

Day 1

House of Lords and House of Commons

EXAMINATION OF A PUBLIC BILL WHICH IS PRIMA FACIE HYBRID

High Speed Rail (London - West Midlands)
Bill

Tuesday 17 December 2013

Before:

The Examiners of Petitions for Private Bills:

MR PETER DAVIS, Counsel for Domestic Legislation, House of Commons

MR MATTHEW HAMLYN, Clerk of Bills, House of Commons

MR PETER MILLEDGE, Counsel to the Chairman of Committees, House of
Lords

MS CHRISTINE SALMON PERCIVAL, Deputy Head of the Legislation Office,
House of Lords

MRS ALISON GORLOV of WINCKWORTH SHERWOOD

appeared as the Parliamentary Agent for the Bill

There also appeared:

MR DAVID WALKER, Parliamentary Clerk, Winckworth Sherwood

MISS MONICA PETO, Parliamentary Agent, Eversheds

MR DARREN WHITE, Parliamentary Clerk, Eversheds

MR JAN PODKOLINSKI, Lead, hybrid Bill Preparation Team, HS2 Ltd.

MS JANICE HECKSCHER, Assistant Bill Manager, hybrid Bill Preparation Team, HS2
Ltd.

MR TIM MUSGRAVE, LWM Lead, Land & Property Manager, HS2 Ltd.

MR PETER MILLER, Head of Environment, HS2 Ltd.

MR MICHAEL CROWTHER, Mouchel

MR ANTHONY PRATT, Terraquest

MR RAJ RANDHAWA, Terraquest

MR TREVOR WILDING, Mott MacDonald

(11 am)

1. **MR HAMLYN:** Good morning, everyone. I hope everyone can hear what I am saying. I am told the microphones are working. Welcome to this slightly unusual salon. Perhaps it would be helpful, just for the record, to remind ourselves why we are all here. We are here to look at the High Speed Rail (London-West Midlands) Bill, which is a Public Bill introduced in the House of Commons, which has been referred to the Examiners under House of Commons Standing Order 224 and Lords Standing Order 83 as being prima facie hybrid.

2. It is our task as Examiners—who, for the record, are impartial officials of the two Houses—to determine whether the Bill is indeed hybrid and, if so, to consider whether the Private Business Standing Orders, which are therefore applicable, have been complied with.

3. Before we get into the substance, I will just introduce myself and my fellow Examiners. I am Matthew Hamlyn. I am Clerk of Bills in the House of Commons. On my left is Peter Davis, who is the other House of Commons Examiner and a member of the Office of Speaker's Counsel in the Commons. To my right is Christine Salmon Percival, who is one of the Lords Examiners in the Public Bill Office in the House of

Lords, and to her right is Peter Milledge, the other Lords Examiner and a distinguished member of the House of Lords legal service. Perhaps I can just ask you, Alison, to introduce yourself for the record.

4. **MRS GORLOV:** My name is Alison Gorlov of Winckworth Sherwood, with the Agents for the Bill.

5. **MR HAMLYN:** Thank you very much indeed. A couple of other housekeeping points; we will, as you can see, be taking a transcript—we are taking a transcript of this meeting and will make that available as soon as possible. I hope certainly this week.

6. Also, we're very keen to finish this by lunchtime. Let's hope we do. If it looks likely to go on for a tediously long time, at the appropriate moment I will suggest a short break for everyone's convenience. But if we can get it done by lunchtime, that would be great.

7. Right, on to the main business of the day. The first thing the Examiners had to decide was whether the Bill was indeed hybrid. It will come as no surprise to anyone in this room that we concluded that it is, because it directly and specially affects individuals in a way different from the way in which it affects the general public. If this railway had not been an undertaking of national importance, obviously it would have been proceeded with in other ways, for instance as a Private Bill. I see that no one disagrees with the fact it is a hybrid Bill. Good. "Speak now or for ever hold your peace", I think is what we have to say now.

8. Right, we now move on to Standing Orders. For the purpose of this Examination, they are Standing Orders 4 to 59 in the two Houses, Standing Order 83A(3) in the Lords and 224A(3) in the Commons. Once again, for the record, the two Houses recently introduced a slight modification to Standing Orders. In June they passed a resolution, in respect of this Bill only, allowing for electronic deposit of documents. So, we need to read our proceedings in that light.

9. We will now consider each Standing Order in turn and invite the agents and promoters to prove compliance with it. Where we think it is straightforward, I hope it will be for the convenience of parties if we say, for the record, after each Standing Order has been considered, whether we agree that it is compliant or non-compliant, which will save time at the end.

10. There may be some cases where we want to reserve our judgment. If there are such cases, we propose to withdraw ourselves briefly at the end of the Examination, confer and come back with a final view. We will of course make our usual report to the two Houses for the record. Right, without further ado—Ms Gorlov, can I hand over to you to start with Standing Order—can we start with Standing Order number 4?

11. **MRS GORLOV:** Yes sir. This concerns the newspaper notice for the Bill. Mr White, do you hand in the newspapers listed on pages 1 to 3 of the proof?

12. **MR WHITE:** I do.

[Same handed in]

13. **MRS GORLOV:** And sir, you will have seen that some of those newspapers, five of them, are asterisked. That is because you have got—they are very nice copies, but I am told they are purely internet copies. The real thing will be provided as soon as it comes to hand. If you think they were published rather a long time ago to have taken this long to get here, we agree, but there it is.

14. You will also see that there were two newspapers as regards which the newspaper notices did not appear quite correctly. The *Leamington Spa Courier* got the pages in the wrong order. *Sutton Coldfield Observer* seems to have dropped some of the—one of the pages. But both of them have republished and I think you will find you have copies of those two notices.

15. **MR HAMLYN:** Yes.

16. **MRS GORLOV:** Miss Peto, do you prove that insofar as required by Standing Order, each notice contains a concise summary of the purposes of the Bill?

17. **MISS PETO:** I do.

18. **MRS GORLOV:** And do you prove that, insofar as required by Standing Orders, each notice states that, as from 29 November 2013, a copy of the Bill may be inspected, and copies obtained, at the offices mentioned on page 4 of the proof?

19. **MISS PETO:** I do.

20. **MRS GORLOV:** And do you also prove that copies are available from the offices mentioned at the bottom of page 4?

21. **MISS PETO:** I do.

22. **MRS GORLOV:** And at the libraries listed on pages 5 and 6?

23. **MISS PETO:** I do.

24. **MRS GORLOV:** Sir, I should just mention that, as regards one of those libraries—it was the Woodford Halse library—we were notified that that was the place to go and when we got there we found it had been closed, I believe, for some considerable time. But one was directed to Middleton Cheney, which was where the papers all went. I think I should ask you to prove, Miss Peto, that those are the offices as mentioned on page 6 of the proof in the right local authority areas.

25. **MISS PETO:** I do.

26. **MRS GORLOV:** Do you prove that each notice also states how objections may be made, as mentioned in the proof?

27. **MISS PETO:** I do.

28. **MRS GORLOV:** And that each notice is headed by the short title of the Bill and subscribed as mentioned in the proof?

29. **MISS PETO:** I do.

30. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

31. **MR HAMLYN:** Thank you. Do the other Examiners have any queries on this one? No problems, no, I think we agree, do we? We agree this one has been complied with. Thank you very much. We move on to 4A now, "Availability of copies of the Bill".

32. **MRS GORLOV:** Ms Heckscher, do you prove that copies of the Bill were made available in the manner at the offices it mentioned in the notices?

33. **MS HECKSCHER:** Yes.

34. **MRS GORLOV:** There is a note, an Appendix, about this one too. The promoter made these and delivered these documents to offices where the local authorities have a statutory obligation to make copies available in these circumstances. That is under Section 225 of the Local Government Act 1972. As you will have seen from Appendix A, some of them have not. That is just on a random sample in London. This is not the first time this has happened and, if we might, we would like to discuss with you after this appointment quite how best to tackle it.

35. **MR HAMLYN:** I seem to remember something similar happening on the Crossrail Bill when we examined.

36. **MRS GORLOV:** Yes, it happened with the Channel Tunnel Rail Link Bill. It is one of those things that happens. Perhaps a pincer movement would be a good idea but perhaps we could plot that hereafter.

37. **MR HAMLYN:** Well, I can certainly. I know on a previous occasion my predecessor wrote a very polite but fairly firm letter which I think was then distributed, possibly via the agents, I am not sure, to those who should be doing their statutory duty and were not. So, perhaps separately from this meeting we could discuss that, if Examiners are content, which I think they are. Thank you for that.

38. **MRS GORLOV:** Thank you. Well, we consider that Standing Order has been complied with.

39. **MR HAMLYN:** Does anyone here disagree with that? We agree with you that 4A has been complied with.

40. **MRS GORLOV:** Thank you very much indeed.

41. **MR HAMLYN:** Number 5 is next.

42. **MRS GORLOV:** Miss Peto, do you prove as regards paragraphs (a), (b), (c), (e) and (f) of the—on page 7 of the proof—that the Notice contains those particulars?

43. **MISS PETO:** I do.

44. **MRS GORLOV:** And Mr Musgrave, do you prove the same thing as regards paragraph (d)?

45. **MR MUSGRAVE:** I do.

46. **MRS GORLOV:** Sir, I consider this Standing Order has been complied with.

47. **MR HAMLYN:** Is there any disagreement to that? No, we agree with you that Standing Order 5 has been complied with. Number 6.

48. **MRS GORLOV:** This, sir, deals with bills for the construction of gasworks, burial grounds and similar. I prove that Standing Order is not applicable to the Bill.

49. **MR HAMLYN:** I think we agree that the Bill does a lot of things but it does not do gasworks and burial grounds, so we agree with you that this is not applicable.

50. **MRS GORLOV:** Thank you, sir. The Standing Order 7 relates to tramway bills, which this is not, and therefore this Standing Order is not applicable either.

51. **MR HAMLYN:** I think we agree to that. No trams here.

52. **MRS GORLOV:** And similarly, Standing Order 8 does not authorise a tramway or a tram road, so Standing Order 8 is also not applicable.

53. **MR HAMLYN:** I agree. I think we agree. Even though we do not know the difference between a tramway and a tram road, this Bill certainly does not do either of them, yes.

54. **MRS GORLOV:** One is off-road, and the other is on-road.

55. **MR HAMLYN:** Thank you. We will not go into trolleybuses this morning.

56. **MRS GORLOV:** We do not need to.

57. **MR HAMLYN:** Standing Order number 9.

58. **MRS GORLOV:** This relates to the construction of waterways and, as the Bill does not do that either, I prove that Standing Order is not applicable.

59. **MR HAMLYN:** Agreed.

60. **MRS GORLOV:** Thank you very much.

61. **MR HAMLYN:** That brings us to number 10.

62. **MRS GORLOV:** If you go to page 10 of the proof, sir, I prove that the Bill is not promoted by a local or joint authority. I prove that the principal office of the Minister in charge of the Bill is in the London Borough of the City of Westminster. Mr White, do you prove that the notices marked "1" and "2" handed in were published in the area of that local authority once in each of two consecutive weeks, as mentioned in the proof?

63. **MR WHITE:** I do.

64. **MRS GORLOV:** Sir, I am not sure if your proof has been corrected here, but it inadvertently referred to all the notices 1 to 58, which patently is wrong because we

are talking about what is published in the City of Westminster and that is the *Times*, which is 1 and 2.

65. **MR HAMLYN:** Right, well I think that point had been notified to us before this meeting, so—

66. **MRS GORLOV:** Thank you, sir. Mr White, do you prove that all the newspaper notices are in the same terms?

67. **MR WHITE:** I do.

68. **MRS GORLOV:** Mr Musgrave, do you prove that the Bill relates to works that are to be, and lands that are, situated in the local authority areas mentioned in the proof? I think I had better read them: Greater London, Buckinghamshire, Hertfordshire, Northamptonshire, Oxfordshire, Staffordshire and Warwickshire; metropolitan boroughs in the city of Birmingham and city of Manchester, and Solihull; and the London boroughs of Brent, Camden, City of Westminster, Ealing, Hammersmith and Fulham, Hillingdon, Islington and the Royal Borough of Kensington and Chelsea.

69. **MR MUSGRAVE:** I do.

70. **MRS GORLOV:** Mr Musgrave, do you prove that those local authority areas are the only ones in which any new works to which Standing Order 27 applies are to be constructed, or in which lands are to be acquired?

71. **MR MUSGRAVE:** I do.

72. **MRS GORLOV:** Mr White, do you prove that the newspaper notices marked 1 to 58 were duly published in the area of the local authorities—

73. **MR WHITE:** I do.

74. **MRS GORLOV:** —in the way printed in the proof, I think, so I consider that Standing Order has been complied with.

75. **MR HAMLYN:** Does anyone disagree among the Examiners? There was one point on the proof. It is on the bottom of page 10 of the proof. Just one query from us on “proving the newspaper notices marked severally and previously handed in, duly published in the area of the said local authority, once in each of two consecutive weeks with an interval of not less than six clear days between the two publication dates, the second publication being not later than 11 December”. Do you feel that you do not need to prove this?

76. **MRS GORLOV:** No, sorry, sir, I should have mentioned that it should have been statted back into your proof. Ms Bolton kindly pointed out that it had been wrongly crossed out, and Mr White proved it just now.

77. **MR HAMLYN:** Thank you. I was trying to follow both the conversation and the proof, if only to make sure I had got it right. So thank you very much, and obviously thank you to Ms Bolton, who spotted it. With that point cleared up, are we content that Standing Order 10 has been complied with? Yes, we are¹. Thank you very much. Now we come to 10A.

78. **MRS GORLOV:** Publication of the notice relating to a works bill. This is applicable. Mr Walker, do you hand in List A?

79. **MR WALKER:** I do.

¹ There was some confusion here and 2 proofs were in fact left out. They were proved on 8.1.14 when the Examiners reconvened. See paragraph 644ff.

[same handed in]

80. **MR HAMLYN:** Thank you very much, Mr Walker, for handing that in.

81. **MRS GORLOV:** Mr Walker, do you prove that List A contains at least one place of public resort in each of the local authority areas in which lands are, or works will be, situated?

82. **MR WALKER:** I do.

83. **MRS GORLOV:** Ms Heckscher, do you prove that copies of the newspaper notice were displayed at each of those places for two consecutive weeks ending not later than 11 December?

84. **MS HECKSCHER:** I do.

85. **MRS GORLOV:** Sir, I prove that this Standing Order has been complied with.

86. **MR HAMLYN:** I agree. Got the thumbs-up from Ms Bolton to my right, who has been reading the same list and agrees that it contains places of resort, which sound rather more fun than this morning. So are we content, Examiners, that 10A has been complied with? We are. Now we come to Standing Order 11.

87. **MRS GORLOV:** This is the gazette notices. Mr White, do you produce the London and Edinburgh gazettes of 26 November, with notice of the Bill?

88. **MR WHITE:** I do.

89. **MRS GORLOV:** And do you prove that each notice was published not later than 11 December?

90. **MR WHITE:** I do.

91. **MRS GORLOV:** Miss Peto, do you prove that each notice contains the particulars mentioned at the foot of page 11 of the proof?

92. **MISS PETO:** I do.

93. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

94. **MS BOLTON:** I have the 26th. Did you say the 11th?

95. **MRS GORLOV:** I said it was published on the 26th but was not later than 11th.

96. **MR HAMLYN:** Yes. I think the deadline was 11 December and it was published on the 26th, so it falls within the deadline, in which case I think we are content that Standing Order 11 has been complied with².

97. **MRS GORLOV:** Street notices. Mr Crowther, Mr Pratt, Mr Randhawa and Mr Wilding, do you prove that not later than 15 November, application was made, as mentioned in the proof, to every highway, every street or highway authority where we are proposing to alter the surface of the street?

98. **MR CROWTHER:** I do.

99. **MR PRATT:** Yes.

100. **MR RANDHAWA:** Yes.

101. **MR WILDING:** Yes.

102. **MRS GORLOV:** And Mr Crowther? Sorry, gentlemen, do all four of you prove that the notice was kept posted as mentioned in the proof?

² The Examiners subsequently decided that this Standing Order had not been complied with. See paragraph 113.

103. **MR CROWTHER:** I do.

104. **MR PRATT:** I do.

105. **MR RANDHAWA:** I do.

106. **MR WILDING:** I do.

107. **MRS GORLOV:** You will have noticed, sir, that in paragraph (a) there are some words that we have introduced that are not quite as per Standing Order in that we say that notices were posted not in every street but as close as reasonably possible. We complied with the directions of the street authorities as we are obliged to do. These were motorway slip roads. I think a couple of them were private roads where we would have been trespassing on private land if we had not done what the landowner told us. Of course, motorway slip roads rather speak for themselves: that going on the middle of the motorway was not on so far as the street authorities were concerned. So, sir, I consider that this Standing Order has been complied with in all respects except as to time.

108. **MR HAMLYN:** Do any Examiners wish to just pick up on that point about "As close as reasonably possible"? Christine Salmon Percival.

109. **MS SALMON PERCIVAL:** I have a little bit of unhappiness about it on the grounds that the Standing Order says "in every street". I know that on a practical basis you could not do it for reasons you have just described. I think I would like time to think about this one.

110. **MR HAMLYN:** I think we agree certainly with Ms Gorlov. It is not compliant as to time anyway, so perhaps we can put that on our list of ones to think about at

the end of the Examination. So we will come back to that one in that particular respect.

111. I am going to do something very irritating now and go back to number 11 just to clarify something in my own mind, because we were sorting out the deadline, and I am sorry about that. Just looking at Standing Order 11, there is a reference to “the time within which objections may be made by deposit of petition”, but I just wondered why on the proof you have given us that you have deleted the words “the time within which”. It is on the bottom of page 11 of the proof.

112. **MRS GORLOV:** Because we do not have any time at the moment. That time will be fixed at some point hereafter by the House, whereas of course with a private bill there is a fixed time. So the notices simply say that they can be objected to by way of petition and that—but they cannot state the time within which that has to be done.

113. **MR HAMLYN:** I take your point. So in effect one cannot with this Bill comply with this point, because we do not have that time set as you would do for a private Bill.

114. **MRS GORLOV:** All one can say is that the time will be fixed hereafter, which obviously is not stating the time within which it would be done. It is the only way one can prove compliance for this Standing Order for a hybrid Bill. I do not think there is anything cutting-edge here.

115. **MR HAMLYN:** No one ever accused this process of being cutting-edge, never fear. I take your point: it is for the Clerk of the Parliaments and the Private Bill

Office, as it were, or the two Houses, to set the petition time. They have not done that yet. Christine Salmon Percival.

116. **MS SALMON PERCIVAL:** Could you explain why—

117. **MR HAMLYN:** Are we content with that explanation of 11? Yes, fine, thank you. So just to confirm that, we now go back to 12 again. I am sorry about that detour.

118. **MS SALMON PERCIVAL:** On 12, why is the date changed from the 12th to the 15th? The Standing Order states the 12th.

119. **MRS GORLOV:** Because it was, in fact, made later than the 12th.

120. **MR HAMLYN:** Which is why, I think, this Standing Order—

121. **MS SALMON PERCIVAL:** So that is why it is non-compliant, because it is late?

122. **MRS GORLOV:** Yes.

123. **MR HAMLYN:** It is non-compliant as to time, I think, as I think Ms Gorlov has already said, so that I think is simply a statement of fact, and it is a fact that that is later than the date in Standing Order.

124. **MRS GORLOV:** And it probably does not need saying, but might I say anyway, in relation to (a), that there are two things just to bear in mind, might I suggest. One of them is that a promoter is required to comply with the directions given by the street authority, and we did. Those directions were to place the notices where we did, and not actually in some cases in the streets themselves.

125. And secondly, it would not have been possible, lawful, to put the notices anywhere else. We could not have put them on the motorway slip roads because we were told we must not, and we could not put them on private land because that would have been trespassing, and so we would say that it cannot be non-compliant if it is incapable of being complied with.

126. **MR HAMLYN:** Just for clarification, that is Standing Order 12(1)(b), which refers to, "In the manner directed by the said authority".

127. **MRS GORLOV:** And of course the notices did name the streets to which they related, as one whizzed past the motorway slip road.

128. **MR HAMLYN:** Yes. I think that is a very, very clear explanation of why you did it this way. Peter Davis, can I bring you in on this point?

129. **MR DAVIS:** Yes, just to pick up on the point that "We could not put this on private land because we would be trespassing", presumably, strictly speaking you could put it on private land if you obtained the landowner's consent.

130. **MRS GORLOV:** My point is, sir, that we did not have—the landowner would not give consent.

131. **MR DAVIS:** Thank you.

132. **MR HAMLYN:** Thank you very much. I think we have already agreed that rather than trying to do this one on the hoof, we will reserve it to the end, so thank you for that. We defer that one to the end of the examination, and we move on to Standing Order 12A, public footpaths and bridleways. Ms Gorlov.

133. **MRS GORLOV:** Yes indeed. Mr Crowther, Mr Pratt, Mr Randhawa and Mr Wilding, you have proved that as from 25 November the notice required by Standing Order 12A was displayed as mentioned in the proof.

134. **MR CROWTHER:** Yes.

135. **MR PRATT:** I do.

136. **MR RANDHAWA:** I do.

137. **MR WILDING:** I do.

138. **MRS GORLOV:** And, sir, we have exactly the same point here: that these notices were not all of them placed at the ends of the relevant footpaths; they were placed somewhere else. This time the reason was slightly different. Some of these footpaths were found to be on the definitive map, but they were not discernible on the ground; they went through farmers' fields and had been overgrown, I think.

139. They were also inaccessible for much the same reason, and so rather than tramp into the middle of the field to put the notice at either end of where the footpath ought to have been but was not, we put the notices at the field edge.

140. **MR HAMLYN:** And is it also another case where you note that you are not compliant as regards time?

141. **MRS GORLOV:** That is right.

142. **MR HAMLYN:** So, this one is already non-compliant in respect of this Standing Order. I think the same issue applies here as applied to previous Standing Orders, which is the strict construction as opposed to the practicality. So, shall we

defer those two as a pair? This is the same issue. Thank you very much. In which case we move on to Standing Order 13.

143. **MRS GORLOV:** Mr Walker, you handed in this B1 to B4 with post office receipts and signed. These are the notices by recorded delivery that were posted in time. And you have handed in this C1 (4) and (5), those relating to the recorded delivery notices posted out of time.

144. **MR WALKER:** Yes

145. **MRS GORLOV:** And Mr Walker also handed in this D1 to D4. I am not sure if those have been handed. Right.

146. **MR HAMLYN:** Good Lord.

147. **MRS GORLOV:** Yes, it is a bit of a pile. Those are the notices—D1 to D4—the notices that were served personally in time, and Mr Walker has also passed list E, which is notices served personally out of time.

148. Mr Walker has also handed in—I suppose he ought to prove it but he will in a minute—lists F1 to F3, which were the notices served by international signed for, which is the international equivalent of recorded delivery—and lists G1 and G2, which were notices served by international signed for but they were out of time. Mr Walker, have you handed in all those?

149. **MR WALKER:** I have.

150. **MRS GORLOV:** Mr Crowther, Mr Randhawa, Mr Pratt and Mr Wilding, do you prove that on or before 5 December, as regards lists B1 to B4, D1 to D4, F1 to F3, and on or before 13 December, as regards lists C1 to C5, E, G1 and G2, you gave notice in

writing in the form following that set out in Appendix 8 of Standing Orders as closely as possible to the parties mentioned in those lists, in accordance with Standing Orders 22 and 24?

151. **MR CROWTHER:** I do.

152. **MR PRATT:** I do.

153. **MR RANDHAWA:** I do.

154. **MR WILDING:** I do.

155. **MRS GORLOV:** And do you also prove that in the case of the notices afforded by post, the notices were posted on or before 2 December, as respects lists B1 to B4, F1 to F3, and on or behalf 13 December as respects lists C1 to C5, G1 and G2?

156. **MR CROWTHER:** I do.

157. **MR PRATT:** I do.

158. **MR RANDHAWA:** I do.

159. **MR WILDING:** I do.

160. **MRS GORLOV:** Mr Musgrave, do you prove that 185 of those notices were returned marked "Undelivered"?

161. **MR MUSGRAVE:** I do.

162. **MRS GORLOV:** If you have a look at Appendix B, sir, you will see what happened there. It is the fourth paragraph on that page. We explain that there were 185 notices, the status of those returned and what we did about it, which was essentially that we tried to find the people concerned, and where we did we served

further notices. I ought to mention that this continues. I mean that it is inconceivable that the Post Office will not be sending us back more of these notices, and we are going to continue to monitor that, pick them up, do further research and serve notices as appropriate. That is going to continue until the last date for petitions in the first House.

163. **MR HAMLYN:** I am sorry, we will be afflicted by bells that announce the start of the sitting in the House of Commons, and we will get them again in about four minutes, so I think we will carry on regardless. Do the Examiners wish to raise any particular points on the service of notices? We have one larger point, which I will bring Peter Davis in on in a moment, but are we content with the enormous bundle of papers that is been given to us as satisfying? It is useful to have that point, Ms Gorlov, about going on trying with all these people right until the end of the petitioning period, which gives you several more months to track them down, where they still exist. Fine.

164. Peter Davis, can I bring you in about the possible application of Standing Order 13 to clause 47 of the Bill?

165. **MR DAVIS:** Yes. Except for clause 47, everywhere that may be the subject of compulsory purchase can be geographically identified in the Bill. The compulsory purchase power in clause 47, however, is unlimited in scope, and therefore I would be grateful if we could hear on the compatibility of clause 47 with compliance with Standing Order 13.

166. **MRS GORLOV:** Yes, sir. The Standing Order does not apply in respect of clause 47 of the Bill, and that is because the Standing Order requires the service of notice on landowners whose property is to be authorised for compulsory acquisition by the Bill. clause 47 does not authorise the compulsory acquisition of anything. What it does is provide authority for the Secretary of State thereafter to make compulsory purchase orders relating to land required for HS2. It is a power to make the orders hereafter, and at the time that happens notices will be served and all the due procedures will be followed as for any compulsory purchase order, but it is not a power to acquire it now under this Bill. And so the Standing Order does not apply.

167. Similar powers are included in the Channel Tunnel Rail Link Act 1996 and in the Crossrail Act 2008. Now, I know a precedent does not necessarily mean it was got right last time, but it was. And that is the explanation why the Standing Order does not apply in respect of this clause.

168. **MR HAMLYN:** Peter Davis, do you wish to respond on that point?

169. **MR DAVIS:** I do not think I need to respond at this moment on that point.

170. **MR HAMLYN:** Christine?

171. **MS SALMON PERCIVAL:** Could I just ask whether or not the point was raised on previous occasions?

172. **MRS GORLOV:** No, it was not because rightly it was not considered to be a power to authorise the compulsory acquisition of land, which I would say plainly it is not. It is a power to compulsorily acquire land hereafter, the land to be specified, subject of notice and all the rest, in due course. And of course it may never happen.

173. **MR HAMLYN:** Yes, but it is an important point, I think. This may not be viewed as the letter of the Standing Order. The point you have just made now, as I understand it, is that were the Secretary of State in due course to decide to do what he is allowed to do by clause 47, an analogous process of serving notice would be followed under ordinary planning law, as it were.

174. **MRS GORLOV:** That is exactly right, sir. There is a procedure in the Acquisition of Land Act, which is applied by 47(4).

175. **MR HAMLYN:** Right. Does any other Examiner wish to comment on any other aspect of Standing Order 13 at this stage? I think you have noted in your proof that you comply, except with regard to time.

176. **MRS GORLOV:** I think we have a few more proofs before we can say that we have complied with the Standing Order.

177. **MR HAMLYN:** OK, we'll carry on.

178. **MRS GORLOV:** If I could just ask the referencers, Messrs Crowther, Pratt, Randhawa and Wilding, to prove that the lists I have just mentioned together contain the names of all the owners, reputed owners, lessees or reputed lessees and occupiers of each parcel of land, as mentioned in the proof.

179. **MR CROWTHER:** I do.

180. **MR PRATT:** I do.

181. **MR RANDHAWA:** I do.

182. **MR WILDING:** I do.

183. **MRS GORLOV:** And sir, I prove that the Standing Order has been complied with as respects, and I am not sure whether you have got a note of this, but as regards lists B1 to B4, D1 to D4 and F1 to F3, I prove that the Standing Order has been complied with. And as regards lists C1 to C5, E, G1 and G2, I prove that the Standing Order has been complied with except as to time.

184. **MR HAMLYN:** Thank you, and we had actually had a late note of those numbers, but it is useful to have them on the record. Do the Examiners have any other comments on this Standing Order? I think we would like to move on. Yes, Peter, carry on. Peter Davis.

185. **MR DAVIS:** Yes, sorry, the other point mentioned in relation to this order raises the question of sewers and compatibility with the Standing Order, where I think you append the letter that you sent some time back in relation to why you think smaller sewers under a certain size—

186. **MRS GORLOV:** If I may say so, sir, this arises under SO 27 in the contents of the plan.

187. **MR DAVIS:** Sorry.

188. **MRS GORLOV:** I think perhaps we might deal with that.

189. **MR DAVIS:** OK, we will come back to that.

190. **MRS GORLOV:** We will come back to it.

191. **MR DAVIS:** I apologise.

192. **MRS GORLOV:** No, no, no, please.

193. **MR HAMLYN:** You are racing ahead. Do not worry.

194. **MR DAVIS:** Yes.

195. **MRS GORLOV:** Well, if you like, we can say we have complied with everything and move on to 27.

196. **MR HAMLYN:** Well, we are coming to a burst of possibly non-applicable Standing Orders.

197. **MRS GORLOV:** We already have a few.

198. **MR HAMLYN:** On Standing Order 13, we have noted that in some respects it is non-compliant as regards time in respect of the list you mentioned. So, I think that is all we need to say at this stage. We may also wish just to reflect on your advice on the clause 47 and its relationship with Standing Order 13. Otherwise for now we will move on to Standing Order 14.

199. **MRS GORLOV:** Which requires notice to frontages in the case of a tramway Bill, which this is not, and so, sir, I prove that the Standing Order is not applicable to the Bill.

200. **MR HAMLYN:** I think we can agree to that one. Not a tramway. 15.

201. **MRS GORLOV:** And the same applies to 15. We are not a trolley vehicle system, which is what that order catches, and so I prove that the Standing Order is not applicable.

202. **MR HAMLYN:** The Examiners agree.

203. **MRS GORLOV:** And similarly on Standing Order 16, notice to mill owners where water is to be impounded, we are not doing that either, so the Standing Order does not apply.

204. **MR HAMLYN:** I think the Examiners agree. And Standing Order 17.

205. **MRS GORLOV:** Yes, this is a notice to owners in respect of gasworks and burial grounds, which we are not, as we have proved previously, and so the Standing Order does not apply.

206. **MR HAMLYN:** Yes. I think we have already agreed that in a previous Standing Order, so yes, I think we agree that 17 does not apply.

207. **MRS GORLOV:** Now, 18 requires notice in the case of relinquishment of works. This Bill would not authorise the relinquishment of works, and so the Standing Order is not applicable.

208. **MR HAMLYN:** I think we are in agreement on that.

209. **MRS GORLOV:** Thank you very much, sir.

210. **MR HAMLYN:** Standing Order 19.

211. **MRS GORLOV:** Standing Order 19 relates to the repeal of express statutory provision for the benefit of people. Miss Peto, do you prove that the Standing Order is not applicable to the Bill?

212. **MISS PETO:** I do.

213. **MRS GORLOV:** We are not including anything of that sort. And do you prove that Standing Order 19A is also not applicable to the Bill?

214. **MISS PETO:** Yes, I do.

215. **MR HAMLYN:** Are we content that 19 and 19A are not applicable? We are. Great.

216. **MRS GORLOV:** Similarly 19B, notice to debenture holders, Miss Peto, do you prove that that is inapplicable?

217. **MISS PETO:** I do.

218. **MR HAMLYN:** Are we in agreement? 19B is not applicable. No debenture holders. Are we agreed?

219. **MS SALMON PERCIVAL:** Yes.

220. **MR HAMLYN:** We are. 19B is not applicable.

221. **MRS GORLOV:** Standing Order 20 relates to the repeal of express provision concerning nuisance. We are not doing that either. Miss Peto, do you prove that the Standing Order is not applicable?

222. **MISS PETO:** I do.

223. **MRS GORLOV:** Thank you very much.

224. **MR HAMLYN:** Do we agree likewise? We do, so we agree that 20 is also not applicable.

225. **MRS GORLOV:** Thank you very much indeed.

226. **MR HAMLYN:** 21.

227. **MRS GORLOV:** Mr Walker, do you hand in list J?

228. **MR WALKER:** I do.

229. **MRS GORLOV:** Before Mr Walker proves anything about the list, can I just point out that it does not have a Post Office receipt, which is what is contemplated by the form of proof. The reason for that is that Royal Mail collect these days, and when they collect the postie does not have his rubber stamp with him and so he does not

receipt the postal list. However, if you have a look at the list, you will see at the end there are facsimile copies of the signatures for the recipients of those letters confirming receipt of the letters themselves.

230. **MR HAMLYN:** We confirm we have those.

231. **MRS GORLOV:** Mr Walker, do you prove that on or before 11 December, as regards this day, you gave notice in writing to the parties mentioned in the list in accordance with Standing Orders 22 and 24?

232. **MR WALKER:** I do.

233. **MRS GORLOV:** And do you prove that in the case of the notices shown on list J, they were posted on or before 8 December, and none of the letters were returned by the Post Office as undelivered?

234. **MR WALKER:** I do.

235. **MRS GORLOV:** Do you also prove that list J contains the names of all the persons owning or working the railways or tram roads over which compulsory running powers are proposed to be taken?

236. **MR WALKER:** I do.

237. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

238. **MR HAMLYN:** Does anyone disagree? I think we have seen the evidence. No, I think we are content that 21 has been complied with.

239. **MRS GORLOV:** Thank you very much, sir.

240. **MR HAMLYN:** Then I will save you time, Ms Gorlov, by asking whether we think that 22, 23, and 24 need to be separately proved. I do not think they do. They relate to mode of giving notice, evidence of notice, notice on a Sunday, et cetera, being invalid. We have already, I think, covered all that.

241. **MRS GORLOV:** Thank you very much.

242. **MR HAMLYN:** So, we move on to 25.

243. **MRS GORLOV:** 25 relates to consents in the case of a tramway bill. We are not a tramway Bill, and so the Standing Order is not applicable.

244. **MR HAMLYN:** I think we can agree on that. 25A.

245. **MRS GORLOV:** 25A relates to consents required by the Greater London Authority under the Greater London Authority Act 1999. That is not applicable to this Bill, sir.

246. **MR HAMLYN:** We are in agreement. 26 is another deposit on Sunday, and I think once again that does not require to be separately proved for these purposes, so move on to 27.

247. **MRS GORLOV:** Thank you, sir.

248. **MR HAMLYN:** It gets interesting.

249. **MRS GORLOV:** Do you prove that on or before 28 November you deposited, in accordance with SO 26 the documents mentioned at the foot of page 28 of the proof?

250. **JANICE HECKSCHER** I do.

251. **MRS GORLOV:** And that they were deposited to the proper offices as mentioned on pages 28 and 29 of the proof?

252. **JANICE HECKSCHER** I do.

253. **MRS GORLOV:** And do you also prove that those proper offices are the proper offices of those local authorities?

254. **MS HECKSCHER:** I do.

255. **MRS GORLOV:** Thank you. Mr Walker, do you prove that on or before 28 November—I am so sorry, this is a joint proof. Mr Walker, Mr White, as regards deposits at the House, and Ms Heckscher, as regards government departments, do you prove that on or before 28 November, copies of the Bill were deposited as mentioned on page 27 of the proof?

256. **MR WALKER:** I do.

257. **DARREN WHITE:** I do.

258. **MRS GORLOV:** And before I ask Mr Podkolinski to—no, sorry, I have lost track of myself. Mr Podkolinski, do you prove that the ordnance maps deposited are of a scale mentioned in the proof?

259. **MR PODKOLINSKI:** I do.

260. **MRS GORLOV:** And that the line of the railway is shown as mentioned in the proof.

261. **MR PODKOLINSKI:** I do.

262. **MRS GORLOV:** Now, there is not a proof relating to what goes on to the plans and whether they show all the right works, but this is the point at which I refer you to the note on sewers at Appendix C.

263. **MR HAMLYN:** Thank you. Let, for the moment, the Examiners get that in front of them. Yes, it is on page 49 of the proof that you have.

264. **MRS GORLOV:** The issue here is what is a sewer that needs to be shown on a plan in a Bill for the construction of works? The Standing Order requires that where certain specified works are authorised to be constructed, those works should be shown on a plan. And the works to which that relates include sewers, and I might also mention watercourses, but we are principally concerned with sewers.

265. The question one asks is what is a sewer that needs to be shown as being specifically authorised? The Bill authorises two categories of works, essentially. One is the works that are specified, the scheduled works, where there are limits of deviation drawn on the plans as regards each of those works, and the centre line is shown. Those are the works that SO 27 says must be specifically shown on the plans. The Bill, like most works Bills, also authorises ancillary works: that is, various types of works that may be constructed in connection with the main scheduled works. If you look at Schedule 1, you will see that there are a large number of works that refer to sewers as being part of the works, and these are sewer diversions. Where the railway hits existing sewers, those sewers have to be diverted.

266. The sewers mentioned in Schedule 1 as specific works are shown on the plans. The issue that we raised with you before the Bill was introduced was the

question of all the sewers that might be affected by the works. The works shown on the plans do not include the ancillary works, and in practice, as regards sewers, that means they do not show any sewer that has an internal diameter of less than a metre. There is no special magic to a metre, except that it is larger than under a metre.

267. **MR HAMLYN:** Yes.

268. **MRS GORLOV:** And we are proceeding on the assumption, and I will explain why in a moment, that what goes into the plans is the big stuff. There are sewers all over the place. What is a sewer? As you will have seen from the footnote to the note on sewers at Appendix C, sewer is defined in a number of statutes very, very widely indeed, as meaning virtually any channel that takes wastewater.

269. In fact it is quite interesting. The Standing Order, SO 27, started life in 1837, and if the Oxford English Dictionary is to be believed, "sewer" at the time probably had a slightly more restricted meaning. I took the opportunity this morning of having a look at the 1944 edition of the shorter OED. I am afraid I did not look at the full OED, but I could do that if wanted. "Sewer" is defined as "an artificial watercourse for draining marshy land and carrying off surface water into a river or the sea". Well, that is one definition, but probably not the one we are looking for.

270. This one is from 1606: "An artificial channel or conduit, now usually covered and underground, for carrying off and discharging wastewater and the refuse from houses and towns".

271. This is the interesting one, and I am afraid I do not know where it comes from: "A drain through which all or a large part of the sewage of a town passes. A main drain collecting and discharging the contents of auxiliary drains".

272. In common parlance, which, in the absence of a definition in Standing Orders, is what one looks at, it is fairly clear from this that a sewer is—first of all, it is an artificial channel of some sort. Secondly, it carries wastewater, waste and surface water. And finally, and this is the bit that is important in relation to the way we have drawn the plans, it appears to contemplate something significant. A sewer can be a little thing; it can be a six-inch pipe, but this is looking at something more in the nature, we think, of a structure. Historically that is what has happened. The way in which we have dealt with this, one-metre sewers, is what has happened over the last 30 to 40 years, to my personal knowledge. Every Private Bill has followed this sort of course, but more importantly those hybrid Bills where there are powers to interfere with sewers have done precisely the same thing. The way one knows that is because either there is no provision for removing sewers, but they are referred to in protective provisions for water undertakers and sewerage undertakers, so there is nothing there because nobody thought it was necessary, or there is provision, which I can tell you because I had a hand in the bills in question: the sewers were the one-metre sewers and not the smaller ones. So, we say what the Standing Order is getting at is the large, significant main sewers.

273. Now, that is all interesting historical speculation, you might say, but in fact if one looks at it more legalistically, the object of the exercise is to authorise works.

And as we say in the note, the reason for authorising works is to get your hands on the land, make sure that the undertaker is competent to construct the works, and finally to authorise the works themselves if necessary so as to protect the undertaker against nuisance claims.

274. Any landowner can lay a pipe. Get planning permission, yes, perhaps, but any landowner can lay a pipe in his land, so you do not need specific authorisation for a six-inch sewer pipe, but you do need it for a structure, and we say that a structure is anything over a metre. So, that is where we get to, and it is why we think that this construction of Standing Orders is correct. It follows a historic precedent, and we think that that historic precedent is also correct.

275. **MR HAMLYN:** Christine Salmon Percival.

276. **MS SALMON PERCIVAL:** What is the historic precedent precisely?

277. **MRS GORLOV:** Well, as I said, if one goes back and looks at particularly Crossrail and the Channel Tunnel Rail Link Acts, the deposited plans for both those were drawn on exactly the same basis as has been done for this Bill.

278. **MS SALMON PERCIVAL:** So, the plans in the case of those two Acts only included sewers of a metre and above.

279. **MRS GORLOV:** That is right, other sewers being dealt with as ancillary works.

280. **MS SALMON PERCIVAL:** And was the issue raised explicitly?

281. **MRS GORLOV:** It was not raised by the Examiners or anybody else; it was actively considered by the Bill team.

282. **MS SALMON PERCIVAL:** But they did not raise it before the Examiners.

283. **MRS GORLOV:** No. It was not thought necessary to do so, and I suppose this is speculation, but the further one gets from the origin of all this, the more questioning one becomes. And I think it is quite important to remember that in 1987, when I think you can really start this with the Channel Tunnel Bill, the people on the Bill team were that much nearer what had been going on in the earlier part of the 20th century with private Bills, and so they did not question it. Now, some of us come into this de novo, ask why the rule is written as it is and why it was complied with as it was. So we asked ourselves, and we raised it with you because we thought we should do so. But we think that what has been done in the past correctly reflects the purpose of the Standing Order, which is what it has to do.

284. **MS SALMON PERCIVAL:** In other parts of the Standing Orders, there are references to dimensions, I believe, of other sorts of pipework. I think I am right in saying that. Yes, on SO 27 (9)—well, in the list, yes. Drainage. There is a measurement.

285. **MR HAMLYN:** Standing Order 27 (6), I think.

286. **MS SALMON PERCIVAL:** 27 (9).

287. **MR HAMLYN:** Well, it is a (6) in the House of Commons and (9) in the House of Lords.

288. **MS SALMON PERCIVAL:** OK. It just happens to mention the size of a cut when there is reference to drainage.

289. **MRS GORLOV:** Yes, I think the reason for that is because it is looking at a drainage cut that is not necessarily cut on the square. It could be tapered. And so if

you have something with sloping sides, it has to turn. It is interested in working out where the measurement is taken.

290. **MS SALMON PERCIVAL:** But do you see my point that if there is a reference to a measurement in one place but not a reference to a measurement in another place, that would seem to suggest that there was no intention for there to be a limit on "sewer" in that list?

291. **MRS GORLOV:** I take your point. I think one might perhaps usefully look and see when that measurement was introduced, because sewers have been there since day one, and I am not sure that that measurement has been. I could check. But one of the things that I think will have been borne in mind by those operating these provisions longer ago than we presently are is that the Standing Order as originally framed referred to public works, which therefore when one reads it through meant that it took in only public sewers. And of course, public sewers are the larger ones, or at least they certainly were in 1837.

292. If the Standing Order had intended to capture every single sewer, there are two things, really. First of all, it is quite impracticable, not least because one does not know where they are. They are all supposed to be on a map, on sewage maps. They are not. You often do not find them until you dig the hole. So it would be quite impracticable. It would also, though, be unnecessary in terms of the Standing Order. It would be outside the scope of the Standing Order.

293. A lot of these sewers will be moved as ancillary works. There will not be main parts of the works. They are being moved because the railway does something that

means that a more remote sewer has to be adjusted. If you were to say that all those sewers also have to be shown on the plans, I think it would logically follow that one could not have ancillary works including work to adjust sewers because you would be saying that they should all of them be shown as specific works, specific scheduled works. Well, that is not possible. I mean it is not practically possible.

294. One of the good things about Standing Orders is that they proceed on the basis that they deal with the art of the possible. The whole purpose of sharing things on plans is to show what is to be constructed. What are the principal works to be constructed? If the Standing Order requires that every single last widget should be shown as a specified work scheduled in Schedule 1 to this Bill, the whole ancillary works clause goes by the board, and that also is not what you would intend, I do not think. I do not think you are suggesting that ancillary works are out of order because they are not shown on the plans. At least I hope you are not.

295. **MS SALMON PERCIVAL:** I have two last questions. The first is: could you clarify why you raised this on this occasion when it was not raised on previous occasions?

296. My second question is: if you are right that it simply is impractical to include all the sewers on the plans, why should we as Examiners construe it in terms of one metre as the limit, because as you say there is nothing magical about that number? Presumably an 80 centimetre sewer could also be a structure, so it is not a question of including every tiny sewer, six-inch sewer, compared to—now I am confusing my

metrics—a metre sewer. So, what is so special about one metre, and why should we construe it that way?

297. I suppose my final observation is that you are really asking us to interpret this Standing Order, are you not? You are asking us to provide a limitation on it that is not written on the face of the Standing Order.

298. **MRS GORLOV:** Can I take each of those in turn?

299. **MR HAMLYN:** Please do.

300. **MRS GORLOV:** Why did we raise it? We raised it because it was looked at afresh. That was really it, honestly. I do not think that those of us who framed that extraordinarily long letter, which I want to apologise for having written to you. I do not think I looked at it as too much more than an interesting inquiry, to be honest. But it was raised by people looking at the issue with a fresh pair of eyes, some of them people who have never dealt with these sorts of plans before, so it seemed a perfectly legitimate inquiry. I do not think we expected it to give rise to quite the controversy that it has.

301. Your second question was what has the magic about a metre? Please bear with me just a moment. [*Ms Gorlov conferred with Mr Podkolinski*] Mr Podkolinski has confirmed that there is nothing defining about a metre, except that it is the sort of first whole number you come to, and it was once a yard. I mean, you know, what can one say? Smaller than that, if you said, "Well, why could not it be 80 centimetres?", then, "Why could not it be 60 centimetres?", you go on down, you know. It is a bit like a Dutch auction; there has to be a figure somewhere. I do not

think a metre dates from anything special; a metre is because somebody was thinking in terms of a yard.

302. A metre diameter sewer is going to be a concrete pipe or a metal pipe. Smaller sewers are also going to be pipes, and the big Brunel variety will have brick arches. In fact one might almost say that this is erring on the side of caution inasmuch as one knows that a one-metre sewer is going to be a big pipe rather than a small tunnel.

303. **MS SALMON PERCIVAL:** Thank you.

304. **MR HAMLYN:** Peter Davis, you had one final question, I think, on sewers.

305. **MR DAVIS:** Yes. On this, you mentioned about the need to authorise the works and ancillary works. Presumably, however, a very important factor is the ability to acquire the easements compulsorily in clause 5 of the Bill.

306. **MRS GORLOV:** Well, yes. I did say that one of the purposes of the Bill is to enable one to acquire the land or the rights in the land. That is absolutely right; that is one of the purposes.

307. **MR DAVIS:** Yes.

308. **MRS GORLOV:** But acquiring the land and the rights does not in itself authorise the works that one wants to construct. Sorry, I did not answer Ms Salmon Percival's last question to me, which was whether we were asking you to interpret Standing Orders.

309. Well, in a way, everything you are doing today is interpreting Standing Orders, so the answer to that is yes. But when you say we are asking you to put in a

restriction that is not on the face of the Standing Order, the precise metre restriction, yes, that is undoubtedly true. But one of the reasons for the historical skirmish just now, in this note and in the letters written to you earlier this year was really to demonstrate that "sewer" in this Standing Order does have that meaning. It is not so much a matter of interpretation. I suspect if we were here in 1837 we would not be having this conversation, because I think it would be taken as said that a sewer was a big thing. I am not asking you to interpret the Standing Order so much as look at the Standing Order as the historic document that it is.

310. **MR HAMLYN:** Thank you for that. Peter, do you want to come back again?

311. **MR DAVIS:** Yes. On this particular point, presumably because all the land on which the ancillary works may be identified is within specified geographical limits, there is no difficulty in complying with having given all the notices.

312. **MRS GORLOV:** No, all the works are within the Bill limits and all the landowners have received notice, so there is no question of our straying outside limits simply because of the way the plans are drawn.

313. **MR DAVIS:** Yes. One last thing. If we say that you are seeking for us really to accept a given meaning of "sewers", you are also accepting implicitly that that meaning once meant something above a yard and now means something above a metre.

314. **MRS GORLOV:** I suspect that I am not—no, I do not think I am being quite as precise as that, but for more practical purposes, yes.

315. **MR HAMLYN:** A final question on this, I think, is clearly one where we are not going to give a snap decision on compliance on this particular point. I think you have already noted that in some respects we are out of time. But on sewers, before we finish proving this particular Standing Order, I have a simple question. It is a layman's question. Who would be disadvantaged, or is there anybody who could be disadvantaged by an interpretation of sewers in the way you are suggesting?

316. **MRS GORLOV:** No.

317. **MR HAMLYN:** No?

318. **MRS GORLOV:** No, because the sewers are either there and known about and they have been surveyed; we know about them. The undertakers ought to know every bit of kit they have, and they know they do not. And there will be protective provisions for the benefit of the sewerage undertakers, which will provide in the normal way for all the works relating in the vicinity of a sewer or affecting a sewer to be the subject of approval as to how they are carried out, and for the sewerage undertakers themselves to do the works, because there is a well-known drill as to how these works are carried out, sewers being particularly sensitive because they operate by gravity. It is not just a question of moving a pipe. It is a question of getting the levels right.

319. **MR HAMLYN:** Yes.

320. **MRS GORLOV:** Before any of the sewer diversions can take place, the works will be designed in detail, and those designs will be approved by the sewerage undertakers. The sewerage undertakers will themselves undertake all or part of these

works, and by the time the hole is dug we will know what has down there. At the moment, we almost certainly do not, and neither do the sewerage undertakers.

321. **MR HAMLYN:** I am going to ask you a possibly leading question now, but do you think that it would be helpful if the Standing Order said on sewers a metre or a yard or whatever?

322. **MRS GORLOV:** That is one way you might clarify SO 27. One can think of others that would be even simpler.

323. **MR HAMLYN:** Peter Milledge.

324. **MR MILLEDGE:** Just on that last point, I suppose there would be a danger, would not there, that if you put in a measurement for a sewer, were the comparable problem then to arise in relation to some other works, the fact that you had put in a measurement in relation to a sewer could be an adverse inference for the other works.

325. **MRS GORLOV:** To be perfectly honest, I do not think so. On the face of the paper it might look like that, but the truth of the matter is that the rest of the infrastructure world does not have anything like this, and there is no problem. One authorises the works one needs to build, and if they are big, significant works, they are specifically authorised. If they are part of the main works, they are specifically authorised. If they are ancillary to it, they are authorised as ancillary works. I might just give you an example.

326. **MR MILLEDGE:** Please.

327. **MRS GORLOV:** A development consent order was recently made in respect of a chord railway in Ipswich. The railway affected a sewer that went through some land, and the local sewerage authority said that this sewer was an insignificant little thing: "We needn't bother about it". But we went out and we surveyed it, and we found it was a dirty great storm relief sewer; it was an enormous tunnel. And so the diversion was authorised as a specific work. Now, if Anglian Water had been right and it had been a little six-inch job, it would not have been authorised at all specifically; it would have been an ancillary work.

328. There is an element of judgment here. You know, it is not entirely a precise science, and what goes on the paperwork really does not have to have this sort of detail any longer. There was a reason for it in 1837, but I suggest that that reason has long since gone by the board.

329. **MR HAMLYN:** Thank you. Is there anything else you want to say to us about this Standing Order?

330. **MRS GORLOV:** I think there is a proof, sir, if I can get back to it.

331. **MR HAMLYN:** We have spent longer in the sewers than Harry Lime, but I think we are out again now.

332. **MRS GORLOV:** Right, we are at 27? Yes, we are at 27.

333. **MR HAMLYN:** Are we on page 27?

334. **MRS GORLOV:** Now, where have we got to? I have asked Mr Podkolinski to prove it. No, sir, I consider that the Standing Order has been complied with in all respects except as regards time.

335. **MR HAMLYN:** Well, I think you can guess from the previous discussion we are not going to give you a snap answer on compliance in other respects, but I think we agree with you that it is out of time, but we will add that to our comparatively short list of things to consider at the end of the examination. Right, let us move on to 27A.

336. **MRS GORLOV:** The Environmental Statement, yes?

337. **MR HAMLYN:** Yes.

338. **MRS GORLOV:** Mr Walker and Mr White, as regards the House deposits, and Ms Heckscher, as regards government departments and other offices, do you prove that on or before 4 December you deposited copies of the Environmental Statement as mentioned in the proof?

339. **DARREN WHITE:** I do.

340. **MR WALKER:** I do.

341. **MS HECKSCHER:** I do.

342. **MRS GORLOV:** And Mr Miller, do you prove that the Environmental Statement contains the information required by Standing Order 27A?

343. **MR MILLER:** Yes.

344. **MRS GORLOV:** Ms Heckscher—sorry, just before we go on, as regards that point, I should just refer you to note (D).

345. **MR HAMLYN:** Yes, it is Appendix D, yes.

346. **MRS GORLOV:** Yes, it came to light both from audit and an inquiry by a member of the public that there were some missing pages. Somebody spotted that

some drawings were missing, and we spotted that some other drawings were missing. And at that point an audit was carried out to see what had happened. These, I emphasise, were not pages that had simply been dropped when the documents had been written; they were missing from the copies as prepared for deposit.

347. **MR HAMLYN:** Right.

348. **MRS GORLOV:** Following this audit, two things emerged: that a total of 877 pages had gone missing, all of them from Volume 5. Volume 5 is the volume of technical reports, not the main statement itself. That is 877 pages—an awful lot—but the total number of pages in Volume 5 is some 36,500, so that sort of puts it into perspective, I suggest.

349. As you will have seen from the note, the audit then went on to look at what was the effect of these pages being omitted from the copies, and they found that the requisite information had in fact not dropped out, and that is for the reasons given in the note on the materiality of—where is it?

350. **MR HAMLYN:** Can you just remind us what—

351. **MR MILLEDGE:** It is page 61 of the proof.

352. **MRS GORLOV:** 61, it should be, is not it? Yes, sorry, I turned two pages. If you have a look at the note on page 61, you will see that each of the missing items has been looked at to determine the effect of its omission from the deposit copies. If it is an omission, it means that certain things cannot be probed and investigated. However, for the reasons given in this note, the information required by the Standing

Order is in fact included in the documents as deposited. That has been taken up with all the responsible consultants, and they have confirmed that, after a detailed analysis.

353. **MR HAMLYN:** Obviously, I have not had time to read the annex in any great detail. I do not know if other Examiners have.

354. **MRS GORLOV:** Shall I take you through it at a canter, sir?

355. **MR HAMLYN:** Essentially what you are saying is that in each respect of the missing pages, your contention is that it does not affect the requirement in the Standing Order.

356. **MRS GORLOV:** That is right. It is information that is either not required by Standing Order, or that is required but is elsewhere in the document.

357. **MR HAMLYN:** Would Examiners like this to be gone through in more detail?

358. **MS SALMON PERCIVAL:** No, I have two questions, actually. On what date was this error rectified?

359. **MRS GORLOV:** It came to light between 2 and 4 December, and then the action we took is shown on page 58 of the proof. It gives a list of dates and what we did about it, and it started on the 12th and finished yesterday, when some further memory sticks were delivered. We prepared two separate memory sticks: one was the defective document but corrected so that all the pages were there, and the other was a complete set of all the documents, including the corrected ones. The recipients of deposit documents got the former, and we are told that this was to replace those documents.

360. **MS SALMON PERCIVAL:** Yes, but your contention, according to this proof, is that the complete information was available on or before 4 December. It just so happened that it was not where somebody reading the document might expect to find it.

361. **MRS GORLOV:** No, I do not think I am saying that. The information was where people would expect to find it, but there were two separate categories of missing information—sorry, the missing pages did separate things. Some of them set out information that is set out elsewhere in the ES, so it was in several places. All of them are where you would expect to find it.

362. **MS SALMON PERCIVAL:** OK, yes.

363. **MRS GORLOV:** Some of them were datasheets, drawings and figures, which were technical documents and would be looked at for the purposes of probing the baseline information, but the baseline information was elsewhere, as mentioned in the materiality note. One of them—I can pick it up from the note in a moment if you wanted—was a technical report to the effect that had no significant effect. If it has no significant effect, of course, it is not the subject of a report in the ES, and therefore is not requisite information, so although there was missing information, none of it was required by the ES, or to the extent that it was, it was elsewhere—not where you would not expect to find it, but because you would expect to find it in those other places.

364. **MS SALMON PERCIVAL:** So by good fortune, the bits that were missing do not prevent you from proving to the effect that the complete Environmental

Statement was deposited on or before 4 December, despite the fact that several pages were missing.

365. **MRS GORLOV:** That is correct.

366. **MR HAMLYN:** I have a couple of questions myself on this one. One is a sort of practical one. You refer to 877 pages, which sounds like quite a lot, although I accept that it is compared to 36,000 or so. In the table of omissions on page 60 of the proof, I suppose that adds up to 877 pages, does it?

367. **MRS GORLOV:** Yes, it does. We checked it this morning. I am not sure. Mr Miller, I think, might have made it 878 the first time he did it, but more or less.

368. **MR HAMLYN:** Well, I notice that the first line of the table has 285 pages, another one has 80 pages and 138 pages. One actually does say "Pages TBC".

369. **MRS GORLOV:** Yes, those have now been confirmed. As I say, Mr Miller has added it up and made it 877.

370. **MR HAMLYN:** My colleague has just handed me a letter from Roger Hargreaves, Director of Hybrid Bill Delivery, HS2 Limited, where he perhaps rather optimistically says, "A small number of pages were inadvertently omitted". Now I suppose "small" is comparative, as you said, but—

371. **MRS GORLOV:** Well, I think that letter was probably framed before we knew it was 877. I suppose it is a failure of communication, but the first that he would have heard of it was when we had been approached by Oxfordshire's county archaeologist, who noted that a couple of pages had gone missing, and then it was a couple more.

It was only latterly that we got it and realised it was this number. But I think relatively it is small.

372. **MR HAMLYN:** Yes, I mean his letter is dated 13 December, as it happens, but, anyway, I just put that on the record.

373. My second point was actually about Standing Order 27A. This confirms your point about what is required. On Standing Order 27A(1)(a)(i) in the House of Commons—I hope that is the same in the House of Lords—the information is specifically that in Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, which actually is quite short, I notice, having read it. So this is really for my fellow Examiners: we would require the description of the development comprising information on the sites, design and size of the development, a description of measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects, data required to assess the main effects, outline the main alternatives studied, et cetera, and the non-technical summary. The requirement of the Standing Order is based on those five lines of prose, so that may be relevant for us to assess, and whether we agree with the agents that nothing conflicts with the Standing Order.

Peter Davis.

374. **MR DAVIS:** Yes, just a very minor qualification of what you have said, Chairman, which is that the Standing Order actually refers to a bit of legislation that has now been revoked and replaced, but I do not think it makes any difference because the replacement legislation is materially identical, as I recollect, and because

the Interpretation Act 1978 would actually probably apply to the Standing Order and simply treat it as a replacement.

375. **MR HAMLYN:** This is all pointing in the direction of updating Standing Orders at some stage, I would have thought, but let us leave that for another day.

376. **MRS GORLOV:** I will, if I may, just point out that 27A(7) says that Schedule 4 is amended from time to time. And that is absolutely right: it has been replaced by regulations in 2011, I think, and they are in the same terms.

377. **MR DAVIS:** Yes.

378. **MR HAMLYN:** Christine and then Peter Milledge.

379. **MS SALMON PERCIVAL:** Having discovered 877 pages missing, are you confident there are no other pages missing?

380. **MRS GORLOV:** Well, a complete audit has been done, and this is what it has revealed. That is what I am instructed and that is what I am sure everybody has found to be the case. You might say that human error being what it is, there has to be something somewhere, and that may be so, but we have not found it, and we have looked very carefully.

381. **MR MILLEDGE:** That was my question.

382. **MR HAMLYN:** Right, so we need not do it again then. Does anyone else have anything else to say about 27A? I cannot remember quite where we were with that, but we have to finish. Have we finished other elements of the proof on 27A?

383. **MRS GORLOV:** We have.

384. **MR HAMLYN:** We have to find Appendix D. We are on page 27 of the proof, and we have just done Appendix D.

385. **MRS GORLOV:** And I was just about to invite Ms Heckscher to prove that every Environmental Statement and non-technical summary was made available, as mentioned in the proof.

386. **MS HECKSCHER:** I do.

387. **MRS GORLOV:** And, sir, I consider that this Standing Order has been complied with.

388. **MR HAMLYN:** I have one question, or just one point really, which is that the Standing Order requires every Environmental Statement and every non-technical summary to be made available for inspection and for sale at a reasonable price. Now you can cross that out of the proof presumably, because no one is charging for this.

389. **MRS GORLOV:** [*Ms Gorlov conferred with Mr Podkolinski*] We did not have to have sale copies with the local authorities. They were available via HS2 at Eland House. [*Ms Gorlov conferred with Mr Podkolinski*] The position on charging is this: there is actually a price list. As you would expect, the hard copies are expensive and the USBs are not. HS2 has issued a considerable number of both, and it is thought that they have all been issued free. But there is a price list. I suspect that it is jolly expensive to buy any number of these in hard copy.

390. **MR HAMLYN:** But it is of course available online, I think.

391. **MRS GORLOV:** It is. [*Ms Gorlov conferred with Mr Podkolinski*] Sorry, sir, I am instructed that some copies have been charged and some have not been charged for.

They are available online, and they are available on USB sticks. I think I am right in saying that a number of principally parish clerks requested some extra USB sticks so that they could hand them out to the public who asked for them, and those were supplied.

392. **MR HAMLYN:** Thank you. Do the Examiners have any other further questions on 27A? So your contention is that 27A has been complied with. I think, given some of the discussion that we have just had, that we might want to reserve judgment on that ourselves till the end. Thank you very much. 28, happily, has been repealed, so we can skip that one. So, can we come to 29?

393. **MRS GORLOV:** Well, yes, this one also we can dispose of fairly shortly. It is the deposit of a map in the case of a tramway Bill, which this is not, and so it does not apply.

394. **MR HAMLYN:** I think we can agree with that. Thank you.

395. **MRS GORLOV:** Standing Order 30, sir, relates to a Bill for the supply of electricity, which this is not, so I prove that this Standing Order is not applicable.

396. **MR HAMLYN:** We agree.

397. **MRS GORLOV:** Similarly, SO 30A, relating to a Bill for taking a water supply, does not apply to this Bill. And I prove that, sir.

398. **MR HAMLYN:** And that is agreed.

399. **MRS GORLOV:** In relation to tidal land, we have to deposit a plan under Standing Order 31. Mr Podkolinski, do you prove that this Bill does not relate to tidal land, and this Standing Order is not applicable?

400. **MR PODKOLINSKI:** I do.

401. **MR HAMLYN:** I think we are agreed. I have seen the map. OK, so we come on to 32.

402. **MRS GORLOV:** Mr Walker, do you hand in list K?

403. **MR WALKER:** I do.

404. **MRS GORLOV:** Ms Heckscher, do you prove that on or before 26 November you deposited a copy of the deposited plans and sections to each of the Environment Agency Offices as mentioned in the proof?

405. **MS HECKSCHER:** I do.

406. **MRS GORLOV:** Sir, I prove that the Standing Order has been complied with in all respects except as to time.

407. **MR HAMLYN:** I think we would agree with the point about time, so I think we are in agreement on that. If we move to 33, banks and rivers.

408. **MRS GORLOV:** Mr Heckscher, do you hand in list L?

409. **MR WALKER:** That should be me.

410. **MRS GORLOV:** I am sorry. I thought that looked a bit odd. Mr Walker, do you hand in list L?

411. **DAVID WALKER:** I have just done that, yes.

412. **MRS GORLOV:** You have just done so, thank you. Ms Heckscher, do you prove that on or before 28 November you sent recorded delivery letters as mentioned in the proof?

413. **MS HECKSCHER:** I do.

414. **MRS GORLOV:** And do you prove that list L contains names of all the principal regional offices of the Environment Agency affected by the Bill?

415. **MS HECKSCHER:** I do.

416. **MRS GORLOV:** Mr Podkolinski, do you also prove that the depth of the proposed tunnel and the bed of the river and other particulars are marked as stated in the proofs?

417. **MR PODKOLINSKI:** I do.

418. **MRS GORLOV:** And do you also prove, Mr Podkolinski, that any ordnance map has the position and extent of the work shown?

419. **MR PODKOLINSKI:** I do.

420. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with in all respects except as regards time.

421. **MR HAMLYN:** Any comments from the Examiners? I think we agree with you on that summary: that it complies, with the exception as regards time. 34.

422. **MRS GORLOV:** Ms Heckscher, do you prove that on 26 November you deposited, in accordance with Standing Order 26, a copy of the deposited plan at the offices mentioned in the proof?

423. **MS HECKSCHER:** I do.

424. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with in all respects, except as to time.

425. **MR HAMLYN:** I think the Examiners agree. Yes, I see no dissent from that. Thank you very much.

426. **MRS GORLOV:** Ms Heckscher, do you prove that on 26 November, you deposited, in accordance with Standing Order 26, at the office of the Metropolitan Police Commissioner a copy of the deposited plans and sections?

427. **MS HECKSCHER:** I do.

428. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with in all respects except as to time.

429. **MR HAMLYN:** I think that is agreed, thank you. 36.

430. **MRS GORLOV:** Mr Walker, did you hand in list M?

431. **MR WALKER:** I do.

432. **MRS GORLOV:** Ms Heckscher, do you prove that on or before 28 November, you deposited, in accordance with Standing Order 26, a copy of the plans and sections as mentioned in the proof?

433. **MS HECKSCHER:** I do.

434. **MRS GORLOV:** And do you also prove that this then identifies all the areas, proper offices and chairmen mentioned in Standing Order 36(1)(a) to (d), and that those areas are the only areas to which the plan, section and book of reference relate?

435. **MS HECKSCHER:** I do.

436. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with in all respects except as regards time.

437. **MR HAMLYN:** I think we agree. I had one point, a question of information really, on Standing Order 36(3). You are quite entitled to say that it is none of my

business, but this requires officers of local authorities to permit people to inspect things at reasonable hours. I do not know whether you have any intelligence on whether that is actually happening, because we discussed that a while back, I seem to remember.

438. **MRS GORLOV:** We did. That is the mystery shopping tour. The answer is that the majority of the sample that we took then were not. I gather that the sampling process is continuing on a rolling basis. I gather that the most recent report is rather better.

439. **MR HAMLYN:** Right. Well, we will return to that, as we have discussed, once we have got this over with. Thank you very much. Let us move on to 37.

440. **MRS GORLOV:** Ms Heckscher, do you prove that on 26 November you deposited, again in accordance with Standing Order 26, copies of the deposited plans, sections and books of reference at the departments and offices mentioned on page 34 of the proof?

441. **MS HECKSCHER:** I do.

442. **MRS GORLOV:** Sir, I consider the Standing Order to have been complied with in all respects except as regards time.

443. **MR HAMLYN:** Do we agree? The Examiners agree with you on 37, thank you. Now 38.

444. **MRS GORLOV:** Thank you very much, sir. Standing Order 38 deals with deposited copies of certain Bills, but these are only Bills on petition: that is to say Private Bills. Sir, I prove that this Standing Order is not applicable.

445. **MR HAMLYN:** We agree. Thank you very much. Now 39.

446. **MRS GORLOV:** Ms Heckscher, do you prove that on or before 4 December you deposited, as specified in Standing Order 1A list and in accordance with Standing Order 26, printed copies of the Bill?

447. **MS HECKSCHER:** I do.

448. **MRS GORLOV:** And do you prove that the Bill affects education and the other things mentioned in the proof?

449. **MS HECKSCHER:** I do.

450. **MRS GORLOV:** Sir, I prove that those deposits are the only deposits required to be made under Standing Order 39, and I consider that this Standing Order has been complied with.

451. **MR HAMLYN:** I think the Examiners are in agreement on that one.

452. **MRS GORLOV:** Thank you very much, sir.

453. **MR HAMLYN:** Number 40 was repealed a very long time ago, so we go on to 41.

454. **MRS GORLOV:** This is on the delivery of the Bill to highway authorities. Mr Walker, do you hand in list N?

455. **DAVID WALKER:** I do.

456. **MRS GORLOV:** Ms Heckscher, do you prove that on or before 4 December you delivered, in accordance with Standing Order 26, a copy of the Bill at the offices of each of the highway authorities mentioned in list N?

457. **MS HECKSCHER:** I do.

458. **MRS GORLOV:** And do you prove that list N contains the name of every highway authority liable for the maintenance of streets or roads as mentioned in the proof?

459. **MS HECKSCHER:** I do.

460. **MRS GORLOV:** Sir, I consider the Standing Order to have been complied with.

461. **MR HAMLYN:** Any dissent? No, we agree with you.

462. **MRS GORLOV:** Thank you, sir.

463. **MR HAMLYN:** 42.

464. **MRS GORLOV:** Ms Heckscher, do you refer to List K that has already been handed in?

465. **MS HECKSCHER:** I do.

466. **MRS GORLOV:** Do you prove that on or before 4 December you delivered, in accordance with Standing Order 26, a copy of the Bill to each of the offices mentioned in list K, as described in the proof?

467. **MS HECKSCHER:** I do.

468. **MRS GORLOV:** And do you also prove that list K contains the names of all the principal regional offices of the Environment Agency for the areas containing watercourses affected by the Bill?

469. **MS HECKSCHER:** I do.

470. **MRS GORLOV:** Sir, I consider this Standing Order has been complied with.

471. **MR HAMLYN:** And we are in agreement.

472. **MRS GORLOV:** Thank you very much, sir.

473. **MR HAMLYN:** Number 43.

474. **MRS GORLOV:** Ms Heckscher, do you refer to list L, which has already been handed in?

475. **MS HECKSCHER:** I do.

476. **MRS GORLOV:** And do you prove that on or before 1 December you posted using recorded delivery, a service as described in the proof, copies of the Bill as mentioned on page 37 of the proof?

477. **MS HECKSCHER:** I do.

478. **MRS GORLOV:** And do you prove that list L contains the names of all the principal regional offices of the Environment Agency for the areas containing rivers or estuaries affected by the Bill?

479. **MS HECKSCHER:** I do.

480. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

481. **MR HAMLYN:** Yes. Any disagreement? No, we agree with that. Thank you. Number 44.

482. **MRS GORLOV:** SO 44 relates to Bills where the promotion requires the consent of members of a company who are not promoters, so that is not applicable to this Bill, and I prove that this Standing Order is not applicable.

483. **MR HAMLYN:** I think we agree, do we not? Yes. Right, 45, deposit and form of estimates.

484. **MRS GORLOV:** Mr Walker and Mr White as regards the House, and Ms Heckscher as regards government departments, do you prove that on or before 4 December you deposited copies of the estimates as stated in the proof?

485. **MR WALKER:** I do.

486. **MR WHITE:** I do.

487. **MS HECKSCHER:** I do.

488. **MRS GORLOV:** And Mr Walker, do you prove that the estimate of expenses is prepared to the form set out in Appendix B to the Standing Orders, or as near as circumstances permit?

489. **MR WALKER:** I do.

490. **MRS GORLOV:** Mr Podkolinski, do you prove that the estimate was made by Alison Munro, as described in the proof?

491. **MR PODKOLINSKI:** I do.

492. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

493. **MR HAMLYN:** Is there any disagreement from the Examiners? No, we agree with you.

494. **MRS GORLOV:** Thank you very much.

495. **MR HAMLYN:** Right. I have lost my place. Where are we now? SO 46 has been repealed, which would explain why I could not find it. So we go on to 47.

496. **MRS GORLOV:** Thank you. Mr Musgrave, do you prove that you prepared a statement in accordance with the requirements of Standing Order 47?

497. **MR MUSGRAVE:** I do.

498. **MRS GORLOV:** Containing information referred to in the proof. Sir, I prove that the Bill does not revive or extend the time limited for the exercise of any power to acquire compulsorily or by agreement in any area to which Standing Order 47 applies: that is, any specified land on which houses are standing in which 30 or more persons are residing. And, sir, I consider that this Standing Order has been complied with.

499. **MR HAMLYN:** Does anyone disagree among the Examiners? No, I think we agree with you on that.

500. **MRS GORLOV:** Thank you very much indeed.

501. **MR HAMLYN:** Right, that takes us to SO 48.

502. **MRS GORLOV:** Mr Podkolinski, do you prove that every deposited plan is drawn as described on page 40 of the proof?

503. **MR PODKOLINSKI:** I do.

504. **MRS GORLOV:** And do you prove that there is no alternative line or work laid down on the plan?

505. **MR PODKOLINSKI:** I do.

506. **MRS GORLOV:** Do you prove that the limits of lateral deviation are as stated in the proof?

507. **MR PODKOLINSKI:** I do.

508. **MRS GORLOV:** Do you also prove that where tunnelling as a substitute for open cutting, or a viaduct as a substitute for solid embankment, is intended, that is shown on the plan as described in the proof?

509. **MR PODKOLINSKI:** I do.

510. **MRS GORLOV:** And do you prove that where under any Standing Order a length is required to be stated on the deposited plan, it is stated in kilometres and metres?

511. **MR PODKOLINSKI:** I do.

512. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

513. **MR HAMLYN:** I think it is. Does anyone disagree? We are content that it is been complied with³.

514. **MRS GORLOV:** Thank you very much.

515. **MR HAMLYN:** SO 49.

516. **MRS GORLOV:** Standing Order 49 relates to a Bill for authorised waterways. Sir, I prove that this Standing Order is not applicable to the Bill.

517. **MR HAMLYN:** And I think we agree. Easy one. Standing Order 50.

518. **MRS GORLOV:** Mr Podkolinski, do you prove that the plan has marked on it the distances in kilometres from the termini as stated in the proof?

519. **MR PODKOLINSKI:** I do.

³ Although it appears as though SO 48 had been complied with at this point there was further discussion on this Order later on (see paragraphs 569ff, 576 and 636ff). It was found to be non-compliant in paragraph 636.

520. **MRS GORLOV:** And do you prove that where it is intended to form a junction, the plan gives the information as stated on page 41 of the proof?

521. **MR PODKOLINSKI:** I do.

522. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

523. **MR HAMLYN:** No objection. We agree that it is been complied with. Standing Order 51.

524. **MRS GORLOV:** Mr Podkolinski, do you prove that where it is proposed to divert, widen or narrow public carriage road, navigable river, canal, railway or tram road, the course of the diversion and the extent of the widening or narrowing is marked on the plan?

525. **MR PODKOLINSKI:** I do.

526. **MRS GORLOV:** And do you prove that where it is intended to divert any public footpath, the course of the diversion is marked on the plan?⁴

527. **MR PODKOLINSKI:** I do.

528. **MRS GORLOV:** I consider this Standing Order has been complied with.

529. **MR HAMLYN:** And I do not think there is any dissent from the Examiners. No, we agree with you.

530. **MRS GORLOV:** Thank you very much.

531. **MR HAMLYN:** SO 52 is tramways again.

⁴ See also paragraph 562ff

532. **MRS GORLOV:** And I prove that this Standing Order is not applicable to this Bill.

533. **MR HAMLYN:** I think we agree. Number 53.

534. **MRS GORLOV:** This relates to defining improvement areas. We do not have any, and I prove that this Standing Order is not applicable to this Bill.

535. **MR HAMLYN:** We agree. SO 54, the contents of the book of reference.

536. **MRS GORLOV:** Mr Musgrave, Mr Crowther, Mr Pratt, Mr Randhawa and Mr Wilding, do you prove that the deposited book of reference are in the same terms and contain the names and the other particulars mentioned on page 43 of the proof?

537. **MR MUSGRAVE:** I do.

538. **MR CROWTHER:** I do.

539. **MR PRATT:** I do.

540. **MR RANDHAWA:** I do.

541. **MR WILDING:** I do.

542. **MRS GORLOV:** I will, if I may, refer you to Appendix E.

543. **MR HAMLYN:** Yes.

544. **MRS GORLOV:** That contains two notes, one on unknown occupiers.

545. **MR HAMLYN:** Yes, this is on page 64 of the proof.

546. **MRS GORLOV:** Page 64.

547. **MR HAMLYN:** And this is unknown owners and unknown occupiers.

548. **MRS GORLOV:** That is right. In the case of unknown owners, notice was posted by fixing it to the property. Where that yielded a response, where somebody

sat up and said, "Ah, it is me, or it is the chap down the road", or whatever—we occasionally found people—notice was served on the appropriate person.

549. In the case of occupiers, as mentioned in this note, there are 1,108 tenants of social housing estates where the name of the occupier could not be established following inquiries. And of course, these are tenancies that will not be registered with HM Land Registry, so that is one area of inquiry that is not available.

550. In one case, as you will see, it is mentioned Camden produced a tenants list three days before the book of reference was to be printed. So, those have been dealt with in a way described in the note. And we do not think we could have done anything else.

551. The other issue is in Volume 4, where there are 743 student occupiers of some privately owned halls of residence and we do not know what their tenure is. Maybe it is term by term, maybe it is year by year; one does not know, and the managing agents and the owners will not tell us, so we sent notice addressed to each occupier.

552. **MR HAMLYN:** Thank you. I note the Standing Order refers to identity: not able to establish the identity of owner or lessee after "reasonable inquiry".

553. **MRS GORLOV:** Indeed, and we say that the inquiries we made were reasonable. And, sir, I consider that this Standing Order has been complied with.

554. **MR HAMLYN:** Peter Davis, you had a question.

555. **MR DAVIS:** Yes, just this. You mentioned various occupiers of social housing whose name you could not get from—was it Camden Council?

556. **MRS GORLOV:** Camden Council was one of the potential sources of information. Referencers are adept at making site visits and asking neighbours and so on, but we still could not get the names.

557. **MR DAVIS:** Yes, so in other words it was not just a question of asking the council for the list. It involved knocking on people's doors and asking, "Who are you?", to do it.

558. **MRS GORLOV:** And examining the electoral roll and all the available sources of information, as mentioned in the note. All of them were interrogated. It is amazing how many people do not want to let on that they live there, or who lives next door.

559. **MR DAVIS:** Yes, but it was not just looking at the official information, it was actually making practical searches and knocking on doors, et cetera.

560. **MRS GORLOV:** That is exactly what referencers are very good at doing.

561. **MR HAMLYN:** Do the Examiners have any further questions about this Standing Order? And do we agree with the Agent that it has been complied with? I think we do. So the good news is that we agree with you on 54. I am afraid I now have to jump back to SO 51, because Peter Milledge had a question about bridleways.

562. **MR MILLEDGE:** I see that Standing Order 51 refers to a footpath or bridleway, but the proof deals only with a footpath. Can you prove in relation to a bridleway as well?

563. **MRS GORLOV:** We have taken powers to divert bridleways, and we can prove that the same applies to them as it does to footpaths as we said.

564. **MR MILLEDGE:** Thank you.

565. **MRS GORLOV:** Do you want Mr Podkolinski formally to confirm that, because I do not know this myself. He does.

566. **MR HAMLYN:** Please do.

567. **MR PODKOLINSKI:** Yes, I confirm that.

568. **MR HAMLYN:** So it was an omission in the proof rather than an omission of the activity the proof recounts. I fear I have now started a trend, because Peter Davis wants to raise something as well.

569. **MR DAVIS:** Yes, this is Standing Order 48, which the Examiners had no problem with as far as it goes. This may be an issue elsewhere, but when you are looking at all the deposited plans, that is presumably on the assumption that your interpretation of sewers is correct.

570. **MRS GORLOV:** Well, yes.

571. **MR DAVIS:** Yes, because there may be certain things where bits fall out, because if "sewers" does indeed mean every single one, there is a consequential issue for SO 48.

572. **MRS GORLOV:** Oh, yes.

573. **MR DAVIS:** But it is the same issue. I just wanted to clarify that, because we were saying that we are content that it is been complied with.

574. **MRS GORLOV:** Yes, understood.

575. **MR DAVIS:** OK, thanks very much.

576. **MR HAMLYN:** On a process point, I should say our decisions are all definitive when we issue our report to the two Houses, so everything is slightly in play. Right, I have one other query that has just been pointed out to me. I am sorry, we are leaping about, but at the bottom of page 40 of the proof on Standing Order 48 you have deleted the words starting "proved that an enlarged plan upon a scale of not less than 1/5,000 is added of any building, yard", et cetera et cetera et cetera. I am wondering, just for the record, what the rationale was behind that deletion.

577. **MRS GORLOV:** We did not need to, sir, because of the overall scale of our plan. This is only where there the plan is of a smaller scale than our plans are.

578. **MR HAMLYN:** Right, I see. Thank you very much. So basically the scale of your plan is already at that level.

579. **MRS GORLOV:** Yes, sir.

580. **MR HAMLYN:** Understood. Thank you very much. Sorry for that jumping about, but I think we have now agreed on SO 54, so we go on to SO 55, where there is another note.

581. **MRS GORLOV:** Yes. Perhaps I could first of all ask Mr Podkolinski to prove that every deposited section is drawn and shows the information stated at the foot of page 43 of the proof.

582. **MR PODKOLINSKI:** I do.

583. **MRS GORLOV:** And that it states the distance of a fixed point in the locality of the works and the height of the point above Ordnance Datum Newlyn.

584. **MR PODKOLINSKI:** I do.

585. **MRS GORLOV:** This is the note at Appendix F, which is page 65.

586. **MR HAMLYN:** Yes.

587. **MRS GORLOV:** The Standing Order has a requirement that, when one stops and thinks about it, is slightly odd. In the days before GPS systems, which is what everybody now operates on, levels were determined by reference to Ordnance Datum Newlyn, so one might have expected that the requirements for sections would have said that the level had to be shown by reference to that level, but that is not what the Standing Order requires. The Standing Order requires the promoter to identify fixed points in the locality of the authorised works, fixed Ordnance Datum points, and to relate those to Newlyn.

588. As explained in the note, the ordnance benchmarks, which one would have to find in the locality of the works, no longer exist. Some of them can probably be found, or the marks can be found, but they have not been maintained for 30 years, so the Ordnance Survey says they are not reliable and should not be relied upon. As they cannot reliably show the level relative to Ordnance Datum Newlyn, we took the view that they had, to all intents and purposes, ceased to exist and so one could not comply with the Standing Order in its own terms. It was incapable of being complied with. However, because the Standing Order contemplates there being some intermediate point that is referred to Newlyn, the plans were drawn taking a number of identified benchmarks that looked like appropriate fixed points that were relatively

stable and so could be relatively easily identified and their level determined, but what is shown is those points relative to Newlyn.

589. Now, it is not quite correct to say that every ordnance benchmark has gone. The basic benchmarks—several thousand of them—have gone, to all intents and purposes. Ordnance Survey still maintains what they call fundamental benchmarks. I do not know how many of them there are around the country. I think we have 190 around the country, so there are not very many of them. The nearest one in the locality of our railway, I think, is some 12 kilometres away, so “in the locality of” is hardly applicable. More to the point, these maintained benchmarks are at locations where one cannot gain access except with special permission. I do not know whether they are places like GCHQ and the Post Office Tower, but it is that sort of location. They are secure and stable, so the public cannot get at them, and that is why we have adopted the course that we did, because we do not think that we can comply with the Standing Order itself.

590. Now, sir, on that basis we consider that the Standing Order has been complied with as regards benchmarks. Having explained that, perhaps before giving my opinion on that I could ask Mr Podkolinski to prove that where tunnelling is a substitute for open cutting or a viaduct is a substitute for an embankment, that is shown on the section.

591. **MR PODKOLINSKI:** I do.

592. **MRS GORLOV:** Mr Podkolinski, do you also prove that where the extreme height of an embankment exceeds 1.5 metres, the height over the depth or the depth under the surface of the ground is marked in figures on the section.

593. **MR PODKOLINSKI:** I do.

594. **MRS GORLOV:** And that where any bridge or viaduct of more than three arches intervenes in any embankment or any tunnel intervenes in any cutting, the extreme height or depth is marked in figures on each of the parts into which the embankment or cutting is divided by the bridge, viaduct or tunnel.

595. **MR PODKOLINSKI:** I do.

596. **MRS GORLOV:** Sir, I consider that the Standing Order has been complied with.

597. **MR HAMLYN:** Christine, a question.

598. **MS SALMON PERCIVAL:** It is a sort of point of principle, really. On the question of the benchmarks, your assertion in Appendix F is that it cannot be complied with. I just find it slightly intellectually difficult to find compliance because compliance is impossible, if you see what I mean. You are asserting that you cannot comply with this Standing Order and therefore that we should find compliance. I am a bit uncomfortable about that situation.

599. **MRS GORLOV:** I do not think you can find non-compliance either, in a way, because logically if there is no benchmark to which one can fix, there is nothing with which one can comply. Therefore the Standing Order is not asking one to do

anything. That is the way of looking at it, because, in its own terms, it actually is not these days.

600. **MS SALMON PERCIVAL:** It is probably a more general feature of the antiquated nature of these Standing Orders that compliance is sometimes impossible.

601. **MRS GORLOV:** It is difficult. This is not quite the same as saying that compliance is impossible because we could not do it, which is what we were saying as regards motorway slip roads and bridleways—parts of footpaths, rather. This is saying that the Standing Order in its own terms has ceased to work, and I suppose you could ask “how can you comply with that with which you cannot comply?”. Given what you are saying, on the same logic it could be argued that it is not non-compliance either. It is really a void. If it is a void, it is not an issue for, ultimately, the Standing Orders Committees. What we are saying is that you can find that it is null and void.

602. **MR MILLEDGE:** That is the metaphysical approach to Standing Orders, I think.

603. **MR HAMLYN:** I think you have mentioned the Standing Orders Committees, and the corollary to the metaphorical or metaphysical approach is that we either find compliance or we find non-compliance, and the Standing Orders Committees then determines whether they can dispense with the requirement that we have identified, which would get you there in the end, as it were. There is also an intriguing Standing Order that allows the Examiner to express doubt—going back to metaphysics again—and make special reports where, because of the particular construction of a Standing

Order in a particular case, we find neither compliance nor non-compliance, and the Standing Orders Committees will then receive those reports and make their own findings. I think we have heard and read your very clear argument about how you sought to do something useful in the absence of a Standing Order that actually works anymore. I think we are going to have to add it to our list of things we all consider at the end. I do not think we need any more evidence on this point. Is that fair?

604. Thank you very much. We will defer 55 on that point specifically and move on to 56, which I suspect is easier.

605. **MRS GORLOV:** This is a Standing Order concerning the improvement of navigation, which we are not doing, and I prove, sir, that this Standing Order is not applicable to the Bill.

606. **MR HAMLYN:** And we agree. That takes us to SO 57.

607. **MRS GORLOV:** Mr Podkolinski, do you prove that the line of the railway marked on the section corresponds with the upper surface of the road?

608. **MR PODKOLINSKI:** I do.

609. **MRS GORLOV:** And do you prove that the distances and vertical measure and proportion are as stated at the top of page 45 of the proof?

610. **MR PODKOLINSKI:** I do.

611. **MRS GORLOV:** Do you prove that wherever the line of the railway is intended to cross any waterway, it shows the heights mentioned on page 45?

612. **MR PODKOLINSKI:** I do.

613. **MRS GORLOV:** Do you prove that where it is proposed to construct or alter a railway—and I should think “or tram road” ought to have come out—so as to form a junction, the particulars are given as stated in the proof?

614. **MR PODKOLINSKI:** I do.

615. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

616. **MR HAMLYN:** Does anyone among the Examiners disagree? You have checked very carefully this time in case there are any bits in the proof you disagree with—we do not want to go back again. Right, then I think we are agreed on SO 57 having been complied with. That takes us to SO 58, which is about tramways again.

617. **MRS GORLOV:** It is. I prove that this Standing Order is not applicable.

618. **MR HAMLYN:** And I think we agree because it is not a tram. That takes us to 59, the last page.

619. **MRS GORLOV:** SO 59 is all about cross-sections of roads, and I prove that this Standing Order is not applicable.

620. **MR HAMLYN:** Do we agree? We do. That brings us to the last pair of Standing Orders, which is 83A in the Lords and 224A in the Commons.

621. **MRS GORLOV:** Miss Peto, do you prove that each notice published under Standing Order 10 states that any person who wishes to make comments on the environmental statement should send them as mentioned in the proof?

622. **MISS PETO:** I do.

623. **MRS GORLOV:** And do you also prove that 24 January 2014 falls no earlier than the 56th day after first publication of the notice?

624. **MISS PETO:** I do.

625. **MRS GORLOV:** The proof does not say that I consider that the Standing Order has been complied with, but perhaps you do not want that.

626. **MR HAMLIN:** Do the Examiners have any—?

627. **MRS GORLOV:** I might be thrown by the fact that the bottom line has dropped off.

628. **MR HAMLIN:** Do Examiners have any questions about the compliance with this pair of Standing Orders?

629. **MR DAVIS:** I think the same point may arise in relation to completeness of the environmental statement: that if the environmental statement as deposited at the time was incomplete, there may be a timing issue on this as well.

630. **MRS GORLOV:** Yes, that is understood.

631. **MR HAMLIN:** Are there any other comments from the Examiners? I think, given what Peter has just said, that we ought to reserve our formal position on compliance until we have agreed our position on the deposit of the environmental statement: that is, that we agree with your proposition that compliance with the Standing Order is not affected by the defects in the annexes.

632. **MRS GORLOV:** Understood.

633. **MR HAMLIN:** So I think at this stage, unless the Examiners have anything else to say on these particular Standing Orders, we should probably withdraw briefly

and consider the deferred Standing Orders, unless you want to take a slightly longer break and combine the two. We have been going for two hours and we could all do with a break, and during that break we will come to a view on the deferred items, so shall we come back here at two o'clock? Thank you very much. We are adjourned, or suspended; I am not sure which.

Examination suspended from 12.50pm until 2.03pm.

(2.03 pm)

634. **MR HAMLYN:** Good afternoon and welcome back. Sorry, that adjournment took slightly longer than I had announced because we had rather a long discussion among the Examiners about what we wanted to do with the deferred items. Much of our conversation turned, I suppose, on a philosophical question about compliance when strict compliance with a Standing Order is either impossible or impractical. An example of non-compliance which falls into these categories, obviously, is non-compliance as regards time, which we have already conceded is the case on quite a few of the Standing Orders and obviously we will so report.

635. There are other forms of non-compliance which the agents for the promoters have said are impossible to comply with, such as benchmarks or the affixing of notices on slip roads of motorways, which is extremely dangerous as well as impractical, or in the case where it could involve trespass. But we as Examiners have to take a decision on how we would treat such compliance or non-compliance with

such Standing Orders, so we felt that it was most prudent, given there is another stage after this stage—namely the meeting of the Standing Orders Committees of the two Houses—to in those cases find non-compliance.

636. There are two other Standing Orders we considered which you discussed this morning where the Examiners have not as yet been able to reach agreement because we feel we need more time, and perhaps I will deal with the detailed Standing Orders in a moment. First, on the deferred Standing Orders we discussed this morning, where we have found non-compliance—and this is in addition to the ones where we have already agreed non-compliance as regards time, which is set out in the proof—are 12, 12A, 27, 48 and 55.

637. Two other Standing Orders gave us concern: 13 and 27A, and with 27A, as we discussed earlier, there is a contingent relationship with 83A in the Lords and 224A in the Commons. In those two cases, we feel we need more time to consider the information provided by the agents, in particular the information relating to the effect of the missing pages to the annexes to the environmental statement, and the question of clause 47 of the Bill, as it relates to the totality of legislation relating to the acquisition of land. So, we will therefore adjourn this meeting. We will not make a formal report to the two Houses today on non-compliance, although I think the transcript will show that where we have made a finding of compliance or non-compliance, that is now on the record. So, I think everyone who needs to know now knows.

638. We will adjourn to Wednesday 8 January at 10.00 am when we will report our findings on the remaining two Standing Orders, and at that point we will then make our formal reports to the two Houses. If there remains any doubt in our mind as to the construction of the remaining Standing Orders, 13 and 27A, we will obviously be able to make a special report under Standing Order 79, and that would also stand referred to the Standing Orders Committees. Are there any questions or any further comments the Examiners wish to make? Ms Gorlov.

639. **MRS GORLOV:** Sir, would it be of any assistance if we gave you a written submission about clause 47? I am conscious of the fact that everything else you have had notes about, but not that.

640. **MR HAMLYN:** That would be extremely helpful, if I may say so. Thank you very much.

641. **MRS GORLOV:** Certainly we will do that.

642. **MR HAMLYN:** Thank you very much. I think, therefore we stand adjourned until 8 January. Thank you all very much for coming.

The Examination was adjourned at 2.15 pm.