EXPLANATORY MEMORANDUM TO

THE RAILWAYS ACT 2005 (AMENDMENT) REGULATIONS 2006

2006 No. 556

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

2. Description

These Regulations modify the definition of "railway safety purposes" in paragraph 1 of Schedule 3 to the Railways Act 2005 (which makes provision for the transfer to the Office of Rail Regulation of safety functions). They do so by excluding from the remit of the Office of Rail Regulation, for the purposes of Schedule 3, fairground equipment, guided bus systems and trolley vehicle systems.

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

None

4. Legislative Background

4.1 The Railways Act 2005 (RA 2005) provides for the transfer from the Health and Safety Commission (HSC) and the Health and Safety Executive (HSE) to the Office of Rail Regulation (ORR) of certain health & safety functions conferred by or under the Health and Safety at Work etc. Act 1974, (e.g. guidance, research, and provision of training and information), in relation to "railway safety purposes", (a term defined in paragraph 1 of Schedule 3 to the RA 2005). *(Section 2 and Schedule 3 of the RA 2005).*

4.2 The definition of "railway safety purposes" relates to certain types of transport systems i.e. railways, tramways, trolley vehicle systems, and transport systems using any other mode of guided transport. But the RA 2005 allows the Secretary of State to make regulations (by negative resolution) to modify the definition of "railway safety purposes", *(paragraph 1(4) of Schedule 3 to the RA 2005).*

4.3 The effect of the regulations is that the functions transferred to the ORR by the RA 2005, when Schedule 3 comes fully into force on the 1st April 2006, will not relate to fairground equipment, guided bus systems and trolley vehicle systems. Instead the HSC/HSE will retain their functions in respect of such systems.

4.4 The Regulations relate to the Railway Safety Levy Regulations 2006, which make provision for the funding of the ORR's functions in relation to health and safety, and which were laid in draft before Parliament under section 82(4) of the HSWA for the approval by resolution of each House of Parliament.

4.5 They also relate to the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, which make the ORR the

enforcing authority for health and safety law in relation to the operation of railways, tramways and certain other systems of guided transport, in place of the HSE.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Derek Twigg, the Parliamentary Under Secretary of State for Transport, has made the following statement regarding Human Rights.

6.2 In my view the provisions of the Railways Act 2005 (Amendment) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 The purpose of the Regulations is to exclude fairground equipment, guided bus systems and trolley vehicle systems from the new health and safety remit of the ORR under Schedule 3 of the RA 2005.

7.2 Commitments were given in Parliament during the passage of the RA 2005 that the modifying powers would be used to ensure that the functions transferred to the ORR would not include ones relating to fairground equipment. Since then the HSE, the ORR and the Department have worked together to review the scope of "railway safety purposes" and all three are agreed that the ORR's prime responsibility should be rail-based transport systems and not other systems which may be within the scope of the expression "transport systems" as used in paragraph 1 of Schedule 3 to the RA 2005.

7.3 The Department have discussed this informally with the rail industry. In addition a formal consultation was issued in November 2005, as part of a wider consultation on the draft Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006. The document explained that the Department intended to amend the Railways Act 2005 to exclude from the remit of the ORR, for the purposes of Schedule 3, fairground equipment, guided bus systems and trolley vehicle systems. A set of draft regulations were included with the consultation document. Around 500 copies were sent out and the consultation document and draft regulations were placed on the DfT website. Although 49 responses were received to the consultation, the responses concentrated on the enforcement regulations. Only two respondents mentioned the amendment regulations. Neither raised any objection to them but both raised drafting points. A copy of the consultation report is available on the Department's website at www.dft.gsi.gov.uk.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector as the matters excluded from the remit of the ORR will remain within the scope of the HSE.

9. Contact

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