

HOUSE OF LORDS

Merits of Statutory Instruments Committee

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4th Report of Session 2009-10

**Northern Rock plc Transfer  
Order 2009**

Correspondence:

**Rail Passengers' Rights and  
Obligations (Exemptions) Regulations  
2009**

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### *The Select Committee on the Merits of Statutory Instruments*

The Committee has the following terms of reference:

- (1) The Committee shall, subject to the exceptions in paragraph (2), consider—
  - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
  - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (3).
- (2) The exceptions are—
  - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
  - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
  - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (3) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
  - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
  - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
  - (c) that it may inappropriately implement European Union legislation;
  - (d) that it may imperfectly achieve its policy objectives.
- (4) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (3) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

### *Members*

The members of the Committee are:

Rt Hon. the Baroness Butler-Sloss GBE	The Baroness Morris of Yardley
The Baroness Deech DBE	The Lord Norton of Louth
The Lord Hart of Chilton	The Lord Rosser ( <i>Chairman</i> )
The Lord James of Blackheath CBE	The Lord Scott of Foscote
The Lord Lucas	The Baroness Thomas of Winchester
The Lord Methuen	

### *Registered interests*

Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the House of Lords Record Office and is available for purchase from the Stationery Office.

### *Publications*

The Committee's Reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/parliamentary\\_committees/merits.cfm](http://www.parliament.uk/parliamentary_committees/merits.cfm)

### *Contacts*

If you have a query about the Committee or its work, please contact the Clerk of the Merits of Statutory Instruments Committee, Delegated Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email [merits@parliament.uk](mailto:merits@parliament.uk). The Committee's website, [www.parliament.uk](http://www.parliament.uk), has guidance for the public on how to contact the Committee if you have a concern or opinion about any new item of secondary legislation.

### *Statutory instruments*

The Government's Office of Public Sector Information publishes statutory instruments on the internet at [www.opsi.gov.uk/stat.htm](http://www.opsi.gov.uk/stat.htm), together with an explanatory memorandum (a short, plain-English explanation of what the instrument does) for each instrument.

# Fourth Report

## INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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**The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.**

### **Northern Rock plc Transfer Order 2009 (SI 2009/3226)**

*Summary: This Order gives effect to the restructuring of Northern Rock. The accompanying Explanatory Memorandum (EM) says that the purpose of the restructuring is to allow the bank to undertake new lending and carry on its current deposit and mortgage business, whilst minimising the required capital injection into the company (paragraph 7.4). Under the Order, part of Northern Rock's business is being transferred to a new company on 1 January 2010. Both entities will continue to be wholly owned by the Treasury. An agreement between the two entities has valued the net value of assets and liabilities being transferred as zero. One effect of this is that under the terms of the Banking (Special Provisions) Act 2008, the Order can proceed under the negative procedure. Although the EM says (paragraph 10.2) that the Government will provide the new company with capital support and will increase the current loan to the existing company, the Government will not provide Parliament with details of the financial support provided for the restructuring of Northern Rock until January 2010. Given that a significant amount of taxpayers' money has been committed to Northern Rock, the House may wish to satisfy itself that the restructuring is in the public interest.*

**This Order is drawn to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House.**

1. In February 2008, following Northern Rock's well-publicised difficulties, the Government decided to take the bank into a period of temporary public ownership. This was done on 22 February 2008 using an Order made under the Banking (Special Provisions) Act 2008 ("the 2008 Act") to transfer the bank's shares into Treasury ownership. On 8 December 2009 the Government announced that the Northern Rock plc Transfer Order 2009 ("the Order") was being laid before Parliament on that day to give effect to a restructuring of Northern Rock. The accompanying Explanatory Memorandum (EM) says that the restructuring is to allow Northern Rock to undertake new lending and carry on its current deposit and mortgage business, whilst minimising the required capital injection into the company (paragraph 7.4).
2. Under the Order the restructuring of the company will take place on 1 January 2010 with part of Northern Rock's business being transferred to a new company. The EM says (paragraph 7.5) that the business transferred to the new company will include Northern Rock's retail and wholesale deposit business (other than certain wholesale deposits held on behalf of Northern Rock's Granite securitisation and covered bond programme), a proportion of its unencumbered mortgages and its mortgage origination and servicing platform. The EM also says (paragraph 7.6) that the remaining part of the

company will retain the remainder of Northern Rock's mortgage book, arrangements relating to the Granite securitisation and the covered bond programme, the company's loan from the Government, its other borrowings, derivatives and certain wholesale deposits held on behalf of its Granite securitisation and covered bond programme.

3. The intention is that the new company will be named "Northern Rock plc" and the existing company will be named "Northern Rock (Asset Management) plc". Both entities will continue to be wholly owned by the Treasury (via a nominee), but the EM says (paragraph 7.8) that they will both operate at arms' length from Government on commercial principles. The restructuring has received significant media coverage<sup>1</sup>, often with the terms "good bank" and "bad bank" being applied to the new and existing companies respectively.
4. The list of property, rights and liabilities to be transferred to the new company are set out in the Order and reflect those contained in the Transfer Administration Agreement ("the Agreement") between the two entities. The Agreement is available on the Treasury website. The EM says (paragraph 4.3) that the value of assets transferred to the new company will be matched by the value of the liabilities being transferred, so the net value of assets and liabilities will be zero. This may be of interest to the House as it means that the Order does not contain any provision for determining the amount of consideration which is payable by the new company, and therefore under the terms of the 2008 Act, it can proceed under the negative procedure.
5. Interestingly, this Order allows the two companies to modify the provisions of the Order. The EM (paragraph 3.8) draws attention to the need for Treasury consent before the power can be exercised, and the Treasury has provided further information on how this would work in practice (see Appendix 1). However, as both companies are wholly owned by the Treasury, the House may have a view on how much of a safeguard this would provide.
6. This Order has been subject to very limited consultation (see EM paragraph 8.1) and it is therefore difficult to gauge the level of support for the restructuring. Although the Government may strictly speaking be correct in saying that the Order has no impact on the public sector, business, charities or voluntary bodies (EM paragraph 10.2), a significant amount of taxpayers' money has been committed to Northern Rock. On that basis, the House may wish to satisfy itself that the restructuring is in the public interest. There is clearly dissatisfaction from some former Northern Rock shareholders as they believe they should have received compensation following the Government's purchase of the bank.<sup>2</sup> This was picked up in the media following the announcement on the same day this Order was made of the independent valuer's provisional assessment that they should not be entitled to any compensation<sup>3</sup>.
7. The EM says (paragraphs 10.2) that in order to support the restructuring the Government will provide the new company with capital support and will increase the current loan to the existing company. However, the Government

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<sup>1</sup> For example: FT.com 9 December 2009; and TIMESONLINE 8 December 2009

<sup>2</sup> UK Shareholders' Association website: Northern Rock Shareholder Action Group – updated 7 October 2009

<sup>3</sup> For example: guardian.co.uk 8 December 2009; and FT.com 9 December 2009

is not going to provide Parliament with details of this financial support until January 2010. The House may feel that it would have been better placed to consider this Order if details of the financial package had been made available at the time the Order was made.

## **OTHER INSTRUMENTS OF INTEREST**

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### ***Student Fees (Amounts) (England) (Amendment) Regulations 2009 (SI 2009/3113)***

8. These Regulations increase the basic and higher amounts of tuition fees that may be charged to full-time undergraduates in respect of an academic year beginning on or after 1 September 2010. The increase is by 2.04%. The Regulations are linked to the Education (Student Support) Regulations 2009 which provide for support for students taking designated higher education courses for the academic year beginning on or after 1 September 2010. When the changes embodied in the two sets of Regulations were announced by the Government [HL Debates 1 July 2009, WMS 21-23] they received significant media coverage, particularly the announcement that the package of support for full-time students will remain at current levels, despite the increase of the fee levels. Representative organisations from the higher education community were quoted at the time expressing significant displeasure on the proposals.

### ***Carbon Accounting (Amendment) Regulations 2009 (SI 2009/3146)***

9. These Regulations amend an error in regulation 6 of the Carbon Accounting Regulations 2009 (“the main regulations”). The main regulations introduced a carbon accounting system, as provided for by the 2008 Act, which is used to monitor compliance with the targets for reducing greenhouse gas emissions. These regulations adjust the amount of carbon units to be used in determining in each year the amount of units to be credited to or debited from the net UK carbon account as a result of the operation of the European Union Emissions Trading System (EU ETS). This ensures that the annual amounts add up to the UK allocation under the EU ETS for the 2008-2012 period.

### ***Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009 (SI 2009/3130)***

10. These Regulations transpose parts of an EC Directive which sets out how the EU ETS will operate beyond 2012. The Regulations require relevant operators to submit emissions data to the regulator for the installations which will be added to the extended EU ETS; and thereafter for the regulator<sup>4</sup> to submit the data to the European Commission. This is to enable the Commission to calculate the Community-wide cap to take account of the new installations. The Regulations also allow for the collection of the information necessary for the UK to comply with its obligation under the Directive to publish a National Implementation Measure (NIM) containing a

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<sup>4</sup> The Environment Agency in England and Wales, the Scottish Environment Protection Agency in Scotland, the chief inspector in Northern Ireland and the Secretary of State for offshore installations

list of installations covered by the extended EU ETS, and any free allocation to each installation. The remainder of the Directive will be transposed in 2011.

***Child Support (Management of Payments and Arrears) Regulations 2009 (SI 2009/3151)***

11. At the request of a number of the parents involved, these regulations helpfully introduce new provisions enabling the Child Maintenance and Enforcement Commission to offset parents' liabilities to pay each other child maintenance. This would simplify the administration of up to 25,000 transactions with a value of approximately £30m. It also would allow prescribed payments such as utility bills to be offset against a person's liability to pay child maintenance. In addition it would permit the recovery of arrears of child support maintenance from a deceased person's estate, currently estimated at about 3,000 cases per year. The regulations also update and consolidate existing provisions for managing arrears, voluntary payments and overpayments of child maintenance.

***Parliamentary Pensions (Amendment) (No 2) Regulations 2009 (SI 2009/3154)***

12. Following up a resolution of the House of Commons<sup>5</sup>, this instrument amends the Parliamentary Pension Scheme to increase member contribution rates, introduce a new one-sixtieth accrual rate option, and give members the opportunity to switch accrual rates. It also applies the scheme's maximum pension limit of two-thirds of final salary to all scheme members for service from 1 April 2009. This means that those who joined the scheme before 1 June 1989 will no longer be able to make contributions to build up benefits after age 65 in excess of the two-thirds limit (benefits built up before 1 April 2009 will not be affected). The Government Actuary has advised that the increases in member contribution rates will produce savings of 1.7 per cent of payroll, and application of the maximum pension limit to all scheme members will produce savings of 1.2 per cent of payroll, thus saving 2.9 per cent in total. With the agreement of the Trustees of the Fund, the changes to the ill-health retirement provisions were made in July 2009 [S.I. 2009/1920], in advance of the accrual rate changes.

**RAIL PASSENGERS' RIGHTS AND OBLIGATIONS  
(EXEMPTIONS) REGULATIONS 2009 (SI 2009/2970):  
GOVERNMENT RESPONSE**

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13. In our 2nd report of this session the Committee drew these Regulations to the special attention of the House on the ground of inappropriately implementing EU legislation as they delayed the implementation of passenger benefits because the Department for Transport had not yet worked out the implications. The Committee also wrote to the Minister to express its concern over the way this legislation is being handled. The Secretary of State for Transport has replied, apologising for the defects. The letter reiterates that cost/benefit data is currently being evaluated following public

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<sup>5</sup> HC Debates, 17 December 2008, cols 1162-70; see also HC Debates, 25 June 2009, cols 986-1018

consultation, however it does not provide any information beyond that set out in the EM to explain the two year delay before obtaining this. Similarly it regrets that officials did not respond to the request for information about the extent to which these protections are already offered by domestic regulation, but does not provide the answer. The main value of the letter is that it gives the Secretary of State's assurance that evidence based decisions will be taken early in 2010. Both letters are published at Appendix 2.

## **INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE**

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**The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.**

### **Draft Instruments requiring affirmative approval**

Draft Communications Act 2003 (Disclosure of Information) Order 2010

Draft Representation of the People (Northern Ireland) (Amendment) Regulations 2010

Draft State Pension Credit (Disclosure of Information) (Electricity Suppliers) Regulations 2010

### **Instruments subject to annulment**

SI 2009/3093 Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009

SI 2009/3094 Pensions Act 2007 (Supplementary Provisions) (No. 2) Order 2009

SI 2009/3095 Non-Domestic Rating Contributions (England) (Amendment) Regulations 2009

SI 2009/3098 Derelict Land Clearance Area (Drake Gardens, Tavistock) Order 2009

SI 2009/3101 Private Water Supplies Regulations 2009

SI 2009/3102 Common Agricultural Policy Single Payment and Support Schemes Regulations 2009

SI 2009/3103 Road Vehicles (Registration and Licensing) (Amendment) (No. 2) Regulations 2009

SI 2009/3104 Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009

SI 2009/3112 Care Quality Commission (Registration) Regulations 2009

SI 2009/3113 Student Fees (Amounts) (England) (Amendment) Regulations 2009

SI 2009/3128 Financial Services and Markets Act 2000 (Market Abuse) Regulations 2009

- SI 2009/3130 Greenhouse Gas Emissions Data and National Implementation Measures Regulations 2009
- SI 2009/3131 Civil Jurisdiction and Judgments Regulations 2009
- SI 2009/3135 Misuse of Drugs (Designation) (Amendment) (England, Wales and Scotland) Order 2009
- SI 2009/3136 Misuse of Drugs (Amendment) (England, Wales and Scotland) Regulations 2009
- SI 2009/3145 Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) (England) Regulations 2009
- SI 2009/3146 Carbon Accounting (Amendment) Regulations 2009
- SI 2009/3150 Local Government Pension Scheme (Miscellaneous) Regulations 2009
- SI 2009/3151 Child Support (Management of Payments and Arrears) Regulations 2009
- SI 2009/3152 Income Support (Prescribed Categories of Person) Regulations 2009
- SI 2009/3153 Thurrock and Basildon College (Dissolution) Order 2009
- SI 2009/3154 Parliamentary Pensions (Amendment) (No. 2) Regulations 2009
- SI 2009/3155 Accreditation Regulations 2009
- SI 2009/3159 Licensing Act 2003 (Premises licences and club premises certificates) (Amendment) (Electronic Applications etc) Regulations 2009
- SI 2009/3184 Courts Boards Areas (Amendment) Order 2009
- SI 2009/3193 Council Tax (Demand Notices) (England) Regulations 2009

**APPENDIX 1: NORTHERN ROCK PLC TRANSFER ORDER 2009 (SI 2009/3226)**

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**Information from HM Treasury**

**Q1.** *The Order is laid under the Banking (Special Provisions) 2008 Act. Were you obliged to use the 2008 Act or could you have used the Banking Act 2009? If the latter, why did you choose the 2008 Act?*

**A1.** Section 8 of the Banking (Special Provisions) Act 2008 (“the 2008 Act”) is expressly designed to facilitate this kind of transfer (a further transfer of the property of a bank which has been taken into temporary public ownership under the 2008 Act).

The powers conferred by the Banking Act 2009 (“the 2009 Act”) were not available. The onward transfer powers conferred by the 2009 Act (see in particular section 45) do not apply to the banks which have been taken into temporary public ownership by virtue of an order made under the 2008 Act. It was not considered appropriate to “grandfather” such banks into the regime established by the 2009 Act.

**Q2.** *Paragraph 3.8 of the EM says that the two companies can modify the provisions of the order. How would this work in practice? Is there similar provision in the 2009 Act?*

**A2.** In light of the relationship between the two companies and the Treasury and the requirement for Treasury consent to any modification (see article 22(3) of the Order), we would expect the companies to discuss with the Treasury any proposal for a modification of the Order pursuant to article 22 at an early stage. Careful consideration would be given to the appropriateness of the proposal and in particular whether it was necessary, whether the issue could be resolved by other (e.g. commercial) means and whether it would be more appropriate for the Treasury to amend the Order by a further order under the 2008 Act. If a modification instrument was considered appropriate, the Treasury would be closely involved in its preparation and drafting. Further consideration would be given to the appropriate means of ensuring those who would be affected by the modification are informed of the modification (in addition to complying with the provisions set out in article 22(5) of the Order).

The 2009 Act confers a similar power to enable the transferee and transferor to modify the terms of a property transfer instrument. This power is narrower than the power conferred by the 2008 Act in that a modifying instrument may not transfer property, rights or liabilities (see section 36(7) of the 2009 Act).

**Q3.** *Do the provisions for this type of restructuring in the 2009 Act differ significantly from those in the 2008 Act?*

**A3.** The powers to transfer the property of a bank which has been taken into temporary public ownership under the 2009 Act are set out in section 45 of the 2009 Act. The powers are similar in many ways to the powers conferred by the 2008 Act. For example, both Acts enable provision to be made in relation to events of default which relate to, or are triggered by, the transfer (see section 38 of the 2009 Act and paragraph 1(1)(e) of Schedule 2 to the 2008 Act).

However, the powers conferred by the 2009 Act are narrower in scope than the powers conferred by the 2008 Act. In particular, the 2009 Act does not confer a general power to modify the interests, rights or liabilities of third parties (compare paragraph 1(1)(e) of Schedule 2 to the 2008 Act). The ability to transfer some, but not all, of the property of a bank under the 2009 Act is also subject to certain safeguards (see sections 47 and 48 and the Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 SI 2009/322).

**Q4.** *This Order can proceed under the negative procedure. Would a similar restructuring under the 2009 Act be subject to the affirmative procedure?*

**A4.** No. A property transfer order made by the Treasury under section 45 of the 2009 Act would be subject to the negative procedure (see section 25 as applied by section 45(5)(a)).

*Q5. Why were details of the financial support package not announced at the time the order was laid?*

**A5.** Details of the financial support package – particularly the amount of additional loan – were not finalised at the time the Order was made.

The precise amounts will not be known until later this month. In January, we intend to inform Parliament the actual amounts of support given.

**December 2009**

**APPENDIX 2: RAIL PASSENGERS' RIGHTS AND OBLIGATIONS  
(EXEMPTIONS) REGULATIONS 2009 (SI 2009/2970): COMMITTEE  
CORRESPONDENCE AND GOVERNMENT RESPONSE**

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**Letter from Lord Rosser to Chris Mole MP**

I am writing as Chairman of the Lords Committee on the Merits of Statutory Instruments. This week the Committee considered this instrument which was laid by the Department for Transport to make use of all the potential derogations from EC Regulation 2007/1371. The Committee requested that I write to express our concern about your Department's handling of this instrument.

The EC Regulation, of course, applies directly to all Member States from 4 December 2009, but SI 2009/2970 makes blanket use of an option to derogate from it for 5 years for certain "non-core" provisions. These provisions relate to the information to be provided to passengers; companies' obligations to passengers in the event of delay, missed connections and cancellations; the definition and monitoring of service quality standards; the personal security of passengers; and the handling of complaints.

Our concern arises because these derogations will delay benefits to passengers, and the reason for doing so appears to be because the Department does not yet have a clear a policy line or even a sound evidence base from which to develop one:

- The impression conveyed by the EM is that serious discussions with stakeholders about the use of the exemptions and the implementation of the Regulations generally only began after the Regulation had been agreed, and that they proved difficult: we would have expected your officials to have had a reasonably clear idea of how the provisions might be implemented before they agreed to the EC Regulation.
- Supplementary inquiries to your officials inform us that they do not have any documentation that clearly states the cost of the EC Regulation: a partial Impact Assessment has been drawn up for the public consultation exercise that ended on 3 November 2009 but that primarily used figures provided by the Association of Train Operating Companies (ATOC). While it is a valid role of the consultation exercise to allow other interested parties to comment on the statement of costs and benefits, we are surprised that, at such a late stage, the Department still has no robust information on the potential costs and benefits of the various provisions under consideration.
- The Committee was particularly struck by the fact that nowhere did the EM appear to recognise that there was an opportunity cost to passengers from the delay in receiving benefits. Your officials stated that they had not engaged in active discussion with organisation representing passengers before laying the current exemption instrument, so there is a risk that the DfT will seem to be favouring the rail operating companies.
- We did wonder if the delay might have negligible impact because existing regulation already provides equivalent protections in the UK, so that there was no actual detriment, but your officials did not make a specific response on this question. Similar questions to passenger organisations indicate that they do expect the EC Regulation to enhance their benefits and would be "very disappointed" if the Department made use of the full 5 years for these exemption, as would this Committee.

The Committee recognises the scale and complexity of negotiating legislation agreed with 26 other Member States. None the less it has been over two years since the final version of

the Regulation was published, and your officials do not yet seem to have adequate information on which to make the required decisions, which leads us to wonder whether they were adequately informed about the practical implications of the EC legislation before they agreed to it.

We have already drawn the instrument to the special attention of the House in our weekly report but in addition, I would request your reassurance that your officials will act swiftly to put themselves in a position to make well-informed and balanced decisions about which, if any, of these exemptions need to be retained, and then act to remove the rest. Whether it is the process itself or the officials' explanation of it that is at fault, we would also wish you to note that the standard of information has fallen below what this Committee normally expects.

1 December 2009

### **Response from Lord Adonis, Secretary of State for Transport**

Thank you for your letter of 1 December to Chris Mole regarding the above mentioned Statutory Instrument (SI). I accept that this matter has not been handled as well as it could have been, though I believe that the SI is the right way to proceed in present circumstances. As requested, I will respond to each of your points in turn.

#### *Discussions with stakeholders*

You question the degree to which stakeholders were consulted about the use of the exemptions and the implementation of the Regulation generally. As regards the latter, officials began to engage closely with all affected stakeholders, including passenger representatives as soon as the proposal for the Regulation was adopted and published as part of the Third Railway Package by the Commission in 2004. A formal consultation of industry stakeholders on the Commission's proposals was undertaken between 23 July and 11 October 2004. This was to inform our negotiating position, to ensure we were aware of industry concerns and issues, and to aid preparation of the Department's partial Regulatory Impact Assessment. From 2004 until political agreement during the UK Presidency at the Transport Council on 5 December 2005, officials worked closely with all stakeholders to inform our negotiating position, and to ensure that as far as possible their concerns were taken on board during negotiations. This took the form of detailed discussions and regular stakeholder meetings, which continued up to final agreement to the Regulation in 2007 and beyond.

We were not able to consult on the use of the exemptions before the adoption of the Regulation. The option of using an exemption was introduced into the measure at a late and fast-moving stage of the negotiations, to help achieve agreement between the Council and the Parliament. There was no opportunity to consult at that stage before adoption of the measure. The UK accepted the change on the basis that it simply provided an option, on which we would be able to consult later, as we have now done. Paragraphs 3.3 and 3.4 of the Explanatory Memorandum describe the discussions we had with stakeholders on this after adoption. Those discussions culminated in the formal 3-month consultation launched on 11 August 2009. I regret that your Committee was not provided more details of the discussions with the stakeholders at an earlier stage.

#### *Cost of the Regulation*

Your Committee was informed about the Impact Assessment that was produced in 2005. It was not possible to seek information about the costs of implementation before final approval of the Regulation because the details of its provisions were changing rapidly until that point – I regret that your Committee was not told about this earlier on. It has proved very difficult to obtain reliable information. We have had estimates from the industry, but

it is not clear how robust they are. It is similarly difficult to assess with any precision the benefits of implementation to passengers. For these reasons, as you point out, we were able to provide only a partial Impact Assessment to accompany the recent consultation. Therefore, another main purpose of the formal consultation mentioned above was to seek evidence of the actual impact of the non-core provisions of the Regulation from those with a direct interest in the Regulation. Once the responses have been analysed, we hope to have a sounder basis for taking considered decisions as to whether the Regulation should be applied in full or whether it would be appropriate to maintain one or other of the exemptions available to Member States.

*Discussion about the current instrument*

As you know, we did not consult on the adoption of the Rail Passenger Rights and Obligations (Exemptions) Regulations (S.I. 2009/2970). That SI was expressly designed to be interim in nature in order to allow us thoroughly to review stakeholder responses to the formal consultation mentioned above, engage in discussion where necessary and ascertain the current costs and benefits of implementation. However, we did write to all consultees, including representatives of both passengers and industry, informing them of our approach and did not meet with any objections. We believe this approach will allow us to make a considered decision as to the use of the derogations in the longer term, without prejudice to any particular party.

*Delay in benefits to passengers*

We accept that our approach has meant that passengers will not benefit from the full force of the Regulation from 4 December. From a policy perspective we considered it preferable to retain the current position rather than give passengers rights which might potentially be removed later. I regret that your Committee did not receive a specific response to its question about the extent to which existing legislation already provides in the UK protections equivalent to those offered by the Regulation. I agree with the passenger organisations whom you quote as saying that the Regulation, if implemented in full, would enhance passenger benefits, though we will of course have to weigh this fact against evidence about costs when deciding on our final approach.

I would like to offer my reassurance to the Committee that work on the final decisions is in progress and that decisions will be taken and implemented as early as practicable in 2010. These decisions will be based on appropriate assessments of the impacts of the measures on industry and passengers.

7 December 2009