

**EXPLANATORY MEMORANDUM TO THE
RAILWAYS (CONVENTION ON INTERNATIONAL CARRIAGE BY RAIL)
REGULATIONS 2005**

2005 No.

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

2. **Description**

This instrument makes provision for the 1999 Vilnius Protocol, introducing a new version of the long standing Convention concerning International Carriage by Rail (COTIF¹), to have the force of law in the UK, and addresses a number of consequential and ancillary matters.

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

None.

4. **Legislative background**

4.1 Background on COTIF. COTIF relates to the transport of passengers (and their luggage) and goods by rail across national boundaries, and the terms and conditions under which that transport is undertaken. The principal aim of COTIF is to establish a uniform system of rules which apply to such transport, between States which are parties to the Convention in order to facilitate international transport by rail².

4.2 COTIF has its roots in the late nineteenth century, and has been revised a number of times since then. The version currently in force in the UK is the 1980 version, which came into force in May 1985.

4.3 The 1999 Protocol substantially modifies the 1980 version of the Convention, and reflects the increasing separation (both in the UK and abroad) of infrastructure management from train operation, and the introduction of open access rights, enabling more than one train operator to operate on any one network. The Protocol introduces a complete new version of the Convention. This contains new versions of uniform rules on contracts for the international carriage of passengers and freight. It also includes new uniform rules on contracts for the use of railway vehicles and infrastructure in international traffic, and on the validation of technical standards, and on

¹ An acronym for « Convention Relative Aux Transports Internationaux Ferroviaires ».

² At present there are 42 member states in Europe (including most EC Member States) North Africa and the Near East.

technical approval of railway vehicles and other railway equipment for use in international traffic. The Protocol (including the new version of COTIF) was presented to Parliament as Command Paper CM 4873 in October 2000.

4.4. The 1999 version of COTIF will come into force after it has been ratified by 27 signatory States. Coming into force is currently forecast to occur sometime between September and November 2005³. The Government aims to be able to deposit the UK's instrument of ratification on 1 September 2005, thus triggering entry into force in respect of the UK on the later of that date and the date on which the 1999 version COTIF comes into force generally.

4.5 Implementation of COTIF 1980 in the UK. The 1980 version of COTIF was given effect in the UK by the International Transport Conventions Act 1983 ('1983 Act'). However the 1983 Act is not sufficiently flexible to deal with implementation of the more fluid 1999 version of COTIF. In particular the 1983 Act's provision that *any* revisions to the Convention could only be brought into effect by Order in Council, upon a recommendation approved by resolution of both Houses of Parliament, is no longer appropriate given that COTIF 1999 is intended to be more of a living document undergoing frequent minor change through committee processes, for example to amend particular detailed technical standards.

4.6. Implementation of COTIF 1999 in the UK. The Government has therefore obtained new primary powers – in section 103 of the Railways and Transport Safety Act 2003 ('2003 Act') – to give effect to the 1999 Protocol by regulations, rather than relying on the 1983 Act. The 2003 Act makes provision for a reference in such regulations to the 1999 Convention to be treated, following modification, as a reference to the Convention as so modified⁴ (see further paragraph 4.8 (b) below).This instrument is made under section 103. It is the first use of those powers.

4.7. Section 103 (6) of the Act provides that any such regulations may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

4.8. In particular this instrument:

a) gives the 1999 Convention the force of law in the UK from the date, specified in the London Edinburgh and Belfast Gazettes, on which the 1999 Protocol enters into force in respect of the UK;

³ However for it to be in force in an individual member state COTIF 1999 will require prior ratification (or equivalent) by that state.

⁴ Schedule 6 paragraphs 3(1) and (2) (a) and (b).

b) provides that the Convention is to be interpreted as referring to the Convention as may be modified from time to time by decisions of certain OTIF⁵ committees.

(Regulation 4(d) requires the Secretary of State to publish information concerning any modification to the Convention. In addition, however, the Department for Transport will expect to consult stakeholders on proposals for modification before such committee decisions are made. The Department has established a database of interested parties on each aspect of the convention to facilitate future consultation. It should be noted that more significant changes to the Convention - which fall within the remit of the OTIF General Assembly, for example a change to the scope of one of the uniform rules, or a new set of uniform rules - would not similarly flow through directly into UK law. Such changes would require a new instrument approved by both Houses of Parliament);

c) repeals the provisions of the 1983 Act giving effect to the 1980 version of COTIF; and

d) updates a number of references to COTIF in other legislation.

5. **Extent**

This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

Derek Twigg, 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 (Convention on International Carriage by Rail) Regulations 2005 are compatible with the Convention rights.

7. **Policy Background**

7.1. The purpose of this instrument is to enable the UK to give effect to, and hence ratify, the latest (1999) version of this long standing international Convention on international rail traffic. International rail traffic comprises under 10% of both passenger and freight traffic in the UK.

7.2. The UK has been a signatory to the Convention on International Carriage by Rail since the 1950s. There have been a number of versions of the Convention and this latest version continues to seek to facilitate the development of international traffic by rail through the adoption of uniform rules and regulations. The existence of such uniform rules yields savings for businesses engaged in international rail traffic by avoiding or reducing the

⁵ OTIF (“Organisation Intergouvernementale Pour Les Transports Internationaux Ferroviaires”) is the Intergovernmental Organisation, comprised of the COTIF member states, which administers the convention.

need for the preparation of separate terms and conditions on which international traffic is to be operated. As indicated in paragraph. 4.3 above, the principal purpose of this latest revision is to adapt and expand the uniform rules to reflect the changed structure of railway operations in many countries including the UK.

7.3. The UK is also under European Community obligations to complete the ratification of the Convention as soon as possible. This is to enable the European Community's accession to COTIF 1999 as a "regional economic integration organisation", in view of the Community's competence in the subject matter of the Convention. The EC would be able to vote on areas for which it had competence on behalf of those EC member states who were also members of COTIF 1999. Accession is not possible under the current 1980 version of the Convention. The European Council agreed a mandate for negotiation of such accession in March 2003, and the text of a proposed accession agreement⁶ is currently being considered by the Council.

7.4. The European Community's competence to make its own legislation in respect of some of the subject matter of the 1999 Convention, has significant implications for the extent to which EC Member States will apply the 1999 Convention uniform rules on Community territory. In particular, a consensus has been reached that the Community will not apply the new uniform rules on technical standards (appendix F of COTIF) and approvals for railway equipment (appendix G of COTIF) on EC territory. Discussions concerning the potential non-application of other parts of COTIF because of overlap with Community law are still continuing. A 'disconnection' clause in the 1999 Convention (Art 3(2)) provides the mechanism for EC Member States to give precedence to their obligations to the European Community.

7.5. The Department formally consulted on the implementation of the 1999 Convention in January-April 2004⁷. There were 15 respondents to the consultation. These covered a range of interests, including train operators, infrastructure managers, rolling stock leasing companies, and public bodies such as the Strategic Rail Authority, the Office of the Rail Regulator, and the Health and Safety Executive. There was broad support for implementing the revised version of COTIF in the UK, the European Community's accession to COTIF, and for the Government's efforts to achieve consensus, at Community level, on the extent to which COTIF 1999 will not be applied in the EC because of overlap with Community law. The Government has taken on board most of the few detailed comments made on a draft of these regulations⁸.

⁶ See Explanatory Memorandum 15068/03 - Proposal for a Council Decision on the conclusion by the European Community of the Agreement on the Accession of the European Community to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999. COM (2003)696 final.

⁷ The consultation documents are viewable on the Departmental website at the following address <http://www.dft.gov.uk/>

⁸ The Government's response to the Consultation is being made available at the following website address <http://www.dft.gov.uk/>

7.6. The Government has, however, revised its intentions regarding derogations and declarations under COTIF 1999. When the 1999 Protocol was laid before Parliament in 2000 it indicated that it did not intend to make any such derogations and declarations. Having now considered the potential impact of implementing COTIF 1999 in more detail, the Government intends to pursue two such derogations/declarations.

7.7. First, it intends to make an agreement with France to derogate from the uniform rules on the contracts of international carriage of passengers (appendix A of COTIF) and goods (appendix B of COTIF) by rail in respect of trains operating solely between the terminals either side of the UK/France border at Folkestone and Coquelles, as permitted by those uniform rules. This is to avoid nugatory expense in amending Eurotunnel's standard Shuttle documentation for no real benefit in terms of improved contract conditions for customers because of the relatively high standards already offered. This proposal was supported by consultees.

7.8. Second, the Government has responded to the concerns expressed by a number of consultees about the undesirable consequences of implementing the new uniform rules on contracts of use of infrastructure in international traffic (appendix E of COTIF). The concern has been to avoid, if possible, the need to implement changes to the existing model clauses for the use of infrastructure prepared by the Office of Rail Regulation which have already been the subject of extensive consultation with the rail industry. The Government is seeking Community agreement to declare against these uniform rules in their entirety. Because the subject matter of these rules falls partly within the Community's exclusive competence only coordinated action by the EC as a whole is possible. It is, though, uncertain whether such agreement will be forthcoming.

8. Impact

8.1. A Regulatory Impact Assessment is attached to this memorandum.

8.2. The impact on the public sector is not expected to be significant. The impact on industry parties and users is not expected to be significant either. The potential impact of the changes to the Convention is much reduced by the conclusion that the EC will not apply the new rules on technical standards and approvals for railway equipment in EC member states.

9. Contact

Bulent Ismail of the International Railways Branch, Department for Transport, Great Minster House, 76 Marsham Street, London, SW1P 4DR, (tel 020 7944 2619; email: bulent.ismail@dft.gsi.gov.uk), can answer any queries regarding this instrument and supply paper copies of any of the documents referred to.

Regulatory Impact Assessment

IMPLEMENTATION IN UK OF NEW VERSION OF THE INTERGOVERNMENTAL CONVENTION ON INTERNATIONAL RAIL TRAFFIC : COTIF 1999

Introduction

1. This RIA examines the costs and benefits to the UK of the implementation in the UK of the new 1999 version of COTIF. Implementation essentially involves extending the scope of, and making detailed changes to, existing legal provisions requiring a certain degree of standardisation in contracts used in international rail transport.

Purpose and intended effect

Objectives

2. The preparation of a revised version of COTIF (convention relative aux transports ferroviaires internationaux) was stimulated by the major institutional reforms that have taken place in the rail sector since the early 1990's in many countries, in particular the separation of infrastructure management from train operations, and the introduction of open access rights. The revised COTIF establishes uniform rules (some new, some revised) for a number of key processes and contractual relationships in international rail transport in this more liberal environment. In doing so, the revised Convention aims to reduce transactions costs and facilitate entry into, and operation of, international rail transport in this changed environment.

Background

3. COTIF has its roots in the late 19th century when the first international convention on harmonised rules for international rail goods traffic was signed. The rules have been periodically revised ever since. They were extended to passenger transport in 1924. The UK acceded in 1952. This may seem surprising given that the Channel Tunnel had yet to be built. But while the purpose of the Convention has been to facilitate international through transport by rail, it has always been possible for Member States to include ancillary road and shipping legs of international journeys within the scope of the uniform rules, so providing for a single contract for the whole journey. To this day a number of short sea shipping routes from the UK are listed lines within the scope of the uniform rules.
4. At the 1980 revision conference the institutional provisions of the original convention were subject to a fundamental reform which led to the creation of an international intergovernmental organisation with legal personality – OTIF – of a modern form and structure. This new Convention concerning international carriage by rail came into force on 1 May 1985. This version of the Convention -

'COTIF 1980' - is that currently in force. It was given effect in the UK by the International Transport Conventions Act 1983. There have subsequently been some minor amendments to the Act to take account of amendments made to the 1980 Convention and to other domestic legislation bearing on similar matters. There are currently 42 signatory states to COTIF drawn from Europe, North Africa and the Caucasus.

5. COTIF 1980 contains two appendices setting out rules, known as “Uniform Rules”, which make provision on the content of:
 - contracts for the international carriage of passengers (known as the CIV Uniform Rules)
 - contracts for the international carriage of goods (freight) (known as CIM Uniform Rules) with annexes dealing with, amongst other things, the carriage of dangerous goods (known as RID Regulations) and international haulage of private owners’ wagons (RIP Regulations).
6. **A substantial work programme to revise the Convention took place in the latter half of the 1990's. The Protocol of Vilnius signed on 3 June 1999 presents a new version of the Convention (COTIF 1999) which:**
 - amends certain aspects of how the organisation functions: in particular
 - replacing the 'central office' with a 'General Secretary' as the official body of the organisation
 - increasing the frequency of General Assemblies, and election of the General Secretary
 - introducing English as a working language, alongside French and German
 - altering the system of financial contributions to OTIF's costs so as to be closer to the UN system in which GDP plays a significant part - both the last two changes are likely to make it easier for additional countries to join OTIF.
 - **provides new versions of the CIV Uniform Rules (Appendix A to COTIF 1999) and CIM Uniform Rules (Appendix B to COTIF 1999)**

Significant changes are: increased scope to bring in all contracts for international carriage, increases to the default (ie unless the parties otherwise agree higher) maximum compensation limits for loss of luggage, goods etc; new provision for default maximum compensation for delay to passengers; new provisions clarifying responsibility when a train operator subcontracts carriage to another train operator; revised provisions on information to be included on tickets.

- **makes RID a free standing regulation (Appendix C to COTIF 1999), so that the application of these rules is no longer contingent on the existence of a CIM contract**
7. **Recognising the importance of these issues for facilitating international traffic in a liberalised environment COTIF 1999 also introduces new appendices setting out Uniform Rules for:**
 - Contracts of use of vehicles in international rail traffic (CUV) (Appendix D)
 - Contracts of use of infrastructure in international rail traffic (CUI) (Appendix E)
 - The validation of technical standards and prescriptions applicable to railway material intended to be used in international traffic (APTU) (Appendix F)
 - The technical admission of railway material used in international traffic (ATMF) (Appendix G)
 8. COTIF 1999 includes provisions allowing Member States to derogate from, or declare that they will not apply, certain parts of the Uniform Rules.
 9. The European Community has external competence in this Convention as its subject matter includes matters on which the Community has legislated or could legislate under the EC Treaty. COTIF 1999 includes, unlike its predecessor, provisions to enable regional economic integration organisations such as the European Community to accede to it and exercise their competence of behalf of their Member States. Subject to the agreement of the European Council, the Community will accede shortly after COTIF 1999 enters into force.
 10. COTIF 1999 includes provision designed to ensure that, for European Community (and European Economic Area) Member States, their obligations under the EC Treaty prevail over their obligations as signatories to the Convention. This has important practical consequences for the UK, as significant parts of the subject matter of the new Uniform Rules added in the 1999 version are covered by EC internal rules (Directives and Regulations): APTU and ATMF in their entirety, and - to a limited extent - CUI. This means that, until or unless these Uniform Rules are subsequently brought into line with Community law, EC Member States will not apply large parts of the new COTIF.
 11. COTIF 1999 will come into force three months after the 27th Member State has ratified it. This is currently forecast to occur in the fourth quarter of 2005.

Risk assessment

12. The motivation for this revision to COTIF was to ensure that the Uniform Rules were adapted to the changed rail market structures in many Member States, and

therefore continued to fulfil the underlying purpose of the Convention, namely to facilitate the development of international rail traffic. Differences between national rail systems have, since the early days of rail transport, impeded the development of a single market in rail services and equipment. Technical and operational barriers have tended to favour national incumbent operators and manufacturers. Historically these were often state owned and/or had national monopolies. These market structures are often associated with market inefficiency. The aim of COTIF has, since its 19th century predecessors, been to provide a set of core common rules for international transport so as to help overcome some of these barriers.

13. International rail transport forms a significant part of total rail transport in many OTIF Member States. In the EC as a whole it is reckoned to account for around 10% of total passenger km (source: OGM study for DGTREN, March 2002) and probably a higher proportion of freight tonne km (no figures available⁹). Within the UK the proportion of rail traffic that is international in both the passenger and freight markets is - unsurprisingly given the UK's location - below the EC average: around 1% of passenger journeys and 5% of tonne km respectively.
14. No formal assessment of the costs and benefits of the final changes, or other options, was undertaken by OTIF as part of the revision process. The revised COTIF seeks to reduce the transaction costs associated with operation of rail transport in a liberalised market by ensuring the existence of relevant uniform rules for the key relationships. In particular the revisions and additions to the Uniform Rules:
 - provide a new transparent process for agreeing technical rules applying to, and technical acceptance of, vehicles used in international traffic - thus making it easier for new entrants to enter and operate in the international rail market;
 - provide a new set of uniform rules for contracts for the use of infrastructure for the purpose of carriage of international passengers and freight - a key contract in operating international rail services in countries where the infrastructure managers is a separate legal entity from any train operator; and
 - ensure clarity as to the responsibilities of individual train operators to customers in view of the more varied contractual arrangements between train operators that may be possible in conveying a passenger from origin to destination in liberalised markets (eg through haulage by one operator, subcontracting haulage, as well as traditional 'sequential' haulage by different operators).
15. Without relevant uniform rules international rail transport could still take place, but it is likely that there would be higher transaction costs as each party would need to negotiate with all the relevant partners about a wider range of matters. This could lead to lower volumes of international rail traffic than would otherwise be the case.

⁹ Proportions for two of the major market sectors are: wagonload traffic (Union Internationale des Chemins de fer members) 45% in 2002 (EC); combined transport (Union Internationale des sociétés de transport combiné Rail-Route members) 71% in 2001 (Europe as a whole).

16. Rail is often less environmentally damaging than road (eg carbon dioxide emissions per passenger km are typically half those for car) and therefore, in the absence of transport prices that reflect the marginal social costs for each mode, this higher level of international rail traffic than would otherwise be the case may also yield environmental benefits.

Options

Identifying the options

17. The base case for this assessment is the current application of the provisions of COTIF 1980 (as amended) in the UK, including its Uniform Rules for contracts for international carriage of passengers and goods, CIV and CIM. Three options, and various sub-options, can be considered:

- *Option 1: COTIF 1999 not implemented in the UK.*

The risk to implementation of this option is enforcement action by the European Community under the EC Treaty to force the UK to implement COTIF 1999 in the interests of the Community.

- *Option 2: Implementation with no UK derogations/declarations*
 - (a) *Community accedes to COTIF*
 - (b) *Community does not accede to COTIF*

The only major risk to UK implementation is that the House of Commons or the House of Lords do not give their assent to the draft regulations implementing the Convention. This risk is considered very small, since both Houses passed the corresponding enabling primary legislation provisions in the Railways Transport and Safety Act 2003. The risk that the European Council does not agree that the Community can sign an accession agreement is very small given that there was unanimous agreement in the Council to allow the Commission to negotiate the terms of accession and the proposed agreement is fully in line with the negotiating mandate.

- *Option 3: Implementation with UK derogations/declarations (Community accedes):*
 - (a) *for Channel Tunnel Shuttles from CIV and CIM*
 - (b) *from CUI in its entirety*

The risk to implementation of option 3a is considered low since our detailed analysis is that a derogation by the UK and France on this matter can be framed in a way that does not require Community agreement, and UK and France have agreed a text at working level. The risk is high in relation to option 3b. We consider that Community agreement is needed. The Commission may be sympathetic to the UK view that a less prescriptive but more comprehensive framework for access contract harmonisation would be preferable. However other EC Member States who have less extensive experience in the development and regulation of access contracts may not see

the same difficulties in applying CUI and may be concerned that such a declaration would be a retrograde step in efforts to harmonise rail transport legislation within, and beyond, the Community in order to promote a single market.

Business sectors affected

18. Implementation of COTIF 1999 affects all **train operators** in the UK engaged in the transport of passengers and goods on any part of an journey by rail which is the subject of a contract for international carriage, **agents for train operators** in the sale of contracts for international carriage by rail (eg travel agents, tour operators, and freight forwarders), **companies having economic disposal of carriages and wagons used in international traffic for the carriage of passengers and freight** (eg train operators, leasing companies, or freight customers), and the **customers for international rail traffic**. It also affects **managers of railway infrastructure** (including stations and depots) to the extent that the principal purpose of a contract for the use of that infrastructure is international carriage of passengers or goods; and **operators of supplementary shipping and road transport services** who intend to continue to list their services for inclusion within the scope of the COTIF uniform rules on contracts for international carriage of passengers and freight by rail.
19. COTIF 1999 implementation is not expected to have any direct impact on manufacturers of railway equipment (infrastructure/rolling stock) used in international traffic. This is because, as explained in para. 10 above, the EC Member States will not apply those appendices (APTU and ATMF) which concern the validation of technical standards and technical approval processes for railway equipment used in international traffic. Such manufacturers may, however, benefit to a limited extent from a wider market for products conforming to the EC common standards (TSIs) as it is likely that those standards will be adopted as the binding standards for international traffic in the non-EC members of OTIF.

Benefits

20. This section describes the benefits of each option relative to the current situation. A table below summarises the likely overall direction and scale of the impact on Government, the railway industry, and users. No significant social benefits are expected from any of the options. None of the options would impact disproportionately on particular social groups. And since none of the options involves any change to the regulation of safety or railway equipment standards, no change in safety performance is expected. No significant environmental benefits are expected from any of the options either. None of the options would affect emission standards from railway equipment, or is expected to result in a significant mode shift from transport modes with higher environmental impacts.

Option 1: COTIF 1999 not implemented in the UK

21. There are no identifiable benefits from this option.

Option 2: Implementation of COTIF 1999 without reservations

22. Two sub-options have been identified: *with or without Community accession*. This only affects the benefits and costs of implementing the main text of the Convention. Each section of the Convention is considered in turn.
23. Convention main text. The changes to the frequency of General Assemblies and appointment of the Secretary General (both reduced from 5 to 3 years) may yield some benefit in terms of enabling Member States to exert greater control over the work of the organisation, thus leading to potential savings in running costs (funded by the Member States) and more beneficial results in adapting the Uniform Rules over time to changing market conditions. More significantly, the introduction of English as a working language, and the move to a contributions system which places significant weight on a country's GDP, rather than just the length of its rail network, should yield benefits from encouraging new countries to accede. The benefits are two fold. First, it should reduce the proportion of OTIF's costs to be met by existing Member States including the UK. Second, it should yield benefits to UK industry both from extending the market for harmonised products, and potentially facilitating the development of traffic to/from those countries.
24. *Community accession* is likely to have a positive impact on the long term development of this Convention. In particular, the Commission is likely to use its co-ordinating role with the EC Member States –who will account for the majority of the vote within OTIF (22¹⁰/42) – to strengthen efforts to achieve greater harmonisation between the technical standards applied in the EC and those outside, both OTIF Member States and Members of OTIF's parallel organisation OSZhD with membership from the former Soviet Union and China. This may yield longer term benefits to industry and users in facilitating the development of trans-continental rail freight traffic.
25. Changes to CIV. The principal benefit will be to UK persons making international journeys in terms of the increase in potential compensation in the event of death, injury, loss or damage to luggage etc, and the addition of minimum compensation in the event of delay. This assumes that international rail transport is part of a competitive market for international travel such that the additional costs to train operators of such compensation cannot simply be recycled to users in higher fares or public subsidy. The benefits will be limited to that small proportion - around 1% - of rail passengers who are making international journeys. Within that segment the benefits will depend on the incidence of claims, and whether train operators in fact normally restrict their compensation to the upper limits set out in CIV or, in the case of operators who have not previously been bound by CIV (eg LUL, Eurotunnel), currently offer lower benefits in their carriage contracts. In GB, for example, standards for compensation for delay both on Eurostar and domestic legs of international journeys are considerably above those set out in the 1999 version of CIV (Art 32). The same may not be true of train operators in some other countries. Eurotunnel's

¹⁰ Estonia, Malta and Cyprus are not currently signatories to COTIF. Estonia plans to accede. Malta and Cyprus have no significant rail networks.

conditions of carriage are, overall, probably not significantly less favourable to users than the equivalent CIV 1999 provisions. The increase in the minimum upper limit for compensation for death and injury where national law otherwise provides for a lower amount (Art 30(2) CIV 1999) will have no impact on UK persons when travelling within the UK because national law in the UK prescribes no limit on that compensation. However UK persons may benefit in the event of an accident in an OTIF Member State which does prescribe a limit lower than the CIV upper limit (SDR 175,000 (c.£150,000)).

26. Users may also benefit from the changed requirements as to the information to be included on tickets. This, for the first time, requires information to be included as to the train operator(s) responsible for each leg of the journey. This may make it easier for the user to pursue any claims against a train operator. The application of these requirements to Eurotunnel's Shuttles, however, would not be of any benefit as this service is not part of 'conventional' international rail travel where a user may travel on the trains of several different train operators to reach his/her destination.
27. In implementing the new CIV in the UK, the Government will not repeat the supplementary provisions included in the International Transport Conventions Act 1983 which implemented COTIF 1980 concerning the required attendance of a constable when a train operator exercises his rights under CIV to inspect a passenger's luggage. Having this as a mandatory requirement appears to offer no particular benefit to users, and could have an opportunity cost in terms of the most effective use of police resources.
28. Changes to CIM. There are no changes to the minimum levels of compensation to customers for delay, loss or damage. The benefits are therefore limited to any arising from the change in the scope of the uniform rules (to include all contracts for international carriage whether or not a particular consignment note is for an international movement, or the movement is over a 'listed line') or from other detailed changes to the rules, eg to the information to be included in the consignment note, to facilitate, for both users and the carriers of freight, international freight transport by rail in liberalised markets. The change in scope technically brings Eurotunnel's freight Shuttle service into the scope as 'substitute carrier' for the (road) carrier who has contracted with the consignor of the goods, but only in very unlikely circumstances (if transit on the Shuttle formed the principal part of the international freight movement and the preceding/subsequent lorry movement by road was 'supplementary' to the Shuttle transit). As with CIV, the scale of the benefits must take into account that international traffic is only a small proportion of total rail freight traffic in the UK.
29. Change to RID. The only change is to make these regulations free-standing – that is that their application is no longer contingent on the existence of a CIM contract. This is unlikely to bring any significant benefits (or costs) to the UK, particularly since these regulations are already binding on all international traffic in EC Member States by virtue of EC Directive 96/49, implemented in the UK by regulations made under the Health and Safety at Work etc Act 1974.

30. New CUV appendix. The coming into force of this new appendix will incentivise the development of standard contract conditions, conforming where necessary to these uniform rules, for the use of railway vehicles (passenger carriages and wagons) used in international traffic for carriage of passengers and freight. This will reduce the transaction costs to train operators and other keepers of such rolling stock. However the extent to which it does so will depend on how far the relevant parties can agree on standard terms for those many matters on which the CUV rules only provide a default arrangement in the absence of agreement on alternative terms. It may also provide benefits in terms of clearer and more easily enforceable rights and obligations for the various parties involved, which could ultimately feed through into lower prices to customers. The increasing trend towards the use of powered multiple unit trains –rather than coaches hauled by separate locomotives – which are outside the scope of this appendix in the passenger market will however reduce the potential benefits.
31. New CUI appendix. The coming into force of this appendix should incentivise the development of standard contract conditions, conforming where necessary to these uniform rules, for the use of infrastructure for international carriage. This may benefit train operators wishing to start new international services by reducing the extent of negotiation required in concluding related access contracts. The scale of these benefits – which could ultimately feed through into lower prices to users - depends, however, on the extent to which OTIF Member States through which international rail traffic to/from the UK travels have not already developed standardised contract conditions for access to infrastructure, and the extent to which these negotiation costs are a significant factor in market entry decisions. At EC level, there have already been proposals for standard features of access contracts in informal discussions between stakeholders, including the Member States' regulatory bodies. In GB, standardised terms for both passenger and freight traffic (covering many more aspects than are regulated in CUI) have been in place for the Railtrack/Network Rail network since the early stages of railway restructuring in the mid 1990s. Recently the standardisation has been developed further, following extensive consultation with the industry, through publication by the Office of Rail Regulation (ORR) of model clauses for access contracts.
32. In addition, the appendix is prescriptive only on a limited number of matters: in particular the circumstances in which the contract may be terminated, and the allocation of liability between the infrastructure manager and train operator. Thus negotiation costs would in any case only be reduced to a limited extent. Overall therefore implementation of this appendix in the UK would be unlikely to have a significant benefit in terms of reducing the costs for starting new international services.
33. Implementation of the appendix would however entail a shift in the balance of expected costs as between train operators and infrastructure managers in the event of incidents giving rise to enforceable rights within the scope of CUI. ORR's view, which the Government shares, is that the CUI provisions are broadly more favourable to the infrastructure manager compared with the equivalent provisions in current access contracts in GB. However the scale of this transfer is expected to be small given the low incidence of events giving rise to more favourable rights

under CUI, and the small number of access contracts that will fall within the scope of CUI in the UK.

34. New APTU appendix. The non-application of this Appendix by EC Member States means that the benefits to the UK will be limited to those deriving from the likely adoption of EC standards (TSIs) as the validated standards to be used in non-EC OTIF Member States when new railway equipment is introduced. These benefits are, firstly, the further stimulus to supply cost reduction of widening the market for standardised components; and secondly, the potential facilitation of through movement of rail vehicles (in practice, likely only to be freight) between the UK and non-EC COTIF Member States, thus opening up new market possibilities. These benefits should ultimately feed through to users if train operation costs are reduced.
35. New ATMF appendix. This appendix will not be applied in the EC Member States. There may nevertheless be two small benefits to UK parties from its application in other OTIF Member States. First, UK manufacturers and train operators may benefit from the greater transparency and consistency in the procedures used in these countries for technical acceptance, should they wish to use vehicles in international traffic in these countries. Second, the development and application by these States of processes to underpin mutual recognition of technical approvals granted by any one State (as required by Art 6 of ATMF) may provide useful experience for the European Community to draw on in considering whether, and when, it would be cost-beneficial to move to a mutual recognition regime in the EC (which would require changes to the relevant EC law – Directives 96/48/EC and 2001/16 EC).

Option 3: Implementation by the UK with derogations/declarations

36. As noted in para. 17, the UK is not free to exercise all of the derogations and declarations nominally available to it under COTIF 1999 because of the Community's external competence in the Convention. The potential benefits/savings in compliance costs of such derogations etc are thus contingent on any necessary Community agreement being forthcoming, which is by no means certain. In the light of the analysis of the costs and benefits of Option 2, the key options to be considered are:

3a: Derogation from CIV/CIM for Channel Tunnel Shuttles (Art 4(1) CIV and CIM)

37. This would essentially maintain the status quo, where Eurotunnel's Shuttles are not within the scope of CIV or CIM.

3b: Derogation from CUI in its entirety (Art 42(1) of the main Convention)

38. The limited potential benefits from implementing these new rules, identified under Option 2, would be foregone.

Costs

39. This section describes the policy¹¹ and implementation¹² costs of each option relative to the status quo. The costs are economic costs. No significant social costs are expected from any of the options. None of the options would impact disproportionately on particular social groups. And since none of the options involves any change to the regulation of safety or railway equipment standards, no change in safety performance is expected. No significant environmental impacts are expected from any of the options either. None of the options would affect emission standards from railway equipment, or is expected to result in a significant mode shift to transport modes with higher environmental impacts.

Option 1: COTIF 1999 not implemented in the UK

40. There would be two policy costs if the UK did not implement , and then ratify, COTIF 1999. First, in accordance with the provisions of COTIF 1980, if the UK has not ratified the COTIF 1999 one month before it comes into force the existing CIV and CIM uniform rules under the 1980 Convention cease to have effect in the UK (Art 20(3) 1980 COTIF). This would have no impact in the short term. Existing contracts would remain enforceable. Train operators would still be free to agree contract terms as per the 1980 or 1999 Convention, but they would be under no obligation to do so. Over time, therefore the benefits to them in saved transaction costs of having uniform binding standard contract terms would be eroded as individual companies sought to negotiate for their own specific interests. The impact on users is uncertain. If UK train operators normally offer better terms to their customers (whether in contract or ex gratia) than the minimum requirements set out in COTIF 1980 (eg on compensation for delay to freight trains, or for loss of baggage) then it is unlikely that they will be disbenefited.
41. Second, the existence of European Community competence in this Convention means that UK ratification is in part in the interests of the Community. The Commission has already written to the UK and other EC Member States asking them to ratify COTIF 1999 as soon as possible, thus accelerating the date at which the Community can become a signatory to COTIF - only possible after COTIF comes into force. Prolonged inaction by the UK on ratifying the Convention would risk the possibility of the Commission taking infraction proceedings against the UK for breach of Article 10 of the EC Treaty (on co-operation to facilitate the Community's tasks). Ultimately this could lead to unlimited fines levied by the European Court of Justice.

Option 2: Implementation of COTIF 1999 without reservation

42. Two sub-options have been identified: with or without Community accession to the Convention. Taking each section of the Convention in turn.
43. Convention main text. There will be a policy cost to the Government from the change in the contributions system. On a straight comparison with the existing funding system (ie not taking into account any changes in OTIF's running costs

¹¹ The costs directly attributable to achieving the policy goals.

¹² Other consequential costs such as training in new requirements and monitoring and enforcing of them.

arising from the Convention changes) the additional cost to the UK is around £40,000 pa: the UK share will increase from 7.3% to 10.3%. The changes to the Convention are likely to lead to some increase in OTIF running costs. In particular, a new Technical Expert has been recruited in anticipation of the work of the new Committee of Technical Experts in revising the annexes to the new APTU appendix on the validation of technical standards, and considering the longer development of the APTU/ATMF to achieve greater compatibility with EC law. There will thus also perhaps be one or two additional meetings per year for the UK to attend. The impact on the UK is estimated to be around £15,000 pa. The total additional cost to the UK could therefore be around £55,000 pa.

44. *Community accession* could however offset some of this cost increase. This is because, for meetings of some of the various committees (Expert, Revision) empowered to modify the Convention, the Community position will have been co-ordinated beforehand at a meeting of a relevant Committee established by an EC Directive (which the UK would have attended anyway) and it will not always be necessary for the UK then to accompany the spokesman for the Community (normally the Commission) to the OTIF committee meeting. If attendance at two meetings per year (on average) were saved, this could mean a saving of £2,000 pa.
45. Changes to CIV. The principal cost impacts derive from three changes: first the change in the scope of these uniform rules, second the changed requirements for information to be included on tickets, and third the increase in minimum compensation limits for claims by customers.
46. Under the 1980 version of COTIF, the CIV rules only apply when travel is over a 'listed line' notified by the Member State **and** is being carried out under a travel document for international carriage between different countries. In GB, however, ATOC members – but not LUL - have voluntarily applied the CIV rules (through the national conditions of carriage) for the domestic connecting legs of international journeys on ATOC services under 'domestic' tickets. (Where international through travel is offered from GB, separate 'domestic' tickets are normally provided for connecting journeys to Eurostar. In the case of through sales to the Irish Republic from GB involving travel on a CIV-listed ferry service, a single through ticket is usually provided).
47. Under the new CIV, travel under any contract for international carriage is within scope. This means that the application of CIV is not conditional on any particular ticket being for travel between different countries, nor on travel being over a railway line that has been 'positively' listed by the UK. The change of scope impacts particularly on LUL and Eurotunnel. If certain train operators continue to offer contracts for through carriage to the continent including a cross-London journey on LUL, all legs of that journey will fall within the scope of CIV. The policy costs for LUL will depend on the extent to which CIV terms differ from those normally offered to customers and the likely incidence of claims. Eurotunnel's Shuttle services between Cheriton and Calais are not included in the 'listed lines' under the current (1980) CIV. They will fall within the scope of the new CIV unless a derogation is obtained (see Option 3a). The policy costs for Eurotunnel largely depend on whether, and to what extent, the obligations to users under CIV differ from Eurotunnel's existing conditions of carriage.. As noted

earlier, there do not appear to be significant differences. There would also be policy costs in amending standard documentation such as the conditions of carriage. Both operators, though, would incur implementation costs in training of relevant staff. Based on information provided by ATOC and LUL we estimate the one-off policy costs to be of the order of £15k.

48. The changed requirements on the information to be included on tickets is likely to impose policy and implementation costs on many train operators and other retailers of international rail tickets as this will require (one-off) system changes and staff training requirements for all train operators and other travel agents that, acting as agent for the train operator, sell contracts for international carriage. Much may depend on whether the relevant changes can easily be incorporated in other planned system changes. This will affect some, but not all, ATOC members, NIR, Eurostar and Eurotunnel and the few independent travel agents that sell international rail tickets on behalf of train operators. The scale of the impact will also depend on the number of outlets through which contracts for international carriage of passengers are sold. Based on information provided by ATOC, we estimate the one-off costs as around £25k.
49. The potential costs to train operators of the changes in the compensation levels under the new CIV will simply be the opposite of the potential benefits to users discussed above. These changes have no cost impact on travel agents etc as they are not party to the contract for carriage.
50. Changes to CIM. As noted in the 'benefits' section above there are no changes to the minimum compensation limits, which could have resulted in additional costs to freight carriers. The other detailed changes to the rules may result in one-off policy costs in amending standard documentation (affecting both train operators and agents for them). Based on information provided by EWS, we estimate these one-off costs as around £50k.
51. Changes to RID. As noted in the 'benefits' section above, no significant impact is likely.
52. New CUV uniform rules. There will be some one-off implementation costs to industry parties in participating in the initial development of standardised contracts conforming to these rules. The rules will apply to existing contracts from one year after the entry into force of COTIF 1999 (Art 6(9) of the Protocol). This may lead to one-off policy costs in amending any existing long term contracts. There may also be one-off policy costs in complying with CUV's requirements on the placing of signs and inscriptions on vehicles used in international traffic. ATOC, however, advised that existing data may suffice.
53. New CUI uniform rules. The Government considers that the appropriate application of these rules in the UK is only to access contracts for train services whose predominant purpose is the international carriage of freight or passengers under CIV/CIM contracts. This will mean that very few access contracts in GB

will fall within the scope of CUI¹³. It should be noted, however, that 'infrastructure' in this context may include those parts of stations and depots necessary for the circulation of international freight and passengers. However it seems likely that very few, if any, such depot and station access contracts are primarily for the purpose of international carriage. LUL is unlikely to be significantly affected as it is a vertically integrated company. However any contracts it has with other train operators for access to tracks operated by LUL would be affected if the primary purpose of the services concerned were international carriage. This seems unlikely given the location of the infrastructure concerned. Heritage railways etc are unlikely to be affected as they are not normally party to contracts for international carriage. Contracts for access by third party train operators to freight terminals are likely to be affected if the trains concerned are primarily for the purpose of carrying 'international' CIM freight.

54. New contracts within scope will have to comply with the rules from the entry into force in the UK of COTIF 1999. The rules will apply to existing contracts within their scope from one year after the entry into force of COTIF 1999 (Art 6(9) of the Protocol). There will be one-off policy costs for a few industry parties (and ORR if pre-approval is required), in amending existing long term contracts and, for new contracts, adapting existing model contracts to reflect CUI requirements where they differ. The extent of such incremental costs is, in total, not likely to exceed £50k (assumed to fall £10k ORR, £40k industry)¹⁴.

55. Implementation of CUI would result in a recurring cost impact on certain train operators because of the shift in the expected balance of costs between train operators and infrastructure managers, as described in para 33 above. However the scale of this transfer is expected to be small given the low incidence of events giving rise to more favourable rights under CUI compared with existing access contracts, and the small number of access contracts that will fall within the scope of CUI in the UK.

56. New APTU appendix. This should impose no costs on the UK as the Appendix will not be applied in EC Member States.

57. New ATMF appendix. This should impose no costs on the UK as the Appendix will not be applied in EC Member States.

Option 3: UK implements COTIF 1999 with derogations/declarations

3a: Derogation from CIV/CIM for Channel Tunnel Shuttles (Art 4(1) CIV and CIM)

¹³ In Northern Ireland there is currently only one vertically integrated operator, Northern Ireland Railways, and therefore no access contracts that would potentially have to be made CUI-compliant.

¹⁴ ORR has incurred material incremental legal costs in examining the correct interpretation of the scope of CUI in the UK. However these costs would have been incurred whatever the final option pursued and are therefore excluded from this RIA.

58. The significant potential benefit is in avoiding the one-off policy costs to Eurotunnel under Option 2 of amending contract conditions and ticket formats to align with CIV as identified in paras 47-48 above. As also noted earlier there are unlikely to be any significant disbenefits to users in not applying CIV rules to these services. Derogation would also avoid any risk of Eurotunnel having to develop different contract conditions for any freight Shuttle user where that user's contract with the final customer fell within the scope of the CIM rules.

3b: Derogation from CUI in its entirety (Art 42(1) of the main Convention)

59. The potential policy and implementation costs from implementing these new rules, identified under Option 2, would be avoided.

Costs for a typical business

60. The cost impacts on train operators, agents for train operators in the sale of contracts for international carriage, infrastructure managers and manufacturing industry have been distinguished in the commentary above. There are unlikely to be differential impacts within the categories of infrastructure manager and manufacturing industry because of the general applicability of the changes brought about by the implementation of COTIF 1999. Within the category of train operators and their agents the impact will vary according to the extent of the involvement of the individual company in international carriage by rail. Even for firms with a high exposure to international rail carriage (eg Eurostar UK Ltd or small independent travel agents or freight forwarders specialising in international rail travel) the cost impacts are not likely to be very significant.

Costs and Benefits: Summary Table

+ = small, probably negligible, benefit

- = small, probably negligible, cost

[blank] = no impact

-- = cost, possibly significant

Option/ Part of COTIF 1999	Public Sector	Rail Industry ¹⁵		Users
		Impl.	Policy	
	Policy	Impl.	Policy	Policy
Option 1	--		--	
Option 2 Main text	-£50-55k pa		+	+
CIV ¹⁶		-	-£40k (one-off)	+
CIM ¹⁷		-	+	+
RID				
CUV		-	+	
CUI ¹⁸	-£10k	-	-£40k (one-off) (plus unquantified, but probably insignificant, recurring transfer TOCs to IMs)	
APTU			+	
ATMF			+	

Option 3: affects costs/benefits of specific parts of COTIF 1999. See footnotes to the table rows for Option 2.

Equity and fairness

61. COTIF rules do not discriminate in any way by type of customer or size or business. COTIF 1999 does, however, omit the provisions that were in COTIF 1980 CIV appendix (Art 13) regulating the granting of child fares for international journeys. The COTIF 1980 provisions allowed commercial flexibility to the train operators, provided that free travel was granted to children under the age of 4 at least, and reduced fares to children under the age of 10 at least. The deletion of this provision is unlikely to have any material impact as long as train operators' normal commercial or nationally regulated policies would be to offer child concessions at least matching the COTIF 1980 CIV requirements. Currently both

¹⁵ To be interpreted here to include organisations other than train operators (eg travel agents and freight forwarders) who act as agents for them in selling contracts for international carriage of goods and passengers.

¹⁶ **Option 3a:** row unchanged, but no rail industry policy costs to Eurotunnel.

¹⁷ **Option 3a:** row unchanged, but no rail industry policy costs to Eurotunnel.

¹⁸ **Option 3b:** row is blank for all columns.

Eurostar and ATOC train operators (in the latter case regulated through a licence condition) provide concessions that exceed the COTIF 1980 CIV minimum standards.

Small firms' impact test

62. The impact of implementing COTIF 1999 falls mainly on the major players in the rail industry – the train operators on, and infrastructure managers of the main rail network, virtually all of whom have more than 50 employees and £4.44m turnover. The only small firms likely to be affected are small freight forwarding companies and independent travel agencies, who, as agents for train operators in selling contracts for international carriage, would be affected by the changes to the CIV and CIM rules.
63. Our assessment is that small firms involved as agents in selling contracts for international rail carriage are unlikely to be proportionately more dependent on international rail traffic than larger firms.
64. Significantly, the non-application of the APTU and ATMF uniform rules in the EC Member States should avoid any significant impact of COTIF 1999 implementation on the many small firms engaged as sub-contractors in the supply of railway equipment.

Competition assessment

65. Through reducing transactions costs and clarifying responsibilities of the various parties involved, implementing this Convention is likely to have a small, probably negligible, positive impact on the development of competition in the international rail transport market, thus enhancing consumer choice.

Enforcement

66. Implementation of COTIF 1999 will require no additional enforcement by public authorities. The uniform rules on contracts (CIV, CIM, CUV and CUI) are enforceable by the parties to those contracts. RID is already enforced in the UK by HSE through regulations made under the Health and Safety at Work etc Act 1974.

Consultation

67. The Department for the Environment, Transport and the Regions consulted widely on the proposed changes to COTIF 1980 in April 1999, before the OTIF 5th General Assembly in Vilnius at which the texts were finalised and the Protocol for COTIF's revision opened for signature. Consultees raised a number of detailed points about various parts of the new uniform rules. The Government was successful in securing a number of the changes requested. The Department reported back to consultees on the outcome of the final negotiations in June 1999.
68. The Department for Transport (DfT) consulted on the proposed mandate for negotiations on a Community accession agreement in May 2002, as part of the

consultation on the Second Rail Package. Only a handful of respondents commented on the COTIF accession proposal. Most of these expressed agreement with the Government's provisional view to support the proposal, and some raised separate issues about the implementation of COTIF 1999 in the UK. One respondent commented that it was unclear whether Community accession would have any impact, and they would welcome more information on the consequences.

69. In June 2003, in view of the prospect of COTIF 1999 coming into force within the next 18 months, and the progress that recently had been made with the introduction of the Railways Transport and Safety Bill in preparing for the implementation of COTIF 1999 in the UK, DfT held an information seminar for around 30 key railway industry stakeholders on the likely impact of COTIF 1999 coming into force and the issues arising from Community competence in the Convention. Attendees were updated in August 2003 on the outcome of subsequent discussion with the European Commission (DGTREN) on the implications of Community competence, and further comments sought.

70. DfT formally consulted¹⁹ on a number of issues concerning implementation of COTIF 1999 into UK law between January and April 2004:

- *Draft regulations giving force to COTIF 1999 in UK law from the date on which COTIF 1999 comes into force for the UK, and dealing with a number of supplemental matters;*

There was broad support for implementing COTIF 1999. A number of detailed comments were made on the draft regulations, which have been taken on board where practicable.

- *Whether the UK should press for a clear EC statement on the extent to which the new CUI (access contracts), APTU (technical standards) and ATMF (technical approval processes) uniform rules appended to COTIF 1999 will not be applied in the Community because they conflict with EC law;*

Respondents strongly supported this.

- *Declarations and reservations that should be made by the UK (or which the UK should ask the Community as a whole to make where action can only be taken at Community level)*

A number of respondents strongly urged that the UK seek a Community declaration against the CUI appendix, in view of the differences between that appendix and the ORR's recent model clauses (on which there had widespread effective consultation). In view of this response the Government has been pursuing such a Community declaration, revised its assessment of the costs and benefits of applying CUI in the UK, and has altered its preferred option to include such a declaration. There was a generally favourable response to the

¹⁹ Consultation document and consultation report can be found at http://www.dft.gov.uk/stellent/groups/dft_control/documents/contentservertemplate/dft_index.html?n=9540&l=2

proposal that the UK and France derogate from the CIV and CIM uniform rules in respect of shuttle trains through the Channel Tunnel.

- *The proposed agreement for European Community accession to COTIF*

Respondents generally welcomed this proposal.

- *The partial RIA*

Additional information provided a small number of respondents has been incorporated into the final RIA.

Monitoring and review

71. The Government will keep the operation of COTIF 1999 and the regulations implementing it in the UK under review. In particular, before the 2nd OTIF General Assembly under the terms of COTIF 1999 (three years after the first Assembly, ie probably in 2008), it will have considered, with stakeholders, whether the UK should propose modifications to the Convention. Modifications on matters within the European Community's exclusive competence could only be put forward by the Community as a whole. On such matters, therefore, the Government would need to seek agreement within the Community on the desirability of such changes.

Summary

72. Based on the analysis of benefits and costs and option delivery risks above, the Government's preferred option is a combination of **Options 3a and 3b: implementation of COTIF 1999 in the UK, Community accession to the Convention, derogation by the UK from the CIV and CIM rules for the Channel Tunnel Shuttles, and Community declaration against CUI**. The overall impact of this option on the UK is assessed to be negligible, with small positive impacts on users of international rail services, a small positive net effect on rail industry parties, and a small, but negligible, cost to the UK public sector. The Government recognises however that declaration against CUI requires Community agreement, and that such agreement may not be forthcoming. It may therefore be forced to adopt option 3a. This would result in a higher cost to the UK public sector – though still not significant, and a reduced net positive effect on rail industry parties.

Ministerial Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Derek Twigg
Parliamentary Under Secretary of State
Department for Transport
9th June 2005

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