



HIGH SPEED TWO PHASE ONE INFORMATION PAPER

E1: CONTROL OF ENVIRONMENTAL IMPACTS

This paper outlines how environmental commitments will be met through controls both within and outside the 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the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.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.

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E1: CONTROL OF ENVIRONMENTAL IMPACTS

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. The Environmental Statement (ES) identifies the likely significant effects that will arise from the construction and operation of the Proposed Scheme, and identifies the range of mitigation measures that could be used to reduce or eliminate these effects. The assessment is based on a number of assumptions about design and construction practices. As the project is taken forward to detailed design and actual construction there may be some changes to assumed working practices and design.
- 2.2. It is important however that reassurance is provided that the nominated undertaker will not simply be free to change the design and working practices at will or without any control. There are therefore a number of mechanisms within the Bill and supporting the Bill that will control changes to the project and therefore provide reassurance as to the extent of the actual impacts of the construction and operation of the Proposed Scheme.
- 2.3. There are three distinct components that taken together will effectively control the environmental impacts of the construction and operation of the Proposed Scheme, they are:
 - arrangements within the Bill for approving detailed design and construction arrangements;
 - policies, commitments and undertakings entered into outside of the Bill; and
 - existing legislation, unless expressly or impliedly disapplied or modified by the Bill.
- 2.4. This information paper sets out the controls contained in the Bill and in general legislation which, along with undertakings given by the Secretary of State, 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 Directive; or
 - would be considered as part of a separate consent process (and therefore further EIA if required).

- 2.5. This will ensure that where EIA is legally required, works will not take place unless they have been assessed already as part of the ES or are subject to a further EIA and consent process.
- 2.6. Counsel for the Promoter confirmed on Day 1 of the Committee proceedings that the EMRs would be made contractually binding on the nominated undertaker. Counsel also gave an undertaking to Parliament on behalf of the Secretary of State concerning their enforcement:
- “Insofar as the Environmental Minimum Requirements are not directly enforceable against any person appointed as the nominated undertaker, the Secretary of State will take such steps as he considers reasonable and necessary to secure compliance with those requirements.”
- 2.7. Assurances (including those relating to the EMRs) will be enforceable against any person appointed as the nominated undertaker through the Secretary of State’s undertaking set out above. This means that in the event of a failure to comply with an assurance, recourse will be through the Secretary of State, and the Secretary of State is answerable to Parliament for securing compliance.
- 2.8. If it is felt that a contractor undertaking works authorised by the Bill is not meeting the requirements of the EMRs then there are steps that can be taken to ensure there is an investigation and if any corrective action is needed it is taken. These are:
- Report to the nominated undertaker - The first step is to report any breach to the nominated undertaker. The nominated undertaker will implement the necessary corrective action.
 - Report to the Secretary of State - If unsatisfied by the nominated undertaker’s response the issue can be reported to the Department for Transport, which can direct the nominated undertaker to implement corrective action.
 - Report to Parliament - If unsatisfied with the Department for Transport’s response, the issue can be reported - to the Speaker in the House of Commons or if it relates to an undertaking given to or accepted by the House of Lords Select Committee then to the Chairman of Committees in the House of Lords under Standing Order 130.

3. Controls within the Bill

Scope of the works

- 3.1. The first way in which environmental impacts are controlled is by defining the nature and location of the works.
- 3.2. Schedule 1 of the Bill describes the 'scheduled works' that the nominated undertaker will be authorised to carry out. The entries in the schedule provide a

description of the type of work and their location. For example, 'Work No. 1/2' in the London Borough of Camden is: "a railway (2.16 kilometres in length) being a realignment of the West Coast Main Line Railway, partly in tunnel, commencing within Euston Station at a point 139 metres south of the junction of Eversholt Street with Drummond Crescent, passing north-westwards and terminating at a point 68 metres east of the eastern face of the bridge carrying Regents Park Road over the West Coast Main Line Railway".

- 3.3. The Bill provides for these works to be constructed on land within the lateral limits of deviation (LoD) for the work concerned shown on the deposited plans and provides for an upwards limit of deviation of 3 metres from the levels shown on the deposited sections for works, subject to any maximum level for any station, depot or shaft shown on the sections (see information paper B2: Limits on Parliamentary Plans). The deposited plans also show a further limit of land to be acquired or used outside the limits of deviation, which may be used for ancillary purposes.
- 3.4. In the case of any development authorised by the Bill which consists of the carrying out of a work other than a scheduled work (that is to say, the work is one not described in Schedule 1 to the Bill), planning permission is only granted by the Bill if:
- the development is not likely to have significant effects on the environment; or
 - the development is not an exempt development with the meaning of the EIA regulations ; or
 - it is a development covered by the assessment in the ES.
- 3.5. Any required works which do not benefit from the general deemed planning permission by virtue of not complying with the above criteria would have to be the subject of a new application for planning permission which would be subject to further environmental impact assessment.

Planning conditions

- 3.6. Environmental impacts are also controlled through the planning regime provided by the Bill. The Bill (by virtue of clause 20) deems planning permission to be granted for the works authorised by it, but this is subject to the conditions set out in Schedule 17. 17 includes conditions requiring various matters to be subject to the approval of the local planning authority, and the extent of these depends on whether or not planning authority becomes a qualifying authority, that is to say one that "had, on or before the day on which the Bill for this Act was reported from Select Committee in the House of Lords, given the Secretary of State undertakings with respect to the handling of planning matters arising under this Schedule which he or she considered satisfactory ...".

- 3.7. The following planning conditions apply to any development under the permission conferred by the Bill. These conditions are enforceable under the Town and Country Planning Act 1990 in the ordinary way.

Operation and works

- 3.8. Schedule 17 to the Bill allows qualifying authorities to refuse to approve or condition the approval of plans and specifications for construction works, minor construction works, fences and walls, artificial lighting, waste and spoil disposal and borrow pits, to protect the local environment. The grounds on which approval can be refused or conditions imposed are specified in paragraph 2(5) and the table in paragraph 3(6) of Schedule 17. These provisions do not apply to works of a temporary nature (see the comments on construction arrangements below for those), to anything underground except any part of a station available for use without a ticket, nor to any tunnel or railway track bed. See information paper B1 - The Main Provisions of the Planning Regime for more details.

Construction arrangements

- 3.9. Environmental impacts of construction arrangements are also controlled through planning conditions. For construction arrangements relating to handling of re-useable spoil or topsoil; storage sites for construction materials, spoil or topsoil; works screening; artificial lighting; dust suppression and road mud control measures approval may be granted through a class approval from the Secretary of State. The Secretary of State when granting a class approval may attach conditions to it, and will consult the relevant qualifying authorities before making the class approval.
- 3.10. For construction arrangements relating to road transport and construction camps approval will be sought from the relevant qualifying authority and they may refuse to grant approval or impose conditions subject to the grounds set out in paragraphs 4(6) and 6 of Schedule 17.

Waste/spoil disposal and excavation

- 3.11. The Bill contains provisions to control environmental impacts from the disposal of waste or spoil or the excavation of bulk material from borrow pits. Before this takes place a scheme for the restoration of the land must be approved by the local planning authority. The ground on which the local authority can refuse to approve, or impose conditions on a scheme are set out in paragraphs 7(7) and (8) of Schedule 17.

Bringing into use of Scheduled Works

- 3.12. To ensure appropriate mitigation for the permanent works and their operation approval must be sought from the relevant qualifying authority before a Scheduled Work can be brought into use, unless that work is underground. Approval is to be granted if the qualifying authority considers that there are no reasonably practicable measures which need to be taken for the purposes of mitigating the impacts of the work or its operation or if it has approved a mitigation scheme submitted by the nominated undertaker. The qualifying

authority cannot refuse or impose conditions upon such a scheme unless it is satisfied that it is expedient to do so on the grounds that the scheme ought to be modified and is reasonably capable of being so modified in order to preserve the local environment, local amenity, a site of archaeological or historic interest or in the interests of nature conservation.

Restoration of construction sites

- 3.13. Where a site is used for construction purposes the site must be restored in accordance with a scheme submitted to the local planning authority within four months of the discontinuation of works at the site. Where no such scheme is agreed the site must be restored in accordance with a scheme determined by the appropriate Ministers.

Restoration of land following temporary possession and use

- 3.14. Schedule 16 provides for the temporary possession of land. Before giving up such land the nominated undertaker must return the land to its former condition or to a condition agreed by the owners of the land and the relevant planning authority.

Construction of replacement buildings

- 3.15. Although it does not authorise the construction of over-site development, the Bill includes provisions to ensure that the full environmental impact of the scheme and related development is properly considered. Clause 63 provides that when planning applications for the erection of buildings (including over-site development) to replace those demolished for the construction of such things as new stations are submitted they must be accompanied by an environmental statement (even if one would not otherwise be required by the 2011 EIA Regulations) if the application:
- is for the replacement of any of the major buildings to be demolished as listed in Clause 63; or
 - is for the replacement of any other building, if there would be likely to be significant effects on the environment as a result of the replacement building.

Accesses to highways affecting traffic

- 3.16. In order to construct the Proposed Scheme it will be necessary to construct new or alter existing accesses to the local road network. To control the impact of this on local traffic, local highway authorities will have an approval role. For the opening of an access onto, or the alteration of, a road at a place shown on the deposited plans the works must be carried out in accordance with plans and specifications approved by the highway authority. In addition the local highway authority may require the access to be moved elsewhere within the Bill limits where that is reasonably capable of being done. If an access is required at a location other than that shown on the deposited plans, the consent of the highway authority is required, subject to its approval of plans and specifications.

Stopping up, diversion and interference with a highway

- 3.17. The construction of the Proposed Scheme will require the temporary closure, diversion or interference with highways. In order to address local impacts the Bill provides for highway authority input. Where a highway is specified within the Bill, the nominated undertaker must consult the highway authority about the exercising of the powers before doing so. Where the powers are to be exercised in relation to a highway not specified within the Bill the nominated undertaker must obtain the consent of the highway authority.

Works affecting highways

- 3.18. Part 1 of Schedule 33 requires the nominated undertaker in exercising the powers in the Bill in relation to highways to have regard to the potential disruption of traffic and to seek to minimise such disruption so far as reasonably practicable and gives highway authorities rights of approval over various matters concerning details of the works affecting highways.
- 3.19. Additional controls are contained in Schedule 4. Where the nominated undertaker constructs a new or alters an existing highway, the construction or alteration must be completed to the reasonable satisfaction of the highway authority, who shall certify that fact in writing to the nominated undertaker.
- 3.20. Where the nominated undertaker constructs or realigns a highway that is constituted or comprises a carriageway, it must be carried out in accordance with plans, sections and specification approved by the highway authority.

Protection of inland waterways and land drainage, flood defence, water resources and fisheries

- 3.21. The construction of the Proposed Scheme will have impacts on inland waterways and land drainage, flood defences, water resources and fisheries. In order to address these impacts the Bill includes a range of controls for the relevant authorities.
- 3.22. The impacts on inland waterways are addressed in Part 4 of Schedule 33, this gives the Canal and River Trust the power to approve plans and specifications for works affecting waterways for which it is responsible.
- 3.23. Part 5 of Schedule 33 states that before beginning to construct any “specified work” (in the main, those affecting drainage, flood storage and flood defence, the flow or purity of water and conservation of water resources), the nominated undertaker will submit plans, including method statements, for the works to the Environment Agency or local drainage authorities (i.e. lead local flood authorities, or internal drainage boards) for approval. Works will be constructed in accordance with the approved plans.
- 3.24. The Environment Agency or local drainage authorities may, amongst other matters, make conditions requiring the nominated undertaker at its own expense to construct such protective works as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for

flood defence purposes is not impaired during the construction of the specified works.

- 3.25. These provisions have effect instead of the normal consenting regime which would apply, for example, under the Land and Drainage Act 1991, or the Water Resources Act 1991.

Statutory undertakers' works in consequence of the Proposed Scheme

- 3.26. If the environmental impacts of utilities' and similar bodies' works to their apparatus made necessary in consequence of the Proposed Scheme have been assessed in the published Environmental Statement, then under Schedule 32 of the Bill the utilities' permitted development rights under the General Permitted Development Order would generally be available to them, subject to the terms of any direction by the Secretary of State.
- 3.27. The Secretary of State is given powers by Schedule 32 to give directions to a utility having effect as conditions of the permitted development for the purpose of avoiding a breach of any undertaking given to the Select Committee in the House of Commons or the House of Lords or securing that the environmental effects of carrying out the permitted development are not materially different from those assessed. Under Schedule 30 the Secretary of State is also given power to determine whether in any given case the development concerned has been so assessed.

Reinstatement of facilities

- 3.28. Clause 50 of the Bill confers power on the nominated undertaker to reinstate facilities whose operation or use is discontinued by virtue of the construction of the Proposed Scheme. These works are subject to the planning regime set out in Schedule 17 and discussed above. However greater controls for the protection of the local environment may be required over the construction or use of the reinstated facilities than is provided by Schedule 17 by itself. Accordingly, under clause 50(4) the Secretary of State may direct that the planning permission which would otherwise be conferred by the Bill is not to apply to that development and may instead direct that deemed planning permission is granted subject to such conditions as are specified in the direction.

Disputes

- 3.29. Where the controls within the Bill which have been referred to above require consents or approvals from local authorities and similar regulatory bodies, these are generally not to be unreasonably withheld and the Bill provides various dispute resolution procedures where disagreements arise. The Bill sets these out in more detail.

4. Controls outside the Bill

- 4.1. In addition to the many controls provided for in the Act itself, there are a number of other mechanisms that will support the control of construction impacts. They are described below.

Environmental Minimum Requirements (EMRs)

- 4.2. This is a suite of documents that is being developed in consultation with local authorities and other relevant stakeholders in relation to the environmental impacts of the design and construction of the Proposed Scheme. Any nominated undertaker will be contractually bound to comply with the controls set out in the EMRs. However, where it is considered necessary, these documents will be supplemented or varied in site specific undertakings in order to deal with specific issues around a particular site. The EMRs comprise:
- a number of specific requirements, including that the nominated undertaker will in any event, and apart from the controls and obligations set out in this paper, use reasonable endeavours to adopt mitigation measures that will further reduce any adverse environmental impacts caused by the Proposed Scheme, insofar as these mitigation measures do not add unreasonable costs to the project or unreasonable delays to the construction programme;
 - the undertakings and assurances given by the Secretary of State (see paragraph 4.9 below); and
 - the four documents mentioned in paragraphs 4.4 to 4.7 below.
- 4.3. The EMRs will remain in draft until the Bill receives Royal Assent. The EMRs will continue to be refined during the Parliamentary process through engagement with local authorities and other relevant stakeholders. Any changes made to the EMRs during that process will not lessen the environmental controls in the draft EMRs published at the time of Bill deposit.

Planning Memorandum

- 4.4. The Planning Memorandum will set out in detail the responsibilities and requirements on planning matters in relation to those authorities that choose to become qualifying authorities. There will be a considerable number of Schedule 17 submissions and the memorandum will seek to ensure that the process of obtaining these consents does not unduly hinder the construction of the Proposed Scheme.

Heritage Memorandum

- 4.5. The Heritage Memorandum provides a framework for the nominated undertaker, Heritage England, local authorities and other stakeholders to work together to ensure that the design and construction of the Proposed Scheme is carried out with due regard for heritage considerations.

Code of Construction Practice

- 4.6. The Code of Construction Practice sets out specific details and working practices in relation to site preparation (including site investigation and remediation, where appropriate), demolition, material delivery, excavated material disposal, waste removal and all related engineering and construction activities. These will be the arrangements by which the nominated undertaker and any sub-contractors will be required to work.

Environmental Memorandum

- 4.7. The Environmental Memorandum provides a framework for the nominated undertaker and representatives of the National Environment Forum to work together to ensure that the design and construction of the Proposed Scheme is carried out with due regard for environmental considerations.

Property Mitigation Policies

- 4.8. In order to provide reassurance to property owners, policies have been developed to provide for noise mitigation and for the prevention or repair of damage caused by settlement. Further discretionary property compensation measures are currently being consulted on.

Undertakings and Assurances

- 4.9. During the passage of the Bill, the Secretary of State will enter into a range of undertakings and assurances that will be made contractually binding on any nominated undertaker. A register of all undertakings and assurances is being compiled and will be finalised after Royal Assent. Undertakings range from being generic to the entire project to being site specific.

5. Existing Legislation

- 5.1. Unless a piece of legislation will be expressly or impliedly disapplied, or modified by the Bill it will continue to apply as normal to the design and construction of the Proposed Scheme. For example, environmental permits or discharge consents will still be required.

6. More information

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