

EXPLANATORY MEMORANDUM TO
THE CHANNEL TUNNEL (INTERNATIONAL ARRANGEMENTS) (AMENDMENT)
ORDER 2008

2008 No. 2366

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 introduces a duty upon the Office of Rail Regulation (ORR) to provide advice to the Channel Tunnel Intergovernmental Commission if so requested. It also provides that at least two members of the UK Delegation to the Channel Tunnel Intergovernmental Commission are to be appointed following consultation with the ORR.

3. Matters of special interest to the [Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Background

4.1 Council Directive 2001/14/EC required the establishment in each Member State of a rail regulatory body. This requirement was transposed with respect to the Channel Tunnel by a binational Regulation of 25 October 2005, given effect in British law by The Channel Tunnel (International Arrangements) Order 2005 (SI 2005/3207) which appointed the Channel Tunnel Intergovernmental Commission as the regulatory body for the Tunnel.

4.2 Although the Treaty of Canterbury of 12 February 1986, which established the Channel Tunnel Intergovernmental Commission, provides that in for the purposes of carrying out its functions the Intergovernmental Commission may invoke the assistance of the authorities of each Government or any body or expert of its choice, and the binational Regulation of 25 October 2005 replicated this provision, the Channel Tunnel (International Arrangements) Order 2005 failed to put a corresponding duty upon the ORR to comply with such a request.

4.3 The present Instrument corrects this lacuna and in addition provides for a greater involvement of the ORR in the appointment of the UK Delegation to the Intergovernmental Commission. This is consistent with the expanded regulatory role of the Intergovernmental Commission.

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

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

7. Policy background

7.1 The Channel Tunnel Intergovernmental Commission (the IGC) was established under Article 10 of the Treaty of Canterbury 1986 "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".

7.2 Recent European legislation on rail-related matters has required the establishment of economic and safety regulatory bodies in each Member State. 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, both for economic and for safety regulation.

7.3 The Treaty provides that "each Government shall appoint half the members of the Intergovernmental Commission, which shall comprise at most 16 members including at least two representatives of the Safety Authority". In practice the two Governments have agreed that the Intergovernmental Commission should comprise 14 members. The UK Delegation to the IGC comprises representation from those Government departments with specific interests in the operation of the Fixed Link: the Department for Transport, the Foreign and Commonwealth Office, the Home Office, HM Revenue and Customs, and the UK Delegation to the Safety Authority. The Department for Transport currently provides the Head of Delegation and a representative dealing with transport security. The Foreign and Commonwealth Office previously provided two members - a legal expert and a diplomat - but has agreed to cede one seat in order to enable the ORR to be represented. A memorandum of understanding was agreed between the DfT and the ORR, setting out how the future arrangements would work.

7.4 Although the IGC is the economic and safety regulator for the Channel Tunnel, its establishment does not provide it with the full resources to undertake these tasks, but assumes that it will seek expert advice from other bodies as necessary. This Order provides the legal basis for the IGC to call upon the ORR, which possesses the relevant expertise, to advise it.

7.5 This instrument has no regulatory or financial impact on the private sector. The Treaty of Canterbury 1986 establishes that the expenses of the IGC and Safety Authority are to be met by the Concessionaires (Eurotunnel), and the Concession Agreement signed in 1986 between the two Governments and the two Tunnel concessionaire companies establishes the level of the annual payment. The expenses of the ORR will be met from this payment. The Order does not affect the amount paid.

7.6 Public consultation on the draft Order and Memorandum of Understanding ran for 12 weeks from 14 September to 7 December 2007. The consultation paper was available via the Department for Transport's website and 15 stakeholders, from French and UK Industry and public authorities, were specifically targeted. Three responses to the consultation were received by the deadline. They did not call for an amendment of the

draft Order. The two from Industry (Eurostar (UK) Ltd and EWS Limited) were supportive, and made suggestions as to how the new IGC arrangements should work, and as to future potential changes to the regulatory structure. The reply from the head of the French delegation to the IGC pointed to a minor inaccuracy in the consultation document about a French institution, which the Department acknowledged. A summary of these replies can be found on the Department's website at <http://www.dft.gov.uk/consultations/closed/consultationonigc/> .

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that the ORR will have an additional responsibility of assisting the IGC. For that purpose, the ORR will receive resources from the amount already required to be paid by the Concessionaires to meet the expenses of the IGC. The amount of the payment itself will be unaffected.

9. Contact

Deborah Phelan at the Department for Transport Tel: 020 7944 6757 or e-mail: Deborah.phelan@dft.gsi.gov.uk can answer any queries regarding the instrument.