EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER (LIGHT RAPID TRANSIT SYSTEM) (EXEMPTIONS) (AMENDMENT) ORDER 2015

2015 No. 1877

1. Introduction

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

2. Purpose of the instrument

2.1 The Greater Manchester (Light Rapid Transit System) (Exemptions) (Amendment) Order 2015 (**the "Order"**) amends The Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2013 (S.I. 2013/339) (**"the 2013 Order"**) which grants exemptions from certain requirements of railways legislation which would otherwise apply to the Greater Manchester Light Rapid Transit System (**"Metrolink"**). The effect of the Order is to extend the exemptions so that they cover the extension to the Metrolink which is scheduled to open from December 2015.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Railways Act 1993 (c.43) (amended by the Transport Act 2000 (c.38)) (**"the 1993 Act"**) sets out a number of statutory requirements and powers which affect operators and owners of railway assets, facilities, and infrastructure (**"the 1993 Act Provisions"**). These include a requirement that operators of railway assets must be licensed; powers for the Office of Rail and Road (**"the ORR"**, formerly the Office of Rail Regulation) to require improvements to railway facilities and direct access to facilities; and a duty on appropriate designating authorities to designate passenger services which they consider ought to be provided under franchise agreements. The Act provides that exemptions may be granted from the 1993 Act Provisions.

4.2 The Railways Act 2005 (c.14) (**"the 2005 Act"**) prescribes procedures that must be followed (**"the 2005 Act Provisions"**) when service operators and railway funding authorities propose to discontinue railway passenger services on a line or from a station or to close networks or stations. It provides that services, networks and stations may be excluded from these procedures if so designated by Order. Any such Order may apply alternative closure procedures to these excluded services.

5. Extent and Territorial Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The 1993 Act Provisions and the 2005 Act Provisions are considered suitable for application to the national heavy-rail network. Metrolink, however, is a self-contained light rail system run by Transport for Greater Manchester (**"TfGM"**), which has granted exclusive operating rights to one train operator.

7.2 Exemptions from the 1993 and 2005 Act Provisions have been granted to the existing Metrolink network which was initially built in two phases (**"Phases 1 and 2"**) which have been operational since 1992 (Bury and Altrincham) and 2000 (Eccles) respectively. Exemptions have also been granted in respect of the further lines which have been constructed and opened – (**"Phase 3A"**) to MediaCityUK (September 2010), St Werbergh's Road in Chorlton (July 2011), and (**"Phase 3B"**) to Rochdale Town Centre (February 2013), East Didsbury (May 2013), Ashton under Lyne (October 2013), Oldham Town Centre (January 2014) and Manchester Airport (November 2014).

7.3 Operations on a short new section of the Metrolink network through the city centre, which includes a new stop at Exchange Square (**"the Second City Crossing Extension"**), are scheduled to begin in December 2015. The intention of this Order is to ensure that exemptions apply consistently across the whole Metrolink network as it expands to incorporate the Second City Crossing Extension. This Order amends the 2013 Order by replacing the map in the Schedule to that Order with a map which includes the Second City Crossing Extension, so that the exemptions granted by the 2013 Order apply to the Metrolink network as set out in the new map, including the Second City Crossing Extension.

7.4 Section 6 of the 1993 Act prohibits any person from acting as an operator of railway assets (trains, networks, stations or light maintenance depots) without a licence granted by the Secretary of State or the ORR (under Section 8). Section 7 of the 1993 Act enables the Secretary of State to grant an exemption from this prohibition. This Order extends the existing exemption, granted on the basis that TfGM already requires the train operator to comply with similar obligations under the terms of its contract as would be required under a licence from the ORR, so that it covers the Second City Crossing Extension.

7.5 Section 16A(2) of the 1993 Act enables the ORR, on application from any person, to direct the owner of a railway facility (or other person with an estate interest or right over that facility) to improve or develop that facility. Section 16B enables the Secretary of State to grant exemptions from this to a specified person or class of persons. This Order extends the exemption granted to the train operator, and to TfGM, which has the contractual right under its agreement with the train operator to require improvements, so that it covers the Second City Crossing Extension.

7.6 Section 17 of the 1993 Act empowers the ORR, on application from any person, to direct the owner of a railway facility to enter into an access contract with the applicant. Section 18 provides that no access contract in respect of a railway facility may be entered into by the facility owner without the approval of the ORR. Section 22A (as inserted by the Transport Act 2000 (c.38)) permits the ORR to require amendments to existing access agreements. Section 20 enables the Secretary of State to grant exemptions from sections 17, 18 and 22A to specified persons or classes of persons in respect of specified railway facilities or classes of facility. TfGM has entered into an exclusive operating contract with the train operator to operate passenger services on Metrolink. Under this contract TfGM pays the train operator to provide services and TfGM retains all the fare revenue from those services. It is therefore considered unnecessary and inappropriate for the ORR to require third party access, or to approve the operating contract (see paragraph 7.7 for further detail). This Order extends the exemption granted to TfGM and the train operator from sections 17, 18 and 22A of the 1993 Act, so that it covers the Second City Crossing Extension.

7.7 Section 23 of the 1993 Act gives the Secretary of State the duty to designate rail passenger services that he considers should be provided under franchise agreements. He may exempt specified rail services from this under section 24. If Metrolink were designated as a franchise, the franchise operator would expect to recover any costs of operation through fares revenue and/or franchise payments. This would undermine the basis of the exclusive operating contract with the train operator, under which fare revenue reverts to TfGM. This Order extends the exemption granted to TfGM and the train operator from the application of section 23 so that it covers the Second City Crossing Extension.

7.8 Sections 22 to 24 of the 2005 Act set out the circumstances and procedures that apply when a service operator or Railway Funding Authority (**"RFA"**) proposes to discontinue all services (whether franchised, secured or non-franchised services) on a line, or from a station. RFAs include the Secretary of State and Passenger Transport Executives – see section 45(1) of the 2005 Act. Sections 26 to 28 set out the circumstances and procedures that apply when an operator or RFA proposes to close all or part of a passenger network. Section 29 sets out the circumstances and procedures that apply when operators of stations propose to close all or part of those stations. Section 30 sets out the circumstances and procedures that apply when a RFA initiates proposals to close all or part of a station. Section 31 sets out the circumstances and procedures that apply when a RFA proposes closure of all or part of a station it has a duty to provide, for example, pending the outcome of a reference to the ORR.

7.9 Section 38 of the 2005 Act gives the Secretary of State the power to exclude services, networks and stations from the provisions of sections 22 to 24 and 26 to 28 and 29 to 31 of that Act. This Order extends the application of these exclusions to Metrolink so that they apply to the Second City Crossing Extension.

7.10 Section 25(7) of the 2005 Act permits the Secretary of State to designate excluded services as "special procedure services". This means that the special closure procedures contained in that section must be followed where a service operator makes a proposal for the discontinuance of certain services. The 2013 Order designates every Metrolink service as a "special procedure service". This Order ensures that Metrolink services using the Second City Crossing Extension are special procedure services.

These special closure procedures are considered more appropriate on a self-contained network on which one operator has contractual rights to run all the passenger services.

Consolidation

7.11 Metrolink Phases 1, 2 and 3A were granted exemptions from the 1993 Act Provisions and the 2005 Act Provisions by virtue of the Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2009. This Order was revoked by the 2013 Order which consolidated those exemptions with new exemptions granted in respect of Metrolink Phase 3B. To the extent that exemptions already applied to the Metrolink under the Railways (Class and Miscellaneous Exemptions) Order 1994, the Railways (Alternative Closure Procedure) Order 1994 and the Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005, these continue in force and were not consolidated into the 2013 Order because the orders under which they were made apply to different sections of infrastructure, as well as Metrolink. It was considered that the most proportionate way of granting the required exemptions in respect of the Second City Crossing Extension was by way of amendment of the 2013 Order by replacing the map in the Schedule.

8. Consultation outcome

8.1 Those consulted included local authorities in the Greater Manchester area, train operating companies, the ORR, Network Rail and organisations representing passengers. The consultation was a Specialised Technical Consultation and it ran from 10th August 2015 until 25th September 2015. Five responses were received, all in support of the proposal.

9. Guidance

9.1 It is not considered necessary to issue guidance.

10. Impact

10.1 The impact on business is minimal. Savings to the operator of Metrolink will be administrative and not easily quantifiable. By way of example, the operator of Metrolink (and any future operator) will benefit because it will not have to apply to the ORR for a licence or a licence exemption. It will therefore save circa £250 plus administrative costs per application to the ORR. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is minimal. The 1993 and 2005 Acts place a number of duties on the ORR and a number of requirements on TfGM. These duties and requirements (which are summarised in paragraphs 7.4 to 7.8 above) will be removed by this Order. The resulting benefits to ORR and TfGM, which are also described in section 7 above, are not easily quantifiable.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Order inserts a review provision into the 2013 Order. The Secretary of State must review the 2013 Order and publish a report which assesses whether the objectives of the 2013 Order have been achieved and remain appropriate. The report must be published before 6th December 2020 and within every 5 years after that. The impacts of the 2013 Order will be monitored through communication with TfGM and ORR. Following the review the Secretary of State will consider whether the 2013 Order should remain as it is or be amended or revoked.

13. Contact

13.1 Charlie Sunderland at the Department for Transport Telephone: 020 7944 8810 or email: charlie.sunderland@dft.gsi.gov.uk can answer any queries regarding the instrument.