

These notes refer to the High Speed Rail (London - West Midlands) Bill as introduced in the House of Commons on 25 November 2013 [Bill 132].

HIGH SPEED RAIL (LONDON - WEST MIDLANDS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the High Speed Rail (London - West Midlands) Bill as introduced in the House of Commons on 25 November 2013. They have been prepared by the Department for Transport in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require an explanation or comment, none is given.

SUMMARY

3. This Bill confers the powers required to construct the first phase – “Phase One” - of a proposed new national high speed rail network, “High Speed 2” (or “HS2”). Phase One will involve the construction of new railway lines (one track in each direction) between London and the West Midlands. The terminals will be in central London (Euston) and in central Birmingham (Curzon Street) and there will be intermediate stations in West London (Old Oak Common) and at Birmingham Airport. The new lines will connect with the existing conventional railway network and the high speed line (HS1) which already links London-St Pancras and the Channel Tunnel.

BACKGROUND

4. The 2010 Coalition Programme for Government included a commitment to establish a national high speed rail network, and to do so in phases. Following a period of consultation and an appraisal of sustainability, in January 2012 the Secretary of State for Transport presented to Parliament the Command Paper *High Speed Rail: Investing in Britain's Future- Decisions and Next Steps (CM 8247)* (‘the 2012 Command Paper’). In that paper, the Secretary of State decided to promote a Y-shaped high speed rail network known as “HS2” linking London, the West Midlands, Leeds and Manchester with intermediate stations in the East Midlands and Sheffield.

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5. In the 2012 Command Paper the Secretary of State decided upon a detailed route for Phase One of High Speed 2. The Government also announced that it intended to introduce a hybrid Bill for this phase of HS2 by the end of 2013. This would grant the powers required to construct and operate the first phase of HS2, and give Parliament an opportunity to hear representations from affected parties.

6. On 9 July 2013, the Secretary of State for Transport issued statutory safeguarding directions to local planning authorities for the Phase One route. These directions provide that the authorities along the proposed route must consult High Speed Two (HS2) Ltd when a planning application is received for significant development within a zone protected for HS2. The directions give the Secretary of State the ability to refuse or call-in for his determination applications which may conflict with proposed plans for Phase One of High Speed 2. The directions also allow residents living in the safeguarding zone to serve the Secretary of State for Transport with a statutory blight notice if they want him to purchase their property. Further details of the safeguarding directions can be found on the HS2 Ltd website.

7. In addition, the High Speed Rail (Preparation) Act 2013 authorises the Secretary of State to incur expenditure in preparation for the construction of a high speed rail network. That Act is intended to ensure that, following enactment of the High Speed Rail (London - West Midlands) Bill, the development of the proposed network might proceed without delay. The Act's other provisions include a power for the Secretary of State to incur expenditure in providing compensation in respect of property likely to be affected by the construction of the proposed network.

8. The Government proposes that, subject to the successful passage of the High Speed Rail (London - West Midlands) Bill, construction of Phase One of High Speed 2 would commence in 2017. This phase would be completed and operational by 2026. The Government plans to introduce a hybrid Bill providing for Phase Two, with the extension of the network to be open by 2033.

9. Further information about HS2 and high speed rail can be found in the Parliamentary research paper on the subject, which can be accessed at <http://www.parliament.uk/briefing-papers/SN00316>.

10. This Bill is a hybrid Bill. This means it is of general application, but it contains provisions which have a different legal effect on the private interests of particular persons. In procedural terms, this means it will be considered as a Public Bill, but will be treated as similar to a Private Bill during certain stages of its passage through Parliament. The hybrid Bill procedure gives those persons who are directly and specially affected an opportunity to petition against the Bill and be heard in Select Committee.

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OVERVIEW OF STRUCTURE

11. The Bill is made up of 65 clauses and 31 schedules. The provisions include:
- The authorisation of works necessary for the construction and maintenance of Phase One of High Speed 2, and all ancillary works. Powers to carry out these works are conferred upon the “nominated undertaker”. The Secretary of State has the power to nominate that undertaker. In promoting this Bill, the Department is being assisted by High Speed Two (HS2) Ltd, a company whose only member is the Secretary of State for Transport. The Secretary of State has not yet decided whether HS2 Ltd should become a nominated undertaker.
 - The power to acquire land (or airspace or subsoil) necessary for the authorised works to be carried out. The Secretary of State is granted compulsory acquisition powers. These powers are intended to expire five years from the date of Royal Assent, however, the Bill does enable the Secretary of State to make an order extending this period by not more than five years. The Bill also contains powers allowing for the compulsory purchase of land for the relocation of businesses which are displaced as a result of the construction of Phase One of High Speed 2.
 - The acquisition of limited rights in land required for works necessary for the construction of HS2 to be carried out.
 - These provisions are included so that, for example, where access over land is required, or where possession of land is needed only temporarily for construction works, the Secretary of State may seek to obtain limited rights over land, rather than being forced to compulsorily acquire the freehold interest in the land.
 - The deeming of planning permission to be granted for the works for Phase One of High Speed 2, and the imposition of conditions on this permission. The conditions include a requirement for the nominated undertaker to submit certain details of the development to the planning authorities for approval.
 - The deregulation of works on HS2. This refers to the disapplication of powers contained in other legislation so that work on Phase One of High Speed 2 occurs expediently after enactment of this Bill.
 - Railway matters and how to apply existing railway legislation to HS2. Principally, these provisions seek to set out the railways regulatory regime which will apply to Phase One of High Speed 2, and how this will interact with the existing network.
 - Facilitating extensions of Phase One of High Speed 2 works by enabling orders under the Transport and Works Act 1992 to apply provisions of the Bill to such

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works. Other delegated powers are conferred to enable works to accommodate high speed trains on existing conventional lines, and at existing stations and depots, when they carry on from the West Midlands to Scotland.

12. The provisions in this Bill and the framework which it is seeking to establish are deliberately similar in many respects to those of the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008. These are the most recent hybrid bills to be introduced for railway projects. However, changes have been made to reflect the different nature of this project and some of the specific requirements of Phase One of High Speed 2.

TERRITORIAL EXTENT AND APPLICATION

13. The provision made by the Bill for the acquisition of land and the authorisation of works is local in nature. The new high speed rail lines forming Phase One of High Speed 2 are to be situated wholly in England.

14. However, as with the Crossrail Act 2008, the Channel Tunnel Rail Link Act 1996 and other hybrid Bills, this Bill does not expressly limit its territorial extent. This means that the Bill extends to the United Kingdom.

15. At introduction this Bill contains provisions that trigger the Sewel Convention. The provisions relate to the reserved matter of cross-border railways but alter the executive competence of the Scottish Ministers. The services using Phase One of High Speed 2 will run to and from Scotland, albeit on the existing conventional rail lines and at normal speed from the West Midlands. Clause 49 confers on the Scottish Ministers an order-making power to authorise works in Scotland which may be required for Phase One purposes – for example to extend train platforms so as to accommodate the larger trains. Also clause 52, which relates to the exercise of rights of entry to carry out surveys or investigations for future phases of HS2, confers a role on the Scottish Ministers in relation to authorising works under clause 51 (rights of entry for further high speed rail works). Such works could include, for example, boring holes to investigate minerals, or placing apparatus on land.

16. The Sewel Convention provides that Westminster will not normally legislate with regards to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

17. None of the provisions contained in this Bill will have an impact upon matters that have been devolved to the National Assembly for Wales or the Northern Ireland Assembly.

COMMENTARY ON CLAUSES

Clause 1: Power to construct and maintain works for Phase One of High Speed 2

18. The primary purpose of the Bill is to authorise the construction of Phase One of High Speed 2. The provisions in *clause 1* allow the nominated undertaker to carry out the construction and maintenance of the principal works for this (known as the scheduled works), further detail of which can be found in Schedule 1.

Clause 2: Further provision about works

19. *Subsection (1)* allows the nominated undertaker to carry out ancillary works within the Act limits (an expression which is defined in clause 63(2)). The types of works which may be undertaken, in connection with the railway, are outlined in subsections (1) and (2).

20. *Subsection (3)* allows the nominated undertaker to carry out, within the Act limits, landscaping or other mitigation works to reduce the impact of construction, maintenance or operation of the Phase One works, and to undertake works which are intended to benefit or protect land affected by the Phase One works.

21. *Subsection (4)* introduces Schedule 2, which contains additional works powers. Details of these can be found below.

22. *Subsection (5)* authorises the nominated undertaker to carry out the electric line works that are specifically authorised by the Bill.

Clause 3: Highways

23. *Clause 3* introduces Schedule 4, which contains provisions relating to highways. More details about this can be found below.

Clause 4: Power to acquire land compulsorily

24. *Subsection (1)* gives the Secretary of State powers of compulsory acquisition over the land shown within the limits of deviation and the limits of land to be acquired or used on the plans accompanying this Bill. The land may only be acquired if it is needed “for Phase One purposes”. This expression is defined in clause 62.

25. *Subsection (2)* introduces Schedule 5 which makes provision about the purposes for which the land within the limits of land to be acquired or used, as shown on the Bill plans, may be acquired.

26. *Subsection (3)* provides that Part 1 of the Compulsory Purchase Act 1965 applies to the acquisition of land under the Bill as if the Bill were a compulsory purchase order under the Acquisition of Land Act 1981, subject to the modifications contained in Schedule 6 referred to below. Part 1 of the 1965 Act provides for procedures for the compulsory acquisition of land.

27. *Subsection (4)* provides that the provisions of the Compulsory Purchase

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(Vesting Declarations) Act 1981 also apply as if this Bill were a compulsory purchase order, subject again to the modifications contained in Schedule 6. The 1981 Act, in its application by the Bill, provides an alternative streamlined method by which the Secretary of State may compulsorily acquire the land required for construction of the railway.

28. *Subsection (5)* introduces Schedule 6 which makes modifications of the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981 and other legislation relating to compulsory acquisition in their application to the acquisition of land under the Bill.

Clause 5: Acquisition of rights in land

29. *Clause 5(1) and (2)* give the Secretary of State power to acquire rights over land (instead of acquiring the whole of a person's interest in land). This includes power to acquire or create easements and other rights and, in the case of land specified in Schedule 7, to impose restrictive covenants.

30. *Subsection (3)* provides that, in the case of land specified in Schedule 8, only rights in land may be compulsorily acquired for the purposes mentioned in the table.

31. *Subsection (4)* enables the Secretary of State by order to provide that a person specified in the order may exercise the powers under the Bill to acquire rights or impose restrictive covenants. Some of the land within the Act limits, particularly that outside the limits of deviation but within the land to be acquired or used, is intended to be used for the diversion of statutory undertakers' apparatus. An order made under subsection (4) could enable a statutory undertaker to create the rights in land necessary to effect the diversion of the apparatus rather than those rights being acquired by the Secretary of State for the benefit of the undertaker.

32. *Subsection (6)* introduces Schedule 9, which makes provision to apply compulsory purchase legislation to the creation of rights, or imposition of restrictive covenants.

Clause 6: Acquisition of part of land

33. *Clause 6*, with Schedule 10 which it introduces, provides an alternative procedure to that set out in section 8(1) of the Compulsory Purchase Act 1965 relating to the acquisition of part of certain land. Where a notice to treat is served under Part 1 of the Compulsory Purchase Act 1965 in respect of land which forms only part of land consisting of a house with a park or garden or a factory, together with a copy of this clause and Schedule 10, the procedure in Schedule 10 takes effect.

34. *Subsection (2)* makes it clear that the alternative procedure does not apply where only rights are being acquired, or restrictive covenants imposed.

Clause 7: Acquisition of airspace

35. Certain works for the railway may require the taking of only the airspace

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above land shown on the deposited plans rather than the totality of the land. *Subsection (1)* enables the Secretary of State to acquire compulsorily only the airspace over land, without acquiring the land itself.

36. *Subsection (2)* disapplies the provisions of the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981 which enable a landowner, in certain cases where it is proposed to purchase only part of property, to require the whole of the property to be acquired on the ground that taking that part of the land would result in material detriment to the remainder of the land. The result is that where only airspace over land is acquired, the Secretary of State cannot be required to acquire a greater interest in the property.

Clause 8: Acquisition of subsoil or under-surface

37. Some of the land shown on the deposited plans is required for underground working tunnels and ancillary works where only the subsoil of the land needs to be acquired. *Clause 8* enables the Secretary of State to acquire compulsorily the subsoil only, rather than having to acquire the whole of the land.

38. *Subsection (2)* disapplies the provisions of the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981 which enable a landowner, in certain cases where it is proposed to purchase only part of property, to require the whole of the property to be acquired on the ground that taking that part of the land would result in material detriment to the remainder of the land. The result is that, where only the subsoil of land is acquired, the Secretary of State cannot be required to acquire a greater interest in the property.

39. However, *subsection (3)* excepts from that disapplication cases where a cellar, vault, arch or other construction forming part of a building is to be acquired compulsorily. In such a case the landowner's right to claim that the whole of the property should be acquired on the ground of material detriment is not affected.

40. *Subsection (4)* introduces Schedule 11 which in certain cases restricts the Secretary of State's power to acquire land to the purchase of subsoil or under-surface of land, or to both the subsoil or under-surface and rights of passage.

Clause 9: Highway subsoil

41. *Subsection (1)* provides that the nominated undertaker may take and use any subsoil beneath a highway within the Act limits without being required to acquire the subsoil or any interest in it. However, under *subsection (2)* this does not apply to cellars, vaults, arches or other structures which form part of a building fronting on to the highway.

42. *Subsections (3) and (4)* provide that the powers to take subsoil or compulsorily acquire an interest in land cannot be exercised in the case of the highway land specified in the table in Schedule 12, except as regards a cellar or other underground structure which forms part of a building which fronts onto the highway, is within the

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Act limits, and in respect of which the power of compulsory acquisition under clause 4(1) is exercisable.

43. *Subsection (5)* provides that, in the case of highways comprised in the land specified in the table in paragraph 1 of Schedule 11 (where only subsoil lying more than 9 metres beneath the surface level of the land can be acquired compulsorily), only subsoil which is more than 9 metres beneath the level of the surface may be taken under subsection (1).

44. *Subsection (6)* makes it clear that the restrictions in the clause as regards the highway land specified in the table in Schedule 12 or in paragraph 1 of Schedule 11 do not prevent the nominated undertaker carrying out street works on those highways in exercise of the powers under the Bill.

45. *Subsections (7) to (9)* provide that compensation is payable for any loss suffered as a result of the taking and use of subsoil under this clause, with any disputes about such compensation to be determined under the Land Compensation Act 1961. But this does not apply to cases relating to statutory undertakers which are covered by the costs sharing regime in section 85 of the New Roads and Street Works Act 1991.

Clause 10: Termination of power to acquire land

46. *Subsection (1)* provides that the compulsory purchase power conferred by clause 4(1) is to expire 5 years from the date when the Bill receives Royal Assent.

47. *Subsection (2)*, however, gives the Secretary of State the power by order to extend the period of 5 years. The period may only be extended once in relation to any particular land, and for a maximum of an additional 5 years.

48. Under *subsection (3)* any order extending the time limit for the exercise of the compulsory acquisition powers is subject to special parliamentary procedure under the Statutory Orders (Special Procedure) Act 1945.

49. *Subsection (4)* introduces Schedule 13, which gives rights to landowners to require acquisition of their land where an order is made extending the time limit in relation to the land.

Clause 11: Extinction of rights over land

50. *Clause 11* introduces Schedule 14, which relates to the extinction of private and other rights over land.

Clause 12: Extinction of rights of statutory undertakers

51. *Subsection (1)* concerns the rights of statutory undertakers over land acquired by the Secretary of State which is required for the purposes of the works authorised by the Bill. The nominated undertaker may extinguish these rights as if the land had been acquired under Part 9 of the Town and Country Planning Act 1990. Sections

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271 to 273 of the 1990 Act provide a process by which any apparatus of a statutory undertaker on such land may be removed and related rights over the land extinguished.

52. *Subsections (2) to (4)* make modifications to sections 271 to 273 (and related provisions) of the 1990 Act. The modifications are needed because the compulsory purchase power under clause 4(1) is vested in the Secretary of State and not the nominated undertaker, so the nominated undertaker will not be the acquiring authority for the purposes of those provisions.

Clause 13: Exclusion of new rights of way

53. *Clause 13* prevents rights of way from being acquired by prescription or user over land which forms an access or approach to any railway infrastructure (as defined in *subsection (3)*) and which is acquired or held for Phase One purposes. Prescription is the legal process of a right of way becoming established through use over a period of at least 20 years.

Clause 14: Temporary possession and use of land

54. *Clause 14* introduces Schedule 15, which makes provision for temporary possession and use of land for the purposes of Phase One works.

Clause 15: Use of roads

55. *Subsection (1)* confers on the nominated undertaker a power to use any roads on the land specified in the table in Schedule 8 or paragraph 2 of Schedule 11 for the purposes of Phase One of High Speed 2. Under *subsection (2)* this power ends 5 years after Phase One of High Speed 2 is brought into general use. Under *subsections (3) and (4)* compensation is payable to the person responsible for managing the road for any loss suffered as a result of the use of it, with any disputes about such compensation to be determined under the Lands Compensation Act 1961.

Clause 16: Cranes

56. *Clause 16* makes provision for cranes employed by the nominated undertaker in connection with the construction of the authorised works to enter the airspace of the land specified in the table in *subsection (7)*.

57. *Subsections (2) and (3)* provide that 7 days' notice must be given before the right to oversail a crane is exercised and that the right ends 7 days after the completion of the activities for which the crane has been used. *Subsections (4) to (6)* make provision for the payment of compensation to the owners and occupiers of the land for any loss suffered by them as a result of the exercise of the power.

Clause 17: Enforcement of restrictions on land use

58. *Clause 17* enables covenants between the Secretary of State and persons with an interest in land entered into by agreement to bind successors in title to such interests even though they are not direct parties to the original covenant.

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59. In order for covenants concerning land to be enforceable against successors in title to such land, the person claiming the benefit must usually have a neighbouring interest in land. The Secretary of State will usually not have such an interest until compulsory purchase powers are exercised. Therefore, to enable covenants which bind successors in title to be entered into before that time, this clause removes the requirement to have a neighbouring interest in land.

Clause 18: Compensation for injurious affection

60. *Clause 18* modifies section 10(1) of the Compulsory Purchase Act 1965 which provides for compensation for ‘injurious affection’ by the acquiring authority. Injurious affection has a specific and detailed meaning developed by case law. In very broad terms, injurious affection under section 10 of the 1965 Act relates to circumstances where the construction of public works such as HS2 causes a diminution in the value of land. The compulsory purchase powers under the Bill are given to the Secretary of State and not the nominated undertaker. The modification of section 10 of the 1965 Act is needed to make the nominated undertaker, who is not the acquiring authority, responsible for the payment of compensation for injurious affection.

Clause 19: Deemed planning permission

61. *Subsections (1), (2) and (4)* deem planning permission under Part 3 of the Town and Country Planning Act 1990 to be granted for development authorised by the Bill, subject to the other provisions of the Bill and the conditions set out in Schedule 16. The conditions are enforceable by the relevant planning authority.

62. *Subsection (3)* provides that this permission does not apply to ancillary development not comprising a scheduled work, if that development would be likely to have significant effects on the environment, unless it is exempt development or has been appropriately environmentally assessed in the environmental statement for the Bill.

63. *Subsection (4)* classifies this planning permission as “specific planning permission” for the purposes of treating the land used by Phase One as operational land of a statutory undertaker. *Subsection (5)* ensures that, where works are carried out by the nominated undertaker, the conditions in Schedule 16 take precedence over any permitted development rights under the normal planning regime.

Clause 20: Time limit on deemed planning permission

64. *Subsection (1)* provides that, for scheduled works, the deemed planning permission granted by clause 19 applies only to works begun no later than ten years after Royal Assent to this Bill.

65. *Subsections (2) and (3)* allow the Secretary of State to extend this time limit by statutory instrument, which will be subject to the negative resolution procedure. *Subsection (4)* disapplies section 91 of the Town and Country Act 1990, which sets

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out the time limit for “normal” planning permissions.

Clause 21: Power to disapply deemed planning permission

66. *Subsection (1), (3) and (4)* allow the Secretary of State, by means of a statutory instrument, to disapply the deemed planning permission granted by clause 19(1) in respect of development consisting of operations for the maintenance or alteration of the Phase One works, from the date specified in the statutory instrument.

67. *Subsection (2)* provides that, in the event of such a disapplication, any further development would be subject to the normal provisions of the Town and Country Planning (General Permitted Development) Order 1995 applying to development authorised by a local Act.

Clause 22: Parking at Birmingham Interchange: limit on deemed planning permission

68. *Subsection (1)* limits the amount of car and coach parking (other than short term parking) that may be provided at Birmingham Interchange station under the planning permission given by clause 19. (This limit is a maximum of 7,500 car parking places and 5 coach parking places).

69. *Subsections (2) and (3)* provide that, instead of Schedule 16 applying to the parking, the permission is to be treated as an outline planning permission for which access, appearance, landscaping and layout are reserved for the subsequent approval of the local planning authority.

Clause 23: Development consent

70. *Clause 23* removes the requirement for development consent under the Planning Act 2008 for the works authorised by this Bill. The construction of a railway is, with exceptions, one of the categories of nationally significant infrastructure project which requires consent from the Secretary of State under that Act. However, a requirement for development consent under the 2008 Act would be inappropriate for works which already have the specific authorisation of Parliament.

Clause 24: Listed buildings

71. *Clause 24* introduces Schedule 17, which disapplies and modifies various controls relating to listed buildings.

Clause 25: Ancient monuments

72. *Clause 25* introduces Schedule 18, which disapplies and modifies controls regarding ancient monuments.

Clause 26: Burial grounds

73. *Subsection (1)* disapplies existing ecclesiastical and other law concerning burial grounds in the case of the construction works for Phase One purposes.

74. *Subsection (2)* provides that where the use of land for those works involves

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disturbing human remains, the disapplication of the law relating to burial grounds only applies if the remains and any monument to the deceased have been dealt with in accordance with Schedule 19 which regulates the way in which such remains and monuments are to be dealt with.

75. *Subsection (3)* provides a definition of “monument” for the purposes of clause 26 and Schedule 19 to include a tombstone or other memorial to the deceased. This includes a monument to one or more deceased persons.

Clause 27: Consecrated land

76. *Clause 27* provides that no law, either ecclesiastical or otherwise, applying to consecrated ground is to restrict the works for Phase One of High Speed 2. This provision does not apply to burial grounds, because burial grounds are covered by clause 26 and Schedule 19.

Clause 28: Commons and other open spaces

77. *Clause 28* disapplies enactments which regulate the use of commons, town or village greens, open spaces or allotments. It provides that no such enactment prevents or restricts the doing of anything for Phase One purposes on land held by the Secretary of State or the nominated undertaker for those purposes, the exercise of any right of entry under the Bill or the doing of anything in exercise of any other power of the Bill. This therefore allows the carrying out of works for Phase One purposes which would otherwise be in breach of such enactments.

Clause 29: Trees

78. *Clause 29* disapplies tree preservation orders made under section 198(1) or 202(1) of the Town and Country Planning Act 1990 and regulations made under section 202A of that Act, and the provisions of section 211 of that Act dealing with trees in conservation areas, in relation to certain tree works. These are works to trees within the Act limits that are carried out for the purposes of the construction of Phase One of High Speed 2 and also works to trees growing on any other land used for Phase One purposes which are necessary for the maintenance or operation of Phase One of HS2 or for safety reasons.

Clause 30: Overhead lines

79. *Clause 30* relates to the installation and diversion of overhead lines. As a number of overhead lines will require to be diverted for Phase One of High Speed 2, *subsection (1)* removes the need for the Secretary of State’s consent under the Electricity Act 1989 where the overhead line work concerned is within the Act limits, is a work authorised by the Bill and has deemed planning permission under the Bill. By virtue of *subsection (3)* this rule also applies where the work concerned is done by the electricity undertaker.

80. Where overhead line work is needed for Phase One purposes to which subsection (1) does not apply, and a consent under section 37 of the Electricity Act 1989 is therefore required, *subsection (2)* provides that there is no automatic duty

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upon the Secretary of State to hold a public inquiry in every case where the planning authority has objected: instead the decision whether to hold a public inquiry is to be a matter for the Secretary of State after considering whether the number and substance of any objections require one.

81. By virtue of subsection (4), development consent under the Planning Act 2008 is not required for electric line work done in consequence of the Phase One works, even if done by the electricity undertaker.

Clause 31: Water

82. *Clause 31* introduces Schedule 20 which provides for the disapplication of certain legislation relating to water.

Clause 32: Buildings

83. *Subsection (1)* introduces Schedule 21 which provides for the disapplication or modification of various provisions of the Building Act 1984 and building regulations.

84. *Subsection (2)* introduces Schedule 22 which provides for the disapplication or modification of the Party Wall etc Act 1996.

Clause 33: Street Works

85. *Clause 33* introduces Schedule 23 which disapplies various controls relating to works in or near streets and highways.

Clause 34: Lorries

86. *Clause 34* introduces Schedule 24, which contains provisions relating to the use of heavy commercial vehicles.

Clause 35: Noise

87. *Clause 35* introduces Schedule 25, which contains provisions regarding noise arising from the construction of authorised works.

Clause 36: Local Acts

88. *Clause 36* introduces Schedule 26, which contains provisions to disapply various controls imposed by local Acts relating to London, Oxfordshire, Staffordshire and the West Midlands.

Clause 37: Objectives of Office of Rail Regulation

89. The Railways Act 1993 imposes on the Office of Rail Regulation (ORR) a duty to address certain objectives in the execution of its non-safety functions. These objectives do not currently contain any explicit requirement for the ORR to facilitate the construction of Phase One of High Speed 2. *Subsection (1)* adds such a requirement and thereby clarifies the ORR's role for the benefit of the ORR and rail operators. *Subsection (2)* instructs the ORR to consult the Secretary of State about how it should carry out this duty.

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90. *Subsection (3)* enables the Secretary of State to make an order repealing this clause. This power enables the objective to be removed from the remit of the ORR when it is no longer relevant.

Clause 38: Disapplication of licensing requirement in pre-operational phase

91. *Subsection (1)* provides that section 6(1) of the Railways Act 1993 does not apply to a network constructed under this Bill, or any trains running on such a network, if it is not ready for commercial use. But for this disapplication, section 6(1) of the 1993 Act would impose a requirement for a licence or an exemption on the operator of the railway asset. Under *subsection (2)*, a network will be deemed ready for commercial use if the Secretary of State lays a notice before Parliament to that effect.

92. *Clause 38* provides that such an exemption under this clause is an appropriate licence exemption for the purposes of section 122 of the Railways Act 1993. This means that a defence is available in the case of any proceedings for nuisance.

Clause 39: Disapplication of statutory closure provisions

93. *Subsection (1)* provides that the Secretary of State may disapply the closure provisions of the Railways Act 2005 in the case of closures which are necessary or expedient because of the construction or operation of Phase One of High Speed 2. The disapplied closure provisions set out what must be done, in terms of notice, consultation and provision of information, in the event of a proposal to close existing services, stations or parts of the rail network. The Secretary of State may not exercise the power under this clause after the Secretary of State has notified Parliament that Phase One is ready for commercial use.

Clause 40: Other railway legislation etc.

94. *Clause 40* introduces Schedule 27, which provides for the ways in which other railway legislation applies to Phase One of High Speed 2.

Clause 41: Co-operation

95. The nominated undertaker which builds and operates Phase One of High Speed 2 will, in the course of its work, have impacts on other controllers of assets on the UK rail network, and vice versa. *Subsections (1)* and *(2)* require both parties, if they consider that a matter may affect an asset of another, to give notice and agree arrangements for working out how to deal with the matter.

96. *Subsection (3)* provides that the terms of an agreement must be accepted by both parties but, if not, arbitration should be used to reach agreement. *Subsection (4)* introduces Schedule 28, which contains further details on the provisions for such arbitration.

97. *Subsection (5)* defines what is a Phase One asset or facility for these purposes.

98. *Subsection (6)* provides that subsections (1) and (2) do not apply in relation to

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matters or agreements which are within the remit of the Office of Rail Regulation.

Clause 42: Transfer of functions relating to works

99. *Subsections (1), (2) and (3)* provide that the Secretary of State may by order transfer the authority to carry out works on railway land where the land is also being transferred. This clause is included in the Bill because, during the construction of Phase One of High Speed 2, works may be required on or close to other railways where unrelated work, approved under other legislation, is also due to be carried out and will still be necessary.

Clause 43: Nominated undertaker

100. *Subsection (1)* gives the Secretary of State the power to nominate, by means of an order, a ‘nominated undertaker’ to carry out some or all of the works, scheduled and ancillary, authorised by the Bill.

101. *Subsection (2)* provides that, in the absence of a designated nominated undertaker for any provision of this Bill, the Secretary of State is deemed to be the nominated undertaker for that provision. This is to allow for situations that may arise where no nominated undertaker has been appointed or there is a delay between a nomination ceasing to have effect (for example, because an agreement has been terminated) and the Secretary of State making a nomination in favour of another person.

102. *Subsection (3)* allows the Secretary of State to restrict the discretionary exercise of the power granted by subsection (1). This is to provide for the Secretary of State to be able to make contractual agreements prior to the nomination of a person or body as the nominated undertaker.

103. *Subsection (4)* allows the Secretary of State, through an order, to modify any provisions of the Bill that refer to the Secretary of State, for cases where modifications are needed in consequence of the Secretary of State’s having the functions of the nominated undertaker.

Clause 44: Transfer schemes

104. *Clause 44* contains provisions for the Secretary of State to transfer any property, rights or liabilities from High Speed Two (HS2) Ltd, or any of its subsidiaries, to any person. Further details about such transfer schemes are contained in Schedule 30, which can be found below.

Clause 45: Extension of planning permission for statutory undertakers

105. *Clause 45* introduces Schedule 30. This Schedule extends the planning permission available for certain works of statutory undertakers, carried out in consequence of Phase One, which have been environmentally assessed in connection with the Bill.

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Clause 46: Protective provisions

106. *Clause 46* introduces Schedule 31, which contains provisions protecting the interests of certain bodies who may be affected by other provisions of the Bill.

Clause 47: Compulsory acquisition of land for regeneration or relocation

107. *Subsection (1)* enables the Secretary of State to acquire land compulsorily if the Secretary of State considers that the construction or operation of Phase One of High Speed 2 gives rise to an opportunity for regeneration or development of that land.

108. *Subsections (2) and (3)* enable the Secretary of State to acquire land compulsorily to relocate the whole or part of an undertaking (defined by *subsection (7)* to include a business or facility) where, as a result of the exercise of any of the powers of the Bill, the former site of the undertaking or part of it is no longer reasonably capable of being used for the undertaking.

109. Under *subsection (4)* the powers of compulsory purchase under this clause are exercisable by means of a compulsory purchase order to which the usual procedure under the Acquisition of Land Act 1981 is to apply.

110. *Subsection (5)* provides that specified provisions of the Town and Country Planning Act 1990, which apply in relation to compulsory acquisition or appropriation under Part 9 of that Act, will apply to a compulsory acquisition under this clause subject to modifications to make them apt for such an acquisition.

111. *Subsection (6)* applies certain of those provisions to acquisitions by the Secretary of State by agreement, which are made for a purpose falling within subsection (1) or (2).

112. *Subsections (7) and (8)* provide that the power of compulsory acquisition under the clause includes power to acquire or create easements or other rights over land. The same modifications of compulsory purchase legislation apply to the acquisition or creation of such rights as where rights are acquired or created by local authorities compulsorily under Part 9 of the 1990 Act.

Clause 48: Power to carry out reinstatement works

113. *Clause 48* allows the nominated undertaker to carry out works to reinstate within the Act limits all or part of an undertaking whose operation or use has been discontinued or substantially impaired by the exercise of the powers of the Bill.

114. *Subsection (3)* allows this power to be used to provide temporary reinstatement works, followed by permanent reinstatement works.

115. Where the nominated undertaker carries out such reinstatement works, planning permission is granted under clause 19 and is accordingly subject to the conditions specified in Schedule 16. However, under *subsection (4)* the Secretary of

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State may direct that this permission does not apply, and where this is done, under *subsection (5)* the Secretary of State may further direct that planning permission is deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the works subject to conditions tailored for the development concerned. Where a direction has been given to that effect, the Secretary of State may also direct that a person other than the nominated undertaker may carry out the works.

116. By virtue of *subsection (6)*, where such a planning direction is given, the planning permission is treated for the purposes of most provisions of the Town and Country Planning Act 1990 as granted on an application referred to the Secretary of State under section 77 of that Act, and under *subsection (7)* the time limit in clause 20 is applied to it as if the reinstatement works were scheduled works.

117. By virtue of *subsection (8)*, a planning direction under subsection (5) may not be made by the Secretary of State where the reinstatement works may have significant effects on the environment, unless they have been appropriately environmentally assessed in the environmental statement for the Bill.

118. *Subsection (9)* requires planning directions under subsection (5) to be published and copies distributed to the local planning authority and the owners and occupiers of the land concerned.

119. *Subsection (10)* provides that where someone other than the nominated undertaker carries out the reinstatement works, that person is responsible for any compensation for injurious affection which may become payable, in place of the nominated undertaker.

120. *Subsection (11)* enables directions under subsection (5) to be revoked and varied.

Clause 49: Works in Scotland for Phase One purposes

121. *Clause 49* gives the Scottish Ministers an order-making power, enabling them to approve works required in Scotland for Phase One purposes. This is to allow for works which may be necessary to accommodate high speed train services travelling at normal speed from the West Midlands to Scotland. Given the early design stage of the project, such works have not yet been identified, but they might potentially include lengthening a station platform to accommodate longer trains or extending depots.

122. *Subsection (2)* makes provision for the procedures to be followed when making orders under clause 49, with particular reference to the Transport and Works (Scotland) Act 2007 and secondary legislation made under that Act.

123. *Subsection (3)* enables references to these provisions to be read as including any amendments made to them.

124. *Subsections (4) and (5)* enable Scottish Ministers to modify legislation relating

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to the carrying out of works in Scotland for Phase One purposes without the legislative restrictions that would otherwise apply to the Scottish Ministers bringing forward legislation in the Scottish Parliament.

Clause 50: Power to apply Act to further high speed rail works

125. *Clause 50* makes provision to facilitate authorisation of further adjustments or minor extensions of Phase One by means of an order under the Transport and Works Act 1992 (“TWA Order”).

126. *Subsections (1) to (3)* provide that a TWA order which relates to “a relevant Phase One matter” may apply any provision of the Bill, with or without modifications, to anything authorised by the order. A relevant Phase One matter is defined by *subsection (2)* and includes works to be carried out for Phase One purposes. This could, for example, include provision for an additional work site or an additional facility outside the Act limits. So if any adjustment to the Phase One works were found to be needed, the TWA order authorising an additional or modified work could provide for the same planning regime under the Bill to apply to it (so that the additional or modified work is treated in the same way as the works authorised under the Bill).

127. *Subsection (4)* disapplies section 13(2) of the Transport and Works Act 1992, which gives the Secretary of State a discretion not to make a TWA order if the objects of the order sought could be achieved by other means. This provides certainty that in appropriate cases powers can be sought for the diversion of utilities by a TWA order notwithstanding that other statutory means may be available under which the powers could be sought.

128. *Subsection (5)* provides that a TWA order cannot apply the provisions in the Bill which enable the Secretary of State to extend the time limit for the exercise of compulsory purchase powers or which modify legislation relating to listed buildings or ancient monuments.

Clause 51: Rights of entry in connection with high speed rail works

and

Clause 52: Exercise of rights of entry

129. *Clause 51* allows an authorised person to enter land, in connection with a Bill or proposed Bill authorising a high speed rail line, for the purpose of conducting surveys or facilitating compliance with EU environmental protection legislation.

130. Land may only be entered if it is within 500 metres of the centre of a proposed line of route. *Subsection (10)* allows the Secretary of State to alter this distance through an order – subject to negative resolution Parliamentary procedure.

131. *Subsection (2)* of clause 51 stipulates that for entry onto residential land, the person must be authorised by a warrant issued by a justice of the peace (for residential land in England and Wales) or a justice of the peace or sheriff (for residential land in

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Scotland). For any other land the person must be authorised in writing by the Secretary of State.

132. Entry should only be authorised by the justice of the peace (in the case of residential land) or by the Secretary of State (for any other land) if it appears that: there is a genuine need to enter the land; all reasonable attempts have been made to obtain consent and; there is likely to be a Bill in Parliament to authorise a high speed rail line, if there is not one already, i.e. a Command Paper to that effect has been published by the Government.

133. Under *clause 52*, the authorisation is valid for 6 weeks after it has been authorised by the justice of the peace or the Secretary of State. Further, any authorised persons must, if requested, produce evidence of their authorisation and the purpose of entry; give notice of at least 14 days to the occupier; and, comply with any other conditions subject to which the authorisation was granted.

134. *Subsection (4)* makes it an offence wilfully to obstruct any authorised person exercising this right of entry.

Clause 53: Application of powers to Crown land

135. *Clause 53* relates to Crown land. With the consent of the relevant Crown authority, *subsections (1) and (2)* permit the authorised works to be carried out by the nominated undertaker, and the exercise of a right of entry under *clause 51*, in relation to Crown land. *Subsection (3)* provides, amongst other matters, that this consent can be given subject to conditions.

136. *Subsection (4)* defines ‘Crown land’.

137. *Subsection (5)* indicates who is the ‘Crown authority’ for the purposes of granting consent to the nominated undertaker. This will, in practice, be a Government department, the Crown Estate Commissioners, the Scottish Ministers or the Chancellor of the Duchy of Lancaster, dependent on the land in question.

138. *Subsection (6)* provides that, if there is a question about which body is the ‘Crown authority’, the matter is to be decided by the Treasury.

Clause 54: Highways for which the Secretary of State is highway authority

139. *Clause 54* concerns highways for which the Secretary of State is the highway authority, namely trunk roads and most motorways. This clause provides that the powers of the Bill with respect to works may be exercised in relation to such highways with the Secretary of State’s consent.

Clause 55: Crown Estate

140. Certain restrictions apply to the disposal of Crown land held by the Crown Estate Commissioners. As with Crossrail, such restrictions might be inconvenient. As a result, *clause 55* contains provisions analogous to those in the Crossrail Act 2008

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removing the restrictions on disposal of land held by the Commissioners which they consider may be required for Phase One purposes.

Clause 56: Royal parks

141. *Clause 56* enables the Secretary of State (as the person responsible for the Royal Parks Agency) to grant a lease of land in the Royal Parks, or an easement over such land, where needed for Phase One purposes. The grant of a lease or easement under the clause may be for such consideration and on such terms as the Secretary of State considers appropriate.

Clause 57: “Deposited plans” and “deposited sections”

142. *Clause 57* defines the meaning of “deposited plans” and “deposited sections” for the purposes of the Bill.

Clause 58: Correction of deposited plans

143. *Clause 58* contains provisions for correcting the plans or book of reference to the plans which have been deposited in Parliament with this Bill, should this be required. These provisions are normal for hybrid or local Bills.

144. Under *subsection (1)*, corrections may be made if the plans are incorrect in describing the land to be taken, or its ownership or occupation. In these cases, the Secretary of State can apply to have these corrected by two justices who have jurisdiction over the land. This can be done after giving 10 days’ notice to the owners or occupiers of the land.

145. Subsections (2) to (4) provide for the justices to certify that such an error in the plans was made by a mistake or inadvertence, and, in such a certificate, state in what respect the plans or book of reference are incorrect. The certificate must then be deposited in Parliament and with each local authority in whose area any of the land concerned is situated. Once this has occurred, the plans or book of reference are to be treated as corrected, and the Secretary of State may act as though the deposited plans had always been as corrected.

146. Subsection (6) provides that, if the land in question is situated in two judicial areas, a justice of the peace with jurisdiction in one of the areas may act with regard to land in either area.

Clause 59: Environmental Impact Assessment Regulations

147. *Clause 59* provides that where a building not forming part of the Phase One works authorised by the Bill (say, a building over a station) is built to replace a building demolished or substantially demolished under the Bill, the planning application for that replacement building must be accompanied by an environmental assessment where the conditions in subsection (1) are met, except where subsection (2) applies in which case the final condition of subsection (1) does not need to be met for an environmental assessment to be needed. This provision is intended to ensure that all the direct and indirect environmental effects of development authorised by the

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Bill are properly assessed at the appropriate stage.

Clause 60: Arbitration

148. *Clause 60* provides how disputes which are to be determined under the Bill by arbitration are to be dealt with. *Subsection (1)* provides that such arbitration shall be settled by a single arbitrator to be agreed between the parties or, where the parties cannot agree, by a person appointed by the President of the Institute of Civil Engineers (the ICE).

149. However, it is accepted that in some cases, notably where the dispute involves railway industry matters, it may not be appropriate for an arbitrator to be appointed by the President of the ICE. If the President should decline to make an appointment, then *subsection (3)* makes provision that such an arbitrator may be appointed by the Office of Rail Regulation (ORR).

150. *Subsection (4)* provides that an employee of the ORR may be appointed as an arbitrator in the circumstances set out in *subsection (3)*.

151. *Subsection (5)* enables the Secretaries of State for Transport and Communities and Local Government, acting jointly, to make procedural rules governing arbitration. Such rules will be made by statutory instrument which can be annulled by a resolution of either House of Parliament.

Clause 61: Notices and other documents

152. *Clause 61* relates to the service of notices or other documents on any person where that is required or authorised under the Bill.

153. *Subsection (1)(a)* allows a document to be served by email or other electronic means where the recipient has agreed to the electronic method of service. Under *subsection (3)* a person who receives a document by electronic means may request a hard copy within 7 days and the other party must then provide the hard copy as soon as reasonably practicable.

154. However under *subsection (4)* a notice under clause 52(3) seeking a right of entry under clause 51 for the purposes of future high speed rail works cannot be given by electronic means. This is because failure to comply with such a notice may constitute evidence of an offence under clause 52(4).

155. *Subsections (1)(b) to (d) and (2)* provide for serving documents by delivery or by post. They include provision specifying where a document may be served on individuals, bodies corporate and partnerships.

156. *Subsections (5) and (6)* contain provisions to deal with cases where a document is required to be served under the Bill on a person as the owner or occupier of land and the person's name or address cannot be determined, and provides the

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means by which documents can still be served.

Clause 62: “Phase One purposes”

157. *Clause 62* defines the phrase “Phase One purposes” as used in this Bill, as purposes of or in connection with: works authorised by the Bill; trains all or part of whose journey takes place on Phase One of High Speed 2; or otherwise in connection with Phase One of High Speed 2 or any high speed railway of which Phase One forms or is to form part.

Clause 63: Interpretation

158. *Clause 63* contains a number of definitions of terms and the ways in which they should be applied in relation to this Bill. For any which refer to another Act, please see the definition in the relevant piece of legislation.

Clause 64: Financial provision

159. *Clause 64* contains provisions about the funding of expenditure incurred by the Secretary of State under the Bill, and provides that such expenditure will be funded out of money provided by Parliament. The clause also provides that where the Bill results in an increase in the sums payable under other legislation out of money provided by Parliament, those sums will also be funded by Parliament.

Commentary on Schedules

Schedule 1: Scheduled works

160. *Schedule 1* sets out the Phase One scheduled works, which are the main works authorised by the Bill. Each of these works has a centre line (or in the case of a road widening, a limit of widening) shown for it on the deposited plans, with a limit of lateral deviation, and a level shown for it on the deposited sections. By virtue of *paragraph 1(1)*, the scheduled works must be constructed in the lines or situations, and at the levels, shown on these. Some stations, depots and shafts also have an upper limit shown for them on the deposited sections, in which case the relevant works must be constructed within the limit.

161. *Paragraph 1(2)* allows deviation laterally from these lines or situations, but only within the limits of deviation shown on the plans. It also allows unlimited deviation downwards from the levels shown, and deviation upwards of not more than three metres. This power to deviate upwards is subject to any upper limit applying to stations, depots and shafts.

Schedule 2: Works

Part 1 - Further and supplementary provisions

162. *Schedule 2* contains a number of further and supplementary works powers for Phase One.

163. *Paragraph 1(1)* authorises the nominated undertaker to survey or investigate

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land which is within the Act limits or affected by the Phase One works, and to protect or remove flora or fauna. *Paragraph 1(2)* provides that this includes the power to make trial holes, carry out ecological or archaeological investigations, and to take samples.

164. Under *paragraphs 1(3) and (4)*, consent of the highway authority is required to the making of trial holes in a carriageway or footway in exercise of these powers, with such consent not to be unreasonably withheld.

165. *Paragraph 1(5)* confers power to enter land in order to carry out the investigation, and to place or leave apparatus. Under *paragraph 1(6)*, 7 days' notice must be given to the owners and occupiers of the land before doing so. Part 2 of the Schedule contains other provisions about entry, including about compensation.

166. *Paragraph 2(1)* enables the nominated undertaker to support or strengthen buildings that may be affected by construction on giving 8 weeks' notice to the occupier. This is because there may be cases where construction can lead to ground movement which requires supporting or strengthening work to be carried out for nearby buildings. These powers apply to buildings within the relevant distance of the works (see *paragraph 6(3)*).

167. *Paragraph 2(2)* provides for recourse to arbitration if the occupier disputes the need for or expediency of the supporting work within 21 days, and *paragraph 2(3)* enables an arbitrator to prescribe how such works are to be undertaken if he or she thinks they should be done.

168. *Paragraph 2(4)* contains provisions for the nominated undertaker to enter adjacent land to carry out the supporting works if they cannot reasonably conveniently be carried out without doing so. The nominated undertaker must give the owners of the adjacent land 14 days' notice.

169. *Paragraph 2(5)* provides that the power under *paragraph 2(1) or (4)* may be exercised without notice in an emergency.

170. *Paragraph 2(6)* permits the nominated undertaker to enter and survey buildings and land to decide whether or how to carry out supporting work.

171. Under *paragraph 2(7)* the nominated undertaker may, in order to strengthen or support a building, leave equipment or material in, next to or under it, or on or under land in its vicinity.

172. *Paragraph 3* provides that the nominated undertaker may carry out further supporting or strengthening works for a building previously supported under *paragraph 2* on giving 8 weeks' notice. *Paragraph 3(2)* sets out the period within which this can be done, namely 5 years from when the Phase One work necessitating

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the previous supporting work was brought into general use.

173. *Paragraph 3(3) to (8)* mirror, for the further supporting works, paragraph 2(2) to (7).

174. *Paragraph 4* allows the nominated undertaker to install and operate monitoring apparatus on any building to measure movement and the effectiveness of supporting work. Similar provisions about objections and arbitration, entry onto adjacent land and surveying apply as for paragraph 2 of the Schedule. Under *paragraph 4(7)* the nominated undertaker may also from time to time maintain, repair or alter the position of monitoring apparatus and take readings from it.

175. *Paragraph 5* applies paragraphs 2 to 4 to the apparatus of a utility undertaker or relevant pipe-lines belonging to another body. This is subject to the modifications in *paragraph 5(2)*.

176. *Paragraph 7* provides for cases where trees overhang or otherwise encroach on land used for the purposes of Phase One. The nominated undertaker may serve a notice (“a tree works notice”) on the occupier of the land requiring the occupier to remove or prune a tree or cut its roots for maintenance or safety reasons. The occupier may then serve a counter notice within 28 days in which case the tree works notice only has effect if confirmed by the county court. If a tree works notice is in effect for a continuous period of 28 days without being complied with, the nominated undertaker may enter the land and carry out the tree works.

177. *Paragraph 7(8)* provides that works required by a tree works notice may be carried out on a tree which is subject to a tree preservation order or which is in a conservation area.

178. *Paragraph 8* authorises the nominated undertaker to use watercourses and public sewers and drains for the purposes of construction drainage. *Paragraph 8(1)* provides that this may entail the laying, removal and alteration of pipes or making connections with the watercourses, sewers or drains within the Act limits.

179. *Paragraph 8(2)* provides that the nominated undertaker may not discharge water into any public sewers or drains without the agreement of the owner, whose consent cannot be unreasonably withheld. *Paragraph 8(3)* requires the nominated undertaker not to make openings into public drains or sewers without the owner’s approval of the plans and the owner being given an opportunity to supervise the works.

180. *Paragraph 8(5)* requires the nominated undertaker to take reasonable steps to secure that water being discharged is as free as is practicable from any solid substance, such as soil or gravel, or oil or matter in suspension. *Paragraph 8(6)* makes it clear that the powers conferred on the nominated undertaker do not obviate

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the need for an environmental permit where relevant.

181. *Paragraph 9* contains provisions to allow the nominated undertaker to interfere temporarily with the waterways identified in *paragraph 9(1)*. *Paragraph 9(2)* provides that it may carry out temporary or dredging works in relation to these waterways, moor or anchor vessels and temporarily close them.

182. *Paragraph 9(3)* sets out that no more of a waterway is to be closed than is necessary in the circumstances and if complete closure is necessary then all reasonable steps are to be taken to cause the minimum obstruction to users.

183. *Paragraph 9(4) and (5)* provide that the nominated undertaker is not liable for any losses which occur as a result of interference with a public right of navigation, and provide for compensation for losses as a result of interference with a private right of navigation. Such compensation is determined in accordance with Part 1 of the Land Compensation Act 1961 if there is a dispute.

184. *Paragraph 10* allows the nominated undertaker, when installing telecommunications apparatus for Phase One, to provide additional capacity for others' use. This does not apply to radio masts.

185. *Paragraph 11* allows the nominated undertaker, when realigning the Aylesbury to Princess Risborough railway, to carry it on the level across the two footpaths listed in the paragraph.

186. *Paragraph 11(3)* provides that the nominated undertaker and highway authority may come to agreements about how the new level crossings should be constructed and maintained.

Part 2 – Exercise of powers of entry etc

187. *Part 2* contains ancillary provisions as respects the powers of entry in Part 1 of the Schedule and provides safeguards subject to which the powers are to be exercised.

188. *Paragraph 12* applies to all the powers to enter land in Part 1, being the provisions set out in *paragraph 12(1)*. The powers of entry are exercisable at any reasonable time and before entering the land the person exercising the right of entry must, if so required, produce evidence of authority to enter the land and state the purpose of entry. The person may take vehicles and equipment (including plant and machinery) on to the land and such other persons as may be necessary.

189. *Paragraph 13* provides additional safeguards in the case of entry onto residential land (which is defined by *paragraph 13(6)* and includes a house and its garden, grounds and outbuildings) and any non-residential buildings. In such cases, where entry is refused, the nominated undertaker or other person authorised to exercise the power of entry on behalf of the nominated undertaker cannot insist on

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entry unless authorised to do so by a warrant issued by justice of the peace.

190. Under *paragraph 13(2)* a warrant must be issued if the justice of the peace is satisfied that the nominated undertaker is entitled to enter the residential land or building concerned and that admission has been refused or a refusal is reasonably apprehended.

191. *Paragraph 13(4)* provides that the issue of a warrant does not remove any requirement under Schedule 1 to serve notice before exercising the power in question. Where no period of notice is provided as regards the right of entry at least 24 hours' notice of the entry must be given (either before or after the issue of the warrant).

192. The requirement under paragraph 13 to obtain a warrant does not apply to entry under paragraph 7(6) to carry out tree works specified in a tree works notice. In such a case other safeguards apply in that a person served with the tree works notice is entitled to serve a counter notice and the tree works notice cannot then take effect unless confirmed by an order of the county court.

193. *Paragraph 14(1)* provides that compensation is payable to anyone who suffers loss as a result of the exercise of any power under paragraphs 1 to 4 of Schedule 1, with disputes about such compensation to be determined under the Land Compensation Act 1961. *Paragraph 14(2)* provides that this does not affect any entitlement to compensation for injurious affection, other than for loss for which compensation is payable under *paragraph 14(1)*.

194. *Paragraph 14(2)* makes provision for the county court to order the nominated undertaker to pay compensation to a person who incurs expenses in complying with a tree works notice under *paragraph 7(2)* or who suffers any loss or damage in consequence of the carrying out of works required by a tree works notice.

Schedule 3: Overhead line diversions

195. The table in this Schedule identifies the overhead line works authorised by clause 2(5).

Schedule 4: Highways

196. *Schedule 4* deals with highways as they relate to the works authorised by this Bill.

Part 1 – Highway access

197. *Paragraph 1* contains provision for the nominated undertaker to create, or improve, means of access within the Act limits.

198. For accesses at places shown on the deposited plans, *paragraph 1(2)* provides that on any highway used by vehicular traffic, works to make a means of access may only be carried out after 28 days' notice to the highway authority. *Paragraph 1(3) and (4)* provide that the works are not to be done if the highway authority objects to the

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siting of the access within the 28 day period, because in its view the access ought to be moved elsewhere within the Act limits on road safety grounds or because of injury to local amenity.

199. If these works are to be carried out on a highway with vehicular traffic, *paragraph 1(5)* requires plans to be approved by the highway authority. Under *paragraph 1(6)*, the only ground on which approval of the plans can be refused is that the plans should be modified to prevent or reduce either injury to local amenity or effects on road safety, and are reasonably capable of being so modified.

200. *Paragraph 1(7) and (8)* concern works for accesses undertaken within the Act limits at places not shown on the deposited plans. These require the highway authority's approval, not to be unreasonably withheld. *Paragraph 1(9)* provides for the matters which the highway authority must take into account.

201. *Paragraph 1(10) and (11)* establishes that, in the event that the highway authority does not respond within 28 days, it is assumed to have approved the plans or given consent.

202. *Paragraph 1(12)* provides that, if the location of access works is moved as a result of *paragraph 1(3)*, then *paragraph 12(5), (7) and (8)* apply as if the new location were shown on the deposited plans.

Part 2 – Interference with highways

203. *Paragraph 2* authorises the nominated undertaker to stop up certain highways permanently. The highways which may be stopped-up for this purpose are listed in table 1 at the end of this Part. Under *paragraph 2(2)* highways specified in table 1 in Part 4 of the Schedule may be stopped up without providing a substitute, and under *paragraph 2(3)* some may be stopped up on provision of an alternative.

204. *Paragraph 3* contains provision for the nominated undertaker to stop up a bridleway or footpath within the Act limits which is not mentioned in table 1 or 2 (see Part of the Schedule), for the purposes of carrying out the Phase One works.

205. *Paragraph 3(2)* provides that this can only be done if the stopping up has been confirmed by the appropriate Ministers, namely the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly.

206. *Paragraph 3(3)* establishes the conditions under which the appropriate Ministers can confirm the proposed stopping up. So long as the three conditions listed are satisfied, the application must be granted. *Paragraph 3(4)* states that the appropriate Ministers must notify the nominated undertaker of the basis on which the application was granted.

207. *Paragraph 3(5)* stipulates that if a substitute footpath or bridleway is to be provided by the nominated undertaker, the original cannot be stopped up until the

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substitute is available.

208. *Paragraph 3(6)* provides that, before the stopping up is confirmed, the nominated undertaker must publish certain details in a local newspaper. This is to include particulars about how affected parties can make representations about the proposals. Under *paragraph 3(8)*, these representations must be considered before the appropriate Ministers confirm an application.

209. *Paragraph 3(7)* states that the nominated undertaker must provide copies of the newspaper notice to every local authority whose area is affected, and place it at each end of the bridleway or footpath.

210. *Paragraph 4* provides that where any highway is stopped up under paragraph 2 or 3, all rights of way over or along it are extinguished. In addition, it provides that the Secretary of State may appropriate and use the site of it without payment if the land on both sides is land owned by the Secretary of State, but by virtue of *paragraph 4(4)* this does not include mines or minerals unless extracted or used in constructing Phase One.

211. Under *paragraph 4(2) and (3)* compensation is payable for losses arising from the extinguishment of a private right of way. Such compensation is determined in accordance with Part 1 of the Land Compensation Act 1961 if there is a dispute.

212. *Paragraph 4(5)* applies Part 3 of Schedule 2 to the Acquisition of Land Act 1981, concerning the working of mines, to land beneath a highway stopped up under paragraph 2 or 3 which the Secretary of State is entitled to appropriate, with modifications.

213. *Paragraph 5* provides that the power to carry out ancillary works under clause 2(1), (3) and (5) may be exercised in a way that permanently obstructs the highway. *Paragraph 5(1)* requires the consent of the highway authority for this, which is not to be unreasonably withheld. If this is disputed, *paragraph 5(2)* provides that the matter must be determined by arbitration or by the Secretary of State.

214. *Paragraph 5(3)* provides that consent will be assumed to have been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

215. *Paragraph 6* enables the nominated undertaker temporarily to interfere with any highway for the purpose of carrying out the Phase One works. Under *paragraph 6(1)*, it may stop up, alter or divert the highway, divert traffic from it or prevent persons passing along it, break up or interfere with it or temporarily remove street furniture. Under *paragraph 6(2)*, the nominated undertaker must provide reasonable access for pedestrians to or from premises abutting the highway.

216. Where the highway is specified in table 3 in Part 4 of the Schedule, under *paragraph 6(3) and (4)* the relevant authority must be consulted with respect to public

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safety and convenience before the power is exercised. In other cases, *paragraph 6(5)* requires the consent of the relevant authority to be obtained in writing by the nominated undertaker prior to the power being exercised.

217. *Paragraph 6(6) and (9)* provide that the relevant authority may not unreasonably withhold such consent, but may apply reasonable conditions in the interests of public safety or convenience, and that any disputes about this must be determined by arbitration or by the Secretary of State.

218. *Paragraph 6(7)* provides that consent will be assumed to have been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

219. *Paragraph 6(8)* modifies the effect of *paragraph 6(7)* for GLA side roads and roads designated under section 60(1) or 61(1) of the Traffic Management Act 2004. In these cases, if the consent does not relate to the temporary removal of street furniture the highway authority has 42 days within which to make a response, rather than 28.

220. *Paragraph 6(10)* provides that a highway does not have to be reinstated after its temporary closure if that same highway is then permanently stopped up under *paragraph 2(1) or 3(1)*.

221. *Paragraph 7* allows the nominated undertaker to place, maintain, reposition and remove apparatus in the highway, and also carry out works for the purpose. *Paragraph 7(2)* provides that ‘apparatus’ has the same meaning as in Part 3 of the New Roads and Street Works Act 1991.

222. *Paragraph 8* treats certain works carried out on highways as major highway works for the purposes of Part 3 of the New Roads and Street Works Act 1991.

223. *Paragraph 8(2)* provides that where highway works for Phase One are carried out by the highway authority under a delegation agreement under *paragraph 12(2)* of the Schedule, the normal rules applying to highway authorities about whether the works are major highway works are to apply.

224. *Paragraph 9* provides that a highway temporarily stopped up under *paragraph 6* may be used as a work site for HS2 where it is within the Act limits.

Part 3 – Construction and maintenance of highways

225. *Part 3* contains supplementary provision about the construction and maintenance of highways.

226. Under *paragraph 10(1)*, if a new highway is constructed, or an existing highway altered (except by carrying out street works to which the New Roads and Street Works Act 1991 applies), this must be done to the reasonable satisfaction of the highway authority. By virtue of *paragraph 10(2) and (3)*, within 28 days of a request by the nominated undertaker, the highway authority must provide a certificate of their

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satisfaction or give notice of their refusal to issue such a certificate. If they do not do so within that period, then a certificate is treated as having been issued.

227. If a dispute arises over the issuing of a certificate, *paragraph 10(4)* provides that this must be settled by arbitration or by the Secretary of State.

228. *Paragraph 11* relates to the realignment or construction of a highway which comprises a carriageway. *Paragraph 11(2)* requires this to be done in accordance with plans approved by the highway authority, such approval not to be unreasonably refused. If a dispute arises about this, under *paragraph 11(3)* it must be settled by arbitration or by the Secretary of State.

229. *Paragraph 11(4)* provides that approval is to be treated as having been given after 28 days, unless the authority notifies the applicant to the contrary within that period.

230. *Paragraph 12* enables the nominated undertaker to enter into agreements with highway authorities about the construction and alteration of highways to be stopped up or interfered with under the Bill, including agreements delegating the nominated undertaker's powers concerning the proposed works.

231. *Paragraph 13* provides that where a work appears to the Secretary of State to constitute the realignment or extension of a trunk road or motorway, then the Secretary of State may by order provide that the extended or realigned portion is to become a trunk road or motorway on a day specified in or under the order, and (in the case of a motorway) the classes of traffic which may use it.

232. *Paragraph 14* relates to the maintenance of a new highway, or a highway altered other than by carrying out street works under the New Roads and Street Works Act 1991. *Paragraph 14(2) and (3)* provide that unless otherwise agreed the nominated undertaker is responsible for maintaining the new or altered highway for 12 months from the later of the date of practical completion of the work or the date it opens for use by the public, and after that the duty to maintain falls to the highway authority. However, under *paragraph 14(8)* this does not apply to the structure of bridges over, or tunnels under, railways of the nominated undertaker.

233. *Paragraph 14(4)* requires the highway authority, unless otherwise agreed with the nominated undertaker, to ensure (during the period that the nominated undertaker is responsible for maintenance) that so far as reasonably practicable safe passage is maintained along the highway with regard to snow and ice.

234. *Paragraph 14(5)* requires the highway authority to certify the date on which the highway was practically complete or on which it was first open for public use. *Paragraph 14(6)* provides that, if there is a dispute about this, it must be determined by arbitration, or by the Secretary of State.

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235. *Paragraph 14(9)* makes clear that the paragraph does not affect section 87 of the New Roads and Street Works Act 1991, which enables a local authority to declare prospectively maintainable highways.

236. Under *paragraph 15*, where the nominated undertaker is responsible for maintaining a bridge carrying a highway constructed or altered under the Bill over a railway, it may enter into an agreement with the body responsible for maintaining the highway, delegating to that body the function of maintaining the bridge.

237. Under section 58 of the Highways Act 1980, highway authorities responsible for maintaining a highway have a defence for any action against them for non-repair if they can prove they have proper inspection and maintenance systems in place. *Paragraph 16* applies this to the maintenance responsibilities of the nominated undertaker under paragraph 4.

238. *Paragraph 17* modifies the maintenance duties for bridges applying under section 46 of the Railways Clauses Consolidation Act 1845, to bring them into line with current practice (so that the highway authority is responsible for maintaining the surface of the highway and the nominated undertaker is responsible for the bridge).

239. *Paragraph 18* applies to Phase One the same rules under sections 116 and 117 of the Transport Act 1968 concerning bridges over railways as apply to the national rail network.

Schedule 5: Acquisition of land for particular purposes

240. *Schedule 5* sets out purposes for which the land set out in the table in the Schedule (which is the land within the limits of land to be acquired or used, as shown on the Bill plans) may be acquired. The table therefore gives an indication of the purposes for which the land in question may be acquired or used (for example for a worksite or for environmental mitigation), but the purposes for which the land may be acquired are not limited to those specified in the table.

Schedule 6: Acquisition of land: application of compulsory purchase legislation

241. *Schedule 6* makes provision as regards how certain legislation regarding compulsory purchase is to apply to compulsory acquisition under the Bill.

242. *Paragraph 1* disapplies the Land Consolidation Clause Act 1845 in relation to the compulsory purchase of land by the Secretary of State under the Bill.

243. *Paragraph 2* makes modifications to the Compulsory Purchase Act 1965 which is to apply to compulsory acquisition under the Bill instead of the 1845 Act. *Paragraph 2(2)* provides that section 4 of the 1965 Act (which provides a three year time limit on the exercise of the power of compulsory purchase) is not to apply. A time limit is instead provided by clause 10. *Paragraph 2(4)* makes a change which is consequential on that made by paragraph 2(2).

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244. *Paragraph 2(3)* extends the period between serving a notice to treat and entering and taking possession (in the case of subsoil or where only an easement or other right over land is acquired) from 14 days to one month and from 14 days to three months (in the case of other acquisitions of land).

245. *Paragraph 2(5)* modifies the procedure in the 1965 Act for obtaining a right of entry by means of the payment into court of compensation and the giving of a bond to the owner in respect of any compensation awarded by removing the requirement for sureties to be provided by the acquiring authority with the bond.

246. *Paragraph 3* makes modifications to provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 for cases where a vesting declaration is made under the Bill and not under a compulsory purchase order.

247. *Paragraph 4* makes modifications to provisions of the Acquisition of Land Act 1981 which are necessary to make those provisions apply to compulsory acquisition under Bill powers as they apply to acquisition of land under a compulsory purchase order.

Schedule 7: Acquisition of rights in land: power to impose restrictive covenants

248. Schedule 7 specifies the land over which restrictive covenants may be imposed for the purposes specified in relation to the land in column (3) of the table.

Schedule 8: Land in which only rights may be acquired compulsorily

249. Schedule 8 specifies the land in respect of which the compulsory purchase power in clause 4(1) is limited to the acquisition of rights for the purposes specified in relation to the land in column (3) of the table.

Schedule 9: Acquisition of rights in land: application of compulsory purchase legislation

250. *Schedule 9* makes modifications to provisions of compulsory purchase legislation, which refer to the acquisition of land, to make them apt for the acquisition of rights and the imposition of restrictive covenants. The effect of the modifications is that the regime under that legislation will apply where the powers to acquire land under clause 4(1) are used to acquire existing rights, to create rights or to impose restrictive covenants.

251. *Paragraphs 1(a) and 2* make specific modifications to provisions of the Compulsory Purchase Act 1965 and the Land Compensation Act 1973 which are needed to make them apply where rights are acquired, or restrictive covenants imposed, in exercise of the compulsory acquisition power under clause 4(1). *Paragraphs 3(1)(a) and 4* make specific modifications to provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 which are similarly needed to make them fit where rights are acquired, or restrictive covenants imposed, under that power. In addition *paragraphs 1(b) and 3(1)(b)* provide that enactments relating to

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compulsory acquisition are to have effect with such other modifications as may be necessary to make them apt where rights are acquired, or restrictive covenants imposed, under that power.

Schedule 10: Acquisition of part of land only

252. *Schedule 10* applies where the Secretary of State proposes only to acquire part of land and invokes the procedure under clause 6 (instead of the procedure that would otherwise apply under the Compulsory Purchase Act 1965) under which landowners may seek the whole of their land to be acquired rather than part of it only. *Schedule 10* sets out the alternative procedure.

253. In cases where the Secretary of State serves a notice to treat in respect of part of an interest in land held by the landowner and invokes the alternative procedure in this Schedule, *paragraph 1(1)* provides that the landowner has 21 days within which to serve a counter-notice stating that the landowner does not wish to sell the part of the land, but is willing to sell the whole of it.

254. *Paragraph 1(2)* provides that if no such notice is given, the landowner is required to sell the part of the land to which the notice to treat relates.

255. However, *paragraph 1(3)* provides that if the Secretary of State agrees that the whole of the land should be purchased as proposed by the counter-notice, then the notice to treat will apply to the whole of the land as opposed to just the part of it.

256. *Paragraph 1(4)* provides that if the Secretary of State does not agree to take the whole of the land as proposed by the counter-notice, the matter is to be referred to the Upper Tribunal (“the Tribunal”).

257. *Paragraph 2* makes provision for the process by which the Tribunal is to determine whether part of the property or the whole should be acquired. *Paragraph 2(1) and (2)* relate to cases where the Tribunal determines that only the part of the land contained in the original notice to treat needs to be acquired. These are cases where the Tribunal concludes that the land can be sold without material detriment to the remaining property which the landowner has proposed should be acquired and, where the land which is proposed to be compulsorily acquired is garden land, that it can be taken without seriously affecting the amenity of the house to which it belongs.

258. *Paragraphs 2(3) and (4)* provide that where the Tribunal determines that the part of the land proposed to be compulsorily acquired cannot be taken without material detriment to the remainder of the land but that the material detriment only affects part of the remaining land, the Secretary of State must also acquire the affected part of the remaining land. However, if the land to be compulsorily acquired is garden only land and the Tribunal determines that it cannot be taken without seriously affecting the amenity or convenience of the house, the whole of the land must be taken.

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259. *Paragraph 2(5)* provides that if the Tribunal determines that none of the land to be compulsorily acquired can be taken without material detriment to the remaining land, all the remaining land must be taken.

260. *Paragraph 2(6)* defines what constitutes ‘garden only land’. This is land which consists of or includes all or part of a park or garden belonging to a house, but not the house itself.

261. *Paragraph 3* applies where the Tribunal decides that more or less land should be purchased than was required in a notice to treat. *Paragraph 3(1)* provides that, should this occur, the Secretary of State may withdraw the notice within 6 weeks of the decision.

262. Where a notice is withdrawn *paragraph 3(2)* provides that compensation is payable to the person on whom the notice is served, should they suffer any loss as a result of the notice’s service and withdrawal. If the amount is not agreed it is to be determined by the Tribunal.

263. *Paragraph 3(3)* provides that, where only part of a house, building, factory or garden is required to be sold the Secretary of State must pay compensation to the landowner for any loss due to the severance of that part as well as the value of the interest acquired.

264. *Paragraph 3(4)* provides that the provisions relating to compulsory acquisition have effect as regards any additional land required to be sold under Schedule 10 regardless of whether the Secretary of State otherwise has power to acquire the land under the provisions of this Bill.

Schedule 11: Land with restrictions relating to surface acquisition

265. *Schedule 11* restricts the power of compulsory acquisition under clause 4(1) to subsoil which is 9 metres or deeper below surface level (in the case of land specified in the table in paragraph 1) or to subsoil which is 9 metres or deeper below surface level and/or rights of passage (in the case of the land specified in paragraph 2). However, *paragraph 3(1)* provides that the power of compulsory acquisition may be exercised so far as it involves imposing restrictive covenants over the land specified in those tables; and *paragraph 3(2)* provides that the restrictions on the power of compulsory acquisition do not apply in relation to cellars or other underground constructions forming part of a building which is within the Bill limits, fronts onto a highway and is subject to compulsory acquisition under clause 4(1).

Schedule 12: Highways: restrictions on powers to use subsoil and acquire land

266. *Schedule 12* contains the table referred to in clause 9. The table specifies the highway land in respect of which the power of compulsory acquisition or to appropriate subsoil is not exercisable.

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Schedule 13: Right to require acquisition where time limit extended

267. *Schedule 13* sets out the arrangements to apply if the Secretary of State makes an order under clause 10(2) extending the time limit for exercising the power of compulsory acquisition under clause 4(1). The Schedule enables the owner or a qualifying lessee of land to which the order relates to bring the period of uncertainty to an end.

268. *Paragraph 2* provides that the owner or a lessee holding an interest under a lease which has at least 21 years to run may serve the Secretary of State with a notice stating that the person in question wishes the Secretary of State to acquire the person's interest in the land. The Secretary of State must then within three months of receipt of the notice either agree to acquire the person's interest in the whole or part of the land, exercise the applicable compulsory acquisition powers in respect of the person's interest in the whole or part of the land or notify the person that the Secretary of State does not intend to proceed with the purchase of the person's interest in any of the land.

269. *Paragraph 3* provides that if the Secretary of State fails to comply with those requirements or notifies the person that the Secretary of State does not intend to purchase the land, the compulsory acquisition powers cease to be exercisable in respect of the person's interest. Where the Secretary of State acquires the person's interest in only part of the land specified in the notice, the compulsory acquisition powers cease to be exercisable in respect of the person's interest in the remainder of the land.

270. The provisions of the Schedule do not apply where the powers of compulsory acquisition are only exercisable in respect of subsoil more than 9 metres below the surface of the land.

Schedule 14: Extinction of rights over land

271. *Schedule 14* makes provision for the extinction of private and general rights over land within the Act limits either held by the Secretary of State, or in which the Secretary of State has acquired rights or imposed restrictive imposed, for Phase One purposes.

272. *Paragraphs 2 to 4* deal with the extinction of private rights as defined by *paragraph 2(3)*. These include private rights of way, rights of common and restrictions as to the user of land.

273. *Paragraph 2* provides the general position that private rights over land within the Act limits which is held by the Secretary of State for Phase One purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase One purposes in relation to land within the Act limits, private rights are only extinguished if and to the extent that they are inconsistent with the exercise of the acquired right or the restrictive covenant.

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274. However, *paragraph 3(3)* sets out certain rights to which paragraph 2 does not apply and are not therefore extinguished. These include rights of statutory undertakers in relation to their apparatus

275. Further, *paragraph 3(1) and (2)* enable the Secretary of State to direct that any particular private right is not to be extinguished under paragraph 2, either wholly or in part.

276. *Paragraph 4* provides that compensation is payable to anyone who suffers loss as a result of the extinguishment of private rights under the Schedule, with disputes about such compensation to be determined under the Land Compensation Act 1961. This does not apply to rights of common in respect of which compensation is payable under Schedule 4 to the Compulsory Purchase Act 1965.

277. *Paragraphs 5 and 6* deal with the extinction of general rights over land, as defined by paragraph 5(3). These include rights of access to, or other public rights over, land under any enactment and rights exercisable under trusts over commons, town or village greens, open space or allotments.

278. Paragraph 5 provides that general rights over land within the Act limits which is held by the Secretary of State for Phase One purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase One purposes in relation to land within the Act limits, general rights are only extinguished to the extent that they are inconsistent with the exercise of the acquired right or the restrictive covenant.

279. Paragraph 6 enables the Secretary of State to direct that any particular general right is not to be extinguished under paragraph 5, either wholly or in part.

280. *Paragraph 7* provides when the extinction of private or general rights under the Schedule is to take effect. Provision is made for different times to apply in different specified circumstances.

281. *Paragraph 8* makes provision for registers of common land or town or village greens to be updated to reflect the extinguishment under the Schedule of rights over such land. The Secretary of State must notify the commons registration authority where land registered as a common or as a town or village green within the Act limits is acquired for Phase One purposes or where rights are acquired, or restrictive covenants are imposed, in relation to such land for those purposes. The prescribed information to be given by the Secretary of State to the commons registration authority includes details of any exchange land to be given. The commons registration authority must then make any necessary consequential amendments to the relevant register.

Schedule 15: Temporary possession and use of land

Part 1 – Temporary possession for construction of works

282. *Schedule 15* allows the nominated undertaker temporarily to take possession, and make use of, land for Phase One purposes. Provision is made for two cases, land which is identified in the table in Part 4 of the Schedule (“the table land”) and other land within the Act limits.

283. *Paragraphs 1(1) and 2(2) to (4)* deal with the table land. The table in Part 4 sets out specific purposes for which the table land may be used. This table therefore gives an indication of the purposes for which certain parcels of land may be used temporarily (for example, for environmental mitigation, utility diversions, highway access or work sites) but the purposes are not exhaustive and the land can be used for other Phase One purposes.

284. *Paragraphs 1(1) and 2(1)* deal with land within the Act limits other than the table land. *Paragraph 1(2)* provides that the nominated undertaker may take temporary possession of such land. However, this is subject to the exceptions in paragraph 2(1). Temporary possession of land cannot be taken if the power of compulsory acquisition under clause 4(1) is restricted to the acquisition of rights in the land or the acquisition of subsoil or under-surface or both the acquisition of subsoil or under-surface and of rights of passage.

285. In addition temporary possession cannot be taken of land in respect of which the power of compulsory acquisition under clause 4(1) has been exercised either by the service of a notice of entry under the Compulsory Purchase Act 1965 or by the making of a vesting declaration under the Compulsory Purchase (Vesting Declarations) Act 1981.

286. *Paragraph 2(2) to (4)* provides that the powers of compulsory acquisition under paragraph 4(1) which are exercisable in relation to the table land are restricted to the acquisition of rights (in which case the land must also be included in the table in Schedule 8), the acquisition of subsoil or under-surface, of rights of passage (in which case the land must also be included in the table in paragraph 1 or 2 of the Schedule 11) or the imposition of restrictive covenants (in which case the land must also be included in the table in Schedule 7).

287. *Paragraph 3* provides that where temporary possession is taken the nominated undertaker may clear the site and construct certain works on the land including landscaping and other environmental mitigation works involving the planting of trees and shrubs and the provision of replacement habitat for wild animals.

288. *Paragraph 4* requires that at least 28 days’ notice must be given to the owners and occupiers of the land before possession is taken and that the nominated undertaker cannot remain on the land for longer than one year from the completion of the work for which possession was taken unless the owners agree otherwise or the land has

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been compulsorily acquired. Compensation is payable for any loss suffered as a result of the exercise of the powers, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

289. *Paragraph 5* requires the nominated undertaker, before giving up possession of any land used under paragraph 1, to put the land in question back into such condition as may be provided in a scheme agreed between the nominated undertaker, the owners of the land and the local planning authority, or in absence of agreement, determined by the appropriate Ministers (for these purposes defined as the Secretary of State for Transport and the Secretary of State for Communities and Local Government, acting jointly).

290. The paragraph also sets out what such a scheme may and may not require and makes provision for the relevant planning authority to take action under a scheme where the nominated undertaker fails to do so and to be reimbursed for expense incurred in doing so.

Part 2 – Temporary possession for maintenance of works

291. *Paragraph 6* allows the nominated undertaker, during the maintenance period for any work (defined as the period beginning when the work is completed and ending five years after the date on which the work is brought into general use), to enter upon and take possession of land within the Act limits and within 20 metres of any work within Schedule 1, and to construct temporary works, if reasonably required for maintaining the work.

292. This power does not extend to any house or garden, any other structure which is occupied or land where the power of compulsory acquisition under clause 4(1) is restricted to the acquisition of rights, subsoil or under-surface of land, or both subsoil and under-surface and rights of passage, or the imposition of restrictive covenants (sub-paragraph 2).

293. *Paragraphs 6(3) and 7* provide safeguards relating to the exercise of the power in paragraph 6. The undertaker must give at least 28 days' notice to the owners and occupiers of the land before possession is taken, may only remain in possession of such land as long as is reasonably necessary to carry out the maintenance works and must, before giving up possession, restore the land to the reasonable satisfaction of its owners. Compensation is payable for any loss suffered as a result of such use, with any disputes about such compensation to be determined under the Land Compensation Act 1961.

Part 3 – Suspension or rights and enforcement

294. *Paragraph 8* provides for private rights (including rights of way, rights of common and restrictions as to user) over land of which temporary possession is taken under the Schedule to be suspended during the period of possession. This is subject to any direction to the contrary made by the nominated undertaker. Compensation is payable to anyone who suffers loss as a result of any such suspension, with any

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disputes about such compensation to be determined under the Land Compensation Act 1961.

295. *Paragraph 9* similarly provides for all general rights over land of which temporary possession is taken to be suspended during the period of possession. This is subject to any direction to the contrary made by the nominated undertaker. The general rights to which paragraph 9 applies include rights of access to, or other public rights over, the land under any enactment and rights exercisable under trusts over commons, town or village greens, open space or allotments.

296. *Paragraph 10* makes provision for the enforcement of any possession required under Schedule 15, should the owner or occupier of the land in question refuse to give up, or hinder the taking of, possession. The provision is similar to that applying to the taking of possession following notice of entry on a compulsory purchase of land.

Part 4 – Land which may be occupied and used for construction of works

297. The table in *Part 4* identifies the land referred to in paragraph 1(1) of which temporary possession may be taken.

Schedule 16: Conditions of deemed planning permission

Part 1 – Conditions

298. *Schedule 16* sets out conditions which apply to the planning permission granted by clause 19.

299. Where a building (other than a temporary building) is to be constructed, altered or extended under the Bill, *paragraph 2* requires this to be done in accordance with plans and specifications approved by the relevant planning authority (which in a non-unitary area is the district council). *Paragraph 2(3)* and *(4)* enable the authority, when approving these, to require plans and specifications showing additional details of the building works to be submitted, in order to permit approvals of the plans and specifications to be staged. *Paragraph 2(5)* and *(6)* set out the grounds on which approval can be refused or conditions applied. For both qualifying and non-qualifying authorities, these are that details of the design or external appearance of the building works ought to be modified to preserve the local environment or local amenity and are reasonably capable of being modified, or that the development ought to be resited within its permitted limits. Qualifying authorities may in addition refuse approval or apply conditions on road and heritage grounds. Under *paragraph 2(7)*, conditions also require the agreement of the nominated undertaker.

300. Where the relevant planning authority is a qualifying authority (see Part 2 of Schedule 16, and the commentary below relating to that Part), *paragraph 3* requires similar approvals in relation to other construction works which are part of Phase One, namely certain road vehicle parks, earthworks, screens, fences, lighting, transformers, telecommunications masts and pedestrian accesses. Similar provision to that in paragraph 2 about additional details, grounds of refusal and conditioning are applied

to these construction works.

301. *Paragraph 4* sets out certain construction arrangements which require the approval of the relevant planning authority if that authority is a qualifying authority, including the handling of re-useable spoil or top soil, storage sites, construction camps, screening, artificial lighting, the suppression of dust and mud on the highway. The paragraph also sets out the grounds on which approval can be refused or conditions applied. Under *paragraph 4(7)*, conditions require the agreement of the nominated undertaker.

302. *Paragraph 5* enables the Secretary of State, after consulting the affected planning authorities, to issue a class approval for these construction arrangements, except in relation to construction camps. Where a class approval is in effect, by virtue of *paragraph 5(5)* the nominated undertaker does not need to seek specific approval from the planning authority under paragraph 4, although if the circumstances of the case require it the nominated undertaker can still apply for that approval by virtue of *paragraph 5(6) and (7)*.

303. Under *paragraph 6*, if the relevant authority (which is the county council in a non-unitary area) is a qualifying authority, it has some control over the routes by which large goods vehicles travel by road to and from working, storage and waste disposal sites. *Paragraph 6(4)* provides that this does not apply to transport on trunk roads or motorways, nor to sites which have less than 24 large goods vehicle movements a day. The paragraph also sets out the grounds on which approval can be refused or conditions applied. Under *paragraph 6(6)*, conditions require the agreement of the nominated undertaker.

304. Where the relevant planning authority is a qualifying authority, *paragraph 7* requires waste and spoil disposal and the excavation of bulk materials from borrow pits to be done in accordance with plans and specifications approved by that authority (which in a non-unitary area is the county council). *Paragraph 7(4) and (5)* enable the authority, when approving these, to require plans and specifications showing additional details to be submitted, in order to permit approvals of the plans and specifications to be staged. *Paragraph 7(6) to (9)* set out the grounds on which approval can be refused or conditions applied. Under *paragraph 7(10)*, conditions require the agreement of the nominated undertaker.

305. *Paragraph 8* further provides that before development to which paragraph 7 applies is begun, the planning authority must approve a restoration scheme. Under *paragraph 8(3)* approval may only be refused on the ground that the scheme ought to be and is reasonably capable of being modified. *Paragraph 8(5)* enables the scheme to make provision about aftercare.

306. *Paragraph 9* provides that where the relevant planning authority (which is the district council in non-unitary areas) is a qualifying authority, scheduled works which are not underground and certain depots cannot be brought into use without the

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approval of the authority. Under *paragraph 9(4)*, approval must be granted if no further environmental mitigation is required or the authority has approved a mitigation scheme submitted by the nominated undertaker. *Paragraph 9(5)* sets out the grounds on which approval of such a scheme may be refused or conditions imposed.

307. *Paragraph 10* requires such a mitigation scheme to be implemented in accordance with any conditions subject to which approval was given.

308. *Paragraph 11* requires operations on ancillary works sites to cease as soon as reasonably practicable after the scheduled works to which they relate have been completed.

309. After such cessation, *paragraph 12* requires the site to be restored in accordance with a scheme agreed with the relevant planning authority (which is the district council in a non-unitary area). Under *paragraph 12(3)* this must be submitted by the nominated undertaker within four months of the cessation. By virtue of *paragraph 12(6)*, a scheme may reserve particulars for subsequent agreement.

310. If no restoration scheme or reserved particular is agreed within the period required (or as extended by agreement by the nominated undertaker and planning authority), under *paragraph 12(4) and (7)* it is determined by the Secretary of State for Communities and Local Government and Secretary of State for Transport acting jointly. *Paragraph 12(8)* makes provision about costs if that happens.

311. Under *paragraph 12(9)*, the requirement for a restoration scheme does not apply where the Bill imposes other requirements with respect to restoration.

Part 2 – Qualifying authorities

312. *Paragraph 13* requires the Secretary of State, by means of an order, to name “qualifying authorities” for the purposes of Schedule 16. 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.

313. *Paragraph 13* also allows the Secretary of State to make orders revoking “qualifying authority” status and to make subsequent naming orders in certain circumstances. Before making such an order, the Secretary of State is to consult the nominated undertaker and, if it is not the body requesting the order, the relevant local planning authority.

314. *Paragraph 14* allows for any order under *paragraph 13* to set out any transitional arrangements that may be necessary (for example, were a local planning authority to cease to be a qualifying authority for the purposes of the Bill whilst a number of undetermined planning applications were before it).

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Part 3 – Approvals: supplementary

315. This part of the Schedule deals with supplementary matters concerning the giving of approvals under Part 1, including appeals.

316. *Paragraph 15* provides that any approval under Part 1 may only be given at the request of the nominated undertaker.

317. *Paragraph 16* provides that the local planning authority is not required to entertain a request for approval unless the nominated undertaker has first submitted a programme of the approvals it intends to seek from the authority, and an explanation of how the matters dealt with in the request fit into the wider Phase One scheme. This does not apply to a request for approval of additional details.

318. *Paragraph 17* enables the Secretary of State for Transport and the Secretary of State for Communities and Local Government jointly to make regulations about fees payable by the nominated undertaker when making requests for approval.

319. *Paragraph 18* sets out requirements for consultation where a request relates to things which may affect certain conservation, recreational or heritage matters. Where this is the case, the planning authority must consult Natural England, the Environment Agency or English Heritage, as appropriate, before giving an approval.

320. *Paragraphs 19 and 20* set out a mechanism for the Secretary of State for Transport and the Secretary of State for Communities and Local Government to issue directions restricting a planning authority's power to approve under the Schedule and to "call in" a particular request for approval.

321. *Paragraph 21* enables a planning authority at the request of the nominated undertaker to make a non-material change to any approval it has previously given under Part 1. This is to allow changes which do not have material planning significance to be made without the necessity for the nominated undertaker to make a fresh request for approval. It is similar to the power available to planning authorities in respect of "normal" planning permissions in section 96A of the Town and Country Planning Act 1990.

322. *Paragraphs 22 to 25* make provision about appeals to the Secretary of State for Transport and the Secretary of State for Communities and Local Government acting jointly, where the nominated undertaker is aggrieved by a decision of the planning authority on a request for approval. The nominated undertaker may appeal within 42 days of the decision or of the period for making a decision having ended. The period for making a decision is 8 weeks unless a longer period is agreed between the nominated undertaker and the planning authority. The Secretaries of State may make regulations prescribing the form to be used when appealing, and about the decision period in cases where fees are paid by cheque.

323. An appeal is determined by an appointed person unless the Secretaries of State

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direct that they should decide it. An appeal is decided by written representations unless the person deciding it thinks a hearing is required.

324. Under *paragraph 25(2) to (4)*, the Secretary of State for Transport and the Secretary of State for Communities and Local Government may make regulations about the procedure to be followed with respect to appeals.

325. *Paragraph 26* enables the Secretary of State for Transport and the Secretary of State for Communities and Local Government to give guidance to planning authorities about the exercise of their functions under the Schedule. The authorities must have regard to the guidance.

Part 4 - Supplementary and general

326. *Paragraph 27* makes supplementary provision about regulations and orders under the Schedule. These are to be made by statutory instrument. Regulations, and orders changing the list of qualifying authorities after the first order specifying them has been made, are subject to annulment by resolution of either House of Parliament.

327. *Paragraph 28* is about the interpretation of certain expressions used in the Schedule.

Schedule 17: Listed buildings

328. *Schedule 17* concerns how legislation in respect of listed buildings under the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the 1990 Act”) applies to the Phase One works.

329. *Paragraph 1* disapplies some of this legislation, and in particular the requirement for listed building consent, from the Phase One works in respect of the listed buildings set out in table 1, or which are listed on or after 30 September 2013.

330. *Paragraph 1(3)* provides that for the buildings specified in table 1 which have a description of works in column (3) of the table, the disapplication of the requirement for listed building consent only applies, as regards works of demolition or alteration which do not comprise works to maintain or restore their character or for the affixing of monitoring apparatus, to works falling within that description.

331. *Paragraph 2* also disapplies some of this legislation, and in particular the requirement for listed building consent, in respect of the listed buildings set out in table 2, but only in respect of works to maintain or restore their character or for the affixing of monitoring apparatus. Table 2 is principally concerned with buildings within the settlement zone of the Phase One works.

332. *Paragraph 3* disapplies section 59 of the 1990 Act, concerning things which might damage listed buildings, in relation to works carried out under the powers in this Bill.

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333. *Paragraph 4* allows the Secretary of State, once the initial construction phase is over, by order made by statutory instrument to restore the normal regime under the 1990 Act for subsequent maintenance and alteration works.

334. *Paragraph 5* provides that partnership agreements under section 26A of the 1990 Act have effect subject to the works powers of the Bill.

335. *Paragraph 6* provides for anyone authorised by English Heritage to enter land on which a listed building is situated which is affected by certain Phase One works, to inspect those works. Under *paragraph 6(2)*, these rights are not to be exercised if the nominated undertaker considers that it is not safe to do so. *Paragraph 6(3)* provides that any person exercising the rights will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

336. *Paragraph 7* requires the nominated undertaker to give notice to English Heritage of the demolition of a building that would require listed building consent, to allow recording prior to demolition. Under *paragraph 7(2)*, at least eight weeks' notice is required, or longer if agreed by the nominated undertaker, though in cases of emergency shorter notice can be given, under *paragraph 7(3)*.

337. *Paragraph 8* provides that where notice has been given under paragraph 7 anyone authorised by English Heritage may enter the building concerned to do the recording during the notice period.

338. *Paragraph 8(2)* and *(3)* provide that this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety requirements.

Schedule 18: Ancient monuments

339. *Schedule 18* concerns how legislation in respect of ancient monuments applies to Phase One works.

340. *Paragraph 1* modifies the application of the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act") in respect of Phase One works.

341. *Paragraph 1(2)* provides that section 2 of the 1979 Act does not apply to works authorised by the Bill.

342. *Paragraph 1(3)* provides that the powers of entry conferred by sections 6(1), 6A(1) and 26 of the 1979 Act are not to be exercisable in relation to land used for or in connection with the carrying out of such works.

343. *Paragraph 1(4)* provides that the functions of a guardian under the 1979 Act and the provisions of an agreement under section 17 have effect subject to the powers

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of the Bill.

344. *Paragraph 1(5)* disapplies section 19 of the 1979 Act where a monument is closed by the nominated undertaker, meaning that public access will no longer be available.

345. *Paragraph 1(6)* disapplies regulations under section 19(3) or (4A) of the 1979 Act in relation to Phase One works, so removing restrictions on things which may injure or disfigure the monument in question for Phase One. *Paragraph 1(7)* provides that the power conferred by section 19(6) of that Act to restrict access is not to be exercisable so as to prevent or restrict the undertaking of the works authorised by this Bill.

346. *Paragraph 1(8)* prevents superintendence under section 25 of the 1979 Act of the carrying out of any of the Phase One works, and provides that English Heritage may not charge for advice in relation to the undertaking of these works.

347. *Paragraphs 1(9) to (13)* disapply sections 28 (offence of damaging certain ancient monuments), 35 (notice of operations in areas of archaeological importance), 39(1) (power to investigate in advance of operations notice), 42(1) (use of metal detectors) and 42(3) (removal of objects discovered by metal detector) of the 1979 Act, in relation to the activities authorised by this Bill.

348. *Paragraph 2* modifies the application of the National Heritage Act 1983 to the Phase One works. The power of entry conferred by section 36(1) of the 1983 Act is only to be exercisable in relation to land used, or intended for use, for or in connection with the Phase One works with the consent of the nominated undertaker, such consent not to be unreasonably withheld. Such consent may be given subject to compliance with any reasonable requirements or conditions imposed for reasons of safety or for the purpose of preventing interference with or delay to the works. Section 36(6) of the 1983 Act, which regulates the right to enter land for the purposes of record keeping, is not to apply to land on which works authorised by the Bill are being carried out. Any disputes about this are to be determined by the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport, acting jointly.

349. *Paragraph 3* allows the Secretary of State, once the initial construction phase is over, by order made by statutory instrument to restore the operation of some of the provisions of the 1979 and 1983 Acts referred to above for subsequent maintenance and alteration works.

350. *Paragraph 4* provides for anyone authorised by English Heritage to enter land at any reasonable time on which a scheduled monument is situated to inspect, observe or advise on the Phase One works as appropriate. *Paragraph 4(2)* and *(3)* provide that this right is not to be exercised if the nominated undertaker considers that it not safe to do so, and any person exercising the right will have to comply with directions from the nominated undertaker in respect of compliance with health and safety

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requirements.

Schedule 19 - Burial grounds

351. *Schedule 19* provides a regime for the removal of human remains and related monuments.

352. *Paragraph 1* requires the nominated undertaker to publish and display notice of the intention to remove any human remains or monuments before any such removal, and sets out what such a notice should contain including an explanation that a personal representative or relative may within 56 days apply for a licence to remove the remains and monument themselves. No notice is required in cases where the Secretary of State has notified the nominated undertaker that the Secretary of State is satisfied that the remains were buried more than 100 years ago and that no relative or representative of the deceased is likely to object. Nor is a notice required in cases where the nominated undertaker already holds a licence to remove human remains under section 25 of the Burial Act 1857. “Relative” is defined in *paragraph 11*.

353. *Paragraph 2* sets out the circumstances in which the nominated undertaker must, upon written application by a relative or personal representative of the deceased, issue a licence to authorise the removal and reburial or cremation of the remains. The reasonable costs of removal and reburial must be paid by the nominated undertaker.

354. *Paragraphs 3 and 4* allow the nominated undertaker to remove human remains where no written application for a licence by a relative or personal representative is received, or where a licence has been issued but the remains have not been removed within 28 days. In cases where the Secretary of State has not given a notification under paragraph 1, the remains must, within 2 months, be buried in a place set apart for the purposes of burial or cremated in a crematorium. Where the Secretary of State has given a notification under paragraph 1, the period of two months is extended to 12 months, or such longer period as the Secretary of State may direct, to enable archaeological or other studies to be carried out where appropriate. In addition, the Secretary of State may dispense with the requirement to bury or cremate the remains but instead authorise them to be dealt with in some other manner (such as being kept in a museum). Provision is made under *paragraphs 3(3) and (4) and 4(3) and (4)* for cases where a question as to an applicant’s entitlement to be granted a licence has been referred to a court but has not yet been determined.

355. *Paragraph 5* applies where the nominated undertaker already holds a licence to remove remains under section 25 of the Burial Act 1857. In such a case the nominated undertaker may remove the remains but is subject to the same requirements as under paragraph 3 to bury them, cremate them or, where the Secretary of State is satisfied that the remains were buried more than 100 years ago and so directs, to deal with them in another manner specified by the Secretary of State.

356. *Paragraph 6* sets out the arrangements to apply to the removal of any

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monument associated with human remains removed under the Schedule. Where a licence has been issued to the relative or personal representative of the deceased, the licensee may also remove any monument to the deceased, re-erect it elsewhere or dispose of it. The reasonable costs of doing so must be paid by the nominated undertaker.

357. *Paragraph 7* allows the nominated undertaker, where human remains have been removed by the nominated undertaker under the Schedule, also to remove any monument to the deceased. Where remains have been removed under a licence but a monument to the deceased has not been removed within 28 days, the monument may be removed by the nominated undertaker. The nominated undertaker can also remove any monument to a deceased person whose remains have been removed under a licence under section 25 of the Burial Act 1857 which is not removed by the licensee. Monuments which are removed by the nominated undertaker may be re-erected at the place where the remains are reburied or removed to some other appropriate place. If that is not done, they are to be broken up and defaced to prevent inappropriate use.

358. *Paragraph 8* sets out the records required to be kept by the nominated undertaker as respects human remains or monuments removed under the Schedule. Records as to the removal of remains must be provided to the Registrar General within two months of their removal and records of the removal of a monument must be provided both to the Registrar General and to the relevant local authority. In the case of remains where the Secretary of State has given a notification under paragraph 1 the period of two months is extended to 12 months, or such longer period as the Secretary of State may direct, to enable archaeological or other studies to be carried out where appropriate.

359. *Paragraph 9* requires the nominated undertaker, in removing remains or monuments, to comply with any reasonable request of a relative or personal representative of the deceased to whom a licence has been granted under the Schedule. This is intended to apply to cases where a licence has been issued to a relative or personal representative but, because the right to remove the remains or monument has not been exercised, the nominated undertaker does so. Provision is made for cases where more than one licence has been granted under the Schedule.

360. *Paragraph 10* enables the Secretary of State to make directions to the nominated undertaker with respect to the carrying out of functions under the Schedule.

Schedule 20: Water

361. *Schedule 20* contains provisions relating to the treatment of water sources and features in relation to this Bill. These generally disapply a restriction or requirement to obtain a further consent for works which are authorised by the Bill.

362. *Paragraphs 1 and 2* disapply sections of the Water Resources Act 1991 with regards to works authorised by this Bill. These provisions require consent for the

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abstraction or impoundment of water.

363. *Paragraph 3* relates to loss or damage caused by the abstraction of water. Section 48A(1) of the Water Resources Act 1991, containing a duty not to cause loss, is disapplied in relation to any power authorised by this Bill. However, if the nominated undertaker does cause loss or damage and the conditions around this would have breached the duty in section 48A(1), then the nominated undertaker must compensate the affected party, under *paragraph 3(2)*. *Paragraph 3(3)* states how such compensation should be determined.

364. *Paragraph 3(4)* disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be made under this paragraph of this Bill and those others listed.

365. *Paragraph 4* removes the requirement to obtain consent for construction works affecting main rivers, if they are done for the purposes of this Bill.

366. *Paragraph 5* removes the restrictions on removing designated features under the Flood and Water Management Act 2010, in relation to works authorised under this Bill.

367. *Paragraph 6* disapplies the requirements to provide approval for the drainage systems of construction works if those works are exercised under the powers of this Bill.

368. *Paragraph 7* removes the specified requirements for communicating with sewers if the communication in question is to involve a sewer serving Phase One of High Speed 2. This provision confers an absolute discretion on sewerage undertakers to refuse to accept communication with certain sewers in Greater London.

369. *Paragraph 8* disapplies Part 4 of the Eels (England and Wales) Regulations 2009, which relate to protection for the passage of eels in the process of construction works.

Schedule 21: Buildings

370. *Schedule 21* disapplies and modifies provisions in the Building Act 1984 (“the 1984 Act”) and building regulations where they would impede the exercise of powers sought for Phase One purposes or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

371. *Paragraph 1* disapplies Part 1 of the 1984 Act with respect to building regulations, as well as building regulations under section 1 of that Act, in relation to certain buildings held by the Secretary of State or the nominated undertaker for Phase One purposes. The 1984 Act provides an exemption from Part 1 and building

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regulations for buildings belonging to a statutory undertaker. As land acquisition powers under the Bill are vested in the Secretary of State, the disapplication is required to secure that a similar exemption applies in relation to Phase One of High Speed 2. The disapplication is wider than that provided for statutory undertakers under the 1984 Act in that it extends not only to offices or showrooms forming part of a railway station but also those which form part of a railway facility (defined as including a maintenance depot, electrical supply facility or stabling facility). To secure compliance with EU Directive 2010/31/EU on the energy performance of buildings, *paragraph 1(5)* excludes from the disapplication certain requirements of the building regulations which relate to energy efficiency.

372. *Paragraph 2* exempts works to drains carried out for Phase One purposes from certain requirements under section 61 of the 1984 Act relating to the carrying out of works to underground drains which communicate with sewers or cesspits. Section 61(4) of the 1984 Act provides an exemption from those requirements for drains and sewers constructed by or belonging to a railway company which run under, across or along the railway. As this exemption would not apply to works carried out to drains to enable Phase One of High Speed 2 to be constructed, the exemption in *paragraph 2* is needed.

373. *Paragraph 3* modifies section 62 of the 1984 Act which enables the local authority to impose requirements as regards the reconstruction or disconnection of drains. *Paragraph 3* removes the power of a local authority to impose requirements as regards works to drains which are carried out for Phase One purposes and substitutes a requirement to give at least 48 hours notice to the local authority before carrying out the works. This is to enable local authorities to update their records as to the position of sewers and drains in their area.

374. *Paragraph 4* modifies section 73 of the 1984 Act which makes provision for the protection of an owner (“the adjoining owner”) where a person (“the building owner”) erects or raises a building to a greater height than the chimney of an adjoining building. In such a case the local authority can require the building owner to increase the height of the chimney of the adjoining building. However, if the adjoining owner so requires, the works must be carried out by the adjoining owner at the expense of the building owner. *Paragraph 4* provides that where the taller building is held by the Secretary of State or the nominated undertaker for Phase One purposes, the adjoining owner cannot insist on carrying out the works if that would require entry onto relevant Phase One land (as defined by *paragraph 4(3)*). So, unless the Secretary of State or nominated undertaker consents to the adjoining owner entering the relevant Phase One land, the works must be carried out by the nominated undertaker.

375. Under section 74(1) of the 1984 Act, local authority consent is required for the construction of a cellar or room below subsoil water level in, or as part of, a house, shop, inn, hotel or office. Under section 74(2), this does not apply to the construction of a cellar or room in connection with a shop, inn, hotel or office that forms part of a

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railway station. *Paragraph 5* extends the exemption in section 74(2) so that section 74(1) does not apply to the construction of a cellar or room in connection with a shop, inn, hotel or office which forms part of a railway station or other railway facility (defined to include a maintenance depot, electrical supply facility or stabling facility) which is used, or intended for use, for Phase One purposes.

Schedule 22: Party walls etc

376. *Schedule 22* disapplies or modifies various provisions of the Party Wall etc Act 1996 (“the 1996 Act”) as respects Phase One works.

377. *Paragraph 2* removes the requirements under section 1 of the 1996 Act for the nominated undertaker to serve a notice on the adjoining landowner before constructing certain walls and fences.

378. *Paragraph 3* ensures that an adjoining landowner does not acquire any rights over Phase One works under the 1996 Act.

379. *Paragraph 4* removes the requirement under section 3 of the 1996 Act for the nominated undertaker, before carrying out works to certain walls or other structures at the boundary of adjoining land, to give notice to the adjoining landowner where the works are carried out in connection with the construction of Phase One works or the maintenance of such works within five years of Phase One being brought into general use. In consequence, the adjoining owner cannot serve a counter-notice under section 4 of the 1996 Act as respects those works.

380. *Paragraph 5* removes the requirement under section 6 of the 1996 Act to obtain the consent of the adjoining owner (or authorisation under the disputes resolution procedure under the 1996 Act) before carrying out any excavation or erection for Phase One purposes.

381. *Paragraph 6* modifies section 6 of the 1996 Act where a landowner (“the building owner”) proposes to undertake any excavation or erection near a building or structure which is erected for Phase One purposes or is on land held by the Secretary of State or the nominated undertaker for Phase One purposes. The effect of the modification is that the Secretary of State or the nominated undertaker can elect that works for the protection of the building or structure (as agreed between the parties or determined by arbitration) should be carried out by the Secretary of State or the nominated undertaker at the expense of the building owner instead of by the building owner.

382. *Paragraph 7* makes provision for the determination of disputes under the 1996 Act which relate to a work required for Phase One purposes, or to a building or structure on land held by the Secretary of State or the nominated undertaker for Phase One purposes, in place of the procedure provided by section 10 of the 1996 Act. The disputes are to be determined by a single arbitrator appointed, in default of agreement,

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by the President of the Institution of Civil Engineers.

Schedule 23: Street works

383. Schedule 23 disapplies as respects works for Phase One purposes a number of provisions of highways legislation which relate to works affecting highways and streets. The disapplications do not apply to highways and streets for which the Secretary of State is the highway or the street authority unless the Secretary of State consents.

384. *Paragraph 1* modifies of the application of provisions of the Greater London Council (General Powers) Act 1970, the Highways Act 1980 and the General London Council (General Powers) Act 1986 which would require a licence or approval to be obtained from the relevant highway authority before certain works (such as the erection of scaffolding, the planting of trees or shrubs in or near a highway or the placing of a retaining wall near a highway) can be carried out.

385. *Paragraph 2* contains disapplications in relation to street works authorised by this Bill. In the case of each of the disapplications listed, placing restrictions on works could risk the delivery timetable for Phase One of High Speed 2.

386. *Paragraph 2(1)* disapplies sections 56 (1) and 56 (1A) of the New Roads and Street Works Act 1991 (“the 1991 Act”). These provide for the power to direct when works that could affect traffic take place and to give directions as regards things done in exercise of any powers conferred by the Bill with respect to works respectively.

387. *Paragraph 2(2)* disapplies section 56A of the 1991 Act which allows an authority to direct an undertaker doing street works to place apparatus in one street rather than another.

388. *Paragraph 2(3)* disapplies section 58(1) of the 1991 Act with respect to works authorised by the Bill which would allow the street authority to restrict further work on a highway on which they have done substantial works for a period of 12 months after completion.

389. *Paragraph 2(4)* disapplies section 61(1) of the 1991 Act which provides that apparatus cannot be put on protected streets without the consent of the street authority.

390. *Paragraphs 2(5) and (6)* disapply section 62(2) and (4) of the 1991 Act. These refer to street authorities’ ability to ask for apparatus placed in a street to be moved if it is later designated a protected street and direct the nominated undertaker in relation to works ongoing if a street is designated or removed as protected, respectively.

391. *Paragraph 2(7)* disapplies section 63(1) of the 1991 Act which states that a street with special engineering difficulties cannot be worked on until plans and

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sections of works are agreed between the nominated undertaker and street authority.

392. *Paragraphs 2(8) and (10)* disapply sections 73A(1) and 78A(1)(b) of that Act. These relate to the requirement to re-surface streets after carrying out street works. They have been disapplied as these works are addressed by provision in Part I of Schedule 31 to the Bill.

393. *Paragraph 2(9)* disapplies section 74A of the 1991 Act and regulations made under it which allow a highway authority to make changes for occupying highways to carry out street works.

394. *Paragraphs 2(11) to (15)* disapply the restrictions which apply under Schedule 3A to the 1991 Act where a street authority receives notice that substantial street works are proposed in a highway. These paragraphs remove the right of the street authority to require notification of other street works in such a highway and to give directions as to when street works may commence and also remove restrictions on the construction of further street works during or after the completion of street works.

395. Under *paragraph 2(16)* these provisions only apply to a street for which the Secretary of State is the street authority if the Secretary of State consents, which may be given subject to conditions.

396. *Paragraph 3* includes provisions that make clear that nothing in Part 3 of the Traffic Management Act 2004 with respect to permit schemes, and nothing in any permit scheme or in any regulation made under that Part, applies to works authorised by the Bill. This is because these provisions would require a further consent for works which have already been authorised by the Bill and are necessary for the implementation of Phase One of High Speed 2. This disapplication does not apply to streets for which the Secretary of State is the highway authority unless the Secretary of State consents.

Schedule 24: Lorries

397. *Schedule 24* modifies the application of lorry ban orders (as defined in the Schedule) in respect of works for Phase One of HS2. The provisions of the Schedule apply to the Greater London (Restrictions of Goods Vehicles) Traffic Order 1985 and also to any other order made at any time under section 1 or 6 of the Road Traffic Regulation Act 1984 which imposes restrictions on the use of roads by heavy commercial vehicles.

398. *Paragraphs 1 and 2* define the orders to which the Schedule applies and make provision to secure that the provisions of the Schedule will be apt for all such future orders.

399. *Paragraphs 3 and 4* make provision for the grant of emergency permits under lorry ban orders in cases where a permit is required for a journey to be undertaken within eight working days of the application including provision to enable

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applications to be made at any time by telephone or by electronic means.

400. Given that the routing of heavy commercial vehicles is intended to be one of the areas of control that planning authorities will have under the planning regime established under the Bill, *paragraph 5* restricts the right to refuse or condition a permit under a lorry ban order. An applicant aggrieved by a decision of the authority not to grant a permit or to grant it subject to conditions may within 28 days appeal to the Secretary of State who may dismiss or vary the authority's decision.

Schedule 25: Noise

401. *Paragraph 1(1)* modifies the operation of sections 60 and 61 of the Control of Pollution Act 1974, so that appeals under those provisions are determined by the Secretary of State or, if the parties agree, by arbitration, rather than by a magistrates' court.

402. *Paragraph 1(2)* enables the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly, to make regulations about procedure in relation to such arbitrations. Under *paragraph 1(3)*, the regulations are to be made by statutory instrument subject to annulment procedure.

403. *Paragraph 2* provides a defence to proceedings for failure to comply with an abatement notice under section 80 of the Environmental Protection Act 1990, where the matter which is the subject of the abatement notice concerns noise caused by the construction, maintenance or operation of Phase One and cannot reasonably be avoided.

404. *Paragraphs 3 and 4* provide that an order under section 82(2) of the Environmental Protection Act 1990 may not be made by a magistrates' court in connection with noise emitted from premises, or from a vehicle, machinery and equipment in a street, where the nominated undertaker can show that the premises, or the vehicle, machinery or equipment, are or is being used for Phase One and the works concerned are being carried out in accordance with a notice or consent issued by the local authority under section 60, 61 or 65 of the Control of Pollution Act 1974 or the noise cannot reasonably be avoided. These provisions of the 1974 Act address control of noise on construction sites (section 60), consent for work on construction sites (section 61) and consent to exceed noise limits (section 65).

Schedule 26: Local Acts

405. *Schedule 26* disapplies and modifies a number of provisions in local Acts where these would impede the exercise of the powers sought for Phase One of High Speed 2 or which require adjustment in consequence of land acquisition powers being vested in the Secretary of State and the power to carry out works being vested in the nominated undertaker.

406. *Paragraph 1* disapplies section 3 of the London Squares Preservation Act 1931, which restricts the use of, and the carrying out of works in, specified London

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squares to recreational purposes, as respects anything done for Phase One of High Speed 2. *Paragraph 1(2)* similarly disapplies the provisions of any agreement made under section 9 of the 1931 Act between the relevant London borough council and the owner of a square protected under the 1931 Act which might otherwise restrict the construction of Phase One of High Speed 2. The disapplications are required because works are to be carried out on, and use is to be made of, parts of Euston Square, Amptill Square, Harrington Square and Camden Gardens.

407. *Paragraph 2* disapplies the London Overground Wires etc Act 1933 and any byelaws made under it in respect of any wires erected or maintained as part of the Phase One works. The 1933 Act requires the prior consent of the relevant London borough council to the erection, placing or retention over or upon any street in the area of the borough of any wire and the Act gives London borough councils various powers to regulate the use of wires including the making of byelaws. There are a number of limited exceptions under section 17 of the 1933 Act for railway companies but as these are dependent upon the railway company owning or holding land for railway purposes, they would not apply as regards Phase One of High Speed 2 where the land acquisition powers are to be vested in the Secretary of State. A disapplication is therefore necessary.

408. *Paragraph 3* disapplies Parts 3, 4 and 5 of the London Building Acts (Amendment) Act 1939 with respect to anything held and used in connection with Phase One of High Speed 2 by the Secretary of State or the nominated undertaker. The 1939 Act contains an exemption for certain buildings or structures belonging to a railway company and situated on a railway or within a railway or station premises. As land acquisition powers under the Bill are to be vested in the Secretary of State, a disapplication is required so that a similar exemption will apply to Phase One of High Speed 2. As in the case of Part 1 of the Building Act 1984 the exemption has been extended to cover offices or showrooms which form part of a railway facility (defined to include a maintenance depot, electrical supply facility or stabling facility) as well as those which form part of a railway station.

409. *Paragraph 4* disapplies certain provisions of the West Midlands County Council Act 1980 (“the 1980 Act”) in relation to Phase One of High Speed 2 which apply to various local authority areas in the West Midlands.

410. *Paragraph 4(1)* disapplies section 11 of the 1980 Act which enables a relevant highway authority to regulate the use of exterior floodlighting provided on buildings which may constitute a danger to the traffic on a street. In the case of Phase One of High Speed 2 it is intended that restrictions on the use of site lighting are to be included in the Code of Construction Practice (“CoCP”) and the Environmental Minimum Requirements (“EMRs”).

411. *Paragraph 4(2)* disapplies section 15 of the 1980 Act which enables a relevant local authority to require persons carrying out building operations to take steps to minimise dust emissions. It is intended that dust emissions caused by works for

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Phase One of HS2 will be dealt with under the CoCP and the EMRs.

412. *Paragraph 4(3)* disapplies section 16 of the 1980 Act which prohibits the use of air-powered tools or mobile air compressors in relation to certain works without an effective device for minimising noise. It is intended that noise from tools will be dealt with under the CoCP and the EMRs.

413. *Paragraph 4(4)* disapplies section 21 of the 1980 Act which enables a relevant local authority to enforce their right of entry to carry out inspections under the Prevention of Damage by Pests Act 1949 by obtaining a warrant from a justice of the peace authorising entry on to the land by force if necessary.

414. *Paragraph 4(5)* disapplies section 46 of the 1980 Act which requires a relevant local authority to reject plans deposited under building regulations unless the authority is satisfied that there will be adequate access for the fire brigade. Fire safety aspects relating to Phase One of High Speed 2 are to be dealt with in accordance with the applicable rail industry standards.

415. *Paragraph 4(6)* disapplies Part 7 of the 1980 Act which enables a relevant local authority to impose and enforce requirements to regulate the storage on sites of stacks of certain flammable materials. There are exemptions for stacks stored in connection with the maintenance of Network Rail's railway which would not apply in relation to Phase One of High Speed 2. In the case of Phase One of High Speed 2 it is intended that fire prevention on work sites will be dealt with under the CoCP and the EMRs.

416. *Paragraph 4(7)* disapplies section 84 of the 1980 Act which enables a relevant local authority to require works which are erected in, under or over watercourses to be securely maintained. There is an exception for works belonging to Network Rail and used for the purposes of Network Rail's undertaking. The disapplication under paragraph 4(7) is needed to give a similar exemption for Phase One of High Speed 2.

417. *Paragraph 5* disapplies certain provisions of the Staffordshire Act 1983 ("the 1983 Act"), in relation to Phase One of High Speed 2, which would otherwise apply in certain areas in Staffordshire.

418. *Paragraph 5(1)* disapplies section 7 of the 1983 Act which requires the approval of a relevant local authority to the proposed layout and construction of new streets. There is an exemption for new streets constructed by Network Rail pursuant to the statutory functions. Paragraph 5(1) provides a similar exemption for Phase One of High Speed 2.

419. *Paragraph 5(2)* of the 1983 Act disapplies section 10(1)(b) of the 1983 Act which enables a relevant local authority to prohibit specified activities including driving or riding a vehicle over certain land. There is a limited exception for vehicles which are used in the course of building operations or by Network Rail and certain

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other undertakers. These exemptions would not cover the use of vehicles for the maintenance of Phase One of High Speed 2 and the disapplication is therefore needed.

420. *Paragraphs 5(3) to (6)* disapply sections 12, 16, 26 and Part 7 of the 1983 Act which are in similar terms, respectively, to sections 15, 21, 46 and Part 7 of the 1980 Act described above.

421. *Paragraph 6* disapplies certain provisions of the Oxfordshire Act 1985 (“the 1985 Act”) in relation to Phase One of High Speed 2 which apply to certain areas in Oxfordshire.

422. *Paragraph 6(1)* disapplies section 5(2)(a) of the 1985 Act which is in similar terms to section 10(1)(b) of the 1983 Act described above. *Paragraph 6(2)* disapplies section 10 of the 1985 Act which enables the highway authority to impose and enforce conditions relating to the culverting of roadside ditches. As respects Phase One of High Speed 2 it is intended that the functions of the highway authorities relating to such matters will be regulated under Part 1 of Schedule 31.

423. *Paragraph 7* disapplies provisions of the Greater London Council (General Powers) Act 1986 which require the consent of the relevant London borough to the demolition of a building or other structure under a street and to other associated works.

Schedule 27: Application of other railway legislation etc

424. *Schedule 27* contains a number of provisions which relate to how other legislation pertaining to railways applies to Phase One.

425. *Paragraph 1* disapplies the Highway (Railway Crossings) Act 1839, concerning the gating of carriageways crossed on the level. This is because it is not proposed that level crossings for carriageways will be provided under the Bill.

426. *Paragraph 2* modifies section 16 of the Railway Regulation Act 1840 as it relates to Phase One or trains that travel wholly or partly on Phase One, by increasing the maximum penalty for offences relating to obstruction and trespass to a fine on summary conviction at level 3 on the standard scale or imprisonment for 51 weeks (in England and Wales) or 12 months (in Scotland). By virtue of *paragraph 2(2)* however, the maximum term of imprisonment in England and Wales is one month before section 281(5) of the Criminal Justice Act 2003 is brought into force.

427. *Paragraph 3* disapplies section 9 of the Railway Regulation Act 1842, concerning the gating of carriageways crossed on the level, for the same reason that *paragraph 1* disapplies the Highway (Railway Crossings) Act 1839

428. *Paragraph 4* incorporates the specified sections of the Railways Clauses Consolidation Act 1845 into this Bill.

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429. *Paragraph 5* incorporates sections 4 and 12 of the Railway Clauses Act 1963 into this Bill.

430. *Paragraph 6* modifies section 5 of the Regulation of Railways Act 1889 as it relates to Phase One or trains that travel wholly or partly on Phase One, by increasing the maximum fine on summary conviction for offences under section 5(1) (relating to ticketing and fares) to level 2 on the standard scale and under section 5(3) (relating to travel with intent to avoid payment of fare) to level 3 on the standard scale, and also extends the power of arrest under section 5(2).

431. *Paragraph 7* disapplies the Railway Companies (Accounts and Returns) Act 1911.

432. *Paragraph 8* applies sections 55 and 56 of the British Transport Commission Act 1949 (provisions dealing with trespass on railways and stone throwing) to relevant railway works constructed under the Bill.

433. *Paragraph 9* relates to clause 12 of the 1987 North Pole Depot undertaking. It amends this so that the specified clause does not apply on the western part of the site, or railways sidings or stabling in connection with the western depot.

Schedule 28: Arbitration between railway operators

434. *Schedule 28* relates to the process should a difference between operators under clause 41(3) be referred to arbitration. *Paragraph 1(2)* provides that, should the parties go to arbitration to reach agreement, the Secretary of State must be informed immediately.

435. *Paragraph 1(3)* allows the Secretary of State to require the arbitrator to ensure that any agreement reached delivers a particular result or outcome. This does not allow the Secretary of State to set the terms of any agreement, but protects against the arbitration process delivering an outcome that hampers the delivery or operation of Phase One of High Speed 2.

436. *Paragraph 1(5)* provides that the Secretary of State may be asked by either party, or the arbitrator, to provide a direction, but does not have to be asked to do so. *Paragraph 1(4)* states that a direction may be provided even if the Secretary of State is directly or indirectly a party to the arbitration.

437. *Paragraph 1(6)* considers the circumstances in which the arbitrator must comply with the direction made. The arbitrator must do so if the direction is both relevant to the determination of the terms of the agreement and is given before the arbitrator has reached a decision.

438. *Paragraph 1(7)* sets out what the arbitrator must do in complying with a direction. Broadly, the arbitrator must try to ensure that the agreement reached through arbitration achieves the outcome set out by the direction from the Secretary of

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State, as far as is reasonably possible.

439. *Paragraph 2* sets out the ways in which the proceedings for arbitration are to be conducted. *Paragraph 2(1)* provides that the Secretary of State will have the power to request, or to direct, that a group of proceedings, for example on a similar matter, should be included in the same arbitration process, or should be arbitrated at the same time.

440. *Paragraph 2(3)* provides that the arbitrator may make a request for such direction, while *paragraph 2(4)* sets out that such a direction must establish the terms for consolidating or timing hearings.

441. *Paragraph 2(5)* contains provisions for cases where hearings with different arbitrators are consolidated. These allow the direction for such hearings to both specify the person who will be the arbitrator and how that person shall be determined.

Schedule 29: Transfer schemes: further provision

442. *Schedule 29* concerns transfer schemes related to Phase One of High Speed 2. It contains provisions which allow the Secretary of State to make transfers of property, rights and liabilities between parties. It is currently unclear as to who will own the HS2 line in the long term. As a result, it is necessary to provide the Secretary of State with powers to transfer the necessary items to any subsequent owner. In addition, these provisions ensure that the transferee is treated identically in law as the original holder of these items.

443. *Paragraph 1* refers to what may be transferred and makes specific provision for rights and liabilities related to contracts of employment to be transferred. *Paragraph 1(2)* also makes clear that a transfer scheme may create rights or interests, or impose liabilities, in relation to property transferred.

444. *Paragraphs 2 to 6* relate to the transfer of employees and the continuity of their employment. The provisions make explicit that the transfer counts as neither dismissal in any way, nor a break in the period of that person's employment. This is so that they will not be entitled to payment under Part 11 of the Employment Rights Act 1996 for redundancy. The employee does, however, retain their right to terminate their contract if there is a substantial change for the worse in their working conditions. *Paragraph 6* also ensures these provisions apply to employees of the Civil Service.

445. *Paragraph 7* provides that any transfer which takes place will do so as if it did not contravene any rights or interests which it otherwise may do.

446. *Paragraph 8* makes similar provisions as for *paragraph 7*, but in relation to the transfer of shares in a subsidiary company of the transferor.

447. *Paragraph 10* contains provisions for what is to be done for those who have a qualifying interest, defined in *paragraph 10(2)*, in parts of the scheme. It provides that

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these are only enforceable in so far as is provided for by the transfer scheme itself.

448. *Paragraph 11* contains provisions indicating the ability for obligations to be imposed, either on the transferor or transferee, to either enter into agreement or execute instruments in favour of persons in the scheme.

449. *Paragraph 12* details the type of provisions that transfer schemes may contain.

450. *Paragraph 13* includes the provisions for when things will transfer, but also makes clear that individual arrangements may be made regarding the timing of transfer of individual things.

451. *Paragraph 14* makes provision that transfer schemes may be modified, subject to what is permitted under this Schedule, by mutual agreement between the transferor and transferee(s).

452. *Paragraph 15* sets out the requirements for the Secretary of State in making a transfer scheme. It also contains provisions for what action must be taken when the necessary information is not submitted.

453. *Paragraph 17* enables the Treasury to make regulations, subject to negative procedure in the House of Commons, varying the way in which a relevant tax has effect in relation to any property, rights or liabilities transferred in accordance with a transfer scheme or anything done for the purposes of, in relation to, or in consequence of, a transfer.

Schedule 30: Extension of planning permission for statutory undertakers

454. *Schedule 30* allows certain statutory undertakers (such as sewerage and electricity undertakers) to rely on their own permitted development rights, say for the diversion of their apparatus to accommodate Phase One, where the likely significant effects of their works are covered by Phase One environmental assessment. In order to achieve this where the necessary conditions are met, *paragraph 1* disapplies the provisions of article 3(10) of the Town and Country Planning (General Permitted Development) Order 1995.

455. *Paragraphs 2 to 5* contain provisions enabling the Secretary of State to intervene with respect to such statutory undertaker works, by imposing conditions on the extended planning permission provided by this Schedule, or to disapply the extended permission. This can be either to ensure compliance with an undertaking given to the Select Committees of either the House of Lords or House of Commons, or (in the case of the imposition of conditions) to ensure the environmental impacts of the development do not materially differ from those set out in the environmental statement.

Schedule 31: Protective provisions

456. *Schedule 31* contains provisions setting out the protections to be provided for

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various bodies with statutory responsibilities likely to be affected by the works.

Part 1 –Highways and traffic

457. *Paragraph 1* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the highway authority concerned agree to vary them. The bodies for which this protection applies include all the highway authorities for highways in which the powers of the Bill can be exercised (i.e. both the local highway authorities (local authorities and Transport for London) and, in respect of trunk roads, the Secretary of State). The arrangements set out here are in addition to the protection given to such authorities in Schedules 2 and 4 (for example, the right to approve temporary closures, the creation of new accesses, and the construction of new or altered streets).

458. These arrangements will apply instead of arrangements which normally govern street works under Part 3 of the New Roads and Street Works Act 1991 (except that by virtue of *paragraph 14(2)* the regulations which govern reinstatement of streets under that Act will apply to reinstatement of highways under the powers of this Bill).

459. *Paragraph 3* imposes a general obligation to minimise disruption to traffic. This will apply to the nominated undertaker in relation to powers to stop up streets and to construct works.

460. *Paragraphs 4, 5 and 7* address works constructed under highways. Approval of plans by the highway authorities is required for the construction of tunnels, subways or other structures within eight metres of the surface (excluding street works within the meaning of Part 3 of the New Roads and Street Works Act 1991). Consent is required if the completed structure will interfere with drainage or will be within two metres of the surface. By virtue of *paragraph 2* any consent or approval under these or any other provisions of this Part is not to be unreasonably withheld. In addition such works must be designed, constructed and maintained to carry the appropriate loading recommended for highway bridges.

461. *Paragraph 6* applies to works involving bridges. Approval of plans is required if there is any interference with a highway and controls are imposed over the way that the works are constructed.

462. *Paragraph 8* gives the highway authorities a right of access to inspect the construction of the works and *paragraphs 9 to 15* contain miscellaneous provisions governing the way that works are constructed in highways, together with provision for reinstating streets after completion of the work, making good damage caused to highways and street furniture, and providing for reimbursement of costs incurred by highway authorities in connection with road diversions required for the works.

463. *Paragraph 16* provides that the nominated undertaker will not be exempt from liability, under this Part of this Schedule or otherwise, by the fact that an act or thing

was done in accordance with plans approved by the highway authority.

464. *Paragraph 17* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 60). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the Secretary of State who must have regard to any matters specified by the Secretary of State on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for the Secretary of State to be involved in the resolution of such disputes.

Part 2 –Electricity, gas, water and sewerage undertakers

465. *Paragraph 18* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State’s powers under the Bill to acquire land) and the undertakers concerned agree to vary them. The undertakers which enjoy the benefit of these provisions are bodies holding licences under the Electricity Act 1989, licensed gas transporters under the Gas Act 1989, and licensed water and sewerage undertakers under the Water Industry Act 1991. Local authorities exercising sewerage functions under arrangements with the local sewerage undertaker under section 97 of the Water Industry Act are also protected.

466. The protection extends to the bodies in relation to apparatus belonging to or maintained by them for the purpose of their undertaking and, in the case of water and sewerage undertakers, apparatus which is subject to an agreement or notice to adopt under the Water Industry Act 1991. However the arrangements will not generally apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (which establishes a nation-wide regime governing street works). Accordingly that Act and the regulations and codes of practice made under it (in particular the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and the Code of Practice “Measures necessary where apparatus is affected by major works (diversionary works)”) will apply to the undertakers’ apparatus in streets.

467. *Paragraph 19* sets out the general principle that apparatus is not to be moved under the powers of the Bill until replacement apparatus has been provided and is in operation. This principle applies except in exceptional circumstances where a certificate is issued by the appropriate Ministers allowing this requirement to be dispensed with. The appropriate Ministers are the Secretary for State for Transport acting jointly with either the Secretary of State for Environment, Food and Rural Affairs or the Secretary of State for Energy and Climate Change.

468. *Paragraphs 20 to 24* set out a procedure for dealing with diversion of apparatus (which can be required by either the nominated undertaker or the undertaker concerned) in consequence of the Phase One of High Speed 2 works. This requires the nominated undertaker or the Secretary of State to provide rights and facilities for the replacement apparatus when it is able to do so, but otherwise the undertaker is

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required to use its best endeavours to obtain these. The terms relating to any such replacement apparatus are to be agreed or otherwise determined in accordance with the disputes procedure under *paragraph 31*, and any person making a determination under *paragraph 31* must have regard to any template provisions issued by the appropriate Ministers (following consultation with the undertakers).

469. *Paragraph 25* applies to apparatus which is not proposed to be removed: the nominated undertaker is to provide plans of the proposed works near to the apparatus and the undertaker can require protective measures to be undertaken, or require its removal (in which case the procedures under *paragraphs 20 to 24* are to apply).

470. *Paragraphs 26 and 27* are intended to protect continued access to apparatus. In particular they provide that the undertaker is to continue to enjoy the same rights for the purpose of maintaining apparatus in streets which have been permanently stopped up under the powers of the Bill.

471. *Paragraph 28* provides for reimbursement of the undertakers' costs in connection with the diversion or protection of its apparatus (or arising from the cutting off of apparatus) and *paragraph 29* provides an indemnity in respect of damage to apparatus or interruption to the undertakers' service, caused by the construction of the works. This indemnity includes provision for reasonable compensation for any losses suffered by the undertaker.

472. *Paragraph 30* provides that, where Network Rail Infrastructure Limited is the nominated undertaker, this Part of the Schedule will have effect subject to any existing agreements Network Rail may have with undertakers.

473. *Paragraph 31* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 60). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by those Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes. The cost of the dispute is to be borne as directed by the appointed decision-maker.

Part 3 –Electronic communications code networks

474. *Paragraph 32* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker and the operators concerned agree to vary them. The operators to whom these provisions apply are operators of an electric communications code network as defined in the Communications Act 2003.

475. The electronic communications code is the code set out in Schedule 2 to the Telecommunications Act 1984, and an electric communications code network is so much of an electric communications network or conduit system provided by an

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electronic communications code operator, (i.e. a person to whom the code is applied by a direction of the Secretary of State under the Communications Act) as is not excluded from the application of the code by such a direction.

476. The protection conferred by this Part applies to any works authorised by the Bill (“the authorised works”).

477. *Paragraph 33* clarifies the relation between the operation of the electronic communications code, Part 3 of the New Roads and Street Works Act 1991 (which regulates street works) and section 272 of the Town and Country Planning Act 1990 (which addresses removal of apparatus in land which has been compulsorily acquired).

478. Paragraph 23 of the electronic communications code (which imposes a procedure for the alteration of telecommunications apparatus by statutory undertakers) is to apply for the purpose of the authorised works except where those purposes are regulated by or under the New Roads and Streets Works Act 1991 (i.e. where the apparatus is in a street), or where the nominated undertaker has a right to remove telecommunications apparatus by virtue of the default powers contained in section 272 of the Town and Country Planning Act 1990 or in relation to removal of apparatus in streets stopped up under the powers of the Bill (which is addressed in sub-paragraphs (3) to (8) of paragraph 35 of this Part). Paragraph 21 of the electronic communications code (which restricts other persons’ rights to require the removal of electronic communications apparatus) is excluded in the same circumstances.

479. *Paragraph 34* provides that the powers of Schedule 4 or the temporary stopping up or diversion of highways are not to affect the statutory rights of operators to use that street for the purpose of installing or maintaining apparatus.

480. *Paragraph 35* protects operators’ rights of access to apparatus in streets which have been permanently stopped up under the powers of the Bill, but this protection is subject to the nominated undertaker’s rights to require the removal of that apparatus or to alter it.

481. The nominated undertaker is required to give notice of the proposed stopping up and the operator has a right and, where reasonably requested by the nominated undertaker, an obligation to move its apparatus. There is provision for the undertaker to recover its costs but *sub-paragraph (8)* provides that the provisions of this Part dealing with the recovery of costs for relocation works are not to apply where the relocation is required as a result of works which are major transport works or major highway works for the purpose of Part 3 of the New Roads and Street Works Act 1991. In such a case the cost sharing regime provided for under that Act will govern recovery of costs and consequently the amount recoverable will be discounted by such amount as is prescribed from time to time under the cost-sharing regulations made under section 85 of that Act (the amount is currently 18% or 7.5% depending on the

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nature of the works).

482. *Paragraph 36* addresses the terms which are to apply to apparatus which has been relocated. These terms are to be agreed or otherwise determined in accordance with the disputes procedure under *paragraph 39*, and any person making a determination under *paragraph 39* must have regard to any template provisions issued by the appropriate Ministers (following consultation with the undertakers). In this case and *paragraph 39* the appropriate Ministers are the Secretary of State for Transport and the Secretary of State for Culture, Media and Sport acting jointly.

483. *Paragraph 37* provides an indemnity for operators in respect of damage to apparatus or interruptions to the supply of its services caused by the construction of the authorised works (or by subsidence resulting from those works). This does not apply to apparatus governed by Part 3 of the New Roads and Street Works Act 1991 (i.e. works in streets).

484. *Paragraph 38* provides that, where Network Rail Infrastructure Limited is the nominated undertaker, this Part of the Schedule will have effect subject to any existing agreements Network Rail may have with operators.

485. *Paragraph 39* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 60). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no need for Ministers to be involved in the resolution of such disputes. The cost of the dispute is to be borne as directed by the appointed decision-maker.

Part 4 – Canal & River Trust

486. *Paragraph 40* provides that the arrangements set out in this Part of the Schedule are to apply unless the nominated undertaker (or the Secretary of State, in relation to those provisions concerning the Secretary of State's powers under the Bill to acquire land) and Canal & River Trust ("the Trust") agree to vary them. The Trust is a charitable trust which was established in July 2012 to replace the British Waterways Board, a statutory corporation. It owns and manages a network of waterways, comprising canal and river navigations, reservoirs and docks. A number of its waterways may be affected by the powers of the Bill. These arrangements apply to "canals" which means any canal or waterway owned or managed by the Trust, including towpaths and other land held or used for the canal. The nominated undertaker's works to which the provisions apply are any "specified works" defined as works in, across, under or within 15 metres of, or which may affect, any canal.

487. *Paragraph 41* makes clear that in relation to land of the Trust, the compulsory powers of the Secretary of State to acquire land will be limited to "what is reasonably

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necessary for, or in connection with, the construction, maintenance or operation of the works” authorised by the Bill, having regard to the statutory duties of the Trust.

488. *Paragraph 42* provides for the Trust to approve plans of the specified works and in approving plans to be able to make reasonable requirements in relation to its canals. Such approval is not to be unreasonably withheld.

489. *Paragraph 43* deals with the construction of the specified works (and any protective works). It provides in particular for these to be constructed to the Trust’s reasonable satisfaction and with minimum disruption to traffic on the canals and use of towpaths, for the Trust to have advance notice of commencement of construction and the right to inspect the construction work.

490. *Paragraphs 44 and 45* deal with deposits of materials on, in or over canals and discharge of water into canals. These operations will require the Trust’s consent (which is not to be unreasonably withheld). The exercise of the powers of paragraph 8 of Schedule 2 to discharge water into watercourses is made subject, in relation to canals, to the terms of any consent given under these provisions.

491. *Paragraph 46* provides protection for access to or along towpaths. If this is temporarily obstructed and there is no alternative means of access, the nominated undertaker is required (so far as is reasonably practicable) to provide a substitute. These requirements are in addition to the obligation in paragraph 6(2) and (5) of Schedule 4 to ensure reasonable pedestrian access to premises adjoining a highway which has been temporarily stopped up and to obtain the consent of the highway authority for such closures.

492. *Paragraph 47* contains provision empowering the Trust to give the nominated undertaker notice to act in circumstances where canal work is abandoned or is in such a condition that it does or may constitute a danger or interference with navigation. The Trust may carry out remedial works at the nominated undertaker’s expense in the event of default by the nominated undertaker.

493. *Paragraph 48* contains a general indemnity for the Trust in respect of claims against it arising from damage to canals covered by the works and for the costs of making good such damage.

494. *Paragraph 50* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would then be governed by the provisions of clause 60). In any other case, unless the parties agree to arbitration, the dispute is determined by a person appointed by the appropriate Ministers who must have regard to any matters specified by the appropriate Ministers on making the appointment. The appropriate Ministers for this purpose are the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs acting jointly. The reason for this distinction is that it is considered that disputes as to compensation will not relate to matters of policy and there is no

need for the appropriate Ministers to be involved in the resolution of such disputes.

Part 5 – Land drainage, flood defence, water resources and fisheries

495. These provisions contain protection for authorities (referred to as drainage authorities) which have functions in connection with land drainage, flood defence, fisheries and water resources. These bodies are the Environment Agency and the local drainage authorities (i.e. local authorities which are given drainage functions as lead local flood authorities as a result of the Flood and Water Management Act 2010 and internal drainage boards). Under these provisions protection is given to each drainage authority in relation to works affecting their functions. Where works authorised by the Bill affect a main river, groundwater, water resources or fisheries, i.e. matters affecting the functions of the Environment Agency, the protection applies to the Environment Agency. Where works affect ordinary watercourses (i.e. watercourses which are not main rivers) or flood defence features for which a local drainage authority is responsible, the protection applies to the relevant local drainage authority.

496. *Paragraph 51* provides that arrangements set out in this Part are to apply unless the nominated undertaker and the drainage authority concerned agree otherwise. It explains which type of drainage authority has responsibility in relation to the different types of works and also provides, given the strategic role of the Environment Agency, for local drainage authorities to consult the Agency in exercising their functions and for the Agency to be able to issue model conditions.

497. *Paragraphs 52 and 53* provide for the drainage authority to approve plans of any specified works and in approving plans to be able to make reasonable requirements (including requiring the nominated undertaker to construct protective works at its own cost). Approval of plans under these provisions is not to be unreasonably withheld.

498. *Paragraph 54* deals with the construction of the works (and any protective works). It provides in particular for these to be constructed to the drainage authority's reasonable satisfaction, for the drainage authority to have the right to inspect the construction and to require alteration or removal of the works where they have not been constructed in accordance with the requirements of this Part.

499. *Paragraph 55* provides for the flood defence works constructed under the powers of the Bill or which is on land held by the nominated undertaker to be maintained to the reasonable satisfaction of the drainage authority and *paragraph 56* requires the nominated undertaker to make good any impairment to the efficiency of drainage works for flood defences purposes or any other damage.

500. Under both *paragraphs 55 and 56* the drainage authority can take remedial action where the nominated undertaker fails to do so.

501. *Paragraph 57* requires the nominated undertaker to take all reasonably

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practicable measures to prevent interruption of the free passage of fish in any fishery and contains provision for the nominated undertaker to prevent or make good damage to fisheries (a fishery is defined as any waters containing fish and the fish within or migrating to or from such waters and the spawn, spawning grounds or food of such fish). The Environment Agency can take remedial action if the nominated undertaker fails to do so.

502. *Paragraphs 58 to 60* contain a general indemnity for the drainage authority in respect of claims against it arising from the construction of the specified works in respect of the drainage authority's functions protected by this Part.

503. *Paragraph 61* addresses disputes arising under this Part and provides for these to be referred to arbitration (which would then be governed by the provisions of clause 60).

FINANCIAL EFFECTS

504. It is proposed that Phase One of High Speed 2 construction will be funded by central Government. The government has allocated a funding envelope of £50.1 billion to deliver both phases of the railway. As part of this, the Chancellor agreed a funding envelope for Phase One, in 2011 prices, of around £21.4bn. This includes significant contingency of around £5.7bn. We expect the level of contingency to reduce over time.

505. Funding will be secured through the estimates process from the consolidated fund. In addition, further contributions will be sought from certain businesses and developers directly benefiting from the project.

PUBLIC SECTOR MANPOWER

506. The delivery stage for Phase One of High Speed 2 includes the construction, testing, and commissioning of the railway. Oversight and management of the programme and the procurement of specific work packages will require substantial public sector resource throughout the delivery period. The manpower required to provide these functions will be resourced through the Department for Transport's budget settlement agreed with HM Treasury through the Spending Review processes.

507. In addition, the Government will continue to work with local partners to maximise the opportunity that Phase One of High Speed 2 will bring. This ranges from working with local authorities to create stations that act as catalysts for transformation of the surrounding area to engaging with Local Enterprise on their local economic growth plans.

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SUMMARY OF IMPACT ASSESSMENT

508. This Bill is accompanied by three impact assessments. The impact assessments, signed by ministers, are available on www.parliament.uk.

509. The individual impact assessments deal with the following provisions:

- a) Railway Matters
- b) Right of Entry for further high speed rail works
- c) Compulsory acquisition of land for regeneration or relocation

COMPATIBILITY WITH EUROPEAN CONVENTION OF HUMAN RIGHTS

510. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of the Act). The Secretary of State for Transport has made the following statement: "In my view the provisions of the High Speed Rail (London - West Midlands) Bill are compatible with the Convention Rights."

511. The High Speed Rail (London - West Midlands) Bill provides powers for the Secretary of State to purchase property compulsorily, and for a nominated undertaker to construct and operate a new high speed railway, between London and the West Midlands (the first phase of an intended national high speed network called "HS2").

512. As a Hybrid Bill, the Bill necessarily involves interference with property rights and homes. The potential for such effects engages, in particular, Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions), Article 8 (the right to respect for private and family life) and, to the extent that any places of assembly or places used for religious purposes are affected, Article 9 (the right to freedom of thought, conscience and religion). In particular the Bill contains provisions for compulsory acquisition of land for building the new railway, and rights of entry to carry out surveys and works on people's land. Furthermore, the railway would, by causing noise, vibration, light pollution and visual intrusion, unavoidably reduce the enjoyment which owners of neighbouring land have over their property.

513. Mitigation of the impact of such interference is provided by the compensation provisions relating to compulsory acquisition and injurious affection to properties under existing legislation which are applied to Phase One of High Speed 2 by the Bill and by additional compensation provisions in the Bill and also by a range of policies that the Secretary of State will be adopting in relation to the scheme - including policies relating to hardship, land acquisition, business relocation and to mitigate construction impacts of the scheme. Taking into account the public and other benefits that will arise from Phase One of High Speed 2 development, and mitigation by the arrangements that have been provided, the Secretary of State is of the view that the Bill strikes a fair balance between the private interests of owners of property on or

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near the route, and the wider public interest in generating additional capacity on, and improved connectivity through, the national rail network. Furthermore he considers that any remaining interference with property and other rights is proportionate and can be, and in all the circumstances is, justified.

514. The Bill contains provisions that provide for the determination of disputes by arbitration. In the light of the applicability of standard procedures for arbitration and the availability of judicial review in relation to any decisions of the Secretary of State, the Secretary of State is of the view that the Bill is compliant with the requirements of Article 6 (the right to a fair trial).

COMMENCEMENT DATE

515. The provisions of this Bill will come into force upon Royal Assent (see clause 65(1)).

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

EXPLANATORY NOTES

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