

## **ANNEX A**

### **REGULATORY IMPACT ASSESSMENT**

#### **Title of proposal**

**The Channel Tunnel (Safety) Order**

#### **Purpose and intended effect**

##### **Objective**

To give effect in UK legislation to a bi-national Regulation of the Channel Tunnel Intergovernmental Commission transposing the provisions of Council Directive 2004/49/EC, on the safety of Europe's railways, for the Channel Tunnel.

The objective of the Directive is to facilitate the establishment of the single European rail market through the development of the transparent and independent regulation of safety, and the maintenance and improvement of existing good safety levels.

The Treaty of Canterbury 1986 between the French Republic and the United Kingdom of Great Britain and Northern Ireland established the essential bi-national framework for the construction and operation of the Channel Tunnel. In view of the clear need for a coherent Anglo-French approach to regulation of the Tunnel, the Treaty established an Intergovernmental Commission to supervise, in the name and on behalf of the two Governments, all matters concerning the construction and operation of the Tunnel. The functions of the Intergovernmental Commission include drawing up, or participating in the preparation of, regulations applicable to the Tunnel.

It is essential to the safe operation of the Tunnel that there should be a single coherent safety regime that applies to the system as a whole. The monitoring of this regime is currently undertaken by a bi-national independent Channel Tunnel Safety Authority established under the Treaty of Canterbury. However, the adoption of Council Directive 2004/49/EC now requires all Member States to establish Safety Authorities with regulatory powers. In recognition of the need to make proper provision for major cross-border infrastructure projects, the Directive permits international, as well as national, Safety Authorities. The British and French Governments have agreed that the Channel Tunnel Intergovernmental Commission shall, for the purposes of the Directive, be the Safety Authority for the Channel Tunnel.

The Intergovernmental Commission has drawn up a bi-national Regulation that establishes an agreed Anglo-French transposition of the provisions of Directive 2004/49/EC to ensure that these are applied in a coherent manner throughout the Tunnel. It was signed on 24 January 2007. The

Regulation covers only those aspects of the Directive that are directly applicable to the infrastructure of the Fixed Link and to the operations of rail services within the boundaries of the Fixed Link.

The intended effect of this Order is to give effect to the Regulation of the Intergovernmental Commission and to make appropriate national provision for enforcement.

This Regulatory Impact Assessment supplements the RIA produced by the HSE for the equivalent transposition regulations made for the rest of GB i.e. the Railways and Other Guided Systems (Safety) Regulations 2005, which can be viewed through the following link to the HSE website: <http://www.hse.gov.uk/aboutus/hsc/meetings/2005/080305/c03c.pdf>.

## **Background**

The rail industry throughout Europe has been in decline for several decades. The European Commission has over the past years been seeking to revitalise the railway industry through a series of legislative measures designed to introduce greater liberalisation of the sector and to reduce the technical and administrative obstacles to greater interoperability. The Directive on the safety of the Community's railways seeks to introduce a common approach to the regulation of railway safety throughout the Community. This should reduce the administrative burdens on railway undertakings seeking to operate international services within the Community, or taking advantage of the right of open access for freight services to operate in a variety of Member States, by providing for a Community-wide system of safety certification based on established criteria for safety management systems. At the same time the Directive recognises the risks inherent in the provision of railway services and provides that until such time as pan-European technical specifications for interoperability and common safety methods are developed, Member States may continue to apply national safety rules. These must, however, have been notified to the European Commission which will then have a role in approving any new rules to ensure that these do not introduce an improper barrier to the development of the rail market.

## **Rationale for government intervention**

Europe's railways reflect a long and complex evolution that started in the early 19th century and which took account of many different national and local economic and physical circumstances. The railways that evolved in different countries had many common features – for instance, the majority of Europe's railways share a common track gauge. However, even within nation states they often also had many significant differences, such as with loading gauge, the supply of electric current, the signalling systems, and so on. As a result, operating practice and procedures vary from Member State to Member State.

Levels of safety also vary. However, the creation of the single internal market within the European Community has increased the demand for cross border movements of passengers and freight. It is therefore essential to work towards pan-European safety standards and practices, while protecting existing high standards.

## **Risk Assessment**

The Directive does not import any risks into the industry. It works from the basis of identifying existing risks and requiring the railway operators to develop safety management systems to manage those risks. This is already a well-developed policy within the UK, including within the Channel Tunnel.

There is a financial risk in failing to transpose the Directive to the Channel Tunnel, as this would expose the UK to the risk of infraction fines from the European Commission.

Failure to transpose would also result in disadvantages to the industry from less transparent and harmonised arrangements.

## **Consultation**

Within government

The Department has worked closely with the members of the Office of Rail Regulation who serve on the Channel Tunnel Safety Authority, and with the Rail Accident Investigation Branch, to ensure that the Intergovernmental Commission's bi-national Regulation and the implementing Order are consistent with the national implementation of Directive 2004/49/EC.

Public consultation

This instrument is of limited application. Transposition of the Directive for the rest of the UK network was done through a combination of the Railways and Transport Safety Act 2003, the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599), The Railways (Accident Investigation and Reporting) Regulations 2005 (SI 2005/1992), the Rail (Access to Training Services) Regulations 2006 (SI 2006/598) and The Railways (Safety Management) Regulations (Northern Ireland) 2006 (SI 2006/237), on which full public consultation took place.

Consultation on the Intergovernmental Commission's bi-national Regulation focussed principally on the Channel Tunnel infrastructure manager (Eurotunnel), the railway undertakings currently operating through the Tunnel and those who had expressed an interest in so doing in the near future, and the independent Accident Investigation Bodies of the UK and France. This consultation took place in three separate phases during 2006. The draft bi-national Regulation was also drawn to the attention of the organisations with a potential future interest in operating through the Channel Tunnel, and was placed on the Department's website. This has been followed by consultation with stakeholders on the draft implementing Order.

## **Options**

(a) "Do nothing"

This is not an attractive option for two reasons:

Firstly, it is a requirement upon Member States of the European Union to transpose Directives into their national law, and to notify the European Commission of the measures taken to do so. Some of the national measures transposing Directive 2004/49/EC to the mainland infrastructure specifically exclude the Channel Tunnel from their scope. Complete and proper implementation of the Directive therefore requires the adoption of the bi-national Regulation of the Intergovernmental Commission to cover the infrastructure omitted from the national measures. Failure to comply with this requirement would leave the United Kingdom open to infraction proceedings and potentially serious fines from the European Court of Justice.

Secondly, failure to produce this Regulation would result in legal uncertainty for operators seeking to run services through the Channel Tunnel, as the European-wide system would not have been applied to it.

(b) Transpose by extending the scope of national measures

This would apply the Directive only to the UK section of the Tunnel, leaving implementation on the French section to separate legislation implemented by the French government, which would be likely to result in differing approaches to implementation in the French and British sections of the Tunnel. This could jeopardise safe operations.

(c) Transpose by bi-national regulation

This is the only option that allows the two Governments to apply a consistent and uniform transposition of the Directive to suit the particular context of the Channel Tunnel.

## **Equity and Fairness**

To the extent that the transposition of this Directive for the Channel Tunnel may create any additional burdens for the infrastructure manager or railway operators, it does so in a non-discriminatory manner.

## **Costs and benefits**

### ***Sectors and groups affected***

The Channel Tunnel Concessionaires (Eurotunnel) and those railway undertakings operating or seeking to operate through the Channel Tunnel (currently Eurostar, SNCF, EWS, EWSI, Europorte 2)

#### Benefits

Safety in the Channel Tunnel is already highly regulated, with an existing bi-national regime that combines the regulatory systems of the UK and France.

Currently, railway undertakings seeking to operate through the Channel Tunnel have to provide Eurotunnel with a safety case in support of those operations. Under the Directive, applicants will instead have to provide the Intergovernmental Commission with proof of a valid Safety Management System accepted by the Safety Authority of the Member State in which they first established their operations, and evidence of the

measures taken to ensure compliance with the specific requirements for operation through the Channel Tunnel.

The principal benefit to stakeholders derives from the reduced administrative costs that this should entail.

#### Costs

The policy costs to the industry should be minimal. Eurotunnel, as infrastructure manager, will require a safety authorisation issued on the basis of an accepted Safety Management System; the company is already in the process of adapting its existing Safety Case to meet the Directive's criteria. There will be no additional cost to the company arising from the revised role of the Intergovernmental Commission since the Concessionaires already meet the cost of the Intergovernmental Commission at a set rate established in the Channel Tunnel Concession.

The railway undertakings will in any case have to comply with the requirements of the Directive in respect of their operations in Great Britain and France and are already obliged to provide a safety case to Eurotunnel, so the main effect of the Directive is to modify, and in several respects simplify, an existing set of requirements. In drawing up the bi-national Regulation the Intergovernmental Commission has been concerned to ensure that, as far as possible, the requirements of the Directive are achieved within the existing regulatory framework without the imposition of additional burdens.

There may be some perceived additional costs arising from the need for railway undertakings operating through the Channel Tunnel to apply for specific safety certification, but in practice those undertakings would, under the previously existing safety regime, have needed to provide a Safety Case to support their application to operate. It is the intention of the Intergovernmental Commission to ensure that the impact on the industry is negligible.

There may be some administrative costs for the Intergovernmental Commission itself, as its role will be expanded to include that of Safety Authority within the terms of the Directive. These cannot be quantified but should not be significant.

#### **Small Firms Impact Test**

Not applicable. This measure only affects companies operating, or seeking to operate, through the Channel Tunnel, and does not go beyond what is needed to apply European legislation - with which those companies will in any event have to comply - in a coherent manner for the Tunnel environment.

#### **Competition assessment**

The Directive applies in a non-discriminatory manner to all infrastructure managers and railway undertakings. The Regulation reflects this transparent and non-discriminatory approach.

## **Enforcement, sanctions and monitoring**

Enforcement of the requirements of the Intergovernmental Commission bi-national Regulation will be carried out by the Office of Rail Regulation. For this purpose the bi-national Regulation will be treated as if it was a health and safety regulation made under the Health and Safety at Work etc Act 1974. This makes sense because the equivalent regulations for the rest of GB, (i.e. the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599)), are health and safety regulations made under the 1974 Act and the Office of Rail Regulation are the enforcing authority under health and safety legislation for railways in GB.

The railway health and safety inspectors of the ORR will be able to inspect and monitor for compliance. They will have various statutory powers, including those of serving improvement and prohibition notices to require compliance. Breach of such notices, breach of various key requirements of the bi-national Regulation, and obstruction of inspectors, may result in prosecution under the 1974 Act. Certain breaches may also give rise to civil liability.

## **Declaration and publication**

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed .....

**Date**

**Minister's name, title, department**

**Contact point for enquiries and comments: name, address, telephone number and email address.**