

Hybrid Bills

The hybrid bill process

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(1) What is a hybrid bill?



- Hybrid – elements of both public and private bills
 - “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” (Speaker Hylton-Foster, HC Deb 10 December 1962 c45)
- Generally used by Government to obtain consent for major national infrastructure, for example:
 - Channel Tunnel Rail Link Act 1996
 - Crossrail Act 2008
 - High Speed Rail (London – West Midlands Act 2017)
- Characteristics:
 - No need for promoter to prove the Bill
 - Principle of the Bill determined at Second Reading HoC



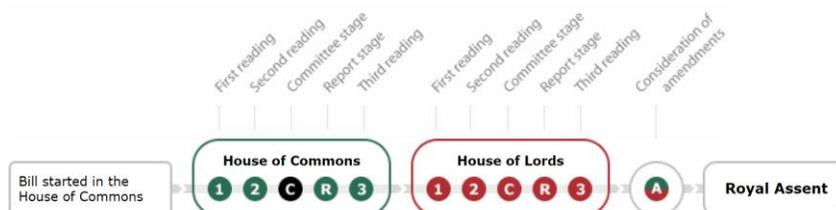
(2) Overview



High Speed Rail (West Midlands - Crewe) Bill 2017-19

Type of Bill: Hybrid Bill
Sponsor: Chris Grayling
Department for Transport

Progress of the Bill



(3) Key stages

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- Consultation on the Environmental Statement
 - Public stages (debate in Chambers)
 - Committee stages (petitioning)
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(3) Key stages

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- High Speed Rail (West Midlands – Crewe) Bill 2017-19
 - First Reading – 17 July 2017
 - Second Reading – 30 January 2018
 - Committee Stage – 19 March 2018 at 3pm
 - Environmental statement
 - Laid on 17 July 2017
 - Deadline for comments – 30 September 2017
 - Assessor’s report – 20 November 2017
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(3)(a) The Environmental Statement



- **Key standing orders:**
 - **27A – Environmental assessment**
 - **224A – Comments on environmental statement**

27A.-(1) Subject to paragraph (10) below, in the case of a bill authorising 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 (3) below) of an environmental statement containing, in relation to the works authorised by the bill

(i) the information specified in paragraph (2), and

(ii) a report which identifies, describes and evaluates reasonable alternatives to the works authorised by the bill, taking into account the objectives and geographical scope of the bill; 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 authorised by the bill



(3)(a) The Environmental Statement



(2) The information referred to in paragraph (1)(a)(i) is

(a) the information referred to in regulation 18(3)(a) to (e) and (4)(b) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (S.I. 2017/571) (referred to below as “the EIA Regulations”), together with any additional information specified in Schedule 4 to the EIA Regulations which is relevant to the specific characteristics of the works authorised by the bill and to the environmental features likely to be significantly affected, or

(b) such of the information mentioned in paragraph (a) as the Secretary of State may in any particular case direct.



(3)(a) The Environmental Statement

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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.

(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

....

(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.

(3)(a) The Environmental Statement

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(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.

(3)(a) The Environmental Statement



- Report of the HS2 Independent Assessor – 20 November 2017
 - Key issue: loss of Ancient Woodland on the route – in particular tunnel under Whitmore Wood
 - Other common concerns:
 - Farming and rural business community
 - Proposed railhead near Stone
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(3)(b) Public stages of the Bill



- First Reading
 - Second Reading
 - if the Bill passes 2nd Reading, the House is taken to have agreed the principle of the Bill.
 - Instruction to Select Committee
 - An instruction will be given by the House for the guidance of the committee on the Bill
 - May be mandatory, but usually permissive – i.e. conferring a power on the committee to consider matters relevant to subject-matter of the Bill
 - Not able to revisit matters going to the principle of the Bill
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(3)(b) Public stages of the Bill



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

1. The Committee shall treat the principle of the Bill, as determined by the House on the Bill's Second Reading, as comprising –
 - (a) the provision of a high speed railway between a junction with Phase One of High Speed 2 near Fradley Wood, in Staffordshire, and a junction with the West Coast Mainline near Crewe in Cheshire,
 - (b) in relation to the railway set out on the plans deposited in July 2017 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, and
 - (c) the fact that there are to be no new stations on, or additional spurs from, the railway mentioned in sub-paragraph (b);and those matters shall accordingly not be at issue during proceedings of the Committee.



(3)(c) Select Committee - petitioning



What should petitions contain?

- The Bill title
- Which clauses of the Bill are relevant to the petition, with a brief explanation as to why
- Who the petitioner is
- Why the Bill affects the petitioner
- What the petitioner requests the Select Committee to do

The petition forms the basis of the petitioner's case before the Select Committee, and should include all points of objection against the Bill.

Fee payable on deposit (currently £20)

Petition must be received by the deadline



(4) Right to be heard (*locus standi*)

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- A problem?

“petitioning happens without sufficient guidance on who should petition, and what about. This certainly results in an inclusive process. It can be seen as too inclusive. There should be less petitioning, with more focus on serious detriment. Clearer, and authoritative, guidance is needed on what constitutes locus standi ... we have broken records with the number of petitions we have heard and with the Committee’s number of sitting days. We do not believe that spending nearly two years on this process is sensible or sustainable in terms of recruitment of future hybrid bill committee members. Nor is it necessary or indeed helpful to petitioners.” (Second Special Report of HoC Select Committee at [385] – [386])

(4) Right to be heard (*locus standi*)

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- General principle:

“Generally speaking, it may be said that petitioners are not entitled to *locus standi* unless it is proved that their property or interests are directly or specially affected by the bill. As a corollary, it has been accepted as an established principle that the owners of land proposed to be compulsorily taken – and also the lessees and occupiers on whom, as owners, the notices required by the standing orders of both Houses are to be served – should always be heard against both the preamble and the clauses of a bill.”

(Erskine May, Parliamentary Practice, 24th Edn, pg 958)

- Note also S/O 91B – right to be heard for MPs whose constituencies are directly affected.
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(4) Right to be heard (*locus standi*)

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- *Power to allow associations, etc., to have petition considered - HC S/O 95; HL S/O 117*

“(1) Where any society or association, sufficiently representing any trade, business, or interest in a district to which any bill relates, petition against the bill, alleging that such trade, business, or interest will be injuriously affected by the provisions contained therein, it shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners to be heard on such allegations against the bill or any part thereof.

(2) Without prejudice to the generality of the foregoing paragraph, where any society, association or other body, sufficiently representing amenity, educational, travel or recreational interests, petition against a bill, alleging that the interest they represent will be adversely affected to a material extent by the provisions contained in the bill, it shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners to be heard on such allegations against the bill or any part thereof.”

(4) Right to be heard (*locus standi*)

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- *Power to allow associations, etc., to have petition considered - HC S/O 95; HL S/O 117*
- Ad-hoc groups/action groups:

“The general principle has been [for Bill Committees] not to hear petitions presented by an ad hoc group, mainly because the public interest in full examination of environmental and ecological issues, including traffic management and the control of pollution of all sorts, is better achieved by petitions presented by local authorities large and small, and by established bodies with expertise in those areas.” (HoL Select Committee on Phase One, Appendix 2 to the Special Report, 13 June 2016, at [7])

- N.B. HS2 Action Alliance and Stop HS2 – right to be heard limited to route wide issues.

(4) Right to be heard (*locus standi*)

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- *Power to allow local authorities or inhabitants to have petition considered - HC S/O 96; HL S/O 118*

“ It shall be competent to the Court of Referees, if it thinks fit, to admit the petitioners, being the local authority of any area the whole or any part of which is alleged in the petition to be injuriously affected by a bill or any provisions thereof, or being any of the inhabitants of any such area, to have their petition against the bill or any provisions thereof considered by the committee.”



(4) Right to be heard (*locus standi*)

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“In accordance with the general principle that, to entitle them to locus standi, petitioners should prove that their property or interests are directly and specially affected by a bill, petitioners whose property was not taken but who contended that they would be adversely affected by the close proximity of a railway, have on several occasions been refused a hearing.

In some exceptional cases, however, of special damage, disturbance or injury, petitioners so affected have been allowed a hearing, and owners and occupiers of houses who complained that their property, although untouched, would be injured or shaken by a proposed line, have been heard and have obtained protective clauses. The owners of property in proximity to a proposed railway, claiming to be heard on grounds of injury from vibration, have in some cases been granted locus standi, and in others been refused.”

Erskine May, pg 958



(4) Right to be heard (*locus standi*)

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- Changes to PrBSOs following phase 1:
 - Abolish requirement for petitions against a bill to include a signature;
 - Remove references to “praying”;
 - Allow electronic submission of petitions;
 - Enable a minimum petitioning period to be set for hybrid bills;
 - Clarify procedure for dealing with late petitions;
 - Enable select committee to group petitions with agreement of petitioners concerned;
 - Modernise language of PrBSOs – e.g. *locus standi*
 - Give certain members of Parliament the express right to have their petitions considered; and
 - Abolish the concept of a Roll B agent.

(4) Right to be heard (*locus standi*)

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- In practice:
 - Guidance note on the ‘right to be heard’ procedure – January 2018
 - The right of petitioners to be heard by the Commons Bill Committee – promoter’s note – more aggressive
 - N.B. Appendix and supporting documents to promoter’s note – any precedential value? Custom?
 - Pre-determined order – right to appear challenges first
 - Note also guidance on nature of such challenges in Guidance note (January 2018)