EXPLANATORY MEMORANDUM TO

THE RAIL PASSENGERS' RIGHTS AND OBLIGATIONS (EXEMPTIONS) REGULATIONS 2014

2014 No. 2793

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 instrument exempts domestic rail passenger services from certain provisions of Regulation (EC) No. 1371/2007 on Rail Passengers' Rights and Obligations ("the European Regulation").

2.2 It comes into effect on December 4th 2014, upon the expiry of existing exemptions, and renews these exemptions in full while the Government consults in parallel on options for removing some or all of the exemptions in 2015 or continuing to retain them in full. This is intended to provide sufficient time for a detailed consultation and proper consideration of all the options whilst also preserving the Government's ability to grant further domestic exemptions until the power in the EU Regulation expires in December 2024.

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

3.1 None.

4. Legislative Context

4.1 The European Regulation consists of 'core' Articles, which have applied to Great Britain's domestic and international rail transport services since December 2009, and "non-core" articles. The core Articles concern the availability of tickets, liability of train companies and their insurance obligations for passengers and their luggage, accessibility and information for disabled persons and persons of reduced mobility and the personal security of passengers. The non-core Articles focus on information provision, compensation and assistance in the event of delays, missed connections and cancellations, further rights of disabled persons and persons of reduced mobility, the handling of complaints and the definition and monitoring of service standards.

4.2 Member States are able under Article 2(4) of the European Regulation to exempt domestic rail passenger services from the 'non-core' articles for an initial period of up to 5 years, which can be renewed twice, culminating in a total period of 15 years.

4.3 In December 2009, the Government took advantage of this to exempt Great Britain's domestic railways from all of the 'non-core' Articles for a period of five

years. The Rail Passengers' Rights and Obligations (Exemptions) Regulations 2009 (SI 2009/2970) that provide for these exemptions expire on 4 December 2014, at which point, if the exemptions are not renewed, the European Regulation would automatically apply in full.

4.4 This instrument renews the current exemptions in full thereby maintaining the status quo so that the Government can undertake a thorough consultation on options to remove some or all of the exemptions or to continue to retain them in full. Depending on the outcome of the consultation, this will pave the way for an amending instrument to be made in 2015 to remove some or all of the relevant exemptions at that point.

4.5 The proposal which resulted in the European Regulation was published by the European Commission as part of the "Third Rail Package" of documents and was the subject of a combined Explanatory Memorandum (EM) numbered 7170/04, 7147/04, 7172/04, 7149/04, 7148/04, and 7150/04 submitted to Parliament by the Department for Transport on 30 March 2004.

4.6 The House of Commons European Scrutiny Committee considered the EM on 21 April 2004. The Committee recommended that the document was of political interest and did not clear it (Report 17, session 2003/04). Ministerial letters were sent to the Committee Chairman to provide further information and keep the Committee informed of the progress of EU negotiations on 1 September 2004, 24 September 2004, 29 November 2004, 14 January 2005, 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007, and 11 July 2007. On 19 January 2005 the Committee recommended that the document was politically important and should be debated (Report 4, session 2004/05). The debate took place on 9 March 2005.

4.7 The House of Lords Select Committee on the European Union referred the EM to its Sub-Committee B for consideration (1176th sift, 6 April 2004). On 21 April the Chairman wrote to the Minister maintaining the scrutiny reserve. Ministerial letters were sent to the Committee Chairman to provide further information and keep the Committee informed of the progress of EU negotiations on 1 September 2004, 24 September 2004, 8 November 2004, 29 November 2004, 14 January 2005, 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007, and 11 July 2007. The scrutiny reserve was lifted in a letter from the Chairman to the Minister of 7 December 2005.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

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 primary policy objectives of the European Regulation are to safeguard the rights of rail passengers and to improve the quality and effectiveness of rail transport. It does this by establishing minimum standards across the European Union in the areas of information and ticketing provision, liability in respect of passengers and their luggage, compensation and assistance in the event of delays, missed connections or cancellations, rights of disabled persons and persons with reduced mobility, passengers' security, the handling of complaints, the definition and monitoring of service standards and enforcement of those rights.

7.2 The European Regulation enables Member States to grant on a transparent and non-discriminatory basis a temporary exemption to domestic rail passenger services. This instrument renews the current domestic exemptions in full, to enable full and proper consideration of options to remove some or all exemptions in 2015 or to continue to retain them in full. The Department has undertaken an early evidence gathering exercise and is in ongoing discussion with stakeholders. The outcome of that engagement indicates the need for a more detailed examination of the issues and sufficient time for a formal consultation.

7.3 The European Regulation requires full compliance by 2024 and the Department wants to gain a fuller understanding of where the industry is already meeting or exceeding the requirements in order to identify where it may be possible to bring some provisions into force earlier than the 2024 deadline. In particular, the Department needs to gather further evidence, which it proposes to do through a public consultation, on the industry's current capability to meet the EU standards, the costs of requiring the industry to meet those standards and the additional benefits for passengers. The complexity of the issues, and the need for reliable monetised evidence on costs and benefits, means that it has not been possible to do this ahead of the expiry of the existing exemptions in December 2014.

7.4 When deciding on which exemptions, if any, to remove, the Department wants to ensure the right balance is struck between the benefits for passengers on the one hand and, on the other, the impact on the rail industry and its ability to meet the requirements of the European Regulation, as well as any impact on taxpayers, whilst also respecting the Government's wider commitments to equality and better regulation principles.

7.5 This instrument therefore facilitates the undertaking of a detailed public consultation and retains maximum flexibility to respond to issues raised by organisations and individuals during the consultation. Depending on the outcome of that process, the Department intends to bring forward an amending instrument in 2015 to remove some or all of the exemptions.

7.6 Importantly, if the existing exemptions are not renewed in December 2014, then it would not be possible, under the terms of the European Regulation, to restore them at a later date; the power to make exemptions would be lost. The European Regulation would apply automatically and this would place a potentially significant cost burden on the rail industry (and other parties subject to the Regulation) without appropriate consideration first having been given to the impacts.

7.7 Expiry of the exemptions without renewal could also lead to rail industry compliance gaps where, separately to cost issues, it might not be feasible for the rail industry to implement the full requirements of European Regulation in time. This could leave the industry vulnerable to claims by passengers for infringements of their rights under the European Regulation where industry, despite best efforts would not have been able to comply in time.

7.8 This instrument is therefore a necessary measure to provide sufficient time for appropriate consultation, evidence gathering and detailed analysis to inform robust and proportionate Government decisions on the retention or removal of exemptions in 2015.

8. Consultation outcome

8.1 The Department has undertaken an early evidence gathering exercise and engaged in pre-consultation discussions with stakeholders culminating in the launch of a 10 week public consultation in October 2014 to consider the case for removal of exemptions from 2015 onwards.

9. Guidance

9.1 In November 2011, the Department produced general guidance for the industry and passenger representative bodies regarding the application of the European Regulation.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil as the instrument preserves the status quo.

10.2 The impact on the public sector is nil as the instrument preserves the status quo.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is for this instrument to renew all exemptions and maintain the status quo. Therefore there will be no effect, positive or negative, on small businesses.

11.3 The basis for the final decision on what action to take to assist small business will be informed by undertaking a consultation in parallel to this instrument to examine the evidence for, and the impact of, removing exemptions. This will look to

both identify the size of business affected and gather evidence of potential compliance costs in order to assess the magnitude of that impact.

12. Monitoring & review

The consultation being conducted in parallel with this instrument will consider the cases for removing some or all exemptions or continuing to retain them in full. Depending on the outcome of that consultation, we intend to make an amending SI to remove some or all exemptions where appropriate in 2015. In addition, this instrument will expire on 4 December 2019 and the Department will review the need for any further exemptions before that date.

13. Contact

Kraig McCarthy at the Department for Transport can answer any queries regarding the instrument Tel: 020 7944 8055 or email: kraig.McCarthy@dft.gsi.gov.uk .