

HOUSE OF LORDS

International Agreements Committee

16th Report of Session 2021–22

**Scrutiny of international
agreements: Agreements
on Channel Tunnel Railway
Licences Undertakings and
Train Driving Licences**

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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.

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SUMMARY

This report addresses the following Agreements, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), which we report for information:

- 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, 2022)
- 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, 2022)

Scrutiny of international agreements: Agreements on Channel Tunnel Railway Licences Undertakings and Train Driving Licences

AGREEMENTS 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 Railway Undertaking Licences in respect of Rail Transport Services through the Channel Fixed Link (CP 602, 2022)¹

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, 2022)²

1. Each of the above Agreements (hereafter the Railway Undertaking Licences Agreement and the Train Driving Licences Agreement) relate to the operation of train services between the United Kingdom and France using the Channel Fixed Link, more commonly known as the Channel Tunnel. The Railway Undertaking Licences Agreement was laid on 27 January 2022 and the scrutiny period is scheduled to end on 8 March 2022. The Train Driving Licences Agreement was laid on 1 February 2022 and the scrutiny period is scheduled to end on 14 March 2022. Both agreements were considered by the Committee on 3 March 2022.
2. The Railway Undertakings Licences Agreement will provide for the mutual recognition of European Economic Area (EEA) and British rail operator licences in the Channel Tunnel and the immediate cross-border area.³ Holders of an EEA licence providing a Channel Tunnel service will also be exempt from the requirement to hold a Statement of Regulatory Provisions issued by the Office of Rail and Road (ORR). The Statement of Regulatory Provisions includes the conditions set by the ORR regarding arrangements

1 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 3 March 2022]

2 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 3 March 2022]

3 The border area extends to Calais-Frethun in France, Dollands Moor freight yard (for freight) and Ashford International Station (for passengers) in the UK.

and standards for ticketing, complaints handling, accessible travel and passenger information.

3. The Train Driving Licences Agreement will provide for the mutual recognition of British and EU train driving licences in the Channel Tunnel and the cross-border area. It will also allow rail undertakings and infrastructure managers to issue drivers with a single complementary certificate. This certificate details the type of rolling stock the driver may drive and the infrastructure over which they are allowed drive trains.
4. Train operator and driving licences were not covered in the Trade and Cooperation Agreement between the UK and the EU. Since the UK's exit from the EU, Channel Tunnel operator licences have been mutually recognised under a temporary arrangement, and the UK Government had waived the requirement for EEA operator licence holders to have a Statement of Regulatory Provisions. The Railway Undertakings Licences Agreement will now place what was a temporary arrangement on a permanent footing.⁴
5. Although the UK Government unilaterally agreed to recognise train driving licences issued by an EU Member State until 31 January 2022, British licences have not been recognised in the EU since the end of the post-Brexit transition period on 31 December 2020. This has meant that UK operators have already obtained EU train driving licences for their drivers. Nonetheless, the Agreement will remove the need for drivers operating in the Channel Tunnel and immediate cross-border area to hold two train driving licences⁵ and reduce the burden on the ORR to process applications from such drivers holding an EU licence.
6. Both Agreements also provide for cooperation and information-sharing, and the Parties have agreed to keep each other informed within a reasonable timeframe of any proposed changes to legislation that might affect Channel Tunnel rail services, particularly where they could require amendment of the Agreements.⁶

Governance and amendments

7. Disputes concerning the interpretation or implementation of the Agreements are to be settled through bilateral exchanges between the Parties, following a mutually agreed timetable.⁷ In exceptional circumstances, either Party can give one week's written notice that it is temporarily suspending application of the Agreement for a maximum of one month.⁸ The Government explains

4 Department for Transport, Explanatory Memorandum on 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, January 2022, para 3.1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050461/EM_France_2.2022_UK_France_Agreement_Train_Driving_Licences_Certificates_Channel_Fixed_Link.odt [accessed 3 March 2022]

5 It is worth noting, however, that a driver operating a service beyond the cross-border area, for example between Gare du Nord in Paris and London St Pancras, would still need to hold both a British and EU-issued train driving licence. Licences are generally an EU competence, which is why a bilateral agreement with France is only possible up to the first border crossing. See: HL Deb, 24 January 2022, cols 92–93 and Department for Transport, Letter from Baroness Vere of Norbiton to Peers regarding the Train Driving Licences and Certificates (Amendment) Regulations 2022 debate, 31 January 2022: <https://admin.depositedpapers.parliament.uk/depositedpaper/view/2283955> [accessed 3 March 2022]

6 Article 4, Railway Undertakings Licences Agreement. Articles 4 and 5, Train Driving Licences Agreement.

7 Article 6, Railway Undertakings Licences Agreement. Article 7 Train Driving Licences Agreement.

8 Article 7, Railway Undertakings Licences Agreement. Article 8, Train Driving Licences Agreement.

that this is “to strike a reasonable balance between providing sufficient time for the issue requiring the suspension to be resolved and to minimise any disruption to cross-border traffic arising from the suspension”.⁹ The Agreement can be terminated by mutual consent, or by one Party providing six weeks’ written notice.¹⁰

8. The Agreements can be amended following a request in writing.¹¹ Any amendment agreed between the Parties would be adopted by an exchange of letters and would come into force under the conditions the Parties jointly determine. The Government states that it would be determined at the time whether an amendment would be subject to parliamentary scrutiny under the Constitutional Reform and Governance Act 2010.¹²
9. **We repeat our long-standing recommendation that the Government should publish clear guidelines on how it decides whether treaty amendments should be subject to ratification (and therefore laid under CRAG).**¹³

Entry into force and implementation

10. Both Agreements will enter into force the day after both Parties have notified each other that they have completed their domestic legal procedures.¹⁴
11. The Government has already made regulations to enable it to implement the Agreements on ratification. The Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021 were made on 29 September 2021,¹⁵ while the Train Driving Licences and Certificates (Amendment) Regulations 2022 were made on 27 January 2022. The Government has explained that in the unlikely event that France were to fail to ratify the Agreement, it would consider revoking these regulations.¹⁶

Territorial scope and consultation

12. Both Agreements apply to the UK only. The EM states that rail operator licensing is a fully reserved matter in Great Britain and, although it is devolved in Northern Ireland, the Agreements have no implications for the Devolved Administrations, nor for the Crown Dependencies or Overseas Territories.¹⁷ The Government has therefore not consulted them on the drafting of this Agreement.
13. The EMs explain that the Department for Transport has not undertaken formal consultation as the Agreement affects only a very limited number of

9 EM on the Railway Undertakings Licences Agreement, para 4.9 and Department for Transport, Explanatory Memorandum on an 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, January 2022, para 4.10: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1050461/EM_France_2.2022_UK_France_Agreement_Train_Driving_Licences_Certificates_Channel_Fixed_Link.odt [accessed 3 March 2022].

10 Article 8, Railway Undertakings Licences Agreement. Article 9, Train Driving Licences Agreement.

11 Article 5, Railway Undertakings Licences Agreement. Article 6, Train Driving Licences Agreement.

12 EM on the Railway Undertakings Licences Agreement, para 4.8. EM on the Train Driving Licences Agreement, para 4.9.

13 See, for example, our reports *Working Practices: one year on* (7th Report, Session 2021–22, HL Paper 75) and *Treaty Scrutiny: Working Practices* (11th Report, Session 2019–21, HL Paper 97)

14 Article 8, Railway Undertakings Licences Agreement. Article 9, Train Driving Licences Agreement.

15 The Railway (Licensing of Railway Undertakings) (Amendment) Regulations 2021 ([SI 2021/1105](#))

16 EM on the Train Driving Licences Agreement, para 4.12 and HL Deb, 12 July 2021, [col 447GC](#).

17 EMs, para 10.1

operators and drivers, and will not impose any new requirements.¹⁸ However, it worked closely with the ORR in developing the Agreements and has engaged regularly with stakeholders, who the EMs explain were supportive of policy objectives.¹⁹

14. **We report the Agreements between the UK and France concerning Railway Undertaking Licences and Train Driving Licences in respect of rail services through the Channel Fixed Link to the House for information. In particular, we highlight our comments at paragraph 9.**

18 EMs, paras 10.2 and 10.3

19 EMs, paras 10.3 and 10.4

APPENDIX : LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Baroness Hayter of Kentish Town

No relevant interests

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, H&O Communications Ltd

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

Earl of Sandwich

No relevant interests

Lord Udny-Lister

Advisor to the Group Chairman of HSBC

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

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