



Department  
for Transport

# High Speed Two: Exceptional Hardship Scheme for Phase Two

A discretionary purchase scheme for property owners whose properties may be affected by high speed rail links from the West Midlands to Leeds and Manchester, and a Heathrow spur

Consultation

January 2013



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# 1. Purpose of consultation

1.1 This consultation paper seeks your views on the Government's proposals to introduce an exceptional hardship scheme for Phase Two of the high speed rail network for Britain. The scheme would protect the interests of mainly residential and small business owner-occupiers of properties (the value of which may be affected by the initial preferred route, station and depot options for Phase Two of the network) who can demonstrate that they have a need to sell their property within the lifetime of the scheme. The scheme is currently expected to run until the end of 2016.

1.2 The Phase Two route extends the high speed rail network north from the West Midlands with two legs: one running to Manchester and the other to Leeds. It may also include a direct link to Heathrow via a spur from the main line. The Government has decided to make public the details of the route and station option for Heathrow T5 that HS2 Ltd has recommended. Though the Heathrow spur is not part of the initial preferred route for Phase Two, the Government recognises the impact that the release of information about this route may have on property owners and therefore is willing to consider applications from property owners potentially affected by it under the proposed Exceptional Hardship Scheme for Phase Two.

## **Background to High Speed Two (HS2)**

1.3 On 10 January 2012 the Government announced its strategy for a national high speed rail network for Britain known as HS2. The Government proposes building HS2 in two phases:

1.4 The January 2012 announcement of the high speed rail network followed one of the largest public consultations ever undertaken by the Department for Transport. The consultation, which ran for five months during 2011, generated around 55,000 responses. It covered a series of questions about the Government's proposed high speed rail strategy, as well as looking at the route for the initial stage of the proposed network, between London and the West Midlands.

1.5 The January 2012 announcement included a commitment to publish the Government's initial preferred route and station options for Phase Two later in 2012. In his Autumn Statement on 5 December 2012, the Chancellor of the Exchequer said that these plans would be set out in the new year.

1.6 The Phase Two announcement was made on 28 January 2013. Information on this announcement is available at [www.gov.uk/government/organisations/department-for-transport/series/hs2-decision](http://www.gov.uk/government/organisations/department-for-transport/series/hs2-decision) and also on a DVD and includes:

- The Command Paper *High Speed Rail: Investing in Britain's Future – Phase Two: the route to Leeds, Manchester and beyond* sets out the Government's initial preferred route, station and depot options for Phase Two of the high speed rail network between the West Midlands and Leeds (via the East Midlands and South Yorkshire) and Manchester. The document provides further details on the background and case for HS2 as well as details of the wider Phase Two proposals and the next steps for the project.

### **Heathrow spur and station:**

#### **Learning from the experience of the Exceptional Hardship Scheme for Phase One of HS2**

- 1.7 In August 2010 an exceptional hardship scheme was brought in for Phase One of HS2, following a consultation exercise. The scheme was discretionary (i.e. not required by law). Consultation began when the Secretary of State indicated his preferred route for Phase One – that is at the same state of development as the Phase Two Scheme has now reached. We have considered the feedback we received on this earlier scheme and have incorporated a number of proposed operational improvements as a result.

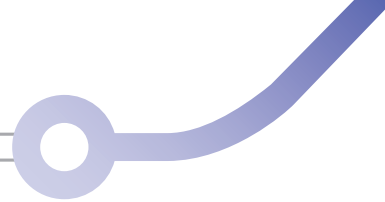
### **In summary, the initial preferences for Phase Two are:**

#### **Western leg**

#### **Eastern leg**

#### **What are we consulting on?**

- 1.8 In order to provide assistance for those people whose properties may be affected by the initial preferred route option for Phase Two, the Government is considering the introduction of a discretionary exceptional hardship scheme (EHS). Under the proposed scheme for Phase Two, residential and small business owner-occupiers whose properties may be affected, and who can demonstrate that they satisfy the criteria, would be able to apply for their properties to be bought by the Secretary of State within the lifetime of the proposed EHS. This is currently expected to run until the end of 2016.
- 1.9 The Government notes that HS2 Ltd has undertaken a significant amount of work developing options for serving Heathrow T5 in accordance with their



remit. The Government recognises that there is likely to be speculation regarding the proposed route and station and that withholding that information would be likely to cause blight and uncertainty and that this could be spread over a wide geographical area and over a number of years until the Commission has reported.

1.10 Therefore, the Government has concluded that, in the interests of reducing uncertainty, it will make public the details of HS2 Ltd's route and station selection process and the single route and station option for Heathrow T5 that HS2 Ltd recommended ("the recommended Heathrow route"). This is not part of the initial preferred route for Phase Two. The recommended Heathrow route reflects the route and station option described in HS2 Ltd's March 2012 reports and which was further refined by the recommendations in the document covering route refinement work since March 2012. The Heathrow route description can be found at <http://www.hs2.org.uk>

1.11 Though the Heathrow spur is not part of the initial preferred route for Phase Two, the Government recognises the impact that the release of information about the recommended Heathrow route may have on property owners and therefore is willing to consider applications from property owners potentially affected by it under the proposed EHS for Phase Two.

1.12 Most large infrastructure projects compensate property owners only at

a later stage of development, when statutory blight measures apply. Given the time it will take to develop HS2, the Government recognises that an earlier discretionary scheme is an important means of helping those property owners who are most severely affected by the proposals. The EHS is intended as an interim measure which would remain in place until such time as the statutory blight measures apply. Information on statutory blight measures can be found on the Department for Communities and Local Government website: [www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure](http://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure)

1.13 Section 2 of this consultation document sets out the proposed details of the Phase Two EHS, on which we want to hear your views.

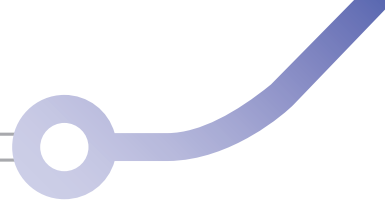
## **Property issues on Phase One (London to the West Midlands) of the network**

1.14 For Phase One of HS2 (between London and the West Midlands), a separate Property and Compensation consultation was launched on 25 October 2012. Phase One has now advanced to the point where long term compensation proposals can be considered. These measures are not yet appropriate for Phase Two as no Government decision on the route has been made. However, if you are interested in these proposals see [www.highspeedrail.dft.gov.uk](http://www.highspeedrail.dft.gov.uk)

## **Who should read this consultation?**

1.15 While this consultation will be of most immediate interest to those owning property on, or adjacent to, the initial preferred route, station or depot options from the West Midlands to Leeds and Manchester and a Heathrow spur, we would also welcome responses from anybody else with an interest in these proposals.





## 2. The proposals

### What are the objectives of the Phase Two Exceptional Hardship Scheme?

2.1 Alongside this consultation, on 28 January 2013 the Government published *High Speed Rail: Investing in Britain's Future – Phase Two: the route to Leeds, Manchester and beyond*, the Command Paper setting out its initial preferred route options for Phase Two of the high speed rail links from the West Midlands to Leeds and Manchester. This paper can be found here: [www.gov.uk/government/organisations/department-for-transport/series/hs2-decision](http://www.gov.uk/government/organisations/department-for-transport/series/hs2-decision)

#### Existing protections

2.2 The Government proposes to hold a public consultation starting later in 2013 on proposals for the route. Following this, the Government will need time to consider the responses to the consultation. If the Government then decides to proceed with its proposals (subject to any modification in the light of the consultation), it would announce its proposed route for Phase Two and make the necessary arrangements to safeguard<sup>1</sup> the route. The Government would then seek powers from Parliament to build the line (through a hybrid Bill).

2.3 The effect of safeguarding would be to trigger the statutory blight measures

under the Town and Country Planning Act 1990. These apply where the promoter of a transport scheme has given notice that they are looking to acquire property, or affect it by their proposals, and entitles a person with a qualifying interest<sup>2</sup> in that property to serve a blight notice on the relevant authority (in the case of HS2, the Secretary of State for Transport). This may result in the Secretary of State purchasing the property in question. These provisions apply to certain commercial<sup>3</sup>, agricultural and residential land, and there is no requirement to demonstrate hardship.

#### Exceptional hardship

2.4 The Government is aware that until it makes a final decision on the route for Phase Two, there will be uncertainty about which properties will need to be purchased in order to construct and operate the line, or which additional properties may be affected during its construction or operation.

2.5 This may result in a negative effect on property values in the immediate vicinity of the initial preferred route options in the period before the final route is announced and statutory protection is available.

2.6 There is no legal obligation to address this. However, as HS2 is a project with a very long timescale, the Government considers that those adversely affected

should have access to some form of redress. This is why it intends to introduce a discretionary EHS for Phase Two of HS2 (as was done for Phase One of HS2) which would be available to eligible residential and small business owner-occupiers whose property value may be affected and who can demonstrate that they have a need to sell before the statutory protection takes effect.

2.7 The proposed Phase Two EHS is intended as an interim measure, which would remain in place only until such time as the statutory blight provisions apply.

2.8 At a later stage, following a decision on the final route, and if the Secretary of State decided to use compulsory purchase powers to acquire land, the normal statutory provisions for the assessment and payment of compensation would apply.

**Question:**

1. Do you agree or disagree that the Department for Transport should introduce an Exceptional Hardship Scheme for Phase Two ahead of decisions on how to proceed with the routes? What are your reasons?

## Who would be eligible to apply?

2.9 The aim of the Phase Two EHS would be to protect the interests of:

whose property values may be seriously affected by the Government's initial preferred route announcement for Phase Two or the Heathrow spur, and who can demonstrate they have an urgent need to sell their properties before any decision is made to safeguard the route.

2.10 We currently expect the proposed scheme to remain in place until the end of 2016. This should cover the period of time needed to formally consult on the wider Phase Two proposals, the analysis of these responses and the announcement of the final route decision.

## Criteria to determine qualification for the Phase Two Exceptional Hardship Scheme

2.11 The owners of certain properties on, or in the vicinity of, any of the sections of the Phase Two initial preferred route options or the Heathrow spur route (including proposed stations) could qualify for the EHS, subject to their meeting the five criteria set out below.

1. Safeguarding is a process under which the Secretary of State issues directions under the Town and Country Planning (General Development Procedure) (England) Order 2010. These directions are given to local planning authorities and are designed to protect route corridors which have already been identified for building transport and other projects. Once the directions are made, where a third party submits certain types of planning applications which affect these route corridors – for instance to erect a new supermarket – the applications need to be reviewed in order to safeguard the development of the project which is the subject of the directions.
2. This term is defined in section 149 of the Town and Country Planning Act 1990.
3. In the case of commercial land, the provisions are restricted to land which has an annual rateable value which does not exceed £34,800 (Town and Country Planning (Blight Provisions) (England) Order 2010).

1. property type – a qualifying interest in the property (ownership or otherwise);
2. location of property (expected impacts of the line);
3. effort to sell and the impact of blight;
4. no prior knowledge of Phase Two of HS2; and
5. Exceptional hardship necessitating a pressing need to sell.

### Criterion 1. Property type

- 2.12 The purpose of this criterion would be to ensure that the person applying to the scheme has the rights to sell the property and that the type of property is one which the scheme is aimed at covering.
- 2.13 At the time of applying for the EHS a person must have a qualifying interest in the property which they are attempting to sell. This means that they must either be a residential, small business or agricultural unit owner-occupier, a mortgagee or the personal representative of a deceased person who had a qualifying interest at the time of death. Owners of residential properties which are not the owner's main place of residence – e.g. second homes – would not be eligible.

### Criterion 2. Location of property

- 2.14 The purpose of this criterion would be to determine whether or not the property is on the Phase Two route or likely to be adversely affected by either

the construction or operation of the proposed line.

- 2.15 Distance from the line of route would be a factor taken into consideration when deciding on an application. However, we do not believe that it is appropriate to set a fixed outer distance from the initial preferred route to satisfy this criterion.
- 2.16 Other factors which would be taken into account include (but are not limited to) the contours of the land, surrounding features, the relative height of the railway in relation to the property and the likely disruption to the property during construction.
- 2.17 Where a property is located on land under which a tunnelled section of the initial preferred route runs we would expect any blighting effects to be limited. Given this, the EHS would not apply to properties above bored tunnelled sections (tunnels constructed from below the ground using tunnel boring machines). The details of which sections of the initial preferred route option would be constructed of a bored tunnel can be found in the detailed plan and profile drawings available at [www.gov.uk/government/organisations/department-for-transport/series/hs2-decision](http://www.gov.uk/government/organisations/department-for-transport/series/hs2-decision)
- 2.18 We propose that the EHS covers all parts of the route, excluding (bored) tunnelled sections, but including properties in close proximity to tunnel entrances and exits and other infrastructure associated with the line.

### Criterion 3. Effort to sell and the impact of blight

- 2.19 The purpose of this criterion would be to determine whether it is the blight resulting from the Phase Two initial preferred route announcement rather than any other factor which is the reason why the property has not sold.
- 2.20 Applicants would need to demonstrate that they had already made all reasonable efforts to sell their property within the current market conditions. For example, that it had been on the market for a minimum of three months with at least one recognised estate agent; and, that no offer had been received within 15% of a realistic asking price as a direct result of the Phase Two initial preferred route.
- 2.21 Applicants would therefore also need to demonstrate that their ability to sell their property had been affected by the Phase Two initial preferred route announcement, rather than other factors. Examples of other factors that might mean a property is not selling could be that the property is overpriced, the condition of the property is poor, or that the property market in the area is already slow and that broadly similar properties that are not close to the Government's Phase Two initial preferred route option are also not selling.
- 2.22 As was the case with the Phase One EHS, we propose that we would write to the estate agents involved in the marketing of the property to gather information that they hold on the marketing efforts. We would seek

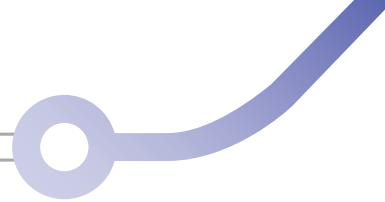
any feedback on the reasons why a property is not selling.

### Criterion 4. No prior knowledge of Phase Two of HS2

- 2.23 The purpose of this criterion would be to make sure that only those who purchased their property before the information on the Phase Two initial preferred route option was made public, are able to apply for the EHS.
- 2.24 An applicant would not be eligible for the Phase Two EHS if they bought their property at a time when they could reasonably have been expected to be aware of the Phase Two initial preferred route option.

### Criterion 5. Exceptional hardship

- 2.25 The purpose of this criterion would be to determine whether the property owner is, or would soon be, in a situation of exceptional hardship which could only be alleviated by the sale of their property before the end of the EHS.
- 2.26 In relation to what constitutes exceptional hardship, we cannot pre-define what this means for individuals, or give examples of specific situations. Experience from Phase One has taught us that it does not work to give a checklist of the reasons why people might apply to the scheme, as individual circumstances and their effects vary. Exceptional hardship might originate from situations including, but not at all limited to financial, health and disability, employment or family/domestic issues, a court settlement, or the winding up of the estate of a deceased person.



- 2.27 Almost everyone experiences one or more forms of hardship at some point in their lives, be it emotional, financial, medical or something else. The scheme is not being proposed to help those experiencing the sort of hardship that many people can expect to experience at some point.
- 2.28 Applicants should be able to demonstrate that they have a pressing need to sell (not simply to move from) their property within the proposed lifetime of the scheme, and that they would suffer exceptional hardship if they had to wait until such time as the longer term package of compensation and blight measures are available.
- 2.29 The application form would ask applicants to set out their situation of exceptional hardship and hence why they must sell their property. Regardless of what the exceptional hardship was, an applicant would need to provide documentary evidence of why the sale of their property would be absolutely necessary to alleviate that exceptional hardship.
- 2.30 We would provide guidance alongside the application form to explain in detail what types of evidence applicants would be expected to provide. This guidance would give an explanation of what is meant by documentary evidence, and examples of the types of documentation that might be expected to be provided, for each of the five EHS criteria. Support from HS2 Ltd would be available for applicants via email, mail and telephone to explain the guidance

and deal with queries relating to the application process.

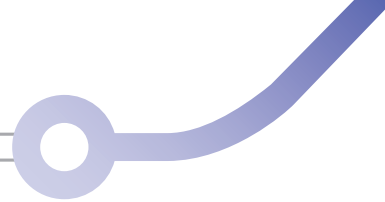
**Question:**

2. Do you agree or disagree with the proposed criteria underpinning the Exceptional Hardship Scheme for Phase Two? What are your reasons? Please specify any alternative principles you would propose, including specific criteria for determining qualification for the scheme.

## How would the Exceptional Hardship Scheme for Phase Two operate?

### Process overview

- 2.31** The Government proposes that HS2 Ltd would administer the Phase Two EHS on behalf of the Secretary of State for Transport. The application process would be designed to enable applications to be made by individual members of the public rather than by professionals or others in the property industry.
- 2.32** A majority independent panel<sup>4</sup>, appointed by HS2 Ltd, would consider applications and make a recommendation to the Secretary of State for Transport on whether an application should be accepted or not. A decision maker appointed by the Secretary of State would then make the final decision on each case, based on the recommendation of the independent panel and on the evidence provided to that panel.
- 2.33** Once applicants have been informed of the outcome, those who were unsuccessful would be given an explanation of why the application was refused.
- 2.34** Successful applicants would have their property purchased by the Government at 100% of its unblighted open market value. This value would be assessed using two independent valuers, chosen from a pool of Royal Institute of Chartered Surveyors qualified valuation firms who have expertise in the specific property type and coverage in the local area. The Government would pay for these valuations and would also, after acceptance of an offer to purchase, pay for a building survey, a title check and an agreed fixtures and fittings list.
- 2.35** The property owner would select one of these valuers from the pool while HS2 Ltd would choose the other. The final valuation would be based on the average of the two figures. If the figures differed by more than 10%, the applicant would choose another valuer from the pool to conduct a third valuation. The offer made would then be based on the average of the closest two valuation figures.
- 2.36** Unsuccessful applicants would be entitled to reapply to the scheme if there was a material change in their circumstances or they were able to provide additional evidence which is related to the reason(s) their original application had been refused. Applicants would be able to reapply as soon as additional evidence became available.
- 2.37** We propose that reapplications to the Phase Two EHS which are submitted within six months of the original decision being communicated should (other than in exceptional circumstances) be considered only against the criterion or criteria upon which the previous application was refused. This would be applicable where the applicant was able to confirm that their circumstances had not changed significantly in the intervening period or in a way that the previous decision would be affected.



In relation to decisions on location, this would only apply where the route had not changed since the previous application.

2.38 We also want to ensure that the panel has as much information as possible when judging applications, especially in relation to the *location of property* criterion. We therefore propose that as well as maps of the area, Geographical Information Systems (mapping software) and photographs (including aerial photographs of the preferred line of route when these become available) would also be used to help the panel better understand the location of the property and the landscape within which it and the preferred line of route sit. Applicants would be able to send in photos supporting their opinion on impacts of the railway.

2.39 The Government also wants to ensure that applicants are given as much information as possible as to what type and detail of documentation they should submit as evidence as part of their application. We want to ensure that applications are not refused due to the evidence provided being incomplete.

2.40 As mentioned in the proposals, the Government therefore proposes to produce a guidance document for applications to the Phase Two EHS. This will give details of the scheme and how applications will be handled and make clear the type of evidence and the level of detail that will be required by the panel in order for them to be

able to properly determine the application.

### Dealing with applications

2.41 Should the Government decide to introduce a Phase Two EHS, the scheme would come into force on the date of its announcement and applicants who consider that they meet the eligibility criteria would be able to apply to the Secretary of State for consideration with immediate effect.

2.42 The Secretary of State would be required to provide a decision on each complete application within three months of receipt. Although not expected to be required by the majority of applicants, they would nevertheless be entitled to have the remainder of the lifetime of the scheme to decide whether to accept the offer and begin proceedings towards a sale. The applicant would be under no obligation to sell the property if the Secretary of State offered to buy it.

#### Question:

3. Do you agree or disagree with the proposed process for operating the Exceptional Hardship Scheme for Phase Two? What are your reasons? Please specify any alternative arrangements which you would suggest.

4. This panel would be made up of three members. Two would be independent of HS2 Ltd and the Department for Transport, with one additional member representing HS2 Ltd.

## 3. Summary of consultation questions

**Question 1.** Do you agree or disagree that the Department for Transport should introduce an Exceptional Hardship Scheme for Phase Two ahead of decisions on how to proceed with the routes? What are your reasons?

**Question 2.** Do you agree or disagree with the proposed criteria underpinning the Exceptional Hardship Scheme for Phase Two? What are your reasons? Please specify any alternative principles you would propose, including specific criteria for determining qualification for the scheme.

**Question 3.** Do you agree or disagree with the proposed process for operating the Exceptional Hardship Scheme for Phase Two? What are your reasons? Please specify any alternative arrangements which you would suggest.



## 4. How to respond

4.1 This is a Department for Transport consultation, being carried out by High Speed Two Ltd on the Department's behalf.

4.2 The consultation will run from 28 January 2013 to 5pm on 20 May 2013; please ensure that your response reaches us by that date.

4.3 If you would like further copies of this consultation document it can be found at <http://www.hs2.org.uk>. You can contact the document order line on 0300 123 1102 if you would like alternative formats (Braille, audio CD, etc) or to request a translated version of this document.

4.4 You can provide your answers online via the consultation website at <http://www.hs2.org.uk>

4.5 Alternatively, you can send your consultation responses by:

Post, using the response form included in this document:  
FREEPOST  
PHASE 2 EHS CONSULTATION

Email: [HS2EHS@ipsos.com](mailto:HS2EHS@ipsos.com)

4.6 When responding, please state whether you are responding as an individual or are representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents.

4.7 Consultation responses and correspondence addressing issues relevant to this consultation that are sent directly to HS2 Ltd will be forwarded to one of the dedicated response channels detailed above for consideration by our response analysis agency. HS2 Ltd cannot accept responsibility for responses that are sent to any addresses other than those advertised on our website and on all associated consultation documents.

4.8 If you have any further enquiries please contact the HS2 Ltd enquiries line on: 020 7944 4908 or email [hs2enquiries@hs2.org.uk](mailto:hs2enquiries@hs2.org.uk)

### What will happen next?

4.9 The consultation closes at 5pm on 20 May 2013. We will then consider all responses and publish a summary report along with next steps.

### Freedom of Information

4.10 Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

4.11 If you want information that you provide to be treated as confidential, please be aware that, under the FOIA,

there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

- 4.12 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 4.13 The Department, HS2 Ltd and Ipsos MORI will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



## 5. Consultation principles

- 5.1 This consultation is being conducted in line with the Government's key Consultation Principles. Full details of the Government's guidance on consultation can be found on the Cabinet Office website at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>.
- 5.2 Full details of the Consultation Principles are available at: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>.
- 5.3 This guidance was issued on 17 July 2012 and replaces the Code of Practice on Consultation issued in July 2008.
- 5.4 If you consider that this consultation does not comply with the key Consultation Principles or have comments about the consultation process please contact:

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