

THE RAIL VEHICLE ACCESSIBILITY (NON-INTEROPERABLE RAIL SYSTEM) (GLASGOW SUBWAY) (AMENDMENT ORDER) EXEMPTION ORDER 2022

Explanatory Note

What does the Order do?

1. The Order exempts rail vehicles known as Metro-Cammell Power Cars and Trailer Cars operated on the Glasgow Subway by Strathclyde Partnership for Transport ('SPT') from requirements under the Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 ("RVAR 2010"). The Order is made by the Secretary of State in exercise of the powers conferred by sections 183(1), (2), (4)(b), (5), (7) and 207(1) and (4) of the Equality Act 2010. The Secretary of State has decided to exercise the powers in section 183(4)(b) rather than section 183(4)(a) of the Equality Act 2010 because the Secretary of State thinks it is appropriate to include conditions and time limits on the exemptions.

What requirements does this Order cover?

2. This order exempts the rail vehicles operating on the Glasgow Subway from the requirements set out in the following paragraphs of Schedule 1 of RVAR 2010:

Part 1 of Schedule 1

- (i) 3(1): The doorway in the side of a rail vehicle must be indicated clearly by doors which on their exterior contrast with the exterior of the vehicle to each side of the doors.
- (ii) 3(3): Each passenger doorway in the side of a rail vehicle must be fitted with an audible warning device which must emit warning sounds in accordance with sub-paragraph (5) inside and outside the vehicle in the proximity of each control device for the doorway or, if there is no such device, adjacent to the doorway.
- (iii) 3(5): The audible warning device must –
 - (a) where the unlocking of all passenger doors in the side of a rail vehicle is activated by a member of the operator's staff, emit a distinct sound for a period of not less than 3 seconds commencing when the doors become openable by passengers;
 - (b) emit a different distinct sound to that required by paragraph (a) and, where applicable, paragraph 1 of Part 2 of this Schedule, commencing not less than 3 seconds before the door starts to close.
- (iv) 6 & 7: Requirements relating to the provision and characteristics of a wheelchair space.
- (v) 8(2): Subject to sub-paragraphs (3) and (5), the floor of a vestibule to a passenger doorway in the side of a rail vehicle must contrast with the adjoining floor of the passenger saloon of the vehicle.
- (vi) 10(1)(a): A handrail must be fitted in every rail vehicle, on the inside as close as practicable to, and on either side of, the passenger doorways in the side of the vehicle, extending vertically from a point not more than 700 mm above the floor to a point not less than 1200mm above the floor.
- (vii) 10(4)(a): Handrail must have a circular cross section with a diameter of not less than 30 mm and not more than 40mm.
- (viii) 10(4)(c): The handrail must have a slip-resistant surface.

- (ix) 10(4)(d): The handrail must contrast with the parts of the rail vehicle adjacent to the handrail.
- (x) 10(6)(a): The handrail fitted on the inside of the vehicle above the doorway must have a maximum width, at its major axis, of not less than 30mm and not more than 40mm.
- (xi) 10(6)(b): The handrail fitted on the inside of the vehicle above the doorway must have a minimum width at its minor axis, of not less than 20mm.
- (xii) 10(6)(c): The handrail fitted on the inside of the vehicle above the doorway must provide not less than 40mm clearance for a passenger's hand between any part of the handrail and any other part of the rail vehicle.
- (xiii) 11(1): The interior of the vehicle must be fitted with a public address system for audible and visual announcements.
- (xiv) 11(10): Displays inside a rail vehicle must, when all passengers are seated, be viewable from at least 51% of passenger seats.
- (xv) 13(3): Each priority seat and the space available to its user, must comply with the specification in C1.
- (xvi) 13(6): There must be a sign on or near to a priority seat indicating that disabled persons have priority for the use of that seat.
- (xvii) 18, 19, 20 and 21: A train consisting of 3 carriages (as the Glasgow Subway units do) must have at least 2 wheelchair spaces.

Part 2 of Schedule 1

- (xviii) 1: Where opening of passenger doors is activated by a member of the operator's staff, the audible warning device required by clause 3(3) of Part 1 must emit a distinct sound for a period of not less than 3 seconds commencing when the doors begin to operate.
- (xix) 3: At a passenger doorway in the side of a rail vehicle the edge of the floor along the entrance must be illuminated by a light placed within or immediately adjacent to that edge.

Why has the Order been made?

3. The Rail Vehicle Accessibility (Non-Interoperable Rail System) (Glasgow Subway) Exemption Order 2019 granted time limited exemptions in respect of the same requirements as those set out in the list above. These time-limited exemptions expire on 1 July 2022.

4. SPT have ordered new trains, which are compliant with RVAR 2010. (The track gauge is only 4-feet (1219 mm) and the tunnel diameter 11 feet (3400 mm)), and consequently no other existing trains are suitable.)

5. At the time of the 2019 Order being made, SPT anticipated introducing the new trains in 2021, and displacing the old trains by June 2022. This application was based on delays that had been encountered in the mobilisation and design stages of the substantial Glasgow Subway Modernisation programme up to that point. Further to that delay, the programme has been significantly impacted, principally by the Covid-19 pandemic, which has resulted in a subsequent delay to the forecast date for completion, and also the interim milestones.

6. Testing on the Subway system commenced in 2022, and the introduction of the new trains into passenger service is scheduled from 2023. This will be carried out on a phased basis, and once certain performance requirements are proven, new trains will be brought into service, and the old trains will be removed from service. It is anticipated that this transfer will take place by June 2024.

What Mitigations are in place for non-compliance?

7. Mitigations for the non-compliances are as follows:

(a) SPT is committed to providing assistance to passengers and improving standards of accessibility across the Glasgow Subway operation. Any passenger who has a disability or mobility issue who advises in advance of a trip will be supported with help in identifying the nearest transport hub with the best suited facilities and assistance in planning for their journey.

(b) If an individual's disability means that they cannot access the Subway, SPT will offer alternative transport through the MyBus service, which is an accessible, shared transport service which will transport them from the departure station to the destination station. This service can also be used to book door to door transport.

Why has the exemption been made without being laid before Parliament?

8. Following the amendment of section 183 of the Equality Act 2010 by the Deregulation Act 2015, which inserted paragraph (7), exemptions can now be made by administrative orders, rather than by statutory instruments. The Order will, however, be notified to Parliament in the Annual Report which the Secretary of State is required to lay before Parliament by section 185 of the Equality Act.

Who has been consulted and what did they say?

9. We consulted the Disabled Persons Transport Advisory Committee ("DPTAC"), the Office of Rail and Road ("ORR"), Transport Focus, Transport Scotland and Mobility and Access Committee for Scotland ("MACS") on the exemption request. Public consultation was not carried out.

10. The consultation comments received are summarised here:

None of the five consultees opposed the exemption request.

MACS and Transport Scotland provided no particular comments, and Transport Focus urged SPT to do all it can to deliver the new trains into service ahead of June 2024.

ORR considered that the effects of any changes to the context in which the vehicles operate should be taken into account and the risks assessed, especially since the accessibility of the Subway system arising from the introduction of the new trains may result in a change to the risk profile, and physical changes to the existing rolling stock or to the procedures for their operation may become necessary to manage changing safety risks, regardless of the status of the exemption.

DPTAC expressed extreme disappointment that the roll-out of accessible rolling stock implies that the Glasgow Subway will not now be fully completed until mid-2024, some 54 months after the original (and legally binding) deadline, and that the application contained no fully detailed mitigation plan reflecting the effect on users of the continuing non-compliances.

DPTAC's comments and suggestions for mitigating actions that SPT could adopt included the following general points and specific points for particular RVAR clause numbers listed:

- Mitigations required of SPT for the original application,
 - Mitigation plan for this exemption extension to help offset disadvantage of disabled users,
 - Drivers announcing all stops and which side the doors open,
 - Potential improvement on help in identifying the nearest alternative accessible transport hub,
 - Monitoring of progress towards 2024 and consideration of no further extension,
- 3 (1): Visually Impaired groups' opinion of door exterior colour contrast,
- 3 (3 and 5), Pt 2, 1: Mitigation for lack of audible warning for door open/close
DPTAC comment in 2019,
- 6, 7 and 18: Mitigation for lack of wheelchair spaces given that there are lifts, albeit at two stations only,
- 8 (2) and 10 (1): Mitigations for lack of floor colour contrast and doorway handrails,
- 10 (4 and 6): Mitigations feasible for lack of handrail colour contrast,
- 11 (1 and 10): Disability groups' opinion of lack of visual announcements,
- 13 (6) Disability groups' views on priority seats and signage,
- Pt 2 (3) Visually impaired groups' opinions on lack of door threshold lighting.

11. In response, SPT reported that the measures taken to mitigate the lack of accessibility features until the new trains are introduced, for both regular travellers and other passengers with disabilities, include ensuring that every station has staff to assist passengers with mobility or sensory impairments, making on-board public address announcements of next station, ensuring that as many vehicles with colour contrast flooring and handrails are in service as possible, engaging with local accessibility groups to understand the challenges of disabled passengers, to ensure that priority seating signage meets requirements for example, advising passengers in advance on available facilities, and encouraging passenger feedback, with a commitment to consider, review and respond to each comment.

12. The measures taken by SPT to recover the programme delay include commencing train testing at night on the Subway running lines prior to vehicle acceptance, system changes to allow new trains to be introduced prior to the communications-based train control system being fully delivered, and the gradual service operation of new trains along with the old ones..

13. The consultation comments received can be found in full at Annex A.

Is there an impact assessment?

14. The Glasgow Subway is operated by SPT, which is a public body. For deregulatory measures affecting public bodies, no impact assessment is required.

Contact

15. Philip Hunt at the Department of Transport: Tel: 07812 483546 or e-mail: philip.hunt@dft.gov.uk, can answer any queries regarding the Order.

Annex A – Stakeholder Consultation responses

Disabled Persons Transport Advisory Committee (DPTAC)

Thanks you for asking us to comment on this application.

It is extremely disappointing that this application has been submitted with the implication that the roll-out of accessible rolling stock on the Glasgow Subway will not now be fully completed until mid-2024, some 54 months after the original (and legally binding) deadline. It is hard to escape the view that SPT's non-compliance was entirely wilful and predicated on the basis that the Secretary of State was never likely to refuse an application that would have rendered a vital piece of Glasgow's transport infrastructure inoperable. As such, it sits very uneasily with SPT's duties under both the Equality Act and Public Sector Equality Duty, and highlights, yet again, the need for reform of the regulatory framework with regard to the accessibility of rolling stock, and the need for a wider and more effective range of remedies and penalties to deter the wilful or negligent failure to comply with regulatory obligations.

Although we note that Covid-19 has negatively impacted on delivery timescales, the request for a two year extension to the previous exemption is in stark contrast to the generally much shorter extensions requested by other operators affected by Covid-19. We also note that, rolling stock aside, the Glasgow Subway is in any event rendered effectively inaccessible by its station infrastructure. However, this does not excuse the failure to meet a legally-binding regulatory requirement.

DPTAC raised strong concerns around SPT's original application for an exemption in 2019 and the Department should revisit the granting of the resulting exemptions to ensure that whatever mitigations were required of SPT have been complied with, and the extent to which they have proved to be effective. We have commented below on the lack of a fully detailed mitigation plan as part of SPT's application.

Given our concerns above, we would strongly recommend that the Department seeks the views of the Mobility and Access Committee for Scotland ('MACS') on this application, and encourages SPT to work closely with MACS in addressing the multiple issues of inaccessibility currently associated with the Glasgow Subway. We would also suggest that SPT are encouraged to apply for Access for All funding for accessibility improvements to their station estate (although it is worth checking first with Neil Priest and his team whether Glasgow Subway stations fall within the scope of this scheme).

In addition to these general comments I have set out below some more detailed comments on specific sections of the application:

General: SPT should be asked to commit to all Subway drivers manually announcing all stops, and ideally whether doors open on the left or right hand sides (in the absence of door opening audible alerts). Although we believe this already happens most of the time, no such commitment is currently in the application, and there would be no harm in focussing the operator's mind on the ongoing need to do this until automatic announcements are fitted.

8: " In this application there are no measures which are proposed to enable a disabled person to utilise the existing Subway rail vehicles." This is an extremely poor approach. Under S149 of the Equality Act 2010, SPT as a public body have a duty to promote equality of access to disabled users / customers of the Glasgow

Subway. Recognising that the entire fleet of rolling stock is to be replaced, temporary mitigation measures to help offset disadvantage of this on disabled users of Glasgow Subway appear to be lacking. I would suggest that DfT may need to challenge SPT here and ask them what their mitigations are as these are not detailed in the dispensation extension request.

“SPT is however committed to providing assistance to passengers and improving standards of accessibility across the Subway operation. Any passenger who has a disability or mobility issue who advises in advance of a trip will be supported with help in identifying the nearest transport hub with the best suited facilities and assistance in planning for their journey.” Again, this offers scope for improvement so DfT may wish to challenge SPT on this in terms of this clearly fails the TuaG philosophy. Furthermore, what about disabled visitors to the city who expect a modern accessible network in line with the now expired 2019 deadline? I’d suggest DfT explore this aspect in more detail.

“If an individual’s disability means that they cannot access the Subway, SPT will offer alternative transport through the MyBus service, which is an accessible, shared transport service which will transport them from the departure station to the destination station. This service can also be used to book door to door transport.” This is a poor alternative to make a journey through the city, and certainly doesn’t fit with any inclusion philosophy. Will the SPT Modernisation plan improve on this to enable and empower disabled users of the Glasgow Subway to make better use of this network?

10. “it is anticipated that this transfer will take place by June 2024.” How will DfT monitor progress against this ‘anticipated’ transfer deadline? If a dispensation extension is granted, might DfT wish to stipulate that no further extensions will be granted?

3 (1) Suggest SPT consult with local VI groups to discuss this aspect. Likewise, MACS may have an opinion.

3 (3) How might SPT mitigate this issue as an interim measure? Also, what was the original DPTAC comment against this issue in 2019?

3 (5) As per 3 (3).

6 & 7 As per 3 (3). This is most concerning. Even taking into account there are only 2 lifts along the 15 stations on the route of the Glasgow Subway, how do SPT accommodate the needs of wheelchair users who aren’t able to stand?

8 (2) How do SPT currently mitigate this aspect?

10 (1) As per 8 (2).

10 (4 and 6). As per 8 (2). I believe that whilst some of the deviations outlined here are small, there may still be an adverse impact on some disabled users of this network. Likewise, might SPT be able to install some temporary improvements for the lifetime of this dispensation extension request, for example, spray / remove and powder coat the silver handrail detailed in 10 (4) d to offer an improved colour contrast?

11 (1) Have SPT discussed this with local disability groups? Whilst it may be ‘fair to presume’ this would lead to minimal adverse impact, in reality for people living with

sight loss and certain cognitive impairments (dementia / learning disabilities etc), this could be a considerable barrier. Suggest DfT explore this aspect.

11 (10) As per 11 (1).

13 (3) Noted. I'm not sure of the level of potential adverse impact this may have on people with certain conditions.

13 (6) Have SPT considered a policy approach in terms of how a temporary improvement (interim) could be applied here? This could be achieved by discussing possible improvements with local disabled communities.

18 Noted. The new rolling stock should address this.

Pt 2 (1) As per response to 8 (2) above.

Pt 2 (3) Have SPT discussed this with the local sight impaired community?

Please let me know if you have any questions on the above or would to discuss any of our comments in more detail.

Best regards

David Mapp (on behalf of DPTAC)

Rail Working Group Lead, DPTAC

Office of Rail and Road (ORR)

Thank you for the opportunity to comment on the proposed extension of the current dispensation for the Glasgow Subway trains operated by Strathclyde Partnership for Transport. I apologise that I did not reply before the date you requested. This was because of other urgent work that had to be prioritised.

We are satisfied that the safety risks are being managed at present such that the exemption can be extended until the withdrawal of the fleet, proposed for June 2024. However, the exemption does not remove the operator's responsibility to manage safety risks to the level required by law, and the effects of any changes to the context in which the vehicles operate should be taken into account and the risks assessed.

In particular we note that the changes to the accessibility of the Subway system arising from the introduction of the new trains may result in a change to the risk profile, and that physical changes to the existing rolling stock or to the procedures for their operation may become necessary to manage changing safety risks, regardless of the status of the exemption.

Extending the dispensation will have no effect on our ability to use our regulatory powers in respect of matters not covered by the exemption.

Yours sincerely

Giles Turner

Senior Engineer, Rail Vehicles, ORR

Transport Focus

Thanks very much for the below and giving us an opportunity to comment on the derogation request by Strathclyde Passenger Transport (SPT).

Given the age of the existing rolling stock and the limits this places on making further adaptations to achieve compliance, the wider modernisation programme and the existing mitigations in place for disabled passengers we do not wish to raise any objections to the request.

We understand that SPT have already made significant changes to the design to ensure that the new trains are introduced ahead of the new signalling system, and that the phase out of the existing stock is expected to take place late next year (2023). We also understand the need to build in some contingency into the request but would urge SPT to do all it can to deliver the new trains to service ahead of June 2024 – the point up to which the derogation is likely to run if granted.

Kind regards

Dan Taylor

Senior Policy Advisor, Transport Focus

Mobility and Access Committee for Scotland (MACS)

Thank you for contacting MACS.

Given that this exemption is a short-term one, due to the delays in introducing the new rolling stock as a result of covid, we have no objection to the exemption.

Do please keep us in touch with any further developments with the Glasgow Subway.

Yours sincerely

Simon Watkins

Lead, Rail Workstream, MACS

Transport Scotland

Hi Philip,

Thank you for sight of the application from SPT which I have shared with rolling stock colleagues for awareness.

As Transport Scotland don't have a role in respect of the Glasgow Subway we have no specific comments to make, however we are aware of the difficulties in bringing in the new trains and accept the need for the extension of the RVAR derogation.

Kind regards

Jacqueline McDonald

Rail Accessibility Manager, Transport Scotland