

# HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the High Speed Rail (West Midlands – Crewe) Bill as introduced in the House of Commons on 17 July 2017 (Bill 6).

- These Explanatory Notes have been produced 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.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill confers the powers required to construct the second phase – “Phase 2a” - of a proposed new national high speed rail network, “High Speed 2” (or “HS2”). Phase 2a will involve the construction of new railway lines (one track in each direction) between the West Midlands (at Fradley) and Crewe. The route of Phase 2a of High Speed 2 comprises of approximately 36 miles (58km) of HS2 main line (including the section which would connect with and form the first part of Phase 2b) and two spurs (approximately 4 miles, 6 km) south of Crewe that will allow trains to transfer between the HS2 main line and the West Coast Main Line. The route is mostly rural, with no terminals or intermediate stations, but will include an Infrastructure Maintenance Facility at Stone.

## Policy background

- 2 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.
- 3 In the 2015 Command Paper “High Speed Two: East and West – the next steps to Crewe and beyond” (Cm 9157) the Secretary of State decided upon a detailed route for Phase 2a 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 2017. 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.
- 4 In January 2016, the Secretary of State for Transport updated statutory safeguarding directions to local planning authorities for the Phase 2a 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 2a 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. The instructions will be updated again later this year, to reflect the route refinements which were consulted on last year. Further details of the safeguarding directions can be found on the HS2 Ltd webpages found on [www.gov.uk/hs2](http://www.gov.uk/hs2).
- 5 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 (West Midlands – Crewe) Bill, the development of the proposed network might proceed without delay. That 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.
- 6 The Government proposes that, subject to the successful passage of the High Speed Rail (West Midlands - Crewe) Bill, construction of Phase 2a of High Speed 2 would commence in 2020. This phase would be completed and operational by 2027. The Government plans to introduce a third Bill for the rest of Phase Two (Phase 2b), with the extension of the network to be open by 2033.
- 7 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://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07082>

- 8 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.

## Legal background

- 9 This Bill will form part of the legislative authority for the construction of the high speed rail network from West Midlands to Crewe. The High Speed Rail (London – West Midlands) Act 2017 provides the legislative authority for the construction of the first phase of the network from London to West Midlands.

## Territorial extent and application

- 10 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 2a of High Speed 2 are to be situated wholly in England.
- 11 However, as with the High Speed Rail (London – West Midlands) Act 2017 (the Phase One Act), 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 but most of the provisions in practice will apply to England only.
- 12 At introduction this Bill, unlike the provisions in the Phase One Act, contains no provisions that trigger the Sewel Convention. Some of the services using Phase 2a of High Speed 2 will run to and from Scotland, albeit on the existing conventional rail lines and at normal speed from Crewe.
- 13 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.
- 14 None of the provisions contained in this Bill will have an impact upon matters that have been devolved to Scottish Government, the Welsh Government or the Northern Ireland Assembly.
- 15 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Works

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

- 16 The primary purpose of the Bill is to authorise the construction of Phase 2a 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*.

### Schedule 1: Scheduled Works

#### Construction requirements

- 17 *Schedule 1* sets out the Phase 2a 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 plans. Some buildings also have an upper limit shown for them on the deposited sections, in which case the relevant works must be constructed within the limit.
- 18 *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, if applicable.
- 19 *Paragraph 1(3)* allows the nominated undertaker to substitute an engineering work not shown on the deposited plans for an engineering work shown on those plans. *Paragraph 1(4)* indicates this may include a bridge, tunnel, viaduct, cutting or embankment.

### Clause 2: Further provision about works

- 20 *Subsection (1)* allows the nominated undertaker to carry out ancillary works within the Act limits (an expression which is defined in *clause 59(2)*). The types of works which may be undertaken, in connection with the railway, are outlined in *subsections (1)* and *(2)*.
- 21 *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 2a works, and to undertake works which are intended to benefit or protect land affected by the Phase 2a works.
- 22 *Subsection (4)* introduces *Schedule 2*, which contains additional works powers. Details of these can be found below.
- 23 *Subsection (5)* authorises the nominated undertaker to carry out the electric line works that are specifically authorised by the Bill and introduces *Schedule 3*.

### Schedule 2: Works

#### Authority to survey and investigate land, etc.

- 24 *Schedule 2* contains a number of further and supplementary works powers for Phase 2a.
- 25 *Paragraph 1(1)* and *(4)* authorise the nominated undertaker to survey or investigate land which is within the Act limits or affected by the Phase 2a works to protect or remove flora or fauna. *Paragraph 1(2)* and *(3)* provide that the nominated undertaker may enter land for these purposes and to monitor



the effectiveness of mitigation measures.

- 26 *Paragraph 1(5) and (6)* apply provisions of the Housing and Planning Act 2016 on the exercise of these powers. These include the requirements to give notice to landowners, to pay compensation in relation to damage and to obtain a warrant where necessary authorising the use of force to enter land.

#### Support of buildings and apparatus, etc.

- 27 *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)*).
- 28 *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.
- 29 *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.
- 30 *Paragraph 2(5)* provides that the power under *Paragraph 2(1) or (4)* may be exercised without notice in an emergency.
- 31 *Paragraph 2(6)* permits the nominated undertaker to enter and survey buildings and land to decide whether or how to carry out supporting work and under *paragraph 2(7)* the nominated undertaker must give 14 days' notice to owners and occupiers of its intention to enter and survey the building or land under *paragraph 2(6)*.
- 32 Under *paragraph 2(8)* 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.
- 33 *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 2a work necessitating the previous supporting work was brought into general use.
- 34 *Paragraph 3(3) to (8)* mirror, for the further supporting works, *paragraph 2(2) to (7)*.
- 35 *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.
- 36 *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)*.

#### Trees on neighbouring land

- 37 *Paragraph 7* provides for cases where trees overhang or otherwise encroach on land used for the purposes of Phase 2a. 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.

38 *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.

39 *Paragraph 7(9)* allows a landowner to recover compensation for complying with a tree works notice.

#### Exercise of powers of rights of entry under paragraphs 2 to 7

40 *Paragraph 8* contains provisions to apply sections of Part 7 of the Housing and Planning Act 2016 as respects the powers of entry under *paragraphs 2 to 7*. These include the requirements to give notice to landowners, to pay compensation in relation to damage and to obtain a warrant where necessary authorising the use of force to enter land.

#### Noise mitigation for buildings

41 *Paragraph 9* authorises the nominated undertaker to carry out noise mitigation works in respect of a building if it is for the purposes of or in connection with the construction or operation of any of the works authorised by the Act: but such works may be carried out only with the consent of the owners and occupiers of the building.

#### Discharge of water

42 *Paragraph 10* authorises the nominated undertaker to use watercourses and public sewers and drains for the purposes of construction or maintenance of works authorised by the Bill. *Paragraph 10(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.

43 *Paragraph 10(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 10(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. *Paragraph 10(4)* provides that the nominated undertaker must not damage or interfere with the beds or banks of any watercourse forming part of a main river.

44 *Paragraph 10(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 10(6)* makes it clear that any dispute as to the giving of consent under *paragraph 10* must be referred to arbitration if both parties agree, otherwise to be settled by the Secretary of State.

#### Temporary interference with waterways

45 *Paragraph 11* contains provisions to allow the nominated undertaker to interfere temporarily with the waterways identified in *paragraph 11(1)*. *Paragraph 11(2)* provides that it may carry out temporary or dredging works in relation to these waterways, moor or anchor vessels and temporarily close them.

46 *Paragraph 11(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.

47 *Paragraph 11(4)* and (5) provide that the nominated undertaker is not liable for any losses which occur as a result of any 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.

## Electronic communications apparatus

- 48 *Paragraph 12* allows the nominated undertaker, when installing telecommunications apparatus for Phase 2a, to provide additional capacity for others' use. This does not apply to radio masts.

## Schedule 3: Overhead line diversions

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

## Clause 3: Highways

- 50 *Subsection (1)* requires the nominated undertaker to seek the consent of any relevant strategic highways company before carrying out works in relation to a highway.
- 51 *Subsection (2)* introduces *Schedule 4*, which contains provisions relating to highways. *Subsection (3)* introduces *Schedule 5*. More details about these can be found below.

## Schedule 4: Highways

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

## Part 1 – Highway access

- 53 *Paragraph 1* contains provision for the nominated undertaker to create, or improve, means of access within the Act limits.
- 54 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 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.
- 55 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.
- 56 *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.
- 57 *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.
- 58 *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

### Stopping up

- 59 *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)* highways specified in table 2 may only be stopped up on provision of an alternative. *Paragraph 2(3)* also provides that the nominated undertaker may temporarily stop up a highway specified in table 2 before the permanent closure when this is required to make the connection with the alternative road.

- 60 *Paragraph 2(4) and (5)* require the relevant highway authority to be consulted with respect to public safety or convenience before the temporary closure under *paragraph 2(3)* and *paragraph 2(7)* provides that there is no need to reinstate a highway after a temporary closure where the permanent closures follows immediately after the end of the temporary closure.
- 61 *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 4 of the Schedule), for the purposes of carrying out the Phase 2a works.
- 62 *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 (*sub-paragraph (12)*).
- 63 *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.
- 64 *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 substitute is available.
- 65 *Paragraph 3(6)* provides that, before the stopping up is confirmed, the nominated undertaker must publish certain details in a notice in a local newspaper with a circulation in the relevant area. The term 'relevant area' is explained in *sub-paragraph (10)*. The details in the notice are 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.
- 66 *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. The term 'local authority' is defined in *sub-paragraph (11)*.
- 67 *Paragraph 3(9)* provides that unless the appropriate Ministers direct otherwise, their functions must be carried out by a person appointed by them for that purpose.

#### Effect of stopping up of highway

- 68 *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 2a.
- 69 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.
- 70 *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.

#### Creation of public rights of way over new footpaths, bridleways, etc.

- 71 *Paragraph 5* provides for a public right of way to be created over paths provided under the powers of the Bill and specified in table 3. *Paragraph 5(2)* to *(4)* apply provisions of the Highways Act 1980 to require compensation to be payable to the landowner over whose land the right of way was created.

72 *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.

#### Deviation of new footpaths, bridleways etc.

73 *Paragraph 6* enables the nominated undertaker, when providing a footpath, bridleway or other kind of way specified in column 3 of table 2 or in table 3 of the Schedule, to deviate laterally to any extent from the lines shown on deposited plans, but within the limits of the plans.

#### Permanent obstruction

74 *Paragraph 7* 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 7(1)* requires the consent of the highway authority for this, which may not be unreasonably withheld. If this is disputed, *paragraph 7(2)* provides that the matter must be settled by arbitration or by the Secretary of State.

75 *Paragraph 7(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.

#### Temporary interference

76 *Paragraph 8* enables the nominated undertaker temporarily to interfere with any highway for the purpose of carrying out the Phase 2a works. Under *paragraph 8(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 8(2)*, the nominated undertaker must provide reasonable access for pedestrians to or from premises abutting the highway.

77 Where the highway is specified in table 4 in Part 4 of the Schedule, under *paragraph 8(3)* and (4) the relevant authority must be consulted with respect to public safety and convenience before the power is exercised. In other cases, *paragraph 8(5)* requires the consent of the relevant authority to be obtained in writing by the nominated undertaker prior to the power being exercised.

78 *Paragraph 8(6)* and (8) 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.

79 *Paragraph 8(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.

80 *Paragraph 8(9)* 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)*.

#### Street works

81 *Paragraph 9* allows the nominated undertaker to place, maintain, reposition and remove apparatus in the highway, and also carry out works for the purpose. *Paragraph 9(2)* provides that 'apparatus' has the same meaning as in Part 3 of the New Roads and Street Works Act 1991.

82 *Paragraph 10* treats certain works carried out on highways as major transport works for the purposes of Part 3 of the New Roads and Street Works Act 1991.

83 *Paragraph 10(2)* provides that where highway works for Phase 2a are carried out by the highway authority under a delegation agreement under *paragraph 14(2)* of the Schedule, the normal rules applying to highway authorities on whether the works are major highway works are to apply.

#### Working sites in highways

84 *Paragraph 11* provides that a highway temporarily stopped up under *paragraph 2(3)(b)* or *8(1)(a)* may be used as a work site for HS2 where it is within the Act limits.

### Part 3 – Construction and maintenance of highways

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

#### Construction and alteration

- 86 Under *paragraph 12(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 12(2)* and (3), within 28 days of a request by the nominated undertaker, the highway authority must provide a certificate of their 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.
- 87 If a dispute arises over the issuing of a certificate, *paragraph 12(4)* provides that this must be settled by arbitration or by the Secretary of State.
- 88 *Paragraph 13* relates to the realignment or construction of a highway which comprises a carriageway. *Paragraph 13(2)* requires this to be done in accordance with plans approved by the highway authority, and such approval not to be unreasonably refused. If a dispute arises about this, under *paragraph 13(3)* it must be settled by arbitration or by the Secretary of State.
- 89 *Paragraph 13(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.
- 90 *Paragraph 14* 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.
- 91 *Paragraph 15* 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.

#### Maintenance

- 92 *Paragraph 16* 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 16(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 16(8)* this does not apply to the structure of bridges over, or tunnels under, railways of the nominated undertaker.
- 93 *Paragraph 16(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.
- 94 *Paragraph 16(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 16(6)* provides that, if there is a dispute about this, it must be determined by arbitration, or by the Secretary of State.
- 95 *Paragraph 16(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.
- 96 Under *paragraph 17*, 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.

- 97 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 18* applies this to the maintenance responsibilities of the nominated undertaker under *paragraph 16(2)* or *16(3)(a)*.
- 98 *Paragraph 19* 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).

#### Bridges carrying highways

- 99 *Paragraph 20* applies to Phase 2a 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: Highways: Tables relevant to Part 2 of Schedule 4.

- 100 *Schedule 5* contains tables that are relevant to the powers exercisable under Part 2 of *Schedule 4*.

## Compulsory Acquisition of Land

### Clause 4: Power to acquire land compulsorily

- 101 *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 2a purposes”. This expression is defined in *clause 59*.
- 102 *Subsection (2)* introduces *Schedule 6* 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.
- 103 *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.
- 104 *Subsection (4)* provides that the provisions of the Compulsory Purchase (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.
- 105 *Subsection (5)* introduces *Schedule 7* which makes modifications to 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.

### Schedule 6: Acquisition of land for particular purposes

- 106 *Schedule 6* sets out the 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 7: Acquisition of land - application of compulsory purchase legislation

107 *Schedule 7* makes provision as regards how certain legislation regarding compulsory purchase is to apply to compulsory acquisition under the Bill.

### Land Clauses Consolidation Act 1845

108 *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.

### Compulsory Purchase Act 1965

109 *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 9. Paragraph 2(4)* makes a change which is consequential on that made by *paragraph 2(2)*.

110 *Paragraph 2(3)* reduces the period between serving a notice to treat and entering and taking possession from 3 months to 1 month in cases where only subsoil, airspace or an easement, restrictive covenant or other right over land is acquired.

111 *Paragraph 2(4)* reduces the length of the supplementary notice of entry required to be served under section 11A of the 1965 Act on an additional occupier or person with an interest in land who is identified after the service of a notice of entry on to the land but before possession has been taken. The period of the notice is reduced to 7 days where the newly identified person is an occupier or is an occupier whose existence has not been identified previously because misleading information has been given or where only subsoil, airspace or a right is to be acquired or a restrictive covenant is to be imposed. In other cases the period of notice is reduced to 28 days

112 *Paragraph 2(6)* makes it clear that reference to taking possession in Schedule 2A to the 1965 Act, which applies where only part of a house, building or factory is proposed to be acquired, are references to taking permanent possession as opposed to taking temporary possession under Schedule 13.

### Compulsory Purchase (Vesting Declarations) Act 1981

113 *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. In particular, *paragraph 3(a)* makes provision for preliminary notices to be served on persons with relevant interests in land in place of the equivalent procedure provided for under the 1981 Act which only applies where a compulsory purchase order has been made.

### Acquisition of Land Act 1981

114 *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.

## Clause 5: Acquisition of rights and imposition of restrictive covenants

115 *Clause 5(1)* gives 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 to impose restrictive covenants.

116 *Subsection (2)* provides that, in the case of land specified in *Schedule 8*, only rights in land may be compulsorily acquired, or restrictive covenants imposed, for the purposes mentioned in the table.

117 *Subsection (3)* enables the Secretary of State by order to provide that a person specified in the regulations may exercise the powers under the Bill to acquire rights or impose restrictive covenants.



Some of the land within the Bill 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 (3)* 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.

118 *Subsection (4)* provides that the power to make an order under *subsection (3)* includes a power to make an order varying or revoking an order previously made under that subsection.

119 *Subsection (5)* introduces *Schedules 9 and 10* which contain provision about the application of compulsory purchase legislation to compulsory acquisition under this clause.

## Schedule 8: Land where powers of acquisition are limited to acquisition of rights or imposition of restrictive covenants

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

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

### Compulsory Purchase Act 1965 and compensation enactments

121 *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.

122 *Paragraphs 1(a)* and *2* make specific modifications to provisions of the Compulsory Purchase Act 1965, the Land Compensation Act 1961 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 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. *Paragraph 5* amends the Phase One Act with respect to the modification of s.5A of the Land Compensation Act 1961.

## Schedule 10: Acquisition of rights in land: substituted Schedule 2A for Compulsory Purchase Act 1965

123 *Schedule 10* sets out the version of Schedule 2A to the Compulsory Purchase Act 1965 that is referred to in *paragraph 2(8)* of *Schedule 9*.

## Clause 6: Acquisition of airspace

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

125 *Subsection (2)* disapplies the provisions of the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Town and Country Planning Act 1990 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 7: Acquisition of subsoil or under-surface

126 Some of the land shown on the deposited plans is required for underground railway tunnels and ancillary works where only the subsoil of the land needs to be acquired. *Clause 7* enables the Secretary of State to acquire compulsorily the subsoil only, rather than having to acquire the whole of the land.

127 *Subsection (2)* disapplies the provisions of the Compulsory Purchase Act 1965, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Town and Country Planning Act 1990 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.

128 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.

129 *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.

## Schedule 11: Land where powers of acquisition are limited to sub-surface acquisition

### Restriction of power of compulsory acquisition to land under the surface or rights of passage

130 *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*. However, *paragraph 2(1)* provides that the power of compulsory acquisition may be exercised so far as it involves imposing restrictive covenants over the land specified in that table; and *paragraph 2(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)*.

## Clause 8: Highway subsoil

131 *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.

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

133 *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)*.

134 *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.

135 *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.

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

136 *Schedule 12* contains the table referred to in *clause 8*. The table specifies the highway land in respect of which the power of compulsory acquisition or to appropriate subsoil is not exercisable.

## Clause 9: Termination of power to acquire land

137 *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.

138 *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.

139 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.

140 *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.

## Schedule 13: Right to require acquisition where time limit extended

141 *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.

142 *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.

143 *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.

144 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.

# Extinction and Exclusion of Rights Over Land

## Clause 10: Extinction of rights over land

145 *Clause 10* introduces *Schedule 14*, which relates to the extinction of private and other rights over land.

## Schedule 14: Extinction of rights over land

### Land to which Schedule applies

146 *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 covenants, for Phase 2a purposes.

### Private rights

147 *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.

148 *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 2a purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase 2a 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.

149 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

150 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.

151 *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.

### General rights

152 *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.

153 *Paragraph 5* provides that general rights over land within the Act limits which is held by the Secretary of State for Phase 2a purposes are extinguished. Where only rights are acquired, or restrictive covenants imposed, for Phase 2a 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.

154 *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.

### Meaning of “the appropriate time”

155 *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.

### Amendments to registers of common land or town or village greens

156 *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 2a 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.

### Clause 11: Extinction of rights of statutory undertakers

157 *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 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.

158 *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 12: Exclusion of new rights of way

159 *Clause 12* 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 2a purposes. Prescription is the legal process of a right of way becoming established through use over a period of at least 20 years.

## Temporary Possession and Use of Land

### Clause 13: Temporary possession and use of land

160 *Clause 13* introduces *Schedule 15* and *16*, which makes provision for temporary possession and use of land for the purposes of Phase 2a works.

### Schedule 15: Temporary possession and use of land

#### Part 1 – Temporary possession for construction of works

161 *Schedule 15* allows the nominated undertaker temporarily to take possession, and make use of, land for Phase 2a purposes. Provision is made for two cases, land which is identified in the table in *Schedule 16* (“the table land”) and other land within the Act limits.

#### Right to enter upon and take possession of land

162 *Paragraphs 1(1) and 2(2) to (4)* deal with the table land. The table in *Schedule 16* 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 2a purposes.

163 *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)* in relation to the land is restricted to the acquisition of rights imposition of restrictive covenants, relating to the land (that is, the land specified in the table in *Schedule 8*) or the acquisition of subsoil or under-surface (that is, the land

specified in the table in *Schedule 11*).

164 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.

#### Exceptions

165 *Paragraph 2(2) to (4)* provide 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 or the imposition of covenants (in which case the land must also be included in the table in *Schedule 8*), or the acquisition of subsoil or under-surface (in which case the land must also be included in the table in *paragraph 1* of *Schedule 11*).

#### Powers exercisable on land of which temporary possession has been taken

166 *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.

#### Procedure and compensation

167 *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 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.

168 *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).

169 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**

### Right to enter upon and take possession of land

170 *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.

171 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 the imposition of restrictive covenants (*sub-paragraph 2*).



## Procedure and compensation

172 *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**

### Suspension of rights relating to land

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

174 *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.

### Enforcement

175 *Paragraph 10* makes provision for the enforcement of any possession required under *Schedule 12*, 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.

## Schedule 16: temporary possession and use of land: table of land

176 The table in this Schedule identifies the land referred to in *paragraph 1(1) of Schedule 15* of which temporary possession may be taken.

## Clause 14: Use of roads

177 *Subsection (1)* confers on the nominated undertaker a power to use any roads on the land specified in the table in *Schedule 7* for the passage of persons or vehicles for the purposes of Phase 2a of High Speed 2. Under *subsections (2) and (3)* at least 7 days' notice must normally be given before the first use of a road under this power. Under *subsection (4)* this power ends 5 years after Phase 2a of High Speed 2 is brought into general use. Under *subsections (5) and (6)* 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 15: Enforcement of restrictions on land use

178 *Clause 15* 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.

179 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 16: Compensation for injurious affection

180 *Clause 16* 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.

## Planning

### Clause 17: Deemed planning permission

181 *Subsections (1) and (3)* 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 17*. The conditions are enforceable by the relevant planning authority.

182 *Subsection (2)* 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.

183 *Subsection (4)* classifies this planning permission as “specific planning permission” for the purposes of treating the land used by Phase 2a as operational land of a statutory undertaker. *Subsection (5)* ensures that, where works are carried out by the nominated undertaker, the conditions in *Schedule 14* take precedence over any permitted development rights under the normal planning regime.

### Schedule 17: Conditions of deemed planning permission

#### Part 1 – Conditions

184 *Schedule 17* sets out conditions which apply to the planning permission granted by *clause 17(1)*.

##### Conditions relating to building works

185 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 re-sited within its permitted limits. Qualifying authorities may in addition refuse approval or apply conditions on road and heritage grounds. Under *paragraph 2(7)*, conditions may only be imposed by the authority on approval on a ground referred to in sub-paragraph (5) or (6).



### Conditions relating to other construction works

186 Where the relevant planning authority is a qualifying authority (see Part 2 of *Schedule 17*, and the commentary below relating to that Part), *paragraph 3* requires similar approvals in relation to other construction works which are part of Phase 2a, 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.

### Conditions relating to matters ancillary to development

187 *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 may only be imposed by the authority on approval for the purposes specified in the table in sub-paragraph (6) in relation to the work in question.

188 *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).

### Conditions relating to road transport

189 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 which are used under the planning permission conferred by the Bill. *Paragraph 6(3)*, (4) and (8) provide that this applies only to the part of the route between the site and the nearest special road or trunk road and on days on which there are 24 or more large goods vehicle movements in a day. The paragraph also sets out the grounds on which approval can be refused or conditions applied. Under *paragraph 6(7)*, conditions require the agreement of the nominated undertaker.

### Conditions relating to waste and spoil disposal and evacuation

190 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) sets out the grounds on which approval can be refused or conditions applied. Under *paragraph 7(10)*, conditions require the agreement of the nominated undertaker.

191 *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.

### Conditions on bringing scheduled works and depots into use

192 *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 approval of the 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.

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

#### Condition relating to discontinuation of ancillary operations

194 *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.

#### Conditions relating to site restoration

195 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.

196 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.

197 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**

### Specification of qualifying authorities

198 *Paragraph 13* requires the Secretary of State, by means of regulations, to name “qualifying authorities” for the purposes of *Schedule 17*. 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.

199 *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.

### Transition

200 *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).

## **Part 3 – Approvals: supplementary**

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

### Requests for planning approval

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

203 *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 2a scheme. This does not apply to a request for approval of additional details.

#### Fees for requests for approval

204 *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.

#### Consultation on requests for approval

205 *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 Historic England, as appropriate, before giving an approval.

#### Directions restricting powers of approval and compulsory reference of requests for approval

206 *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.

#### Non-material changes to approvals

207 *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.

#### Appeals

208 *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.

209 An appeal is determined by an appointed person unless the Secretaries of State direct that they should decide it. An appeal is decided by written representations unless the person deciding it thinks a hearing is required.

210 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.

#### Guidance by Secretary of State

211 *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

### Regulations

212 *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.

### Clause 18: Time limit on deemed planning permission

213 *Subsection (1)* provides that, for scheduled works, the deemed planning permission granted by *clause 17(1)* applies only to works begun no later than ten years after Royal Assent to this Bill.

214 *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 out the time limit for “normal” planning permissions.

### Clause 19: Power to disapply deemed planning permission

215 *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 17(1)* in respect of development consisting of operations for the maintenance or alteration of the Phase 2a works, from the date specified in the statutory instrument.

216 *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) (England) Order 2015 applying to development authorised by a local Act.

### Clause 20: Development consent

217 *Clause 20* 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.

## Deregulation

### Clause 21: Listed buildings and Ancient Monuments

218 *Clause 21* introduces *Schedule 18*, which disapplies and modifies various controls relating to listed buildings and *Schedule 19*, which disapplies and modifies various controls relating to ancient monuments.

### Schedule 18: Listed buildings

219 *Schedule 18* 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 2a works.

#### Buildings authorised to be demolished, altered or extended

220 *Paragraph 1(2)* disapplies some of this legislation, and in particular the requirement for listed building consent, from the Phase 2a works in respect of the listed buildings set out in table 1, or which are listed before 12 June 2017.

221 *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.

#### Buildings in respect of which noise mitigation works are authorised

222 *Paragraph 2* also disapplies some of this legislation, and in particular the requirement for listed building consent, in respect of listed buildings set out in table 2, but only in respect of works for noise mitigation purposes (as defined in paragraph 9(2)).

#### Damage to buildings

223 *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.

#### Power to disapply provision made by paragraphs 1 to 3

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

#### Heritage partnership agreements

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

#### Inspection and observation of works

226 *Paragraph 6* provides for anyone authorised by Historic England to enter land on which a listed building is situated which is affected by certain Phase 2a works, to inspect those works. Under *paragraph 6(3)*, these rights are not to be exercised if the nominated undertaker considers that it is not safe to do so. *Paragraph 6(4)* 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.

#### Recording of buildings

227 *Paragraph 7* requires the nominated undertaker to give notice to Historic England 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)*.

228 *Paragraph 8* provides that where notice has been given under *paragraph 8* anyone authorised by Historic England may enter the building concerned to do the recording during the notice period.

229 *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 19: Ancient monuments

230 *Schedule 19* concerns how legislation in respect of ancient monuments applies to Phase 2a works.

#### Disapplication of controls

231 *Paragraph 1* modifies the application of the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act") in respect of Phase 2a works.

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

233 *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.

234 *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 of the Bill.

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

236 *Paragraph 1(6)* disapplies regulations under section 19(3) or (4A) of the 1979 Act in relation to Phase 2a works, so removing restrictions on things which may injure or disfigure the monument in question for Phase 2a. *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.

237 *Paragraph 1(8)* prevents superintendence under section 25 of the 1979 Act of the carrying out of any of the Phase 2a works, and provides that English Heritage may not charge for advice in relation to the undertaking of these works.

238 *Paragraph 1(9) to (13)* disapplies 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 works authorised by this Bill.

239 *Paragraph 2* modifies the application of the National Heritage Act 1983 to the Phase 2a 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 2a 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.

#### Power to disapply provision made by paragraphs 1 and 2

240 *Paragraph 3* allows the Secretary of State, once the initial construction phase is over, by regulations 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.

#### Inspection and observation of works etc.

241 *Paragraph 4* provides for anyone authorised by Historic England to enter land at any reasonable time on which a scheduled monument is situated to inspect, observe or advise on the Phase 2a 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 requirements.

## Clause 22: Burial grounds

242 *Subsection (1)* disapplies existing ecclesiastical and other law concerning burial grounds in the case of the construction works for Phase 2a purposes.

243 *Subsection (2)* provides that where the use of land for those works involves 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 20* which regulates the way in which such remains and monuments are to be dealt with.

244 *Subsection (3)* provides a definition of “monument” for the purposes of *clause 22* and *Schedule 20* to include a tombstone or other memorial to the deceased. This includes a monument to one or more deceased persons.

## Schedule 20: Burial grounds

245 *Schedule 20* provides a regime for the removal of human remains and related monuments.

### Notice of removal of remains or monument

246 *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, as per *paragraph 2(1)*, 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*.

### Removal or remains under licence

247 *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.

### Removal of remains by nominated undertaker

248 *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.

249 *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.

### Removal of monuments

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

251 *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.

#### Records

252 *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.

#### Discharge of functions by nominated undertaker

253 *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.

254 *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.

### Clause 23: Consecrated land

255 *Clause 23* provides that no law, either ecclesiastical or otherwise, applying to consecrated ground is to restrict the works for Phase 2a of High Speed 2. This provision does not apply to burial grounds, because burial grounds are covered by *clause 23* and *Schedule 20*.

### Clause 24: Commons and open spaces

256 *Clause 24* 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 2a 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 2a purposes which would otherwise be in breach of such enactments.

### Clause 25: Trees

257 *Clause 25* 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 2a of High Speed 2 and also works to trees growing on any other land used for Phase 2a purposes which are necessary for the maintenance or operation of Phase 2a of HS2 or for safety



reasons.

## Clause 26: Overhead lines

258 *Clause 26* relates to the installation and diversion of overhead lines. As a number of overhead lines will require to be diverted for Phase 2a 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)*, *subsection (1)* is treated as applying where the work concerned is done by the electricity undertaker if it would be work authorised by the Bill and would have deemed planning permission when carried out by the nominated undertaker.

259 Where overhead line work is needed for Phase 2a 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 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.

260 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 2a works, even if done by the electricity undertaker.

## Clause 27: Water

261 *Clause 27* introduces *Schedule 21* which provides for the disapplication of certain legislation relating to water.

## Schedule 21: Water

262 *Schedule 21* 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.

### Water abstraction and impounding

263 *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 abstraction or impoundment of water.

264 *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.

265 *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.

### No environmental permit required for operating regulated facility etc.

266 *Paragraph 4* disapplies the requirement for an environmental permit for flood risk activities, water discharges or groundwater activities carried out in the exercise of the powers of this Bill.

### Floods

267 *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.

### Drainage

268 *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.

### Eels

269 *Paragraph 7* 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.

## Clause 28: Buildings

270 *Subsection (1)* introduces *Schedule 22* which provides for the disapplication or modification of various provisions of the Building Act 1984 and building regulations.

271 *Subsection (2)* introduces *Schedule 23* which provides for the disapplication or modification of the Party Wall etc. Act 1996.

## Schedule 22: Buildings

272 *Schedule 22* 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 2a 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.

### Building regulations

273 *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 2a purposes. The 1984 Act provides an exemption from Part 1 and building 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 2a 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.

### Drain repairs

274 *Paragraph 2* exempts works to drains carried out for Phase 2a 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 2a of High Speed 2 to be constructed, the exemption in *paragraph 2* is needed.

### Drain disconnections

275 *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 2a 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.

### Raising of chimneys

276 *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 2a purposes, the adjoining owner cannot insist on carrying out the works if that would require entry onto relevant Phase 2a 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 2a land, the works must be carried out by the nominated undertaker.

### Construction of cellars and rooms below subsoil water level

277 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 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 2a purposes.

### Schedule 23: Party walls etc.

278 *Schedule 23* disapplies or modifies various provisions of the Party Wall etc. Act 1996 (“the 1996 Act”) as respects Phase 2a works.

279 *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.

280 *Paragraph 3* ensures that an adjoining landowner does not acquire any rights over Phase 2a works under the 1996 Act.

281 *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 2a works or the maintenance of such works within five years of Phase 2a 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.

282 *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 2a purposes.

283 *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 2a purposes or is on land held by the Secretary of State or the nominated undertaker for Phase 2a 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.

284 *Paragraph 7* makes provision for the determination of disputes under the 1996 Act which relate to a work required for Phase 2a purposes, or to a building or structure on land held by the Secretary of

State or the nominated undertaker for Phase 2a 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, by the President of the Institution of Civil Engineers.

285 *Paragraph 8* provides for modifications in relation to sections 13 and 14 of the 1996 Act to have effect regarding works to which a notice under section 6(5) of that Act are carried out by an adjoining owner.

## Clause 29: Street Works

286 *Clause 29* introduces *Schedule 24* which disapplies various controls relating to works in or near streets and highways.

## Schedule 24: Street works

287 *Schedule 24* disapplies as respects works for Phase 2a 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 or a strategic highways company is the highway or the street authority unless the Secretary of State or the strategic highways company consents.

### Works in or near highways

288 *Paragraph 1* disapplies sections 141, 167 and 169(1) of the Highways Act 1980 as regards the planting of trees or shrubs, placing a retaining wall near a highway or the erection of scaffolding, for the purposes of or in connection with the exercise of powers conferred by this Bill.

### Street works

289 *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 2a of High Speed 2.

290 *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.

291 *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.

292 *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.

293 *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.

294 *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.

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

296 *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.

297 *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.

298 *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.

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

#### Permit schemes

300 *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 2a of High Speed 2. This disapplication does not apply to streets for which the Secretary of State or a strategic highways company is the highway authority unless the Secretary of State or the strategic highways company consents, which may be given subject to conditions.

### Clause 30: Lorries

301 *Clause 30* introduces *Schedule 25*, which contains provisions relating to the use of heavy commercial vehicles.

### Schedule 25: Lorries

302 *Schedule 25* modifies the application of lorry ban orders (as defined in the Schedule) in respect of works for Phase 2a of HS2. The provisions of the Schedule apply to the any other order made at any time under section 1 of the Road Traffic Regulation Act 1984 which imposes restrictions on the use of roads by heavy commercial vehicles.

#### Lorry ban orders and required provision in lorry ban orders

303 *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.

#### Issue of emergency permits

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

#### Grant of applications for permit

305 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.



## Clause 31: Noise

306 *Clause 31* introduces *Schedule 26*, which contains provisions regarding noise arising from the construction of authorised works.

### Schedule 26: Noise

#### Control of noise on constructions sites

307 *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.

308 *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 the negative resolution procedure.

#### Defences to proceedings relating to statutory nuisance

309 *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 use of the works authorised by the Bill or the operation of Phase 2a and cannot reasonably be avoided.

310 *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 in connection with the carrying out of works authorised by the Bill, is a consequence of the construction, maintenance or use of the works authorised by the Bill or the operation of Phase 2a 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).

## Clause 32: Local Acts

311 *Clause 32* introduces *Schedule 27*, which contains provisions to disapply various controls imposed by local Acts relating to Staffordshire and Cheshire.

### Schedule 27: Local Acts

312 *Schedule 27* disapplies and modifies a number of provisions in local Acts where these would impede the exercise of the powers sought for Phase 2a of High Speed 2.

#### Cheshire County Council Act 1968

313 *Paragraph 1* disapplies section 12 of the Cheshire County Council Act 1968. Section 12 gives power to a relevant local authority to make an order prohibiting the use during prescribed hours of an estate road or any land within the curtilage of a private dwelling in a street in their district as a parking place for heavy commercial vehicles. It would be inappropriate for this power to be used to override the powers conferred by the Bill.

#### Cheshire County Council Act 1980

314 *Paragraph 2* disapplies certain provisions of the Cheshire County Council Act 1980 ("the 1980 Act") in relation to Phase 2a of High Speed 2.

315 *Paragraph 2(1)* disapplies section 12 of the 1980 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 2(1)* provides a similar exemption for Phase 2a of High Speed 2.

316 *Paragraph 2(2)* disapplies Part 8 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 works of construction or maintenance of Network Rail's railway which would not apply in relation to Phase 2a of High Speed 2. In the case of Phase 2a of High Speed 2 it is intended that fire prevention on work sites will be dealt with under the Code of Construction Practice and the Environmental Minimum Requirements. The draft Code of Construction Practice has been published as part of the *High Speed Two Phase 2a: West Midlands to Crewe Working Draft Environmental Impact Assessment Report*. The Draft Code of Construction Practice sets out measures and standards to provide effective planning, management and control of potential impacts on individuals, communities and the environment during construction of Phase 2a of HS2. On the Bill gaining Royal Assent, the draft document will become the Code of Construction Practice. The Environmental Minimum Requirements will ensure that the environmental effects of the Proposed Scheme do not exceed those assessed in the formal EIA Report. The Environmental Minimal Requirements would sit alongside the statutory environmental controls included in the hybrid Bill.

317 *Paragraph 2(3)* disapplies section 48 of the 1980 Act which requires a relevant local authority to reject plans deposited under building regulations relating to underground car parks or parking spaces for more than 20 vehicles within a building unless specified fire safety conditions are met. Fire safety aspects relating to Phase 2a of High Speed 2 are to be dealt with in accordance with the applicable rail industry standards.

318 *Paragraph 2(4)* disapplies section 50 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 2a of High Speed 2 are to be dealt with in accordance with the applicable rail industry standards.

319 *Paragraph 2(5)* disapplies section 57 of the 1980 Act which enables the fire authority to require the occupier of a building to affix a prescribed sign on any part of the building used for the manufacture or storage of substances likely to involve special hazards to persons carrying out fire prevention. Fire safety aspects relating to Phase 2a of High Speed 2 are to be dealt with in accordance with the applicable rail industry standards.

#### Staffordshire Act 1983

320 *Paragraph 3* disapplies certain provisions of the Staffordshire Act 1983 ("the 1983 Act"), in relation to Phase 2a of High Speed 2, which would otherwise apply in certain areas in Staffordshire.

321 *Paragraph 3(1)* disapplies section 7 of the 1983 Act which is in similar terms to section 12 to the 1980 Act described above.

322 *Paragraph 3(2)* modifies section 9 of the 1983 Act which enables a relevant local authority to set apart an area of a park, pleasure ground or open space for use as a car park. This is subject to a requirement that the authority consults Network Rail where the proposed area is situated within 15 metres from a railway of Network Rail. Paragraph 3(2) provides a similar requirement for the authority to consult the nominated undertaker where the proposed area is within 15 metres of a railway forming part of Phase 2a of High Speed 2.

323 *Paragraph 3(3)* 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 other undertakers. These exemptions would not cover the use of vehicles for the maintenance of Phase 2a of High Speed 2 and the disapplication is therefore needed.

324 *Paragraphs 3(4)* disappplies section 12 of the 1983 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 Phase 2a of HS2 will be dealt with under the Code of Construction Practice and the Environmental Minimum Requirements.

325 *Paragraph 3(5)* disappplies section 16 of the 1983 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

326 *Paragraph 3(6) to (8)* disappplies sections 25 and 26 and Part 7 of the 1983 Act which are in similar terms, respectively, to sections 48 and 50 and Part 8 of the 1980 Act described above.

327 *Paragraph 3(9)* modifies section 40(1) of the 1983 Act which enables the local authority to stop up wholly or partially any highway in Stoke-on-Trent which in their opinion is unnecessary. This is subject to a requirement that the authority must give notice to certain bodies who may object to the stopping up. *Paragraph 3(9)* requires the authority also to give notice to the nominated undertaker.

### Clause 33 Community Infrastructure Levy

328 *Clause 34* provides that liability to the Community Infrastructure Levy under Part 11 of the Planning Act 2008 does not apply or arise in relation to any development authorised by this Act.

## Railway Matters

### Clause 34: Objectives of Office of Rail and Road

329 The Railways Act 1993 imposes on the Office of Rail and Road (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 2a 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. The duty will sit alongside the ORR's existing duties and is not intended to override its existing duties.

330 *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 35: Disapplication of licensing requirement in pre-operational phase

331 *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.

332 *Subsection (3)* 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 36: Disapplication of statutory closure provisions

333 *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 2a of High Speed 2. The disappplied 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 2a is ready for commercial use.

### Clause 37: Other railway legislation etc.

334 *Clause 37* introduces *Schedule 28*, which provides for the ways in which other railway legislation applies to Phase 2a of High Speed 2.

### Schedule 28: Application of other railway legislation etc.

335 *Schedule 28* contains a number of provisions which relate to how other legislation pertaining to railways applies to Phase 2a.

#### Highway (Railway Crossings) Act 1839

336 *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.

#### Railway Regulation Act 1840

337 *Paragraph 2* modifies section 16 of the Railway Regulation Act 1840 as it relates to Phase 2a or trains that travel wholly or partly on Phase 2a, 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.

#### Railway Regulation Act 1842

338 *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

#### Railway Clauses Consolidation Act 1845

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

#### Regulation of Railways Act 1889

340 *Paragraph 5* modifies section 5 of the Regulation of Railways Act 1889 as it relates to Phase 2a or trains that travel wholly or partly on Phase 2a, 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).

#### British Transport Commission Act 1949

341 *Paragraph 6* 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.

### Clause 38: Co-operation

342 The nominated undertaker which builds and operates Phase 2a 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.

343 *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 29*, which contains further details on the provisions for such arbitration.

344 *Subsection (5)* defines what is a Phase 2a asset or facility for these purposes.

345 *Subsection (6)* provides that subsections (1) and (2) do not apply in relation to matters or agreements which are within the remit of the Office of Rail and Road.

## Schedule 29: Arbitration between railway operators

346 *Schedule 29* 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.

### Directions as to results to be achieved

347 *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 2a of High Speed 2.

348 *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.

349 *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.

350 *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 State, as far as is reasonably possible.

### Directions as to consolidation and grouping of proceedings

351 *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.

352 *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.

353 *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.

## Clause 39: Transfer of functions relating to works

354 *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 2a 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.

# Traffic

## Clause 40: Traffic

355 *Clause 40* introduces *Schedule 30*, which contains provisions relating to traffic regulation.

## Schedule 30: Traffic Regulation

356 *Schedule 30* makes provision relating to traffic regulation.

### Traffic authority to consult Secretary of State before making traffic regulation order

357 *Paragraph 1* requires a traffic authority which is proposing to make an order under section 1,9 or 14 of the Road Traffic Regulation Act 1984 (a “TRO”) which could affect the construction of the works authorised by the Bill to consult the Secretary of State before making the order. The consultation requirement applies where the order relates to a road which is within the Bill limits or is, or may become, part of a construction traffic route for the authorised works and the authority considers that the provision proposed to be made by the order could significantly interfere with the use of the road for the construction of the authorised works by heavy commercial vehicles.

358 *Paragraph 2* enables the Secretary of State to designate roads or parts of roads in relation to which the consultation requirement under *paragraph 1(2)* is, for the time being, not to apply, for example because the road is not being used for the construction of the authorised works. The Secretary of State can also designate types of TRO in relation to which the consultation requirement is not to apply.

359 *Paragraph 3* provides that the consultation requirement under *paragraph 1* will cease to apply in relation to the whole or part of the area of a traffic authority if the Secretary of State gives notice to the authority that no further works under the Bill are to be constructed in that area or part and that the use of relevant roads in that area or part are no longer required for the construction of the Bill works. The Secretary of State must give such notice if he considers that to be the case.

### Power of Secretary of State to direct traffic authority to make traffic regulation order

360 *Paragraph 4* enables the Secretary of State to direct a traffic authority to make a TRO if it is necessary for the purposes of the timely, efficient and cost-effective construction of the works authorised by the Bill and is reasonable in the circumstances.

361 *Paragraphs 5* and *6* make ancillary provision relating to TROs made in pursuance of directions under *paragraph 4*.

### Further powers of Secretary of State (including in relation to variation or revocation of orders)

362 *Paragraph 7* enables the Secretary of State to direct a traffic authority to revoke or vary a TRO made in pursuance of a direction under *paragraph 4*.

363 *Paragraph 8* gives default power to the Secretary of State to make, revoke or vary a TRO where a traffic authority has failed to comply with a direction under *paragraph 4* or *7* requiring the traffic authority to do so.

364 *Paragraph 9* enables the Secretary of State to vary or revoke a TRO made by a traffic authority if he considers that it is necessary for the purposes of the timely, efficient and cost-effective construction of the works authorised by the Bill and is reasonable in the circumstances.

365 *Paragraph 10* makes ancillary provision relating to an order made by the Secretary of State under *paragraph 8* or *9*.

## Power to restrict traffic authority from making or implementing traffic regulation order

366 *Paragraph 11* enables the Secretary of State to direct a traffic authority not to make or bring into operation a TRO (whenever made) if the Secretary of State considers that the TRO could significantly interfere with the use of any road for the construction of the works authorised by the Bill.

## Consultation requirements applicable to Secretary of State

367 *Paragraph 12* requires the Secretary of State to consult a traffic authority before giving the authority a direction under *paragraph 4, 7 or 11* to make, vary or revoke a TRO or not to make a TRO or bring it into force. The Secretary of State must also consult a traffic authority before making an order under *paragraph 8(2) or 9* revoking or varying a TRO made by the authority. The purposes of the consultation are set out in *paragraph 12(2)*.

## Guidance

368 *Paragraph 13* requires the Secretary of State, after consulting the nominated undertaker and affected traffic authorities, to prepare a statement setting out in general terms guidance in connection with the traffic authorities' duty to consult under *paragraph 1(2)* and how the Secretary of State proposes to exercise the powers relating to TROs in *Schedule 22*.

## Removal of vehicles

369 *Paragraph 14* enables a person authorised by the nominated undertaker to remove, or arrange for the removal of, any vehicle which is stationary on a road in contravention of a TRO or on a road which is stopped up under the powers of the Bill. The power can only be exercised if the vehicle, if not removed, is likely to obstruct the carrying out of any of the works authorised by the Bill or is at risk of being damaged by the construction of the works. The vehicle can only be removed to another position on the same road or to another road.

# Nominated Undertaker

## Clause 41: Nominated undertaker

370 *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.

371 *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.

372 *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.

373 *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.

# Statutory Undertakers

## Clause 42: Extension of planning permission for statutory undertakers

374 *Clause 42* introduces *Schedule 31*. This Schedule extends the planning permission available for certain works of statutory undertakers, carried out in consequence of Phase 2a, which have been

environmentally assessed in connection with the Bill.

## Schedule 31: Extension of planning permission for statutory undertakers

### Case where planning permission extended

375 *Schedule 31* 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 2a, where the likely significant effects of their works are covered by Phase 2a 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) (England) Order 2015. (Article 3 (10) would normally remove permitted development rights in relation to a project which is subject to environmental assessment).

### Condition of extended planning permission, controls on proposed development and notices

376 *Paragraph 2* contain provisions enabling the Secretary of State to impose requirements in relation to the extended planning permission provided by this Schedule. 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 to ensure the environmental impacts of the development do not materially differ from those set out in the environmental statement.

377 *Paragraphs 3 and 4* enable the Secretary of State to give notice disapplying the planning permission given by *paragraph 1* in a case where it appears that the proposed development is not covered by the environmental statement or in order to avoid the breach of an undertaking given to the Select Committees of either House of Parliament. Further provisions about the notices given under *paragraphs 2 to 4* are contained in *paragraph 5*.

## Clause 43: Protective provisions

378 *Clause 43* introduces *Schedule 32*, which contains provisions protecting the interests of certain bodies who may be affected by other provisions of the Bill.

## Schedule 32: Protective provisions

379 *Schedule 32* contains provisions setting out the protections to be provided for various bodies with statutory responsibilities likely to be affected by the works.

### Part 1 – Highways and traffic

380 *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 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).

381 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).

382 *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.

383 *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.

384 *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.

385 *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 highways authorities in connection with road diversions required for the works.

386 *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.

387 *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 63*). 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**

388 *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.

389 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.

390 *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.

391 *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 2a 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 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).

392 *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).

393 *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.

394 *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.

395 *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.

396 *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**

397 *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.

398 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 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.

399 The protection conferred by this Part applies to any works authorised by the Bill ("the authorised works").

400 *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).

- 401 *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.
- 402 *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.
- 403 *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.
- 404 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 nature of the works).
- 405 *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.
- 406 *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).
- 407 *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.
- 408 *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 – Land drainage, flood defence, water resources and fisheries**

- 409 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.
- 410 *Paragraph 40* 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.
- 411 *Paragraphs 41 and 43* 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.
- 412 *Paragraph 42* applies obligations under the Environmental Permitting Regulations 2016 to the drainage authority when exercising its functions under *paragraph 41* to approve plans in relation to works affecting groundwater. These obligations relate to avoiding pollution of groundwater.
- 413 *Paragraph 44* 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.
- 414 *Paragraph 45* 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 46* requires the nominated undertaker to make good any impairment to the efficiency of drainage works for flood defences purposes or any other damage.
- 415 Under both *paragraphs 45 and 46* the drainage authority can take remedial action where the nominated undertaker fails to do so.
- 416 *Paragraph 47* requires the nominated undertaker to take all reasonably 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.
- 417 *Paragraphs 48 to 50* 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.
- 418 *Paragraph 51* 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 56*).

## **Part 5 – Canal & River Trust**

- 419 *Paragraph 52* 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 acquired land) and the 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.
- 420 *Paragraph 53* 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 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.
- 421 *Paragraph 54* provides for the Trust to approve plans for 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.
- 422 *Paragraph 55* 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.
- 423 *Paragraphs 56 and 57* 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 under *paragraph 10(5) 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.
- 424 *Paragraph 58* provides protection for access to or along towpaths. If access 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 8(2) or (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.
- 425 *Paragraph 59* 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.
- 426 *Paragraph 60* 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.
- 427 *Paragraph 62* addresses disputes arising under this Part. Matters affecting the amount of compensation payable are referred to arbitration (which would be governed by the provisions of *clause 56*). In any other case, unless the parties agree to arbitration, the dispute is determined by a person 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.

#### Clause 44: Existing agreements

428 *Subsection (1)* provides that the agreements listed in *subsection (2)* apply in relation to the exercise of the powers conferred by the Bill as they apply in relation to the exercise of the powers conferred by the High Speed Rail (London – West Midlands) Act 2017.

429 *Subsection (2)* lists the agreements as the undertaking given on 25 February 2015 by the Secretary of State for Transport to the Commonwealth War Graves Commission; and the undertaking given on 1 April 2015 by the Secretary of State for Transport to the Archbishops' Council of Church House.

## Reinstatement and Environmental Works

#### Clause 45: Compulsory acquisition of land for relocation of an undertaking

430 *Subsection (1)* enables the Secretary of State to acquire land compulsorily to relocate the whole or part of an undertaking (defined by *subsection (4)* 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.

431 Under *subsection (3)* 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. That procedure provides for publication of the proposed order, for affected persons to be given notice and to have the opportunity to make objections and for such objections to be considered at a public inquiry or hearing.

432 *Subsection (4)* 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.

433 *Subsection (5)* applies certain of those provisions to acquisitions by the Secretary of State by agreement, which are made for a purpose falling within *subsection (1)*.

434 *Subsections (6) and (7)* 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 46: Power to carry out reinstatement works

435 *Clause 46* 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.

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

#### Clause 47: Planning permission: works involving reinstatement of undertaking

437 Where the nominated undertaker carries out such reinstatement works, planning permission is granted under *clause 17* and is accordingly subject to the conditions specified in *Schedule 17*. However, under *subsection (4)* the Secretary of 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.

438 By virtue of *subsection (4)*, 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.

439 By virtue of *subsection (6)*, a planning direction under *subsection (3)* 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.

440 *Subsection (7)* requires planning directions under *subsection (4)* to be published and copies distributed to the local planning authority and the owners and occupiers of the land concerned.

441 *Subsection (8)* 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.

442 *Subsection (9)* enables directions to be revoked and varied.

## Clause 48: Enforcement of Environmental Covenants

443 *Clause 48* applies when the Secretary of State and a landowner agree that the landowner is to be subject to obligations regarding works relating to land which have, broadly speaking, the aim of mitigating adverse environmental effects caused by any of the works for Phase 2a of High Speed 2.

444 *Subsection (1)* enables the Secretary of State to enter into an agreement with a land owner whose land contains environmental mitigation measures as a consequence of HS2 to ensure that such mitigation is maintained, upgraded if required, or that such land is not used for purposes that would prohibit the continued effectiveness of mitigation measures. This clause also binds successors in title into any covenant agreed with previous land owners.

445 *Subsection (3)* provides that the Secretary of State or an authorised person may enforce the agreement.

446 *Subsection (6)* stipulates certain details that must be part of any agreement made under *subsection (1)*.

447 *Subsections (9), (10) and (11)* provide that exemplary damages may be awarded by the court in the event of a breach of an agreement under *subsection (1)*.

## Further High Speed Rail Works

### Clause 49: Power to apply Act to further high speed rail works

448 *Clause 49* makes provision to facilitate authorisation of further adjustments or minor extensions of Phase 2a by means of an order under the Transport and Works Act 1992 (“TWA order”).

449 *Subsections (1) to (3)* provide that a TWA order which relates to “a relevant Phase 2a matter” may apply any provision of the Bill, with or without modifications, to anything authorised by the order. A relevant Phase 2a matter is defined by *subsection (2)* and includes works to be carried out for Phase 2a 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 2a 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).

450 *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.

451 *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.

## The Crown

### Clause 50: Application of powers to Crown land

452 *Clause 50* relates to Crown land. With the consent of the relevant Crown authority, *subsection (1)* permits the authorised works to be carried out by the nominated undertaker, and the exercise of a right of entry under *clause 53*, in relation to Crown land. *Subsection (2)* provides, amongst other matters, that this consent can be given subject to conditions.

453 *Subsection (3)* defines ‘Crown land’.

454 *Subsection (4)* indicates who the ‘Crown authority’ is for the purposes of granting consent to the nominated undertaker. This will, in practice, be a Government department, the Crown Estate Commissioners or the Chancellor of the Duchy of Lancaster, dependent on the land in question.

455 *Subsection (5)* provides that, if there is a question about which body is the ‘Crown authority’, the matter is to be decided by the Treasury.

### Clause 51: Highways for which the Secretary of State is highway authority

456 *Clause 51* 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 52: Crown Estate

457 Certain restrictions apply to the disposal of Crown land held by the Crown Estate Commissioners. As with Phase One of HS2, such restrictions might be inconvenient. As a result, *clause 52* contains provisions analogous to those in the High Speed Rail (London – West Midlands) Act 2017 removing the restrictions on disposal of land held by the Commissioners which they consider may be required for Phase 2a purposes.

## Deposited Plans and Sections

### Clause 53: “Deposited plans” and “deposited sections”

458 *Clause 53* defines the meaning of “deposited plans” and “deposited sections” for the purposes of the Bill.

### Clause 54: Correction of deposited plans

459 *Clause 54* 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.

460 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.

461 *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.

462 *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.

## Miscellaneous and General

### Clause 55: Environmental Impact Assessment Regulations: miscellaneous

463 *Clause 55* provides that where a building not forming part of the Phase 2a 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 Bill are properly assessed at the appropriate stage.

### Clause 56: Arbitration

464 *Clause 56* 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).

465 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 and Road (ORR).

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

467 *Subsection (5)* enables the Secretaries of State for Transport and for 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 57: Notices and other documents

468 *Clause 57* relates to the service of notices or other documents on any person where that is required or authorised under the Bill.

469 *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.

470 *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.

471 *Subsection (4)* provides that *subsection (5)* applies where a document is required or authorised to be given to a person for the purposes of the Bill where that person is the owner of an interest in, or occupier of the land and that person's name and address cannot be ascertained after reasonable



inquiry.

472 *Subsection (5)* contains 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 means by which documents can still be served.

473 *Subsection (6)* provides that any notice for the purposes of this Bill is to be in writing.

### Clause 58: Resumption of previous use of land

474 *Clause 58* applies where temporary use of land under in accordance with the deemed planning permission under sections 20(1), 22(6)(a) or 50(5)(a) of the Phase One Act and *clause 17(1)* or *47(3)(a)* of this Bill comes to an end and allows the previous use of the land to be resumed without an application for planning permission.

475 *Subsection (4)* disapplies section 57(2) of the Town and Country Planning Act which makes similar provisions under the normal planning regime but does not work properly in relation to the cessation of use under the provisions within the Phase One Act and this Bill set out above.

## Interpretation

### Clause 59: "Phase 2a purposes"

476 *Clause 59* defines the phrase "Phase 2a 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 2a of High Speed 2; or otherwise in connection with Phase 2a of High Speed 2 or any high speed railway of which Phase 2a forms or is to form part.

### Clause 60: Interpretation

477 *Clause 60* 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.

## Final

### Clause 61: Financial provision

478 *Clause 61* 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.

### Clause 62: Commencement and short title

479 *Clause 62* describes when the Act comes into force, and how it may be cited.

## Commencement

480 The provisions of this Bill will come into force upon Royal Assent (see *clause 62(1)*).

## Financial implications of the Bill

481 It is proposed that Phase 2a of High Speed 2 construction will be funded by central Government. The Spending Review settlement announced on 25 November 2015 provided £3.72bn of capital funding for this Phase of HS2. Since that date there has been a transfer of scope and funding from Phase 2a to Phase 2b in relation to the construction of a longer tunnel under Crewe. The funding for Phase 2a is now £3.48bn.

482 The settlement announced set out an updated funding envelope for delivering the HS2 project in 2015 prices of £55.7bn. The funding envelope has been increased to reflect inflation over the past 4 years. The envelope was previously £50.1bn in 2011 prices (as set out in the 2013 Spending Review).

## Parliamentary approval for financial costs or for charges imposed

483 A money resolution is required for the Bill, to cover potential expenditure by the Secretary of State under various provisions of the Bill. A number of provisions contemplate the payment of compensation where the Secretary of State's powers of compulsory acquisition are exercised. The Bill also confers a range of functions on the nominated undertaker (including the power to construct and maintain the main works for the construction of Phase 2a of HS2, and other miscellaneous obligations to pay compensation). Since the Secretary of State is the nominated undertaker until someone else is appointed, the exercise of such functions may involve expenditure by the Secretary of State.

484 The Bill also gives rise to additional functions for the Office of Rail and Road (previously the Office of Rail Regulation). The Office was established by section 15 of the Railways and Transport Safety Act 2003. Paragraph 15 of Schedule 1 to that Act provides for expenditure incurred by the Office in connection with the performance of its functions to be paid out of money provided by Parliament, to the extent that the Office's expenditure is not met by its other income. The exercise of the additional functions conferred on the Office by the Bill may lead to an increase in the Office's expenditure and, as a result, an increase in the payments to the Office out of money provided by Parliament under the 2003 Act.

## Compatibility with the European Convention on Human Rights

485 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 (West Midlands – Crewe) Bill are compatible with the Convention Rights."

486 The High Speed Rail (West Midlands – Crewe) 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 the West Midlands and Crewe (Phase 2a of an intended national high speed network called "HS2").

- 487 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.
- 488 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 2a 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 2a 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 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.
- 489 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).

# Annex A - Territorial extent and application in the United Kingdom

490 While most of the clauses in the Bill will only apply to England which is where Phase 2a of the High Speed Rail network is to be constructed some of the clauses are regarded as having the potential to impact on Wales and Scotland. These clauses are clauses 34 to 39 (railway matters) and clause 49 (further high speed rail works). It is not possible at this juncture to assess whether there will, in fact, be an impact and if there is an impact what level it will.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
<b>Works</b>								
Clauses 1-2	Yes	No	No	No	No	Yes	Yes	No
Clause 3	Yes	No	No	No	Yes	Yes	Yes	No
<b>Compulsory Acquisition of Land</b>								
Clauses 4-9	Yes	No	No	No	Yes	Yes	Yes	No
<b>Extinction and exclusion of rights over land</b>								
Clauses 10-12	Yes	No	No	No	Yes	Yes	Yes	No
<b>Temporary possession of land</b>								
Clauses 13-16	Yes	No	No	No	Yes	Yes	Yes	No
<b>Planning</b>								
Clauses 17-20	Yes	No	No	No	Yes	Yes	Yes	No
<b>Deregulation</b>								
Clauses 21-25	Yes	No	No	No	Yes	Yes	Yes	No
Clauses 26	Yes	No	No	No	No	Yes	Yes	No
Clauses 27-33	Yes	No	No	No	Yes	Yes	Yes	No
<b>Railway Matters</b>								
Clauses 34-39	Yes	Yes	Yes	No	N/A	N/A	N/A	No
<b>Traffic</b>								

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 40	Yes	No	No	No	Yes	Yes	Yes	No
<b>Nominated Undertaker</b>								
Clause 41	Yes	No	No	No	Yes	Yes	Yes	No
<b>Statutory Undertaker</b>								
Clauses 42-44	Yes	No	No	No	Yes	Yes	Yes	No
<b>Re-instatement and environmental works</b>								
Clauses 45-48	Yes	No	No	No	Yes	Yes	Yes	No
<b>Further High Speed Rail works</b>								
Clause 49	Yes	Yes	Yes	No	Yes	Yes	Yes	No
<b>The Crown</b>								
Clauses 50-52	Yes	No	No	No	Yes	Yes	Yes	No
<b>Deposited plans and sections</b>								
Clauses 53-54	Yes	No	No	No	Yes	Yes	Yes	No
<b>Miscellaneous and general</b>								
Clauses 55-58	Yes	No	No	No	Yes	Yes	Yes	No
<b>Interpretation</b>								
Clauses 59-60	Yes	No	No	No	Yes	Yes	Yes	No
<b>Final</b>								
Clauses 61-62	Yes	No	No	No	Yes	Yes	Yes	No
<b>Schedules</b>								
Schedules 1-3	Yes	No	No	No	No	Yes	Yes	No
Schedules 4-5	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 6-13	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 14	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 15-16	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 17	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 18-20	Yes	No	No	No	Yes	Yes	Yes	No
Schedule 21-25	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 26-27	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 28-29	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Schedule 30	Yes	No	No	No	Yes	Yes	Yes	No
Schedules 31-32	Yes	No	No	No	Yes	Yes	Yes	No

*These Explanatory Notes relate to the High Speed Rail (West Midlands – Crewe) Bill as introduced in the House of Commons on 17 July 2017 (Bill 6)*

## Minor or consequential effects<sup>2</sup>

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

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<sup>2</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

# **HIGH SPEED RAIL (WEST MIDLANDS – CREWE) BILL**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the High Speed Rail (West Midlands – Crewe) Bill as introduced in the House of Commons on 17 July 2017 (Bill 6).

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