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STATUTORY INSTRUMENTS

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**2005 No. 2628**

**TRANSPORT**

**The Railways (Provision etc. of Railway  
Facilities) (Exemptions) Order 2005**

*Made* - - - - 21st September 2005  
23rd September  
*Laid before Parliament* 2005  
*Coming into force* - - 15th October 2005

The Secretary of State, in exercise of the powers conferred by section 16B of the Railways Act 1993<sup>(1)</sup>, and after consultation with the Office of Rail Regulation in accordance with that section, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Railways (Provision etc. of Railway Facilities) (Exemptions) Order 2005 and shall come into force on 15th October 2005.

(2) In this Order—

“the 1993 Act” means the Railways Act 1993; and

“freight purposes” means the purpose of carrying goods by railway.

**Exemptions**

2.—(1) Subject to paragraph 2, exemption is granted from subsection (1) of section 16A of the 1993 Act to every operator of a network, station or light maintenance depot in respect of any railway facility.

(2) The exemption in paragraph 1 does not apply to any person specified in Schedule 1.

3. Exemption is granted from subsection (2) of section 16A of the 1993 Act in respect of the railway facilities specified in Schedule 2 to any person having an estate or interest in, or a right over, any of those facilities.

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(1) 1993 c. 43. Section 16B was inserted by the Transport Act 2000 (c. 38), section 223. Section 16B was amended by the Railways and Transport Safety Act 2003 (c. 20), section 16(5) and Schedule 2, paragraphs 1 and 3.

### **Revocation of exemptions**

4.—(1) Subject to paragraph (2), the Secretary of State may revoke an exemption granted by this Order in respect of any operator or railway facility to whom or to which the exemption applies.

(2) Before exercising the power conferred by paragraph (1) the Secretary of State shall:

- (a) serve notice in writing on the operator, or on the person who has an estate or interest in, or right over, the railway facility in question, as the case may be, informing him of his intention to revoke the exemption in respect of that operator or railway facility, and inviting him to make representations in writing to the Secretary of State within such period, not being less than 28 days from the service of the notice, as may be specified in the notice; and
- (b) consider any representations so made.

Signed by authority of the Secretary of State for Transport

21st September 2005

*Derek Twigg*  
Parliamentary Under Secretary of State  
Department for Transport

## SCHEDULE 1

Article 2(2)

### NON-EXEMPT OPERATORS

#### *Interpretation*

1. In this Schedule—

“concession operator” has the meaning given in article 2 of the Merseyrail Electrics Network Order 2003<sup>(2)</sup>;

“Group Company” means a company which is a member of the same group of companies within the meaning of section 42(1) of the Landlord and Tenant Act 1954<sup>(3)</sup>; and

“a Transport for London company” means Transport for London or a subsidiary of Transport for London, and “Transport for London companies” shall be construed accordingly.

#### *Non-exempt Operators*

2. Network Rail Infrastructure Limited.

3. Any franchise operator.

4. A concession operator.

5. Any operator who holds a station licence other than an operator who is:

(1) providing railway services all of which are provided by, for or on behalf of one or more Transport for London companies;

(2) providing railway services on the network constructed in consequence of the making of any of the works authorised by section 5 of the Heathrow Express Railway Act 1991<sup>(4)</sup>;

(3) providing railway services on the network constructed in the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987<sup>(5)</sup>; or

(4) providing railway passenger services.

6.—(1) Any operator who holds a light maintenance depot licence other than an operator who:

(a) is providing light maintenance services—

(i) all of which are provided by, for or on behalf of one or more Transport for London companies;

(ii) for rolling stock used on the network constructed in consequence of the making of any of the works authorised by section 5 of the Heathrow Express Railway Act 1991;

(iii) for rolling stock used on the network constructed in the tunnel system within the meaning of the Channel Tunnel Act 1987; or

(iv) wholly or predominantly for rolling stock used for passenger services which are not franchised services; or

(b) is a person—

(i) who holds a licence to operate trains, or who is a Group Company of a person who holds a licence to operate trains; and

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(2) S.I.2003/1696.

(3) 1954 c. 56. Section 42(1) was amended by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (S.I. 2003/3096), articles 1, 2, 16 and 28 and Schedule 6.

(4) 1991 c.vii.

(5) 1987 c. 53.

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(ii) who operates light maintenance depots which are used, when all of those depots are considered in aggregate, wholly or predominantly for freight purposes.

(2) In determining the predominant use of a light maintenance depot for the purposes of this paragraph, temporary use, use for locomotive refuelling and use for emergency purposes shall be disregarded.

## SCHEDULE 2

Article 3

### EXEMPTED FACILITIES

#### *Interpretation*

1. In this Schedule—

“the 1991 Act” means the Heathrow Express Railway Act 1991;

“1991 Act network” means any network constructed in consequence of the making of any of the works authorised by section 5 of the 1991 Act and any network which extends or connects any such network to any part of Heathrow Airport;

“the 1994 Order” means the Railways (Class and Miscellaneous Exemptions) Order 1994<sup>(6)</sup>;

“the Board” means the British Railways Board;

“PPP agreement” and “PPP company” have the same meaning as in section 239 of the Greater London Authority Act 1999<sup>(7)</sup> (public-private partnership agreements);

“qualifying activities”, in relation to a PPP company, means light maintenance services, network services or station services carried out by the PPP company in fulfilment of obligations imposed on the company by a PPP agreement;

“specified light maintenance depot” means any light maintenance depot which is a specified light maintenance depot for the purposes of the 1994 Order;

“specified network” means any network which is a specified network for the purposes of the 1994 Order;

“specified station” means any station which is a specified station for the purposes of the 1994 Order; and

“TfL company” means

(a) Transport for London or any subsidiary of theirs; or

(b) a PPP company, so far as it is carrying out qualifying activities,

and a light maintenance depot, a station or track is controlled by a TfL company where such company, in the course of a business (whether for profit or not), is in operational control of that railway facility.

#### *Facilities related to Transport for London Services*

2. Any track comprised in a network on which regular scheduled railway passenger services are provided by or on behalf of a TfL company where such track is controlled by a TfL company.

3. Any station or part of a station which is controlled by a TfL company.

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<sup>(6)</sup> S.I.1994/606.

<sup>(7)</sup> 1999 c. 29.

4. Any light maintenance depot which is used in connection with the provision of railway passenger services by or on behalf of a TfL company where such depot is controlled by a TfL company.

*Facilities related to Heathrow Airport*

5. Any track comprised in a 1991 Act network.
6. Any station constructed in exercise of the power conferred by section 7 of the 1991 Act or any other station constructed at Heathrow Airport which is associated with a 1991 Act network.
7. Any light maintenance depot constructed at Heathrow Airport which is associated with a 1991 Act network.

*Freight Facilities*

8. Any railway facility which is used wholly or predominantly in connection with freight purposes, provided that:

- (1) where the relevant facility owner is
- (a) Network Rail Limited or any subsidiary of theirs; or
  - (b) a person holding a licence to operate trains (other than a passenger licence) granted under section 8 of the 1993 Act,

such railway facility shall be exempt from subsection (2) of section 16A of the 1993 Act only to the extent that the railway facility is and remains subject to a facility exemption; and

(2) in determining the predominant use of a railway facility for the purposes of this paragraph, temporary use, use for locomotive refuelling and use for emergency purposes shall be disregarded.

*Other Facilities*

9. Any specified station or specified light maintenance depot (other than a light maintenance depot listed in Schedule 1 to the 1994 Order) or any part of any such station or light maintenance depot.

10. Any station or light maintenance depot, not being exempt by virtue of paragraphs 8 or 9 above, the use of which in connection with railway passenger services does not include use in connection with franchised services, or any part of any such station or light maintenance depot.

11. Any track (or any part of any such track, or any installations associated with such track) comprised in any specified network, the use of which in connection with passenger services does not include use in connection with franchised services, and which is not—

- (1) track which must be used for the purpose of using any locomotive fuelling point comprised in a light maintenance depot listed in Schedule 1 to the 1994 Order; or
- (2) track comprised in the networks comprised in the railway goods terminals listed in Part II of Schedule 2 to the 1994 Order; or
- (3) track exempt by virtue of paragraph 8 above.

12. Any light maintenance depot listed in Schedule 1 to the 1994 Order, not including any part of a light maintenance depot which part consists of a locomotive fuelling point or must be used for the purpose of using any such fuelling point.

13. Any part of a station (other than a specified station) which part was, immediately before 1st April 1994, used otherwise than in connection with the provision of regular scheduled railway passenger services by—

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- (1) the Board,
  - (2) a subsidiary of the Board, or
  - (3) a TfL company.
- 14.** The following railway facilities—
- (1) the station known as Waterloo International Terminal in London;
  - (2) Ashford International Passenger Station in Kent; and
  - (3) the light maintenance depot known as North Pole International at Mitre Way, London W10 6AT.
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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order exempts certain operators and railway facilities from the provisions of section 16A(1) and (2) of the Railways Act 1993 (which empowers the Office of Rail Regulation to direct the owner or operator of a railway facility to provide new railway facilities or to improve or develop an existing railway facility).

In relation to section 16A(1), a general exemption is given to all operators apart from those specified in Schedule 1.

In relation to section 16A(2), the exempted railway facilities are specified in Schedule 2. These are, broadly, the facilities which have been exempted from the licensing, access, franchising and closure provisions of the 1993 Act by orders made by the Secretary of State under sections 7, 20, 24, and 49 of the 1993 Act, or by the Office of Rail Regulation under section 20.

Article 4 provides for exemptions to be revoked in respect of particular operators or facilities.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.