EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (ABOLITION OF THE RAILWAY HERITAGE COMMITTEE) ORDER 2013

2013 No. [XXXX]

1. This explanatory document has been prepared by the Department for Transport and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

2. Purpose of the instrument

The purpose of this instrument is to abolish the Railway Heritage Committee and transfer its functions to the Board of Trustees of the Science Museum.

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

None.

4. Legislative Context

4.1 The Government are proposing to use the powers in the Public Bodies Act 2011 ("the Act") to abolish the Railway Heritage Committee ("RHC") and to transfer its functions to the Board of Trustees of the Science Museum. Section 1 of the Act permits a Minister to abolish a body or office specified in Schedule 1 and the RHC is one of the bodies specified in that Schedule.

4.2 The functions of the RHC are set out in the Railway Heritage Act 1996 ("the 1996 Act"). The RHC was established under the Railway Heritage Scheme Order 1994 (S.I. 1994/2032) and its establishment was continued under the Railway Heritage Scheme Order 1997 (S.I. 1997/39) and the Railway Heritage Scheme Order 2005 (S.I. 2005/2905).

4.3 The RHC is responsible for identifying and designating records and artefacts of the railway industry which in its opinion are of sufficient interest to warrant preservation; and it considers proposals for disposal by the owners of such designated records and artefacts and, if content, approves of disposal of the same.

4.4 The proposal to abolish the RHC was announced as part of the Cabinet Office's Public Bodies Review on 14 October 2010. However, during the legislative passage of the Act, Lord Faulkner of Worcester tabled a proposal that the designation power should be retained and transferred to the Board of Trustees of the Science Museum. The Government was persuaded that there was merit in retaining the designation powers and transferring the exercise of those powers to the Board of Trustees of the Science Museum.

4.5 Discussions between the Department for Transport (DfT) and the Department for Culture, Media, and Sport (DCMS) – the Department responsible for the National Museum of Science and Industry, now known as the Science Museum Group (SMG) – have resulted in an agreement that the power of designation and the statutory protection it affords should be retained after the RHC itself is abolished, with the power being transferred to the Board of Trustees of the Science Museum. There was also discussion regarding amending section 1 of the 1996 Act to extend the scope of bodies to which the designation function would apply, however it was agreed that this was a matter that would be visited by DCMS after the designation function had been transferred to the Board of Trustees of the Science Museum.

4.6 This instrument, made under the Act, provides for the abolition of the RHC with its functions transferred to the Board of Trustees of the Science Museum.

5. Territorial Extent and Application

This instrument applies to all of Great Britain.

6. European Convention on Human Rights

The Minister of State Simon Burns has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of the Railway Heritage Committee) Order 2013 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 The RHC was established under the Railway Heritage Scheme Order 1994 (S.I. 1994/2032) and its establishment was continued under the Railway Heritage Scheme Order 1997 (S.I. 1997/39) and finally the Railway Heritage Scheme Order 2005 (S.I. 2005/2905). The functions of the RHC are set out in the 1996 Act. Its functions are:

- to identify and designate those records and artefacts of the railway industry which in the opinion of the RHC are of sufficient interest to warrant preservation; and
- to consider proposals for disposal by the owners of designated records and artefacts and, if content, approve of such disposal.

7.2 In most cases disposals are made to public record offices, museums or other railway heritage organisations who undertake responsibility for the long-term preservation of the designated record or artefact. The owners of the record or artefact when making the disposals are entitled to seek payment of a fair value price for the items – though many of them may have limited financial value.

7.3 The RHC is a non-departmental public body with members drawn from the rail industry, the National Railway Museum, part of the SMG and the National Archives of Scotland and includes other members with expertise in conservation and archiving. The Chairman and members of the RHC and its specialist sub-committees are all unpaid (although they can claim expenses) apart from the Secretary who receives an annual salary. The cost of the RHC is currently around £100,000 a year.

7.4 During its life, the RHC has designated over 1300 artefacts and many thousands of important historical documents – including the Brunel drawings of the Great Western Railway; the collection of British Transport Films; paintings by Terence Cuneo; coaches from the Royal Train; a travelling post office sorting van; and the GNER archive.

7.5 The Cabinet Office review of public bodies was launched in June 2010, and proposed that the RHC be abolished, on the basis that it did not meet any of the three Cabinet Office tests (around the need for technical expertise, impartiality or independent establishment of facts). The Cabinet Office review announced on 14 October 2010 that, as part of the wider package of Public Bodies review announcements, the RHC should be abolished.

7.6 During the passage of the Act through Parliament, Lord Faulkner of Worcester (a former Chairman of the RHC) tabled a proposal that the designation power should be retained although it would be exercised in future not by the RHC but by the Board of Trustees of the Science Museum.

7.7 The Government announced that it was persuaded that there was merit in this proposal and subsequent discussions between DfT and DCMS have resulted in an agreement that the power of designation and the statutory protection it affords should be retained after the RHC itself is abolished, with the power being transferred to the Board of Trustees of the Science Museum in a smooth and timely manner.

7.8 It is envisaged that the Board of Trustees of the Science Museum will set up a committee known as the SMG Railway Heritage Designation Advisory Board and the composition and manner of this committee's proceedings will be determined by the Board of Trustees of the Science Museum. In order to ensure the smooth transition of the designation function to the Board of Trustees of the Science Museum a shadow SMG Railway Heritage Designation Advisory Board is being set up. Further details about the shadow SMG Railway Heritage Designation Advisory Board can be found in Annex 1.

7.9 The changes being made will apply uniformly throughout Great Britain as the subject matter of the 1996 Act has not been devolved to either Scotland or Wales.

7.10 It has also been agreed that DCMS will have ministerial responsibility for the designation function once it has been transferred to the Board of Trustees of the Science Museum including considering whether further bodies should be included within the scope of the designation function. Section 1(2) of the 1996 Act provides that the Secretary of State may by order modify Section 1(1) by adding a body or a description of bodies to the list of bodies to which the of the 1996 Act applies. An Order made under this section would

be made using the negative resolution procedure and so could not be combined with the present instrument being made under the Act.

7.11 In addition, the DfT will make a one-off payment to DCMS of £50,000 to cover the expenses in the 2011-15 Spending Review period likely to be associated with the SMG Railway Heritage Designation Advisory Board as part of the new arrangements. This is separate to any funding which might be required to provide a secretariat function for the advisory structure, which SMG would be expected to absorb from within its allocated resources. It has also been agreed that DfT will continue to fund the RHC until it is abolished and its designation function is transferred to the Board of Trustees of the Science Museum.

7.12 In line with the requirements of the Act (section 8(1)), a Minister may only make an Order under section 1 of the Act abolishing a body if the Minister considers that the Order serves the purpose of improving the exercise of public functions. In considering this, the Minister must have regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.

- Satisfying the requirements of section 8(1) of the Act

7.13 The Minister considers that this Order serves the purpose in section 8(1) of the Act for the following reasons:

i. **Efficiency:** The decision to abolish the RHC is consistent with reducing unnecessary bureaucracy, overheads and management layers. The Board of Trustees of the Science Museum is responsible for the whole of the SMG. The SMG incorporates the National Railway Museum. The transfer of functions to the Board of Trustees of the Science Museum will result in more efficient working as the National Railway Museum is currently the main recipient of the artefacts designated under the 1996 Act. In addition, currently the composition and proceedings of the RHC are set out in the Railway Heritage Scheme Order 2005; however, once the functions are transferred to the Board of Trustees of the Science Museum, they will be governed by the provisions of Paragraph 16 of Schedule 1, Part II to the National Heritage Act 1983. Under these provisions the Board of Trustees of the Science Museum have power to regulate their own procedure and make arrangements for any of their functions to be discharged by committees. There will therefore be greater flexibility for the Board of Trustees of the Science Museum to create a more efficient organisation. Finally, the back-office functions will be more streamlined as they will be absorbed within the existing structure of the SMG.

ii. **Effectiveness:** The National Railway Museum is the main recipient of the artefacts designated by the RHC. The transfer of those designation powers will enable much closer working between those designating the artefacts and the recipients of those artefacts as they both fall under the umbrella of the same organisation. This will lead to a reduced regulatory burden and effective streamlining of working practices.

iii. **Economy:** This reform will deliver a better deal for taxpayers as the current costs of running the RHC will be largely absorbed within the existing budget of the SMG. The designation function will also be absorbed from within SMG's existing resources and therefore will not create any additional burden. The costs of running the RHC are currently around £100,000 a year.

iv. **Securing appropriate accountability to Ministers:** The abolition of the RHC will not result in any lack of accountability to Ministers as the designation powers will be transferred to the Board of Trustees of the Science Museum which is an executive non-departmental public body sponsored by the DCMS. DCMS will have ministerial responsibility for the designation power once it has been transferred to the Board of Trustees of the Science Museum. There will not be any impact on the public sector and civil society other than a change to the organisation directly responsible for the preservation of railway records and artefacts.

7.14 The Minister considers that the conditions in section 8(2) of the Act are satisfied in respect of the RHC as the designation functions being transferred to the Board of Trustees of the Science Museum will otherwise continue to be exercised within the existing legal framework of the 1996 Act. Abolition does not remove any necessary protections nor does it affect the exercise of any legal rights or freedoms either directly or indirectly.

- The Order

7.15 This Order abolishes the RHC and simultaneously transfers its functions to the Board of Trustees of the Science Museum.

7.16 The Order also makes amendments to the 1996 Act. Section 2 of the 1996 Act which deals with the establishment of the RHC is deleted and the Railway Heritage Scheme Order 2005 made under that section is also revoked. Other amendments are made to the 1996 Act substituting references to the "Committee" with references to the "Board of Trustees". Finally a definition for the term "Board of Trustees" is included in section 7 of the 1996 Act.

7.17 The Order also makes a number of consequential, incidental and supplementary amendments to legislation which are required as a result of the abolition of the RHC and the transfer of its functions to the Board of Trustees of the Science Museum. It revokes the Railway Heritage Scheme Order 2005 which gave effect to the Railway Heritage Scheme under section 2 of the 1996 Act. The Scheme provided for the continued establishment of the Railway Heritage Committee. The Order also makes consequential amendments to the Parliamentary Commissioner Act 1967, the Freedom of Information Act 2000, the Public Bodies Act 2011 and the Freedom of Information (Additional Public Authorities) Order 2010.

8. Consultation outcome

8.1 The Government has carried out consultation in accordance with section 10 of the Act. The targeted 6 week consultation, which was also made available to the public on the DfT's website, on the proposed abolition of the RHC and transfer of its designation function to the Board of Trustees of the Science Museum was launched on 19 January 2012 and closed on 1 March 2012. The consultation was targeted at those with an interest in the issues around the preservation of railway artefacts and records and therefore best placed to comment on the proposed changes. It was decided that 6 weeks was sufficient time to allow those targeted by the consultation to reply, although it was stated that a time extension would be considered for extenuating circumstances. In addition, the DfT liaised closely with the RHC, DCMS and SMG in relation to the consultation. In particular, the DfT ensured that the RHC was fully engaged in the consultation process. A total of 32 responses were received regarding the proposals. Responses were analysed for general views on the proposals and the specific questions set out in the consultation document.

8.2 Respondents included a number of organisations from the museum, archive and heritage sectors as well from the rail industry and rail passenger organisations. Responses were also received from a variety of other sources such as a Parliamentary group representing the interests of heritage rail, the Welsh Government and a number of private individuals. Although there was some support for retaining the RHC, the majority of respondents appeared to be pleased with the proposal to maintain the designation function and transfer it to the Board of Trustees of the Science Museum. Most respondents recognised the need for the rationalisation of functions or expressed the view that the exercise of the designation function is more important than the vehicle through which it is delivered. There was strong support for the Board of Trustees of the Science Museum being ideally placed to take on the role in the future, especially if it appoints external panel members to ensure that there is no conflict of interest between it carrying out the designation function and its role as the governing body of the National Railway Museum. One industry respondent also commented favourably on the "impressive commercial and other backgrounds of the Trustees". The SMG has also confirmed that it intends to ensure that Scotland and Wales are properly represented on the SMG Railway Heritage Designation Advisory Board to advise the Board of Trustees of the Science Museum on its new designation function.

8.3 In addition to responding to the questions in the consultation document, a small number of respondents indicated that they should be included within the scope of the designation powers, so that artefacts and records held by them could also be designated by the SMG Railway Heritage Advisory Designation Board. One of the respondents also stated that the structure of the industry had changed substantially in recent years and there were bodies that currently are part of the rail industry that do not fall within the scope of the 1996 Act. The respondent also suggested that including these further bodies within the scope of the 1996 Act could reduce the regulatory burden on those bodies that are currently within scope if this were coupled with a change allowing disposal of a designated artefact or record to another "in scope" body without having to notify the designating body. Finally, the respondent also suggested further changes that could be

made to the 1996 Act in order to reduce the burden on bodies that are within the scope of the 1996 Act.

8.4 It is not possible however to extend the scope of designation in the present instrument under the Public Bodies Act as such an extension of scope could only be effected by an order under section 1 of the 1996 Act to which the negative resolution procedure would apply rather than the affirmative resolution procedure applicable to the present instrument. Wider changes to the way in which the designation process operates which would require changes to the 1996 Act would also be beyond the scope of what can be done in relation to the RHC under the Act.

8.5 Following the close of the consultation, the DfT and DCMS held a joint meeting with representatives of the RHC and the SMG on 18 April 2012 at which the outcome of the consultation and the proposed next steps were discussed. The Government's decision is that in the face of financial constraints and with the added efficiency associated with transferring the designation functions to Board of Trustees of the Science Museum, abolition is the best way forward.

8.6 The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Act can be found on the Department for Transport website at: http://www.dft.gov.uk/consultations. Further information relating to the consultation responses can be found in the Annex 2.

9. Guidance

9.1 The nature of this order makes it unnecessary to publish guidance in relation to it.

9.2 The RHC has been informed of the decision that it is to be abolished and that its designation functions are to be transferred to the Board of Trustees of the Science Museum. The RHC is supportive of this move and in a press release dated 9 December 2011, in relation to the proposal to transfer the power of designation, the RHC Chairman, Peter Ovenstone said "We have been greatly heartened by the Government's decision which recognises the significance of the nation's railway heritage and the value of continuing to maintain the statutory protection system which has worked so well over the last 18 years."

10. Impact

It has been determined that an Impact Assessment is not required as there will be no impact on businesses, the public sector or civil society. The impact on businesses will be neutral as there will not be any change to the designation functions so there will not be any new costs to industry. The only difference that the industry will notice is that there will be a different organisation dealing with the designation functions. The National Heritage Act 1983, under which the SMG is formed, contains enough flexibility and rail expertise to ensure the powers can be transferred without any change to their current working arrangements. The impact on the public sector and civil society will also be none

or at most negligible. The designation function will be absorbed from within SMG's existing resources and therefore there will not be any additional burden on DCMS. It has therefore been determined that there is no burden or additional costs involved and that an Impact Assessment is therefore not required.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring of the abolition of the RHC is not required as no further action is required once the Order comes into effect and the RHC's functions cease. The appointments of RHC members will terminate on the date the Order comes into effect, with the power of designation transferred to the Board of Trustees of the Science Museum.

12.2 The Board of Trustees of the Science Museum will report to DCMS - the Department responsible for the Science Museum Group - on the SMG Railway Heritage Designation Advisory Board's activities. DCMS Ministers are accountable to Parliament for the way the SMG fulfils its role.

12.3 DCMS will carry out a review within 3 years after the designation function has transferred to the Board of Trustees of the Science Museum in order to establish whether further bodies or classes of bodies should be included within the scope of the 1996 Act and whether the burden on bodies as a result of the exercise of the designation function can be reduced. DCMS Ministers are expected to co-operate with any requests for information on this from the Culture, Media and Sport Committee.

13. Contact

Mike Biskup at the Department for Transport, tel: 0207 944 5409 or e-mail: mike.biskup@dft.gsi.gov.uk can answer any queries regarding the instrument.

Annex 1

TRANSITIONAL ARRANGEMENTS - STATUTORY PROTECTION for RAILWAY HERITAGE

The SMG has been working with the RHC via a Transitional Steering Group chaired by Lord Faulkner of Worcester, a member of the Board of Trustees of the Science Museum. A new body will be formed to be known as the:

Science Museum Group Railway Heritage Designation Advisory Board (RHDAB)

The RHDAB will report to the Board of Trustees of the Science Museum and take on the day to day duties of the RHC and make recommendations on designation to the Board of Trustees of the Science Museum. Secretarial and support services will be provided by SMG staff.

As an interim step, it is planned to establish a 'shadow' RHDAB to operate in parallel with the RHC until the transfer of functions takes place. It is envisaged that the shadow RHDAB will meet on the same day and at the same venue as the RHC. The first meeting of the shadow RHDAB will be held at the Science Museum in London following the RHC meeting on Thursday 22 November 2012.

It is envisaged that this structure will enable members of the shadow RHDAB to become familiar with the work and procedures applied by RHC in executing its statutory functions. The objective is to ensure that the new RHDAB will be able to assume these responsibilities in 2013 having already gained valuable experience in the tasks which it will undertake.

The formal terms of reference will be determined by the RHDAB itself (conforming to SMG practice).

Annex 2

The Consultation

The consultation document which was made available to the public and the consultees can be found at http://www.dft.gov.uk/consultations/dft-2012-01/ The consultation ran from 19 January until 1 March 2012 and the response to the consultation can be found at http://assets.dft.gov.uk/consultations/dft-2012-01/railway-heritage-responses.pdf

Analysis of the responses:

The consultation was targeted at those with an interest in the issues around the preservation of railway artefacts and records and therefore best placed to comment on the proposed changes. In addition, the DfT liaised closely with the RHC, DCMS and SMG in relation to the consultation. The consultation was also made available to the public on the DfT's website.

The following organisations were alerted of the consultation by e-mail:

All Party Parliamentary Group for Rail Heritage
Archives and Records Association
Arriva Trains Wales
ASLEF
Association of British Transport & Engineering Museums
Association of Independent Museums
Association of Train Operating Companies
Bombardier
BRB (Residuary) Ltd
British Transport Police Authority
c2c
Chiltern Railways
Cross Country
CyMal
DB Schenker
Department for Culture, Media and Sport
DRS
East Coast
East Midlands Trains
Eurostar
First Capital Connect
First Great Western
First Hull Trains
First TransPennine Express
Freightliner Group Ltd
GB Railfreight
Grand Central
Heathrow Express

Heritage Railway Association
HM Treasury
London & Continental Railways
London Midland
London Overground
London TravelWatch
London Underground
Merseyrail
Museums Association
Museums and Galleries Scotland
National Express East Anglia
National Museum of Science and Industry (including the National Railway Museum)
National Museums Scotland
National Museum of Wales
National Records of Scotland
Network Rail
Northern
Office of Rail Regulation
Passenger Focus
Rail Freight Group
Rail Industry Association
Railway Heritage Committee
Railway Heritage Trust
RMT
RSSB
Scotland Office
ScotRail
Scottish Council on Archives
Scottish Ministers
Southeastern
South West Trains
Southern
The National Archives
Transport for London
Transport Scotland
Transport Trust
TSSA
Virgin Trains
Wabtec
Wales Office
Welsh Ministers

The breakdown of responses

The following table provides a breakdown of the responses received.

Breakdown of responses	Number received
Rail industry	9
Transport sector	2
Heritage sector	4
Museum / archive sector	6
Engineering sector	2
Archaeological sector	1
Passenger organisations	2
Government	1
Members of the public	5
Total	**32**

Of the responses

16 agreed that the RHC should be abolished, 13 disagreed or were disappointed with the abolition and 2 did not give a definitive view either way.

29 were in favour of retaining the RHC's designation function and 28 agreed with transferring it to the Board of Trustees of the Science Museum with 1 expressing only qualified support.

19 thought that the Board of Trustees of the Science Museum has sufficient expertise and knowledge to ensure that historically significant railway records and artefacts are identified and protected, 1 with qualifications and 2 expressed some concerns.

17 could not think of another organisation that would be able to carry out the designation function better than the Board of Trustees of the Science Museum, 3 maintained that the RHC should continue to oversee the function.

21 agreed that the appointment of external panel members will ensure there is no conflict of interest between the Board of Trustees of the Science Museum carrying out the designation function and its role as the governing body of the National Railway Museum, 2 did not see a conflict in the first place.