EXPLANATORY MEMORANDUM TO

THE DOCKLANDS LIGHT RAILWAY (SILVERTOWN AND LONDON CITY AIRPORT EXTENSION) (EXEMPTIONS) ORDER 2006

2006 No.2536

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

The Docklands Light Railway (Silvertown and London City Airport Extension) (Exemptions) Order 2006 (the "Order") exempts Docklands Light Railway Limited ("DLRL") in respect of railway services provided by it on the Silvertown and London City Airport extension (the "extension") of the Docklands Light Railway ("DLR") from designation as passenger services to be provided under franchise agreements. It also exempts the extension from the standard closures procedures for networks, passenger services and stations and applies a modified closures procedure

3. Matters of special interest to the Joint Committee on Statutory Instruments.

None.

4. Legislative Background

4.1 The Railways Act 1993 (the "1993 Act"):

(a) requires the Secretary of State (and Scottish Ministers in respect of Scotland only services) to designate such services for the carriage of passengers by railway as it considers ought to be provided under franchise agreements and to select the franchisees (section 23);

(b) permits the Secretary of State (and Scottish Ministers in respect of Scotland only services) to exempt from designation under section 23 such services for the carriage of passengers by rail as may be specified in an order (section 24 of the 1993 Act); and

(c) makes requirements as to the procedure to be followed in relation to the closure of networks, passenger services and stations (sections 37 to 50 of the 1993 Act)

(d) permits the Secretary of State (and Scottish Ministers in respect of Scotland only services) to make exemptions from such closures requirements (section 49(2), (4) and (5)) and to apply a modified closure requirement contained in Schedule 5 (section 49(3)).

4.2 DLRL currently enjoys the exemptions described above in relation to the majority of the DLR network under the Railways (Class and Miscellaneous Exemptions) Order 1994 (S.I. 1994/606). Since 1994, exemptions have been obtained in relation to any extensions to the DLR network by way of an Order made by the Secretary of State in relation to the requirements at 4.1 (b) and (c) above.

4.3 DLRL has applied to the Secretary of State for an Order exempting it and the extension from the requirements in relation to 4.1 (b) and (c) above. The effect of the Order is to exempt the extension from those requirements.

4.4 The Order also applies the modified closures procedure in Schedule 5 to the Railways Act 1993 to the extension. The standard closures procedure has involved the SRA (for example in deciding whether it thinks that a proposed closure should go ahead and publicising the proposal). Under those provisions the Secretary of State makes the final decision on whether a closure should take place taking into account any report by the relevant Rail Passengers' Committee and may impose conditions on the SRA for securing the continued provision of services. The alternative procedure in Schedule 5 which applies to DLR is slightly simpler. There is no SRA involvement. Instead, the Mayor of London makes a final decision on whether a proposed closure should go ahead taking into account any report by the London Transport Users' Committee (known as London TravelWatch).

4.5 Sections 37 to 49, part of section 50 and Schedule 5 of the 1993 Act are to be repealed by section 59(6) and Schedule 13 of the Railways Act 2005 (the "2005 Act") in the near future. The 2005 Act will introduce new network modification provisions for services, networks and stations (sections 22 to 45). The 2005 Act also provides for the abolition of the SRA.

4.6 In particular, section 38(4) of the 2005 Act provides that where an order made under section 49(2), (4) or (5) of the 1993 Act is in force immediately before commencement of section 38 of the 2005 Act, that order will, after commencement of section 38 have effect to exclude the services, network (or parts of a network) and stations (or parts of a station) from the relevant network modification provisions in the 2005 Act. Therefore, once the new network modification provisions come into force, the Order will have the same effect as an order under section 38 of the 2005 Act.

4.7 Under section 25(1) of the 2005 Act the provisions of Schedule 8 (proposals to discontinue excluded London services) of that Act apply where a proposal is made for the discontinuance of "special procedure services which are excluded London services".

4.8 A "special procedure excluded service" is an excluded service which is designated as a special procedure service in an order made (in this case) by the Secretary of State. Under section 25(10) of the 2005 Act, where an order made under section 49(3) of the 1993 Act is in force immediately before the commencement of section 25, that order shall have effect as an order designating services to which it applies as a special procedures service.

4.9 The closures procedures set out in Schedule 8 largely replicate the procedures that are currently set out in paragraph 5A of Schedule 5 to the Railways Act 1993. However, there is no longer a right of appeal to the Secretary of State.

4.10 The Department has decided to proceed with making the Order now rather that wait until the 2005 Act is in force because it would then be necessary to make two orders, one under the 1993 Act in relation to the franchise exemption and one under the 2005 Act in relation to exemptions from the closures provisions.

5. Extent

This Order applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 All of the DLR network operated by DLRL is currently exempt from the closures regime in section 37 to 50 of the 1993 Act. Instead, the modified closures provisions apply to it. DLRL has requested that these exemptions and the modified closures provisions be likewise applied to the extension.

7.2 The DLR routes affected by the Order are: Canning Town –West Silvertown – Pontoon Dock – London City Airport – King George V.

7.3 A public consultation has not been conducted on the Order since it merely extends the exemptions which apply to the whole of the DLR network, to the extension. This Order assimilates the extension with the rest of the DLR network and it is unlikely that a public consultation would have affected the policy.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the Order as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

Andy Rudd at the Government office for London, Tel: 020 7217 3015, or email: jbonde@gol.gsi.gov.uk can answer any queries regarding the Order.