STATUTORY INSTRUMENTS

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 11of 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**);

(**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(**5**).

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(**6**) and the Channel Tunnel (International Arrangements) (Amendment) Order 2009(**7**) 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(**8**).

Signed by authority of the Secretary of State for Transport

Kramer
Minister of State
Department for Transport

24th March 2015

(**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 supervise, in the name and on behalf of the United Kingdom and French governments, all matters concerning the construction and operation of the Fixed Link ("the IGC"):

Having regard to the Treaty between the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") and the French Republic ("France") concerning the construction and operation by private concessionaires of a Channel Fixed Link, signed at Canterbury on 12 February 1986 ("the Treaty of Canterbury"), and in particular Articles 1 and 10 thereof;

Having regard to Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area ("the Directive"), and, in particular, Articles 26, 29, 32, 55, 56 and 57 thereof;

Considering that, under Article 26 of the Directive, Member States shall ensure that charging schemes for railway undertakings allow the infrastructure manager to market and make optimum effective use of the available infrastructure capacity;

Considering that, under Article 29 of the Directive, Member States must establish a charging framework;

Considering that Article 32(3) of the Directive applies to the Channel Fixed Link;

Considering that Article 55 of the Directive requires each Member State to establish a single national regulatory body for the railway sector, which must be a stand-alone authority which is, in organisational, functional, hierarchical and decision-making terms, legally distinct and independent from any other public or private entity, except that it may be joined in organisational terms with a number of authorities specified in the Directive;

Considering that provisions will have been made by the time this regulation enters into force, by the United Kingdom and France for the transposition of the Article 55 of the Directive;

Considering, therefore, that the regulation of the Intergovernmental Commission of 23 July 2009, on the use of the Channel Tunnel ("the bi-national regulation of 23 July 2009"), should be repealed, and that the functions of the IGC by virtue of European law as regulatory body in respect of the Fixed Link should be transferred to the regulatory bodies of the United Kingdom and France;

Considering that the main task of a regulatory body is to ensure fair and non-discriminatory access to railway networks and services and that, under article 56 of the Directive, a regulatory body is competent, in particular, for dealing with appeals concerning the network statement, the allocation process, the charging scheme, the level or structure of infrastructure charges, arrangements for access and access to and charging for services,

Considering that Article 57 of the Directive requires Member States to ensure that cooperation arrangements are established between the national regulatory bodies for the railway sector; considering that the cross-border nature of the Fixed Link infrastructure and the existence of only one infrastructure manager require effective mechanisms to be set up in order to ensure, insofar as possible, that the decisions made by the regulatory bodies are clearly aligned for the whole Fixed link,

Has adopted the following regulation:

Article 1

1. The function of the IGC as a regulatory body is transferred to the regulatory bodies established by the United Kingdom and France by virtue of European law ("the regulatory bodies").

2. These regulatory bodies shall respectively have jurisdiction over the part of the Fixed Link situated on the territory of their State, as determined in accordance with article 3 of the Treaty of Canterbury.

Article 2

1. The IGC shall ensure that any information or document that it holds for the purposes of its functions under the bi-national regulation of 23 July 2009 are communicated to the regulatory bodies as quickly as practicable after the repeal of that regulation pursuant to Article 7.

2. The IGC and the regulatory bodies shall exchange information as necessary to perform their respective functions.

Article 3

1. Where an appeal concerning the Channel Fixed Link is made to one of the regulatory bodies, a corresponding appeal shall also be made to the other regulatory body. The first such appeal shall only be considered to be valid once the second one has been duly lodged.

2. The regulatory bodies shall, in the performance of their functions relating to the Channel Fixed Link, have regard to the need to coordinate and to adopt decisions or opinions that have an aligned legal and practical effect across the entirety of the Channel Fixed Link.