

# High Speed Rail (London - West Midlands) Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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**After Clause 65**

BARONESS PIDDING  
LORD STEVENSON OF BALMACARA

Insert the following new Clause –

**“Office of the HS2 Adjudicator**

- (1) There is to be a body corporate known as the Office of the HS2 Adjudicator hereinafter referred to as “the Adjudicator”.
- (2) Schedule (*Adjudicator: status and funding*) has effect.
- (3) The Adjudicator has the functions conferred on it by or under any enactment.
- (4) Those functions include –
  - (a) enforcement functions,
  - (b) inspection functions, and
  - (c) information functions.
- (5) The main objective of the Adjudicator in performing its functions is to protect the natural environment and communities impacted by the construction and operation of Phase 1 of High Speed 2.
- (6) The Adjudicator is to perform its functions for the general purpose of securing –
  - (a) the minimisation of adverse impacts on communities and the natural environment situated in locations affected by the construction or operation of Phase 1 of HS2; and
  - (b) the provision of additional mitigation measures in the event the environmental impacts of the operation of HS2 are worse than as set out in the environmental statement prepared in accordance with section 67(4).”

Insert the following new Clause –

**“Matters to which the Adjudicator must have regard**

- (1) In performing its functions, the Adjudicator must have regard to –

**After Clause 65 - continued**

- (a) the views expressed by or on behalf of the members of the public or organisations about the environmental impacts of constructing Phase One of HS2;
  - (b) the views expressed by people affected by the construction and operation of Phase One of HS2;
  - (c) the views expressed by local authorities about the impact of constructing and operating Phase One of HS2 in their areas;
  - (d) the need to protect the natural environment and minimise environmental impacts arising from the construction and operation of Phase One of HS2;
  - (e) the need to ensure that any action by the Adjudicator in relation to its areas of responsibility is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed;
  - (f) any developments in approaches to monitoring and mitigating environmental impacts arising from the construction or operation of Phase One of HS2;
  - (g) best practice among persons performing functions comparable to those of the Adjudicator (including the principles under which regulatory action should be transparent, accountable and consistent).
- (2) In performing its functions, the Adjudicator must also have regard to such aspects of government policy as the Secretary of State may direct.”

Insert the following new Clause –

**“Statement on stakeholder involvement**

- (1) The Adjudicator must publish a statement describing how it proposes to –
  - (a) discharge its oversight requirements to ensure environmental outcomes reflect the forecasts set out in the environmental statement referenced in section 67(4);
  - (b) promote engagement and discussion with the nominated undertaker and impacted communities concerning adequate levels of mitigation;
  - (c) ensure that proper regard is had to views expressed by non-government organisations and local authorities concerning the environmental impacts arising from the construction and operation of Phase One of High Speed 2; and
  - (d) arrange for accurate regular reporting of environmental impacts arising from the construction of the scheduled works and operation of Phase One of High Speed 2.
- (2) The Adjudicator may from time to time revise the statement and must publish any revised statement.
- (3) Before publishing the statement (or any revised) statement, the Adjudicator must consult such persons it considers appropriate.”

**After Clause 65 - continued**

Insert the following new Clause –

**“Compliance with requirements**

- (1) The Adjudicator will keep under review compliance by HS2 Ltd, the nominated undertaker and its contractors with the standards detailed in the environmental statement, Environmental Minimum Requirements and the Code of Construction Practice and the assurances and undertakings provided by the Secretary of State on HS2 and Information Papers prepared by HS2 Ltd (collectively the “environmental documents”).
- (2) If it appears to the Adjudicator that any person has failed or is likely to fail to comply with any requirements for which he is responsible set out in the environmental documents relating to the construction or operation of Phase One of High Speed 2 (hereinafter referred to in this section as the “relevant requirements”), the Adjudicator may address to that person an enforcement notice.
- (3) An enforcement notice comes into effect 36 hours after it is published on the website of the Adjudicator.
- (4) The Adjudicator must also transmit an electronic version to HS2 Ltd, any nominated undertaker or contractor to the aforementioned, or local authority that has supplied to the Adjudicator an email address for this purpose.
- (5) An enforcement notice must also be placed on a hard-copy register maintained at such a location as the Adjudicator may determine.
- (6) An enforcement notice is a notice in writing –
  - (a) specifying the matters which appear to the Adjudicator to constitute a failure to comply with the relevant requirements set out in the environmental documents, and
  - (b) prohibiting the recurrence or occurrence of those matters and requiring the person to whom it is addressed to carry out any specified works or take any steps which the Adjudicator considers necessary to ensure compliance with the relevant requirements detailed in the environmental documents.
- (7) Where any person suffers loss or damage as a result of any matter specified in an enforcement notice, whether that loss or damage occurs before or after the service of the enforcement notice, he may recover damages for that loss or damage in a civil court from the person on whom the enforcement notice was served.
- (8) It shall be a defence to any claim under subsection (7) above to prove that the matters alleged to constitute non-compliance have not occurred or that they do not constitute non-compliance with the relevant requirements.
- (9) If any person fails to comply with the requirements of an enforcement notice, he shall be guilty of an offence.
- (10) A person guilty of an offence under this section shall be punishable on summary conviction by a fine not exceeding £20,000, and on conviction on indictment to a fine.

**After Clause 65 - continued**

- (11) It shall be a defence to any criminal proceedings under subsection (9) claim to prove that—
- (a) the matters alleged to constitute non-compliance have not occurred,
  - (b) that they do not constitute non-compliance with the relevant requirements or that any required works or steps were not necessary to achieve compliance with the relevant requirements, or
  - (c) that despite due diligence he was unaware of the provision of the notice.
- (12) Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

Insert the following new Clause—

**“Inspections and studies**

- (1) The Adjudicator may for the purposes of its regulatory functions carry out inspections of—
  - (a) the carrying on of the Scheduled Works, or
  - (b) the operation of any train travelling on Phase One of HS2.
- (2) The Adjudicator may undertake or promote comparative or other studies designed to enable it to make recommendations—
  - (a) for improving sustainability and effectiveness in any activity mentioned in subsection (3), or
  - (b) for improving the management of environmental outcomes arising from the operation of Phase One of HS2.
- (3) Those activities are—
  - (a) the undertaking of construction activity by HS2 Ltd or a nominated undertaker,
  - (b) the making of arrangements by HS2 Ltd or a nominated undertaker for the purpose of environmental mitigation.
- (4) The Adjudicator may also undertake or promote studies designed to enable it to prepare reports as to the impact of—
  - (a) the operation of any particular statutory provisions, or
  - (b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provisions or otherwise), on economy, efficiency and effectiveness in an activity mentioned in subsection (3)(a) or (b).
- (5) The Adjudicator must undertake or promote a study falling within subsection (2) or (4) if the Secretary of State so requests.
- (6) The Adjudicator must publish—
  - (a) any recommendations made by it under subsection (2), and
  - (b) the result of any studies undertaken or promoted under that section.

**After Clause 65 - continued**

- (7) The Secretary of State may, after consulting the Adjudicator, by regulations make provisions as to the procedure to be followed in respect of the making of representatives to the Adjudicator before the publication under subsection (2) of any recommendations or the result of any studies.”

Insert the following new Clause—

**“Power to require documents, information returns etc.**

- (1) The Adjudicator may require any person mentioned in subsection (2) to provide it with any information, documents, records or other items which the Adjudicator considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The persons are—
  - (a) HS2 Limited,
  - (b) a nominated undertaker, and
  - (c) any contractor appointed by HS2 Limited or a nominated undertaker.
- (3) The power in subsection (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.
- (4) The Adjudicator may require a nominated undertaker to make a return to the Adjudicator at such intervals as may be prescribed.
- (5) Provision may be made in such requirements as to the contents of the return and the period in respect of which and date by which it is to be made.”

Insert the following new Clause—

**“Information and advice**

- (1) The Adjudicator must keep the Secretary of State informed about the following matters—
  - (a) the environmental impact of constructing Phase 1 of HS2 and whether such impacts reflect the forecasts detailed in the Environmental Statement;
  - (b) the impact on communities and the natural environment arising from the construction and operation of HS2; and
  - (c) the carrying on of regulated activities.
- (2) The Adjudicator may at any time give the Secretary of State advice on anything connected with those matters.
- (3) When requested to do so by the Secretary of State, the Adjudicator must give the Secretary of State such advice or information in connection with a matter mentioned in subsection (1) as may be specified in the request.”

**After Clause 65 - continued**

Insert the following new Clause—

**“Provision of copies of registers**

- (1) Subject to subsection (3), the Adjudicator must secure that copies of any register kept for the purposes of this Act are available at its offices for inspection at all reasonable times by any person.
- (2) Subject to subsections (3) and (4), any person who asks the Adjudicator for a copy of, or an extract from, a register kept for the purposes of this Chapter is entitled to have one.
- (3) Regulations may provide that subsections (1) and (2) do not apply—
  - (a) in such circumstances as may be prescribed, or
  - (b) to such parts of a register as may be prescribed.
- (4) A fee determined by the Adjudicator is payable for the copy or extract except—
  - (a) in prescribed circumstances, or
  - (b) in any case where the Adjudicator considers it appropriate to provide the copy or extract free of charge.”

**After Schedule 32**

BARONESS PIDDING  
LORD STEVENSON OF BALMACARA

Insert the following new Schedule—

**“ADJUDICATOR: STATUS AND FUNDING**

- 1 The Adjudicator shall be a body corporate.
- 2 (1) Subject to sub-paragraph (3), the Adjudicator shall not be regarded as the servant or agent of the Crown or any enjoying any status immunity or privilege of the Crown.
- (2) The members of the Adjudicator and of their staff shall not be regarded as civil servants and the Adjudicator’s property shall not be regarded as property of, or held on behalf of, the Crown.
- (3) In relation to any matter in respect of which the Adjudicator acts by virtue of a direction under Section 1.3, the Adjudicator shall enjoy the same privileges, immunities and exemptions as those enjoyed in relation to that matter by the Secretary of State for Transport.
- (4) Subject to the provisions of any enactment, the Adjudicator shall not be exempt from any tax, duty, rate, levy or other charge whatever (whether general or local).
- (5) The Adjudicator shall receive such funds from the Secretary of State as he considers that it needs to perform its functions expeditiously and efficiently.

*Membership*

- 3 (1) The Adjudicator shall consist of not fewer than 8 and not more than 17 members.

**After Schedule 32 - continued**

- (2) The members shall be appointed by the Secretary of State, who shall appoint one of them to be chairman and may appoint another of them to be deputy chairman.
- (3) In appointing any member, the Secretary of State shall have regard to the desirability of the members as a whole having knowledge or experience of all the following, namely railway construction and operation, the preservation of cultural heritage, town and country planning, ecology, arboriculture, landscape, and air quality.
- (4) In appointing members, the Secretary of State shall have regard to the desirability of at least one of them having knowledge of local government (as well as knowledge or experience of one or more of the subjects mentioned in sub-paragraph (3)).
- (5) Subject to the following provisions of this paragraph, a chairman, deputy chairman or other member shall hold and vacate office in accordance with the terms of his appointment, but no member shall be appointed for a period of more than 5 years.
- (6) A chairman, deputy chairman or member may resign his office by notice in writing addressed to the Secretary of State.
- (7) If the Secretary of State is satisfied that a member—
  - (a) has been absent from meetings of the Adjudicator for a period longer than 3 consecutive months without the consent of the Adjudicator, or
  - (b) has become bankrupt or has made an arrangement with his creditors, or
  - (c) is incapacitated by physical or mental illness, or
  - (d) is otherwise unable or unfit to discharge the functions of a member,the Secretary of State may remove him from his office.
- (8) If a chairman or deputy chairman ceases to be a member he shall also cease to be chairman or deputy chairman; and if a chairman or deputy chairman ceases to be chairman or deputy chairman he shall also cease to be a member.
- (9) A person who ceases to be a member, otherwise than by virtue of subparagraph (7), or ceases to be chairman or deputy chairman, shall be eligible for re-appointment.

*Staff*

- 4 (1) There shall be a chief officer of the Adjudicator who shall be appointed by the Adjudicator with the approval of the Secretary of State.
- (2) The chief officer shall be responsible to the Adjudicator for the general exercise of the Adjudicator's functions and may, subject to the directions of the Adjudicator, exercise all the powers of the Adjudicator either himself or through nominated staff members.
- (3) The Adjudicator may appoint such other employees as the Adjudicator thinks fit.
- (4) The Adjudicator shall pay to their employees such remuneration and allowances as the Adjudicator may determine.
- (5) The employees shall be appointed on such other terms and conditions as the Adjudicator may determine.

**After Schedule 32 - continued**

- (6) The Adjudicator may pay such pensions, allowances or gratuities as they may determine to or in respect of any of their employees, make such payments as they may determine towards the provision of pensions, allowances or gratuities to or in respect of any of their employees or provide and maintain such schemes as they may determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any of their employees.
- (7) The references in sub-paragraph (6) to pensions, allowances or gratuities to or in respect of any employees include references to pensions, allowances or gratuities by way of compensation to or in respect of employees who suffer loss of office or employment.
- (8) A determination under sub-paragraph (4), (5) or (6) is ineffective unless made with the approval of the Secretary of State given with the Treasury's consent.
- (9) The Adjudicator shall make, not later than such date as the Secretary of State may determine, an offer of employment by the Adjudicator to each person employed in the civil service of the State whose name is notified to the Adjudicator by the Secretary of State for the purposes of this paragraph.
- (10) The terms of the offer shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (11) In determining whether the terms of the offer are more or less favourable to that person than those enjoyed by him on the date of the offer no account shall be taken of the fact that employment with the Adjudicator is not employment in the service of the Crown.
- (12) An offer made in pursuance of this paragraph shall not be revocable during the period of 3 months beginning with the date on which it is made.
- (13) Where a person becomes an employee of the Adjudicator in consequence of this paragraph, then, for the purposes of his period of employment in the civil service of the State shall count as a period of employment by the Adjudicator and the change of employment shall not break the continuity of the period of employment.
- (14) Any dispute arising under this paragraph as to whether or not the terms of any employment offered by the Adjudicator are, taken as a whole, less favourable than those applying to a person's employment in the civil service of the State shall be referred to and determined by an employment tribunal.
- (15) An employment tribunal shall not consider a complaint whereby a dispute mentioned in sub-paragraph (6) is referred to it unless the complaint is presented to the tribunal before the end of the period of 3 months beginning with the date of the offer of employment or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of 3 months.

**After Schedule 32 - continued**

- (16) An appeal shall lie to the Employment Appeal Tribunal on a question of law arising from any decision of, or arising in proceedings before, an employment tribunal under this paragraph; and no appeal shall lie except to the Employment Appeal Tribunal from any decision of an employment tribunal under this paragraph.

*Proceedings*

- 5 Subject to the following provisions of this Schedule, the Adjudicator may regulate their own procedure (including quorum).
- 6 (1) A member of the Adjudicator who is in any way directly or indirectly interested in a contract made or proposed to be made by the Adjudicator or by HS2 Limited or by any nominated undertaker appointed by the Secretary of State, or in any other matter which falls to be considered by the Adjudicator, shall disclose the nature of his interest at a meeting of the Adjudicator.
- (2) The disclosure shall be recorded in the minutes of the meeting.
- (3) A member shall not—
- (a) where a contract in which the member is interested is under consideration, take part in the deliberations on or decision about the contract; and
  - (b) where any other matter in which the member is interested is under consideration, take part in the deliberations on or decision about the matter if the Adjudicator decide that the member's interest might prejudicially affect his consideration of the matter.
- (4) For the purposes of this paragraph, a notice given by a member at a meeting of the Adjudicator to the effect that he is a member of a specified body corporate or firm and is to be regarded as interested in any contract which is made with the body corporate or firm after the date of the notice, and in any other matter concerning the body corporate or firm which falls to be considered after that date, shall be a sufficient disclosure of his interest.
- (5) A member need not attend in person at a meeting of the Adjudicator in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is taken into consideration and read at such a meeting.
- (6) The validity of any proceedings of the Adjudicator shall not be affected by any vacancy among the members, or by any defect in the appointment of any person as a member or chairman or deputy chairman, or by a failure to comply with paragraph 6.

*Committees*

- 7 (1) The Adjudicator shall constitute at least one committee to advise them on ecology and at least one to advise them on compliance by HS2 Ltd with its obligations under the Environmental Statement and at least one to advise them on the efficacy of such compensation schemes which are implemented by HS2 Ltd and the Department for Transport and may constitute other committees to advise them on those or other aspects of their functions.
- (2) The Adjudicator may include as members of committees persons who are not members of the Adjudicator.

**After Schedule 32 - continued**

- (3) The Adjudicator may regulate the proceedings (including quorum) of committees.
- (4) The Adjudicator may pay to the members of any committee such reasonable allowances in respect of expenses or loss of remuneration as the Secretary of State may determine with the Treasury's approval.

*Instruments*

- 8 (1) The fixing of the seal of the Adjudicator shall be authenticated by the signature of the chairman of or some other person authorised either generally or specially by the Adjudicator to act for that purpose.
- (2) A document purporting to be duly executed under the seal of the Adjudicator, or to be signed on the Adjudicator's behalf, shall be received in evidence and, unless the contrary is proved, be deemed to be so executed or signed.

*Members' Remuneration*

- 9 (1) The Adjudicator shall pay to members of the Adjudicator such remuneration and such allowances in respect of expenses as the Secretary of State may determine with the Treasury's approval.
- (2) In the case of any such member or past member of the Adjudicator as the Secretary of State may with the Treasury's approval determine, the Adjudicator shall pay such pension, allowance or gratuity to or in respect of him, or make such payment towards the provision of such a pension, allowance or gratuity, as the Secretary of State may so determine.
- (3) Where a person ceases to be a member of the Adjudicator, and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may, with the Treasury's approval, direct the Adjudicator to make to that person a payment of such amount as the Secretary of State may determine with the Treasury's approval.

*Accounts*

- 10 (1) The Adjudicator shall keep proper accounts and proper records in relation to them.
- (2) The Adjudicator shall prepare a statement of accounts in respect of each financial year.
- (3) The statement shall give a true and fair view of the state of the Adjudicator's affairs at the end of the financial year and of the Adjudicator's income and expenditure in the financial year.
- (4) The statement shall –
  - (a) be prepared within such period as the Secretary of State may direct; and
  - (b) comply with any directions given by the Secretary of State with the Treasury's consent as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared.

**After Schedule 32 - continued**

- (5) The accounts in respect of each financial year ending on or before 31st March 2018 (including any statement of accounts in respect of each such financial year prepared under this paragraph) shall be audited by persons appointed in respect of each financial year by the Secretary of State.
- (6) No person shall be appointed auditor under this paragraph unless he is—
  - (a) eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006; or
  - (b) a member of the Chartered Institute of Public Finance and Accountancy; but a firm may be so appointed if each of its members is qualified to be so appointed.
- (7) Where the Adjudicator has prepared a statement of accounts in respect of a financial year ending on or after 31st March 2016, it must, as soon as reasonably practicable after the end of the financial year to which the statement relates, send a copy of the statement to the Comptroller and Auditor General.
- (8) The Comptroller and Auditor General shall examine, certify and report on any statement of accounts sent to him under sub-paragraph (7).
- (9) In this paragraph “financial year” means the period commencing with the day of the Adjudicator’s establishment and ending with the second 31 March following that day, and each successive period of 12 months.

*Information*

- 11 (1) The Adjudicator shall make to the Secretary of State, as soon as may be practicable after the end of each financial year, a report on the exercise of their functions since the last report was made or (in the case of the first) since the Adjudicator’s establishment.
- (2) Each report shall include a copy of the statement of accounts prepared and audited under paragraph 11 in respect of the financial year and, where the statement has been audited by the Comptroller and Auditor General, a copy of his report on it.
- (3) Each report of the Adjudicator shall include a statement of action taken by the Adjudicator concerning—
  - (a) The compliance by HS2 Ltd with the commitments made in the Phase 1 Environmental Statement,
  - (b) The adequacy of the mitigation measures undertaken by HS2 Limited and any Nominated Undertaker concerning construction of the line,
  - (c) Recommendations concerning any additional mitigation measures required to ensure adequate environmental mitigation,
  - (d) The assessment of reasonable practicability undertaken by the nominated undertaker,
  - (e) The Secretary of State shall lay a copy of each report of the Adjudicator before each House of Parliament,

**After Schedule 32 - continued**

- (f) As soon as may be after receiving any report made by the auditors on any accounts audited under paragraph 12 or, as the case may be, made by the Comptroller and Auditor General on any statement of accounts prepared under that paragraph, the Adjudicator shall send a copy of the report to the Secretary of State,
- (g) The Adjudicator shall furnish the Secretary of State with such information relating to their property and the discharge and proposed discharge of their functions as he may require, and for that purpose they shall permit any person authorised by him to inspect and make copies of any accounts or other documents of the Adjudicator and shall give such explanation of them as that person or the Secretary of State may require and
- (h) In this paragraph “financial year” has the same meaning as in paragraph 10.

*House of Commons disqualification*

- 12 (1) In Part III of Schedule 1 to the House of Commons Disqualification Act 1975 (disqualifying offices), there shall be inserted at the appropriate place in alphabetical order –
- (a) “Any member, in receipt of remuneration, of the Adjudicator.””

# High Speed Rail (London - West Midlands) Bill

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AMENDMENTS  
TO BE MOVED  
IN GRAND COMMITTEE

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*30 December 2016*

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