EXPLANATORY MEMORANDUM TO

THE RAIL VEHICLE ACCESSIBILITY EXEMPTION ORDERS (PARLIAMENTARY PROCEDURES) REGULATIONS 2008

2008 No. Draft

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

2. Description

2.1 The Regulations set out the basis on which the Secretary of State will decide which Parliamentary procedure is to be followed when making an exemption order from domestic rail vehicle accessibility requirements.

2.2 They provide for the circumstances in which an exemption order would normally be subject to the negative resolution procedure and those in which the draft affirmative resolution procedure would normally apply.

2.3 They also contain provisions allowing the Secretary of State to decide to adopt a different procedure for a particular order having regard to representations from the Disabled Persons Transport Advisory Committee ("DPTAC")[1].

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

3.1 None.

4. Legislative Background

4.1 Section 46 of the Disability Discrimination Act ("DDA") 1995 enables the Secretary of State to make regulations ensuring that all new rail vehicles are accessible to disabled people. The Rail Vehicle Accessibility Regulations 1998 ("RVA Regulations"), have applied since 31 December 1998.

4.2 Section 47 of the DDA 1995 enables the Secretary of State to make an order (an "exemption order") to allow a rail vehicle which does not fully comply with the requirements of RVA Regulations to be used. A full list of all exemption orders which have been granted and their provisions is posted on the Department for Transport's web site[2]. Exemption orders issued under Section 47 were initially subject to the negative resolution procedure. However, changes introduced in the DDA 2005 have meant that, since 30 June 2005 and until the Regulations are in force, all exemption orders must be considered by the draft affirmative resolution procedure.

[1] DPTAC are the Government's statutory advisers on the public passengers transport needs of disabled people.
[2] See www.dft.gov.uk/transportforyou/access/rail/vehicles/eo.

4.3 Following recommendations made by the Disability Rights Task Force[3] ("DRTF"), including the setting of an end date by which time all rail vehicles must be accessible and applying accessibility requirements to refurbishment projects, the Department for Transport consulted on policy proposals for implementation in 2003[4]. That consultation also sought views on other issues which were not DRTF recommendations in light of experience of operating under the existing regime. These included proposals to amend the process of granting exemptions from RVA Regulations by making them by administrative order in a similar manner to the regime in place for buses and coaches.

4.4 The proposals received support from both the industry and disability stakeholders who recognised that the Parliamentary process could delay otherwise fully accessible rail vehicles from entering service which would not benefit any passengers. Disability organisations in particular indicated they were reassured that the requirement to consult with DPTAC before granting any exemption order would be retained. Given the broad backing from all stakeholders, the Government included measures in the DDA 2005 to amend Section 47 of the DDA 1995 to revise the exemption regime accordingly.

4.5 However, during the passage of the DDA 2005 through Parliament, the new measures received a great deal of scrutiny and initial proposals to make exemption orders by administrative order were rejected by the Delegated Powers and Regulatory Reform Committee[5]. Consequently the Government brought forward an amendment to retain the existing system, under which exemption orders were made by statutory instrument subject to the negative resolution procedure - as recommended by the Committee.

4.6 Further amendments to the Bill were then brought forward by the Government to meet concerns expressed by Peers. These were designed to increase the level of Parliamentary scrutiny for some exemption orders so that, in particular circumstances, an order would need to be approved by the draft affirmative resolution procedure before becoming law. They included a regulation-making power to enable the Secretary of State to prescribe the basis on which a decision would be made as to which Parliamentary procedure should be used for individual exemption orders. They also include a requirement to consult DPTAC before any such decision is made. This regulation-making power was inserted at section 67A(3) of the DDA 1995.

4.7 The DDA 2005 also extended the power of the Secretary of State to grant exemptions to rail vehicles used on named "networks" such as a specific heritage or tourist line (previously the exemption power could only be used for defined rail vehicles). This power was introduced in recognition of the obvious constraints presented by the rail vehicles operated on these networks.

[3] The DRTF was established by the Government in 1997 to consider how best to deliver its Manifesto commitment to provide comprehensive and enforceable civil rights to disabled people.
[4] See www.dft.gov.uk/consultations/archive/2004/arpv.
[5] See www.publications.parliament.uk/pa/ld200405/ldselect/lddelreg/19/1902.htm.

4.8 In recognition of a commitment given during the passage of the DDA 2005 through Parliament, the Regulations ensure that network exemption orders will normally be subject to the draft affirmative resolution procedure.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain only.

6. European Convention on Human Rights

Tom Harris, Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights:

In my view the provisions of the Rail Vehicle Accessibility Exemption Orders (Parliamentary Procedures) Regulations 2008 are compatible with the Convention rights.

7. Policy background

7.1 The Regulations set out the criteria which the Secretary of State will use when deciding which Parliamentary procedure should be followed. These include, for example, the age of the vehicle/s and the length of time for which an exemption is requested. Such transparency is necessary to ensure that both the rail industry and disabled people can understand how applications will be treated once the Regulations come into force and particularly under which circumstances the draft affirmative resolution procedure will be the likely route chosen.

7.2 Since 30 June 2005, and until the Regulations are in force, all exemption orders regardless of scope are automatically subject to the draft affirmative resolution procedure. Two exemption orders have been made during this period to date:

- The Rail Vehicle Accessibility (Gatwick Express Class 458 Vehicles) Exemption Order 2006 [SI 2006/933]; and

- The Rail Vehicle Accessibility (B2007 Vehicles) Exemption Order 2008 [SI 2008/925].

7.3 A further exemption order for new London Underground Victoria Line trains, the Rail Vehicle Accessibility (London Underground Victoria Line 09TS Vehicles) Exemption Order 2008, are being laid before Parliament in tandem with these Regulations.

7.4 It should be noted that the introduction of new European standards (the technical specification for interoperability for persons with reduced mobility or "PRM TSI") on 1 July 2008 has removed the 4,600 previously regulated heavy rail vehicles from RVA Regulations and Part 5 of the DDA 1995. The exemption regime outlined in section 4 above therefore no longer applies to these vehicles, although there remains a requirement to maintain them to the

standards to which they were built. The Rail Vehicle Accessibility (Interoperable Rail System) Regulations 2008 [SI 2008/1746][6] were themselves subject to the draft affirmative resolution procedure and came into force on 7 July 2008. The new regulations were necessary to reflect the fact that the PRM TSI, which includes similar requirements to RVA Regulations, has taken precedence over domestic accessibility requirements for heavy rail vehicles since it came into force on 1 July 2008 and the necessity of avoiding simultaneous regulation by domestic and European regimes.

7.5 The provisions for exempting heavy rail vehicles from accessibility requirements under the interoperability regime are more limited than those under RVA Regulations. The only circumstances under which an exemption (known as a "derogation") can be granted by the Secretary of State under the interoperability regime are in relation to a project which is "at an advanced stage of development or is the subject of a contract in the course of performance when the PRM TSI was published". However, this is superfluous because the PRM TSI itself states that it does not apply in such cases. There is no facility for granting a derogation to enable new heavy rail vehicles to be introduced into service whilst non-compliances are rectified as there is under the RVA Regulations regime.

7.6 The RVA Regulations will remain as the accessibility standard going forward for light rail, metro, underground and tram systems.

Consultation

7.7 A twelve week consultation exercise on the Regulations was completed on 16 October 2006. The consultation paper[7], which also included other material on enforcement, was distributed to over 230 stakeholders. 37 responses were received (of which 13 were from train operating companies, 8 from other organisations with a rail industry interest, 3 from organisations with light rail and heritage interests, 4 from disability organisations, 1 from a group representing passengers, 3 from government organisations and 5 from other organisations or individuals).

7.8 Consultees were asked two specific questions on the Regulations which are reproduced below in bold:

- **Do you think that the criteria used to decide whether a draft RVA Regulations exemption order merits a resolution to be passed by both Houses of Parliament (the draft affirmative resolution procedure) before it can become law are correct?; and**

- **Are there any other instances where a draft RVA Regulations exemption order could be subjected to the negative resolution procedure?**

[6] See www.opsi.gov.uk/si/si2008/pdf/uksi_20081746_en.pdf.
[7] See www.dft.gov.uk/consultations/archive/2006/rsdp.

7.9 All respondents indicated that they agreed that the Secretary of State should have discretion to decide which Parliamentary procedure to adopt when considering RVA Regulations exemption orders. However, there appeared to be a misapprehension in the industry over the existing procedure for laying exemption orders in Parliament with many assuming that the negative resolution procedure still applied (the DDA 2005 ensures that, until the Regulations are in place, all exemption orders must be considered under the draft affirmative resolution procedure).

7.10 Industry also expressed concern that the need to refer exemptions to Parliament was disproportionate, excessively bureaucratic and unpredictable and may therefore delay projects. No additional instances where the negative resolution procedure might apply were identified.

7.11 The consultation paper also noted that, whilst the substance of the Regulations was discussed, it was possible their layout could be revised if that would add clarity. Many responses criticised the complexity of the Regulations and suggested that their drafting could be considerably simplified. The Department for Transport has used the delay in the introduction of the PRM TSI as an opportunity to re-draft the Regulations to meet this criticism. In particular, the Regulations have been restructured so that they read in a more logical order.

7.12 The 2006 consultation paper trailed the introduction of the PRM TSI and noted that it may require the Regulations to be substantially amended in future. This is no longer the case as the PRM TSI is now in force although, at that stage, it was expected that the new European standards would be published in early 2007. On this basis, it was decided to delay the implementation of the Regulations, and commencement of the relevant provisions of the DDA 2005, and come forward with a revised consultation package pending the development of the PRM TSI and an assessment of its implications. The publication of the PRM TSI was subsequently delayed further until December 2007 and it has been necessary to prioritise the new legislation mentioned in **paragraph 7.4** to facilitate its introduction further delaying these measures.

7.13 Following the making of these Regulations, the Government proposes to progress the remaining provisions of the DDA 2005, adjusted in consequence of the PRM TSI, and reflecting the fact that RVA Regulations now applies only to those rail vehicles operated on light rail, metro, underground and tram systems.

Guidance

7.14 We are intending to revise the current RVA Regulations guidance documentation to reflect these changes once the other provisions of the DDA 2005 are in place. The guidance has been widely welcomed by industry and has been particularly successful in assisting train designers and manufacturers in understanding the requirements of the RVA Regulations. We intend to

work with the industry, DPTAC and other stakeholders on the production of the new guidance.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as no additional cost on business, charities or voluntary bodies is foreseen.

8.2 Since all RVA Regulations exemption orders are currently subject to the draft affirmative resolution procedure, the introduction of the Parliamentary Procedures Regulations will potentially shorten the time taken to process some new exemption orders which may, once they come into force, be subject to the negative resolution procedure.

8.3 For those exemption orders which are likely to remain subject to the draft affirmative resolution procedure, the consultation paper acknowledged that this process does require additional time to complete. However, by ensuring that the Regulations are clear about the procedure under which any exemption order is likely to proceed, it is envisaged that those applying will, in discussion with the Department for Transport, be able to incorporate sufficient time in their project planning process.

8.4 The impact on the public sector is negligible.

Regulating small business

8.5 The only small businesses to which the Regulations are likely to apply are heritage and tourist railway and tramway operators. They will only become active when an application for an RVA Regulations exemption order is made and contain provisions recognising the special nature of the rail vehicles that these types of service operate, which often make applications for exemptions from the RVA Regulations unavoidable, and are sensitive to the operating realities of this sector of the industry.

8.6 As noted in **paragraph 8.2**, the Regulations will remove the necessity for all RVA Regulations exemption orders to be considered under the draft affirmative resolution procedure. This will make exemption applications from heritage and tourist railway and tramway operators less onerous and time consuming since the Regulations ensure that these will generally be considered under the negative resolution procedure.

9. Contact

Christopher Angell at the Department for Transport (tel: 020 7944 0082 or e-mail: christopher.angell@dft.gsi.gov.uk) can answer any queries regarding the instrument.