

High Speed Rail (West Midlands – Crewe Bill)

Memorandum by the Department for Transport to the Delegated Powers and Regulatory Reform Committee

Introduction

1. This Memorandum identifies provisions for delegated legislation and other powers in the High Speed Rail (West Midlands – Crewe) Bill. It describes the Bill in outline and deals in detail with the delegated powers it confers.
2. The Bill authorises, or in some cases confers powers to authorise, the works required to construct the second phase (referred to as “Phase 2a”) of a new national high speed rail network called “High Speed 2”. Phase 2a will involve the construction of a high speed rail line between the West Midlands (at Fradley) and Crewe. The route is mostly rural, with no terminals or intermediate stations, but will have one Infrastructure Maintenance Depot at to the west of the existing Basford Hall freight yard, south of Crewe. The new line will connect with the Phase One route near Fradley Wood in Staffordshire and the existing conventional railway network at the West Coast Main Line near Crewe in Cheshire. The Bill contains all of the necessary powers to build, and operate the line.
3. The Bill is a hybrid Bill because it contains provisions which affect the interests of particular individuals, as well as containing provisions of a more general public nature. It is a public Bill promoted by the Government which is treated like a Private Bill for part of its passage through Parliament, in addition to being scrutinised in the same way as any other public Bill.

4. This means that individuals, groups or organisations affected by aspects of the Bill have an opportunity to petition against the Bill and to be heard before a Select Committee in either or both Houses.

Summary of the Bill's provisions

5. This Bill comprises 62 clauses and 32 schedules. The main provisions of the Bill provide for the following:
 - a. The authorisation of work necessary for the construction and maintenance of Phase 2a of High Speed 2 (meaning the route from the West Midlands to Crewe) and all ancillary works.
 - b. Powers to carry out these works, which are conferred upon the "nominated undertaker". The Secretary of State is given the power to nominate that undertaker. In promoting this Bill, the Department is being assisted by High Speed Two (HS2) Limited ("HS2 Ltd"), a company whose only member is the Secretary of State for Transport. The Secretary of State has nominated HS2 Ltd as the nominated undertaker in respect of delivery of Phase One of High Speed 2, the high speed rail line between London and the West Midlands and has not yet taken a decision regarding delivery of Phase 2a.
 - c. The acquisition of land (or airspace or subsoil) necessary for the authorised works to be carried out. The Secretary of State is granted compulsory acquisition powers. The compulsory acquisition powers are intended to expire five years from the date of Royal Assent. The Bill enables the Secretary of State to make an order extending this period, but not by more than five years.
 - d. The acquisition of limited rights in land required for works necessary for the construction of Phase 2a to be carried out. These provisions are included so that, for example, where access

over land or possession of land is needed only temporarily for construction works, the Secretary of State may seek to obtain limited rights over land, rather than having to compulsorily acquire the freehold interest in the land. This would have the effect of reducing the amount of land that needs to be compulsorily acquired for construction works to take place.

e. *Planning* and the granting of planning permission for the authorised works. It also seeks to establish how local planning authorities may have control over local effects.

f. The *deregulation of works* on Phase 2a High Speed 2. This refers to the disapplication of certain provisions of other Acts so that work on Phase 2a of High Speed 2 may take place without further legal constraints after enactment of this Bill. These disapplications are to apply only in relation to works for Phase 2a.

6. The provisions in this Bill and the framework which it is seeking to establish are similar in many respects to those of the High Speed Rail (London – West Midlands) Act 2017 (the Phase One Act), which was based on the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008. These are the most recent hybrid Bills to be introduced for railway projects. However, changes have been made to reflect the specific requirements of Phase 2a of High Speed 2.

Description and analysis of delegated powers

7. This section of the Memorandum describes the powers being conferred by the Bill, explains both their purpose and why the matter is to be left to delegated legislation rather than included in the Bill, and specifies what Parliamentary scrutiny procedure (if any) is provided for each power. It deals with the provisions in the order in which they appear in the Bill.

Clause 3 and Schedule 4 paragraph 15 - Designation of trunk or special roads

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary scrutiny procedure: No Parliamentary procedure

Purpose of the power

8. Clause 3, together with Schedule 4, confer powers on the nominated undertaker to stop up and interfere with highways. Paragraph 15 of the Schedule 4 governs the designation of trunk and special roads, and subparagraph (2) contains an order-making power to enable the Secretary of State to provide that a highway is to become a trunk road or special road (or both) from the date specified in the order or else in an instrument after the making of the order.

Why the matter that is the subject of the power has been left to delegated legislation

9. The purpose of this power is to enable suitable provision to be made if part of a trunk road network or a special road is extended or realigned as a result of Phase 2a. This power is needed because this level of detailed information will not be available before Royal Assent and so the Secretary of State needs this flexibility so that the integrity of the highway network is maintained

Choice of Parliamentary scrutiny procedure

10. As the trunk roads network is within the remit of the Highways Agency, it is not considered that Parliamentary scrutiny is required for any decisions to move aspects of the network.

Clause 9 – Power to extend the period for the exercise of the Compulsory Purchase Powers

Power conferred on: Secretary of State

Power exercisable by: Order

Parliamentary scrutiny procedure: special Parliamentary procedure.

Purpose of the power

11. The Secretary of State is permitted to acquire the land required for Phase 2a by compulsory purchase (clause 4(1)). Clause 9(1) provides that the period for exercising the powers in clause 4(1) will end 5 years after the Bill receives Royal Assent. Clause 9(2) allows the Secretary of State by order to extend this period once, and by not more than 5 additional years, in relation to specified land. Further detail on the right to require the acquisition of land where the time limit has been extended contained in Schedule 13.
12. Similar provisions were contained within the Crossrail Act 2008. These were originally unlimited, in both time and usage, but were amended at the request of the House of Commons Select Committee during the passage of the Phase One Act to be exercisable only once up to a maximum of 5 years. The provisions within this Bill reflect the principle of those amendments.

Why the matter that is the subject of the power has been left to delegated legislation

13. The order making power will allow appropriate flexibility for the Secretary of State in relation to the compulsory acquisition of land needed for the construction of the Phase 2a route. The construction and delivery of the Phase 2a route may be unexpectedly hampered and so delaying the need for land. To avoid taking powers over land sooner than the land is

required, this power allows compulsory purchase powers provided by clause 4(1) to be exercised after the initial 5 year period.

14. The period for the exercise of the compulsory purchase powers may only be extended once by the Secretary of State.

Choice of parliamentary scrutiny procedure

15. The power to extend the 5 year period is exercised by an order which is subject to “special parliamentary procedure”. This procedure was chosen because of the protection it will provide to those affected by the extension of the time limit by which the compulsory purchase power is to be exercised.
16. The special parliamentary procedure was established by the Statutory Orders (Special Procedure) Act 1945 (as amended in 1965). The procedure is particularly relevant in cases such as this where land is subject to compulsory acquisition and where there is a need for the extension of such powers to be subject to a high level of scrutiny.
17. A Minister must lay a special procedure order before Parliament with a certificate stating that the prescribed preliminary proceedings have been complied with. Objectors (such as those whose land is affected) then have 21 days within which to deposit petitions against the order or seeking amendments. The Chairman of Ways and Means and the Chairman of Committees in the House of Lords determine any questions of standing before reporting to both Houses whether any petitions remain against the order. Within 21 days of this report, any Member of either House may move that the order be annulled or that petitions against are not to be referred to a Joint Committee.
18. If the order is annulled, there can be no further proceedings on it although a fresh order may later be introduced. If the order is not annulled and no further petitions against the order, or seeking

amendments to it, remain, the order comes into force. Otherwise, the remaining petitions are referred to a Joint Committee, at which point petitioners are given the opportunity to prove the merits of their case. The Committee may then approve the order, with or without amendments, or decline to approve it.

19. If the order is reported from the Committee without amendment, or with amendments which have been accepted by the Minister, it comes into force. If the order is reported with amendments that are not accepted, or is not approved by the Committee, it may be confirmed by the introduction of a public Bill.
20. Special procedure orders are suitable for use in the type of situation in clause 9 (i.e. the extension of time for the exercise of compulsory purchase powers), as they present an opportunity for affected individuals to make representations and for active scrutiny by Parliament. The Department suggests that the level of scrutiny provided by special parliamentary procedure is therefore appropriate.

Clause 17 (deemed planning permission) and Schedule 17 paragraph 13 – Power to specify qualifying authority

Power conferred on: Secretary of State

Power exercisable by: regulations made by Statutory Instrument

Parliamentary scrutiny procedure: No parliamentary procedure (but negative resolution procedure in certain circumstances)

Purpose of the power

21. Clause 17 makes provision for planning permission to be deemed to be granted under Part 3 of the Town and Country Planning Act 1990 for the purpose of development authorised by this Bill. Clause 17(13) introduces Schedule 17 which provides for the conditions of deemed planning permission. Paragraph 13(1) of Schedule 17 requires the

Secretary of State, by means of regulations, to specify which local authorities will, for the purposes of this Schedule, be considered to be 'qualifying authorities'. It is intended that these 'qualifying authorities' will be local planning authorities which have given the Secretary of State undertakings regarding the handling of requests for approval under the Schedule made by the nominated undertaker. This regulation making power is not subject to any Parliamentary procedure.

22. Paragraph 13(3) and (4) contain further delegated powers regarding the specification of qualifying authorities. Paragraph 13(3) allows the Secretary of State to determine by regulations that a body is no longer to be considered a qualifying authority, while paragraph 13(4) provides that the Secretary of State may determine by regulations that a body *is* to be a qualifying authority for the purposes of this Schedule. These regulation making powers are subject to consultation with the nominated undertaker and the authority in question (paragraph 13(6)). The regulation making powers under paragraph 13(3) and (4) are subject to the negative resolution procedure.
23. These powers may be used if, for example, following the completion of the major works, an authority has requested that its status be changed as it considers that the additional responsibilities (as well as powers) arising from being designated a qualifying authority are no longer cost effective. They may also be exercised if a qualifying authority has persistently failed to comply with its obligations under the undertakings given by it referred to above. These powers were also contained in the legislation for Phase One Act, Crossrail and the Channel Tunnel Rail Link.
24. Paragraph 14 of Schedule 17 allows orders made under paragraph 13 to make transitional provision, say in relation to how outstanding requests for approval under Schedule 17 are to be dealt with. To allow the Secretary of State to give some reassurance to anybody that may be appointed as nominated undertaker, paragraph 14(3) enables the

Secretary of State to fetter his discretion, when entering into a project construction agreement with the nominated undertaker, about how such transitional arrangements would work.

Why the matter that is subject of the power has been left to delegated legislation

25. The regulation making power in relation to paragraph 13(1) is only considered to be a delegated power in the sense that it is an obligation to list those planning authorities which had provided undertakings to the Secretary of State with respect to the handling of planning matters which he considered satisfactory and had not been subsequently released from its undertakings.
26. The regulation making power under paragraph 13(3) and (4) will provide the Secretary of State with additional flexibility to allow changes to the designation of qualifying authorities after the Parliamentary scrutiny process by the Select Committee in the House of Lords had been completed.

Choice of Parliamentary scrutiny procedure

27. The regulations made under paragraph 13(1) are a mechanism of putting of putting matters on the record following Parliamentary scrutiny. In these circumstances the Department considers that no further scrutiny is needed.
28. Regulations made under paragraph 13(3) or (4) would involve a change of designation of a qualifying authority after Parliamentary scrutiny had been completed. Such regulations are therefore subject to the negative resolution procedure so that there is an appropriate degree of Parliamentary scrutiny.

Clause 17 (deemed planning permission) and Schedule 17 Part 3 – Fees relating to requests for planning approvals.

Power conferred on: Secretary of State for Transport and Secretary of State for Communities and Local Government

Power exercisable by: regulations made by Statutory Instrument

Parliamentary scrutiny procedure: negative resolution procedure

Purpose of the power

29. Part 3 of Schedule 17 contains supplementary provisions regarding the approvals process for the planning regime for Phase 2a works. Within this are contained a number of delegated powers which can be exercised by the appropriate Ministers who, for the purposes of this Schedule, are the Secretary of State for Transport and the Secretary of State for Communities and Local Government acting jointly.
30. Paragraph 17 of Schedule 17 enables the appropriate Ministers to make regulations regarding the fees for requests for approval made by the nominated undertaker to a planning authority. Sub-paragraph (2) details what these regulations may provide for. As was the approach with Phase One and Crossrail, it is considered appropriate for the appropriate Ministers to be able to create a bespoke set of regulations regarding fees.
31. Paragraph 22(5) of Schedule 17 enables the appropriate Ministers to make regulations regarding the extension of the appropriate period for appeals in connection with the payment of fees by means of cheque.

Why the matter the subject of the power has been left to delegated legislation

32. The regulation making powers allow the appropriate Ministers the necessary flexibility to provide a fees structure for planning approvals for

Phase 2a. This is necessary because the nature of the requests for approval will differ from those under the normal planning application regime being limited to requests for approval of certain specific operations or works set out in Part 1 of Schedule 17.

33. The regulation making power under paragraph 22(5) of Schedule 17 allow an extension of the appropriate period for appeals for payment by way of cheque so as to allow for flexibility when considering how payments are to be made and to enable a regulatory framework to be put in place which deals with the issue in an appropriate manner.

Choice of Parliamentary scrutiny procedure

34. These regulations are subject to negative resolution procedure, (by virtue of paragraph 27(3) of the Schedule) which is considered to provide the appropriate level of scrutiny for regulations having financial implications for the nominated undertaker and local authorities.

Clause 17 (deemed planning permission) and Schedule 17 paragraph 19 – Directions to restrict a planning authority’s powers in relation to a request for approval under Part 1

Power conferred on: Secretary of State for Transport and Secretary of State for Communities and Local Government

Power exercisable by: Directions not made by Statutory Instrument

Parliamentary scrutiny procedure: Not subject to Parliamentary procedure

Purpose of the power

35. Paragraph 19 of Schedule 17 enables the appropriate Ministers, by direction, to restrict the powers that a local authority has with regard to giving approvals under this Schedule. Such directions may relate to a specific approval or to approvals of a specific description, may be over

a specific period or without a time limit, and may cancel or vary specific requests.

36. This is based on provisions contained within the Phase One Act, which in turn reflects provisions contained within the Crossrail Act 2008. The use of these provisions in practice is generally coupled with the possible exercise of powers by the appropriate Ministers to “call in” a request for approval.

Why the matter that is the subject of the power has been left to delegated legislation

37. The direction making power has been provided to allow the appropriate Ministers the necessary level of flexibility for planning matters occurring after Royal Assent. In any event, the direction making powers are essentially to allow for the administration of the planning approval process and it would not be appropriate for this type of detail to appear on the face of the legislation.

Choice of Parliamentary scrutiny procedure

38. It is not considered necessary for Parliament to have scrutiny over the making of these directions. Under the Bill, the appropriate Ministers have the authority to determine any appeals relating to a request for approval, and as such Parliament will therefore have accepted (if the Bill is enacted in that form) that they have a supervisory role on such matters.

Clause 17 (deemed planning permission) and Schedule 17 paragraph 20 – Compulsory reference of any request for approval to the appropriate Ministers

Power conferred on: Secretary of State for Transport and Secretary of State for Communities and Local Government

Power exercisable by: Directions not made by Statutory Instrument

Purpose of the power

39. Paragraph 20 of Schedule 17 enables the appropriate Ministers to “call in” a request for approval, that is direct that a planning authority is required to refer any request for approval under Part 1 of the Schedule to them. These directions can relate to a specific request or to a specific type of request, and can cancel or vary specific requests.

40. In certain circumstances, it may be considered more appropriate that decisions on planning matters are determined at a ministerial, rather than planning authority, level. In such cases, these powers will be required to provide flexibility to enable the appropriate Ministers to make these decisions. They reflect similar powers contained within the Phase One Act, Crossrail Act 2008 and the Channel Tunnel Rail Link Act 1996.

Why the matter the subject of the power has been left to delegated legislation

41. The direction making power has been provided to allow the appropriate Ministers the necessary level of flexibility for planning matters occurring after Royal Assent. In any event, the direction making powers are essentially to allow for the administration of the planning approval process and it would not be appropriate for this type of detail to appear on the face of the legislation.

Choice of Parliamentary scrutiny procedure

42. No Parliamentary scrutiny is considered necessary for the exercise of these powers. The appropriate Ministers will have been granted powers under the Bill (if it is enacted in its present form) to determine any appeals relating to a request for approval. Therefore, Parliament will have accepted that they are the appropriate authority to make the decisions in these instances.

Clause 17 and Schedule 17 paragraphs 22 to 25 – Powers relating to modification of the appeals procedure

Power conferred on: Secretary of State for Transport and Secretary of State for Communities and Local Government

Power exercisable by: Directions (not made by Statutory Instrument) and regulations (made by Statutory Instrument)

Parliamentary scrutiny procedure: Directions are not subject to Parliamentary scrutiny and regulations are subject to the negative resolution procedure.

43. Paragraphs 22 to 25 of Schedule 17 contain provisions regarding the appeals procedure for planning approvals. The power to decide appeals is vested in the appropriate Ministers. However, under paragraph 23(1), unless otherwise directed, these functions are to be exercised by an appointed person (expected to be from the Planning Inspectorate).
44. This power to direct that the appropriate Ministers themselves should decide an appeal is required as there may be instances where it is necessary for the appropriate Ministers to take the decision after considering the appointed person's report. There is further power in paragraph 23 to revoke a direction or substitute an appointed person.
45. Under paragraph 25(1), appeals are to be decided by written representations unless the person deciding the appeal directs otherwise. This is necessary in order to cover a case where the person determining the appeal thinks an oral hearing is necessary in a particular case.
46. Paragraph 22(1) and (9), and paragraph 25 of Schedule 17 give the appropriate Ministers the power to make regulations to prescribe the form required for a notice of appeal by a nominated undertaker aggrieved by a decision of the local authority on a request for approval under Part 1, and the power to make regulations regarding the procedures for the appeals process for the planning regime respectively. This includes the setting of a time limit for making representations and

enabling the person deciding the appeal to proceed where no representations are received within the specified time.

Why the matter that is the subject of the power has been left to delegated legislation

47. The power to make directions under paragraphs 23 and 25 are principally administrative in nature and depend on the facts of individual cases. It allows flexibility to the appropriate Ministers to make directions as required. Further it is considered that it would be inappropriate for this level of detail to be on the face of the Bill.
48. The regulation making powers set out in paragraphs 22(1) and (9) and 25 allow the appropriate Ministers to have the necessary flexibility to set out the appeal process.

Choice of Parliamentary scrutiny procedure

49. The direction making power is essentially administrative in nature and so it is not considered necessary for there to be any additional Parliamentary scrutiny on the exercise of this power.
50. Regulations under paragraphs 22(1) and (9) and 25 are subject to the negative resolution procedure. This is considered to be the appropriate level of Parliamentary scrutiny for regulations setting out the procedural rules which are to apply to appeals on planning matters under Schedule 14

Clause 18 – Power to extend the time limit of deemed planning permission

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary scrutiny procedure: Negative resolution procedure

Purpose of the power

51. Under clause 17, planning permission is deemed to be given for works authorised by the Bill. Clause 18(1) places a condition on this which is that where the work comprises the construction of a scheduled work it must be begun within 10 years following Royal Assent. Clause 18(2) confers a power on the Secretary of State to extend the period of deemed planning permission in relation to specific development.
52. It is expected that all of the land required for construction will be acquired within a maximum of 10 years after Royal Assent, unless the power in clause 9 is exercised.

Why the matter that is the subject of the power has been left to delegated legislation

53. The regulation making powers allow flexibility to the Secretary of State in relation to the construction and delivery of the Phase 2a of the High Speed 2 project. Phase 2a is part of a large and complex project and particular scheduled works may begin their construction sometime after the land itself has been acquired, the power to extend the period mentioned in clause 19(2) is a contingency in case the timing of particular works becomes delayed.

Choice of Parliamentary scrutiny procedure

54. It is considered appropriate that regulations made using this power should be subject to negative resolution procedure, as this should provide a sufficient level of Parliamentary scrutiny in whatever circumstances may require the making of such regulations at the time.

Clause 19 – Power to disapply deemed planning permission

Power conferred on: Secretary of State

Power exercisable by: regulations made by Statutory Instrument

Parliamentary scrutiny procedure: laid before Parliament after being made

Purpose of the power

55. Under clause 19, the Secretary of State may by regulations disapply the deemed planning permission granted under clause 17 in relation to operations for the maintenance or alteration of works which have been constructed under the Bill and which are specified in the regulations. In essence, this allows the Secretary of State to ‘switch-off’ deemed planning permission granted by the Bill with respect to future maintenance or alteration of the specified works, and instead revert to the normal planning regime applying to works authorised by local Act.

Why the matter the subject of the power has been left to delegated legislation

56. The regulation making power will allow the Secretary of State to have the flexibility to ensure that where works done under the Bill comprise the realignment of a railway belonging to Network Rail to accommodate the new high speed line, once the construction phase is over so that a single planning regime will apply to the Network Rail track.

Choice of Parliamentary scrutiny procedure

57. The exercise of this power would be an act of administrative simplification which would restore the normal planning regime for certain works. The goal of Parliamentary procedure in this instance is transparency rather than scrutiny, and the Department believes that the laying of the regulations before Parliament after they have been made is sufficient for this purpose.

Clause 21(1) and Schedule 18– Power to disapply provisions related to listed buildings

Power conferred on: Secretary of State

Power exercisable by: regulations made by Statutory Instrument

Parliamentary scrutiny procedure: laid before Parliament after being made

58. Clause 21(1) introduces Schedule 18, which lifts the disapplication of the specified legislative provisions with respect to listed buildings from the Phase 2a works. This is to ensure that works may be undertaken expediently.
59. Paragraph 4(1) of Schedule 18 provides that the Secretary of State may, by regulations, reapply certain of these disapplied provisions once the initial construction phase is over (that is, reapply them to subsequent maintenance and alteration works).

Why the matter that is the subject of the power has been left to delegated legislation

60. The regulation making power will allow the Secretary of State to have the flexibility to ensure that where works done under the Bill comprise the realignment of a railway belonging to Network Rail to accommodate the new high speed line, once the construction phase is over a single heritage regime will apply to the Network Rail track. It fulfils a similar purpose to that of clause 19 (power to disapply deemed planning permission) and paragraph 3 of Schedule 19 (ancient monuments).

Choice of Parliamentary scrutiny procedure

61. Regulations made under these provisions would not be subject to any affirmative or negative Parliamentary procedure. This is because the power would only be used to reapply restrictions which would otherwise

have been in place, save for the provisions of this Bill. However, as there is a need for transparency as to how these powers are used, the regulations will be made by statutory instrument and will be laid before Parliament after having been made.

Clause 21(2) and Schedule 19 – Power to disapply provisions related to ancient monuments

Power conferred on: Secretary of State

Power exercisable by: regulations made by Statutory Instrument

Parliamentary scrutiny procedure: laid before Parliament after being made

Purpose of the power

62. Clause 21(2) introduces Schedule 19, which provides for the lifting of the disapplication of the specified legislative provisions in relation to works involving ancient monuments. These are to allow works on Phase 2a of High Speed 2 to progress as necessary, without encountering undue legal obstacles.
63. Paragraph 3 of the Schedule contains provisions which enable the Secretary of State by regulations to reapply certain of these disapplied provisions once the initial construction phase is over (that is, reapply them to subsequent maintenance and alteration works)

Why the matter that is the subject matter of the power left to delegated legislation

64. The regulation making power will allow the Secretary of State to have the flexibility to ensure that where works done under the Bill comprise the realignment of a railway belonging to Network Rail to accommodate the new high speed line, once the construction phase is over a single heritage regime will apply to the Network Rail track. It fulfils a similar

purpose to that of clause 19 (power to disapply deemed planning permission) and paragraph 4 of Schedule 18 (listed buildings).

Choice of Parliamentary scrutiny procedure

65. Regulations made under the power in paragraph 3 are to be made by statutory instrument. As they are only to be used for reapplying certain statutory restrictions, it is not considered necessary for Parliament to exercise any scrutiny over the making of these regulations. However, as there is a need for transparency, these regulations will be laid before Parliament after they have been made.

Clause 22 and Schedule 20, paragraphs 3, 4, 8, 9 and 10 – Power to give directions with respect to the carrying out of burial ground related functions under the Schedule

Power conferred on: secretary of State

Power exercisable by: Direction not made by Statutory Instrument

Parliamentary scrutiny procedure: Not subject to Parliamentary procedure

Purpose of the power

66. Schedule 17 provides a regime for the removal, reinternment or cremation, or in the case of ancient remains the custody, of human remains buried on land used for the purpose of constructing Phase 2a. Provision is also made for the removal, keeping, disposal and recording of monuments on such land.
67. Paragraph 3(4), 4(2), 4(3), 8(2) and 9(2) of the Schedule give the Secretary of State power to make directions to the nominated undertaker to deal with particular cases such as directions as to how remains are to be dealt with pending the settlement of disputes between relatives.
68. Paragraph 10 gives the Secretary of State a general power to give directions with respect to any of the functions under the Schedule.

69. The provisions of this Schedule are identical to the equivalent Schedule (Schedule 20) in the Phase One Act.

Why the matter that is the subject of the power has been left to delegated legislation

70. The arrangements set out in Schedule 20 are detailed and will ensure the appropriate administrative arrangements are made in each particular matter. It is necessary to ensure the Secretary of State has sufficient flexibility to be able to deal with circumstances that may arise in which further detail may be needed. It is therefore thought appropriate that the Secretary of State should be able to give directions in certain specified circumstances as well as having the flexibility of a general power to give directions.

Choice of Parliamentary scrutiny procedure

71. As such directions can only be made in relation to matters of administrative detail it is not considered appropriate that they should be subject to any Parliamentary scrutiny procedure.

Clause 30 and Schedule 25, paragraph 4(2) – Power to grant lorry permits subject to conditions

Power conferred on: Secretary of State

Power exercisable by: Order not made by Statutory Instrument

Parliamentary scrutiny procedure: Not subject to Parliamentary procedure

72. Clause 30 introduces Schedule 25. This Schedule makes provision relating to “lorry ban orders” under the Road Traffic Regulation Act 1984 which prohibit or restrict the use of lorries on certain roads without a permit. The Schedule provides a streamlined process for the granting of permits for the use of lorries in the construction of HS2.

73. Paragraph 4 provides an expedited procedure for cases of urgency, where a lorry is required to undertake a journey after the application for a permit has been made but before it is granted. In such a case the permit is deemed to have been granted subject to conditions specified by the Secretary of State in the order.

Why the matter that is the subject of the power has been left to delegated legislation

74. The order making power is an administrative provision. It is required to ensure that the Secretary of State has sufficient flexibility in urgent cases. This will mean that that lorry journeys may be undertaken immediately following an application for a permit, without needing to wait for approval to be granted, but subject to appropriate conditions specified by the Secretary of State. This will allow any unnecessary delays in the construction stage to be avoided.

Choice of Parliamentary scrutiny procedure

75. As this is an administrative provision to fill a gap while a permit is being obtained under the Schedule, it is not considered necessary for the exercise of the power to be subject to Parliamentary scrutiny.

Clause 31 and Schedule 26 – Power to make provision in relation to appeals about the control of noise on construction sites

Power conferred on: Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport

Power exercisable by Regulations made by Statutory Instrument

Parliamentary scrutiny procedure: Negative resolution procedure

76. Clause 32 introduces Schedule 26, which enables disputes over noise on construction sites under the Control of Pollution Act 1974 to be

determined (amongst other matters) by arbitration. Paragraph 1(2) of Schedule 26 enables the Secretaries of State for Transport and for Environment, Food and Rural Affairs to jointly make regulations about the procedures for such arbitrations.

Why the matter that is the subject of the power has been left to delegated legislation

77. The regulation making power will ensure the Secretaries of State have sufficient flexibility in arbitration matters. The power to make such regulations would be used if it were considered necessary to supplement the ordinary procedures for statutory arbitrations with tailored provision for noise appeals under Part 3 of the Control of Pollution Act 1974, similar to that found in regulations made under section 70(2) and 70(3) of that Act. It would be exercised jointly by the Secretaries of State for Transport and for Environment, Food and Rural Affairs, as the latter has policy responsibility for control of construction noise.

Choice of Parliamentary scrutiny procedure

78. Regulations made under this power are subject to the negative resolution procedure. This is because it is considered that some scrutiny over this power may be required, and that the negative resolution procedure would provide a sufficient level of scrutiny.

Clause 34 – Power to remove the construction of Phase 2a of High Speed 2 from the objectives of the Office of Rail and Road

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary scrutiny procedure: laid before Parliament after being made

79. Clause 34 requires that facilitating the construction of Phase 2a of High Speed 2 is to be treated as included in the list of objectives of the Office

of Rail and Road (“ORR”) governed by section 4(1) of the Railways Act 1993. The regulation making power allows the Secretary of State to remove the objective when it is no longer necessary.

Why the matter that is the subject of the power has been left to delegated legislation

80. Clause 34(3) enables the Secretary of State to disapply this provision by regulations as it will no longer be necessary once the Phase 2a construction has been completed.

Choice of Parliamentary scrutiny procedure

81. As this would be an administrative arrangement, the purpose of the Parliamentary procedure is to provide clarity and transparency on what has been done. To that end, it is considered a sufficient procedure that the order is laid before Parliament after it has been made.

Clause 39 – Power to make transfers relating to works

Power conferred on: Secretary of State

Power exercisable by: Order not made by Statutory Instrument

Parliamentary scrutiny procedure: No Parliamentary procedure

Purpose of the power

82. Clause 39(1) provides that if the Secretary of State acquires land from a railway operator on which there are authorised statutory works, the Secretary of State may by order provide for the transfer of any statutory duty or power to carry out these works to the Secretary of State or to the nominated undertaker. Clause 39(2) provides a power whereby the Secretary of State may by order make a further transfer of any power or duty already transferred under subsection (1). As it may be that the nominated undertaker is in a better position to carry out the works than

the land's original owner, this power is required to ensure that the appropriate powers can be transferred. Clause 39(3) enables this to work in reverse, in such cases as where another body acquires land upon which there had previously been High Speed 2 works.

Why the matter that is the subject of the power has been left to delegated legislation

83. The powers are intended to marry land ownership with statutory duties and powers appropriately. As the question of land ownership during and after the construction of High Speed 2 is not yet settled, these powers are of necessity delegated to provide flexibility.

Choice of Parliamentary scrutiny procedure

84. As these powers only relate to the transfer of already authorised statutory works, and will require third party consent, it is not considered necessary for Parliament to be able to scrutinise their exercise.

Clause 40 (Traffic) and Schedule 30

Power conferred on: Secretary of State

Power exercisable by: order made by Statutory Instrument

Parliamentary scrutiny procedure: No Parliamentary procedure

Purpose of the power

85. This clause introduces Schedule 30 which makes provision regarding traffic regulation. Paragraph 4 of the Schedule provides that the Secretary of State may give a direction to a traffic authority to make a traffic regulation order if the Secretary of State considers that the making of the order is necessary to ensure the timely, efficient and cost effective construction of the works authorised under the Phase 2a Bill and it is reasonable in the circumstances.

86. Paragraph 7(1) provides that the Secretary of State may direct a traffic authority to revoke a traffic regulation order made by an authority pursuant to paragraph 4. Paragraph 7(2) provides that the Secretary of State may direct a traffic authority to vary a traffic regulation order made by an authority pursuant to a direction under paragraph 4 where the variation is necessary to ensure the timely, efficient and cost effective construction of the works authorised under the Phase 2a Bill and it is reasonable in the circumstances.
87. Paragraph 8(1) provides that where a traffic authority has failed to comply with a direction under paragraph 4, the Secretary of State may make the order required by the direction. Paragraph 8(2) provides that where a traffic authority has failed to comply with a direction under paragraph 7, the Secretary of State may by order vary or revoke the traffic regulation order as required by the direction.
88. Paragraph 9(1) provides that the Secretary of State may by order made by statutory instrument vary or revoke a traffic regulation order (whenever made) if the Secretary of State considers the variation or revocation necessary for the timely, efficient and cost effective construction of the works authorised under the Phase 2a Bill and it is reasonable in the circumstances.
89. The provisions in this Schedule are based on the provisions contained in Schedule 9 to the Road Traffic Regulation Act 1984 (“the 1984 Act”) which provide for similar powers for the Secretary of State to direct, make, vary or revoke traffic regulation orders. The provisions relating to the way these traffic regulation orders are to be made will therefore reflect the arrangements set out in the 1984 Act.

Why the matter that is the subject of the power has been left to delegated legislation

90. The provision in this Schedule relate to traffic regulation orders made pursuant to a direction given by the Secretary of State under paragraph 4 where a traffic authority is required to make an order under section 1, 9 or 14 of the 1984 Act. Section 124 of that Act make provision as to certain orders. Section 124(2) provides that any power of the Secretary of State to make an order under the sections cited (which includes sections 1, 9 and 14) shall be exercisable by statutory instrument.
91. This Schedule does not seek to disapply section 124(2) as the Department felt that to do so would cast doubt on whether a resulting order would be a proper traffic regulation order for the purposes of the 1984 Act.
92. Further it is not possible to foresee the circumstances in which the Secretary of State might be required to make such an order. It is necessary to ensure there is sufficient flexibility for an order to be made as necessary.

Choice of Parliamentary scrutiny procedure

93. Section 124(2) of the 1984 Act makes no provision for any Parliamentary scrutiny.

Clause 41 – The ‘nominated undertaker’

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary scrutiny procedure: Regulations under clause 41(1) are not subject to Parliamentary scrutiny; Regulations under clause 41(4) are subject to negative resolution procedure

Purpose of the power

94. Clause 41(1) allows the Secretary of State by regulations to appoint a 'nominated undertaker' for the purposes of such provisions of the Bill (when it becomes an Act) as may be specified. At this stage, the person that is responsible for constructing and operating the railway for Phase 2a is yet to be decided.
95. In circumstances where there is no appointed nominated undertaker, the Secretary of State is deemed to be the nominated undertaker for the purposes of the relevant provision. Clause 41(4) grants the Secretary of State the power to modify any provision of this Bill under which the Secretary of State is exercising the functions of the nominated undertaker. This would enable the Secretary of State to modify the provisions in situations such as where the functions of the nominated undertaker are vested in the Secretary of State but the Secretary of State also has the function of determining disputes between the nominated undertaker and other parties.

Why the matter the subject of the power has been left to delegated legislation

96. The regulation making power will afford flexibility to the Secretary of State in making an appointment by regulations under clause 40(1). This will allow the Secretary of State to make the decision at the appropriate time as to the appropriate person to undertake that particular role.
97. The regulation making power under clause 40(4) will provide the Secretary of State with the necessary flexibility to modify the provisions of the Bill where the Secretary of State exercises the function of the nominated undertaker.

Choice of Parliamentary scrutiny procedure

98. Regulations made under clause 40(1) is not subject to any Parliamentary scrutiny as the person appointed as the nominated undertaker will carry out the functions that have been specified. Regulations made under clause 40(4) are subject to negative resolution procedure. This is because it is recognised that these are powers over which Parliament should possess a degree of scrutiny, and it is considered that negative resolution procedure provides a sufficient means of ensuring this.

Department for Transport (10 July 2017)