



# Channel Tunnel Act 1987

## 1987 CHAPTER 53

### PART I

#### PRELIMINARY

#### **1 Construction and operation of a tunnel rail link between the United Kingdom and France**

- (1) The primary purpose of this Act is to provide for the construction and operation of a tunnel rail link (together with associated works, facilities and installations) under the English Channel between the United Kingdom and France, in accordance with—
  - (a) the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, signed at Canterbury on 12th February 1986, together with its supplementary protocols and arrangements; and
  - (b) the Concession between Her Majesty's Government in the United Kingdom and the Government of the French Republic on the one hand and private Concessionaires on the other hand which, in accordance with Article 1 of that Treaty, regulates, together with that Treaty, the construction and operation of the Channel fixed link referred to in that Article.
- (2) In connection with the primary purpose mentioned in subsection (1) above, Part II of this Act also makes provision for enabling—
  - (a) the road network in the vicinity of Ashford, in Kent; and
  - (b) the rail network in South Eastern England;to be improved with a view to accommodating traffic using the tunnel rail link when it comes into operation.
- (3) Subject to section 3 of this Act, the expressions defined below in this section have the meanings there given for the purposes of this Act.

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*Status: This is the original version (as it was originally enacted).*

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- (4) "The Treaty" means the Treaty mentioned in paragraph (a) of subsection (1) above, including its supplementary protocols and arrangements, and "the Concession" means the Concession mentioned in paragraph (b) of that subsection.
- (5) "Concession agreement" means any agreement or arrangement which for the time being constitutes, or is included among the agreements or arrangements which together for the time being constitute, the Concession.
- (6) "Concession lease" means any lease granted by the Secretary of State to the Concessionaires in pursuance of the Concession, and references to a Concession lease include any provisions of a Concession agreement providing for the grant of a lease of any land by the Secretary of State to the Concessionaires.
- (7) "The tunnel system" means the tunnel rail link, together with its associated works, facilities and installations, to be constructed in pursuance of the Treaty, and incorporating—
- (a) tunnels under the English Channel between Cheriton, Folkestone, in Kent and Frethun in the Pas de Calais, comprising two main tunnels capable of carrying both road traffic on shuttle trains and rail traffic, and an associated service tunnel;
  - (b) two terminal areas, for controlling access to and egress from the tunnels, located at the portals of the tunnels in the vicinity of Cheriton, Folkestone and Frethun respectively;
  - (c) a service and maintenance area at the Old Dover Colliery site;
  - (d) an inland clearance depot at Ashford, in Kent, for the accommodation, in connection with the application to them of customs and other controls, of freight vehicles which have been or are to be conveyed through the tunnels on shuttle services;
  - (e) necessary links with the road and rail networks of each country; and
  - (f) the fixed and movable equipment needed for the operation of the tunnels and the associated works, facilities and installations mentioned in paragraphs (b) to (e) above or for the operation of shuttle services using the tunnels.
- (8) "The Concessionaires" means the person or persons who, under the Concession, have for the time being the function of constructing and operating or (as the case may be) of operating the tunnel system.
- (9) "Shuttle train" means a train designed for the purpose of carrying road traffic between Cheriton, Folkestone and Frethun by way of the tunnels and "shuttle service" means a service operated by means of a shuttle train.
- (10) Where the Concessionaires for the time being are two or more persons, any provision of this Act conferring or imposing upon them any right, power, liability or duty shall have effect (except where the context otherwise requires) so as to confer or impose it upon them jointly; but anything done by or in relation to any one of them which purports to be done by or in relation to both or all of them shall have effect for the purposes of this Act as if done by or in relation to them jointly.

## **2 No government funds or guarantees for the tunnel system**

- (1) Subject to subsection (2) below, no Minister of the Crown or Government department shall provide funds to the Concessionaires, or guarantees of a financial or commercial

- nature relating to the performance of any obligations of the Concessionaires, in respect of the construction or operation of the tunnel system or any part of it.
- (2) Subject to subsection (3) below, subsection (1) above shall not preclude the provision of funds to the Concessionaires, or the provision of guarantees relating to the performance of any of their obligations, if they are provided under any enactment conferring a power or imposing a duty on any such Minister or department to provide such funds or guarantees—
- (a) to or for the benefit of persons of any class or description which includes the Concessionaires; or
  - (b) in respect of expenditure of any class or description which includes expenditure on the construction or operation of the tunnel system or any part of it.
- (3) Subsection (1) above shall preclude the making by the Secretary of State under section 56(1) of the Transport Act 1968 (grants towards capital expenditure on public passenger transport facilities) of grants towards expenditure incurred or to be incurred by the Concessionaires for the purpose of the provision, improvement or development of the tunnel system or any part of it.
- (4) Where anything in contravention of subsection (1) above is done or proposed by or on behalf of a Minister of the Crown or Government department, any person who has suffered, or may suffer, loss in consequence of it may bring an action against the Minister or department concerned.
- (5) In such an action the court may—
- (a) grant a declaration that the thing done or proposed is or would be in contravention of that subsection; or
  - (b) subject to subsection (6) below, make an award of damages.
- (6) The court may only make an award of damages if the person bringing the action has suffered loss in consequence of something done and if, at the time when it was done, the Minister or Government department concerned knew—
- (a) that it was in contravention of subsection (1) above; and
  - (b) that it would cause loss of the description suffered either to the person bringing the action or to persons of a class to which he belongs.
- (7) The Crown Proceedings Act 1947 shall have effect as if anything done in contravention of subsection (1) above were a tort committed by the Minister, or by the Minister in charge of the department, by whom or on whose behalf the thing was done.
- (8) Where in any proceedings a question arises as to the construction of subsection (1) above, the court shall have regard in determining the question to any construction of the corresponding provision in Article 1(1) of the Treaty for the time being adopted by the arbitral tribunal which appears to the court to be relevant.
- (9) The reference in subsection (8) above to the corresponding provision in Article 1(1) of the Treaty is a reference to the provision of Article 1(1) which requires the Channel fixed link referred to in that Article to be financed without recourse to government funds or to government guarantees of a financial or commercial nature.
- (10) In this Act "the arbitral tribunal" means the arbitral tribunal constituted under the Treaty.

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### **3 Provision for further definition of the tunnel system and for applying this Act to a new Concession**

- (1) The Secretary of State may, from time to time, by order define (by reference to its boundaries or situation, the area it occupies or any other characteristics of any kind whatsoever) any element of the tunnel system.
- (2) The reference in subsection (1) above to an element of the tunnel system is a reference to any area, facility or work, and any description of equipment, incorporated in the tunnel system by virtue of section 1(7) of this Act.
- (3) Where on or following the expiry or termination of the original Concession, as defined by section 1(4) above, there is agreement on a new Concession, references in this Act (other than section 1(1)(b) and (4)) to the Concession shall be read, in relation to any matter occurring after the new Concession comes into operation, as references to the new Concession.
- (4) Subsection (3) above shall apply in relation to the expiry or termination of any such new Concession as it applies in relation to the expiry or termination of the original Concession.
- (5) In this Act—
  - (a) references to agreement on a new Concession are references to the conclusion of any agreements or arrangements between Her Majesty's Government in the United Kingdom and the Government of the French Republic on the one hand and any other persons on the other hand for the operation (and, where it has not yet been completed, the construction) by those persons of the tunnel system; and
  - (b) references to a new Concession are references to any such agreements or arrangements.
- (6) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **4 Notice with respect to operation, expiry or termination of the Concession**

- (1) The Secretary of State shall as soon as practicable after the coming into operation or (as the case may be) the expiry or termination of the Concession publish notice of that fact and of the date on which it came into operation or (as the case may be) expired or terminated; and any such notice shall specify in such manner as the Secretary of State thinks fit any Concession agreements.
- (2) A notice required by this section shall be published—
  - (a) in the London Gazette; and
  - (b) in such newspapers circulating in the City of Canterbury, the borough of Ashford and the districts of Dover, Shepway and Thanet, in the county of Kent, as the Secretary of State thinks fit.
- (3) For the purposes of this Act, the Concession shall be taken to have come into operation or (as the case may be) to have expired or terminated on the relevant date specified in any notice published under this section in relation to the Concession.