
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into effect, for the Channel Tunnel, Directive [2004/49/EC](#) of the European Parliament and of the Council of 29th April 2004 (O.J. No. L 220, 21.6.04 p. 16), (“the Railway Safety Directive”). It does so by giving the force of law to a Regulation transposing that Directive (“the Regulation”) made on 24th January 2007 by the Channel Tunnel Intergovernmental Commission, (under Article 10(3) (e) of the Treaty of Canterbury, Cm 1827), on behalf of the Governments of the United Kingdom of Great Britain and Northern Ireland and the French Republic. The text of the Regulation is set out in the Schedule to the Order.

Article 1 provides that the Order comes into force on the date of the later of the notifications by the two Governments of the completion of their necessary internal procedures to give the Regulation the force of law in the respective countries. That date will be notified in the London, Edinburgh and Belfast Gazettes. It provides that the Order does not extend to Northern Ireland except for limited purposes.

Article 3 provides that the Regulation has the force of law.

Article 4 makes the Office of Rail Regulation responsible for the enforcement of the Regulation, (except for those matters identified in paragraphs (5) and (6)). It applies for this purpose various enforcement provisions of the Health and Safety at Work etc Act 1974, such as the powers to appoint inspectors and for inspectors to serve improvement and prohibition notices and institute proceedings for their breach or other offences. It identifies those articles of the Regulation which, if contravened, would give rise to an offence under section 33(1) (c) of that Act (ie where a contravention of the Regulation would give rise to an offence without an inspector having first to serve an improvement notice or a prohibition notice and show that the terms of the notice had been contravened).

Article 5 provides various rights of appeal to the Office of Rail Regulation for the benefit of railway undertakings, or persons currently or previously employed as train drivers or staff performing vital safety tasks, should they be denied any entitlement conferred upon them by articles 56 to 60 of the Regulation, (rights to fair and non discriminatory access to training facilities and rights to receive copies of documents verifying training, qualifications and experience).

Article 6 makes various provisions concerning civil liability. In particular it provides that a breach of a duty requirement or prohibition imposed by certain articles of the Regulation is, in so far as it causes damage, actionable.

Article 7 provides that the Order does not affect the operation of Part 1 of the Railways and Transport Safety Act 2003, or the Railways (Accident Investigation and Reporting) Regulations 2005, as these measures already implement the accident and incident investigation requirements of the Railway Safety Directive and also apply to the Channel Tunnel.

Article 8 empowers the Intergovernmental Commission to impose charges reflecting their administrative costs for processing applications for certain certificates and authorisations under the Regulation.

Article 9 makes amendments to the Channel Tunnel (International Arrangements) Order 2005 which are consequential upon article 75 of the Regulation and the Railway Safety Directive.

Article 10 re-enacts paragraph 1(b) (i) of Schedule 2 (application for a safety certificate) to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 with the addition of the Intergovernmental Commission to the list of safety authorities whose certificates may be recognised

Changes to legislation: There are outstanding changes not yet made by the [legislation.gov.uk](https://www.legislation.gov.uk) editorial team to *The Channel Tunnel (Safety) Order 2007*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

by the Office of Rail Regulation for the purpose of their consideration of applications for “safety certificates” under regulation 7 of those Regulations. This gives effect to article 38 of the Regulation.

The key provisions of the Regulation itself are briefly as follows—

(1) The Intergovernmental Commission is made the safety authority for the Channel Tunnel (*chapter 2*).

(2) The Concessionaires, who are the infrastructure managers of the Channel Tunnel, are to draw up and put into effect a safety management system which shows their ability to assume responsibility for safety. They may only manage and operate the Channel Tunnel if they possess a safety authorisation from the Intergovernmental Commission (*chapter 3*).

(3) A railway undertaking may not operate through the Channel Tunnel unless it has a safety certificate. Part A of the certificate provides confirmation of the acceptance of its safety management system by the Member State in which it first established its operations. Part B confirms acceptance by the Intergovernmental Commission of the measures taken by the railway undertaking to comply with the specific requirements necessary for safe use of the Channel Tunnel (*chapter 3*).

(4) Provision is made for staff to have access to necessary training (*chapter 4*).

(5) Provision is made for requiring rolling stock to be authorised by the Intergovernmental Commission before it may be operated through the Channel Tunnel where, although it is authorised to be placed in service in a Member State, it is not fully covered by relevant technical specifications for interoperability (*chapter 5*).

(6) Provision is made relating to the investigation of accidents and incidents in the Channel Tunnel (*chapter 6*).

(7) Transitional and miscellaneous provisions are made (*chapter 7*).

An impact assessment of the effect that this Order will have on the costs of business can be obtained from the Department for Transport, Great Minister House, 76 Marsham Street, London SW1P 4DR. A transposition note in relation to the implementation of the Railway Safety Directive by this Order can also be obtained from this address. They are also annexed to the Explanatory Memorandum published with this Order on the Office of Public Sector Information website www.opsi.gov.uk

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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\(7\)](#)