

**EXPLANATORY MEMORANDUM TO
THE GREATER MANCHESTER (LIGHT RAPID TRANSIT SYSTEM)
(EXEMPTIONS) ORDER 2009**

2009 No. 2726

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order grants exemptions from certain requirements of railways legislation currently applying to the Greater Manchester Light Rapid Transit System (“**Metrolink**”) to the extensions to the system due to open in October 2009.

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

3.1 None

4. Legislative Context

4.1 The Railways Act 1993 (c.20) (amended by the Transport Act 2000 (c. 38)) (“**the 1993 Act**”) provides for the appointment and establishes the functions of a Rail Regulator. The Act also sets out a number of provisions with respect to railway services. These include a requirement that operators of railway assets must be licensed; powers for the Regulator to require improvements to railway facilities and direct access to facilities; and a duty on appropriate designating authorities to designate passenger services which they consider ought to be provided under franchise agreements. The Act provides that exemptions from these powers and requirements may be granted.

4.2 The Railways Act 2005 (c.14) (“**the 2005 Act**”) prescribes procedures that must be followed when service operators and railway funding authorities propose to discontinue railway passenger services on a line or from a station or close networks or stations. It provides that services, networks and stations may be excluded from these procedures if so designated by Order. The Order may apply alternative closure procedures to these excluded services.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 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 The existing Metrolink network has been built in two phases, operational since 1992 and 2000 respectively. A third phase is due to be operational by February 2012. Phases 1 and 2 are already exempted from some of the provisions of the Railways Act 1993 and 2005 (“**the Railways Acts**”). The intention is to ensure that exemptions apply consistently across the whole Metrolink network as it expands to incorporate Phase 3A. The reason for applying such exemptions to Metrolink is that it is a self-contained network, not part of the national network and is owned by Greater Manchester Transport Executive (“**GMPTE**”) which grants exclusive operating rights to one contractor. GMPTE requires the contractor to comply with similar obligations under its contractual terms. This Order will apply exemptions to Phase 3A while consolidating into one Order the existing exemptions which already apply to Phases 1 and 2 by virtue of The Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2004 (“**the 2004 Order**”). The 2004 Order will be repealed simultaneously with the coming into force of this Order. 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 in force. This is because those orders apply to different sections of infrastructure, as well as Metrolink.

7.2 Section 6 of the 1993 Act prohibits any person from acting as an operator of railway assets (trains, networks, stations or light maintenance depots) without a licence. Section 7 enables the Secretary of State for Transport to grant exemptions from this prohibition. This Order grants an exemption from the application of section 6 to Metrolink Phase 3A because it is a self-contained network for which a contractor will be granted an exclusive contract by GMPTE to operate passenger services.

7.3 Section 16A(2) of the 1993 Act enables the Rail Regulator, on application from any person, to direct the owner of a railway facility (or other person with an estate interest or other right over that facility) to improve or develop that facility. Section 16B enables the Secretary of State to grant exemptions from this to a specified person or class of person. This Order grants an exemption from the application of section 16A(2) to GMPTE, which will have the contractual right under its agreement with the contractor to require improvements.

7.4 Section 17 of the 1993 Act empowers the Regulator, on application from any person, to direct the owner of a railway facility to enter into an access contract with the applicant. Section 18 provides no access contract in respect of a railway facility may be entered into by the facility owner without the approval of the Regulator. Section 22A permits the Regulator to require amendments to existing access agreements. Section 20 of the 1993 Act enables the Secretary of State to grant exemptions from sections 17, 18 and 22A to specified persons or classes of persons in respect of specified railway facilities or classes of facility. As the contractor will have

exclusive rights to operate railway passenger services on the Metrolink network it is inappropriate for the Regulator to intervene in respect of third party access or amendments to access terms. Therefore the Order exempts GMPTE and the contractor from sections 17, 18 and 22A in relation to Metrolink.

7.5 Section 23 of the 1993 Act gives the appropriate designating authority the duty to designate rail passenger services that it considers should be provided under franchise agreements. The Secretary of State may exempt specified rail services from this under section 24. This Order exempts GMPTE and the contractor from the application of section 23 Metrolink as it would be inappropriate to designate services on the network for franchising when a contractor has an exclusive contract to operate all services.

7.6 Sections 22 to 24 of the 2005 Act set out the circumstances and procedures that apply when a service operator or Railway Funding Authority (“RFA”) proposes to discontinue all services (whether franchised, secured or non-franchised services) on a line or from a station; sections 26 to 28 set out the circumstances and procedures that apply when an operator or RFA (including where it has a duty to provide, for example pending the outcome of a reference to the ORR) proposes to close all or part of a passenger network; section 29 sets out the circumstances and procedures that apply when operators of stations propose to close all or part of those stations; section 30 sets out the circumstances and procedures that apply when a RFA can initiate proposals to close all or part of a station; and section 31 sets out the circumstances and procedures that apply when a RFA can propose closure of all or part of a station it has a duty to provide, for example pending the outcome of a reference to the ORR.

7.7 Section 38 of the 2005 Act gives the Secretary of State the power to exclude services, networks and stations from the provisions of sections 22 to 24 and 26 to 28 and 29 to 31. Therefore this Order excludes Metrolink from the provisions of sections 22-24 and 26-31 of the 2005 Act, although alternative closure procedures will apply which are considered more appropriate on a self-contained network on which one operator has contractual rights to run all the passenger services. To the extent that exemptions already apply to Phase 1 under the Railways (Class and Miscellaneous Exemptions) Order 1994, these will continue in force. Although the sections under which that exemption was granted are now repealed, section 38(4) of the 2005 Act provides that the 1994 exemption shall have effect as an order made under section 38(4) thereby allowing their continued application.

7.8 Section 25 of the 2005 Act provides that special procedures must be followed where a proposal for the discontinuance of all the excluded services which have been designated as a “special procedure service” for the purposes of that section and are provided by a particular person (the service operator) on a particular line, or from a particular station, is made by the service operator. This Order applies those special procedures by designating every passenger service which operates wholly or substantially on the Metrolink network as a “special procedure service”, except where the Railways (Alternative Closure Procedure) Order 1994 already provides that railway passenger services on the network are subject to alternative closure procedures. Although the sections under which that order was made are now repealed, section 25(10) of the 2005 Act provides that the provisions of that order shall have effect as though made under section 25(10); designating the services to

which is applied as special procedure excluded services, thereby providing for their continued application.

- ***Consolidation***

7.9 Metrolink Phases 1 and 2 were granted exemptions in respect of sections 7, 16B, 20, 24 and 49 of the Railways Act 1993 by virtue of the Greater Manchester (Light Rapid Transit System) (Exemptions) Order 2004. Therefore, this order will grant exemptions to Phase 3A while consolidating the existing exemptions under the 2004 Order. The 2004 Order will be repealed simultaneously with the coming into force of this 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 in force.

- ***Exemptions relating to network interchanges***

7.10 In addition to exempting Metrolink from requirements relating to the operation of network stations (from which Metrolink services are the only regular railway passenger services operated), the draft Order also applies to stations where use is shared with other, non-Metrolink operators and services. These stations are described as 'network interchanges'. Exemptions from facility, facility improvement and closure provisions apply to 'network interchanges' where part of the relevant station is used exclusively for the provision of Metrolink services. This is to address the concern that at some stations Metrolink will operate alongside the heavy rail network to which the exemption should not extend, therefore requiring the asset to which the exemption attaches to be defined as narrowly as possible.

7.11 A different emphasis applies to the term 'network interchange' in relation to the licence exemption because the exemption is granted to GMPTE and the contractor to be the operator of certain assets - therefore the exemption attaches to the operator rather than to the asset as defined.

8. Consultation outcome

8.1 Those consulted included local authorities in the Greater Manchester area, train operating companies, the Office of Rail Regulation, Network Rail and organisations representing passengers. The consultation ran for 12 weeks from 2 March 2009. Six responses were received.

Only one respondent – the trade union Unite – was opposed to the proposals. They felt that the proposals were an example of responsibility being passed to a private company, which would have the freedom to dismantle the signalling system. We must point out that although a private company will be appointed to run the Metrolink services, the network will still be publicly owned – by the Greater Manchester Passenger Transport Executive. In addition, although the draft Order will exempt Phase 3A of the network from some of the provisions of the Railways Acts 1993 and 2005, similar requirements will in some cases be made of the contractor by GMPTE.

Other respondents noted that Phases 1 and 2 of Metrolink are already subject to most of the proposed exemptions and welcomed the consistency that will apply across the network.

The National Council on Inland Transport queried why the draft Order included a specific power to revoke some of the exemptions (in Articles 3-6) but not those in articles 7-9. This is because section 14 of the Interpretation Act 1978 provides that there is an implied power to revoke exemptions unless a contrary intention appears. This does not apply in the case of Articles 3-6, where the original Acts provide that an express power to revoke must be specified.

9. Guidance

9.1 It is not considered necessary to issue guidance.

10. Impact

10.1 The impact on business is minimal. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is minimal. The Rail Regulator is the main public body affected, as the Railways Acts 1993 and 2005 place a number of duties on the Regulator. The Order will remove some of these duties with respect to Metrolink.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This Order seeks to apply exemptions from the Railways Acts 1993 and 2005 consistently across the Metrolink network. No proposals for monitoring or review are considered necessary.

13. Contact

David Pope at the Department for Transport Tel: 020 7944 5854 or email: david.pope@dft.gsi.gov.uk can answer any queries regarding the instrument.