

HIGH SPEED RAIL (LONDON - WEST MIDLANDS) BILL

NOTE ON UNDERTAKINGS AND ASSURANCES

December 2014

Commitments given by the Promoter during the passage of the Bill are included on the Register of Undertakings and Assurances held by the Department for Transport and finalised at Royal Assent. The purpose of the Register is to record the commitments which have been given concerning the implementation of the project following Royal Assent.¹ All commitments included on the Register will be binding on the nominated undertaker and the Secretary of State as the project is taken forward.

For the purpose of recording on the Register, such commitments are classified as 'assurances' or 'undertakings'. These are labels given to reflect a difference in the way that different types of commitment are enforced.

All commitments included in the Register are binding, but the mechanism of enforcement depends on their classification.

The term 'undertaking' is used to describe two kinds of commitment: (i) an undertaking given to Parliament (breach of which would be addressed through a recourse to Parliament); or (ii) a commitment which has effect as a legally binding contract and is therefore enforceable by the courts.²

'Assurance' is the term used to describe any other commitments. These are unilateral commitments given directly to Petitioners or affected parties which do not have the status of legally binding contracts enforceable by the courts, but are made binding on the project by being included on the Register. Enforcement is through the Secretary of State, as is explained below.

All undertakings and assurances included on the Register form part of the Environmental

Minimum Requirements (EMRs - the collection of documents and specific commitments outside the Bill which control the impacts of the project). Counsel for the Promoter confirmed on Day 1 of the Committee proceedings that the EMRs would be made contractually binding on the nominated undertaker. Counsel also gave an undertaking to Parliament on behalf of the Secretary of State concerning their enforcement:

"Insofar as the Environmental Minimum Requirements are not directly enforceable against any person appointed as the nominated undertaker, the Secretary of State will take such steps as he considers reasonable and necessary to secure compliance with those requirements."

Since assurances are not legally binding commitments - and, for that reason, are not directly enforceable against the nominated undertaker by the persons who benefit from them - they will be enforceable against any person appointed as the nominated undertaker through the Secretary of State's undertaking set out above. This means that in the event of a failure to comply with an assurance, recourse will be through the Secretary of State rather than the courts, and the Secretary of State is answerable to Parliament for securing compliance. It also means that where commitments take the form of agreements and can be enforced directly through the courts, this undertaking does not apply.

¹ The Register applies to commitments which relate to the implementation of powers of the Bill (as opposed to commitments dealing with the Bill process or matters which the Promoter must do before Royal Assent).

² These include commitments expressed as a formal agreement and also undertakings given in consideration of withdrawal of a petition, which take effect as a legal contract.