



Department  
for Transport

# **Channel Tunnel: Transposition of Railway Safety and Interoperability Directives**

**Proposals Consultation Paper**

**November 2012**

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## Executive Summary

i) This consultation seeks your views on the Department for Transport's ("the Department's") proposals to transpose a number of European Directives on railway safety and interoperability for the Channel Tunnel ("the Tunnel"). The draft Channel Tunnel (Safety) Order 2013 ("the draft Order") at **Annex B** is intended to implement:

- **Directive 2008/110/EC** which requires an entity in charge of maintenance ("ECM") to be identified in the National Vehicle Register ("NVR") and to establish an appropriate maintenance regime;
- **Directive 2009/149/EC** which includes a revised methodology to calculate common safety indicators; and
- Provisions of **Directive 2008/57/EC** in respect of the additional authorisation of rail vehicles for operation in the Tunnel.

ii) These provisions are already in force for the rest of mainland Great Britain through the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011<sup>1</sup> for safety requirements and the Railways (Interoperability) Regulations 2011<sup>2</sup> for interoperability. For the Tunnel these provisions are intended to be implemented, in recognition of the Tunnel's cross-border nature, by amendments to the Channel Tunnel (Safety) Order 2007<sup>3</sup> ("the 2007 Order") which amended a bi-national safety regulation of the IGC (which formed the Schedule to the 2007 Order) made under the Treaty of Canterbury 1986<sup>4</sup> ("the Treaty") between the UK and the French Republic.

iii) Due to its cross-border nature, implementation for the Tunnel first has to be agreed between the UK and French governments. The mechanism for doing this is through a bi-national regulation made by the Intergovernmental Commission for the Tunnel (the "IGC") under the authority of the Treaty of Canterbury 1986<sup>5</sup> (the "Treaty"). The IGC has the function under the Treaty of supervising all matters concerning the construction of the Tunnel for, and on behalf of, both Governments and it serves as the safety authority for the Tunnel.

iv) Once a bi-national regulation is made by the IGC, it then has to be given legal effect in accordance with the Treaty in both national jurisdictions. The proposed draft Order, if made, would therefore give legal effect in the UK to a bi-national regulation which it is proposed will be made by the IGC to implement the three directives referred to above. The draft text of this bi-national regulation has been negotiated and agreed in principle with the French government (subject to their internal clearance processes). The draft UK Order will implement the proposed bi-national regulation by amending an existing Order, the Channel Tunnel (Safety) Order 2007<sup>6</sup> ("the 2007 Order"). The 2007 Order gave legal effect to an earlier 2007 bi-national safety regulation (the text of which is set out in the schedule to the 2007 Order).

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1 S.I. 2011/1860 (available from [www.legislation.gov.uk/uksi/2011/1860/contents/made](http://www.legislation.gov.uk/uksi/2011/1860/contents/made)).

2 S.I. 2011/3066 (available from [www.legislation.gov.uk/uksi/2011/3066/contents/made](http://www.legislation.gov.uk/uksi/2011/3066/contents/made)).

3 S.I. 2007/3531 (available from [www.legislation.gov.uk/uksi/2007/3531/contents/made](http://www.legislation.gov.uk/uksi/2007/3531/contents/made)).

4 Available from [www.channeltunneligc.co.uk/Essential-texts\\_24.html?lang=en](http://www.channeltunneligc.co.uk/Essential-texts_24.html?lang=en).

5 Available from [www.channeltunneligc.co.uk/Essential-texts\\_24.html?lang=en](http://www.channeltunneligc.co.uk/Essential-texts_24.html?lang=en).

6 S.I. 2007/3531 (available from [www.legislation.gov.uk/uksi/2007/3531/contents/made](http://www.legislation.gov.uk/uksi/2007/3531/contents/made)).

v) France will also bring the proposed revised IGC bi-national regulation into force on its territory and the provisions will be brought into force simultaneously in both countries. It is proposed that these steps will be completed by March 2013.

vi) It is the Government's policy to adopt a minimal "copy out" approach to the transposition of European requirements wherever possible to avoid placing any additional regulatory burdens or costs on UK business. The Department regards a provision as being copied out if it is implemented by cross-reference or the language of the Directive is used with modifications only where necessary to fit the specific circumstances of the Tunnel or the drafting approach of the bi-national regulation.

vii) A transposition table, which explains where copy out has not been followed and why can be found at **Annex C**. Although the Department would welcome comments on any aspect of the draft Order, respondents should bear in mind that the provisions of the Directives we are copying out have previously been agreed and are already in place elsewhere in the UK and Europe.

viii) The Tunnel's strategic importance as the sole physical direct link between the UK and European rail networks means this consultation will be of interest to the relevant national safety authorities in both the UK and France and also a wide section of the rail industry who operate, or are thinking of operating, through the Tunnel including railway undertakings, suppliers and manufacturers of rail vehicles, conformity assessment bodies and other interested parties that may represent passengers or unions. The Department welcomes responses from any other parties with an interest.

### **Legal Disclaimer**

ix) This consultation document is intended to explain how the UK intends to transpose the requirements of the Directives to the Tunnel. However, it is not a legal document and should not be relied upon as a primary source of rights or obligations, nor as an interpretative tool. Consultees should refer to the source legislation and take their own legal advice concerning interpretation.

## 1 How to Respond

**1.1** The consultation period runs from Thursday 15 November 2012 until Friday 14 December 2012 and responses should be received, or be post marked, no later than the end date. This consultation document has been published on the Department's website and can be found at [www.dft.gov.uk/consultations](http://www.dft.gov.uk/consultations) or you can contact us using the details below should you wish to request an alternative format.

**1.2** Consultation responses should be sent to:

Chris Angell  
Rail International & Safety Policy Division  
Department for Transport  
Zone 3/19  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

**Tel:** 020 7944 0082  
**E-mail:** [interoperability@dft.gsi.gov.uk](mailto:interoperability@dft.gsi.gov.uk)

**1.3** If you would prefer to respond to the consultation on-line, it is possible to do so at Citizen Space (see <https://consultation.dft.gov.uk>).

**1.4** When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of its members were assembled.

**1.5** A list of those consulted can be found at **Annex E**. If you have any suggestions of others who may wish to be involved in this process, please pass the information to them or contact us.

**1.6** We would like to take this opportunity to thank those who have considered and responded to the Department's consultation in advance. We do not intend to acknowledge individual responses unless by request.

## Freedom of Information

**1.7** Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations 2004.

**1.8** If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

**1.9** In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an

assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

**1.10** The Department will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation principles?

**1.11** This consultation is being conducted in line with the Government's key consultation principles which are listed below:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

**1.12** Further information is available on the Better Regulation Executive's web site at <https://update.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>.

If you have any comments about the consultation process please contact:

The Consultation Co-ordinator  
Department for Transport  
Zone 1/14  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

**E-mail:** consultation@dft.gsi.gov.uk

## What happens next?

**1.13** A factual summary of responses, including next steps will be published on the Department's web site within three months of the consultation end date. Paper copies will be available on request.

## 2 Background

### 2.1 Railway Safety Directive

**2.1.1** Directive 2008/110/EC, which the draft Order is designed to implement, amended Directive 2004/49/EC (“the Railway Safety Directive”) by introducing a common system for rail vehicle maintenance arrangements across the European Union by requiring all rail vehicles to have an assigned Entity in Charge of Maintenance (“ECM”). ECMs have a duty to ensure that any rail vehicles for which they are responsible are maintained in a safe condition. For freight wagons only, an ECM certification regime is also being established. The details were adopted in European Regulation 445/2011<sup>7</sup> which is directly applicable in the UK.

**2.1.2** Following the adoption of Directive 2008/110/EC, the Commission made further amendments to the Railway Safety Directive in Directive 2009/149/EC (“the CSI Directive”). These make provision relating to the Common Safety Indicators (“CSIs”) against which railway safety performance is measured in the European Union and set out a common methodology to calculate the economic impact of accidents. These changes have already been transposed for the rest of the UK.

### 2.2 Recast Railway Interoperability Directive

**2.2.1** Interoperability is a European initiative aimed at improving the competitive position of the rail sector in relation to other modes of transport through the introduction of common technical standards and harmonised assessment regimes. The key aims of interoperability can be summarised as:

- ensuring compatibility between European railways to allow for through running of trains between Member States;
- harmonising Member State design assessment, acceptance and approval processes to prevent barriers to trade and to promote a single European market for railway products and services; and
- delivering the benefits of standardisation through economies of scale for components, improving the economic performance of European railways and the environmental performance of the whole European transport system.

**2.2.2** The Commission introduced its first Interoperability Directive (1996/48/EC on high-speed railways) in 1996. This required Member States to use harmonised Technical Specifications for Interoperability (“TSIs”) as the set of standards to build and renew the Trans European Network (“TEN”) for High Speed railways. This was followed by a second Directive (2001/16/EC on conventional railways) in 2001 applying the same principles to key conventional railway networks that form part of the TEN, including those used for freight operations. These Directives, including a number of subsequent amendments, were transposed into UK law by the Railways (Interoperability) Regulations 2006<sup>8</sup>.

**2.2.3** The Commission subsequently recast, in 2008, all interoperability legislation into a single, consolidated Directive 2008/57/EC<sup>9</sup> (“the Interoperability Directive”)

<sup>7</sup> Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF>.

<sup>8</sup> S.I. 2006/397.

<sup>9</sup> The recast Directive has subsequently been updated by European Directives 2009/131/EC and 2011/18/EU; European Decisions 2011/107/EU, 2011/155/EU and 2011/633/EU and European Regulation 201/2011.



which the UK transposed through the Railways (Interoperability) Regulations 2011<sup>10</sup> (“RIR 11”) which revoked and replaced the Railways (Interoperability) Regulations 2006 mentioned above. RIR 11 covers the whole of the UK, including the Channel Tunnel, with the exception of the provisions relating to the additional authorisation of rail vehicles.

### 3 Proposals

**3.1** This section includes more detail about the specific proposals we are making to transpose the revisions to the Safety and Interoperability Directives. A transposition table, which includes each of the relevant Directive’s articles indicating the corresponding implementing measure in the draft Order, is at **Annex C**.

#### 3.1 Channel Tunnel (Safety) (Amendment) Order

**3.1.1** The bi-national nature of the Tunnel, and the obligations placed on the British and French Governments by the Treaty mean that it cannot be treated in the same manner as the rest of the UK rail network. The IGC, which supervises in the name and on behalf of the two governments all matters concerning the Tunnel’s construction and operation and also acts as its safety authority, was established to provide a mechanism to ensure that the two sides could meet and discuss matters relating to the Tunnel and provide a structure for decision making.

**3.1.2** As a result of discussions and negotiation with officials of the French Government, the draft text of a bi-national regulation has now been agreed which it is proposed should be made by the IGC to implement the provisions of the Directives described in **Section 2**. Under the Treaty, both governments are required to give legal effect in their national jurisdictions to regulations made by the IGC and the draft Order (at **Annex B**) is designed to do this for the UK for the proposed bi-national regulation.

**3.1.3** The draft Order also includes some minor drafting amendments to the 2007 Order and introduces a new statutory obligation on the Secretary of State to review its provisions every five years on the anniversary of the coming into force date (see **Section 4** for more information).

**3.1.4** The draft Order also contains a schedule which replaces the schedule to the 2007 Order. The replacement schedule sets out the text of the 2007 IGC bi-national safety regulation as now amended by the current proposed bi-national regulation. The majority of the provisions set out in the schedule have therefore not been amended and the following sections explain the revisions which we are proposing to make to each chapter of the schedule.

**3.1.5** Please note that, although the draft Order accurately reflects the policy intention, minor changes may be made to the final text as a result of comments received during this consultation and any final minor drafting changes agreed before the IGC makes the bi-national regulation following final legal checks.

**3.1.6** It is proposed that the draft Order will come into force once both Governments have notified the completion of the processes that are necessary in their domestic law for the revisions to the bi-national safety regulation to come into force. This date will be

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<sup>10</sup> S.I. 2011/3066 (available from [www.legislation.gov.uk/ukSI/2011/3066/contents/made](http://www.legislation.gov.uk/ukSI/2011/3066/contents/made)).

notified in the London, Edinburgh and Belfast Gazettes and we anticipate that this will be no later than March 2013.

## 3.2 Schedule Chapter 1: Definitions

**3.2.1** A number of new or revised definitions have been inserted into the revised bi-national safety regulation to recognise the provisions in the Directives as follows:

- a revised definition of “**accident**” to enhance clarity by ensuring that each of the different categories of accident must be recorded separately for the purposes of reporting against the CSIs;
- a revised definition of “**Common Safety Indicator**” to include a cross-reference to Annex 1 of the Railway Safety Directive (see **Section 3.10** for more information);
- a new definition of “**ECM certificate**” to recognise certificates issued to freight wagon ECMs under Article 14a(4) of the Railway Safety Directive;
- a new definition of “**ECM regulation**” which cross-references European Commission Regulation 445/2011<sup>11</sup> which established the certification regime for freight wagon ECMs;
- a new definition of “**Entity in Charge of Maintenance**” to ensure that the legal responsibilities and duties of the bodies who undertake this function can be recognised;
- a new definition of “**Freight Wagon**” which copies out the definition used in European Regulation 445/2011;
- a revised definition of “**Interoperability Constituent**” to recognise that the distinction between high speed and conventional elements of the rail system has been removed under Directive 2008/57/EC;
- a new definition of “**Keeper**” which copies out the definition inserted into the Railway Safety Directive (since the term is used in the definition of ECM);
- a revised definition of “**Unified Safety Rules**” to align with, and recognise, the requirements for national safety rules and national technical rules to be established in accordance with the Safety and Interoperability Directives; and
- a new definition of “**Vehicle**” which will bring the draft Order into line with the definitions and terminology used elsewhere in relevant European Union legislation.

**3.2.2** These amendments are designed to increase regulatory clarity by more closely aligning the existing text to the definitions used in the relevant Directives and introducing new definitions on the same basis. Where possible, we have used a “copy out” approach in accordance with the Government’s policy on transposition of European legislation.

### Question 1

**Do you agree with the amendments we are proposing to the definitions in Chapter 1?**

<sup>11</sup> Commission Regulation of 10 May 2011 on a system of certification of maintenance for freight wagons and amending Regulation (EC) No 653/2007. Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF>.

### 3.3 Chapter 2: Duties & Responsibilities

**3.3.1** This Chapter deals with the statutory duties and responsibilities of various bodies in relation to the operation of the Tunnel including the IGC (in its role as safety authority), Eurotunnel (as infrastructure manager), and railway undertakings.

#### ***Safety Authority***

**3.3.2** There are a number of amendments to **Article 4** which are designed to replace references to the earlier high-speed and conventional Interoperability Directives which were revoked and replaced by the recast Interoperability Directive in 2008. Many of the changes are minor since sections of the Interoperability Directive have not been revised but more substantive changes have been made to:

- **Article 4(iv)** to ensure that the provisions of the Interoperability Directive are applied as they relate to the authorisation and additional authorisation of vehicles including types of vehicle (see **Section 3.6**).
- **Article 5(b)** has been amended to place a duty on any applicant to the IGC to supply such supplementary information that the IGC might request promptly (which copies out article 12(11) of the Railway Safety Directive).
- **Article 5A(a)** has been inserted to ensure, if an application is made for an additional authorisation of a TSI-confirming vehicle, that the IGC conforms to the provisions and timetables outlined in the recast Directive for a decision to be made. It also ensures that, should the IGC be unable to make a decision within these deadlines, that the applicant will automatically receive a “deemed” authorisation which will allow the vehicle to be placed in service.
- **Article 5A(b)** has been inserted for the same purpose as 5A but with reference to applications for the additional authorisation of non-TSI conforming vehicles.

#### ***Unified Safety Rules***

- **Article 18** has been supplemented by the addition of text making it clear that the unified safety rules include both safety and technical requirements and that the IGC must conform with the requirements and notification procedures laid down in both the Safety and Interoperability Directives when establishing them.

#### **Question 2**

**Do you agree with the amendments we are proposing to the duties and responsibilities in Chapter 2?**

### 3.4 Chapter 3: Safety Management & Certification

**3.4.1** The only substantive amendments are the:

- is deletion of **Articles 32** and **47** since the relevant timescales are already set out in Article 5(b);
- insertion of new **Article 55A** to ensure that no vehicles can be placed in service or used in the Tunnel unless there is an ECM assigned to it which is registered in a national vehicles register and holds an ECM Certificate if the vehicle is a freight wagon; and
- insertion of new **Article 55B** which provides that an ECM must establish a maintenance regime in accordance with Article 14a(3) of the Railway Safety Directive (Maintenance of Vehicles) in order to ensure all vehicles which have been assigned to it are in safe working order.

**3.4.2** Aside from a few minor modifications to the text, no further amendments have been made.

### Question 3

**Do you agree with the amendments we are proposing to safety management and certification in Chapter 3?**

## 3.5 Chapter 4: Staff Training

**3.5.1** Only minor amendments have been made to enhance regulatory clarity. There has been no change in the substance of these articles.

### Question 4

**Do you agree with the amendments we are proposing to staff training in Chapter 4?**

## 3.6 Chapter 5: Rolling Stock

**3.6.1** Chapter 5 of the draft Order deals with the additional authorisation of rolling stock for use within the Tunnel. Authorisation is the process through which the relevant national safety authority gives its consent, as part of the regulation of the interoperability requirements, to place a vehicle into service.

**3.6.2** Additional authorisation is the process which occurs when a vehicle is already authorised in one Member State and the applicant seeks to use it in another Member State, or for the purposes of this consultation, the Tunnel. The additional authorisation provisions were originally included in Article 14 of the Railway Safety Directive and were transposed through the IGC's bi-national safety regulation which was given effect in the UK by the 2007 Order. In view of the cross-border nature of the Tunnel, and to ensure consistency throughout its infrastructure, the UK and French Governments are proposing to implement the changes to the European additional authorisation provision through amendments to the bi-national safety

regulation. They are therefore intended to be part of the bi-national safety regulation and are included in the schedule to the draft Order.

**3.6.3** Member States may still choose to require additional authorisation, but the recast Interoperability Directive strictly limits the matters which a national safety authority (the IGC in respect of the Tunnel) may check to only those which are relevant to ascertain the vehicle's compatibility with the additional infrastructure on which it is intended to operate. Since a vehicle's conformity with TSIs and the other standards to which it has been built will already have been assessed by an independent third party (a Notified Body for TSIs or a Designated Body for any national technical rules) during the first authorisation process, this measure is designed to avoid duplication and unnecessary costs if a policy of mandatory additional authorisation is applied.

**3.6.4** The Commission has published a Recommendation (2011/217<sup>12</sup>) which clarifies a number of key points about how the Interoperability Directive should be interpreted. Paragraphs 5.4.1 and 5.4.2 of the Recommendation refer to the additional checks that it is possible for a second Member State to carry out when undertaking additional authorisation and these are explained in further detail below. Please note that this only a summary of the key points and consultees are advised to refer directly to the Recommendation for clarification about its content.

### ***The position in the UK outside of the Tunnel***

**3.6.5** The Railways (Interoperability) Regulations 2011 ("RIR 11") apply a policy of "voluntary additional authorisation" in mainland Great Britain and Northern Ireland. If an applicant wishes to use a vehicle in the UK which has already received an authorisation in another Member State, it will not require a second authorisation. Applicants may still wish to seek an additional authorisation for their vehicles, for example to demonstrate conformity, but this process is not mandated. Should additional authorisation be sought, the relevant national safety authority (the Office of Rail Regulation for Great Britain and the Department for Regional Development for Northern Ireland) is constrained in the same manner as if mandatory additional authorisation were applied for. The other processes, such as development of the operator's Safety Management System will still need to ensure that it recognises and mitigates any route compatibility issues.

### ***Reference Document***

**3.6.6** As well as restricting the additional authorisation process to technical compatibility only, the Interoperability Directive also introduced the concept of a "Reference Document" to make easier the cross-acceptance (sometimes known as "mutual recognition") of vehicles between different Member States. The document, a list published by the European Railway Agency of each Member States' requirements, is designed to make vehicle authorisation requirements and processes more transparent and to enable equivalence to be established between Member State's rules. The Interoperability Directive further limits the ability of national safety authorities to check any such rules which are categorised in the document as equivalent to those of the Member State where the first authorisation was granted. If

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<sup>12</sup> Commission Recommendation of 29 March 2011 on the authorisation for the placing in service of structural subsystems and vehicles under Directive 2008/57/EC of the European Parliament and of the Council. Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:095:0001:0029:EN:PDF>.

equivalence has been established, such rules are also out of scope of the additional authorisation process.

**3.6.7** Reference Document rules are categorised under three groups in accordance with Annex VII of the Interoperability Directive:

- “A” international standards or national rules deemed to be equivalent to those of other Member States;
- “B” rules which have yet to be classified; and
- “C” rules strictly necessary to define technical infrastructure characteristics.

**3.6.8** Group A rules are the ones that are out of scope of the additional authorisation process. In practice this means, for example, that if a vehicle were already authorised against a requirement in France that has been mutually agreed as equivalent to a UK requirement or a Tunnel requirement, it must not be checked again by the national safety authority during the additional authorisation process irrespective of whether the additional authorisation is mandatory or optional. The UK’s reference document is available at:

[www.era.europa.eu/Document-Register/Documents/NatioNal%20Reference%20Document%20for%20United%20Kingdom.pdf](http://www.era.europa.eu/Document-Register/Documents/NatioNal%20Reference%20Document%20for%20United%20Kingdom.pdf)

### ***The position in the Tunnel***

**3.6.9** The 2007 Order made additional authorisation mandatory for the Tunnel since this is also the policy of the French Government on both its mainland territories and for its half of the Tunnel. The draft Order maintains this provision but substantially amends it to ensure the restrictions on the actions of the IGC as the national safety authority explained in **paragraph 3.6.3** are more transparent for the Tunnel.

**3.6.11** In addition, in accordance with Articles 23(7) and 25(5) of the Interoperability Directive (relating to TSI-conforming and non-conforming vehicles respectively), the draft Order also places strict limits on the time available to the IGC to make a decision once an application for an additional authorisation is received. In accordance with Article 21(8) of the recast Interoperability Directive, if these time limits are exceeded by the IGC (for example, should the UK and French delegations to the IGC be unable to reach timely consensus on an application), the draft Order provides that the applicant’s vehicles shall be deemed to have been authorised in accordance by the IGC under Chapter 5 of the revised bi-national safety regulation.

**3.6.12** The draft Order also requires the IGC, should it intend to revoke an additional authorisation, to follow a process in line with that it currently follows when it intends to revoke a railway undertaking’s safety certificate or an infrastructure manager’s safety authorisation (see revised **article 63** of the bi-national safety regulation in the schedule to the draft order).

**3.6.13** Finally, Article 62 of the revised bi-national safety regulation ensures that, if a vehicle is 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 the vehicle and the network, it must not be subjected to any additional authorisation procedures if the Tunnel conforms to all relevant TSIs.

## Question 5

**Do you agree with the amendments we are proposing to the rolling stock provisions in Chapter 5?**

### 3.7 Chapter 6: Accident Investigation

**3.7.1** Only one minor change has been made which is to Article 70 where the last part of the last sentence of this article, which recognises the pre-existing arrangements in place to ensure that the relevant investigation body is informed should an accident or incident take place, has been moved to the beginning.

### 3.8 Chapter 7: Transitional & Miscellaneous Provisions

**3.8.1** Only minor amendments have been made to Articles 73 and 74 to improve regulatory clarity. Article 75, which enacted consequential amendments to the bi-national economic regulation<sup>13</sup>, has been deleted since these provisions were subsequently incorporated into the latter regulation and are therefore spent.

### 3.9 Annex 1: Safety Management Systems

**3.9.1** No changes are proposed to this annex which explains the requirements and basic elements which must be included in a railway undertaking's Safety Management System.

### 3.10 Annex 2: Common Safety Indicators

**3.10.1** Common Safety Indicators ("CSIs") are a common set of rail data gathered by the European Railway Agency to facilitate the assessment of achievement of Common Safety Targets and monitor the development and performance of safety in different Member States. CSIs were initially laid down and defined in Annex 1 of the Railway Safety Directive and are based on common definitions and calculation methods and covering:

- significant accidents;
- deaths and serious injuries;
- suicides;
- precursors of accidents;
- economic impacts of accidents;
- technical aspects (e.g. level crossings by type and train protection systems); and
- management of safety.

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<sup>13</sup> Set out in the schedule to the Channel Tunnel (International Arrangements) (Amendment) Order 2009 [S.I. 2009/2081].



**3.10.2** CSI data for each Member State are submitted annually by national safety authorities and published by the European Railway Agency in its annual report on rail safety performance in the European Union<sup>14</sup>.

**3.10.3** Following discussions between the European Railway Agency and national safety authorities some revisions to Annex 1 of the Railway Safety Directive were introduced in the CSI Directive. The CSIs were previously replicated in full within Annex 2 of the 2007 Order but the approach taken in the draft Order is to delete this annex in favour of a reference to Annex 1 of the Railway Safety Directive in the definition of “Common Safety Indicators”. The Department considers this to be appropriate given the technical nature of Annex 1. In practical terms, the IGC has been collecting data against the revised CSIs from operators using the Tunnel for the last two years.

**3.10.4** The revised definition, which will ensure that any future amendments to the methodology of calculation will automatically apply to the Tunnel without the necessity of further legislative amendment, reads:

“...means the common safety indicators referred to in Annex I (common safety indicators) of Directive 2004/49/EC **on the safety of the Community’s railways, as such annex is amended from time to time.**”

## Question 6

**Do you agree that a reference to Annex 1 of the Railway Safety Directive is more appropriate than replicating Annex 1 in its entirety as a schedule to the Order?**

## 4 Statutory Review

**4.1** It is the Government’s policy that, for regulations transposing European Union legislation, a statutory obligation on the Secretary of State to review them every five years will apply. The draft Order therefore inserts into the 2007 Order a requirement for the Secretary of State to carry out a review of the operation of the 2007 Order (as amended) on a five yearly basis and to publish the results. The first such review will have to be carried out within five years of the coming into force date of the draft Order.

## 5 Impact Assessment

**5.1** An Impact Assessment can be found at **Annex D** which identifies the potential costs and benefits of the Order. It compares the preferred approach against other options and contains an analysis of the expected impacts, regulatory burdens and costs which it is expected to create.

**5.2** The Department is seeking further data where possible from consultees about the potential costs and benefits of the Order. Any additional information, particularly any evidence which explains monetised costs and benefits, would be helpful.

<sup>14</sup> The latest report, “Railway Safety Performance in the European Union – 2012” is available from [www.era.europa.eu/Document-Register/Pages/Railway-Safety-Performance-in-the-European-Union-2012.aspx](http://www.era.europa.eu/Document-Register/Pages/Railway-Safety-Performance-in-the-European-Union-2012.aspx).



### **Question 7**

**Do you agree with the analysis of the costs and benefits in the Impact Assessment? Please provide any other relevant data and supporting evidence for your position.**

## Consolidated List of Questions

### **Question 1 (Page 7)**

Do you agree with the amendments we are proposing to the definitions in Chapter 1?

### **Question 2 (Page 8)**

Do you agree with the amendments we are proposing to the duties and responsibilities in Chapter 2?

### **Question 3 (Page 9)**

Do you agree with the amendments we are proposing to safety management and certification in Chapter 3?

### **Question 4 (Page 9)**

Do you agree with the amendments we are proposing to staff training in Chapter 4?

### **Question 5 (Page 12)**

Do you agree with the amendments we are proposing to the rolling stock provisions in Chapter 5?

### **Question 6 (Page 13)**

Do you agree that a reference to Annex 1 of the Railway Safety Directive is more appropriate than replicating Annex 1 in its entirety as a schedule to the Order?

### **Question 7 (Page 14)**

Do you agree with the analysis of the costs and benefits in the Impact Assessment? Please provide any other relevant data and supporting evidence for your position.

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 STATUTORY INSTRUMENTS
 

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2013 No. 0000

## CHANNEL TUNNEL

## HEALTH AND SAFETY

## The Channel Tunnel (Safety) (Amendment) Order 2013

*Made* - - - - - 2013

*Laid before Parliament* 2013

*Coming into force in accordance with article 2(1)*

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)(15), and by section 2(2) of, read together with paragraph 1A of Schedule 2 to, the European Communities Act 1972(16) .

This Order makes provision for a purpose mentioned in section 2(2) of that Act, 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(17).

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.(18)

**1.Citation, commencement and extent**

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

(1) This Order comes into force on the date on which the amending regulation of the Intergovernmental Commission on the safety of the Channel Fixed Link, done on XXX(19) (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 Channel fixed link signed at Canterbury on 12th February 1986(20)) comes into force, as provided for in article xxx of that regulation.

(2) The Secretary of State shall give notice in the London, Edinburgh and Belfast Gazettes of the date provided for in paragraph (1).

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(15) 1987 c.53. “Appropriate Minister” is defined in section 13(1) of that Act.

(16) 1972 c.68. Section 2(2) was amended by, 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.

(17) Article 1.iii of the regulation in the Schedule to this Order makes such a reference.

(18) S.I. 1996/266, to which there are amendments not relevant for these Regulations

(19) That regulation amends the regulation of the Intergovernmental Commission on the Safety of the Channel Fixed Link done on 24 January 2007; the text of which appeared originally in the Schedule to S.I. 2007/3531; it appears, as amended by the regulation of the Intergovernmental Commission on the Safety of the Channel Fixed Link, done on XXX, in the Schedule to this Order.

(20) 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.channeltunneligc.co.uk/Essential-texts,24.html?lang=en>).

- (3) Subject to paragraph (4), this Order does not extend to Northern Ireland.
- (4) The following provisions extend to Northern Ireland—
  - (a) article 4(1),
  - (b) article 4(2), and
  - (c) article 4(5).

### 3. Amendment of the Channel Tunnel (Safety) Order 2007

4.—The Channel Tunnel (Safety) (Order) 2007(21) is amended as follows.

- (1) In article 1(2), omit “Subject to paragraph (3),”, and, for “this”, substitute “This”.
- (2) Omit article 1(3).
- (3) In article 4(4)—
  - (a) after “52(a) and (b),” insert “55A, 55B”, and
  - (b) in paragraph (i), for “authorisation of rolling stock”, substitute “vehicle authorisation”.
- (4) In article 6(1), after “52(a) and (b),” insert “55A, 55B”.
- (5) Omit article 9.
- (6) 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 Directives 2004/49/EC, dated 29th April 2004(22), and 2008/57/EC, dated 17th June 2008(23), dated are implemented in other member States.

(3) The report must in particular—

- (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 regulation 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) Reports under this Order are afterwards to be published at intervals not exceeding five years.”

- (7) 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

Date

Minister of State  
Department for Transport

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(21) S.I. 2007/3531.

(22) 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, p62) and Directive 2009/149/EC (OJ No. L 313, 28.11.2009, p65).

(23) OJ No. L 191, 18.7.2008, p. 1, as amended by Directive 2009/131/EC (OJ No. L 273, 17.10.2009, p12) and Directive 2011/18/EU (OJ No. L 57, 2.3.2011, p21).

**SCHEDULE**

Article 2(7)

**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 cross-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 dated 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 the Council of 29 April 2004 on the safety of Community railways and amending Council Directive 95/18/EC on the licensing of railway undertakings as well as 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 2008/110/EC of the European Parliament and the Council of 16 December 2008 and by Directive 209/149/CE of the Commission of 27 November 2009;

Having regard to Directive 2004/51/EC of the European Parliament and the Council of 29 April 2004 modifying 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 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 Directive 2008/57/EC of the European Parliament and the Council of 17 June 2008 concerning the interoperability of the rail system within the Community, amended by Directive 2009/131/EC of the Commission of 16 October 2009 and by Directive 2011/18/EC of the Commission of 1 March 2011;

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 the Council of 16 December 2008;

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

Having regard to Decision 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision 1962/96/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 of 25 October 2005 concerning the use of the Channel Tunnel by international groupings or railway undertakings;

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 and interpretation

- (i) “Accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents shall be allocated to the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by vehicle 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” (“CSIs”) means the common safety indicators referred to in Annex I (common safety indicators) of Directive 2004/49/EC on the safety of the Community’s railways, 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 concerning the use of the Channel Tunnel by international groupings or railway undertakings.
- (vii) “Concession” has the meaning given in Article 1 of the Treaty.
- (viii) “Concessionaires” has the meaning given in Article 1 of the Treaty.
- (ix) “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.
- (x) “ECM Regulation” means Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance for freight wagons.
- (xi) “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.
- (xii) “Fixed Link” means the Channel Fixed Link as defined in Article 1.2 of the Treaty.
- (xiii) “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.
- (xiv) “incident” means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of operations.
- (xv) “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.

- (xvi) “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.
- (xvii) “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, as defined in Directive 2008/57/EC. The concept of a “constituent” covers both tangible objects and intangible objects such as software.
- (xviii) “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.
- (xix) “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.
- (xx) “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 a national vehicle register provided for in Article 33 of 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 (recast);
- (xxi) “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.
- (xxii) “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.
- (xxiii) “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 infrastructure and fixed equipment;
    - 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 railway system as a whole,
  - (b) and which also incorporates the Concessionaires’ shuttle services for road vehicles.
- (xxiv) “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.
- (xxv) “Safety Authority” means the body appointed by France and the United Kingdom to perform the tasks relating to the safety of the Fixed Link in accordance with Article 3.g and Article 16 of Directive 2004/49/EC in order to ensure a unified safety regime for the specific cross-border infrastructure of the Channel Tunnel.
- (xxvi) “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.

- (xxvii) “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.
- (xxviii) “Technical specifications for interoperability” (“TSI”) 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.
- (xxix) “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.
- (xxx) “Unified safety rules” means the safety rules, made in accordance with Article 18, which apply to the Fixed Link and describe the safety and technical 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.
- (xxxi) “Vehicle” means a rail vehicle suitable for circulation 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

##### **2.Safety Authority**

**3.** The Intergovernmental Commission is the Safety Authority for the Fixed Link.

**4.** 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.

**5.** The tasks of the Intergovernmental Commission, as Safety Authority, shall be at least the following:

- (i) authorising the placing in service of any new or substantially modified subsystem of the trans-European railway system, included or operated within the boundaries of the Fixed Link to which Article 15 of Directive 2008/57/EC applies;
- (ii) verifying 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 10 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 operating shuttle services for road vehicles, where such new or substantially modified vehicle is proposed to be located and/or operated only within 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 30th September at the latest each year, publishing and sending to the Agency an annual report concerning its activities in the preceding year, including 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 in 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 submit supplementary 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 vehicle authorisation 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 dossier specified in article 23, paragraph 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 dossier specified in article 25, paragraph 2 of Directive 2008/57/EC;
  - where applicable, two months after submission of any additional information or risk analyses requested by the Intergovernmental Commission;
  - where applicable, two months after submission of the results of tests requested by the Intergovernmental Commission.

If no decision is issued within the time limit 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 shall be to verify safety requirements in accordance with the conditions for award of safety authorisation to the Concessionaires and 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.

### **6. 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.

### **7. 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;

### **8. 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.

### **9. 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 safety certificate and applicants for safety authorisation.
18. The unified safety rules shall be made in accordance with Article 17 of Directive 2008/57/EC and Article 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, Entity in charge of maintenance of a vehicle operated only within the limits of the Fixed Link

#### **10. 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 in 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.

#### **11. 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.

### **12.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;
- (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 stated in the document. 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:

- (a) proof that it holds a valid Part A certificate confirming acceptance of its SMS,
- (b) 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:
- (c) 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;
- (d) 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;
- (e) the different types of rolling stock used for the railway undertaking's operations, including evidence that they meet requirements of TSIs and of the unified safety rules and have been duly certified; and

- (f) 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 limits 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 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 modification of the regulatory framework relating to safety, 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 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.

### **13. Entity in charge of maintenance of a vehicle operated only within the limits of the Fixed Link**

55A. In respect of a vehicle to be used or placed in service only within the limits 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 limits of the Fixed Link must 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 safe working order.

## CHAPTER 4

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

#### **14. 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.ii.d 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 must 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 the organisation of examinations to assess staff or issue 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, and be given copies of them and be free to pass them on.

## CHAPTER 5

### Provisions relating to additional authorisation of vehicles

61. A vehicle which has a first authorisation for placing into service in a Member State, where the first authorisation was not issued by the Intergovernmental Commission must 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 relevant TSIs.

63. The Intergovernmental Commission must 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 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 must send a copy of the file to that authority.

If the Intergovernmental Commission intends to revoke an additional authorisation granted by itself or an additional authorisation deemed in accordance with Article 5A, it must give formal notice to the applicant and give the applicant an opportunity to make representations and must consider any representations made before it may revoke the authorisation. If the Intergovernmental Commission decides to revoke an additional authorisation it must give its reasons for its decision to the applicant. The Intergovernmental Commission must 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 steps 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 concession-holders and shall be payable by the applicant.

65. When the Intergovernmental Commission issues an additional authorisation, it shall also authorise the corresponding vehicle type as per 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, as per 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 will act in accordance with their national laws 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

##### **15. Transitional provisions on Safety Authorisation and Part B Certificates**

73.(a) Any notification of acceptance (including revisions to it) which is current on the date this Regulation comes into force, issued by the Intergovernmental Commission to the Concessionaire in relation to a safety case (or revisions to it) submitted by the Concessionaire 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 on the date this Regulation comes into force, issued by the Intergovernmental Commission in respect of 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].

##### **16. 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 [INSERT DATE] in the English and French languages, both texts being equally authoritative.

Head of UK Delegation,  
Intergovernmental Commission

Head of French Delegation,  
Intergovernmental Commission

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the Channel Tunnel (Safety) Order 2007 (“the principal Order”) and the Channel Tunnel (International Arrangements) Order 2005 (“the 2005 Order”). The 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 IGC is established by Article 10 of the Treaty of Canterbury (see full citation and reference in article 2(1) and footnote (a) to that provision) to supervise the operation of the Channel Tunnel. The new bi-national regulation in turn implements some parts of interoperability Directive 2008/57/EC, including its amendments to Directive 2004/49/EC, and other amendments made to the latter 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 2005 (“the original 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 original 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;
- requires the IGC to deal with applications for safety authorisations for railway undertakings within certain time limits;
- provides that trains already certified as complying fully with the Technical Specifications for Interoperability (TSIs - harmonised technical rules on railways covering, among other things, the constructions of trains) 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;
- provides for the authorisation of trains to cover types, as well as individual vehicles;
- implements requirements concerning the entities in charge of the maintenance of trains;
- revises the Common Safety Indicators (a harmonised way of measuring the safety performance of European railways);

Under *article 2(1)* of this Order, this Order will come into force on the date 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 [ ] of the new bi-national regulation. Under *article 2(2)* of this Order, the Secretary of State must give notice, in the Gazettes, of the date when the new bi-national regulation enters into force.

*Article 2(3)* provides that this Order does not extend to Northern Ireland, except where the exceptions provides in *article 2(4)* apply. These exceptions relate to the repeal of amendments of 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 4(7)* substitutes new text for the Schedule to the principal Order. The substituted text sets out the text of the original 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* also amends the principal Order by providing for new criminal offences in relation to certain new provisions now included in the amended 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 and (b) 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.

*Article 4 also* makes consequential amendments to provisions of the principal Order that referred to articles of the original bi-national regulation. Articles 1(3), 3 and 9 of the principal Order related to a provision in the original bi-national regulation relating to economic regulation, given effect by the Channel Tunnel (International Arrangements) Order 2005 (S.I. 2005/3207). That Order, which extends to Northern Ireland, makes provisions 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 repealed, because the bi-national relating to economic regulation has now been replaced by a new one which includes an equivalent provision. *Article 2 also* inserts a new provision in the principal Order which requires the Secretary of State to review the operation and effect of the principal Order and to publish a report within five years after the coming into force of this Order and then within every five years after that. Following a review it will fall to the Secretary of State to consider whether the provisions of the principal Order, as now amended, should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the principal Order, as now amended, or to amend it.

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 Standards and Safety 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](http://www.legislation.gov.uk)). A transposition note is also annexed to that Memorandum.

## Annex C: Transposition Table

**Transposition table for: (i) provisions of Directive 2008/57 relating to additional authorisations for the Channel Tunnel; (ii) Directive 2008/110 amending Directive 2004/49/EC on safety on the Community's railways; and (iii) Commission Directive 2009/149 amending the Railway Safety Directive as regards Common Safety Indicators and common methods to calculate accident costs.**

### Background and explanation of the transposition table

#### Directive 2008/57

The Railways (Interoperability) Regulations 2011 (S.I. 2011/3066) implemented Directive 2008/57 (as amended by Directives 2009/131 and 2011/18) for the UK. Those regulations apply to the UK side of the Channel Tunnel as well as to the rest of the UK. But regulation 6, which deals with the additional authorisation of train vehicles used in the UK where a vehicle has already been authorised in another Member State, does not apply to the Channel Tunnel. This is because additional authorisation of vehicles used in the Channel Tunnel is governed by chapter 5 of the bi-national Safety Regulation for the Channel Tunnel. The bi-national Safety Regulation is made under the Treaty of Canterbury and is applicable to both the UK and French sections of the Channel Tunnel. It is given force of law in the UK by the Channel Tunnel (Safety) Order 2007 (S.I. 2007/3531). Chapter 5 of the bi-national Safety Regulation, which implemented the additional authorisation provisions in an earlier version of the rail safety Directive (Directive 2004/49), needs to be amended in order to reflect the revised EU additional authorisation provisions which are now contained in articles 23 and 25 of Directive 2008/57.

The proposed Order will therefore give force of law in the UK to the necessary revisions to the bi-national Safety Regulation which implement articles 23 and 25 of Directive 2008/57. The revised bi-national Safety Regulation also implements other provisions of the Directive to the extent those provisions need to apply to additional authorisations for the Channel Tunnel.

#### Directive 2008/110

The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860) implemented Directive 2008/110 for mainland Great Britain (there are separate regulations for Northern Ireland). The 2011 Regulations do not apply to the UK side of the Channel Tunnel. This is because Directive 2004/49, which Directive 2008/110 amends, was implemented separately for the Channel Tunnel by the bi-national Safety Regulation, given force of law in the UK by the Channel Tunnel (Safety) Order 2007. Directive 2008/110 introduces requirements for ensuring that entities in charge of maintenance of rail vehicles perform maintenance safely. The bi-national Safety Regulation needs to be amended to implement Directive 2008/110 for the Channel Tunnel, and the proposed order will give such amendments force of law for the UK.

#### Directive 2009/149

The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 implemented Directive 2009/149 for mainland Great Britain (again there were separate regulations for Northern Ireland), but for the same reasons as above, this does not include the UK side of the Channel Tunnel. Directive 2009/149

introduces new common safety indicators, common definitions for these indicators and methods for calculating them. The bi-national Safety Regulation needs to be amended to implement Directive 2009/149 for the Channel Tunnel, and the proposed order will give those amendments force of law in the UK.

### Further explanation

The table below indicates that the approach taken is predominately one of copy out. For these purposes we have regarded a provision as being copied out if either (i) the text is implemented by cross-reference or (ii) the language of the Directive is used with modifications to the text being limited to necessary changes to fit specific circumstances of the Channel Tunnel or the drafting approach of the bi-national regulation, and without elaborating the text for policy reasons.

The articles referred to in the national provision column of the table refer to the articles in the revised bi-national regulation, which will be set out in a schedule to the UK implementing order.

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
<b>Directive 2008/57</b>			
Article 21 (to the extent applicable to additional authorisations)	Yes		Articles 5A and 63
Articles 23(1)	Yes		Article 62
Articles 23(2) and 25(1) - Member States decide whether additional authorisation is mandatory.	No	The agreement reached with the French authorities is that additional authorisation will be mandatory for the Channel Tunnel.	Article 61
Articles 23(3)-(7) and 25(2)-(5)	Yes		Articles 63 and 64 <sup>i</sup>
Articles 26 and 34(3) (to the extent applicable to additional authorisations)	Yes		Articles 63 and 65
Last two sentences of paragraph 2.6 of Annex VI (as amended by Directive 2011/18)	Yes		Last two sentences of Article 63
<b>Directive 2008/110</b>			
Article 1(1) – The following exclusions from scope are added to the exclusions in Article 2(2) of Directive 2004/49. Both exclusions are discretionary:	No	These exclusions are not relevant to the types of operation carried out in the Channel Tunnel.	

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
(i) heritage vehicles that run on the national network (subject to compliance with national safety rules), and  (ii) separate heritage, museum and tourist railways,			
Article 1(2) - New definitions of “entity in charge of maintenance”, “keeper” and “vehicle”	Yes		Articles 1(xi), 1(xx) and 1(xxxi)
Article 1(3) - The term “wagon keeper” is replaced with “keeper” in the Railway Safety Directive.	No	The term “wagon keeper” is not used in the binational regulation so no transposition is required.	
Article 1(4) - Amendments are made to Article 5(2) of Directive 2004/49, concerning the adoption of a measure that revises the Annex of Common Safety Indicators.	No	No transposition required. The revised Annex was adopted in Directive 2009/149, transposition of which is described below.	
Article 1(5) - Development of Common Safety Methods (“CSMs”): Directive 2008/110 expands on the original text on CSMs in Article 6 of Directive 2004/49	No	No transposition required as this provision deals with measures required to be adopted by the Commission..	
Article 1(6) - Development of Common Safety Targets (“CSTs”): Directive 2008/110 expands on the original text on CSTs in Article 7 of Directive 2004/49	No	No transposition required as this deals with the process for the adoption of common safety targets by the European Railway Agency and the Commission.	
Article 1(7) - Wording concerning safety certificates in Directive 2004/49 has been	No	This provision sets out revised declaratory wording (to go into article	

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
amended to change the emphasis on the role of a railway undertaking as a provider of transport services rather than as an operator.		10(1) of Directive 2004/49) setting out the purpose of a safety certificate for which transposition is not required. The provision also makes a minor amendment to wording in Article 10(1) of 2004/49 in relation to the matters to be confirmed by a safety certificate. This wording is copied out with an amendment to article 45 of the Binational Safety Regulation.	
<b>Article 1(8) – Incorporation of new Article 14a (Maintenance of Vehicles) into Directive 2004/49</b>			
Article 14a(1) - Requirement that, prior to being placed in service or used on the network a vehicle must have an entity in charge of maintenance (“ECM”) assigned to it which is registered on the National Vehicle Register in accordance with Article 33 of Directive 2008/57	No	This provision has been transposed in substantially the same form as it appears in the amending Directive, but includes the requirement for an ECM for freight wagons to hold a certificate in accordance with article 14a(4) (discussed below).	Article 55A
Article 14a(2) - A railway undertaking, infrastructure manager or keeper may be an ECM.	Yes		Definition of “entity in charge of maintenance”, Article 1(xi)
Article 14a(3) - Requirement for the ECM to establish a system of maintenance for the vehicles for which it is in charge.	Yes		Article 55B
Article 14a(3) - Requirement for the ECM to carry out maintenance itself or	No	This provision does not require transposition because, as a matter	

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
through contractors.		of UK law, an ECM is free to carry out maintenance through its own efforts or by using third party contractors acting on its behalf.	
<p>Article 14a(4) – Requirement for ECMs to be certified by an accredited or recognised body or by the national safety authority to perform maintenance on freight wagon. This includes mention of the accreditation or recognition process if the certifying body appointed by the Member State is not the national safety authority – the accreditation process in such a case is to be in accordance with paragraph 5 of article 14a. Paragraph 5 (see below) provides for a Commission measure to be adopted which will, among other things, provide for accreditation criteria</p>	No	<p>The requirement that an ECM for freight wagons is certified is transposed in Article 55A(ii).</p> <p>The requirement for the certification body to be accredited in accordance with paragraph 5 (of article 14a is implemented by the new definition (in article 1(ix) of the revised bi-national Safety Regulation) of an ECM Certificate which cross-refers to the ECM Regulation (Commission Regulation (EU) No 445/2011 on a system of certification of entities in charge of maintenance) made by the Commission under paragraph 5 of article 14a. In practice the Channel Tunnel Intergovernmental Commission, which is the national safety authority for the Tunnel, will not be a certification body, and ECMs for freight wagons arriving at the Tunnel will already be certified under Member State</p>	Article 55A(ii)



Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
		national implementing provisions and the ECM Regulation.	
Article 14a(4) - Provision for ECMs that are railway undertakings or infrastructure managers to have confirmation of compliance with the ECM certification requirements (in Article 14a(5)) noted on the certificates specified in Articles 10 or 11, as applicable, of Directive 2004/49.	No	Transposition not needed as this will be carried out administratively.	
Article 14a(5) - Measure to be adopted by the Commission by 24 <sup>th</sup> December 2010 setting out the details and scope of the ECM certification system. This will include the date of application of the certification system and transition period, as well as details of the maintenance system and the format and validity of the certificate.  Commission to review the measure, based on a recommendation by the European Railway Agency, by 24 <sup>th</sup> December 2018.	No	No transposition required – these are European Commission obligations, the first of which was fulfilled by Commission Regulation 445/2011 on a system of certification of entities in charge of maintenance.	
Article 14a(6) - ECM certificates to be valid throughout the Community.	No	No transposition required. Commission Regulation 445/2011 is directly applicable in Member States and the definition of an ECM certificate, in article 1(ix) of the revised bi-national	

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
		Safety Regulation, as a certificate issued in accordance with the ECM Regulation (i.e. Regulation (EU) 445/2011), would include certificates issued in accordance with that Regulation in all EU Member States..	
Article 14a(7) - European Railway Agency to evaluate certification process and submit a report to the Commission within three years of the entry into force of the Commission's measure on ECM certification.	No	No transposition required. This is a European Railway Agency obligation.	
Article 14a(8) - Permitted derogations from the obligations to: (a) identify the entity in charge of maintenance; and (b) certify it through alternative measures. The derogations are discretionary.	No	No transposition required. These derogations are not relevant in the Channel Tunnel	
Article 1(9) - Amendments to Article 16(2)(a), and (g) and deletion of Article 16(2)(b) of Directive 2004/49 requiring the safety authority to authorise the placing in service of structural subsystems within the scope of Directive 2008/57, and that vehicles are duly registered on the National Vehicle register and that safety information therein is kept up-to-date.	No	The wording in article 4(i) has been negotiated with French officials to recognise that authorisation is only required (consistently with article 15 of Directive 2008/57/EC and the rest of that Directive) where new or substantially modified sub-systems are put in place and not otherwise. This therefore makes clear that any obligation to obtain	Article 4(i)

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
These amendments and the deletion update references to earlier interoperability directives that were consolidated by Directive 2008/57.		an authorisation is limited to those circumstances.	
Article 1(10) - Obligation on national safety authority for any derogations adopted under Article 14a(8) to be reported in its annual safety report.	No	The obligation of the IGC, as safety authority for the Channel Tunnel to produce an annual report are set out at article 4 of the bi-national Safety Regulation. The additional reporting requirement in relation to derogations does not need to be implemented as the derogations referred to here are not relevant to the types of vehicle using the Channel Tunnel	
Article 1(11) and (12) - Amends Article 26 which allows the annexes of Directive 2004/49 to be adapted to technical and scientific progress, with reference to EU Committee rules and procedures	No	No transposition required – these are European Commission obligations.	
Article 1(13) - Deletion of paragraph 3 from the requirements in Annex II for Member States to notify the Commission of national safety rules relating to the authorisation of placing in service and maintenance of new and substantially altered rolling stock that is not yet covered by a	No	Unified safety rules are defined in article 1(xxx) of the bi-national Safety Regulation as meaning both safety and technical requirements consistently with the wording of article 17(3) of the Interoperability Directive	

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
<p>Technical Specification for Interoperability. This requirement is now included in Article 17(3) of the Interoperability Directive (2008/57/EU).</p>		<p>(2008/57/EU). In addition, Article 18 of the bi-national Safety Regulation (regarding unified safety rules) now refers to unified safety rules as being made in accordance with article 17 of Directive 2008/57 and article 8 of Directive 2004/49. Under article 20 of the bi-national Safety Regulation the IGC advises the UK and French governments when new unified safety rules or modifications to existing rules are required to be notified to the Commission. Such notifications are then handled administratively by the Department for Transport.</p>	
<p>Article 2 - Requires Member States to introduce provisions to implement the requirements contained in the amending Directive and notify the Commission of transposition by 24<sup>th</sup> December 2010.</p>	No	<p>No transposition required. This article describes the administrative requirements for transposition.</p>	
<p>Article 3 - States the entry into force date of the Directive</p>	No	<p>No transposition required.</p>	
<p>Article 4 - Addresses the Directive to Member States</p>	No	<p>No transposition required.</p>	
<b>Directive 2009/149</b>			

Article	Copy out (Yes/No)	If no – reason for elaboration	National provision
Article 1 - Annex I of Directive 2004/49 is replaced by the Annex in the CSI Directive.	No	No transposition required.	
Article 2 - Requires Member States to introduce provisions to implement the CSI Directive and notify the Commission of transposition.	Yes		Article 1(iii) – the definition of “Common Safety Indicators” cross-refers to the new Annex to 2004/49/EC.
Article 3 - States the entry into force date of the Directive	No	No transposition required.	
Article 4 - Addresses the Directive to Member States	No	No transposition required.	
Annex - This is the text of the new Annex of Common Safety Indicators and common methods to calculate accident costs.	Yes		Article 1(iii) – the definition of “Common Safety Indicators” cross-refers to the new Annex to 2004/49/EC.

(i) The last sentence of article 64 (concessionaires' fees for tests) is not copied out from the Directive, but is carried over from the current bi-national regulation.

<b>Title:</b> <b>Transposing European Directives on Railway Safety and Interoperability to the Channel Tunnel</b> <b>IA No:</b> CT001  <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> Channel Tunnel Intergovernmental Commission Office of Rail Regulation	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 22/10/2012		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Chris Angell, 020 7944 0082 christopher.angell@dft.gsi.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC: GREEN</b>

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
- £0.023m	- £0.0005m	£0.0005m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**  
 The UK is required, in order to fulfil its obligations as a European Union Member State, to transpose Directives 2008/110/EC and 2009/149/EC which amend the Railway Safety Directive (2004/49/EC) and elements of the recast Railway Interoperability Directive (2008/57/EC) for the Channel Tunnel. These relate to the introduction of a harmonised system of railway vehicle maintenance, a common methodology for the assessment of safety performance and the economic impact of accidents, and provisions relating to the additional authorisation in the Channel Tunnel of rail vehicles already authorised in another Member State.

**What are the policy objectives and the intended effects?**  
 The objectives of the European Union in introducing the Directives are to **(a)** improve safety by harmonising rail vehicle maintenance regimes and establishing “entities in charge of maintenance”; **(b)** improve data quality following accidents and **(c)** ensure that only appropriate compatibility checks can be carried out during additional authorisation and that they are carried out on time. UK objectives are to **(a)** introduce a compliant maintenance regime; **(b)** establish a compliant method of data collection and **(c)** apply minimal checking during additional authorisation. The intended effects are to **(1)** provide reassurance that rail vehicles are maintained safely; **(2)** provide a more accurate measure of safety performance and **(3)** ensure the safety and interoperability regulation of the Channel Tunnel remains compliant.

**What policy options have been considered, including any alternatives to regulation?**  
**Option 1:** Do nothing;  
**Option 2:** Transpose by bi-national regulation; or  
**Option 3:** Transpose by extending the scope of national measures.  
  
**Option 2** is preferred since it is the best option to transpose the UK’s obligations in a clear and consistent manner while taking into account the bi-national governance of the Tunnel.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 03/2017

Does implementation go beyond minimum EU requirements?	No				
Are any of these organisations in scope?	<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded: 0</b>		<b>Non-traded: 0</b>		

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_ Simon Burns \_\_\_\_\_ Date: \_\_\_\_\_ 30 Oct 2012 \_\_\_\_\_

# Summary: Analysis & Evidence Policy Option 2

**Description:** Transpose by bi-national regulation

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: minus 0.023
2012	2012	5 Years			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.0245	0	0.023

### Description and scale of key monetised costs by 'main affected groups'

The Order will extend provisions which are already in force throughout mainland UK and France to the Channel Tunnel. These relate to the identification of the entity in charge of maintenance in a national vehicle register and establishing an appropriate maintenance regime for each vehicle. In practice, the Order will not result in any significant costs for those companies which operate on the infrastructure since the provisions are already applicable to them on either side of the Tunnel. The only business costs envisaged relate to operators familiarising themselves with the requirements. These are one-off in the first year only, and given the small number of operators affected, are assessed as negligible (£576). Further costs of £24,000 will fall to the public sector from undertaking a statutory review of the requirements after five years. After this period there are no identifiable monetised costs or benefits arising and so this impact assessment is limited to a five year horizon.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

The monetised impacts of the Order are so small that their quantification is not practicable and these are therefore treated as being equal to zero.

### Other key non-monetised benefits by 'main affected groups'

The benefits of the Order are that it will **(a)** bring the Channel Tunnel into line with provisions already in place in the UK and France; **(b)** achieve consistency of approach to rail vehicle maintenance across the European Union; **(c)** assist railway undertakings to better control risks and costs through assurance that any vehicles they haul have an appropriate maintenance regime in place; and **(d)** alleviate barriers to trade in the form of duplication, unnecessary costs and delay in the safety authorisation process.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Since railway undertakings will already be familiar with the provisions which the Order introduces as they are already in place in the UK and France, costs are likely to be minimal and restricted to familiarisation. There is a risk of infraction from the European Commission for late transposition of the Directives which the Order transposes. Were formal infraction proceedings instigated, the UK would be at risk of a minimum lump sum of around €9.666 million (based on the UK's GDP) and potentially substantial daily fines of thousands of pounds for continued non-compliance.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0005	Benefits: 0	Net: - 0.001	No	NA

# Summary: Analysis & Evidence Policy Option 3

**Description:** Transpose by extending the scope of national measures

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period 5 Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: minus 0.023

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0.0245	0	0.023

### Description and scale of key monetised costs by 'main affected groups'

In essence, the only variance with **Option 2** is the fact that, under **Option 3**, there is a greater risk of inconsistency in the implementation of the safety and interoperability regimes. That difference is extremely difficult to assess and the costs and benefits are therefore assessed as being identical to those of **Option 2**.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

As for **Option 2** since the impacts of the Order have been assessed as materially extremely small, quantification of the benefits is not practicable – and these are therefore treated as being equal to zero.

### Other key non-monetised benefits by 'main affected groups'

The benefits are the same as for **Option 2**.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Since railway undertakings will already be familiar with the provisions which the Order introduces since they are already in place in the UK and France, costs are likely to be minimal and restricted to familiarisation. Pursuit of this option could result in the introduction of different regimes within the UK and French halves of the Channel Tunnel which could complicate the authorisation process for both industry stakeholders and the safety authorities.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0.0005      Benefits: 0      Net: - 0.001	No	NA



# Evidence Base (for summary sheets)

## References

- | No | Legislation or publication  |
|----|---|
| 1  | <b>European Commission explanatory memorandum</b> ( <a href="http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&amp;lg=EN&amp;type_doc=COMfinal&amp;an_doc=2006&amp;nu_doc=0784">http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&amp;lg=EN&amp;type_doc=COMfinal&amp;an_doc=2006&amp;nu_doc=0784</a> ) |
| 2  | <b>European Commission impact assessment</b><br>( <a href="http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2006/1641/COM_SEC(2006)1641_EN.pdf">http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2006/1641/COM_SEC(2006)1641_EN.pdf</a> )   |
| 3  | <b>Working Group Final Report</b><br>( <a href="http://www.otif.ch/otif/_epdf/dir_tech_adm_2007/2007-10_WG_Keeper_final_report.pdf">http://www.otif.ch/otif/_epdf/dir_tech_adm_2007/2007-10_WG_Keeper_final_report.pdf</a> )  |
| 4  | <b>Treaty of Canterbury 1986</b> ( <a href="http://www.channeltunneligc.co.uk/Essential-texts,24.html?lang=en">http://www.channeltunneligc.co.uk/Essential-texts,24.html?lang=en</a> )  |
| 5  | <b>Commission Regulation 445/2011 (Certification of Freight Wagon ECMs)</b><br>( <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF</a> )  |

## Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.0005	0	0	0	0	0.024	0	0	0	0
<b>Annual recurring cost</b>	0	0	0	0	0	0	0	0	0	0
<b>Total annual costs</b>	0.0005	0	0	0	0	0.024	0	0	0	0
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Total annual benefits</b>	0	0	0	0	0	0	0	0	0	0

\* For non-monetised benefits please see summary pages and main evidence base section

# Evidence Base (for summary sheets)

## 1. Title of Proposal

- 1.1. Transposing European Directives on rail safety and interoperability to the Channel Tunnel.

## 2. Purpose and intended effect

### Problem addressed

- 2.1 A glossary of terms used throughout this impact assessment can be found at **Annex 3**.
- 2.2 The Channel Tunnel (Safety) (Amendment) Order (“the Order”) is intended to implement Directive 2009/149/EC on a revised methodology to calculate common safety indicators (“the CSI Directive”) and Directive 2008/110/EC (“the Directive on vehicle maintenance”) which requires an entity in charge of maintenance (“ECM”) to be identified in the National Vehicle Register (“NVR”) and the ECM to establish an appropriate maintenance regime. It is also intended to transpose those parts of the recast Railway Interoperability Directive (2008/57/EC, “the recast Directive”) which deal with the authorisation of railway vehicles for use in the Channel Tunnel (“the Tunnel”).
- 2.3 That transposition is intended to take place through a bi-national regulation of the Intergovernmental Commission for the Channel Tunnel (“IGC”), made under Article 10(3)(e) of the Treaty of Canterbury of 1986 (“the Treaty”). The Order would give effect to that bi-national regulation.
- 2.4 The above provisions have already been transposed for mainland Great Britain through the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 [S.I. 2011/1860] and the Railways (Interoperability) Regulations 2011 [S.I. 2011/3066]. However, the former is not applicable to the Tunnel since, in accordance with the Treaty and in recognition of the cross-border nature of the Tunnel, it has been agreed that transposition should be on a bi-national basis following negotiation and agreement with the French government. The latter is applicable to the Tunnel with the exception of the provisions relating to the additional authorisation of vehicles first authorised in another Member State (see **paragraph 2.11**).
- 2.5 There have been a number of previous bi-national regulations of the IGC but those currently in force are the Channel Tunnel (International Arrangements) Order 2005<sup>1</sup> and the Channel Tunnel (Safety) Order 2007<sup>2</sup> (“the 2007 Order”) which the Order will amend. This impact assessment does not consider provisions which have remained unchanged since they do not create any new regulatory or cost burdens on business and the amendments will come into force simultaneously in both the UK and France. The Department’s intention is to complete this process by no later than 31 December 2012.

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<sup>1</sup> S.I. 2005/3207 (available from [www.legislation.gov.uk/ukSI/2005/3207/contents/made](http://www.legislation.gov.uk/ukSI/2005/3207/contents/made)).

<sup>2</sup> S.I. 2007/3531 (available from [www.legislation.gov.uk/ukSI/2007/3531/contents/made](http://www.legislation.gov.uk/ukSI/2007/3531/contents/made)).

## ***Common Safety Indicators***

- 2.6 The CSI Directive simply amends the methodology and format of calculation for statistics which are already collected in Great Britain by RSSB<sup>3</sup>. Its implementation does not represent any additional resource or cost impact on business (indeed, administrative provisions have already been put in place to ensure data is recorded in the new format in advance of transposition). However, it will benefit duty holders and the IGC, as safety authority for the Tunnel, by ensuring data is provided on a consistent basis across the EU which can then be used to inform policy development. More information can be found in **Section 3**.

## ***Freight Wagon Maintenance***

- 2.7 The Convention concerning International Carriage by Rail (“COTIF”) stated in 2006 that the keepers<sup>4</sup> of wagons were no longer obliged to register their wagons with a railway undertaking. This created the present situation where different maintenance regimes exist within the UK and across the EU in which vehicle keepers have to meet the requirements of individual railway undertakings (freight operators) to gain access to the railway network.
- 2.8 The nature of rail freight operations means that it is common for freight wagons to traverse Europe in an irregular and random manner since they tend not to be used on the set routes like passenger vehicles. As a result, they are regularly used by numerous railway undertakings which may all have different maintenance regimes with which the keeper must comply. Keepers have asserted that the presence of these multiple maintenance regimes at both a national and EU-wide level imposes significant cost burdens on them in demonstrating compliance, a situation which is more prevalent in mainland Europe than the UK. This is inconsistent with broader UK and EU aspirations of improving access to rail markets through harmonisation of requirements, increasing the competitive position of rail freight in relation to other modes of transport and improving safety.
- 2.9 Adopting a consistent approach to vehicle maintenance across the EU is likely to lead to significant benefits to consumers since it will contribute to greater certainty within the rail industry and reduced whole industry costs. The impact of a consistent approach to establishing vehicle maintenance standards and safety will particularly benefit international traffic, although it is envisaged that some benefits may also be realised at a UK domestic level. The Order is designed to address these industry concerns by providing the foundations for the introduction of an EU-wide freight wagon ECM certification scheme.
- 2.10 This is of vital importance to the Tunnel since it is the sole direct physical link between the UK rail network and mainland Europe, and as only a limited number of railway undertakings currently operate on its infrastructure, the UK welcomes any initiative to make it more attractive to other railway undertakings.

## ***Vehicle Additional Authorisation***

- 2.11 The recast Directive makes a number of changes to the regulatory framework surrounding interoperability. These have already been transposed for the Tunnel through the Railways (Interoperability) Regulations 2011 [S.I. 2011/3066] with the exception of the provisions relating to rail vehicle additional authorisation. It was not possible to transpose these requirements through this mechanism since the vehicle

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<sup>3</sup> Previously the Rail Safety and Standards Board.

<sup>4</sup> The “keeper” of a vehicle is defined as the person who owns it, or has a right to use it, and operates it as a means of transport.

additional authorisation provisions were originally contained within article 14 of the Railway Safety Directive (2004/49/EC). This was transposed through a bi-national regulation of the IGC and given effect by the Channel Tunnel (Safety) Order 2007. In view of the cross-border nature of the Tunnel, and to ensure consistency throughout the Tunnel infrastructure, the UK and French Governments have decided to implement the changes to the European authorisation provision through the bi-national regulation process. They are therefore intended to be part of the bi-national safety regulation, as amended, and are included in the Order.

- 2.12 Member States may still choose to apply additional authorisation, but the recast Directive places strict limits on the areas which a national safety authority (the IGC in respect of the Tunnel) can check to only those which are relevant to ascertain the vehicle's compatibility with the infrastructure on which it is intended to operate.
- 2.13 The options considered for vehicle authorisation for the Tunnel are considered in more detail in **Section 3**.
- 2.14 As these measures are designed to transpose European requirements, which the UK is obliged to implement as a result of its status as a Member State of the European Union, and wherever possible follow a minimal "copy out" approach, the Order does not fall within the scope of the Government's "**One In, One Out**" requirement.
- 2.15 It is noted that, with the exception of those rail vehicles which operate solely within the confines of the Tunnel concession area, rail vehicles which transit the Tunnel are already subject to similar transposing legislation already in force within Great Britain and France. Railway undertakings will therefore already be familiar with the requirements which the Order contains. Since it replicates, as far as possible, the provisions of the relevant Directives, it is not anticipated that the introduction of the Order will, in itself, create any new legislative or cost burdens on industry. However, this impact assessment nevertheless assumes no prior knowledge in order to assist understanding of its impacts for potential new entrants to the market.
- 2.16 The Order will directly impact upon the following groups who do, or may in future wish to, operate on Tunnel infrastructure:
- Safety authorities;
  - Freight wagon owners and operators;
  - Entities in charge of maintenance;
  - Railway undertakings and rolling stock leasing companies; and
  - Railway infrastructure owners/managers and those responsible for maintenance.

## **Purpose & Intended Effect**

### ***Common Safety Indicators***

- 2.17 The CSI Directive introduced amendments to Article 5(2) of the Railway Safety Directive requiring the introduction of common definitions of CSIs and methods to calculate the economic costs of accidents. CSIs are collected to help assess the achievement of common safety targets ("CSTs") which will, in future, define the minimum safety levels and safety performance that must at least be reached by the railway system in each Member State.
- 2.18 The CSI Directive included a revised Annex I to the Railway Safety Directive which has been recognised in the Order through the definition of CSIs. The amendments

are designed to improve data quality and consistency in reports from Eurostat (the statistical office of the European Union situated in Luxembourg) which provide the Commission with statistics at a European level to enable a comparison of safety performance between individual Member States and geographic regions. More detail about the changes can be found in **Section 3**.

### ***Freight Wagon Maintenance***

- 2.19 The purpose of the amendments is largely preparatory to create the legislative and administrative foundation on which the Commission's EU-wide certification system for freight wagon ECMs. This has now been introduced through European Regulation 2011-445<sup>5</sup> which came into effect in May 2012.
- 2.20 More specifically, the purpose of the Order is to:
- clarify and make transparent who is responsible for the maintenance of a railway vehicle by introducing the concept of an ECM; and
  - pave the way for a scheme for the certification of freight wagon ECMs.
- 2.21 The intended effect is to ensure that each ECM is registered on a National Vehicle Register ("NVR"), a database of rail vehicles operated in each Member State whose establishment is required under the recast Directive, and has a system in place for maintaining vehicles it is responsible for. This will provide assurance to the railway undertaking and the national safety authority<sup>6</sup> that the ECM is able to safely maintain the railway vehicle it is responsible for. Having this assurance will enable the railway undertaking to better control safety risks and costs. The presence of an ECM certificate will mean that it will no longer be necessary for the railway undertaking to carry out rigorous checking of wagons every time they are hauled as only simple visual safety check will subsequently be necessary.
- 2.22 It is anticipated that the introduction of the ECM concept and the certification scheme for freight wagon ECMs will help to make rail transport more competitive by reducing the administrative costs associated with establishing rail vehicle safety and preventing delays and/or bottlenecks.

### ***Vehicle Additional Authorisation***

- 2.23 "Additional authorisation" is the process which occurs when a rail vehicle has already received an authorisation to be placed in service in one Member State and the applicant wishes it to operate in a second Member State. The Recast Directive enables Member States to decide whether or not an additional authorisation is necessary within its territory. There are good reasons why a Member State might wish to make additional authorisation mandatory within its territory, for example, if the infrastructure or operating conditions differ significantly or there are additional safety issues which must be addressed. Previously, this would have involved requiring the applicant to go through a completely new authorisation process requiring independent third party assessment of the compatibility of the rail vehicle with common technical standards (technical specifications for interoperability or "TSIs") and any applicable national technical rules.

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<sup>5</sup> See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:122:0022:0046:EN:PDF>.

<sup>6</sup> "Safety authority" is defined in the Railway Safety Directive as meaning the national body entrusted with the tasks regarding railway safety in accordance with that Directive or any bi-national body entrusted by Member States with these tasks to ensure a unified safety regime for specialised cross-border infrastructures. The IGC performs this function for the Tunnel.

- 2.24 However, since conformity with many of these standards, and TSIs in particular, will have already been assessed during the initial authorisation process and would not be relevant to the additional authorisation, the recast Directive places restrictions on those areas which the national safety authority (the IGC for the Tunnel) can check during the process to only those issues which affect the technical compatibility of the rail vehicle with the infrastructure on which it is intended to operate. The measure is designed to avoid duplication and unnecessary costs.
- 2.25 The Directive also provides that, in the absence of a decision of the safety authority within specified time limits, authorisation is deemed to have been granted. This provision is intended to remove unnecessary delays and is reflected in the Order.

### 3. Background

#### Problems addressed

- 3.1 Different national procedures in the EU for the approval of railway vehicles can hinder the free movement of trains. Railway undertakings assert that these procedures can be bureaucratic and expensive when vehicles are placed in service. Vehicle keepers have identified that meeting multiple maintenance regimes of different railway undertakings is onerous and expensive, a barrier to the creation of new railway undertakings in the freight sector and a stumbling block affecting the interoperability of the European rail system. As no Member State has the power to determine unilaterally that the operating authorisation it has issued will be valid in another Member State, an EU-wide initiative is being taken to harmonise and simplify existing national procedures. The ROGS (Amendment) Regulations implement European provisions that are part of the solution to this problem for mainland GB but the bi-national nature of the Tunnel means that it is best to progress transposition separately.

#### *The Position in the Tunnel*

- 3.2 The problem involves<sup>7</sup>:

- 1,732 UK-registered international wagons (i.e. registered in the UK to travel through the Tunnel); and
- 6,477 foreign-registered international wagons (i.e. registered outside the UK for travel through the Tunnel).

According to figures from the Railway Industry Monitor there were 21 billion tonne/km of rail freight traffic in the UK in total during 2008.

The Tunnel has one infrastructure manager (Eurotunnel) and four railway undertakings currently authorised to operate services (Eurostar, EWSI, DB Schenker UK Ltd and Europorte Channel). Using a typical railway undertaking as an example, four types of checks on wagons it does not own are usually carried out:

- supplier assurance (in accordance with Railway Group Standard GT/RT2450);
- documentation review of certification and a detailed examination of the maintenance records/arrangements;
- fitness-to-run examination (a detailed examination of the vehicle); and

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<sup>7</sup> Source: UK Rolling Stock Library; as a comparator, there are 19,319 UK-registered wagons which are only used for domestic transport.

- Level 1 traffic examination (a visual check of the vehicle to ensure that it is safe to operate).

3.3 A supplier assurance audit could take two person-days to conduct; a documentation review could take between half to two person-days; a fitness-to-run examination could take between 10 and 50 person-days depending on the level of intervention, which would be determined by the supplier assurance and documentation review. The introduction of an ECM certification regime would mean that the railway undertaking could benefit by not having to conduct the supplier assurance audit, documentation review or the fitness-to-run examination. If the keeper leasing or hiring out a wagon to the railway undertaking presented them with an ECM Certificate, the railway undertaking would only need to carry out a Level 1 traffic examination prior to operating the vehicle. This is likely to result in significant cost and time savings for the railway undertaking.

### ***The Position in Europe***

3.4 COTIF stated in 2006 that wagon keepers were no longer obliged to register their vehicles with a railway undertaking. This led to representatives of the freight wagon community lobbying the EU to change the Railway Safety Directive to introduce a system that would help provide assurance of the safety of freight wagons across EU Member States. In October 2006 a working group<sup>8</sup> was set up by the European Commission (“the Commission”) to look at ways to clarify the role of the keeper of wagons and the maintenance of wagons. It consisted of representatives from the freight community, national safety authorities, Member States and the European Railway Agency (“ERA”)<sup>9</sup>. The UK (represented by the Office of Rail Regulation (“ORR”)) was active in the group and strongly expressed a desire for the person or body responsible for maintenance to be defined in the same way ‘contracting entity’ is defined in the Railways (Interoperability) Regulations 2006.

3.5 Across the EU, the problem concerns<sup>10</sup> a total of:

- 536 contracting parties, which include 83 railway undertakings, 354 private wagon keepers and 99 railway undertakings who are also wagon keepers; and
- 705,168 declared wagons of which 201,698 are owned by private wagon keepers.

### **Objectives**

3.6 The following objectives have been set by the Department:

- ensure any amendments to the Tunnel legislation are compliant with European legislation and follow a minimal “copy out” approach;
- recognise common maintenance regimes compliant with European legislation; and
- establish provisions in preparation for the introduction of the European certification regime for freight wagon ECMs.

### **The CSI Directive**

3.7 Article 5(2) of the Railway Safety Directive (as amended) requires the revision of Annex I to include common definitions of the CSIs and methods to calculate costs of accidents. CSIs are collected to help assess the achievement of common safety

<sup>8</sup> Working Group Final Report – See ‘References’ section above for web link.

<sup>9</sup> ERA has been established to provide EU Member States and the Commission with technical assistance in the fields of railway safety and interoperability.

<sup>10</sup> 2007 figures from Working Group Final Report – See ‘References’ section above for web link.

targets (“CSTs”). CSTs will, in future, define the minimum safety levels and safety performance that must at least be reached by the railway system in each Member State.

- 3.8 ERA has been working with national safety authorities to define the CSIs listed in Annex I and the CSI Directive reflects the outcome of these discussions.
- 3.9 The CSI Directive contains the amended Annex I to the Railway Safety Directive. It aims to improve reporting and data quality and consistency in Eurostat (the statistical office of the European Union situated in Luxembourg) data. It provides the Commission with statistics at a European level to enable a comparison of safety performance between individual Member States and geographic regions).
- 3.10 The 2007 Order contained CSIs that related to the costs of accidents borne by the railway. The revisions change the emphasis of CSIs from the impact of accidents on the railway to the impact of accidents on society. The aim of this amendment is to assist measurement of safety performance and make the economic impact assessment of CSTs more effective.
- 3.11 Since the CSI Directive simply amends the methodology and format of calculation for statistics which are already collected, its implementation does not represent any additional resource or cost impact (indeed, administrative provisions have already been put in place to ensure data is recorded in the new format in advance of transposition), but it benefits duty holders and ORR by providing data collected on a consistent basis across the EU which can then be used to inform policy development.

#### **Directive on vehicle maintenance (2008/110/EC)**

- 3.12 The nature of the problem identified above, and the objectives set suggested that an EU-wide approach was more appropriate.
- 3.13 The outcome of industry lobbying was a consultation by the Commission in early 2006. Responses to the consultation favoured a Commission initiative. Non-legislative options considered included:
  - close monitoring of the use of the mutual recognition principle and, where appropriate, launch of infringement procedures; and
  - assigning ERA the role of coordinating parallel acceptance procedures.
- 3.14 In December 2006, the Commission<sup>11</sup> tabled a package of revisions to the Common Transport Policy. The driving force behind these revisions was to improve cross-acceptance for freight wagons. This is to allow free movement of rail services in an integrated common railway area. The legislative package included amendments to the Railway Safety Directive, in the form of the Directive on vehicle maintenance (and also a recast Railway Interoperability Directive (2008/57/EC)).
- 3.15 The Directive on vehicle maintenance establishes a common system for maintenance arrangements across EU Member States. Under its requirements, all vehicles need to be assigned an ECM before they are placed in service or used on the network. The ECM must be registered on the NVR of the Member State in which it is first placed in service. The ECM must also establish a system of maintenance, which ensures that the vehicles for which it is responsible are safe to run on the network.

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<sup>11</sup> European Commission explanatory memorandum and impact assessment – See ‘References’ section above for web link.



- 3.16 In respect of the maintenance of freight wagons only, the ECM will need to hold an ECM certificate. The ECM certificate will provide assurance that the maintenance requirements of the Directive on vehicle maintenance are being met for any freight wagon for which the ECM has responsibility.

### **Vehicle Additional Authorisation**

- 3.17 As noted in **paragraph 3.14**, the revisions to the Common Transport Policy, including amendments to the additional authorisation provisions, are designed to facilitate the free movement of rail vehicles across borders. Whilst the European rail network is moving towards harmonisation through the introduction of common harmonised standards and assessment processes, there remains significant divergence between individual Member States' networks. The Commission has recognised this issue but the recast Directive ensures that, where additional authorisation is applied, the checks that a national safety authority can make are limited solely to those areas which relate to the compatibility of the rolling stock with the infrastructure on which it is intended to operate and that a decision is made in good time.

## **4. Options**

### **Option 1: Do nothing**

- 4.1 A "do nothing" option would result in the UK failing to meet its European Union treaty obligations through failure to transpose the requirements of European law. The existing, un-amended, legislative regime would remain in place for the Tunnel which would be out of step with both mainland Great Britain and France where these provisions are already in place and with practice in other European Union countries.
- 4.2 Although there would be no associated costs related to this option, it would result in a failure to realise the benefits which the legislation is designed to deliver and leave the UK at substantial risk of infraction (fines) by the Commission. Doing nothing would maintain in place a vehicle authorisation regime in the Tunnel that train operators, manufacturers and neighbouring infrastructure managers have identified<sup>12</sup> as a key barrier to developing services via the Tunnel. It would also result in legal uncertainty for operators seeking to run services through the Tunnel as the provisions for the Tunnel would be out of step with the system in place elsewhere across the European Union.

### **Option 2: Transpose by bi-national regulation**

- 4.3 Due to the method chosen to transpose the original Railway Safety Directive for the Tunnel, and the cross-border nature of the Tunnel, this is the best option for implementation at the present time which also meets the UK Government's obligations under European Union law.

#### **Costs**

- 4.4 The only costs envisaged as a result of the introduction of the Order are those associated with the familiarisation of stakeholders with the revised requirements. Only a limited number of railway undertakings are currently authorised to operate in the Tunnel, and the IGC has confirmed that in fact only one ECM, Eurotunnel, is likely to need to familiarise itself with the new requirements (as all other ECMs will be familiar with them due to their current operations within either the United Kingdom or

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<sup>12</sup> IGC Market Monitoring Survey (2012).

France). It is therefore expected that the costs of the draft Order will be materially very small and have therefore been classed as negligible (£576 assuming a middle manager earning £15.01 per hour<sup>13</sup> (multiplied by 1.60 for on costs) taking three days (24 hours) to become entirely familiarised with the legislation. These are one-off costs in the first instance. Since the requirements for the certification of freight wagon ECMs are contained in other legislation, the costs of certification will be assessed in a separate impact assessment.

- 4.5 The introduction of the Order will not result in any material impact on cost for an ECM to be identified in the NVR<sup>14</sup> and for an ECM to establish a maintenance system since these requirements are already in place as a result of other legislation.
- 4.6 The IGC does not charge industry on a per authorisation basis but these costs (and all other IGC expenses) are funded by Eurotunnel through its concession agreement. Any costs to industry would be incurred largely through the employment of an independent third party, a “notified body”, which undertakes conformity assessments but the recast Directive minimises these as far as possible if the rolling stock is otherwise in conformity with the relevant TSIs. These costs have been assessed as negligible since the rolling stock will already have been checked for conformity with the vast majority of the relevant standards during the first authorisation process.

#### ***Existing arrangements for the NVR***

- 4.7 The requirement to assign an ECM to a vehicle and register it as such in an NVR complements mandatory provisions already in force. Details must be recorded in the NVR of the European Union Member State where the vehicle was first authorised as well as information on which other Member States it is authorised to operate. European Commission Decision 2007/756/EC (as amended by Decision 2011/107/EU) includes a common specification for all NVRs which are managed the relevant Member State.
- 4.8 Great Britain already has a comprehensive rolling stock library which plays an integral role in the management of access to, and operations on, the rail network and is overseen by ORR. Train and freight operating companies are therefore already accustomed to providing detailed information about their vehicles since failure to do so generally means that these cannot be granted operational status.
- 4.9 The information that must be recorded in the NVR in relation to ECMs is basic and concerns only contact details and covers name, postal and e-mail addresses and registered business number. These requirements have been added to the list of other pieces of information already requested and E
- 4.10 CM details for all existing trains and freight wagons has already been recorded in the NVR (in respect of the Tunnel, either the GB or French NVRs; a separate NVR will not be established for the Tunnel itself). Since a statutory obligation to provide this data already exists in other legislation, the Order creates no new regulatory burdens or costs in this respect.

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<sup>13</sup> Annual Survey of Hours and Earnings.

<sup>14</sup> The Recast Directive requires Member States to establish a register of basic information about all rail vehicles which are operated in their territories. NVRs are operated and maintained by Registration Entities, a function performed in Great Britain by Network Rail Infrastructure Limited.

### ***Existing arrangements for a system of maintenance***

- 4.11 The requirement for an ECM to ensure that, by means of a system of maintenance, any vehicle for which it has responsibility is safe to run formalises measures already in place either through legislation or administratively in Great Britain as follows:
- a) Sections 2 and 3 of the Health and Safety Act Work etc Act 1974 require duty holders to do all that is reasonably practicable to conduct their undertaking safely. Implicit in this will be the requirement to maintain railway vehicles.
  - b) Regulation 5(1)(d)(i) of ROGS requires that a duty holder has a safety management system that ensures the control of risks relating to the supply of maintenance and material. The safety management system is established to ensure that it conforms to relevant national safety rules and relevant safety requirements laid down in Technical Specifications for Interoperability (“TSIs”).
  - c) Railway Group Standard GM/RT 2004 has been used by the railway industry to demonstrate that they comply with the requirement to keep vehicles for which they are responsible safely maintained.
  - d) It is a condition of an operator’s licence issued under section 8 of the Railways Act 1993 (as amended) to comply with Railway Group Standards that are applicable to its licensed activities.
  - e) Under section 4.2.8 of the TSI for freight wagons (Commission Decision 2006/861/EC, as amended) all maintenance activities undertaken on freight wagons must be performed in accordance with the provisions of the TSI.
- 4.12 The Department considers that the regulatory burden created by the requirements of the Order are negligible since railway undertakings are already required to comply with the new obligations it creates in respect of the other countries in which they operate, including mainland GB and France. Aside from the costs of familiarisation with the Order, it is envisaged that no other new costs will be created for business as a result of its coming into force.

### ***Existing arrangements for additional authorisation***

- 4.13 Any train operator wishing to operate trains through the Tunnel must currently get its rolling stock authorised by three, NSAs: ORR for UK territory, the IGC for the Tunnel and EPSF, the French national safety authority, for French territory.
- 4.14 The Order does not make any changes to these arrangements although consideration has been given to allow the existing national safety authorities (ORR and EPSF) to replace the IGC as the national safety authority for the Tunnel. However, this option has been rejected at this time since it would result in two authorisations being required for the same infrastructure and the possibility of the introduction of inconsistent regimes for the British and French halves of the Tunnel.
- 4.15 However, the Order will introduce the provisions of the recast Directive which strictly limit the ability of the safety authority, the IGC, to check the conformity of vehicles to only those which are relevant to ascertain the vehicles compatibility with the Tunnel infrastructure. Since a vehicles’ conformity to with TSIs and the other standards to which it has been built will already have been assessed by an independent third party during the first notification, this measure is designed to avoid duplication and unnecessary costs if mandatory additional authorisation is applied. Given these limits, we might expect additional authorisation costs for the Tunnel to be reduced but it is impossible to quantify these savings since the size and scope of an authorisation

depends on the size and scope of the works being undertaken. The Order will also impose strict time limits on the length of the authorisation process.

- 4.16 The Department believes the new provisions represent a significant improvement to the legislation concerning vehicle authorisation for the Tunnel which should, in turn, lead to the establishment of clearer requirements and a more efficient authorisation process to that which is currently in place.

### ***Benefits***

- 4.17 The major benefit of introducing the Order is that it will assist in the achievement of consistency of approach to rail vehicle maintenance across the European Union, in particular by assisting railway undertakings to better control safety risks and costs. These will be further enhanced once the certification scheme for freight wagon ECMs becomes fully operational in 2013. For freight wagon keepers, it will reduce the need to meet different maintenance requirements of different railway undertakings when transiting through the Tunnel. For the railway undertaking, it will provide assurance that there is a suitable maintenance regime in place for any vehicles it hauls. It will also help to increase competition and the flow of rail traffic by reducing the potential barriers for new entrants to the market.
- 4.18 Implementing the CSI Directive will also benefit the Department, duty holders and ORR through the collection of more accurate data on safety performance, which can then be used to inform policy development.
- 4.19 Finally, the changes to the additional authorisation regime will reduce duplication, unnecessary costs and delays.

### **Option 3: Transpose by extending the scope of national measures**

- 4.20 As noted above, in view of the cross-border nature of the Tunnel and to ensure consistency throughout Tunnel infrastructure, the UK and French Governments have decided to implement the amendments to the European authorisation provision through the bi-national regulation process. They are therefore intended to be part of the safety bi-national regulation, as amended, and are included in the Order.
- 4.21 In theory, pursuing this option could allow the UK to make additional authorisations for the UK half of the Tunnel voluntary. However, given that our clear understanding is that the French government would maintain mandatory additional authorisations for its half, introducing voluntary arrangements in the UK half would not result in any practical benefits for applicants for authorisations. This is because without an authorisation from IGC or another French authority for the French half the ability to operate in the UK half only would be practically worthless.
- 4.22 In essence the only variance with **Option 2** is the fact that, under **Option 3**, there is a greater risk of inconsistency in the implementation of the European safety and interoperability regimes. That difference is extremely difficult to assess and the costs and benefits are considered to be identical to those of **Option 2**.

## **5. Summary of preferred option**

- 5.1 **Option 2** is preferred since it ensures that the provisions of the Directives are transposed for the Tunnel whilst recognising the bi-national governance of the Tunnel infrastructure. This choice is based on legal and practical considerations and not on monetary costs and benefits which are assessed as being identical with **Option 3**.

## 6. Statutory Review

- 6.1 The Government's policy is that there should be a statutory obligation on the Secretary of State to review, no later than five years after coming into force, regulations implementing European Union obligations. The Order therefore contains provision requiring that within five years of the Order coming into force, the Secretary of State must review its provisions and publish the conclusions. In undertaking the review, the Secretary of State must, so far as is reasonable, have regard to how the Directives are implemented in other Member States. It is intended that this will be achieved through a survey of stakeholders in tandem with similar provisions in the relevant domestic implementing instrument and to gather evidence through workshops and questionnaires.
- 6.2 The Post Implementation Review Plan (at **Annex 1**) sets out more information about the proposed review which the Department expects will take 0.33 person-years to complete. The estimated costs of the review, including the required publication of the results as a Command Paper, will be around £24,000<sup>15</sup>.
- 6.3 The benefits of a Ministerial duty to review the Order are that it will assist to:
- prevent over-regulation;
  - ensure the Order is working as intended;
  - determine whether the assessment of impacts was accurate; and
  - assess where burdens on business and others might be further reduced.

## 7. Specific impact tests

- 7.1 The Department has considered the potential impact of the Order on the following areas in line with relevant guidance. No specific disproportionate impacts have been identified given the nature of the proposed measure.

### *Equality*

- 7.2 The Order does not create any disproportionate impacts on protected characteristics under the Equality Act 2010.

### *Competition*

- 7.3 The Order is unlikely to have a material impact on competition in the UK rail industry, although it is intended to assist in the development of international railways by harmonising and simplifying the regulatory regimes across Europe. Among other issues, the Order's provisions are a precursor to the introduction of a broader certification regime for freight wagon ECMs which is likely to have a positive impact on competition in the UK and European rail freight markets. In particular, this will reduce barriers to entry for firms wishing to operate across national borders by increasing confidence in an ECM's ability to control the process of freight wagon maintenance.
- 7.4 The Directives which the Order transposes are specifically designed to apply in a non-discriminatory manner to all infrastructure managers and railways undertakings. The Order reflects this transparent and non-discriminatory approach.

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<sup>15</sup> This assumes: salary of £42,491; on costs multiplied by 1.58; full time equivalent required is 0.33; an additional £2,000 for publication of the Command Paper.

### ***Impact on Small Firms***

- 7.5 The Order applies only to those companies operating, or seeking to operate, through the Tunnel (currently Eurostar, EWSI, Europorte Channel and DB) and does not go beyond what is required to transpose European requirements with which these companies would, in any event, have to comply – in a coherent manner for the Tunnel environment.
- 7.6 The Order is therefore not applicable to any small firms and this impact assessment indicates that it will not create any new regulatory costs or burdens on business beyond familiarisation with its requirements.

### ***Greenhouse Gas***

- 7.7 The Order does not have a material impact on greenhouse gas emissions. However, the broader introduction of a harmonised approach to rail vehicle maintenance across the European Union should facilitate easier cross-boarder rail traffic, which in turn may encourage the movement of traffic and particularly freight from the roads onto the rail network. This may result in environmental benefits from lower carbon emissions.

### ***Wider Environmental Impact***

- 7.8 The Order does not have a material impact on the wider environment (although it is noted that the CSI Directive requires a separate assessment of the costs of restoring any damage to the environment which must be included in any evaluation of the overall cost of an accident).

### ***Health & Well Being***

- 7.9 Major incidents in the Tunnel are rare, but when they occur, they have the potential to cause a large impact on the confidence of users. In addition, they can lead to injuries and fatalities as well as physical disruption of the railway. Indirectly, such incidents can also undermine public confidence in the operation of the railways. Implementing the measures in the Order is likely to provide further assurance that safety risks are being managed appropriately, in accordance with mature, proportionate and well-understood European requirements.

### ***Human Rights***

- 7.10 The proposal has no human rights implications.

### ***Justice Impact***

- 7.11 The Ministry of Justice has agreed that no new impacts will be created on the justice system since the offences of placing in service of using a vehicle without an ECM being assigned to it and registered in the NVR and an ECM that does not ensure that a vehicle it is responsible for has been maintained in a safe condition and is safe to run on the network (Articles 55A and 55B of the schedule to the draft Order) are already in place for the rest of the United Kingdom. The Office of Rail Regulation is the enforcing authority for the UK half of the Tunnel.

### ***Rural Proofing***

- 7.12 The Order applies only in relation to the Tunnel environment and therefore does not have any material impact on rural communities.

### ***Sustainable Development Impact***

- 7.13 The Order does not have a material impact on sustainable development. However, it is a precursor to the introduction of a broader certification regime for freight wagon ECMs which is likely to have a positive impact on competition in the UK and European rail freight markets.
- 7.14 A more competitive rail transport sector will also help the European Union to fulfil its commitments with regard to sustainable development and the struggle against climate change<sup>16</sup>. A consistent approach to rail vehicle maintenance across Europe should allow for easier cross-border rail traffic, which may in turn encourage the movement of freight traffic in particular from the roads onto the rail network. This would result in environmental benefits from lower carbon emissions.

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<sup>16</sup> European Commission Explanatory Memorandum – see “References”.

## **Annex 1: Post Implementation Review (“PIR”) Plan**

### **Basis of the review:**

The Order contains a requirement to review the implementation of the bi-national regulation as it applies to the British half of the Tunnel five years from the date on which the Order came into force. See **Section 6** of this impact assessment for more information.

### **Review objective:**

It is intended that a proportionate check of the Order’s provisions will be undertaken to ensure they are operating as intended.

### **Review approach and rationale:**

It is intended that the review will consider each of the Order’s provisions in turn and determine whether they have been implemented successfully in practice. It is noted that there are likely to be additional changes, arising from amendments to the overarching European legislative framework within the review period which would necessitate further amendments to the Order.

Given the minor amendments which the Order contains which are driven by European requirements and transposed following a “copy out” approach, it is anticipated that an initial desktop review will be the most appropriate vehicle to commence the review. This will involve the collation and updating of existing evidence on the operation of the Order, seeking new material from regulatory bodies, and an approach to stakeholders for additional information in the form of workshops and questionnaires.

### **Baseline:**

The baseline position is the introduction (in 2012) of the requirement to assign an entity in charge of maintenance (“ECM”) to a railway vehicle; to ensure that the ECM is registered on the National Vehicle Register; and for the ECM to ensure that the rail vehicles for which it is responsible are safely maintained through a system of maintenance.

### **Success criteria:**

Success criteria for the Order will be to demonstrate that:

- (a) the amendments have a positive or neutral impact on business costs; and
- (b) Standards of safety are maintained, and where possible, improved.

### **Monitoring information arrangements:**

The Department’s approach to maintaining health and safety on Britain’s railways is to ensure that the industry manages risks satisfactorily, and continuously improves its health and safety performance as far as is reasonably practicable. The Office of Rail Regulation, as the independent health and safety regulator for Great Britain, monitors the safety performance of duty holders and investigates incidents and complaints to find out why failures have occurred and if the law has been broken.

The Intergovernmental Commission also has responsibilities in its role as the national safety authority for the Tunnel and will be a key partner in providing evidence to support the review.

### **Reasons for not planning a review:**

Not applicable.



## Annex 2: Glossary of Terms

<b>Commission</b>	-	European Commission
<b>COTIF</b>	-	Convention on International Carriage by Rail
<b>CSIs</b>	-	Common Safety Indicators
<b>CSI Directive</b>	-	Directive 2009/149/EC
<b>CSTs</b>	-	Common Safety Targets
<b>Directive on Vehicle Maintenance</b>	-	Directive 2008/110/EC
<b>DRS</b>	-	Direct Rail Services
<b>ECM</b>	-	Entity in Charge of Maintenance
<b>ERA</b>	-	European Railway Agency
<b>EU</b>	-	European Union
<b>IGC</b>	-	Intergovernmental Commission
<b>NSA</b>	-	National Safety Authority
<b>NVR</b>	-	National Vehicle Register
<b>Order</b>	-	Channel Tunnel (Safety) Order
<b>ORR</b>	-	Office of Rail Regulation
<b>PWF</b>	-	Private Wagon Federation
<b>PWRA</b>	-	Private Wagon Registration Agreement
<b>Railway Safety Directive</b>	-	Directive 2004/49/EC
<b>Recast Directive</b>	-	Directive 2008/57/EC (Railway Interoperability)
<b>Regulation 445/2011</b>	-	Certification system for freight wagon ECMs
<b>ROGS</b>	-	Railways and Other Guided Transport Systems (Safety) Regulations 2006 [S.I. 2006/599]
<b>RSSB</b>	-	Previously the Rail Safety & Standards Board
<b>Treaty</b>	-	Treaty of Canterbury 1986
<b>TSIs</b>	-	Technical Specifications for Interoperability
<b>Tunnel</b>	-	Channel Tunnel

### Consultee List

The following organisations have been directly invited to respond to this consultation:

Abellio  
Advanced Transport Systems  
AEA Technology Plc  
Aggregate Industries  
Alcan Primary Metal Europe  
Alcan Smelting & Power UK  
Alstom Transport Ltd  
Amey Plc  
Angel Trains  
Arriva  
ASLEF  
Association of Community Rail Partnerships  
Association of London Government  
Association of Train Operating Companies  
Atkins Rail  
Axiom Rail  
Babcock Rail  
Balfour Beatty plc  
Bombardier Transportation  
Brett Aggregates Ltd  
British Chambers of Commerce  
British International Freight Association  
British Ports Association  
British Transport Police  
Campaign for Better Transport  
Carillion Rail  
Channel Tunnel Intergovernmental Commission (IGC)  
Chartered Institute of Logistics & Transport  
Chiltern Railway Company Ltd  
Civil Aviation Authority  
Colas Rail Ltd

Commission for Integrated Transport  
Confederation of British Industry  
Confederation of Passenger Transport UK  
Correl Rail Ltd  
Corus Construction & Industrial  
Crossrail  
D B Schenker  
DeltaRail  
Department for Regional Development Northern Ireland  
Direct Rail Services Ltd  
Equality & Human Rights Commission  
Eurostar International Ltd  
Eurotunnel  
Eversholt Rail  
Faiveley  
Federation of Small Businesses  
First Group plc  
Freightliner Ltd  
FS Life  
GB Railfreight Ltd / Europorte  
Go-Ahead Group /Govia  
Grand Central Railway Company Ltd  
Halcrow Group Limited  
Harsco  
Health and Safety Executive  
Health and Safety Executive (NI)  
Heritage Railway Association  
Hitachi Europe Ltd  
HS1 Ltd  
Hunslett-Barclay  
Institution of Civil Engineers  
Institution of Engineering and Technology  
Institution of Mechanical Engineers  
Institution of Occupational Safety & Health  
Institution of Railway Signal Engineers

Interfleet Certification Ltd  
Jarvis Rail  
Keolis UK Ltd  
Lafarge Cement  
Lafarge Redlands Aggregates Ltd  
Lloyd's Register Rail Ltd  
Local Government Association  
London Travel Watch  
LuxControl  
Marcroft Engineering Ltd  
Modern Railway Magazine  
Mott MacDonald Railway Approvals  
NACCO (UK) Ltd  
National Express  
National Specialist Contractors Council  
National Union of Rail, Maritime and Transport Workers (RMT)  
Network Rail  
Office of Rail Regulation  
Parliamentary Advisory Council for Transport Safety  
Parry Associates  
Passenger Focus  
Passenger Transport Executive Group  
Plasmor Ltd  
Plasser  
Porterbrook Leasing Company Ltd  
Praxis HIS Ltd  
Praxis Rail  
Pre Metro Operations Ltd (Stourbridge)  
Private Wagon Federation  
Quintec Assoc Ltd  
Rail Accident Investigation Branch  
Rail Freight Group  
RSSB (previously the Rail Safety and Standards Board)  
Railfuture  
Railway Approvals Ltd

Railway Gazette International  
Railway Industry Association  
Railway Magazine  
Riviera Trains Ltd  
Scientifics Ltd  
Serco Rail Group  
Siemens Transportation Systems Ltd  
Signalling Solutions Ltd  
Standard Car & Truck  
STVA UK Ltd  
Tarmac National Contracting  
Trade Union Congress  
Transport for London  
Transport Research Laboratory  
Transport Salaried Staffs Association  
Transport Scotland  
UK Accreditation Service  
UK Major Ports Group Ltd  
Unite the Union (inc. TGWU)  
Venice-Simplon Orient Express Ltd  
Virgin Trains  
Volker Rail Group  
VTG Rail UK Ltd  
W H Davis Ltd  
Wabtec Rail Ltd  
Welsh Assembly Government

## Glossary

<b>2007 Order</b>	Channel Tunnel (Safety) Order 2007
<b>Commission</b>	European Commission
<b>CSI Directive</b>	Directive 2009/149/EC
<b>CSIs</b>	Common Safety Indicators
<b>Department</b>	Department for Transport
<b>DPA</b>	Data Protection Act 1998
<b>Draft Order</b>	Channel Tunnel (Safety) Order 2012
<b>ECM</b>	Entity in Charge of Maintenance
<b>FOIA</b>	Freedom of Information Act 2000
<b>IGC</b>	Intergovernmental Commission
<b>Recast Railway Interoperability Directive</b>	Directive 2008/57/EC (as amended)
<b>NVR</b>	National Vehicle Register
<b>RIR 11</b>	Railways (Interoperability) Regulations 2011
<b>Railway Safety Directive</b>	Directive 2004/49/EC (as amended)
<b>TEN</b>	Trans-European Network
<b>Treaty</b>	Treaty of Canterbury 1986
<b>TSIs</b>	Technical Specifications for Interoperability
<b>Tunnel</b>	Channel Tunnel
<b>UK</b>	United Kingdom

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