

Draft Regulations laid before Parliament under section 34(3)(b) of the Channel Tunnel Act 1987, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2021 No. 0000

CHANNEL TUNNEL

TRANSPORT

**The Railway (Licensing of Railway Undertakings)
(Amendment) Regulations 2021**

Made - - - - - *****

Coming into force

Regulations 1, 2 and 14 to 19 *30th September 2021*

Regulations 3 to 13 *11.00 p.m. on 31st January 2022*

The Secretary of State, acting as the appropriate Minister, makes these Regulations in exercise of the powers conferred by section 11(1)(a), (c), (d) and (g) and (2) (a) and (b) of the Channel Tunnel Act 1987(a).

In accordance with section 34(3)(b) of that Act, a draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021.

(2) This regulation, regulation 2 and regulations 14 to 19 come into force on 30th September 2021.

(3) Regulations 3 to 13 come into force, and regulations 14 to 19 are revoked at 11.00 p.m. on 31st January 2022.

(4) These Regulations do not extend to Northern Ireland.

(a) 1987 c. 53. See section 13 for the meaning of the “appropriate Minister”. There is an amendment to section 11 which is not relevant to these Regulations.

Interpretation

2. In these Regulations—

“the 2005 Regulations” means the Railway (Licensing of Railway Undertakings) Regulations 2005(a);

“the 2019 Regulations” means the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019(b).

PART 2

Amendments to the Railway (Licensing of Railway Undertakings) Regulations 2005

3. The 2005 Regulations are amended in accordance with this Part.

4. In regulation 2(1) (interpretation) after the definition of “the 1993 Act” insert—

““the 1995 Directive” means Council Directive 95/18/EC of 19th June 1995 on the licensing of railway undertakings(c), as amended by Directive 2001/13/EC of 26th February 2001(d) and Directive 2004/49/EC of 29th April 2004(e), both of the European Parliament and of the Council;

“the 2012 Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast)(f);

“Channel Tunnel service” means—

- (a) a service for the transport of passengers by rail between Calais-Fréthun station in France and Ashford International station in the United Kingdom,
- (b) a service for the transport of goods by rail between Fréthun freight yard in France and Dollands Moor freight yard in the United Kingdom, or
- (c) a service for the transport of passengers or goods by rail which originates or terminates somewhere other than one of those stations or freight yards, but only while it passes between them;

“European licence” means a licence granted pursuant to any action taken by an EEA state for the purpose of implementing the 1995 Directive or Chapter III of the 2012 Directive;

“French licensing authority” means the body responsible for granting European licences in France;”.

5. In regulation 5 (prohibition of unlicensed provision of services)—

- (a) in paragraph (1), at the beginning insert “Subject to paragraph (1A),”;
- (b) after paragraph (1) insert—

“(1A) A person that is a railway undertaking to which these Regulations apply may provide a Channel Tunnel service if the person holds a European licence that would be appropriate for that service if the United Kingdom were an EEA state.”.

(a) S.I. 2005/3050, relevant amending instruments are 2015/1682, 2016/645 and 2019/700.

(b) S.I. 2019/700.

(c) O.J. No. L 143, 27.6.1995, p. 70. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 71/95 of 15th December 1995 (O.J. L 57, 7.3.96, p.37).

(d) O.J. No. L 75, 15.3.2001, p. 26. Added to Annex XIII of the EEA Agreement by Article 2 of the Decision of the EEA Joint Committee No. 118/2001 of 28th September 2001 (O.J. L 322, 6.12.2001, p.32).

(e) O.J. No. L 164, 30.4.2004, p. 44, to which there has been a corrigendum which is not relevant to these Regulations. Added to Annex XIII of the EEA Agreement by Article 1 of the Decision of the EEA Joint Committee No. 151/2004 of 29th October 2004 (O.J. L 102, 21.4.2005, p.27).

(f) O.J. No. L 343, 14.12.12, p. 32, as corrected by Corrigendum, O.J. L 67, 12.3.15, p. 32.

6. After regulation 8 (monitoring, suspension and revocation of railway undertaking licences) insert—

“Information sharing by the ORR

8A.—(1) Where the ORR considers that there is serious doubt whether a railway undertaking which holds a European licence and is operating a Channel Tunnel service in reliance on that licence complies with any requirement of the 1995 Directive or Chapter III of the 2012 Directive, it must so notify the French licensing authority.

(2) The ORR must without delay provide information to the French licensing authority in relation to any relevant railway undertaking licence and the railway undertaking to which that licence has been granted—

- (a) on request by the French licensing authority on it notifying the ORR of any concerns or doubts in relation to the validity of that licence;
- (b) if the ORR takes steps in accordance with regulation 8(2)(b) to determine whether or not the railway undertaking to which that licence has been granted complies with a requirement referred to in Schedule 2;
- (c) if the ORR requires that railway undertaking to submit or resubmit its licence for approval in accordance with regulation 8; or
- (d) if the ORR suspends or revokes that licence.

(3) In this regulation “a relevant railway undertaking licence” means a railway undertaking licence in reliance upon which a railway undertaking provides a Channel Tunnel service in France.”.

7.—(1) Regulation 9 (prohibition on operating trains without a statement of national regulatory provisions) is amended as follows.

(2) In paragraph (1) at the beginning for “Where” substitute “Subject to paragraph (4A), where”.

(3) After paragraph (4) insert—

“(4A) Paragraphs (1) to (4) do not apply where that person—

- (a) holds a European licence but not a railway undertaking licence; and
- (b) provides a Channel Tunnel service.”.

PART 3

Consequential amendments to primary legislation

The Railway Fires Act 1905

8. In section 4 of the Railway Fires Act 1905(a) (definitions and application), in the definition of “railway company”—

- (a) at the end of paragraphs (a) and (b) omit “or”;
- (b) at the end of paragraph (c) insert “or”;
- (c) after paragraph (c) insert—

“(d) who holds a relevant European licence (within the meaning given by section 6(2) of the Railways Act 1993);”.

(a) 1905 c. 11; the definition of “railway company” was inserted by the Railways Act 1993 (c.43), Schedule 12, paragraph 2(2); the definition was amended by S.I. 2005/3050, 2016/645 and 2019/700.

The Insolvency Act 1986

9. In paragraph 10 of Schedule 2A to the Insolvency Act 1986(a) (exceptions to the prohibition on the appointment of administrative receiver: supplementary provision)—

- (a) at the end of sub-paragraph (1)(n) insert “or a relevant European licence.”;
- (b) after sub-paragraph (2A) insert—

“(3) In sub-paragraph (1)(n) “relevant European licence” has the meaning given by section 6(2) of the Railways Act 1993.”.

The Railways Act 1993

10.—(1) The Railways Act 1993(b) is amended as follows.

(2) In section 6 (prohibition on unauthorised operators of railway assets)—

- (a) for subsection (1A) substitute—

“(1A) This section does not apply to a person who acts as the operator of a railway asset to the extent that the asset is operated for the purpose of providing—

- (a) a service for which a railway undertaking licence is required; or
- (b) a Channel Tunnel service for which a railway undertaking licence or a European licence is required.”;

- (b) after subsection (1A) insert—

“(1B) In this section—

“Channel Tunnel service” means—

- (a) a railway passenger service between Calais-Fréthun station in France and Ashford International station in the United Kingdom;
- (b) a service for the carriage of goods by railway between Fréthun freight yard in France and Dollands Moor freight yard in the United Kingdom; or
- (c) a railway passenger service or service for the carriage of goods by railway which originates or terminates somewhere other than one of those stations or freight yards, but only while it passes between them;

“European licence” means a licence granted pursuant to any action taken by an EEA state for the purpose of implementing—

- (a) Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC of 26 February 2001 and Directive 2004/49/EC of 29 April 2004, both of the European Parliament and of the Council; or
- (b) Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area (recast).
”.

(3) In section 6(2) (prohibition on unauthorised operators of railway assets) after the definition of “railway undertaking licence” insert—

““relevant European licence” means a European licence which an operator relies on to provide a Channel Tunnel service.”.

(4) In section 80(1A) (duty to furnish information on request), after “railway undertaking licences”, insert “, and holders of relevant European licences,”.

(a) 1986 c. 45; Schedule 2A was inserted by the Enterprise Act 2002 (c.40) section 250(2), Schedule 18 to which relevant amendments have been made by S.I. 2005/3050, 2016/645 and 2019/700.

(b) 1993 c. 43; section 6(1A) was inserted by S.I. 1998/1340 and subsequently amended by S.I. 2005/3050 and 2019/700, subsection (2) was amended by S.I. 2005/3050, 2016/645 and 2019/700; section 80(1A) was inserted by S.I. 2005/3050 and amended by S.I. 2015/1682, 2016/645 and 2019/700. There are other amending instruments but none is relevant.

(5) In section 83(1) (interpretation) after the definition of “relevant condition or requirement” insert—

““relevant European licence” has the meaning given by section 6(2);”.

The Civil Contingencies Act 2004

11. In Schedule 1 to the Civil Contingencies Act 2004(a) (category 1 and 2 responders) for paragraph 24 substitute—

“**24.** A person who provides services in connection with railways in Great Britain and who holds—

- (a) a railway undertaking licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005; or
- (b) a relevant European licence, within the meaning of section 6(2) of the Railways Act 1993.”.

The Railways Act 2005

12. In section 46(7)(c) of the Railways Act 2005(b) (bye-laws), after “railway undertaking licence” insert “or a relevant European licence”.

PART 4

Amendments etc. to other legislation

The British Transport Police (Police Services Agreement) Order 2004

13.—(1) Article 2 of the British Transport Police (Police Services Agreement) Order 2004(c) (requirement to enter into a police services agreement) is amended as follows.

(2) At the end of paragraph (1)(b) insert “or who holds a relevant European licence”.

(3) After paragraph (3) insert the following—

“(4) In this article “relevant European licence” has the meaning given in section 6(2) of the Railways Act 1993.”.

The Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019

14. The 2019 Regulations are amended in accordance with regulations 15 to 19.

15. In regulation 34 for “regulations 35 to 39” substitute “regulations 35 to 40”.

16. For regulation 35 substitute—

“**35.** Regulation 2(1) (interpretation) has effect as if the following definitions were inserted at the appropriate places—

““the 1995 Directive” means Council Directive 95/18/EC of 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC of 26th February 2001 and Directive 2004/49/EC of 29th April 2004, both of the European Parliament and of the Council;”;

(a) 2004 c. 36; paragraph 24 of Schedule 1 was substituted by S.I. 2005/3050, and amended by S.I. 2016/645 and S.I. 2019/700.

(b) 2005 c. 14; section 46(7) was amended by S.I. 2005/3050 and 2019/700.

(c) S.I. 2004/1522, amended by S.I. 2005/3050, 2016/645 and 2019/700.

““the 2012 Directive” means Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012 establishing a single European railway area (recast);”;

““Channel Tunnel service” means—

- (a) a service for the transport of passengers by rail between Calais-Fréthun station in France and Ashford International station in the United Kingdom;
- (b) a service for the transport of goods by rail between Fréthun freight yard in France and Dollands Moor freight yard in the United Kingdom; or
- (c) a service for the transport of passengers or goods by rail which originates or terminates somewhere other than one of those stations or freight yards but only while it passes between them;”;

““European licence” means a licence that is—

- (a) valid throughout the territory of any EEA state;
- (b) granted to a railway undertaking by which the capacity of the railway undertaking as such is recognised and which authorises the undertaking to provide in and between EEA states such train services as may be specified in the licence; and
- (c) granted pursuant to action taken by an EEA state for the purpose of implementing the 1995 Directive or the 2012 Directive;”;

““French licensing authority” means the body responsible for granting European licences in France;”.”.

17. After regulation 36 insert—

“**36A.** The 2005 Regulations have effect as if the following regulation were inserted after regulation 8—

“Information sharing by the ORR

8A.—(1) Where the ORR considers that there is serious doubt whether a railway undertaking which holds a European licence and is operating a Channel Tunnel service in reliance on that licence complies with any requirement of the 1995 Directive or Chapter III of the 2012 Directive, it must so notify the French licensing authority.

(2) The ORR must without delay provide information to the French licensing authority in relation to any relevant railway undertaking licence and the railway undertaking to which that licence has been granted—

- (a) on request by the French licensing authority on notifying the ORR of any concerns or doubts in relation to the validity of that licence;
- (b) if the ORR takes steps in accordance with regulation 8(2)(b) to determine whether or not the railway undertaking to which that licence has been granted complies with a requirement referred to in Schedule 2;
- (c) if the ORR requires that railway undertaking to submit or resubmit its licence for approval in accordance with regulation 8; or
- (d) the ORR suspends or revokes that licence.

(3) In this regulation “a relevant railway undertaking licence” means a railway undertaking licence in reliance upon which a railway undertaking provides a Channel Tunnel service in France.”.”.

18. For regulation 37 substitute—

“**37.** Regulation 9 (prohibition on operating trains without a statement of national regulatory provisions) has effect as if—

- (a) in paragraph (1), at the beginning—
 - (i) for “Where” there were substituted “Subject to paragraph (6), where”;
 - (ii) after “railway undertaking licence” there were inserted “or a European licence (see regulation 5)”;
- (b) after paragraph (5) there were inserted—

“(6) This regulation and regulations 10 to 14A and Schedule 3 do not apply in respect of the provision of a Channel Tunnel service if the person providing that service does so in reliance on a European licence and is not authorised to do so by a railway undertaking licence.”.

19. In paragraph (4) of regulation 41 for the definition of “relevant European licence” substitute—

““relevant European licence” means any European licence provided that where the holder is required to have a valid SNRP in accordance with regulation 9 of the 2005 Regulations, (as modified by regulation 37 of these Regulations) a European licence is only a relevant European licence if the holder has a valid SNRP that has not been suspended or revoked;”.

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the Channel Tunnel Act 1987 in order to amend the Railway (Licensing of Railway Undertakings) Regulations 2005 (the “2005 Regulations”) and the Railway (Licensing of Railway Undertakings) (Amendment etc.) (EU Exit) Regulations 2019 (the “2019 Regulations”). This is to enable the implementation of an agreement with France for the mutual recognition of railway operator licences in the Channel Tunnel and immediate cross-border areas (the “agreement”).

Regulation 1 (citation, commencement and extent) and regulation 2 (interpretation) together with the amendments to the 2019 Regulations (regulations 14 to 19) are commenced on 30 September 2021. The amendments to the 2005 Regulations in Part 2, and the consequential amendments in Part 3 and regulation 13 are then commenced at 11 pm on 31 January 2022 with regulations 14 to 19 also being revoked at the same point.

These Regulations make amendments to the 2005 Regulations in respect of rail operator licensing arrangements as they apply to European railway undertakings conducting cross-border services between the UK and France. These amendments provide for the recognition of operator licences (“European licences”) issued to such undertakings by the relevant authorities in the EEA pursuant to Council Directive 95/18/EC of 19th June 1995 (as subsequently amended by Directive 2001/13/EC of 26th February 2001 and Directive 2004/49/EC of 29th April 2004) or Chapter III of Directive 2012/34/EU of the European Parliament and of the Council of 21st November 2012.

The recognition of European licences only applies in relation to cross-border services (“Channel Tunnel services”) between the UK and France and only as far as Ashford International station (for passenger services) and Dollands Moor freight yard (for freight services). Under the agreement equivalent provision is made for the recognition of railway undertaking licences issued by the Office of Rail and Road (“ORR”) in Great Britain, in the French part of the Channel Tunnel and to Calais-Fréthun station (for passenger services) and Fréthun freight yard (for freight services).

Part 2 makes amendments to the 2005 Regulations to provide for the recognition of European licences in the UK for operators conducting rail services through the Channel Tunnel, as described in the fourth paragraph above. Part 2 also includes provision for the ORR to share information with the French licensing authority responsible for issuing European licences in France, in relation both to holders of European Licences operating a Channel Tunnel service in Great Britain and to holders of railway undertaking licences operating a Channel Tunnel service in France. Holders of European licences providing a Channel Tunnel service are also exempted from the requirement to hold a Statement of Regulatory Provisions (“SNRP”) issued by the ORR under the 2005 Regulations.

Part 3 makes consequential amendments to primary legislation.

Part 4, as well as making minor consequential amendments to secondary legislation, amends the 2019 Regulations. The 2019 Regulations corrected deficiencies in the 2005 Regulations arising out of the UK’s exit from the European Union. Among other things, the 2019 Regulations provided for continued recognition in Great Britain of European licences for a transitory period until 11.00 p.m. on 31st January 2022 (the “transitory period”). After that time, all railway undertakings will need to hold a railway undertaking licence issued by the ORR to operate a train service in Great Britain.

These Regulations modify these transitory recognition provisions, so far as they apply to Channel Tunnel services, in order to enable implementation of the agreement during the transitory period. The transitory provisions are modified so as to provide for information sharing by the ORR with the French licensing authority and to disapply the SNRP requirement for European licence holders providing a Channel Tunnel service.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. An Explanatory Memorandum has been produced for this instrument and is published alongside this instrument at www.legislation.gov.uk.

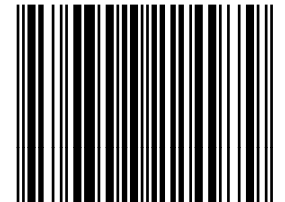
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