

The Rt. Hon. Jeremy Wright MP QC
House of Commons
London
SW1A 0AA

21 May 2021

Dear Jeremy,

You have asked us to provide you with further information regarding the powers, responsibilities, and processes of compliance for HS2 Ltd and its contractors, including how they relate to impacts on communities and the environment.

In response, this letter provides a summary of powers as set out in the High Speed Rail (London – West Midlands) Act (2017) as well as related policies, commitments, and legislation.

We hope that this is a useful summary, and for further information we suggest that anyone with an interest in these issues also refers to the detailed Information Papers that were published in 2017 to accompany the Act, such as those related to the [Hybrid Bill](#), [Environment](#) and [Construction](#).

The HS2 Phase One Act

The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act (2017). The Act was promoted through Parliament by the Secretary of State for Transport. The Secretary of State also appointed a body responsible for delivering the scheme under the powers granted by the Act – HS2 Ltd.

HS2 Ltd is known as the 'nominated undertaker'. There may well be more than one nominated undertaker – for example, HS2 Ltd is the nominated undertaker for the main railway works, while Network Rail could become the nominated undertaker for works to an existing station such as Euston. But whoever they are, all nominated undertakers, in exercising the powers in the Act, are bound by the obligations contained in it.

These obligations are passed from the nominated undertaker to its appointed sub-contractors. However, the nominated undertaker is ultimately responsible for their delivery.

There are three distinct components that taken together effectively control the environmental impacts of the construction and operation of the scheme, they are:

- arrangements within the Act for approving detailed design and construction arrangements.
- policies, commitments and undertakings entered into outside of the Act.
- existing legislation, unless expressly or impliedly disapplied or modified by the Act.

This is set out in HS2's Information Paper E1: Control of Environmental Impacts, published in February 2017.

In addition to the above, there are a number of other mechanisms that support the control of construction impacts.

- Environmental Minimum Requirements (EMRs) – the EMRs consist of a suite of documents that were developed in consultation with local authorities and other relevant stakeholders in relation to the environmental impacts that may arise from the design and construction of the railway. They were subject to further refinement through the parliamentary process.
- HS2 Information Papers – these documents were produced to explain the commitments made in the Phase One Act and the EMRs, and how they will be applied to the design and construction of the scheme.
- Undertakings and Assurances - during the passage of the Phase One Bill, the Secretary of State entered into a range of undertakings and assurances that are contractually binding on all nominated undertakers. These are enforceable against any person appointed as the nominated undertaker through the Secretary of State's separate undertaking to Parliament on enforcement of the EMRs. That particular undertaking can be found on the [Phase One register of Undertakings and Assurances](#) (number 63). This means that in the event of a failure to comply with any assurance, recourse will be through the Secretary of State, and the Secretary of State is answerable to Parliament for securing compliance.
- Code of Construction Practice (CoCP) - this sets out specific details and working practices in relation to site preparation, including site investigation and remediation (where appropriate), demolition, material delivery, excavated material management, waste removal and all related engineering and construction activities. These are the arrangements by which the nominated undertaker and any sub-contractors are required to work. Both the CoCP and the Undertakings and Assurances are part of HS2's Environmental Minimum Requirements (EMRs).
- Existing Legislation - unless a piece of existing legislation has been expressly or impliedly disapplied, or modified by the Phase One Act, it will continue to apply as

normal to the design and construction of the scheme. For example, HS2 still needs to apply for specific ecological licences issued by Natural England.

HS2 Phase One Act Powers

The Act grants deemed planning permission to HS2 Ltd and its contractors to carry out the works needed to deliver and operate the scheme. This follows a very extensive scheme development and consultation process as well as consideration of the Bill by Parliament, which includes a period of petitioning in each House where those whose property or interests were directly affected by the scheme could have their concerns heard by the Select Committees considering the Bill.

The design of the scheme at hybrid Bill stage provided the level of detail necessary for the purposes of the Bill and the requirements of the Environmental Impact Assessment Regulations. At that stage, the level of detailed design necessary to enable the scheme to be constructed had yet to be carried out, and was not anticipated to be completed until after Royal Assent.

Since then, Royal Assent has been secured and HS2's main works contractors for Phase One have been appointed. They have been undertaking detailed design and construction planning work. As part of that process, the design of the railway is being refined, working within the Limits of Deviation (LoD) and the Limits of Land to be Acquired or Used (LLAU) set out in the plans and sections accompanying the Bill (collectively known as 'the Bill limits'). Further information about these constraints can be found in Information Paper - B2 Limits on Parliamentary Plans.

HS2 Ltd applies for approval of the detailed design of a range of aspects of the scheme from local planning authorities along the route under the planning regime established by the Phase One Act. Further information about the planning regime can be found in Information Paper - B1 Main Provisions of the Planning Regime.

Environmental Licencing

The Phase One Act gives HS2 Ltd the powers required to carry out work to build the railway, and licenses from Natural England are one of the ways that HS2 Ltd ensures that all works have the right safeguarding in place to protect wildlife.

In practice, the Phase One Act disapplies certain parts of environmental legislation which is then reapplied. For example, Schedule 33 (5) permits the Environment Agency to approve works that interact with waterbodies, however HS2 Ltd and its contractors also still need to comply with other legislation, such as the need for ecological licences issued by Natural

England, and the requirement for Section 61 consents under the Control of Pollution Act 1974.

In an [article published by Natural England's Director for Wildlife Licensing and Enforcement](#), it is explained that Natural England's role in licensing development is to "ensure that activities affecting protected species are carried out without damaging those populations."

Natural England does not have powers to stop projects that have been approved, or to delay them unnecessarily, nor do they have powers to prevent the felling of ancient woodland if the development proposed has secured planning consent. However, when a developer (such as HS2 Ltd) applies for a licence to undertake works that will impact on protected species, Natural England assesses whether the works can be carried out in a way that maintains the conservation of the species in that area.

Natural England licences include conditions that the licensee must apply with. They monitor compliance with licence conditions and are able to take enforcement action if they are broken.

Both Natural England and the Forestry Commission are engaged in the scrutiny of environmental works and they provide comment on the Ecology Site Management Plans in advance of works. Monitoring of ecological mitigation sites, including ancient woodland soils receptor sites and compensatory planting sites, is a commitment by HS2 Ltd and a requirement for our contractors.

HS2 Ltd must present an annual monitoring report to an independent body each year, covering the previous year's monitoring results. That body is the HS2 Ecology Review Group (ERG). The ERG was set up following recommendations from the Environmental Audit Committee's review of HS2 in 2014 and its primary function is to scrutinise monitoring data arising from ecological mitigation and compensation measures put in place by HS2 Ltd.

HS2 Ltd and our contractors adhere to all regulations surrounding acquisition of licences where a European Protected Species could be impacted by our works. Only when any relevant licences are in place from Natural England (where required) will our clearance work commence. All ecology work is carried out in accordance with the law and adheres to recognised best practice.

HS2 Ltd Assurance of Phase One Programme Delivery

HS2 Ltd delivers assurance of our Tier 1 Contractors and in turn our Tier 1 Contractors delivers assurance of their supply chain.

Main construction work on Phase One of HS2 is gathering momentum, delivered by a number of different contractors. In addition, several different teams and specialists from HS2 Ltd are supporting the delivery of the scheme, ranging from community engagement to colleagues in land and property.

We're committed to ensuring that the delivery of the scheme is as effective and integrated as possible, while minimising our impact on local communities. As part of this approach, the route has been organised into 13 geographical areas, in which the work of HS2 Ltd's specialist teams and contractors is being coordinated and assured by local integrated delivery units.

The delivery units are led by the main works project directors and supported by senior project managers, to ensure our delivery activities happen in a coordinated and effective way. The senior project managers assure work in their areas and act as internal escalation points for major issues.

Technical assurance is at the forefront of design compliance, and this is the process by which the technical integrity of a product, process or system is monitored and maintained. To achieve this the contractor ensures compliance with HS2 Ltd Technical Assurance requirements.

The contractor is responsible for undertaking assurance tasks in a progressive manner throughout the delivery of the works and has in place its own Technical Assurance Plan which defines how it achieves compliance with the HS2 Ltd requirements. The contractor uses the design reviews to ensure coordination of interfaces with stakeholders and others.

In addition to the above, HS2 Ltd actively assures and manages contractor performance through a range of processes and contractual mechanisms, including Key Performance Indicators (KPIs).

The HS2 Complaints Process

In recognition that building HS2 will affect the lives of thousands of people, HS2 Ltd has established a robust process to ensure complaints are addressed quickly and appropriately. The process enables an internal investigation to take place in the first instance whilst offering options for an additional level of scrutiny if it is deemed to be required.

Step 1 of the complaints process involves the HS2 Public Response Team investigating concerns. If a complainant is satisfied with the outcome, this is where the complaints process will finish.

However, if the complainant is unsatisfied, there is an opportunity to request HS2 Ltd takes the complaint to Step 2. If the complaint relates to construction, it can be referred to the Independent Construction Commissioner (ICC). The ICC's role is to monitor how HS2 Ltd responds to construction complaints and to settle any disagreements. The ICC will review the complaint and how HS2 Ltd responded to it. The ICC's decision is final, and this is the end of the process for complaints about HS2 construction.

If the complaint is about HS2 Ltd's services, Step 2 involves an investigation by a member of HS2 Ltd's Senior Leadership Team who will present their findings to HS2 Ltd's Chief Executive for approval. Complaints can also be referred to a Step 3 investigation by the Department for Transport's Independent Complaints Assessors (ICA) with a final Step 4 involving complainants requesting their Member of Parliament refer their complaint to the Parliamentary and Health Services Ombudsman (PHSO). This step represents the end of the process for complaints about HS2 Ltd's services.

The role of the independent HS2 Commissioners

The Construction Commissioner:

In addition to overseeing the Step 2 construction complaints process, the HS2 Construction Commissioner also reports on activities and acts as an arbitrator for the HS2 Small claims scheme.

As part of the creation of the independent Construction Commissioner, the Construction Commissioner Steering Group (CCSG) was set up to monitor their performance throughout the construction period. The Steering Group has also been tasked with providing independent oversight and advice to Ministers at the Department for Transport (DfT).

The Steering Group is supported by HS2 Ltd and includes representatives from local authorities and local communities along the line of route in Phase One and Phase 2a. Representatives from HS2 Ltd and DfT also sit on the Steering Group, although it is independent of HS2 Ltd and DfT. It meets three to four times a year.

The Residents' Commissioner:

The Residents' Commissioner is independent and holds HS2 Ltd accountable to the commitments made in the HS2 Residents Charter. The Residents' Commissioner oversees and monitors HS2 Ltd's commitments and produces a periodic report.

In addition, the Residents' Commissioner meets regularly with the HS2 Ltd Chairman about emerging trends and concerns. The Residents' Commissioner does not investigate individual cases, act as an arbitrator for individual resident concerns, or deal with complaints.

Construction Inspectors

In March 2021, the HS2 Minister introduced a small team of construction inspectors.

One part of their role is to assist the Department for Transport (DfT) in ensuring that HS2 works are being delivered to time and budget. The HS2 sponsor team in DfT already performs this function in terms of analysis of HS2 management information and the utilisation of governance structures that hold HS2 Ltd to account for timely and cost-efficient delivery.

The Construction Inspectors will undertake site visits to assess that the progress being reported at board level is happening on the ground at site level. This role and its access to work sites also means that the Inspectors are uniquely placed to provide the DfT with a means of assuring how HS2 Ltd community engagement and complaint handling activities are working in each area. In particular, they will provide DfT with an independent means of assessing intractable or persistent construction issues where community concerns are a significant feature. They will conduct independent investigations or assessments following referral from DfT, providing an independent perspective and making tailored or thematic recommendations for improvement as necessary. They will operate within agreed criteria and will be commissioned to look into specific issues either by the HS2 Minister or officials.

I hope that this summary of the powers, responsibilities, and processes of compliance for HS2 Ltd and its contractors is useful. It is a multi-faceted subject, but we have sought to summarise the key points in this letter as clearly as possible, which you are welcome to share, as required.

Yours sincerely

Iain Andrews

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