EXPLANATORY MEMORANDUM TO

THE GREATER MANCHESTER (LIGHT RAPID TRANSIT SYSTEM) (EXEMPTIONS) ORDER 2013

2013 No. 339

1. 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 This Order grants exemptions from certain requirements of railways legislation which currently apply to the Greater Manchester Light Rapid Transit System (**"Metrolink"**) and extends them to cover the extensions to the system which are scheduled to open from April 2013.

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

3.1 None

4. Legislative Background

4.1 The Railways Act 1993 (c.20) (amended by the Transport Act 2000 (c. 38)) (**"the 1993 Act"**) provides for the appointment, and establishes the functions, of a Rail Regulator. The Act also sets out a number of provisions with respect to railway services. These include 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 Regulator 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 from the 1993 Act Provisions may be granted.

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 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. Territorial Extent and 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 existing Metrolink network was built in two phases ("**Phases 1 and 2"**) which have been operational since 1992 (Bury and Altrincham) and 2000 (Eccles) respectively. The first of the Phase 3A lines have now been opened to MediaCityUK (September 2010), St Werbergh's Road in Chorlton (July 2011) and Oldham Mumps (temporary) (June 2012). The remaining Phase 3A lines to Droylsden and Shaw & Crompton/ Rochdale Railway Station are expected to open in early 2013. Operations on **Phase 3B** were scheduled to begin in January 2013, but will now begin later in 2013, with April 2013 being the earliest opening date. Phases 1, 2 and 3A are already exempted from the 1993 and 2005 Act Provisions. This is because these provisions are considered suitable for application to the national heavy-rail network, whereas Metrolink is a self-contained light rail network run by Transport for Greater Manchester ("**TfGM**"), which has granted exclusive operating rights to one train operator. The intention is to ensure that exemptions apply consistently across the whole Metrolink network as it expands to incorporate Phase 3B. This Order will therefore apply exemptions to Phase 3B as well as consolidating into one Order the existing exemptions which already apply to Phases 1, 2 and 3A by virtue of The Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2009 (**"the 2009 Order"**). The 2009 Order will be repealed simultaneously with the coming into force of this Order. To the extent that exemptions already apply to 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 will continue in force. This is because those orders apply to different sections of infrastructure, as well as Metrolink.

7.2 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. Section 7 enables the Secretary of State for Transport to grant an exemption from this prohibition. This Order grants such an exemption in respect of the Metrolink system 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 Office of Rail Regulation (ORR).

7.3 Section 16A(2) of the 1993 Act enables the Rail Regulator, on application from any person, to direct the owner of a railway facility (or other person with an estate interest or other 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 person. This Order grants such an exemption to the train operator, and to TfGM, which has the contractual right under its agreement with the train operator to require improvements.

7.4 Section 17 of the 1993 Act empowers the Regulator, 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 no access contract in respect of a railway facility may be entered into by the facility owner without the approval of the Regulator. Section 22A permits the Regulator to require amendments to existing access

agreements. Section 20 of the 1993 Act 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 Regulator to require third party access through a franchise agreement, or to approve the operating contract. Paragraph 7.5 sets out why it will not be possible for a franchise agreement to be entered into. This Order, therefore, exempts TfGM and the train operator from sections 17, 18 and 22A in relation to Metrolink.

7.5 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 also 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 revenues 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 therefore exempts TfGM and the train operator from the application of section 23.

7.6 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. 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 can initiate 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.

7.7 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. This Order applies these exclusions to the Metrolink system. To the extent that exemptions already apply to the Metrolink network under the Railways (Class and Miscellaneous Exemptions) Order 1994, these will continue in force. Although the sections under which that exemption was granted are now repealed, section 38(4) of the 2005 Act provides that the 1994 exemption shall have effect as an order made under section 38(4) thereby allowing their continued application.

7.8 Section 25 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. This Order designates every Metrolink service as a "special procedure service", except where the Railways (Alternative Closure Procedure) Order 1994 has already, in effect, done this. Although the sections under which that order was made are now repealed, section 25(10) of the 2005 Act provides that the provisions of that order shall have effect as

though made under section 25(10); designating the services to which is applies as special procedure excluded services, thereby providing for their continued application. 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***

7.9 Metrolink Phases 1, 2 and 3A were granted exemptions in respect of sections 7, 16B, 20, 24 and 49 of the Railways Act 1993 by virtue of the Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2009. This Order will grant exemptions to Phase 3B while consolidating the existing exemptions under the 2009 Order. The 2009 Order will be revoked simultaneously with the coming into force of this Order. However, to the extent that exemptions already apply to the Metrolink network 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 will continue in force.

- ***Exemptions relating to Metrolink Stations***

7.10 In addition to exempting Metrolink from requirements relating to the operation of Metrolink stations from which Metrolink services are the only regular railway passenger services operated, the Order applies to stations where use is shared with other, non-Metrolink operators and services. Exemptions from facility, facility improvement and closure provisions apply to all Metrolink stations including those where part of the relevant station is used in connection with the provision of Metrolink services. This is to address the concern that at some stations Metrolink will operate alongside the heavy rail network to which the exemption should not extend.

8. Consultation outcome

8.1 Those consulted included local authorities in the Greater Manchester area, train operating companies, the Office of Rail Regulation, Network Rail and organisations representing passengers. The consultation was a Specialised Technical Consultation and it ran from 12 June 2012 until 30 July 2012. 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 the private sector will be minimal. No impact on charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is minimal. The Rail Regulator is the main public body affected, as the Railways Acts 1993 and 2005 place a number of duties on the Regulator. The Order will remove some of these duties with respect to Metrolink.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside it at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This Order seeks to apply exemptions from the Railways Acts 1993 and 2005 consistently across the Metrolink network. No proposals for monitoring or review are considered necessary.

13. Contact

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