



HOUSE OF COMMONS

LONDON SW1A 0AA

Date: 26th March 2024

Dear Minister,

West Coast Railway Company

We write to you as a group of Members of Parliament in whose constituencies West Coast Railway Company (**WCR**) and Railway Touring Company (**RTC**) operations are based, whose constituencies are served by WCR and RTC heritage train journeys, providing important economic support to local businesses or with an interest in protecting and promoting the UK's heritage rail sector.

This letter follows earlier correspondence with you from a number of us, WCR and RTC.

We are grateful for the attention you have given this matter to date and ask you to consider the contents of this letter at your earliest convenience.

Application for a Regulation 5 long-term exemption

On Friday 8 March 2024, WCR made an application to the ORR for a long-term "Regulation 5" exemption to operate its heritage Mark 1 and Mark 2 carriages on the mainline without central door locking (CDL). As you will know, its previous exemption was withdrawn on 8 January.

This application asks the ORR to consider granting an exemption for the continued use of hinged-door carriages with enhanced oversight of secondary-door locking (SDL), on the basis of a comprehensive risk assessment carried out by an external health and safety consultant. WCR's previous application was criticised for not having a sufficient risk assessment.

Although the ORR's policy on the granting of exemptions emphasises that fitment of CDL will be required, there are exceptions. It makes clear that ORR will consider granting an exemption where an applicant can demonstrate exceptional circumstances. Consistently with this, the ORR has confirmed that it cannot "*shut its ears*" to an application for an exemption which excludes the fitment of CDL.¹ The High Court judgment helpfully summarises the policy as follows:

*"The ORR's policy gives a strong steer that central door locking will be required but it nonetheless makes clear that ORR will consider granting an exemption from Regulation 5 where an applicant can "demonstrate that there are exceptional circumstances". Two examples of exceptional circumstances are given but they are not said to be exhaustive. It is 'expected' that any deviation from the policy "provide an equivalent level of safety protection to central door locking" but the requirement is not mandatory."*²

WCR's application is intended to meet the exceptional circumstances exception to the policy.

¹ See the "common ground" in paragraph 49 of the judgment: <https://www.judiciary.uk/wp-content/uploads/2023/12/R-v-ORR-Judgment.pdf>

² As above, paragraph 50.



We note from your correspondence with the managing director of RTC that you encouraged WCR to implement CDL on its rolling stock as soon as possible. We set out the above policy context in order to clarify two points in this regard. First, WCR is acting reasonably in making an application for a Regulation 5 exemption on the basis of SDL, supported by a robust risk assessment meeting the ORR's requirements. Secondly, the ORR has to keep an open mind in considering the application. Given the huge cost of fitting CDL—WCR has 125 Mark 1 and 2 carriages which would require fitting, approximately 60% of the heritage rolling stock in the UK—it is understandable that they should wish to make a further application for an exemption on the basis that it meets the exceptional circumstances exception in the ORR policy. We are concerned that WCR should not be judged negatively for doing so.

Application for a temporary Regulation 5 exemption

WCR's immediate concern is that it is able to operate its services while the full application is considered. This concern is shared by the RTC, whose heritage operations are wholly reliant on WCR's Mark 1 rolling stock.

WCR had previously requested a temporary exemption while it was preparing its application, both at an in-person meeting with Richard Hines, HM Deputy Chief Inspector of Railways at the ORR, on 7 February 2024 and in follow-up correspondence on 15 February. ORR's response was that it requires an application from WCR before it will consider whether the granting of a regulation 5 exemption is appropriate.

In its covering letter accompanying the application sent to the ORR last Friday, WCR requested a temporary exemption to cover the period of the application, now that a full application had been submitted.

The ORR has a statutory period of four months to consider WCR's application and reach a determination, on receipt of all required information. In practice, the ORR's assessment of an exemption application can take much longer than four months. It can request further information and restart the clock upon its receipt. This can happen multiple times. WCR's last application took nearly two years to be processed.

Even were the ORR to decide the application in four months, this period extends through spring to the summer months, the busiest period for both WCR and RTC, third-party suppliers and hospitality and retail businesses who depend on their services.

The ORR's refusal, and its consequences

On 13 March 2024, the ORR refused to grant WCR's request for a temporary exemption, stating that *"the unique set of circumstances that resulted in the grant of short-term temporary extensions to WCRC no longer apply and as such, a temporary exemption will not be granted while we assess the application."*

The consequences for both WCR, RTC, the tourism-based economies in our constituencies and members of the public who have booked tickets will be profound:

- In terms of WCR, the bookings of 77,000 passengers are at risk. The first Jacobite service runs on 28 March.
- The Jacobite service alone brings in an annual average of £25 million in tourism revenue to the UK.
- RTC runs 70 steam-hauled tours in the UK. It carried 22,000 passengers in 2023 and currently has over 10,000 passengers booked for 2024. Its seven-day UK tour on The Great Britain XVI runs on 13 April.
- Neither WCR nor RTC will be able to withstand the financial costs of cancelling their services for a minimum of four months, let alone any longer, while the full application is considered.

Our request

We ask that you urgently consider for yourself, and in turn discuss with the ORR, whether its refusal of the temporary exemption is based on legitimate regulatory reasons. For the reasons below, we are deeply concerned that it is not.

Safety

In previous correspondence with us, WCR and RTC you have explained that it would not be appropriate for you to intervene where “a safety issue” has been identified and acted upon by the ORR.

We want to clarify that, in relation to the granting of a temporary exemption while the full application is considered, there are no safety reasons to justify a refusal. This is for two reasons:

1. There has been no suggestion from the ORR that, since its last inspection in the summer, WCR's operating procedures have given rise to new safety concerns, which require an immediate revocation of the exemption. This is confirmed in the High Court judgment:

After inspection on 8 August 2023, the ORR was satisfied that the changes proposed by the Claimant were sufficient to address the safety concerns raised by its June and July inspections.³

2. WCR has operated with an exemption for 18 years, during which time there has been no serious injury attributable to the lack of CDL.

Consistency of approach and fairness

Other operators are operating on the mainline with an exemption, the only difference being they have given a long-term commitment to carry out plans for fitment of CDL. In its first decision letter to WCR, dated 31 January 2023, the ORR stated:

“However, even though operators have had a significant period to fit CDL since the Regulations came into force, we are not requiring operators or owners to cease using vehicles until CDL is fitted. Instead, we have requested that operators provide timebound

³ Para 34 of the judgment: <https://www.judiciary.uk/wp-content/uploads/2023/12/R-v-ORR-Judgment.pdf>



plans for how they will fit CDL for our consideration, which include any financial, engineering, etc. limitations which means fitment might take longer.”

The fitment plans can be found on the ORR’s website [here](#). An example from one of the exemption certificates reads:

“The Company must ensure that the fitment of a method of centrally locking hinged doors in a closed position to the Rolling Stock shall take place in accordance with the fitment plan provided to ORR on 28 February 2023 (the ‘Fitment Plan’).

“The Company must ensure that it provides ORR with written updates of progress against the Fitment Plan at 6-monthly intervals starting from the date of this certificate.

“The Company must notify ORR in writing of delays to completion of any part of the Fitment Plan including the reasons for the delays.” (Emphasis added.)

The key conclusion we ask you draw from this, in terms of WCR’s application for a temporary exemption, is less that other operators have long-term plans in place to fit CDL; more that they are currently allowed to use Mark 1 carriages with hinged doors and SDL on the mainline without the risk to passenger safety being considered by the ORR to be a sufficient reason for them not to operate.

WCR is asking to be treated in the same way. The approach to WCR’s application for a temporary exemption should be based on a safety assessment. It should not be clouded by the fact it has not to date made an application to fit CDL.

Conclusion

Regulators have enormous powers which, if exercised unreasonably, have the capacity to bring businesses they regulate to a quick end. It is for that reason that they are politically accountable – it is a vital democratic safeguard.

Given the reasons for the temporary exemption application (the imminent tourist season), we urge you to act on this letter as soon as possible.

Yours Sincerely

David Morris MP

Tim Farron MP

Sarah Dines MP

Jamie Stone MP

James Wild MP

Rt Hon Sir Graham Brady

Robbie Moore MP

Cat Smith MP