

HIGH SPEED TWO

PHASE 2a INFORMATION PAPER

E4: HIGHWAYS AND TRAFFIC DURING CONSTRUCTION - LEGISLATIVE PROVISIONS

This paper outlines the clauses in the High Speed Rail (West Midlands – Crewe) Bill which set out how works on highways, which may affect users including motorised traffic, pedestrians, cyclists and equestrians and access to property, must be undertaken.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (West Midlands-Crewe) Bill which is now enacted. It was finalised at Royal Assent and no further changes will be made.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

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E4: HIGHWAYS AND TRAFFIC DURING CONSTRUCTION - LEGISLATIVE PROVISIONS

1. Introduction

- 1.1. High Speed Two (HS2) is the Government's proposal for a new, high speed north-south railway. The proposal is being taken forward in phases: Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. Phase 2b will extend the route to Manchester, Leeds and beyond. The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017.
- 1.2. HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works to a Development Agreement made with the Secretary of State for Transport.
- 1.3. In July 2017, the Government introduced a hybrid Bill¹ to Parliament to seek powers for the construction and operation of Phase 2a of HS2 (the Proposed Scheme). The Proposed Scheme is a railway starting at Fradley at its southern end. At the northern end it connects with the West Coast Main Line (WCML) south of Crewe to allow HS2 services to join the WCML and call at Crewe Station. North of this junction with the WCML, the Proposed Scheme continues to a tunnel portal south of Crewe.
- 1.4. The work to produce the Bill includes an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs)², which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.5. The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. The nominated undertaker will be bound by the obligations contained in the Bill and the policies established in the EMRs. There may be more than one nominated undertaker.
- 1.6. These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the Proposed Scheme have been reached.

¹ The High Speed Rail (West Midlands – Crewe) Bill, hereafter 'the Bill'.

² For more information on the EMRs, please see Information Paper E1: Control of Environmental Impacts.

2. Overview

- 2.1. This paper outlines the clauses in the High Speed Rail (West Midlands - Crewe) Bill that set out how works on highways must be undertaken, where these may affect users³ and access to property.
- 2.2. References to 'Paragraphs' in the sections below relate to the numbered paragraphs in the relevant schedules of the Bill.
- 2.3. For further details about how traffic will be managed during construction, refer to Information Papers E3: Management of Traffic during Construction and D3: Code of Construction Practice.

3. Schedule 4 - Provisions regarding highways

Part 1 - Highway access

- 3.1. Paragraph 1 allows the nominated undertaker to form and lay out new means of access to highways, and to improve existing means of access to highways, within the Bill limits. Further details are contained in the Information Paper B3: 'Limits on Parliamentary Plans'.
- 3.2. Where these are shown on the deposited plans, this is subject to 28 days' notice being given to the highway authority. The nominated undertaker must also undertake the work in accordance with the plans and specifications approved by the highway authority.
- 3.3. On being given notice, the highway authority may object to an access location but only on the grounds that the works should be carried out elsewhere within the limits set by Parliament in the interests of local amenity, road safety or the free flow of traffic. The works must also be reasonably capable of being carried out where the highway authority wishes.
- 3.4. The highway authority may refuse to approve the plans and specifications submitted by the nominated undertaker but only on the grounds that they should be modified in the interests of local amenity, road safety or the free flow of traffic. The plans and specifications must also be reasonably capable of being modified as the highway authority wishes.
- 3.5. If the nominated undertaker seeks to use an access at a location not shown on the deposited plans, the consent of the highway authority is required and the works must be carried out in accordance with the plans and specifications that the authority approves. However, whilst the highway authority must have regard to road safety or the free flow of traffic, such consents and approvals must not be unreasonably withheld.

Part 2 - Interference with highways

- 3.6. Paragraph 2 allows the nominated undertaker to stop up those highways (or parts of highways) listed in the tables in Schedule 5. Table 1 lists those highways

³ This includes motorised traffic, pedestrians, cyclists and equestrians.

that may be stopped up without replacement, whereas those in Table 2 cannot be stopped up until their specified replacements are open for public use.

- 3.7. Following the permanent stopping up of a highway (or part thereof), ownership of each half-width of the former highway will normally revert to the adjoining landowner unless it has been previously acquired by the highway authority (e.g. by means of a compulsory purchase order). The usual rights of statutory undertakers to place new utilities apparatus in a highway also cease to have effect. However, Schedule 32 Part 2 Paragraph 27 preserves the rights of electricity, gas, water and sewerage undertakers to access any existing apparatus remaining in the former highway land. A similar provision is made in Schedule 32 Part 3 Paragraph 35 in respect of electronic communications code network operators.
- 3.8. Paragraph 3 allows the nominated undertaker to stop up footpaths and bridleways (or parts of them) within the limits set by Parliament but not listed in Tables 1 or 2, subject to the proposals being advertised locally and confirmed by the appropriate Ministers. Any representations made about the proposals will be considered, but such applications must be granted if Ministers are satisfied that an alternative footpath or bridleway will be available at the time of stopping up or that no alternative is required.
- 3.9. Paragraph 5 provides for the creation of public rights of way over new or diverted bridleways, footpaths or other paths provided under the Bill and specified in Table 2 or 3.
- 3.10. Paragraph 7 allows the nominated undertaker permanently to obstruct a highway, subject to the consent of the highway authority (which must not be unreasonably withheld) for the works authorised by the Bill.
- 3.11. Paragraph 8 allows the nominated undertaker to:
 - temporarily stop up⁴, alter or divert a highway (or part of it);
 - divert traffic, break up or interfere with a highway (or part of it, including any sewer, drain or tunnel in it); and
 - temporarily remove any street furniture.
- 3.12. However, the nominated undertaker must provide reasonable access for pedestrians going to or from adjacent premises. For those highways listed in Table 4 in Schedule 5, the nominated undertaker must consult with the highway authority. For other highways, the nominated undertaker must obtain consent from the highway authority (which must not be unreasonably withheld), subject to any conditions reasonably required in the interest of public safety or convenience.

⁴ For more information on “stopping up”, please see Appendix A.

- 3.13. Where the nominated undertaker carries out highway works as described in paragraph 3.11 in accordance with Paragraph 8, and these highway works do not include any works to apparatus located in a highway, then such highway works are not “street works” as defined by Section 48 of the New Roads and Street Works Act 1991 (NRSWA). As such the requirements under NRSWA as regards to the provision of notices via electronic notices do not apply to such highway works. However, the nominated undertaker may voluntarily seek to provide electronic notices for such highway works, in similar timescales to those provided by statutory undertakers, to assist the highway authority in using their best endeavours to co-ordinate street work and other works in the highway in accordance with Section 59 of NRSWA.
- 3.14. Paragraph 9 allows the nominated undertaker to:
- place, maintain, alter or change the position of apparatus in a highway;
 - remove apparatus from a highway; and
 - execute any works required for, or incidental to, any of the works described above.

Part 3 - Construction and maintenance of highways

- 3.15. Paragraph 12 requires that any new highway constructed, or existing highway altered, by the nominated undertaker must be completed to the reasonable satisfaction of the highway authority.
- 3.16. Paragraph 13 requires that any new carriageway constructed, or existing carriageway realigned, by the nominated undertaker must be carried out in accordance with the plans and specifications⁵ approved by the highway authority (with such approval not being unreasonably withheld).
- 3.17. Paragraph 14 enables the nominated undertaker to delegate its powers to construct or alter a highway to the organisation responsible for managing it.
- Paragraph 16 requires the nominated undertaker to maintain new or altered highways for 12 months from the date of practical completion (or, if later, the date on which they are first open for public use). Unless otherwise agreed by the highway authority and the nominated undertaker, the highway authority will be responsible for winter maintenance. After that period, the highway must be maintained by, and at the expense of, the highway authority (except for the structure of any bridge carrying a highway over, or structure of any tunnel carrying a highway under, the railway).
- 3.19. Further details about the future maintenance responsibilities for new and altered highways (and their associated structures) are given in Information Paper E7: Future Highway Maintenance Responsibilities.

⁵ For the purposes of this document, 'plans and specifications' also includes sections and any other particulars submitted to the highway authority for approval.

- 3.20. Following the transfer of maintenance responsibilities from the nominated undertaker to the highway authority after 12 months, ownership of the highway itself will vest in the highway authority as a result of the deemed adoption provisions in Schedule 4. However, the subsoil will remain in the ownership of the Secretary of State unless it is transferred to the highway authority by agreement.

4. Schedule 17 - Conditions of deemed planning permission

Condition relating to matters ancillary to development

- 4.1. Paragraph 4 requires that road mud control measures must be carried out in accordance with arrangements which have been approved by the qualifying planning authority (being the unitary authority or district council for the area), or where in place, by class approval as set out in Paragraph 5. Approval may be refused only on the grounds that the arrangements should be modified in the interests of local amenity, road safety or the free flow of traffic.
- 4.2. Where the local authority is not a qualifying authority, all reasonably practicable measures will be put in place to control the deposition of mud on the highway.
- 4.3. Notwithstanding the above, highway authorities and police also retain their existing power under Section 161 of the Highways Act 1980 to take action against any person depositing mud on a road without lawful authority or excuse in a way that might endanger highway users.

Condition relating to road transport

- 4.4. Paragraph 6 requires that large goods vehicles must only use routes to a working or storage site, a site where material will be re-used, or a waste disposal site, which have been approved by the relevant planning authority (that is the unitary authority or county council for the area). However, this does not apply to routes where the number of movements per day is 24 or less, nor to motorways and trunk roads or any part of the route beyond a motorway or trunk road.

5. Schedule 24 - Street works

- 5.1. Paragraph 1 disapplies certain legislation normally applicable to works in or near highways.
- 5.2. Paragraph 2 disapplies certain legislation normally applicable to street works.
- 5.3. Paragraph 3 disapplies certain legislation normally applicable to permit schemes.
- 5.4. Further details are given in Information Paper B4: 'Disapplication of Legislation'.
- 5.5. Except where disapplied by the Bill, existing highway legislation continues to have effect in respect of street works carried out in conjunction with the Proposed Scheme. In the case of the New Roads and Street Works Act 1991, these include:
 - Section 54 – Advance notice of certain works

- Section 55 – Notice of starting date of works
- Section 64 – Traffic-sensitive streets
- Section 75 – Inspection fees

6. Schedule 25 - Lorries

- 6.1. Paragraphs 1 to 5 modify certain legislation relating to lorry ban orders so that permits are issued to enable the authorised works to be carried out in a timely and efficient manner and, where the local authority is a qualifying authority, in accordance with any arrangements relating to lorry routing approved by the authority under planning conditions (see 4.4 above).
- 6.2. Paragraph 1 specifies the types of lorry ban order covered by Schedule 25.
- 6.3. Paragraph 2 provides for permits to be issued to allow heavy commercial vehicles – being used in connection with authorised works – exemption from the prohibitions, restrictions or requirements imposed by a lorry ban order, and any orders not containing a permitting provision shall be treated as if they did. Use authorised by such a permit does not then constitute a breach of the prohibition, restriction or requirement.
- 6.4. Paragraphs 3 and 4 set out the procedure to be followed where a permit is required in the event of an emergency (defined as a journey proposed to be undertaken before the end of the next complete eight working days).
- 6.5. Paragraph 5 requires that permit applications must be granted where reasonably required to enable the authorised works to be carried out in a timely and efficient manner or in accordance with the arrangements approved under Schedule 17 Paragraph 6. It further requires that no condition may be imposed that is likely to obstruct the carrying out of such works.

7. Schedule 30 – Traffic Regulation

- 7.1. Paragraph 1 requires traffic authorities to consult the Secretary of State where they intend to make a traffic regulation order ('TRO') which could significantly interfere with the use of a "relevant road" by heavy commercial vehicles for the purposes of the Proposed Scheme. A "relevant road" is defined in Paragraph 1 as a road, other than a special or trunk road, which falls within one or more of the following descriptions:
 - a) a road which is identified in a deposited statement as a construction traffic route;
 - b) a road which is part of a lorry route approved under Schedule 17 of the Bill;
 - c) a road which is part of a lorry route which has been submitted for approval under Schedule 17 of the Bill; or
 - d) a road any part of which is within the Bill limits.

- 7.2. Paragraphs 2 and 3 include provisions for the Secretary of State to give notice that for certain roads, or certain types of TROs, this consultation under Paragraph 1 is not required.
- 7.3. Paragraphs 4 and 7 permit the Secretary of State to direct a traffic authority to make, vary or revoke a TRO, where it is necessary for the timely, efficient and cost effective construction of the Proposed Scheme and is reasonable in the circumstances.
- 7.4. Paragraph 11 permits the Secretary of State to direct a traffic authority to not make, or bring into operation, a TRO where that TRO could significantly interfere with the use of any road for the purposes of the construction of the Proposed Scheme.
- 7.5. Paragraph 12 requires the Secretary of State to consult the relevant traffic authority before the Secretary of State exercises the direction powers set out in paragraphs 4, 7 or 11.
- 7.6. Paragraphs 8 to 10 make provision to allow the Secretary of State to make, vary or revoke a TRO in the circumstances specified by those paragraphs.
- 7.7. Paragraph 14 provides powers for a person authorised by the nominated undertaker to remove a vehicle, or arrange for its removal where the following conditions are met:
 - the vehicle has been permitted to rest, or is broken down, in contravention of a TRO or on any road stopped up under paragraph 2 or 8 of Schedule 4; and
 - the vehicle, if not removed, will likely obstruct the carrying out of works authorised by the Bill or be at risk of being damaged as a result of such construction activities.
- 7.8. Under Paragraph 14 a vehicle may only be relocated to another place in that road, or to another road. Prior to using these powers, the authorised person must give notice to the relevant local authority and Police force.

8. Schedule 32 - Protective provisions - Part 1 - Highways and traffic

- 8.1. Under Paragraph 2, the approvals or consents described below may be subject to such reasonable terms and conditions as the highway authority may require, but approval or consent must not be unreasonably withheld.
- 8.2. Paragraph 3 imposes a general duty on the nominated undertaker in exercising any of its functions to minimise disruption to traffic so far as is reasonably practicable.
- 8.3. Paragraph 4 requires the nominated undertaker to construct any tunnel, subway or other structure that is within eight metres of the surface of a highway comprised of a carriageway, to be carried out in accordance with the plans and specifications submitted to, and approved by, the highway authority.

- 8.4. Paragraph 5 requires the nominated undertaker not to allow any such tunnel, subway or other structure to interfere with the highway drainage system or be nearer than two metres to the surface of a highway without the consent of the highway authority.
- 8.5. Paragraph 6 requires the nominated undertaker to construct any new or altered bridge carrying HS2 over a highway, or vice versa, in accordance with the plans and specifications submitted to, and approved by, the highway authority.
- 8.6. Paragraph 7 requires the nominated undertaker to design, construct and maintain any works under a highway to carry the appropriate loading recommended for highway bridges by the Secretary of State.
- 8.7. Paragraph 8 requires the nominated undertaker to allow an officer of the highway authority, having given reasonable notice, to enter and inspect any works over, under or affecting a highway. It also requires the nominated undertaker to adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.
- 8.8. Paragraph 9 requires the nominated undertaker not to alter, disturb or in any way interfere with any property of the highway authority on or under any highway, or the access to that property, without the consent of the highway authority.
- 8.9. Paragraph 10 requires the nominated undertaker not to remove any soil or material from any highway except that excavated to carry out the Proposed Scheme works.
- 8.10. Paragraph 11 requires the nominated undertaker to repay any additional expense incurred in consequence of the signposting and other measures related to traffic diversions, and the repair of any highway by reason of the diversion of traffic from a road of a higher standard (subject to certain conditions).
- 8.11. Paragraph 12 requires the nominated undertaker not to deposit soil or material, or store any plant, or erect scaffolding or other structures, in or over a highway without the consent of the highway authority.
- 8.12. Paragraph 13 requires the nominated undertaker to provide, to the reasonable satisfaction of the highway authority, any temporary bridges or ramps for vehicular or pedestrian traffic that may be necessary to prevent undue interference with the flow of traffic.
- 8.13. Paragraph 14 requires the nominated undertaker to make good and reinstate, to the reasonable satisfaction of the highway authority, any part of a highway that has been broken up or disturbed.
- 8.14. Paragraph 15 requires the nominated undertaker to make good, or pay compensation for, any damage to a highway caused by or resulting from constructing the authorised works or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon such work.

- 8.15. Furthermore, the existing power under Section 59 of the Highways Act 1980 enabling a highway authority to recover expenses due to extraordinary traffic is not disapplied by the hybrid Bill.

9. More information

- 9.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2

Appendix A

The term “stopping up” usually refers to a permanent extinguishment of a highway (or part thereof), with all highway-related rights, duties and powers ceasing to have effect. However, the term “temporary stopping up” is used in hybrid Bills and certain statutory instruments (e.g. orders made under the Transport and Works Act 1992) to enable a nominated undertaker to temporarily close a highway to vehicular and/or pedestrian traffic in a similar way to a temporary traffic regulation order made by a highway authority under the Road Traffic Regulation Act 1984. The effects of temporary stopping up include:

- the public are temporarily prohibited from passing along the designated length of highway;
- the normal powers and duties of the highway authority are not removed, but they will only be able to exercise these in way that is consistent with the nominated undertaker having taken possession of the area as a working site;
- the police will generally not need to exercise their normal powers and duties related to highways and traffic in such areas, although will continue to tackle any incident in the appropriate manner; and
- public utilities will continue to have rights of access to their apparatus, as set out in Schedule 32 , Paragraphs 26(3) and 34.

However, temporary stopping up does not result in a permanent change of highway status and has no implications for land ownership.