

High Speed 2, Hybrid Bills and Environmental Impact Assessment

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May 2014

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This paper considers the hybrid bill process, as occasionally used to promote major infrastructure projects, and how this interacts with the Environmental Impact Assessment regime¹. In particular it deals with the current High Speed Rail (London – West Midlands) Bill, which is seeking powers to build and operate Phase I of the High Speed 2 railway (“the HS2 Bill”).

A hybrid bill has characteristics of both a public bill and a private bill. Although of general interest, the content of the bill would significantly affect the interests of certain individuals or organisations.

Speaker Hylton-Foster described a hybrid bill as “a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class”.²

On 28th April 2014 the House of Commons voted to give the HS2 Bill a Second Reading by a sizeable majority, with the Bill attracting broad cross-party support. Although the text of the Bill the House voted on was unchanged from that published several months ago, the Government made clear that it was removing the proposed HS2-HS1 link between Old Oak Common and the Channel Tunnel Rail Link (“CTRL”), and MPs are taken to have voted on the Bill minus that element. The principle of the HS2 Bill, less that link, is therefore now established in the Commons.

On 29th April 2014 the House passed motions appointing a six-member Select Committee to hear private petitions against the Bill.³ The House also instructed the Select Committee as to the scope of the principle of the Bill, which is outside its remit and so not something that petitioners can expect to be heard on. This includes the “broad route alignment”.

The most recent similar Bills to HS2 were those that became the Channel Tunnel Rail Link Act 1996 and the Crossrail Act 2008. The approach to those projects gives a guide to the likely handling of HS2. However practice and procedure has moved on since even the Crossrail legislation.

This paper will consider both the position of hybrid bills in general and the particular position of HS2, in respect of which the time for petitions to be lodged commenced on 30th April 2014 (and will conclude on 16th May 2014 or 23rd May 2014, depending on the identity of the petitioner).

Hybrid Bill procedure

In broad terms, a hybrid Bill proceeds as a Public Bill (Second Reading, Committee, Report and Third Reading) with an additional Select Committee stage after Second Reading in each House at which objectors whose interests are directly and specially affected by the Bill may be heard. There is a further written Environmental Impact Assessment stage prior to the Second Reading.

¹ We would like to thank Gordon Nardell QC for his thoughts on an earlier version of this paper.

² *Hansard*, 1962-1963, Vol. 669, Col.45.

³ The Committee Members are Mr Henry Bellingham, Sir Peter Bottomley, Mr Ian Mearns, Mr Yasmin Qureshi, Mr Robert Syms and Mr Michael Thornton.

Environmental Impact Assessment and National Legislation

The Environmental Impact Assessment Directive does not apply to the authorization of projects by national legislation. Article 1(4) provides that the Directive:

“shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process”

However the scope of this exemption has been limited by the European Court of Justice in a series of judgments in *WWF v Bozen*,⁴ *Luxembourg v Linster*,⁵ *Boxus* and *Solvay*. In *Linster* the Court emphasized:

“49. Article 1(5) of the Directive should be interpreted having regard to the objectives of the Directive and to the fact that, since it is a provision limiting the Directive’s field of application, it must be interpreted restrictively.”

The Court referred to the obligation to assess in Article 2(1) and the sixth recital that appropriate information is required from the developer which may be supplemented by the authorities and the people who may be concerned with the development. It concluded at para 59:

“on a proper construction of Article 1(5) of the Directive, a measure adopted by a parliament after public parliamentary debate constitutes a specific act of national legislation within the meaning of that provision where the legislative process has enabled the objectives pursued by the Directive, including that of supplying information, to be achieved, and the information available to the parliament at the time when the details of the project were adopted was equivalent to that which would have been submitted to the competent authority in an ordinary procedure for granting consent for a project”

This echoed the Opinion of Advocate-General Léger who said at paragraph 114:

“Only legislative acts which provide the same safeguards as those which would have been required under the Directive fall outside the scope of the Directive.

115. In other words, it is because the project approved by the legislature achieves, from the point of view of impact assessment and public information and consultation, the environmental protection objectives pursued by the Directive that it is exempt from complying with the letter of the Directive. ...

118. Can it reasonably be asserted that, under the Directive, Member States are exempted from assessing the environmental impact of a project and from implementing information and consultation procedures before the project is carried out, whatever its nature, solely because they choose to adopt the project through the legislative process?”

In her opinion in *Boxus v Région Wallonne* (Joined Cases C-128/09–C-131/09, C-134/09 and C-135/09) [2012] Env LR 320 Advocate General Sharpston explained the rationale behind the exemption in these terms:

⁴ C-435/97, [1999] ECR I-5613.

⁵ C-287/98, [2000] ECR I-6917.

“55. The EIA Directive , as amended in order to take account of the Aarhus Convention , seeks to improve the decision-making processes of administrative bodies. The element of public participation it introduces to the process is important to achieving this aim. In other words, the EIA Directive promotes direct public participation in administrative decision-making processes concerning the environment within a member state.

“56. Where a decision is reached by a legislative process, however, such public participation already exists. The legislature itself is composed of democratically elected representatives of the public. When the decision-making process takes place within such a body, it benefits from indirect, but nevertheless representative, public participation.”

Whether the project is able to rely on the Article 1(4) exemption is for the national court. The role of the Court was emphasized by the CJEU in *Solvay v Region Wallonne* C-182/10:

“only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of the Convention and the directive have been achieved by the legislative process, are excluded from the scope of those instruments. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply ‘ratify’ a pre-existing administrative act, by merely referring to overriding reasons in the public interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific act of legislation within the meaning of the latter provision and is therefore not sufficient to exclude a project from the scope of that Convention and that directive as amended.

... – when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive as amended must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law, and

– if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.”

If the legislation relied on does not meet the requirements of the Article, a development consent is still required. The *Linster* case concerned proceedings by the Luxembourg government to compulsorily acquire land for a road project. The defendants contended that the national law relied upon had been adopted in breach of the Environmental Assessment Directive. The ECJ held that the ‘national court, called on to examine the legality of a procedure for the expropriation in the public interest, in connection with the construction of a motorway, of immovable property belonging to a private individual, may review whether the national legislature kept within the limits of the discretion set by

the Directive, in particular where prior assessment of the environmental impact of the project has not been carried out, the information gathered in accordance with Article 5 has not been made available to the public and the members of the public concerned have not had an opportunity to express an opinion before the project is initiated, contrary to the requirements of Article 6(2) of the Directive.’⁶

Bozen had held that the Article 1(4) exemption applied if two conditions were met: ‘The first requires the details of the project to be adopted by a specific legislative act; under the second, the objectives of the Directive, including that of supplying information, must be achieved through the legislative process.’⁷ Consequently ‘the act must lay down the project in detail, that is to say in a sufficiently precise and definitive manner so as to include, like development consent, following their consideration by the legislature, *all the elements of the project relevant to the environmental impact assessment*’.⁸

The Habitats Directive

Parliament is still required to comply with the Habitats and Birds Directives, in particular the requirement for appropriate assessment if the project is likely to have a significant effect on European Protected Sites.⁹

EIA in the Hybrid Bill process

Private Business Standing Order 27A in each House deals with Environmental Assessment on Private Bills. If a Private Bill authorizes the carrying out of specified works an Environmental Statement must be deposited or a direction provided by the Secretary of State that no Environmental Statement is required.¹⁰ The ES should contain the information required by Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, such of the Part I information as is reasonably required and which the promoters can reasonably provide or such of that information as the Secretary of State may direct.¹¹ It is difficult to see how or why the Secretary of State can cut down the content of the Environmental Statement. The Environmental Statement must be accompanied by a non-technical summary.¹² Copies of the Environmental Statement and non-technical summary must be made available for inspection, and copies be available for a reasonable fee.

The Environmental Statement will generally prove extremely useful for petitioners against a hybrid bill.

Accompanying the Crossrail Bill was an Environmental Statement, totaling 9 volumes, and accompanied by a non-technical summary. A similar procedure had been followed in

⁶ Paragraph 39.

⁷ At paragraph 76.

⁸ Paragraph 79.

⁹ *Solvay v Region Wallonne* C-182/10

¹⁰ Unless planning permission has already been granted for the works: SO 27A(8).

¹¹ SO 27A(2). The standing orders still refer to the 1999 EIA Regulations, which have been revoked everywhere except Wales, but include any subsequent regulations.

¹² SO 27A(4).

the Channel Tunnel Rail Link Bill with an Environmental Statement produced when the Bill was introduced. It was then supplemented when changes were made to the Bill.¹³

The Crossrail Act granted deemed planning permission for the carrying out of the scheduled works (the railway, shafts roads, bridges and other works identified in Schedule 1 of the Bill). It also gave deemed planning permission to other development authorized by the Bill which would not have required EIA under the EIA Regulations¹⁴ or which is included in the deposited Environmental Statement.¹⁵

Standing Order 27A had been in force for the Channel Tunnel Rail Link (“CTRL”) and Crossrail Bills. The adequacy of the process had long been criticized. At the time of CTRL Lord Kennet questioned whether the environmental assessment carried out was adequate under European law.¹⁶ When the Crossrail Bill was produced there was substantial complaint that the Standing Orders did not satisfy the Directive’s requirements for an exemption.¹⁷ In response to such criticisms the government advertised response periods for the Environmental Statement and the various supplements to it. Representations on the Environmental Statement (but, oddly not correspondence challenging the EIA process being undergone) were placed before MPs prior to Second Reading. Further comments on the Environmental Statement were put before the House prior to Third Reading and ministers gave a statement of reasons for approving the project at that stage.

Prior to the HS2 Bill’s second reading, claimants sought to challenge the legality of the Bill on administrative law grounds. In the Court of Appeal in the HS2 litigation,¹⁸ the government accepted that the hybrid Bill procedure would not be EIA Directive compliant because there was no stage at which the public could participate in the environmental decision-making process. The Court of Appeal considered that the procedures could be made compliant with the Directive.¹⁹

Standing order 224A was made to seek to address these problems. Standing Order 27A had simply required an Environmental Statement to be deposited but had not required Parliament to do anything with it, nor even invite representations on it. SO 224A tries to resolve what is done with an Environmental Statement.

Firstly, the notice published of the Bill must invite the public to ‘comment on the environmental statement’ within a period of at least 56 days.²⁰ This misunderstands the scope of the Directive, which enables the public to participate in the environmental decision-making process (article 6(4)), making comments and questions (article 6(2)) and invites public authorities to comment on the developer’s information and ‘the request for development consent’ (article 6(1)). The consultation responses to be invited should

¹³ *Lords Hansard*, 21st May 1996, col. 793 (Viscount Goschen)

¹⁴ The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

¹⁵ Clause 10(1), (2).

¹⁶ *Lords Hansard*, 21st May 1996, col. 810.

¹⁷ See for example submissions by Robert McCracken and the Confederation of British Industry to the Commons Select Committee and the 2005 forerunner of this paper.

¹⁸ *R(Buckinghamshire County Council) v Secretary of State for Transport* [2013] EWCA Civ 920, [2013] P.T.S.R. 1194 at para 79 and also see [2013] EWHC 481 (Admin) per Ouseley J at para 243 to 276

¹⁹ At para 82.

²⁰ SO 224A(3).

include any comments on environmental aspects of the project (whether within the Environmental Statement or not) and views on the substance and detail of the Bill.

Statutory authorities which are to be consulted should also be identified, whether in general terms or case by case (article 6(1)) and this has not been done in the Standing Orders. In practice though they are likely to be well aware of the Bill.

The minister is required to publish the comments made and to send them to an ‘independent assessor’.²¹ The assessor’s report is required to summarise ‘the issues raised by those comments’²² but no mention is made of reaching conclusions on those issues nor of conducting an evaluation of the Environmental Statement.²³ The assessor will report at least 14 days before the Second Reading of the Bill.²⁴

It is left at large what is done with the representations and the assessor’s report. Parliamentarians could take it into account in deciding whether to give the Bill a Second Reading. Many of the points raised will concern the detail of the Bill, usually examined in the Select Committee and the later committee stages, but the Select Committee is historically confined to considering petitions rather than points raised by non-petitioners. MPs could raise comments made at other stages, such as the conventional committee stage (where amendments are debated) and at Report and Third Reading.

In the case of the HS2 Bill, Golder Associates were appointed as to report, in summary form, on the issues raised by comments on the Environmental Statement. Golder Associates’ April 2014 report on the ES comments was published on 07.04.2014.

Supplementary environmental information is to be publicized, open for comments and reported on by the independent assessor in a similar manner. So for HS2, any further environmental information will be consulted on, and then those consultations comments reported on.

In the case of HS2, a good example of a potential source of supplementary environmental information is new proposals for the Euston station element. As the Minister explained, if a new proposal for Euston was to emerge, Standing Order 224A would require that proposal to be the subject of an Environmental Statement, with consultation on that Statement followed by reporting.²⁵

Any report on such information must be published at least 14 days before Third Reading, although the reports ought to be produced much earlier.

At the Third Reading the minister is required to set out:²⁶

- “(a) the main reasons and considerations upon which Parliament is invited to give consent to the project to be authorised by the bill;
- (b) the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.”

²¹ SO 224A(5).

²² SO 224A(6)(i).

²³ This had been criticised by the appellants in the Supreme Court hearing of *R(Buckinghamshire County Council) v Secretary of State for Transport*.

²⁴ SO 224A(7).

²⁵ *Hansard* House of Commons, 29.04.2014, col.767.

²⁶ SO 224A(9).

A written statement setting out this information shall be laid before the House not less than 7 days before Third Reading.

This seeks to replicate Article 9 of the EIA Directive, although it omits the need to include ‘information about the public participation process’.

The Select Committee Procedure

Committal to a Select Committee

After Second Reading a hybrid Bill will then be committed to a Select Committee to consider petitions. The House passes procedural motions establishing the Select Committee, ordering the Bill committed to its consideration. In the case of HS2, this was the motion ordered on 29th April 2014.²⁷

Instructions may be given to the Select Committee to consider certain matters. This occurs on committal, by a further motion ordered by the House (for the detail regarding HS2, see below and the Appendices), but also may occur following a report by the Select Committee. The instruction defining the “principle” of the Bill approved at Second Reading, so necessarily defining the area beyond the jurisdiction of the Select Committee and setting the scope of their consideration, is key.

Scope of the Select Committee’s consideration: matters outside the principle of the Bill

Whilst the promoter of a Private Bill is required to demonstrate to the Select Committee why the Bill should be enacted, consideration on a hybrid bill is more restricted. Unless the House has given any instruction or indication to the contrary, the Second Reading of the Bill is considered to remove from the promoters the onus of proving the expediency of the Bill and committees have declined to hear evidence on the principle of the Bill as already endorsed by the House.²⁸

Consequently the committee are unable to reject the Bill in its entirety – unlike the rejection of the previous Private Bill for Crossrail. The burden of proof is on the petitioner to secure a change to the Bill or a concession (usually by undertaking) from the promoters.

The scope of the principle of the Bill is usually contentious. The Crossrail Select Committee were instructed in the Commons to treat the principle as the termini of the route and the location of certain intermediate railway stations, as follows:

- (i) the termini of the railway transport system for which the Bill provides, and
- (ii) the provision of intermediate stations at Paddington, Bond Street, Tottenham Court Road, Farringdon, Liverpool Street, Whitechapel, the Isle of Dogs and Custom House.

However, in the case of Crossrail the Select Committee also considered that ‘the general alignment of the tunnels and the stations’ were part of the principle.²⁹ The Lords Select

²⁷ See appendix for full motion text. Note that this was very similar to the order of committal on Crossrail.

²⁸ Erskine May, p.645, citing the Channel Tunnel Rail Link Bill.

²⁹ Alan Meale MP to Guy Carpenter, Woodseet and Hanbury Street Residents Association, 14th March 2007.

Committee considered that ‘the principle of the Bill should be understood to mean the works proposed (outlined in the Bill—its clauses and schedules) within the limits of deviation. In the Bill there is an intimate connection between the powers conferred and the places where those powers may be exercised.’³⁰

In the case of HS2, the Select Committee has been instructed that the principle of the Bill, so those matters *outside* the scope of their consideration, comprises:

- (a) the provision of a high speed railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Water Orton in Warwickshire to Curzon Street in Birmingham and intermediate stations at Old Oak Common and Birmingham Interchange, and
- (b) in relation to the railway set out on the plans deposited in November 2013 in connection with the Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, its broad route alignment.

However, it will be for the Select Committee to decide what, exactly, is meant by “the broad route alignment”. To what extent this is wider than the ‘general alignment’ remains to be seen. It is certainly wider than the limits of deviation.

As noted, the HS2 Select Committee may receive further instruction regarding the scope of its consideration following a report from it to Parliament recommending that it be given further instruction. That occurred with the Crossrail Bill.³¹

There may be a further constraint when the Bill is considered in the Second House. Amendments proposed by a Select Committee may:

- (a) limit the powers included in the Bill, or to
- (b) extend the obligations of the Government and/or extend the powers contained in the Bill.

The latter type of amendment is known as an Additional Provision. Since such an amendment could potentially have an impact on people not previously affected by the Bill, Additional Provisions need to be advertised and authorised by the House in the same way as the original provisions of the Bill, and may be subject to further petitions. On a

³⁰ Select Committee First Special Report, para 22.

³¹ Following recommendations by the Select Committee on HS1 an instruction was given to the committee on 1st November 1995:

“That it be an instruction to the Select Committee to which the Channel Tunnel Rail Link Bill is committed in the next Session--

(1) that it have power to consider--

(a) alternatives to the provision which is now made in the Bill regarding the approach of the rail link to St. Pancras station from the west of Highbury Corner;

(b) the provision of rail sidings on the Midland Main Line on the western edge of the King's Cross Railway Lands; ...

(f) the provision of an additional road into the King's Cross Railway Lands from York Way, in the London Borough of Camden; (g) alterations to the provision which is now made in the Bill regarding ticket halls and subways of the London Underground Railways; ...

and, if it thinks fit, to make Amendments to the Bill with respect to any of the matters mentioned above, and for connected purposes; (2) that any Petition against Amendments to the Bill ...”

Private Bill, it is not possible to introduce a Petition for Additional Provision in respect of a Bill in the Second House, as this is expressly forbidden by Private Bill Standing Order 73. Procedure in a Select Committee on a hybrid bill "broadly follows the procedure on an opposed private bill" according to *Erskine May*. The Lords Select Committee on Crossrail therefore concluded that they had no power to make an amendment which would have amounted to an Additional Provision, unless specifically instructed to do so by the House. They received no such instruction.³²

It is possible for the Second House select committee to propose additional provisions or to report to the House for an instruction to do so.

Petitions – substance

The primary objective of a petition is to reduce harm to or secure benefits for the petitioner's objectives by either persuading the Select Committee to make amendments to the Bill or persuading the promoter to offer undertakings and assurances. The undertakings and assurances are kept on a register. In the Crossrail process 'Environmental Minimum Requirements' were also offered as part of the undertakings.

It is for the promoter to offer undertakings, although the committee could suggest that it does so.

The petition should therefore spell out the problem and the proposed solution which the committee could adopt. It may also be sensible to indicate undertakings which the promoter could enter into to resolve the objection.

A petition may have a secondary objective, to pursue arguments which may ultimately lead to a House or government withdrawing support for part of the Bill or proposing further changes. For example, on CTRL the London Borough of Newham proposed that the Bill include the powers to construct a station at Stratford. The committee did not amend the Bill, but recommended that the station be authorized and constructed under a Transport and Works Order. That was subsequently done and the rest is part of Olympic history.

Petitions - procedure

An objector to a Bill who wishes to be heard by the Select Committee must file a petition which is a summary of his objections to the Bill. In civil litigation it is best viewed as a set of grounds. The petition will, in numbered paragraphs, explain the interest of the objector and then set out shortly his objection to the Bill. Practice has been that each particular objection to part of the Bill is set out in a separate paragraph with very limited reasoning. An example is given in the House of Commons' Private Bill Office publication *How to Petition against a Private Bill in the House of Commons*.³³

A petitioner may only be heard on the points raised in his petition so it is critical that these are comprehensive.

The time for filing a petition will be set down in the order sending the Bill to a Select Committee. This period may be short: for the Channel Tunnel Rail Link the order allowed two weeks for most objectors and three weeks for individuals and local residents.

³² See Select Committee First Special Report, para 23 to 26.

³³ <http://www.parliament.uk/documents/upload/commonspetitioningkit.pdf>

In the case of the HS2 Bill, the deadlines are similar to those for the CTRL. The first day for petitioning was 30th April 2014 and the deadlines were ordered as 16th May 2014 (for local authorities (not Parish Councils) and businesses) and 23rd May 2014 (in any other case).

The Minister told the House on 29th April 2014 that a business association would be treated as subject to the later deadline.³⁴

A petition must be deposited with the Private Bill Office in person, by a petitioner, duly authorised agent or by an MP. The agent should have a letter of authorisation and any necessary application form for Roll B.

A fee of £20 is payable on presentation of a petition.

Locus Standi

A petitioner may only be heard if they have *locus standi*. Parliament has not yet caught up with the civil courts in disapproving of the use of Latin. Generally, petitioners are not entitled to *locus standi* unless it is proved that their property or interests are directly and specially affected by the Bill.

Certain people always have *locus standi*:

- Owners of land proposed to be compulsorily taken
- Lessees and occupiers of such land on whom notice of the Bill has to be given

Parliamentary practice is inconsistent about the standing of persons whose land is said to be affected by a railway line, such as by vibration, but is not being taken.³⁵ This issue must now be considered under the Human Rights Act 1998 and in particular, Articles 6 and 14 of the European Convention on Human Rights. A Hybrid Bill can interfere with a person's civil rights, for example by authorising the construction of a railway line which will affect their property by noise and vibration and by removing their right to claim in nuisance against it. The exclusion of such persons whose legal rights are being affected would deprive them of a fair hearing under Article 6. As some people with affected civil rights are allowed to be heard, such as landowners proposed to be acquired, denying a hearing to other 'civil rights' objectors may also be unlawful discrimination contrary to Article 14. The legal remedy may be a declaration of incompatibility against the HS2 Bill when enacted, as the Houses of Parliament or persons exercising functions in connection with proceedings in Parliament are not public authorities under section 6 of the HRA.³⁶

The narrow and historic approach to *locus standi* is also inconsistent with the concept of access to environmental justice in the Aarhus Convention. We address its relationship with the EIA Directive below.

Disputes about *locus standi* are determined by the Select Committee. Previous decisions of the Court of Referees are binding on the Committee.³⁷ The Committee has a discretion to allow certain petitioners to appear:

³⁴ *Hansard*, House of Commons, 29.04.2014, col.767.

³⁵ See Erskine May.

³⁶ Human Rights Act 1998, section 6(3).

³⁷ Erskine May, p.646.

- Bodies representing trades, businesses and interests in a locality if they allege that the trade, business or interest will be injuriously affected by the Bill³⁸
- Bodies representing amenity, educational, travel or recreational interests if they allege that the interest will be adversely affected to a material extent
- Bodies affected by competition from the Bill's proposals³⁹
- Local authorities of any area, the whole or any part of which is alleged in the petition to be injuriously affected⁴⁰
- Inhabitants of such an area⁴¹
- River authorities, land drainage authorities and conservators of forests, commons or open space.

Standing may be limited to particular points in the petition. A person may only argue on matters which give them *locus standi*.

Agents

A petitioner may be represented by Parliamentary Agents. Roll A Agents are persons authorised to promote Bills and have considerable Parliamentary experience. Other persons, whether or not solicitors, may become Roll B agents for a particular bill.⁴²

Proceedings in Committee

The committee proceedings are essentially concerned with the hearing of petitions. The committee will usually sit in a committee room in Westminster, although they may carry out site visits. Parties may appear in person, or represented by agents or counsel. Counsel will appear robed.

As the promoter does not have to prove the case for the Bill, it is not expected to produce witnesses first. However the committee proceedings on the Bill may begin with a speech by counsel for the promoters, outlining the scheme.

Petitions will then be heard individually. These will be timetabled and may follow the line of the railway. The programming structure has tended to be to hear petition by petition rather than to group petitioners or issues.

The procedure will be determined by the committee, but will usually be in this form.

The Crossrail practice was for counsel for the promoter to relatively briefly outline the subject matter of the petition.⁴³ The advocate for the petitioner would then make an opening speech before calling any witnesses. Proofs of evidence are not required to be produced, either to the other side or the committee.⁴⁴ The witnesses and advocates may

³⁸ House of Commons, Standing Orders for Private Business, SO 95.

³⁹ House of Commons, Standing Orders for Private Business, SO 92.

⁴⁰ SO 96.

⁴¹ SO 96.

⁴² The form is in *How to Petition against a Private Bill*

<http://www.parliament.uk/documents/upload/commonspetitioningkit.pdf>

⁴³ See the House of Lords Select Committee First Special Report, para 27 to 29.

⁴⁴ There may though be tactical questions as to how far the evidence should be disclosed to the other side in advance.

use a ‘question and answer’ script. Documents may be placed before the committee to illustrate the case.⁴⁵ Those witnesses can be cross-examined by the promoters, re-examined and questioned by the committee.

The promoter will then reply, and may call evidence. If they do call evidence, the petitioner has a right to reply.⁴⁶ The promoter may then make a closing submission on the petition.⁴⁷ Counsel for the petitioners may then make closing submissions.

These hearings are considerably shorter than the equivalent consideration in a public inquiry. Consideration of whether the Channel Tunnel Rail Link Bill should authorize the construction of a station at Stratford took less than a day.

Uncorrected transcripts of the evidence will usually be available on the Parliamentary website by the following day. It is useful for petitioners to see how similar issues have been addressed.

The committee report

The Crossrail Select Committee in the Commons had 84 days of hearings, with evidence from 205 petitioners. The committee will publish a written report at the end of the hearings and may produce special reports as it goes along. The report will not necessarily deal with each objection.

Tactical points

The primary objective of a petition will usually be to resolve their private concerns. The primary objective of the promoter will be to dispose of obstacles to the passage of the Bill. It is therefore important for prospective and actual petitioners to be talking to the promoters, explaining their problems and suggesting solutions from an early stage. Similarly it is incumbent on the promoters to establish negotiating teams which seek to understand what the problems are.

The progress of negotiations, however positive, should not stop petitions being submitted. It may be that the negotiations are not successful, or their success is reduced by the absence of the pressure of a petition. The submission of a petition is not a hostile act.

⁴⁵ Practice on Crossrail was for 16 copies of exhibits to be handed to the committee clerk and exchanged with Crossrail 24 hours in advance. Copies were also provided to the shorthand writer and the display screen operator (17th January 2006, para 12). Crossrail then put the documents onto the system for projection at the committee.

⁴⁶ See Erskine May, 24th Edition (2011), pp.652-658 and *How to Petition* However Appendix C to that guide sets out the usual order of proceedings in an opposed (private) bill committee, which requires the promoters to prove their case.

⁴⁷ See the ruling of the Crossrail Bill Select Committee in the Commons on 26th January 2006 at col 1624:

“Following consultation the Committee has decided to order the following, that at the end of the presentation of evidence from both sides for the petition the Promoter shall, to help the Committee, make a closing statement relating to this petition. The Petitioner will have the right to make the final statement. This in no way, of course, affects the right of the Promoter to make the closing statement at the end of our consideration of the Bill.”

Consequences of non-compliance with EIA

If the High Speed 2 process fails to secure the Article 1(4) exemption then the first consequence is that it will need to go through a fresh development consent process. The grant of deemed planning permission under the Bill (or as permitted development under the Town and Country Planning (General Permitted Development) Order 1995) would be unlawful. It would purport to be a grant of development consent in breach of the Directive.

The UK Courts would be able to review whether the High Speed 2 Act was within the Article 1(4) exemption. The issue may be taken as a defence to compulsory acquisition, as in *Linster*⁴⁸, or as a judicial review.⁴⁹

The issue could also be raised by the European Commission in infraction proceedings.

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May 2014

⁴⁸ Judgment, para 39.

⁴⁹ *Linster* at para 37.

House of Commons
Standing Orders for Private Business
Standing Order 27A

27A.-(1) Subject to paragraph (8) below, in the case of a bill authorized the carrying out of works the nature and extent of which are specified in the bill on land so specified, there shall be deposited on or before 4th December in the Private Bill Office and at the public departments at which copies of the bill are required to be deposited under Standing Order 39 (Deposit of copies of bills at Treasury and other public departments, etc.), either-

- (a) a copy or copies (as specified by paragraph (2) below) of an environmental statement containing, in relation to the works authorized by the bill
 - (i) the information referred to in Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (S.I. 1999, No. 293) (referred to below as “Schedule 4”), and so much of the information referred to in Part I of that Schedule as is reasonably required to assess the environmental effect of the works and as the promoters can reasonably be expected to compile; or
 - (ii) such of that information as the Secretary of State may in any particular case direct, or
 - (b) a copy or copies (as so specified) of a direction by the Secretary of State that no such statement is necessary in relation to the works authorized by the bill.
- (2) The number of copies required to be deposited under paragraph (1)(a) or (b) above shall be two in the case of a deposit at the Department for Environment, Food and Rural Affairs and the Office of the Deputy Prime Minister and one in any other case.
- (3) Where any such works authorized by a bill relate to two or more distinct projects each project may be treated separately for the purposes of paragraph (1) above: and the references in sub-paragraphs (a) and (b) of that paragraph to the works authorized by the bill shall accordingly be construed, where the paragraph applies separately to each project, as references to the works comprised in that project.
- (4) Notwithstanding any direction given as mentioned in paragraph (1)(a) above, any environmental statement of which copies are deposited under this order shall contain the summary (referred to below as “the non-technical summary”) required by paragraph 6 of Part I and paragraph 5 of Part II of Schedule 4.
- (5) Where the Secretary of State has given a direction as mentioned in paragraph (1)(a) above, a copy of the direction shall be deposited with every copy of the environmental statement deposited under this order; and every copy of a direction so deposited or deposited under paragraph (1)(b) above shall be accompanied by a statement by the Secretary of State of his reasons for giving the direction.
- (6) Copies of every environmental statement deposited under this order shall be made available for inspection, and for sale at a reasonable price, on and after 4th December, at the offices at which copies of the bill are required to be made available under Standing Order 4A (Copies of bill to be made available); and there shall also be made available separately on and after that date at those offices, for inspection and for sale at a reasonable price, copies of the non-technical summary.

- (7) The reference to Schedule 4 in this order is a reference to that schedule as amended from time to time and includes a reference to the corresponding provision of any regulations which re-enact the Town and Country Planning (Environment Impact Assessment) (England and Wales) Regulations 1999, with or without amendment; and references to particular paragraphs of Schedule 4 shall be construed accordingly.
- (8) This order does not require the deposit of copies of an environmental statement in relation to any works for which planning permission has been granted.

Standing Order 224A

224A. "Comments on environmental statement"

- (1) This order applies to any government bill in relation to which the Examiner decides Standing Orders 4 to 68 are applicable and in relation to which an environmental statement is required to be deposited under Standing Order 27A.
- (2) In this order:
 - (a) "the relevant Minister" means the Minister of the Crown with responsibility for the bill;
 - (b) "the environmental statement" means the environmental information originally deposited by the relevant Minister in relation to the bill for the purpose of Standing Order 27A;
 - (c) "supplementary environmental information" means any additional environmental information deposited by the relevant Minister, after the deposit of the environmental statement, to supplement that statement for the purpose of meeting the requirements of any EU Directive relating to environmental impact assessment.
- (3) The notice published under Standing Order 10 in relation to the bill shall state that any person who wishes to make comments on the environmental statement should send them to the relevant Minister in such manner and on or before such date as shall be specified by the relevant Minister in the notice, that date being no earlier than the 56th day after the first publication of the notice.
- (4) For the purpose of Standing Order 224 paragraph (3) shall be treated as one of the Standing Orders compliance with which must be examined by the Examiner.
- (5) The relevant Minister shall, in such form as may be specified by the Examiner, publish and deposit in the Private Bill Office any comments received by him in accordance with this order and shall also submit those comments to the independent assessor appointed under paragraph (6) below. The relevant Minister shall deposit a certificate in the Private Bill Office setting out the date on which all comments have been received by the independent assessor.

(6) (a) If the bill originated in this House and if comments are received on the environmental statement in accordance with this order:

i. a report shall be prepared by an independent assessor summarising the issues raised by those comments;

ii. the Examiner shall appoint the independent assessor within the period for commenting on the environmental statement prescribed by paragraph (3) above;

iii. the assessor shall be instructed to prepare the report within such period as the Examiner shall specify, the end of that period being no earlier than the 28th day after the date certified by the relevant Minister, in accordance with paragraph (5) above, as the date on which the assessor received all of the comments from the relevant Minister;

iv. before specifying a period in accordance with sub-sub-paragraph (iii) above, the Examiner shall consult the relevant Minister on the length of this period;

v. the Examiner shall submit the report of the assessor to the House.

(b) If a report is submitted to the House in accordance with sub-paragraph (a)(v) above, the Examiner has leave to submit the report of the assessor to the House of Lords.

(7) If paragraph (6) above is applied, the bill shall not receive a second reading until at least 14 days after the report of the independent assessor on the comments on the environmental statement has been submitted to the House.

(8) If any supplementary environmental information is deposited in relation to the bill:

(a) it shall be prefaced with a statement that the information is being deposited as supplementary information under this order;

(b) the requirements of Standing Order 27A in relation to the deposit of copies of the environmental statement shall apply to the supplementary environmental information;

(c) copies of the supplementary environmental information shall be made available for inspection and sale at the offices prescribed by Standing Order 27A(6);

(d) notice shall be published in accordance with Standing Order 10 (save in respect of dates) above stating that any person who wishes to make comments on the supplementary environmental information should send them to the relevant Minister in such manner and within such period as may be specified in the notice, the end of that period being no earlier than the 42nd day after the date of the first publication of the notice;

(e) paragraphs (5) and (6) above shall have effect in relation to any comments received on any supplementary environmental information deposited in this House as they apply to comments received on the environmental statement and irrespective of the bill's House of origin;

(f) the examiner shall examine and report to the House whether or not paragraphs (8)(a) to (d) have been complied with and Standing Order 224 shall apply to that examination.

(g) the bill shall not receive a third reading in this House or, if supplementary environmental information has been submitted before second reading, second reading in this House until at least 14 days after the assessor's report on the comments on the supplementary environmental information has been submitted to the House.

(9) At third reading of the bill the relevant Minister shall set out:

(a) the main reasons and considerations upon which Parliament is invited to give consent to the project to be authorised by the bill;

(b) the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

A written statement setting out this information shall be laid before this House not less than 7 days before third reading.

(10) The costs of the assessor and also the costs of the process of appointing an assessor, incurred by the House by virtue of paragraphs (6) and (8)(e) above, shall be reimbursed by the government.

(11) For the avoidance of doubt, any supplementary environmental information accompanying an amendment to a bill which, if the bill were a private bill, would require a petition for an additional provision shall be subject to paragraph (8) above and not paragraph (3) or (7) above".

Electronic access to documents:

“That, in respect of any bill relating to High Speed 2 that is read the first time in Session 2013-14 and to which the standing orders relating to private business are found by the Examiners of Petitions for Private Bills to apply, it shall be sufficient compliance with:

(a) any requirement under those standing orders for a document to be deposited or delivered at, or sent to, an office of a government department, body or person if it is deposited or delivered at, sent to or otherwise made accessible at that office in electronic form;

(b) any requirement under those standing orders for a document to be deposited with an officer if it is deposited with or delivered, sent or otherwise made accessible to that officer in electronic form;

(c) any requirement under those standing orders for a document to be made available for inspection at a prescribed office, or to permit a document to be inspected, if it is made available for inspection at that office, or is permitted to be inspected, in electronic form;

(d) the requirement under Standing Order 27(4) or 36(3) relating to private business to permit a person to make copies of a document or extracts from it, if there is provided to that person, on request and within a reasonable time, copies of so much of it as the person may reasonably require and such copies may, if the person so agrees, be provided in electronic form;

(e) the requirement under Standing Order 27(4) relating to private business for a memorial to be made on every document deposited under that Standing Order, if the memorial is made on a separate document;

(f) any requirement under Standing Order 4A(1), 27A(6) or 224A(8) relating to private business to make a document available for sale at prescribed offices, if it is made available for sale at an office in London.

That this Order shall not affect any requirement under those standing orders to deposit any document at, or deliver any document to, the Private Bill Office or the Vote Office.

That any reference in those standing orders to a document which is deposited, lodged, delivered or sent under those standing orders includes a reference to a document which is so deposited, delivered or sent in electronic form.

That any reference to a document in this order includes a reference to any bill, plan, section, book of reference, ordnance map, environmental or other statement or estimate.”

**Motions ordering HS2 Bill committed to Select Committee
and instruction etc**

Question put and agreed to.

Ordered,

1. That the Bill be committed to a Select Committee.

2. That the following Members be appointed as members of the Select Committee: Mr Henry Bellingham, Sir Peter Bottomley, Ian Mearns, Yasmin Qureshi, Mr Robert Syms and Mr Michael Thornton.

3. (1) That there shall stand referred to the Select Committee—
 - (a) any Petition against the Bill presented by being deposited in the Private Bill Office between 29 April 2014 and the closing date (inclusive), during the hours specified in a notice published by the Private Bill Office, and
 - (b) any Petition which has been presented by being deposited in the Private Bill Office during such hours and in which the Petitioners complain of any amendment as proposed in the filled-up Bill or of any matter which has arisen during the progress of the Bill before the Select Committee, being a Petition in which the Petitioners pray to be heard by themselves or through Counsel or Agents.

(2) The closing date for the purposes of sub-paragraph (1)(a) is-

 - (a) in a case where the Petition is that of a local authority (except a parish council) or a business, 16 May 2014, and
 - (b) in any other case, 23 May 2014.

4. That, notwithstanding the practice of the House that appearances on Petitions against an opposed Private Bill be required to be entered at the first meeting of the Select Committee on the Bill, in the case of any such Petitions as are mentioned in paragraph 3(1)(a) above on which appearances are not entered at that meeting, the Select Committee shall appoint a later day or days on which it will require appearances on those Petitions to be entered.

5. That any Petitioner whose Petition stands referred to the Select Committee shall, subject to the Rules and Orders of the House and to the Prayer of that person's Petition, be entitled to be heard in person or through Counsel or Agents upon that person's Petition provided that it is prepared and signed in conformity with the Rules and Orders of the House, and the Member in charge of the Bill shall be entitled to be heard through Counsel or Agents in favour of the Bill against that Petition.

6. That in applying the Rules of the House in relation to parliamentary agents, any reference to a petitioner in person shall be treated as including a reference to a duly authorised member or officer of an organisation, group or body.

7. That the Select Committee have power to sit notwithstanding any adjournment of the House, to adjourn from place to place and to report from day to day the Minutes of Evidence taken before it.

8. That three be the Quorum of the Select Committee.

High speed Rail (London - West Midlands) Bill: Instruction

Ordered,

That it be an Instruction to the Select Committee to which the High Speed Rail (London - West Midlands) Bill is committed to deal with the Bill as follows—

1. The Committee shall, before concluding its proceedings, amend the Bill by

(a) leaving out provision relating to the spur from Old Oak Common to the Channel Tunnel Rail Link, and

(b) making such amendments to the Bill as it thinks fit in consequence of the amendments made by virtue of sub-paragraph (a).

2. The Committee shall not hear any Petition to the extent that it relates to whether or not there should be a spur from Old Oak Common to the Channel Tunnel Rail Link.

3.–(1) The Committee shall treat the principle of the Bill, as determined by the House on the Bill’s Second Reading, as comprising the matters mentioned in sub-paragraph (2); and those matters shall accordingly not be at issue during proceedings of the Committee.

(2) The matters referred to in sub-paragraph (1) are:

(a) the provision of a high speed railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Water Orton in Warwickshire to Curzon Street in Birmingham and intermediate stations at Old Oak Common and Birmingham Interchange, and

(b) in relation to the railway set out on the plans deposited in November 2013 in connection with the Bill in the office of the Clerk of the Parliaments and the Private Bill Office of the House of Commons, its broad route alignment.

That these Orders be Standing Orders of the House.—(Mr McLoughlin.)

High speed rail (London - west Midlands) Bill: Carry-Over

Ordered,

That, notwithstanding the practice of the House, the following provisions shall apply to proceedings on the High Speed Rail (London - West Midlands) Bill:

Suspension at end of this Session

1. Further proceedings on the High Speed Rail (London - West Midlands) Bill shall be suspended from the day on which this Session of Parliament ends (“the current Session”) until the next Session of Parliament (“Session 2014-15”).

2. If a Bill is presented in Session 2014-15 in the same terms as those in which the Bill stood when proceedings on it were suspended in the current Session–

- (a) the Bill so presented shall be ordered to be printed and shall be deemed to have been read the first and second time;
- (b) the Bill shall stand committed to a Select Committee of the same Members as the members of the Committee when proceedings on the Bill were suspended in the current Session;
- (c) any Instruction of the House to the Committee in the current Session shall be an Instruction to the Committee on the Bill in Session 2014-15;
- (d) all Petitions presented in the current Session which stand referred to the Committee and which have not been withdrawn, and any Petition presented between the day on which the current Session ends and the day on which proceedings on the Bill are resumed in Session 2014-15 in accordance with this Order, shall stand referred to the Committee in Session 2014-15;
- (e) any Minutes of Evidence taken and any papers laid before the Committee in the current Session shall stand referred to the Committee in Session 2014-15;
- (f) only those Petitions mentioned in sub-paragraph (d), and any Petition which may be presented by being deposited in the Private Bill Office and in which the Petitioners complain of any proposed additional provision or of any matter which has arisen during the progress of the Bill before the Committee in Session 2014-15, shall stand referred to the Committee;
- (g) any Petitioner whose Petition stands referred to the Committee in Session 2014-15 shall, subject to the Rules and Orders of the House and to the Prayer of that person's Petition, be entitled to be heard in person or through Counsel or Agents upon the Petition provided that it is prepared and signed and in conformity with the Rules and Orders of the House, and the Member in charge of the Bill shall be entitled to be heard through Counsel or Agents in favour of the Bill against that Petition;
- (h) the Committee shall have power to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from day to day Minutes of Evidence taken before it;
- (i) three shall be the Quorum of the Committee;
- (j) any person registered in the current Session as a parliamentary agent entitled to practise as such in opposing Bills only who, at the time when proceedings on the Bill were suspended in the current Session, was employed in opposing the Bill shall be deemed to have been registered as such a parliamentary agent in Session 2014-15;
- (k) the Standing Orders and practice of the House applicable to the Bill, so far as complied with or dispensed with in the current Session, shall be deemed to have been complied with or (as the case may be) dispensed with in Session 2014-15.

Suspension at end of this Parliament

3. If proceedings on the Bill are resumed in accordance with paragraph 2 but are not completed before the end of Session 2014-15, further proceedings on the Bill shall be suspended from the day on which that Session ends until the first Session of the next Parliament (“Session 2015-16”).

4. If a Bill is presented in Session 2015-16 in the same terms as those in which the Bill stood when proceedings on it were suspended in Session 2014-15–

(a) the Bill so presented shall be ordered to be printed and shall be deemed to have been read the first and second time;

(b) the Standing Orders and practice of the House applicable to the Bill, so far as complied with or dispensed with in the current Session or in Session 2014-15, shall be deemed to have been complied with or (as the case may be) dispensed with in Session 2015-16; and

(c) the Bill shall be dealt with in accordance with–

(i) paragraph 5, if proceedings in Select Committee were not completed when proceedings on the Bill were suspended,

(ii) paragraph 6, if proceedings in Public Bill Committee were begun but not completed when proceedings on the Bill were suspended,

(iii) paragraph 7, if the Bill was waiting to be considered when proceedings on it were suspended,

(iv) paragraph 8, if the Bill was waiting for third reading when proceedings on it were suspended, or

(v) paragraph 9, if the Bill has been read the third time and sent to the House of Lords.

5. If this paragraph applies–

(a) the Bill shall stand committed to a Select Committee of such Members as were members of the Committee when proceedings on the Bill were suspended in Session 2014-15;

(b) any Instruction of the House to the Committee in the current Session or in Session 2014-15 shall be an Instruction to the Committee on the Bill in Session 2015-16;

(c) all Petitions presented in the current Session or in Session 2014-15 which stand referred to the Committee and which have not been withdrawn, and any Petition presented between the day on which Session 2014-15 ends and the day on which proceedings on the Bill are resumed in Session 2015-16 in accordance with this Order, shall stand referred to the Committee in Session 2015-16;

(d) any Minutes of Evidence taken and any papers laid before the Committee in the current Session or in Session 2014-15 shall stand referred to the Committee in Session 2015-16;

(e) only those Petitions mentioned in sub-paragraph (c), and any Petition which may be presented by being deposited in the Private Bill Office and in which the Petitioners complain of any proposed additional provision or of any matter which has arisen during the progress of the Bill before the Committee in Session 2015-16, shall stand referred to the Committee;

(f) any Petitioner whose Petition stands referred to the Committee in the first Session of the new Parliament shall, subject to the Rules and Orders of the House and to the Prayer of his Petition, be entitled to be heard in person or through Counsel or Agents upon the Petition provided that it is prepared and signed and in conformity with the Rules and Orders of the House, and the Member in charge of the Bill shall be entitled to be heard through Counsel or Agents in favour of the Bill against that Petition;

(g) the Committee shall have power to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from day to day Minutes of Evidence taken before it;

(h) three shall be the Quorum of the Committee;

(i) any person registered (or deemed by paragraph 2(j) to be registered) in Session 2014-15 as a parliamentary agent entitled to practise as such in opposing Bills only who, at the time when proceedings on the Bill were suspended in Session 2014-15, was employed in opposing the Bill shall be deemed to have been registered as such a parliamentary agent in Session 2015-16.

6. If this paragraph applies, the Bill shall be deemed to have been reported from the Select Committee and to have been re-committed to a Public Bill Committee.

7. If this paragraph applies—

(a) the Bill shall be deemed to have been reported from the Select Committee and from the Public Bill Committee; and

(b) the Bill shall be set down as an order of the day for consideration.

8. If this paragraph applies-

(a) the Bill shall be deemed to have been reported from the Select Committee and from the Public Bill Committee and to have been considered; and

(b) the Bill shall be set down as an order of the day for third reading.

9. If this paragraph applies, the Bill shall be deemed to have passed through all its stages in this House.

Other

10. The references in paragraphs 1 and 3 above to further proceedings do not include proceedings under Standing Order 224A(8) (deposit of supplementary environmental information).

11. That the above Orders be Standing Orders of the House. —(*Mr McLoughlin.*)

positions for which additional salaries are payable for the purposes of section 4A(2) of the parliamentary standards act 2009

Resolved,

That the Chair of the select committee appointed to consider the High Speed Rail (London - West Midlands) Bill is specified for the purposes of section 4A(2) of the Parliamentary Standards Act 2009.—(*Mr Goodwill.*)

