



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

B6: RAILWAY POWERS IN THE HYBRID BILL

This paper provides an overview of the purposes and practical implications of the “Railway Matters” clauses (clauses 38 to 43 and Schedules 28 and 29) in the High Speed Rail (London - West Midlands) Bill. It explains why the powers are there and how they would work.

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the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.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

- 2.1. This Information Paper explains the purposes and workings of clauses 39-44 in the Bill and their related schedules.
- 2.2. The construction and operation of Phase One will have impacts on existing railway infrastructure and services. The users, owners and operators of those services will be interested in how the nominated undertaker will integrate into the existing industry's licencing regime and operating practices.

3. Existing rail network

Objectives of the Office of Rail and Road

- 3.1. The Office of Rail and Road (ORR) is the independent safety and economic regulator for Britain's railways. Its functions include setting Network Rail's funding and outputs as the monopoly operator of the network, and enforcing delivery and ensuring fair access to that network.
- 3.2. Its high-level objectives are set in section 4() of the Railways Act 1993. Although they could be interpreted as requiring the ORR to facilitate the construction of Phase One of HS2, the Government believes it would be helpful to include a specific objective to that effect. This will help to avoid confusion about the ORR's role in relation to Phase One and its role in relation to the wider rail network. The same approach was taken successfully by the Crossrail Act. This new objective will sit alongside and is not intended to override the ORR's existing objectives.
- 3.3. Once the construction of Phase One is complete, the Secretary of State will lay an Order before Parliament that removes this specific item from the objectives of the ORR as HS2 will then be part of the operational railway network and fully encompassed by the existing legislation on the ORR's role.

Co-operation with the rail industry

- 3.4. Due to the significant number of interfaces that Phase One will have with the existing rail network, the delivery and operation of the network may well affect others in the rail industry, including Network Rail and train operators. HS2's needs may require changes to the plans of others and, as a result, the nominated undertaker or the ultimate operator of services may need to pay compensation to mitigate any losses or expenditure incurred by those affected.
- 3.5. In practice, the nominated undertaker for Phase One will work with others in the rail industry to agree a way forward where interface issues occur. It is important that negotiations take place on reasonable terms and at a reasonable pace, so that prompt agreement is achieved before works are carried out, both during the main construction period and throughout operation.
- 3.6. Clause 43 provides a mechanism for securing agreement about matters which concern Phase One and third parties' infrastructure or train services. It is based on provision in the Crossrail and Channel Tunnel Rail Link Acts, providing for the

parties concerned to reach agreement or, in the absence of agreement, to go to arbitration. Schedule 30 allows the Secretary of State to set out what needs to be agreed as an outcome (as far as reasonably practicable) of the arbitration or the principle on which it is to be determined (e.g. a result which avoids delay, albeit perhaps at additional project costs). However, it does not allow the Secretary of State to determine the details of the agreement delivering that result (e.g. as to the additional compensation that one side may pay to the other). The Schedule also sets out the arrangements that apply in the case of multiple arbitrations, thus allowing proceedings to be consolidated or held concurrently

Transfer of functions relating to works

- 3.7. If the Bill is enacted, some land acquired for Phase One might be land belonging to a railway operator on which works are authorised through a different Act of Parliament. It might be efficient to allow either the nominated undertaker or the railway operator concerned to carry out both sets of authorised work.
- 3.8. Clause 44 allows the Secretary of State to transfer functions between the nominated undertaker and a railway operator, in either direction, in such circumstances. The transfer of a duty to a railway operator can be done only with the operator's consent.

4. Disapplications of legislation

Pre-operational licensing

- 4.1. Rail operators are required to have a licence from the ORR to provide services on the rail network, under section 6(1) of the Railways Act 1993. The licence requires compliance with the safety, charging and access regimes managed by the ORR.
- 4.2. Before Phase One becomes operational, extensive testing of the track and trains will be required. This will include both the new track constructed as part of Phase One, and existing network on which high speed trains will run north of Handsacre on the West Coast Main Line. This testing and other activity would normally require a licence.
- 4.3. However, the organisation(s) that wish to carry out testing or other licensable activities might not be the same as the organisation(s) providing rail services once Phase One is open for commercial use. For example, it might be the nominated undertaker, or train manufacturers or others, for whom the burden of acquiring a licence from the ORR would be a significant regulatory burden.
- 4.4. Clause 40 therefore disapplies the requirement to have a licence for operating trains on track constructed under this Bill, if enacted, until the Secretary of State has determined that it is ready for commercial use.
- 4.5. With respect to testing on existing track, it is intended that the Secretary of State will grant exemption(s) from licencing under section 7 of the Railways Act 1993. The exemption(s) would have conditions attached, requiring the

organisation(s) concerned to work within the ORR regime for safety, access and related purposes.

- 4.6. A licence under section 6(1) of the Railways Act 1993 provides a defence against a legal action for nuisance and other grounds, under section 122 of the same act. Clause 40(3) of the Bill provides that the exemption from the licensing requirement in the pre-operational phase also provides the same defence against legal action, as allowed by section 122 of the Railways Act 1993.

Closures

- 4.7. In the Railways Act 2005, sections 22-31 and section 37 set out statutory closure provisions for services and stations. Among other things, they require an assessment of whether a closure meets the criteria set out in guidance, and consultation on proposed closures.
- 4.8. Clause 41 of the Bill provides that these statutory provisions may be disapplied by the Secretary of State for any closure necessary or expedient for the construction or operation of Phase One, at any time before it is ready for commercial use.
- 4.9. The assessment, consultation and other elements of the provisions are not relevant, as the decision to construct Phase One will have been approved by Parliament.
- 4.10. There are no station closures planned as part of the construction and operation of Phase One. The only line that would close is the eastern end of the Northolt and Acton Line (also known as the "Wycombe Single") between Old Oak Common and Park Royal. This currently carries one weekday passenger service from London to West Ruislip.
- 4.11. There are services that may run with a reduced frequency, as they are replaced by alternative services on Phase One. The closures provisions do not apply to these services, which will be dealt with under the Department for Transport's franchise agreements and, where appropriate, the Network Change compensation process.

Other railway legislation

- 4.12. A significant amount of legislation relating to railways has been enacted since Victorian times. Where relevant to modern railway this needs to be specifically applied and where it is not relevant or appropriate it needs to be disapplied. Schedule 29 sets out how a number of those Acts are treated with respect to Phase One.
- 4.13. Paragraph 1 of the Schedule disapplies the Highway (Railway Crossings) Act 1839, which requires any railway crossing a road to provide gates at either end of the crossing, and staff to open the gates. Phase One does not cross any roads such as to require a level crossing but level crossing footpaths on the Princes Risborough line will be moved.

- 4.14. Paragraph 2 modifies section 16 of the Railway Regulation Act 1840, modifying the fine levels and sentences for obstruction of officers or trespass on the railway, and addressing those offences if committed in Scotland on Phase One trains or property.
- 4.15. Paragraph 3 of the Schedule disapplies section 9 of the Railway Regulation Act 1842, which also makes provision for level crossings and their use.
- 4.16. The Railway Consolidation Clauses Act 1845 sets out numerous provisions for railway legislation that may or may not be incorporated into any new railway legislation, with the intention of providing consistent treatment of various issues in a convenient manner. The Bill incorporates many of these clauses, as listed in paragraph 4(1) 4(1) of Schedule 28. Other sections of the 1845 Act have not been incorporated into the Bill.
- 4.17. Paragraph 5 incorporates sections 4 and 12 of the Railway Clauses Act 1863. Section 4 authorises deviation from plans within the limits of deviation set out on the plans deposited with the Bill. Section 12 deals with the costs and maintenance of new junctions with other railways.
- 4.18. Paragraph 6 modifies and gives effect to provisions in the Regulation of Railways Act 1889 on offences related to travelling without a ticket.
- 4.19. Paragraph 7 gives effect to provisions in the British Transport Commission Act 1949 relating to penalties for certain offences, extending (with adjustments) provisions for the protection of a railway, which apply to the existing railway network, to the new railway.
- 4.20. Paragraph 8 disapplies a clause in an undertaking previously given by the British Railways Board to the London Borough of Ealing and the London Borough of Hammersmith. The clause restricts the operation of diesel trains at the North Pole Depot near Wormwood Scrubs in west London. This was an undertaking given in relation to the Channel Tunnel Act. It needs to be disapplied because the current First Great Western depot at Old Oak Common will be taken by the Phase One scheme, and the diesel trains currently based there need a depot until their replacement by Intercity Express Programme trains in 2018.

5. More information

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