STATUTORY INSTRUMENTS

2009 No. 2081

RAILWAYS

The Channel Tunnel (International Arrangements) (Amendment) Order 2009

Made - - - -	*25th July 2009*
Laid before Parliament	*29th July 2009*
Coming into force in accordance with article 1(2)	

The Secretary of State for Transport makes the following Order in exercise of the powers conferred on the appropriate Minister by section 11(1)(a), (c) and (g) of the Channel Tunnel Act 1987(**a**):

Citation and commencement

1.—(1) This Order may be cited as the Channel Tunnel (International Arrangements) (Amendment) Order 2009.

(2) This Order comes into force—

(a) for the purposes of articles 2(2) to 2(4), 2(7) and 3, on the date on which the regulation of the Intergovernmental Commission on the use of the Channel Tunnel, done on 23rd July 2009(**b**) (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(**c**)) comes into force, as provided for in article 13.2 of that regulation, and

(b) for all other purposes, on 25th August 2009.

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

Amendment of Order

2.—(1) The Channel Tunnel (International Arrangements) Order 2005(**d**) is amended as follows.

(2) In article 2 (interpretation), in the definition of "Directives"—

(a) in sub-paragraph (a), for the words "and Directive 2004/51 dated 29th April 2004, both of the European Parliament and of the Council", substitute ", Directive 2004/51/EC dated

(**a**) 1987 c. 53. "Appropriate Minister" is defined in section 13(1) of that Act.
(**b**) The text of that regulation appears in the Schedule to this Order.
(**c**) 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).
(**d**) S.I. 2005/3207, amended by S.I. 2007/3531 and 2008/2366.

29th April 2004 and Directive 2007/58/EC dated 23rd October 2007(**a**), each of the European Parliament and of the Council"; and

(b) in sub-paragraph (c), after the word "certification", insert "as amended by Directive 2007/58/EC dated 23rd October 2007, both".

(3) In article 2, in the definition of "infrastructure manager", "international grouping" and "railway undertaking", for the words "and Directive 2004/51 dated 29th April 2004, both of the European Parliament and of the Council", substitute ", Directive 2004/51/EC dated 29th April 2004 and Directive 2007/58/EC dated 23rd October 2007, each of the European Parliament and of the Council".

(4) In article 3 (application of international articles), omit the words "come into force and" and the words after "United Kingdom".

(5) In article 5 (application of civil law), after paragraph (2), add the following paragraph—

"(3) Without prejudice to the right which any person may have by virtue of paragraph (1) to bring civil proceedings in respect of any breach of duty, the obligation to comply with the provisions referred to in that paragraph shall be enforceable by civil proceedings by the Intergovernmental Commission for an injunction or for interdict or any other relief."

(6) After article 5, add the following articles—

"**Making of false statements etc.**

6.—(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Order, makes any statement which that person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he or she is guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(2) No proceedings shall be instituted in England or Wales in respect of an offence under this article, except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

Offences by bodies corporate and Scottish partnerships

7.—(1) Where an offence under this Order has been committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he or she as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

(3) Where a Scottish partnership is guilty of an offence under this Order in Scotland and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he or she as well as the partnership shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

(7) Subject to article 3, for the content of the Schedule, substitute the content of the Schedule to this Order.

(**a**) OJ No. L 315, 3.12.2007, p.44.

Transitional arrangements

3. The substitution, under paragraph 2(7), of Article 3 of the Schedule to the Channel Tunnel (International Arrangements) Order 2005 shall not apply before 1st January 2010, and that Article, in its unamended form, shall continue to have effect until 31st December 2009 inclusive.

Signed by authority of the Secretary of State for Transport

C.D. Mole
Parliamentary Under Secretary of State
Department for Transport

25th July 2009

SCHEDULE

Article 2(7)

International Articles

THE INTERGOVERNMENTAL COMMISSION,

Having regard to the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the construction and operation by private concessionaires of a Channel Fixed Link signed at Canterbury on 12 February 1986 ("the Treaty"), and in particular its Articles 1 and 10;

Having regard to Council Directive 91/440/EEC of 29 July 1991, as amended by Directives 2001/12/EC of 26 February 2001, 2004/51/EC of 29 April 2004, both of the European Parliament and of the Council, Council Directive 2006/103/EC of 20 November 2006 and Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, on the development of the Community's railways and, in particular, its Article 10(3);

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

Having regard to Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001, as amended by Directives 2004/49/EC of 29 April 2004 and 2007/58/EC of 23 October 2007 both of the European Parliament and of the Council, on the allocation of railway infrastructure capacity, and the levying of charges for the use of railway infrastructure and in particular its Article 8(2) whereby for specific investment projects, infrastructure managers may set or continue to set higher charges on the basis of the long-term costs of such projects if they increase efficiency and/or cost-effectiveness and could not otherwise have been undertaken;

Having regard to the Regulation of the Intergovernmental Commission on the safety of the Channel Fixed Link signed in London on 24 January 2007;

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

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

HAS ADOPTED the following Regulation:

ARTICLE 1

Purpose

This Regulation applies to the use of those parts of the Channel Fixed Link necessary for the delivery of:

- international passenger services,

- international combined transport goods services, and

- international freight services by railway undertakings,

in accordance with the above Directives.

ARTICLE 2

Definitions

"Concession" and "Concessionaires" have the meaning given in Article 1 of the Treaty.

"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.

"Intergovernmental Commission" means the Intergovernmental Commission established by Article 10 of the Treaty to supervise in the name and on behalf of the two Governments all matters concerning the construction and operation of the Fixed Link.

The expressions used in this Regulation, which are also used in the Directives referred to above, shall have the meaning they bear in those Directives.

ARTICLE 3

Access Rights

3.1 Railway undertakings established or to be established in a Member State shall have access rights through the Common Section, on equitable and non-discriminatory conditions, for the purpose of the provision of international combined transport goods services, international freight services or, on or after 1 January 2010, of international passenger services.

3.2 Access rights through the Common Section include, for any railway undertaking, the right to the following minimum access package:

- handling of requests for infrastructure capacity;

- the right to utilise capacity which is granted;

- use of running track points and junctions in the Common Section;

- train control including signalling, regulation, dispatching and the communication and provision of information on train movements; and

- all other information required to implement or operate the service for which capacity has been granted.

3.3 Access rights through the Common Section also comprise:

- use of the electrical supply system for traction current;

- access to any installation intended to receive rail-borne freight that the two Governments decide, in accordance with Article 1(2) of the Treaty, forms part of the Fixed Link;

- shunting in the event of technical breakdown; and

- access to the emergency sidings in the event of an incident.

ARTICLE 4

Management of Infrastructure

Subject to the provisions of Articles 9.2 and 11.3, the Concessionaires shall be the infrastructure manager of the Fixed Link. The Concessionaires' profit and loss accounts and balance sheets relating on the one hand to the provision of transport services by railway undertakings and on the other for business relating to the management of railway infrastructure shall be kept and published separately. Any public funds paid to one of these two areas of activity may not be transferred to the other. The accounts for the two areas of activity shall be kept in a way that reflects this prohibition.

ARTICLE 5

Network Statement for the Fixed Link

5.1 The Concessionaires shall develop, publish, keep up to date and modify as necessary a network statement for the Fixed Link ("the Network Statement") in accordance with Article 3 of and Annex 1 to Directive 2001/14/EC. The Concessionaires shall give timely notice to railway undertakings operating services through the Fixed Link of any major changes to the quality or capacity of the infrastructure.

5.2 The Network Statement shall contain all the information necessary to exercise access rights through the Fixed Link, in particular:

(a) a description of the nature of the infrastructure which is available to railway undertakings and the conditions of access in the Fixed Link;

(b) the principles and criteria for capacity allocation, setting out the general characteristics of the infrastructure and any restrictions relating to its use, including likely capacity requirements for maintenance;

(c) the procedures and deadlines for presenting and considering requests for capacity allocation, in particular:

  (i) the procedures according to which capacity may be requested from the infrastructure manager;

  (ii) the requirements governing those requesting capacity;

  (iii) the schedule for the application and allocation processes;

  (iv) the principles governing the co-ordination process;

  (v) the procedures to be followed and criteria used where infrastructure is congested;

  (vi) details of restrictions on the use of infrastructure; and

  (vii) any conditions by which account is taken of previous levels of utilisation of capacity in determining priorities for the allocation process.

(d) the charging principles and tariffs; and

(e) the measures taken to ensure the adequate treatment of international freight services, without prejudice to other international services, and requests subject to the ad hoc procedure.

5.3 The Concessionaires shall consult all the interested parties, including the Intergovernmental Commission, on the draft Network Statement, allowing a reasonable deadline to respond

5.4 The Concessionaires shall finalise the Network Statement and publish it appropriately, no less than four months in advance of the annual deadline for requests for infrastructure capacity.

5.5 The Network Statement shall be kept up to date following the same process.

ARTICLE 6

Exercise of Access Rights

A railway undertaking shall not be permitted to exercise the access rights unless it:

(a) is licensed in accordance with the provisions of Council Directive 95/18/EC, as amended by Article 1 of Directive 2001/13/EC and Article 29 of Directive 2004/49/EC, and complies with all mandatory requirements of national legislation and regulation, and also the operating rules of the Concessionaires approved by the Intergovernmental Commission and the security provisions laid down by the Principals;

(b) is adequately insured for provision of services in the Fixed Link or has made equivalent arrangements for cover, in accordance with national and international law, of its liabilities in the event of accidents, in particular in respect of its clients, the Concessionaires of the Fixed Link and other third parties;

(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 24 January 2007;

(d) on fulfilling the three conditions above, has entered into an agreement with the Concessionaires. This agreement shall set out the rights and obligations of the parties in line with the conditions set out in Article 7.

ARTICLE 7

Nature and Content of Agreements

7.1 Conditions governing agreements to be entered into under Article 6(d) shall be non-discriminatory, in accordance with Article 10(5) of Directive 91/440 EEC as amended by Article 1 of Directive 2001/12/EC and Directive 2004/51/EC.

7.2 Agreements to be entered into under Article 6(d) shall include:

- the administrative, technical and financial provisions necessary to ensure compliance at all times with the conditions specified in points (a) to (c) of Article 6 above;

- the provisions relating to allocation of train paths over the Common Section agreed as a result of application of the procedures specified in Article 9;

- the provisions relating to fees set according to the rules specified in Article 11.

ARTICLE 8

Framework Agreements

8.1 The Concessionaires may agree with any railway undertaking or international grouping a framework agreement covering a number of years, setting out the characteristics of the infrastructure capacity required by the railway undertaking or the international grouping and offered by the Concessionaires over any period exceeding one timetable period. A framework agreement shall not specify the path or paths in detail but be drawn up so as to meet the legitimate commercial needs of the railway undertaking or the international grouping.

8.2 A framework agreement shall in principle be for a period of five years, renewable for periods equal to its original duration. The Concessionaires may agree to a shorter or longer period. Any period longer than five years shall be justified by the existence of commercial contracts, specialised investments or risks.

8.3 For services using specialised infrastructure as designated under Article 24 of Directive 2001/14/EC and which require substantial and long-term investment, duly justified by the railway undertaking or the international grouping, framework agreements may be for a period of 15 years. Any period longer than fifteen years shall be possible only in exceptional cases, in particular where there is large-scale, long-term investment, and particularly where such investment is

covered by contractual commitments including a multi-annual amortisation plan. In these cases, the railway undertaking or the international grouping may call for detailed definition of the capacity characteristics – including the frequency, volume and quality of train paths – which are to be provided for the duration of the framework agreement. The Concessionaires may reduce reserved capacity which, over a period of at least one month, has been used less than the threshold quota provided for in the Network Statement, in accordance with Article 9.5(c).

8.4 The framework agreement shall not be such as to preclude the use of the Fixed Link by other railway undertakings or services.

8.5 The framework agreement shall allow for the amendment or limitation of its terms to enable better use to be made of the Fixed Link.

8.6 The framework agreement may include provision for penalties should it be necessary to modify or terminate the agreement.

8.7 Whilst respecting commercial confidentiality, the general nature of each framework agreement shall be made available to any interested party.

ARTICLE 9

Procedure for Allocation of Train Paths

9.1 The Concessionaires shall establish an allocation body to allocate infrastructure capacity in the Fixed Link. The allocation body shall ensure that infrastructure capacity is allocated on a fair and non-discriminatory basis and in accordance with Community law, and shall respect the confidentiality of any commercial information provided to it in the exercise of this function. Subject to compliance with Article 9.2, the Concessionaires as infrastructure manager shall fulfil the role of the allocation body.

9.2 The allocation body established in accordance with Article 9.1 shall be independent in its legal form, organisation and decision-making from any railway undertaking.

9.3 Requests for train paths shall be submitted to the allocation body, or to any other relevant infrastructure manager, or to any joint body established by infrastructure managers for this purpose. Requests for train paths shall be submitted by the railway undertaking or the international grouping in accordance with the conditions and procedures set out in the Network Statement complemented, where a framework agreement is in place and as appropriate, by the provisions of that agreement. The allocation body must adhere to the requirements set out in Article 18 of Directive 2001/14/EC.

(a) The right to use specific infrastructure capacity in the form of a train path may be granted for a maximum duration of one working timetable period. Any party to a framework agreement shall apply for capacity in accordance with the terms of that agreement. Once the allocation body has allocated capacity to a railway undertaking, that capacity may not be transferred by the recipient to another undertaking or service. Any trading in infrastructure capacity is prohibited and shall lead to that railway undertaking being excluded from the further allocation of capacity. The use of capacity by a railway undertaking when carrying out the business of an international grouping shall not be considered a transfer.

(b) The allocation body shall consider all applications for infrastructure capacity under the conditions and following the deadlines set out in the Network Statement. It shall take account of the capacity needed for maintenance, renewal and improvement of the infrastructure. It shall as far as is possible meet all requests for infrastructure capacity. Where there are conflicting requests for capacity, the allocation body shall have the right to propose different paths to those that were requested; any such proposal must be accompanied by a justification. The allocation body shall attempt, through consultation with the appropriate path requestors, to achieve a resolution of any conflicts.

(c) At the end of the scheduling process, the allocation body shall establish a draft working timetable which it shall circulate to all interested parties. Interested parties shall have at

least one month in which to make any comments on the draft. At the end of that period, the allocation body shall take appropriate measures to deal with any concerns that are expressed, and then adopts and publishes the definitive working timetable.

(d) Without prejudice to the provisions of Article 12, in case of disputes relating to the allocation of infrastructure capacity, the allocation body shall establish a dispute resolution system in order to resolve such disputes promptly. The system shall be described in the Network Statement and, where the system is applied, a decision shall be reached within a time limit of ten working days.

(e) Requests for paths may be made after publication of the working timetable and for the remainder of the duration of that timetable period. Ad-hoc requests for individual train paths may also be made at any time during the current working timetable period. The allocation body must respond to ad hoc requests for individual train paths as quickly as possible and, in any event, within five working days. Information supplied on available spare capacity shall be made available to all railway undertakings and international groupings who may wish to take advantage of this capacity.

9.4 The allocation body shall give its reasons for any refusal of train paths.

9.5 The allocation body may, giving reasons, withdraw or alter allocated paths:

(a) to allow unscheduled maintenance on the railway infrastructure;

(b) at the request of the Intergovernmental Commission, of either of the two Principals or of both Principals acting jointly, to give priority to transport needed for national defence; or

(c) to allow more efficient use of the infrastructure when the path has, for a period of at least one month, been used less than a threshold quota set out in the Network Statement.

Fifteen days' notice must be given to the path holder, and the railway undertakings affected must be consulted, on any decision to modify or withdraw paths. The allocation body must advise the duration of the modification or withdrawal. In the circumstances described at (c) above, the modification or withdrawal may last for the duration of the current working timetable period.

However, in the event of an emergency and where absolutely necessary, particularly in the event of an accident, a breakdown rendering the infrastructure temporarily unusable or any other event preventing the reasonably safe use of the infrastructure, the allocation body may without warning withdraw the paths allocated for as long as is necessary to repair or recover the system. The allocation body shall immediately inform the Intergovernmental Commission of such a closure.

The terms governing compensation shall be set out in the agreement entered into in accordance with Article 6(d).

9.6 The allocation body shall co-operate with other infrastructure managers to ensure that there is proper co-ordination of train paths through the Fixed Link and on to other networks, and shall establish such procedures as are appropriate to enable this to take place in accordance with Article 15 of Directive 2001/14/EC.

ARTICLE 10

Congested Infrastructure

10.1 Where the Concessionaires find that it is not possible to satisfy requests for infrastructure capacity, they must immediately declare the infrastructure to be congested, inform the Intergovernmental Commission, and apply the priority criteria set out in the network statement.

10.2 The Concessionaires shall, within six months of the declaration described in Article 10.1, undertake a capacity analysis in accordance with Article 25 of Directive 2001/14/EC, and notify it to the Intergovernmental Commission.

10.3 Following consultation with the users of the infrastructure the Concessionaires shall, within six months of the completion of the capacity analysis described in Article 10.2, produce a capacity

enhancement plan in accordance with Article 26 of Directive 2001/14/EC and in conformity with any relevant provisions of the Concession.

ARTICLE 11

Infrastructure Charges

11.1 The Concessionaires shall co-operate with other infrastructure managers to achieve the efficient operation of train services. They must aim to guarantee the optimum competitiveness of international rail freight and ensure the efficient utilisation of the Trans-European Rail Freight Network.

11.2 The Concessionaires shall establish a charging body to set out specific charging rules and to determine charges for the use of the Fixed Link in accordance with Chapter II of Directive 2001/14/EC. Subject to compliance with Article 11.3, the Concessionaires as infrastructure manager shall fulfil the functions of the charging body. In any event, the Concessionaires shall collect the infrastructure charges for the use of the Fixed Link.

11.3 The charging body established in accordance with Article 11.2 shall be independent in its legal form, organisation and decision-making from any railway undertaking.

11.4 The charges shall be established in accordance with the charging principles set out in Chapter II of Directive 2001/14/EC above, and in particular Article 8.2, with the exceptions listed to those principles, and to the permitted discounts and adjustments, taking into account performance and the possibility of reservation charges. The Concessionaires shall advise the Intergovernmental Commission if they intend to negotiate with a capacity requestor concerning the level of infrastructure charges. Such negotiations shall only be permitted if they are carried out under the supervision of the Intergovernmental Commission, which must intervene immediately if the negotiations are likely to contravene the requirements of Directive 2001/14/EC.

11.5 The charging body must be able to justify the charges billed as against the charging principles set out in this Regulation and in Chapter II of Directive 2001/14/EC and, in particular, to show that the charging scheme has been applied to all railway undertakings in a fair and non-discriminatory way. The charging body must respect the commercial confidentiality of information provided to it by those requesting capacity.

ARTICLE 12

Regulatory Body

12.1 A railway undertaking or international grouping shall have a right of appeal to the Intergovernmental Commission if it believes that it has been unfairly treated, discriminated against or is in any other way aggrieved, and in particular against decisions adopted by the Concessionaires or, where appropriate, the railway undertaking, concerning:

(a) the network statement;

(b) the criteria contained within it;

(c) the allocation process and its result;

(d) the charging scheme;

(e) the level or structure of infrastructure fees which it is, or may be, required to pay; and

(f) arrangements for access to the network.

12.2 For the purpose of carrying out this appeal function the Intergovernmental Commission may call upon such bodies or experts appointed for that purpose, in conformity with Article 10(7) of the Treaty.

12.3 The Concessionaires and other interested parties shall supply to the Intergovernmental Commission, without undue delay, all relevant information requested by that body. In particular, the Concessionaires shall supply to the Intergovernmental Commission all the information

necessary to enable that body to ensure that charges set by the Concessionaires are compliant with Chapter II of Directive 2001/14/EC and are non-discriminatory.

12.4 The Intergovernmental Commission shall take a decision and take action to remedy the situation within a maximum period of two months from receipt of all relevant information about an appeal or complaint. Notwithstanding Article 12.5, a decision of the Intergovernmental Commission shall be binding on all parties covered by that decision.

12.5 Pursuant to Article 76 of the Regulation of the Intergovernmental Commission on the safety of the Channel Fixed Link signed in London on 24 January 2007, the decisions of that 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.

12.6 For the purpose of monitoring competition in the rail services market, in so far as it relates to the Channel Fixed Link, the Intergovernmental Commission, without prejudice to the national laws of the two states on competition policy, may call upon such bodies or experts appointed for that purpose, in conformity with Article 10.7 of the Treaty.

ARTICLE 13

Entry into Force

13.1 This Regulation repeals and replaces the Regulation signed on 25 October 2005, except for the provisions of Article 3 of the latter, which remain in force until 31 December 2009.

13.2 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 23rd July 2009 in the English and French languages, both texts being equally authoritative.

Roy Griffins
Head of UK Delegation, Intergovernmental Commission

Christian Parent
Head of French Delegation, Intergovernmental Commission

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Channel Tunnel (International Arrangements) Order 2005 ("the principal Order") in three ways.

Firstly, it amends the principal Order to give effect to a new bi-national regulation ("the new bi-national regulation") made by the Intergovernmental Commission (IGC) established by Article 10 of the Treaty of Canterbury (see full citation and reference in article 1(2)(a) and footnote (**c**) to that provision) to supervise the operation of the Channel Tunnel Fixed link. The new bi-national regulation, made on 23rd July 2009, concerns the conditions of access to the Channel Tunnel. It implements the amendments made by Directive 2007/58/EC to Council Directive 91/440/EEC on the development of the Community's railways (OJ No. L 237, 24.8.1991, p. 25), and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, of the European Parliament and of the Council (OJ No. L 75, 15.3.2001, p. 29), and makes further provisions. The new bi-national regulation shall repeal and replace an earlier regulation made by the IGC on 25th October 2005.

More specifically, compared with the former bi-national regulation, the new bi-national regulation:

- extends, from 1st January 2010, the right of access to the Channel Tunnel for international passenger services from international groupings to all railway undertakings (article 3.1 of the new bi-national regulation, implementing articles 1(2), (3), (5), (6), (7) and (8) of Directive 2007/58/EC);

- includes new provisions on the duration of Framework Agreements between railway undertakings and infrastructure managers (article 8 of the new bi-national regulation, implementing article 2(4) of Directive 2007/58/EC);

- includes special provisions on framework agreements, applying when infrastructure has been designated as a "specialised infrastructure" under Article 24 of Directive 2001/14/EC (article 8 of the new bi-national regulation, also implementing article 2(4) of the Directive 2007/58/EC);

- provides for the Concessionaires of the Tunnel to allow a reasonable consultation period on their Network Statement (article 5.3 of the new bi-national regulation, changing the implementation of article 3 of Directive 2001/14/EC);

- changes the wording on judicial review for IGC decisions under the bi-national regulation (article 12.5 of the new bi-national regulation, changing the implementation of article 30(6) of Directive 2001/14/EC);

- requires negotiations between the Concessionaires of the Tunnel and a capacity requestor, concerning the level of charges, to be supervised by the IGC (article 11.4 of the new bi-national regulation, implementing article 30(3) of Directive 2001/14/EC).

Accordingly, *article 2(7)* and the *Schedule* substitute a new Schedule of "international articles" to the principal Order. That Schedule contains the text of 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, as amended by *article 2(4)* of this Order. Under *article 1(2)(a)* of this Order, the substitution and amendment will take place from the date when both governments have completed the domestic 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 13.2 of the new bi-national regulation. Under *article 1(3)* of this Order, the Secretary of State must give notice, in the Gazettes, of the date when the Schedule enters into force.

Article 3 implements the transitional arrangements under article 13.1 of the bi-national regulation, whereby Article 3 of the former bi-national regulation remains in force until 31st December 2009. As a result, between the date on which this Order comes into force and the opening of

international services to all railway undertakings on 1 January 2010, Article 3 of the new bi-national regulation will not have effect, while the unamended Article 3 of the Schedule to the principal Order will continue to have effect. This means that international groupings will not lose their rights of access on the coming into force of the bi-national regulation.

Secondly, *articles 2(2) and 2(3)* of this Order update the references to Directives 91/440/EEC and 2001/14/EC in the principal Order, so that they are read as amended by Directive 2007/58/EC. Again, these articles come into force only at the same time as the new bi-national regulation.

Thirdly, this Order amends the principal Order to make changes to the enforcement regime under the principal Order. *Article 2(5)* provides that the IGC has the power to bring civil enforcement proceedings in respect of the breach of certain obligations, including by seeking an injunction or, in Scotland, an interdict. These obligations are: article 4(3) of the principal Order, which creates an obligation to comply with certain directions given by the IGC in the context of an appeal made to it, in its capacity as the regulatory body (see article 4 of the principal Order, Article 12 of the Schedule to the principal Order and Article 12 of the new bi-national regulation); and the provisions of the bi-national regulations imposing certain obligations (especially in relation to finance) on the Channel Tunnel Concessionaires as infrastructure managers (see Article 4 of the Schedule to the principal Order and Article 4 of the new bi-national regulation). Under *article 2(6),* making false statements for the purposes of the principal Order (including the Schedule) will be an offence, as it is already in the domestic context of the Railway Infrastructure (Access and Management) Regulations 2005 (S.I. 2005/3049). Article 2(6) also makes provision regarding the criminal liability of the officers and members of bodies corporate and the partners of Scottish partnerships.

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 Network Strategy Division, Department for Transport, Great Minster House, 76 Marsham Street, London SW1P 4DR, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.org.uk). A transposition note is also available from the same sources.

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