

HIGH SPEED TWO PHASE 2a INFORMATION PAPER

B9: INTRODUCTION TO HYBRID BILL POWERS

This paper provides an introduction to the powers that are contained in the hybrid Bill for HS2.

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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B9: INTRODUCTION TO HYBRID BILL POWERS

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 Bill¹ 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)², 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.

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

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

2. Overview

- 2.1. This information paper provides a brief introduction to the principal powers and provisions contained in the Bill.
- 2.2. The information provided in this paper is a high-level summary of the following powers and provisions:
 - work powers;
 - highways powers;
 - land powers;
 - utilities;
 - planning;
 - disapplication of other legislation;
 - railway legislation; and
 - protective provisions for statutory undertakers.
- 2.3. These are addressed in turn below. This list of powers is not exhaustive, and the Bill contains a range of other provisions. Readers wishing to determine the application and effect of these provisions in specific circumstances should consult the Bill itself and seek appropriate legal advice where necessary.
- 2.4. The Bill can be viewed on the UK Parliament website at:
<http://services.parliament.uk/bills/>

3. Works powers

- 3.1. Clause 1 of the Bill authorises the construction of the specific works listed in Schedule 1 to the Bill, known as scheduled works. The schedule contains only a brief description of each work, so is not an exclusive list of all works required in connection with the scheduled works. The scheduled works comprise the railway works, highway works, bridges, watercourse diversions and major utility works.
- 3.2. The centrelines of the scheduled works are shown on the Bill Plans and Sections (Volume 1), together with limits of deviation. The Bill authorises the works to be constructed anywhere within these limits. Further information on the limits of deviation may be found in Information Paper B3: Limits on Parliamentary plans.

The Plans and Sections can be found at:
<https://www.gov.uk/government/collections/high-speed-rail-west-midlands-to-crewe-bill>
- 3.3. The longitudinal sections along the centrelines of the works are shown on the Bill Plans and Sections (Volume 2).
- 3.4. The scheduled works are not all the works required for the Proposed Scheme. Clause 2 gives powers to carry out ancillary works required in connection with the scheduled works within the Bill limits. Such works include environmental

mitigation works, drainage works, works to watercourses, roads, railways and other infrastructure.

- 3.5. Schedules 2 and 3 contain further powers to carry out works, including surveys and investigations, protective works to buildings and utilities, works to trees and canals, and diversion of overhead power lines.

4. Highway powers

- 4.1. The Bill includes various powers relating to highways, including in relation to access, interference, construction and maintenance. These are set out in Schedule 4 of the Bill. Powers to interfere with highways include the following:
 - Power to close a highway permanently, with no replacement. This power can be exercised only if certain conditions relating to access to affected properties are met. The affected parts of highways are listed in Table 1 of Schedule 5.
 - Power to close a highway, with a replacement. Highways cannot be stopped up until the replacement is in place, except for temporary closures required to build the replacement highway. Relevant highways are listed in Table 2 of Schedule 5, with the replacement highway specified.
 - Power to create new highways. The Bill provides powers to create new public rights of way, similar to the powers in the Highways Act 1980. The highways to be created, are listed in Table 3 of Schedule 5.
 - Power to temporarily stop up a highway. The extent of highway that can be temporarily stopped up is listed in Table 4 of Schedule 5. The Promoter can also stop up any highway, within or outside limits, with the consent of the Highway Authority.
- 4.2. The Bill also contains provisions about obtaining approvals for highway works from Highways Authorities. These are contained in Schedule 4 and Part 1 of Schedule 32. It is likely that supplementary agreements will be reached with affected Highway Authorities. These will be set out in Undertakings or Assurances which will accompany the Act, once the Bill has been passed.

5. Land powers

- 5.1. The Bill, once enacted, confers powers to acquire land compulsorily, take temporary possession of land, and use land for Phase 2a purposes.
- 5.2. Clause 4 of the Bill contains the power to compulsorily acquire land within the limits of deviation (LoD) and the limits of land to be acquired or used (LLAU), provided that the land is required for Phase 2a purposes. This includes a power to compulsorily acquire airspace, subsoil, easements and other rights over land. Additional information is provided in a number of Schedules, including:
 - Schedule 6: this sets out a non-exhaustive list of purposes for which land within the LLAU may be permanently acquired or used.

- Schedule 8: this lists land over which the Secretary of State’s power of acquisition is limited to acquiring rights for the purposes specified in the schedule, such as a right of access or the power to impose a restrictive covenant over land. This enables, for example, mitigation works to be placed on land, and then for it to be handed back to its previous owner with a covenant preventing removal of the mitigation.
 - Schedule 11: this lists land where the Secretary of State can only acquire land gm below the surface.
 - Schedule 12: this lists highway land where the Secretary of State cannot exercise compulsory purchase powers but the nominated undertaker can carry out street works.
 - The Bill also contains provisions about temporary possession and use of land at Schedule 15. The table in Schedule 16 sets out purposes for which the nominated undertaker may take temporary possession of the land identified in the table. The nominated undertaker may also take temporary possession of that land or, subject to certain exceptions, any other land within the Act limits, for Phase 2a purposes.
- 5.3. Land is defined by reference to the land parcel number and parish, which are shown on the Bill plans. Land parcels on the plans are distinguished from each other by means of shading. The shading has no significance in terms of the powers sought over the land.

6. Compensation

- 6.1. The Bill contains various provisions relating to compensation where powers of compulsory acquisition are exercised. Further information on compensation can be found in the C series Information Papers.

7. Utilities

- 7.1. Specific utility diversions are authorised under the Bill – certain major diversions are major works which are listed in Schedule 1 of the Bill as part of the scheduled works. Clause 2 of the Bill contains further powers to carry out certain works to utilities anywhere within the LoD and LLAU.
- 7.2. Schedule 2 also contains powers to carry out protective works to utilities within a set distance of the works authorised under the Bill 7.3 Works to utilities require agreement with the utility companies. Provisions governing this relationship are set out in Parts 2 and 3 of Schedule 32. These provisions may be modified by agreements reached with utility companies. Any such agreements will be listed in the Register of Undertakings and Assurances.

8. Planning

- 8.1. The Bill grants deemed planning permission, similar to an outline planning consent, for development authorised by the Bill. For development that is not

part of the scheduled works, planning permission is deemed to be granted only where it is:

- not likely to have significant effects on the environment; or
- exempt development under the Environmental Impact Assessment Regulations; or
- covered by the ES.

8.2. Approval of details must be obtained from local planning authorities through conditions imposed on the deemed planning permission which are set out in Schedule 17. Further details of the planning regime are set out in Information Paper B2: Main provisions of the planning regime.

9. Disapplication or modification of other legislation

9.1. The deregulation provisions of the Bill disapply legislation relating to a number of matters, including:

- listed buildings and ancient monuments;
- burial grounds and consecrated land;
- commons and open spaces;
- trees;
- overhead lines;
- water;
- buildings;
- street works;
- lorries;
- noise; and
- local Acts.

9.2. The general principle applied in control over such matters is that the requirement to obtain an in-principle consent from third parties is removed, but that in appropriate cases the ability to approve details of the works is conferred by the Bill itself. This means that the Proposed Scheme is not subject to the control of other parties: it does not risk being delayed, nor is the will of Parliament thwarted, but proper protection and control continue to be afforded.

9.3. Further details of disapplication and modifications can be found in Information Paper B4: Disapplication of legislation.

10. Railway legislation

10.1. The construction and operation of the Proposed Scheme will have impacts on the existing railway infrastructure and services. The Bill contains provisions which regulate how the Proposed Scheme will integrate with this existing infrastructure and regulatory regime.

- 10.2. Further information on the powers relating to existing infrastructure are contained in Information Paper B7: Railway powers in the hybrid Bill.

11. Protective provisions for statutory undertakers

- 11.1. The Bill provides the nominated undertaker with powers to carry out works affecting infrastructure, apparatus or other facilities or land which are the responsibility of various statutory undertakers. In order to ensure that the interests of these bodies are protected, the Bill includes, at Schedule 32, protective provisions which describe the processes that must be followed prior to implementing such works.
- 11.2. In general, the protective provisions require the nominated undertaker to engage with these bodies during the design of the works, to obtain the necessary agreement and approvals from them, and then to carry out the works in the manner approved.
- 11.3. The bodies covered by these requirements are those that have responsibility for:
- highways and traffic;
 - electricity, gas, water, and sewerage undertakings;
 - electronic communications code networks;
 - land drainage, flood defence, water resources and fisheries; and
 - canals and rivers.
- 11.4. In some cases, the requirements of the schedule will be superseded by separate agreements reached with individual undertakers. These will be included in the Register of Undertakings and Assurances.

12. Time limits

- 12.1. Certain powers within the Bill are subject to time limits. Further information on these time limits can be found in Information Paper B8: Time limits in the Bill.

13. More information

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