

# European Scrutiny Committee

## Oral evidence: Brexit: The future operation of the Channel Tunnel Fixed Link, HC 1062

Wednesday 16 December 2020

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Members present: Sir William Cash (Chair); Jon Cruddas; Allan Dorans; Richard Drax; Margaret Ferrier; Mrs Andrea Jenkyns; Mr David Jones; Anne Marie Morris; Greg Smith.

Questions 1 - 40

### Witnesses

I: Rachel Maclean, Parliamentary Under Secretary of State for Transport; Andrea Pearson, Deputy Director International Rail, Department for Transport.

## Examination of witnesses

Witnesses: Rachel Maclean and Andrea Pearson.

Q1 **Chair:** Thank you for coming before the Committee. In the course of our scrutiny of EU matters, we have considered the EU's plans for the operation of the Channel Tunnel at the end of the transition period. The Committee has published three report chapters on the EU's plans and, as the responsible Minister, we have written to you, Mrs Maclean, to ascertain the Government's views on these and your assessment of their legal and political importance.

Very briefly, the EU would prefer EU rail safety law to continue to apply on the UK side of the Channel Tunnel at the end of the transition period. It argues that it should be overseen by the European Court of Justice, on which, as you know, I have had quite a lot to say over the years. The EU believes this is necessary to ensure the safe and efficient operation of the tunnel. The Government have repeatedly rejected the EU's position and have stated in correspondence with the Committee that it favours an agreement that is compatible with "the UK's status as a sovereign nation".

In the course of today's session, we will consider the need for an agreement on the future operation of the Channel Tunnel, the EU's position, the alternative arrangements suggested by the Government and the potential implications of changes in the governance of the tunnel for affected stakeholders.

We will start with the legal framework governing the operation of the Channel Tunnel, but, before this, I would be grateful if you would introduce yourselves. First of all, Rachel, would you be kind enough to introduce yourself?

**Rachel Maclean:** I am Rachel Maclean, and I am the Minister in the Department for Transport responsible for EU transition planning.

**Andrea Pearson:** My name is Andrea Pearson. I am deputy director for international rail at the Department for Transport.

Q2 **Chair:** The first question is to both of you. Would you explain the legal and regulatory framework that currently applies to the operations of the Channel Tunnel Fixed Link and the roles and responsibilities of the bodies charged with overseeing its governance and ensuring its safe and efficient operation, bearing in mind the position I have just outlined that the Government take, in my opinion quite rightly, that this should be treated in the context of our being a sovereign nation?

**Rachel Maclean:** I would like to start by saying that we in the Department for Transport fully agree with what you have just outlined in your characterisation of our negotiating position and our approach to this. As you will know, the continuation of cross-border services is not dependent on the outcome of the negotiations. It was agreed in the political declaration that a bilateral approach would be taken to this. We are fully committed to and confident of the continued safe and effective

operation of the tunnel after the end of the transition period because of the immense benefits it brings to the UK and the vital connection for passengers and freight. We are seeking an agreement with France on the overarching safety arrangements for the Channel Tunnel as well as individual agreements on the recognition of certain cross-border licences and certificates for the tunnel to provide long-term certainty and clarity to operators.

On the legal framework, it is the treaty of Canterbury, which predates EU rail law, that governs the operation of the fixed link. That covers, among other things, dispute resolution for the tunnel, co-operation between the safety authorities and consultation between the UK and French Governments. The concession agreement sits alongside this treaty and sets out Eurotunnel's rights and duties regarding the financing, construction and operation of the fixed link until 2086, as well as the commitments taken by the states through the intergovernmental commission in order to facilitate the tunnel's operation. If I may, I will ask Andrea to comment on anything further.

**Andrea Pearson:** Thank you, Minister.

Q3 **Chair:** Before you begin, I will frame another question to you personally rather than to the Minister regarding the question of EU law and so on. Would you explain the role of EU law on the tunnel and give the Committee an idea of the different issues it regulates? Basically, there is also this question about whether the EU has tried to engineer a situation in which this is done under the framework of EU law. Something rather shadowy seems to be going on. Technically, because of the Canterbury agreement, it is between us and France, but the way in which the whole thing is being constructed is to turn it into an EU legal position. In other words, we could find ourselves confronted with the European Court of Justice over this. Could you explain all of that, please?

**Andrea Pearson:** Yes, I will certainly try. As the Minister has rightly said, you have the treaty of Canterbury and the concession agreement, which came into force and were signed before EU rail law grew and developed. Over the last 10 years, EU law has expanded to cover safety certificates, operator licences and the technical interoperability rules, in essence the technical rules for running trains. As those rules have developed, they have applied to the whole of the Channel Tunnel. Through binational regulations with France, we have tried to harmonise those rules to minimise any differences on either side of the border.

Q4 **Chair:** Would it be fair to say that the operation of the Channel Tunnel is primarily governed by rules and standards that have been decided jointly by the UK and France, without any EU input, but the EU has tried to secure overarching EU control over it through the European court? Who would adjudicate in the event of a clash?

**Andrea Pearson:** The treaty of Canterbury provides for dispute resolution settlement under article 19, and that is a dispute resolution settlement in the International Court of Arbitration.

**Chair:** This is the International Court of Justice, not the European court.

**Andrea Pearson:** Yes, that is correct. It is the International Court of Arbitration. That is a tried and tested method, which we have used in recent years. Where there have been points of EU law, however, there has been a role for the European Court of Justice, for clarification for example.

Q5 **Chair:** Are they insisting that this European Court of Justice jurisdiction is maintained whatever the outcome of the negotiations? Has it really been raised as part of the negotiations?

**Andrea Pearson:** You will have seen, in the Commission's proposals published earlier in the year on the prospect of keeping the IGC as the national safety authority, that it did foresee a role for the European Court of Justice.

Q6 **Chair:** When you say "foresee", did they foresee it because they wanted this or did they insist upon it? What has our response been?

**Andrea Pearson:** They included it as part of the ask in response to having the IGC continue as the national safety authority for the tunnel.

Q7 **Chair:** What was our response: that we do not want it and we will not have it?

**Andrea Pearson:** That is correct.

Q8 **Jon Cruddas:** Good afternoon, Minister and Ms Pearson. My question follows directly on from the Chair's question there. Minister, the EU proposals adopted in November state that the future operation of the tunnel is granted on three conditions: first, that the IGC applies all relevant EU law in a dynamic way; secondly, if arbitration fails, that the Court of Justice ruling is binding; thirdly, in an emergency or failure of the UK to comply, that France can act unilaterally to regain control of its section of the tunnel. Not unsurprisingly, the Government rejected the EU proposals, but could you just state your reasons in terms of those three criteria?

**Rachel Maclean:** You are right: those proposals were put forward by the Commission. Ministers, via the officials and the messages that have been sent back, have made clear that those conditions are absolutely unacceptable in their current form. That is why we are proposing a joint approach, which no doubt we will get into.

The reason they are unacceptable is that they cut across the red lines for the UK Government's position, because they insisted on dynamic alignment with EU law, on the EU courts having a role and on the European Union Agency for Railways, the ERA, having a role. We were very clear that we could not accept any jurisdiction of the ERA or the CJEU on our territory, including in our half of the Channel Tunnel. We would not accept any agreement that would not respect our position as an independent sovereign nation.

We will also not accept any position that is contingent on dynamic alignment going forward from the end of the transition period. We have been clear with the EU all along that there are perfectly feasible alternative arrangements, which will maintain robust and consistent safety standards across the whole of the fixed link, that do not entail such conditions.

**Jon Cruddas:** One of my colleagues will turn to your counterproposals, but that is very clear.

Q9 **Allan Dorans:** Minister, you partially answered this question in your previous reply, but I will ask it anyway. The EU has justified the conditions that it has placed on France, and the terms of any French-UK agreement, as necessary to ensure the safe operation of the tunnel. The Government have rejected this suggestion. Would you explain why the EU is wrong?

**Rachel Maclean:** The reason why the EU is wrong, if I have understood your question correctly, is that we have been very clear that we are leaving the EU, and that means we will not be accepting any regulation or jurisdiction of the EU on UK territory. That is a very straightforward position, which the UK has maintained in all its negotiations with the EU. Its proposals were clearly unacceptable to the UK Government, because they affect our own sovereign territory, i.e. our half of the Channel Tunnel. That is why the EU was wrong and why we could not accept these proposals.

**Chair:** That could not be clearer.

Q10 **Richard Drax:** Good afternoon to you both. Setting the EU's proposals to one side, is an agreement necessary for the safe and efficient operation of the tunnel, Minister?

**Rachel Maclean:** Basically, an agreement is not needed to continue the safe functioning of the tunnel, because we have put in place contingency arrangements. We are going to have a situation where the intergovernmental commission, the IGC, will remain the safety authority for our half of the tunnel for an interim period pending the agreement of a new binational regulation.

I just want to reassure the Committee that having this binational arrangement does have precedent in many areas. It is perfectly sensible, and it is perfectly reasonable to expect that we can negotiate this. We want to get to a position where we have this binational regulation with France that establishes our Office of Rail and Road, the ORR, as the safety authority for our half of the Channel Tunnel, and we do not need to have any further measures in place to deliver this from 1 January.

It would also be helpful to know that the ORR will play an enhanced role in the IGC during this period, and we do not expect any significant decisions to be made during this time that will affect the operational running of the tunnel or the services, but we are working at pace and we are prioritising arrangements, with our friends in France, to deliver

long-term certainty. We do believe, due to the really fantastic work of Andrea and the team, that we will be able to get to that position.

**Q11 Richard Drax:** Bearing in mind the belligerence of the EU throughout these negotiations and in particular now, are you concerned that, if no deal is struck, we are going to have problems getting people backwards and forwards through this rail tunnel? What will happen immediately if there is no deal on 1 January? If I wanted to go from this country to Paris, for example, would there be a problem for me or anyone?

**Rachel Maclean:** I want to assure you that, for a start, the operation of the tunnel is not directly affected by the outcome of this EU negotiation process. Whether we have a deal or whether we do not have a deal, I am very confident that we will see smooth operation of the tunnel.

My Department and my officials have worked up a whole series of contingency plans for all aspects of the transport system, including the Channel Tunnel, as that is a very important part of passengers and freight. We have worked through a whole number of scenarios. We are as confident as we could possibly be that we have considered any possible eventualities that could have a negative impact on passengers or freight. We have taken a number of steps to help the transport sector prepare and be ready for whatever happens. I very much hope that, if you did decide to go to Europe, restrictions permitting, you would be able to do so.

**Q12 Richard Drax:** If it is going to be so hard, as it is alleged, to get across by sea or in any other form to Europe, why is it going to be so easy by train?

**Rachel Maclean:** I do not accept that it is going to be so hard to get over. Of course, there are a number of things we are still negotiating. It is a very intense process of negotiations with the EU, because we want to have smooth travel arrangements for leisure travel and for freight. The negotiations are very well advanced in many of these areas.

I would like to reassure the Committee that, while you may be reading all sorts of negative reports, the Government have done a huge amount to prepare for every possible scenario. We have put in place additional mitigations for sea transport and freight, on those vital freight routes. I work incredibly closely with all those operators across the maritime sector and the ports, because it is absolutely in our interest and in the EU's interest to ensure things continue to flow freely.

**Q13 Richard Drax:** You can say that on 1 January, if we leave with no deal, both passengers and freight will be able to use this railway tunnel without any problems at all.

**Rachel Maclean:** I would probably be overstepping my brief if I gave you some sort of cast-iron guarantee, because at the end of the day I am not God. I believe that, as much as any Government Department can be prepared, we have been as prepared as possible. I would like to stress again that the "deal or no deal" side of things is not the defining issue

here. The governance arrangements for the tunnel and the legal status will allow those services to continue regardless of a deal or no deal with the EU in the wider negotiations.

Q14 **Chair:** I would just like to throw coronavirus into this equation to see what you have to say about that. We have different regimes operating in France as compared to the UK, and we have different arrangements on coronavirus in a number of ways. Do you have any thoughts that you would like to share with us on that?

**Rachel Maclean:** Yes, it is really important. All of the work we have been doing in the Department has considered the impact of coronavirus on the operations of all of these services, Eurostar/Eurotunnel being one of them. For a start, there are lots of exceptions and exemptions for freight operators, workers, drivers, transport workers and road haulage drivers. They are exempt from a lot of the quarantine and self-isolation restrictions. We want to make things easy for them to pass through. We have also looked at a number of relaxations around, for example, relaxing social distancing requirements, should we need to do it, should we need to put on additional freight trains, for example, to take up capacity if there is any disruption on the short strait sea crossings.

We have put in place a lot of preparations in case we have a perfect storm of disruption relating to the end of the transition period or a coronavirus surge. All of our work has considered all of that, and we have a very extensive command and control civil contingencies plan. This was worked up not only with local partners in the Kent Resilience Forum, the local police and local government. We have also worked with our friends in the military, our friends in defence and the maritime security body, which looks at intelligence all across the sea. We have done a huge amount to prepare for that.

Q15 **Anne Marie Morris:** Minister, I am delighted to have you here with us with this update. Since the adoption of the EU's proposal in November, France has been authorised to open negotiations with the UK on the future operation on the Channel Tunnel. Are you able to provide an update on the progress of these negotiations?

**Rachel Maclean:** I think you are referring to the binational talks that we are having with France to reach an agreement on the safety authority, that joint safety authority arrangement. If I may, I am going to ask Andrea to comment on that in a bit more detail. She is the one who is conducting the negotiations.

**Andrea Pearson:** The negotiations are progressing quite well. They have two tiers: a technical working level and then a higher up head of negotiations level. We meet weekly and we go through a range of safety and interoperability issues as well as discussions on the future of the IGC and the two safety authorities. It is important to say that the negotiations are conducted in a very good atmosphere and a good spirit. That is really due to the fact that as co-owners of the Channel Tunnel we have and

have always had, really, a very positive relationship in relation to the future operation of the tunnel and its economic prosperity.

They are progressing well, but it does remain that there is quite a lot of detail to continue to talk about as we get into the first few months of next year.

**Q16 Anne Marie Morris:** The next question is to some extent related. At the end of November 2020, the Commission published a new proposal on the future operation of the Channel Tunnel, supplementing the decision and regulation agreed in October. The Committee has not yet had the chance to consider this proposal but understands that it will give both the UK and France extra time to reach an agreement by providing for the continued recognition, for a limited time, of UK-issued train licences and the Channel Tunnel Intergovernmental Commission's safety authorisation of the infrastructure manager.

Minister, how would you describe this development? Is it something the Government were aware of before its publication? What, if anything, does it say about the UK's approach to the negotiations?

**Rachel Maclean:** Yes, this proposal followed considerable pressing from the French authorities, but we have been actively involved as a constructive negotiation partner from the UK side to enable this to happen. We and the French are more aligned on this with each other than perhaps with the Commission, if that makes sense. It is in our joint interests, completely outside of the wider EU dynamics, for this very important link to continue to work.

You are absolutely right to say that it will allow an additional two months for the EPSF, the French safety regulator, to issue a new safety authorisation to Eurotunnel for the French half. We expect, as a result of that, industry to continue with its contingency plans, which are largely in place to support the continuation of services. This is a positive development, and it is down to the constructive working relationship of the UK with the French. It is testament to the negotiating skills of our team here in the UK.

**Q17 Anne Marie Morris:** For me, the question here is not that we have the extra time. That is excellent, although it begs the question, at the end of the two months, of where we go from here. Given that this is effectively a bilateral arrangement between the French and the United Kingdom, does it not seem odd to you that the EU should suddenly issue this, which seems to be rather at odds with our negotiating position?

**Rachel Maclean:** There are probably quite a lot of things that the EU does that seem quite odd to me. I do not profess to speak for the EU. Our position has always been that our objective is to ensure the best outcome of the UK, and that clearly is the continuity of services and standing up for the interests of the UK.

If you look at the wider dynamics of it, there are all sorts of tricky issues in this negotiation, but we have always been clear, for the reasons I

alluded to in my earlier remarks, that we have not been able to accept some of the earlier proposals from the EU because they clearly cut across our red lines. There is no way we could accept any of them, because we have left the EU. Perhaps the EU has been a bit slow to wake up to that, but I would not like to speculate further on why it has done what it has done.

Q18 **Anne Marie Morris:** At the end of that two-month period, what would you expect to happen, or what is provided, if indeed it is relevant or applicable, in this particular missive?

**Rachel Maclean:** We would expect the talks to continue, and we would expect at that time to have reached this binational situation where we have a joint safety oversight arrangement in place, providing that continuity and certainty for UK operators and a continuation of the very safe operation of the tunnel.

Q19 **Anne Marie Morris:** We have not yet had the chance to consider what is actually in this particular proposal. Are you able to identify two or three key things in it, to give us a sense about how concerned we should or should not be about the EU choosing to issue this diktat, as I might call it?

**Rachel Maclean:** I am more than happy to provide some more detail. I am just going to turn to Andrea to see if she can give you a bit more background on this particular proposal.

**Andrea Pearson:** This proposal covers safety authorisations for Eurotunnel as the infrastructure manager for the Channel Tunnel. It also covers safety certificates for rail operators that operate through the tunnel and it covers operator licences. The two-month period only relates to the Eurotunnel safety authorisation. For the other two strands, it is a nine-month recognition period. This proposal from the Commission essentially recognises all certificates and licences within those three strands that have been issued by the UK or the IGC. It is to allow time to conclude the binational agreement with France.

It is buying us that two-month period for the safety authorisation and the nine months for safety certificates and operator licences. On the safety authorisation, the two-month period is for EPSF to conclude and issue Eurotunnel safety authorisation. There is nothing that has to be done on the UK side for that to continue.

Q20 **Anne Marie Morris:** That is a helpful answer, but it still leaves me a bit concerned that the EU may be trying in some way, and that may be the purpose of this particular publication, to take control of what the ultimate agreement looks like and to tie agreed provisions into EU legislation and oversight.

**Rachel Maclean:** I would go back to the overall purpose of the negotiations with the EU and the mandate our negotiating team has. As I said at the very start, the political declaration was very clear that the Channel Tunnel arrangements would not form part of those wider FTA

negotiations. David Frost and his team have always followed that approach throughout the negotiations. Possibly, where you are going with your questioning is a sense that this may be a sticking point or something that could be a trading position. My sense is that that is not where we are at all. This is a separate, binational talk that is not part of those wider dynamics.

As the Committee will know, the sticking points in the talks more broadly are not about the Channel Tunnel. They are about a lot of the other cross-cutting issues, the level playing field and so on. The operation of the Channel Tunnel has been dealt with in a very separate fashion to those wider negotiations. As a DfT Minister, many things that are within my purview are tied up in those wider negotiations and we watch them very carefully. The Channel Tunnel, also because it is so vital to the French side, in terms of the commercial interests, their freight and their cultural links with us, is a separate issue. I believe that we will be able to reach an agreement on this, because it is clearly in the best interest of both parties. It is much more important to us and France than it is to the wider EU.

Q21 **Anne Marie Morris:** That is very helpful, Minister. Can I ask you finally to confirm that there is absolutely no possibility going forward, whether agreement is reached quickly or otherwise between the French and the United Kingdom, that the United Kingdom will sanction any ongoing involvement by the EU in the operation of the tunnel?

**Rachel Maclean:** We will absolutely not accept any dynamic alignment. We will not accept any jurisdiction of the European Court of Justice. We will not accept any oversight of EU law. We will be operating the tunnel as part of our sovereign independent nation. I hope I can give you that reassurance clearly.

Q22 **Chair:** Are they going to start hollering that we have broken international law?

**Rachel Maclean:** We have not broken international law.

Q23 **Chair:** I am just asking whether you expect that they might try to do that.

**Rachel Maclean:** Not on this particular issue, no.

Q24 **Mr Jones:** Most of the points I wanted to raise have been covered by Ms Morris. The Commission's proposal of course is dependent upon the UK continuing to give effect to relevant provisions of EU law, and you have indicated what they might be. For clarification, is it your intention to accept that suggestion? If so, for how long a period?

**Rachel Maclean:** I think I have been clear that we are not accepting the original proposal, which depended on us accepting the reign of EU law in the UK. As Ms Pearson has set out, there is some temporary period whereby we will be keeping the status quo, effectively, the laws that already govern the operation of the fixed link, the Eurotunnel. There is already a joint common safety authority, which has been established for

some time. That status quo will simply continue until we reach the new arrangement.

Q25 **Mr Jones:** Have you agreed that ECJ jurisdiction should not apply during this extension period?

**Rachel Maclean:** Yes, the ECJ jurisdiction will not apply during this period.

Q26 **Mr Jones:** That has been accepted by France and the EU.

**Rachel Maclean:** Can I make sure that we are talking about the same thing? At the moment, we have a situation where the arbitration is not governed by the ECJ. It is governed by the international court, so there is no new introduction of the ECJ's jurisdiction into this at the moment. I might turn to Ms Pearson to clarify this particular point.

**Andrea Pearson:** That is right. On 1 January, the IGC will continue as the safety authority for a limited period on the UK part of the tunnel. On the French part, it will become EPSF. The CJEU jurisdiction will continue on the French part, but on the UK part that jurisdiction will cease.

**Chair:** Did you say the EPCF?

**Andrea Pearson:** The EPSF, the French safety regulator.

**Chair:** Good, just so the public can understand.

Q27 **Mr Jones:** What if a question of interpretation of EU law was to arise? Who would interpret that?

**Rachel Maclean:** On our side, it would be our courts. It would be the UK's judicial system.

Q28 **Chair:** Are they not going to have to comply with EU principles in order to arrive at the decisions they do?

**Rachel Maclean:** I am sorry; I did not quite catch that.

**Chair:** Would they need to apply EU principles of law within our Supreme Court in order to make a judgment about what you have just said?

**Rachel Maclean:** You are asking me many questions about the operation of law, which—I will be honest—are beyond my intellectual ability to answer. I apologise.

Q29 **Chair:** Perhaps Andrea Pearson could answer that question. I think she knows what I am talking about, which is the provisions in relation to EU retained law.

**Andrea Pearson:** UK courts would presumably have to look at what is on the UK statute book. We have retained many elements of the existing rail acquis in UK law, as part of our withdrawal Act, so we now have that status quo. The UK courts would look at what was on the UK statute books. It would be a matter for the CJEU to look at whatever issues were arising on the French terminal.

Q30 **Chair:** Could you imagine any circumstances in which the UK courts, under the withdrawal agreement, would consider quashing any legislative agreements we had in place, including any Acts of Parliament? Perhaps you could write to us about that.

**Andrea Pearson:** Yes, we can reflect further.

Q31 **Mr Jones:** That is precisely my concern. It seems to me that, if a question of interpretation arises, there is the potential for the European Court of Justice to be engaged. I would like clarification on that point too.

**Rachel Maclean:** My first answer reflects my understanding of how the legal system works in general, which I am sure is not as in depth as that of many members of this Committee. As Ms Pearson has set out, in any judgment on a matter such as this, I imagine the UK court would have to look at EU law and consider it, but considering is not the same thing as being ruled by it. The whole point of becoming an independent nation is that we make our own laws. We adjudicate in our own courts. The supreme authority is our own Supreme Court.

All of the policy decisions we have made with respect to the tunnel and its operation have been with that in mind. We have to get to that position where we have had that red line and been very clear that we will not accept any jurisdiction of EU law on our own territory. Our own territories are half of the Channel Tunnel, even as it goes under the sea, up to the point where it reaches the French side.

Q32 **Mr Jones:** I understand that. Perhaps you could write if necessary. I am concerned to know whether, in the case of a reference to the ECJ by the EU, it would be expected, under the terms of what has been proposed in this temporary arrangement, that the UK would be bound by that decision of the European Court of Justice as a matter of interpretation, rather than anything else. I appreciate we are talking about what will hopefully be a short time. Nevertheless, I am concerned that there may be some vestiges of ECJ jurisdiction that will continue beyond the end of the transition period.

**Rachel Maclean:** I absolutely accept that concern. It is entirely understandable. We will write to you on that and clarify this. It is beyond my ability to give you that detailed assurance at this point.

**Mr Jones:** That is very kind of you. Thank you.

Q33 **Greg Smith:** Good afternoon, Minister and Ms Pearson. In correspondence with the Committee in the past, when it comes to the Government's alternative proposals, you have referred to a joint regulatory approach. Can you outline precisely what you mean by that in more detail? In particular, how would a joint regulatory approach compare to what we have now?

**Rachel Maclean:** Under the joint regulatory approach the French national rail safety authority, the EPSF, would become the safety authority for the French half of the Channel Tunnel. The Office of Rail and Road, which is our body, would take over this intergovernmental

commission, the intergovernmental commission being at the moment the joint French and UK-owned body. The ORR would take over as a safety authority for the UK's half of the tunnel. That joint regulation approach would be supported by robust co-operation agreements between the two regulators.

In reality, the joint regulation is not so different to what currently happens. A lot of the individuals will be the same people with the same expertise and knowledge. Both the ORR and the EPSF are currently already engaged in this work. The body of knowledge, the experience, the safety and the procedures are already held in those bodies. It is just the governance arrangement that is different to retain the sovereignty of the UK, as members of the Committee have picked up on.

Q34 **Greg Smith:** What happens if the two disagree?

**Rachel Maclean:** There is already a well-established procedure for that to happen. That is going to be worked into the new arrangement. There clearly has to be a dispute resolution mechanism built into that.

Q35 **Margaret Ferrier:** This question is to Ms Pearson. Part of what has been described to us as the joint regulatory approach suggests that binational regulation could be used within the intergovernmental commission to allow France to give effect to future EU laws covering the Channel Tunnel and the UK to do likewise, but with amendments to suit its status as a non-EU member state. Could you explain how realistic this is?

Fire protection and prevention is a subject that is very important to me. Would this be possible for future safety standards that concern issues of fundamental importance to me and those travelling through the tunnel, such as fire protection and prevention, or would the UK have to give effect to these EU laws?

**Andrea Pearson:** There is quite a lot in that question. The binational regulation approach, which is the statutory instrument as it were, the agreement between France and the UK, is a well-established approach we have used for a number of years. It is made under the auspices of the treaty of Canterbury. That is business as usual and will not change. What will change is that the ORR and EPSF will come into play and share the joint safety regulation of the Channel Tunnel. The co-operation arrangements will be brought into force on a regulatory basis within that binational regulation.

We recognise, as France does, the real importance of maintaining a single safety management system for the Channel Tunnel and having an integrated set of rules, so there is a level of consistency for operator and infrastructure managers. We have always, routinely, discussed each and every rule as it comes up to decide how we will implement it, and we come to some kind of joint agreement. That is business as usual and we are going to continue to enjoy all that best practice that we do now.

The Channel Tunnel has quite an advanced safety system. It has quite a good safety record, as I am sure you will be aware. There is no reason to

think any of these new arrangements would lessen any of that safety regime that we have currently.

Q36 **Mr Jones:** The regulatory and legal framework applicable to the tunnel is presently stable, transparent and predictable. I would suggest that there must be some concern on the part of stakeholders, such as train service operators. Can you tell us what you have done to allay those concerns? What steps have you taken to mitigate the possibility of major disruption?

**Rachel Maclean:** The concerns of operators are of paramount importance to Ministers and the negotiation teams. We have a very close working relationship with them. We have been keeping them closely informed of our plans and working with them to ensure that, at all stages, they understand what we are doing and why. They are very supportive of our approach. All of them have expressed support for the priority we have placed on having this continuity of governance, in terms of the disruption they are going to see. They want clarity and certainty from the Government and that is what we have provided to them, as well as a large amount of transparency.

Obviously, there are issues in the negotiations that are sensitive, and we are not able to discuss them. As I hope I have made clear in my earlier remarks, much of the day-to-day impact on their operations is outside of those wider talks. It is a matter for those binational agreements that we are proceeding with. It is very reassuring that they have developed contingency plans. They have good operational plans for all eventualities. We expect that the services will continue to run without disruption.

I think I said earlier that I could not promise. I am not God and I do not want to give that kind of reassurance. We have certainly exposed all the risks we can think of, and all of our stakeholders and partners can think of, and develop plans to tackle any of them, should they arise, in the unfortunate event that they do.

Q37 **Mr Jones:** I take it you are maintaining a regular dialogue with them.

**Rachel Maclean:** Yes, of course.

Q38 **Chair:** You have just put me in mind of what Alexander Pope once said: "presume not God to scan, The proper study of mankind is Man". Perhaps we could bear that in mind.

What steps do you think the Government will take to ensure future arrangements covering the operation of the Channel Tunnel are clear to the public and business? I ought to add perhaps fewer civil servants having to go over there in the event of everything going according to plan. How will this House be kept informed of the proposed new rules and standards on the tunnel?

**Rachel Maclean:** We will of course keep the House informed and I very much welcome the Committee's interest in our work. I will continue to be as responsive and transparent with this Committee and with the House as possible.

In terms of disruption, planning and the communications we are undertaking with the public, that is something that the Government broadly have put a great deal of effort and thought into. If you drive on any of the major motorways at the moment, you will see very visible signage advising people to get ready for 1 January, and to go to GOV.UK and check what they need to do, so they are ready and they do not encounter queues at the border.

We have also put a lot of resource and time into communicating with any traders and businesses who are involved in import and export to the European Union, letting them know what they need to do to get ready for the changes, helping them with the paperwork and providing the support they need to enable their continued operation, whatever business sector they are. That is something that I and other Government Ministers have been focusing on for a long time now.

Q39 **Chair:** Good, thank you very much. I have one last thought before we finish. Unlike the sorts of things we deal with a lot on paper, EU law, policy, legislation, the application of law, jurisdiction, sovereignty and so on, this is a physical object. This is something that therefore I would be grateful to have your thoughts on. Whereas a plane takes off from a terminal and arrives at another terminal, in this case it is a fixed object under the sea. Have you had any thoughts as to how the difference would apply as between law, papers, jurisdiction and things like that, and dealing with this physical object that is effectively owned by two different countries, at the heart of it? Do you have any thoughts on how you approach that subject?

**Rachel Maclean:** It is a really important and pertinent point. It is at the nexus of these separation talks we are having. Of course, we have to pay very careful attention to maritime issues, road haulage and, as you rightly say, aeroplanes. With this tunnel, it is slightly different because we have such longstanding arrangements with our French partners. Pragmatism and commercial interests are so paramount for both sides. It is just as much in the French side's interest that things work well and people can cross in the tunnel, as they have done for a very long time.

We want to have fantastic relations with our French friends. We want to be able to continue to trade, to go on holiday, to enjoy the French countryside and everything it has to offer. There is no practical reason why that cannot happen. It is down to the work of Andrea and the team, because they have kept those talks on such a sensible, pragmatic, working, practical, realistic tenor. It is focused on those arrangements to provide certainty. I am as confident as I can be that that is where we will get to. With pragmatism and goodwill, which we have on this issue, we will be able to get to a very good resolution of these matters.

Q40 **Chair:** This is the final question I would like to ask. There is no suggestion at any point you are aware of that, if the negotiations, for example, were to fail, because it will be about sovereignty ultimately, they would then suddenly come up with something you had not expected, in the form of a blockade or anything of that kind. That has never even

been in contemplation, as far as you are concerned.

**Rachel Maclean:** We have contemplated everything. We have certainly contemplated the issue of actions such as you have alluded to in many areas of our national life. We have certainly contemplated all those in contingency planning. In this particular fixed link, we think it is so unlikely. Frankly, it is against international law for the French to engage in any sort of activity that you have suggested. They would be the ones breaking international law. Those are international laws quite outside of the European Union arrangements that we have. It would be very difficult for them to do anything in practice that would impede the flow of people, goods or trains through that tunnel.

**Chair:** Perhaps our Scottish friends on the Committee might care to reflect on what you have said in the context of their claims for Scottish independence, in light of the fact that once upon a time we had a functioning Hadrian's Wall. I will leave the session at that point. Thank you very much for coming. We will consider what you have said and we will be producing some further report on the subject in due course. Thank you very much.