

	RSD Internal Guidance	RIG-2019-01	
<i>Channel Tunnel enforcement notices - arrangements for binational notification</i>			
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<u>Keywords</u>			
<u>Summary</u> This RIG informs those involved in Channel Tunnel related activities of the process to follow to deliver binational communications in the event of enforcement action being taken by members of the UK CTSA delegation against Channel Tunnel stakeholders.			
<u>Original consultation</u> Jen Ablitt (CTSA UK HoD); Paul Appleton (Deputy Chief Inspector, RSD), Martin Jones (Head of railway safety policy); Jenny Lopez (CTSA inspector); Karen Barnes (CTSA Inspector); Paul Hooper (CTSA member); Steve Demetriou (CTSA Member) Jeremy Bohl (IGC legal adviser); Kathryn Coleman (CTSA secretariat); Sue Butler (IGC secretariat); Corinne Menage (IGC French delegation).			
<u>Subsequent consultation</u>			

Background

1. The Intergovernmental Commission (IGC) for the Channel Tunnel is the National Safety Authority (NSA), established to supervise, in the name and on behalf of the British and French Governments, all matters concerning the construction and operation of the Channel Tunnel. One of the key roles of the IGC relates to the management of health and safety matters by all stakeholders using the Tunnel, on which it is advised by the Channel Tunnel Safety Authority (CTSA), which has a similar bi-national structure.

Action

2. The CTSA has the power to appoint ORR inspectors and engineers to carry out inspection and investigation activity on CTSA's behalf (under the Treaty of Canterbury and the Channel Tunnel Act 1987). Where an inspector has been appointed by the CTSA, that appointment confers powers that are similar, but not identical, to their HSWA inspection powers (power of entry, ability to carry out inspection and investigation, seize evidence, interview persons etc.). However, CTSA inspectors' powers do not include enforcement powers such as the ability to issue notices.

3. The main purpose of appointment by the bi-national CTSA is to confer powers of entry and inspection on those appointed in respect of both the French and UK halves of the Channel Tunnel. Appointment by CTSA clearly does not extend, for example, the HSWA power of an ORR inspector to serve Improvement Notices on the French half of the Concession.

4. HSWA and EARR both apply to the UK half of the Channel Tunnel. As such, any warranted ORR (or indeed HSE) inspector enjoys their full set of s.20 powers in the UK half of the Channel Tunnel irrespective of whether or not they have been formally appointed by CTSA. Having said that, at the time of ORR's 2015 enforcement action on Eurotunnel in relation to the "migrant crisis" (see below) the CTSA initiated and requested that ORR inspectors investigate (CTSA had been monitoring for some time). The enforcement action taken by ORR was progressed in close association with IGC/CTSA and we consider that close cooperation with IGC/CTSA is desirable, in the event that ORR inspectors wish to exercise their UK domestic powers.

Detail

5. ORR inspectors and the IGC / CTSA secretariats should follow the steps set out in paragraph 7 to 12 when considering enforcement action in respect of Channel Tunnel related activities.

6. The role of the CTSA is to provide advice and assistance to the IGC on all matters concerning safety in the construction and operation of the Channel Tunnel and ensuring that Channel Tunnel health & safety is regulated and enforced in line with the obligations of the Treaty of Canterbury. To enable this the UK and French governments have granted the IGC and its members and agents (the CTSA) the powers of investigation, inspection and examination necessary to the fulfilment of their tasks. Individual inspectors may possess specific enforcement powers that they have been granted by their parent authorities, which will only apply in their respective national territories.

7. As part of their duties, warranted IGC inspectors are expected to exercise their powers and responsibilities in line with the policies of the IGC and taking account of the policies and approaches of their home National Safety Authority, company or professional institution.

8. Investigation and enforcement activities in relation to the Channel Tunnel are undertaken in accordance with the respective enforcement powers and policies of the French judicial authorities, to the mid-point of the Tunnel, and ORR.

9. Whilst there is regular communication between the two investigation bodies on matters arising, it is important to ensure that similar information is exchanged between the relevant governing bodies (IGC, CTSA and their respective working groups) to

ensure that they are aware of ongoing issues, in particular the service of enforcement notices by ORR Inspectors.

10. In line with the binational principle of acting jointly, ORR inspectors exercising, or wishing to exercise, enforcement powers under national law in respect of Channel Tunnel related activities should, where time allows:

- ensure that their counterparts in France are made aware of their intentions to serve a notice;
- liaise with ORR legal to ensure that, in respect of the potential binational nature of the enforcement action, the notice is being served on the appropriate duty holders;
- liaise with the CTSA secretariat, providing brief details of the notice (or a draft) and the reasons for its service, so that the other national delegations can be informed.

11. Inspectors should take the opportunity to liaise on these matters **in advance of** taking any enforcement action, unless it is considered that the activity in question involves (or will involve) a risk of serious personal injury. In these circumstances, liaison should be carried out as soon as possible after any enforcement action.

12. The CTSA secretariat should, on receipt of such notification, immediately inform:

- all members of the UK CTSA delegation;
- the UK IGC secretariat (who in turn should inform all members of the UK IGC delegation);
- the French CTSA and IGC secretariats;
- in the event that the issue being addressed has fire, emergency service and public safety implications, members of CTSA WG 1; and
- the Chief Inspector of Railways (as per the guidance set out in [RIG-2008-09](#)) and ORR's Chief Executive Officer.

Further information

13. For further information please speak to the IGC / CTSA secretariat as follows:

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