

CHANNEL TUNNEL RAIL LINK (SUPPLEMENTARY PROVISIONS) ACT 2008

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 ("the Act") which received Royal Assent on 22 May. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

TERRITORIAL EXTENT

3. The Act's provisions extend to the whole of the United Kingdom.

SUMMARY AND BACKGROUND

4. The Channel Tunnel Rail Link Act 1996 ("the 1996 Act") provided for a new high speed railway between the mouth of the Channel Tunnel and London St Pancras station. The concession to construct and operate the railway was awarded to London and Continental Railways Limited ("LCR") in a package of agreements entered into in February 1996, the principal one being the CTRL Development Agreement of 28 February 1996 between LCR and the Secretary of State for Transport.
5. The new railway, High Speed 1, formerly known as the Channel Tunnel Rail Link ("the CTRL"), is now complete and is designed for use by both international and domestic train operators. International passenger services from St. Pancras began on 14 November 2007, while high-speed domestic services to and from North and East Kent are due to start in 2009.
6. The main provisions within the Act:
 - confirm that the Secretary of State is empowered to fund the CTRL and the trains that run on it post construction;
 - amend the exclusion in the 1996 Act from regulation under the Railways Act 1993 ("the 1993 Act") for access agreements in relation to CTRL infrastructure;
 - repeal certain duties of the Office of Rail Regulation ("the ORR") under the 1996 Act in relation to the CTRL;
 - allow the ORR to charge a fee for the exercise of its regulatory functions in relation to the CTRL;

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- amend the definition of development agreement in the 1996 Act to include the word 'operation'.

COMMENTARY ON SECTIONS

Powers of Secretary of State

Section 1

7. Under section 6(1) of the Railways Act 2005 ("the 2005 Act") the Secretary of State has the power to "provide, or agree to provide, financial assistance to any person –

(a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or

(b) for any other purpose relating to a railway or to railway services."

"Financial assistance" is further defined within the 2005 Act as including "the making of grants or loans", "the giving of guarantees" and "investment in bodies corporate".

8. The Secretary of State provides assistance to the CTRL in a number of ways. These include capital funding through a range of mechanisms including loans, Government Guaranteed bonds, securitised bonds and other debt facilities. In addition, the Secretary of State also provides revenue funding for domestic services operating on the CTRL under a franchise. Train Operating Companies ("TOCs") enter into franchise agreements with the Secretary of State and are either subsidised by DfT, or pay a premium to run train services.
9. The Act confirms – for the avoidance of doubt – that the Secretary of State can, following completion of the construction project, continue to provide financial assistance to the CTRL and the trains that run on it under the powers in the 2005 Act. It was considered that there was a sufficient level of uncertainty as to whether or not these powers applied to the CTRL that there might be an adverse impact on any value generated from a sale of the business without the Act.

Access contracts

Section 2

10. **Section 2** aims to delineate more clearly the exclusion that the CTRL has from regulation by the ORR. Under the 1996 Act, the CTRL is generally excluded from the ORR's regulatory jurisdiction under the 1993 Act: any operator of the CTRL is not required to hold a licence under the 1993 Act (section 16(1) of the 1996 Act); and, as a general rule, access contracts in relation to the CTRL do not require the prior approval of the ORR (section 17 of the 1996 Act). There is an exception to this in section 17(3) of the 1996 Act, however, which this provision removes.
11. Railway facilities on the CTRL which may fall within the scope of section 17(3) of the 1996 Act include St Pancras and other stations on the new line, where they interconnect with the national rail network. Consequently, prior to this Act coming into force, access contracts in relation to these stations were susceptible to regulation by the ORR under the 1993 Act. They would also be subject to regulatory oversight by the Secretary of State, in accordance with the terms of the Development Agreement. The purpose of this section is to ensure that all access contracts in relation to the CTRL should be outside regulation by the ORR under the 1993 Act. Accordingly, section 2 repeals section 17(3) of the 1996 Act, and makes a consequential amendment to section 17(2).

Duties of Office of Rail Regulation

Section 3

12. Section 3 of the Act makes some changes to the duties of the ORR in relation to the CTRL. In sections 21(1) and (2) of the 1996 Act, the ORR was given specific duties in relation to the CTRL which were designed to ensure that the exercise of the ORR's regulatory functions in relation to the national railway did not have an adverse impact on the construction project and the funding streams of the privately owned railway.
13. The duty on the ORR in subsection (1) of section 21 is considered to remain relevant to the operation of the CTRL under the development agreement. However, the duty in subsection (2) of section 21 is no longer applicable with the completion of the construction project and there are consequential amendments to the rest of the section.

Power of Office of Rail Regulation to charge fees

Section 4

14. In addition to the duty that the ORR has under section 21(1) of the 1996 Act, it also has regulatory functions in relation to the CTRL under the [Railways Infrastructure \(Access and Management\) Regulations 2005 \(SI 2005/3049\)](#). The ORR also has other functions under the 1993 Act that it may be called upon to exercise in relation to the CTRL. These include its Competition Act 1998 functions under section 67(3) of the 1993 Act and its general function to keep under review the provision of railway services in Great Britain in section 69 of the 1993 Act.
15. This section allows the ORR to charge those responsible for operating the CTRL a fee calculated by reference to the costs it reasonably incurs in the exercise of any such function in relation to the railway other than its competition functions under section 67(2) and (3) of the 1993 Act.
16. The section provides for the fee to be levied on an ad hoc basis by the service of a notice by the ORR, which specifies the amount of the fee and the date by which it must be paid. The section also provides for the recovery by the ORR as a civil debt of any amount outstanding after the due date and for refunds of any amounts found after payment to have been overcharged.

Meaning of Development Agreement

Section 5

17. The fifth provision within the Act amends the definition of "development agreement" in section 56(1) of the 1996 Act.
18. LCR designed and constructed the CTRL in accordance with the terms of the CTRL Development Agreement which it entered into with the Secretary of State in 1996. This agreement will continue post-construction (albeit in a revised form) and will contain the terms of the concession to operate the railway. To reflect more clearly that the agreement and provisions in the 1996 Act relate to the operational phase of the CTRL as well as its design and construction, this section amends the definition of "development agreement" in the 1996 Act to include the word "operation".

COMMENCEMENT

19. The Act will commence two months after Royal Assent.

HANSARD REFERENCES

20. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

These notes refer to the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008 (c.5) which received Royal Assent on 22 May 2008

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>	
a) House of Commons			
Introduction	8 November 2007	Vol. 467 Col 259	
Second Reading	20 November 2007	Vol. 467 Cols. 1120-1160	
Committee	4 December 2007	Hansard General Committee Debates Public Bill Committee Channel Tunnel Rail Link (Supplementary Provisions) Bill	
Report and Third Reading	17 January 2008	Vol. 470 Cols. 1132-1164	
b) House of Lords			
Introduction	18 January 2008	Vol. 697 Col 1545	
Second Reading	19 February 2008	Vol. 699 Cols. 136-150	
Committee	12 March 2008	Vol. 699 Cols. 225-256	
Report	31 March 2008	Vol. 700 Cols. 779-796	
Third reading	13 May 2008	Vol. 701 Cols 925 - 934	
Royal Assent –		House of Lords Hansard Vol. 701 Col 1549	
		House of Commons Hansard Vol. 476 Col 413	