EXPLANATORY MEMORANDUM TO

THE RAILWAYS (NORTH AND EAST LONDON LINES) EXEMPTION ORDER 2015

2015 No. 237

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 railway passenger services on specified routes from London Liverpool Street station and Romford 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 certain railway passenger 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) London Liverpool Street station to Enfield Town station;
b) London Liverpool Street station to Cheshunt station (via Southbury);
c) London Liverpool Street station to Chingford station;
d) Romford station to Upminster station.

4.4 A TfL company[1] is currently exempt from the franchising requirements in respect of every railway passenger service it provides (see the Railways (London Regional Transport) (Exemptions) Order 1994 (S.I. 1994/573) ("the 1994 Order"), article 5). This instrument will exempt passenger services on the routes described in paragraph 4.3 provided by a TfL concessionaire from the franchising requirements in the 1993 Act.

4.5 The railway passenger service discontinuance and station closure provisions contained in the Railways Act 2005 ("the 2005 Act") are already disapplied in respect of services or stations operated by a TfL concessionaire within the Greater London area (see article 6 of the 1994 Order). This will automatically apply to the services described in paragraph 4.3 once transferred to TfL, with the exception of certain services on the route between London Liverpool Street station and Cheshunt station. The effect of article 7 of the 1994 Order is that services within Greater London which are provided by a TfL concessionaire are instead subject to the discontinuance provisions in Schedule 8 to the 2005 Act. This means that decisions are made by the Mayor of London, rather than the Secretary of State.

4.6 The wording of article 6 of the 1994 Order ensures that the disapplication does not apply to services which start or end, or call at stations, outside Greater London. As Cheshunt is in Hertfordshire, that route will continue to be subject to the relevant discontinuance provisions in the 2005 Act.

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 A key part of the Government's localism agenda is to devolve, to a local level of government, responsibility for decisions about rail services that are provided primarily for local people. Whilst much of the rail network and services are provided for national strategic reasons, it is acknowledged that some services are primarily local or regional in nature and views have often been expressed by local bodies, such as TfL and some other local authorities, that they are better placed to determine what services should be provided. This formed the basis for the Department for Transport's March 2012 consultation document entitled *Rail*

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

Decentralisation: Devolving decision making on passenger rail services in England which invited comments, proposals and expressions of interest from potential devolved bodies and rail industry partners on options for further devolution of local or regional services in England.

7.2 In response to this national consultation, TfL submitted a proposal for specific services, including certain inner suburban West Anglia services from London Liverpool Street station (known as the North and East London lines), to be transferred to TfL. The proposal offered improved passenger benefits as a result of the transfer, including better train performance and station improvements. The Secretary of State on 3 July 2013 indicated to TfL his agreement to proceed with the decentralisation of the services described in paragraph 4.3. The proposed date for transferring these services to TfL is 31 May 2015.

7.3 It is proposed that these services will be operated by a concessionaire under a concession agreement with TfL. In line with Government policy to exempt railway passenger services operated by TfL companies from the franchising requirements in the 1993 Act, this Order exempts services provided by a TfL concessionaire on the routes described in paragraph 4.3 from such requirements. As well as being consistent with Government policy, it was also anticipated that a franchise on such a small section of the network would be unworkable.

7.4 It is also the Government's policy that services provided by a TfL concessionaire within the Greater London area should be subject to the discontinuance provisions in Schedule 8 to the 2005 Act, with decisions made by the Mayor of London rather than the Secretary of State. This is already achieved by the 1994 Order (see paragraphs 4.5 and 4.6 above) in respect of the three routes described in paragraph 4.3 which are in Greater London. However the effect of the 1994 Order is also that, because Cheshunt is in Hertfordshire and not in Greater London, any proposal to discontinue services or to close stations on the London Liverpool Street station to Cheshunt route, would be determined by the Secretary of State. This is consistent with Government policy that closure decisions in relation to routes which serve communities outside Greater London should be determined by the Secretary of State and not the Mayor.

- Consolidation

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

8. Consultation outcome

8.1 In March 2012 the Department for Transport carried out a 16-week consultation entitled *Rail Decentralisation: Devolving decision-making on passenger rail services in England*. This was an open consultation paper aimed in particular at Passenger Transport Executives, local authorities, franchised train operators and their owning groups, rail freight operating companies, rolling stock companies, community rail partnerships and other transport industry participants. As well as

seeking views about the principles of decentralisation, the consultation also invited expressions of interest from bodies who wished to explore the possibility of taking on greater responsibility. The consultation has been published on the Department's website and is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/2704/main-document.pdf

8.2 In total the Department received 183 responses from a variety of stakeholders including local transport authorities, groups or associations of councils, local enterprise partnerships, community rail partnerships, private sector organisations, representative body or interest groups (including rail user groups), professional bodies, members of the public and elected members of parliament or local authorities. About 70% of responses expressed support for the principle of decentralisation and about 10% indicated that they were against decentralisation. In addition, three specific proposals were received for greater decentralisation, including one from TfL that included a proposal for taking over responsibility for services to the north-east of London, currently part of the Greater Anglia franchise. A summary of the responses provided has been published on the Department's website and is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15328/consultation-responses.pdf

8.3 A second round of targeted consultation with specific reference to the proposed transfer of the railway passenger services on the routes described in paragraph 4.3 from the Secretary of State for Transport to TfL took place between 9 October and 8 November 2014 with the Office of Rail Regulation, London TravelWatch, Passenger Focus, the Association of Train Operating Companies, Network Rail, TfL, and relevant local authorities.

8.4 The results of the first consultation showed that there is widespread support for the further decentralisation across all stakeholder groups. It is acknowledged that it is a widely held view across a broad range of respondents that there is no 'one-size-fits-all' model of decentralisation that could be applied in all areas of England. The Department has carefully considered and taken into consideration this view during the decision making process. In response to the second round of consultation on the proposed devolution of the services described in paragraph 4.3, the Office of Rail Regulation confirmed the proposal did not raise any significant concerns, and in addition recommended that the Department notify and invite comment from the Competition and Markets Agency (CMA). The Department adopted this recommendation and notified the CMA on 19 November 2014. The CMA confirmed on 17 December 2014 that it did not wish to raise concerns about the proposed transfer of responsibility for the North and East London Line Services to TfL. The Department has not received any other comments in response to the second round of consultation.

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

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

10.2 There is no impact on the public sector.

10.3 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 1993 Act applies consistently across the TfL network. No proposals for monitoring or review are considered necessary.

13. Contact

Philip Barnett at the Department for Transport Tel: 0207 944 5275 or email: Philip.barnett@dft.gsi.gov.uk can answer any queries regarding the instrument.