

2007 No. xxx

CHANNEL TUNNEL

HEALTH AND SAFETY

The Channel Tunnel (Safety) Order 2007

Made - - - - - 2007

Laid before Parliament 2007

Coming into force in accordance with article 1(1)

CONTENTS

1. Citation, commencement and extent
2. Interpretation
3. Regulation has the force of law
4. Enforcement of the Regulation
5. Access to training facilities
6. Civil liability
7. Investigations into accidents and incidents
8. Power to impose charges
9. Amendments to the Channel Tunnel (International Arrangements) Order 2005
10. Amendment to the Railways and Other Guided Transport Systems (Safety) Regulations 2006

**SCHEDULE — REGULATION OF THE INTERGOVERNMENTAL COMMISSION
ON THE SAFETY OF THE CHANNEL FIXED LINK**

- Chapter 1 - Definitions (article 1)
- Chapter 2 - Duties and responsibilities (articles 2 to 21)
 - Safety Authority (articles 2 to 10)
 - Infrastructure manager (articles 11 to 13)
 - Railway undertakings (articles 14 to 15)
 - Annual safety report (article 16)
 - Unified safety rules (articles 17 to 21)
- Chapter 3 - Safety management systems, safety authorisation of Concessionaires and Part B certification of railway undertakings (articles 22 to 55)
 - Safety management systems (articles 22 to 26)
 - Safety authorisation for the Concessionaires (articles 27 to 38)

- Part B certification for railway undertakings (articles 39 to 55)
- Chapter 4 - Specific provisions for training of train drivers and staff performing vital safety tasks
 - Access to training facilities (articles 56 to 60)
- Chapter 5 - Provisions relating to rolling stock
 - Authorisation of railway undertakings' in-use rolling stock (articles 61 to 66)
- Chapter 6 - Investigations into accidents and incidents (articles 67 to 72)
- Chapter 7 - Transitional and miscellaneous provisions (articles 73 to 77)
 - Transitional provisions on safety authorisation and Part B certificates (articles 73 and 74)
 - Miscellaneous provisions (articles 75 to 77)
- Annex 1 - Safety Management Systems
- Annex 2 - Common Safety Indicators

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by section 11(1) (a) and (g), (2) (a) and (b), and (3) (a), (b), (c) and (f) of the Channel Tunnel Act 1987(a).

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Channel Tunnel (Safety) Order 2007 and comes into force on the date on which the Regulation comes into force in accordance with article 77 of the Regulation. That date will be notified in the London, Edinburgh and Belfast Gazettes.
- (2) Subject to paragraph (3), this Order does not extend to Northern Ireland.
- (3) The following articles of this Order extend to Northern Ireland—
 - (a) article 3, but only in so far as it relates to article 75 of the Regulation; and
 - (b) article 9.

Interpretation

2. In this Order—

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

“contravention” includes failure to comply;

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

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

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

(a) 1987 c.53. The Department for Transport is the Government Department concerned with the subject matter of this Order. The Secretary of State for Transport being the Minister in charge of this Department is, in accordance with section 13(1) of this Act, the “the appropriate Minister” referred to in section 11.

(b) 1974 c.37.

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

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

Regulation has the force of law

3. The Regulation has the force of law.

Enforcement of the Regulation

4.—(1) Subject to paragraphs (5) and (6), it is the duty of the Office of Rail Regulation to make adequate arrangements for the enforcement of the Regulation and accordingly a reference to the enforcing authority in the provisions applied for this purpose by paragraphs (2) and (3) is to be construed as a reference to the Office of Rail Regulation.

(2) Subject to paragraph (4), the provisions of the 1974 Act specified in paragraph (3) apply for the purposes of the enforcement of the Regulation as if it was within the meaning of “health and safety regulations” as defined in section 15(1) (b) of that Act.

(3) The provisions of the 1974 Act referred to in paragraph (2) are—

- (a) sections 19 and 20 (appointment and powers of inspectors)(c);
- (b) sections 21 and 22 (improvement and prohibition notices)(d);
- (c) section 23 (provisions supplementary to sections 21 and 22)(e);
- (d) section 24 (appeal against improvement or prohibition notice)(f);
- (e) section 25 (power to deal with cause of imminent danger);
- (f) section 26 (power to indemnify inspectors);
- (g) section 28 (restrictions on disclosure of information)(g);
- (h) sections 33 to 42 (provisions as to offences)(h); and

-
- (a) Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty February 1986. Now published as Treaty Series No. 15 (1992), Command Paper 1827.
 - (b) Section 15(1) was amended by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 6; it was also amended by S.I. 2002/794, article 5(2) and Schedule 2.
 - (c) Section 20(7) was amended by the Civil Partnership Act 2004 (c.33), section 261(1) and Schedule 27, paragraph 49.
 - (d) Section 22(1) and (2) was amended by the Consumer Protection Act 1987 (c.43), section 3 and Schedule 3. Section 22(4) was substituted by the Consumer Protection Act 1987, section 3 and Schedule 3.
 - (e) Section 23(4) was amended by the Fire and Rescue Services Act 2004 (c.21), section 53(1) and Schedule 1, paragraph 44, and by S.I. 2005/1541, article 53(1) and Schedule 2, paragraph 9.
 - (f) Section 24 (2) and (4) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2) (a).
 - (g) Section 28(3) and (5) were amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 30(6) and Schedule 24; by the Water Act 1989 (c.15), section 190 and Schedule 25, paragraph 46; and by S.I. 2004/3363, article 5(1) and (2). Section 28(4) was amended by the Environment Act 1995, section 120 and Schedule 22, paragraph 30(6) (e). Section 28(9) was inserted by the Employment Protection Act 1975 (c.71), section 116 and Schedule 15, paragraph 9. Section 28(9A) was inserted by S.I. 2004/3363, article 5(1) and (4). There are other amendments to section 28 not relevant to this Order.
 - (h) Words omitted in 33(1) (c) were repealed by the Employment Protection Act 1975 (c.71), sections 116 and 125(3) and Schedule 15, paragraph 11, and Schedule 18. Section 33(1) (h) was amended by the Consumer Protection Act 1987, section 36 and Schedule 3. Words omitted in section 33(1) (m) were repealed by the Forgery and Counterfeiting Act 1981 (c.45), section 30 and Part 1 of the Schedule. Section 33(1A) and (2A) were inserted by the Offshore Safety Act 1992 (c.15), section 4(2), (3) and (6). Maximum fine referred to in section 33(2) increased by the Criminal Law Act 1977 (c.45), section 31 and Schedule 6 and converted to a level on the standard scale by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 33(3) was amended by the Offshore Safety Act 1992, section 4(4) and (6), and by the Magistrates Courts Act 1980 (c.43), section 32(2). Section 33(5) was repealed by the Offshore Safety Act 1992, sections 4(5), (6), and 7(2), and Schedule 2. Section 33(6) was repealed by the Forgery and Counterfeiting Act 1981, section 30 and Part 1 of the Schedule. There are amendments to section 34 not relevant to this Order. Section 38 was amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 30(7).

- (i) section 46 (service of notices).
- (4) For the purposes of the enforcement of the Regulation section 33(1)(c) of the 1974 Act (offences) only applies to contraventions of—
 - (a) articles 13 iv, 15 iv, 16, 22 to 25, 27, 34 (a) and (b), 39, 51, 52 (a) and (b) and 61 of the Regulation; and
 - (b) any requirement or prohibition to which a person is subject by virtue of the terms of or any condition or restriction attached to any—
 - (i) authorisation of rolling stock;
 - (ii) safety authorisation; or
 - (iii) Part B certificate;given under the Regulation, including any deemed authorisation or Part B certificate referred to in articles 66, 73 or 74 of the Regulation.
- (5) This article does not apply in respect of the following articles of the Regulation—
 - (i) articles 6 and 7 (safety authority);
 - (ii) articles 56 to 60 (access to training facilities); and
 - (iii) articles 67 to 72 (investigations into accidents and incidents).
- (6) This article does not apply for the purpose of enforcing the obligations of the Intergovernmental Commission under the Regulation.

Access to training facilities

- 5.—(1) Any railway undertaking whose train drivers or staff performing vital safety tasks are denied the entitlements conferred by articles 56, 57(a) and 58 of the Regulation has a right of appeal to the Office of Rail Regulation.
- (2) In relation to training services to which article 59 of the Regulation applies, a railway undertaking which considers that the price charged for access to those services is unreasonable or discriminatory has a right of appeal to the Office of Rail Regulation.
- (3) A person who is denied any entitlement conferred on him by article 60 of the Regulation has a right of appeal to the Office of Rail Regulation.
- (4) The provisions of regulation 5(3) to (5) of the Railways (Access to Training Services) Regulations 2006^(a) (appeal to the regulatory body) apply to any appeal made under this article as if reference to an appeal in those provisions included reference to an appeal under this article.

Civil liability

- 6.—(1) Breach of a duty requirement or prohibition imposed by articles 13 iv, 15 iv, 22 to 25, 27, 34 (a) and (b), 39, 51, 52 (a) and (b) and 61 of the Regulation is, so far as it causes damage, actionable.
- (2) Subject to paragraphs (1) and (3) and to article 5 of this Order, nothing in this Order is to be construed as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty requirement or prohibition imposed by the Regulation.
- (3) This article is without prejudice to any right to apply for judicial review which an aggrieved person may have under article 76 of the Regulation.
- (4) This article is without prejudice to any right of action which exists apart from the provisions of this Order.
- (5) Any term of an agreement which purports to exclude or restrict the operation of paragraph (1), or any liability arising by virtue of that paragraph, is void.

^(a) S.I. 2006/598.

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

Investigations into accidents and incidents

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

Power to impose charges

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

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

Amendments to the Channel Tunnel (International Arrangements) Order 2005

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

(2) In the Schedule (International Articles)—

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

“(c) has received and continues to hold a safety certificate as required by article 39 of the Regulation of the Intergovernmental Commission transposing Directive 2004/49/EC of the European Parliament and of the Council (the Railway Safety Directive) signed on 24th January 2007;”;

- (b) in Article 12 (regulatory body) for sub-paragraph (1) (f) substitute—

“(f) arrangements for access to the network.”.

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

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

“(i) a copy of a current certificate issued to the applicant by—

- (aa) the Office of Rail Regulation, other than a deemed safety certificate;
- (bb) a safety authority in another member State;
- (cc) a safety authority in Northern Ireland; or
- (dd) the safety authority for the tunnel system within the meaning of section 1(7) of the Channel Tunnel Act 1987(e),

under provisions giving effect to article 10(2) (a) of the Directive which relates to an equivalent railway operation; or”.

(a) 2003 c.20.

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

(c) S.I. 2005/3207.

(d) S.I. 2006/599, to which there are amendments not relevant to these Regulations.

(e) 1987 c.53, to which there are amendments not relevant to these Regulations.

Signed by authority of the Secretary of State for Transport

2007

Name
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE

Article 3

REGULATION OF THE INTERGOVERNMENTAL COMMISSION ON THE SAFETY OF THE CHANNEL FIXED LINK

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;

Having regard to Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed railway system and to Directive 2001/16/CE of the European Parliament and of the Council on the interoperability of the trans-European conventional railway system;

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 Regulation (EC) 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency;

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

- i “Accident” means an unwanted or unintended sudden event or a specific chain of such events which have harmful consequences; accidents are divided into the following categories: collisions, derailments, level-crossing accidents, accidents to persons caused by rolling stock 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 2 to this Regulation.
- 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 25 October 2005 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 “Fixed Link” means the Channel Fixed Link as defined in Article 1.2 of the Treaty.
- x “incident” means any occurrence, other than accident or serious accident, associated with the operation of trains and affecting the safety of operations.
- xi “Infrastructure manager” means any body or undertaking that is responsible in particular for establishing and maintaining railway infrastructure, or a part thereof, as defined in Article 3 of Directive 91/440/EEC. The Concessionaires are the infrastructure manager for the Fixed Link, in accordance with the Treaty, and are responsible also for the management of infrastructure control and safety systems.

- xii “Intergovernmental Commission” (“IGC”) means the Intergovernmental Commission, established by Article 10 of the Treaty to supervise, in the name and on behalf of the governments of the United Kingdom of Great Britain and Northern Ireland and of the French Republic, all matters concerning the construction and operation of the Fixed Link.
- xiii “Interoperability constituents” means any elementary component, group of components, subassembly or complete assembly of equipment incorporated or intended to be incorporated into a subsystem upon which the interoperability of the high-speed or conventional rail system depends either directly or indirectly, as defined in Directives 96/48/EC and 2001/16/EC. The concept of a “constituent” covers both tangible objects and intangible objects such as software.
- xiv “investigation” means a process conducted for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of causes and, when appropriate, the making of safety recommendations.
- xv “Investigating bodies” means the national British and French investigating bodies, respectively:
 - a. the Rail Accident Investigation Branch (“RAIB”) established by the Railways and Transport Safety Act 2003;
 - b. the French Office for the investigation of land transport accidents (bureau d’enquêtes sur les accidents de transport terrestre “BEA-TT”) established by law n° 2002-3 of 3 January 2002 and decree n° 2004-85 of 26 January 2004 amended.
- xvi “Notified bodies” means the bodies which are responsible for assessing the conformity or suitability for use of the interoperability constituents or for appraising the EC procedure for verification of the sub-systems, as defined in Directives 96/48/EC (interoperability of the trans-European high-speed rail system) and 2001/16/EC (interoperability of the trans-European conventional rail system).
- xvii “Part A certificate” means safety certification confirming acceptance of a railway undertaking’s safety management system, issued by the safety authority in the Member State where that railway undertaking first established its operations.
- xviii “Part B certificate” means safety certification issued to railway undertakings by the Intergovernmental Commission under this Regulation and valid solely in respect of their operations on the Common Section.
- xix “Railway system” means the whole of the railway network of the Fixed Link:
 - a. which is constituted by all or part of the subsystems in the structural and functional fields as defined in Directives 96/48/EC and 2001/16/EC, including:
 - the railway infrastructure and fixed equipment;
 - the rolling stock 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.
- xx “Railway undertaking” means any railway undertaking as defined in Directive 2001/14/EC and any other public or private undertaking, the activity of which is to provide transport of goods and/or passengers by rail on the basis that the undertaking must provide traction; this also includes undertakings which provide traction only. However, it does not include the Concessionaires, whose transport operations are limited to the provision of shuttle services for road vehicles through the Channel Tunnel.

- xxi “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.
- xxii “Safety management system” (“SMS”) means the organisation and provisions drawn up by an infrastructure manager or a railway undertaking to ensure the safe management of its activities.
- xxiii “Serious accident” means any train collision or derailment resulting in at least one fatality or serious injury to at least five persons, or extensive damage to rolling stock, to the infrastructure, or to the environment, and any other similar accident having an obvious impact on the regulation or the management of railway safety; “extensive damage” means damage which may be immediately assessed by the competent investigating body at a total of at least 2 million euro.
- xxiv “Technical specifications for interoperability” (“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 high-speed and conventional rail systems as defined in Directives 96/48/EC and 2001/16/EC.
- xxv “Treaty” means the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of a cross-channel fixed link, signed at Canterbury on 12 February 1986.
- xxvi “Unified safety rules” means the safety rules as notified to the European Commission which apply to the Fixed Link and describe the safety requirements to be observed in the design, maintenance and operation of the railway system. The objective of these rules is to contribute to the overall level of safety.

Chapter 2

Duties and responsibilities

Safety Authority

2. The Intergovernmental Commission is the Safety Authority for the Fixed Link.
3. The Intergovernmental Commission, taking into account the specific characteristics of the railway system, shall ensure that the overall safety level of the Fixed Link is maintained and, where that is reasonably practicable, continuously improved, by taking account of changes to Community legislation, as well as technical and scientific progress, and by giving priority to the prevention of serious accidents.
4. The tasks of the Intergovernmental Commission, as Safety Authority, shall be at least the following:
 - i. authorising the placing in service (in accordance with the requirements of Article 14 of both Directive 96/48/EC and Directive 2001/16/EC), of any structural subsystems which would constitute part of the trans-European high speed rail system, or part of the trans-European conventional rail system, which are proposed to be located or operated within the Fixed Link;
 - 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 12 of both Directives 96/48/EC and 2001/16/EC;
 - iv. authorising the placing in service in the Fixed Link of new or substantially modified rolling stock that is not covered by a technical specification of interoperability;
 - v. as already established through the Concession, authorising the placing in service in the Fixed Link of new or substantially modified rolling stock used for operating shuttle services for road vehicles;
 - 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 the rolling stock authorised to run on the Fixed Link is duly registered with safety related information in a national register drawn up in accordance with Article 14 of both Directive 96/48/EC and Directive 2001/16/EC, and that the information so registered is correct and kept up to date;
 - xi. by 30th September 2007 and thereafter annually 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.
6. (a) To carry out the aforementioned tasks, the Intergovernmental Commission:
- i. may request, at any time, technical assistance from the Concessionaires, the railway undertakings or other qualified bodies;
 - ii. shall carry out any inspections and investigations necessary, invoking the assistance of the authorities of each Government or any body or expert of its choice in accordance with the provisions of Articles 10(7), 10(8), 11(6) and 11(8) of the Treaty. Without prejudice to the powers of inspection granted to the Intergovernmental Commission under the Concession, in France such inspections and investigations are conducted under the same conditions as those established for inspections and investigations undertaken by the safety authorities of the French Republic in fulfilling their functions outside the Fixed Link, and in Great Britain are conducted in accordance with relevant statutory powers.

- (b) To assist the Intergovernmental Commission in carrying out the aforementioned tasks the Concessionaires and railway undertakings shall, on request, give the Intergovernmental Commission access to all relevant documents and to their premises, installations and equipment.
7. The Intergovernmental Commission may duly authorise persons for the purposes of Article 6(a)ii. Such persons shall carry out these tasks in such a way as to cause the minimum of disruption to the operation of the Fixed Link consistent with the purpose for which the persons concerned are lawfully there, which is to check compliance with safety requirements in accordance with the conditions for award of safety authorisation to the Concessionaires and of Part B certificates to railway undertakings.
 8. The Concessionaires and the railway undertakings shall provide information on request to the Intergovernmental Commission on any question relating to safety. In addition, they shall advise the Intergovernmental Commission immediately of:
 - i. serious accidents on the railway system;
 - ii. any other accidents or incidents which fall within categories specified and notified to them by the Intergovernmental Commission.
 9. The Concessionaires and any railway undertakings which use the Common Section shall, on request, provide to the Intergovernmental Commission appropriate information on significant incidents, incidents from which worthwhile safety lessons may be learned, and investigations that are likely to have relevance to the safety of the railway system.
 10. In order to monitor and evaluate the implementation of the safety requirements applicable to the Fixed Link, and without prejudice to its rights under the Concession to receive reports and information from the Concessionaires, the Intergovernmental Commission shall collect relevant material through the common safety indicators described in Annex 2 and through any other indicators relating to the Fixed Link which it thinks appropriate.

Infrastructure manager

11. The Concessionaires are the infrastructure manager for the Fixed Link.
12. Without prejudice to civil liability established in conformity with legal requirements, the Concessionaires are responsible for the railway system and its safe operation, including the supply of material and the contracting of services, vis-à-vis users, customers, the workers concerned and third parties.
13. For this purpose and without prejudice to their responsibilities under the Concession, the Concessionaires shall take all necessary measures and in particular shall:
 - i. implement any necessary risk control measures, where appropriate in co-operation with railway undertakings;
 - ii. comply with Community and national legislation and the unified safety rules applying to the railway system;
 - iii. be responsible for the compliance of the shuttle service operations for road vehicles with the safety requirements for the Common Section;
 - iv. ensure that rolling stock used for operating shuttle services for road vehicles is authorised to run on the Common Section;
 - v. ensure that rolling stock used to operate their shuttle services for road vehicles is in safe condition;
 - vi. ensure that railway undertakings and sub-contractors have access to all information necessary for them to fulfil their responsibilities on the training and certification of staff undertaking safety-related work, including information on specific procedures for preventing and protecting against risks in the tunnel;

- vii. ensure that their staff undertaking safety-related work have been trained, and possess and maintain the appropriate skills and certification;
- viii. take any necessary protective measures if they identify, or are advised of, a situation presenting a clear and present safety risk arising from a serious or repeated failure of the railway undertakings to respect the unified safety rules;
- ix. advise the Intergovernmental Commission of any serious or repeated failure of the railway undertakings to respect the unified safety rules and of any protective measures taken, in order for the Commission to assess the action to be taken, in particular action under Article 54.

Railway undertakings

- 14. Without prejudice to civil liability established in conformity with legal requirements, every railway undertaking is responsible for the safe operation of its activities on the Common Section, including the supply of material and the contracting of services vis-à-vis users, customers, the workers concerned and third parties.
- 15. For this purpose railway undertakings shall take all appropriate measures and in particular shall:
 - i. implement any necessary risk control measures, where appropriate in cooperation with the Concessionaires;
 - ii. comply with the requirements of the unified safety rules applying to the railway system;
 - iii. ensure that their staff undertaking safety-related work have been trained, and possess and maintain the appropriate certification and skills, including those relating to the procedures for preventing and protecting against risks in the tunnel;
 - iv. ensure that the rolling stock used for carrying out their railway transport activities is authorised to run on the Common Section;
 - v. ensure that the rolling stock used for carrying out their railway transport activities is in safe condition.

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 referred to in Annex 2 insofar as these indicators are relevant to their activities;
 - iv. the results of their internal safety audits; and
 - v. observations on deficiencies and malfunctions of railway operations and infrastructure management that might be relevant for the Intergovernmental Commission.

Unified safety rules

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

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 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 effect 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 the modification of an existing element of that system.

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

Safety authorisation for the Concessionaires

27. The Concessionaires may only manage and operate the Fixed Link if they possess a safety authorisation from the Intergovernmental Commission so to do.
28. The safety authorisation confirms acceptance by the Intergovernmental Commission of:
 - a) the Concessionaires' safety management system; and
 - b) the measures taken by the Concessionaires to comply with specific requirements necessary for the safe design, maintenance and operation of the railway system.
29. The Intergovernmental Commission shall provide guidance on the procedures for obtaining the safety authorisation, its duration, and the procedures for issuing, updating, amending, revising, renewing, suspending and revoking it.
30. The period of validity of a safety authorisation shall not exceed five years, and will be clearly indicated on the safety authorisation.
31. The Concessionaires must submit any request for renewal of their safety authorisation at least four months before its expiry.
32. The Intergovernmental Commission shall take a decision on an application for a safety authorisation without delay and in any event not more than four months after all information required, and any supplementary information requested by the Intergovernmental Commission, has been submitted. If the applicant is requested to submit supplementary information, this must be provided promptly.
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 rolling stock 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, including a deemed safety authorisation under Article 73(a), 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 rolling stock outside the fixed link.

Part B certification for railway undertakings

39. In order to use the Common Section, a railway undertaking must hold a safety certificate comprising:
 - (i) a Part A certificate; and
 - (ii) a Part B certificate issued by the Intergovernmental Commission.
40. A part B certificate may only be granted for rail transport activities which are equivalent to those specified in the part A certificate held by the railway undertaking.
41. The duration of validity of the Part B certificate shall not exceed five years and will be clearly indicated on it. It shall in any case cease to be valid if the part A certificate ceases to be valid.
42. In order to obtain a Part B certificate, a railway undertaking must provide:
 - i. proof that it holds a valid Part A certificate confirming acceptance of its SMS,
 - ii. evidence of the measures taken to ensure compliance with the specific requirements necessary for safe use of the Common Section. This shall include documentation on:
 - a) the TSIs or, if appropriate, parts only of the TSIs and, where relevant, unified safety rules and other rules applicable to the operations of the railway undertaking, its staff and its rolling stock and how compliance with them is ensured by the safety management system;
 - b) the different categories of staff employed or contracted for the railway undertaking's operation, including evidence that they meet the requirements of TSIs and the unified safety rules and any other rules applicable to the operations, and that those staff have been duly certified;
 - c) the different types of rolling stock used for the railway undertaking's operations, including evidence that they meet requirements of TSIs and the unified safety rules and have been duly certified; and
 - d) the training and certification of train drivers and staff performing vital safety tasks relating to their knowledge of the TSIs, unified safety rules and the emergency procedures for the Channel Tunnel.
43. To avoid duplication of work and reduce the amount of information only summary documentation should be submitted concerning elements that comply with TSIs and other requirements of Directives 96/48/EC and 2001/16/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 safe use of the Common Section.
46. Railway undertakings shall, on request, produce to the Concessionaires their Part B certificate.
47. The Intergovernmental Commission shall take a decision on applications for a Part B certificate without delay and in any event not more than four months after all information required, and any supplementary information requested by the Intergovernmental Commission, has been submitted. If the applicant is requested to submit supplementary information, this must be provided promptly.
48. The Intergovernmental Commission shall seek the Concessionaires' opinion on any request from a railway undertaking for a Part B certificate, at the time it starts its consideration of the application.
49. The Intergovernmental Commission shall provide guidance on the procedures for applying for, issuing, updating, amending, revising, renewing and revoking a Part B certificate.
50. In order to renew a Part B certificate a railway undertaking must apply for the renewal at least four months before the current certificate's expiry.
51. The holder of a Part B certificate shall without delay inform the Intergovernmental Commission of all major changes to the conditions of its Part A certificate, and whenever new categories of staff or new types of rolling stock 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. The Intergovernmental Commission may require that the relevant sections of the Part B certificate be revised following substantial changes in the safety regulatory framework.
54. If the Intergovernmental Commission finds that the holder of a Part B certificate no longer satisfies the conditions for that certificate, it may, without prejudice to any emergency actions needed, after formal notice and giving the certificate holder an opportunity to make representations and after considering any representations made, modify, restrict, suspend or revoke the Part B certificate, giving reasons for its decision. The Intergovernmental Commission shall without delay advise the safety authority that granted the Part A certificate and the Concessionaires.
55. The Intergovernmental Commission shall revoke the Part B certificate if it is not used as intended within the year following its issue.

Chapter 4

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

Access to training facilities

56. Fair and non-discriminatory access to training necessary to obtain a Part B certificate in accordance with the requirements in Article 42.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) If training services do not include examinations and the granting of certificates to assess personnel and certify 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 proving their training, qualifications and experience, and be given copies of them and be free to pass them on.

Chapter 5

Provisions relating to rolling stock

Authorisation of railway undertakings' in-use rolling stock

61. Rolling stock which has been authorised for placing in service in a Member State but which is not fully covered by the relevant TSIs may not be operated on the Fixed Link unless it has received authorisation from the Intergovernmental Commission.
62. The applicant for this authorisation shall submit a technical file to the Intergovernmental Commission concerning the rolling stock or type of rolling stock, indicating the use intended on the Common Section. The dossier shall provide the necessary justification and contain the following information:
 - i. evidence that the rolling stock has been authorised to be placed in service in another Member State of the European Union and copies of records which show the history of its operation, maintenance and, if applicable, technical modification;

- ii. technical data, maintenance programmes and operational characteristics requested by the Intergovernmental Commission and needed for this authorisation;
 - iii. evidence on technical and operational characteristics that show that the rolling stock is in compliance with the railway system and with the unified safety rules;
 - iv. information on any exemptions from the unified safety rules that are needed to grant this authorisation, and evidence, based on risk assessment, showing that the acceptance of the rolling stock does not introduce undue risks to the Fixed Link.
63. The Intergovernmental Commission shall seek the advice of the Concessionaires on the application and may require trials of rolling stock on the Fixed Link to verify compliance with the requirements specific to the railway system. The Intergovernmental Commission shall set out the scope and content of these trials. Charges may be levied for capacity used for the purpose of these trials. Such charges shall not exceed the net cost, to the Concessionaires, of the trials and shall be payable by the applicant.
64. The Intergovernmental Commission shall inform the railway undertaking of its decision on the application as soon as possible and no later than four months after submission of the complete technical dossier, including documents relating to any tests. The certificate of authorisation may contain conditions for use and other restrictions.
65. The Intergovernmental Commission shall inform the Concessionaires of its decision on the request of the railway undertaking without delay and shall provide a copy of any authorisation given.
66. Any approval or authorisation of rolling stock for use on the Fixed Link, (including revisions to it), issued by the Intergovernmental Commission and which is current immediately before the date this Regulation comes into force, shall be deemed to be an authorisation within the meaning 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. 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, without prejudice to the arrangements for reciprocal notification contained in the co-operation arrangements.

71. The Intergovernmental Commission shall take the measures necessary to ensure that recommendations by the investigating bodies concerning the Fixed Link are duly taken into consideration by the Concessionaires and the railway undertakings and, where appropriate, acted upon.
72. The Intergovernmental Commission shall report back at least annually to the relevant investigating body on measures that are taken or planned as a consequence of recommendations.

Chapter 7

Transitional and miscellaneous provisions

Transitional provisions on safety authorisation and Part B certificates

73. (a) Any notification of acceptance (including revisions to it) which is current immediately before 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) The deemed safety authorisation referred to in Article 73(a) shall remain valid for one year after the date this Regulation comes into force or until replaced by a new safety authorisation issued pursuant to this Regulation, whichever is the first to occur.
74. (a) Any notification of acceptance (including revisions to it) which is current immediately before 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) The deemed Part B certificate referred to in Article 74(a) shall remain valid for two years after the date this Regulation comes into force or until replaced by a new Part B certificate issued pursuant to this Regulation, whichever is the first to occur.

Miscellaneous provisions

75. The Regulation of the Intergovernmental Commission concerning the use of the Channel Tunnel by international groupings or railway undertakings signed on 25 October 2005 shall be amended as follows:-
 - i. Article 6(c) shall be replaced by the following provision:

“(c) has received and continues to hold a safety certificate as required by Article 39 of the Regulation of the Intergovernmental Commission transposing Directive 2004/49/EC of the European Parliament and of the Council (the Railway Safety Directive) signed on 24th January 2007;”.
 - ii. Article 12(1) (f) shall be replaced by the following provision:

“(f) arrangements for access to the network.”.
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 24 January 2007 in the English and French languages, both texts being equally authoritative.

Roy Griffins
Head of UK Delegation,
Intergovernmental Commission

Marc Abadie
Head of French Delegation,
Intergovernmental Commission

Annex 1

SAFETY MANAGEMENT SYSTEMS

1. Requirements on the safety management system

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

2. Basic elements of the safety management system

The basic elements of the safety management system are:

- (a) a safety policy approved by the organisation's chief executive and communicated to all staff;
- (b) qualitative and quantitative targets of the organisation for the maintenance and enhancement of safety, and plans and procedures for reaching these targets;

(c) procedures to meet existing, new and altered technical and operational standards or other prescriptive conditions as laid down:

in TSIs,

or

in the unified safety rules referred to in Article 1 xxvi,

or

in other relevant rules,

or

in authority decisions;

or where necessary to achieve common safety targets or adherence to common safety methods, when these are adopted; and procedures to assure compliance with the standards and other prescriptive conditions throughout the life-cycle of equipment and operations;

(d) procedures and methods for carrying out risk evaluation and implementing risk control measures whenever a change of the operating conditions or new material imposes new risks on the infrastructure or on operations;

(e) provision of programmes for training of staff and systems to ensure that the staff's competence is maintained and tasks carried out accordingly;

- (f) arrangements for the provision of sufficient information within the organisation and, where appropriate, between organisations operating on the same infrastructure;
- (g) procedures and formats for how safety information is to be documented and designation of procedure for configuration control of vital safety information;
- (h) procedures to ensure that accidents, incidents, near misses and other dangerous occurrences are reported, investigated and analysed and that necessary preventive measures are taken;
- (i) provision of plans for action and alerts and information in case of emergency, agreed upon with the appropriate public authorities; and
- (j) provisions for recurrent internal auditing of the safety management system.

Annex 2

COMMON SAFETY INDICATORS

If new facts or errors are discovered after the submission of an Annual Safety Report, the indicators for one particular year shall be amended or corrected by the infrastructure manager, railway undertaking or the Intergovernmental Commission as the case may be, at the first convenient opportunity and at the latest in the next annual report.

For indicators relating to accidents under heading 1 below, Regulation (EC) No. 91/2003 of the European Parliament and of the Council of 16 December 2002 on rail transport statistics shall be applied as far as the information is available.

1. Indicators relating to accidents

(1). Total and relative (to train kilometres) number of accidents and a break-down on the following types of accidents:

- (a) collisions of trains, including collisions with obstacles within the clearance gauge;
- (b) derailments of trains;
- (c) level-crossing accidents, including accidents involving pedestrians at level-crossings;
- (d) accidents to persons caused by rolling stock in motion, with the exception of suicides;
- (e) suicides;
- (f) fires in rolling stock; and
- (g) others.

Each accident shall be reported under the type of the primary accident, even if the consequences of the secondary accident are more severe, e.g. a fire following a derailment.

(2). Total and relative (to train kilometres) number of persons seriously injured and killed by type of accident divided into the following categories:

- (a) passengers (also in relation to total number of passenger-kilometres);
- (b) employees including the staff of contractors;
- (c) level-crossing users;
- (d) unauthorised persons on railway premises; and
- (e) others.

2. Indicators relating to incidents and near-misses

- (1). Total and relative (to train kilometres) number of broken rails, track buckles and wrong-side signalling failures.
- (2). Total and relative (to train kilometres) number of signals passed at danger.
- (3). Total and relative (to train kilometres) number of broken wheels and axles on rolling stock in service.

3. Indicators relating to consequences of accidents

(1). Total and relative (to train kilometres) costs in euro of all accidents where, if possible, the following costs should be calculated and included:

- (a) deaths and injuries;
- (b) compensation for loss of or damage to property of passengers, staff or third parties - including damage caused to the environment;
- (c) replacement or repair of damaged rolling stock and railway installations; and
- (d) delays, disturbances and re-routing of traffic, including extra costs for staff and loss of future revenue.

From the above costs shall be deducted indemnity or compensation recovered or estimated to be recovered from third parties such as motor vehicle owners involved in level crossing accidents. Compensation recovered by insurance policies held by railway undertakings or infrastructure managers shall not be deducted.

(2). Total and relative (to number of hours worked) number of working hours of staff and contractors lost as a consequence of accidents.

4. Indicators relating to technical safety of infrastructure and its implementation

- (1). Percentage of tracks with Automatic Train Protection (ATP) in operation, percentage of train kilometres using operational ATP systems.
- (2). Number of level crossings (total and per line kilometre). Percentage of level crossings with automatic or manual protection.

5. Indicators relating to the management of safety

Internal audits accomplished by infrastructure managers and railway undertakings as set out in the documentation of the safety management system. Total number of accomplished audits and the number as a percentage of audits required (and/or planned).

6. Additional indicators

The above listed indicators in this Annex are derived from Annex 1 of the Railway Safety Directive 2004/49/EC. Additional indicators may be required by the Intergovernmental Commission specifically for the risks in the tunnel.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into effect, for the Channel Tunnel, Directive 2004/49/EC of the European Parliament and of the Council of 29th April 2004 (O.J. No. L164, 30.04.04 p.44), (“the Railway Safety Directive”). It does so by giving the force of law to a Regulation transposing that Directive (“the Regulation”) made on 24th January 2007 by the Channel Tunnel Intergovernmental Commission, (under Article 10(3) (e) of the Treaty of Canterbury, Cm 1827), on behalf of the Governments of the United Kingdom of Great Britain and Northern Ireland and the French Republic. The text of the Regulation is set out in the Schedule to the Order.

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

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

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

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

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

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

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

Article 9 makes amendments to the Channel Tunnel (International Arrangements) Order 20005 which are consequential upon article 75 of the Regulation and the Railway Safety Directive.

Article 10 re-enacts paragraph 1(b) (i) of Schedule 2 (application for a safety certificate) to the Railways and Other Guided Transport Systems (Safety) Regulations 2006 with the addition of the Intergovernmental Commission to the list of safety authorities whose certificates may be recognised by the Office of Rail Regulation for the purpose of their consideration of applications for “safety certificates” under regulation 7 of those Regulations. This gives effect to article 38 of the Regulation.

The key provisions of the Regulation itself are briefly as follows.-

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

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

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

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

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

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

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

A regulatory impact assessment of the effect that this Order will have on the costs of business can be obtained from the Department for Transport, Great Minister House, 76 Marsham Street, London SW1P 4DR. A transposition note in relation to the implementation of the Railway Safety Directive by this Order can also be obtained from this address. Copies of both these documents have been placed in the Library of each House of Parliament. They may also be accessed on the Office of Public Sector Information website www.opsi.gov.uk.