



# High Speed Rail (London-West Midlands) Bill

**Bill No 132-I & 132-II, 2013-14**

**RESEARCH PAPER 14/24** 22 April 2014

This paper has been prepared for the House of Commons Second Reading stage of the *High Speed Rail (London-West Midlands) Bill*, scheduled for 28 April. The Bill confers the powers required to construct Phase One of the proposed HS2 scheme from London Euston to Birmingham Curzon Street and Handsacre with intermediate stations in West London (Old Oak Common) and at Birmingham Airport. It does not provide for a direct connection to Heathrow Airport. While provision for a rail link to the Channel Tunnel Rail Link (HS1) remains in the Bill the Government intends for it to be removed during the Bill's progress through Parliament.

This is a Hybrid Bill, which means it has elements of both a public and a private Bill: it gives both Parliamentary approval and planning permission for the scheme. Those directly and specially affected by the construction of the route will be able to petition a specially-convened select committee on the Bill.

Louise Butcher

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## Research Paper 14/24

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## Summary

This paper deals with the Hybrid Bill to authorise the building of Phase One of the High Speed 2 (HS2) project from London to the West Midlands. The Bill, if passed, would give both Parliamentary and planning approval for the scheme.

HS2 is the Government's flagship transport infrastructure project to build a high speed rail line from London to Manchester and Leeds, via Birmingham, the East Midlands, Sheffield and Crewe, to begin operation in 2026 and be completed by 2032/3. It was supported by the Labour Government after 2009 and has had the support of the Conservative-Liberal Democrat Coalition Government since May 2010. There are two 'phases' of the scheme: Phase One from London to the West Midlands and Phase Two from the West Midlands to Leeds and Manchester.

Supporters claim that the line is urgently needed to meet projected future demand; to tackle the capacity constraints on the West Coast Main Line; and to deliver wider economic and regional benefits. Opponents maintain that these claims are over-stated and that future demand and capacity can be met via other, cheaper means.

The total cost of the scheme is currently estimated at £42.6 billion for both phases with an additional £7.5 billion for rolling stock (including contingency).

This Hybrid Bill for Phase One follows a 'paving bill', the *High Speed Rail (Preparation) Act 2013*, which was given Royal Assent in November 2013, and is intended to be succeeded by a second Hybrid Bill for Phase Two. The paving bill authorised spending in preparation for HS2 (see HC Library briefing note [SN6624](#)).

The Hybrid Bill and the accompanying Environmental Statement, running to some 50,000 pages in total, was published in November 2013. A Hybrid Bill has elements of both a public and private bill – the key additional stage, compared to Public Bill procedure, is a special select committee convened to consider petitions against the Bill from directly and specially affected individuals, organisations or groups. This adds significant time to the Parliamentary process and means that this Bill will need to be carried over into the new Parliament, after the 2015 General Election.

This paper is focused on the **procedure** for the Bill and its **content**. There is only a brief overview of the project itself and debates about the scheme 'in principle', including its merits or otherwise: these matters are already covered in detail in HC Library research paper RP11/75, *High Speed Two (HS2): the debate*, 17 November 2011; and HC Library briefing note SN316, *Railways: high speed rail (HS2)*, 14 April 2014.

# 1 The HS2 project: overview

## ***What is HS2?***

HS2 is the Government's flagship transport infrastructure project to build a high speed rail line from London to Manchester and Leeds, via Birmingham, the East Midlands, Sheffield and Crewe, to begin operation in 2026 and be completed by 2032. It has been supported by the three main parties since 2009, in government and opposition.<sup>1</sup> The SNP has called for HS2 to be extended to Scotland and has indicated it is considering building a separate high speed rail link between Edinburgh and Glasgow by 2024.<sup>2</sup> Plaid Cymru has said the scheme is an English 'vanity project' and called for Wales to be allocated compensatory funds through the Barnett Formula.<sup>3</sup> UKIP has labelled the project 'unaffordable' and called for it to be scrapped.<sup>4</sup>

Supporters claim that the line is urgently needed to meet projected future demand; to tackle the capacity constraints on the West Coast Main Line; and to deliver wider economic and regional benefits. Opponents maintain that these claims are over-stated and that future demand and capacity requirements can be met via other, cheaper means.

The scheme that became HS2 was floated separately by the three main parties in 2008-09. In January 2009 Geoff Hoon, then Transport Secretary in the Labour Government, set up HS2 Ltd. with the principal aim of advising the Secretary of State on the development and proposals for a new railway from London to the West Midlands and potentially beyond.<sup>5</sup> The scheme taken forwards from 2010 was based on the outcome of the work conducted for the Labour Government by HS2 Ltd. It was initially proposed by Labour in their March 2010 command paper and taken up by the Coalition Government after it assumed office in May of the same year.<sup>6</sup>

In the May 2010 Coalition Agreement the new government confirmed its decision to build the new line in two phases, due to "financial constraints".<sup>7</sup> It was later confirmed that Phase One would take the line from London to the West Midlands by 2026 while Phase Two would take the line from the West Midlands to the north of England by 2032-33.<sup>8</sup> The route configuration for Phase One was published for consultation in February 2011, eliciting strong responses from those concerned about the effects on the Chilterns and other areas of outstanding natural beauty and on the area around Euston Station in north London, particularly Camden. The Government consequently announced changes to mitigate some of these concerns.<sup>9</sup>

A further significant change to Phase One was announced by the Government in March 2014 after the Chairman of HS2 Ltd., Sir David Higgins, recommended that the proposed direct HS1-HS2 overland link in North London should be scrapped and that plans for Euston should

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<sup>1</sup> DfT, *Britain's transport infrastructure: High Speed Two*, January 2009; Conservative Party, *Conservative rail review: getting the best for passengers*, February 2009; and: Liberal Democrats, *Fast track Britain: Building a transport system for the 21<sup>st</sup> century* (policy paper 85), June 2008. One should note that these were not proposing exactly the same scheme: scope, route alignment and destinations were all slightly different

<sup>2</sup> SNP press notice, "SNP welcome commitment to high speed rail by 2024", 12 November 2012

<sup>3</sup> "HS2: Plaid Cymru say there will be no benefit for North Wales", *Daily Post*, 30 October 2013; for information on the Barnett formula, see HC Library briefings note [SN4750](#)

<sup>4</sup> "Nigel Farage: 'Skint' Britain cannot afford HS2", *The Daily Telegraph*, 25 January 2014

<sup>5</sup> DfT, *The role and funding of High Speed Two Ltd.*, 14 January 2009

<sup>6</sup> DfT, *High Speed Rail*, Cm 7827, March 2010; and: DfT press notice, "Proposed high speed rail network North of Birmingham confirmed", 4 October 2010

<sup>7</sup> HMG, *The Coalition: Our Programme for Government*, May 2010

<sup>8</sup> DfT, *High Speed Rail: Investing in Britain's Future – Consultation*, February 2011, p16

<sup>9</sup> DfT, *High Speed Rail: Investing in Britain's Future – Decisions and Next Steps*, Cm 8247, January 2012; and: DfT, *The Government Response to the HS2 Design Refinement Consultation*, Cm 8758, November 2013

be reconsidered.<sup>10</sup> In response, the Secretary of State, Patrick McLoughlin, stated that he would remove the HS1-HS2 link from the Hybrid Bill and withdraw the safeguarding of this section of the route ‘as soon as possible’. In addition, on Euston Mr McLoughlin said that he would ask HS2 Ltd. and Network Rail to develop more comprehensive proposals for the redevelopment of the station, including proposals for rebuilding the Euston Arch.<sup>11</sup> This would involve an amendment to the Hybrid Bill at a later stage if new proposals for Euston are brought forward.

It was not until January 2013 that a decision was taken as to the configuration of the route from Birmingham north to Manchester (via Crewe) and Leeds (via the East Midlands and Sheffield).<sup>12</sup> The Government ran a consultation on Phase Two between July 2013 and January 2014. A final decision on the route is expected by the end of 2014: this is unlikely to have any bearing on the Phase One Hybrid Bill.<sup>13</sup>

Arguments for and against HS2 are based on competing ideas not only about what the country needs in terms of new or improved rail infrastructure, but about how (if needed at all) it should be delivered and what the benefits and costs are of the ideas put forward. The two sides fundamentally disagree with the other’s interpretation of the ‘facts and figures’ about the scheme. More information on this is given below.

### ***How much is it going to cost?***

The cost estimate for Phase One,<sup>14</sup> published alongside the Hybrid Bill, is for a total construction cost of £19.39 billion, while the ‘target price’ (i.e. the amount that the Government wants to bring the scheme in for) is £17.16 billion.<sup>15</sup> However, the statement on financial effects in the Explanatory Notes to the Bill still gives an overall ‘funding envelope’ for Phase One of £21.4 billion in 2011 prices, including £5.75 billion of contingency.<sup>16</sup>

These figures are in 2011 prices. The Government has refused to update them to, e.g., 2013 prices, on the grounds that “this price base has been used in presenting all cost information on the project to date to enable a clear comparison of cost as the project progresses”.<sup>17</sup> It does not include VAT as “VAT is an internal transfer within government rather than an additional cost. It would therefore not be right to include VAT within cost estimates”.<sup>18</sup>

The cost estimate includes compensation: this would come out of the £2.788 billion allocated for the purchase of land, easements, etc.<sup>19</sup>

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<sup>10</sup> HS2 Ltd., *HS2 Plus: A report by David Higgins*, March 2014; ‘HS1’ is the Channel Tunnel Rail Link, which terminates at St Pancras

<sup>11</sup> [HC Deb 17 March 2014, cc53-54WS](#)

<sup>12</sup> DfT, *High speed rail: investing in Britain’s future – Phase Two: the route to Leeds, Manchester and Beyond*, Cm 8508, January 2013; [detailed route maps](#) are available on the DfT website

<sup>13</sup> DfT, *High Speed Rail: investing in Britain’s future - Consultation on the route from the West Midlands to Manchester, Leeds and beyond*, July 2013; though aspects of this Bill would impact on those living along the Phase Two route, see section 3.7 for further information

<sup>14</sup> Phase Two, currently at a much earlier stage of development, is estimated at present to cost £21.2 billion [DfT, *The Economic Case for HS2*, October 2013, p49]

<sup>15</sup> DfT/HS2 Ltd., *High Speed Rail (London-West Midlands): Estimate of Expense*, 25 November 2013; and: DfT, *HS2: Outline Business Case - Section 4: Financial Case*, March 2014, para 9

<sup>16</sup> EN, para 504; this discrepancy between the estimated construction cost and the ‘funding envelope’ is due to a £2 billion Treasury-held contingency [op cit., *HS2: Outline Business Case - Section 4: Financial Case*, Table 1]

<sup>17</sup> [HC Deb 10 December 2013, c181W](#)

<sup>18</sup> [HL Deb 7 January 2014, c294WA](#); and: op cit., *HS2: Outline Business Case - Section 4: Financial Case*, para 22

<sup>19</sup> The compensation arrangements for HS2 have proven complex and controversial; for further information see section 4 of HC Library note [SN316](#)

While this estimate is specifically for the *construction* cost, it does include costs incurred from April 2013 onwards. Spending up to and including 2014/15 is currently estimated to total £1.1 billion.<sup>20</sup> However, this estimate does not take account of the decision to remove the overground link between HS1 and HS2 in North London or of any revised plans for the redevelopment of Euston Station and its environs.<sup>21</sup> In addition, it does not (for obvious reasons) include the cost of any possible changes to the scheme ordered by the Hybrid Bill Committee at a later stage, such as further mitigation measures, or changes to the route and/or stations.<sup>22</sup> Similarly, there is an implication in terms of the cost of any delay to the Government's anticipated implementation timeframe: "a one year delay in the opening date of the railway would reduce the estimated benefits by around £400m in the scheme appraisal due to the effects of discounting".<sup>23</sup>

The vast bulk of the funding will come from the taxpayer. The Government has consistently argued that 'some' funding could come from the private sector and from the EU: "... further contributions will be sought from certain businesses and developers directly benefitting from the project".<sup>24</sup> However, the Government does acknowledge that "third party contributions could only ever deliver a small percentage of the core costs for HS2".<sup>25</sup> For example, EU contributions to previous HSR projects via the Trans-European Transport Network (TEN-T) stream have equated to between four and six per cent of the overall cost.<sup>26</sup>

The rolling stock (trains) that will operate on the line will also have to be purchased. The estimated cost is £6.93 billion; this is the 'central estimate' in 2011 prices and was revised down from the previous estimate of £7.5 billion largely due to changes in risk assumptions. The lower figure was the one used in the October 2013 revised economic case, though the Department states that: "it is also appropriate to retain the higher figure as a long-term fiscal provision, providing a higher level of certainty".<sup>27</sup>

There will be two types of rolling stock: captive (used on HS2 only) and classic compatible (able to run off the HSR track onto the conventional railway). The revised costs refer only to 200 metre units (trains); the 260 metre units, which were previously envisaged to run on the full Y network once Phase Two was open, have now been discarded.<sup>28</sup> It is as yet unclear whether the cost of the rolling stock will be met by the taxpayer, though this seems increasingly likely. The Government says that the current estimated cost:

... is likely to exceed current private sector financing market capacity. The largest individual Rolling Stock Company (RoSCo) financings have been less than £1bn, and the largest since 2008 has been around £300m. The £2.4bn IEP [InterCity Express Programme] financing was delivered through a structured Public Private Partnership (PPP) arrangement but included around £1bn of Japanese Export Credit Agency. However, there may be potential to establish a government funded rolling stock company which could seek co-investors in due course.<sup>29</sup>

Once the line is operational it is likely that the Government of the day will seek to recoup some of the construction costs by letting out a contract to operate the line. Such a contract is

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<sup>20</sup> [HL Deb 7 January 2014, c293WA](#)

<sup>21</sup> As recommended by Sir David Higgins and agreed by the Government in March 2014 – see above

<sup>22</sup> See section 2, below, for the role of the Select Committee

<sup>23</sup> [Railway Matters and Regulation – HS2 Hybrid Bill: Impact Assessment](#), 24 September 2013, p6

<sup>24</sup> EN, para 505

<sup>25</sup> Op cit., [HS2: Outline Business Case - Section 4: Financial Case](#), para 62

<sup>26</sup> Ibid., para 78; for more information on TEN-T, see HC Library briefing note [SN478](#)

<sup>27</sup> Ibid., paras 19-20

<sup>28</sup> HS2 Ltd. for the DfT, [HS2 cost and risk model report](#), March 2012, pp15-17; and: *ibid.*, para 16

<sup>29</sup> Op cit., [HS2: Outline Business Case - Section 4: Financial Case](#), para 95

currently in place on HS1.<sup>30</sup> While the Department has “not decided at this stage” whether to let a similar concession for HS2,<sup>31</sup> “there is likely to be significant market capacity for an HS2 concession”. The value of such a concession:

... will be determined largely by the level and certainty of access charge revenues, but the potential scale may be such that the delivery of finance may be best sought by letting two or even three separate concessions. An operating concession would mean government would still need to meet the up front capital costs of the project, and would also bear post construction defect risk. However, risk transfer could be structured to focus on those elements where the private sector can enhance efficiency (e.g. operating costs).<sup>32</sup>

### **Why do people support it?**

*Note: a fuller statement for the arguments for HS2 can be found in HC Library research paper [RP 11/75](#).*

The main arguments made for HS2 are threefold: demand; capacity; and economic and regional benefits (‘rebalancing the economy’). The Government has emphasised each of these benefits at different times and for different reasons, for example, it has said that the main rationale for Phase One is to relieve overcrowding on the West Coast Main Line (WCML) between London and Birmingham, while Phase Two is intended to achieve wider economic and regional benefits in the north of England and beyond. There are other arguments that have been put forward in favour of the scheme, namely that the UK is in danger of falling behind our neighbours and competitors in Europe if we do not modernise our transport infrastructure and that, assuming a need for such infrastructure, HSR is the least harmful option in terms of carbon emissions.

The most recent, and comprehensive, statement of the arguments for HS2 was made in the Government’s ‘strategic case’, published in October 2013. This draws on previously published work by KPMG, Steer Davies Gleave, Network Rail, Greengauge 21 and others. It makes a positive case in terms of: protecting and increasing current services; providing extra capacity to meet anticipated demand; offering a relatively low carbon form of transport; job generation, redevelopment and growth in the regions and being affordable.

As mentioned above, the demand and capacity question is largely focused on the southern end of the WCML just north of London, though it is also a factor on the approaches to the major stations in Birmingham, Manchester and Leeds. In the strategic case the Government explains:

The high speed line itself would be capable of carrying fourteen trains per hour in each direction, rising to eighteen trains when the network is complete. New stations on the line would be built to accommodate 400m long trains – much longer than those currently in use on the network and each capable of carrying up to 1,100 passengers.

At the same time as transforming intercity travel, space will be released on the existing network to enable commuter and freight traffic to grow, and for a well-planned timetable of other services to places not served by HS2. At present intercity trains occupy 11 of the 14 hourly train paths on the West Coast Main Line fast lines. These will be available for new services.

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<sup>30</sup> For details see section 3 of HC Library briefing note [SN267](#)

<sup>31</sup> DfT, *The Strategic Case for HS2*, October 2013, para 105, p37

<sup>32</sup> Op cit., *HS2: Outline Business Case - Section 4: Financial Case*, para 94

There are many options for making best use of this released capacity, including extra commuter and freight trains, and other regional and local services that would otherwise be impossible to run. Network Rail estimate that over 100 cities and towns could benefit from new or improved services as a result of capacity released on the existing rail network. By increasing capacity in this way, there is also the chance to relieve pressure on the overworked main lines and help improve performance, reliability and timetable resilience.<sup>33</sup>

The Government is also keen to emphasise that HS2 would deliver an 'equal if not better' service to all towns and cities connected by the scheme. Most of these service improvements would come from freed up capacity on the conventional network. Phase One intends to deliver service improvements along the following lines:

Between Euston and Birmingham, the West Coast Main Line timetable could be restructured, offering better services from locations such as Coventry, Rugby, Northampton, Milton Keynes and Watford. This will bring significant benefits to commuters. There is the potential to create a high quality network of intercity rail services for places not directly served by HS2. It would make it possible to run services so that the stations [such as Crewe, Stafford, Tamworth, Nuneaton, Rugby, Milton Keynes and Watford Junction] meet their full potential as connecting hubs.<sup>34</sup>

Phase Two intends to deliver the following service improvements:

Phase Two will provide new lines directly to the heart of Manchester and Leeds, and will also serve Sheffield, East Midlands and Manchester airport with new stations. These will unlock further improvements to the existing rail network. These would include:

- more capacity for local and regional services serving the West Midlands from the North, Staffordshire, Cheshire and Manchester;
- a re-orientation of the routes from Leeds to Sheffield, Wakefield and Doncaster, allowing more frequent commuter trains into these centres; and
- a bypass of the congested East Coast Main Line, especially the two-track bottleneck south of Stevenage.<sup>35</sup>

The Government also anticipates improvements to freight services from freed up capacity:

HS2 could provide space for an extra 20 West Coast Main Line freight paths (and possibly more subject to detailed train planning). As an indication of the value of additional freight paths, previous analysis carried out by WSP (HS2 and Freight – A Hidden Benefit) concluded that 40 additional freight paths could remove up to 1,600 lorries a day from the motorways and could deliver benefits of up to £1.3bn to the economy.<sup>36</sup>

In terms of economic and regional benefits, the case made by the Government and others is that the city regions in the Midlands and the North of England would do particularly well out of HS2 (both phases). In its October 2013 strategic case the Government relies largely on the earlier work of KPMG to show these benefits:

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<sup>33</sup> Op cit., *The Strategic Case for HS2*, pp74-75

<sup>34</sup> Ibid., p77

<sup>35</sup> Ibid., p78; for full details of potential service improvements see Figure 4.5, pp79-80

<sup>36</sup> Ibid., p81

The results from the KPMG analysis suggest that HS2 could increase economic output by £15bn per year. Even with more cautious assumptions the annual benefit could be £8bn. In addition, the analysis shows that while all regions benefit, the city regions in the Midlands and the North do particularly well. For example, it suggests that HS2 could provide a boost to the Birmingham city region equivalent to between 2.1% and 4.2% of its GDP. For the Manchester city region the figure is 0.8%-1.7%, for the Leeds city region 1.6% and for Greater London 0.5%. This contradicts suggestions that London will benefit from HS2 at the expense of the North.<sup>37</sup>

The regions have also set out how they expect to benefit from HS2. For example, Centro, the Passenger Transport Executive for the West Midlands, has said:

The “Y”-shaped [full HS2] network, combined with a local connectivity package, will generate for the West Midlands region:

- A £4bn increase in economic output per year
- Over 50,000 additional jobs
- An average GVA increase of £680 per worker

The importance of the Connectivity Package is illustrated by the fact that it adds huge value to the West Midlands:

- A £2.4bn increase in economic output per year
- 28,000 additional jobs
- An average GVA increase of £400 per worker

The local connectivity package, working with the HS2 network, therefore provides over double the economic benefits that the national HS2 network alone would bring to the West Midlands. This fits with the experiences of cities and towns around the world which have effectively “plugged-in” new high speed rail stations with effective local connections.<sup>38</sup>

In terms of the more traditional cost/benefit, the Government states that:

Our analysis shows that the ‘standard’ benefit-cost ratio for HS2 is ‘high’ value for money at 2.3 including wider economic impacts. Based on projections about longer term growth in demand, the ‘long term’ benefit-cost ratio would be ‘very high’ value for money, ranging from 2.8 to 4.5 if demand grows at 2.2% a year to 2040 or 2049, respectively. Even for Phase One alone the benefit-cost ratio is estimated at 1.7.<sup>39</sup>

The Government also insists that the scheme is eminently affordable and that looked at in the wider public spending context it is “an investment that the country can sustain and needs” as it represents only 0.17 per cent of GDP.<sup>40</sup> Furthermore, the Government insists that the

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<sup>37</sup> Ibid., p99; it does acknowledge that “given differences in approach it is not directly comparable to the standard assessment set out below and cannot be added to the benefit-cost ratio, but it does suggest that there may be benefits not captured in the transport appraisal and is a step forward in improving the evidence in this area”, p100. For further details, see: KPMG for HS2 Ltd., *HS2 Regional Economic Impacts*, Ref: HS2/074, September 2013

<sup>38</sup> Centro, *How the HS2 Y Network Will Transform the West Midlands*, September 2013

<sup>39</sup> Op cit., *The Strategic Case for HS2*, p101

<sup>40</sup> Ibid., p140

costs are under control and are being brought down (see above for information on recent reductions in the construction estimate for Phase One and the rolling stock costs).

Finally, while acknowledging that high speed rail is not entirely without environmental impacts, the Government argues that the current scheme is accompanied by extensive mitigation works to minimise immediate impacts on the environment:

The proposed line of route has been carefully designed to avoid or reduce local environmental effects wherever possible by seeking to avoid the most significant impacts on centres of population and by using tunnels, deep cuttings and, where feasible, existing transport corridors. The views of local people and communities have been important. In designing the route and in mitigating the impacts of constructing and operating the railway, we have done as much as reasonably possible to avoid or reduce environmental impacts, particularly those that might affect residential areas, historic buildings, conservation areas, sensitive habitats and areas of natural beauty.<sup>41</sup>

And that HS2 will, more generally, reduce transport's carbon footprint:

Over the full lifetime of the scheme, assumed to be 120 years, HS2 would continue to give rise to net carbon reductions from its operations, as well as to carbon increases due to ongoing maintenance, repair and replacement of infrastructure. As a result, the overall carbon trend for HS2 could be a net carbon reduction over its design life, even if the higher value of construction emissions is assumed.

In practice, if HS2 did not proceed, other strategic transport alternatives would be required to seek to address the current and emerging transport challenges, each with their own carbon impacts. These alternatives have not been considered as part of this study. However, in comparison with most other transport modes, high speed rail offers some of the lowest carbon emissions per passenger-kilometre, and significantly less than cars and planes. Furthermore, most of the carbon emissions due to HS2 would arise from activities that fall within the EU ETS and would therefore be limited and gradually reduced.<sup>42</sup>

### **Why do people oppose it?**

*Note: a fuller statement for the arguments against HS2 can be found in HC Library research paper [RP 11/75](#).*

The main arguments made against HS2 fall into three broad categories: cost; environmental and social impacts; and the economic case. There are three main types of opposition to the scheme: those who are directly affected by the negative environmental and social impacts of the scheme (i.e. the people who live near the proposed route); those who are opposed to this particular scheme for social, environmental or other reasons, but not to high speed rail more generally; and finally those who oppose high speed rail altogether, largely (but not exclusively) for economic reasons. Many opponents of HS2 fall into more than one of these categories and the arguments are tied closely together.

Opponents of HS2 argue not only that the scheme is too expensive, but also that if the Government were determined to spend the money it could be better spent elsewhere to

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<sup>41</sup> Op cit., *The Strategic Case for HS2*, p86

<sup>42</sup> Temple-ERM for HS2 Ltd., *High Speed Rail: Consultation on the route from the West Midlands to Manchester, Leeds and beyond Sustainability Statement: Appendix F – HS2 and Carbon*, October 2013, p27; independent work by CPRE largely supports this but it states that carbon savings can only be maximised by changes to the scheme and other public policy measures, see: CPRE, *The carbon impacts of High Speed 2*, September 2012

deliver growth and economic benefits, particularly in the regions. This is the ‘opportunity cost’. Opponents also argue that HS2 would distort future spending: the gravitational pull of the scheme would crowd out other projects because of the political investment in HS2’s success. Dr Richard Wellings of the Institute for Economic Affairs (IEA) has said:

Given the political economy of [HS2], it is probable that schemes connected to HS2 will be prioritised over alternatives. In practice this means transport investment will not be allocated to maximise economic returns, but rather to bolster the viability of high-speed rail and favour the special interests involved in its development. Transport projects with high benefit-cost ratios will be crowded out by projects with lower benefit-cost ratios that link to HS2, even though the latter may represent poor value for money for taxpayers.<sup>43</sup>

The ‘opportunity cost’ could come in the form of other transport projects or spending in other areas such as housing and education, or using that money to provide for tax cuts to help reduce the debt or the deficit.<sup>44</sup> Opponents of the scheme have long criticised the Government for not properly considering alternative rail schemes that they have proposed.<sup>45</sup>

Opponents also argue that the overall cost of the scheme is already too high and likely to get higher. For example, when the Government announced a significant increase in the budget in June 2013 Joe Rukin, the Stop HS2 Campaign Manager, said:

The casual way in which a 30% jump in the costs of HS2 has been announced by the Transport Secretary, which almost completely wipes out the cuts made in the spending review is unbelievable. We are now looking at a total cost of over £50bn on a train which will only benefit the richest in society. The DfT have always said the costs wouldn’t go up as there was an ample contingency built in, but now we know, like everything else which has been said about the case for HS2, that this was completely false. As Frank Dobson pointed out, there are still loads of items which have yet to be added into the costs and the costs for this project will only continue to spiral. To push ahead with HS2 blindly because it sounds like it must be a good idea is simply insane and a kick in the teeth to everyone affected by the cuts.<sup>46</sup>

In terms of wider cost/benefit, opponents assert that the business case is based on a number of incomplete, outdated or simply false assumptions regarding, e.g. the value of working on a train. For example, the Bluespace Thinking Ltd. consultancy argued in November 2013:

The Economic case itself has two obvious and fundamental flaws within the detailed Analysis [value of time and passenger growth assumptions], along with two highly doubtful assumptions that almost discredit the case entirely [third party investment and business people working on trains]. Both the business passengers demand forecast and the KPMG assessment of economic benefits are also exaggerated and neither one is based on evidence or sound analytical practice.

Correcting the flaws, we calculate that the Benefit Cost Ratio (BCR) of Phase 1, with Wider Economic Impacts (WEIs), drops from 1.7 to 0.8, resulting in a negative £5

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<sup>43</sup> IEA, *The High-Speed Gravy Train: Special Interests, Transport Policy and Government Spending*, IEA Current Controversies Paper No. 46, August 2013, p47

<sup>44</sup> For some examples, see: NEF, *Is HS2 really the best way to spend £33bn?*, 18 June 2013

<sup>45</sup> See, e.g.: *Better than HS2: The 51m Alternative Infrastructure Investment Strategy*, 2013; for the Government’s response to this and other proposals, see: Atkins for DfT, *Appraisal of rail alternatives to HS2*, October 2013; and: Network Rail for DfT, *Options for Potential Capacity and Connectivity Enhancements to the Existing Network. A report for the Department for Transport*, October 2013

<sup>46</sup> Stop HS2 press notice, “UPDATED – HS2 costs jump by £10bn, almost wiping out Spending Review savings in one hit”, 26 June 2013

billion value. The Full scheme (phases 1 and 2) BCR with WEIs, drops from 2.3 to 1.0, resulting in a negative £0.4 billion value. The opportunity cost of proceeding with the full scheme versus carrying out alternative projects with BCRs of 3, including WEIs, is a negative £88 billion.<sup>47</sup>

Others have argued that the claims for benefits to the regions are exaggerated or unproven and that London is likely to gain far more than other cities. Prof. John Tomaney of the Bartlett School of Planning at UCL has summarised this view:

Regarding the future impacts of HS2 in the UK, the expected benefits announced by the UK government are mostly based on economic growth resulting from a more integrated economy. However as argued above, these benefits are calculated on the basis that cities with good rail links are more productive, which as we have demonstrated is difficult to prove. Based on previous experiences from other countries, the most likely outcome is that economic growth at the national level would result from an increasing concentration of population and economic activity in London and the South East. The overall objective of higher growth would still be attained, but not the one of reconfiguring the UK's regional economic disparities. The only possible solution to guarantee a more equal distribution of resources, as argued by Urban and Regional Policy (2009), would be to put in place effective governance mechanisms that would complement the existence of a better infrastructure. This is however unlikely to happen as a result of current constraints on the public budget, nor is it likely that such governance mechanisms as exist currently in the UK would be capable of reversing the powerful agglomeration effects of London and the South East. Following Puga (2002), the proposed UK model is a clearly a hub and spoke one centred on London. According to this analysis, there is therefore a high probability that London will accrue the majority of the benefits of the investment.<sup>48</sup>

In terms of environmental and social impacts, there are 'local' concerns about the impact of the HS2 scheme, particularly on areas of outstanding natural beauty (e.g. the Chilterns) and in Camden.<sup>49</sup> There are wider concerns about HS2's environmental impact on, for example, ancient woodland:

21 ancient woods remain threatened and so far there has been no decrease in the area of loss or damage these woods will face ... the construction footprint of HS2 seems far bigger than that indicated in the draft Environmental Statement. This means ancient woodland that we thought was a considerable distance away from the works is now a much closer

The use of 'translocation' is still in evidence (meaning to transport ancient woodland soils to a different area in an attempt to salvage) despite there being nothing to support

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<sup>47</sup> Bluespace Thinking Ltd., *An evaluation of the HS2 Strategic and Economic Cases*, November 2013, p2; see also NAO, PAC and Treasury Committee concerns about *earlier versions* of the economic case: NAO, *High Speed 2: A review of early programme preparation* (session 2013-14), HC 124, 16 May 2013; PAC, *High Speed 2: A review of early programme preparation* (twenty-second report of session 2013-14), HC 478, 9 September 2013; and Treasury Committee, *Spending Round 2013* (third report of session 2013-14), HC 575, September 2013

<sup>48</sup> Transport Committee, *Written evidence from Professor John Tomaney (HSR 14)*, May 2011, para 5.5

<sup>49</sup> See, e.g., Chiltern Society press notice, "HS2 Environmental Statement "undermines the entire concept of protected landscapes" says Chiltern Society", 26 February 2014; and: Camden Council, *HS2's cost to Camden*, July 2013

the effectiveness of this method. Data from supposed success as part of HS1 is distinctly lacking and seeming impossible to get hold of.<sup>50</sup>

And wildlife:

The current route proposed by HS2, from London to Birmingham, will destroy or irrecoverably damage a large number of important sites. Our own analysis indicates it will impact directly on two Wildlife Trust nature reserves, four SSSIs [sites of special scientific interest], ten ancient woodland sites and 53 Local Wildlife Sites or potential Local Wildlife Sites.<sup>51</sup>

The House of Commons Environmental Audit Committee recently concluded that, overall,

The Government should aim higher than that objective of no net biodiversity loss. It has significant work to do to demonstrate that it has put the 'mitigation hierarchy' at the heart of its approach, given the environmental damage expected to ancient woodlands, SSSIs and local wildlife sites. Where such biodiversity loss is genuinely unavoidable and cannot be mitigated, compensation measures should be applied to the fullest extent possible. HS2 Ltd must carry out environmental surveys as much as possible of the 40% of the route yet to be examined and catalogue all ancient woodland and protected animal species [...]

Carbon is diminishing as a factor in the debate on the case for the project, and the likely savings are likely to be relatively small. A bigger issue is the potential effect of the decarbonisation of the generation of the required electricity. The Government should examine the scope for requiring a reduced maximum speed for the trains until electricity generation has been sufficiently decarbonised.<sup>52</sup>

And finally, opponents claim that the scheme will not be 'socially inclusive' as the fares will be too high for many people, in effect, that the scheme will be a 'rich man's railway'.<sup>53</sup>

## 2 The Hybrid Bill process

*For full details of what a hybrid bill is and how it progresses through Parliament, please refer to HC Library briefing note [SN6736](#).*

### 2.1 What is a 'hybrid' bill and why is it being used in this case?

'Hybrid' bills are so called because they have characteristics of both public and private bills. What this means, in its simplest terms, is that while a bill may be of general application, its contents would significantly affect the interests of particular individuals or organisations. In effect, it is a public bill with a planning process attached, and as such it is normally used for big infrastructure projects. In the past 20 years there have been two: the Channel Tunnel Rail Link (HS1) and Crossrail.<sup>54</sup>

The procedures followed in Parliament in considering hybrid bills incorporate aspects of both public bill and private bill procedures. Promoters of hybrid bills do not need to prove the need for their bill (as promoters of private bills do), the principle of a hybrid bill is endorsed through

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<sup>50</sup> Woodland Trust press notice, "[Is the full Environmental Statement for HS2 even worse than the draft?](#)", 28 November 2013

<sup>51</sup> The Wildlife Trusts, *Position Statement: High Speed 2 (HS2)*, October 2010

<sup>52</sup> EAC, *HS2 and the Environment* (thirteenth report of session 2013-14), HC 1076, 7 April 2014, summary

<sup>53</sup> Stop HS2, *HS2 – the rich man's toy*, September 2011

<sup>54</sup> For details see: HC Library briefing note [SN267](#) on HS1 and research papers [RP05/38](#) and [RP07/85](#) on Crossrail

it being given a Second Reading. Between a hybrid bill's introduction and Second Reading, time is provided for members of the public to comment on the Environmental Statement (ES) published with the Bill and for a review to be prepared for consideration by MPs. Following Second Reading, hybrid bills are committed to a select committee to allow those directly and specially affected by the Bill to petition against aspects of the Bill to which they object. It can amend the Bill to address particular affects the Bill places on those who petitioned against it. After the select committee has reported, a hybrid bill is considered in Committee, on Report and debated at Third Reading, like a public bill.

There has been criticism of the hybrid bill process from all quarters: some arguing that not enough time has been allotted for the Second Reading debate, and others that the nature of a hybrid bill means that it takes too long. For example, some MPs whose seats are directly affected by the scheme argued in the House that holding Second Reading on only one day, and a Monday at that, when the House does not begin sitting until 2.30 pm, was insufficient.<sup>55</sup> This was taken up by groups campaigning against HS2.<sup>56</sup> On the other side, Transport Minister Robert Goodwill cautioned against "vexatious" petitions once the Bill goes into select committee "trying to gum up the process, trying to delay the project".<sup>57</sup> Sir David Higgins, Chairman of HS2 Ltd., also called for a 'balance' to be struck between scrutiny, delivery and costs. His 2014 report said: "Additional time spent debating the legislation will translate into extra uncertainty about the construction timescale – and therefore about its cost".<sup>58</sup>

## 2.2 What has happened so far

### *Standing Orders and preliminary business*

**Prior to the publication of the Hybrid Bill** the House of Commons agreed procedural changes to facilitate the passage of the Bill. These changes, made in June 2013, were as follows:

- new Standing Order SO 224A, relating to private business, was made to ensure that the House's procedures on hybrid bills are fully compliant with the objectives of the EU Directive on Environmental Impact Assessments. The new SO gave members of the public a minimum of 56 days from the deposit of a hybrid bill in Parliament to submit comments on the ES and provided that any comments would be published, assessed and summarised by an independent assessor. Once the assessor's report has been submitted a period of 14 days must then elapse before the bill can be given Second Reading; and
- Private Business Standing Orders were also amended so as to permit the electronic deposit of the required relevant documentation. Standing Orders had required hard copies of all bill documentation, including the ES, to be deposited in every local authority area along the line of route.<sup>59</sup> Hard copies were made available for inspection in both Houses of Parliament.

The Bill (in two volumes, with a separate volume of explanatory notes) and the ES were **published and formally deposited** on 25 November 2013. Together, the estimated length is approximately 50,000 pages, the vast bulk of which is the ES.<sup>60</sup> The next stage was for the bill to be **formally declared a 'hybrid'**, and not a 'public' bill. This process is undertaken by

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<sup>55</sup> [HC Deb 3 April 2014](#), c1005 (Cheryl Gillan), c1013 (Christopher Pincher), and cc1016-17 (Michael Fabricant)

<sup>56</sup> Stop HS2 press notice, "[Hybrid Bill Second Reading Date – 28th April 2014](#)", 4 April 2014

<sup>57</sup> Environmental Audit Committee, [Oral evidence: HS2 and the Environment](#), HC 1076, 26 March 2014, Q100

<sup>58</sup> Op cit., [HS2 Plus: A report by David Higgins](#), p16

<sup>59</sup> [HC Deb 26 June 2013](#), cc417-428; [Directive 85/337/EEC](#), as amended

<sup>60</sup> [HC Deb 6 March 2013](#), c1010W

the Parliamentary Examiners of Petitions for Private Bills.<sup>61</sup> In the case of a bill that is thought to be hybrid, the Examiners are required to determine whether the Standing Orders relating to private bills should apply to the Bill. Their determination is based on the test of whether the Bill affects particular private interests of individuals or organisations differently from others in the same class or category.<sup>62</sup> Until the Examiners' report, the Bill is described as *prima facie* hybrid. The Examiners in this case considered the HS2 Hybrid Bill on 17 December 2013 and 8 January 2014 and concluded that it is a hybrid bill.<sup>63</sup>

### ***Environmental Statement***

Standing Orders relating to private bills require that an ES has to be deposited if a bill authorises work to be carried out on land specified in the bill.<sup>64</sup> As indicated above, SO 224A requires that the public have **56 days to comment on an ES**; for the HS2 Hybrid Bill this took the consultation period to 24 January 2014. However, that deadline was subsequently extended twice – to 14 February and then 27 February. This was a consequence of decisions by the Standing Orders Committees of both the Commons and the Lords.<sup>65</sup> The reasons for these extensions were the same in both Committees: that there was not sufficient consultation on the ES, due to the omission of certain pages at the outset of the consultation period (specifically 877 pages from volume 5 of the ES). These were later inserted and the decision to extend the consultation period was based on the time it initially took for those corrections to be inserted.<sup>66</sup>

Under the terms of the Standing Orders of the two Houses of Parliament and following an advertised public procurement procedure, on 5 December 2013 the Examiners appointed Golder Associates (UK) Ltd. (a company which provides environmental consulting, design and construction services) to act as the **Independent Assessor**. Their role as Independent Assessor was to produce a report summarising the issues raised in the responses to the ES consultation. Following the closure of the consultation on 27 February there was a mandated period of at least 28 days (in the event, 31 days) for the Independent Assessor to prepare his summary of the consultation responses.

The **Assessor's report** was published on 9 April. It is intended to assist Members of both Houses in understanding the views expressed in the consultation.<sup>67</sup> The role of the Assessor in their report is:

... not [to] provide a judgement on the validity or otherwise of comments received against the technical design work, documentation, development process and proposed mitigation measures for the proposed High Speed Line, particularly in regard to individual submissions and geographic features. However, the Report does comment

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<sup>61</sup> House of Commons, *Standing Orders of the House of Commons – Public Business, 2012*, September 2012, HC 614 2012-13, Standing Order No 61

<sup>62</sup> House of Commons, *Standing Orders of the House of Commons – Private Business*, October 2005, HC 441 2005-06, Standing Order 224

<sup>63</sup> Examiners of Petitions for Private Bills, *HS2 Hybridity Examination*, 17 December 2013; *HS2 Hybridity Examination*, 8 January 2014

<sup>64</sup> House of Commons, *Standing Orders of the House of Commons – Private Business, 2005*, July 2005, HC 441 2005-06, Standing Order 1A and Standing Order 27A

<sup>65</sup> House of Commons, *Report of the Standing Orders Committee of 15 January*, 15 January 2014; and Standing Orders (Private Bills) Committee (Lords), *High Speed Rail (London – West Midlands) Bill: Update 20 January 2014* [accessed 8 April 2014]

<sup>66</sup> See, e.g. HC Standing Orders Committee, *High Speed Rail (London – West Midlands) Bill: Minutes of Proceedings*, 15 January 2014, paras 131-159 and 330-331

<sup>67</sup> HS2 Independent Assessor, *High Speed Rail (London - West Midlands) Bill: Summary of issues raised by comments on the Environmental Statement*, HC 1199, 9 April 2014

on issues of significance as expressed in the responses, and highlights areas where the public has expressed particular concern.<sup>68</sup>

The report states that a total of 21,833 responses were received during the consultation process, of which over half were postcards. There was a relatively small number of long responses (over 50 pages), with one of more than 800 pages. The remainder of the replies fell between the two.<sup>69</sup> In terms of key issues raised, overall, minimising the impact of the proposed route through the Chilterns Area of Outstanding Natural Beauty (AONB) was the single greatest issue of concern for respondents. The three areas of particular concern were tunnelling (including the Chilterns), eliciting 12,637 comments; community (construction impacts, loss of amenity, quality of life etc.), 9,716 comments; and sound, noise and vibration, 9,330 comments. ‘Public consultation’ came fourth with 9,280 comments: of particular concern in this category was the integrity of the ES, an insufficient ES consultation timeframe, and project communication – many respondents felt that their efforts to engage with the project had been “downplayed or ignored”.<sup>70</sup>

Under SO224A there must be at least 14 days between the Independent Assessor submitting his report to Parliament and Second Reading.

## 2.3 What happens next

### *Second Reading, 28 April*

The Bill is scheduled to receive **Second Reading** in the House of Commons on 28 April. The procedure for Second Reading of a hybrid bill is the same as for a public bill: Members debate the principle of the Bill and may vote on the decision to approve it. This is the point at which the House will either agree the scheme in principle (‘give HS2 the go ahead’) or reject it.

There are two ‘reasoned amendments’ on the Order Paper declining to give the Bill a Second Reading, both for similar reasons, i.e. that the Bill is badly routed, poorly connected, insufficient time has been given for proper consideration of the environmental impacts; compensation is inadequate etc.<sup>71</sup>

### *Instructions to the Select Committee, 29 April*

After Second Reading, the House will refer the Bill to a specially convened select committee and give **instructions to that committee**. This is scheduled to take place on 29 April. This is a critical stage as the nature and contents of those instructions steer the select committee in its deliberations. Instructions can prevent the select committee from amending certain provisions or allow it to make alterations to infrastructure provided for in the Bill.<sup>72</sup>

There are two instructions laid by the Government for this Bill. The first names the six members of the Committee (three Conservative, two Labour and one Liberal Democrat) and sets a quorum at three, and specifies the timetable for depositing petitions and the treatment of those petitions (the closing date being 16 May for business and local authorities (except

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<sup>68</sup> Ibid., p1

<sup>69</sup> Ibid., pp4-6

<sup>70</sup> Ibid., pp12-16; the Assessor counted comments separately (e.g. one response could have three or four comments), hence the higher numbers involved. The full (anonymised) responses are available to search online on [this website](#) [accessed 22 April 2014]

<sup>71</sup> [HC Order Paper OP No. 152: Part 1](#), 28 April 2014, item 1; the first amendment is in the name of Michael Fabricant, the second in the name of Cheryl Gillan. Bill Cash has also put down an amendment to Mrs Gillan’s amendment [see top of page 7]

<sup>72</sup> For example, the select committee considering the *Crossrail Bill* was instructed to treat the principle of the bill as including the termini of the railway and certain intermediate stations [[HC Deb 19 July 2005 c1218](#)]

parish councils), or 23 May in other cases). The second directs the Committee to amend the Bill by leaving out provision relating to the HS1 link (the spur from Old Oak Common to St Pancras), to make consequent amendments to the Bill and not to hear any petitions on this aspect of the scheme. There have been concerns expressed about the wording of this instruction. For example, Lord Berkeley, chairman of the Rail Freight Group, has said that the instruction “would prevent discussion of alternative routes – or even passive provision for their later provision”:

“This means there will be no chance in the future of connecting HS2 at its main interchange station at Old Oak Common to any other station in London or to HS1,” said Berkeley.

“This is because HS2 Ltd has rightly maintained that all tunnelling from Old Oak Common eastwards must start from there because there is nowhere suitable to erect a tunnel boring machine (TBM) near Euston or beyond. Since the TBMs must be erected on what is to be the future station platform area at Old Oak Common, any tunneling works clearly must be completed before the station is fitted out and trains can operate from there up to HS2 and to Euston.”<sup>73</sup>

The same instruction orders the Committee to treat as the principle of the Bill (i.e. ‘not be at issue during proceedings of the Committee’) the following:

(a) the provision of a high speed railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Water Orton in Warwickshire to Curzon Street in Birmingham and intermediate stations at Old Oak Common and Birmingham Interchange, and

(b) in relation to the railway set out on the plans deposited in November 2013 in connection with the Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, its broad route alignment.<sup>74</sup>

The wording of para (b), above, is interesting in how it differs from previous instructions. For example, the instructions to the *Crossrail Bill* did not specify that the ‘broad route alignment’ should not to be considered by the Committee; instead Crossrail took the approach of specifying the termini and stations that must be included in the scheme.<sup>75</sup> What is unclear is how restrictive (or open ended) this instruction might be to the Committee as it considers mitigation and other aspects of the scheme (how ‘broad’ is ‘broad’?, for instance).

### **Petitioning**

Any individuals, organisations or groups of people ‘directly and specially affected’ by the Bill can deposit a petition to oppose the Bill. A petition is:

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<sup>73</sup> “HS2 Bill process ‘could thwart link to HS1’”, *Local Transport Today* [LTT 645], 17 April 2014; there are several alternative ideas, from Berkeley himself and Lord Bradshaw and others, and the Mayor of London, who would like to see a tunnel link

<sup>74</sup> [HC Order Paper OP No. 151: Part 2](#), 10 April 2014, items 28 & 29

<sup>75</sup> [HC Deb 19 July 2005, c1218](#); there was no instruction at all to the Channel Tunnel Rail Link Committee, the Minister at the time, John Watts, argued: “If the Government had wished to give an instruction to the Committee, we could have tabled the proper motion and specified that matters outside the line of deviation set out in the Bill should not be considered. We have not chosen to do that because, in our view, it is better that such matters are left to the wise discretion of the Committee and that it should not be constrained.” [[HC Deb 16 January 1995, c546](#)]

... a summary of objections to particular aspects of the Bill. It is a request to the House of Commons for the Petitioner to be allowed to argue their case before the Select Committee.<sup>76</sup>

Petitions have to be deposited by 16 or 23 May in Portcullis House and must conform to the rules for petitions against hybrid bills. Guidance on petitioning against hybrid bills is published by the Private Bill Office of the House of Commons. It includes an overview on the information to include in a petition against a hybrid bill:

#### **What should be the form and content of petitions?**

The petition should begin by setting out the bill title; who the petitioner is; the provisions of the Bill objected to; the particular damage caused to the petitioner by the bill; and the form of relief sought by the petitioner, including amendments to clauses. Since the petition forms the basis of a petitioner's case before a select committee, petitions should include all the points of objection a petitioner has against the bill. **Matters can only be raised in the committee if they are alluded to in the original petition.** However, there is no need to elaborate objections in great detail: they can be stated in concise form.<sup>77</sup>

The guidance includes a template for a petition, along with an example of a petition.<sup>78</sup> Petitioners may also, if they wish, send a draft petition to the Private Bill Office for comment. There is a charge of £20 to submit a petition. Some Members have expressed concerns as to the impact of this fee on poorer constituents, who may be deterred from petitioning because of the associated cost.<sup>79</sup>

The right of a petitioner to be heard in opposition to a private or hybrid bill (their *locus standi*, to use the technical term) "depends on whether his personal property or interests stand to be adversely affected by the passage into law of the measure concerned".<sup>80</sup> If the promoter of a bill challenges the *locus standi* of a petitioner, the select committee itself (upon whom the decisions of the Court of Referees are binding), determines who may and who may not be heard and on which sections of the Bill.<sup>81</sup>

Once petitions are received, the select committee meets to consider the Bill in very much the same way as a private bill committee would. However, there are certain differences; in particular, that the promoters do not need to establish the need for the Bill since the House has already put on record its approval of the principle of the Bill at Second Reading.

First the petitioners make their case, calling witnesses if necessary. Witnesses are normally examined on oath. When the opponents of the Bill have completed their case, and the

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<sup>76</sup> Select Committee on the Crossrail Bill, *First Special Report*, 23 October 2007, HC 235 2006-07, para 10

<sup>77</sup> *How to Petition against a Hybrid Bill in the House of Commons*, Session 2013-14, p3, from House of Commons, *Hybrid bills in current and previous sessions* [follow the link to "Petitioning forms"]

<sup>78</sup> *How to Petition against a Hybrid Bill in the House of Commons*, Session 2013-14, Appendix A and Appendix B, , from House of Commons, *Hybrid bills in current and previous sessions* [follow the link to "Petitioning forms"]

<sup>79</sup> "HS2 homeowners offered improved compensation", *The Guardian*, 9 April 2014; see final para quoting from a letter to the Secretary of State from Frank Dobson MP [Holborn & St Pancras] and Glenda Jackson MP [Hampstead and Kilburn]

<sup>80</sup> Norman Wilding and Philip Laundry, *An Encyclopaedia of Parliament* (4<sup>th</sup> ed.), 1972, p438

<sup>81</sup> The Court of Referees consists of the three Deputy Speakers and the Speaker's Counsel and MPs appointed by the Speaker; its main role is in determining the *locus standi* of petitioners to Private Bills, although hybrid bill committees determine the *locus standi* of petitioners to a hybrid bill, their decisions are made in accordance with the Court of Referees' existing rulings [for further information, see Erskine May, *Parliamentary Practice*, 24<sup>th</sup> ed., 2011, pp656-7]

promoters have been heard in reply, the committee considers the clauses of the Bill, reporting it to the House with or without amendment. If the committee wishes to communicate its view on the subject matter of the Bill, or if the promoters no longer wish the Bill to proceed, the committee may make a special report to the House: for example, the Crossrail Committee published a special report on a new station at Woolwich.<sup>82</sup>

Once the select committee has heard from both the petitioners and promoters, it can amend the Bill to address particular effects the Bill places on those who petitioned against it; and the select committee can recommend or suggest a course of action to the Promoter of the Bill (i.e. the Government) rather than amending the Bill.

To give some idea of the magnitude of the task involved with a hybrid bill committee, the ten-member Crossrail committee met up to eight times a week for 22 months; sat for 84 days in public meetings, heard 205 Petitioners in total and received 413 volumes of written evidence.<sup>83</sup>

### ***Remaining stages, carry over and amendments***

After the select committee has reported on the Bill, and made any amendments, it is normally re-committed to a **committee of the whole House** or to a **public bill committee**. Committee stage, Report stage and Third Reading take the same form as for all other public bills. The Bill is then sent to the **House of Lords** where there is a further opportunity for objectors to petition and to appear before a select committee.

As with private bills, the House has, when necessary, considered motions to suspend (i.e. **carry-over**) hybrid bills from one session to another: the *Channel Tunnel Rail Link Bill* was suspended twice. When a General Election has been called, motions have also been considered to allow hybrid bills to recommence at the point they had reached before the election: the *Crossrail Bill* was introduced before the 2005 General Election but did not receive Royal Assent until July 2008. Motions of these kinds may, of course, be opposed and negatived; in which case the Bill would fall, or have to start all over again. A Government motion to carry over this Bill into both the 2014-15 and 2015-16 sessions (i.e. the second being after the 2015 General Election) are scheduled for debate on 29 April.<sup>84</sup>

Finally, there is the matter of what would happen were the scheme to be **substantially amended** during the course of the Bill, as it will be in this case, due to the removal of the HS1 link. Removal of provisions is relatively straightforward, but where new provisions are inserted, for example, any new proposals as regards Euston, a process is required to allow those affected to object. The Crossrail Bill Committee explained how amendments were proposed, considered and made and when it considered the *Crossrail Bill*:

After hearing all the evidence on a case the Committee would decide whether or not it should amend the Bill. There were usually two types of amendment the Committee could consider making to the Bill. These were amendments that would:

- a) naturally tend to limit the powers, or
- b) extend the obligations of the Government and extend the powers contained in the Bill.

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<sup>82</sup> Crossrail Committee, *Crossrail Bill: Woolwich Station* (first special report of session 2005-06), HC 1597, 1 November 2006; though not quite the same, it is notable that an earlier *Crossrail Bill* was killed off in private bill committee in 1994, despite support from both the then Conservative Government and the Labour Opposition ["Three MPs kill Crossrail project and 60,000 jobs", *The Times*, 11 May 1994]

<sup>83</sup> Op cit., *First Special Report of Session 2006-07*, para 22

<sup>84</sup> HC Order Paper OP No. 151: Part 2, 10 April 2014, item 27

The latter type of amendment is known as an Additional Provision. Since such an amendment could potentially have an impact on people not previously affected by the Bill, Additional Provisions need to be advertised and authorised by the House in the same way as the original provisions of the Bill.

On occasions where we agreed such amendments were necessary, these decisions were announced in Committee. This was to allow the Government to bring forward the necessary Additional Provisions to the Bill and also to give the public the opportunity to object to these provisions if they were affected by them.

Although Additional Provisions to the Crossrail Bill were put forward by the Secretary of State, they were not formally accepted as amendments to the Bill until the Committee had fully considered all the cases presented against them. All amendments we judged to be appropriate were made formally to the Bill when we reported the Bill to the House.<sup>85</sup>

When both Houses have approved a hybrid bill, it receives **Royal Assent** in exactly the same way as a public bill.

### 3 The Bill

#### 3.1 What is this Bill for?

This Bill provides the powers and authorisation required for the construction of the proposed high speed rail line between London Euston and Birmingham Curzon Street. It includes a junction with the West Coast Main Line (WCML) at Handsacre in Staffordshire; and a spur from Water Orton in Warwickshire to Curzon Street in Birmingham.

The Bill also includes a spur from Old Oak Common in North West London to a junction with HS1, however the Secretary of State for Transport made it clear on 24 March that this would be removed from the Bill 'as soon as possible'.<sup>86</sup> As indicated above, the instruction to the Select Committee orders it to remove this part of the Bill and make consequential amendments. Until that happens, this aspect of the scheme remains on the face of the Bill and in the long title.

There are five main elements of the Bill:

- The authorisation of necessary works to construct and maintain Phase One of the HS2 line (powers to carry out these works are conferred on the 'nominated undertaker');
- The power to acquire land (and limited rights in land) necessary for the works to be carried out;
- The deeming of planning permission to be granted for the works;
- The deregulation of works on HS2 (the disapplication of certain powers contained in other legislation); and
- Railways matters, essentially the application of existing legislation to HS2 and the future regulatory regime for the line.

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<sup>85</sup> Op cit., *First Special Report of Session 2006-07*, paras 18-21

<sup>86</sup> HC Deb 24 March 2014, c30

There are also powers to enable works to connect and ensure compatibility with the existing railway and the conventional network; works in Scotland; applying the Act to other high speed rail networks; rights of entry; application to the Crown and other matters.

The Bill extends to the whole of the UK, even though the scheme provided for in the Bill is situated entirely in England. This mirrors the extent of other Hybrid Bills (Crossrail and HS1).

A detailed clause-by-clause analysis can be found in the [Explanatory Notes](#) to the Bill. The following provides an overview of the main provisions.

As stated above, this Bill speaks to both the principle of the scheme ('should we build HS2') and its details ('how it will be constructed'). Comment on the Bill thus far has tended to focus on the former rather than the latter. This is perhaps understandable given the separate consultation on the multi-volume Environmental Statement that accompanied the Bill and which talks to the technical issues in the Bill around planning, works and access, and the petitioning process that forms part of the Bill's consideration.

### 3.2 Authorisation of works, construction and nominated undertaker (clauses 1-3, 43 and Schedules 1 to 4)

**Clause 1, Schedule 1** and the Deposited Plans<sup>87</sup> interact together to make the core of the Bill: these would authorise the 'nominated undertaker' to construct and maintain the works required for the construction of Phase One and other ancillary works connected therewith. Schedule 1 sets out the 'scheduled works' that form the backbone of the scheme. Scheduled works must be constructed according to the deposited plans, within a specified degree of deviation set out in Schedule 1, para 1(1). The scheduled works are listed on pages 31-93 of Vol. 1 of the Bill, each work is numbered and begins from London, working up the route to the West Midlands.

Power to carry out these works would be given to a 'nominated undertaker'. This is not named on the face of the Bill. **Clause 43** gives the Secretary of State the power to make regulations specifying the nominated undertaker (if the Secretary of State fails to make such an order then he is the *de facto* nominated undertaker).<sup>88</sup>

It is likely that the Secretary of State would nominate HS2 Ltd. as the nominated undertaker, though by no means certain. Cross London Rail Links (CLRL), a company set up in a similar way to HS2 Ltd. and for a similar purpose, was named the nominated undertaker for the Crossrail project.<sup>89</sup> Other options for nominated undertaker could be Network Rail, or some heretofore unknown third option.

**Clause 2 and Schedules 2 and 3** would make supplementary provisions regarding the nominated undertaker's powers to undertake works. What this means, in simple terms, is that in the course of carrying out the works set out in clause 1 and Schedule 1, the nominated undertaker could carry out rail, building, construction, demolition and highway works, and can make changes to sewers, drains, cables, non-navigable rivers, streams and watercourses. It could also:

- survey and investigate land;

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<sup>87</sup> the Plans can be viewed by section on the [HS2 website](#) [accessed 1 April 2014]

<sup>88</sup> The regulations would be made under the negative resolution procedure; for further information see section 3 of HC Library briefing note [SN6509](#)

<sup>89</sup> *Crossrail (Nomination) Order 2008 (SI 2008/2036)*; London Underground Limited (LUL) was also named nominated undertaker for those aspects of the scheme for which it would be responsible, there may be a similar arrangement for the London end of HS2

- support or strengthen buildings;
- remove, top, lop or cut back trees on neighbouring land;
- drain and discharge water;
- install electronic communications apparatus;
- temporarily interfere with the 24 waterways specified on the face of the Bill;<sup>90</sup> and
- construct a new level crossing when realigning the Aylesbury to Princess Risborough railway.

These powers come with various duties to obtain consent and give notice; constraints on the extent of the works and requirements to exercise consideration of their impacts. These are different in every case. All of these powers may only be exercised within the limits of the Act.<sup>91</sup>

**Schedule 2(12-14)** contains ancillary provisions respecting powers of entry for the above works and associated safeguards. In effect, it would allow the nominated undertaker or any 'authorised person'<sup>92</sup> to enter land for the purposes of undertaking above listed works. If required, they must produce evidence of their authority to do so and state their purpose of entry and they may take vehicles and equipment onto the land. There are further safeguards where the land in question is either residential land (including a house) or a non-residential building: here, where entry is refused, the undertaker cannot insist on entry unless authorised to do so by a warrant issued by a justice of the peace.<sup>93</sup>

**Schedule 3** lists the electric overhead line diversions that may be undertaken under clause 2(5).

**Clause 3** and **Schedule 4** would provide powers to the nominated undertaker to access, stop up or interfere with, or construct and maintain highways within the limits of the Act. Access would require 28 days' notice to the relevant highway authority;<sup>94</sup> the highways authority may not 'unreasonably' withhold consent for access, though it may specify a reasonable alternative means of access. Failure to respond to a notice is considered *de facto* consent.

'Interference' comes in four forms: stopping up of specific highways or parts of highways, bridleways and footpaths as set out on the face of the Bill in Part 4 of Schedule 4; permanent obstruction of highways, bridleways and footpaths for the carrying out of ancillary works; temporary interference with highways for the purpose of carrying out works; and street works. Stopping up also includes the extinguishment of any right of way, for which compensation

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<sup>90</sup> [Schedule 2\(9\)](#)

<sup>91</sup> The 'limits of the Act' are set out in clause 63(2) and are defined as "within the limits of deviation for the scheduled works, or within the limits of the land to be acquired or used"

<sup>92</sup> An 'authorised person' is defined in Schedule 2(12)(5) as "a person exercising the relevant power of entry on the nominated undertaker's behalf" (i.e. a third party contractor)

<sup>93</sup> There is an exception for entry related to carrying out tree works where there are separate arrangements (Schedule 2(7))

<sup>94</sup> Either the Highways Agency for strategic roads (motorways, major A roads) or the county or unitary council for all other (local) roads

may be available.<sup>95</sup> Stopping up a bridleway or footway requires the express consent of the relevant ministers, following consideration of any public objections.

The construction and maintenance requirements are straightforward, requiring works to be carried out to the satisfaction of the highways authority. Under Schedule 4, Part 3, Paragraph 14(2) new highways constructed under this legislation would automatically become 'highways maintainable at public expense', i.e. public highways.

### 3.3 Acquiring land (clauses 4-18 and Schedules 5 to 15)

*Much of this part of the Bill relates to compulsory purchase and rights of way. For information on these issues generally and an overview of the legislation, see the HC Library pages on planning on the [Parliament website](#).*

**Clauses 4-10** and **Schedules 5 to 13** relate to the compulsory acquisition of land. This includes powers to:

- acquire land compulsorily for 'Phase one purposes'<sup>96</sup> within the limits of the Act,<sup>97</sup> using compulsory purchase powers (**Schedule 5** lists the named land that may be acquired and for what purposes). Under **clause 8** only subsoil or under surface more than nine metres beneath the ground may be acquired for those works listed in **Schedule 11**. The compulsory purchase powers would expire five years after the passing of the Bill unless extended by Order by the Secretary of State: such an extension could only be made for a maximum of five years;<sup>98</sup>
- acquire *rights* in land, including the power to acquire or create easements<sup>99</sup> (**Schedule 7** lists the named land on which a restrictive covenant<sup>100</sup> may be imposed and for what purposes; **Schedule 8** lists the named land in which only rights may be acquired and for what purposes);
- acquire part of land under an alternative compulsory purchase procedure set out in **clause 6** and **Schedule 10**;<sup>101</sup>
- acquire airspace above land; and
- take and use any subsoil beneath a highway within the limits of the Act without being acquired to acquire the subsoil or any interest in it. Under **clause 9** this power

<sup>95</sup> Schedule 4(4)

<sup>96</sup> 'Phase One purposes' are defined in clause 62 as anything being done or required "for the purposes of or in connection with the works authorised by this Act; for the purposes of or in connection with trains all or part of whose journey is on Phase One of High Speed 2; or otherwise for the purposes of or in connection with Phase One of High Speed 2 or any high speed railway transport system of which Phase One of High Speed 2 forms or is to form part"

<sup>97</sup> The inclusion of this requirement is critical, as it limits the powers in the bill to the land required only for Phase One

<sup>98</sup> Clause 10; such an Order would be subject to a special parliamentary procedure whereby objectors can petition against the Order; and Members of either House can move that the Order be annulled. Petitions are referred to a joint committee, which may approve the Order, with or without amendments, or decline to approve it. If the Joint Committee approves it or the Minister accepts the amendments, it comes into force. Otherwise the Minister may introduce a bill to confirm the Order (see the [Statutory Orders \(Special Procedure\) Act 1945](#), and: Erskine May, *Parliamentary Practice*, 24th ed., 2011, pp932-3)

<sup>99</sup> An 'easement' is a right to make limited use of someone else's land

<sup>100</sup> A 'restrictive covenant' is a promise by one person to another, (such as a buyer of land and a seller) not to do certain things with the land or property

<sup>101</sup> Required because under the normal compulsory purchase procedure a landowner may require that all of their land is purchased

excludes cellars, vaults, arches or other structures that form part of a building fronting onto the highway; **Schedule 12** lists specific works excluded from the use of this power.

**Clauses 11-13** and **Schedule 14** relate to the extinction and exclusion of rights over land. Taken together, they would:

- give the Secretary of State the power to extinguish private and general rights of way over land to which he has acquired a right or imposed a restrictive covenant for Phase One purposes ‘at an appropriate time’;<sup>102</sup>
- give the nominated undertaker the power to extinguish the rights of statutory undertakers<sup>103</sup> over land acquired by the Secretary of State for the purposes of carrying out works authorised by the Bill; and
- prevent any new rights of way being acquired over land which forms an access or approach to any railway infrastructure that is acquired or held for Phase One purposes.

**Clauses 14-18** and **Schedule 15** relate to the temporary possession and use of land. Taken together they allow for the nominated undertaker to: assume temporary possession of land and to use it for both specific purposes set out in **Part 4 of Schedule 15** and more generally; use any roads on the lands specified in **Schedule 8** and **para 2 of Schedule 11**; to make payments of compensation for such possession and use; employ cranes for the construction of authorised works and enter the airspace of Camden and Hillingdon specified in **clause 16(7)** for that purpose; and ensure that they are responsible for the payment of compensation for ‘injurious affection’.<sup>104</sup>

Separately, **clause 17** binds successors in title to covenants made between the Secretary of State and persons with an interest in land.

### 3.4 Planning matters (clauses 19-23 and Schedule 16)

*This part of the Bill is about planning permission. For information on these issues generally and an overview of the legislation, see the HC Library pages on [planning on the Parliament website](#).*

**Clause 23** removes the requirement for development consent for the scheme under the *Planning Act 2008* (which would otherwise be required as the scheme is a nationally significant infrastructure project) and **Clause 19** gives deemed planning permission for works authorised by the Bill, subject to the conditions set out in **Schedule 16** (these effectively give local planning authorities some control over standards of works, construction, transportation, etc.).<sup>105</sup> **Clause 20** imposes a time limit of 10 years on the permission provided by clause 19 (i.e. permission is only granted for works that begin within 10 years of the Bill achieving

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<sup>102</sup> Compensation would be available for the extinguishment of private rights of way (Schedule 14(4))

<sup>103</sup> ‘Statutory undertakers’ are “persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator” (section 262 of the *Town and Country Planning Act 1990*, as amended)

<sup>104</sup> In broad terms, ‘injurious affection’ relates to circumstances where the construction of public works such as HS2 causes a diminution in the value of land [see EN, para 60]

<sup>105</sup> The provisions of Schedule 16 apply to ‘qualifying authorities’, to be named by Order, but the Explanatory Notes make clear that “these are the local planning authorities which, by the time the Bill is reported from the Select Committee in the House of Lords, have given the Secretary of State satisfactory undertakings about the handling of planning requests” [EN para 312]

Royal Assent – probably until about 2027). **Clause 21** would permit the Secretary of State to disapply by Order permission granted under clause 19 for maintenance or alteration works so that permission reverts to local authorities under the *Town and Country Planning (General Permitted Development) Order 1995* ([SI 1995/418](#)) or its successor.

**Clause 22** speaks specifically to parking at the Birmingham Interchange. It provides for a limit of 7,500 car parking places and five coach parking places under the permission granted by clause 19. It also disapplies **Schedule 16** for the parking provision and instead provides that the permission under clause 19 be treated as outline planning permission, leaving the local planning authority to take a decision as to layout, appearance, etc. It is not stated why this particular location has been singled out for a specific parking restriction.

### 3.5 Deregulation (clauses 24-36 and Schedules 17 to 26)

This collection of clauses and schedules has the effect of disapplying particular articles of legislation to the following areas: listed buildings; ancient monuments; burial grounds; consecrated land; commons and open spaces; trees; overhead lines; water; buildings; street works; lorries; noise and local acts.

In effect, these provisions prevent other pieces of legislation from interfering with the construction of Phase One, in some cases with certain provisos as to notice, arbitration, etc.

Specifically on the interaction with other transport legislation, **clause 33** and **Schedule 23** disapply requirements to obtain a licence for certain works and the powers in the *New Roads and Street Works Act 1991*, as amended, that give local authorities controls over the site, timing and standard of works.<sup>106</sup> **Clause 34** and **Schedule 24** in effect exempt HGVs working on Phase One construction from the London lorry ban and introduces emergency permits for journeys to be undertaken for HS2 purposes.

### 3.6 Railway matters (clauses 37-42 and Schedules 27 to 28)

**Clauses 37-39** change the application of certain parts of primary railways legislation as they affect Phase One of HS2. Specifically, they include “facilitating the construction of Phase One of High Speed 2” in the objectives of the Office of Rail Regulation (ORR), set out in section 4(1) of the *Railways Act 1993*, as amended, with an accompanying provision that the Secretary of State can remove this objective by Order when it is no longer required.<sup>107</sup> They also provide an exemption from the requirements of the 1993 Act for operators of railway assets to hold a licence, until such a time as Phase One becomes ‘operational’<sup>108</sup> and disapply the statutory closure provisions in the same Act.

The Government explained the purpose of these changes in a September 2013 impact assessment:

Unless otherwise specified, any UK railway or delivery body of a railway is subject to the provisions in the 1993 Act (as amended by the [*Railways Act 2005*]). Whilst this framework may be suitable for regulating the existing rail network, it is not designed to foster the delivery of significant new railways such as HS2. Requiring the development of HS2 Phase 1 to comply with all the elements of the existing regulatory framework could:

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<sup>106</sup> For a full description of this regime, see section 2 of HC Library briefing note [SN739](#)

<sup>107</sup> This is possible because the Bill does not actually amend the 1993 Act (which would require a further amendment in primary legislation to remove it), rather it requires that the ORR’s objectives *be treated as* including HS2; for more information as to the role of the ORR, see HC Library briefing note [SN2071](#)

<sup>108</sup> Defined therein as the Secretary of State laying a notice before Parliament to that effect

- Revisit or duplicate some of the consideration of the bill, its outcomes and impacts that will already have taken place in Parliament;
- Introduce significant risks of delay and additional costs incurred through compliance with the existing framework without providing any of the protections or benefits to users or rail operators that would normally be associated with compliance with the framework by existing operators.

For example, the role of the ORR ... focuses on items that relate to the management of the existing network and interactions between existing rail industry bodies rather than the delivery body of a new railway. This could mean operation of the existing network is always prioritised ahead of the delivery of HS2, resulting in unfair delay and cost to the scheme.

The hybrid Bill will extend some existing provisions in the 1993 Act and will also disapply processes within legislation that are clearly designed and applicable only to the existing railway. For example, the procedure to close existing railway facilities as outlined by the 2005 Act requires proving of disuse or under-utilisation and a consultation process. However, the closures would already have been subject to debate as part of the parliamentary process, with those individuals affected able to petition the Bill. The closures would have been approved as necessary and appropriate through the Royal Assent to the Act. It would not be appropriate to then effectively reopen Parliament's decision by having to follow the closure procedures as set out in the 2005 Act.<sup>109</sup>

**Clause 40** and **Schedule 27** set out how other minor pieces of railways legislation apply to Phase One (these largely date back to the late nineteenth and early twentieth centuries); **clause 41** and **Schedule 28** provide for cooperation between the nominated undertaker and the controllers of other railway assets, including an arbitration process where there is disagreement; and **clause 42** provides for the transfer of authority to undertake works on railway land where that land changes hands.

There is one interesting omission from this part of the Bill that was included in the [Crossrail Act 2008](#). Section 25 of that Act disapplied the requirement in the 1993 Act that rail franchises cannot be awarded to public sector operators. The Labour Government deemed this a sensible precautionary measure so that “flexibility is retained ... in case some future circumstance applies—we are talking here about unforeseeable events more than 10 years hence—that meant that the Secretary of State found it necessary to take on the franchise and to operate it in the public sector for a time”.<sup>110</sup>

### 3.7 Other matters (clauses 44-65 and Schedules 29 to 31)

The remaining parts of the Bill cover sundry matters in relation to the following:

- Transfer schemes for nominated undertakers (**clause 44** and **Schedule 29**) allows the Secretary of State to transfer property, rights or liabilities from HS2 Ltd. or one of its subsidiaries to any person (the main beneficiary likely to be the nominated undertaker, if this is different from HS2 Ltd.);

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<sup>109</sup> Op cit., [Railway Matters and Regulation – HS2 Hybrid Bill: Impact Assessment](#), pp3-4

<sup>110</sup> Lord Bassam of Brighton, [HL Deb 26 June 2008, c691GC+](#); the Crossrail franchise is being let to the private sector, under a concession with TfL, see: TfL press notice, “[TfL announces shortlist of bidders to run Crossrail services](#)”, 25 June 2013

- Planning permission for statutory undertakers (**clause 45** and **Schedule 30**) extends the planning permission available for certain works of statutory undertakers under certain conditions;
- Protections for certain bodies (**clause 46** and **Schedule 31**) provide for the interests of highways and traffic authorities, electricity, gas, water and sewerage undertakers, electronic communications code network operators (e.g. BT), the Canal and River Trust,<sup>111</sup> and authorities who have responsibility for land drainage, flood defence, water resources or fisheries. These protections (which relate to assets, operations and works) apply unless one of these bodies agrees to vary them in agreement with the nominated undertaker;
- Application to Crown land, including the Crown Estate and Royal Parks (**clauses 53-56**) allow authorised works to be carried out on Crown land with the consent of the relevant Crown authority and on highways for which the Secretary of State is the relevant authority with his consent; and for a lease of land or an easement over land in the Royal Parks. These measures also disapply restrictions on the disposal of Crown land;
- Deposited plans and sections are defined in **clause 57**. **Clause 58** provides for the correction of said plans and sections by two justices who have jurisdiction over the land, on application by the Secretary of State and the service of relevant notice. This is to accommodate errors in drafting (the justices have to be satisfied that “the misstatement or wrong description arose from mistake or inadvertence”, clause 58(2)) and not, on the face of it, changes to the scheme (e.g. the removal of the HS1 link);
- Environmental Impact Assessment Regulations (**clause 59**) provides that any replacement building not forming part of Phase One (e.g. a building over a station) must be accompanied by an environmental assessment;
- Arbitration (**clause 60**) explains how disputes which are to be determined under the various provision of the Bill are to be dealt with;
- Notices and other documents (**clause 61**) specifies how notices etc. required by the Bill are to be delivered to a person – this can be in electronic format (though it must be written, it cannot be orally by telephone), though the recipient may request a paper copy within seven days of receipt;
- Interpretation (**clauses 62-63**) defines ‘Phase One purposes’ and other key terms;
- The standard financial provision is in **clause 64** of the Bill; and
- Commencement and short title (**clause 65**) provides for the Act to come into force on the day on which it is passed (received Royal Assent):

There are two areas where further explanation is required: acquisition of land for and power to carry out regeneration or relocation (**clauses 47-48**); and further high speed rail works (**clauses 49-52**).

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<sup>111</sup> Information on the CRT can be found in HC Library briefing note [SN3184](#)

***Acquisition of land for and power to carry out regeneration or relocation***

As regards acquisition of land for and power to carry out regeneration or relocation (**clauses 47-48**), the Government intends to enable the Secretary of State to promote Compulsory Purchase Orders for the purposes of regeneration and business relocation in connection with HS2. An impact assessment published with the Bill states that in the past local authorities have not used those compulsory purchase powers available to them to make the most of proposed regenerations schemes.<sup>112</sup> The Government expects the areas around the proposed HS2 stations and depots to be areas of potentially major regeneration and to that end is seeking a reserve power in the Bill to relocate business and community facilities that are not otherwise able to find a suitable site and to encourage regeneration around key sites where it is not already apparent.

The impact assessment estimates that there are 8,430 jobs from businesses directly affected by the need to compulsorily purchase land for the construction and operation of HS2. Based on the proportion of successful relocations as a result of the London Olympics development, the Government estimates that as a consequence of Phase One approximately 1,010 jobs could be permanently lost, with an additional 380 jobs at risk indirectly through supply chains. ‘Novel and unique’ businesses and community facilities are most at risk from a lack of suitable relocation sites.<sup>113</sup>

***Further high speed rail works***

Finally, four clauses of the Bill deal with further high speed rail works (**clauses 49-52**). Specifically, **clause 49** gives Scottish Ministers an Order-making power to provide for works in furtherance of Phase One. Although Phase One stops at Birmingham, some of the rolling stock used on the new track will be ‘classic compatible’, meaning that it will be able to run off HS2 onto the conventional rail network and so might require, for example, the lengthening of station platforms to accommodate it. This aspect of the Bill triggers the Sewel Convention (it relates to a reserved policy matter but changes the executive competence of Scottish Ministers).<sup>114</sup>

**Clauses 51** and **52** provide for rights of entry in connection with high speed works on the authority of a justice of the peace (residential land) or the Secretary of State (other land). This power is for two specific purposes: for surveying land or to facilitate compliance with EU environmental protection legislation. To be clear this is not limited to the scheme in the current Bill (Phase One), but extends to “... a Bill *or proposed Bill* to authorise works for a high speed railway line in Great Britain” [clause 51(1), emphasis added]. A ‘proposed Bill’ is defined in clause 51(4) as: “a Bill proposed in a Command Paper which the Secretary of State has presented to Parliament at any time in the past five years”. The Government is particularly keen that these powers be available to use for Phase Two:

... being able to obtain primary research data through physical land surveys would help provide assurance that the environmental assessments are as accurate as possible and the railway design as effective as possible. Whilst payment is offered to land owners for access, due to the controversial nature of the HS2 scheme and opposition towards it from those one or near the proposed railway (which is primarily where most surveys would be required), many individuals have to date refused access to land and there is at present no remedy to a failure of commercial agreement for schemes promoted via a hybrid Bill.

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<sup>112</sup> e.g. Luneside East in Lancaster and Rochester Riverside

<sup>113</sup> *Compulsory Purchase Order (CPO) Powers for the Secretary of State for Regeneration and Business and Community Facility Relocation – HS2 Hybrid Bill: Impact Assessment*, 25 November 2013, pp9-10

<sup>114</sup> EN, para 15

This creates the risk that environmental data may be out of date or incomplete, which could result in delays in the passage of the Bill due to the need to carry out further surveys or that the design of the railway and environmental mitigation is less than optimal ... This is a risk that could have been avoided if access to all relevant land was permitted.

[...] without intervention the risks outlined above that apply to Phase One of the scheme would also apply to Phase Two and any future phases of High Speed Rail (none are planned at present but feasibility work has been announced for links to Scotland).<sup>115</sup>

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<sup>115</sup> *Rights of Entry – HS2 Hybrid Bill: Impact Assessment*, 11 September 2013, p4

**Appendix: HS2 project timeline 2009-14**

