



HOUSE OF LORDS

International Agreements Committee

18th Report of Session 2022–23

Scrutiny of international agreements: UK-France Channel Tunnel Rail Safety Certification Agreement

Ordered to be printed 8 June 2023 and published 8 June 2023

Published by the Authority of the House of Lords

International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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Declaration of interests

See Appendix 1.

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SUMMARY

This report addresses the following Agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link

The purpose of the Agreement is to allow for mutual recognition of UK and French rail safety certificates for the Channel Tunnel, saving operators the administrative burden of having to apply for a second certificate from both the UK and French authorities.

The Agreement replicates mutual recognition arrangements which were in place when the UK was an EU member state and replaces temporary post-Brexit arrangements which are due to expire in March 2024. This is the third in a series of four post-Brexit agreement relating to the Channel Tunnel which the UK has agreed with France; it is expected that all four will be implemented by statutory instrument in spring 2024.

We note that the Agreement provides for amendments by agreement with the parties but does not confirm that these would be subject to the CRAG process. We call on the government to ensure that significant amendments are submitted for Parliamentary scrutiny under CRAG. We welcome that the Agreement provides for continuity of existing arrangements which should provide confidence to rail operators on service continuity.

We report this Agreement to the House for information.

Scrutiny of international agreements: UK-France Channel Tunnel Rail Safety Certification Agreement

AGREEMENT REPORTED FOR INFORMATION

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link (CP 833)¹

1. The UK-France rail safety certification Agreement (the Agreement) was laid before Parliament on 21 April 2023. The scrutiny period for this Agreement is scheduled to end on 8 June 2023. The Agreement was considered by the Committee at its meeting on 8 June 2023.

Background to the Agreement

2. Rail safety certificates provide evidence that a rail operator has complied with track operators' safety management systems in the country in which it operates.²
3. While the UK was an EU member state, EU law provided for the mutual recognition of safety certificates issued by other member states so that operators of cross-border rail services only had to acquire a safety certificate from their home state regulator. These arrangements continued to apply until the end of 2020. From 2021 each side took unilateral measures to ensure that certificates could be recognised. These arrangements ended on 31 March 2022,³ meaning that French certificates were no longer accepted in the UK, and UK certificates were no longer accepted in France. Currently, operators running services through the French section of the Tunnel do so on the basis of temporary contractual arrangements with Eurotunnel which will remain valid until 27 March 2024. Operators running services through

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- 1 HM Government, *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link*, CP 833 (April 2023): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150802/CS_France_1.2023_UK_France_Agreement_Safety_Certification_Rail_Channel_Fixed_Link.pdf [accessed 11 May 2023]
 - 2 The Railways and Other Guided Transport Systems (Safety) Regulations 2006 (ROGS) provide the regulatory regime for rail safety, including the mainline railway, metros (including London Underground), tramways, light rail and heritage railways. The Regulations were introduced to implement the European Railway Safety Directive (2004/49/EC) into Great Britain. The aim of that Directive was to establish a common approach to rail safety and support the development of a single market for rail transport services in Europe. Source: Office for Rail and Road (ORR), 'ROGS': <https://www.orr.gov.uk/guidance-compliance/rail/health-safety/laws/rogs> [accessed 18 May 2023]. Under ROGS, no one is able to operate vehicles or manage infrastructure on the UK railway unless they have obtained the appropriate safety certificate or authorisation. Source: Office for Rail and Road, *Safety certificates and safety authorisations*: <https://www.orr.gov.uk/guidance-compliance/rail/health-safety/laws/rogs/certificates-authorisations> [accessed 12 May 2023]
 - 3 Department for Transport, 'Guidance: Rail transport: domestic and cross-border operations' (4 January 2021): <https://www.gov.uk/guidance/rail-transport-domestic-and-cross-border-operations#safety-certificates> [accessed 9 May 2023]

the UK section do so on the basis of Channel Tunnel Intergovernmental Commission (IGC)⁴ and British safety certificates. The Government's Explanatory Memorandum (EM) accompanying the Agreement notes that "Eurotunnel's shuttle operations in the UK section are covered by their IGC safety authorisation, which will also remain valid until 27 March 2024."⁵

The Agreement

4. The Agreement provides for the mutual recognition of safety certificates for rail services through the Channel Tunnel. Mutual recognition will apply to services between Dollands Moor Freight Yard (for freight) and Ashford International Station (for passengers) in the UK, and Calais-Frethun in France (for both freight and passengers). Services operating beyond those points will need the appropriate UK or EU safety certificate.
5. The EM notes that "The treaty will provide long-term certainty, clarity and confidence to cross-border operators, [...] regarding the safety certification framework for the Channel Tunnel, while reflecting the UK's status outside the EU [additionally] reducing administrative burdens and costs for cross-border operators."⁶ In a letter to Sir William Cash MP, Chairman of the European Scrutiny Committee, the Minister of State, Huw Merriman MP, wrote, "[The Agreement] fully respects UK red lines, which are: conferring no role for the EU courts or the European Rail Agency in UK territory, including the UK section of the Channel Tunnel, and avoiding dynamic alignment with EU law."⁷

Information exchange

6. To address potential cross-border risks to rail safety, it will be important to establish effective channels of communication between each side of the Channel. The EM notes that both Parties have "set out the conditions for cooperation and information exchange" including how safety authorities will inform one another about "any serious safety risks." The Agreement sets out how information can be shared "if there are concerns or doubts about the

4 The Intergovernmental Commission (IGC)'s responsibility is to supervise and monitor all matters relating to the operation of the Channel Tunnel. Safety and economic regulation are a key part of this. The IGC's official website includes an explanation of IGC and CTSA's roles and responsibilities (including the special legal framework for the Channel Tunnel) IGC, 'Who we are': <https://www.channeltunneligc.co.uk/-Who-we-are-.html> [accessed 7 June 2023]. Source: Office of Rail and Road, 'Channel Tunnel Intergovernmental Commission (IGC) and Safety Authority (CTSA)': <https://www.orr.gov.uk/channel-tunnel-intergovernmental-commission-igc-and-safety-authority-ctsa> [accessed 22 May 2023]

5 HM Government, *Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link*, CP 833, para 3.4: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153273/EM_CS_France_1.2023_UK_France_Agreement_Safety_Certification_Rail_Channel_Fixed_Link.odt [accessed 10 May 2023]

6 *Ibid.*, para 2.1

7 European Scrutiny Committee, Letter from Huw Merriman MP to the Chair regarding the future operation of the Channel Fixed Link, dated 13 April 2023: <https://committees.parliament.uk/publications/39092/documents/192138/default/>

validity of a particular safety certificate,” to establish that transport services can be operated safely.⁸

Entry into force

7. The Agreement will enter into force the day after the UK and France have both completed their respective domestic procedures and notified by written exchange via diplomatic channels.⁹ Officials from the Department for Transport told the Committee that this Agreement is the third in a series of four the UK has been negotiating with France for the Channel Tunnel post Brexit. Officials noted the first Agreement concerned a mutual recognition of rail operator licenses¹⁰ and the second addressed mutual recognition of train driving licenses.¹¹ Officials noted the subject matter of this third Agreement is linked to the fourth and that all four will be implemented by a single Statutory Instrument. Officials told us that it is expected that the SI will enter into force in Spring 2024. **We hope that the statutory instrument giving effect to this series of Agreements is made in good time before the expiry of the current temporary arrangements on 27 March 2024.**
8. In the 13 April letter, the Minister of State wrote, “We now intend to commence the ratification process for this agreement under [CRAG] [...]. We expect to begin this process in the coming weeks.”¹²
9. The Agreement will remain in force for an indefinite period. Article 8(2) provides that it may be terminated either by agreement between the parties in writing or by one party giving six weeks’ written notice to the other.

Territorial scope and consultation

10. The Agreement applies to the UK and France only. The Department states that no consultation is required because the Agreement’s scope is narrow and maintains the status quo. The Agreement does not affect the Devolved Nations so these do not require consultation. The EM nonetheless notes that the Department “has been engaging very regularly with all affected

8 HM Government, *Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link*, CP 833, para 4.6: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153273/EM_CS_France_1.2023_UK_France_Agreement_Safety_Certification_Rail_Channel_Fixed_Link.odt [accessed 10 May 2023]

9 *Ibid.*, Article 8, p 8

10 HM Government, *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning Railway Undertaking Licences in respect of Rail Transport Services through the Channel Fixed Link*, CP 602 (January 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1049445/CS_France_1.2022_UK_France_Undertaking_Licences_Channel_Fixed_Link.pdf [accessed 18 May 2023]

11 HM Government, *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning Train Driving Licences and Complementary Certificates in respect of Rail Transport through the Channel Fixed Link*, CP 610, (February 2022): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050460/CS_France_2.2022_UK_France_Train_Driving_Licences_Complementary_Certificates_Channel_Fixed_Link.pdf [accessed 18 May 2023]

12 European Scrutiny Committee, Letter from Huw Merriman MP to the Chair regarding the future operation of the Channel Fixed Link, dated 13 April 2023: <https://committees.parliament.uk/publications/39092/documents/192138/default/>

stakeholders while developing the treaty” and surveyed key stakeholders in early 2022.¹³

Amendments to the Agreement

11. The Agreement may be amended by written agreement between the Parties.¹⁴ Amendments will enter into force in accordance with such terms as the Parties jointly decide. This means that the Agreement does not guarantee that amendments will be subject to ratification and therefore laid before Parliament under CRAG.
12. Article 7 of the Agreement provides for the temporary suspension of the Treaty on the grounds of national security. The EM notes that this is a limited power which can be triggered only in “exceptional circumstances.”¹⁵ Neither side is likely to have any interest in suspension unless a genuine emergency arises. The maximum period of one month’s suspension has been settled on “to strike a reasonable balance between providing sufficient time resolve the issue, and to minimise any disruption to cross-border traffic.”¹⁶
13. **We welcome this Agreement between the UK and France, which addresses the upcoming cessation of temporary arrangements and should improve rail operators’ confidence in service continuity.**
14. **We report this Agreement to the House for information, highlighting our comment in paragraph 7.**

13 HM Government, *Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic concerning safety certification in respect of rail transport services through the Channel Fixed Link*, CP 833, para 10.3: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1153273/EM_CS_France_1.2023_UK_France_Agreement_Safety_Certification_Rail_Channel_Fixed_Link.odt [accessed 10 May 2023]

14 *Ibid.*, para 4.7

15 *Ibid.*, para 4.8

16 *Ibid.*

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Fox
 Lord Geidt
 Lord Grimstone of Boscobel
 Baroness Hayter of Kentish Town (Chair)
 Lord Howell of Guildford
 Lord Kerr of Kinlochard
 Baroness Kingsmill
 Lord Marland
 Lord Razzall
 Lord Udny-Lister
 Lord Watts

Declarations of interest

Lord Fox
No relevant interests
 Lord Geidt
Chairman of Council, King's College London
President, Royal Overseas League
 Lord Grimstone of Boscobel
No relevant interests
 Baroness Hayter of Kentish Town
Senior Non-Executive Director, Association of British Insurers
 Lord Howell of Guildford
No relevant interests
 Lord Kerr of Kinlochard
No relevant interests
 Baroness Kingsmill
No relevant interests
 Lord Marland
Director, Janspeed Technologies Ltd (manufacturer of motor parts)
 Lord Razzall
Director, North Atlantic Mining Associates Limited
Director, ZeU Technologies Inc
Shareholdings, ZeU Technologies Inc
Shareholdings, St-Georges Eco-Mining Corporation
Shareholdings, Tintra plc
 Lord Udny-Lister
No relevant interests
 Lord Watts
No relevant interests

