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STATUTORY INSTRUMENTS

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**2015 No. 785**

**RAILWAYS**

**The Channel Tunnel (International Arrangements)  
(Charging Framework and Transfer of  
Economic Regulation Functions) Order 2015**

*Made - - - - 24th March 2015*

*Laid before Parliament 26th March 2015*

*Coming into force in accordance with article*

The Secretary of State for Transport makes this Order in exercise of the powers conferred on the appropriate Minister by section 11 of the Channel Tunnel Act 1987(1).

**Citation and commencement**

1.—(1) This Order may be cited as the Channel Tunnel (International Arrangements) (Charging Framework and Transfer of Economic Regulation Functions) Order 2015.

(2) This Order comes into force on the date when the IGC regulation comes into force, as provided for in Article 8 of that regulation.

(3) The Secretary of State for Transport must give notice in the London, Edinburgh and Belfast Gazettes of the date provided for in paragraph (2).

**Interpretation**

2. In this Order—

”the 2005 Order” means the Channel Tunnel (International Arrangements) Order 2005(2);

”the 2005 Regulations” means the Railways Infrastructure (Access and Management) Regulations 2005(3);

”the 2015 Regulations” means the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015(4);

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(1) 1987 c.53. “Appropriate Minister” is defined in section 13(1) of that Act.

(2) S.I. 2005/3207, amended by S.I. 2008/2366 and 2009/2081. All those instruments are revoked by this Order.

(3) S.I. 2005/3049, amended by S.I. 2009/1122 and 2011/1043 and by the 2015 Regulations.

(4) S.I. No 2015/786.

“the IGC regulation” means the regulation of the Intergovernmental Commission of 23rd March 2015 transferring economic rail regulation competence from the Intergovernmental Commission to the national regulatory bodies, setting out principles for cooperation between them and establishing a charging framework for the Channel Fixed Link; and

“Intergovernmental Commission” means the Commission established pursuant to Article 10 of the Treaty<sup>(5)</sup>.

### **Application of the IGC regulation**

3. The IGC regulation, the text of which is set out in the Schedule, has effect.

### **Revocation**

4. The 2005 Order, the Channel Tunnel (International Arrangements) (Amendment) Order 2008<sup>(6)</sup> and the Channel Tunnel (International Arrangements) (Amendment) Order 2009<sup>(7)</sup> are revoked.

### **Supplemental provisions and savings**

5.—(1) This article is subject to Article 5 of the IGC regulation.

(2) In any case where the 2005 Regulations, as amended by the 2015 Regulations, make provision equivalent to that made under or by virtue of the 2005 Order before its revocation by this Order, then—

- (a) in so far as anything done by any person under or by virtue of the 2005 Order could have been done by that person under such provisions of the 2005 Regulations as so amended, it is to have effect as if so done; and
- (b) in so far as anything that is in the process of being done by any person under or by virtue of the 2005 Order, immediately before its revocation, could continue to be done by that person under such provisions of the 2005 Regulations as so amended, it may continue to be so done.

(3) Anything done or in the process of being done by the Intergovernmental Commission under or by virtue of the 2005 Order is to be treated as done or in the process of being done by the Office of Rail Regulation<sup>(8)</sup>.

Signed by authority of the Secretary of State for Transport

24th March 2015

*Kramer*  
Minister of State  
Department for Transport

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(5) “Treaty” is defined in section 1(4) of the Channel Tunnel Act 1987.

(6) [S.I. 2008/2366](#).

(7) [S.I. 2009/2081](#).

(8) The Office of Rail Regulation was established by section 15 of the Railways and Transport Safety Act 2003 (c.20).

SCHEDULE

Article 3

Regulation transferring economic rail regulation competence from the Intergovernmental Commission to the national regulatory bodies, setting out principles for cooperation between them and establishing a charging framework for the Channel Fixed Link

The Intergovernmental Commission established to support the United Kingdom and French governments, all matters of the Fixed Link (“the IGC”):

Having regard to the Treaty between the United Kingdom (“the United Kingdom”) and the French Republic (“the French Republic”) for the operation by private concessionaires of a Channel Fixed Link signed in London on 22 February 1986 (“the Treaty of Canterbury”), and in particular

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of November 2012 establishing a single European railway market, and in particular Articles 26, 29, 32, 55, 56 and 57 thereof;

Considering that, under Article 26 of the Directive, Member States should ensure that their national schemes for railway undertakings allow the infrastructure manager to ensure the effective use of the available infrastructure capacity;

Considering that, under Article 29 of the Directive, Member States should ensure that their national framework;

Considering that Article 32(3) of the Directive applies to

Considering that Article 55 of the Directive requires Member States to designate a national regulatory body for the railway sector, which must be independent, organisational, functional, hierarchical and decision-making independent from any other public or private entity, except

Considering that the main task of a regulatory body is to to railway networks and services and that, under article competent, in particular, for dealing with appeals concern process, the charging scheme, the level or structure of access and access to and charging for services,

Considering that Article 57 of the Directive requires M arrangements are established between the national re considering that the cross-border nature of the Fixed Lin one infrastructure manager require effective mechanism possible, that the decisions made by the regulatory bodi link,

Has adopted the following regulation:

### **Article 1**

1. The function of the IGC as a regulatory body is trans by the United Kingdom and France by virtue of Europea
2. These regulatory bodies shall respectively have jur situated on the territory of their State, as determined in Canterbury.

### **Article 2**

1. The IGC shall ensure that any information or docu functions under the bi-national regulation of 23 July 2

3. To that end, the regulatory bodies shall, in the performance of their functions relating to the Channel Fixed Link, cooperate closely and coordinate their actions in order to put in place effective common working arrangements. For those arrangements to be effective, those working arrangements shall permit the adoption of common decisions by the regulatory bodies.

4. The regulatory bodies shall keep the IGC informed of their actions and decisions and shall publish them.

5. Where, in spite of the common working arrangements, the regulatory bodies will adopt decisions or opinions which have a practical effect across the entirety of the Channel Fixed Link, they shall consult all interested parties, including the IGC.

6. In the performance of their functions relating to the Channel Fixed Link, the regulatory bodies shall consult one another. When so consulted, they shall give due regard to the views of the IGC. They themselves have the right to request under their national law the IGC to be consulted used for the purposes of the matter in relation to which they are consulted under this paragraph.

## **Article 4**

1. This regulation is without prejudice to the provisions of the Statute of the Channel Fixed Link conferred on the IGC by the Governments of the United Kingdom and of France, and to the provisions of the Statute of the Channel Fixed Link. In carrying out this function, the IGC shall cooperate with the regulatory bodies and shall not interfere with their decisions.

## **Article 8**

Each Government shall notify the other of the completion of the measures necessary to enable this regulation to come into force. This regulation shall apply from the date of reception of the later notification.

Done by the Intergovernmental Commission on 23rd March 2015, the two texts being equally authoritative.

The Head of the UK delegation to the IGC

Christopher Irwin

The Head of the French delegation to the IGC

Pascale Andréani

## **ANNEX**

### **Charging Framework for the C**

## **Article 1**

### **Introduction**

1. The purpose of this charging framework is to set out the

## **Article 2**

### **Charging rules**

1. The infrastructure manager shall be responsible for ensuring the safety and security of the railway infrastructure of the Channel Fixed Link.
2. In accordance with the Treaty of Canterbury, the Channel Fixed Link shall not have recourse to government funds or to government guarantees.

## **Article 3**

### **General principles**

When performing its functions, the infrastructure manager shall ensure that its charges are transparent, non-discriminatory and fair.

## **Article 4**

### **Access charges**

1. Charges must be at least equivalent to the cost that is directly incurred by the operation of the train service.
2. The infrastructure manager may set or continue to set charges that are directly incurred by the operation of each train service on the Channel Fixed Link project, attributable to the railway and the Channel Fixed Link project.

7. The above-mentioned discounts may, in particular, in respect of railway undertakings according to the time when the period of use of the railway infrastructure in terms of railway path

8. If the infrastructure manager decides to grant discounts, it shall determine that it sets out the detail of such discounts and variations

## **Article 5**

### **Calculation of access charges**

1. The infrastructure manager shall determine the charges for train services.

2. In doing so the infrastructure manager shall respect the principle of transparency and fairness and take into account how the activities of the railway undertakings concerned.

3. No portion of any costs shall be recovered more than once.

4. The infrastructure manager shall determine the terms and conditions for reservation for infrastructure capacity is cancelled and for an undertaking.

## **Article 6**

### **Method for apportioning costs**

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives effect to a bi-national regulation (“the new bi-national regulation”) of the Intergovernmental Commission on the Channel Tunnel (IGC), and revokes the Channel Tunnel (International Arrangements) Order 2005 (“the 2005 Order”). The new bi-national regulation transfers the economic regulation of the Tunnel from the IGC to the national regulator of the United Kingdom and France, namely the Office of Rail Regulation (ORR) in the case of the United Kingdom and the Autorité de régulation des activités ferroviaires (ARAF) in the case of France. It makes provisions consequential to that transfer, concerning, in particular:

- the transfer to the domestic regulators of the information currently held by the IGC pursuant to its economic regulation functions;
- cooperation and coordination between the domestic regulators, in accordance with Article 57 of Directive 2012/34/EU (OJ L 343, 14.12.2012, p. 32);
- the preservation of the general supervisory role of the IGC;
- its relationship with the domestic regulators;
- savings concerning the jurisdiction of the adjudicating authorities which, before the transfer, had competence to deal with the judicial review of IGC decision with respect to economic regulation;
- revocation of the IGC bi-national regulation of 2009, which implemented Directives [91/440/EEC](#) (OJ No. L 237, 24.8.1991, p. 25) and [2001/14/EC](#) (OJ No. L 75, 15.3.2001, p. 29); implementation of the relevant EU legislation will no longer be found in an IGC bi-national regulation, except in the respect set out in the second indent above, and in the paragraph below.

The new bi-national regulation also makes provision to implement Article 4(1) of [Directive 2001/14/EC](#). That Article requires Member States to establish a charging framework. That framework is now set out in the Annex to the new bi-national regulation.

*Article 1(2)* provides for this Order to enter into force on the date on which the new bi-national regulation comes into force. Under Article 8 of the new bi-national regulation, this will be when both the UK and French governments have completed the internal processes necessary to give the new bi-national regulation the force of law in their respective legal systems, and notified each other that they have done so.

*Article 1(3)* of this Order provides that the Secretary of State must give notice, in the London, Edinburgh and Belfast Gazettes, of the date when the new bi-national regulation, and therefore this Order, enters into force.

*Article 3* gives effect in the United Kingdom to the new bi-national regulation. *Article 4* revokes the 2005 Order and the instruments that subsequently amended it.

Many provisions of the revoked 2005 Order will be replicated in the Railways Infrastructure (Access and Management) Regulations 2005, by virtue of the Railways Infrastructure (Access and Management) (Amendment) Regulations 2015 (which enter into force at the same time as this Order). Where this happens, *article 5* provides that what had been done under or by virtue of the 2005 Order is to have effect as if done under the 2005 Regulations, as amended, if it could have been done under those Regulations. It also provides that what was in the process of being done under or by virtue of the Order may continue to be done under the 2005 Regulations, as amended, if it could continue to be done under those Regulations. However, what had been done, or in the process

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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of being done, by the IGC, will be deemed to have been done, or in the process of being done, by the ORR. Furthermore, as provided by Article 5 of the new bi-national regulation, the adjudicating authorities that, before the revocation of the 2005 Order, had competence to deal with the judicial review of IGC decisions taken before that date under that Order will continue to have jurisdiction.

An impact assessment has not been produced in respect of this Order, since it has no impact of the costs of business or the voluntary sector. An Explanatory Memorandum, with a transposition note annexed to it, is published alongside this Order at [www.legislation.gov.uk](http://www.legislation.gov.uk).