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## STATUTORY INSTRUMENTS

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# 2007 No. 3531

## The Channel Tunnel (Safety) Order 2007

### Citation, commencement and extent

1.—(1) This Order may be cited as the Channel Tunnel (Safety) Order 2007 and comes into force on the date on which the Regulation comes into force in accordance with article 77 of the Regulation. That date will be notified in the London, Edinburgh and Belfast Gazettes.

(2) Subject to paragraph (3), this Order does not extend to Northern Ireland.

(3) The following articles of this Order extend to Northern Ireland—

(a) article 3 in so far as it relates to article 75 of the Regulation; and

(b) article 9.

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### Commencement Information

**I1** Art. 1 comes into force in accordance with art. 1(1)

### Interpretation

2. In this Order—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(1);

“the Fixed Link” means the Channel fixed link as defined in Article 1(2) of the Treaty;

“the Intergovernmental Commission” means the Commission established under Article 10 of the Treaty to supervise, in the name and on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic, all matters concerning the construction and operation of the Fixed Link;

“railway undertaking” has the same meaning as in article 1xx of the Regulation;

“Regulation” means the provisions set out in the Schedule (being a regulation drawn up by the Intergovernmental Commission, under Article 10(3) (e) of the Treaty, on the safety of the Fixed Link); and

“the Treaty” means the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of the Fixed Link signed at Canterbury on 12th February 1986(2).

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### Commencement Information

**I2** Art. 2 comes into force in accordance with art. 1(1)

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(1) 1974 c. 37.

(2) Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty February 1986. Published as Treaty Series No. 15 (1992), Command Paper 1827. (Out of print but copies may be obtained from the British Library.)

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## Regulation has the force of law

### 3. The Regulation has the force of law.

#### Commencement Information

**I3** Art. 3 comes into force in accordance with art. 1(1)

## Enforcement of the Regulation

4.—(1) Subject to paragraphs (5) and (6), it is the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of the Regulation.

(2) Subject to paragraphs (4) to (6), the provisions of the 1974 Act specified in paragraph (3) (the “specified provisions”) apply for the purposes of the enforcement of the Regulation as if in the specified provisions—

- (a) a reference to the “enforcing authority” was a reference to the Office of Rail Regulation;
  - (b) a reference to the “relevant statutory provisions” was a reference to the Regulation and to the specified provisions; and
  - (c) a reference to “health and safety regulations” was a reference to the Regulation.
- (3) The provisions of the 1974 Act referred to in paragraph (2) are—
- (a) sections 19 and 20 (appointment and powers of inspectors)(**3**), excluding section 20 (3);
  - (b) sections 21 and 22 (improvement and prohibition notices)(**4**);
  - (c) section 23 (provisions supplementary to sections 21 and 22)(**5**), excluding section 23(6);
  - (d) section 24 (appeal against improvement or prohibition notice)(**6**);
  - (e) section 25 (power to deal with cause of imminent danger);
  - (f) section 26 (power to indemnify inspectors);
  - (g) section 28 (restrictions on disclosure of information)(**7**);
  - (h) sections 33 (1) (c), (e) to (h), (k) to (o), (2), (2A) and (3), 34 (1) (c) and (d) and (2) to (5), 35, 36 (1) and (2), 37 to 41 and 42 (1) to (3) (provisions as to offences)(**8**); and
  - (i) section 46 (service of notices).

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- (3) Section 20(7) was amended by the Civil Partnership Act 2004 (c. 33), section 261(1) and Schedule 27, paragraph 49.
  - (4) Section 22(1) and (2) was amended by the Consumer Protection Act 1987 (c. 43), section 3 and Schedule 3. Section 22(4) was substituted by the Consumer Protection Act 1987, section 3 and Schedule 3.
  - (5) Section 23(4) was amended by the Fire and Rescue Services Act 2004 (c. 21), section 53(1) and Schedule 1, paragraph 44, and by S.I.2005/1541, article 53(1) and Schedule 2, paragraph 9.
  - (6) Section 24 (2) and (4) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2) (a).
  - (7) Section 28(3) and (5) were amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 30(6) and Schedule 24; by the Water Act 1989 (c. 15), section 190 and Schedule 25, paragraph 46; and by S.I. 2004/3363, article 5(1) and (2). Section 28(4) was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 30(6) (e). Section 28(6) was substituted by the Local Government Act 1985 (c. 51), section 84 and Schedule 14, paragraph 52; and was amended by the Education Reform Act 1988 (c. 40), section 237 and Schedule 13, Part 1; and by the Greater London Authority Act 1999 (c. 29), section 328 and Schedule 29, Part 1 paragraph 23. Section 28(9) was inserted by the Employment Protection Act 1975 (c. 71), section 116 and Schedule 15, paragraph 9. Section 28(9A) was inserted by S.I. 2004/3363, article 5(1) and (4). There are other amendments to section 28 not relevant to this Order.
  - (8) Section 33(1) (c) was amended by the Employment Protection Act 1975 (c. 71), sections 116 and 125(3) and Schedule 15, paragraph 11, and Schedule 18. Section 33(1) (h) was amended by the Consumer Protection Act 1987, section 36 and Schedule 3. Section 33(1) (m) was amended by the Forgery and Counterfeiting Act 1981 (c. 45), section 30 and Part 1 of the Schedule. Section 33(2A) was inserted by the Offshore Safety Act 1992 (c. 15), section 4(2), (3) and (6). Maximum fine referred to in section 33(2) increased by the Criminal Law Act 1977 (c. 45), section 31 and Schedule 6 and converted to a level on the standard scale by the Criminal Justice Act 1982 (c. 48), sections 37 and 46. Section 33(3) was amended by the Offshore Safety Act 1992, section 4(4) and (6); and by the Magistrates Courts Act 1980 (c. 43), section 32(2).

(4) For the purposes of the enforcement of the Regulation section 33(1)(c) of the 1974 Act (offences) only applies to contraventions of—

- (a) articles 13 iv, 15 iv, 16, 22 to 25, 27, 34 (a) and (b), 39, 51, 52 (a) and (b) and 61 of the Regulation; and
- (b) any requirement or prohibition to which a person is subject by virtue of the terms of or any condition or restriction attached to any—
  - (i) authorisation of rolling stock;
  - (ii) safety authorisation; or
  - (iii) Part B certificate;

given under the Regulation, including any deemed authorisation or Part B certificate referred to in articles 66, 73 or 74 of the Regulation.

(5) Paragraphs (1) and (2) do not apply in respect of the following articles of the Regulation—

- (a) articles 6 and 7 (safety authority);
- (b) articles 56 to 60 (access to training facilities); and
- (c) articles 67 to 72 (investigations into accidents and incidents).

(6) Paragraphs (1) and (2) do not apply for the purpose of enforcing the obligations of the Intergovernmental Commission under the Regulation.

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**Commencement Information**

**I4** Art. 4 comes into force in accordance with art. 1(1)

**Access to training facilities**

**5.—(1)** Any railway undertaking whose train drivers or staff performing vital safety tasks are denied the entitlements conferred by articles 56, 57(a) and 58 of the Regulation has a right of appeal to the Office of Rail Regulation.

(2) In relation to training services to which article 59 of the Regulation applies, a railway undertaking which considers that the price charged for access to those services is unreasonable or discriminatory has a right of appeal to the Office of Rail Regulation.

(3) A person who is denied any entitlement conferred on him by article 60 of the Regulation has a right of appeal to the Office of Rail Regulation.

(4) The provisions of regulation 5(3) to (5) of the Railways (Access to Training Services) Regulations 2006<sup>(9)</sup> (appeal to the regulatory body) apply to any appeal made under this article as if reference to an appeal in those provisions included reference to an appeal under this article.

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**Commencement Information**

**I5** Art. 5 comes into force in accordance with art. 1(1)

**Civil liability**

**6.—(1)** Breach of a duty requirement or prohibition imposed by articles 13 iv, 15 iv, 22 to 25, 27, 34 (a) and (b), 39, 51, 52 (a) and (b) and 61 of the Regulation is, so far as it causes damage, actionable.

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(9) S.I. 2006/598.

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(2) Subject to paragraphs (1) and (3) and to article 5 of this Order, nothing in this Order is to be construed as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty requirement or prohibition imposed by the Regulation.

(3) Paragraph (2) is without prejudice to any right to apply for judicial review which an aggrieved person may have under article 76 of the Regulation.

(4) Paragraphs (1) and (2) are without prejudice to any right of action which exists apart from the provisions of this Order.

(5) Any term of an agreement which purports to exclude or restrict the operation of paragraph (1), or any liability arising by virtue of that paragraph, is void.

(6) In this article “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person’s physical or mental condition).

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**Commencement Information**

**I6** Art. 6 comes into force in accordance with art. 1(1)

**Investigations into accidents and incidents**

7. Nothing in this Order or the Regulation prejudices or affects the provisions of Part 1 of the Railways and Transport Safety Act 2003(10) or the Railways (Accident Investigation and Reporting) Regulations 2005(11).

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**Commencement Information**

**I7** Art. 7 comes into force in accordance with art. 1(1)

**Power to impose charges**

8. The Intergovernmental Commission may impose charges reflecting their administrative costs of processing applications for the following—

- (a) Part B certificates as required by article 39(ii) of the Regulation, including their renewal under article 50 or modification under article 52 of the Regulation, and
- (b) authorisation under article 61 of the Regulation for operating rolling stock on the Fixed Link.

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**Commencement Information**

**I8** Art. 8 comes into force in accordance with art. 1(1)

**Amendments to the Channel Tunnel (International Arrangements) Order 2005**

9.—(1) The Channel Tunnel (International Arrangements) Order 2005(12) is amended as follows.

(2) In the Schedule (International Articles)—

- (a) in Article 6 (exercise of access or transit rights) for paragraph (c) substitute—

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(10) 2003 c. 20.

(11) S.I. 2005/1992, amended by S.I. 2005/3261 and S.I. 2006/557.

(12) S.I. 2005/3207.

- “(c) has received and continues to hold a safety certificate as required by article 39 of the Regulation of the Intergovernmental Commission transposing Directive [2004/49/EC](#) of the European Parliament and of the Council (the Railway Safety Directive) signed on 24th January 2007;” and
- (b) in Article 12 (regulatory body) for sub-paragraph (1) (f) substitute—
- “(f) arrangements for access to the network.”.

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**Commencement Information**

**I9** Art. 9 comes into force in accordance with art. 1(1)

**Amendment to the Railways and Other Guided Transport Systems (Safety) Regulations 2006**

**10.** For paragraph 1 (b) (i) of Schedule 2 to the Railways and Other Guided Transport Systems (Safety) Regulations 2006(**13**) (application for a safety certificate) substitute—

- “(i) a copy of a current certificate issued to the applicant by—
- (aa) the Office of Rail Regulation, other than a deemed safety certificate;
  - (bb) a safety authority in another member State;
  - (cc) a safety authority in Northern Ireland; or
  - (dd) the safety authority for the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(**14**),
- under provisions giving effect to article 10(2)(a) of the Directive which relates to an equivalent railway operation; or”.

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**Commencement Information**

**I10** Art. 10 comes into force in accordance with art. 1(1)

Signed by authority of the Secretary of State for Transport

13th December 2007

*Tom Harris*  
Parliamentary Under Secretary of State  
Department for Transport

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(13) S.I. [2006/599](#), to which there are amendments not relevant to these Regulations.

(14) [1987 c. 53](#).

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**Changes and effects yet to be applied to :**

- Sch. substituted by [S.I. 2013/407 art. 2\(8\)](#)Sch. 8
- art. 1(2) word substituted by [S.I. 2013/407 art. 2\(2\)](#)
- art. 1(2) words omitted by [S.I. 2013/407 art. 2\(2\)](#)
- art. 1(3) omitted by [S.I. 2013/407 art. 2\(3\)](#)
- art. 4 words substituted by [S.I. 2015/1682 Sch. para. 10\(r\)](#)
- art. 4(4)(a) words inserted by [S.I. 2013/407 art. 2\(4\)\(a\)](#)
- art. 4(4)(b)(i) words substituted by [S.I. 2013/407 art. 2\(4\)\(b\)](#)
- art. 5 words substituted by [S.I. 2015/1682 Sch. para. 10\(r\)](#)
- art. 6(1) words inserted by [S.I. 2013/407 art. 2\(5\)](#)
- art. 9 omitted by [S.I. 2013/407 art. 2\(6\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 11 inserted by [S.I. 2013/407 art. 2\(7\)](#)