



## HIGH SPEED TWO PHASE 2a INFORMATION PAPER

### B4: DISAPPLICATION OF LEGISLATION

This paper outlines various parts of existing legislation that the High Speed Rail (West Midlands - Crewe) Bill seeks to disapply or modify.

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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# B4: DISAPPLICATION OF EXISTING LEGISLATION

## 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 Bill<sup>1</sup> 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)<sup>2</sup>, 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.

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

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

## 2. Overview

- 2.1. The Proposed Scheme is a project of national importance which the Government wishes to see completed as soon as possible. There is a need to address many consent requirements that would be required under existing legislation, given that Parliament will already have approved the scheme and therefore removed the need for further consultation and approval. The Bill therefore seeks to disapply some of these consent requirements and to create a tailor-made regime, based on that applied to HS2 Phase One, HS1 and Crossrail.
- 2.2. This tailor-made regime comprises a range of elements including the environmental commitments that the Secretary of State is making in the EMRs, as well as the protective provisions and planning regime set out in the Bill. Together these ensure that there is a proper measure of scrutiny and control of the Proposed Scheme. The controls applied by the Bill (both within the Bill itself and the EMRs) are described in Information Paper E1: Control of Environmental Impacts.
- 2.3. This paper explains the main disapplication of legislation proposed in the Bill.

## 3. Legislation not disapplied

- 3.1. It is important to note that no disapplication or modification is made to national health and safety legislation, either at a general level or its particular application to railways. Accordingly, the Health and Safety Executive and the Railways Safety Directorate in the Office of Rail and Road will retain all their usual powers in respect of the construction and operation of HS2.
- 3.2. Similarly, environmental protection legislation continues to apply (for example, the Control of Pollution Act 1974 and the Environmental Protection Act 1990<sup>3</sup>), including controls on the treatment and deposit of waste. The requirement for consents where appropriate under the Planning (Hazardous Substances) Act 1990 also continues to apply.

## 4. Planning and Heritage Provisions

### Planning permission

- 4.1. Clause 17 of the Bill deems planning permission to be granted under Part 3 of the Town and Country Planning Act 1990 for development authorised by the Bill, subject to the other provisions of the Bill and the conditions set out in Schedule 17. Under these conditions, various details have to be approved by the local planning authority. The planning permission conferred by the Bill is therefore similar to an outline planning permission, which settles the principle of the development, while leaving certain details to be approved at a later stage. However, the amount of detail a planning authority is able to approve under Schedule 17 depends on whether it is a 'qualifying' authority: that is, whether it has signed up to the Planning Memorandum<sup>4</sup>. If it has not done so, the range of matters subject to its approval are more limited.

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<sup>3</sup> There are some modifications to this Act in Schedule [27] (Noise) of the HS2 Bill (see paragraphs [14.1-14.3] below)

<sup>4</sup> The Planning Memorandum is the document containing the undertakings by qualifying authorities referred to in paragraph 13(1) of Schedule 17 to the Bill, and which also includes requirements of the nominated undertaker.

- 4.2. The conditions in Schedule 17 are enforceable by the relevant local planning authority.
- 4.3. Information Paper B2: The Main Provisions of the Planning Regime explains the main provisions of the planning regime more fully.
- 4.4. Clause 20 of the Bill removes the requirement for development consent under the Planning Act 2008 for the works authorised by the Bill. The construction of a railway is, with exceptions, one of the categories of nationally significant infrastructure project which requires consent from the Secretary of State under that Act. However, a requirement for development consent under the 2008 Act would be inappropriate and is unnecessary for works which already have the specific authorisation of Parliament.

### **Heritage consents**

- 4.5. In 1991 the Government reviewed the relationship between statutory controls over the demolition and alteration of listed buildings and proposals for strategically important developments promoted via specific legislation in pursuance of Government policy objectives. The review arose from the fact that a requirement to seek listed building consents separately could result in decisions at variance with the decision of Parliament on the proposal as a whole, causing unreasonable delay or even putting the development at risk. As regards such strategically important developments, the Government therefore stated that it would expect:
  - the Bill to contain details of the buildings which would be affected by disapplying listed building controls;
  - the ES deposited with the Bill to contain an account of the effect of the scheme on the built heritage;
  - the Promoter to consult Historic England during the preparation of the Bill; and
  - Historic England to have the right to appear before the select committee on the Bill on matters within its competence.
- 4.6. The Acts for HS1, Crossrail and HS2 Phase One followed this approach. This Bill for Phase 2a of HS2 does the same. Clause 21 and Schedule 18 disapply the requirement for listed building consent with respect to Phase 2a works affecting the listed buildings specified in Table 1 of Schedule 18. This is extended to any building that is listed after 17 July 2017, in order to cover any building affected by Phase 2a which may become listed before construction begins. Table 2 of the Schedule sets out listed buildings in relation to which works carried out for noise mitigation purposes are permitted.
- 4.7. In the light of the removal of the requirement for listed building consent, it is proposed that heritage agreements will be entered into between the nominated undertaker, Historic England and relevant local authorities requiring approvals of certain method statements and other details.

- 4.8. Clause 21 and Schedule 19 of the Bill disapply provisions in the Ancient Monuments and Archaeological Areas Act 1979, including the requirement to obtain consent for works affecting a scheduled monument, powers of entry and provisions relating to public access, the use of metal detectors and the removal of objects.
- 4.9. Schedule 19 also modifies the powers of entry (to obtain information about ancient monuments and historic buildings for inclusion in records kept by Historic England) under section 36 of the National Heritage Act 1983. In its place, new rights of entry specifically tailored to the circumstances of HS2 are conferred by paragraph 4 of the Schedule.

## 5. Burial grounds and consecrated land

- 5.1. For Phase 2a construction works, Clauses 22 and 23 disapply enactments relating to burial grounds and restrictions applying to consecrated ground under ecclesiastical law.
- 5.2. In their place, where the use of land for those works involves disturbing human remains, specific provision is made by Schedule 20, which sets out requirements as to how the remains and any monument to the deceased are to be dealt with. Schedule 20 is based on the regime applied to Crossrail, HS1 and HS2 Phase One.
- 5.3. For more information see Information Paper E25: Burial Grounds.

## 6. Commons and other open spaces

- 6.1. Clause 24 provides that no restriction set out in enactments which regulates the use of commons, town or village greens, open spaces or allotments can prevent or restrict actions authorised under the Bill for Phase 2a purposes or on Phase 2a land. The term 'enactment' includes subordinate legislation such as regulations or byelaws (see clause 62(1) of the Bill). Clause 24 ensures that the specific powers to carry out works under the Bill override any restrictions in general legislation which could otherwise prevent the construction of Phase 2a.

## 7. Trees

- 7.1. Clause 25 and paragraph 7 of Schedule 2 make special provision in relation to trees. It is necessary that a nominated undertaker should have power to remove or carry out other works on trees growing on, or overhanging, land used for building or operating the railway.
- 7.2. Regulation 13 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('the 2012 Regulations') prohibits certain works to trees protected by a tree preservation order or in a conservation area. This is subject to exemptions (see paragraph 7.6 below).
- 7.3. Clause 25 applies where tree works need to be carried out in relation to trees growing on land either within the Bill limits or to be used for Phase 2a purposes. The restrictions in the 2012 Regulations on the carrying out of tree works to a tree protected by a tree preservation order or in a conservation area are disapplied in

relation to tree works required to enable Phase 2a to be constructed, maintained or operated.

- 7.4. Paragraph 7 of Schedule 2 provides for cases where trees overhang or otherwise encroach on land used for Phase 2a purposes. The nominated undertaker may serve a tree works notice on the occupier of the neighbouring land, requiring the occupier to remove the tree or to carry out tree works. Unless the notice is successfully challenged by the occupier, the tree works must be carried out by the occupier or, in default, may be carried out by the nominated undertaker. The power to require tree works can only be used where the works are necessary to enable Phase 2a to be constructed or maintained, or are required for reasons of safety in connection with the construction or operation. The power is not unique. For example, telecommunications operators have similar powers to require the lopping of trees to prevent interference with their apparatus.
- 7.5. Restrictions relating to trees which are subject to a tree preservation order or in a conservation area are disapplied as regards works required by a tree works notice.
- 7.6. Regulation 14(1)(a) of the 2012 Regulations provides exemptions for tree works carried out by a statutory undertaker or tree works to implement a specific planning permission. However, because it is uncertain whether this exemption applies to all the circumstances catered for by clause 25 and paragraph 7 of Schedule 2, it is desirable that the position is clarified by making specific provision in the Bill.

## **8. Overhead lines**

- 8.1. Clause 26 relates to the installation and diversion of overhead lines. Some overhead lines will need to be diverted for Phase 2a as specified in Schedule 3 to the Bill. The clause removes the need for the Secretary of State's consent under the Electricity Act 1989 where the overhead line work is within the Act limits, is a work authorised by the Bill and has deemed planning permission under the Bill.
- 8.2. This rule also applies where the work is done by an electricity undertaker. For cases where this exclusion does not apply to overhead line works arising for or as a consequence of Phase 2a (say, because an overhead line diversion goes outside the Act limits), the duty of the Secretary of State to hold a public inquiry in every case where the planning authority has objected is also removed. The decision on whether or not to hold a public inquiry is at the Secretary of State's discretion, having considered the number and substance of any objections.

## **9. Water**

- 9.1. The Proposed Scheme has been designed to avoid or reduce impacts on rivers, streams, canals and groundwater. The Proposed Scheme has also been designed to avoid an increase in the risk of flooding, taking in to account the projected impact of climate change. It is against this background that Schedule 21 contains provisions relating to the treatment of water sources and features. These generally disapply a restriction or requirement to obtain a further consent or a power for a regulatory authority to make directions in relation to works authorised by the Bill. Instead, the Bill introduces in Part 4 of Schedule 32 a tailor-made regime for the approval of plans by

the relevant regulatory authority (the Environment Agency or the local drainage authority) for works affecting water resources:

- paragraphs 1 and 2 of Schedule 21 disapply sections 24 and 25 of the Water Resources Act 1991 requiring consent for Phase 2a works relating to the abstraction or impoundment of water;
- section 48A(1) of the Water Resources Act 1991 (containing a duty not to cause loss or damage caused by the abstraction of water) is disapplied. However, under paragraph 3(2) of Schedule 21 to the Bill, if the nominated undertaker does cause loss or damage that would have breached the duty in section 48A(1), then it must compensate the affected party. Paragraph 3(3) states how such compensation should be determined;
- paragraph 3(4) disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be made under this paragraph of the Bill and those others listed;
- paragraph 4 removes the requirement to obtain consent for Phase 2a works involving flood risk activities, water discharge activities or groundwater activities;
- paragraph 5 removes the restrictions on removing designated features (which are structures or natural or man-made features of the environment designated as a feature by a 'responsible authority' such as the Environment Agency) under the Flood and Water Management Act 2010;
- paragraph 6 disapplies the requirement to obtain approval of works for the drainage systems of Phase 2a if the works are constructed under the powers of this Bill; and
- paragraph 7 disapplies Part 4 of the Eels (England and Wales) Regulations 2009, which relate to protecting, in the process of construction works, the passage of eels in waterways and allowing the Environment Agency to impose requirements on persons carrying out works that would affect this.

## 10. Buildings

- 10.1. Schedule 22 to the Bill disapplies various provisions of the Building Act 1984 in relation to buildings held by the Secretary of State or the nominated undertaker and used for Phase 2a purposes.
- 10.2. The Building Act 1984 provides for railway undertakers to have an exemption from Part 1 of that Act. It also exempts them from Building Regulations made under that Part in relation to any building belonging to them and held or used by them for the purposes of their undertaking, unless it is house or a building which is used as offices or showrooms and which does not form part of a railway station. That exemption would not apply to buildings held by the Secretary of State and used by the nominated undertaker for Phase 2a purposes, so paragraph 1 of Schedule 22 provides a similar exemption in relation to Phase 2a. The exemption has also been extended to apply to

offices or showrooms that form part of a railway facility, such as a maintenance facility. In order to secure compliance with EU requirements, the exemption does not apply to certain building regulations relating to energy efficiency.

- 10.3. Section 61 of the 1984 Act imposes requirements relating to the carrying out of works to underground drains communicating with sewers. There is an exception for drains or sewers constructed by railway companies for their railway. Since this exception would not apply to works carried out to enable Phase 2a to be constructed, paragraph 2 of Schedule 22 provides an exemption for Phase 2a works. Paragraph 3 modifies section 62 of the 1984 Act so as to remove the power of a local authority to impose requirements as regards works to drains which are carried out for Phase 2a purposes and substitutes a requirement to give advance notice to the local authority.
- 10.4. Where a new building is constructed, section 73 of the 1984 Act enables the relevant local authority to require chimneys on adjoining buildings to be raised so that they are higher than the new building. Normally, such works would be carried out by the owner of the new building, but the adjoining owner can instead choose to carry out the works at the expense of the building owner and is entitled to enter the building owner's land for that purpose. For safety reasons, paragraph 4 of Schedule 22 provides that the adjoining owner cannot insist on carrying out the works if to do so would require entry onto Phase 2a land. In those circumstances the works are to be carried out by the nominated undertaker unless consent is given to the adjoining owner to enter the Phase 2a land.
- 10.5. Section 74 of the 1984 Act requires local authority consent for the construction of underground cellars. This does not apply to a cellar in connection with a shop, inn, hotel or office that forms part of a railway station. Paragraph 5 of Schedule 22 extends that exemption for Phase 2a so that it also applies to a cellar or room in connection with a shop, inn, hotel or office which forms part of a railway facility other than a station, such as a maintenance facility which is used or intended for use for Phase 2a purposes.
- 10.6. Sections 80, 81 and 82 of the 1984 Act deal with certain matters relating to demolitions. Section 80 requires prior notice to be given to the local authority of an intended demolition before any such work can begin. Section 81 sets out the authority's power to serve a counter notice imposing requirements relating to the demolition. Section 82 sets out the scope and terms for the authority's counter notice described in section 81. Paragraph 6 of Schedule 22 excludes sections 80(2)(b), 81 and 82 of the 1984 Act from applying to demolitions carried out in exercise of the powers of the Bill.
- 10.7. Relevant control measures that deal with demolition practice will be consolidated in the Phase 2a Code of Construction Practice. This will set out requirements in place of those imposed under sections 81 and 82 of the 1984 Act and the particular practice that will be adhered to and shared with the local authority in advance of demolition work starting on site.

## **11. Party Walls**

- 11.1. The Party Wall etc. Act 1996 ("the 1996 Act") makes provision to regulate the relationship between the building owner and the adjoining landowner where building operations are carried out at or near the junction of adjoining land. Schedule 23 to the Bill disapplies or modifies various provisions of the 1996 Act in respect of Phase One works, in the interests of safety or where the provisions of the 1996 Act would inappropriately impede the construction or operation of Phase 2a.
- 11.2. Paragraphs 3 and 4 of Schedule 23 disapply parts of sections 2 and 3 of the 1996 Act. These provisions relate to party walls and, among other things, enable an owner to place footings and foundations on neighbouring land and to carry out strengthening and repair work, as well as certain other work to party or boundary structures. Adjoining owners would therefore not have the right to carry out such work to Phase 2a boundary structures or to enter onto Phase 2a land for that purpose. This disapplication is also necessary from a safety perspective.
- 11.3. Where it is proposed to carry out works to certain walls or other structures at the boundary of adjoining land, sections 2 and 3 of the 1996 Act enable the adjoining owner to object to the works and to refer the matter to the dispute procedure under the 1996 Act. Paragraph 4 of Schedule 23 disapplies this in the case of works carried out in connection with the construction of Phase 2a works or their initial maintenance. It would be inappropriate for adjoining owners along the route to be in a position to delay the construction of Phase 2a, which will have been approved by Parliament, by invoking this procedure.
- 11.4. Paragraph 5 of Schedule 23 disapplies section 6 of the 1996 Act in relation to Phase 2a works. Section 6 applies where a person is proposing to excavate and erect a building, or otherwise make an excavation. In such cases the building owner may enter adjoining land for that purpose. The consent of the adjoining owner is required to the works or, if that consent is not given, the matter is referred to the dispute resolution procedure under the 1996 Act. If the works are to be carried out, the building owner may enter the adjoining land to carry out the works and underpin adjacent buildings. The provisions of section 6 are unnecessary as regards Phase 2a because they are replaced by the provisions in the Bill dealing with the underpinning of buildings (paragraphs 2 to 6 of Schedule 2). The interests of persons affected by settlement from underground works and similar matters are intended to be dealt with by specific proposals made by the nominated undertaker (for further information see Information Paper C14: Ground Settlement).
- 11.5. A person who undertakes excavation or erection near a building or structure has a right to do so under section 6 of the 1996 Act, but is also required to undertake works to safeguard the foundations of the adjoining building or structure. For safety reasons it would be inappropriate for a building owner to have a right to enter Phase 2a land to carry out safeguarding works. Paragraph 6 of Schedule 23 therefore provides that where safeguarding works are required for a building or structure erected, or on land held, for Phase 2a purposes, the Secretary of State or the nominated undertaker can carry out the works instead of the building owner.

- 11.6. The 1996 Act provides that disputes are to be settled by a surveyor appointed by the parties or, failing agreement, by three surveyors (one surveyor appointed by each party, together with a third surveyor appointed by those two surveyors). This process is not suited to Phase 2a since surveyors appointed as provided under the 1996 Act will not necessarily have the specialist expertise required to make determinations concerning railway infrastructure. Paragraph 7 of Schedule 23 provides that disputes under the 1996 Act which relate to a work required, or to a building or structure on land held, for Phase 2a purposes are instead to be determined by a single arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers.

## 12. Highways and street works

- 12.1. Schedule 24 disapplies various provisions of highways legislation relating to works affecting highways and streets. These are, generally, provisions that require consent be obtained from a highway or street authority, or provisions giving highway authorities power to make directions as to the use of particular streets, which could impede the implementation of the Proposed Scheme. They are replaced by requirements for detailed approval by or consultation with the highway authority under protective provisions in Part 1 of Schedule 32 and the provisions relating to highways in Schedule 4 to the Bill.
- 12.2. Under paragraph 1 of Schedule 24, various provisions of the Highways Act 1980 are disapplied or modified. These provisions would require a licence or approval to be obtained from the relevant highway authority before certain works (such as the erection of scaffolding, the planting of trees or shrubs in or near a highway or the placing of a retaining wall near a highway) can be carried out.
- 12.3. Under paragraph 2 of Schedule 24, the following provisions of the New Roads and Street Works Act 1991 are also disapplied in relation to street works authorised by the Bill:
- the power to direct when works that could affect traffic can take place;
  - the power to direct an undertaker doing street works to place apparatus in one street rather than another;
  - where street authorities propose substantial works, the power to restrict work on that highway for a period of 12 months after completion of the works;
  - the requirement for consent of the street authority before apparatus is put in protected streets, and the power to ask for apparatus placed in a street to be moved if it is later designated a protected street;
  - the power to require that a street with special engineering difficulties cannot be worked on until plans and sections of works are agreed between the nominated undertaker and street authority;
  - the power of street authorities to impose requirements as to the nature and timing of street resurfacing after carrying out street works;

- regulations allowing a highway authority to make charges for occupying highways to carry out street works; and
  - the right of the street authority to require notification of other street works in a highway and to give directions as to when street works may commence and also remove restrictions on the construction of further street works during or after the completion of street works.
- 12.4. In addition, the Bill disapplies the requirement to obtain a permit from the highway authority for carrying out street works in a highway subject to a permit scheme made under Part 3 of the Traffic Management Act 2004. In such cases, the New Roads and Street Works Act 1991 as modified by Schedule 24 will apply.

## **13. Lorries**

- 13.1. Traffic authorities have powers to make lorry ban orders i.e. orders under section 1, 9 or 14 of the Road Traffic Regulation Act 1984 restricting the movement of heavy goods vehicles, for example, on specified roads or during restricted hours.
- 13.2. The Promoter seeks a consistent and realistic regime for lorry movements and one which recognises the need for – particularly where tunnelling works are concerned – night-time movements in some cases. Without modification, the operation of the restrictions under a lorry ban order might cause unnecessary delay to vehicles supplying material to, or removing material from, the Phase 2a construction sites. It is therefore proposed that lorry movements will instead be controlled by planning conditions imposed under Schedule 17 to the Bill and by the special regime for the granting of permits under Schedule 25.
- 13.3. Under the planning regime in Schedule 17 to the Bill, qualifying local planning authorities will be required to approve the routes by which material is to be transported on a highway by a large goods vehicle to a work or storage site, a site where it would be reused or a waste disposal site. Such approval will be needed for transportation between a site and the nearest motorway or trunk road where the number of large goods vehicle movements exceeds 24 in one day.
- 13.4. Schedule 25 provides a special regime for permits under lorry ban orders to be issued to persons proposing to use a heavy commercial vehicle in connection with Phase 2a works. The regime applies to any lorry ban order which may be made under section 1, 9 or 14 of the Road Traffic Regulation Act 1984.
- 13.5. Paragraph 5 of Schedule 25 provides that a permit is to be granted if reasonably required for the purpose of enabling the Phase 2a works to be carried out in accordance with lorry routing arrangements approved under Schedule 17, or for the purpose of enabling the Phase 2a works to be carried out in a timely and efficient manner. There is also a provision for appeals to the Secretary of State if the application is refused. Paragraphs 3 and 4 of Schedule 25 make provision for dealing with applications for emergency permits in a way that does not unnecessarily hinder the Phase 2a works. These provisions are modelled on those successfully operated on HS1 and Crossrail and similar provisions are contained in the Phase One Act.

## **14. Noise**

- 14.1. Paragraph 1 of Schedule 26 to the Bill modifies subsection (7) of sections 60 and 61 of the Control of Pollution Act 1974 ("the 1974 Act") so that the Secretary of State<sup>5</sup>, rather than a magistrates' court, determines the results of appeals against a construction noise notice under section 60, or a refusal or conditioning of a consent to construction arrangements under section 61. Phase 2a will be a significant linear work, passing through the areas of many courts. While magistrates' courts comprise an appropriate forum for the resolution of disputes in relation to schemes and activities with discrete local effects, the use of such courts and appellate bodies is not likely to secure a co-ordinated and unified approach to construction activities for the effective management of a project the size of the Proposed Scheme.
- 14.2. The Environmental Protection Act 1990 ("the 1990 Act") provides that where construction activities take place in accordance with a notice issued by a local authority under section 60 (or a consent under section 61 or 65) of the 1974 Act, the notice or consent has effect as a defence in any proceedings for failure to comply with a noise abatement notice issued by a local authority under section 80(1)(a) of the Environmental Protection Act 1990. However, it does not constitute a defence against proceedings by individuals under section 82 of that Act.
- 14.3. Schedule 26 to the Bill follows the Crossrail Act and the Phase One Act by providing that such a notice or consent is also a defence against proceedings brought by an individual. This will enable the nominated undertaker to carry out its works, as approved by the local authority, with greater certainty. In addition, the Bill provides a defence against proceedings under section 80 of the 1990 Act for failure to comply with a noise abatement notice, and against proceedings by an individual under section 82, where the nuisance is a consequence of the construction, use or maintenance of works authorised by the Bill or the operation of Phase 2a and cannot reasonably be avoided.

## **15. Local Acts**

- 15.1. Schedule 27 makes provision for the disapplication or modification of various provisions in Local Acts which could inappropriately inhibit the implementation of the Proposed Scheme or which require adjustment as a result of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

### **Cheshire County Council Act 1968**

- 15.2. Paragraph 1 of Schedule 27 to the Bill disapplies section 12 of the 1968 Act in relation to Phase 2a which would otherwise apply in Cheshire. Section 12 gives power to the local authority to restrict the use by heavy commercial vehicles of certain estate roads or residential land during prescribed hours.

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<sup>5</sup> In practice this will be the Secretary of State with policy responsibility for noise, so currently the Secretary of State for the Environment, Food and Rural Affairs, rather than the Secretary of State for Transport.

## **Cheshire County Council Act 1980**

- 15.3. Paragraph 2 of Schedule 27 to the Bill disappies the provisions of the 1980 Act mentioned below in relation to the Proposed Scheme which would otherwise apply in Cheshire:
- section 12 requires local authority approval of the layout and construction of new streets. There is an exemption for new streets constructed by Network Rail and authorised by any enactment and the Bill provides a similar exemption for the Proposed Scheme;
  - Part 8 enables a relevant local authority to impose requirements as regards the storage on sites of stacks of certain flammable materials. There is an exemption for stacks stored in connection with the maintenance of Network Rail's undertaking. Since this exemption would not apply in relation to Phase 2a works a specific exemption is needed. It is intended that fire prevention at Phase 2a work sites will be dealt with by the Code of Construction Practice (CoCP) for the Proposed Scheme and EMRs;
  - section 50 requires a local authority to reject plans deposited under building regulations unless it is satisfied that there is adequate access for the fire brigade. As mentioned above, subject to limited exceptions relating to energy efficiency, building regulations will not apply as regards Phase 2a works. The provision made by section 50 is also unnecessary since Phase 2a fire safety will be dealt with in accordance with the applicable rail industry standards;
  - section 57 enables the fire authority to prescribe standard signs or warning notices. The fire authority may require the occupier of a building to affix a prescribed sign on any part of a building used for the manufacture or storage of certain hazardous substances. Rail safety standards and requirements will apply as regards the Phase 2a works; and section 57 is disappied to avoid any conflict between the rail safety standards and requirements and those prescribed under section 57.

## **Staffordshire Act 1983**

- 15.4. Paragraph 3 of Schedule 27 to the Bill disappies or modifies the provisions of the 1983 Act mentioned below in relation to the Proposed Scheme which would otherwise apply in certain areas of Staffordshire:
- section 7 requires local authority approval of the layout and construction of new streets. There is an exemption for new streets constructed by Network Rail pursuant to their statutory functions and the Bill provides a similar exemption for the Proposed Scheme;
  - section 10(1)(b) enables a relevant local authority to prohibit specified activities including driving or riding a vehicle over certain land. There are limited exceptions for vehicles which are used in the course of building operations or by Network Rail and other statutory undertakers which would not cover the use of vehicles for HS2. The Bill therefore provides an exemption for the Proposed Scheme;

- section 12 enables a relevant local authority to require persons carrying out building operations to take steps to minimise dust emissions. These powers are unnecessary since measures to reduce dust emissions caused by Phase 2a works will be part of the CoCP and the EMRs;
- section 16 enables a relevant local authority to enforce their right of entry to carry out inspections under the Prevention of Damage by Pests Act 1949 by obtaining a warrant authorising entry onto the land by force if necessary. For safety and other reasons this would not be appropriate in the case of Phase 2a land;
- section 26 and Part 7 is in similar terms to section 50 and Part 8 of the Cheshire County Council Act 1980 and is disappled for the same reason;
- section 40 enables the relevant local authority to make an order to stop up, wholly or partially, any highway in the city of Stoke on Trent which in their opinion is unnecessary. This power could potentially affect construction routes needed for Phase 2a works. The Bill therefore provides that the authority must consult the nominated undertaker before making a stopping up order. That will enable the nominated undertaker to object to the proposed order if it will affect the construction of the Proposed Scheme.

## **16. Transport and Works Act 1992**

- 16.1. Clause 49 of the Bill makes provision for the authorisation of further adjustments or minor extensions of the Proposed Scheme by means of an Order under the Transport and Works Act 1992. In relation to such an Order, subsection (4) of Clause 49 disapples section 13(2) of that Act which gives the Secretary of State discretion not to make an Order if the objects of the Order sought could be achieved by other means. For example, the Secretary of State could refuse an application for the diversion of utility apparatus on the grounds that this could be authorised under the utilities' own legislation.
- 16.2. Disapplying this provision gives certainty that – in appropriate cases – powers can be sought for the diversion of utilities by an Order under the Transport and Works Act, notwithstanding that other statutory means may be available under the legislation applying to utilities through which the powers could also be sought. This allows the nominated undertaker to promote the powers to complete the Proposed Scheme itself, rather than having to rely on the promotion of powers by individual utilities.

## **17. Community Infrastructure Levy**

- 17.1. Clause 35 of the Bill disappiles the requirement to pay the Community Infrastructure Levy in relation to development authorised by the Bill.

## **18. Railway Regulatory Provisions**

- 18.1. This Information Paper does not deal with the railway regulatory regime provided in the Bill with respect to the Proposed Scheme. For further information on those provisions, please see Information Paper B7: Railway Powers in the Bill.

## **19. More information**

19.1. More detail on the Bill and related documents can be found at: [www.gov.uk/HS2](http://www.gov.uk/HS2)