CASE FILE LIST

Case: HS2-085.
Title: HS2-085 National Farmers Union - Petitioner.

No	Statement(s), depositions(s) and documents(s)	Statement Date	Page
1	NFU Supplementary Evidence Slides(A107)	05-07-23	2-25

The National Farmers' Union of England and Wales: Petition No.107

Supplementary Slides for 10 and 11 July 2023

A107(1)

Inappropriate use of Compulsory Powers

Select Committee Transcript 9th May 2023

207. THE CHAIR: The Government, yes, but the intention, just to be very clear what HS2 are saying to the Committee today, is to follow these principles set out in 21.1.6 and where it relates to utilities to seek to do that via temporary acquisition of land. Is that HS2's position?

208. MR ECKETT: Where it only relates to the utilities. So you get utilities and multiple uses.

209. THE CHAIR: Yes, then the other principles kick in.

210. MR MOULD KC (DfT): Yes, and we are concerned with this Bill, first and foremost I would suggest, with making sure that the legislative and policy arrangements are satisfactory. What I have shown you on the screen is the current published statement of policy in the farmers and growers guide. That is the stated policy that I am instructed represents the promoter's intention.

Inappropriate use of Compulsory Powers

Farmer and Grower Guide Phase 2b

21.1.6 If agricultural land is available to the Secretary of State on a temporary basis for construction works, it will normally be considered economic for him to acquire temporary rights of occupation, provided the land concerned is planned to be used solely for agricultural purposes after hand-back. This will not normally be the case in the following examples:

- where compensation could be sought reflecting the development potential of the land;
- where compensation could be sought reflecting the value of mineral or tipping rights in the land;
- the land also includes buildings which require demolition and re-instatement involving greater costs;
- the land is used for a tunnel or tunnel drive working site;
- the period of occupation exceeds five years;
- there are other factors which significantly increase the costs of temporary acquisition;
- the HS2 works materially change the nature of the land and the landowner will not agree to the requirements set out in paragraph 3 above;
- the landowner and occupier of a piece of land do not both agree to temporary occupation

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Inappropriate use of Compulsory Powers

Select Committee Transcript 9th May 2023

217. MR FINDLAY KC: Mr Mould said that our first ask was unprecedented, but can I ask you to have a look at slide P299(8) please, and paragraph 15.1? 'If at any time when it's proposed to implement the powers of the Bill,' and that is by GVD primarily, in relation to property, 'the Secretary of State is satisfied in the light of detailed design,' and that chimes with what we're asking for, 'that any part of the property will not be required for the accommodation of any permanent works, the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill'.

218. We've asked for a development upon that for a different onus, but it's the same concept. Mr Mould, with respect, misstates the NFU's case. Our case is, with respect to him, slightly more subtle than he presented it. It's the exercise of the powers when they've carried out this further detailed design that we're seeking an assurance in respect of, and on similar terms that assurances have been given, albeit they've proved ineffective, on Phase One and 2A.

219. Likewise, assurances are given in terms of land taken temporarily on the subsequent pages, 9 and 10. I won't take time now to go through them, but it is simply not the case that what we'd be doing would be wholly exceptional or novel.

220. The second point to close with is that, as Ms Staples has just said, in terms of acquisition of rights for utilities, for accommodation crossings and the like, and we'll show you an example in a moment, they are absolutely acquired as normal under DCOs. There's still in acquisition of permanent rights, but as I pointed out in opening, it's not an acquisition of the freehold. It's a difference.

Inappropriate use of Compulsory Powers

Promoter's Exhibit Slide P299(8) extract

15. **Assurance No.15 – Land acquisition - Where land cannot be identified at this stage, but it may be possible to do so following detailed design**

15.1 If at the date when it is proposed to implement the powers of the Bill in relation to the Property [describe] the Secretary of State is satisfied, in the light of detailed design of the project, that any part of the property will not be required for the accommodation of any permanent works authorised by the Bill the Secretary of State shall not exercise the powers of compulsory acquisition conferred by the Bill in relation to that part of the Property but instead the Nominated Undertaker may exercise the powers of Schedule 15 to the Bill to enter and take temporary possession of the Property.

P299(8)

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Inappropriate use of Compulsory Powers

Select Committee Transcript 9th May 2023

- 221. MR FINDLAY KC: If one comes to that strip of pink land, there's a significant difference to the farmer if it's acquired freehold, or whether permanent rights are required over it, or temporary rights. Farmers up and down in the country have easements, electricity line easements over their land. They live with them. They may or may not get a small payment in respect of them, depending on the legalities behind which they're put in place.
- 222. But there's a significant difference to the farmer and the continuing operation of his business if he knows that that land is only either acquired temporarily or it's only rights over that land are going to be required because he will get the farm land back to use eventually. So those are my two points.
- 223. THE CHAIR: First of all, I think the Committee understands your position and we understand where HS2 are. I think we're at risk of talking around in circles things we've already covered. So I don't know if the Committee agrees but I'm keen we've got other things to move on to. Mr Mould, did you wish to respond to this?
- 224. MR MOULD KC (DfT): I was simply going to say that the assurance that you were shown at P299(8) is actually an application of the Secretary of State's statement of policy at paragraph 3.3 in information paper C3, which you have at P319(3) and (4), which I think you were shown in my opening statement. So that remains the Secretary of State's position

Inappropriate use of Compulsory Powers

Promoter's Exhibit Slide P319(3) (Extract)
Information Paper C3: Land acquisition policy

- 3.3 The Bill generally includes full land acquisition powers. However, in any individual case, the exercise of these powers will operate on the basis that the Secretary of State will acquire no greater amount of land than appears to him will be reasonably required following the detailed design of the Proposed Scheme. It is likely to be the case that detailed design will not be completed at the time that possession is required of the land and that this may mean that more land is acquired than is necessary. In these cases, the Land Disposal Policy will apply, and the surplus land may be offered back to the original owner. Further details about this are contained in information papers C2: Rural landowners and occupiers guide and C6: Disposal of surplus land.

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Inappropriate Use of Compulsory Powers: Revised Solution (1)

Given that the Promoter has 8 years to exercise compulsory powers, the Bill be amended so that (unless the owner and occupier agree otherwise):

1: No compulsory powers (whether GVD or Notice to Treat) may be exercised in the first 2 years following Royal Assent unless:

(a) a detailed design stage has been completed

(b) it can be demonstrated that compulsory acquisition of the land in question is required for the purpose of carrying out permanent works

(c) the purpose for which the land is needed cannot be met by a combination of (i) acquisition of rights (ii) temporary possession and/or (iii) acquisition of subsoil or airspace.

2: No GVD be made at any time after that 2 year period unless paragraphs (a) to (c) above are met.

3. No compulsory powers be exercised where land is required for environmental mitigation unless the owner and occupier agree otherwise in writing or the Secretary of State has used best endeavours to agree reasonable terms, including payment, for management of the mitigation and agreement has not been reached.

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Environmental Mitigation BNG

Select Committee Transcript 9th May 2023

- 282. THE CHAIR: Aren't we all aggressively in agreement with each other here?
- 283. MR MOULD KC (DfT): I did discuss this beforehand with Mr Miller, who, as you know, is responsible for these matters. Mr Miller made the characteristically sensible, practical point, if I may say so, that in a case where that opportunity arose, the promoter's desire would be that that land should be handed back to the former landowner with a view to them taking on the role of managing that land. Of course, it would be a matter for them whether they wish to do that, but certainly the promoter of this railway would ordinarily wish, in a case like that, the former owner to take on that responsibility under the aegis of one of the management agreements that Ms Staples said we're now making progress with in her earlier evidence. So that's a practical aspect, which tends to reinforce your reaction, I would suggest.
- 284. If there is a nervousness on this side of the room, it's this. The assurance, in the way in which it's put, is an assurance, if you like – it's a commitment of universal application, and supposing that the landowner in question in a given case was asked whether they would agree to their former land being devoted towards the purpose of achieving environmental net gain, they said no they wouldn't agree to it, and then they were asked, 'Would you like the land back?', and they said, 'No, we wouldn't like the land back because it's too small. It doesn't have any particular utility to it anymore', then the promoter is therefore in the situation where they have land, which they judged to be suitable for environmental net gain purposes, and yet they can't reach agreement with the landowner that it should be, and so they have some surplus land for which the best use is being denied them

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Environmental Mitigation BNG

Select Committee Transcript 9th May 2023

- 285. Now, I hear from my right the suggestion that that is a drafting point. Well, quite, that's precisely the point and if there's room for manoeuvre on this point, it's in relaxing the nature of this commitment, so it is more aligned to the practicalities and doesn't seek, as so many of these assurances do in this presentation, to fit everything into one size, some kind of bed of Procrustes, which has to apply to everything. We're happy to move this forward in a more pragmatic way, in line with what I said to you in those passages that are included from the transcript.
- 286. MR FINDLAY KC: So, if my learned friend wished to come up with some further drafting, we'd of course consider it and we can bring it back to you at another case if we don't reach agreement, but it sounds as though we should reach agreement on it.
- 287. THE CHAIR: That sounds the case to me and I would have thought point D would be easy to reach an agreement on as well.
- 288. MR MOULD KC (DfT): Indeed.
- 289. THE CHAIR: So we're left with B and C.
- 290. MR MOULD KC (DfT): Well, B, the explanation is to be found in the environmental statement but it doesn't follow that I'm going to say – we're going to simply direct the farmer to that explanation. The farmers and growers guide has a detailed section, section 2 at R67, on communication with farmers, landowners and rural business owners. If those who haven't petitioned against the location of environmental and ecological mitigation on their land – if the NFU's position is that those of their members who haven't petitioned, but whose land is earmarked for that, would wish to receive further information, I see no difficulty in principle with reasonable arrangements being made for them to receive such information

Environmental Mitigation BNG

Select Committee Transcript 9th May 2023

- 291. THE CHAIR: Okay. So with relation to A, you will have a fairer period of negotiation, because I'll be very open about what my position would be. I would have been sympathetic to the NFU's position on this, with relation to the 10% gain. I wouldn't wish to see land being used, which could go back to other uses, to meet that. Throughout this, I've been very open, as many of us have, about what our view is. I'm sympathetic on this point so I hope that there will be some further work done on this so that we're not then required to produce something ourselves on it.
- 292. MS MUMBY-CROFT: I completely and totally agree with you on that, yes.
- 293. THE CHAIR: Well, there's a majority of us and Grahame's nodding-ish in agreement, so that's where we would be on this issue. Let's be open about that to facilitate all parties. But then that work can take place and we can be updated on that.
- 294. MR MOULD KC (DfT): Thank you

GVD Notices - plans

Select Committee Transcript 9th May 2023

- 437. MR MOULD KC (DfT): Right. And if we need to, if I may say so, if you'll allow me to say this without provoking your patience. If we haven't, heaven forbid, resolved this before we come back, you know where we're going to start next time.
- 438. THE CHAIR: Yes, indeed.
- 439. MR MOULD KC (DfT): I suspect you will say, 'Please don't start with this one'.
- 440. THE CHAIR: Yes, please try to resolve it for our own sake. Can I thank the parties today? That was very interesting, genuinely. We look forward to having the NFU back again. The date will be 4 July. So anyway, we will see you at some point in the future to pick up where we have things. I think you understand, we're very keen to understand that particular point where we would like to have that resolved. Anyway, on that basis I'll call this afternoon's meeting to a close

Phase 2b Western Leg Information Paper

B5: Compliance with undertakings and assurances

This paper outlines how HS2 Ltd will record and comply with any undertakings and assurances given during the passage of the High Speed Rail (Crewe - Manchester) Bill.

It will be of particular interest to those potentially affected by the Government's proposals for high speed rail.

This paper was prepared in relation to the promotion of the High Speed Rail (Crewe - Manchester) Bill. Content will be maintained and updated as considered appropriate during the passage of the Bill.

If you have any queries about this paper or about how it might apply to you, please contact the HS2 Helpdesk in the first instance.

The Helpdesk can be contacted:

by email: HS2enquiries@hs2.org.uk

by phone (24hrs): 08081 434 434
08081 456 472 (minicom)

or by post: High Speed Two (HS2) Limited
2 Snowhill, Queensway
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Last updated: 10 February 2023

A107(13)

1 Introduction

1.1 High Speed Two (HS2) is the Government's scheme for a new, high speed north-south railway, which is being taken forward in a number of phases. Phase One will connect London with Birmingham and the West Midlands. Phase 2a will extend the route from the West Midlands to Crewe. The Phase 2b Western Leg will connect Crewe to Manchester. As set out in the Integrated Rail Plan, published in November 2021, HS2 East is proposed to deliver a new high speed line from the West Midlands to East Midlands Parkway.

1.2 HS2 Ltd is the non-departmental public body responsible for developing and promoting these proposals. The company works under the terms of a Development Agreement entered into with the Secretary of State for Transport.

1.3 The construction and operation of Phase One of HS2 is authorised by the High Speed Rail (London – West Midlands) Act 2017 and Phase 2a by the High Speed Rail (West Midlands – Crewe) Act 2021.

1.4 In January 2022, the Government introduced a hybrid Bill to Parliament (hereafter referred to as 'the Bill'), to seek powers for the construction and operation of the Phase 2b Western Leg (the Proposed Scheme), which is called the High Speed Rail (Crewe – Manchester) Bill. The Proposed Scheme comprises the Phase 2b Western Leg from Crewe to Manchester and several off-route works. It also facilitates the delivery of Northern Powerhouse Rail by providing the Crewe Northern Connection and junctions and other infrastructure to be used in future schemes.

1.5 The work to produce the Bill includes an Equalities Impact Assessment and an Environmental Impact Assessment (EIA), the results of which are reported in an Environmental Statement (ES) submitted alongside the Bill. The Secretary of State has also published draft Environmental Minimum Requirements (EMRs), which set out the environmental and sustainability commitments that will be observed in the construction of the Proposed

Scheme. For more information on the EMRs please see Information Paper E1: Control of environmental impacts.

1.6 The Secretary of State for Transport is the Promoter of the Bill through Parliament. The Promoter will also appoint a body responsible for delivering the Proposed Scheme under the powers granted by the Bill. This body is known as the 'nominated undertaker'. There may be more than one nominated undertaker. However, any and all nominated undertakers will be bound by the obligations contained in the Bill, the policies established in the EMRs and any commitments provided in the information papers.

1.7 These information papers have been produced to explain the commitments made in the Bill and the EMRs and how they will be applied to the design and construction of the Proposed Scheme. They also provide information about the Proposed Scheme itself, the powers contained in the Bill and how particular decisions about the Proposed Scheme have been reached.

2 Overview

2.1 This information paper outlines how the Promoter will ensure that any commitments entered into by the Promoter during the passage of the Bill will be recorded and complied with.

2.2 There are two types of commitments:

- undertakings, which are binding (usually contingent) agreements between the Promoter and another party, set out in legal documents or given by another means to the Select Committee itself or to Parliament; and
- assurances, which are unilateral written commitments made by the Promoter in a letter or other document (such as an information paper), or in petition responses.

2.3 A number of commitments have already been made, such as the EMRs. Others will be given in response to petitions that are received to the Bill.

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2.4 Undertakings and assurances on the register for Phase One and Phase 2a of HS2 do not apply to the Proposed Scheme unless the Promoter specifically re-asserts the commitment in question and includes it on the register for the Proposed Scheme.

3 Recording undertakings and assurances

3.1 Undertakings and assurances will be recorded in an official register, held by the Department for Transport (DfT). The process is expected to follow the successful templates provided by Phase One and Phase 2a of HS2 during the passage through Parliament of the Bills for the High Speed Rail (London - West Midlands) Act 2017 and the High Speed Rail (West Midlands – Crewe) Act 2021.

3.2 The register itself will be a list of the commitments given and to whom. It will not necessarily give details of each undertaking or assurance, and in some cases may simply refer to other documents (such as signed undertakings between the Promoter and the third party concerned). The register should also be read in conjunction with other documents that are part of the EMRs, namely the Code of Construction Practice, the Environmental Memorandum, the Planning Memorandum and the Heritage Memorandum. The entries on the register itself will not, therefore, be definitive in themselves.

3.3 The bulk of the material referred to in the register will be in the public domain. However, some personal or commercially confidential material (for example) will not. Requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 will be considered according to the respective standard procedures. However, in both cases, exemptions (or exceptions) may apply to some information, such as commercially confidential material, or material benefitting from legal professional privilege. Other material covered by the Data Protection Act 2018 may also benefit from exemptions under that Act. The register itself will be published and updated as the Bill process continues through Parliament to include any further

undertakings and assurances given. A final version will be produced and published after the Bill receives Royal Assent.

3.4 The register will not include undertakings or assurances that have either been carried out already or that will be carried out during the passage of the Bill (for example, an assurance to amend the content of the Bill). This is because the purpose of the register is to capture undertakings and assurances that will be carried out once the Bill is enacted and construction starts.

3.5 The Secretary of State or nominated undertaker may agree with the party or parties involved in a specific undertaking or assurance to alter the terms of that undertaking or assurance following its recording in the register. In such cases, the new agreed terms shall be met and, if appropriate, the relevant local authority will be notified of the new terms.

4 Ensuring undertakings and assurances are met

4.1 Following Royal Assent to the Bill, a nominated undertaker is expected to be appointed to construct and maintain the Proposed Scheme. Any nominated undertaker will be contractually obliged to comply with all relevant undertakings and assurances made by the Promoter in regard to construction and operation of the Proposed Scheme.

4.2 The Promoter will give an undertaking to Parliament that they will take such steps as are considered reasonable and necessary to secure compliance with the EMRs. This includes all relevant undertakings and assurances, insofar as they are not directly enforceable against any person appointed as a nominated undertaker. In other words, the Secretary of State is not obliged to enforce an undertaking if the recipient has a means of enforcing it itself (such as under an agreement).

4.3 Undertakings and assurances do not bind any consent-giving body - such as local authorities, or other regulatory bodies like the Environment Agency - unless that body is specifically a party to them. However, consent-giving bodies would be expected to be mindful of the nominated undertaker's responsibility to make every effort to comply with them

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since they will have formed part of the consideration of the issues, and the conferring of the powers, by Parliament.

5 More information

5.1 More detail on the Bill and related documents can be found at www.gov.uk/hs2-phase2b-crewe-manchester.

HS2

How to report a possible non-compliance with an Undertaking or Assurance

January 2022

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Department for Transport

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How to report a possible non-compliance with an Undertaking or Assurance

Commitments given by the Government during the passage of an HS2 Bill are included in a Register of Undertakings and Assurances held by the Department for Transport (DfT) and finalised at Royal Assent, the point where the Bill becomes law.

The purpose of the Register is to record the commitments which have been given to third parties that are to be honoured as the project is built and brought into operation. Each Phase has a separate Register, and they can be found at:

Phase 1: https://www.gov.uk/government/publications/high-speed-rail-london-west-midlands-bill-register-of-undertakings-and-assurances

Phase 2a: https://www.gov.uk/government/publications/hs2-phase-2a-register-of-undertakings-and-assurances

All commitments included on the Register are binding on the nominated undertaker and the Secretary of State as the project is taken forward. Undertakings and assurances are ultimately enforced either by recourse to the Courts or Parliament respectively.

HS2 Ltd recognises the importance of dealing with a non-compliance of an undertaking or assurance and will investigate on behalf of the beneficiary of the undertaking or assurance.

If you are a beneficiary of an undertaking or assurance on the Register and consider that undertaking or assurance has not been complied with this should be notified to the HS2 Ltd helpline together with your contact details, the undertaking or assurance number from the Register and a brief description of the matter you consider has occurred.

The HS2 Ltd helpline is available 24hrs on Freephone: 08081 434 434 / Minicom: 08081 456 472 or you can email us at HS2enquiries@hs2.org.uk

We will take immediate action to notify the person within HS2 Ltd who is responsible for the undertaking or assurance and whose action is likely to be most effective in remedying a non-compliance.

A member of HS2 Ltd staff will be assigned to maintain contact with you and will update as to the progress and the outcome of HS2 Ltd's investigation.

More information on Undertakings and Assurances can be found in Information Paper B4: Compliance with Undertakings and Assurances (Phase 1) at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/672180/B4_-_Compliance_with_undertakings_and_assurances_v1.5.pdf

or in Information Paper B5: Compliance with Undertakings and Assurances (Phase 2a) at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/960602/B5_Compliance_with_Undertakings_and_Assurances_v1.1.pdf

Once notified HS2 Ltd will conduct enquiries to determine whether there has been a non-compliance.

If it is determined that there has been a non-compliance, HS2 Ltd will:

- implement the recommended steps identified to stop or mitigate the non-compliance and to prevent reoccurrences;
- inform the beneficiary of the undertaking or assurance that it believes a non-compliance has occurred and the recommended steps it will or has implemented.

If it is determined that there has not been a non-compliance, HS2 Ltd will:

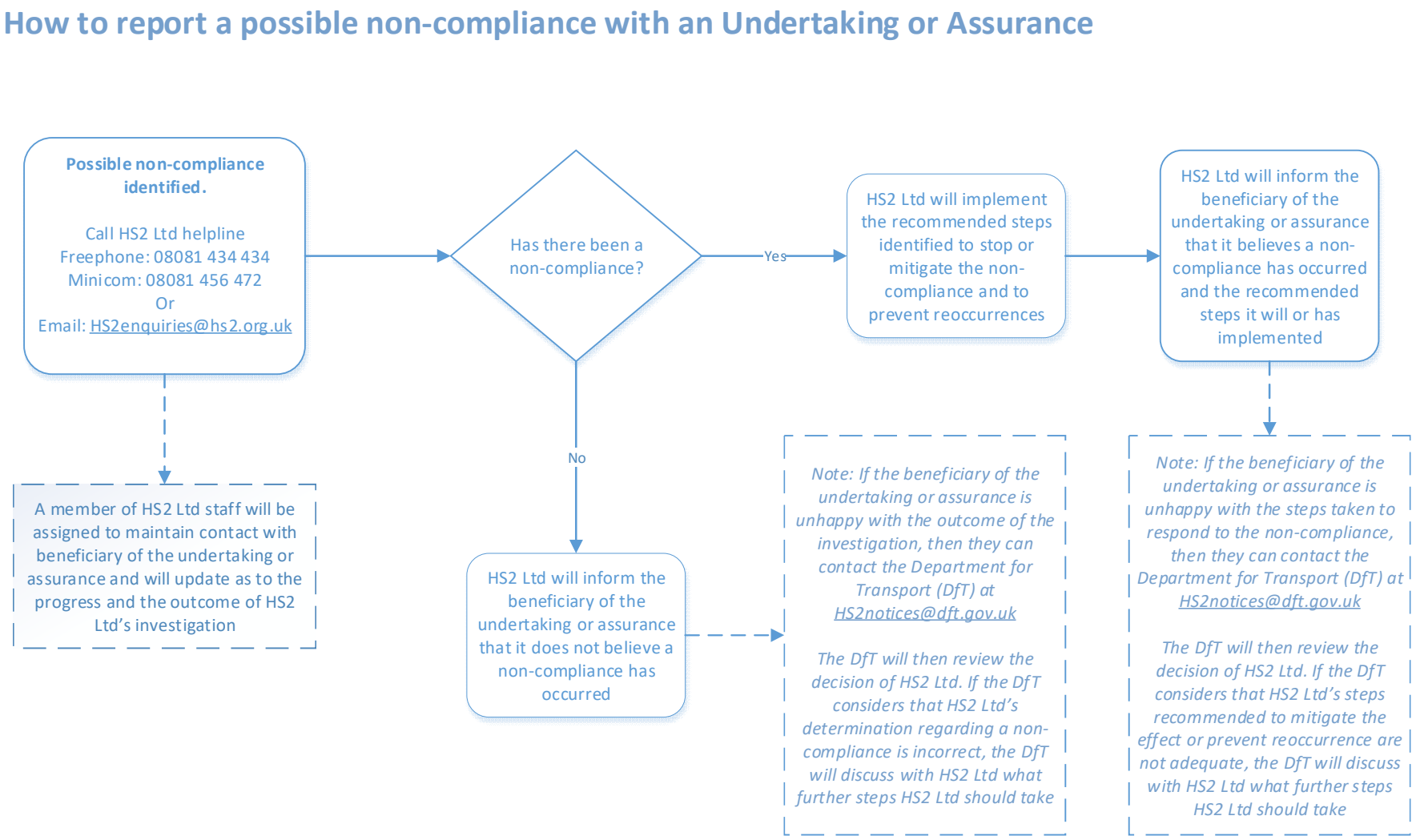
- inform the beneficiary of the undertaking or assurance that it does not believe a non-compliance has occurred.

A full investigation may take up to 28 days and further action may be necessary as a result. HS2 Ltd will update the beneficiary of the undertaking or assurance as to the progress of the investigation.

If the beneficiary of the undertaking or assurance is unhappy with the outcome of the investigation, then they can contact the Department for Transport (DfT) at HS2notices@dft.gov.uk

The DfT will then review the decision of HS2 Ltd. If the DfT considers that HS2 Ltd's determination regarding a non-compliance is incorrect or the steps recommended to mitigate the effect or prevent reoccurrence are not adequate, the DfT will discuss with HS2 Ltd what further steps HS2 Ltd should take.

Figure 1: Flow chart



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