EXPLANATORY MEMORANDUM TO
THE RAILWAYS (SUBSTITUTE ROAD SERVICES) (EXEMPTIONS) ORDER 2006

2006 No.1935

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

2. Description

2.1. The Railways (Substitute Road Services) (Exemptions) Order 2006 (the "Order") exempts certain railway operators from the duty in section 248(2) of the Transport Act 2000 (the "2000 Act") to ensure, so far as is reasonably practicable, that any road services that they provide or secure to replace railway services that have been temporarily interrupted or discontinued allow disabled passengers to travel safely and in reasonable comfort.

Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1. None.

4. Legislative Background

4.1. The requirements of section 248 apply to any person, unless exempted by order, who provides or secures substitute road services. The Secretary of State may, under section 248(4) of the Act grant exemptions from the duty in section 248(2), after consultation with the Disabled Persons' Transport Advisory Committee ("DPTAC") and such other representative organisations as he thinks fit.

4.2. Section 248 has yet to be brought into force. A commencement order has been made to bring section 248 into force at the same time as the Order, so that those operators who will be exempted by the Order do not have to comply with section 248 temporarily.

4.3. The Railways Act 2005 (the "2005 Act") amends section 248 so that the duty which would have been on the Strategic Rail Authority (SRA) will instead be on the Secretary of State, the Scottish Ministers and the National Assembly for Wales, as the case may be, if that authority secures substitute road services. Section 40 of the 2005 Act, which is already in force, gives those authorities the powers to provide substitute road services. A commencement order has also been made to bring the amendments to section 248 into force.

5. Extent

5.1. This instrument applies to Great Britain.

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

7.1. The substitute road services requirement in section 248 of the 2000 Act was introduced to ensure that passengers with mobility impairments who may have difficulty using some rail replacement services were properly provided for. The provision defines a disabled person as one who has a disability or who has suffered an injury which seriously impairs their ability to walk. The person procuring the service is free to provide any alternative form of transport that renders the journey safe and reasonably comfortable for the disabled person. It would be open to operators to review their existing arrangements for rail replacement services so as to ensure that all vehicles will be accessible, but the provision does not require this. For example, if a passenger in a wheelchair is not able to access a replacement bus or coach, the operator will be able to comply with the requirements of section 248 if he provides a wheelchair accessible taxi or private hire vehicle for that person.

7.2. The policy aim of the Order is to exempt heritage railway operators and most charter train operators from the requirements of section 248. These two groups of operators provide services that are not regular scheduled passenger services, but services operated primarily for leisure purposes.

7.3. A heritage service is typically a restored, steam railway, run by enthusiasts and volunteers on a network physically separate from the national rail network. This type of service is usually exempted from the licensing requirements of the Railways Act 1993.

7.4. A charter service is a special excursion train or tour, often using the national rail network, but not available for boarding by passengers unless they have a special ticket. Where they run on the national network charter trains must be operated by a licensed operator.

7.5. The nature of heritage and charter services is such that generally where a train is unable to operate it will be postponed or cancelled and will not be replaced by a road vehicle, since the experience of the railway journey is usually the reason for travel. Where a road replacement may be required in an emergency (e.g. due to break down of the train during the journey) the Department would expect the operator to consider the needs of stranded passengers as part of its customer service policy, but it was not considered reasonable to apply section 248 to these operators given the nature of their services.

7.6. The instrument was prepared in close consultation with the SRA. The Secretary of State was required to consult the DPTAC before making the exemptions. A consultation exercise sought views more widely from within government and from the railway industry. The proposal was for a blanket exemption of all heritage and charter services (and to seek to create an appropriate definition of those terms, not

previously defined in law). The consultation document was also placed on the Department's website. 15 responses were received. Eight respondents felt that charter operators should be subject to the requirements of section 248 and four that heritage operators should be subject to the requirements. The main reason given was that in many cases passengers did not distinguish between such operations and regular scheduled services on the national network. The main concern was that disabled passengers should be properly cared for in an emergency. However, DPTAC was content with our proposed exemptions in both cases, on the basis that charter and heritage services differed in nature from other railway services.

7.7. As a consequence of the consultation the Department reconsidered the extent to which charter and heritage services should be exempt, and consulted again on the revised proposal that, whilst there was still a strong case for exempting most such services, the exemption should be slightly narrower than had been originally proposed. The Department proposed that an operator that it wished to exempt could best be described as an operator who:

(a) is not required to be licensed to operate the assets it uses to provide passenger services; or
(b) is licensed, but not required by the licence to provide through ticketing facilities within the national rail network.

7.8. The through ticketing requirement recognises the function of an operator as a provider of regular, scheduled services available to national rail passengers, and ensures that passengers can purchase a through ticket to make any journey on the network. One of the distinguishing features of the licence of operators whose only passenger services are charter services is that it does not contain this requirement.

7.9. Any operator who is subject to the through ticketing requirement will be subject to the requirements of section 248 when providing substitute services for all services they operate, including any charter services. This includes all franchise operators, who may provide charter services as a commercial undertaking separate from their schedule of franchised services. The Department felt that this distinction was appropriate because it would be reasonable for disabled passengers to assume that operators who were required to comply with section 248 when providing substitute services for their regular scheduled services would be under the same obligation if any charter train they provided had to be replaced with a road vehicle.

7.10. There were six responses to the revised proposal. There was broad agreement with it; but one respondent reiterated its view that that there should be no exemptions for charter services. However, as described above, the Department decided that the exemption of some charter operators was appropriate given the nature of the services.

7.11. A number of non-franchised or light rail operators whom the Department did not wish to exempt would otherwise fall within the scope of the exemptions because they were either licence exempt or because their licences do not require participation in through ticketing. Such services are listed in the Schedule to the Order, which excludes them from the exemption.

8. Impact

8.1. No regulatory impact assessment was prepared. The instrument will have no impact on business, charities or voluntary bodies. Because the exemption will come into effect at the same time as section 248, charter and heritage operators will not be subject to new burdens, nor will any burdens be lifted from them – the impact taken together will be neutral.

9. Contact

9.1. Denise Rose at the Department for Transport - tel. 020 7944 6753 or e-mail denise.rose@dft.gsi.gov.uk - can answer any queries regarding the instrument.