



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

B4: COMPLIANCE WITH UNDERTAKINGS AND ASSURANCES

This paper outlines how HS2 Ltd will record and comply with any undertakings and assurances given during the passage of The High Speed Rail (London-West Midlands) Bill.

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 Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

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. **The Helpdesk can be reached at:**

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B4: COMPLIANCE WITH UNDERTAKINGS AND ASSURANCES

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 two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 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 November 2013, HS2 Ltd deposited a hybrid Bill¹ with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 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 project have been reached.

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

2. Undertakings and assurances

- 2.1. This paper outlines how Hs2 Ltd will record and comply with any commitments given to Parliament by the Promoter during the passage of the Bill.
- 2.2. Commitments will be categorised in two ways: by the party or parties that they affect, and by type. Establishing a 'type' depends on the nature of the commitment, promise or indication given by the Promoter to the third party concerned. Two categories are used:
 - undertakings, which are binding (usually contingent) agreements set out in legal documents or given by another means to the Select Committee itself or to Parliament; and
 - assurances, which are unilateral written commitments made by the Promoter in a letter or other document, or in petition responses.
- 2.3. A number of commitments have already been made, such as the EMRs. Others will be in response to petitions that are received to the Bill.

3. Recording undertakings and assurances

- 3.1. Undertakings and assurances will be recorded in an official register, held by the Department for Transport (DfT). The process is expected to follow the successful template provided by the Channel Tunnel Rail Link and Crossrail projects during the passage of both those Bills.
- 3.2. The register itself will be a list of the commitments given, and to whom. It will not necessarily give details of each undertaking or assurance, and in some cases may simply refer to other documents (such as signed undertakings between the Promoter and the third party concerned). The register should also be read in conjunction with other documents that are part of the EMRs, namely the Code of Construction Practice, the Environmental Memorandum and the Planning and Heritage Memorandum. The entries on the register itself will not, therefore, be definitive in themselves.
- 3.3. The bulk of the material referred to in the register will be in the public domain. However, some personal or commercially confidential material (for example) will not. Requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 will be considered according to the respective standard procedures. However, in both cases, exemptions (or exceptions) may apply to some information, such as commercially confidential material, or material benefitting from legal professional privilege. Other material covered by the Data Protection Act 1998, may also benefit from exemptions under that Act. The register itself will be published and updated as the Bill process continues through Parliament to include any further undertakings and assurances given. A final version will be produced and published after the Bill receives Royal Assent.

- 3.4. The register will not include undertakings or assurances that have either been carried out already or that will be carried out during the passage of the Bill (for example, an assurance to amend the content of the Bill). This is because the purpose of the register is to capture undertakings and assurances that will be carried out once the Bill is enacted and construction starts.
- 3.5. The Secretary of State or nominated undertaker may agree with the party or parties involved in a specific undertaking or assurance to alter the terms of that undertaking or assurance following its recording in the register. In such cases, the new agreed terms shall be met and, if appropriate, the relevant local authority will be notified of the new terms.

4. Ensuring undertakings and assurances are met

- 4.1. Following Royal Assent to the Bill, a nominated undertaker (or nominated undertakers) is expected to be appointed to construct and maintain HS2. Any nominated undertaker will be contractually obliged, via the requirements set, to comply with all relevant undertakings and assurances made by the Secretary of State/ the Promoter in regards to HS2. The requirements set, supported by the register, will be the means of communicating to any nominated undertaker the commitments given to third parties during the passage of the Bill.
- 4.2. It is expected that the Secretary of State will give an undertaking to Parliament that he will take such steps as he considers reasonable and necessary to secure compliance with the EMRs. This includes all relevant undertakings and assurances, insofar as they are not directly enforceable against any person appointed as a nominated undertaker. In other words the Secretary of State is not obliged to enforce an undertaking if the recipient has a means of enforcing it themselves.
- 4.3. Undertakings and assurances do not bind any consent-giving body - such as local authorities, or other regulatory bodies like the Environment Agency - unless that body is specifically a party to them. However, consent-giving bodies would be expected to be mindful of the nominated undertaker's responsibility to make every effort to comply with them since they will have formed part of the consideration of the issues, and the conferring of the powers, by Parliament.

5. More information

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