

2013 No. 407

CHANNEL TUNNEL

HEALTH AND SAFETY

The Channel Tunnel (Safety) (Amendment) Order 2013

Made - - - - - *25th February 2013*

Laid before Parliament *28th February 2013*

Coming into force in accordance with article 1 (2)



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The Secretary of State for Transport makes this Order in exercise of the powers conferred on the appropriate Minister by section 11(1)(a), and (g), (2)(a) and (b) and (3)(a), (b) and (f) of the Channel Tunnel Act 1987(a) and by section 2(2) of the European Communities Act 1972(b), as read with paragraph 1A of Schedule 2 to the latter Act.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for certain references to provisions of EU instruments to be construed as a reference to those provisions as amended from time to time(c).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to railways and railway transport(d).

Citation, commencement and extent

1.—(1) This Order may be cited as the Channel Tunnel (Safety) (Amendment) Order 2013.

(2) This Order comes into force on the date on which the regulation of the Intergovernmental Commission to amend the bi-national regulation of the IGC of 24 January 2007 on the safety of the Channel Fixed Link, done on 6th February 2013(e) (being a regulation drawn up under article 10(3)(e) of 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 a

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- (a) 1987 c.53. “Appropriate Minister” is defined in section 13(1) of that Act.
 - (b) 1972 c.68. Section 2(2) was amended, and paragraph 1A of Schedule 2 was inserted, by the Legislative and Regulatory Reform Act 2006 (c.51, sections 27(1)(a) and 28). Both are amended by the European Union (Amendment) Act 2008 (c.7, Part 1 of the Schedule) and paragraph 1A of Schedule 2 is also amended by S.I. 2007/1388.
 - (c) Article 1(iii) of the regulation in the Schedule to this Order makes such a reference.
 - (d) S.I. 1996/266, to which there are amendments not relevant for these Regulations.
 - (e) That regulation amends the regulation of the Intergovernmental Commission on the Safety of the Channel Fixed Link done on 24 January 2007 (“the 2007 bi-national regulation”), the text of which appeared originally in the Schedule to S.I. 2007/3531; the 2007 bi-national regulation appears, as amended by the regulation of the Intergovernmental Commission to amend the bi-national regulation of the IGC of 24 January 2007 on the safety of the Channel Fixed Link, done on 6th February 2013, in the Schedule to this Order. The amending regulation provides in its article 2 that the process for its entry into force will be as follows: “Each Government shall notify the other of the completion of its necessary internal procedures to enable this Regulation to enter into force. This Regulation shall enter into force on the date when both Governments have received from one another the documents containing these notifications.”

Channel fixed link signed at Canterbury on 12th February 1986(a)) comes into force, as provided for in article 2 of that regulation.

(3) The Secretary of State shall give notice in the London, Edinburgh and Belfast Gazettes of the date provided for in paragraph (2).

(4) Subject to paragraph (5), this Order does not extend to Northern Ireland.

(5) The following provisions extend to Northern Ireland—

- (a) article 2(1), to the extent that it relates to article 2(2), 2(3) and 2(6),
- (b) article 2(2),
- (c) article 2(3), and
- (d) article 2(6).

Amendment of the Channel Tunnel (Safety) Order 2007

2.—(1) The Channel Tunnel (Safety) (Order) 2007(b) is amended as follows.

(2) In article 1(2), omit “Subject to paragraph (3),”, and, for “this”, substitute “This”.

(3) Omit article 1(3).

(4) In article 4(4)—

- (a) in sub-paragraph (a), after “52(a) and (b)”, insert “,55A, 55B”, and
- (b) in sub-paragraph (b)(i), for “authorisation of rolling stock”, substitute “vehicle authorisation”.

(5) In article 6(1), after “52(a) and (b)”, insert “,55A, 55B”.

(6) Omit article 9.

(7) After article 10 insert—

“Review

11.—(1) The Secretary of State must from time to time—

- (a) carry out a review of this Order,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification(c), and Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community (Recast) (d), are implemented in other member States.

(3) The report must in particular—

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- (a) Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, February 1986, and published as Treaty Series No. 15 (1992), Command Paper 1827 (out of print but copies may be obtained from the British Library; also available at <http://www.channeltunnelige.co.uk/Essential-texts,24.html?lang=en>). The Treaty (at Article 10) established the Intergovernmental Commission to supervise, in the name of the Governments of the United Kingdom and the French Republic all matters concerning the construction and operation of the Channel fixed link.
 - (b) S.I. 2007/3531.
 - (c) OJ No. L 164, 30.4.2004, p. 44, as amended by Directive 2008/57/EC (OJ No. L 191, 18.7.2008, p.1), Directive 2008/110/EC (OJ No. L 345, 23.12.2008, p.62) and Directive 2009/149/EC (OJ No. L 313, 28.11.2009, p.65).
 - (d) OJ No. L 191, 18.7.2008, p. 1, as amended by Directive 2009/131/EC (OJ No. L 273, 17.10.2009, p.12) and Directive 2011/18/EU (OJ No. L 57, 2.3.2011, p.21).

- (a) set out the objectives intended to be achieved by the regulatory system established by this Order,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this article must be published before the end of the period of five years beginning with the day on which the Channel Tunnel (Safety) (Amendment) Order 2013 comes into force.

(5) Subsequent reports under this Order are to be published at intervals not exceeding five years.”

(8) For the content of the Schedule, substitute the content of the Schedule to this Order.

Signed by authority of the Secretary of State for Transport

25th February 2013

Simon Burns
Minister of State
Department for Transport

SCHEDULE

Article 2(8)

Regulation of the Intergovernmental Commission on the safety of the Channel Fixed Link as amended

The Intergovernmental Commission (IGC), established to supervise all matters concerning the construction and operation of the Fixed Link in the name of the British and French governments and by delegation from them;

Having regard to 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 a Channel Fixed Link, signed at Canterbury on 12 February 1986 (“the Treaty”), and in particular Articles 1 and 10 thereof;

Having regard to Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings, amended by Directive 2001/13/EC of the European Parliament and of the Council of 26 February 2001 and Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004;

Having regard to Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, amended by Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008, Directive 2008/110/EC of the European Parliament and of the Council of 16 December 2008 and by Commission Directive 2009/149/EC of 27 November 2009;

Having regard to Commission Regulation (EU) 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) 653/2007;

Having regard to the provisions made by the United Kingdom of Great Britain and Northern Ireland and the French Republic for the transposition of Article 14a of Directive 2004/49/EC;

Having regard to Directive 2004/51/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 91/440/EEC on the development of the Community’s railways;

Having regard to Directive 2007/59/EC of the European Parliament and of the Council of 23 October 2007 on the certification of train drivers operating locomotives and trains on the railway system in the Community;

Having regard to the provisions made by the United Kingdom of Great Britain and Northern Ireland and the French Republic for the transposition of Directive 2007/59/EC

Having regard to Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community, amended by Commission Directive 2009/131/EC of 16 October 2009 and by Commission Directive 2011/18/EU of 1 March 2011;

Having regard to the provisions made by the United Kingdom of Great Britain and Northern Ireland and the French Republic for the transposition of Directive 2008/57/EC;

Having regard to Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency, amended by Regulation (EC) 1335/2008 of the European Parliament and of the Council of 16 December 2008;

Having regard to Commission Regulation (EC) 653/2007 of 13 June 2007 on the use of a common European format for safety certificates and application documents in accordance with Article 10 of Directive 2004/49/EC of the European Parliament and of the Council and on the validity of safety certificates delivered under Directive 2001/14/EC of the European Parliament and of the Council;

Having regard to Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network;

Having regard to the provisions made by the United Kingdom of Great Britain and Northern Ireland and the French Republic for the transposition of Articles 19 to 25 of Directive 2004/49/EC;

Having regard to the quadripartite Concession signed on 14 March 1986 between the Secretary of State for Transport of the United Kingdom of Great Britain and Northern Ireland and the ministre de l'urbanisme, du logement et des transports representing the French State on the one part, and France-Manche SA and the Channel Tunnel Group Ltd on the other part (the Concession);

Having regard to the regulation of the Intergovernmental Commission signed on 23rd July 2009 on the use of the Channel Tunnel;

Considering the specific nature of the investment undertaken to assure the design, financing, construction and, since 1994, operation of the Channel Tunnel;

Considering the need to ensure a unified safety regime within the boundaries of the cross-border infrastructure of the Fixed Link;

Considering that the unified safety regime takes account of the specific risks of the Fixed Link;

Having consulted the Safety Authority established by the Treaty;

Has adopted the following regulation:

CHAPTER 1

1 . Definitions

- (i) “Accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by vehicles in motion, fires and others.
- (ii) “Agency” means the European Railway Agency, that is to say, the Community agency for railway safety and interoperability established by the aforementioned Regulation (EC) No 881/2004.
- (iii) “Common safety indicators” means the common safety indicators referred to in Annex I (common safety indicators) of Directive 2004/49/EC, as such annex is amended from time to time.
- (iv) “Common safety methods” (“CSMs”) means the methods to be developed by the Agency to describe how safety levels and achievement of safety targets and compliance with other safety requirements are assessed.
- (v) “Common safety targets” (“CSTs”) means the safety levels, to be drawn up by the Agency, that must at least be reached by different parts of the rail system (such as the high speed rail system and long railway tunnels) and by the system as a whole, expressed in risk acceptance criteria.
- (vi) “Common Section” means that part of the Fixed Link which is normally used by all categories of trains for the delivery of the services described in Article 1 of the Intergovernmental Commission Regulation of 23 July 2009 on the use of the Channel Tunnel.
- (vii) “Concession” has the meaning given in Article 1 of the Treaty.
- (viii) “Concessionaires” has the meaning given in Article 1 of the Treaty.
- (viii)a “ECM certificate” means a certificate issued in accordance with the ECM Regulation to an entity in charge of maintenance for the purposes of Article 14a(4) of Directive 2004/49/EC or a certificate or self-declaration recognised as being equivalent for those purposes in accordance with Article 12(3) to (7) of the ECM Regulation.
- (viii)b “ECM Regulation” means Commission Regulation (EU) 445/2011 of 10 May 2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) 653/2007.
- (viii)c “Entity in charge of maintenance” means an entity in charge of maintenance of a vehicle, registered as such on a national vehicle register, and can include a railway undertaking, an infrastructure manager or a keeper.
- (ix) “Fixed Link” means the Channel Fixed Link as defined in Article 1.2 of the Treaty.
- (ix)a “Freight wagon” means a non-self propelled vehicle designed for the purpose of transporting freight or other materials to be used for activities such as construction or infrastructure maintenance.

- (x) “Incident” means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of operations.
- (xi) “Infrastructure manager” means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC. The Concessionaires are the infrastructure manager for the Fixed Link, in accordance with the Treaty, and are responsible also for the management of infrastructure control and safety systems.
- (xii) “Intergovernmental Commission” (“IGC”) means the Intergovernmental Commission, established by Article 10 of the Treaty to supervise, in the name and on behalf of the governments of the United Kingdom of Great Britain and Northern Ireland and of the French Republic, all matters concerning the construction and operation of the Fixed Link.
- (xiii) “Interoperability constituents” means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the rail system depends either directly or indirectly. The concept of a “constituent” covers both tangible objects and intangible objects such as software.
- (xiv) “Investigation” means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations.
- (xv) “Investigating bodies” means the national British and French investigating bodies, respectively:
 - (a) the Rail Accident Investigation Branch (“RAIB”) established by the Railways and Transport Safety Act 2003;
 - (b) the French Office for the investigation of land transport accidents (bureau d’enquêtes sur les accidents de transport terrestre “BEA-TT”) established by law no 2002-3 of 3 January 2002 and decree no 2004-85 of 26 January 2004 amended.
- (xv)a “Keeper” means the person or entity that, being the owner of a vehicle or having the right to use it, exploits the vehicle as a means of transport and is registered as such in the national vehicle register referred to in Article 33 of Directive 2008/57/EC;
- (xvi) [Not used]
- (xvii) “Part A certificate” means safety certification confirming acceptance of a railway undertaking’s safety management system, issued by the safety authority in the Member State where that railway undertaking first established its operations.
- (xviii) “Part B certificate” means safety certification issued to railway undertakings by the Intergovernmental Commission under this Regulation and valid solely in respect of their operations on the Common Section.

- (xix) “Railway system” means the whole of the railway network of the Fixed Link:
- (a) which is constituted by all or part of the subsystems in the structural and functional fields as defined in Directive 2008/57/EC, including:
 - the railway lines and fixed installations;
 - the vehicles authorised to run on this infrastructure;
 - the equipment for preventing and protecting against risks in the tunnel;
 - the elements necessary for the management and operation of the Fixed Link as a whole,
 - (b) and which also incorporates the Concessionaires’ shuttle services for road vehicles.
- (xx) “Railway undertaking” means any railway undertaking as defined in Directive 2001/14/EC and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must provide traction; this also includes undertakings which provide traction only. However, it does not include the Concessionaires, whose transport operations are limited to the provision of shuttle services for road vehicles through the Channel Tunnel.
- (xxi) [not used]
- (xxii) “Safety management system” (“SMS”) means the organisation and provisions drawn up by an infrastructure manager or a railway undertaking to ensure the safe management of its activities.
- (xxiii) “Serious accident” means any train collision or derailment resulting in at least one fatality or serious injury to at least five persons, or extensive damage to rolling stock, to the infrastructure, or to the environment, and any other similar accident having an obvious impact on the regulation or the management of railway safety; “extensive damage” means damage which may be immediately assessed by the competent investigating body at a total of at least 2 million euro.
- (xxiv) “Technical specifications for interoperability” (“TSIs”) means the specifications by which each subsystem or part of a subsystem is covered in order to meet the essential requirements and ensure the interoperability of the trans-European rail system as defined in Directive 2008/57/EC.
- (xxv) “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 a cross-channel fixed link, signed at Canterbury on 12 February 1986.
- (xxvi) “Unified safety rules” means the safety rules, made in accordance with Article 18, which apply to the Fixed Link and describe the technical and safety requirements to be observed in the design, maintenance and operation of the railway system. The objective of these rules is to contribute to the overall level of safety. The unified safety rules shall be notified to the European Commission.
- (xxvii) “Vehicle” means a railway vehicle that runs on its own wheels on railway lines, with or without traction. A vehicle is composed of one or more structural and functional subsystems or parts of such subsystems.

CHAPTER 2

Duties and responsibilities

Safety Authority

2. The Intergovernmental Commission is the Safety Authority for the Fixed Link within the meaning of Articles 3(g) and 16 of Directive 2004/49/EC.
3. The Intergovernmental Commission, taking into account the specific characteristics of the railway system, shall ensure that the overall safety level of the Fixed Link is maintained and, where that is reasonably practicable, continuously improved, by taking account of changes to Community legislation, as well as technical and scientific progress, and by giving priority to the prevention of serious accidents.
4. The tasks of the Intergovernmental Commission, as Safety Authority within the meaning of Articles 3(g) and 16 of Directive 2004/49/EC, shall be at least the following:
 - (i) authorising, in accordance with the requirements of Article 15 of Directive 2008/57/EC, the placing in service of any new or substantially modified subsystem constituting the railway system, included or operated within the boundaries of the Fixed Link;
 - (ii) supervising that any such structural subsystems placed in service are operated and maintained in accordance with the relevant essential requirements;
 - (iii) supervising, in so far as relevant for the railway system, that the interoperability constituents are in compliance with the essential requirements as required by Article 14 of Directive 2008/57/EC;
 - (iv) authorising, in accordance with the provisions of Articles 21, 23, 25 and 26 of Directive 2008/57/EC, the placing in service of any new or substantially modified vehicle within the boundaries of the Fixed Link;
 - (v) as already established through the Concession, authorising the placing in service of any new or substantially modified vehicle used for the shuttle services for road vehicles, when it is proposed to locate or operate such a new or substantially modified vehicle within the boundaries of the Fixed Link;
 - (vi) issuing, renewing, amending and revoking relevant parts of safety certification granted to railway undertakings in so far as it relates to the Fixed Link;
 - (vii) issuing, renewing, amending and revoking relevant parts of the safety authorisation granted to the Concessionaires;
 - (viii) verifying that with regard to the Fixed Link the conditions and requirements of safety certification and authorisation are fulfilled and that the activities of railway undertakings and the Concessionaires comply with the requirements of Community and national legislation and the regulations of the Intergovernmental Commission;
 - (ix) monitoring, promoting and, where appropriate, enforcing and developing the safety regulatory framework applicable to the railway system, including the unified safety rules;

(x) checking that vehicles authorised to run on the Fixed Link are duly registered with safety related information in a national vehicle register drawn up in accordance with Article 33 of Directive 2008/57/EC, and that the information so registered is correct and kept up to date;

(xi) by 30 September at the latest each year, publishing and sending to the Agency a report concerning its activities in the preceding year, containing information on the development of railway safety, common safety indicators, safety certification and safety authorisation; any important changes in legislation and regulation concerning railway safety within the boundaries of the Fixed Link; and the results of and experience relating to the supervision of the Concessionaires and railway undertakings.

5. (a) The Intergovernmental Commission shall perform its tasks in an open, non-discriminatory and transparent way. In particular, it shall allow all parties to be heard and shall indicate the reasons for its decisions.

(b) It shall promptly respond to requests and applications and communicate its requests for information without delay and adopt all its decisions within four months after all requested information has been provided. If the applicant is requested to supply further information, this must be provided promptly.

5A. Notwithstanding the timescales mentioned in Article 5, when the Intergovernmental Commission has received an application for an additional authorisation for placing in service of a vehicle under Article 63, the following shall apply:

(a) if the application is made in accordance with Article 23 of Directive 2008/57/EC, the Intergovernmental Commission shall issue its decision as to authorisation as soon as possible and no later than:

- two months after submission of the file specified in Article 23(3) of Directive 2008/57/EC;
- where applicable, one month after submission of any additional information requested by the Intergovernmental Commission;
- where applicable, one month after submission of the results of tests requested by the Intergovernmental Commission.

(b) if the application is made in accordance with Article 25 of Directive 2008/57/EC, the Intergovernmental Commission shall issue its decision as to authorisation as soon as possible and no later than:

- four months after submission of the technical file specified in Article 25(2) of Directive 2008/57/EC;
- where applicable, two months after submission of any additional information or risk analyses requested by the Intergovernmental Commission pursuant to Article 25(4) of Directive 2008/57/EC;
- where applicable, two months after submission of the results of tests requested by the Intergovernmental Commission pursuant to Article 25(4) of Directive 2008/57/EC.

If no decision is issued within the time limits, the placing in service of the vehicle in question shall be deemed to have been authorised after a period of three months starting at the end of the time limit.

6. (a) To carry out the aforementioned tasks, the Intergovernmental Commission:
- (i) may request, at any time, technical assistance from the Concessionaires, the railway undertakings or other qualified bodies;
 - (ii) shall carry out any inspections and investigations necessary, invoking the assistance of the authorities of each Government or any body or expert of its choice in accordance with the provisions of Articles 10(7), 10(8), 11(6) and 11(8) of the Treaty. Without prejudice to the powers of inspection granted to the Intergovernmental Commission under the Concession, in France such inspections and investigations are conducted under the same conditions as those established for inspections and investigations undertaken by the safety authorities of the French Republic in fulfilling their functions outside the Fixed Link, and in Great Britain are conducted in accordance with relevant statutory powers.
- (b) To assist the Intergovernmental Commission in carrying out the aforementioned tasks the Concessionaires and railway undertakings shall, on request, give the Intergovernmental Commission access to all relevant documents and to their premises, installations and equipment.

7. The Intergovernmental Commission may duly authorise persons for the purposes of Article 6(a)(ii). Such persons shall carry out these tasks in such a way as to cause the minimum of disruption to the operation of the Fixed Link consistent with the purpose for which the persons concerned are lawfully there, which is to check compliance with safety requirements in accordance with the conditions for award of safety authorisation to the Concessionaires and of Part B certificates to railway undertakings.

8. The Concessionaires and the railway undertakings shall provide information on request to the Intergovernmental Commission on any question relating to safety. In addition, they shall advise the Intergovernmental Commission immediately of:

- (i) serious accidents on the railway system;
- (ii) any other accidents or incidents which fall within categories specified and notified to them by the Intergovernmental Commission.

9. The Concessionaires and any railway undertakings which use the Common Section shall, on request, provide to the Intergovernmental Commission appropriate information on significant incidents, incidents from which worthwhile safety lessons may be learned, and investigations that are likely to have relevance to the safety of the railway system.

10. In order to monitor and evaluate the implementation of the safety requirements applicable to the Fixed Link, and without prejudice to its rights under the Concession to receive reports and information from the Concessionaires, the Intergovernmental Commission shall collect relevant material through the common safety indicators and through any other indicators relating to the Fixed Link which it thinks appropriate.

Infrastructure manager

11. The Concessionaires are the infrastructure manager for the Fixed Link.

12. Without prejudice to civil liability established in conformity with legal requirements, the Concessionaires are responsible for the railway system and its safe operation, including the supply of material and the contracting of services, vis-à-vis users, customers, the workers concerned and third parties.

13 .For this purpose and without prejudice to their responsibilities under the Concession, the Concessionaires shall take all necessary measures and in particular shall:

- (i) implement any necessary risk control measures, where appropriate in co-operation with railway undertakings;
- (ii) comply with Community and national legislation and the unified safety rules applying to the railway system;
- (iii) be responsible for the compliance of the shuttle service operations for road vehicles with the safety requirements for the Common Section;
- (iv) ensure that vehicles used for operating shuttle services for road vehicles are authorised to run on the Common Section;
- (v) ensure that vehicles used to operate their shuttle services for road vehicles are in safe condition;
- (vi) ensure that railway undertakings and sub-contractors have access to all information necessary for them to fulfil their responsibilities on the training and certification of staff undertaking safety-related work, including information on specific procedures for preventing and protecting against risks in the tunnel;
- (vii) ensure that their staff undertaking safety-related work have been trained, and possess and maintain the appropriate skills and certification;
- (viii) take any necessary protective measures if they identify, or are advised of, a situation presenting a clear and present safety risk arising from a serious or repeated failure of the railway undertakings to respect the unified safety rules;
- (ix) advise the Intergovernmental Commission of any serious or repeated failure of the railway undertakings to respect the unified safety rules and of any protective measures taken, in order for the Commission to assess the action to be taken, in particular action under Article 54.

Railway undertakings

14 .Without prejudice to civil liability established in conformity with legal requirements, every railway undertaking is responsible for the safe operation of its activities on the Common Section, including the supply of material and the contracting of services vis-à-vis users, customers, the workers concerned and third parties.

15 .For this purpose railway undertakings shall take all appropriate measures and in particular shall:

- (i) implement any necessary risk control measures, where appropriate in cooperation with the Concessionaires;
- (ii) comply with the requirements of the unified safety rules applying to the railway system;
- (iii) ensure that their staff undertaking safety-related work have been trained, and possess and maintain the appropriate certification and skills, including those relating to the procedures for preventing and protecting against risks in the tunnel;
- (iv) ensure that the vehicles used for carrying out their railway transport activities are authorised to run on the Common Section and are in safe condition.
- (v) [not used]

Annual safety report

16 .Every year from 2007 onwards, the Concessionaires and all railway undertakings operating on the Common Section shall submit to the Intergovernmental Commission by 30 June an annual report on safety, relating to their activities within the Fixed Link during the previous calendar year. It shall cover:

- (i) information on the extent to which the Concessionaires or the railway undertakings have achieved their own safety objectives;
- (ii) the results of their safety plans;
- (iii) the common safety indicators insofar as these indicators are relevant to their activities;
- (iv) the results of their internal safety audits; and
- (v) observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the Intergovernmental Commission.

Unified safety rules

17 .The Intergovernmental Commission shall ensure that the binding unified safety rules are published in French and English and are made available to Concessionaires, adjacent infrastructure managers, railway undertakings, applicants for a vehicle authorisation, applicants for a safety certificate and applicants for safety authorisation.

18 .The unified safety rules shall be made in accordance with Articles 17 of Directive 2008/57/EC and 8 of Directive 2004/49/EC and supplement the requirements of the technical specifications for interoperability (TSIs) which apply to all or part of the railway system.

19 .The Intergovernmental Commission shall, taking into account the specific characteristics of the railway system, ensure any necessary amendment of the unified safety rules to take account of the adoption and revision of common safety methods and to achieve at least the common safety targets in accordance with the timescale for the implementation of those targets.

20 .The Intergovernmental Commission shall advise the governments of France and the United Kingdom of any need to notify the European Commission of any modification to existing unified safety rules or new unified safety rules unless the amendments or proposals wholly relate to the implementation of technical specifications of interoperability.

21 .In developing the unified safety rules, the Intergovernmental Commission shall consult all persons involved and parties with an interest.

CHAPTER 3

Safety Management Systems, Safety authorisation of Concessionaires and Part B certification of railway undertakings and of entities in charge of maintenance of vehicles operated only within the boundaries of the Fixed Link

Safety management systems (SMS)

22 .The Concessionaires shall draw up and put into effect a Safety Management System which shows their ability to assume their responsibility for safety.

23 .The Concessionaires' safety management system shall meet the requirements and contain the elements set out in the unified safety rules and Annex 1 to this Regulation, adapted with regard to the nature, the importance and other characteristics of the activities undertaken with the aim of ensuring a unified safety regime for the Fixed Link under the conditions set out by the Intergovernmental Commission. Without prejudice to existing national and international liability rules, the Concessionaires' safety management system shall take account, where appropriate and reasonable, of the risks arising as a result of the activities of third parties.

24 .The Concessionaires' safety management system shall take account of the effects on operating safety of the activities carried out by the different railway undertakings that use the Common Section, and make provision to allow all railway undertakings to operate in accordance with applicable TSIs, relevant national and unified safety rules, and with conditions laid down in their Part B certificate. It shall provide for the co-ordination of the Concessionaires' emergency procedures with those of all the railway undertakings using the Common Section.

25 .The Concessionaires' safety management system shall contain the necessary provisions to manage risks relating to the introduction of a new element into the railway system or to the modification of an existing element of that system.

26 .Railway undertakings must provide proof to the Intergovernmental Commission of the acceptance of a safety management system by the Member State in which they first established their activities.

Safety authorisation for the Concessionaires

27 .The Concessionaires may only manage and operate the Fixed Link if they possess a safety authorisation from the Intergovernmental Commission so to do.

28 .The safety authorisation confirms acceptance by the Intergovernmental Commission of:

(a) the Concessionaires' safety management system; and

(b) the measures taken by the Concessionaires to comply with specific requirements necessary for the safe design, maintenance and operation of the railway system.

29 .The Intergovernmental Commission shall provide guidance on the procedures for obtaining the safety authorisation, its duration, and the procedures for issuing, updating, amending, revising, renewing, suspending and revoking it.

30 .The period of validity of a safety authorisation shall not exceed five years, and will be clearly indicated on the safety authorisation.

31 .The Concessionaires must submit any request for renewal of their safety authorisation at least four months before its expiry.

32 .[Not Used]

33 .Unless otherwise agreed with the Intergovernmental Commission, all applications for a safety authorisation, and supporting documents, shall be submitted in English and French.

34. (a) The Concessionaires shall without delay inform the Intergovernmental Commission of any substantial changes proposed to the infrastructure, signalling, energy supply or vehicles or to the principles of their operation and maintenance, and shall propose any appropriate modifications to the safety authorisation.

(b) In proposing any introduction of a new element into the railway system or the modification of an existing element of that system the Concessionaires shall ensure that such new elements or modifications would not reduce the overall level of safety and, where reasonably practicable, would improve it.

(c) The Intergovernmental Commission's procedures for considering such proposals will be the same as for considering an application for a safety authorisation.

(d) The period of validity of the safety authorisation shall not be affected by the approval of any such proposals unless the decision of the Intergovernmental Commission indicates otherwise and the safety authorisation is modified accordingly.

35.The Intergovernmental Commission may require that the safety authorisation be revised following substantial changes to the safety regulatory framework.

36. If the Intergovernmental Commission finds that the Concessionaires no longer satisfy the conditions for a safety authorisation it may, without prejudice to any emergency actions needed, after formal notice and giving the Concessionaires an opportunity to make representations and after considering any representations made, modify, restrict, suspend or revoke the authorisation, giving reasons for its decision. The Concessionaires shall take the appropriate measures to inform railway undertakings operating through the Common Section of any consequent impact upon their operations.

37.The Intergovernmental Commission shall inform the Agency, within one month, of the issue, renewal, amendment or revocation of the safety authorisation. The notification shall state the name and address of the Concessionaires, the date of issue, the scope and the validity of the safety authorisation, and, in the case of revocation, the reasons for its decision.

38 .A safety authorisation issued by the Intergovernmental Commission to the Concessionaires may also, if the Intergovernmental Commission thinks fit and so indicates in writing, constitute certification confirming acceptance by the Intergovernmental Commission of the Concessionaires' safety management system in accordance with Article 10(2) (a) of Directive 2004/49/EC where this is required for the purposes of any operation by the Concessionaires of their vehicles outside the Fixed Link.

Part B Certification for railway undertakings

39 .In order to use the Common Section, a railway undertaking must hold a safety certificate comprising:

- (i) a Part A certificate; and
- (ii) a Part B certificate issued by the Intergovernmental Commission.

40 .A part B certificate may only be granted for rail transport activities which are equivalent to those specified in the part A certificate held by the railway undertaking.

41 .The duration of validity of the Part B certificate shall not exceed five years and will be clearly indicated on it. It shall in any case cease to be valid if the part A certificate ceases to be valid.

42 .In order to obtain a Part B certificate, a railway undertaking must provide:

- (i) proof that it holds a valid Part A certificate confirming acceptance of its SMS,
- (ii) evidence of the measures taken to ensure compliance with the specific requirements necessary for safe use of the Common Section. This shall include documentation on:
 - (a) the TSIs or, if appropriate, parts only of the TSIs and, where relevant, unified safety rules and other rules applicable to the operations of the railway undertaking, its staff and its rolling stock and how compliance with them is ensured by the safety management system;
 - (b) the different categories of staff employed or contracted for the railway undertaking's operation, including evidence that they meet the requirements of TSIs and the unified safety rules and any other rules applicable to the operations, and that those staff have been duly certified;
 - (c) the different types of rolling stock used for the railway undertaking's operations, including evidence that they meet requirements of TSIs and the unified safety rules and have been duly certified; and
 - (d) the training and certification of train drivers and staff performing vital safety tasks relating to their knowledge of the TSIs, unified safety rules and the emergency procedures for the Channel Tunnel.

43 .To avoid duplication of work and reduce the amount of information only summary documentation should be submitted concerning elements that comply with TSIs and other requirements of Directive 2008/57/EC.

44 .Unless otherwise agreed with the Intergovernmental Commission, all applications for a Part B certificate, and supporting documents, shall be submitted in English and French.

45 .The Part B certificate confirms acceptance by the Intergovernmental Commission of the measures taken by the railway undertaking to comply with the specific requirements necessary for the safe supply of its services on the Common Section. These requirements concern the application of the TSIs and unified safety rules, including the network operating rules, acceptance of staff certificates and authorisation to operate, within the boundaries of the Fixed Link, vehicles used by the railway undertakings.

46 .Railway undertakings shall, on request, produce to the Concessionaires their Part B certificate.

47 . [Not Used]

48 . [Not Used]

49 .The Intergovernmental Commission shall provide guidance on the procedures for applying for, issuing, updating, amending, revising, renewing and revoking a Part B certificate.

50 . In order to renew a Part B certificate a railway undertaking must apply for the renewal at least four months before the current certificate's expiry.

51 .The holder of a Part B certificate shall without delay inform the Intergovernmental Commission of all major changes to the conditions of its Part A certificate, and whenever new categories of staff or new types of vehicle are proposed for introduction.

52. (a) The holder of a Part B certificate shall inform the Intergovernmental Commission without delay and propose appropriate modifications to its Part B certificate whenever it proposes to alter substantially the type or extent of its operations or where any proposed changes referred to in Article 51 would necessitate modifications to the certificate.

(b) In proposing any introduction of a new element into the railway system or the modification of an existing element of that system the holder of a Part B certificate shall ensure that such new elements or modifications would not reduce the overall level of safety and, where reasonably practicable, would improve it.

(c) The Intergovernmental Commission's procedures for considering such proposals will be the same as for considering an application for a Part B certificate. The period of validity of the Part B certificate shall not be affected by the approval of any such proposals unless the decision of the Intergovernmental Commission indicates otherwise and the Part B certificate is modified accordingly.

53 .In case of substantial changes in the safety regulatory framework, the Intergovernmental Commission may require that the relevant sections of the Part B certificate be revised.

54 .If the Intergovernmental Commission finds that the holder of a Part B certificate no longer satisfies the conditions for that certificate, it may, without prejudice to any emergency actions needed, after formal notice and giving the certificate holder an opportunity to make representations and after considering any representations made, modify, restrict, suspend or revoke the Part B certificate, giving reasons for its decision. The Intergovernmental Commission shall without delay advise the safety authority that granted the Part A certificate and the Concessionaires.

55 .The Intergovernmental Commission shall revoke the Part B certificate if it is not used as intended within the year following its issue.

Entity in charge of maintenance of a vehicle operated only within the boundaries of the Fixed Link

55A. In respect of a vehicle to be used or placed in service only within the boundaries of the Fixed Link, no person may place in service or use such a vehicle unless that vehicle has an entity in charge of maintenance assigned to it, and that entity in charge of maintenance:

- (i) is registered in relation to that vehicle in a national vehicle register; and
- (ii) holds an ECM certificate if the vehicle is a freight wagon.

55B. An entity in charge of maintenance in respect of a vehicle placed in service or to be used only within the boundaries of the Fixed Link shall set up a maintenance system in accordance with Article 14a(3) of Directive 2004/49/EC, to ensure that such vehicles as have been assigned to it are in a safe state of running.

CHAPTER 4

Specific provisions for training of train drivers and staff performing vital safety tasks

Access to training facilities

56 .Fair and non-discriminatory access to training necessary to obtain a Part B certificate in accordance with the requirements in Article 42(d)(ii) shall be provided by the Concessionaires, by railway undertakings or by appropriate training services, to train drivers and staff performing vital safety tasks of any railway undertaking.

57 . (a) Training shall cover knowledge of the relevant aspects of the railway system, in particular knowledge of the route; operating rules and procedures; the signalling and control command system; and emergency procedures.

(b) In cases where the training services do not include organisation of examinations to assess staff or issue of certificates to show that they meet the relevant requirements of the Part B certificate, the Intergovernmental Commission shall ensure that railway undertakings have access to such certification if it is a requirement of the Part B certificate.

58 .The provision of training services and, where appropriate, the issue of certification required for a Part B certificate must meet the safety requirements laid down in TSIs or in the unified safety rules.

59 .If the training services are only offered by a single railway undertaking or the Concessionaires, they shall be made available to other infrastructure managers and railway undertakings at a reasonable and non-discriminatory price, which is cost-related and may include a profit margin.

60 .Persons currently or previously employed as train drivers and staff performing vital safety tasks may, by simple request to the relevant bodies, have access to the documents certifying their training, qualifications and experience, obtain copies of them and be free to pass them on.

CHAPTER 5

Provisions relating to additional authorisation for placing in service of vehicles

61 .A vehicle which has a first authorisation for placing in service in a Member State of the European Union, where the first authorisation was not issued by the Intergovernmental Commission shall not be operated on the Fixed Link unless it has an additional authorisation from the Intergovernmental Commission or unless Article 62 applies.

62 .Vehicles in complete conformity with TSIs covering all aspects of the relevant subsystems without specific cases and without open points strictly related to technical compatibility between vehicle and network shall not be subject to any additional authorisation for placing in service if the Fixed Link conforms with all TSIs or if the vehicles run under the conditions specified in any corresponding TSIs.

63 .The Intergovernmental Commission shall determine a valid application for an additional authorisation in accordance with the applicable provisions of Articles 21, 23, 25 and 26 of Directive 2008/57/EC. In order for an application to be valid the application must be made in accordance with:

(a) the provisions of Articles 23 and 26 of Directive 2008/57/EC when the vehicle conforms to the TSIs but when Article 62 does not apply.

(b) the provisions of Articles 25 and 26 of Directive 2008/57/EC when the vehicle does not conform to all the relevant TSIs.

The applicant shall retain a copy of the file submitted under Article 23(3) or 25(2) of Directive 2008/57/EC throughout the service life of the vehicle. If requested by the safety authority of a Member State the applicant shall send a copy of the file to that authority.

If the Intergovernmental Commission intends to revoke an additional authorisation granted by itself or a deemed additional authorisation in accordance with Article 5A, it shall give formal notice to the applicant and give the applicant an opportunity to make representations and shall consider any representations made before it may revoke the authorisation. If the Intergovernmental Commission decides to revoke an additional authorisation it shall give its reasons for its decision to the applicant. The Intergovernmental Commission shall promptly give notice of its decision to the safety authority who issued the first authorisation and to the Concessionaires.

64 .The Intergovernmental Commission may require further information to be supplied, risk assessments to be conducted under Article 6(3) of Directive 2004/49/EC, or tests carried out on the Fixed Link in order to carry out the verification actions referred to in Articles 23 or 25 of Directive 2008/57/EC. However, after the adoption of the reference document referred to in Article 27 of Directive 2008/57/EC, the Intergovernmental Commission may only carry out such verification on the basis of the unified safety rules relating to Group B or C featuring in that document. Having consulted the applicant, the Intergovernmental Commission shall define the scope and content of the tests of the vehicle on the Fixed Link, mentioned in Articles 23 or 25 of Directive 2008/57/EC. The Concessionaires, in consultation with the applicant, shall make every effort to ensure that any tests required by the Intergovernmental Commission can take place within three months of the applicant's request. Where appropriate, the Intergovernmental Commission shall take measures to ensure that such tests take place. The Concessionaires may charge fees, based on capacity used, to undertake the tests. Such fees shall not exceed the net cost of such tests to the Concessionaires and shall be payable by the applicant.

65 .When the Intergovernmental Commission issues an additional authorisation, it shall also authorise the corresponding vehicle type in accordance with Article 26 of Directive 2008/57/EC. In case of an additional authorisation, if the Intergovernmental Commission grants, modifies, suspends or withdraws a vehicle type authorisation, in accordance with Article 26 of Directive 2008/57/EC, it shall notify the Agency accordingly, so that it can update its register of authorised vehicle types.

66 .Any additional authorisation issued by the Intergovernmental Commission and valid before entry into force of this Chapter shall be deemed an additional authorisation in the terms of Article 61 above.

CHAPTER 6

Investigations into accidents and incidents

67 .Investigations into serious accidents and those incidents and accidents which, under slightly different conditions, might have led to serious accidents, including technical failures of the structural subsystems or of interoperability constituents, occurring within the Fixed Link, will be undertaken by the investigating bodies, which are functionally independent of the Intergovernmental Commission.

68 .In deciding whether to carry out an investigation and in the exercise of their functions, the investigating bodies shall act in accordance with their national law and any reciprocal co-operation arrangements agreed between them. They shall include in their consideration relevant aspects of the safety regime for the Fixed Link established by the two Governments and the Intergovernmental Commission.

69 .The Intergovernmental Commission, the Concessionaires and the railway undertakings may request the investigating bodies to undertake an investigation. The respective investigating bodies will, in considering any such requests, act in accordance with their respective national laws and any reciprocal co-operation arrangements made between them.

70 .Without prejudice to the arrangements for reciprocal notification contained in the co-operation arrangements, the Concessionaires, the railway undertakings and if necessary the Intergovernmental Commission shall advise one or other of the investigating bodies immediately of any accidents and incidents as referred to in Article 8 above.

71 .The Intergovernmental Commission shall take the measures necessary to ensure that recommendations by the investigating bodies concerning the Fixed Link are duly taken into consideration by the Concessionaires and the railway undertakings and, where appropriate, acted upon.

72 .The Intergovernmental Commission shall report back at least annually to the relevant investigating body on measures that are taken or planned as a consequence of recommendations.

CHAPTER 7

Transitional and miscellaneous provisions

Transitional provisions on Safety Authorisation and Part B Certificates

73. (a) Any notification of acceptance (including revisions to it) which is current when this Regulation comes into force, issued by the Intergovernmental Commission to the Concessionaires in relation to a safety case (or revisions to it) submitted by the Concessionaires to the Intergovernmental Commission concerning the Fixed Link, shall be deemed to be a safety authorisation within the meaning of Article 28 above.
- (b) [Not Used].
74. (a) Any notification of acceptance (including revisions to it) which is current when this Regulation comes into force, issued by the Intergovernmental Commission to a railway undertaking in relation to a safety case (or revisions to it) submitted to the Intergovernmental Commission concerning the Common Section, shall be deemed to be a Part B certificate within the meaning of Article 39(ii) above.
- (b) [Not Used].

Miscellaneous Provisions

75 .[Not Used]

76 .The decisions of the Intergovernmental Commission taken by virtue of bi-national regulations made pursuant to Article 10(3)(e) of the Treaty may be subject to judicial review by the authorities of either France or the United Kingdom under the conditions laid down by national law applicable to those authorities. The lodging of an application for judicial review before the authorities of one State precludes the lodging of an application for judicial review of the same matter before the authorities of the other State.

77 .This Regulation shall enter into force on the date of the later of the notifications by the two Governments of the completion of their necessary internal procedures.

Done by the Intergovernmental Commission on 24th January 2007 in the English and French languages, both texts being equally authoritative.

Roy Griffins
Head of UK Delegation
Intergovernmental Commission

Marc Abadie
Head of French Delegation
Intergovernmental Commission

Annex 1

SAFETY MANAGEMENT SYSTEMS

1. Requirements on the safety management system

The safety management system must be documented in all relevant parts and shall in particular describe the distribution of responsibilities within the organisation of the infrastructure manager or the railway undertaking. It shall show how control by the management on different levels is secured, how staff and their representatives on all levels are involved and how continuous improvement of the safety management system is ensured.

2. Basic elements of the safety management system

The basic elements of the safety management system are:

- (a) a safety policy approved by the organisation's chief executive and communicated to all staff;
- (b) qualitative and quantitative targets of the organisation for the maintenance and enhancement of safety, and plans and procedures for reaching these targets;
- (c) procedures to meet existing, new and altered technical and operational standards or other prescriptive conditions as laid down:
 - in TSIs,
 - or
 - in the unified safety rules referred to in Article 1 xxvi,
 - or
 - in other relevant rules,
 - or in authority decisions;or where necessary to achieve common safety targets or adherence to common safety methods, when these are adopted; and procedures to assure compliance with the standards and other prescriptive conditions throughout the life-cycle of equipment and operations;
- (d) procedures and methods for carrying out risk evaluation and implementing risk control measures whenever a change of the operating conditions or new material imposes new risks on the infrastructure or on operations;
- (e) provision of programmes for training of staff and systems to ensure that the staff's competence is maintained and tasks carried out accordingly;
- (f) arrangements for the provision of sufficient information within the organisation and, where appropriate, between organisations operating on the same infrastructure;
- (g) procedures and formats for how safety information is to be documented and designation of procedure for configuration control of vital safety information;

(h) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventive measures are taken;

(i) provision of plans for action and alerts and information in case of emergency, agreed upon with the appropriate public authorities; and

(j) provisions for recurrent internal auditing of the safety management system

Annex 2

[not used]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Channel Tunnel (Safety) Order 2007 (“the principal Order”). The principal purpose of these amendments is to give effect to a bi-national regulation (“the new bi-national regulation”) made by the Intergovernmental Commission (IGC). The new bi-national regulation in turn implements, in relation to the Channel Tunnel, some parts of Directive 2008/57/EC, including its amendments to Directive 2004/49/EC, and other amendments made to Directive 2004/49/EC by Directives 2008/110/EC and 2009/149/EC. The new bi-national regulation amends an earlier regulation made by the IGC on 24th January 2007 (“the 2007 bi-national regulation”).

The full citation of the above Directives is:

- Directive 2008/57 of the European Parliament and of the Council on the interoperability of the rail system with the Community (OJ No. L 191, 18.7.2008, p. 1);
- Directive 2004/49/EC of the European Parliament and of the Council on safety on the Community’s railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for use of railway infrastructure and safety certification (OJ No. L 164, 30.4.2004, p. 44).
- Directive 2008/110/EC of the European Parliament and of the Council amending Directive 2004/49/EC on safety on the Community’s railways (Railway Safety Directive) (OJ No. L 345, 23.12.2008, p.62).
- Commission Directive 2009/149/EC amending Directive 2004/49/EC of the European Parliament and of the Council as regards Common Safety Indicators and common methods to calculate accident costs (OJ No. L 313, 28.11.2009, p.65)

More specifically, in amending the 2007 bi-national regulation, the new bi-national regulation:

- places restrictions on the scope of the verifications required by the Safety Authority (the IGC) before it issues additional authorisations, where these are required (*see article 64 of the amended 2007 bi-national regulation, as set out in the Schedule*);
- requires the IGC to deal with applications for safety authorisations for railway undertakings within certain time limits (*see articles 5(b) and 5A of the amended 2007 bi-national regulation, as set out in the Schedule*);
- provides that railway vehicles already certified as complying fully with the Technical Specifications for Interoperability (TSIs - harmonised technical rules on railways covering, among other things, the construction of railway vehicles) will no longer need further authorisation in order to be used within the Tunnel if and when the Tunnel itself becomes fully compliant with the TSIs, or when the trains run under the conditions specified in any corresponding TSIs (*see article 62 of the amended 2007 bi-national regulation, as set out in the Schedule*);
- provides for the authorisation of railway vehicles to cover types, as well as individual vehicles (*see article 65 of the amended 2007 bi-national regulation, as set out in the Schedule*);
- provides that no person may place a railway vehicle in service in the Tunnel unless an entity in charge of maintenance has been assigned to it, with the entity in charge of maintenance, in the case of a freight wagon, having to hold an “ECM certificate” (i.e. a certificate issued in accordance with Commission Regulation (EU) 445/2011 on a system of certification of entities in charge of maintenance for freight wagons and amending Regulation (EC) 653/2007 (OJ No. L122, 11.05.2011, p22) or a certificate or self-declaration recognised as equivalent to such a certificate); the entity in charge of maintenance must also set up a maintenance system to ensure the railway vehicle is in a safe state of running (*see articles 55A and 55B of the amended 2007 bi-national regulation, as set out in the Schedule*);

- revises the Common Safety Indicators (a harmonised way of measuring the safety performance of European railways) (*see definition of common safety indicators in article 1 of the amended 2007 bi-national regulation, as set out in the Schedule*);

Under *article 1(2)* of this Order, this Order will come into force on the date on which the new bi-national regulation comes into force which (under article 2 of that regulation) will be when both the UK and French governments have completed the internal processes necessary to give the new bi-national regulation the force of law in their respective legal systems, and notified each other that they have done so. This means that the content of the Schedule will come into force and be given the force of law pursuant to the process required by Article 2 of the new bi-national regulation. Under *article 1(3)* of this Order, the Secretary of State must give notice, in the London, Edinburgh and Belfast Gazettes, of the date when the new bi-national regulation and so also this Order enters into force.

Article 1(4) provides that this Order does not extend to Northern Ireland, other than where the exceptions provided in *article 1(5)* apply. These exceptions relate to the repeal of amendments made by the principal Order to the Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207) (the “2005 Order”) (see below), which did extend to Northern Ireland. Following this Order, the principal Order will no longer extend to Northern Ireland.

Article 2(8) substitutes new text for the Schedule to the principal Order. The substituted text sets out the text of the 2007 bi-national regulation as amended by the new bi-national regulation. Its content will have the force of law by virtue of this and by virtue of article 3 of the principal Order.

Article 2(4) and *(5)* amends the principal Order by providing for new enforcement mechanisms in relation to certain new provisions now included in the amended 2007 bi-national regulation. These provisions (implementing certain requirements of Directive 2008/110/EC) (a) prohibit the placing of a vehicle in service within the Channel Tunnel fixed link network without an entity in charge of maintenance having been assigned to the vehicle; (b) require that entity to hold an ECM certificate if the assigned vehicle is a freight wagon; and (c) require such entities in charge of maintenance to set up a system of maintenance to ensure the vehicles assigned to them are in safe working order.

Articles 1(3) and 9 of the principal Order related to a provision in an earlier 2005 bi-national regulation relating to economic regulation, which was given effect by the 2005 Order. The 2005 Order, which extends to Northern Ireland, makes provision for the rights of access of railway undertakings to the Tunnel, the allocation of capacity within it, and charging. But the amendments made to it by the principal Order have since been revoked, because the 2005 bi-national regulation relating to economic regulation has itself since been replaced by a new one, made in 2009, which includes an equivalent provision. *Article 2(2)*, *(3)* and *(6)* revokes Articles 1(3) and 9 of the principal Order.

Article 2(7) inserts a new provision in the principal Order which requires the Secretary of State to review the principal Order and to publish a report of that review within five years after the coming into force of this Order and then within every five years after that.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sectors has been produced and is available from the Rail International and Safety Policy, Division, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR. It is published with the Explanatory Memorandum alongside the instrument on the Legislation website (www.legislation.gov.uk). A transposition note is also annexed to that Memorandum.

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