



# HIGH SPEED TWO PHASE ONE INFORMATION PAPER

## B<sub>3</sub>: DISAPPLICATION OF LEGISLATION

This paper outlines various parts of existing legislation that the High Speed Rail (London – West Midlands) Bill seeks to disapply or modify.

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 Bill for Phase One of the scheme which is now enacted. Although the contents were maintained and updated as considered appropriate during the passage of the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.

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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# B3: DISAPPLICATION OF EXISTING LEGISLATION

## 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 two phases: Phase One will connect London with Birmingham and the West Midlands and Phase Two will extend the route to Manchester, Leeds and beyond.
- 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 November 2013, HS2 Ltd deposited a hybrid Bill<sup>1</sup> with Parliament to seek powers for the construction and operation of Phase One of HS2 (sometimes referred to as 'the Proposed Scheme'). The Bill is the culmination of nearly six years of work, including an Environmental Impact Assessment (EIA), the results of which were 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.
- 1.4. The Bill is being promoted through Parliament by the Secretary of State for Transport (the 'Promoter'). The Secretary of State will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill.
- 1.5. This body is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd could become the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers will be bound by the obligations contained in the Bill and the policies established in the EMRs.
- 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 project have been reached.

## 2. Purpose of this paper

- 2.1. Phase One of HS2 is a project of national importance which the Promoter, Parliament and many of those affected wish to see completed as soon as possible. There is a danger however that the many consents required under existing legislation before the project can be built could lead to extensive delays. The Bill therefore seeks to disapply

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

some of these requirements and to create a tailor-made regime, based on that successfully applied to HS1 and Crossrail.

- 2.2. This tailor-made regime creates controls appropriate for a project that has been specifically approved in Parliament replacing those consents that the Bill disapplies. This regime is made up of a range of elements including the environmental commitments that the Secretary of State is making in the Environmental Minimum Requirements (EMRs), as well as the protective provisions and planning regime set out in the Bill. Together these ensure that there is a proper measure of scrutiny and control over the details of HS2's design and construction. The controls applied by the Bill (both within the Bill itself and the EMRs) are described in Information Paper E1: Control of Environmental Impacts.
- 2.3. This paper explains the main disapplications of legislation proposed in the Bill.

### 3. Legislation not disapplied

- 3.1. While the Bill does amend some legislation, it is important to note that no disapplication or modification is made to national health and safety legislation, either at a general level or its particular application to railways. Accordingly, the Health and Safety Executive and the Railways Safety Directorate in the Office of Rail Regulation will retain all their usual powers in respect of the construction and operation of HS2.
- 3.2. Similarly, environmental protection legislation continues to apply (for example, the Control of Pollution Act 1974 and the Environmental Protection Act 1990<sup>2</sup>), including controls on the treatment and deposit of waste. The requirement for consents where appropriate under the Planning (Hazardous Substances) Act 1990 also continues to apply.

### 4. Planning and Heritage Provisions

#### Planning permission

- 4.1. Clause 20 of the Bill deems planning permission to be granted under Part 3 of the Town and Country Planning Act 1990 for development authorised by the Bill, subject to the other provisions of the Bill and the conditions set out in Schedule 17. Under these conditions, various details have to be approved by the local planning authority. The planning permission conferred by the Bill is therefore analogous to an outline planning permission, which settles the principle of the development, while leaving certain details to be approved at a later stage. However, the amount of detail a planning authority is able to approve under Schedule 17 depends on whether it is a 'qualifying' authority: that is, whether it has subscribed to the Planning Memorandum<sup>3</sup>. If it has not subscribed the range of matters subject to its approval are more limited.
- 4.2. The conditions in Schedule 17 are enforceable by the relevant planning authority.

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<sup>2</sup> There are some modifications to this Act in Schedule 27 (Noise) of the HS2 Bill (see paragraphs 15.1-15.3 below)

<sup>3</sup> The Planning Memorandum is the document containing the undertakings by qualifying authorities referred to in paragraph 13(1) of Schedule 17 to the Bill, and which also includes requirements of the nominated undertaker.

- 4.3. Information Paper B1: The Main Provisions of the Planning Regime explains the main provisions of the planning regime more fully.
- 4.4. Clause 24 removes the requirement for development consent under the Planning Act 2008 for the works authorised by the Bill. The construction of a railway is, with exceptions, one of the categories of nationally significant infrastructure project which requires consent from the Secretary of State under that Act. However, a requirement for development consent under the 2008 Act would be inappropriate for works which already have the specific authorisation of Parliament.

### Heritage consents

- 4.5. In 1991 the Government reviewed the relationship between statutory controls over the demolition and alteration of listed buildings and proposals for strategically important developments promoted via specific legislation in pursuance of Government policy objectives. The review arose from the fact that a requirement to seek listed building consents separately could result in decisions at variance with the decision of Parliament on the proposal as a whole, causing unreasonable delay or even putting the development at risk. As regards such strategically important developments, the Government therefore stated that it would expect:
- the Bill to contain details of the buildings which would be affected by disapplying listed building controls;
  - the ES deposited with the Bill to contain an account of the effect of the scheme on the built heritage;
  - the Promoter to consult Historic England during the preparation of the Bill; and
  - Historic England to have the right to appear before the select committee on the Bill on matters within its competence.
- 4.6. The Acts for HS1 and Crossrail followed this approach. This Bill for Phase One of HS2 does the same. Clause 25 and Schedule 18 disapply the requirement for listed building consent with respect to Phase One works affecting the listed buildings specified in Table 1 of Schedule 18. This is extended to any building that is listed after 30 September 2013, in order to cover any building affected by Phase One which may become listed before construction begins. In addition, there is a longer table of listed buildings set out in Table 2 of the Schedule. For these buildings, works to maintain or restore a listed building's character, or to fix monitoring equipment onto it, are permitted.
- 4.7. In the light of the removal of the requirement for listed building consent, it is proposed that heritage agreements will be entered into between the nominated undertaker, Historic England and relevant local authorities requiring approvals of certain method statements and other details.
- 4.8. Clause 26 and Schedule 19 of the Bill disapply provisions in the Ancient Monuments and Archaeological Areas Act 1979, including the requirement to obtain consent for

works affecting a scheduled monument, powers of entry and provisions relating to public access, the use of metal detectors and the removal of objects.

- 4.9. Schedule 19 also modifies the powers of entry (to obtain information about ancient monuments and historic buildings for inclusion in records kept by Historic England) under section 36 of the National Heritage Act 1983. In its place, new rights of entry specifically tailored to the circumstances of HS2 are conferred by paragraph 4 of the Schedule.

## 5. Burial Grounds and Consecrated Land

- 5.1. For Phase One construction works, Clauses 27 and 28 disapply enactments relating to burial grounds and restrictions applying to consecrated ground under ecclesiastical law.
- 5.2. In their place, where the use of land for those works involves disturbing human remains, specific provision is made by Schedule 20, which sets out requirements as to how the remains and any monument to the deceased are to be dealt with. Schedule 20 is based on the regime applied to Crossrail and HS1.

## 6. Commons and other open spaces

- 6.1. Clause 29 provides that no restriction set out in enactments which regulate the use of commons, town or village greens, open spaces or allotments can prevent or restrict actions authorised under the Bill for Phase One purposes or on Phase One land. The term 'enactment' includes subordinate legislation such as regulations or byelaws (see clause 68(1) of the Bill). Clause 29 ensures that the specific powers to carry out works under the Bill override any restrictions in general legislation which could otherwise prevent the construction of Phase One.

## 7. Trees

- 7.1. Clause 30 and paragraph 7 of Schedule 2 make special provision in relation to trees. It is necessary that a nominated undertaker should have power to remove or carry out other works on trees growing on, or overhanging, land used for building or operating the railway.
- 7.2. Regulation 13 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('the 2012 Regulations') prohibits certain works to trees protected by a tree preservation order or in a conservation area. This is subject to exemptions (see paragraph 7.6 below).
- 7.3. Clause 30 applies where tree works need to be carried out in relation to trees growing on land either within the Bill limits or to be used for Phase One purposes. The restrictions in the 2012 Regulations on the carrying out of tree works to a tree protected by a tree preservation order or in a conservation area are disapplied in relation to tree works required to enable Phase One to be constructed, maintained or operated.
- 7.4. Paragraph 7 of Schedule 2 provides for cases where trees overhang or otherwise encroach on land used for Phase One purposes. The nominated undertaker may serve

a tree works notice on the occupier of the neighbouring land, requiring the occupier to remove the tree or to carry out tree works. Unless the notice is successfully challenged by the occupier, the tree works must be carried out by the occupier or, in default, may be carried out by the nominated undertaker. The power to require tree works can only be used where the works are necessary to enable Phase One to be constructed or maintained, or are required for reasons of safety in connection with the construction or operation. The power is not unique. For example, telecommunications operators have similar powers to require the lopping of trees to prevent interference with their apparatus.

- 7.5. Restrictions relating to trees which are subject to a tree preservation order or in a conservation area are disapplied as regards works required by a tree works notice.
- 7.6. Regulation 14(1)(a) of the 2012 Regulations provides exemptions for tree works carried out by a statutory undertaker or tree works to implement a specific planning permission. However, because it is uncertain whether this exemption applies to all the circumstances catered for by clause 30 and paragraph 7 of Schedule 2, it is desirable that the position is clarified by making specific provision in the Bill.

## 8. Overhead lines

- 8.1. Clause 31 relates to the installation and diversion of overhead lines. Some overhead lines will need to be diverted for Phase One as specified in Schedule 3 to the Bill. Subsection (1) of the clause removes the need for the Secretary of State's consent under the Electricity Act 1989 where the overhead line work is within the Act limits, is a work authorised by the Bill and has deemed planning permission under the Bill.
- 8.2. This rule also applies where the work is done by an electricity undertaker. For cases where this exclusion does not apply to overhead line works arising for or as a consequence of Phase One (say, because an overhead line diversion goes outside the Act limits), the duty of the Secretary of State to hold a public inquiry in every case where the planning authority has objected is also removed. The decision on whether or not to hold a public inquiry is at the Secretary of State's discretion, having considered the number and substance of any objections.

## 9. Water

- 9.1. HS2 has been designed to avoid or reduce impacts on rivers, streams, canals and groundwater. The project has also been designed to avoid an increase in the risk of flooding, taking in to account the projected impact of climate change. It is against this background that schedule 21 contains provisions relating to the treatment of water sources and features. These generally disapply a restriction or requirement to obtain a further consent or a power for a regulatory authority to make directions in relation to works authorised by the Bill. Instead, the Bill introduces in Part 5 of Schedule 33 a tailor-made regime for the approval of plans by the relevant regulatory authority (the Environment Agency or the local drainage authority) for works affecting water resources:
  - paragraphs 1 and 2 disapply sections 24 and 25 of the Water Resources Act 1991 requiring consent for Phase One works relating to the abstraction or

impoundment of water;

- section 48A(1) of the Water Resources Act 1991 (containing a duty not to cause loss or damage caused by the abstraction of water) is disapplied. However, under paragraph 3(2) of the Bill, if the nominated undertaker does cause loss or damage that would have breached the duty in section 48A(1), then it must compensate the affected party. Paragraph 3(3) states how such compensation should be determined;
- paragraph 3(4) disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be made under this paragraph of the Bill and those others listed;
- paragraph 4 removes the requirement to obtain consent for Phase One construction works affecting main rivers;
- paragraph 5 removes the restrictions on removing designated features (which are structures or natural or man-made features of the environment designated as a feature by a 'responsible authority' such as the Environment Agency) under the Flood and Water Management Act 2010;
- paragraph 6 disapplies the requirement to obtain approval of works for the drainage systems of Phase One if the works are constructed under the powers of this Bill; and
- paragraph 8 disapplies Part 4 of the Eels (England and Wales) Regulations 2009, which relate to protecting, in the process of construction works, the passage of eels in waterways and allow the Environment Agency to impose requirements on persons carrying out works that would affect this.

## 10. Connections with sewers

- 10.1. Under section 106 of the Water Industry Act 1991, an owner or occupier of premises has a right to connect private drains and sewers serving the premises to the public sewer belonging to the sewerage undertaker so as to discharge foul water and surface water from the premises.
- 10.2. Outside Greater London, the sewerage undertaker may only refuse to permit the connection if it appears to the undertaker that the drain or sewer does not satisfy standards reasonably required by the undertaker, or that the making of the connection would be prejudicial to the undertaker's sewerage system. By virtue of subsection (8) of section 106 of the Water Industry Act 1991, within Greater London the sewerage undertaker may refuse to permit a connection on any grounds it wishes and there is no right of appeal.
- 10.3. Paragraph 7 of Schedule 21 to the Bill applies the national rule to all of the Phase One works, not just those falling outside Greater London. The right of the sewerage undertaker to refuse a connection, on the grounds that standards are not satisfied or that it would prejudice the undertaker's sewerage system, remains.

## 11. Buildings

- 11.1. Schedule 22 to the Bill disapplies various provisions of the Building Act 1984 in relation to buildings held by the Secretary of State or the nominated undertaker and used for Phase One purposes.
- 11.2. The Building Act 1984 provides for railway undertakers to have an exemption from Part 1 of that Act. It also exempts them from Building Regulations made under that Part in relation to any building belonging to them and held or used by them for the purposes of their undertaking, unless it is a building used as offices or showrooms and does not form part of a railway station or a house. That exemption would not apply to buildings held by the Secretary of State and used by the nominated undertaker for Phase One purposes, so Paragraph 1 of Schedule 22 provides a similar exemption in relation to Phase One, but one that has been extended to offices or showrooms that do form part of railway facilities, with the exception of stations such as maintenance depots. In order to secure compliance with EU requirements, the exemption does not apply to certain building regulations relating to energy efficiency.
- 11.3. Section 61 of the 1984 Act imposes requirements relating to the carrying out of works to underground drains communicating with sewers. There is an exception for drains or sewers constructed by railway companies for their railway. Since this exception would not apply to works carried out to enable Phase One to be constructed, paragraph 2 of Schedule 22 provides an exemption for Phase One works. Paragraph 3 modifies section 62 of the 1984 Act so as to remove the power of a local authority to impose requirements as regards works to drains which are carried out for Phase One purposes and substitutes a requirement to give advance notice to the local authority.
- 11.4. Where a new building is constructed, section 73 of the 1984 Act enables the relevant local authority to require chimneys on adjoining buildings to be raised so that they are higher than the new building. Normally, such works would be carried out by the owner of the new building, but the adjoining owner can instead choose to carry out the works at the expense of the building owner and is entitled to enter the building owner's land for that purpose. For safety reasons, paragraph 4 of Schedule 22 provides that the adjoining owner cannot insist on carrying out the works if to do so would require entry onto Phase One land. In those circumstances the works are to be carried out by the nominated undertaker unless consent is given to the adjoining owner to enter the Phase One land.
- 11.5. Section 74 of the 1984 Act requires local authority consent for the construction of underground cellars. This does not apply to a cellar in connection with a shop, inn, hotel or office that forms part of a railway station. Paragraph 5 extends that exemption for Phase One so that it also applies to a cellar or room in connection with a shop, inn, hotel or office which forms part of a railway facility other than a station, such as a maintenance depot which is used or intended for use for Phase One purposes.

## 12. Party Walls

- 12.1. The Party Wall etc Act 1996 ("the 1996 Act") makes provision to regulate the relationship between the building owner and the adjoining landowner where building operations are carried out at or near the junction of adjoining land. Schedule 23 to the

Bill disappplies or modifies various provisions of the 1996 Act in respect of Phase One works, in the interests of safety or where the provisions of the Act would inappropriately impede the construction or operation of Phase One.

- 12.2. Paragraphs 1 and 2 of Schedule 23 disapply parts of sections 2 and 3 of the 1996 Act. These provisions relate to party walls and, among other things, enable an owner to place footings and foundations on neighbouring land and to carry out strengthening and repair work, as well as certain other work to party or boundary structures. Adjoining owners would therefore not have the right to carry out such work to Phase One boundary structures or to enter onto Phase One land for that purpose. This disapplication is also necessary from a safety perspective.
- 12.3. Where it is proposed to carry out works to certain walls or other structures at the boundary of adjoining land, sections 2 and 3 of the 1996 Act enable the adjoining owner to object to the works and to refer the matter to the dispute procedure under the Act. Paragraph 4 of Schedule 23 disappplies this in the case of works carried out in connection with the construction of Phase One works or their initial maintenance. It would be inappropriate for adjoining owners along the route to be in a position to delay the construction of Phase One, which will have been approved by Parliament, by invoking this procedure.
- 12.4. Paragraph 5 of Schedule 23 disappplies section 6 of the 1996 Act in relation to Phase One works. Section 6 applies where a person is proposing to excavate and erect a building, or otherwise make an excavation. In such cases the building owner may enter adjoining land for that purpose. The consent of the adjoining owner is required to the works or, if that consent is not given, the matter is referred to the dispute resolution procedure under the 1996 Act. If the works are to be carried out, the building owner may enter the adjoining land to carry out the works and underpin adjacent buildings. The provisions of section 6 are unnecessary as regards Phase One because they are replaced by the provisions in the Bill dealing with the underpinning of buildings (paragraphs 2 to 6 of Schedule 2). The interests of persons affected by settlement from underground works and similar matters are intended to be dealt with by specific proposals made by the nominated undertaker (for further information see Information Paper C3: Ground Settlement).
- 12.5. A person who undertakes excavation or erection near a building or structure has a right to do so under section 6 of the 1996 Act, but is also required to undertake works to safeguard the foundations of the adjoining building or structure. For safety reasons it would be inappropriate for a building owner to have a right to enter Phase One land to carry out safeguarding works. Paragraph 6 of Schedule 23 therefore provides that where safeguarding works are required for a building or structure erected, or on land held, for Phase One purposes, the Secretary of State or the nominated undertaker can carry out the works instead of the building owner.
- 12.6. The 1996 Act provides that disputes are to be settled by a surveyor appointed by the parties or, failing agreement, by three surveyors (one surveyor appointed by each party, plus a third surveyor appointed by those two surveyors). This process is not suited to Phase One since surveyors appointed as provided under the 1996 Act will not necessarily have the specialist expertise required to make determinations concerning

railway infrastructure. Paragraph 7 of Schedule 23 provides that disputes under the 1996 Act which relate to a work required, or to a building or structure on land held, for Phase One purposes are instead to be determined by a single arbitrator appointed, in default of agreement, by the President of the Institution of Civil Engineers.

### 13. Highways and street works

- 13.1. Schedule 24 disapplies various provisions of highways legislation relating to works affecting highways and streets. These are, generally, provisions that require consent be obtained from a highway or street authority, or provisions giving highway authorities power to make directions as to the use of particular streets, which could impede the implementation of the project. They are replaced by requirements for detailed approval by or consultation with the highway authority under protective provisions in Part 1 of Schedule 33 and the provisions relating to highways in Schedule 4 to the Bill.
- 13.2. Under paragraph 1 of Schedule 24, various provisions of the Greater London Council (General Powers) Act 1970, the Highways Act 1980 and the General London Council (General Powers) Act 1986 are disapplied or modified. These provisions would require a licence or approval to be obtained from the relevant highway authority before certain works (such as the erection of scaffolding, the planting of trees or shrubs in or near a highway or the placing of a retaining wall near a highway) can be carried out.
- 13.3. Under paragraph 2 of Schedule 24, the following provisions of the New Roads and Street Works Act 1991 are also disapplied in relation to street works authorised by the Bill:
  - the power to direct when works that could affect traffic can take place;
  - the power to direct an undertaker doing street works to place apparatus in one street rather than another;
  - where street authorities propose substantial works, the power to restrict work on that highway for a period of 12 months after completion of the works;
  - the requirement for consent of the street authority before apparatus is put in protected streets, and the power to ask for apparatus placed in a street to be moved if it is later designated a protected street;
  - the power to require that a street with special engineering difficulties cannot be worked on until plans and sections of works are agreed between the nominated undertaker and street authority;
  - the power of street authorities to make requirements as to the nature and timing of street resurfacing after carrying out street works;
  - regulations allowing a highway authority to make charges for occupying highways to carry out street works; and
  - the right of the street authority to require notification of other street works in a highway and to give directions as to when street works may commence and also remove restrictions on the construction of further street works during or

after the completion of street works.

- 13.4. In addition, the Bill disapplies the requirement to obtain a permit from the highway authority for carrying out street works in a highway subject to a permit scheme made under Part 3 of the Traffic Management Act 2004.

## 14. Lorries

- 14.1. The Greater London (Restriction of Goods Vehicles) Traffic Order ("the London Lorry Ban Order") made under section 6 of the Road Traffic Regulation Act 1984 restricts the movement of heavy goods vehicles within a defined area of Greater London during restricted hours. A permit granted by the relevant London borough council is required for a heavy goods vehicle to use restricted roads during restricted hours and these are granted subject to conditions.
- 14.2. The Promoter seeks a consistent and realistic regime for lorry movements and one which recognises the need for – particularly where tunnelling works are concerned – night-time movements in some cases. Without modification, the operation of the restrictions under the London Lorry Ban Order or any other similar lorry ban order might cause unnecessary delay to vehicles supplying material to, or removing material from, the Phase One construction sites. It is therefore proposed that lorry movements will instead be controlled by planning conditions imposed under Schedule 17 to the Bill and by the special regime for the granting of permits under Schedule 26.
- 14.3. Under the planning regime in Schedule 17 to the Bill, qualifying local planning authorities will be required to approve the routes by which material is to be transported on a highway by a large goods vehicle to a work or storage site, a site where it would be reused or a waste disposal site. Such approval will not be needed for transportation on a motorway or a trunk road, or transportation to a site where the number of large goods vehicle movements does not exceed 24 in a day.
- 14.4. Schedule 25 provides a special regime for permits under lorry ban orders to be issued to persons proposing to use a heavy commercial vehicle in connection with Phase One works. The regime applies to the London Lorry Ban Order or any other order which may be made under section 1 or 6 of the Road Traffic Regulation Act 1984.
- 14.5. Paragraph 5 of Schedule 26 provides that a permit is to be granted if reasonably required for the purpose of enabling the Phase One works to be carried out in accordance with lorry routing arrangements approved under Schedule 17, or for the purpose of enabling the Phase One works to be carried out in a timely and efficient manner. There is also a provision for appeals to the Secretary of State if the application is refused. Paragraphs 3 and 4 make provision for dealing with applications for emergency permits in a way that does not unnecessarily hinder the Phase One works. These provisions are modelled on those successfully operated on HS1 and Crossrail.

## 15. Noise

- 15.1. Paragraph 1 of Schedule 27 to the Bill modifies subsection (7) of sections 60 and 61 of the Control of Pollution Act 1974 (“the 1974 Act”) so that the Secretary of State<sup>4</sup>, rather than a magistrates’ court, determines the results of appeals against a construction noise notice under section 60, or a refusal or conditioning of a consent to construction arrangements under section 61. Phase One will be a significant linear work, passing through the areas of many courts. While magistrates’ courts comprise an appropriate forum for the resolution of disputes in relation to schemes and activities with discrete local effects, the use of such courts and appellate bodies is not likely to secure the kind of co-ordinated and unified approach to construction activities that would be desirable for the effective management of a project the size of Phase One.
- 15.2. The Environmental Protection Act 1990 (“the 1990 Act”) provides that where construction activities take place in accordance with a notice issued by a local authority under section 60 (or a consent under section 61 or 65) of the 1974 Act, the notice or consent has effect as a defence in any proceedings for failure to comply with a noise abatement notice issued by a local authority under section 80(1)(a) of the Environmental Protection Act 1990. However, it does not constitute a defence against proceedings by individuals under section 82 of that Act.
- 15.3. Schedule 27 to the Bill follows the Crossrail Act by providing that such a notice or consent is also a defence against proceedings brought by an individual. This will enable the nominated undertaker to carry out its works, as approved by the local authority, with greater certainty. In addition, the Bill provides a defence against proceedings under section 80 of the 1990 Act for failure to comply with a noise abatement notice, and against proceedings by an individual under section 82, where the nuisance is a consequence of the construction or maintenance of works authorised by the Bill or the operation of Phase One and cannot reasonably be avoided.

## 16. Local Acts

- 16.1. Schedule 28 makes provision for the disapplication or modification of various provisions in Local Acts which could inappropriately inhibit the implementation of Phase One or which require adjustment as a result of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

### **London Squares Preservation Act 1931**

- 16.2. The construction of Phase One requires the surface-level use of parts of Euston Square, Amptill Square, Harrington Square and Camden Gardens, which are protected under the London Squares Preservation Act 1931. Section 3 restricts the things which may be done in the London squares specified in the Act and section 9 provides for agreements between the square owner and the local authority to regulate the use of squares. As these restrictions could prevent the construction of Phase One,

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<sup>4</sup> In practice this will be the Secretary of State with policy responsibility for noise, so currently the Secretary of State for the Environment, Food and Rural Affairs, rather than the Secretary of State for Transport.

paragraph 1 of Schedule 28 disappplies them with respect to carrying out the Phase One works. This exclusion does not affect the requirement for local planning authorities to approve detailed plans and specification of works or site reinstatement applying to the operation of planning conditions under Schedule 17 to the Bill.

### **The London Overground Wires &c Act 1933**

- 16.3. The 1933 Act requires the prior consent of London borough councils for placing or maintaining wires on or over streets in the councils' area and enables them to regulate the use of wires (including making byelaws). There are a number of exceptions under section 17 of the 1933 Act for railway companies, but as these are dependent on the railway company owning or holding land for railway purposes they would not apply to Phase One, where the land is to be acquired by the Secretary of State and the works are to be carried out by the nominated undertaker. Paragraph 2 of Schedule 28 therefore exempts the nominated undertaker from the requirements of the 1933 Act.

### **London Building Acts (Amendment) Act 1939**

- 16.4. Parts 3 to 5 of the 1939 Act include provisions regulating certain categories of buildings within Greater London. The Act contains exemptions from these requirements for certain buildings or structures belonging to a railway company and situated within a railway or station premises. As land acquisition powers under the Bill are to be vested in the Secretary of State, these exemptions would not apply to Phase One. Paragraph 3 of Schedule 28 therefore provides a similar exemption for Phase One buildings or structures. As in the case of Part 1 of the 1984 Act (see paragraph 10.2 above), the exemption has been extended to cover offices or showrooms that form part of a railway facility (including a maintenance depot), as well as those that form part of a railway station.

### **West Midlands County Council Act 1980**

- 16.5. The 1980 Act applies to various local authority areas in the West Midlands. Paragraph 4 of Schedule 28 to the Bill disappplies the provisions of the 1980 Act mentioned below in relation to Phase One works:
- section 11 enables the local highway authority to regulate the use of exterior floodlighting which may constitute a danger to the traffic on the street. This provision is not necessary in the case of Phase One since it is intended that restrictions on the use of site lighting are to be included in the Code of Construction Practice ("CoCP") and the Environmental Minimum Requirements ("EMRs"). For more information, please see Information Papers D2 (Code of Construction Practice) and E1 (Control of Environmental Impacts);
  - section 15 enables a relevant local authority to require persons carrying out building operations to take steps to minimise dust emissions. These powers are unnecessary since measures to reduce dust emissions caused by Phase One works will be part of the CoCP and the EMRs;
  - section 16 prohibits the use of air-powered tools or mobile air compressors without effective noise minimisation. Again these controls are unnecessary since measures to reduce noise from tools will be set out in the CoCP and the

EMRs;

- section 21 enables a relevant local authority to enforce their right of entry to carry out inspections under the Prevention of Damage by Pests Act 1949 by obtaining a warrant authorising entry onto the land by force if necessary. For safety and other reasons this would not be appropriate in the case of Phase One land;
- section 46 requires a local authority to reject plans deposited under building regulations unless it is satisfied that there is adequate access for the fire brigade. Subject to limited exceptions relating to energy efficiency, building regulations will not apply as regards Phase One works (see paragraph 10.2 above). The provision made by section 46 is also unnecessary since Phase One fire safety will be dealt with in accordance with the applicable rail industry standards;
- part 7 enables a relevant local authority to impose requirements as regards the storage on sites of stacks of certain flammable materials. There is an exemption for stacks stored in connection with the maintenance of Network Rail's undertaking. Since this exemption would not apply in relation to Phase One works a specific exemption is needed. It is intended that fire prevention at Phase One work sites will be dealt with by the CoCP and EMRs; and
- section 84 enables the local authority to require works erected in, under or over watercourses to be securely maintained. There are exceptions for Network Rail works and the Bill provides a similar exemption for Phase One works.

### **Staffordshire Act 1983**

16.6. Paragraph 5 of Schedule 28 to the Bill disapplies the provisions of the 1983 Act mentioned below in relation to Phase One which would otherwise apply in certain areas of Staffordshire:

- section 7 requires local authority approval of the layout and construction of new streets. There is an exemption for new streets constructed by Network Rail pursuant to their statutory functions and the Bill provides a similar exemption for Phase One;
- section 10(1)(b) enables a relevant local authority to prohibit specified activities including driving or riding a vehicle over certain land. There are limited exceptions for vehicles which are used in the course of building operations or by Network Rail and other statutory undertakers which would not cover the use of vehicles for HS2. The Bill therefore provides an exemption for Phase One; and
- sections 12, 16, 26 and Part 7 are in similar terms to sections 15, 21, 46 and Part 7 of the West Midlands County Council Act 1980 and are disapplied for the same reasons.

## **Oxfordshire Act 1985**

16.7. Paragraph 6 of Schedule 28 to the Bill disapplies the provisions of the 1985 Act mentioned below in relation to Phase One which would otherwise apply in certain areas of Oxfordshire:

- section 5(2)(a) is similar to Section 10(1)(b) of the Staffordshire Act 1983 (see 16.6.2) and is disapplied for the same reasons; and
- section 10 enables the highway authority to impose and enforce conditions relating to the culverting of roadside ditches. It is intended that in relation to Phase One, these functions of the highway authorities will be regulated under Part 1 of Schedule 33 of the Bill.

## **Greater London Council (General Powers) Act 1986**

16.8. Sections 5, 6 and 7 of the 1986 Act require the consent of the relevant London borough council to certain works under streets. These are: the demolition of a building or other structure under a street and other associated works; the erection of any structure which would prevent access to a vault, arch or cellar or other part of a building; and the filling in of a vault, cellar or underground room under a street. It would be inappropriate for such consent to be required in the case of the Phase One works.

## **17. Modification of section 8 of the Compulsory Purchase Act 1965**

- 17.1. By virtue of section 8 of the Compulsory Purchase Act 1965, in certain circumstances an owner of land can call for the whole of his land to be taken even though the acquiring authority only wants part of it. For example, if the acquisition of only a garden of a house is proposed, the landowner can require the house be acquired as well if taking only a part of the land would be seriously detrimental to the remainder of the holding.
- 17.2. For the deep tunnelled sections of Phase One, the Bill only enables the Secretary of State to acquire an interest in the subsoil of the land at a depth of more than nine metres (see paragraph 1 of Schedule 11 to the Bill). The Secretary of State also has a general power under clause 8(1) to acquire only the subsoil of other land, but he would not expect to use that power for underground works if substantial physical effects were expected to be caused by the works concerned to the property above.
- 17.3. If the operation of section 8 to the Compulsory Purchase Act 1965 were not modified, the owners of land above the tunnels could seek to invoke section 8 to contend that the Secretary of State was obliged to acquire the whole of this land (that is, the subsoil occupied by the tunnel and the land and buildings above the subsoil). Accordingly, clause 8(2) of the Bill disapplies section 8 except in cases where a construction forming part of a building such as a cellar is being acquired.
- 17.4. A similar provision has been included in all recent Acts and transport and works orders that authorise underground railways and in the model clauses contained in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006.

## 18. Transport and Works Act 1992

- 18.1. Clause 53 of the Bill makes provision for the authorisation of further adjustments or minor extension of Phase One by means of an Order under the Transport and Works Act 1992. In relation to such an Order, subsection (4) of Clause 53 disapplies section 13(2) of that Act which gives the Secretary of State discretion not to make an Order if the objects of the Order sought could be achieved by other means. For example, the Secretary of State could refuse an application for the diversion of utility apparatus on the grounds that this could be authorised under the utilities' own legislation.
- 18.2. Disapplying this provision gives certainty that – in appropriate cases – powers can be sought for the diversion of utilities by an Order under the Transport and Works Act, notwithstanding that other statutory means may be available under the legislation applying to utilities through which the powers could also be sought. This allows the nominated undertaker to promote the powers to complete Phase One itself, rather than having to rely on the promotion of powers by individual utilities.

## 19. Crown land and Royal Parks

- 19.1. Certain restrictions under existing legislation apply to the disposal of Crown land by the Crown Estate Commissioners and within Royal Parks. Under section 3 of the Crown Estate Act 1961, the Crown Estate Commissioners cannot grant a lease for more than 150 years and there are restrictions that apply to the value that must be obtained. Land within the Royal Parks managed by the Department of Culture, Media and Sport under the Crown Lands Act 1851 is inalienable. In order to allow sufficient flexibility in the agreements about land acquisition and use (to be entered into with the Commissioners and the Royal Parks Agency) these restrictions are disapplied. This follows a similar approach to that adopted in the Crossrail Act.

## 20. Railway Regulatory Provisions

- 20.1. This Information Paper does not deal with the railway regulatory regime provided in the Bill with respect to Phase One. For further information on those provisions, please see Information Paper B6: Railway Powers in the HS2 Bill.

## 21. More information

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