



Department
for Transport

High Speed Rail (London-West Midlands) Act 2017: Guidance on the removal of qualifying authority status

May 2018

Moving Britain Ahead

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1. Introduction

- 1.1 Schedule 17 to the High Speed Rail (London – West Midlands) Act 2017 ('the Act') establishes the planning approval regime for the HS2 Phase One project. It allows the Secretary of State for Transport ('the Secretary of State') to specify planning authorities as 'qualifying authorities' for the purposes of Schedule 17, but also allows the Secretary of State to remove qualifying authority status from a planning authority.
- 1.2 It is anticipated that the circumstances necessitating the removal of qualifying authority status should not arise, as both the nominated undertaker (High Speed Two (HS2) Limited ('HS2 Ltd')) and the HS2 Phase One qualifying authorities have a responsibility to make the HS2 Phase One planning approval regime work and to take a proactive approach to resolve any concerns/issues that may arise. However, to ensure that the Department for Transport ('DfT') is open and transparent with the HS2 Phase One qualifying authorities and that there is clarity between DfT, HS2 Ltd and the qualifying authorities on the circumstances under which this power might need to be used, DfT believes it is appropriate to provide guidance on this issue.

2. Background

- 2.1 The Act gives the HS2 Phase One planning authorities a choice between having a wide or narrow range of controls in the approval of the detail of the construction works required for the HS2 Phase One scheme. Planning authorities opting for a wide range of controls are referred to as 'qualifying authorities'. The matters that require qualifying authority approval are set out in Annex A. Those planning authorities opting for a narrow range of controls are described in the Act as 'authorities which are not qualifying authorities'. The matters that require the approval of these authorities are set out in Annex B.
- 2.2 To be specified as a qualifying authority, planning authorities had to sign the High Speed Rail (London-West Midlands) Planning Memorandum ('the Memorandum'). The Memorandum sets out the arrangements for handling the requests for approval submitted by HS2 Ltd to the qualifying authorities and details the responsibilities of both the qualifying authority and HS2 Ltd. Following the return of a signed copy of the Memorandum to DfT, the HS2 Phase One qualifying authorities were specified by the Secretary of State in the High Speed Rail (London-West Midlands) (Qualifying Authorities) Order 2017, which came into force on 24 February 2017. Overall, 28 planning authorities (out of a total of 30) chose to become qualifying authorities and they are listed in Annex C.
- 2.3 The timely approval of requests made by HS2 Ltd by qualifying authorities is critical to the successful delivery of HS2 Phase One. Therefore, the Act allows the Secretary of State to remove qualifying authority status from a planning authority where it is considered expedient to do so. The Secretary of State's decision to remove qualifying authority status from a planning authority is final - the Act does not provide for a right of appeal. Removal of qualifying authority status will happen by way of an Order made by Statutory Instrument. However, before such an Order is made, the Act specifies that the Secretary of State must consult HS2 Ltd (as the nominated undertaker) and the qualifying authority in question.
- 2.4 Once the Order to remove qualifying authority status comes into effect (21 days after it is made), the planning authority in question will cease to be a qualifying authority for the purposes of Schedule 17. On this date, any requests for approval on matters reserved for qualifying authorities that are pending a decision will no longer be considered by the planning authority. However, the planning authority will still approve requests for approval in relation to building works and site restoration schemes, in its role as an 'authority which is not a qualifying authority'.
- 2.5 It should be noted that paragraph 13(4) of Schedule 17 allows the Secretary of State to 'reappoint' a planning authority as a qualifying authority if the Secretary of State "considers that the way in which the authority carries out its functions has been significantly affected by a change of circumstances".

3. Responsibilities of qualifying authorities

- 3.1 The purpose of the Memorandum is to ensure that the process of obtaining planning approvals for the construction works required by the HS2 Phase One scheme does not unduly hinder its construction. HS2 Ltd will be submitting a large number of requests for approval to qualifying authorities and there is a high risk of delay to the HS2 Phase One construction programme if requests for approval are not considered in the way specified in the Memorandum.
- 3.2 The main responsibilities of qualifying authorities (as set out in Sections 4, 7, 8 and 9 of the Memorandum) are as follows:
- In considering the requests for approval, qualifying authorities will have regard to the Planning Conditions Schedule contained in the Bill, the conclusions of the Forum and the Planning Forum Notes. Qualifying authorities will also have regard to any statutory guidance given under paragraph 26 of the Planning Conditions Schedule (paragraph 4.1.5).
 - The qualifying authority must ensure that sufficient planning staff (and other relevant disciplines which may be required such as heritage, traffic or environmental health) resources are made available in order to process requests for approval in a timely manner, undertake pre-application discussions and attend meetings (paragraph 7.1.1).
 - Resources should be made available to provide sufficiently for any potential peaks in submissions from HS2, to cover for annual leave and any other absences (paragraph 7.1.1).
 - HS2 is an infrastructure project of national importance. The qualifying authority shall accordingly have regard to construction, cost and programme implications, and shall not seek to impose any unreasonably stringent requirements on the requests for approval of any construction arrangement, plans or specifications, mitigation scheme or site restoration scheme, which might frustrate or delay the project, or unreasonably add to its cost. In particular, the qualifying authority shall not seek to impose unreasonably stringent requirements or standards in respects of land use, planning, design or environmental matters (paragraph 7.2.1).
 - The qualifying authority shall give due weight to any conclusions reached by the Select Committee (subject to any modifications made by Parliament) which are relevant to matters submitted for approval (or agreement) (paragraph 7.2.1).
 - The qualifying authority shall use reasonable endeavours, subject to its obligations under statute and statutory guidance from the Secretary of State, to determine any request for a relevant approval within the timetable referred to in paragraph 22(4) of the Planning Conditions Schedule (i.e. eight weeks) or, whenever possible, a lesser period (paragraph 7.3.1).
 - Where additional details of a request for approval are submitted under paragraph 2(3), 3(4), 7(4) (as appropriate) of the Planning Conditions Schedule, the authority

shall use its reasonable endeavours to make its decision on the approval expeditiously, and in any event within eight weeks after the date of submission of the additional details (paragraph 7.3.3).

- The qualifying authority shall not require the nominated undertaker to vary the extent or content of a request for approval to include matters which could reasonably be included in a subsequent request (unless it is necessary for the determination of the first request) (paragraph 7.3.4).
- When a qualifying authority wishes to agree conditions with the nominated undertaker, it shall propose them at least seven days prior to the determination date of the request for approval, which will assist in determination within the eight-week period (paragraph 7.3.5).
- When necessary, the qualifying authority shall put in place appropriate internal decision making arrangements to ensure that this timetable for determining requests is achieved (paragraph 7.4.1).
- Where only part of a request can be determined within this timetable, the qualifying authority shall not seek unreasonably to delay determination of the remainder (paragraph 7.4.2).
- Where an authority refuses approval of a request for approval, in addition to specifying the grounds under the Planning Conditions Schedule for its decision, it shall state clearly and precisely the full reasons for its decision (paragraph 7.7.1).
- Where the authority's decision in relation to the determination of plans and specifications has been reached on the grounds that some aspect of the operation or work ought to be modified and is reasonably capable of being modified, or that the development ought to be (and could reasonably be) carried out elsewhere within the relevant limits, the authority shall include an explanation of why and how it considers the modifications should be made (paragraph 7.7.2).
- Where the authority's decision in relation to the determination of construction arrangements has been reached on the grounds that the arrangements ought to be modified and are reasonably capable of being modified, the authority shall include an explanation of why and how it considers modification should be made and where (paragraph 7.7.3).
- There may be instances when it will be necessary to obtain permission for works which are not the subject of deemed consent granted by the Bill. Should the nominated undertaker seek permission through the normal planning process, the qualifying authority shall consider and determine the application expeditiously under normal planning procedures (paragraph 8.1.1).
- In determining requests for approval, the qualifying authority shall take into account the assessments in the Environmental Statement, the arrangements in the CoCP, the Heritage Memorandum, the Environmental Memorandum, and any relevant undertakings and assurances concerning the project specified in the Register of Undertakings and Assurances (paragraph 9.1.1).
- The qualifying authority shall have regard to the Planning Context Report under paragraph 16 of the Planning Conditions Schedule and to the nominated undertaker's explanation of how an individual request for approval fits into the overall scheme of the works authorised by the Bill (paragraph 9.2.1).

- The qualifying authority must have regard to statutory guidance issued by the Secretary of State in accordance with paragraph 26 of Schedule 17 to the Bill (paragraph 9.3.1).

4. Responsibilities of the nominated undertaker

4.1 In order to facilitate the expeditious handling of requests for approval by qualifying authorities, the Memorandum also places certain obligations on the nominated undertaker (HS2 Ltd). The main responsibilities of the nominated undertaker (as set out in Sections 1, 4, 7 and 10 of the Memorandum) are as follows:

- The nominated undertaker will work with qualifying authorities to support the determination of requests for approval, which will include early and constructive engagement, in accordance with obligations set out in this Memorandum (paragraph 1.1.3).
- The nominated undertaker will have regard to the conclusions of the Forum and the Planning Forum Notes in preparing the requests for approval (paragraph 4.1.6).
- Where practicable, the nominated undertaker will respond quickly to requests for information or clarification to assist the planning authority in the timely processing of requests (paragraph 7.3.1).
- The nominated undertaker shall engage in proportionate forward discussions about prospective requests for approval with the qualifying authority and statutory consultees. Forward discussions will, as relevant, include design development, submission dates and planning committee cycles (paragraph 7.5.1).
- When designs of HS2 works are submitted for approval, the nominated undertaker shall, where reasonably necessary for the proper consideration of the design proposed, provide an indication or outline of the appropriate mitigation measures (if any) which it intends to submit subsequently under paragraphs 9 or 12 of the Planning Conditions Schedule (paragraph 7.5.2).
- Where the works for approval will have a mitigating effect in relation to operational noise from the railway or new roads, the nominated undertaker will provide information to show, so far as is reasonably practicable at that stage in the design process, how the noise mitigation performs and the expected conditions (paragraph 7.5.2).
- The nominated undertaker will, every quarter, provide a forward plan of requests for approval anticipated in the next six months (paragraph 7.5.3).
- The nominated undertaker will notify the relevant qualifying authority if there is a significant change to the forward plan (paragraph 7.5.3).
- The nominated undertaker will use reasonable endeavours to submit a site restoration scheme, for the agreement of the qualifying authority, prior to the discontinuation of the use of any site for carrying out operations ancillary to the construction of any of the scheduled works (paragraph 7.5.4).

- In order to assist with the expeditious handling of submissions, where a request for approval is made by the nominated undertaker under the Planning Conditions Schedule, then for information purposes:
 - if the site to which the request relates is on or close to an authority boundary, and is likely to impact upon it, a copy will be sent to the adjacent authority;
 - if the request relates to lorry routes which pass through the areas of adjoining authorities, a copy will be sent to those adjoining authorities;
 - in non-unitary areas, a copy will be sent to the non-determining authority; and in the areas subject to Opportunity Area Planning Frameworks, a copy will be sent to the Greater London Authority (paragraph 7.5.5).
- Prior to an authority being disqualified, the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker (paragraph 7.6.1).
- The nominated undertaker shall submit requests for approval of construction arrangements, plans and specifications, and mitigation schemes in compliance with guidelines on standardised pro forma to be drawn up by the Forum (paragraph 10.1.1).

5. Criteria for the removal of qualifying authority status

5.1 Paragraph 7.6.1 of the Memorandum states:

“If the qualifying authority repeatedly fails to expedite requests for approval, or seriously fails to expedite a request in line with the timescale set out in paragraph 22(4) of the Planning Conditions Schedule, or repeatedly or seriously fails to act in accordance with all the requirements of this Memorandum, the Secretary of State may have sufficient grounds to order that the authority shall cease to have the powers of a qualifying authority under the Bill provisions. Prior to an authority being disqualified, the nominated undertaker and the Secretary of State will discuss with the qualifying authority concerns regarding its performance and the performance of the nominated undertaker.”

5.2 As per paragraph 7.6.1, DfT will only consider the removal of qualifying authority status from a qualifying authority if the qualifying authority repeatedly fails to expedite requests for approval in line with the timescales set out in paragraph 22(4) of Schedule 17¹, or repeatedly or seriously fails to act in accordance with all the requirements of the Memorandum and an insufficient attempt to rectify the situation is made by the qualifying authority.

5.3 Each qualifying authority will be dealing with different quantities and types of requests for approval and the implication for the HS2 Phase One construction programme of delays to approval will vary depending on the nature of the request. Therefore, DfT does not believe that it is appropriate to establish firm criteria (e.g. a qualifying authority failing to expedite requests for approval on X number of occasions) for the circumstances under which the power to remove qualifying authority status might be used. Instead, each case raised by HS2 Ltd will be assessed individually by DfT, taking into account the overall number, type and criticality of requests for approval being processed by the qualifying authority in question.

¹ It should be noted that the eight week timescale for the determination of requests set out in Schedule 17 can be extended with the agreement of HS2 Ltd.

6. Staged approach for the removal of qualifying authority status

- 6.1 To ensure that the process for the removal of qualifying authority status enables the timely and efficient delivery of HS2 Phase One but also gives qualifying authorities the opportunity to take action to resolve any areas of concern identified by HS2 Ltd, DfT proposes a staged approach for the removal of qualifying authority status, as set out in Table 1 below.
- 6.2 Before this staged approach is commenced, DfT expects that HS2 Ltd will have attempted to resolve the areas of concern at a working level with the qualifying authority concerned (Stage 0). Only once resolution of the concerns/issues has proved impossible should HS2 Ltd consider commencing Stage 1 of the process. HS2 Ltd must notify DfT and the relevant qualifying authority in writing before Stage 1 is commenced.
- 6.3 The staged approach aims to ensure that Stage 5 (removal of qualifying authority status) should only be reached in exceptional circumstances and that there are sufficient opportunities for the issues to be resolved through dialogue at various levels of the organisations concerned. Before Stage 3 is commenced, DfT will require HS2 Ltd to demonstrate that it has escalated the case in line with the process set out (Stages 1 and 2 of the staged approach) and has exhausted all reasonable possibilities to resolve the issues through dialogue with the qualifying authority.
- 6.4 In order for DfT to satisfy itself that the process has been followed and that the action (or inaction) of the qualifying authority warrants progression to Stage 3 of the process, it will ask HS2 Ltd to provide written evidence of its interaction with the qualifying authority on the issues/requests for approval concerned (for example, emails, meeting minutes and notes of phone calls). It will be the responsibility of the HS2 Ltd Town Planning team to ensure that this information is easily accessible and can be provided to DfT as requested.
- 6.5 For clarity, DfT does not expect that all issues will be resolved or a formal response will have necessarily been issued by the qualifying authority within the timescales set out in Table 1. However, DfT does expect that initial steps will have been taken by the qualifying authority (e.g. acknowledging the letter from HS2 Ltd, arranging a meeting with HS2 Ltd etc.) within the timescales specified.
- 6.6 To ensure that the act of removing qualifying authority status is able to be completed within a timeframe that will support the successful and timely delivery of HS2 Phase One, DfT will prepare a template Order and Explanatory Memorandum that can be utilised in the event that Stage 5 is reached. These will remain on file and will ensure that, once the Secretary of State has made the decision to remove qualifying authority status from a planning authority, the time taken to finalise the Order and lay it before Parliament is minimised.

6.7 For the avoidance of doubt, DfT considers that Stages 3 and 4 of the staged approach satisfy the requirement (under paragraph 13(6) of Schedule 17) for the Secretary of State to consult HS2 Ltd and the qualifying authority in question before making the Order. No additional consultation will take place.

7. Table 1: Staged approach for the removal of qualifying authority status

Stage 0:

HS2 Ltd and the qualifying authority to resolve any issues/areas of concern at a working level.

If the issues cannot be resolved satisfactorily, then HS2 Ltd may proceed to Stage 1.

In advance of commencing Stage 1, HS2 Ltd must notify DfT and the qualifying authority in writing.

Stage	Action	Subject and Timescales
Stage 1	Letter from HS2 Ltd Head of Town Planning to the Head of Town Planning at the qualifying authority	<p>Details the issues that are causing HS2 Ltd concern and the efforts made to resolve the issue. Offers a discussion/meeting to resolve the issues and find a way forward. Likely to ask for a response within 14 working days.</p> <p>If the issues remain, proceed to Stage 2. In advance of commencing Stage 2, HS2 Ltd must notify DfT in writing.</p>
Stage 2	Letter from the HS2 Ltd Chief Executive to the Chief Executive of the qualifying authority	<p>References letter from Stage 1. Details the issues that are causing HS2 Ltd concern. Asks for a response on the issues raised and/or how they will be addressed. Makes clear that if there is no acceptable resolution, then the issue will be escalated to DfT. Likely to ask for a response within 21 working days.</p> <p>If the issues remain, proceed to Stage 3.</p>
Stage 3	Letter from a DfT Senior Civil Servant to the Chief Executive of the qualifying authority	<p>References letters from Stage 1 and 2. Details the issues that are causing HS2 Ltd concern. Asks for a response on the issues raised and/or how they will be addressed. Makes clear that if there is no acceptable resolution, then DfT may need to begin the process of removing qualifying authority status. Likely to ask for a</p>

response within 7 working days.

If the issues remain, proceed to Stage 4.

Stage 4	Letter from the Secretary of State to the Chief Executive of HS2 Ltd and the Chief Executive of the qualifying authority	References Stages 1-3. Notifies both Chief Executives that DfT intends to make an Order which will remove qualifying authority status from the planning authority in question. Offers qualifying authority a final opportunity to resolve issues. Likely to ask for a response within 7 working days.
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Stage 5	The Secretary of State makes an Order to remove qualifying authority status from the planning authority and lays it before Parliament. It will come into force 21 days after it is laid.	
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8. Notification of the removal of qualifying authority status

- 8.1 As stated in paragraph 2.3, the Secretary of State's decision to remove qualifying authority status from a planning authority is final – the Act does not provide for a right of appeal.
- 8.2 Once the Order to remove qualifying authority status has been made by Statutory Instrument, DfT will notify HS2 Ltd and qualifying authority in writing and set out the date on which the Order will come into effect (21 days after the Order is laid in Parliament). DfT will notify the other qualifying authorities of the removal of qualifying authority status through an update at the next meeting of the HS2 Phase One Planning Forum. The Order removing qualifying authority status will also be published on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

9. Guidance on the repeated use of the staged approach by the nominated undertaker

- 9.1 The construction of HS2 Phase One is to last for approximately 10 years. This lengthy construction period may result in HS2 Ltd commencing the staged approach in relation to a specific qualifying authority on more than one occasion. This situation could arise if the staged approach is initiated by HS2 Ltd (e.g. in Year 2) and the concerns/issues which led HS2 Ltd to commence the staged approach are subsequently resolved (for example at Stage 3 of the process), but then further down the line (e.g. in Year 5), concerns/issues arise again and HS2 Ltd initiates the staged approach once more.
- 9.2 If HS2 Ltd seeks to initiate the staged approach for the removal of qualifying authority status more than once with the same qualifying authority, it will seek DfT's advice as to whether or not it is appropriate for the staged approach to begin at Stage 1 or whether it should resume from the point at which the concerns/issues were resolved on the previous occasion that it was initiated. DfT expects that HS2 Ltd will only seek its advice once resolution of the concerns/issues at a working level (Stage 0) has proved impossible. HS2 Ltd must notify the qualifying authority that it is seeking DfT's advice on this issue.
- 9.3 In advising HS2 Ltd, DfT will take account of how much time has passed between the occasions that the staged approach has been initiated and the degree to which the issues involved are similar or different. DfT will notify both HS2 Ltd and the qualifying authority of its decision, which will be final.

Annex A: Matters requiring qualifying authority approval under Schedule 17

- **Building works** – includes the erection, construction, alteration or extension of any permanent building.
- **Other construction works** – includes road vehicle parks; earthworks; sight, noise or dust screens; transformers, telecommunications masts or pedestrian accesses to railway lines; fences or walls; and lighting equipment.²
- **Matters ancillary to development** – specifically construction camps, but also any construction arrangements for which class approvals have not been given, and in any case where HS2 Ltd wishes to depart from the class approval given by the Secretary of State in March 2017.
- **Road transport** – routes used by large goods vehicles to transport materials to a working or storage site, a site where it will be re-used, or a waste disposal site. However, approval is not required if the route is on a special road or trunk road and/or where the site in question has no more than 24 large goods vehicle movements per day.
- **Waste and soil disposal and the excavation of bulk materials from borrow pits**
- **Bringing scheduled works and depots into use** – however, approval is not required for works which are underground.
- **Site restoration schemes** – including sites relating to waste and soil disposal and the excavation of borrow pits, but not in relation to sites where the nominated undertaker is subject to an obligation under paragraph 5(1) of Schedule 16.

² As per paragraph 3(8) of Schedule 17, approval is not required for works of a temporary nature.

Annex B: Matters requiring the approval of 'authorities which are not a qualifying authority' under Schedule 17

- **Building works** - includes the erection, construction, alteration or extension of any permanent building.
- **Site restoration schemes** - however, approval is not required for sites relating to waste and soil disposal and the excavation of borrow pits or sites where the nominated undertaker is subject to an obligation under paragraph 5(1) of Schedule 16.

Annex C: HS2 Phase One qualifying authorities

Aylesbury Vale District Council
Birmingham City Council
Buckinghamshire County Council
Cherwell District Council
Chiltern District Council
Hertfordshire County Council
Lichfield District Council
London Borough of Brent
London Borough of Camden
London Borough of Ealing
London Borough of Hammersmith and Fulham
London Borough of Hillingdon
Manchester City Council
Northamptonshire County Council
North Warwickshire Borough Council
Old Oak & Park Royal Development Corporation
Oxfordshire County Council
Slough Borough Council
Solihull Metropolitan Borough Council
South Bucks District Council
South Northamptonshire Council
Staffordshire County Council
Stratford on Avon District Council
Three Rivers District Council
Warwickshire County Council
Warwick District Council
Westminster City Council
Wycombe District Council