

## HIGH SPEED TWO PHASE 2a INFORMATION PAPER

### B6: ENVIRONMENTAL IMPACT ASSESSMENT AND HUMAN RIGHTS

This paper outlines the process of environmental impact assessment for the High Speed Rail (West Midlands - Crewe) Bill, including public participation in the process, and the human rights issues raised by 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 High Speed Rail (West Midlands-Crewe) Bill which is now enacted. It was finalised at Royal Assent and no further changes will be made.

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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# B6: ENVIRONMENTAL IMPACT ASSESSMENT AND HUMAN RIGHTS

## 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 phases: Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route to Crewe. Phase 2b will extend the route to Manchester, Leeds and beyond. The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017.
- 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 July 2017, the Government introduced a hybrid Bill<sup>1</sup> to Parliament to seek powers for the construction and operation of Phase 2a of HS2 (the Proposed Scheme). The Proposed Scheme is a railway starting at Fradley at its southern end. At the northern end it connects with the West Coast Main Line (WCML) south of Crewe to allow HS2 services to join the WCML and call at Crewe Station. North of this junction with the WCML, the Proposed Scheme continues to a tunnel portal south of Crewe.
- 1.4 The work to produce the Bill includes an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs)<sup>2</sup>, which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed Scheme.
- 1.5 The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. The nominated undertaker will be bound by the obligations contained in the Bill and the policies established in the EMRs. There may be more than one nominated undertaker.
- 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 Proposed Scheme have been reached.

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<sup>1</sup> The High Speed Rail (West Midlands – Crewe) Bill, hereafter 'the Bill'.

<sup>2</sup> For more information on the EMRs, please see Information Paper E1: Control of Environmental Impacts.

## 2. Overview

- 2.1 The first section of this information paper outlines the process of environmental impact assessment ('EIA') that applies to the Bill, and the second section explains how issues of human rights are addressed in relation to the Bill.

## 3. Environmental impact assessment

- 3.1 EIA is derived from European Union law. Although the UK has withdrawn from the European Union, the rights and obligations under EU law apply until the end of the implementation period on 31 December 2020. It is expected that after that the European Union (Withdrawal) Act 2018 will convert the body of existing EU law into domestic law and preserve the laws we have made in the UK to implement our EU obligations, so that the same rules and laws will apply. It will then be for democratically elected representatives in the UK to decide on any changes to that law.
- 3.2 The EIA Directive (2011/92/EU as amended by Directive 2014/52/EU) requires an EIA to be carried out before the 'competent authority' may grant development consent for certain projects that are likely to have significant effects on the environment. For that purpose, the developer must provide environmental information on the proposals and the reasonable alternatives that the developer has studied. The competent authority must take this into account in making its decision to grant development consent. The decision must incorporate a reasoned conclusion on the significant effects of the project on the environment, any environmental conditions attached to the decision and a description of any features of the project and/or measures envisaged to avoid, reduce and offset significant adverse effects, as well as, where appropriate, monitoring measures.
- 3.3 The EIA Directive includes requirements for public participation in the decision-making process. These requirements were added to the EIA Directive to ensure compliance with the Aarhus Convention on public participation in environmental decision making, to which the European Union and the United Kingdom are parties.
- 3.4 Projects, such as the Proposed Scheme, which are promoted for development consent through a specific act of national legislation (in this case, an Act of Parliament) may be exempted from the public participation requirements of the EIA Directive. Article 2(5) of the EIA Directive states –

“Without prejudice to Article 7, in cases where a project is adopted by a specific act of national legalisation, Member States may exempt that project from the provisions relating to public consultation laid down in this Directive, provided the objectives of this Directive are met”.
- 3.5 Article 2(5) requires that the objectives of the EIA Directive are achieved through the legislative process. The European Court of Justice has given the following summary of what that means–

“A measure adopted by a parliament after public parliamentary debate constitutes a specific act of national legislation within the meaning of that provision where the legislative process has enabled the objectives pursued by the Directive, including that of supplying information, to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for the project”<sup>3</sup>.

- 3.6 The hybrid Bill process meets these requirements. In the case of the Bill, Parliament is the competent authority for EIA purposes, because it decides whether to grant development consent (in the form of deemed planning permission). To ensure that the objectives of the Directive are met, an EIA process is included in the relevant Standing Orders of each House of Parliament. The Standing Orders relating to EIA are essentially the same in both Houses of Parliament.
- 3.7 Standing Orders HL27A and HC27A apply to the Bill. These orders require that the promoter of a Bill deposits an Environmental Statement for inspection. The statement is deposited in the Private Bill Office. The statement must contain the equivalent environmental information that would be required to be supplied to the competent authority in an ordinary procedure for granting development consent for a project under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571). The environmental statement must include a Non-Technical Summary of its main findings and a description of the reasonable alternatives to the project studied by the promoter.
- 3.8 Standing Orders HC224A and HL83A provide opportunities for public participation by enabling any member of the public who wishes to comment on the deposited environmental statement to do so within a specified period prior to Second Reading of the Bill.
- 3.9 At the close of the specified period for public comment on the deposited environmental statement, an independent assessor appointed by Parliament must prepare a report to Parliament summarising the issues raised in the comments on the statement.
- 3.10 The Second Reading of the Bill may not take place until at least 14 days after the assessor's report has been submitted to the relevant House. Second Reading is the first substantive stage in the Bill process where the Bill is debated by Members of Parliament and voted upon.
- 3.11 The process outlined in paragraphs 3.7 to 3.9 above applies to any supplementary environmental statement deposited at a later stage in the Bill process.

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<sup>3</sup> See Grand Duchy of Luxembourg v Linster Case C-287/98 [2000] ECR I-6917 at [59]

- 3.12 Following Second Reading of the Bill, a Select Committee of MPs will consider petitions from persons whose property or interests are directly and specially affected by the Bill. At the close of its sittings, the Select Committee will report its conclusions to the House of Commons.
- 3.13 At Third Reading, the Minister in charge of a hybrid Bill must set out the main reasons and considerations upon which Parliament is invited to consent to the project. He or she must also set out the main measures to avoid, reduce and, if possible, offset the project's major adverse environmental effects. This information must be laid before the House in writing at least seven days before Third Reading. Third reading is the final opportunity for each House to debate the contents of a Bill and vote on it.
- 3.14 In accordance with the Standing Orders, the Department for Transport has deposited an environmental statement for the Bill. It is available at:
- <https://www.gov.uk/government/collections/hs2-phase-2a-environmental-statement>
- 3.15 The statement includes a short guide to the structure of the statement, a non-technical summary and a full report on alternatives.
- Supplementary environmental information was deposited in March 2018 and February 2019. This is available at:
- <https://www.gov.uk/government/collections/hs2-phase-2a-supplementary-environmental-statement-and-additional-provision-environmental-statement>
  - <https://www.gov.uk/government/collections/hs2-phase-2a-supplementary-environmental-statement-2-and-additional-provision-2-environmental-statement-february-2019>
- 3.16 In the case R(on the application of Hillingdon London Borough Council and others) v Secretary of State for Transport) [2014] UKSC 3, the Supreme Court rejected the argument that the hybrid Bill process is incompatible with the EIA Directive. The Supreme Court's judgment and a summary are available at:
- <https://www.supremecourt.uk/cases/docs/uksc-2013-0172-judgment.pdf>
  - <https://www.supremecourt.uk/cases/docs/uksc-2013-0172-press-summary.pdf>
- 3.17 In order to ensure that the Proposed Scheme is carried out in accordance with the basis of the EIA process, the parameters assessed and the mitigation measures adopted, the Government will develop various control and mitigation measures, most notably the EMRs. These requirements will consist of a Code of Construction Practice, a Planning Memorandum, a Heritage Memorandum, an

Environmental Memorandum and the undertakings and assurances given to Parliament and to petitioners during the passage of the Bill<sup>4</sup>. Drafts of the CoCP and the Planning, Heritage and Environmental Memoranda are available at:

- <https://www.gov.uk/government/collections/high-speed-rail-west-midlands-to-crewe-bill>

3.18 The controls to be contained in the EMRs are a key element of the Government's overall strategy for ensuring that impacts which have been assessed in the environmental statement are not exceeded unless this:

- results from a change in circumstances which was not likely at the time of the environmental statement; or
- would not be likely to have significant environmental impacts (meaning significant adverse impacts where the change is a modification to the current project); or
- would be subject to a separate consent process (and therefore further EIA is required).

3.19 The Secretary of State has given an undertaking to Parliament in relation to the enforcement of the EMRs, as he did in relation to the Bill to authorise Phase One of HS2. On the first day of the Select Committee on the Bill in the House of Commons (19 March 2018) the Secretary of State gave an undertaking that, insofar as the Environmental Minimum Requirements are not directly enforceable against any person appointed as a nominated undertaker, the Secretary of State would take such steps as he considers are reasonable and necessary to secure compliance with those requirements. That undertaking would also apply in a case where a statutory undertaker is carrying out development in connection with the Phase 2a Project in reliance on planning permission enjoyed under Schedule 31 to the Bill.

## 4. The Aarhus Convention

4.1 The United Kingdom is a signatory to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, Denmark on 25 June 1998 – the “Aarhus Convention”. The European Union is also a signatory to the Convention. The Convention takes effect as part of EU law through the EIA Directive (2011/92/EU as amended by Directive 2014/52/EU).

4.2 Article 6 of the Aarhus Convention provides for public participation in environmental decision-making where development consent is sought for a

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<sup>4</sup> Further information on the environmental minimum requirements can be found in Information Paper E1: Control of Environmental Impacts, which explains the promoter's approach to dealing with environmental impacts and their regulation.

project such as the Proposed Scheme. Those rights are given effect to by the procedures set out in Standing Orders HC224A and HL83A, detailed above.

## 5. Human rights

- 5.1 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill to make a statement, before Second Reading, about the compatibility of the Bill with the European Convention on Human Rights. The Secretary of State has made the following statement: "In my view the provisions of the High Speed Rail (West Midlands-Crewe) Bill are compatible with the Convention Rights." This statement was made on introduction of the Bill in the House of Commons.
- 5.2 The principal rights engaged by the Bill and the Proposed Scheme appear to the Secretary of State to be those under article 8 (right to respect for home, family and private life) and article 1 of the 1st Protocol (right to the peaceful enjoyment of possessions). It is considered that interference with these rights is justified by the considerable public benefits of the Proposed Scheme. There is a compelling case in the public interest which makes the level of interference proportionate under article 8 and such as to strike a fair balance under Article 1 Protocol 1. This is sufficient to outweigh the impact of the railway on private property rights when considered in the context of the right to claim compensation for compulsory purchase and the panoply of measures forming part of the Proposed Scheme for the purpose of avoiding, limiting or mitigating impacts resulting from its construction or operation.
- 5.3 The Bill does not engage rights to a fair trial under Article 6 of the Convention, as the Bill process concerns the passage of legislation and not the determination of civil rights.
- 5.4 The petitioning process and hearings before the Select Committee will ensure that those whose property or interests are directly and specially affected will have a proper and fair opportunity to present their concerns to Parliament.
- 5.5 The exercise by the Promoter of powers conferred by the Bill, including the power to extend time limits for the exercise of compulsory purchase powers and/or the carrying out of development pursuant to deemed planning permission, will be subject to judicial review. To the extent that the Promoter's exercise of such powers may engage the petitioners' civil rights, the availability of judicial review is sufficient to safeguard rights under Article 6 of the Convention.

## 6. More information

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