

2008 No. 2975

DISABLED PERSONS

The Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008

Made - - - - *14th November 2008*

Coming into force - - *15th November 2008*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 67(2) and (3)(b) and 67A(3) of the Disability Discrimination Act 1995(a).

In accordance with section 67A(4) of that Act the Secretary of State has consulted the Disabled Persons Transport Advisory Committee(b) and such other persons as the Secretary of State considers appropriate.

A draft of these Regulations has been laid before Parliament in accordance with section 67(4)(g) and (4A) of that Act and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

“the 1995 Act” means the Disability Discrimination Act 1995;

“draft affirmative resolution procedure”, in relation to an order, means the procedure under which the order is only made if a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament;

“exemption” means an authority given under section 47(1)(a) or (b)(c) of the 1995 Act by an order;

“negative resolution procedure”, in relation to an order, means the procedure under which a statutory instrument containing the order is subject to annulment in pursuance of a resolution of either House of Parliament;

“network” means any permanent way or other means of guiding or supporting vehicles to which the provisions of RVA Regulations apply;

“network order” means an order—

(a) 1995 c. 50. Section 67A was inserted by section 6(4) of the Disability Discrimination Act 2005 (c. 13).
(b) The Disabled Persons Transport Advisory Committee was established under section 125 of the Transport Act 1985 (c. 67) and has a statutory duty to provide the Government with advice on the public passenger transport needs of disabled people.
(c) Section 47(1) was amended by section 6(3) of the Disability Discrimination Act 2005.

- (a) which only applies to vehicles which are used on a specified network or on networks of a specified description (or which are used on both); and
 - (b) the application of which is not limited to specified vehicles;
- “RVA Regulations” means rail vehicle accessibility regulations made under section 46(1) of the 1995 Act.

Orders under section 47 of the 1995 Act which are normally subject to the negative resolution procedure

2.—(1) When the Secretary of State comes to make an order under section 47(1) of the 1995 Act in any of the circumstances referred to in paragraph (3), the Secretary of State will decide that the negative resolution procedure is to be adopted in connection with the making of the order.

(2) But having regard to representations by the Disabled Persons Transport Advisory Committee in response to consultation under section 67A(1) of the 1995 Act, the Secretary of State may decide that the draft affirmative resolution procedure is to be adopted instead.

(3) The circumstances referred to in paragraph (1) are where—

- (a) the order meets any of the qualification criteria listed in regulation 3(1) (which relates to existing vehicles and minor amendments etc) but does not meet any of the disqualification criteria listed in regulation 3(2),
- (b) the order meets either of the qualification criteria listed in regulation 4(1) (which relates to vehicles used on exempt networks and historical vehicles etc) but does not meet any of the disqualification criteria listed in regulation 4(2),
- (c) the order is made solely to revoke an order, to remove an exemption or to reduce the scope of an exemption, or
- (d) the effects of the order could be achieved by one or more orders (each an “alternative order”), and each alternative order would fall within sub-paragraph (a), (b) or (c).

Criteria relating to existing vehicles, and minor amendments etc

3.—(1) The qualification criteria referred to in regulation 2(3)(a) are that—

- (a) (i) the only vehicles to which the order applies are ones to which RVA Regulations do not apply prior to the coming into force of the amendment of section 46(6) of the 1995 Act by the Disability Discrimination Act 2005(a), or ones which belong to a class of vehicle to which RVA Regulations do not so apply; and
- (ii) the reason, or one of the reasons, for RVA Regulations not applying is that the vehicles were first brought into use, or belong to a class of vehicle which were first brought into use, before 1st January 1999;
- (b) (i) the only vehicles to which the order applies are ones to which RVA Regulations do not apply prior to the coming into force of the repeal of section 46(10) of the 1995 Act by the Disability Discrimination Act 2005(b); and
- (ii) the reason, or one of the reasons, for RVA Regulations not applying is that the vehicles are not used for the carriage of members of the public for hire or reward at separate fares;
- (c) the only vehicles to which the order applies are ones to which RVA Regulations do not apply prior to the making of these Regulations, and the reason for RVA Regulations not applying is that the vehicles are not ones which were constructed or adapted to carry passengers on—

(a) Section 6(2) of the Disability Discrimination Act 2005 will amend the definition of rail vehicle in section 46(6) of the 1995 Act so that the scope of the power to make regulations under section 46(1) will not be limited to vehicles first brought into use, or belonging to a class of vehicle first brought into use, on or after 1st January 1999.

(b) Schedule 2 to the Disability Discrimination Act 2005 will repeal section 46(10) of the 1995 Act, which provides that, for the purposes of sections 46 and 47 of the 1995 Act, a person uses a vehicle for carriage if that person uses it for the carriage of members of the public for hire or reward at separate fares.

- (i) a railway or tramway, or
- (ii) a system which uses magnetic levitation or monorail, or which is track-based with side guidance;
- (d) the order applies only to a unique vehicle;
- (e) the order contains only one or more minor amendments to an order;
- (f) the exemption to which the order relates is for specified vehicles and for a specified period of time during which—
 - (i) the vehicles are to be used solely for testing;
 - (ii) no fares are to be charged to any passenger in the vehicles; and
 - (iii) the vehicles are not to be available for use by members of the general public;
- (g) the exemption to which the order relates is granted for a period not exceeding six months.

(2) The disqualification criteria referred to in regulation 2(3)(a) are that—

- (a) the order creates or extends the scope of an exemption with no expiry date or an expiry date later than 31st December 2019;
- (b) other than where the sole purpose is to amend a typographical error, the order amends an order by extending the period of time for which the exemption applies;
- (c) the order is a network order creating or extending the scope of an exemption.

(3) In paragraph (1)(c) “railway” and “tramway” have the same meaning as in section 67(1) of the Transport and Works Act 1992^(a) and “magnetic levitation”, “monorail” and “tracked-based with side guidance” have the same meaning as in article 3(1) of the Transport and Works (Guided Transport Modes) Order 1992^(b);

(4) In paragraph (1)(e), a “minor amendment” means any of the following—

- (a) the correction of a typographical error,
- (b) the elucidation or correction of an order that has been drawn to the special attention of both Houses of Parliament in a report by the Joint Committee on Statutory Instruments^(c),
- (c) an amendment made solely for the purpose of extending to additional vehicles an exemption which was previously granted to more than one specified vehicle, and the additional vehicles are of an identical type to the specified vehicles,
- (d) an amendment which does not create or extend the scope of an exemption.

Criteria relating to vehicles used on exempt networks, and historical vehicles etc

4.—(1) The qualification criteria referred to in regulation 2(3)(b) are that—

- (a) the order only applies to a vehicle which—
 - (i) was first brought into use on or after 1st January 1999;
 - (ii) is used for carriage on a network on which one or more of the vehicles brought into use before that date are the subject of a network order (an “exempt network”); and
 - (iii) if used also on one or more networks which are not exempt networks, is not used on them for more than 20 days in total in any calendar year;
- (b) the order only applies to a vehicle which—
 - (i) is used to demonstrate or operate a historical or special type of railway service; and
 - (ii) is used exclusively or primarily for tourist, educational or recreational purposes.

(2) The disqualification criteria referred to in regulation 2(3)(b) are that—

(a) 1992 c.42.
 (b) S.I. 1992/3231 as amended by S.I. 1997/1951.
 (c) The Joint Committee on Statutory Instruments operates under House of Commons Public Business Standing Order No 151 and House of Lords Public Business Standing Order 74.

- (a) the order applies to a vehicle first brought into use on or after 1st January 1999 and the order creates or extends the scope of an exemption with no expiry date or an expiry date later than 31st December 2019;
- (b) other than where the sole purpose is to amend a typographical error, the order amends an order by extending the period of time for which the exemption applies;
- (c) the order is a network order creating or extending the scope of an exemption.

Orders under the 1995 Act which are normally subject to the draft affirmative resolution procedure

5.—(1) When the Secretary of State comes to make an order under section 47(1) of the 1995 Act otherwise than in any of the circumstances referred to in regulation 2(3), the Secretary of State will decide that the draft affirmative resolution procedure is to be adopted in connection with the making of the order.

(2) But having regard to representations by the Disabled Persons Transport Advisory Committee in response to consultation under section 67A(1) of the 1995 Act, the Secretary of State may decide that the negative resolution procedure is to be adopted instead.

Signed by authority of the Secretary of State for Transport

Andrew Adonis
Minister of State
Department for Transport

14th November 2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out basis on which the Secretary of State will decide which parliamentary procedure is to be followed when making an order under section 47(1) of the Disability Discrimination Act 1995 (c. 50), as substituted by section 6(3) of the Disability Discrimination Act 2005 (c. 13).

Regulations 2 to 4 set out the circumstances in which such an order would normally be subject to the negative resolution procedure, so that it could be annulled following the passing of a resolution by either House. *Regulation 5* sets out the circumstances in which an order would normally be subject to the draft affirmative resolution procedure, requiring the instrument to be laid and approved by a resolution of both Houses of Parliament before being made and brought into force.

The Secretary of State may however decide to adopt a different procedure for a particular order having regard to representations by the Disabled Persons Transport Advisory Committee.

An impact assessment has not been produced for this instrument because no additional costs on business, charities or the voluntary sector are foreseen and the impact on the public sector is negligible.

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