



Phase One Planning Forum

3rd/4th December 2014



Environmental Minimum Requirements

Planning Forum
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Statement to Select Committee

“It is the Secretary of State’s intention to ensure, through the controls contained in the Bill, in general legislation and in the Environmental Minimum Requirements, that the environmental impacts of constructing and operating the project do not exceed those that have been assessed in the Environmental Statement...”

Tim Mould QC, Select Committee, 1 July '14

Environmental Minimum Requirements

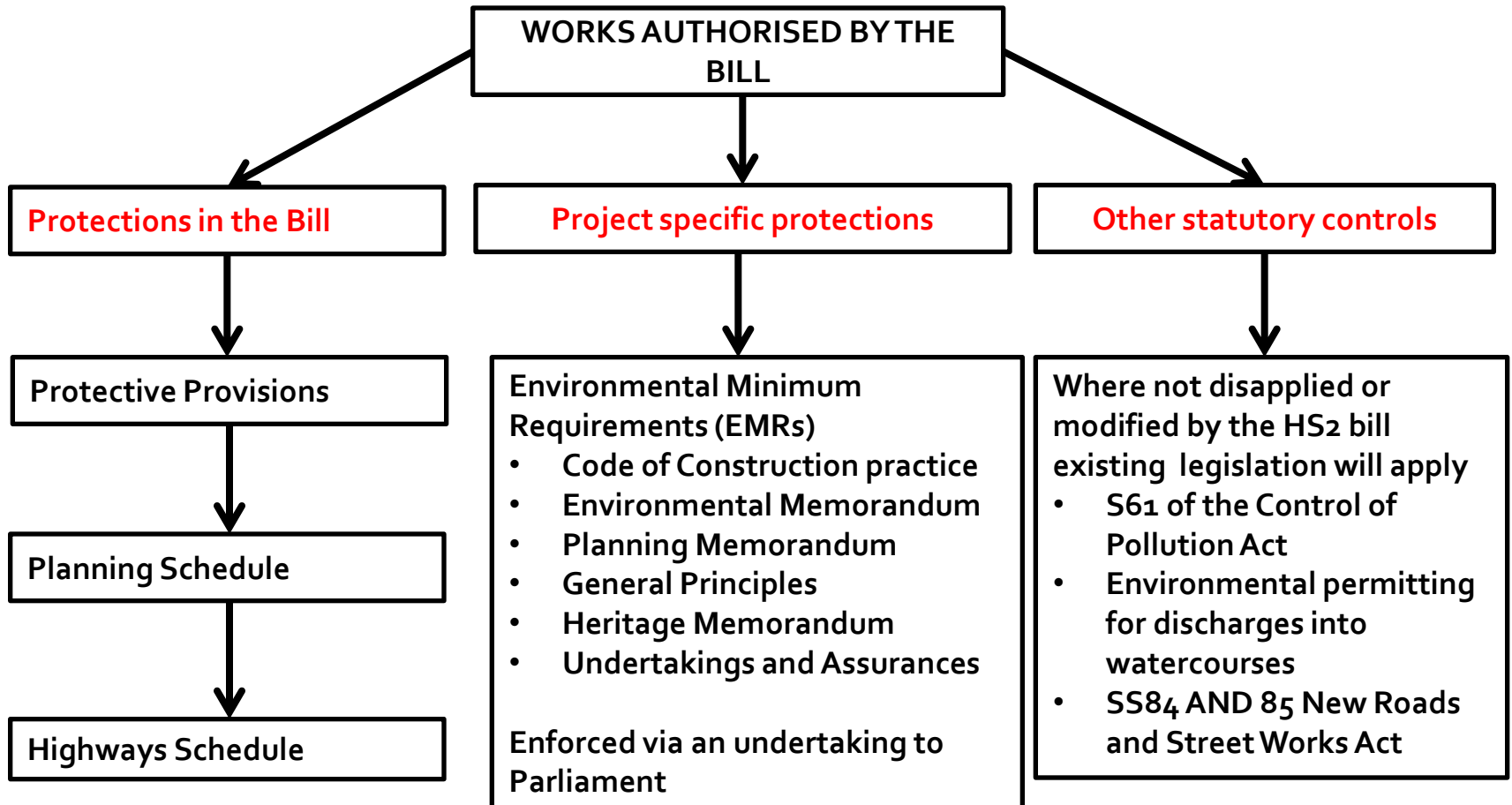
Environmental Minimum Requirements - suite of documents that set out how the NU will behave and how the scheme will be delivered, committed via an undertaking to Parliament.

The EMRs will comprise the following documents:

- General principles
- Environmental Memorandum
- Planning Memorandum
- Heritage Memorandum
- CoCP

The role of the EMRs and the controls within need to be looked at in the context of other controls that will be placed on HS2

Controls in place on the HS2



General Principles

The purpose of the EMRs , as set out in the statement of intent given on behalf of the Secretary of State, is to supplement the other controls set out in the Bill and contained in general legislation so as to ensure that the effects assessed in the environmental settlement are not exceeded.

General Principles

The controls contained in the EMR along with powers contained in the HS2 Bill and the Undertakings given by the SoS will ensure that impacts which have been assessed in the ES will not be exceeded, unless any new impact or impacts in excess of those assessed in the ES:

- results from a change in circumstances which was not likely at the time of the ES; or
- would not be likely to be environmentally significant; or
- results from a change or extension to the project, where that change or extension does not itself require environmental impact assessment under either (i) article 4(1) of and paragraph 24 of Annex 1 to the EIA Directive; or (ii) article 4(2) of and paragraph 13 of Annex 2 to the EIA Directive⁴; or
- would be considered as part of a separate consent process (and therefore further EIA if required).

General Principles

- Nominated Undertaker (NU) is contractually bound to comply with the EMR.
- NU will use reasonable endeavours to adopt mitigation measures that will further reduce adverse environmental effects.
- Statutory Undertakers carrying out development in connection with HS2, for which it has planning permission on the basis of the ES, will be required to comply with the EMRs and controls set out in the HS2 Register of Undertakings and Assurances.

Enforcement

- DfT will make an Order appointing a nominated undertaker.
- The Nominated Undertaker will be required by the SoS to adhere to the arrangements provided for in the EMRs in designing and constructing Phase One.
- Crossrail – The NU reported themselves to the SoS when they identified a breach of the EMRs, when delivery drove down a road precluded by an assurance.
- It is the NU's responsibility to ensure that the EMRs are implemented, which is a very onerous requirement, a breach of which will result in breach of his contractual commitment to the Secretary of State. The Secretary of State is answerable to Parliament for enforcing these obligations of the nominated undertaker

Enforcement

Mechanism	Description
Report to the NU	The first step is to report any breach to the NU – the NU implements corrective action.
Report to SoS	If not satisfied – report to DfT, who direct NU to implement corrective action.
Report to Parliament	If not satisfied - report to Speaker in the House of Commons or Chairman of Committees in the House of Lords under Standing Order 130.
Undertake high court injunction	Alternatively – apply for judicial review or action for breach of contract.
Construction arrangements enforcement	Alternatively - Sch. 16 construction arrangements are enforceable by qualifying authorities via Town & Country Planning Act powers.
Complaints Commissioner – generally for members of the public rather than LPAs.	If the complainant feels that the complaint has not been satisfactorily addressed through the normal procedure i.e. reporting to NU, they can put their case to the Complaints Commissioner.

Enforcement

Other controls with which the nominated undertaker must comply with include (but are not limited to):

Other Controls	
Planning approvals that will be required under Schedule 16 to the Bill	Highways approvals under Part 1 or 3 of Schedule 4 to the Bill
The process relating to burials in Schedule 19 to the Bill	Highways approvals under Schedule 31 of the Bill
Utilities related approvals under Schedule 31 to the Bill	Canal and river related approvals under Schedule 31 to the Bill
Land drainage, flood defence, water resource and fisheries approvals under Schedule 31 to the Bill	Approval of works to listed building under the Heritage Agreement process
Approval of works to scheduled monuments under a Scheduled Monument Agreement	Environmental permitting for discharges into watercourses during construction works under Part 1 of Schedule 2 to the Bill
Sections 84 and 85 of the New Roads and Street Works Act 1991	Seeking approvals under Section 61 of the Controls of Pollution Act 1974
Habitats Directive	

Reasonable Endeavours

The term **reasonable endeavours** is used once in the Draft General Principles (para. 1.1.5) – it relates to reducing the effects beyond what has been reported in the ES.

The statement of intent relating to not exceeding the effects in the ES does not use reasonable endeavours but states that the EMRs and controls in the Bill will ensure that impacts which have been assessed in the ES will not be exceeded....(para 1.1.3).

Reasonable endeavours is a well used legal expression which is often used in contractual documents and has been considered by the courts. It allows a party to balance the ability to use reasonable endeavours against all relevant commercial considerations including the costs of, and the uncertainties and practicalities relating to, compliance with an undertaking.