

EXPLANATORY MEMORANDUM TO
THE CHANNEL TUNNEL (SAFETY) ORDER 2007
2007 No. 3531

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
2.1 This Order gives effect in Great Britain to a “Regulation” (“the bi-national Regulation”) made by the joint United Kingdom and French Channel tunnel authority, known as the Channel Tunnel Intergovernmental Commission (“IGC”), to transpose the requirements of the European Railway Safety Directive (Directive 2004/49/EC) in relation to the Channel tunnel.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
3.1 The coming into force provision in article 1(1) is necessary to ensure that the bi-national Regulation will come into force simultaneously in Great Britain and France as intended by article 77 of the bi-national Regulation. 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 77, would not be given earlier than the expiry of 21 days from the date the Order is laid, so as to respect the “21day rule”.
4. **Legislative Background**
4.1 The Order is being made to implement a European obligation, namely the obligation to give effect to the Railway Safety Directive in relation to the Channel tunnel.
4.2 It is also being made to implement the United Kingdom’s obligation under article 10(8) of the Treaty of Canterbury of 1986, made between the United Kingdom and the French Republic concerning the construction and operation of the Channel tunnel. Under article 10(8) both governments are obliged to give legal effect in their national jurisdictions to Regulations made by the IGC under article 10(3) (e) of that Treaty, i.e. regulations applicable to the Channel tunnel.
4.3 For the rest of Great Britain the requirements of the Railway Safety Directive are mainly transposed by the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (S.I. 2006/599) (“ROGS”). However the relevant provisions of these Regulations were not made to apply to the tunnel, as transposition was to be dealt with on a bi-national footing with the French Government, in accordance with the Treaty of Canterbury and in recognition of the cross border nature of the tunnel.
4.4 The Treaty of Canterbury established a 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 the IGC to supervise, in the name of and on behalf of the two Governments, all matters concerning the construction and operation of the tunnel (article 10 of the Treaty).
4.5 The functions of the IGC include drawing up, or participating in the preparation of, regulations applicable to the Tunnel (article 10(3) (e) of the Treaty). The bi-national Regulation is the second regulation so drawn up by the IGC to be brought into force. The first one was brought into force by S.I. 2005/3207.

4.6 In order to transpose the Railway Safety Directive in a uniform way throughout the tunnel system the IGC has drawn up the bi-national Regulation. A copy is set out in the Schedule to the Order.

4.7 The purpose of the draft Order is therefore to give effect to the bi-national Regulation in Great Britain and to make provision for its enforcement.

4.8 A transposition table is shown in Annex A of this Memorandum.

4.9 A Parliamentary scrutiny history is shown in Annex B of this Memorandum.

5. Territorial Extent and Application

5.1 Subject to the few exceptions indicated in article 1(3), the Order only applies to Great Britain. The few provisions which article 1(3) makes apply to Northern Ireland are made to apply there because they involve amending the Channel Tunnel (International Arrangements) Order 2005 and that instrument applies in Northern Ireland (see paragraph 7.21 below).

5.2 The Order makes equivalent provision for the Channel Tunnel as already exists for the rest of the Great Britain. Equivalent provision to transpose the Railway Safety Directive has been made for Northern Ireland.

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

The Railway Safety Directive

7.1 The Railway Safety Directive aims to establish a common regulatory framework for railway safety throughout Europe. It was drawn up against the background of the EC policy objective of promoting a single market for rail transport services. It recognised that differences remained between national frameworks for safety regulation, and the need to harmonise safety rules, safety certification, the roles of safety authorities and the investigation of accidents. The Directive sets out to achieve the development and improvement of safety on the Community's railways and improved access to the market for rail transport services by:-

- (a) harmonising the regulatory structures in Member States;
- (b) defining responsibilities between the various stakeholders (e.g. infrastructure managers, railway companies, national safety authorities);
- (c) developing common safety targets and common safety methods with a view to greater harmonisation of national rules;
- (d) requiring the establishment, in every Member State, of a safety authority and an accident investigation body; and
- (e) defining common principles for the management, regulation and supervision of railway safety.

7.2 Safety authorities, to be established in all Member States, are to be independent in their organisation, legal structure and decision making from any railway undertaking, infrastructure manager or procurement entity. Member States are to lay down the rules on penalties applicable to infringements of national provisions adopted under the Directive.

The bi-national Regulation

7.3 The way the bi-national Regulation transposes the Railway Safety Directive is briefly as follows.

(a) The IGC is made the safety authority for the Channel tunnel (*chapter 2*). Indeed the Directive expressly recognises that for specialised cross-border infrastructure Member States may entrust the functions of safety authority to a bi-national body in order to ensure a unified safety regime. This does not create any additional regulatory burden for the IGC because under the Treaty of Canterbury its supervisory role already encompassed safety.

(b) 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 IGC (*chapter 3*).

(c) 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 IGC of the measures taken by the railway undertaking to comply with the specific requirements necessary for safe use of the Channel tunnel (*chapter 3*).

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

(e) Provision is made for requiring rolling stock to be authorised by the IGC 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*).

(f) Provision is made relating to the investigation of accidents and incidents in the Channel Tunnel (*chapter 6*). This mirrors the principles already in place in the UK (including the tunnel) with the establishment of the Rail Accident Investigation Branch, and the bi-national Regulation will not affect the existing arrangements.

(g) Transitional and miscellaneous provisions are made (*chapter 7*). In particular these allow current operations to continue unaffected for transitional periods pending the new style safety authorisations and safety certificates being put in place.

Consultation on the bi-national Regulation

7.4 The bi-national Regulation was signed on 24th January 2007. It was subject to three separate consultations by the IGC with stakeholders (i.e. from 2 February to 17 March, from 28 June to 31 July and from 26 October to 9 November) during the course of its preparation in 2006.

7.5 In particular, the consultation was directed to Eurotunnel, Eurostar (UK) Ltd (EUKL), English, Welsh and Scottish Railways International (EWSI), Société National des Chemins de Fer Français (SNCF - the French rail operator that operates passenger and freight services through the Tunnel in collaboration with EUKL and EWSI respectively), and Europorte 2, (the subsidiary company established by Eurotunnel for the purpose of running freight services through the Tunnel). The Rail Accident Investigation Branch had been consulted during the drafting process because of the need to ensure that the text was coherent with the existing accident investigation regulations which applied to them. The consultation documents were also brought to the attention of the railway industry stakeholders represented on the Department for Transport's European Rail Policy Forum, including ASLEF and the RMT. The consultation received no media attention.

7.6 Substantive comments were received from Eurotunnel, EUKL, EWSI, SNCF and Europorte 2, and included concern about the clarity of the text, the application of transitional procedures and the potential for the introduction of lengthy delays in the time required to acquire Part B certification. The only response from the wider range of consultees came from Passenger Focus, who were concerned at possible confusion between the role of the existing “Channel Tunnel Safety Authority” (established under article 11 of the Treaty of Canterbury to advise and assist the IGC) and the role of the IGC as “safety authority” for the purposes of the Railway Safety Directive.

7.7 As a result of the substantive comments received, the IGC substantially recast its original draft to take account of the concerns expressed. In particular, the requirements placed on the infrastructure manager and the railway undertakings were re-ordered to read more coherently and to remove duplication of clauses, provisions for a “deemed safety authorisation” and “deemed safety certificate” were introduced to provide clear transitional arrangements, and the application process for Part B certification was amended to clarify that an application could be made simultaneously with an application for Part A certification. This allayed the railway undertakings’ concern that they might need to have completed the process for obtaining a Part A certificate before they could even apply for a Part B certificate. The five main interested parties were consulted on the revised draft again during July 2006, and responded with a range of suggested drafting adjustments as a result of which further minor amendments were made to the text. The railway undertakings’ main concerns related to the “unified safety rules” that they would be expected to comply with. The IGC was able to assure them that these “rules” were the technical standards with which they already complied. The revised text was re-circulated to Eurotunnel, EWS, EUKL, SNCF and Europorte 2 on 26 October. No further substantive comments were received.

The Channel Tunnel (Safety) Order 2007

7.8 The Order is made to give the bi-national Regulation force of law in Great Britain, make provision for its enforcement, and deal with related and consequential matters.

(i) Enforcement

7.9 It makes the Office of Rail Regulation (“ORR”) responsible for the enforcement of the bi-national Regulation and treats it as if it was a health and safety regulation. The ORR is thus empowered to use various enforcement provisions of the Health and Safety at Work etc Act 1974 (“the 1974 Act”) to enforce it as if it was made under that Act. These powers involve the designation of inspectors who will be able to serve improvement notices and prohibition notices for breach. There will be a right of appeal against such notices to an employment tribunal. Inspectors will be able to institute prosecutions for breach of such notices, for breach of certain key articles of the bi-national Regulation identified in article 4 (4) of the Order, for breaches of conditions attached to authorisations and safety certificates, and for various other offences under section 33 of the 1974 Act (e.g. intentionally to obstruct an inspector in the exercise of his duties).

7.10 It makes the ORR the enforcing authority because it is already the enforcing authority in GB for the 1974 Act and health and safety regulations made under it, in so far as they apply to railways (including the Channel Tunnel). Indeed it is the enforcing authority for the ROGS regulations mentioned in paragraph 4.3 above. ROGS are health and safety regulations and the Order is drafted to make the enforcement provisions for the bi-national Regulation equate as closely as reasonably practical with the enforcement regime applicable to ROGS.

7.11 The ORR’s enforcement remit will not, however, extend to those articles of the bi-national Regulation, or to those obligations, identified in article 4(5) and (6) of the Order, for the following reasons.

7.12 Article 4(5) of the Order excludes from the ORR's enforcement remit articles 6 and 7 of the bi-national Regulation (safety authority) because those relate to the IGC and duplicate powers they already hold under section 17 of the Channel Tunnel Act 1987. In particular provision for enforcement of any requirements imposed upon third parties under those articles is already provided for under section 17.

7.13 Article 4(5) excludes articles 56 to 60 (access to training facilities) because alternative provision for the enforcement of those provisions is already made in article 5 of the Order.

7.14 Article 4(5) excludes articles 67 to 72 (investigation of accidents and incidents) because this aspect of the Railway Safety Directive (Part V) has already been transposed for the UK, including the Channel Tunnel, through Part 1 of the Railways and Transport Safety Act 2003, which established the Rail Accident Investigation Branch for the UK including the UK part of the tunnel and the related Railways (Accident Investigation and Reporting) Regulations 2005 (as reflected in article 7 of the Order).

7.15 Article 4(6) provides that the responsibility of the ORR to enforce the bi-national Regulation does not extend to enforcing compliance by the IGC with their obligations under it. The IGC is a government body and it would not be appropriate for the ORR to use its enforcement powers against it. However decisions of the IGC may be subject to judicial review.

(ii) Access to training facilities

7.16 Article 5 of the Order relates to articles 56 to 60 of the bi-national Regulation. Those articles provide rights for non discriminatory access to training for train drivers and staff performing vital safety tasks of any railway undertaking, prohibit monopoly training providers charging unreasonable prices, and provide rights for train drivers and staff performing vital safety tasks to have access to documents verifying their training, qualifications and experience.

7.17 Article 5 provides a right of appeal to the ORR for railway undertakings whose staff are denied these rights, or where the price charged for training is unreasonable or discriminatory. Individuals who are denied access to documents verifying their training, qualifications and experience are provided a right of appeal to the ORR.

7.18 Where an appeal is made the procedure provided for in the Railways (Access to Training Services) Regulations 2006 (SI 2006/598), is made to apply. The 2006 Regulations transpose the access to training facilities provisions of the Railway Safety Directive for the rest of GB and incorporate an appeal mechanism in the event of default. In the absence of an appeal mechanism in the bi-national Regulation for the enforcement of such rights, and for consistency, it was considered expedient to adopt these existing appeal procedures. The ORR's decision on appeal is binding and persons to whom they give a direction are under a duty to comply with that direction. This is without prejudice to any right there may be to apply for judicial review of the ORR's decision.

(iii) Civil Liability

7.19 Article 6 provides that a breach of any of those key articles of the bi-national Regulation listed in paragraph (1), (which are the same key articles as listed in article 4(4) (a) of the Order, except for article 16), will, if it causes damage to a third party, be actionable by that third party in civil proceedings for compensation or other civil remedy. Damage for this purpose includes death of, or injury to, any person (including disease and any impairment of a person's physical or mental condition). These rights may not be excluded by contract.

7.20 A breach of ROGS would give rise to civil liability under section 47 of the 1974 Act and so it is considered appropriate to provide comparable liability under this article.

The grant of these rights is without prejudice to any other rights of action a third party may have apart from the Order, e.g. under the international carriage by rail convention (COTIF) or any common law rights to sue for negligence. Decisions of the IGC may be subject to judicial review by the Courts under article 76 of the bi-national Regulation.

(iv) Investigations into accidents and incidents

7.21 Article 7 provides that the Order shall not affect the operation of Part 1 of the Railways and Transport Safety Act 2003, (which established the “Rail Accident Investigation Branch” for the UK), or the Railways (Accident Investigation and Reporting) Regulations 2005 (SI 2005/1992), as these measures already implement the accident and incident investigation requirements of the Railway Safety Directive (Chapter V) and already apply to the Channel Tunnel.

(v) Power to impose charges

7.22 Article 8 empowers the IGC to impose charges reflecting their administrative costs of processing applications for Part B certificates under article 39(ii) of the bi-national Regulation, (including their renewals and modification), and for authorisations for operating rolling stock under article 61 of the bi-national Regulation. By way of comparison, the ORR are empowered to recover their equivalent costs under ROGS through the Railway Safety Levy.

(vi) Amendments to the Channel Tunnel (International Arrangements) Order 2005

7.23 Article 9 makes consequential amendments to the Channel Tunnel (International Arrangements) Order 2005 (SI 2005/3207), and the bi-national Regulation of the 25 October 2005 annexed to it, in order to give effect to article 75 of the bi-national Regulation. The substantive effect of these amendments relate to two issues. Firstly to the existing requirement for railway undertakings, or certain international groupings of them, to hold a certain form of safety certificate from the IGC in order to be allowed access or transit rights through the tunnel. For this requirement will be substituted the requirement to hold a safety certificate under the bi-national Regulation. Secondly in the list of subjects in relation to which appeals may be brought to the IGC by railway undertakings, or certain international groupings of them, for “the enforcement and monitoring of safety rules” there is substituted “arrangements for access to the network”. This amendment is required by article 30(2) of the Railway Safety Directive.

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

7.24 Article 10 makes a consequential amendment to ROGS in order to give effect to article 38 of the bi-national Regulation. The intention of these provisions is to facilitate the Concessionaires being able to apply to the ORR for authorisation to operate their break down recovery diesel locomotives from the Channel Tunnel and along the Channel tunnel rail link and prevent failed trains impacting on tunnel operations.

Consultation on the Channel Tunnel (Safety) Order 2007

7.25 The Department conducted a three month consultation on the Order with stakeholders from 16th July to 16th October 2007. The consultation document was also published on the Department’s web site for that period and can now be seen at the following site: (<http://www.dft.gov.uk/consultations/closed/consultstatinstruchantunnel/>).

7.26 The stakeholders consulted were ASLEF, Europorte 2, Eurostar Group Ltd, Eurotunnel PLC, English Welsh and Scottish Railways International Ltd (EWSI), the Channel Tunnel Intergovernmental Commission (IGC) (including their advisory and associated body the Channel

Tunnel Safety Authority), the Office of Rail Regulation (ORR), the Rail Accident Investigation Branch (RAIB), and the Rail Freight Group.

7.27 Only two representations were received. The first was from Eurostar (UK) Ltd (“EUKL”) and related to article 13viii of the bi-national Regulation (duty of the Concessionaires to take protective measures if they identify, or are advised of, a clear and present safety risk arising from serious or repeated default by a railway undertaking). They questioned the appropriateness of this provision and whether it had a direct basis in the Railway Safety Directive. They considered an underlying principle of the Directive was to place railway undertakings and infrastructure managers on a level footing with a duty to co-operate. They suggested that by placing this duty on the Concessionaires, this balance could be affected. They believed any duty to take action should be with the IGC, which could do so under article 54 (power to suspend, revoke etc a railway undertaking’s safety certificate).

7.28 The UK Secretariat to the IGC has drawn the attention of EUKL to assurances that had already been provided on this article and to the fact that it had been reworded following EUKL's earlier representation that it should be amended to make clear that it related to protective, rather than enforcement, measures. On this basis the EUKL has indicated that it is content.

7.29 The other representation was from the Rail Accident Investigation Branch. They sought confirmation that Chapter 6 of the bi-national Regulation (investigations into accidents and incidents) would not supersede or otherwise compromise the existing UK transposition measures for this aspect of the Railway Safety Directive (see paragraph 7.13 above). They were advised that article 7 of the Order maintains the primacy of the existing UK transposition legislation. On this basis they indicated they were content.

Guidance

7.30 The IGC has prepared guidance on the application of the bi-national Regulation. The guidance has been produced in consultation with stakeholders. Railway undertakings, in particular, are already very aware of the requirements of the Railway Safety Directive as these already apply to their other European operations.

8. Impact

8.1 An Impact Assessment is shown in Annex C of this Memorandum.

8.2 The impact foreseen on the public sector is minimal. Responsibility for the enforcement of the bi-national Regulation is placed upon the ORR, which is already the health and safety enforcing authority for railways and in particular the enforcing authority for ROGS (see paragraph 4.3 above).

9. Contact

9.1 Mike Franklyn at the Department for Transport - Tel: 020 7944 5761 or e-mail: mike.franklyn@dft.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A TRANSPOSITION TABLE

This tables indicates how the bi-national Regulation made by the Intergovernmental Commission ("IGC") transposes the Railway Safety Directive (Directive 2004/49/EC) in relation to the Channel tunnel.

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
CHAPTER 1 - INTRODUCTORY PROVISIONS			
Article 1 - Purpose			
1	Statement of the purposes of the Directive.	Not appropriate for transposition	-
Article 2 - Scope			
2	Statement of scope of the Directive and what rail systems may be excluded.	Bi-national Regulation only applies to the Channel Tunnel	-
Article 3 - Definitions			
3	Definitions.	1 (<i>adopted and adapted as appropriate</i>).	-
CHAPTER II - DEVELOPMENT AND MANAGEMENT OF SAFETY			
Article 4 - Development and improvement of railway safety			
4.1	Member States to ensure that railway safety is generally maintained and, where reasonably practicable, continuously improved.	3	IGC
4.2	Member States to ensure that safety measures take account of a system based approach.	Bi-national Regulation taken as a whole	IGC
4.3	Member States to ensure that the responsibility for the safe operation of the railway system and control of risks is laid upon the infrastructure managers and the railway undertakings.	12, 13, 14, 15	Concessionaires and Railway Undertakings
4.4	Article 4.3 is to be without prejudice to the responsibility of manufacturers, suppliers, and service providers to ensure that rolling stock, installations and services comply with necessary requirements.	12 and 14. (<i>Also generally reflected in existing UK law, e.g. section 6 Health and Safety at Work etc Act 1974</i>).	-
Article 5 - Common safety indicators			
5	Member States to collect information on common safety indicators (CSIs) through annual reports of the safety authorities.	1 iii, 4 xi, 10, 16 iii and Annex 2	IGC
Article 6 - Common safety methods			
6	Provision for the adoption of "common safety methods" (CSMs) by the European Commission and for Member States to amend their national safety rules in the light of their adoption.	1 iv and 19 (<i>but otherwise not appropriate for transposition</i>)	IGC
Article 7 - Common safety targets			
7	Provision for the adoption by the EC of "common safety targets" (CSTs) and for Member States to amend their national safety rules in order to achieve at least the CSTs.	1 v and 19 (<i>but otherwise not appropriate for transposition</i>)	IGC
Article 8 - National safety rules			
8	Member States to establish binding national safety rules, and to notify the Commission of them and any revisions to them. Provision for EC scrutiny of proposed national safety rules which may exceed standards required by CSTs or which may affect railway undertakings of other Member States.	1 xxvi and 17 - 21 (<i>but otherwise not appropriate for transposition. Existing national safety rules already notified to the Commission</i>)	IGC
Article 9 - Safety management systems			
9.1	Infrastructure managers and railway undertakings to	1 xxii, 22, 23, 26 and	Concessionaires and

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
	establish safety management systems to ensure that the railway system can achieve at least the CSTs, conforms with national safety rules and with safety requirements laid down in the Technical Specifications for Interoperability (TSIs) and that the relevant parts of CSMs are applied.	Annex 1	railway undertakings
9.2	The safety management systems are to meet the requirements laid down in Annex III. They are to ensure the control of all risks including the supply of maintenance and material and the use of contractors and take account of the risks arising from the activities of other parties.	1 xxii, 23, 25 and Annex 1	Concessionaires
9.3	The safety management system of an infrastructure manager is to take account of the effects of operations by different railway undertakings and make provision to allow all railway undertakings to operate in accordance with the TSIs etc and be developed with the aim of co-ordinating the emergency procedures of the infrastructure manager with all railway undertakings which operate on its infrastructure.	1 xxii, 24, 25 and Annex 1	Concessionaires
9.4	Infrastructure managers and railway undertakings to submit annual safety reports to the safety authority.	16	Concessionaires and railway undertakings
CHAPTER III - SAFETY CERTIFICATION AND AUTHORISATION			
Article 10 - Safety Certificates			
10.1	Railway undertakings must hold a "safety certificate" to be granted access to railway infrastructure, covering the whole railway network of a Member State or only a defined part of it.	39	Railway undertakings
10.2	The safety certificate is to comprise certification confirming acceptance of (a) the railway undertaking's safety management system and (b) the provisions it has adopted to meet the specific requirements needed for safe operation on the relevant network. The certification to be based on documentation submitted by the undertaking as described in Annex IV.	39, 40, 42, 43 and 45	Railway undertakings and the IGC
10.3	The safety authority in the Member State where the railway undertaking first establishes its operation shall grant the certification referred to in article 10.2 (a) specifying the type and extent of the railway operations covered and such certification shall be valid throughout the EC for equivalent rail transport operations.	42 i	Railway undertakings
10.4	The safety authority in the Member State where the railway undertaking is planning to operate additional rail transport services shall grant the additional national certification referred to in article 10.2 (b).	39 ii	IGC
10.5	Railway undertakings to have to apply to renew their safety certificates at intervals of not more than 5 years. They must inform safety authorities of all major changes for which the certificate must be updated and whenever new categories of staff or rolling stock are introduced. In addition the safety authority may require the certificate to be revised following substantial changes in the safety regulatory framework. If the authority finds the holder no longer satisfies the requirements for having safety certification it shall revoke the part issued under article 10.2 (a) or under 10.2 (b) giving reasons. Member States which issued the article 10.2 (a) certificate are to be informed if the article 10.2 (b) certificate is revoked. The certificate must be revoked if not used in first year of issue.	41, 51, 52(a) and 53 - 55	Railway undertakings and the IGC
10.6	The safety authority to inform the European Railway Agency whenever certification under article 10.2 (a) is issued, renewed, amended or revoked.	Administrative practice of IGC	Issuing Safety Authority

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
10.7	Before 30 April 2009 the European Railway Agency is to evaluate the development of safety certification and report to the Commission.	Not appropriate for transposition	-
Article 11 - Safety authorisation of infrastructure managers			
11.1	An infrastructure manager must hold a “safety authorisation” to be allowed to manage and operate rail infrastructure from the safety authority in the Member State where it is established. The authorisation is to confirm acceptance of the manager’s safety management system and the manager’s provisions to meet the specific requirements necessary for the safe design, maintenance and operation of the infrastructure including the traffic control and signalling system. .	27 and 28	Concessionaires
11.2	Infrastructure managers to have to apply to renew their safety authorisations at intervals of not more than 5 years. It must be updated whenever substantial changes are made to the infrastructure, signalling or energy supply or to the principles of its operation and maintenance. The holder must inform safety authorities of all such changes. The safety authority may require the authorisation to be revised following substantial changes in the safety regulatory framework. If the authority finds the holder no longer satisfies the requirements for having safety authorisation it shall revoke it giving reasons	30 and 34 -36	Concessionaires and IGC
11.3	The safety authority to inform the European Railway Agency whenever safety authorisation is issued, renewed, amended or revoked.	37	IGC
Article 12 - Application requirements relating to safety certification and authorisation			
12.1	Safety authorities to take decisions on applications for safety certificates and authorisations within four months of receipt of all required information.	32 and 47	IGC
12.2	Safety authorities to issue guidance for applicants for safety certification.	49	IGC
12.3	Guidance for obtaining safety certification, listing required documents, to be made available free of charge and applications to be submitted in language required by the safety authority.	44	IGC
Article 13 - Access to training facilities			
13.1	Member States to ensure that railway undertakings applying for a safety certificate have fair and non discriminatory access to training facilities for train drivers and staff accompanying trains whenever necessary to fulfil requirements for the certificate. Training to include relevant route knowledge, operating rules, signalling and control command systems and emergency procedures. Infrastructure managers are also to have non discriminatory access to training facilities for their staff performing vital safety tasks. Member States to ensure railway undertakings have access to examinations and the granting of certificates if such are a pre-requisite of being granted a safety certificate. The safety authority is to ensure the training services, or granting of certificates meets the safety requirements of the TSIs, or national safety rules.	56 - 58	Railway Undertakings, the Concessionaires and the IGC (<i>right of appeal to the ORR under article 5 of the Channel Tunnel (Safety) Order</i>).
13.2	If the training facilities are only available through the services of one railway undertaking or infrastructure manager, Member States are to ensure that they are made available to other railway undertakings at a reasonable non discriminatory price, which is cost related and may include a profit margin.	59	Railway Undertakings and the Concessionaires (<i>right of appeal to the ORR under article 5 of the Channel Tunnel (Safety) Order</i>).
13.3	When recruiting new train drivers, staff on board trains	60	Railway

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
	and staff performing vital safety tasks, railway undertakings must be able to take into account any training, qualifications and experienced acquired from other railway undertakings. For this purpose, such members of staff shall be entitled to have access to, obtain copies of and communicate all documents verifying this.		Undertakings and the Concessionaires (<i>right of appeal to the ORR under article 5 of the Channel Tunnel (Safety Order).</i>)
13.4	Railway undertakings and infrastructure managers are to be responsible for the level of training and qualifications of its staff carrying out safety related work as set out in article 9 and Annex III.	13 vii and 15 iii	Railway Undertakings and the Concessionaires
Article 14 - Placing in service of in-use rolling stock			
14.1	Rolling stock that has been authorised to be placed in service in one Member State in accordance with article 10.2(b) and is not fully covered by the relevant TSIs shall be authorised to be placed in service in another Member State, in accordance with this article 14, if that Member State so requires.	61	Railway undertakings and the IGC
14.2	A railway undertaking seeking such authorisation is to submit a technical file concerning the rolling stock or type of rolling stock to the relevant safety authority, indicating intended use and providing evidence of authorisation in the other Member State etc, relevant technical data etc, evidence of technical compatibility with the proposed new route, information on any exemptions from national safety rules needed and evidence that no undue risks would be introduced.	62	Railway undertakings
14.3	The safety authority may require test runs to be undertaken to verify compatibility of the rolling stock with the proposed route.	63	IGC
14.4	Safety authority to take decision on application within four months after receipt of all documentation.	64	IGC
Article 15 - Harmonisation of safety certificates			
15.1	Before 30 th April 2009 decisions on common harmonised requirements in accordance with article 10.2(b) and Annex IV and a common format for application guidance documents to be adopted at European level.	Not appropriate for transposition	-
15.2	The European Railway Agency shall make recommendations in relation to article 15.1.	Not appropriate for transposition	-
CHAPTER IV - SAFETY AUTHORITY			
Article 16 - Tasks			
16.1	Each Member State shall establish a safety authority, to be independent in organisation, legal structure and decision making from any railway undertaking, infrastructure manager, applicant or procurement entity. (NOTE: The definition of safety authority in article 3 (g) of Directive 2004/49/EC recognises that a safety authority may be a binational body entrusted by Member States with this role in order to ensure a unified safety regime for specialised cross border infrastructure.)	1 xxi and 2	IGC
16.2	This sets out the tasks safety authorities are to be entrusted with. They include (a) authorising the bringing into service of structural subsystems constituting the trans-European high speed and conventional rail systems and (b) issuing, renewing, amending and revoking safety certificates and safety authorisations.	4 (Note: (a) A number of these tasks relate to the interoperability directives and have already been transposed for the tunnel through S.I. 2006/397. (b) Enforcement of compliance by railway undertakings etc is generally by the	IGC

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
		<i>ORR under article 4 of the Channel Tunnel (Safety) Order and article 34 of S.I. 2006/397).</i>	
16.3	These tasks are not to be transferred or sub contracted to any infrastructure manager, railway undertaking or procurement entity.	1 xxi	IGC
Article 17 - Decision making principles			
17.1	This set out principles to be observed by safety authorities in carrying out their tasks. They include the need to carry out those tasks in an open, non-discriminatory and transparent way, giving reasons for their decisions and adopting decisions within four months from receipt of all required information.	5	IGC
17.2	The safety authority shall be free to carry out all inspections and investigations needed to accomplish its tasks and shall be granted access to all relevant documents and to premises and equipment of infrastructure managers and railway undertakings.	6 and 7 (Note: this largely duplicates powers already held by the IGC under section 17 of the Channel Tunnel Act 1987).	IGC
17.3	Member States are to ensure that decisions of safety authorities are subject to judicial review.	76	-
17.4	Safety authorities are to conduct active exchanges of views and experiences in order to harmonise their decision making criteria across the EC. The European Railway Agency is to support them in these tasks.	Not appropriate for transposition	IGC
Article 18 - Annual Report			
18	Each year safety authorities are to publish an annual report and send it to the European Railway Agency by 30 th September.	4 xi	IGC
CHAPTER V - ACCIDENT AND INCIDENT INVESTIGATION			
Articles 19 to 25			
19 -25	These articles make provision for the investigation of railway accidents and incidents. Member States are to establish a permanent body to conduct investigations into railway accidents and incidents. The body is to be functionally independent from the safety authority. Member States are to make provision for railway undertakings, infrastructure managers and, where appropriate, safety authorities to inform the investigating body of such accidents and incidents. Provisions are set out regarding the powers duties and procedures of such investigating bodies and the publication of their reports. Safety authorises are to take the necessary measures to ensure that recommendations are duly taken into consideration and where appropriate acted upon.	67 - 72 (Note: This Chapter of the Directive already transposed in UK by legislation referred to in article 7 of the Channel Tunnel (Safety) Order.)	RAIB, railway undertakings, the Concessionaires and the IGC
CHAPTER VI - IMPLEMENTING POWERS			
Article 26 - Adaptation of Annexes			
26	The Annexes of the Directive are to be adapted in response to technical and scientific progress.	Not appropriate for transposition	-
Article 27 - Committee procedures			
27	The European Commission is to be assisted by a Committee (known as the article 21 Committee) and this article makes provision in relation to committee procedure.	Not appropriate for transposition	-
Article 28 - Implementing measures			
28	Provision in relation to the European Commission considering transposition measures of Member States.	Not appropriate for transposition	-
CHAPTER VII - GENERAL AND FINAL PROVISIONS			
Article 29 - Amendments to Directive 95/18/EC			
29	Amendments to Directive 95/18/EC on the licensing of	Not appropriate for	-

Article of the Directive	Brief summary of the article	Article of the bi-national Regulation which implements it	Responsibility for implementing the article
	railway undertakings.	transposition. (<i>Note: for the Channel tunnel Directive 95/18/EC has already been transposed, taking into account Directive 2004/49/EC, by S.I. 2005/3207</i>).	
Article 30 - Amendments to Directive 2001/14/EC			
30.1	Removes “safety certification” from the heading of Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure.	Not appropriate for transposition	-
30.2	Amendment to Directive 2001/14/EC to adjust the grounds of appeal which may be invoked by railway undertakings seeking access rights such as to substitute “arrangements for access” for enforcement and monitoring of safety rules.	75 ii (<i>see article 9(2) (b) of the Channel Tunnel (Safety) Order</i>).	-
30.3	Amendment to Directive 2001/14/EC to delete provisions regulating safety certification.	75 i (<i>see article 9(2) (a) of the Channel Tunnel (Safety) Order</i>).	-
30.4	Amendment to Directive 2001/14/EC to adjust provisions relating to the European Commission considering transposition measures relating to it Member States.	Not appropriate for transposition	-
Article 31 - Report and further Community action			
31	EC Commission to report to EC Parliament and to the Council on the implementation of the Railway Safety Directive.	Not appropriate for transposition	-
Article 32 - Penalties			
32	Member States to lay down rules on penalties for breach of national transposition measures.	None. (<i>Note: transposition effected through article 4 of the Channel Tunnel (Safety) Order</i>).	-
Article 33 - Implementation			
33	Member States required to transpose the Directive by 30-4-06 and make reference to it in their transposition measures.	All articles. (<i>Note: already implemented for the rest of the UK</i>).	Secretary of State
Article 34 - Entry into force			
34	Directive enters into force.	Not appropriate for transposition	-
Article 35 - Addresses			
35	Directive addressed to all member states.	Not appropriate for transposition	-
Annex I	Common Safety Indicators.	Annex 2	IGC, the Concessionaires and railway undertakings
Annex II	Notification of national safety rules	1 xxvi and 17 (<i>see entry for article 8 above</i>).	IGC
Annex III	Safety Management Systems	Annex 1	The Concessionaires and railway undertakings
Annex IV	Declarations for network specific part of safety certificate.	42 and 43	Railway undertakings
Annex V	Principal content of accident and incident investigation report.	See entry above for articles 19-25 of the Directive.	RAIB

ANNEX B

SCRUTINY HISTORY

Second Rail Package European Documents 5721/02, 5723/02, 5724/02, 5726/02, 5727/02 and 5744/02

The proposal which resulted in the Railway Safety Directive was issued by the European Commission as part of a group of documents known as the 'Second Railway Package'. An Explanatory Memorandum (EM) on the Package (5721/02, 5723/02, 5724/02, 5726/02, 5727/02 and 5744/02) was submitted to Parliament by the Department for Transport, Local Government and the Regions on 5 March 2002.

The House of Commons European Scrutiny Committee considered the EM at their meeting on 20 February 2002, found it to be of legal and political importance and recommended it for debate in Standing Committee A (Report 22 session 01/02, references 23192, 23202, 23193, 23194, 23195, and 23191). It was debated and cleared from scrutiny on 8 May 2002. The Minister wrote to the European Scrutiny Committee Chairman on 11 November 2002 and 11 March 2003 with an update on negotiations. The Chairman replied on 20 November 2002 and 19 March 2003 thanking the Minister for keeping the Committee informed. The Minister wrote to the Chairman on 25 November 2003 with an update following the European Parliament's Second Reading. The Chairman replied on 4 December 2003 thanking the Minister for the information. A further letter was sent on 24 March 2004 to inform the Committee of the outcome of conciliation.

The House of Lords Select Committee on the European Union referred the EM to sub Committee B on 19 March 2002 (1096th sift). The Chairman wrote to the Minister on 27 March 2002 requesting the results of the consultation. The Minister wrote to the Select Committee Chairman on 17 October 2002 with an update on progress following the 3 October Transport Council. The Chairman wrote to the Minister on 30 October 2002 asking for a detailed account of how negotiations were proceeding. The Minister replied to the Chairman's letter of 27 March on 11 November 2002 providing information on the consultation exercise. The Chairman wrote to the Minister on 4 December 2002 thanking him for the information provided and requesting the Government's views on the points put forward by the Strategic Rail Authority (SRA) response to the package. The Minister wrote to the Chairman on 11 March 2003 with an update on developments in the European Council and European Parliament. In reply to the Minister's letter the Chairman wrote on 21 March 2003 lifting the scrutiny reserve on the document. The Minister wrote to the Chairman with a further update on 9 April 2003, which was considered by the Committee at its meeting on 12 May 2003. The Chairman replied to the Minister on 14 May 2003 thanking him for the update. The Minister subsequently wrote to the Chairman on 25 November 2003 with an update on the European Parliament's Second Reading. A further letter was sent on 24 March 2004 to inform the Committee of the outcome of conciliation.

ANNEX C Summary: Intervention & Options		
Department /Agency: Department for Transport	Title: Impact Assessment of The Channel Tunnel (Safety) Order 2007	
Stage: Implementation	Version: #2	Date: 13 th December 2007
Related Publications: The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (SI 2006/599)		

Available to view or download at:

<http://www.dft.gsi.gov.uk> [.....]

Contact for enquiries: Mike Franklyn

Telephone: 020 7944 5761

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

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 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.

What are the policy objectives and the intended effects?

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.

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

1. Do nothing;
2. Transpose by extending the scope of the national measures;
3. 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

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

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:

Tom Harris

Parliamentary Under Secretary of State, Department for Transport....Date: 13th December 2007

Summary: Analysis & Evidence

Policy Option: 3

Description: Transpose by bi-national regulation

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’ Eurotunnel as infrastructure manager. 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 (IGC) at a set rate established in the Channel Tunnel Concession.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV)
Other key non-monetised costs by ‘main affected groups’ Railway Undertakings will have to comply with the requirements of the Directive in respect of their operations through the Tunnel. However, because the main requirements already apply through existing provisions, the main effect of the Directive is to modify and in several respects simplify, an existing set of requirements.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		
	Total Benefit (PV)		£
Other key non-monetised benefits by 'main affected groups' Applicants seeking to operate through the Tunnel will now have to provide the IGC with proof of a valid Safety Management System accepted by the Safety Authority of the Member State in which they first established their operations. The principal benefit to stakeholders will derive from reduced administrative costs.			

Key Assumptions/Sensitivities/Risks As far as possible, the Directive's requirements are achieved within an existing regulatory framework and create no new compliance or enforcement costs. Failure to transpose the Directive would expose the UK to EC infraction fines, and would disadvantage the industry by less transparent and harmonised arrangements.

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?			Channel Tunnel	
On what date will the policy be implemented?			29/1/2008	
Which organisation(s) will enforce the policy?			Office Rail Regulation	
What is the total annual cost of enforcement for these organisations?			£ NIL	
Does enforcement comply with Hampton principles?			Yes/No	
Will implementation go beyond minimum EU requirements?			No	
What is the value of the proposed offsetting measure per year?			£	
What is the value of changes in greenhouse gas emissions?			£	
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?		Yes/No	Yes/No	N/A
				N/A

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

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. 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.
2. 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.
3. 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.
4. 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.
5. This Impact Assessment supplements the Regulatory Impact Assessment (RIA) produced by the HSE for the equivalent transposition regulations made for the rest of GB i.e. the Railways and Other Guided Transport Systems (Safety) Regulations 2006, 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

6. 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

7. 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.

8. 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.

Policy Options

9. Three policy options were considered:

(a) "Do nothing"

This was 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.

Annual Costs

10. 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, and Europorte 2).

11. The 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.

12. 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. Since the experts advising the Intergovernmental Commission are also responsible for the granting of safety authorisation and certification on the domestic network, there is scope for synergy in the consideration of applications.

13. 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.

Annual Benefits

14. 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.

15. 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.

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

Risk Assessment

17. 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.

18. 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.

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

Consultation

Within government

20. 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

21. 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.

22. 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.

Equity and Fairness

23. 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.

Competition assessment

24. 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

25. 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.

26. 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.

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	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	No	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
Rural Proofing	No	No

Annexes

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.

Small Firms Impact Test

This measure only affects companies operating, or seeking to operate, through the Channel Tunnel (currently Eurostar, SNCF, EWS, EWSI, Europorte 2), 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.