

**EXPLANATORY MEMORANDUM TO
THE CHANNEL TUNNEL (INTERNATIONAL ARRANGEMENTS) (AMENDMENT)
ORDER 2009**

2009 No. 2081

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument, which relates specifically to the Channel Tunnel, implements a bi-national regulation of the Intergovernmental Commission on the Channel Tunnel (IGC), itself implementing a European Directive concerning the liberalisation of international passenger rail services. That Directive extends current access rights to infrastructure for international rail freight services and international groupings to all international passenger rail services. It also makes new provisions on Framework Agreements for access to the infrastructure. In addition to implementing the Directive, the bi-national regulation and the Order deal with ancillary points: strengthening the enforcement provisions relating to access and management, correcting an omission from the transposition of the previous European legislation on rail market access, and making a few other changes of detail.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The coming into force provision in article 1(1)(a) is necessary to ensure that the bi-national regulation will come into force simultaneously in the United Kingdom and France as intended by article 13.2 of the bi-national Regulation. The coming into force process under article 1(2)(a) is similar to that under article 1(1) of another instrument giving effect to a bi-national regulation of the IGC, SI 2007/3531, the Channel Tunnel (Safety) Order 2007. As with that instrument, in the present case, the Department would ensure that the UK Government notification to the French Government of the completion of the UK internal procedures, as required by article 13.2, would not be given earlier than the expiry of 21 days from the date the Order is laid, so as to respect the “21 day rule”.

4. Legislative Background

4.1 Directive 2007/58/EC amends Council Directive 91/440/EEC on the development of the Community's railways and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for use of railway infrastructure entered into force on 4 December 2007. Member States must transpose Directive 2007/58/EC by 3 June 2009. A Transposition Note is attached at Annex B.

4.2 Directive 91/440/EEC required Member States to open up access to the entire rail network, including track access to and provision of services in terminals and rail

connected ports, to all international and domestic freight operators, and to international groupings.

4.3 Directive 2001/14/EC required Member States to apply Community rules on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure. It required the establishment in each Member State of a rail regulatory body.

4.4 The Channel Tunnel Intergovernmental Commission (the IGC) was established under Article 10 of the Treaty of Canterbury of 1986 (Treaty Series No. 15 (1992)) "to supervise, in the name and on behalf of the two Governments [of the UK and the French republic], all matters concerning the construction and operation of the Fixed Link [i.e. the Channel Tunnel]". In particular, under Article 10(2)(e) of that Treaty, it can draw up regulations applicable to the Tunnel

4.5 In order to ensure that there is no disparity in the manner in which regulation is applied to the French and British sections of the Tunnel, the British and French Governments have agreed that the IGC should be the regulatory body for the Tunnel, both for economic and for safety regulation.

4.6 As part of these functions, to implement Directives 91/440/EEC and 2001/14/EC, the IGC adopted, on 25 October 2005, a bi-national regulation on the use of the Channel Tunnel by Railway Undertakings, which was implemented in the UK by the Channel Tunnel International Arrangements (Order) 2005. To implement Directive 2007/58/EC, the IGC adopted, on 23 July 2009, a bi-national regulation that will repeal and replace the one of 2005. That instrument must, in turn, be transposed in UK law, which is one of the effects of the Order.

4.6 The proposal which resulted in Directive 2007/58/EC was the subject of Explanatory Memorandum (EM) 7147/04 submitted by the Department for Transport to the UK Parliament for consideration on 30 March 2004. The proposal was part of a series of EU proposals known as the 'Third Railway Package'.

4.7 The House of Commons European Scrutiny Committee considered the EM on 21 April 2004, found that it was of political importance and requested further information. The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B, who considered the EM on 19 April 2004 and requested further information. Tony McNulty MP, then Parliamentary Under Secretary of State for Transport, responded to both Committees on 1 September 2004. The House of Commons European Scrutiny Committee considered the Minister's letter on 9 September 2004, and reported that they might wish to recommend a debate on the proposal when further information became available. The House of Lords Select Committee on the European Union replied on 9 September that they would also hold the proposal under consideration pending further developments. Tony McNulty wrote to both Committees again on 24 September 2004. Further Ministerial letters were sent to both Committees on 29 November 2004 and 14 January 2005, enclosing partial Regulatory Impact Assessments. On 19 January 2005, the House of Commons European Scrutiny Committee recommended a debate on the documents in European Standing Committee A. The debate took place on 9 March 2005, and endorsed the Government approach to the

proposal. The House of Lords Select Committee on the European Union cleared the proposal on 26 January 2005.

4.8 Further Ministerial letters were sent to both Committees to keep them informed of the further progress of the proposals in EU negotiations. These were dated 13 July 2005, 25 November 2005, 17 January 2007, 19 February 2007, and 11 July 2007.

5. Territorial Extent and Application

5.1 This instrument extends to all of the United Kingdom.

5.2 It does not replicate legislation which already exists in a part of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Directive 2007/58/EC requires member States to extend, from 1 January 2010 at the latest, the existing right of access for international passenger services (as defined in the provision inserted by Article 1(3) of the Directive) in the EC to any licensed railway undertaking (currently only open to "international groupings" i.e. associations of at least two railway undertakings established in different Member States, for the purpose of providing international services between those States). The Directive also amends the provisions on the duration of framework agreements, allowing agreements of up to fifteen years for services using specialised infrastructure, and even longer in exceptional cases. Finally, it provides for other changes that are not relevant to the Channel Tunnel, either because of its nature, or because, in the case of railway services operating under a public service contract, it is not envisaged that any such operators will be operating in the Tunnel in the near future.

7.2 The bi-national regulation implements those provisions. From 1 January 2010, all railway undertakings, whether part of an international grouping or not, will have rights of access to the Tunnel. Until that date, as before, only international groupings will enjoy those rights. The bi-national regulation also makes further provisions. One is to require the Concessionaires to allow a reasonable period of consultation on their Network Statement, i.e. the document which, under Directive 2001/14/EC provides information on the capacity available. The bi-national regulation also changes the wording of Article 12.5, to make it consistent with the wording of Article 76 of the bi-national regulation of 24 January 2007 on safety in the Channel Tunnel, and cross-refer to that provision. This change has no material effect in UK law, but provides a firmer legal basis for judicial review under French law. Finally, the bi-national regulation corrects an error in the transposition of Directive 2001/14/EC: now, any negotiation between the

Concessionaires and an undertaking or grouping requesting capacity will need to be supervised by the IGC.

7.3 The Order in turn implements the bi-national regulation, the text of which forms its Schedule. It will also create standard provisions enabling the IGC to seek an injunction or interdict, standard provisions relating to the making of false statements, and standard provisions on offences by bodies corporate and Scottish partnerships.

7.4 There has been no public interest in this policy as no responses to the consultation were received from the general public. Neither has there been any media attention.

7.5 Apart from the fact that the Regulations implement a Directive, the changes implemented by the Regulations are not in themselves politically or legally important.

- ***Consolidation***

7.6 This is the second amendment to The Channel Tunnel (International Arrangements) Order 2005. As was said above, the changes made to the 2005 bi-national regulation were consolidated with the original. As a result, the Schedule to the 2005 Order will be replaced in its entirety, as opposed to being amended in a piecemeal fashion. Otherwise, it is not the Department's intention to consolidate the legislation in the foreseeable future.

8. Consultation outcome

8.1 The Department carried out a 12-week consultation exercise on the draft Regulations via the Department's website. 18 stakeholders were specifically targeted. Three responses were received: one from the Office of Rail Regulation (ORR), one from Eurostar, and one from Transport for London (TfL). An analysis of the responses was completed and consultees' views taken into consideration. A copy of the consultation report is available on the Department's website at www.dft.gov.uk.

8.2 The responses were supportive of our approach. In particular, they agreed that the rights of access in respect of passenger services should be extended to all from 1 January 2010. They also agreed that, until that date, international groupings should keep their rights in that capacity. The ORR drew attention to an error in the Explanatory Note and Impact Assessment listing them as the regulatory body, which was corrected to refer to the IGC. They suggested adding a provision in Article 8.3 of the bi-national regulation, allowing the infrastructure manager to reduce the capacity reserved under the terms of a framework agreement in certain circumstances, which we also accepted. They were unsure about the changes to the wording of Article 12.5, but, as explained above, we do not think it has an impact in UK law, while we understand it is useful in French law. The ORR agreed with the way we proposed amending the regulations in respect of consultation on the draft network statement. They suggested setting a minimum period for response (28 days). However, the Directive is silent on a timescale for response, and we have not included such a provision in the domestic regulations, so did not follow this suggestion. The ORR also suggested clarifying the wording of Article 5.5, on the process to update Network Statements, but we did not think it required clarification. TfL commented that they did not believe that the Impact Assessment had identified the

adverse impact on Eurostar of potential competition; we updated the Impact Assessment accordingly.

8.3 During consultation, we received a response from the Commission to a query about the position of international groupings. This confirmed our approach of no longer referring, in the provisions of the bi-national regulation implementing Directive 91/440/EEC, to those groupings as such: it would no longer be necessary, since access rights for international passenger services would be available to all railway undertakings. On the other hand, it led us to refer to international groupings by name again in the provisions of the bi-national regulation that transpose Directive 2001/14/EC – such as the right to enter into a Framework Agreement – since that Directive itself, by contrast with Directive 91/440/EEC, still uses that phrase, and since this allows international groupings to do a number of things to represent their members, such as applying for capacity. It took us some time to agree the wording with our French counterparts. We therefore did not have an opportunity to consult on those changes, and will not have one before the transposition date. However, since the impact of the changes is minimal (without it, the same result would be achieved by the constituent undertakings of an international grouping concluding a collective agreement with the Concessionaires), and since the impact on businesses, if anything, is positive, since it simplifies the way a group of undertakings can apply for capacity, we do not think the lack of consultation on this specific point creates unfairness to the stakeholders.

8.4 After consultation, a number of further requests for changes of the bi-national regulation were made by the French Foreign Affairs Ministry, as a condition to granting authority to approve it to the Head of the French Delegation and Chairman of the IGC. One concerned the cross-reference to Article 76 of the bi-national regulation of 24 January 2007, referred to above, and others concerned the alignment of the French and English versions. As mentioned above, we consider that the former has no effect in English law, while the latter changes were very minor.

9. Guidance

9.1 The Department is not producing guidance on this Order.

10. Impact

10.1 The Order will have some impact on the Channel Tunnel infrastructure manager, Eurotunnel, and on train operators including Eurostar. There is no impact on charities or voluntary bodies.

10.2 The impact on the public sector is minimal. The IGC is the main public body affected, as the Regulations place a number of duties on the regulatory body. However, the expenses of the IGC are met by the Concessionaires. In any case, the majority of these functions are already carried out by the IGC, and it is assumed that any extra work created by the implementation of these Regulations will be accommodated within existing resources.

10.3 An Impact Assessment is attached to this memorandum at Annex A.

11. Regulating small business

11.1 The legislation applies to small business. However, the legislation will only affect large rail operators. No impact on small firms is expected.

12. Monitoring & review

12.1 The purpose of this instrument is to open up market access for international passenger services. This instrument may attract new applications from operators to run other international passenger services. Greater competition in this area could result in an increase to service levels and more choice for passengers.

12.2 The European Commission will submit a report to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions by 31 December 2012 evaluating the application of Directive 2007/58/EC. The report will also assess the state of preparation of a further opening up of the rail market.

13. Contact

Fran Queen at the Department for Transport, Tel: 020 7944 5020 or e-mail: fran.queen@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department /Agency: Transport	Title: Impact Assessment of transposition of Directive 2007/58/EC to the Channel Tunnel	
Stage: Implementation	Version: 2	Date 23 April 2009
Related Publications:		

Available to view or download at:

<http://www.dft.gov.uk>

Contact for enquiries: Fran Queen

Telephone: 020 7944 5020

What is the problem under consideration? Why is Government intervention necessary?

Directive 2007/58/EC addresses liberalisation of international passenger services and is one of the latest in a series of directives designed to revitalise the railways and take forward the creation of an integrated European railway area.

To comply with Directive 2007/58/EC, it is necessary to amend secondary legislation extending current legislation on international rail freight to international passenger services. This IA relates specifically to amendment of The Channel Tunnel (International Arrangements) Order 2005.

What are the policy objectives and the intended effects?

The Directive's objectives address opening the market for provision of train services, and harmonising regulation of the rail sector in order to facilitate use of rights of access and reduce the costs of providing train services.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Do the minimum needed to give effect to the Directive in the Channel Tunnel. This is the preferred option as it meets our Community obligations while minimising the impact on industry.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The European Commission will review the impact of the Directive by 1 January 2009, and produce a second review on market development by 31 December 2012.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments

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

Signed by the responsible Minister:

C D MoleDate: 25th July 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Do the minimum needed to give effect to the Directive in the Channel Tunnel
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		
○	Total Cost(PV)		£ Not known
<p>Other key non-monetised costs by 'main affected groups' There may be a very small increase in costs to IGC. We do not have the information to monetise these costs, but they are expected to be negligible.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off) (excluding one-off)		
	£		
○	Total Benefit (PV)		£ Not known
<p>Other key non-monetised benefits by 'main affected groups' If new rail operators enter the market, there may be benefits to passengers from increased competition and choice. However, the rail market in Great Britain is already open, so the incremental benefit from this specific small change is unlikely to be significant.</p>			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	3 June 2009
Which organisation(s) will enforce the policy?	IGC
What is the total annual cost of enforcement for these organisations?	£ Unknown, v small
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0

What is the value of changes in greenhouse gas emissions?			£ Unknown	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase -	
Increase	£ negligible	Decrease	£	Net Impact	£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Directive 2007/58/EC extends the provisions of previous Directives in order to liberalise international passenger rail services. There is currently only one international passenger service operator through the Channel Tunnel, Eurostar, whom the directive may affect. However, the legal certainty that the Directive and its implementing Regulations will provide may attract new applications to run other international passenger services. Greater competition in this area could result in an increase to service levels and more choice for passengers. On the other hand, the change in legislation is small, and it is not clear that new operators would choose to enter the market and so provide these benefits. The arrival of new entrants to the market might also provide benefits to the Eurotunnel by increasing access charge revenues. Conversely, the arrival of competition could see passengers switch from existing Eurostar services and could thus have an adverse impact on that company's revenues.

The Directive also amends the current requirements on the duration of framework agreements for all rail services, and requires that from 1 January 2010 the regulatory body approve initial framework agreements for passenger services that had previously operated outside a framework agreement. Although this situation does not arise in the case of the Channel Tunnel, the wording of the Directive is opaque. The provision is therefore being applied, in order to demonstrate complete transposition, but is expected to be redundant.

The Channel Tunnel Intergovernmental Commission (IGC) is the regulatory body under the current legislation - The Channel Tunnel (International Arrangements) Order 2005. The new regulations will amend and extend its responsibility to cover new requirements for international rail services and framework agreements. This may create some additional work for the IGC, but the cost implications are likely to be minimal.

Transposition is by means of a Regulation drawn up by the IGC - thus ensuring a consistent approach for operators applying in France or in the UK - and given effect in domestic law by Order of Parliament.

Legal Aid

The Directive and its implementing Regulations are likely to have no effect on the legal aid budget, as only large rail operators would potentially make an application under the Civil Procedure Rules.

Competition assessment

The proposed legislation will not directly affect or limit the number or range of suppliers (in this case international passenger rail operators) nor limit the firm's ability or incentives to compete vigorously. If the increased legal certainty does result in more firms entering the market then competition will actually increase.

Small firms impact test

The proposed legislation will only affect large rail operators. No impact on small firms is expected.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No

TRANSPOSITION NOTE FOR DIRECTIVE 2007/58/EC AMENDING COUNCIL DIRECTIVE 91/440/EEC ON THE DEVELOPMENT OF THE COMMUNITY'S RAILWAYS AND DIRECTIVE 2001/14/EC ON THE ALLOCATION OF RAILWAY INFRASTRUCTURE CAPACITY AND THE LEVYING OF CHARGES FOR USE OF RAILWAY INFRASTRUCTURE

This Transposition Note outlines how Directive 2007/58/EC is implemented in relation to the Channel Tunnel by the Channel Tunnel (International Arrangements) (Amendment) (Order) 2009 (“the Order”). The Order gives force in UK law to a bi-national regulation of the Intergovernmental Commission on the Channel Tunnel (IGC), made on 23 July 2009, which repeals and replaces a bi-national regulation made by it on 25 October 2005. That regulation had been implemented by SI 2005/3207, the Channel Tunnel (International Arrangements) Order 2005 (“the 2005 Order”), which the Order amends.

In relation to the network in the rest of Great Britain, the Directive is implemented by SI 2009/1122, the Railways Infrastructure (Access and Management) (Amendment) Regulations 2009, to which a Transposition Note is also attached.

Articles	Objectives	Implementation	Responsibility
Article 1(1)	Permits Member States to exclude any international transit service that starts and finishes outside of the EC.	This situation is not geographically possible in respect of services going through the Channel Tunnel so this provision has not been implemented.	
Articles 1(2), (3) and (4)	Delete the definition of "international grouping" in Article 3 of Directive 91/440/EEC (definitions); insert definitions of “international passenger service” and of “transit”.	As these relate to the interpretation of phrases found elsewhere in the Directive, no implementation as such is required. For the purposes of convenience, Article 2 of the Schedule to the Order, reproducing the new bi-national regulation, provides that the expressions used in that regulation shall have the meaning they bear in the Directive.	Secretary of State
Article 1(5)	Deletes the first indent of Article 5(3) of Directive 91/440/EEC concerning the right of railway undertakings to form international groupings.	In the Schedule to the Order no longer refers to “international groupings” in the Articles that transpose Directive 91/440/EEC. This concerns Articles 3	Secretary of State

Articles	Objectives	Implementation	Responsibility
		(access rights), 5 (network statement), and 11(5) (infrastructure charges – fairness of the charging scheme).	
Article 1(6) -	Deletes the phrase "and international groupings" in Article 8(1) of Directive 91/440/EEC, relating to the fee payable by those using the infrastructure.	Article 11(5) in the Schedule to the Order, which implements Article 8(1) of Directive 91/440/EEC, no longer refers to "international groupings".	Secretary of State
Article 1(7)	Deletes Article 10(1) of Directive 91/440/EEC concerning the rights of international groupings to have access to the infrastructure.	Article 3(1) in the Schedule to the Order, on access rights, no longer refers to "international groupings".	Secretary of State
Article 1(8)	<p>Inserts paragraph (3a) in Article 10 of Directive 91/440/EEC. That provision:</p> <ul style="list-style-type: none"> - requires Member States to extend, from 1 January 2010, the existing right of access to provide international passenger services in the EC, currently available to 'international groupings', to any licensed railway undertaking; - includes the right to pick up and set down passengers at stations within a Member State as part of an international train service by 1 January 2010. - provides that the right of access to the infrastructure of 	<p>Article 3(1) in the Schedule to the Order confers, from 1 January 2010, rights of access to international passenger services run by all railway undertakings, whether part of an international grouping or not.</p> <p>There is no possibility of picking up or setting down passengers within the Channel Tunnel, so this provision has not been implemented.</p> <p>In the UK, the share of international carriage of passengers by train does</p>	Secretary of State

Articles	Objectives	Implementation	Responsibility
	<p>Member States where the share of international carriage of passengers by train constitutes more than half of the passenger turnover of railway undertakings in that Member State shall be granted by 1 January 2012.</p> <p>- Provides that the regulatory body shall determine whether the principle purpose of the service is to carry passengers between stations located in different Member States.</p> <p>Inserts paragraph 3b in Article 10 of Directive 91/440/EEC allowing Member States to restrict competition in particular routes which are covered by public service contracts.</p> <p>Inserts paragraph 3c in Article 10 of Directive 91/440/EEC allowing Member States to limit the right to pick up and set down passengers in certain circumstances.</p> <p>Inserts paragraph 3d in Article 10 of Directive 91/440/EEC permitting Member States not to grant rights of access</p>	<p>not constitute more than half of the passenger turnover of railway undertakings. In any event, under Article 3(1) of the Schedule to the Order, access rights will be granted on 1 January 2010.</p> <p>Under article 4 of the 2005 Order, the IGC is the relevant regulatory body for the Tunnel, and, under Article 12 of the Schedule to the Order, a railway undertaking may appeal to it if it believes it has been aggrieved. The IGC would determine the issue of the purpose of the service if it was part of the dispute under appeal.</p> <p>We have not implemented this provision, as it is not envisaged that the Channel Tunnel will be used for the performance of public service contracts.</p> <p>There is no possibility of picking up passengers or setting them down within the Channel Tunnel within the Channel Tunnel, so this optional provision has not been implemented.</p> <p>In the Tunnel, access rights will only be granted to all railway undertakings from 1 January 2010.</p>	

Articles	Objectives	Implementation	Responsibility
	<p>before 1 January 2010, where access rights of a similar nature are not granted.</p> <p>Inserts paragraph 3e in Article 10 of Directive 91/440/EEC, requiring Member States to ensure that decisions referred to in paragraphs 3b, 3c and 3d are subject to judicial review.</p> <p>Inserts paragraph 3f in Article 10 of Directive 91/440/EEC allowing the authorities responsible for rail passenger transport to impose a levy on railway undertakings providing passenger services for the operation of routes which fall within the jurisdiction of that authority and which are operated between two stations in that Member State.</p>	<p>Paragraphs 3b, 3c and 3d are not implemented, so this provision does not need to be implemented either.</p> <p>This provision is not relevant to the Channel Tunnel, where there are no stations.</p>	
Articles 1(9) to (13)	Impose an obligation on the Commission to report on the implementation of Directive 91/440/EEC, provide for the procedure to amend and adapt it, and provide that that Directive does not apply to Cyprus or Malta as long as there is no railway system on their territory.	These provisions do not require implementation in the UK.	
Article 2(1)	Inserts a new exclusion in Article 1(3)(e) to Directive 2001/14/EC	This situation is not geographically possible in respect of services going	

Articles	Objectives	Implementation	Responsibility
	for transport operations in the form of railway services which are carried out in transit through the Community.	through the Channel Tunnel, so this provision has not been implemented.	
Article 2(2)	Inserts a new definition for "transit in Article 2(n) to Directive 2001/14/EC.	As this relates to the interpretation of phrases found elsewhere in the Directive, no implementation as such is required. In any case, such rail "transit" is not geographically possible in respect of services going through the Channel Tunnel, so this provision has not been implemented. For the purposes of convenience, Article 2 in the Schedule to the Order, reproducing the new bi-national regulation, provides that the expressions used in that regulation shall have the meaning they bear in the Directive.	
Article 2(3)	Inserts a new paragraph in Article 13(4) of Directive 2001/14/EC, requiring an applicant to contact the infrastructure managers and the regulatory bodies concerned, when applying to operate international passenger services. In order to enable the assessment of the purpose of the international service to carry passengers between stations located in different member States, and the potential economic impact on existing	Article 9 of the Schedule to the Order requires those requesting capacity to submit their requests to the allocation body set up by the Concessionaires. The provision regarding the duty to inform the regulatory body has not been implemented. It is not envisaged that the Tunnel will be used for the performance of public service contracts. If the Concessionaires agree that the service should obtain capacity, there is no need for the IGC to determine formally what the purpose of the service is; if they do	Secretary of State

Articles	Objectives	Implementation	Responsibility
	<p>public services contract, any competent authorities that have awarded a rail passenger service defined in a public service contract, any other interested competent authority with a right to limit access under Article 10(3b) of Directive 91/440/EEC and any railway undertaking performing a public service contract on the route of this international passenger service must be informed of the application by the competent regulatory body.</p>	<p>not agree, the purpose can be determined on an appeal to the IGC under Article 12 of the Schedule to the Order.</p>	
<p>Article 2(4)</p>	<p>Replaces article 17(5) of Directive 2001/14/EC by new Articles 17(5) and 17(5a), setting the time periods for framework agreements.</p> <p>The third paragraph of new Article 17(5a) relates to international passenger services operating before 1 January 2010. We have been told by the European Commission that it applied to services having operated without a framework agreement, and having made specialised investments, and that its application was optional (“the initial framework</p>	<p>Article 8 in the Schedule to the Order implements new Articles 17(5) and (5a).</p> <p>As this provision is optional and concerns a situation that does not occur within the Channel Tunnel, it has not been implemented.</p>	<p>Secretary of State</p>

Articles	Objectives	Implementation	Responsibility
	agreement <i>may</i> be drawn up...”)		
Article 2(5)	Provides that the regulatory body under Directive 2001/14/EC must be functionally independent of a competent authority awarding a public service contract	The regulatory body is designated by article 4 of the 2005 Order as the Intergovernmental Commission. As it is not envisaged that the Tunnel will be used for the performance of public service contracts, no further implementation is necessary.	
Article 3(1)	Requires Member States to implement the Directive before 4 June 2009.	Article 1(2)(a) of the Order provides that the provisions implementing the bi-national Regulation will commence when the bi-national regulation enters into force in international law, namely when both countries have completed their internal procedures for the entry into force, and notified the other that they have done so namely on the date of the later notification.	Secretary of State
Article 3(3)	Provides that the provisions of Articles 1(2), (5), (6) and (7), apply from 1 January 2010, deleting references to the rights of international groupings from Directive 91/440/EEC.	Under Article 3(1) of the Schedule to the Order, and article 3(8) of the Order, Article 3 of the 2005 Order, before amendment, continues into force until 1 January 2010. This means that international groupings will not lose their rights of access before the right of access is generalised on 1 January 2010.	Secretary of State