

Operations Note 047

Date: 06 September 2018

High Speed 2 (HS2) rail - impacts on woodland management activity

Purpose

Landowners who are affected by the route of HS2, and have trees and woodland under management (through a felling licence or grant scheme obligation) now or in the future, are unclear as to what access they will have to the land affected by the HS2 construction phases, and what woodland activity they can undertake.

This Operations Note provides guidance to the forestry sector about the interest of HS2 Ltd. on:

- land affected by the HS2 rail routes, and the impact that interest will have on the use of approved felling licences and grant schemes
- applications currently under review by the Forestry Commission (FC)
- how future applications for woodland activity will be managed in relation to the safeguarded zones associated with the HS2 routes

This guidance seeks to provide clarity for landowners, agents, HS2 Ltd. and FC staff.

1. HS2 – Glossary, and phases of work

1.1	HS2 glossary	<p>LOD – Limits of deviation.</p> <p>LLAU – Limit of land to be acquired or used.</p> <p>'Safeguarded Zone' – The total area of the LOD and LLAU.</p> <p>HS2 Ltd. – The company constructing the HS2 railway.</p>
1.2	HS2 phases of work	<p>Phase 1 – London to Birmingham/Lichfield as authorised by High Speed Rail (London to West Midlands) Act 2017, granted royal assent in Feb 2017.</p> <p>Phase 2a – Lichfield to Crewe as proposed, to be authorised in the High Speed Rail (West Midlands to Crewe) Bill. This is currently deposited with parliament.</p> <p>Phase 2b - Birmingham to Leeds/Crewe to Manchester, for which Safeguarding Directions are in place for development affecting the proposed route.</p>

2. Legislation

2.1	HS2 legislation summary	<p>High Speed Rail (HSR) Act 2017 – Section 20.</p> <p>Planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990, for the carrying out of development authorised by the HSR Act.</p> <ul style="list-style-type: none"> • Therefore, any felling of trees for the implementation of the works, deemed to be granted planning permission under the HSR Act, would fall within the Forestry Act 1967 exemption 9(4)(d) • The Forestry Act exemption 9(4)(d) uses the word 'immediately'. This is interpreted as preventing the felling of trees too far ahead of the time the land is required for the implementation of the planning permission. The proposed tree felling works required to implement the HS2 Phase 1 works are considered immediate enough for the exemption to apply <p>The High Speed Rail (West Midlands to Crewe) Bill (the Phase 2A Bill) contains a similar deemed planning permission, in clause 17 of the Bill. When the Phase 2A Bill gets Royal Assent, the same exemption as above will apply.</p>
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3. HS2 – Has permission to fell trees (Phase 1)

3.1	HS2 Ltd. felling trees in LOD	HS2 Phase 1 tree felling within the LOD is exempt from need of a felling licence under 9(4)(d) of the Forestry Act 1967 because of Section 20 HSR Act 2017
3.2	HS2 Ltd. felling trees in LLAU	HS2 Phase 1 tree felling within the LLAU is exempt from need of a felling licence under 9(4)(d) of the Forestry Act 1967 because of Section 20 HSR Act 2017
3.3	HS2 Ltd. felling trees outside of LOD/LLAU	<p>HS2 Phase 1 tree felling outside of the LOD/LLAU is permitted under HSR Act Schedule 2 Part 1(7)</p> <p>A 'tree works notice' would be served by HS2 to enable trees to be felled and removed. No felling licence under the Forestry Act 1967 or other permission is required.</p> <p>Where HS2 do not serve a 'tree works notice', a felling licence is required.</p>

3.4	HS2 Ltd. felling trees already covered by a Felling Licence	<p>If HS2 Ltd. takes possession of trees already covered by a felling licence, and HS2 Ltd. fells these and other trees as part of the implementation of the Phase 1, these works are deemed to be granted planning permission under the HSR Act 2017.</p> <p>The landowner should keep any documentation from HS2 confirming their need to do the felling. The Felling Licence is not deemed to have been enacted by the landowner, and restocking conditions would not be enforced by the FC.</p>
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4. Landowner – Has a felling licence to fell trees

4.1	Land owner felling trees in LOD / LLAU	<p>The land owner (or their agents) can fell trees covered by a felling licence on any land within the LOD/LLAU. up until HS2 Ltd. takes control of the Phase 1 land.</p> <p>The timber felled under the felling licence can be removed and sold (subject to any ongoing farm woodland legacy obligations), up until HS2 Ltd. takes control of the land.</p>
4.2		<p>After HS2 Ltd. takes possession of the Phase 1 land, felling under the felling licence and removal of timber can only be undertaken by the land owner (or their agents) on land within the LOD / LLAU with HS2 Ltd. permission.</p> <p>The land owner will not be seen as felling trees for the implementation of the HSR Phase 1 works, and so any conditions imposed by the felling licence will need to be met – see Part 5.</p>

5. Landowner - Restocking conditions after felling

For a felling licence, restock notice or enforcement notice		
5.1	Land owner meeting the conditions for felling of trees in LOD or LLAU	<p>Conditions for restocking (for felling licences and for enforcement cases) will continue to apply under the Forestry Act 1967.</p> <p>If HS2 Ltd. has not taken possession of the Phase 1 land, the landowner is deemed to be able to meet the obligations the conditions create, and must comply with them.</p>
5.2		<p>If HS2 Ltd. has taken possession of the Phase 1 land, and HS2 Ltd. permit entry to the land, the landowner is deemed to be able to meet the obligations the conditions create, and must comply with them.</p>
5.3		<p>If HS2 Ltd. has taken possession of the land and refuses entry to the land, the land owner cannot comply with the conditions at that time. The landowner should inform the FC immediately, providing written evidence of the impediment.</p> <p>If the HS2 Ltd. development, or future operational activity, permanently prevents restocking conditions being met, then those conditions will be withdrawn by the FC.</p> <p>If the HS2 Ltd. development, or future operational activity, will not permanently prevent restocking conditions being met, then, once HS2 Ltd. gives up control of 'the land' (or part of it) and/or allows entry to the landowner, the landowner is deemed to be able to meet the obligations that the conditions create.</p> <p>The landowner should comply with those conditions, but this will be at a later date (for compliance), as agreed by the FC.</p>

6. Landowner - Applying for a felling licence

6.1	Land owner applying for felling permission in LOD or LLAU	<p>A landowner can apply for a Felling Licence to fell trees within the LOD and LLAU at any time, whether HS2 Ltd. has taken possession of the land or not.</p> <p>The FC will process felling applications as normal.</p> <p>Unless HS2 has taken possession of the Phase 1 land (See Part 4.2), once a felling licence is approved, it (and any conditions attached to it) can be enacted by the land owner, and any timber felled can be removed.</p>
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7. Landowner – Has grant agreement for woodland creation

7.1	Land owner has a woodland agreement in the LOD or LLAU, and is in receipt of payments, or the scheme is still within the obligation period.	<p>Where a land owner receives a Notice of Possession from HS2 Ltd. on land that receives a grant or has obligations under a Legacy grant scheme (FWS/FWPS/EWGS), or has a Countryside Stewardship (CS) Delivery Services (CSDS) agreement, they must make a claim of Force Majeure to the Forestry Commission to avoid full grant recovery on the areas of planted woodland lost to development.</p> <p>This must be done within 10/15 days of receipt of the HS2 Ltd. Notice of Possession, depending on the agreement type terms and conditions.</p> <p>All legacy agreement holders who might be affected by the HS2 development have received a letter (sent spring 2018) advising them of what they need to know and do.</p>
7.2	Land owner has an agreement to create new woodland in the LOD or LLAU, and has not yet done so	If HS2 Ltd. has not and will not take possession of the Phase 1 land, the landowner is able to plant the new woodland and claim the relevant grants. (See 7.1 above)
7.3		If HS2 has taken possession of the Phase 1 land, the landowner must have HS2 Ltd. permission to enter the land and plant the new woodland in order to claim the relevant grants. (See 7.1 above)

8. Landowner – Plans new woodland creation

8.1	Landowner plans to create new woodland in LOD / LLAU – and has not agreement for grant aid	<p>Since 2016, the FC has not supported grant aid for new tree planting proposals within the LOD or LLAU areas for Phase 1 or 2a for HSR.</p> <p>This restriction has now been extended to land within the Safeguarded Zone for Phase 2b of the HS2 project.</p> <p>This is land needed for HS2 and, until the completion of the project, this land will not be available for woodland creation unless instigated by HS2 Ltd.</p>
8.2		The land owner is entitled to apply, at any time, for an opinion (under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999) on creating new woodland within the LOD/LLAU, without grant aid. The FC will give their EIA opinion after engagement with HS2 as an interested stakeholder.

9. HS2 – Plans new woodland creation

9.1	HS2 Ltd. plans to create new woodland in LOD / LLAU/ elsewhere	<p>The Environmental Impact Assessment (EIA) statement required by the HSR Act has already addressed the environmental impacts of the rail proposal for Phase 1, and requires HS2 to provide appropriate mitigation for the development impact on habitats and species. This will include some new woodland creation.</p> <p>The FC is not required to do further EIA work under the EIA (Forestry) (England and Wales) Regulations 1999 if the works have already been determined under the HSR Act.</p> <p>The FC will rely on HS2 Ltd. to make relevant EIA regulatory determinations on woodland creation projects outside of the LOD and LLAU, as required under the HSR Act.</p>
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Versions

Version 1 – Issued 06.09.2018

Annex 1 – HS2 Phases route map

