

# HS2

## Party wall guidance under the HS2 regime

May 2022



## Department for Transport

High Speed Two (HS2) Limited has been tasked by the Department for Transport (DfT) with managing the delivery of a new national high speed rail network. It is a non-departmental public body wholly owned by the DfT.

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## **1. Statement of purposes**

- 1.1. This guidance aims to explain how the provisions of the existing HS2 Acts [(London – West Midlands) & (West Midlands – Crewe)] (“the HS2 Acts”) and expected future HS2 legislation interacts with the Party Walls Act 1996. The primary purpose of the Party Wall regime as modified by the HS2 legislation is to retain safeguards for those who own buildings or land adjacent to the HS2 railway, whilst ensuring the HS2 railway’s safe, economic and timely delivery and subsequent operation. This includes both excavation and underpinning works as well as party wall works.
  
- 1.2. This guidance is not an authoritative interpretation of the law, but intended as a guide for specialists and practitioners. The Department for Transport and HS2 Ltd are unable to comment on individual cases and cannot provide a definitive interpretation of the law as this is a matter for the judicial system. Therefore, this information is informal only and is not binding.

## 2. Main changes to party walls procedure

- 2.1. The construction of the HS2 railway is an infrastructure project of national significance. The powers required to build, operate and maintain the railway have been authorised by Acts of Parliament which, in effect, give deemed planning permission for the plans as approved by Parliament<sup>1</sup>.
- 2.2. The Secretary of State for Transport considered it appropriate to amend certain provisions of the Party Wall etc. Act 1996 (PWA 1996). Without these changes, each interface of HS2 work with a neighbouring property would need to be agreed between surveyors or determined in accordance with processes set out in the PWA 1996.
- 2.3. The purpose of the modifications is to reduce or remove the potential for protracted disputes with neighbouring owners, whilst also retaining protections for neighbouring owners. Extended disputes over works could cause delays to the HS2 construction programme with subsequent cost implications.
- 2.4. An adjoining owner to HS2 land retains a number of safeguards and protections set out under the PWA 1996. These include the right to compensation, the requirement for the Nominated Undertaker to give at least 14 days' notice before entering land to carry out work, and for works to be carried out in accordance with plans agreed between the Nominated Undertaker and the Adjoining Owner.
- 2.5. Schedule 23 of the HS2 Acts provides, amongst other provisions, the following:
  - 2.5.1. No notice is required under section 1(2) or 1(5) of PWA 1996 (notice before building at line of junction with adjoining land) before the building of any wall for HS2 purposes.
  - 2.5.2. Sections 1(6) and 2 of PWA 1996 (rights of adjoining owners) do not confer rights in relation to:
    - anything held by the Secretary of State for Transport or the Nominated Undertaker and used, or intended for use, by the Nominated Undertaker for the purposes of its building or operating the HS2 railway;
    - or land on which there is any such building or structure.

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<sup>1</sup> For further information on the legislation see Information Paper B1: Understanding the Hybrid Bill [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/960595/B1\\_Understanding\\_the\\_Bill\\_v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960595/B1_Understanding_the_Bill_v1.1.pdf)

- 2.5.3. No notice under section 3 of the PWA 1996 is required before exercising any right conferred by section 2 (right to repair etc party wall) for the purposes of or in connection with:
- the construction of the works authorised by the HS2 Acts; or
  - the maintenance of any such work starting with the date on which the work is finished and ending 5 years after the date on which it is brought into general use.
- 2.5.4. Section 6 of the PWA 1996 (underpinning of adjoining buildings) does not apply in relation to a proposal to excavate, or excavate for and erect anything, for HS2 purposes. Instead, any underpinning works of adjoining buildings which may be necessary are carried out under Schedule 2 to the HS2 Acts (see below).
- 2.5.5. Section 6 of the PWA 1996 is modified where a neighbouring owner as Building Owner proposes to undertake any of the works described in section 6 which are within the prescribed distance of a building or structure which has been erected for HS2 purposes, or is on land which is held by the Secretary of State or the Nominated Undertaker for the purposes of the Nominated Undertaker's undertaking under the HS2 Acts. The effect of the modifications is that, where safeguarding works to the adjoining building are required, the building owner does not have a right to enter onto HS2 land to carry out safeguarding works. Instead, the Nominated Undertaker can elect that the works (as agreed or as determined by arbitration) will be carried out by the Nominated Undertaker at the Building Owner's expense.
- 2.5.6. Where a dispute arises or is deemed to have arisen in respect of a matter connected with any work to which the PWA 1996 relates and the work:
- is required for HS2 purposes, or
  - relates to a building or structure situated on land held by the Secretary of State or the Nominated Undertaker for the purposes of building the HS2 railway,

Then a modified arbitration procedure applies (see arbitration below).

### 3. Explanation of terms

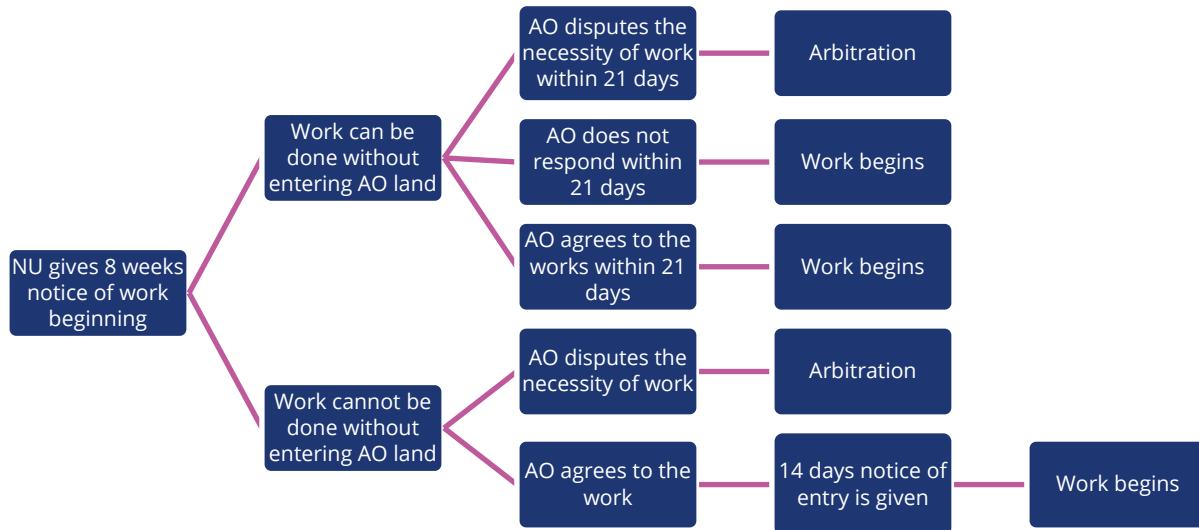
<b>Term</b>	<b>Meaning</b>
Adjoining Owner (AO)	As defined in the Party Wall etc. Act 1996, section 20.
Arbitration Act 1996	This Act makes provision relating to arbitration and arbitration awards.
Building Owner (BO)	As defined in the Party Wall etc. Act 1996, section 20.
Compensation code	A collective term used for the principles set out in Acts of Parliament, supplemented by case law, relating to compensation for compulsory acquisition and the construction of statutorily authorised works.
HS2 Acts	High Speed Rail (London – West Midlands) Act 2017, High Speed Rail (West Midlands – Crewe) Act 2021 and expected future HS2 legislation, which authorise, and give powers to enable, the construction and operation of phases of the HS2 railway.
HS2 Phase One Act	High Speed Rail (London – West Midlands) Act 2017
HS2 Phase 2a Act	High Speed Rail (West Midlands – Crewe) Act 2021
Land in scope	Land within the limits as shown on the plans deposited in Parliament with the HS2 Acts.
Nominated Undertaker (NU)	The body appointed by the Secretary of State for Transport to be responsible for delivering the HS2 railway.
Owner	As defined in the Party Wall etc. Act 1996, section 20.
Party Wall etc. Act (PWA) 1996	This Act makes provision in respect of party walls, and excavation and construction in proximity to certain buildings or structures.
SoS	The Secretary of State for Transport.

## **4. Where the Secretary of State or Nominated Undertaker is the building owner**

### **Procedure where supporting or strengthening works to AO's buildings are proposed by the SoS or NU**

- 4.1. Schedule 23, paragraph 5 of the HS2 Acts disappplies the requirement for the NU (as BO) to serve notice under the PWA 1996 section 6 in respect of certain works within a specified distance of the structure of an AO's building. This removes the requirement for consent to be given by the AO (or deemed to be given for the works. The purpose is to prevent risk to the HS2 works programme. Instead, Schedule 2 to the HS2 Phase One Act or Schedule 2 to the HS2 Phase 2a Act applies to any underpinning or strengthening works required to safeguard the adjoining building.
- 4.2. The process for undertaking such strengthening works to adjoining buildings is set out in full in Schedule 2 to the HS2 Acts.
- 4.3. The NU must give at least 8 weeks' notice of the proposed strengthening works to the owners and occupiers of the building. After receiving the notice, the owner or occupier has 21 days to serve counter notice, if they dispute that the works are necessary. After receiving the counter notice, the dispute would then be referred to arbitration (see arbitration). The arbitrator can also prescribe how the strengthening works are to be carried out. If it is not reasonably possible to complete strengthening works without entering onto adjacent land, the NU can enter onto the said land, after serving 14 days notice on the owners and occupiers. No notice is required in the case of an emergency.
- 4.4. The NU has the right to inspect any adjacent building or land or affix movement measuring apparatus to decide whether strengthening works are needed, and if so, how they should be carried out, and to monitor the building after the strengthening works have been completed. The NU is required to serve 8 weeks' notice on the owners and occupiers of the building before movement measuring equipment is fixed. The AO must serve a counter notice within 21 days, if they dispute that fixing the apparatus is necessary, or object to how or where it is to be fixed. The dispute would then be referred to arbitration (see arbitration). No notice is required in the case of an emergency.
- 4.5. If no counter notice is received by the NU, the works in question can be carried out.

## Flowchart 1: Procedure where strengthening works are proposed



4.6. The statutory process under Schedule 2 to the HS2 Acts sits alongside the non-statutory protection for adjoining landowners set out in the HS2 ground settlement policy, and is given legally binding effect through the settlement deed entered into between the NU and the AO. The policy and the draft deed are set out in relation to the Phase 2a Act in Information Paper C14<sup>2</sup> (and Information Paper C3 for the Phase One Act). A settlement deed can be required by any AO whose building is within 30 metres on plan of any tunnels, retained cuttings, shafts and boxes authorised by the relevant HS2 Act. It commits the NU to a process which requires, in summary, the following measures:

- 4.6.1. An assessment is carried out by a suitably qualified person to predict settlement to the property and a report is prepared which will include, amongst other things, an assessment of any protective works needed to the building.
- 4.6.2. If the assessment predicts that the building falls into a low risk category in respect of potential damage, consultation is required with the AO. If a higher risk of damage is assessed, or protective works are recommended, then the AO can require that the report is agreed with an engineer

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<sup>2</sup> Phase 2a Information Paper C14: Ground Settlement can be found at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/960659/C14\\_Ground\\_Settlement\\_v1.1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960659/C14_Ground_Settlement_v1.1.pdf)

appointed by them at the cost of the NU. There is a process for adjudication (by expert determination) if the report cannot be agreed.

- 4.6.3. If the NU proceeds with the works, it must carry out the protective works identified in the report.
- 4.6.4. Monitoring of settlement must be carried out if recommended in the report.
- 4.6.5. If settlement of 10mm or more is predicted, the NU must employ a reputable firm of chartered building surveyors or chartered engineers to prepare a schedule of defects at the NU's cost, both before and after the works. (See also 7.4.2.).
- 4.6.6. There is provision for compensation to be paid for the cost of remedying any damage caused by the works, irrespective of whether those costs would be recoverable under the Compensation Code.

#### **Procedure where it is proposed to construct a party wall or fence on the line of junction, or to carry out works to an existing party wall**

- 4.7. Under the PWA 1996 section 1(2), the SoS or NU has the right to build a wall or fence up to, but not on, the line of junction with adjoining land, and under section 1(6) of the PWA 1996, footings or foundations for a new structure may be built below the level of the adjoining land. Under PWA 1996 section 2, the SoS or NU has the right to carry out various specified works in relation to an existing party wall. As stated above, the HS2 Acts disapply the requirement under the PWA 1996 section 1(2) or (5) and section 3 for the SoS or NU to serve notices one month before exercising the rights mentioned above. Therefore, the AO is not able to serve a counter notice requiring the new party wall to be built wholly on HS2 land.
- 4.8. A non-statutory notice must be served by the SoS or NU on the AO with plans, sections and particulars of the proposed works to enable them to be agreed as mentioned below.
- 4.9. Where a dispute arises or is deemed to have arisen between the BO and AO, the matter can be referred to arbitration or alternative dispute resolution (see arbitration).

## **5. Summary of retained PWA 1996 measures which apply where works are carried out by SOS or NU under Section 1 or 2 of the PWA 1996**

- 5.1. Where the SoS or NU carries out HS2 works under the PWA 1996 as modified by the HS2 Acts, the AO continues to have the benefit of the following protective provisions set out in the PWA 1996.

### **PWA 1996 s.7:**

- 5.2. The SoS or NU cannot exercise any right conferred under the PWA in such a manner or at such time as to cause unnecessary inconvenience to the AO or any adjoining occupier.
- 5.3. The AO and any adjoining occupier is entitled to compensation for any loss or damage which may result to any of them by reason of any work executed by SoS or NU in pursuance of the PWA 1996.
- 5.4. The SoS or NU must put up hoardings for the protection of the adjoining land or buildings, and the security of any adjoining occupier.
- 5.5. Any works must be executed in accordance with such plans, sections and particulars as may be agreed between the SoS or NU and the AO or, in the event of a dispute, settled by a single arbitrator under the dispute resolution provided by Schedule 23 of the HS2 Acts. Either party may appeal to the county court against the award.

### **PWA 1996 s.8**

- 5.6. At least 14 days' notice must be given by the SoS or NU before entering on any land or buildings of the AO except in the case of emergency, when such notice as may be reasonably necessary may be given.

### **PWA 1996 s.11**

- 5.7. The provisions relating to the payment of expenses apply (see also 7.6).

### **PWA 1996 s. 12**

- 5.8. The AO can require the SoS or NU to give security for expenses.

### **PWA 1996 ss.13 and 14**

- 5.9. The provisions relating to submitting and settling accounts for work carried out apply. This is subject to the special provision made where the BO is not the SoS or

NU, and the NU carries out safeguarding works to HS2 buildings which would otherwise have to be carried out by the BO.

## **6. Where the Secretary of State or Nominated Undertaker is the adjoining owner**

### **Procedure for adjacent excavation and/or construction**

6.1. Section 6 of the PWA 1996 applies where excavation or underpinning works are proposed to be carried out by the BO and either:

6.1.1. Within three metres measured horizontally, any part of the excavation or works will be below the bottom of the foundations of the building or structure of the AO, or

6.1.2. Within 6 metres measured horizontally, any part of the excavation will meet a line drawn downwards at 45° in the direction of the excavation of the BO from the bottom of the AO's foundations.

6.2. Where the AO is the SoS or NU, or the structure which potentially requires underpinning has been erected for the purposes of the HS2 railway, a modified process applies, as set out in Schedule 23 to the HS2 Acts. Section 6 of the PWA has effect with the following modifications:

6.2.1. Subsections (3), (6) and (7) are replaced with the following process:

6.2.1.1. The BO must serve one month's notice as set out in PWA 1996 6(5)

6.2.1.2. The notice must be accompanied by:

- Plans and sections showing: The site and depth of any excavation the BO proposes and if the BO proposes to erect a building or structure in its site.

6.2.1.3. Where the notice includes a proposal to underpin or strengthen a structure or building of the SoS or NU, it must:

- include a detailed description of the works
- specify the BO's proposed programme for carrying them out.

- 6.2.2. The SoS or NU, as AO, may consent to the works by notice within 14 days. In this notice, they must state whether they will carry out the works themselves, or require the BO to carry out the works.
- 6.2.3. If the SoS or NU does not issue a consent notice within 14 days, a dispute will be deemed to occur. This dispute must be referred to arbitration (see arbitration).
- 6.3. Where the work is undertaken by the BO, the works are carried out at the BO's expense.
- 6.4. Normally the SoS or NU (as AO) will elect to undertake the agreed works themselves at the reasonable expense of the BO (neighbouring owner). Where the neighbouring owner has appointed an appropriate professional (AP (see 7.1)), the SoS or NU will agree the works and their costs with the AP before commencing the works. Within 2 months of completing the agreed works, the SoS or NU must serve the BO an account in writing showing particulars and expenses of the works. The BO can then serve a notice objecting to the account within one month. The disputed amount is then referred to arbitration (see arbitration).

### **Procedure where a party wall or fence is proposed to be constructed on the line of junction**

- 6.5. The BO must serve a notice on the SoS or NU under PWA 1996 section 1(2). Unless the SoS or NU serves a notice within 14 days consenting to the building of the party wall or party fence wall, it must be built at the BO's expense and wholly on the BO's land. The BO does not have a right to place footings and foundations on HS2 land. The reason for this is to avoid works being carried out on HS2 land which might prejudice the carrying out or operation of the railway works. The arbitration provisions under the PWA, as modified, do not apply.

### **Works of repair etc. of existing party wall**

- 6.6. The BO does not have any rights under PWA 1996 section 2 to carry out repairs such as underpinning which intrude on HS2 Land or buildings. Any such works can only be carried out by agreement and not under the PWA 1996 so the arbitration provisions under the PWA, as modified, do not apply.

## **7. Engagement with the Secretary of State/Nominated Undertaker in the exercise of powers affecting Schedule 23 of the HS2 Acts**

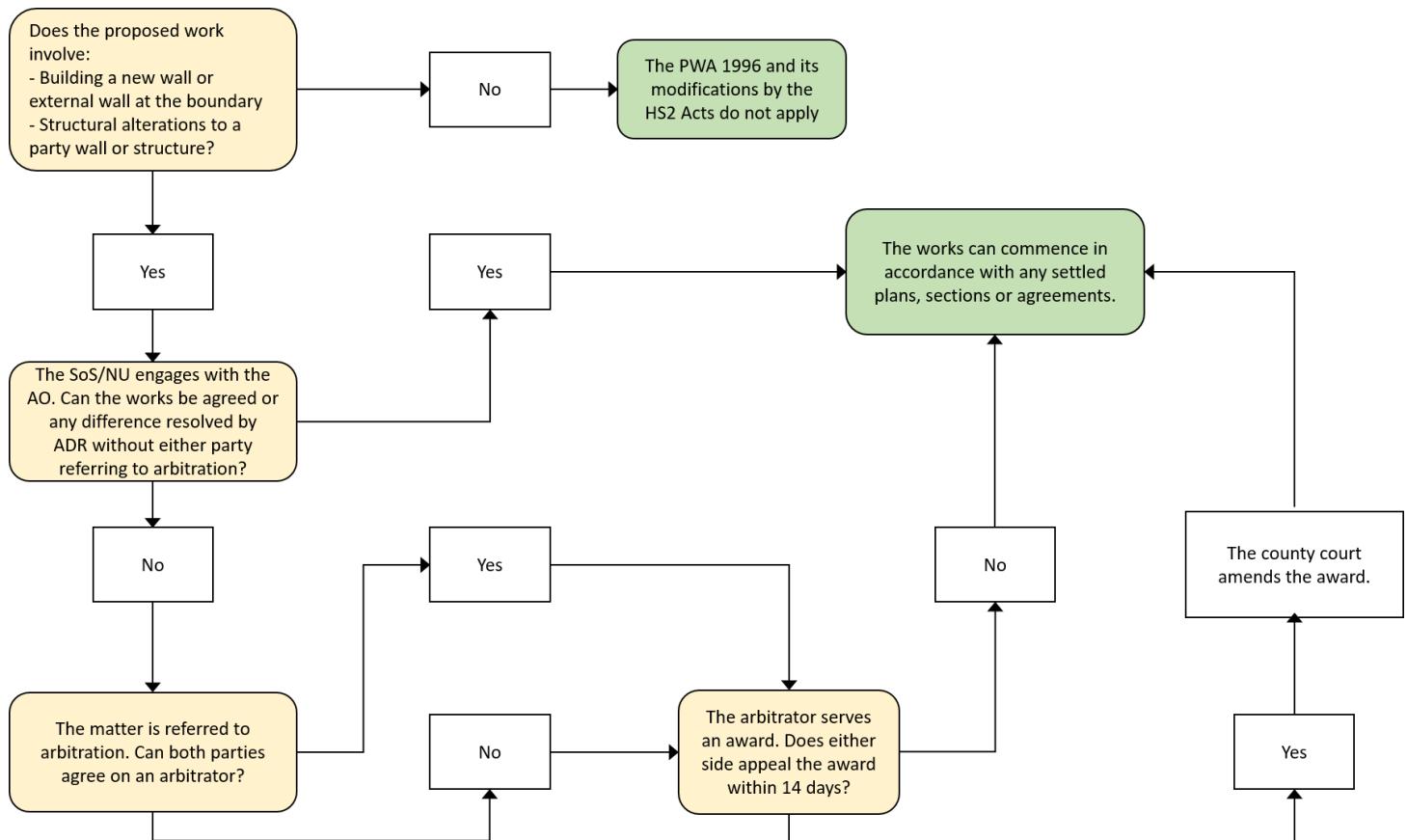
- 7.1. For the purposes of this Guidance and the explanation of how various powers to be conferred under the HS2 Acts interact with the PWA 1996, it is suggested that an AO obtains professional advice from practitioners experienced in party walls matters who are members of a recognised professional body.
- 7.2. In the exercise of the powers conferred under the HS2 Acts the NU will engage in good faith with an AO on any matters affecting the operation of provisions under the PWA 1996 and in particular the provision to the AO with such information that is held by the NU and which is reasonably required by the AO for the purposes of any applicable provision of the PWA 1996 requiring the NU to supply plans, sections and details of construction to the AO.
- 7.3. The NU shall, where practicable, provide the AO with appropriate 'as-built' drawings within a reasonable time after being requested to do so where works are carried out by the NU pursuant to section 2 of the PWA 1996.
- 7.4. With a view to avoiding any unnecessary arbitrations under the PWA 1996 the NU will engage constructively with the AO in seeking to minimise the risk of disputes consistent with the efficient and timely implementation of the construction of works authorised under the HS2 Acts and where agreed adopting appropriate alternative dispute resolution procedures to resolve any differences.

## 8. Arbitration

- 8.1. Any arbitration will take place in accordance with the Arbitration Act 1996. The HS2 Acts do not alter the Arbitration Act 1996, and therefore it applies in full. Resolution of disputes will be conducted by an impartial process, avoiding any unnecessary delay and expense.
- 8.2. In an endeavour to avoid unnecessary arbitration the parties may:
  - 8.2.1. Attempt to settle any dispute by mediation;
  - 8.2.2. Agree to appoint a neutral third party to adjudicate on the dispute, as if it was a dispute arising under a Construction Contract for the purposes of the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy Economic Development and Construction Act 2009; or
  - 8.2.3. Engage in any other form of alternative dispute resolution as may be agreed.
- 8.3. The below arbitration process applies to disputes about any work related to the PWA 1996 which:
  - 8.3.1. is required for HS2 purposes, or
  - 8.3.2. relates to a building or structure situated on land held by the SoS or the NU for the purposes of HS2 infrastructure or operation.
- 8.4. Where a dispute has arisen, or is deemed to have arisen, an alternative arbitration process to that of the PWA 1996 applies. The arbitration process is set out in paragraph 7 of Schedule 23 to the HS2 Acts.
- 8.5. Arbitration is settled by a single arbitrator, appointed in agreement by both parties. If agreement cannot be reached, an arbitrator will be appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers. The professional qualification of the appointed arbitrator will be a matter for the President. In cases where matters may impact the integrity, safety and security of the construction and/or the operation of High Speed Rail infrastructure, the arbitrator will need to have appropriate engineering experience, as identified to the President by the NU. In other cases, it will be appropriate for a chartered surveyor to be appointed.

- 8.6. If the arbitrator refuses to act, or neglects to act within 10 days after a request from either party, or becomes incapable of settling the dispute, another arbitrator must be appointed.
- 8.7. The arbitrator will settle any dispute by award. Such an award may determine:
  - 8.7.1. the right to carry out any work;
  - 8.7.2. the time and manner of carrying out any work; and
  - 8.7.3. any other matter arising out of, or incidental to, the dispute including the costs of making the award.
- 8.8. The arbitrator may determine that any party involved in the dispute must pay the other party's reasonable costs incurred in:
  - 8.8.1. making or obtaining the award;
  - 8.8.2. reasonable inspections of work to which the award relates; and
  - 8.8.3. any other matter arising out of the dispute.
- 8.9. Either of the parties has 14 days, after the date of the award, to appeal to the County Court. The County Court can:
  - 8.9.1. rescind the award or modify it in such manner as the court thinks fit; and
  - 8.9.2. make such order as to costs as the court thinks fit.
- 8.10. Any award is conclusive and other than on appeal to the County Court, the award cannot be questioned in any other court. Both parties retain their rights to choose their own representation.

## Flow chart 2: Dispute process where works are carried out by the SoS or NU under the PWA 1996



## **9. Compensation outside the PWA 1996**

- 9.1. The usual provisions of the Compensation Code apply where the compensation provisions under section 7(2) or Schedule 2 to the HS2 Acts do not apply.
- 9.2. Landowners who are affected by public works projects are entitled to compensation under the Compensation Code. The application of the Compensation Code to a particular case depends on the individual circumstances of that case.
- 9.3. Under section 10 of the Compulsory Purchase Act 1965, landowners may seek compensation where the Secretary of State does not need to purchase land, but the works interfere with the owner's enjoyment of the land or diminish its value either permanently or temporarily. Compensation is also payable if there is any actual damage caused by construction e.g. damage caused by vibration from machinery.

## **10. Post settlement matters and damage caused during construction**

- 10.1.The NU shall alert the AP when monitoring which has been taking place is to be ceased, with reports to be provided to the AP and the AO showing that movement of the AO's premises has reverted to pre-commencement background levels.
- 10.2.The NU is to undertake all reasonably necessary repairs associated with the removal of the monitoring equipment and shall not leave such equipment in place.
- 10.3.Once 10.1 above has been satisfied, the AP may undertake final inspections of the AO's premises and liaise with the NU to agree the extent of any damage and the remedy for repair.
- 10.4.Interim inspections may be carried out by the AP with costs for such inspections borne by the NU or AO, depending on whether the damage has occurred as a result of the NU's works. The AO will be responsible for the AP's reasonable fees if damage has been reported by the AO but has not occurred as a result of the NU's works.
- 10.5.The NU shall provide a person with equivalent qualifications and experience as a person who may be appointed as AP under 7.1 above, to inspect, review, discuss and agree claims for damage as a result of the NU's works with the AP. The suitably qualified person and the AP are to agree the scope and extent of the damage and use their knowledge of construction to agree the method of repair. They shall obtain at least three quotations from a suitable contractor to repair the damage. If the repair does not adversely affect the NU's works, the NU may pay compensation to the AO in lieu of repairing the damage. If the damage to the AO's building does adversely affect the NU's works, the damage may be repaired by the NU.
- 10.6.The NU shall respond to claims for damage within 14 days, or in the case of emergency within 24 hours, with emergency contact details provided to the AO.
- 10.7.Damage to the AO's premises may be reported to the NU after the completion of the NU's works. Completion is taken to be the point at which movement has been shown to have 'trended out' or ceased on the monitoring reports.

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