

Phase 2b Western Leg Information Paper

B6: Environmental impact assessment and human rights

This paper outlines the process of environmental impact assessment for the High Speed Rail (Crewe - Manchester) 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 (Crewe - Manchester) Bill. Content will be maintained and updated as considered appropriate during the passage of the Bill.

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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1 Introduction

- 1.1 High Speed Two (HS2) is the Government's scheme for a new, high speed north-south railway, which is being taken forward in a number of phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route from the West Midlands to Crewe. The Phase 2b Western Leg will connect Crewe to Manchester. As set out in the Integrated Rail Plan, published in November 2021, HS2 East is proposed to deliver a new high speed line from the West Midlands to East Midlands Parkway.
- 1.2 HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works under the terms of a Development Agreement entered into with the Secretary of State for Transport.
- 1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017 and Phase 2a by the High Speed Rail (West Midlands – Crewe) Act 2021.
- 1.4 In January 2022, the Government introduced a hybrid Bill to Parliament (hereafter referred to as 'the Bill'), to seek powers for the construction and operation of the Phase 2b Western Leg (the Proposed Scheme), which is called the High Speed Rail (Crewe – Manchester) Bill. The Proposed Scheme comprises the Phase 2b Western Leg from Crewe to Manchester and several off-route works. It also facilitates the delivery of Northern Powerhouse Rail by providing the Crewe Northern Connection and junctions and other infrastructure to be used in future schemes.
- 1.5 The work to produce the Bill includes an Equalities Impact Assessment and 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), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed

Scheme. For more information on the EMRs please see Information Paper E1: Control of environmental impacts.

- 1.6 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'. There may be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the EMRs and any commitments provided in the information papers.
- 1.7 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.

2 Overview

- 2.1 The first section of this information paper outlines the process of an 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 originally from European Union law. The EIA Directive (2011/92/EU as amended by Directive 2014/52/EU) ("the EIA Directive") was implemented in the UK through a number of different regulations including, in relation to planning matters in England, the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017/571) ("the EIA Regulations"). These included the elements of the EIA Directive which ensured compliance with the Aarhus Convention on public participation in environmental decision making, to which the European Union and the United Kingdom are parties.

- 3.2 In the case of projects authorised by Acts of Parliament (which were in certain respects exempt from the requirements of the Directive) the objects of the Directive were met through including the EIA process in the Standing Orders of each House of Parliament. 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> and <https://www.supremecourt.uk/cases/docs/uksc-2013-0172-press-summary.pdf>
- 3.3 The UK has now left the European Union following the end of the transition period on 31 December 2020. The European Union (Withdrawal) Act 2018 converts the body of existing EU law into domestic law and preserves the laws we have made in the UK to implement our EU obligations. This body of retained EU law includes the EIA Regulations.
- 3.4 It is now for democratically elected representatives in the UK to decide on any changes to that law. If there are changes to the legal framework that underpins the EIA, as it applies to the project, this Paper will be updated as appropriate.
- 3.5 The Standing Orders of Parliament dealing with EIA are unaffected by the withdrawal. They continue to apply to the promotion of hybrid Bills and will apply to this Bill. They are essentially the same in both Houses of Parliament.
- 3.6 Standing Orders HL27A and HC27A apply to the Bill. These orders require that the promoter of a Bill deposits an ES 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 EIA Regulations. The ES must include a Non-Technical Summary of its main findings and a

description of the reasonable alternatives to the project studied by the Promoter.

- 3.7 Standing Orders HC224A and HL83A provide opportunities for public participation by enabling any member of the public who wishes to comment on the deposited ES to do so within a specified period prior to Second Reading of the Bill.
- 3.8 At the close of the specified period for public comment on the deposited ES, an independent assessor appointed by Parliament must prepare a report to Parliament summarising the issues raised in the comments on the statement.
- 3.9 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.
- 3.10 The process outlined in paragraphs 3.5 to 3.7 above applies to any supplementary ES deposited at a later stage in the Bill process.
- 3.11 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.
- 3.12 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. They 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.
- 3.13 In accordance with the Standing Orders, the Department for Transport has deposited an ES for the Bill. It is available at www.gov.uk/hs2-phase2b-crewe-manchester.

- 3.14 The statement includes a short guide to the structure of the statement, a non-technical summary and a full report on alternatives.
- 3.15 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. Drafts of the CoCP and the Planning, Heritage and Environmental Memoranda are available at www.gov.uk/hs2-phase2b-crewe-manchester.
- 3.16 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 ES are not exceeded unless this:
- results from a change in circumstances which was not likely at the time of the ES; 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).
- 3.17 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 and Phase 2a of HS2. On the first day of the Select Committee on the Bill in the House of Commons (31 January 2023) 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 2b 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, signed at Aarhus, Denmark on 25 June 1998 – the “Aarhus Convention”. The European Union was also a signatory to the Convention. The Convention took 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 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.
- 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-phase2b-crewe-manchester.