



# HIGH SPEED TWO PHASE ONE INFORMATION PAPER

## B5: ENVIRONMENTAL IMPACT ASSESSMENT AND HUMAN RIGHTS

This paper outlines the process of environmental impact assessment for the High Speed Rail (London-West Midlands) 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 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the Bill (including shortly prior to the enactment of the Bill in February 2017) the contents are now historic and are no longer maintained.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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## 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.

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

## 2. Environmental impact assessment

- 2.1. This section of the information paper outlines the process of environmental impact assessment ('EIA') that applies to the Bill.
- 2.2. EIA is derived from European Union law. The EIA Directive (2011/92/EU) requires an EIA to be carried out before the 'competent authority' may grant development consent for certain projects that are likely to have significant effects on the environment. The competent authority must assess those likely effects. For that purpose, the developer must provide environmental information on the proposals and an outline of the main alternatives that the developer has studied. The competent authority must give the main reasons for its decision whether to grant consent and describe the measures taken to avoid, reduce and offset the major adverse effects.
- 2.3. The EIA Directive includes requirements for public participation in the decision-making process. These requirements were added to the Directive to ensure compliance with the Aarhus Convention on public participation in environmental decision making, to which the European Union and the United Kingdom are parties.
- 2.4. The EIA Directive does not apply to projects, such as HS2, which are promoted for development consent through a specific act of national legislation (in this case, the Bill). Article 1(4) of the EIA Directive states –

“This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process”.
- 2.5. Article 1(4) requires that the objectives of the EIA Directive are achieved through the legislative process. The European Court of Justice has given the following summary of the position –

“A measure adopted by a parliament after public parliamentary debate constitutes a specific act of national legislation within the meaning of that provision where the legislative process has enabled the objectives pursued by the Directive, including that of supplying information, to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for the project”<sup>2</sup>.
- 2.6. The hybrid Bill process meets these requirements. In the case of the Bill, Parliament is the competent authority for EIA purposes, because it decides

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<sup>2</sup> See Grand Duchy of Luxembourg v Linster Case C-287/98 [2000] ECR I-6917 at [59]

whether to grant development consent (in the form of deemed planning permission). To ensure that the objectives of the Directive are met, an EIA process is included in the relevant Standing Orders of each House of Parliament. The Standing Orders relating to EIA are essentially the same in both Houses of Parliament.

- 2.7. Orders HL27A and HC27A apply to the Bill. These orders require that the promoter of the Bill deposits an environmental statement for inspection. The statement is deposited in the Private Bill Office. The statement must contain the equivalent environmental information that would be required to be supplied to the competent authority in an ordinary procedure for granting development consent for a project under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011/1824). The environmental statement must include a Non-Technical Summary of its main findings and an outline of the main alternatives to the project studied by the promoter.
- 2.8. Orders HC224A and HL83A provide opportunities for public participation by enabling any member of the public who wishes to comment on the deposited environmental statement to do so within a specified period prior to Second Reading of the Bill.
- 2.9. At the close of the specified period for public comment on the deposited environmental statement, an independent assessor is appointed who must prepare a report to Parliament summarising the issues raised in the comments on the statement.
- 2.10. The Second Reading of the Bill may not take place until at least 14 days after the assessor's report has been submitted to the relevant House. Second Reading is the first substantive stage in the Bill process where the Bill is debated by Members of Parliament and voted upon.
- 2.11. The process outlined in paragraphs 2.7 to 2.9 above applies to any supplementary environmental statement deposited at a later stage in the Bill process.
- 2.12. Following Second Reading of the Bill, a Select Committee of MPs will consider petitions from persons who 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.
- 2.13. At Third Reading, the Minister in charge of a hybrid Bill must set out the main reasons and considerations upon which Parliament is invited to consent to the project. He or she must also set out the main measures to avoid, reduce and, if possible, offset the project's major adverse environmental effects. This information must be laid before the House in writing at least seven days before Third Reading. Third reading is the final opportunity for each House to debate the contents of a Bill and vote on it.

- 2.14. In accordance with the Standing Orders, the Department for Transport has deposited an environmental statement for the Bill. It is available at:
- <https://www.gov.uk/government/collections/hs2-phase-one-environmental-statement-documents>
- 2.15. The statement includes a short guide to the structure of the statement, a non-technical summary and a full report on alternatives.
- 2.16. The period for public comment on the environmental statement for the Bill closed on 27th February 2014. The appointed independent assessor's report summarising the issues raised in the public's comments on the statement was submitted to the House of Commons and published on 7 April 2014. It is available to view at:
- <http://www.parliament.uk/documents/commons-private-bill-office/2013-14/HS2-Independent-Assessor-report.pdf>
- 2.17. 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:
- [http://supremecourt.uk/decided-cases/docs/UKSC\\_2013\\_0172\\_Judgment.pdf](http://supremecourt.uk/decided-cases/docs/UKSC_2013_0172_Judgment.pdf)
  - [http://supremecourt.uk/decided-cases/docs/UKSC\\_2013\\_0172\\_PressSummary.pdf](http://supremecourt.uk/decided-cases/docs/UKSC_2013_0172_PressSummary.pdf)
- 2.18. In order to ensure that the project 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 Environmental Minimum Requirements. These requirements will consist of a Construction Code, a Planning and Heritage Memorandum, an Environmental Memorandum and the undertakings and assurances given to Parliament and to petitioners during the passage of the Bill<sup>3</sup>.
- 2.19. The controls to be contained in the Environmental Minimum Requirements are a key element of the Government's overall strategy for ensuring that impacts which have been assessed in the environmental statement are not exceeded unless this:
- results from a change in circumstances which was not likely at the time of the environmental statement; or

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<sup>3</sup> Further information on the environmental minimum requirements can be found in Information Paper E1: Control of Environmental Impacts, which explains the promoter's approach to dealing with environmental impacts and their regulation.

- 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).
- 2.20. The Government intends to provide important undertakings to Parliament in relation to the enforcement of the environmental minimum requirements, as the previous Government did in relation to the Crossrail Bill. On the first day of the Select Committee on that Bill (17 January 2006) the Government gave an undertaking that, insofar as the environmental minimum requirements are not directly enforceable against any person appointed as a nominated undertaker or to whom the powers of the Bill are devolved, the Secretary of State would take such steps as he considers are reasonable and necessary to secure compliance with those requirements. Later in the consideration of the Bill (on 10 July 2007) the Government gave a further undertaking in the light of an amendment.

### 3. Human rights

- 3.1. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill to make a statement, before Second Reading, about the compatibility of the Bill with the European Convention on Human Rights. The Secretary of State has made the following statement: "In my view the provisions of the High Speed Rail (London-West Midlands) Bill are compatible with the Convention Rights." This statement was made on introduction of the Bill in the House of Commons.
- 3.2. The principal provisions engaged by the Bill and the project appear 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 railway. There is a compelling case in the public interest which makes the level of interference proportionate (in article 8 terms) and such as to strike a fair balance with the interference of Article 1 Protocol 1 rights. These are sufficient to outweigh the impact of the railway on the petitioners' 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.
- 3.3. 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. In any event the petitioning process and hearings before the Select Committee will ensure that those direct and specially affected will have a proper and fair opportunity to present their concerns to Parliament.
- 3.4. 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.

#### **4. More information**

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