EXPLANATORY MEMORANDUM TO

THE RIGHTS OF PASSENGERS IN BUS AND COACH TRANSPORT (EXEMPTIONS) REGULATIONS 2013

2013 No. 228

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 The statutory instrument gives effect within Great Britain to exemptions available to EU Member States under Articles 2(4), 2(5) and 16(2) of Regulation (EU) No 181/2011 on the rights of passengers in bus and coach transport.

.

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

None.

4. Legislative Context

4.1 The European Commission published its proposal for a Regulation on bus and coach passenger rights in December 2008. The proposal was brought forward to meet the European Commission's objective of ensuring equal treatment for all passengers by establishing passenger rights in all modes of transport, as set out in their White Paper "European transport policy for 2010: time to decide".

4.2 Its full title is Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004. Similar legislation already exists for air, rail and maritime transport.

4.3 The regulation lays out the responsibilities of industry participants, including operators and terminal owners, in the case of delays, cancellations, accidents and other issues affecting passengers, including disabled passengers and passengers with reduced mobility.

4.4 All provisions of the Regulation apply to regular domestic and international passenger services of 250km (155 miles) or longer. Although the Regulation is directly applicable, Member States have the ability to make use of a number of time-limited exemptions. These exemptions include:

- **Article 2(4)** - With the exception of certain mandatory provisions of the Regulation (see paragraph 4.5 below), Member States may on a transparent and non-discriminatory basis, exempt domestic regular services from the application of the Regulation for four years from 1 March 2013. This exemption may be renewed once.

- **Article 2(5)** - For a maximum period of four years from 1 March 2013, Member States may, on a transparent and non-discriminatory basis, exempt from the application of the Regulation particular regular services because a significant part of such regular services, including at least one scheduled stop, is operated outside of the EU. Such exemptions may be renewed once.

- **Article 16(2)** - A Member State may for a maximum of five years from 1 March 2013 grant an exemption to drivers from the requirement for disability awareness training for personnel of carriers and terminal managing bodies.

4.5 A limited number of mandatory provisions of the Regulation also apply to regular services shorter than 250km, with a very limited number of provisions also applying to occasional services (private hire and tours). No exemptions are available in these cases.

5. Territorial Extent and Application

5.1 The instrument applies to Great Britain.

5.2 Similar legislation will be made in Northern Ireland.

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 One of the Government's Guiding Principles when adopting any EU legislation is to ensure that UK businesses are not put at a competitive disadvantage compared with their European counterparts. In line with this guiding principle and to end so-called "gold-plating" it is Government policy not to go beyond the minimum requirements of European legislation, unless there are exceptional circumstances.

7.2 Therefore, it is Government policy to make full use of any available derogation (exemptions) within the Regulation which would reduce costs to business.

7.3 Thee exemptions available under Articles 2(4) and 2(5) of the Regulation will apply for 4 years from 1st March 2013 and may be renewed once in March 2017.

7.4 The exemption available under Article 16(2) of the Regulation will apply for 5 years and cannot be renewed. The Government has made a commitment to review the application of this exemption in March 2014.

7.5 A subsequent Statutory Instrument will give effect to Articles 13(1), 28(1) and 31 of the Regulation, concerning the designation of terminals at which assistance must be provided to disabled persons and persons of reduced mobility; the designation of national enforcement bodies; and penalties applicable to infringements of the Regulation.

- ***Consolidation***

7.4 The Department for Transport does not consider that the application of this instrument warrants a consolidation of any relevant legislation.

8. Consultation outcome

8.1 A twelve week formal public consultation on the application of the Regulation in Great Britain took place between 18th July and 11th October 2012. The consultation sought views on the proposed use of the exemptions described in this memorandum; the designation of terminals at which assistance must be provided to disabled persons and persons of reduced mobility; the designation of national enforcement bodies; and penalties applicable to infringements of the Regulation. This included an Impact Assessment of likely costs and benefits.

8.2 The proposed use of the exemptions described in this memorandum generated varying levels of opposition from consultation respondees. In light of the responses received, the Department for Transport acknowledges that exemptions which delay the application of the Regulation will involve some costs to passengers, as they will not benefit from all of the guaranteed rights under the Regulation until at least 2017. However, any disadvantage to passengers will be mitigated by the requirements of existing domestic contract and equality law; and by the fact that most major long-distance operators already provide a similar quality of service to that required by the Regulation.

8.3 Having considered all consultation responses in detail, the Department remains committed to applying the exemptions available under Articles 2(4), 2(5) and 16(2) of the Regulation for the reasons outlined in paragraph 7 above.

8.4 The Government's formal response to the consultation will be published shortly and made available on the Department's website at www.gov.uk/dft

9. Guidance

9.1 There is no specific guidance associated with the instrument. However, the Department for Transport will look to issue formal guidance on the wider application of the Regulation in Great Britain.

10 Impact

10.1 Applying these exemptions will ensure UK businesses are not put at a competitive disadvantage compared with their European counterparts. The use of exemptions would also provide estimated monetised benefits of £8.2m to bus and coach operators and terminal managing bodies (including local authorities).

10.2 The impact on the public sector is minimal.

10.3 A consultation stage Impact Assessment has been prepared which includes analysis of the effects of applying the various exemptions available under the Regulation. It is attached to this memorandum (at Annex A) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. A final Impact Assessment is

subject to clearance by the Regulatory Policy Committee and will be published on www.legislation.gov.uk in due course.

11. Regulating small business

11.1 Applying these exemptions would provide more time for the bus/coach industry to prepare for the requirements of the Regulation, which is likely to be of benefit to smaller businesses.

12. Monitoring and review

12.1 The Department for Transport will monitor feedback through statistics and stakeholder discussions. In addition a review clause has been included for all exemptions applied by this instrument in line with the Government's Guiding Principles for EU legislation.

13. Contact

13.1 Ben Jones at the Department for Transport, telephone number 020 7944 4731 or email ben.jones@dft.gsi.gov.uk, can answer any queries regarding the instrument.