

HIGH SPEED RAIL (PREPARATION) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the High Speed Rail (Preparation) Bill as brought from the House of Commons on 31st October 2013. They have been prepared by the Department for Transport in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. 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, 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 the 2012 Command Paper the Secretary of State announced a policy of promoting 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. This network would be established in phases.
4. The 2012 Command Paper specified a detailed route for the first phase, linking London and the West Midlands. These new lines will connect with the existing rail network. Subsequently, in January 2013, the Secretary of State presented a Command Paper on the second phase of HS2, setting out initial preferences for the detailed route (*Cm 8508 (High Speed Rail: Investing in Britain's Future - Phase Two: The route to Leeds, Manchester and beyond)*).
5. The 2012 Command Paper announced an intention to introduce a hybrid Bill by the end of 2013. The hybrid Bill will provide the necessary powers to construct and operate the first phase of HS2. The Parliamentary procedure for hybrid bills will provide an opportunity for those affected by the first phase to make representations to Parliament.

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6. In a judgment handed down on 15th March 2013 in the case of *R. (on the application of) Buckinghamshire County Council and others v. Secretary of State for Transport* ('the judicial review'), the High Court rejected nine out of ten grounds of legal challenge to the Government's policies announced in the 2012 Command Paper. The rejected grounds included arguments that the Secretary of State had breached European Union law on environmental assessment and that elements of the proposed railway were irrational. The Court of Appeal refused all grounds of appeal in a judgment given on 24th July 2013. The Supreme Court heard the remaining grounds of appeal at a hearing on 15th and 16th October 2013 and reserved its judgment.
7. The Secretary of State had set out in the 2012 Command Paper the Government's high level policy on compensation for property blight caused by the proposals for HS2. In the judicial review, the High Court quashed the *Review of Property Issues* document published alongside the 2012 Command Paper. In the light of the Court's judgment the Secretary of State is consulting further on matters of compensation policy. The consultation began on 12th September 2013 and will close on 4th December 2013.
8. Some expenditure has been incurred to date in connection with the development of a new high speed rail network (including grant-in-aid to High Speed Two (HS2) Ltd and the acquisition of property blighted by proposals for HS2). The Secretary of State has relied upon section 6 of the Railways Act 2005 and common law powers. However, it is envisaged that significant expenditure will need to be incurred in preparation for HS2. Chapter 2 of HM Treasury's document *Managing Public Money* explains that Ministers must normally seek Parliamentary authority for specific legislation to empower any significant new commitment which seems likely to persist, in advance of securing powers in primary legislation.

SUMMARY

9. The High Speed Rail (Preparation) Bill authorises the Secretary of State to incur expenditure in preparation for a high speed rail network. Thereby the Bill is intended to ensure that the development of the proposed railway may proceed without delay. The Secretary of State's power to incur expenditure will also allow the introduction of long-term schemes for acquisition of property or the provision of compensation to owners of property blighted by HS2. The Bill also imposes a duty on the Secretary of State to prepare an annual report in relation to expenditure incurred under the powers conferred by the Bill.

TERRITORIAL EXTENT AND APPLICATION

10. The Bill extends to England and Wales and to Scotland.
11. The Government proceeds in accordance with a convention that it will not normally ask Parliament to legislate on matters within the legislative competence of the National Assembly

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for Wales without its consent. The Government of Wales Act 2006 provides that the regulation and provision of railways services is not within the legislative competence of the Assembly. While certain types of financial assistance in relation to railway services are excluded from this, and are accordingly within the Assembly's legislative competence, the Bill does not contain provisions that require a legislative consent motion. The Bill authorises expenditure by the United Kingdom Government, rather than by Welsh Ministers.

12. The Scottish Parliament's consent has been sought for the provisions in the Bill that trigger the Sewel Convention. Under the Scotland Act 1998 the provision and regulation of railway services is a reserved matter. However, there is an exception from this reservation for grants relating to railway services, which constitute a devolved matter. Clause 1 makes provision which may relate in part to this matter. This Bill therefore contains provisions that trigger the Sewel Convention. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.

COMMENTARY ON CLAUSES

Clause 1: Preparatory Expenditure

13. Clause 1 provides that the Secretary of State may, with the approval of the Treasury, incur expenditure in preparation for a high speed railway transport network. The network involves the construction of railway lines connecting at least London, Birmingham, the East Midlands, Sheffield, Leeds and Manchester and which connects with the existing railway transport network as well as with such other parts of the transport network (including roads, footpaths, cycleways, airports and light railways) as the Secretary of State considers appropriate. The clause therefore authorises expenditure in preparation for the whole of the network which is proposed in the 2012 Command Paper. It also allows expenditure in preparation for potential future extensions to this network.
14. Clause 1 provides examples of the types of expenditure which may be incurred under the new power. The first example is expenditure on preparation for the construction of a railway line and any other infrastructure proposed to be included in the network. The second example is preparation for the provision of services as part of that network. In both cases expenditure may include expenditure incurred on pre-construction activity (such as surveying and design), in acquiring property and in providing compensation in respect of property likely to be affected.

Clause 2: Financial Reports

15. Clause 2 imposes a duty on the Secretary of State to prepare an annual report on expenditure under the new power conferred by clause 1. Each report must contain details of the expenditure incurred during the relevant financial year (with capital and resource shown separately for each head of expenditure) and the total expenditure incurred. Details must also be provided of any overspend or underspend as against the annual budget and the likely effect

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on the total budget of £50.1 billion set for HS2 in 2011. Each report must also contain an account of the vocational qualifications gained by individuals employed in connection with preparation for, and construction of, the high speed rail network.

16. The Secretary of State must lay each report before Parliament. The purpose of this clause is to ensure that Parliament is informed of all anticipatory expenditure and related matters in advance of the Government's securing powers, under the proposed hybrid bill, to construct and operate the high speed line.

FINANCIAL EFFECTS

17. It is not possible to give a definitive figure for expenditure that will result as a consequence of this Bill. Funding for the development of proposed and potential future high speed rail lines is the subject of discussions between the Department for Transport and HM Treasury alongside wider spending review discussions.

PUBLIC SECTOR MANPOWER

18. No changes in the staff of Government departments and their agencies are expected as a result of this Bill.

IMPACT ASSESSMENT

19. As the Bill is concerned solely with public expenditure, no Impact Assessment has been undertaken.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

20. 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 that Act). The Minister of State has made a statement under section 19(1)(a) of the 1998 Act expressing the view that the provisions of the Bill are compatible with the Convention rights. The reasoning behind this is as follows.
21. Article 8 of the Convention provides that everyone has the right to respect for his private and family life and his home. Article 1 of the First Protocol provides a right to peaceful enjoyment of possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Article 14 of the Convention provides that the enjoyment of the

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Convention rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

22. This Bill does not in itself confer any powers to purchase compulsorily or otherwise obtain a person's home and thereby deprive anyone of his or her possessions. The Secretary of State accepts that proposals for a railway line have the potential to reduce the value of property near the proposed route and to make it harder to sell. Economic loss is capable of constituting a control in use of property.
23. However, case law indicates that, by supporting a major infrastructure project to meet anticipated demands for travel, the Secretary of State may pursue a legitimate aim in the public interest. To the extent that the proposals for a high speed rail line engage Article 1 of the First Protocol, the Government considers that existing or anticipated statutory rights and the possibility of compensation under discretionary schemes (authorised by clause 1 of the Bill) offer proportionate protection for the rights of property owners.
24. Articles 8 and 14 of the Convention and Article 1 of the First Protocol were considered by the European Court of Human Rights in the case of *Allen & Others v. UK* (5591/07 ECHR 2009). Here the applicants challenged the adequacy of compensation proposed for blight to property caused by proposals for airport development at Stansted. The Court rejected the applicants' arguments that Article 8 of the Convention was engaged and found that there was no breach of Article 1 of the First Protocol or Article 14. The Court recognised that the State enjoys a wide margin of appreciation in deciding whether to endorse a particular development in the general interest and, if so, what measures to put in place to ensure respect for the rights of individuals affected by the proposed development.

COMMENCEMENT

25. The Bill will come into force on the day that it is passed.

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