



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

E25: AUTHORISING WORKS AFFECTING WATERCOURSES

This paper outlines the role of relevant consenting authorities in giving approval for the construction and operation of Phase One of High Speed Two, where such elements of the Proposed Scheme have the potential to impact on the management of flood risk from watercourses.

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the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.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.

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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. Background

- 2.1. The Proposed Scheme will cross a number of watercourses along its route ranging from large rivers to small tributaries. As a consequence, numerous construction activities and works will be required either within, or near to watercourses.
- 2.2. These temporary and permanent works have the potential to alter flood risk associated with affected watercourses. Information Paper E4: Water Resources and Flood Risk provides details of the approach used to assess and mitigate changes in flood risk as a result of these works and as reported in the ES. This paper sets out the approach for approval (or consenting) of such works before they can take place.
- 2.3. Ordinarily, the requirement for a consent relating to managing flood risk from watercourses is set out in three main pieces of legislation:
 - the Environmental Permitting (England and Wales) Regulations 2010 (EPR 2010);
 - the Land Drainage Act 1991 (LDA 1991); and
 - the Flood and Water Management Act 2010 (FWMA 2010).
- 2.4. However, once the hybrid Bill receives Royal Assent (and becomes law), some key sections of this legislation would no longer apply, or else would be disapplied by the new Act of Parliament. In common with normal practice for projects of national importance, the Bill disapplies requirements for a subsequent in-principle consent in relation to watercourses which could prevent a scheme authorised by Parliament proceeding and instead includes protective provisions² giving the relevant authority the ability to approve detailed plans and otherwise protecting their interests.
- 2.5. This paper:
 - sets out the statutory consenting requirements for the Proposed Scheme for works affecting flood risk associated with watercourses (both before and after Royal Assent); and
 - clarifies the responsibilities of the relevant authorities in issuing consents (or approvals) and explains how this would be different once the Bill becomes law.

² See Part 5 of Schedule 33 to the Bill.

3. Consenting regimes

- 3.1. Under the current statutory regime, giving consent for works that affect watercourses in relation to flood risk management is the responsibility of one of three types of risk management authority³.
- 3.2. The responsible authority is dependent on the type of watercourse affected as follows⁴:
 - works affecting main rivers⁵ require consent from the Environment Agency as set out in the EPR 2010⁶;
 - works affecting ordinary watercourses⁷ that are within the district of an Internal Drainage Board (IDB), require a consent from that IDB as set out in the LDA 1991⁸; and
 - works affecting all ordinary watercourses not within the district of an IDB require consent from the relevant Lead Local Flood Authority⁹ (LLFA), as set out in the LDA 1991⁸.
- 3.3. Some works associated with the construction of the proposed scheme will be required before Royal Assent and hence will be subject to the current consenting regime. This includes some elements of the early works, such as ground investigations works near to watercourses.

Changes after Royal Assent

- 3.4. Once the Bill is enacted, the legislative framework outlined above would not apply¹⁰. Instead the Bill would put in place a bespoke regime controlled by protective provisions.
- 3.5. The protective provisions on land drainage and flood risk have been developed to ensure that the duties of relevant authorities to manage flood risk from watercourses are not unduly affected by the construction and operation of the Proposed Scheme. The Environment Agency, IDBs and LLFAs would be able to:

³ Risk management authorities are defined by the FWMA 2010.

⁴ Byelaws made under the WRA 1991 and the LDA 1991 do not apply to railway undertakings.

⁵ Main rivers are watercourses marked on the main rivers map, as set out in the WRA 1991, as amended by the Water Act 2014.

⁶ Under Regulation 12(1)(a) of the EPR 2010, this includes works over, under or in a main river.

⁷ Under the relevant statutes, 'ordinary watercourses' are any other watercourse, not designated as main river, through which water flows.

⁸ Under Section 23 of the LDA 1991, this includes any mill dam, weir or other like obstruction to flow in an ordinary watercourse including culverts.

⁹ Lead Local Flood Authorities were established by the FWMA 2010, and in England are either the Unitary Authority or County Council where no Unitary Authority exists.

¹⁰ Regulation 12(1)(a) of the EPR 2010 would be disapplied and Section 23 of the LDA 1991 does not apply to any works carried out under Acts of Parliament.

- approve (or refuse approval of) detailed plans for works affecting watercourses;
- through approving plans, impose reasonable conditions or to safeguard flood risk management infrastructure against damage;
- enforce the conditions that they impose; and
- take corrective action to any completed works in order to keep them in good repair at the expense of the nominated undertaker (i.e. the builder and/or operator of the Proposed Scheme).

4. Consenting responsibilities after Royal Assent

- 4.1. The protective provisions set out conditions whereby specific works would require approval by the Environment Agency, an LLFA or an IDB under the regime after Royal-Assent.
- 4.2. The type of works requiring approvals related to watercourses and the associated responsibilities of each of the relevant flood risk management authorities are detailed below.

Works affecting main river

- 4.3. After Royal Assent, plans for works that are likely to affect a main river¹¹ and/or its flow, or affect any other watercourse that would subsequently affect the volumetric flow rate within a main river, would require approval from the Environment Agency before they could be built or operated.

Works affecting ordinary watercourses

- 4.4. After Royal Assent, plans for the following types of works would require approval from the relevant LLFA or IDB:
 - erection of a new (or alteration of an existing) structure¹² which obstructs flow in an ordinary watercourse;
 - erection of a new (or alteration of an existing) culvert structure in an ordinary watercourse; and
 - alteration, removal or replacement of a designated feature¹³.
- 4.5. The protective provisions give the Environment Agency a strategic overview role in the approval process for ordinary watercourses. This reflects the Environment

¹¹ Including any of the following associated with a main river – its bank, wall, embankment or other structure, appliance, flood defence, monitoring equipment or land used to provide flood storage capacity.

¹² Mill dam, weir or other 'like obstruction'.

¹³ Schedule 1 of the FWMA 2010 allows flood risk management authorities to designate (and afford a degree of protection to) certain natural features or man-made structures which it deems as providing a flood defence function where that feature's primary function is not one of flood defence (e.g. a private property wall running alongside a watercourse).

Agency's current strategic overview role in delivering the Government's national Flood and Coastal Erosion Risk Management Strategy, and the supervisory role that the Environment Agency has undertaken in the development of LLFAs since the introduction of the Flood Risk Regulations in 2009 and the FWMA in 2010.

- 4.6. This process will minimise the administrative impact on IDBs and LLFAs, and foster a consistent approach to the approval of relevant works.
- 4.7. The Environment Agency will work with IDBs and LLFAs (as well as other parties) to develop standard practices and model conditions for consents to be issued for structures and works that may affect ordinary watercourses along the route.
- 4.8. LLFAs and IDBs can impose reasonable conditions or requirements on works it approves. However, as part of its strategic overview role, the Environment Agency must be consulted before setting such conditions and the model conditions issued by the Environment Agency should be considered.

5. More information

- 5.1. More detail on the Bill and related documents can be found at: www.gov.uk/HS2
- 5.2. Full details of the proposed protective provisions are detailed in Schedule 33 Part 5 of the Bill located at the above link.
- 5.3. Further detail on the disapplication process is provided in Information Paper B3: Disapplication of Legislation.
- 5.4. Further detail on how the management of flood risk has been incorporated into the initial design and assessment of Proposed Scheme can be found in Information Paper E4: Water Resources and Flood Risk.