

These notes relate to the Channel Tunnel Rail Link (Supplementary Provisions) Bill as introduced in the House of Commons on 8th November 2007 [Bill 4]

CHANNEL TUNNEL RAIL LINK (SUPPLEMENTARY PROVISIONS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Channel Tunnel Rail Link (Supplementary Provisions) Bill (“the Bill”) as introduced in the House of Commons on 8th November 2007. They have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

TERRITORIAL EXTENT

3. The Bill’s provisions extend to the whole of the United Kingdom. Because the Sewel convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

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SUMMARY AND BACKGROUND

4. The Channel Tunnel Rail Link Act 1996 (“the 1996 Act”) provided for a new high speed railway between the mouth of the Channel Tunnel and London St Pancras station. The concession to construct and operate the railway was awarded to London and Continental Railways Limited (“LCR”) in a package of agreements entered into in February 1996, the principal one being the CTRL Development Agreement of 28 February 1996 between LCR and the Secretary of State for Transport.
5. The new railway, High Speed 1, formerly known as the Channel Tunnel Rail Link (“the CTRL”), is now complete and will be used by both international and domestic train operators. International passenger services from St. Pancras are due to begin on 14 November 2007, while high-speed domestic services to and from North and East Kent are due to start in 2009.
6. The main provisions within the Bill are intended to:
 - confirm that the Secretary of State is empowered to fund the CTRL and the trains that run on it post construction;
 - amend the exclusion in the 1996 Act from regulation under the Railways Act 1993 (“the 1993 Act”) for access agreements in relation to CTRL infrastructure;
 - repeal certain duties of the Office of Rail Regulation (“the ORR”) under the 1996 Act in relation to the CTRL;
 - allow the ORR to charge a fee for the exercise of its regulatory functions in relation to the CTRL;
 - amend the definition of development agreement in the 1996 Act to include the word ‘operation’.

COMMENTARY ON CLAUSES

Powers of Secretary of State

Clause 1

7. Under section 6(1) of the Railways Act 2005 (“the 2005 Act”) the Secretary of State has the power to “provide, or agree to provide, financial assistance to any person –
 - (a) for the purpose of securing the provision, improvement or development of railway services or railway assets; or
 - (b) for any other purpose relating to a railway or to railway services.”

“Financial assistance” is further defined within the 2005 Act as including “the making of grants or loans”, “the giving of guarantees” and “investment in bodies corporate”.

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8. Currently, the Secretary of State provides assistance to the CTRL in a number of ways. These include capital funding through a range of mechanisms including loans, Government Guaranteed bonds, securitised bonds and other debt facilities. In addition, the Secretary of State will also provide revenue funding for domestic services operating on the CTRL under a franchise. Train Operating Companies (“TOCs”) enter into franchise agreements with the Secretary of State and are either subsidised by DfT, or pay a premium to run train services.
9. The Bill confirms – for the avoidance of doubt – that the Secretary of State can, following completion of the construction project, continue to provide financial assistance to the CTRL and the trains that run on it under the powers in the 2005 Act. It was considered that there was a sufficient level of uncertainty as to whether or not these powers applied to the CTRL that there might be an adverse impact on any value generated from a sale of the business without the Bill.

Access contracts

Clause 2

10. Clause 2 aims to delineate more clearly the exclusion that the CTRL has from regulation by the ORR. Under the 1996 Act, the CTRL is generally excluded from the ORR's regulatory jurisdiction under the 1993 Act: any operator of the CTRL is not required to hold a licence under the 1993 Act (section 16(1) of the 1996 Act); and, as a general rule, access contracts in relation to the CTRL do not require the prior approval of the ORR (section 17 of the 1996 Act). There is an exception to this in section 17(3) of the 1996 Act, however, which this clause is intended to remove.
11. Railway facilities on the CTRL which may fall within the scope of section 17(3) of the 1996 Act include St Pancras and other stations on the new line, where they interconnect with the national rail network. Consequently, access contracts in relation to these stations would be susceptible to regulation by the ORR under the 1993 Act. They would also be subject to regulatory oversight by the Secretary of State, in accordance with the terms of the Development Agreement. The purpose of this clause is to ensure that all access contracts in relation to the CTRL should be outside regulation by the ORR under the 1993 Act. Accordingly, clause 2 repeals section 17(3) of the 1996 Act, and makes a consequential amendment to section 17(2).

Duties of Office of Rail Regulation

Clause 3

12. Clause 3 of the Bill makes some changes to the duties of the ORR in relation to the CTRL. In sections 21(1) and (2) of the 1996 Act, the ORR was given specific duties in relation to the CTRL which were designed to ensure that the exercise of the ORR's regulatory functions in relation to the national railway did not have an adverse impact on the construction project and the funding streams of the privately owned railway.

13. The duty on the ORR in subsection (1) of section 21 is considered to remain relevant to the operation of the CTRL under the development agreement. However, the duty in subsection (2) of section 21 is no longer applicable with the completion of the construction project and there are consequential amendments to the rest of the section.

Power of Office of Rail Regulation to charge fees

Clause 4

14. In addition to the duty that the ORR has under section 21(1) of the 1996 Act, it also has regulatory functions in relation to the CTRL under the Railways Infrastructure (Access and Management) Regulations 2005 (SI 2005/3049). The ORR also has other functions under the 1993 Act that it may be called upon to exercise in relation to the CTRL. These include its Competition Act 1998 functions under section 67(3) of the 1993 Act and its general function to keep under review the provision of railway services in Great Britain in section 69 of the 1993 Act.
15. This clause allows the ORR to charge those responsible for operating the CTRL a fee calculated by reference to the costs it reasonably incurs in the exercise of any such function in relation to the railway other than its competition functions under section 67(2) and (3) of the 1993 Act. This is similar to the position on the national rail network, where the ORR's regulatory functions are funded by the licence fee paid by the operator, Network Rail.
16. The clause provides for the fee to be levied on an ad hoc basis by the service of a notice by the ORR, which specifies the amount of the fee and the date by which it must be paid. The clause also provides for the recovery by the ORR as a civil debt of any amount outstanding after the due date and for refunds of any amounts found after payment to have been overcharged.

Meaning of Development Agreement

Clause 5

17. The fifth provision within the Bill amends the definition of "development agreement" in section 56(1) of the 1996 Act.
18. LCR designed and constructed the CTRL in accordance with the terms of the CTRL Development Agreement which it entered into with the Secretary of State in 1996. This agreement will continue post-construction (albeit in a revised form) and will contain the terms of the concession to operate the railway. To reflect more clearly that the agreement and provisions in the 1996 Act relate to the operational phase of the CTRL as well as its design and construction, it is proposed to amend the definition of "development agreement" in the 1996 Act to include the word "operation".

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FINANCIAL EFFECTS OF THE BILL

19. The Bill will have one direct financial impact, which will fall on the owner of the concession to operate the rail link. This is the power given to ORR under clause 4 to charge for the regulatory functions which it carries out in relation to the CTRL. It is not currently possible to estimate what these fees will be but it is a requirement that the ORR calculates the fee on the basis of the costs it reasonably incurs in carrying out the relevant function.
20. Other provisions of the Bill seek to ensure that there is clarity about the relevant regulatory rules and other powers that apply to the CTRL. It is intended that this will facilitate the maximum value from any sale of the CTRL business being secured. The Bill also anticipates a financial restructuring of the business by confirming that existing funding powers apply to the CTRL and the trains that run on it.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

21. The Bill will have no impact on public service manpower.

SUMMARY OF THE IMPACT ASSESSMENT

22. The impact assessment is available from the Vote Office and on the Department for Transport website at www.dft.gov.uk. It identifies the fee that may be levied by the ORR on an ad hoc basis when it exercises its regulatory functions in relation to the rail link and finds that no new burden of regulation will be imposed.

COMMENCEMENT

23. The Bill will commence two months after Royal Assent.

EUROPEAN CONVENTION ON HUMAN RIGHTS

24. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Secretary of State for Transport has made the following statement: "In my view the provisions of the Channel Tunnel Rail Link (Supplementary Provisions) Bill are compatible with the Convention rights."

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