

HS2 railway, UK – the hybrid bill

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The hybrid bill for the London-to-West Midlands phase of the UK's High Speed Two (HS2) high-speed railway weighed half a tonne, and was the largest ever deposited in parliament. Preparation, to strict requirements of parliament's standing orders, took 22 months, using a large part of the country's engineering and environmental resources, and was completed to time and on budget.

1. What is the authorisation for?

On 15 June 1215, King John signed the Magna Carta. This seminal document set out, for the first time in English law, some basic principles of human rights. The document contained 65 clauses, most of which are of only historical interest, but three remain on the statute books of the UK. Two of these relate to the freedom of the church and the City of London, but the third, clause 39, relates to human rights.

Over the years, human rights have been further enshrined in the legal canon, culminating in the Human Rights Act 1998, which states, at the first protocol of article 1 of schedule 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Implementation of a major infrastructure project will inevitably require interference with a great many persons' right to the enjoyment of their possessions, namely their land. Authorisation is a process whereby such interference can be made, in a manner that is lawful and fair. The objective of the process is to deliver the necessary certainty to the promoter of the scheme while at the same time delivering justice to those persons who are being deprived of their possessions. The key aspect of the process is to ensure compliance with the exception in the protocol quoted above – namely to ensure that it can be demonstrated that all land taken for the scheme is required for the scheme and that it is therefore in the public interest that such land is taken.

Throughout the life of the UK's High Speed Two (HS2) high-speed railway project, the team responsible for the preparation of the bill for the first phase between London and the West Midlands emphasised to all team members, as part of induction training and during preparation of the bill documents, the absolute need to respect this fundamental principle of human rights. They had to ensure that no greater powers were sought than were absolutely needed to implement the scheme, while ensuring there was still some ability to develop the design.

2. Historical perspective

The problem of seeking rights over others, or depriving them of some of their rights, has been a legal issue since the time that rule of law was established. In the UK, the issue has generally been resolved by promoters of schemes seeking powers through the legal system. The first known example is a petition submitted to the Crown in 1290 to levy tolls on a road. With the development of the parliamentary system, when authority passed from the Crown to parliament, the matter was resolved by seeking parliament to pass an act granting a promoter the necessary powers. The first known such act was in 1421 and related to the creation of a road in Abingdon. In the seventeenth century, the process was used extensively to create turnpike roads, with the first Turnpike Act for part of the Great North Road being passed in 1663. As the industrial revolution took hold, the process was used to create the network of canals around the country, with the first Canal Act in 1759 authorising the famous Bridgewater canal. Then came the railway era, where acts of parliament were used extensively to create the rail network. The first of these was in 1758, to authorise a horse-drawn railway at the Middleton colliery. The first steam age Railway Act was for the Stockton and Darlington railway, in 1821. After that came a flood of acts – in one year alone, 1846, during the speculative frenzy known as 'railway mania', over 700 railway bills were presented to parliament! Not all of these were built of course and many investors lost a great deal of money.

Acts of parliament continued to be used to authorise railways until 1992, when parliament passed the Transport and Works Act 1992. This provided an alternative route to authorise major infrastructure projects and acts of parliament ceased to be generally used for this purpose. The Planning Act 2008 took over the role of the authorisation of major infrastructure projects, including railway projects more than 2 km in length. Since the passing of that act, HS2 is the first time an act of parliament has been used to authorise a railway.

3. Why an act of parliament?

Government may choose to use an act of parliament to authorise a railway, rather than a development consent order

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(DCO) under the Planning Act 2008, for various reasons. Typically these could include the following.

- Parliament is the body that is best placed to strike the correct balance between the national and private interest for the largest, most controversial national projects. This is particularly relevant for extensive linear projects (such as railways) that cross a number of local authorities and where the benefits and impacts may arise in different places.
- It enables those directly, specially and adversely affected by a proposed project to petition parliament for changes or mitigation, and to have those petitions heard by the members of parliament (MPs) in each house, who can balance those effects with the wider benefits of the project.
- Approval in principle is granted at second reading of the bill; this reduces the risk for particularly expensive projects by enabling consent at a relatively early stage, minimising significant public expenditure that may otherwise be nugatory.
- It allows the approval of the scheme to include the approval of new or amended legislation necessary to deliver the scheme. Separation of the consent from the legislative changes could cause severe issues for the delivery of the project.
- The approval of parliament protects the project from delay or cancellation that might arise from challenges to decisions that are made by lower authorities.

A further benefit of the bill process is that it is relatively simple to introduce changes to the scheme during its progression through parliament, an option that is particularly valuable for very large schemes, and which is not available during promotion of a DCO.

There are, of course, some disadvantages associated with this authorisation route, primarily resulting from the employment of a select committee of MPs who may not be professionally qualified or may have other interests and priorities. Historically, such committees have also been known to make decisions on other projects that, in the eyes of the promoters, have seemed capricious.

An act of parliament is obtained by promoting a hybrid bill in parliament. It is described as 'hybrid' as it is a hybrid of the two principal types of bill – public and private. A public bill is the normal type of legislation, affecting everyone in the country, introduced by government and debated on the floor of the Houses of Commons and Lords. Members of the public have no direct input to the process. A private bill is usually promoted by a transport or local authority, and affects a limited number of people. Those directly affected can petition parliament. A hybrid bill has elements of both: the principle is debated on the floor of each house and those directly affected can petition parliament and be heard.

4. Standing orders

The preparation and promotion of a hybrid bill is governed by parliament's rule book – the standing orders. Both the House of Commons and House of Lords have a separate rule book, although they are mostly identical. The book, about 230 pages long, was drafted largely in the mid-nineteenth century and, although it has been periodically updated, still contains a number of anachronisms. During the course of promotion of the HS2 bill, a number of such anachronisms were identified and parliament was persuaded to amend the standing orders to remove them. The standing orders were also changed, just for the HS2 bill, to allow submission of the bill in electronic format.

Compliance with standing orders is obligatory and those responsible for preparing the bill have to submit evidence to parliamentary officials, known as the examiners, that compliance has been achieved. In the event that compliance has not been achieved, a further appearance before a special standing committee of each house, known as the standing orders committee, is required. The standing orders committee will then rule whether the standing order can be dispensed with or whether further action is required.

Non-compliance with certain standing orders relating to the timing of deposit of the bill was unavoidable and therefore an appearance before the standing orders committee was necessary. Furthermore, there were a number of substantive non-compliances, resulting from production errors caused by the sheer size of the documentation, which resulted in an extension of the consultation period for the environmental statement.

Following completion of proceedings in the House of Commons, the author was invited by parliamentary officials to propose amendments to standing orders to remove anachronisms and modernise the rules to reflect modern practice in the design and implementation of railway schemes. In total, 18 such amendments of the House of Commons private business standing orders were subsequently proposed and these were accepted by parliament in June 2017.

5. The parliamentary process

The parliamentary process is illustrated in Figure 1. The hybrid bill for phase one of HS2 was deposited in November 2013. The subsequent progress of the bill through parliament is described in a separate paper that is currently being prepared.

6. The powers in the bill

The bill contains the powers that will be required to implement the scheme. The principal powers are the power to

- acquire or temporarily occupy or obtain rights over land
- interfere with highways, including temporary or permanent stopping up and diversion
- interfere with and divert utilities
- carry out surveys to buildings and undertake strengthening works.

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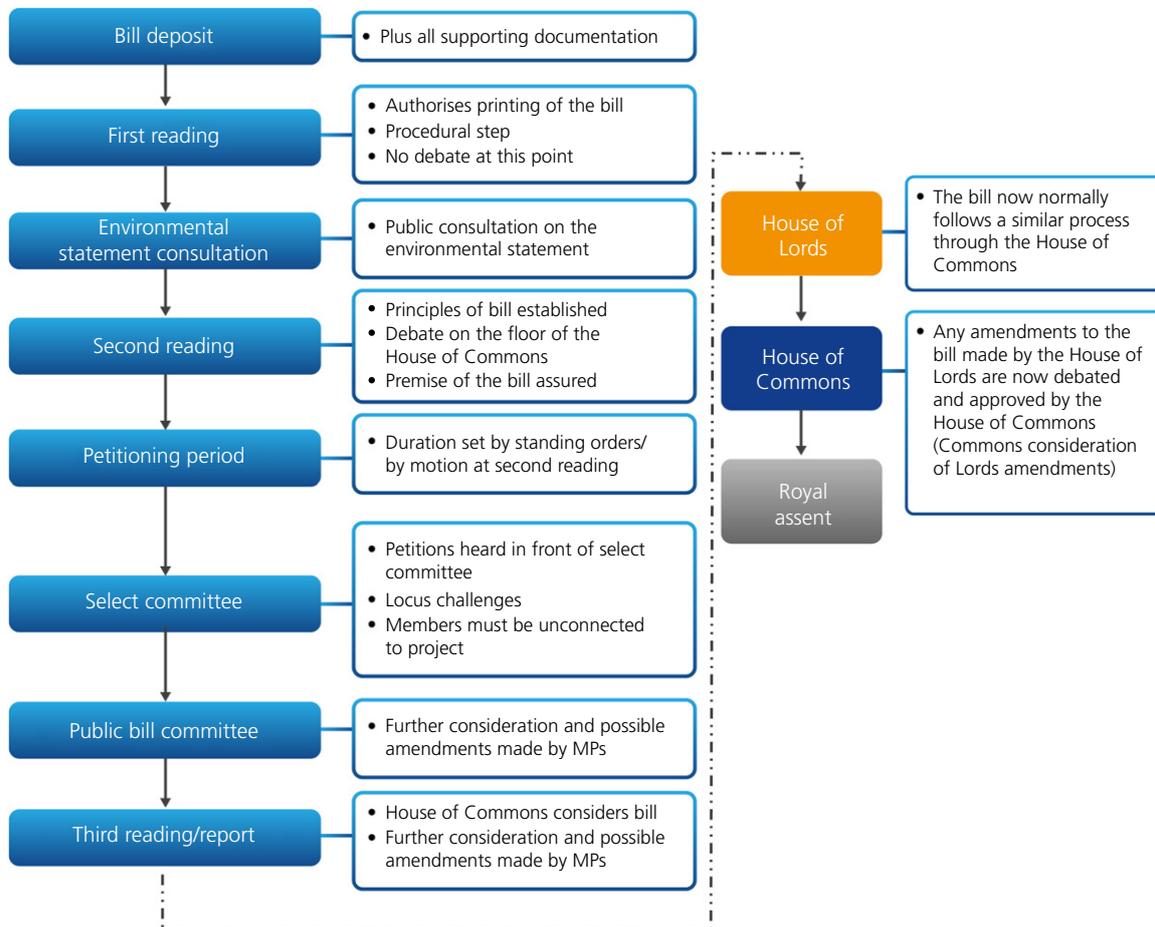


Figure 1. The parliamentary process for a hybrid bill

The bill also

- grants planning consent, subject to approval of matters of detail by the local planning authorities
- disapplies or amends legislation relating to listed buildings, ancient monuments, burial grounds, building regulations, party walls, trees and various other pieces of legislation
- allows works to Crown land
- amends general railway legislation
- amends and applies early railway legislation
- contains protective provisions that govern relations with other statutory bodies such as the Environment Agency, utilities companies and the Canal and River Trust.

7. Flexibility and constraints for design development

The powers in the bill are designed to provide a degree of flexibility for the future development of the design of the scheme. This flexibility is expressed as limits of horizontal deviation for the principal scheduled works shown on the plans and limits

of vertical deviation expressed within the bill. The latter permit upwards deviation of 3 m and any amount downwards. There is also flexibility with respect to ancillary works, which can be constructed anywhere within limits, where the appropriate land powers are included in the bill.

However, the bill also contains constraints on this flexibility. Within the bill, use of land is constrained by the land powers in the bill, and the ability to interfere with highways is strictly defined in the bill. Further constraints are contained in the environmental statement (HS2, 2013a). The bill grants planning consent for the works but, as far as ancillary works are concerned, this consent only applies where the works carried out are as assessed in the environmental statement. If the environmental effects of the works differ from those reported in the environmental statement, planning consent will be lost.

Although the bill grants planning consent, approval of details is still required from the planning authority. Similarly, although the bill includes the power to undertake works to utilities and powers to do various works affecting environmental

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and heritage assets, approval of details is still required from the relevant bodies. Grounds for refusing approval are restricted, but the approval process will still constrain future design development.

8. The bill documents

In accordance with standing orders, the bill comprised

- the bill itself
- plans and sections
- the book of reference
- an estimate of expense
- the housing statement and
- the environmental statement.

The bill contains the powers described above. It is a document some 440 pages long, of which 35 pages set out the powers and the remainder comprises the schedules, which includes descriptions of the scheduled works, the affected land, affected highways and other matters of detail.

The plans illustrate the scheme and show the principal works, the affected land and affected highways. They show a translation of the engineering scheme into a particular parliamentary format. The centrelines of principal works such as railways, highways and major utilities, as specified in standing orders, are shown, together with the limits of permissible deviation of those works. Routes of diversions of footpaths and bridleways are also shown. The plans also show the limits of land to be acquired or used for ancillary works, or occupied temporarily. Within the land limits, every parcel of land that is separately owned is shown and identified by a unique number. In total, 279 plans were required for the HS2 phase one bill.

The sections show a longitudinal section along the principal works, showing the relationship between the works and the existing ground and other features in the land. The sections also define the vertical limits of deviation for certain works. 373 sections were required to illustrate the works for HS2 phase one.

Including key plans, scheme plans and additional plans and sections required for compliance with standing orders, the plans and sections for the phase one bill comprised 698 drawings presented in 11 separate volumes.

The book of reference (HS2, 2016a) included a description of every land parcel identified on the plans, together with the owners and others with an interest in the land. The book of reference was about 2800 pages long, presented in seven volumes.

The estimate of expense (HS2, 2013b) set out the cost of implementing the scheme in a format specified in standing orders.

The housing statement (HS2, 2013c) listed all local authorities where the compulsory acquisition of dwellings that affected 30 or more persons was proposed.

The environmental statement is the largest part of the bill documentation. This is described by Bonard *et al.* (2019).

9. Ancillary documents

At the same time as the bill documents described above were deposited in parliament, a number of other documents were prepared. These included the following.

- Business case. An outline business case was prepared, setting out the case for the scheme. This informed the parliament debate on the scheme at the second reading of the bill.
- Information papers (HS2, 2017). These are a series of papers setting out additional information or HS2's public policy on various topics, including route development, understanding the bill, property, compensation and funding, construction, environment, operations, consultation, stations and key locations, and rail industry issues.
- Impact statements (HS2, 2013d). These include statements of the impacts of the bill on rights of entry, railway matters, planning, compulsory purchase powers and delegated powers. These documents were prepared by the Department for Transport (DfT) to explain the impact of the bill powers under the various topics described.
- European Convention of Human Rights memorandum. This examined the impacts of the scheme on human rights.

10. Land referencing and land notices

The process of identifying the owners and occupiers of the land included within bill limits is known as 'land referencing'. This was undertaken by specialist contractors appointed by the scheme promoter – in this case Terraquest, Mouchel and Mott MacDonald.

The land referencing process comprised several stages. In the first instance, the contractors obtained information on land ownership and land boundaries from the Land Registry and other online registers such as Companies House and 192Business.com. They then sent questionnaires to the property owners to confirm details of boundaries and all ownership and occupation interests. Separately, in cases where no owners could be identified after extensive enquiries, notices were posted on the site to solicit information.

The information gathered during this exercise was recorded in a geographical information system (GIS) database that was then used to communicate the information directly to the engineers who prepared the bill plans, ensuring 100% consistency between the plans and the book of reference. Immediately prior to the deposit of the bill, further enquiries were made to

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ensure that the information was as accurate as possible at deposit of the bill.

The land referencing identified some 11 420 land parcels with 16 500 individual affected owners and occupiers recorded. Some interesting issues were revealed by the exercise. For example, five fields in Warwickshire occupy nearly 200 pages of the book of reference because these fields had been divided into 1300 subplots and sold to 2100 investors in the Far East.

Standing orders require that all affected parties (those owners and occupiers having an interest of, or greater than, a quarterly tenancy) are notified at bill deposit. The land referencing contractors prepared all the required notices and sent them along with copies of the relevant bill plans to affected parties at deposit. Proof of delivery of all notices was then presented to the examiners to verify compliance with the standing orders. This huge logistical exercise was successfully completed.

11. Preparation of the bill

The process of preparing the actual legislation required the following steps.

- The requirements for legislation were established by the legal department of the DfT, the HS2 project team and parliamentary agents (specialist lawyers who are accredited by parliament as being competent to prepare legislation).
- The requirements were then translated by the DfT legal team or parliamentary agents into a series of instructions.
- These instructions were forwarded to the Office of Parliamentary Counsel at the Cabinet Office, who drafted the actual legislation.
- Drafts were then circulated for review by DfT and HS2 project teams and were further circulated among other government departments to ensure compatibility with wider government policy.
- The schedules that accompanied the bill, which detail the works to be constructed, the land required, the affected highways and other matters of detail, and which form the greater bulk of the bill itself, were prepared by the HS2 project team and reviewed by parliamentary agents.

In practical terms, every effort was made to build on the experience and precedents set on previous bills, in particular on Crossrail and the Channel Tunnel Rail Link (now High Speed One (HS1)). Meetings were arranged with the Crossrail team to establish lessons learned on that project and, as a consequence, several refinements of the powers in the Crossrail bill were incorporated into the HS2 bill. The HS2 bill also incorporated changes arising from changes to general legislation arising after enactment of the Crossrail Act 2008.

Preparation of other bill documents, including the plans and sections and bill schedules was undertaken in stages, as set out below. The plans and sections were prepared by HS2's

engineering consultants, Arup, Atkins, Capita and Mott MacDonald, and the schedules were prepared by HS2's bill preparation team.

12. Preparation of bill document specifications, templates and delivery plan

At an early stage, the HS2 bill team prepared a detailed specification for the various bill documents. This was based on careful interpretation of the standing orders and a review of documentation prepared on previous bills. The output included the specification, together with templates for plans and sections and computer-aided design/GIS specifications covering line styles, fonts, drawing layers and other technical aspects. The specifications and templates were reviewed by parliamentary agents who certified that adherence to the specifications would achieve compliance with parliament's standing orders.

Bills for infrastructure projects are prepared at an early stage in the design development. The powers sought in the bill must therefore include some flexibility to enable minor changes to be made as the design develops. There is therefore a tension between including powers over sufficient land to allow for such flexibility while at the same time ensuring compliance with the human rights principle that no more land than necessary is included in the bill. The specification provided guidance on how to achieve the best balance between these conflicting requirements.

A delivery plan was developed, setting out how the documents would be prepared, including the critical 'handshakes' between the engineering consultants and the land referencers when information on required land parcels was exchanged and when the boundaries of required land were to be adjusted to reflect land ownership.

13. Translation of engineering drawings

Once the design had reached a sufficient stage of maturity, a series of workshops was held to translate the engineering drawings into parliamentary language, including identification of the main 'scheduled' works and permanent and temporary land-takes. At this stage, the requirements were subject to challenge to ensure sufficient flexibility was provided and to ensure that excessive land was not included in the bill. The workshops were attended by engineering, environmental, utility and legal teams to ensure that the bill plans included sufficient powers to implement the requirement of all technical disciplines and areas. The draft plans and sections were subject to a series of increasingly detailed reviews until a point was reached where parliamentary agents were satisfied that full compliance with standing orders was achieved.

14. Preparation of bill schedules

The bill comprised some 400 pages of schedules. Preparation of these schedules was undertaken by HS2's bill preparation

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team during a series of workshops in which all works were described, the use of every land parcel was established and all highway diversions were defined. This was a substantial exercise, requiring some 400 h to complete.

Preparation of the bill commenced in the spring of 2012 and took some 22 months, with deposit being made on schedule on 13 November 2013.

15. Production and deposit of the bill

As noted by Bonard *et al.* (2019), the environmental statement was a huge document, comprising around 40 000 pages. The complete bill, including 700 A1 drawings, weighed nearly half a tonne. Printing of this large document was consequently a major production exercise (Figures 2–4).

Standing orders had been amended to permit, for the first time, electronic copies to be deposited, but hard copies were also printed for deposit in parliament itself and at several other locations. Production became thus a two-pronged affair, with printed copies being produced together with electronic versions on USB sticks (Figure 5).

The two processes required different quality management controls and, in this area, some difficulties were experienced, resulting in the omission of some data from a technical appendix of the environmental statement. This resulted in a non-compliance with standing orders and the requirement to re-deposit the missing information. This required an extension of the consultation period, but did not result in an overall extension of the parliamentary process.

Standing orders required deposit of the bill at approximately 250 locations along the route, including parish councils, libraries, council offices and others. Although standing orders

had been changed to permit deposit in electronic format, during the debate in parliament on the changes, the transport minister had promised that locations wishing to receive hard copies relevant to their area could request this. A significant exercise was therefore carried out to contact every deposit



Figure 3. The book of reference – over 2500 pages long



Figure 2. Plans and sections – nearly 700 A1 sheets in 11 volumes



Figure 4. One copy of the bill

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Figure 5. Production of digital copies of the bill

location, establish their requirements for electronic or hard copy and also to establish their requirements for delivery (some parishes were located in people's homes).

A specialist logistics company (Team 365) was appointed to undertake the assembly and delivery of the documents, which was undertaken from a rather cold warehouse in Beckton (Figure 6).

Stringent assurance processes were put in place, both by HS2 and Team 365, to ensure that the correct combinations of documents were delivered to the correct address on the correct day, and that evidence of delivery was provided. The operation went remarkably smoothly, with very few incorrect or refused deliveries.

16. Assurance against standing order requirements

Compliance against 33 specific standing orders needed to be demonstrated to the parliamentary examiners. A detailed assurance process was developed that required each responsible party to verify their compliance against the relevant part of each standing order and to provide evidence of such compliance. In some cases, such as evidencing proof of delivery of some 12 000 notices, such evidence was voluminous!

17. Additional provisions

A key benefit of promoting a scheme through parliament is the ability to amend the scheme during the course of select



Figure 6. Assembly of copies of the bill for distribution

committee hearings in the House of Commons. This facility was used to the full in the promotion of the bill for phase one of HS2.

Changes to the scheme arose for several reasons, such as

- the promoter's design development
- maturing requirements of utility companies
- adjustments to meet the requirements of petitioners
- amendments instructed by the select committee.

Changes were implemented by promoting additional provisions to the bill. These are essentially 'mini bills', comprising the same documentation as the main bill, including bill amendments, plans and sections, an environmental statement and estimate of expense, and following the same process through parliament, namely deposit and distribution, debate in parliament, environmental statement consultation and a petition period, together with appearances before the examiners and standing orders committee as appropriate.

Changes were either required to the powers in the bill, such as additional land requirements or changes to highways works, or where changes were within existing powers but which generated significant changes to the environmental impacts. The latter changes were reported in a supplementary environmental statement that was submitted alongside the environmental statement for changes that required additional powers.

Five additional provisions were deposited for the HS2 phase one bill, seeking authorisation for approximately 300 changes to the scheme. The additional provisions were as follows.

- AP1 – deposited in September 2014. This included 62 amended plans and covered various minor changes arising

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from design development and further information from utility companies.

- AP2 – deposited in July 2015. A further 122 plans were amended. This additional provision included some of the major changes to the scheme, including an extension to the tunnel under the Chilterns, a major realignment of approximately 10 km of the route in Staffordshire so that it passed under the A38 and the West Coast Main Line instead of over them, and the addition of a new depot at Langley to enable Heathrow Express trains to be relocated from Old Oak Common. There were also a large number of minor changes arising from discussions with petitioners.
- AP3 – deposited in September 2015. This comprised eight revised plans as well as three deleted plans and dealt with changes at Euston and deletion of the link to HS1.
- AP4 – deposited in October 2015. This included 103 amended plans and dealt with mostly small-scale changes arising from negotiation with petitioners.
- AP5 – deposited in December 2015 at the very end of the House of Commons select committee hearings. This included 15 amended plans and addressed a small number of minor items.

18. Consolidated bill

Following completion of proceedings in the House of Commons, a ‘consolidated’ version of the bill was prepared. This consolidated all the changes made in the five additional provisions into one document. This was published in 2016 (HS2, 2016b) and was sent to all deposit locations. The consolidated bill was the version presented at the House of Lords for further consideration by the Lords.

19. House of Lords

A number of amendments were made to the bill during its passage through the House of Lords. However, by convention, the Lords do not make changes that require additional powers

to be inserted into a bill. The land and works powers set out in the consolidated bill therefore remained unchanged and these are the powers that appear in the act that received royal assent in February 2017.

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