

THE GOVERNMENT RESPONSE TO THE CONSULTATION ON SAFEGUARDING HS2

London – West Midlands



The Government response to the Consultation on Safeguarding HS2

London – West Midlands – published on 9 July 2013

Presented to Parliament
by the Secretary of State for Transport
by Command of Her Majesty

July 2013

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Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR.

ISBN: 9780101867221

Printed in the UK by The Stationery Office Limited on behalf of the
Controller of Her Majesty's Stationery Office

ID 2568717 07/13

Printed on paper containing 75% recycled fibre content minimum

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Safeguarding Consultation Government Decisions Document

Purpose and background

Between 25 October 2012 and 31 January 2013, the Government ran a consultation on its proposal to 'safeguard' the proposed route of HS2 between London and the West Midlands, a section of the HS2 route known as Phase One. The consultation was primarily aimed at the Local Planning Authorities (LPAs) who must operate under the requirements of the Direction, but it was also open to responses from the public more generally.

Safeguarding Directions are a mechanism set out in the Town and Country Planning (Development Management Procedure) (England) Order 2010 for ensuring that new developments do not conflict with the construction of major projects such as HS2, and when properly applied can help control costs and prevent delays, in the interests of scheme promoters, individual developers and the wider public.

In practice, once the Secretary of State has made a decision to safeguard the line of route, the Secretary of State issues 'safeguarding directions' to LPAs. Safeguarding directions place a legal obligation on LPAs to consult the named authority – in this case High Speed Two (HS2) Limited – on all undetermined planning applications (other than those exempted by the directions) in respect of land that is within the safeguarded area. If an LPA is minded to grant planning permission otherwise than to give effect to HS2 Ltd's comments then the planning application is referred to the Secretary of State for Transport who is able to direct a final decision on the planning application.

The safeguarding consultation set out proposals for safeguarding the full length of 'Phase One' of the HS2 scheme between London and the West Midlands. Since the safeguarding consultation period, the Government has proposed, and sought public views on, a number of design refinements of the Phase One route – including additional tunnels in Ealing, West London, and in the Bromford area of Birmingham.

The Secretary of State has decided that it would not be appropriate at this stage to issue safeguarding directions for those two sections of the route, but has decided, following consideration of the consultation responses, to issue safeguarding directions to LPAs covering the rest of the Phase One route. This not only has immediate implications for the LPAs themselves, but also for those considering submitting planning applications in respect of land in the safeguarded area.

Furthermore, safeguarding is a trigger for Statutory Blight procedures under the Town and Country Planning Act 1990 and gives those who have a qualifying interest in property as defined in that Act the ability to serve a Blight Notice and request that the Government purchases their property under the Compensation Code. For example, owner-occupiers of residential properties who meet the relevant criteria and whose request is accepted can expect to receive the unblighted value of their home, a home-loss payment of 10% of the value of their home (up to £47,000) and reasonable moving costs.

General information on compensation for those who own property within safeguarded areas is available from the Department for Communities and Local Government at: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/compulsory-purchase-system-guidance>.

Information on compensation specifically aimed at those who own property within areas safeguarded for HS2, including application forms, is available at <http://www.hs2.org.uk/> or by phoning the HS2 Ltd enquiries line on 020 7944 4908.

The purpose of this document is to explain the Government's decisions in the light of responses to the safeguarding consultation. The responses themselves have been separately summarised by HS2 Ltd, in a

document entitled *HS2 Phase One safeguarding consultation: summary of responses*, published alongside this document at <http://www.hs2.org.uk/>.

Questions asked

The consultation asked the following four questions:

1. Do you agree with the proposal to safeguard, and the content of the proposed safeguarding directions? If not, please explain why.
2. Do you agree with the content of the guidance for Local Planning Authorities on the directions? If not, please explain why.
3. Do you agree with the geographical coverage of the land to be safeguarded? If not, please explain why.
4. Do you consider that the draft Impact Assessment is a fair reflection of the costs and benefits of the safeguarding proposals on the operation and outcomes of the planning application process? If not, please explain why.

In total, 3761 responses were submitted during the consultation period.

1 The proposal to safeguard the Phase One line of route

1.0.1 This chapter sets out the Government's decisions following responses to the question:

1. Do you agree with the proposal to safeguard, and the content of the proposed safeguarding directions? If not, please explain why.

1.0.2 Around half of the Local Authorities (upper and lower tiers of local government i.e. County, Borough and District Councils) who responded either explicitly agreed with the need for safeguarding or said that they did not object to it in principle.

1.0.3 Most members of the wider public who responded to the consultation disagreed with the proposal to safeguard the route as proposed. Many of these respondents argued that the HS2 scheme itself should not proceed as proposed, and as a logical consequence of that position they believe that there is no case for safeguarding Phase One of the scheme. The arguments cited in support of that position were varied. Some respondents, for example, referred to the economic justification for the proposed railway and the affordability of the project. Many who responded in such terms explained that they live close to the proposed route and set out a range of specific concerns about the proposed route and design and their potential adverse impacts.

1.0.4 If there were no realistic prospect of HS2 proceeding broadly according to the current plans, the Government would agree that it would be unnecessary to safeguard the Phase One route and would not be proposing to do so. However, the Government has already consulted extensively on the case for the HS2 programme as well as the details of the proposed Phase One route and design. Through the decisions made in January 2012, further decisions to introduce and prepare legislation for Parliament, and by means of numerous public statements, Ministers have repeatedly expressed their clear view that HS2, and in particular Phase One of the preferred scheme, should proceed broadly as proposed. The Government has set out its reasons extensively in a number of published documents and statements¹ and we do not consider it necessary to restate those reasons here. We do not therefore accept the arguments made by many respondents that HS2 should not proceed and therefore neither should safeguarding.

1.0.5 This conclusion is reinforced by the fact that few real alternatives to issuing safeguarding directions were proposed. One alternative that was offered was that we could convene a group of LPAs and work collaboratively to manage development until a decision is taken on HS2 Phase One by Parliament. This alternative was considered by the Government, but ruled out because it would not be as effective as the proposed option of safeguarding which provides the legal powers necessary to protect land for HS2 and gives many property owners the right to claim compensation. The alternative approach offered was also considered likely to increase the burden on LPAs rather than reduce it. Furthermore, in such a scenario the Secretary of State would lack the legal powers necessary to intervene in the planning process.

1.0.6 The Government has though considered a number of more specific arguments made through the consultation process against the proposal to safeguard Phase One at this time, and in the manner proposed. The key arguments are set out below, along with the Government's response.

¹ <https://www.gov.uk/government/publications/high-speed-rail-investing-in-britains-future-decisions-and-next-steps>

1.1 Whether safeguarding Phase One of HS2 will spread blight

1.1.1 One argument made for the conclusion that safeguarding should either be postponed or called off entirely was that safeguarding is likely to exacerbate or spread property market blight.

1.1.2 The Government has always recognised that the proposals for the HS2 project have caused, and may continue to cause, property market blight along the line of route. However, the Government does not agree that safeguarding directions *as such* should exacerbate or spread property market blight; there is an important distinction to be made between the HS2 project and the processes that allow HS2 to be constructed and operated.

1.1.3 Safeguarding directions set out in clear, geographical limits the Government's current expectation of the land which, if developed, may conflict with the HS2 project. While these limits are subject to possible future refinement, an important effect of safeguarding is that it helps to clarify the land that the Government expects will *not* be required for the railway. This gives those who are considering submitting planning applications outside the safeguarded area a measure of additional certainty. On that basis, the Government believes that safeguarding directions are as likely to limit as to exacerbate the spread of blight.

1.1.4 The Government does recognise its responsibility to those who wish to develop land in the safeguarded area. In particular, the Government supports the principle that safeguarding should not automatically prevent development in the safeguarded area, but instead should provide a process for potential conflicts to be resolved. For that reason, the Government has asked HS2 Ltd to adopt the following 'Safeguarding Planning Principles'.

1. HS2 Ltd will respond, in a clear manner, to planning application consultations within 21 days.
2. HS2 Ltd will publish and apply guidance for developers providing key information about HS2 design criteria. This will assist developers to design buildings to meet the Government's safeguarding objectives and decrease the possibility of a recommendation of refusal of planning permission being made to the LPA;
3. Where potential developments are in conflict with the railway, HS2 Ltd will be ready to discuss with developers any possible ways in which the design of the development could be altered to remove conflicts with the railway.

1.2 Whether now is the right time to safeguard Phase One

1.2.1 A number of respondents said that this is not the right time in the life of the project to issue safeguarding directions. The arguments put forward in support of this view included that issuing safeguarding directions now would limit the ability of Parliament to influence the route, and also that given that the route is not yet fixed, future refinements of the safeguarded area would lead to subsequent decisions on planning applications being needlessly reversed.

1.2.2 Taking these in turn, the Government does not agree that safeguarding now will limit the ability of Parliament to alter the Phase One route. The Hybrid Bill for HS2 will give the Government powers to construct and build the railway. Parliament will consider and determine the Hybrid Bill promoted by the Government setting out its proposed railway. However, ultimately it is for Parliament to approve these powers and thus ultimately for Parliament whether and where HS2 goes ahead. Safeguarding directions are a planning tool and as stated are designed to protect the proposed route from conflicting development in

advance of the specific statutory powers granted by Parliament through the Hybrid Bill process to construct the route of HS2. Safeguarding directions therefore offer no restriction of the parliamentary process.

- 1.2.3 There is at this time, however, sufficient confidence in the line of route that the majority of Phase One of HS2 will take that safeguarding directions can be issued without significant risk of a substantial number of planning decision reversals. This confidence is demonstrated by the draft Environmental Statement consultation, which sets out in detail the extent of land the Government believes will be needed both for construction and permanent operation of the railway. The Government does accept that where there is reasonable doubt over a section of the route, it would not be appropriate to safeguard such sections until the matter has been decided. For example, the current Design Refinement Consultation proposes that there should be bored tunnels at both Bromford and Ealing, and so the Government has decided that these sections of the proposed line of route should not yet be safeguarded until the Secretary of State has reached conclusions on these tunnels.
- 1.2.4 Even so, there is no final point at which all refinements to the line of route will have been made. This is because the construction and operation of the line is always subject to change – both in response to the parliamentary process, and, later, to technical refinement as engineers find solutions to challenges presented by construction.
- 1.2.5 While it is possible that refinements to safeguarding boundaries will mean that new areas are included or excluded, the Government believes that the overall planning risks are greater, the later safeguarding directions are issued. This is because before safeguarding is in place there is no restriction on developments along the line of route – possibly resulting in the unnecessary additional demolition of homes and businesses.
- 1.2.6 Finally, an important consequence of issuing safeguarding directions is that it gives those who live in the safeguarded area, with a qualifying interest, a right to ask the Government to buy their homes. If they meet statutory criteria they may then receive compensation for their homes.
- 1.2.7 To delay safeguarding is also to delay help to those in the safeguarded area who want or perhaps need to move home. At present anyone wishing to move whose home may be affected by property blight as a result of the plans for HS2 can only apply to the Government to buy their home under the Exceptional Hardship Scheme for Phase One. In order to qualify under this scheme they must meet five criteria including showing that they will experience exceptional hardship if they do not sell. Because this is a discretionary scheme, the tests for qualification are more stringent, and only the unblighted open market value is paid. As such, many people who are within or partially within the draft safeguarded area that was consulted on from October 2012 to January 2013 are waiting for safeguarding directions to be made so they can seek compensation on the terms set out on page 7.
- 1.2.8 For the reasons set out above, the Government believes there is significant benefit in issuing safeguarding directions at this point, and the Secretary of State has therefore decided to issue safeguarding directions for the majority of Phase One of HS2. This represents an important step forward for HS2 that will reduce risks to the project and cost to the tax payer. As described above, it is anticipated that safeguarding directions for the remaining parts of Phase One (in Ealing and Bromford) will be issued once decisions on whether to proceed with these tunnels have been taken in light of the Design Refinement Consultation (expected in autumn 2013).

1.3 Independent Arbitrator for Determining Planning Applications

- 1.3.1 There was a suggestion by some respondents that final decisions on planning applications should not be made by the Secretary of State for Transport but that such decisions should be referred to an independent arbitrator. The suggestion was that they consider it a conflict of interest given the Secretary of State's role as the sponsor of the project.
- 1.3.2 It is worth at this stage outlining the process as set out in law: if an LPA, having received a recommendation from HS2 Ltd to amend or refuse a planning application, were nonetheless minded to grant planning permission, the LPA is required to inform the Secretary of State. At that point the Secretary of State for Transport could step in and direct refusal of, or restrictions on, the grant of planning permission. The LPA must deal with an application for planning permission for development to which a direction given by the Secretary of State applies in such a way as to give effect to that direction. The LPA's determination can be challenged on appeal in the usual way with planning applications.
- 1.3.3 The Government rejects the argument that an independent arbitrator should have the ultimate decision on planning applications. The Secretary of State is best placed to understand and appreciate the planning implications and requirements of HS2 and thus determine what is appropriate.
- 1.3.4 Further, safeguarding directions are an established tool of the planning system. Many such directions have been made with the same provisions relying on the powers provided by statute. As the planning is still determined by the LPA it is still subject to appeal in the usual way. Further, any exercise of the Secretary of State's power is subject to the general principle that it must be exercised in a reasonable, rational and proportionate way otherwise that decision can be challenged in the Courts. The power is therefore subject to appropriate safeguards.
- 1.3.5 Moreover, it is our consistent experience with transport schemes subject to safeguarding directions that the vast majority of decisions on planning applications continue to be taken by the relevant LPAs, who are directly democratically accountable for those decisions to the communities they serve. LPAs generally work successfully in partnership with transport scheme promoters, reflecting a shared understanding that the public interest is not served when conflicting developments are granted planning permission.

1.4 Sunset Clause

- 1.4.1 A number of respondents called for a 'sunset clause' to be built into the directions so that they would automatically lapse in certain circumstances, such as if the Hybrid Bill was not passed by Parliament, or if construction did not commence within a set number of years following Royal Assent.
- 1.4.2 The Government agrees that where regulation is unnecessary it should be removed. We recognise the risk that the long-term safeguarding of proposed transport schemes can prevent beneficial developments and hold areas back from achieving their full potential. Safeguarding therefore should only be implemented where a preferred route has been decided, and there is a realistic prospect of the scheme being implemented.
- 1.4.3 There are some good reasons to believe that the protections of safeguarding will need to be in place for the long term. For example, the HS1 Channel Tunnel Rail Link still has safeguarding directions in place. Safeguarding continues to protect the operation of the railway from conflicting developments, such as works above tunnels, the erection of cranes that could over-sail the railway, or the installation of lights near the line which drivers could mistake for

signals. Such protections may continue to be required to ensure the safe and efficient operation of HS2, once built.

- 1.4.4 We, however, agree that it is right that the safeguarding directions should be kept under review, and that opportunities to reduce the extent of safeguarding should be taken. Therefore, while the Government does not agree with the argument that safeguarded directions should automatically lapse, the Government has asked HS2 Ltd to keep safeguarding under review so that it can be reduced, removed or otherwise refreshed at periodic intervals where it is reasonable to do so. The Government believes it will be appropriate to ask HS2 Ltd (and/or any successor) to review the safeguarding of the scheme following key milestones in the lifetime of the project – such as the completion of main construction works for each phase. We anticipate that the next formal review will take place around the deposit of the hybrid Bill.
- 1.4.5 In the event that HS2 were to be cancelled, or indefinitely postponed, a consideration of whether it would be appropriate to remove safeguarding would need to be taken at that time, with reference to the public interest in removing unnecessary regulation, balanced against the potential public interest in preserving the possibility that the scheme could be revived efficiently at some later date. The Government believes it would unnecessarily prejudice the careful determination of the public interest in such circumstances if we were to introduce sunset clauses now.

2 The content of the guidance for Local Planning Authorities

2.0.1 This chapter sets out the Government's decisions following responses to the question:

2. Do you agree with the content of the guidance for LPAs on the directions? If not, please explain why.

2.1 Land charges register: zoom safeguarding disclosure

2.1.1 A number of respondents, both organisations and individuals, questioned the request in the guidance that:

...the safeguarding provisions should be revealed in response to Optional Enquiries sent with requisitions for searches of the local land charges register in relation to properties within the zone of consultation and within 200 metres of the areas of surface interest shown shaded on the plans attached to the Directions.

2.1.2 Respondents developed the argument that asking LPAs to reveal, in response to searches of the local land charges register prior to a potential purchase of a property, that the property in question is within zoom of safeguarding, would risk exacerbating blight through making such properties harder to sell.

2.1.3 Although the zoom figure has a precedent in previous projects (such as Crossrail), there is no formal requirement for it; this is only guidance. Its intended purpose was to assist LPAs. However, the Government has considered the concerns expressed on this matter and agrees that there is some merit in the argument that the zoom suggestion could spread blight unnecessarily. As such the Government has amended the consultation draft to provide that the LPAs themselves should determine the circumstances in which they reveal the safeguarding provisions in response to searches of the local land charges register.

2.1.4 On that basis, we have amended the relevant text (quoted above) in the guidance to LPAs to read:

...the safeguarding provisions should be revealed in response to Optional Enquiries sent with the requisitions for searches of the local land charges register in relation to properties within the limits of land subject to safeguarding direction.

2.2 Improvements to the guidance to reduce the burden on LPAs

2.2.1 A number of suggestions were made as to how the guidance to LPAs can be improved in order to reduce unnecessary burdens on LPAs that arise as a consequence of safeguarding.

2.2.2 A proportion of LPAs questioned the practicality of informing HS2 Ltd of permitted development (PD) proposals – minor changes that do not require planning permission and derive from a general planning permission granted by Parliament. This was on the basis that LPAs are only likely to know of such proposals where there is a requirement for prior notification, which does not apply to the majority of PD works. It was also argued that such proposals would generally have very limited implications for HS2.

2.2.3 After consideration, the Government accepts that asking LPAs to inform HS2 Ltd of PD proposals presents practical difficulties, and also agrees that PD schemes are unlikely to have significant impacts for the HS2 project. Therefore, the Government has decided to remove the requirement for LPAs to inform the HS2 Ltd of PD proposals within the safeguarding area.

- 2.2.4 In a similar vein, some LPAs said that they were unable to inform HS2 Ltd about extant planning permissions within the safeguarded area (those that had already been granted but had yet to result in development). The Government recognises those concerns and has amended the guidance as follows to reflect that:

Where LPAs are aware of, or become aware of, any extant planning permissions affecting land within the consultation zone which have yet to be implemented, it would be helpful if they could let HS2 Ltd know about these.

- 2.2.5 There were repeated requests by LPAs that a means be provided for planning applications to be referred to HS2 Ltd electronically in the interest of time and cost.

- 2.2.6 The Government agrees that electronic delivery is cheaper, faster and more secure. For that reason the guidance now contains an email address to which LPAs can refer planning applications. This is: town.planning@hs2.org.uk . Planning applications can still be sent by first class post to:

The Safeguarding Planning Manager
HS2 Limited
2nd Floor, Eland House
Bressenden Place,
London SW1E 5DU

- 2.2.7 Some councils raised the issue of conflicts arising between safeguarding and their local plans. A local plan is a statutory development plan created by the LPA for their local authority area, typically setting out (among other things) the strategic objectives and development requirements in terms of infrastructure, economic growth, housing, and environmental protection.
- 2.2.8 Councils accepted that it would not be sensible to have Local Plan policies that conflicted with the safeguarded area, but were concerned that it would be costly and time consuming to amend a Local Plan designation purely in light of the adoption of the HS2 safeguarding directions. As an alternative approach LPAs suggested that any conflict with the safeguarded area could be addressed when a planning application was submitted without the need to amend the Local Plan. LPAs suggested that conflicts on a policies map were best considered when the Local Plan or relevant Development Plan Document was revised.
- 2.2.9 The Government considers the suggested alternative above to be a sensible and proportionate approach and the final guidance in relation to Local Plans has been amended accordingly.

3 Geographical Coverage

3.0.1 This chapter sets out the Government's decisions following responses to the question:

3. Do you agree with the geographical coverage of the land to be safeguarded? If not, please explain why.

3.0.2 A proportion of responses made reference to either the general approach to defining the land to be safeguarded, or to specific geographical locations. Of the latter, a number asked that the safeguarding boundaries be changed. Typically, businesses wanted to be excluded from safeguarding, while home-owners asked to be included.

3.1 Suggested changes to the safeguarding boundary

3.1.1 It is worth stressing that the rationale for the geographical extent of safeguarding is determined by anticipated engineering need, rather than, for example, the expected physical effects of the railway, or – as some people suggested – by a desire to reduce compensation for those in proximity to the line of route.

3.1.2 Overall, the Government's conclusion is that, in general, the geographic extent of safeguarding as was set out in the consultation was the right one for this project at this stage in its development (with the exception of the sections of the route in Bromford and Ealing).

3.1.3 Every proposed location-specific change to the safeguarding boundary was considered by HS2 Ltd which assessed them against the requirements of the project and in accordance with the aims of safeguarding – to protect land likely to be needed for the railway.

3.1.4 In a number of cases, it proved possible to make amendments to reflect the wishes of the respondents without compromising these goals. The 'Notes on changes' document published alongside the safeguarding maps sets out the changes that have been made to the maps following consultation, many of which responded directly to consultation responses. In other cases, it was considered that the proposed change would conflict with the purposes of the safeguarding (e.g. would leave an area of interest exposed to conflicting development) or that it would not be an appropriate use of safeguarding (e.g. expanding the zone to include land that was manifestly not needed for the project and where developments could not conceivably conflict with the railway proposals).

3.1.5 Some representations related more to the line of route than to the proposed safeguarding area. For example, there were requests for new or extended tunnels in the Chilterns and at the HS1 link in Camden. Having considered these requests, the Government does not consider that any evidence has been presented which has not already been taken into account as part of previous consultations and decisions specifically on the line of route and the detailed scheme design. Following the consultation on the draft Environmental Statement, the next formal opportunity to propose changes to the line of route will be during the Parliamentary passage of the hybrid Bill.

3.1.6 Finally, a number of respondents requested further information about the detail of the impact of the proposals in their area. Given that the safeguarding consultation was narrowly focused on the protection of land for HS2, the proper vehicle for such information is the draft Environmental Statement Consultation, which was published on 16 May 2013, and is available at <http://www.hs2.org.uk/draft-environmental-statement>. Where comments, suggestions or expressions of concern were made in relation to the local impact of the construction or operation of HS2 (such as an increase in noise, traffic or other disruption), and these were considered to be significant and new (i.e. not previously raised through consultation or other forms of public engagement), these were passed to relevant teams within HS2 Ltd and the Department for Transport.

4 Impact Assessment

4.0.1 This chapter sets out the Government's decisions following responses to the question:

- 4. Do you consider that the draft Impact Assessment is a fair reflection of the costs and benefits of the safeguarding proposals on the operation and outcomes of the planning application process? If not, please explain why.**

4.1 The scope and detail of the Impact Assessment

4.1.1 The most common response to the draft Impact Assessment (IA) was to highlight a potential cost which it was claimed was either underestimated, or not included at all.

4.1.2 The Government agrees that improvements to the IA were possible, and these have been incorporated into the final IA, available alongside this document at <http://www.hs2.org.uk>. For example, the IA has been revised to reflect the additional evidence provided by respondents on the different impacts on urban authorities compared to rural ones.

4.1.3 There were a number of responses that either explicitly said or tacitly assumed that the IA should record all the blighting impacts that might be attributed to the HS2 project. The Government does not consider that this is the right approach. Exactly what an IA should cover is a matter of convention and judgement, but it is widely accepted that IAs should cover the impacts of the proposals to which they relate, all other things being equal. So the impact that needs to be assessed is the additional impact of building HS2 with safeguarding directions in place, as opposed to building it without safeguarding directions.

4.1.4 In the case of HS2, in line with established practice the estimated costs associated with property compensation or factors that could link to property values (either up or down), such as time savings, noise, air quality, regeneration and changes to the landscape are accounted for separately through work on the wider HS2 business case, and the HS2 economic case as an integral part of the business case. There are further IAs in relation to other aspects of the project, such as in relation to the draft Environmental Statement, but we have not attempted to record the estimated impact of HS2 as a whole in a single document. The safeguarding IA therefore limits itself to costs and benefits directly related to the decision to issue safeguarding directions.

4.2 Where costs imposed by safeguarding should fall

4.2.1 A relatively frequent response to this question was the claim that where the IA displayed a cost that safeguarding directions would impose on LPAs or others, the Government should provide funding to cover that cost. For the reasons set out below, the Government does not agree that there is justification for the provision of additional funding to cover the relatively minor costs generated by compliance with safeguarding directions.

4.2.2 In respect to additional costs imposed on LPAs, the requirement for LPAs to comply with safeguarding directions is set out in law and as such it falls within the normal responsibilities of any LPA.

4.2.3 Where safeguarding directions impose an additional cost on developers resulting from, for example, waiting for HS2 Ltd to examine and rule on their planning applications, or redesign planning applications to comply with HS2's construction needs, we note that safeguarding directions are a well-established component of the planning and regulatory framework within which developers operate in this country.

4.2.4 Finally, for those who meet the qualifying criteria and who own and live in homes or operate small businesses within the safeguarded area, and who believe safeguarding has imposed a cost on them in respect of a possible blighting effect, safeguarding does trigger a potential compensation route. General information on this is available from the Department for Communities and Local Government at: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/compulsory-purchase-system-guidance>.

4.2.5 Information on compensation specifically aimed at those who own property within areas safeguarded for HS2, including application forms, is available at <http://www.hs2.org.uk/> or by phoning the HS2 Ltd enquiries line on 020 7944 4908.

4.3 Strategic Environmental Assessment

4.3.1 A number of respondents queried whether a Strategic Environmental Assessment (SEA) had been carried out.

4.3.2 Under the law, there is no requirement to conduct an SEA in respect of safeguarding. Neither the safeguarding directions nor the decision to make them are a 'plan or programme' within the terms of the SEA Directive because they do not set a framework for future development consent. Instead they seek to ensure the proper planning of the area for the railway and allow the government to comment on relevant planning applications. The purpose of assessment under SEA is to identify the current state of the environment and the likely significant effects on the environment of implementing the plan or programme. The implementation of safeguarding as a planning tool is unlikely to have significant environmental effects.

4.4 Equalities Impact Assessment

4.4.1 Some respondents also queried whether an Equalities Impact Assessment (EIA) had been carried out.

4.4.2 The public sector equality duty came into force on 5 April 2011. Section 149 of the Equalities Act 2010 broadly requires public authorities to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between those who share a protected characteristic and those who do not. Public authorities need to have due regard to these duties when making decisions and setting policies.

4.4.3 A screening process to identify the need for adjustments and to inform the decision of whether an EIA is necessary was carried out. The resulting document has now been appended to the IA.

4.4.4 Ultimately, safeguarding directions themselves do not impose or increase inequalities between those who share a protected characteristic and those who do not. Safeguarding directions apply to a particular geographical area on the basis of engineering need, and as such are blind to the differences between the people who live and work in that area. We have not received evidence through the recent consultation that should lead us to expect indirect discrimination effects.

4.4.5 We have not therefore identified any need to produce an EIA for the safeguarding proposals.

5 Reflections on the consultation Process

5.0.1 Some respondents commented on the safeguarding consultation process itself.

5.1 Focus of the consultation questions

5.1.1 A small number of respondents were concerned that the consultation questions were framed to limit the scope of possible responses.

5.1.2 The questions were phrased to focus responses on issues specific to safeguarding on which we wish to gain the views of the public, and thereby shape Government policy. We welcome and consider all responses to the consultation, but the usefulness of the consultation process for shaping the policies in question is reduced if our questions do not have sufficient direction to aid respondents in addressing the points on which we wish to gauge their views.

5.1.3 Even so we did receive a large proportion of responses that did not directly address the narrow focus of the questions, which suggests that respondents did not consider themselves constrained by the questions posed.

5.2 Timing

5.2.1 The safeguarding consultation ran from 25 October 2012 to 31 January 2013, simultaneously with a separate consultation on a discretionary property compensation package.

5.2.2 A few respondents said that these two consultations should not have been conducted and analysed separately.

5.2.3 There are a number of reasons why the decision was taken to keep these consultations separate. The safeguarding consultation related to a regulatory planning mechanism and as such was primarily aimed at LPAs, while the property compensation consultation related to extra-statutory compensation for property owners and as such was aimed at the general public.

5.2.4 Keeping the two consultations separate also had procedural advantages; as was expected the discretionary property compensation consultation received far more responses than the safeguarding consultation, and sorting the responses to a joint consultation would have been unnecessarily expensive and time consuming.

5.2.5 A small number of respondents expressed concerns that the consultation closed (on 31 January) soon after the Phase Two route publication (28 January) and before the Court Ruling on the HS2 Judicial Reviews (15 March).

5.2.6 There is no dependency between the Phase One safeguarding consultation and the Phase Two route publication. We considered it was still appropriate to close the consultation notwithstanding the Judicial Review being then undecided, however, we deferred issuing safeguarding directions until the outcome of the Judicial Review. Safeguarding is not affected by the result of the Judicial Review and we consider that it is appropriate to continue with it. We anticipate that the Phase Two route will have a separate safeguarding consultation of its own in due course, specifically targeted at the LPAs along that section of the route. The Government's proposal to safeguard Phase One was not the subject of legal challenge. The timing of the judgment was, in any case, outside the Government's control. There would have been no benefit in extending the Phase One safeguarding consultation to ensure it overlapped with other events on the HS2 project.

6 Next steps

6.1 Immediate implications of safeguarding

- 6.1.1 Safeguarding directions for the majority of Phase One are now in place. As has already been explained, this has immediate implications for LPAs and those wishing to submit planning applications in respect of land in the safeguarded area.
- 6.1.2 Safeguarding also enables those who own property and meet the qualifying criteria to approach the Government to purchase their properties from them, if they wish. General information on compensation for those who own property within safeguarded areas is available from the Department for Communities and Local Government at: <https://www.gov.uk/government/organisations/department-for-communities-and-local-government/series/compulsory-purchase-system-guidance>.
- 6.1.3 Information on compensation specifically aimed at those who own property within areas safeguarded for HS2, including application forms, is available at <http://www.hs2.org.uk/> or by phoning the HS2 Ltd enquiries line on 020 7944 4908.

6.2 Future consultations as the route is refined

- 6.2.1 The plans for the railway will continue to be refined, both in response to engineering developments, the draft Environmental Statement consultation and the Parliamentary process. There are therefore likely to be some changes to the boundaries of the safeguarded area in future.
- 6.2.2 Once the outcome of the Design Refinement consultation is known, we anticipate that safeguarding directions for the remaining sections of the Phase One route (Bromford and Ealing) will be issued to reflect the route decisions taken. Because the land aspects of this issue are already subject to public consultation, a separate consultation focused solely on safeguarding is not anticipated at that stage.
- 6.2.3 We anticipate that a full review of the extent of Phase One safeguarding will be carried out at around the time the hybrid Bill is introduced into Parliament. The plans for HS2 land usage submitted to Parliament at that stage will have been developed in light of public views, for example, those submitted in response to the draft Environmental Statement consultation. Any changes to the extents of safeguarding considered appropriate at that point, will therefore reflect wider decisions on the route design. Should we consider that the safeguarding directions need to be amended at that time, we will notify people affected.
- 6.2.4 We anticipate that there will be a consultation on the issue of safeguarding for Phase Two, specifically targeted at the LPAs along the route of Phase Two. This would be issued once the plans for the Phase Two route have reached a sufficient level of detail.



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ISBN 978-0-10186-722-1



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