EXPLANATORY MEMORANDUM TO

THE RAILWAYS (CROSSRAIL SERVICES) EXEMPTION ORDER 2015

2015 No. 239

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

2. Purpose of the instrument

This Order exempts any concessionaire of Transport for London (TfL) (or concessionaire of any of TfL's subsidiaries) which operates services on the routes specified in the Schedule to the Order from the requirement for such services to be provided under a franchise agreement. The exemption is granted as part of the transfer of responsibility for the operation of these services from the Secretary of State to TfL.

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

None.

4. Legislative Context

4.1 Section 23 of the Railways Act 1993 ("the 1993 Act") requires the Secretary of State (and Scottish Ministers in respect of Scotland only services) to designate those railway passenger services which it considers ought to be provided under franchise agreements and to select the franchisees.

4.2 Section 24 of the 1993 Act permits the Secretary of State (and Scottish Ministers in respect of Scotland only services) to grant an exemption from such designation in respect of specified services.

4.3 This instrument is made as part of the transfer of responsibility for the operation of Crossrail services from the Secretary of State for Transport to TfL. It is proposed that these services will be operated under a concession agreement and the effect of the Order is to exempt from the franchising requirements services operated by any such concessionaire on the following routes—

a) Reading station to London Paddington station (via Hayes and Harlington station).
b) Heathrow station to London Paddington station (via Hayes and Harlington station).
c) London Paddington station to London Liverpool Street station (via Tottenham Court Road station).

d) London Liverpool Street station to Shenfield station (via Whitechapel station).
e) London Liverpool Street station to Abbey Wood station (via Whitechapel station).

4.4 A TfL company[1] is currently exempt from the franchising requirements in the 1993 Act in respect of every railway passenger service it provides (see the Railways (London Regional Transport) (Exemptions) Order 1994 ("the 1994 Order"), article 5). The current instrument will exempt passenger services which are provided on the route described in paragraph 4.3 by a TfL concessionaire from those franchising requirements.

5. Territorial Extent and Application

This instrument extends to Great Britain and applies to England.

6. European Convention on Human Rights

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 Crossrail Act 2008 gave the Secretary of State various powers in order to enable the construction and operation of a new railway between Maidenhead, in the county of Berkshire, and Heathrow Airport, in the London Borough of Hillingdon, through central London to Shenfield, in the County of Essex, and Abbey Wood, in the London Borough of Greenwich. It has since been agreed by the Secretary of State to extend that route in the west to Reading in the County of Berkshire.

7.2 By an agreement between the Secretary of State and TfL entered into on 5th December 2008 ("the Sponsors Agreement") the parties agreed TfL would, following a procurement process, award a concession agreement for the operation of the Crossrail railway passenger services.

7.3 Accordingly, it is not intended that the Secretary of State shall have the power to designate the railway passenger services operating on the routes described at paragraph 4.3 for franchising as such services will be operated by TfL on the basis of a concession agreement. It has historically been the Government's practice to exempt all services provided by TfL from designation as franchise services and the current proposal is consistent with this policy.

[1] Defined as TfL, any subsidiary of TfL or a public-private partnership company carrying out qualifying activities.

- Consolidation

7.4 As this is a stand-alone exemption Order no consolidation is necessary.

8. Consultation outcome

No statutory consultation was required in connection with this Order because the Secretary of State's intention to exempt the services concerned from franchising agreements did not, in this case, arise following an application by a person providing or intending to provide services for the carriage of passengers by railway and accordingly no such consultation was undertaken. The exemption is required to enable the intended concession arrangements for the operation of Crossrail services, which have been subject to competition and widely publicised, to be brought into effect.

9. Guidance

There is no statutory guidance associated with the instrument. TfL has been involved in the drafting of this instrument and is fully aware of its contents and effect.

10. Impact

9.1 There is no impact on business, charities or voluntary bodies.

9.2 There is no impact on the public sector.

9.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This Order ensures exemption from the franchising requirements of the 1993 Act applies consistently across the TfL network. No proposals for monitoring or review are considered necessary.

13. Contact

Lucas Maldonado at the Department for Transport Tel: 0207 944 6911 or email: Lucas.Maldonado@railexecutive.gsi.gov.uk can answer any queries regarding the instrument.