EXPLANATORY MEMORANDUM TO THE

RAILWAYS ACT 1993 (DETERMINATION OF TURNOVER) ORDER 2005

2005 No.

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 draft instrument defines "turnover" for the purposes of the powers under the Railways Act 1993 ("the 1993 Act"), as amended, to impose penalties (and obligations to pay reasonable sums) not exceeding 10% of turnover on railway operators in certain circumstances.

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

3.1 None.

4. Legislative Background

4.1 Sections 55(7B) and 57A(3) of the 1993 Act enable the Secretary of State to make an order determining what constitutes a railway operator's turnover for the purposes of imposing a penalty (or obligation to pay a reasonable sum) not exceeding 10% of turnover in certain circumstances. The relevant circumstances are those where an operator has breached any condition of a railway operator's licence, a term of a franchise agreement or a requirement attached to the closure of a railway service, station or network. A penalty may also be imposed if an operator contravenes an enforcement order made under section 55 of the Act.

4.2 The application of a ceiling of 10% of turnover was introduced in the Transport Act 2000 (by amendment to the 1993 Act) to make the railway enforcement regime consistent in this regard with the regimes of other regulated utilities and the regime under the Competition Act 1998.

4.3 Sections 55 and 57A of the 1993 Act provide the powers to impose penalties (and obligations to pay reasonable sums). The powers to impose penalties in the specified circumstances are discretionary.

4.4 The Railways Act 2005 further amends the 1993 Act. It transfers the enforcement role of the Strategic Rail Authority (SRA) to the Secretary of State and, so far as Scottish operators are concerned, the Scottish Ministers. A Scottish operator is defined for this purpose as a franchisee under a Scottish franchise agreement (i.e. a franchise for which the Scottish Ministers are the franchising authority, at the present time being ScotRail); a franchise operator in relation to such an agreement; or a person under Scottish closure restrictions (i.e. requirements attached to a closure that was proposed by the Scottish Ministers or a Scottish operator in accordance with Part 4 of the 2005 Act). It replaces the closure provisions of the 1993 Act with revised network modification procedures set out in Part 4. It transfers to the Office of Rail Regulation (ORR) the SRA's responsibility under the 1993 Act for enforcing the consumer protection conditions of licences. These provisions of the 2005 Act are not yet in force. It is anticipated that the transfer of responsibilities under

the enforcement regime from the SRA to the Secretary of State and the ORR will occur in summer 2005. The Scottish Ministers are expected to take on their enforcement role in autumn 2005. Part 4 of the Act is expected to commence towards the end of 2005.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

> "In my view the provisions of the Railways Act 1993 (Determination of Turnover) Order 2005 are compatible with the Convention rights."

7. Policy background

7.1 The ceiling on penalty levels was introduced as a safeguard against excessive penalties. In the first instance the 1993 Act requires any penalty to be reasonable. 10% of turnover is the ceiling that a penalty that is deemed to be reasonable must not exceed. The size of any individual penalty is a matter for the authority imposing the penalty. Each authority with the power to impose penalties is required by section 57B of the Act to publish, following appropriate consultation, their policy as to how they will go about setting penalties.

7.2 The policy intention in preparing the draft instrument was to ensure that penalties could be set at a level that presented a deterrent to breach of railway operators' obligations whilst not introducing undue risk for the operators; that a reasonable degree of flexibility would be available for determining penalties; and that railway operators would have a reasonable degree of certainty about the potential maximum size of any penalty that might be imposed. The Department was mindful that the majority of railway operators receive substantial sums of public subsidy. It was therefore important to develop an order that would ensure that where operators failed to deliver they would face financial consequences, but would not be counter productive and give rise to pressure for more subsidy as operators sought to compensate for the risk of future penalties.

7.3 The instrument defines turnover by reference to the amount of an operator's business that may be taken into account and the time period over which that turnover may be measured. It was considered necessary for the whole of an operator's railway activity in Great Britain to be relevant for this purpose, in order for the turnover available for assessing the appropriate level of a penalty to be properly representative. The turnover is net of VAT and other taxes, but includes any grants or other aid from government.

7.4 It was assumed that most penalties would involve breaches that continued for only a short period of time and accordingly for most operators subject to a penalty their turnover will be their most recent year's turnover. However, it was considered necessary also to be able to take into account more than one year's turnover when assessing a penalty for a breach that had continued for a longer period. This was so that a more representative sample of turnover was available for the period in question where an operator had not acted more quickly to rectify a breach. The instrument therefore provides for additional months of turnover to be added, equivalent to the number of months in which the operator remained in breach, up to a maximum of two years of turnover. For example, if a breach has continued for 18 months, the amount of turnover that may be taken into account is the most recent business year's plus six months of the preceding business year's turnover. If a breach has continued for 25 months

or more, the amount of turnover that may be taken into account is the last 24 months' turnover, because of the two year cap. This cap on the number of years was considered appropriate in order to balance the need for flexibility with the potential financial risk to the industry that a longer period might present. In addition, where there is no preceding business year's turnover available for determining a penalty, the instrument provides for the turnover in the current year to be used. For example, a new operator may have been in business for six months when a breach occurs. If it was considered necessary and appropriate to impose a penalty on that operator, the instrument provides that the turnover in this first year of the operator's railway activity be used. The authority imposing the penalty could use the year-to-date turnover, or they could decide to wait until the end of the financial year before determining a penalty which took into account the whole year of turnover.

7.5 The draft instrument was prepared in close consultation with the SRA and ORR prior to public consultation. The consultation document was circulated to the railway industry and within government, and was placed on the Department's website. Sixteen responses were received. The only substantive comments were those received from rail industry respondents. These indicated that a number of operators were concerned about the potential size that a penalty could reach and the impact that this could have on the operator's business. Some of these concerns arose from the view that a ceiling of 10%, as applied by the Act, was in itself too high. It is not within the scope of this instrument to amend that figure. However, we made several adjustments in the light of other comments received.

7.6 Several operators felt that the applicable turnover should be defined more narrowly. The original proposal had been that the applicable turnover would be that derived from the whole of an operator's ordinary activities. We adjusted this to be the turnover derived from an operator's railway activities in Great Britain. Several operators felt that certain elements of Government subsidy should be excluded from the applicable turnover. We did not agree with this - all subsidy is to be included for the reasons given in paragraph 7.2. Several operators felt that the cap on the number of years that could be taken into account for considering penalties where a breach had continued for a number of years should be lower than the three year cap that was originally proposed. We decided that a lower cap of two years would offer the authority considering the penalty an adequate amount of turnover on which to base a penalty in such circumstances. One operator pointed out that the separate treatment of closures that had been proposed in the consultation draft order may not have had much practical value. We had originally been concerned about the prospect of a facility that had closed generating no turnover. We had therefore suggested that the turnover used should be that in the last year before the closure condition was imposed. The consultee in question suggested that a breach could occur many years after the condition had been imposed and would thus be remote from the turnover of the operator at that time. On reflection we decided that it was not necessary to treat closures separately in the instrument, as the definition of applicable turnover was sufficiently wide to limit circumstances arising in which there was no recent turnover available on which to base a penalty.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

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.

FINAL REGULATORY IMPACT ASSESSMENT

1. The Railways Act 1993 (Determination of Turnover) Order 2005

2. Purpose and intended effect of measure

(i) The objective

The objective is to make an order defining turnover for the purposes of penalties that may be imposed on railway operators. Part of that objective is to ensure that:

(a) prospective penalties act as a deterrent to breach or failure by railway operators to comply with relevant obligations;

(b) the application of the turnover definition is fair and reasonable;

(c) the potential size of penalties does not create undue risk for operators; and

(d) operators have reasonable certainty about the maximum amount of the financial penalty for which they could be liable in the event of a breach or failure.

(ii) The background

There is power to impose penalties (or obligations to pay a reasonable sum - for the purposes of this document such obligations shall be included in the term "penalties") under sections 55 and 57A of the Railways Act 1993 (the 1993 Act). At present the power is exercisable by the Strategic Rail Authority (SRA) and the Office of Rail Regulation (ORR). In future, when relevant provisions of the Railways Act 2005 come into force, the powers will be exercisable by the Secretary of State, the Scottish Ministers and the ORR.

Under those sections the power to impose penalties is subject to a ceiling of 10% of the relevant operator's turnover. Penalties may be imposed on a railway operator for breach of a licence condition, franchise agreement term or, requirement attached to a railway closure (e.g. where a franchise operator is given approval to close a station on certain conditions).

What constitutes turnover in each case is to be determined in accordance with an order made by the Secretary of State. The application of a ceiling of 10% of turnover makes the railway enforcement regime consistent in this regard with the regimes of other regulated utilities and the regimes under Competition and Enterprise legislation. The ceiling on penalty levels is intended as a safeguard against excessive penalties. This is the case notwithstanding that penalties imposed under the 1993 Act must be reasonable (see section 55(7A) and section 57A(1)). 10% of turnover is the ceiling that a penalty that is deemed to be reasonable must not exceed. The size of any penalty is a matter for the person imposing it, subject to these constraints - a penalty may of course be lower than a sum equivalent to 10% of the relevant operator's turnover. The Courts may reduce or quash a penalty if an operator has grounds for appeal as provided for in sections 57 and 57F of the 1993 Act. The bodies with power to impose penalties are each required by section 57B of the Act to publish,

following appropriate consultation, their policy as to how they intend to exercise their powers to impose penalties and determine their amounts.

For clarity it should be noted that since the consultation on a draft order, which was to have applied to the powers available to the SRA and the ORR, the Government has completed a review of the railway industry. The conclusions of that review were set out in the White Paper, *The Future of Rail* (15 July 2004, CM 6233). The elements of the review that required legislation were provided for in the Railways Act 2005 (the 2005 Act), which gained Royal Assent on 7 April. Amongst the changes provided for by the 2005 Act were the transfer of the SRA's enforcement role to the Secretary of State and, so far as Scottish operators are concerned, the Scottish Ministers. (A Scottish operator is defined for this purpose as a franchisee under a Scottish franchise agreement (e.g. ScotRail); a franchise operator in relation to such an agreement; or a person under Scottish closure requirements). In addition, the SRA's responsibility for enforcing the consumer protection conditions of licences transfers to the ORR. The 2005 Act also adjusts the railway closure regime to reflect the restructuring of the railway industry that the Act provides for, introducing a revised procedure for the approval of network modifications. This results in consequential changes as to the persons responsible for imposing and enforcing closure conditions. The 2005 Act provisions are not in force at the time of preparing this document. It is anticipated that the transfer of responsibilities under the enforcement regime from the SRA to the Secretary of State and the ORR will occur in summer 2005. The Scottish Ministers are expected to take on their enforcement role in the autumn. The revised network modifications provisions are expected to commence towards the end of 2005.

(iii) Risk assessment

The risk of not making an order is to expose the railway industry to continued uncertainty about the potential size of any financial penalty, as the turnover that should be taken into account when determining a penalty would remain undefined.

3. Options

A partial regulatory impact assessment and consultation exercise took soundings on a draft order. The partial regulatory impact assessment considered several options under each of the two headings below. As a result of the views expressed during the consultation exercise a further option was developed in each case, as explained below.

How much of an operator's business turnover should be derived from

All the options assumed that the applicable turnover would include income from government subsidies.

Option 1: Limit turnover to income specific to the operator's activity authorised by the licence, franchise or closure requirement that has been breached. We anticipate that this would be the starting point for determining the size of a penalty in the majority of cases, and this has been the approach adopted in the past by the ORR and SRA when considering the penalties they have imposed (details of past penalties are provided below). However, there may be exceptional cases where the financial benefit derived by an undertaking from a breach appears to be greater than 10% of turnover if it were calculated according to this option. We therefore concluded that in

order to deal properly with such cases it was necessary to have the flexibility to consider any wider business of an operator. This led to options 2 and 3.

Option 2: Derive turnover from the provision of all goods and services falling within the operator's ordinary activities, whether or not such activities are authorised by the licence or franchise in question, or relate to the facility being closed. This was the option which the consultation paper recommended. During the consultation, operators pointed out that this option could risk substantial sums, as many railway operators have substantial non-rail businesses. We therefore revised our original approach and adopted option 3.

Option 3: Derive turnover from the provision of goods and services falling within the operator's ordinary railway activities in Great Britain, whether or not such activities are authorised by the licence or franchise in question, or relate to the facility being closed.

The maximum period of time over which turnover should be measured

All the options assumed that where an offence continued for a period of 12 months or less, the applicable turnover should be that for the business year immediately preceding the date on which the contravention occurred, with one exception. The exception was that the consultation draft of the order proposed that where a penalty was imposed for breach of a closure requirement, the applicable turnover would be that for the business year immediately preceding the date on which the operator was made subject to the closure requirement. As indicated below, following the consultation exercise we decided that this exception was not necessary, and that breaches of closure requirements should be treated in the same way as all other breaches. For all options, the assumption was that most breaches last for a short period of time, and that in most cases one year of turnover would therefore be taken into account. It was, however, necessary to decide how to deal with circumstances in which a breach continued for longer than one year.

The options considered were:

Option 4: No limit on the period to be taken into account: the 10% maximum of turnover would apply to the relevant turnover for each and every year during which the breach or failure took place. We decided that this option was too open ended and would create an unreasonable financial risk for the industry if, for example, a breach had gone unnoticed for a number of years.

Option 5: Limit the relevant period to the last year in which the breach or failure took place. We decided that this option would not offer sufficient flexibility for a larger penalty, if justified, where a breach had continued for longer than one year.

Option 6: Limit the relevant period to each and every year in which the breach or failure took place, but place an upper limit on the number of years. This was the option which we recommended in the consultation document, placing an upper limit of three years. The additional turnover should be pro-rated according to the length by which the contravention exceeded 12 months relative to the length of the business year, but should not exceed the applicable turnover for the last preceding business year.

However, during the consultation operators expressed the view that three years was too long a period. We therefore revised the upper limit to two years - option 7.

Option 7: Limit the relevant period to each and every year in which the breach or failure took place, but apply an upper limit of two years, again with pro-rating and the proviso that the total amount should not exceed the applicable turnover for the last preceding business year.

Prior to the consultation we were concerned that this option could mean that an operator would be liable for a significantly different penalty for a breach of a licence or a closure requirement depending on whether the 1993 Act or a separate regime available to the ORR under the Competition Act 1998 for this type of breach was used. The Competition Act regime has an upper limit of three years. Our initial view was that it was appropriate for the railway and competition regimes to be consistent in this regard. However, in the light of operators' concerns, we decided that a lower number of years and the potential for different penalties under the two regimes is justified. Our view is that two years provides an appropriate level of flexibility for responding to offences that have continued for several years, whilst limiting the potential burden on the industry.

We had originally been concerned about the prospect of a facility that had closed generating no turnover. We therefore proposed that the turnover to be used when considering a penalty for breach of a closure condition should always be that of the last year before the closure condition was imposed. However, one consultee pointed out that a breach of a closure requirement could occur many years after the facility had closed, and would thus be remote from the last year of its operation and the value of turnover at that time. On further consideration, we decided that the definition of applicable turnover was sufficiently wide to limit circumstances arising in which there was no recent turnover available on which to base a penalty. The turnover for penalties in respect of breach of a closure requirement is therefore now treated in the same way as that for breach of a licence or franchise agreement.

4. Benefits

Economic

For all options the effective and appropriate use of the enforcement regime to impose penalties should generate a climate of compliance with contractual obligations, which will benefit overall industry performance and could generate greater use of train services.

Social

For all options, as part of an effective enforcement regime the regulations should have the effect of deterring railway operators from breaching their contractual obligations. This can include obligations that are in passengers' interests and thus of benefit to society.

Environmental

No environmental benefits were identified.

Sectors affected

The order affects anyone holding a licence issued under the terms of the 1993 Act to operate a railway train, station or light maintenance depot; passenger rail franchisees

and franchise operators; and any person who is subject to a requirement attached to a railway closure.

Issues of equity and fairness

The order does not raise issues of equity or fairness for any particular group.

5. Costs

How much of an operator's business turnover should be derived from

Economic

Option 1: This option would have involved the lowest potential costs in terms of the size of penalty that could be imposed. Our view was that this would not offer sufficient flexibility for higher penalties where this was justified by the circumstances.

Option 2: This option would have involved greater potential costs in terms of the size of penalty that could be imposed, since the whole of an operator's business, including its non-rail activities, could have been taken into account. A number of operators were concerned that this could lead to unreasonably high costs as many have substantial non-rail businesses. For 2004 the total turnover of the current train operating companies, including non-rail activities, was around £11bn, with approximately £5bn coming from rail activities. Taking group turnover into account would increase the likelihood of operators pricing in more risk to franchise bids and increasing the subsidy requirement. This led us to consider option 3.

Option 3: This option offered the best solution to the concerns arising under options 1 and 2. It offers the flexibility to take into account turnover derived from activities wider than the licence, franchise or requirement that has been breached, but limits this wider application to other railway activities in Great Britain.

A number of operators who responded to the consultation exercise perceived the risk of very high penalties. To some extent this was based on their view that the ceiling of 10% of turnover was in itself too high. However, that ceiling has been set in the primary legislation and is not within the scope of these regulations.

By way of precedents for penalties imposed under the 1993 Act, railway operators have been subject to financial penalties three times since 1993.

In 1997 train operators participating in the National Rail Enquiry Service were penalised a total of £350,000 for failure to meet call answering targets. This sum could have been higher had the failure to meet the targets continued.

In 1999 Railtrack was penalised £7.9m for failure to achieve targets for reducing passenger delay minutes. The Rail Regulator had published an enforcement order that specified that the company was to be subject to a financial penalty of £4m for each percentage point by which it fell short of the targets it had published in its 1998 Network Management Statement. £4m represented 1.1% of Railtrack's operating profits before tax in 1998/99. The company's total turnover in that year was £2.573billion. Railtrack missed its targets by 2.7%, which resulted in a penalty of £10.8m. The enforcement order allowed for the penalty to be reduced if Railtrack could demonstrate that it had taken all reasonable steps to reduce delays. After considering Railtrack's representations the Regulator reduced the penalty to £7.9m.

In 2002 Arriva Trains Northern was penalised £2m by the SRA for poor performance. The £2m sum represented the excess profit that that operator had earned above

budgeted profit in the period (approximately four months) that the breach of its franchise had continued. It represented less than 1% of the total turnover for the franchise of £340m in 2001/02.

On each of the above occasions the penalty was determined on the basis that it was reasonable according to the severity of the breach and the operator's financial position, and a penalty that represented substantially less than 10% of turnover was imposed.

We nevertheless gave careful consideration to the views expressed by respondents to the consultation who suggested that the perception that very high penalties could be imposed would prove counter productive, as operators bidding for franchises were likely to seek additional subsidy to compensate for accepting such a risk. In addition, the majority of train operators who responded felt that a penalty in the upper end of the 10% range would put the financial viability of the business at risk. We therefore made the adjustments in option 3 to respond to these concerns.

Two passenger operators felt that the applicable turnover should exclude the Government subsidy that operators receive to meet the access charges they pay to Network Rail, and one passenger operator felt that all subsidy should be excluded. We did not agree with this approach. Subsidy often comprises an important element of the operator's turnover and excluding it from the applicable turnover would mean that any penalty was based on an unrepresentative sum.

It should be noted that the 1993 Act provides the discretion to pursue alternative methods of securing compliance. For example, if the authority considering enforcement action is satisfied that the operator has a robust recovery plan in place, they may decide that a penalty is unnecessary. A further alternative, which was adopted by the Strategic Rail Authority in the past, was to agree with a franchise operator who had breached the terms of the franchise agreement investment in a package of service improvements. This approach - if adopted in future - might result in a broadly equivalent level of cost to an operator as would a financial penalty; but could be demonstrated as being of direct benefit to passengers.

Social

No social costs were identified.

Environmental

No environmental costs were identified.

The maximum period of time over which turnover should be measured

Economic

Option 4: This option would have involved the greatest potential costs in terms of the size of penalty that could be imposed for a breach that continued for longer than one year. Our view was that this did not offer the industry sufficient certainty about potential future costs; this could lead to a higher subsidy requirement.

Option 5: This option would have involved the lowest potential costs in terms of the size of penalty that could be imposed for a breach that continued for longer than one year, since it would limit the turnover that could be taken into account to the last

financial year. Our view was that this did not offer sufficient flexibility to impose a higher penalty, if justified, where a breach had continued for longer than one year.

Option 6: This option appeared to offer an appropriate solution to the concerns raised about options 4 and 5 and was the preferred option on which we consulted. However, during the consultation most operators felt that three years was too long a period. As discussed above the perception was of the risk of very high penalties. In view of this we reconsidered the maximum number of years that could be taken into account. Since turnover can vary from year to year and go down as well as up, a maximum of three years would have had the benefit of providing a longer and therefore potentially more representative range of turnover on which to base a penalty. However, we decided that sufficient flexibility was offered by a maximum of two years and that this adjustment was an appropriate response to the views expressed by consultees about the maximum time period.

Option 7: This option provides a balance in the level of flexibility available for responding to offences that have continued for several years, whilst limiting the potential financial burden on the industry.

Social

No social costs were identified.

Environmental

No environmental costs were identified.

6. Consultation with small business: the Small Firms' Impact Test

The order affects the railway industry. It was not possible to complete a public services threshold test as the costs involved will only impact in the form of a penalty, which must always be reasonable.

7. Competition Assessment

The order affects the railway industry and will not have a substantially different effect on different companies within that industry.

8. Enforcement and sanctions

The order relates to powers exercisable by those set out in section 55 and 57A of the 1993 Act (currently the SRA and ORR). Any operator who is aggrieved about the imposition of a penalty may have grounds for appeal to the courts. The 1993 Act includes specific provisions that enable a court to reduce or quash a penalty on appeal.

9. Monitoring and review

The effectiveness of the order in practice will be kept under review and revisions made from time to time if necessary. Substantive changes are likely to be subject to consultation with the industry, and would be subject to the approval of Parliament.

10. Consultation

(i) Within Government

The order was developed in close consultation with the Strategic Rail Authority and the Office of Rail Regulation. Other key government/local government bodies and

the devolved administrations were also consulted. Responses were received from the Strategic Rail Authority, the Office of Rail Regulation, the Scottish Executive, Merseytravel Passenger Transport Executive and Strathclyde Passenger Transport Executive.

(ii) Public consultation

The draft order was subject to public consultation. A consultation document was published on the Department's website and was sent in hard copy to the railway industry. Responses were received from Network Rail, Arriva Trains Northern, National Express Group, the Association of Train Operating Companies, GNER, First Group, Go-Ahead Rail, English Welsh & Scottish Railways, Transport for London, London Underground Ltd and Railfuture. Several changes were made to the order as a consequence of the views expressed:

- Revision of the turnover which will be applicable. This was originally to be turnover derived from all of an operator's ordinary activities. We have adjusted this to be turnover derived from an operator's railway activities in Great Britain. In addition, we have made it clearer in the order that income from subsidies is to be included.

- Revision of the maximum period over which turnover can be measured for offences lasting longer than one year. This was originally capped at three years. We have adjusted this to two years.

- Revision of the turnover that should be used to determine a penalty where a closure requirement has been breached. We had originally been concerned about the prospect of a facility that had closed generating no turnover. We therefore proposed that the turnover to be used when considering a penalty for breach of a closure condition should always be that of the last year before the closure condition was imposed. However, one consultee pointed out that a breach of a closure requirement could occur many years after the facility had closed, and would thus be remote from the last year of its operation and the value of turnover at that time. On further consideration, we decided that the definition of applicable turnover was sufficiently wide to limit circumstances arising in which there was no recent turnover available on which to base a penalty. The turnover for penalties in respect of breach of a closure requirement is therefore now treated in the same way as that for breach of a licence or franchise agreement.

11. Summary and recommendation

We recommend that the applicable turnover for the purposes of penalties is defined as the turnover of the relevant operator derived from its railway business activities in Great Britain during a business year. For the purposes of considering a penalty, the applicable turnover to be taken into account should for the business year immediately preceding the contravention, where the contravention lasts for 12 months or less. Where the contravention lasts for more than 12 months, there will be an additional element of turnover considered. This will be the applicable turnover in the business year preceding the business year which immediately preceded the contravention. The additional element shall be pro-rated according to the length by which the contravention exceeded 12 months relative to the length of the business year, but shall not exceed the applicable turnover for that business year, even if the specified contravention lasts for more than two years.

Our view is that this determination provides certainty for operators about the potential maximum size of any penalty; and provides an appropriate balance between the need to provide a deterrent to breach of a licence, franchise agreement or closure requirement, and the need to avoid undue financial risk for the industry.

13. Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed…Derek Twigg……..

*Date…*13th June 2005*……*

Derek Twigg

Parliamentary Under Secretary of State

Department for Transport

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