

<b>Title:</b> Impact Assessment on the Exemption Order under the Railways Acts 1993 and 2005 <b>IA No:</b> DfT00180 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 16/10/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Other		
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<b>Summary: Intervention and Options</b>			<b>RPC:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
0	0	0	Yes   OUT

**What is the problem under consideration? Why is government intervention necessary?**  
Transport for Greater Manchester (TfGM) has applied to the Secretary of State to exempt a newly constructed section of the Metrolink tram system in Manchester ("Phase 3B") from various provisions of the Railways Acts 1993 and 2005 via an exemption order. Operators of railway services and facilities are subject to various requirements under the Railways Acts 1993 and 2005. Both Acts contain provisions permitting the Secretary of State to grant exemptions from these obligations. Similar exemptions were granted by the Secretary of State to Phases 1 and 2 in 2004 and Phase 3A in 2009 and the current request is to apply the same exemptions to Phase 3B.

**What are the policy objectives and the intended effects?**  
To apply the exemptions already in place for previous Metrolink Phases 1, 2 and 3A to Phase 3B which is now under construction and due to be operational in January 2013. It would be inconsistent and unworkable to have different operating requirements and procedures in force on the different sections of the Metrolink network.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
Option 1 (the preferred option) is for the Secretary of State to provide all the exemptions requested by TfGM to the operators of the new phase of the Metrolink system. This would bring the new phase into line with the rest of the Metrolink system and ensure consistency across the system. Under the relevant legislation a statutory instrument (in the form of this Exemption Order) is needed to do this.  
Option 2 is for the Secretary of State not to make the order. The Office of Rail Regulation (ORR) is able to provide some of the exemptions that TfGM have requested. However they can only provide exemptions to the current operators, whereas the Secretary of State for Transport can, using a statutory instrument allowed for this purpose, provide block exemptions to cover current and future operators in order to reduce red tape that would otherwise apply to them.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b> NA					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No	<b>Large</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A	<b>Non-traded:</b> N/A	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Preferred Option - grant exemptions to Phase 3B and Implement the Order

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	£0	£0
High	£0	£0	£0
Best Estimate	£0	£0	£0

### Description and scale of key monetised costs by 'main affected groups'

The preferred option (making the Order) will have no costs to TfGM, the operator or any other public or private body. Failure to make the Order would mean TfGM and the operator would have to apply for individual exemptions and licences from the ORR. ORR cannot provide an automatic exemption for both current and future operators. They will most likely provide it now but it would need to be applied for each time the operator changed which would impose an administrative burden and administrative costs, albeit limited.

### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	£0	£0
High	£0	£0	£0
Best Estimate	£0	£0	£0

### Description and scale of key monetised benefits by 'main affected groups'

Having spoken to TfGM we are clear that it would disproportionate to provide further detail of the monetised benefits which will in any case be minimal (savings to TfGM and the current and any future operators of £250 plus administrative costs per exemption, where ORR does not provide an automatic exemption.)

### Other key non-monetised benefits by 'main affected groups'

N/A

### Key assumptions/sensitivities/risks

TfGM and the current and future operators would apply for the exemptions from ORR and, where required, ORR would grant them. This would need to be done each time the operator changed.

Discount rate (%)

N/A

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0m	Net: £0m	Yes	OUT



# Evidence Base (for summary sheets)

## Introduction

Transport for Greater Manchester (TfGM) has applied to the Secretary of State to exempt a newly constructed section of the Metrolink tram system in Manchester ("Phase 3B") from various provisions of the Railways Acts 1993 and 2005 via an exemption order. Exemption orders take the form of Statutory Instruments and there is currently one in place to exempt the rest of the Metrolink tram system from these same provisions - The Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2009 (SI 2009 No. 2726). The provisions of the Railways Acts 1993 and 2005 are deemed to be inappropriate for a tram system where services are run by only one operator.

## Background

Metrolink is the name of the Greater Manchester light rail system owned by Transport for Greater Manchester (TfGM).

Phase 1 was opened in 1992 with services from Manchester to Altrincham and Bury. Phase 2 opened in 2000 and runs from the city centre through Salford Quays to Eccles.

Phase 3 of the Metrolink expansion is being implemented in two stages. The first, Phase 3A opened in 2010 and involved extending the network to Oldham and Rochdale, Droylsden in Tameside, and Chorlton in South Manchester.

The second phase of the expansion, Phase 3B, will take Metrolink into Oldham and Rochdale town centres as well as to Ashton-under-Lyne, East Didsbury and Manchester Airport.

The Secretary of State granted exemptions in relation to Metrolink Phases 1 and 2 by order in 2004 - The Greater Manchester (Light Rapid Transit System)(Exemptions) Order 2004 (SI 2004 No. 1072). In 2009, the SoS also granted exemptions in relation to Metrolink Phases 1,2 and 3A – The Greater Manchester (Light Rapid Transit System)(Exemptions) Order 2009 (SI 2009 No. 2726). This order applied exemptions to Phase 3A, while consolidating into one order the existing exemptions which already applied to Phases 1 and 2 by virtue of the 2004 Order. The 2004 Order was revoked simultaneously with the coming into force of the 2009 Order. However, to the extent that exemptions already apply to Phase 1 under the Railways (Class and Miscellaneous Exemptions) Order 1994, the Railways (Alternative Closure Procedure) Order 1994 and the Railways (Provision etc. of Railway Facilities)(Exemptions) Order 2005, these will continue to be in force.

The current request from TfGM is to apply these same exemptions to Phase 3B of the Metrolink network.

## Policy Objective

Operators of railway services and facilities are subject to various requirements under the Railways Acts 1993 and 2005. Both Acts contain provisions permitting the Secretary of State to grant exemptions from these obligations. Exemptions under the 1993 Act already apply to Phases 1 and 2 of Metrolink by virtue of previous orders.

It would be inconsistent and unworkable to have different operating requirements and procedures in force on the different sections of the Metrolink network. Furthermore, there will only be one contractor with exclusive rights to operate all services on the system, this contract being granted by TfGM. Therefore the draft Order will consolidate a number of the existing exemptions with those now proposed for Phase 3B. The previous 2009 exemption order will be revoked simultaneously with the coming into force of this instrument.

## The Exemptions and Their Consequences

- i) **Exemption from s6 of the 1993 Act - exempts the Metrolink operator and TfGM from the requirement that operators be licensed:**

When the Government introduced licensing conditions through the Railways Act 1993 they exempted geographically separate rail systems unconnected from the mainline railways from the requirement to be licensed through the Railways (Class and Miscellaneous Exemptions) Order 1994. This exemption would apply to Metrolink and other similar systems. Phases 1, 2 and 3A of Metrolink are already exempted from the licensing requirement, so there will be a consistent application across the network if it is applied to Phase 3B as well.

The Office of Rail Regulation (ORR) can only grant licence exemptions to individual applicants whereas the Secretary of State can grant licence exemptions covering a particular class or description of assets, as well as granting exemptions to individual bodies. The exemption order is wanted here as it will allow an exemption for all current and future operators on this section of the track and avoid the need for future exemption applications.

Without an exemption the Metrolink operator and TfGM, and any future operators would need to spend time and money obtaining the necessary licences from the ORR to operate Phase 3B and the relevant stations. The fee for a new licence application is £250.

The terms of the operator licence place a number of obligations on licence holders. Some – such as third party insurance, a complaints procedure, an Environmental Management Plan, liaison with rail passenger transport committees, timetabling and change of control – will be provided for via contractual agreement between the operator and TfGM. Others, such as through ticketing and emergency access, are a matter for TfGM rather than the operator. TfGM also has a number of responsibilities under the Equality Act 2010 to which they are committed to complying with. Accessibility requirements have been fully taken into account in the design and construction of Phase 3B. Finally, other licensing terms, such as non-discrimination between other operators on the main line railway, co-operation with Transport for London, claims allocation and handling, membership of the Rail Safety and Standard Board and Railway Group Standards, are not relevant to the Manchester Metrolink as they are only relevant to the national rail network.

However, if the Order were not made, TfGM and the Metrolink operator would apply for an individual exemption from the ORR. ORR guidelines state “.....if you do not need a safety certificate or authorisation for the mainline railway under ROGS you are likely to qualify for a licence exemption.” (ROGS – The Railway and Other Guided Transport Systems (Safety) Regulations 2006). It is likely that the Metrolink operator and TfGM would fall within this category and would therefore qualify for an exemption from ORR. There is no fee for a license exemption application.

Therefore, it is our view that granting the exemption does not result in any costs or savings to any public or private sector bodies other than administrative costs from having to apply to ORR..

**ii) Exemption from s16A(2) of the 1993 Act – exempts the Metrolink operator and TfGM from the ORR’s power to direct improvements to railways facilities:**

Under the 1993 Act, either the Metrolink operator or TfGM could be directed to improve the Metrolink 3B facilities. Facilities are defined as any track, station or light maintenance depot. As Metrolink is not part of the national rail network and TfGM owns the Metrolink tracks, stations and maintenance depots, it would be more appropriate for TfGM as the owner, to direct improvements, as necessary. The licence granted by TfGM to the Metrolink operator to use Phase 3B for the operation of trams does not give it the rights to make physical modifications to the infrastructure. Accordingly, it follows that any improvement requirement for Phase 3B could only be issued by ORR to TfGM itself. Therefore in reality there will be no costs or savings to the Metrolink operator from this exemption as it is merely a formality.

Under s16E of the 1993 Act an improvement can only be required by ORR where ORR is satisfied that the person carrying out the improvement will be “adequately rewarded” for carrying it out. TfGM would not be adequately rewarded as the costs would not result in an increase in access charges recoverable from access beneficiaries, as would usually be the case on the mainline railway. It is therefore unlikely that ORR would direct TfGM to improve the facilities in any case.

Therefore the exemption from this requirement would not result in any additional reporting or administrative burden on public bodies, nor would it introduce any new regulatory costs on the public sector. Nor would it result in any costs or savings to the private sector.

iii) **Exemptions from s17, 18 & 22A of the 1993 Act – exempts National Rail and TfGM from the ORR’s power to direct the owner of a railway facility to enter into an access contract with an applicant:**

Under Railways Act 1993, access to the railway network is given under access agreements. **Sections 17, 18 and 22A** exist to ensure that a facility owner - as the monopoly provider of an essential service - is not able to unreasonably refuse access or to demand unreasonable terms for its use.

The contractor will be granted an exclusive contract by TfGM to operate railway services on the Metrolink network. Therefore it would be inappropriate for ORR to retain the power to require the contractor or TfGM to enter into access agreements giving third parties the right to access the Metrolink network.

Under **Section 17** the ORR can direct a facility owner to enter into an access contract with an applicant. A facility owner is defined as anyone who has an estate or interest in, or right over, a railway facility; and whose permission to use that railway facility is needed by another before that other may use it. Both TfGM and National Rail (NR) will fall within this definition.

The exemption will prevent ORR directing that TfGM enter into an access contract with a provider other than the Metrolink operator. In practice it is not workable for there to be two separate operators on the Metrolink system. A franchise agreement would be useless unless access rights were also granted to the franchisee. It will not be possible for a franchise agreement to be entered into as set out in section iv below.

**Section 18** requires ORR approval for track access agreements (thereby ensuring terms are reasonable). The effect of the exemption from section 18 is that when agreeing future Metrolink operating contracts TfGM will not need to obtain prior ORR approval. Similarly with any future easements or rights granted to TfGM from NR to use the relevant land, there will be no need to obtain prior ORR approval.

An exemption from **Section 22A** would prevent the ORR from directing parties to an access agreement increase the use for which the access agreement has been granted, e.g. a direction to run trams more frequently. It is unlikely to be used here as the ORR would have no interest in forcing a regional tram services provider such as TfGM to require that its non-franchised commercial operator provide further services.

It is highly unlikely that the ORR would apply the same regime to require open access in respect of regional tram services as it does to the national rail network. By way of background TfGM has leased an exclusive operating contract to the Metrolink operator to operate passenger services on the Metrolink Light Rail Network. Under this contract TfGM pays the operator to provide services and TfGM retains all the fare revenue from those services.

There has never been any attempt by the ORR in the past to subvert these local tram arrangements, and indeed any such attempt is likely to be judicially reviewable by TfGM.

Theoretical savings for TfGM would not be sufficient to count for the purposes of an Impact Assessment. Any savings for the private tram operator are incalculable as there realistically is no counterfactual, given the ORR is highly unlikely to require open access, and if it did, TfGM would most likely seek to terminate the operating agreement.

iv) **Exemption from s23(1) of the 1993 Act - exempt Metrolink and TfGM from the Secretary of State’s power to designate services for franchising:**

This exemption will prevent the Secretary of State or the ORR from requiring the Metrolink operator to provide additional tram services or to require any Metrolink services to be provided under a franchising agreement.

It would be inappropriate for the Secretary of State to have the power to designate Metrolink services for franchising, since one contractor will have an exclusive contract to operate all services on the network. Designating any services for franchising would interfere with the contractual arrangements permitting the contractor exclusive operating rights on the Metrolink network.

For the reasons explained above, it is highly unlikely that the Secretary of State or the ORR would upset the arrangements already in place in Manchester and require franchising on a local tram system.

If Metrolink were designated as a franchise, the franchise operator would expect to recover any costs of operation through fares revenues and/or franchise payments. Under the current agreement the Metrolink operator pays over the entire fare revenue to TfGM, and TfGM pays the Metrolink operator a fixed amount. If Metrolink were to be designated as a franchise TfGM would still be contractually required to pay the Metrolink operator but would not be receiving any of the fare revenues.

Therefore any costs related to this exemption would be borne by TfGM and not the private sector.

**v) Disapplication of ss22 to 24, ss26 to 28, ss29 – 31 of the 2005 Act – Disapply the closure procedures to Metrolink:**

The disapplication of these sections of the 2005 Act (and the application of s25 of the 2005 Act) means that Metrolink phase 3B will no longer be subject to the standard closure provisions, but rather to the special procedure for excluded services.

The standard closure procedures are not necessary for a self contained network where one operator has the contractual rights to run all the railway passenger services.

Under both procedures an application is made to the Secretary of State proposing the discontinuance of a railway passenger service, the operation of a network or the closure of a station. The operator must provide at least 3 months notice. The standard procedure states that where the Secretary of State or the ORR do not ratify the proposal for closure, the Secretary of State must secure the provision of the services, the continued operation of the network or the operation of the station once the interim period is over. The Special procedure for excluded services does not require the Secretary of State to secure the provision of the railway passenger services once the interim period has expired.

Any savings in relation to this will accrue to the Secretary of State and TfGM and therefore to the public sector rather than the private sector.

**Options Considered**

Option 1 (the preferred option) is for the Secretary of State to provide all the exemptions requested by TfGM to the operators of the new phase of the Metrolink system. This would bring the new phase into line with the rest of the Metrolink system and ensure consistency across the system. It would also ensure that no further exemptions would have to be applied for if the operator changed – the exemption order would cover any future operators as well. Under the relevant legislation a statutory instrument (in the form of this Exemption Order) is needed to do this.

Option 2 is for the Secretary of State not to make the order. So as to prevent the new Phase 3B being subject to different operating requirements and procedures than the rest of the network, TfGM would have to ensure that they complied with all the relevant regulations before Phase 3B could become operational – they would have to apply to ORR for exemptions and licences prior to Phase 3B becoming operational. The ORR is able to provide some of the exemptions that TfGM have requested. However they can only provide exemptions to the current operators, whereas the Secretary of State for Transport can, using a statutory instrument allowed for this purpose, provide block exemptions to cover current and future operators in order to reduce red tape that would otherwise apply to them.

**Monetised and non-monetised costs and benefits**

There are very minimal monetised costs involved if the exemption order is not granted – administrative costs for TfGM and the operator in applying for any exemptions not automatically provided by ORR. There are no monetised costs if the exemption order is granted.

Without the exemption order, TfGM will have to ensure they comply with the relevant regulations for Phase 3B of the Metrolink network otherwise it will not be consistent with Phases 1, 2 and 3A of the network.

With the exemption order, the Metrolink network can operate under consistent conditions.

### **Rationale and evidence that justify the level of analysis used**

The level of detail of the costs and benefits outlined in the forms reflects the fact that the proposals will affect relatively few firms or organisations (the exemption order only relates to TfGM, National Rail and the Metrolink operator). The consultation resulted in five responses all of which were in favour of the exemptions. Gathering data for detailed costs and benefits would require a large amount of resources from other public bodies which cannot be justified as the scale of the impacts of the exemption order are extremely low. No responses were forthcoming on this in the replies to the consultation.

### **Affected Stakeholders**

Before granting an exemption from the franchise duties under section 23 of the 1993 Act, there is a statutory requirement to consult the ORR and give notice of intention to grant a franchise exemption to parties who may be affected. For the other exemptions, there is only a requirement to consult the ORR or, in the case of the disapplication of the closure provisions of the 2005 Act, no consultation requirement at all. However, as the exemptions are related, a single consultation paper was issued to the wider audience including ORR, passenger groups, local authorities and national rail companies.

### **Wider Impacts**

There are no anticipated wider environmental or social impacts. I confirm that this proposal has been screened for its likely impact (positive or adverse) on the equality groups. It is not considered that this exemption will have any impact on these groups.

### **Review of Policy**

The Policy will not be reviewed as the exemptions are to provisions in legislation that are not relevant to a light rail system. Assuming that the system continues in operation indefinitely and the legislation continues in existence, as it is needed for the heavy rail network, the exemptions will be needed in perpetuity.

### **Summary and preferred option with description of implementation plan**

Both the Government and industry representative's preferred option is Option 1 'Grant the exemptions and implement the Order'. The consultation result was in favour of granting the exemption order. The Secretary of State will then have to formally approve the exemption order and this will be implemented as a Statutory Instrument. This has to be completed before Phase 3B of the Metrolink network can become operational – currently scheduled for January 2013.