

CASE FILE LIST

Case: HS2-085.

Title: HS2-085 National Farmers Union - Promoter.

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Louise Staples
National Farmers Union

By email: Louise.Staples@nfu.org.uk

'Without Prejudice and subject to governance'

14 June 2023

Dear Louise,

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL – HOUSE OF COMMONS SELECT COMMITTEE: PETITION HS2-P2B – 085 National Farmers Union

I am writing further to the NFU hearing on the 9 May. There are a number of matters that we hope to resolve between now and your select committee appearance on the 10 July. This letter sets out those matters. The letter makes references to exhibits from the 9 May hearing and the following correspondence:

- HS2 letter 5 January 2023;
- HS2 letter 17 March 2023;
- Sharpe Pritchard letter 26 April 2023;
- Sharpe Pritchard email 1 May 2023;
- HS2 destination assurance letter 4 May 2023 ['the Assurance Letter'];
- HS2 letter 4 May 2023; and
- Sharpe Pritchard letter 5 May 2023.

Your petition raised thirty-three issues – set out in the PRD Exhibit R78 (1). We responded by letter on the 4 May setting out our position on the issues raised and offering several assurances. We note that you have not yet responded to these assurances, therefore, this subsequent letter provides a consolidated reply to all issues raised. It addresses twenty-three of the petition issues, with suggested additional draft assurances for your consideration, and subject to governance on a '***without prejudice***' basis.

Our position on the issues set out below is unchanged:

1.1-1.1.6	GVDs (General Vesting Declaration) being made unnecessarily because detailed design is incomplete.
1.13 – 1.14	Only temporary possession should be allowed in certain cases
2.4 - 2.5	The limiting of purpose of acquisition or temporary possession should be limited by Schedule 6 or Schedule 16
8.1 – 8.5	Interest on payments
9.1-9.5	Disposal of Surplus Land Policy for Farmland
12.1 – 12.4	Compulsory Acquisition and Temporary Possession Powers: Notice Periods

15.1-15.2	Earthworks
18.1-18.2	Severance and Hedgerows
23.1 – 23.6	Capital Gains Tax
24.1 – 24.8	Inheritance Tax

Use of Compulsory Powers for Environmental Mitigation - Petition paragraphs 1.7-1.12

NFU Request: Exhibit A54 (29)

The Promoter will:

- (a) not use any land within the Act limits for biodiversity net gain (including after temporary use of the land for HS2 purposes has finished and whether or not the land was acquired permanently or taken temporarily), except with the agreement of the landowner;
- (b) explain to a landowner, on reasonable notice, why any part of their land has been chosen for the provision of habitat mitigation (including by reference to any of HS2's metrics) and why that amount is needed on their land;
- (c) notify farmers whether land is required for ecological mitigation, ask whether they would like to retain ownership and if so, begin discussions on any maintenance agreement;
- (d) consult the National Farmers Union on its proposed Biodiversity Action Plan before finalising it, and on any significant proposed changes to the plan once published.

HS2 Response

In response to point a) we would like to clarify that there is no land in the Book of Reference that is specifically identified for Biodiversity Net Gain (BNG). However, it does not follow that land acquired for the purposes of construction and operation of the railway might not be used for BNG. The following draft assurance is for consideration;

- 1.1 *Where agricultural land within Act Limits meets the criteria specified in paragraph 1.3 the Promoter shall use reasonable endeavours to -*
 - 1.1.1 *provide to the landowner reasonable details of the extent of land within Act Limits formerly within that landowner's ownership that is under consideration as a possible candidate site for delivery of biodiversity gains in accordance with the HS2 Environmental Sustainability Vision; and*
 - 1.1.2 *In the event that the former owner requests the return of that land from the Secretary of State, the Promoter will engage with that landowner with a view to reaching agreement with that landowner on the terms of the return of that land.*
- 1.2 *Paragraph 1.1 does not apply to agricultural land which is intended to be used by the Promoter for any other purpose in connection with the works to be authorised by the Bill following completion of construction of those works.*

- 1.3 *The criteria mentioned in paragraph 1.1 are that the agricultural land in question –*
- 1.3.1 *is in the freehold ownership of the Secretary of State;*
 - 1.3.2 *is being held for Phase 2b (Crewe - Manchester) purposes;*
 - 1.3.3 *has been identified for delivering biodiversity gains; and*
 - 1.3.4 *the Promoter is satisfied that the former owner of that land wishes to resume ownership of that agricultural land for agricultural purposes.*
- 1.4 *Notwithstanding coverage of such matters in the Environmental Statement, where agricultural land is included within the Book of Reference as being required for the purpose of environmental mitigation works, the Promoter will, prior to Royal Assent for the Bill write to owners of that agricultural land providing a description and justification of those proposed works.*
- 1.5 *Without prejudice to the generality of paragraph 1.4 the letter will provide an explanation of the rationale for the location and extent of the proposed environmental mitigation works that have been identified. The explanation of the rationale will set out the reasons why environmental mitigation works are proposed within the Bill on that agricultural land, the choice of proposed location and the planned engagement with the landowner during the detailed design stage of the works regarding these matters.*
- 1.6 *Where agricultural land has been identified as being required for the purposes of environmental mitigation works (including habitat creation) the Promoter will engage with the owner of that agricultural land pursuant to paragraph 22(8) of the Farmers and Growers Guide in seeking to reach agreement with that landowner on the maintenance of those environmental mitigation works on the terms specified in paragraph 22(8) of the Farmers and Growers Guide.*
- 1.7 *The Promoter shall use reasonable endeavours to consult the National Farmers Union on its proposed Biodiversity Action Plan before it is finalised by the Promoter and on any significant proposed changes to the Plan once it is published.*
- 1.8 *In this assurance –*
- 1.8.1 *“Act Limits” has the same meaning as in clause 63(1) of the Bill;*
 - 1.8.2 *“Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;*

- 1.8.3 *“Biodiversity Action Plan” means a plan prepared in respect of the Proposed Scheme which will set out mechanisms to achieve the Promoter’s ambition of securing biodiversity gains in line with the HS2 Environmental Policy;*
- 1.8.4 *“Biodiversity gains” means the contributions made by the Promoter in constructing the Proposed Scheme to the recovery of nature which includes ensuring that wildlife habitat is enhanced through development of the Proposed Scheme;*
- 1.8.5 *“Book of Reference” means a book of reference deposited in Parliament with the Bill;*
- 1.8.6 *“Environmental Mitigation Works” means environmental works to mitigate the effects of the construction, maintenance and operation of any of works to be authorised under the Bill;*
- 1.8.7 *“Environmental Statement” means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with an additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;*
- 1.8.8 *“Farmers and Growers Guide” means a guide prepared by the Promoter to explain to farmers the policies of the Promoter in connection with the construction of the Proposed Scheme;*
- 1.8.9 *“High Speed Rail Project” means the Proposed Scheme, together with the Phase One Scheme and the Phase 2a Scheme;*
- 1.8.10 *“HS2 Environmental Policy” means a policy prepared by the Promoter establishing a framework for environmental protection and management for the High Speed Rail Project;*
- 1.8.11 *“HS2 Environmental Sustainability Vision” means the statement published in January 2022 setting out the Promoters vision for delivering the Proposed Scheme as an environmentally sustainable project;*
- 1.8.12 *“nominated undertaker” means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;*
- 1.8.13 *“other purpose” means a purpose other than the delivery of biodiversity gains;*
- 1.8.14 *“Phase One Scheme” means the railway scheme authorised under the High Speed Rail (London-West Midlands) Act 2017;*

- 1.8.15 *“Phase 2a Scheme” means the railway scheme authorised under the High Speed Rail (West Midlands -Crewe) Act 2021;*
- 1.8.16 *“Phase 2b (Crewe – Manchester) purposes” has the same meaning as in clause 62 of the Bill;*
- 1.8.17 *“Promoter” means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;*
- 1.8.18 *“Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill; and*
- 1.8.19 *“Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio.*

Utility works (including Electric Line Diversions) – Petition Paragraphs 1.15 - 1.19

NFU Request – Exhibit A54 (35)

The Promoter should be required to go through a thorough exercise, before the conclusion of the Select Committee proceedings, of identifying all areas of farmland where it is known that only rights will be required, in particular for utility works (including electricity line diversions) and for the construction and use of accesses, and the Bill should be amended so those areas are listed in Schedule 8 – acquisition of rights only (and where relevant, removed from Schedule 6 – acquisition of land for particular purposes).

HS2 Response

The following draft assurance is for consideration;

1. *Where agricultural land is required within Act Limits for utility diversion works and not for any other purposes the Promoter will only exercise powers to acquire rights and powers of temporary occupation in respect of the utility diversion works and will not acquire compulsorily the agricultural land including any mines and minerals present.*
2. *Paragraph 1 does not apply to –*
 - (a) *the construction of utility diversion works within the permanent railway corridor;*
or
 - (b) *the construction of brand new utility connections between existing apparatus and third party infrastructure required in consequence of the construction of the Proposed Scheme; or*
 - (c) *the construction of brand new utility connections between existing apparatus and infrastructure constructed by the nominated undertaker as part of the Proposed Scheme; or*

- (d) *the construction of operational infrastructure where the relevant utility undertaking requires the freehold interest in the operational infrastructure concerned; or*
 - (e) *the overall cost to the project of exercising powers to acquire rights and powers of temporary occupation pursuant to paragraph 1 is materially greater than the cost of acquiring compulsorily the agricultural land, including any mines and minerals present.*
3. *Where any provision of paragraph 2(a) to (e) applies to any proposal under paragraph 1 to exercise powers of compulsory acquisition over agricultural land, the Promoter may exercise powers of compulsory acquisition over the agricultural land concerned including any mines and minerals present.*
 4. *Without prejudice to paragraph 2, the requirement on the Promoter under paragraph 1 to exercise powers to acquire rights or temporary powers of occupation does not apply where the freehold owner of the agricultural land in question makes a written request to the Promoter to acquire compulsorily the agricultural land in question.*
 5. *In this assurance-*
 - 5.1 *“Act Limits” has the same meaning as in clause 63(1) of the Bill;*
 - 5.2 *“agricultural land” means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;*
 - 5.3 *“Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;*
 - 5.4 *“electronic communications apparatus” has the same meaning as in paragraph 1(1) of Schedule 17 to the Communications Act 2003;*
 - 5.5 *“nominated undertaker” means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;*
 - 5.6 *“operational infrastructure” means buildings and associated facilities required for the purposes of enabling the utility undertaker concerned to carry out its operational undertaking;*

- 5.7 *“powers to acquire rights” means the powers to be conferred under sections 4 and 5 of the Bill;*
- 5.8 *“powers of temporary occupation” means the powers of temporary occupation to be conferred under section 13 of the Bill;*
- 5.9 *“Promoter” means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;*
- 5.10 *“Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill;*
- 5.11 *“Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio;*
- 5.12 *“apparatus” has the same meaning as in paragraph 18(2)(a) of Part 2 of Schedule 32 to the Bill and includes electronic communications apparatus;*
- 5.13 *“utility undertaking” has the same meaning as in clause 63(1) of the Bill; and*
- 5.14 *“utility diversion works” means the execution of authorised works to divert the alignment of apparatus on agricultural land onto a different alignment across agricultural land.*

Plans Petition - Paragraphs 2.1 – 2.3

NFU Request: Exhibit A 54 (39)

1. The Promoter will, with each further Additional Provision to be introduced to the Bill and on Royal Assent,
2. produce a set of consolidated land plans which delineate in colour how individual plots of land may be treated under the Bill, including delineating those plots which are subject to:
 - Temporary possession only
 - Acquisition or imposition of rights only
 - Acquisition of subsoil or airspace only
 - Full compulsory acquisition
3. Updated plans of the construction works will be provided by the nominated undertaker to the farmer on a secure website or portal at least every 6 months once the works are underway.

HS2 Response

We offered an assurance in the letter dated 4 May – Exhibit P310 (1) as follows:

The Promoter will, make available online only following Royal Assent a set of consolidated land plans which delineate in colour how individual plots of land may be treated under the Bill, including delineating those plots which are subject to:

- Temporary possession only
- Acquisition or imposition of rights only
- Acquisition of subsoil or airspace only
- Full compulsory acquisition’.

Our position in relation to request three remains unchanged and is as set out in the letter of the 4 May.

Use of Multiple GVDs for each Farmer - Petition Paragraphs 3.1- 3.5

NFU Request: Exhibit A54 (37)

The Promoter should be required, if the farmer agrees, to combine multiple plots of land in the farmer’s ownership into a smaller number of GVDs, and where appropriate, one GVD but only in respect of land which is justified as being required permanently. For the avoidance of doubt, this request does not mean that the NFU supports the idea of a single GVD over all a farmer’s land if some of the land should not be used at all or should only be used temporarily, for ecological mitigation or for exercising rights only.

Any GVD served in relation to farmland should only include within its scope land which is in the ownership of one farming business or estate. Where a GVD is made which includes land which is in multiple ownership, the Promoter will provide each landowner with a plan only showing which parts of their land are included in the GVD.

HS2 response

Our response is set out in the PRD, 5 January letter and 4 May letter.

Maintenance of Farmland: Weed Control Measure Petition Paragraphs 4.1-4.2

NFU Request: Exhibit A57 (87)

- The Promoter should be required to ensure that the Nominated Undertaker and its contractors carry out weed control measures on farmland that has been acquired permanently or taken temporarily but is not being used for HS2 purposes.
- This should be carried out on the first occasion at an appropriate time of the year (before weeds flower) and then on at least an annual basis. Or the farmer (if they request) should be given a licence and allowed to do it.
- In the case of land that has been severed and is inaccessible, the Promoter should

be required to use reasonable endeavours to make arrangements for weed control measures to take place, and if not, should fund the cost of doing so by the landowner, subject to compliance with the Construction (Design and Management) Regulations 2015.

HS2 Response

We offered an assurance in the letter of 4 of May. Further to your feedback, we propose the following draft amendments subject to governance [amended text in red].

Updated Assurance

1. . *"In this assurance -*
***"1959 Act"** means the Weeds Act 1959;*
***"the 1981 Act"** means the Wildlife and Countryside Act 1981;*
***"Bill"** means "the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to "the Bill" includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;*
***"CoCP"** means a document setting out the measures and standards to which the Nominated Undertaker must adhere in order to provide effective planning, management and control of potential impacts on individuals, communities and the environment during construction of the Proposed Scheme;*
***"Ecology Site Management Plans"** means plans prepared by the Nominated Undertaker pursuant to the Environmental Statement for the management of ecology and other sites of importance to nature conservation prior to any works commencing on site. Plans are required to specify the ecological objectives of each ecological habitat creation area or site of nature conservation, the measures to be taken to establish and maintain these habitats and site together the detailed planting requirements and the monitoring regime for each site;*
***"Environmental Statement"** means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with any additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;*
***"nominated undertaker"** means High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill;*
***"Proposed Scheme"** means Phase 2b (Crewe - Manchester) of High Speed 2 as defined in the Bill;*
***"Secretary of State"** means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio; and*
***"weed control measures"** means appropriate measures for the treatment /control of invasive and non-native species employed by the nominated undertaker under its CoCP to control plants identified in the relevant provisions of 1959 Act and the 1981 Act.*

2. *The Secretary of State will require the nominated undertaker to use reasonable endeavours during the construction of the Proposed Scheme to control weeds on land within limits belonging to a farming business which has been either acquired permanently for, or occupied temporarily for the purposes of the Proposed Scheme either through the treatment or removal of weeds, in accordance with the implementation of weed control measures.*
3. *The Secretary of State will require the nominated undertaker during the construction of the Proposed Scheme to use reasonable endeavours to control weeds on land belonging to a farming business within limits which is rendered inaccessible to a farmer/landowner but which is accessible to the nominated undertaker by reason of the execution of works to be authorised by the Bill on land belonging to the farmer/landowner but which is not required to be occupied by the nominated undertaker for those works. The obligation imposed on the nominated undertaker under this paragraph 3 will subsist until such time as the land so rendered inaccessible is either disposed of to a third party or returned to the ownership of the farmer/landowner.*
4. *Subject to paragraphs 2 and 3, during construction, the nominated undertaker will implement annual injurious weed control measures during spring. The aim is to implement injurious weed control measures before the flowering season to minimise spread subject to the condition that the use of any weed control measures must be consistent with Ecology Site Management Plans on land identified for the execution of environmental mitigation works to be authorised under the Bill.*

Prolonged Occupation of Farmland - Petition Paragraphs 5.1 – 5.4

NFU request: Exhibit A54 (70)

- 1: The Promoter should be required to ensure that the Nominated Undertaker or its contractor (including persons executing utility works) provides farmers with information (both before taking possession, and updated regularly during possession) about the precise reason for taking temporary possession, and the expected duration of the occupation of the land. The updates should set out the forecasted date of completion of the work for which temporary possession of the land was taken.
- 2: When farmland has been taken for a purpose and the purpose has been met, and works are complete, the Promoter should be required to (i) inform the landowner that works are complete and (ii) explain the hand back process. The completion of the works will trigger the one-year period within which the Nominated Undertaker must no longer remain in temporary possession of the land which was taken, as set out in the paragraph 4 of Schedule 15 to the Bill.

HS2 Response

In response to point 1 above. This is set out in the F & G Guide Section 2: Communication with farmers and landowners and rural business owners.

Section 2.1.4 states:

HS2 Ltd or the nominated undertaker will write to the affected farmers when the Phase 2b Western Leg has reached an appropriate stage of detailed design, setting out:

- An indication of whether the land which they own or occupy is likely to be required for construction of the Phase 2b Western leg – and if only part is likely to be required, which part; and*
- The best estimate then available as to the date on which the nominated undertaker is likely to need to take possession or occupation of the land.*

Section 2.1.5 states:

As part of the wider engagementHS2 Ltd will be required to consult with the owner/tenant of an agricultural holding regarding the detailed design of the works proposed to be undertaken on any part of that holding and HS2 will take account of those responses, and as far as reasonably practicable (have all regard to other factors):

- Seek to minimise the loss of Grade 1,2 and 3a agricultural land; and*
- Through engagement, seek to accommodate reasonably proposals to modify detailed design of the works.....'*

2.1.6 states:

Having identified the concerns of each individual farmer, HS2 Ltd or the nominated undertaker will enter into arrangements following the principles set out in this Guide and how they apply to each individual farmer.

In response to point 2 above on hand back, we propose to add a new draft paragraph for consideration at 21.1.10 to the F&G Guide as follows:

- 21.1.10 *Where farmland has been subject to temporary occupation only, the Promoter will update the landowner from time to time pursuant to paragraph 21.1.9 above on the likely date of the end of occupation of that farmland. In parallel with that activity, the Promoter will engage with the landowner/farmer on (1) the planned date of completion of HS2 related works under paragraph 4(2) of Part 1 of Schedule 15 to the Bill, and (2) the planned date of vacation by the Promoter of the farmland occupied temporarily. For the purposes of paragraph 5(1) of Part 1 of Schedule 15 to the Bill, the Promoter will explain to the landowner/farmer the*

hand back process which will identify the steps to be taken by both the Promoter and the landowner/farmer. This will include the timing of those steps to facilitate the prompt restoration of the land in accordance with a scheme of restoration required to be agreed or determined under paragraph 5 (1) or (2) of Part 1 of Schedule 15 to the Bill. Paragraph 5 of Schedule 15 to the Bill requires the Promoter and the landowner/farmer to work together to ensure that the hand back of land is undertaken efficiently and economically and as quickly as possible following the completion of HS2 works.

In addition, the draft assurance below is for consideration subject to governance:

1. The Promoter shall consult the National Farmers Union on the framework for its proposed hand back arrangements in respect of the vacation of agricultural land that has been occupied temporarily by the Promoter to construct HS2 related works in the exercise of temporary possession powers.

2. In this assurance –

2.1 “Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill; and

2.2 “temporary possession powers” means powers to be conferred under Part 1 of Schedule 15 to the Bill to occupy land temporarily and execute works provided for in paragraph 1 and 3 of Part 1 of Schedule 15 to the Bill.

Prompt Agreement and Payment of Compensation Petition Paragraphs 6.1-6.6

NFU Request – Exhibit A 54 (67)

- 1: Once the Promoter has received a claim, the claimant should be provided with confirmation that the claim has been received within no more than 5 days.
- 2: Where further evidence or information is required, that evidence or information, together with an explanation of the same, should be requested within 14 days of the claim being submitted.
- 3: The nominated undertaker should arrange a meeting with the claimant to discuss the claim before the nominated undertaker submits its report of the claim to the Promoter.
- 4: The nominated undertaker should be required to provide a reasonable explanation of how it valued any offer of an advance payment.
- 5: Any payment must be accompanied by a breakdown of the payment and how it has been calculated, together with a cross-reference to the original claim.

HS2 Response

We offered an assurance in the letter of 4 May. This updated paragraphs 7.3 – 7.5 of Section 7 of Information Paper C2; Rural Landowners and Occupiers Guide as follows:

- 7.3 Paragraph 7.4 shall apply where an agricultural/rural business owner submits to the Promoter a request for an advance payment of compensation pursuant to section 52 (1) and (2) of the Land Compensation Act 1973 arising from the authorisation of the acquisition of an agricultural /rural business (“an advance payment request”). An advance payment request must be made in accordance with section 52(2) of the Land Compensation Act 1973.
- 7.4 In making an advance payment of compensation to an agricultural/rural business owner in accordance with section 52 (2A) and (4) of the Land Compensation Act 1973, the Promoter will provide to the agricultural/rural business owner a breakdown of the advance payment of compensation being made.
- 7.5 A breakdown provided by the Promoter under paragraph 7.4 will identify the component elements of the advance compensation payment made to the agricultural/rural business owner, including disturbance payable in respect of the prospective compulsory purchase of that agricultural land/rural business.

We also propose to update paragraph 7.1 with a further sentence marked in red in draft for consideration as follows:

- 7.1 *Where an agricultural/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the nominated undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business. The estimate will include a breakdown on an equivalent basis as provided for in the Petitioner’s detailed request.*

Alternative Dispute Resolution Petition Paragraph 7.1 – 7.2

NFU Request

The ADR process should be subject to reasonable time limits for each stage, for instance, the deadline by which the expert should be appointed. Moreover, in the usual way, the parties should either agree on the expert jointly, or if they are unable to do so, one of the parties should apply to, say, RICS, CAAV or the Law Society for an expert to be appointed. The practical effect of this would be to delete certain provisions from the Guidance, including

paragraphs 8.3 and 8.4. In any event, no farmer should be prevented from proceeding to ADR if the farmer wishes to do so and the Guidance should be amended to reflect this.

HS2 response

The Promoter offered the following assurance in the letter of the 4 May – Exhibit P310 (1):

‘The Promoter will consult the NFU on any changes proposed to be made by the Promoter to the guidance document entitled ‘Alternative Dispute Resolution Guidance’ draft published in February 2023.’

Use of Roads (Clause 14) – Petition Paragraphs 10.1-10.4

NFU Request –Exhibit A54 (46)

The bill should be amended, or the Promoter should be required to provide a further assurance to the effect that where a private farm road is to be used by the Nominated Undertaker then due regard must be had to the requirements of the farmer to use the road and that the farmer’s reasonable use of the road should not be impeded. If it is impeded, even temporarily, a further access must be provided.

Connected with this, any main drive or access to the holding should remain within the land ownership of the farmer, whether it is an existing or new drive / access, and HS2 Ltd. Should only be able to acquire rights in respect of it (and/or were appropriate, take temporary possession but safeguarding the farmer’s right to use the access). The NFU seeks an assurance that an undertaking in these terms will be given to a landowner who requests this.

HS2 Response

An additional draft inclusion to HS2 Phase 2b Western Leg Information Paper C2: Rural landowner and occupiers guide: Use of private access roads across agricultural land inserted at 13.1 is for consideration below [marked in red] and renumbering the existing paragraph 13.1 as 13.2:

- 13.1 *Without prejudice to paragraph 13.2, when exercising powers under clause 14 of the Bill the nominated undertaker will have due regard to the access requirements of the farmer concerned and will use reasonable endeavours to minimise inconvenience to the farmers use of the private access road for agricultural purposes.*
- 13.2 *The nominated undertaker will engage with the owner and occupier of agricultural land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.*

In addition, Section 22 of the Farmers and Growers Guide offers a number of scenarios for the potential use of temporary occupation powers rather than power of compulsory purchase. It indicates the circumstances in which the Promoter would consider exercising powers of temporary occupation. The guidance makes clear that an agreement between the Promoter and the owners and occupiers of land will be required. That agreement will necessarily be bespoke to each individual case.

The scenarios cover circumstances where the proposed use of a farmer's private road is only required during construction, or where there is a permanent requirement for the proposed use of that road that can be shared with the farmer's ongoing use.

Paragraph 22.3 says "*Where land can be identified prior to detailed design as not being required for permanent works and will not be materially changed by construction of the Phase 2b Western Leg: The Promoter would be prepared to limit the exercise of compulsory purchase powers and would use powers of temporary occupation instead.*" The Promoter has offered assurances to petitioners based on this guidance, which have been accepted.

Access Licence - Petition Paragraphs 11.1-11.7

NFU Request – Exhibit A54 (55)

The references to the Secretary of State being able to terminate the Access Licence on giving 7 days' notice or immediate notice should be removed from the licence as these are unreasonable provisions.

In any event, it should be a condition of termination (whether under the "no less than seven days' provision, or otherwise) that termination can only take place where a temporary access, which is equally suitable to the farmer's needs as the original access, is provided in its place.

The Secretary of State's power to close or vary the route should be conditional on the Secretary of State providing a replacement route, which is equally suitable to the farmer's needs, in place of the original access. If the condition is not included, the Secretary of State's power to close or vary in the circumstances described should be removed from the Access Licence.

The uncapped indemnity is unreasonable (it would not be possible for a farmer to secure insurance in respect of it) and should be removed from the Access Licence. Alternatively, it should be amended to refer to a capped figure which HS2 Ltd. must first agree with the NFU.

HS2 Response

We cannot agree to vary the requirement to give short notice to terminate or vary the access licences where required for programme, construction or breach purposes. However, we are currently evaluating the potential for altering the access licences to remove the need for an uncapped indemnity. We will update you on progress.

Any further requirement for protection of ability to maintain access is catered for in the Information papers.

Extent of Land-Take for Mitigation - Petition Paragraphs 13.1 – 13.5

NFU Request Exhibit A55 (22)

1. The Promoter has included, in all three phases of HS2, large areas of farmland for use as environmental mitigation or for biodiversity net gain ("BNG"). There is no reason why a farmer should not be able to retain ownership of their land in such circumstances if the farmer is content to take on the burden of maintenance, subject to reasonable terms, including payment, being agreed which ensure the mitigation is maintained.
2. One of the problems that farmers on Phase 1 have encountered is that they have only recently been provided with drafts of management agreements and ecological site management plans ("ESMPs") which they would have to sign up to if they were to retain ownership of land to be used for environmental mitigation – that in turn has created uncertainty and has made it difficult for the farmer to decide what to do. Furthermore, farmers need to be told in advance about the payments they will receive for carrying out the management, something which has still not happened on Phase 1. The ESMP requires annual monitoring and reporting.

HS2 Response

The following draft assurance is for consideration subject to governance:

1. *Notwithstanding coverage of such matters in the Environmental Statement, where agricultural land is included within the Book of Reference as being required for the purpose of environmental mitigation works, the Promoter will prior to the exercise of compulsory purchase powers write to the owners of that agricultural land providing a description and justification of those proposed works.*
2. *Without prejudice to the generality of paragraph 1 the letter will provide an explanation of the rationale for the location and extent of the proposed environmental mitigation works that have been identified. The explanation of the rationale will set out the reasons why environmental mitigation works are proposed within the Bill on that agricultural land, the choice of proposed location and the planned engagement with the landowner during the detailed design stage of the works regarding these matters.*
3. *Where agricultural land has been identified as being required for the purposes of environmental mitigation works (including habitat creation) the Promoter will engage with the owner of that agricultural land pursuant to paragraph 22(8) of the Farmers and Growers Guide in seeking to reach agreement with that landowner on the maintenance of those environmental mitigation works on the terms specified in paragraph 22(8) of the Farmers and Growers Guide.*

4. *The Promoter shall use reasonable endeavours to consult the National Farmers Union on its proposed Biodiversity Action Plan before it is finalised by the Promoter and on any significant proposed changes to the Plan once it is published.*

**Right of Entry for Further High Speed Railway Works and Exercise of Rights of Entry -
Petition Paragraphs 14.1-14.5**

NFU Request – Exhibit A54 (61)

Assurance that when the post-notice email is served on the landowner/agent, it must include more information than it does currently, including confirming the type of survey or surveys to be carried out, identifying the actual field(s) where any survey will be carried out, the date(s) of the proposed survey(s), and the notice must be accompanied by a plan of the affected field(s). Notice numbers should be identified.

Assurance that any contractor accessing a farmer's land must attend with a copy of the relevant notice and (as importantly) correct identification. There have been, regrettably, instances of individuals with no connection to HS2 Ltd. seeking to gain access to farmer's properties, particularly areas where valuable equipment is stored.

That the Nominated Undertaker be required to comply with the provisions of section 174 of the Housing and Planning Act 2016 in respect of notices served under section 54 of the High Speed Rail (London-West Midlands) Act 2017.

HS2 Response

We can confirm that all contractors carry our letter of authority. This is enclosed at Annex A for your information.

The following draft assurance is for consideration:

- 1 *The Secretary of State will require the nominated undertaker to put in place procedures to ensure that the particular requirements of section 174 of the 2016 Act are brought to the attention of all persons seeking to enter agricultural land for the purposes of paragraphs 1 (1) and (2) of Schedule 2 to the Bill in exercise of the powers to be conferred on the Nominated Undertaker under Part 7 of the 2016 Act for the purposes of the Proposed Scheme.*

- 2 *In this assurance –*

2.1 *“2016 Act” means the Housing and Planning Act 2016;*

2.2 *“Bill” means “Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to*

clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill; and

2.3 “Nominated Undertaker” means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;

2.4 “Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill; and

2.5 “Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio.

Planning Consent for Replacement Buildings and Associated Dwellings – Petition Paragraphs 16.1-16.5

NFU Request [PRD Page 61]

The NFU asks that the assurance given on this subject by the Promoter of the Phase 1 and Phase 2A Bills (assuming it is replicated in relation to Phase 2B) be altered so that it provides that the Nominated Undertaker would provide a statement in support of a planning application in cases where this issue applies, and that the Nominated Undertaker would respond promptly to any reasonable request by a farmer about the scope and likely amount of compensation that would be payable in the event that the farmer is displaced.

That the Promoter be required to write a letter to all planning authorities along the route in which farmland is situated, requesting them to be sympathetic to farmers in these situations. A letter of this nature was sent on Phase 1 and Phase 2A.

The NFU seeks a recommendation from the Select Committee that the Department for Levelling Up, Housing and Communities should provide further guidance to Local Planning Authorities on the subject of planning conditions:

- ensuring replacement of existing dwellings will be permitted;
- discouraging an agricultural tie on replacement premises where none exists on the current premises;
- ensuring that conditions should only relate to design, materials used and access.

HS2 Response

We responded in the letter of 4 May which said:

‘The Promoter acknowledges that in some cases where the Proposed Scheme requires the demolition of agricultural buildings, a farmer/rural business owner may wish to use their

compensation and parts of their retained land to re-provide agricultural buildings that have been lost in consequence of the construction of the Proposed Scheme.

An explanation of the specific powers available to the Promoter under the Bill to make provision for the relocation of businesses is provided in section 7 of Information Paper C7: Business Relocation and a general description of the arrangements covering relocation is set out in section 3 of the Farmers and Growers Guide’.

Utilities and Conduits Petition - Paragraphs 17.1 - 17.2

NFU Request - Exhibit A54 (89)

The NFU believes that it is essential that farmers are able to install utilities such as cables and pipes under the railway if land in their ownership is severed by the railway. This can be achieved by making use of culverts, bridges and underpasses crossing the railway, in order to provide future proofing and to help ensure that connectivity (particularly high speed broadband for rural communities) is not stifled by the scheme. Where a bridge, underpass or culvert is constructed across the proposed railway in circumstances where agricultural land is severed, a sleeve or similar work will be installed to enable cables or pipes to be carried through or along the bridge, underpass or culvert, whether or not such cables or pipes are required at the time the railway is constructed.

HS2 response

Our response is set out in the PRD Pages 64 and 65. In addition to those documents referenced in the PRD, Section 11 of Information Paper C2 Rural Landowners and Occupiers Guide states:

- 11.1 The provision of permanent accommodation works will depend on the individual circumstances on the holding and will usually be developed as the detailed design of the Proposed Scheme is undertaken.
- 11.2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned.
- 11.3 The nominated undertaker will discuss with each landowner the provision and timing of accommodation works as part of the compensation package.
- 11.4 The structures of accommodation bridges, underpasses, culverts or sleeves over or under the Proposed Scheme will be maintained by the nominated undertaker. The maintenance of any surfaces or fences will need to be determined on a case-by-case basis. The landowner will normally be responsible for any surface over which that landowner will have exclusive use.

The additional text below is for consideration to address shared use of accommodation bridges, underpasses, culverts or sleeves in our response to **Accommodation Crossings - Petition Paragraph 20.1-20.2**. This proposes amending para 11.2 [with changes in red] to read:

11.2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned *and including both the current and reasonably foreseeable operational needs of the landowner. Where shared use of accommodation bridges or underpasses would enable current or future operational needs of a landowner severed by the railway to be accommodated, the nominated undertaker will in a timely way discuss with the landowner the process of finalising the detailed design of the Proposed Scheme.*

Interruption of Water Supply- Petition Paragraphs 19.1 – 19.3

NFU Request - Exhibit 54 (83)

That the assurances given to the NFU in respect of Phases 1 and 2A should apply to Phase 2B but modified so as to provide that if a farmer makes a reasonable request to the Nominated Undertaker for a temporary alternative water supply, then it should be provided forthwith if reasonably practicable and in any event within 12 hours of notification by the farmer and remain in place until the issue that gave rise to the request has been remedied.

That the assurances be modified so that they apply to public water supplies as well as private water supplies, with appropriate modifications.

HS2 Response

The assurances given on Phase 1 and 2A have been offered on Phase 2b. The location of these commitments is set out in the letter of the 4 May 2023 Section 7 – Exhibit ref P309 (14). In addition, we offered a further assurance in the letter also dated 4 May [exhibit ref P313 (7)] which added new section 10.1 to Information Paper C2.

We now propose to add para 16.2.16 from the Draft Code of Construction Practice to IP C2: Rural Landowner and Occupiers Guide: Water Supply as new paragraphs 10.2 and 10.3 9 (as below in red):

10.1 Where an existing private water supply to a farm is adversely and directly affected by the construction of the Proposed Works, and if requested by the farmer or landowner to do so, the nominated undertaker will take all necessary steps as quickly as practicable to either:

- meet the reasonable cost incurred by the farmer or landowner in the provision by the farmer or landowner of an alternative supply of water where there is no other practicable alternative means of supply available; or
- provide or procure on behalf of the farmer or landowner an alternative supply of water where reasonably practicable to do so if there is no other practicable alternative means of supply available.

10.2 Without prejudice to paragraph 10.1 but subject to paragraph 10.3 any private water supply pipes damaged during construction will be repaired or replaced as quickly as reasonably practicable and normally within 24 hours. Until water supplies are reinstated and tested, drinking water will be provided by bottle and/or tanker as a temporary measure as appropriate to affected parties. Provision of an interim water supply will also apply where supplies to livestock are temporarily interrupted.

10.3 For the avoidance of doubt the repair of any damage to public water supplies caused by utility companies working on behalf of the nominated undertaker will be the responsibility of that utility company in accordance with the service delivery requirement applicable as between that company as a statutory undertaker and the farming business concerned.

The maintenance of public water supply both in unforeseen events and planned construction is the responsibility of the statutory undertaker and is covered by separate legislation and policy. Information Paper D8 Maintenance of Public Utilities states:

- 5.3 Wherever possible, when the work is carried out, the new equipment will be installed and commissioned before the existing infrastructure is disconnected. However, in some circumstances a period of disconnection may be essential to allow safe completion of the work. Where this is the case, the nominated undertaker will agree the appropriate arrangements (such as planned night-time or weekend closures) with the relevant utility operator. Significant planned service outages or road traffic closures will be notified to residents in advance.
- 5.4 Before starting construction, the nominated undertaker will establish procedures with the utility operators for the management and mitigation of unforeseen events.

Accommodation Crossings - Petition Paragraph 20.1-20.2

NFU Request Exhibit 54 (51)

The Promoter should be required to provide an assurance that in designing and constructing the authorised works, the Nominated Undertaker will ensure that, if requested by the owner or farmer— In a case where agricultural land will be severed by the authorised works, a suitable temporary crossing for agricultural use during the construction period by the owner and occupier of the agricultural land will be put in place before the land in question is severed

and thereafter will be available for use at all times by the owner and occupier until (where appropriate) a permanent accommodation crossing is available for use.

HS2 Response [all amends in red]

We propose amended wording for consideration for HS2 Phase 2b Western leg Information Paper C2: Rural landowner and occupiers guide: Accommodation Works and Severance; for paragraph 11. 1 as follows:

11.1 The provision of permanent accommodation works will depend on the individual circumstances on the holding and will usually be developed as the detailed design of the Proposed Scheme is undertaken but in all cases accommodation works will be determined in accordance with section 68 of the Railways Clauses Consolidation Act 1845.

for paragraph 11.2 as follows:

11.2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned and including both the current and reasonably foreseeable operational needs of the landowner. Where shared use of accommodation bridges or underpasses would enable current or future operational needs of a landowner severed by the railway to be accommodated, the nominated undertaker will in a timely way discuss with the landowner the process of finalising the detailed design of the Proposed Scheme.

for paragraph 11.5 as follows:

11.5 During construction, the nominated undertaker will maintain access to the rural landowner's land as far as reasonably practicable and where necessary under controlled conditions, without prejudice to the landowner's rights to maintain disturbance compensation.

We propose amended wording for consideration for HS2 Phase 2b Western Leg Information Paper E16: Drainage Works paragraph 5.4 as follows:

5.4. Where this is not reasonably practicable, ditches will be provided with crossing points by culverts at appropriate locations and where shared use of a culvert can meet both current and reasonably foreseeable land drainage needs of the existing farming business the nominated undertaker will use reasonable endeavours to incorporate the requirements for such a culvert in finalising the detailed design for the scheme provided that the farming business concerned engages in a timely way with the nominated undertaker that is consistent with the timely, economic and efficient delivery of the HS2 works.

Land Drainage - Petition Paragraphs 21.1.21.5

NFU Request – Field Drainage Exhibit A54 (51)

That the Promoter be required to alter the assurances previously given, in line with other infrastructure schemes, so as to:

- remove the onus on farmers to maintain drainage systems required to drain HS2 work sites or infrastructure, and which are imposed on the farmer (unless the farmer agrees otherwise).
- ensure that any new land drainage systems are put back in a condition that is at least as effective as the condition of those which they replace.
- establish a specific dispute resolution process to deal with disputes relating to drainage issues, (including the appointment of a jointly agreed Independent Expert who is a suitably qualified drainage consultant and a member of the Land Drainage Contractors Association (LDCA). Where possible, they shall have at least five years' experience of working in the relevant local area. Where agreement cannot be reached on the appointment of the Independent Expert the matter will be referred to the President of the Institution of Civil Engineers).
- provide that where it is appropriate and reasonable to do so, and the consent of the relevant landowner has been obtained; the Nominated Undertaker will carry out works involving the reinstatement of drainage outside of the Bill limits.

HS2 Response

Our response is set out in the PRD page 74 (Exhibit R78 (74)). A dispute resolution process is currently under consideration by HS2 [see response to Petition Paragraph 27.1-27.3]. In addition to this we offered an amendment to Section 11 of the F&GG in the letter dated 4 May. The text is amended as set out below and suggested in draft as a replacement for the current text in Section 11 Land Drainage of the F & G Guide:

- 11.1.1 The nominated undertaker will, prior to the completion of detailed design, undertake a programme of ground investigation and testing and to use the results from the ground investigations to validate the water infiltration assumptions used in the preliminary design undertaken before the Bill was submitted.
- 11.1.2 The nominated undertaker will engage with farmers and growers to identify the existing drainage arrangements on land holdings required for the construction of the new railway. In the first instance this will be established through correspondence and copies of relevant drainage plans and/or specialist survey were deemed appropriate.
- 11.1.3 The nominated undertaker will use reasonable endeavours to engage agricultural drainage consultants with working knowledge of the local conditions & prior to the commencement of significant works to construct the Proposed Scheme.

- 11.1.4 Prior to the commencement of significant construction works, land drains affected by the Phase 2b Western Leg works will, where practicable, be intercepted in a manner which maintains their efficiency throughout construction and as a result of the final as built design.
- 11.1.5 Where appropriate, plans to modify land drainage will be provided by the nominated undertaker.
- 11.1.6 Where natural drainage patterns are adversely affected by the Phase 2b Western Leg works, the provision of supplementary drainage or irrigation works will be considered, having regard to an assessment of compensation and the commercial justification.
- 11.1.7 The nominated undertaker will carry out work affecting existing drainage arrangements on landholdings required for the construction of the new railway to an appropriate specification after discussion with the landowner which may include the design and timing of any land drainage works required.
- 11.1.8 The nominated undertaker will comply with the measures set out in the CoCP regulating the impact on existing drainage arrangements on landholdings required for the construction of the new railway.
- 11.1.9 Provided that where a farmer/grower makes a request during the construction works for reinstatement of drainage works on specified land outside of Act limits;
- it is appropriate and reasonable to do that work on that land;
 - the consent of all third-party interests in that land has been obtained;
 - all requisite statutory and environmental consents have been obtained for the proposed works; and
 - the reinstatement works are undertaken on land in the ownership of the farmer/grower who makes the request,

the nominated undertaker will carry out the requested drainage reinstatement works.

Soils - Petition Paragraphs 22.1-22.7

NFU Request: Exhibits 54 (79), 54 (80), 54 (81)

The assurances on this subject given on Phases 1 and 2a be altered in line with other infrastructure schemes, so as to include the following details for the Record of Condition and Preconstruction Soil Survey Target Specification:

Soil: Request for Assurance

Provision of a Record of Condition:

A Record of Condition should be undertaken pre -construction and will include the following:

- Existing crop regimes
- The position and condition of existing field boundaries
- The condition of existing access arrangements
- The location and type of existing private water supplies
- The type of agricultural use taking place.
- The condition of crops (if at a stage this can be assessed)
- The quality of grazing land
- The existing weed burden
- Preconstruction Soil Survey target specification
- Weather conditions
- Date of survey
- Grid reference

Photographs, drone and video footage including section drawings/plans should be included in the record of condition, alongside the Pre- construction Soil Survey Target Specification and should be provided to the landowner and occupier, for agreement, prior to entry to the landholding.

Pre-construction Soil Survey Target Specification

The Pre-construction Soil Survey Target Specification should include the identification of the physical characteristics of profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed). Soil pits will be examined at appropriate locations to provide additional detail on soil structure. The Pre-Construction Soil Survey will also provide information on the following physical soil characteristics:

- soil horizon depths for topsoil and subsoil horizons;
- soil textures of all horizons;
- soil colour;
- stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;
- presence and characteristics of mottling, a soil wetness indicator;
- presence of manganese concretions, a soil wetness indicator;
- identification of gleyed horizons;
- identification of slowly permeable layers; and
- identification of impenetrable rock layers.

A copy of the Pre-Construction Soil Target Specification shall be provided to the Landowner and any Occupier prior to commencement of the Works.

HS2 Response

The Phase 1 and Phase 2b assurance on soils which sets out the requirement for a soil management plan is now addressed in paras 14.1.4 to 14.1.6 of the F & G Guide. This also includes the requirement for a target specification. The requirement for soil surveys to record the agricultural and forestry soils disturbed is addressed in Section 6.2 of the draft CoCP. This sets out the terms of reference including the physical characteristics that will be surveyed. Para 6.2.10 states that ‘the stripping, storage and reinstatement of soils will be carried out with reference to the soil resource plan and will be accompanied by a soil audit report produced by the contractor’. This requirement is also set out in Information Paper D12 Section 6 which includes soils surveys to determine the soil types and properties.

The project offered an assurance in the letter of the 4 May - Exhibit 313 (10). We propose updated draft wording for consideration as set out below [amends in red].

1. “Bill”	<i>the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” include any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill</i>
“F&G Guide”	<i>the Guide to Farmers and Growers affected by the Phase 2b Western Leg of HS2 to be published on Royal Assent of the Bill</i>
“HS2 Works”	<i>any works to be authorised under the Bill to be constructed on land comprised in an agricultural holding which is then in use for productive agricultural purposes and in respect of which a soil resource plan is prepared pursuant to paragraphs 9.13 of IPC2 and 3.4 of IPE19</i>
“IPC2”	<i>Phase 2b Western Leg Information Paper C2: Rural Landowners and occupiers Guide</i>
“IPE19”	<i>Phase 2b Western Leg Information Paper E19: Soil Handling for soil restoration</i>
nominated undertaker”	<i>High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill</i>
“Pre-construction Soil Survey Target Specification”	<i>a. the identification of the physical characteristics of land profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed);</i>

- b. *the examination of soil pits at appropriate locations to provide additional detail on soil structure; and*
- c. *the provision of information on the following physical soil characteristics:*
 - i. *soil horizon depths for topsoil and subsoil horizons;*
 - ii. *soil textures of all horizons;*
 - iii. *soil colour;*
 - iv. *stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;*
 - v. *presence and characteristics of mottling, a soil wetness indicator;*
 - vi. *presence of manganese concretions, a soil wetness indicator;*
 - vii. *identification of gleyed horizons;*
 - viii. *identification of slowly permeable layers; and*
 - ix. *identification of impenetrable rock layers*

“Record of Condition”

a record of condition to be carried out on an agricultural holding prior to the commencement of construction of HS2 works for the purposes of preparing a Soil Resource Plan which may include some or all of the following information relevant to the holding in question:

- a. *details of existing crop regimes;*
- b. *the position and condition of existing field boundaries;*
- c. *the condition of existing access arrangements;*
- d. *the location and type of existing private water supplies;*
- e. *the type of agricultural use taking place;*
- f. *the condition of crops (if at a stage this can be assessed);*
- g. *the quality of grazing land;*
- h. *the existing weed burden;*
- i. *a Pre-construction Soil Survey target specification;*
- j. *weather conditions on the dates on which surveys were undertaken;*
- k. *the dates on which surveys were undertaken; and*
- l. *Grid references*

“Soil Resource Plan”

a soil resource plan referred to in paragraph 14.1.4 of the F & G Guide and paragraphs 9.13 of IPC2 and 3.4 of IPE19.

2. *The nominated undertaker shall use reasonable endeavours to engage with landowners and/or occupiers of agricultural holdings on the preparation by the nominated undertaker of a Soil Resource Plan prior to the commencement of HS2 works on the agricultural holding subject to the execution of HS2 works.*
3. *Subject to access over the agricultural holding being made available to the nominated undertaker at such times as the nominated undertaker reasonably requires in order to undertake the necessary survey and other investigatory work, a record of condition will form part of the Soil Resource Plan.*
4. *Without prejudice to the generality of paragraph 3, the record of condition will include photographs, section drawings/plans and where appropriate video footage.*

Phase 1 and 2A Assurances – Petition Paragraphs 25.1-25.5

NFU Request – PRD Page 89

The Promoter should be required to add to the register of undertakings and assurances for Phase 2B those assurances of general application given to the NFU on Phase 2A, subject to any alterations agreed between the NFU and the Promoter or resulting from recommendations of the select committee following consideration of the points raised in this petition.

The Promoter should be required to repeat the Part B assurances, with modifications which will be raised by the NFU, and offer them to all farmers affected by Phase 2B, unless any of the assurances is clearly not relevant. Sufficient time should be given for farmers to agree to those assurances. Clear guidance should be given to all farmers affected by Phase 2B at an early stage (in other words now) about the process and the timescales for seeking Part B assurances and undertakings. The timescales should not place a cut-off date of the finalisation of the register of assurances and undertakings.

There is no reason why the Part B assurances should not be contained in a legally binding agreement (or “undertaking” using the Promoter’s terminology). If a farmer requests such an agreement, then the Promoter should be required to enter into one.

HS2 Response

We have revised the approach to assurances in response to this petition point. This is offered in two assurances dated 17 March 2023 and 4 May 2023. The 4 May letter offers assurances

based on the F & G Guide to all farmers. It also provides a comprehensive explanatory note which shows how this updated approach works.

Compliance with the Farmers and Growers Guide – Petition Paragraphs 26.1-26.2
NFU Request – PRD Page 91

The Promoter should be required to give an assurance that the Promoter or Nominated Undertaker will comply with all the commitments in the Farmers and Growers and that the NFU will be consulted on any changes to the Guide.

HS2 Response

We have revised the approach to assurances and the F & G Guide in response to this petition point. This is offered in two assurances dated 17 March 2023 and 4 May 2023. The 4 May letter [The Letter] provides a comprehensive explanatory note which shows how this updated approach works.

Enforcement of Assurances - Petition Paragraph 27.1-27.3

NFU Request – PRD Page 94

The Promoter should be required to provide a guide to farmers setting out details of how allegations of breaches of assurances will be dealt with, including information on the format of complaints, contact details of an individual to whom they should be made, details about how allegations will be handled (including timescales and opportunities for farmers to provide further input) in a day-to-day online guide of what to do.

A better alternative, mentioned above, is that Part B assurances (and other assurances secured by farmers, particularly if they relate to land, and the benefit is intended to run with the land) should be contained in legally binding agreements, not assurances, which it seems are ultimately only enforceable by invoking contempt of Parliament procedures.

HS2 Response

We are giving consideration to this issue and hope to provide a further update shortly.

Agricultural Liaison Officer – Petition Paragraphs 28.1-28.2

NFU Issue – PRD Page 97

That the agricultural liaison officer be appointed directly by the Nominated Undertaker and remain so appointed so as to provide more consistency and continuity. In addition, whether or not the officer is appointed by the Nominated Undertaker, there should only be two tiers of officer, with direct access being available for farmers to the senior tier officer (and project

manager if different) for the relevant section of the route. This would be in line with procedures on Nationally Significant Infrastructure Projects.

HS2 Response

At your request we added the words set out in HS2 Phase 2b Western Leg Information E19 to Information Paper C2. This was offered in our letter of 4 May [The Letter] which says:

'The wording currently located in section 7.1 & 7.2 of HS2 Phase 2b Western Leg Information Paper E19: Soil Handling for Land Restoration will be replicated in HS2 Phase 2b Information Paper C2: Rural Landowners and Occupiers Guide.'

Please do not hesitate to contact me if you would like to talk this through. We mentioned a meeting in a few weeks so I will email to fix a date.

Yours Sincerely,



Amanda Pownall

Petition Manager

High Speed Two (HS2) Limited

ANNEX A



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for Transport

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13th M.

Issue Date: 13th May 2022

Expiry Date: 31st December 2024

To whom it may concern

High Speed Rail (West Midlands – Crewe) Act 2021
Authority to enter land to carry out surveys and investigations
Authorised Organisation: Kier Construction Limited

High Speed Two (HS2) Limited ("HS2") is the nominated undertaker for the construction of Phase 2a of the HS2 scheme pursuant to the High Speed Rail (West Midlands – Crewe) Act 2021 and The High Speed Rail (West Midlands – Crewe) (Nomination) Regulations 2021.

The bearer of this letter is authorised by HS2 under Schedule 2 of the above Act to enter and undertake surveys and investigations in connection with the HS2 scheme.

Accordingly, we would respectfully request that the bearer of this letter be admitted to and undertake the surveys and investigations advised in the notices previously served on you.

If you have any queries regarding this work, please call our helpdesk on 08081 434 434 out of office hours. For callers with hearing or speech difficulties, please contact us on our Freephone number on 08081 456 472. Alternatively, you can email hs2enquiries@hs2.org.uk

Further information about HS2 can be found on our website at www.gov.uk/hs2

Thank you, in anticipation of your assistance.

Yours faithfully,

Matthew Young
Construction Client, Phase 2a
Duly authorised for and on behalf of High Speed Two (HS2) Limited

Amanda Pownall
Petition Manager
HS2 Ltd

Your Ref:
Our Ref:
Email: alewis@sharpepritchard.co.uk
Direct Line: 07771 515 961

27 June 2023

Amanda.Pownall@hs2.org.uk

Without prejudice

Dear Amanda

High Speed Rail (Crewe – Manchester) Bill: Petition Hs2-P2b – 085 National Farmers Union

I refer to your letter of 14 June to Louise Staples and have been asked to respond on a few of the points where it seems agreement can be reached swiftly.

The proposed changes to the revised versions of the following assurances are shown tracked in the attached Appendix.

- Soils
- Weed Control
- Water Supplies

The changes are put forward subject to the NFU's outstanding point about assurances all being in one place.

I should be grateful if you would provide an update on the position on enforcement of assurances.

Yours sincerely

Alastair Lewis
for Sharpe Pritchard LLP

CC: Louise Staples, Alice Sharlot: National Farmers Union

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Appendix
High Speed Rail (West Midlands – Manchester) Bill
NFU Proposed Changes to Certain Assurances

Soils

1. “Bill”

the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” include any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill

“F&G Guide”

the Guide to Farmers and Growers affected by the Phase 2b Western Leg of HS2 to be published on Royal Assent of the Bill. References in this assurance to paragraph numbers in the F & G Guide are to the paragraph numbers in the version of the F & G Guide dated January 2023 published on the Promoter’s website

“HS2 Works”

any works to be authorised under the Bill to be constructed on land comprised in an agricultural holding which is then in use for productive agricultural purposes and in respect of which a soil resource plan is prepared pursuant to paragraphs 9.13 of IPC2 and 3.4 of IPE19

“IPC2”

Phase 2b Western Leg Information Paper C2: Rural Landowners and ~~e~~Occupiers Guide

“IPE19”

Phase 2b Western Leg Information Paper E19: Soil Handling for soil restoration

“nominated undertaker”

High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill

“Pre-construction Specification”

Soil

Survey

Target

a. the identification of the physical characteristics of land profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed);

*b. the examination of soil pits at appropriate locations to provide additional detail on soil structure; and
c. the provision of information on the following physical soil characteristics:*

- i. soil horizon depths for topsoil and subsoil horizons;*
- ii. soil textures of all horizons;*
- iii. soil colour;*
- iv. stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;*
- v. presence and characteristics of mottling, a soil wetness indicator;*

“Record of Condition”

- vi. presence of manganese concretions, a soil wetness indicator;
- vii. identification of gleyed horizons;
- viii. identification of slowly permeable layers; and
- ix. identification of impenetrable rock layers

a record of condition to be carried out on an agricultural holding prior to the commencement of construction of HS2 works for the purposes of preparing a Soil Resource Plan which may include some or all of the following information relevant to the holding in question:

- a. details of existing crop regimes;
- b. the position and condition of existing field boundaries;
- c. the condition of existing access arrangements;
- d. the location and type of existing private water supplies;
- e. the type of agricultural use taking place;
- f. the condition of crops (if at a stage this can be assessed);
- g. the quality of grazing land;
- h. the existing weed burden;
- i. a Pre-construction Soil Survey target specification;
- j. weather conditions on the dates on which surveys were undertaken;
- k. the dates on which surveys were undertaken; and
- l. Grid references

“Soil Resource Plan”

a soil resource plan referred to in paragraph 14.1.4 of the F & G Guide and paragraphs 9.13 of IPC2 and 3.4 of IPE19.

2. The nominated undertaker shall use reasonable endeavours to engage with landowners and/or occupiers of agricultural holdings on the preparation by the nominated undertaker of a Soil Resource Plan prior to the commencement of HS2 works on the agricultural holding subject to the execution of HS2 works.

3. A record of condition will form part of the Soil Resource Plan, Subject to access over the agricultural holding being made available to the nominated undertaker at such times as the nominated undertaker reasonably requires in order to prepare the record of condition (including any work necessary to enable the Pre-construction Soil Survey Target Specification to be prepared) undertake the necessary survey and other investigatory work, a record of condition will form part of the Soil Resource Plan.

4. Without prejudice to the generality of paragraph 3, the record of condition will include photographs, section drawings/plans and where appropriate video footage.

Weed Control

1. . “In this assurance -

“1959 Act” means the Weeds Act 1959;

“the 1981 Act” means the Wildlife and Countryside Act 1981:

“Bill” means“ the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

“CoCP” means a document setting out the measures and standards to which the Nominated Undertaker must adhere in order to provide effective planning, management and control of potential impacts on individuals, communities and the environment during construction of the Proposed Scheme, a draft of which is contained in volume 5 of the Environmental Statement;

“Ecology Site Management Plans” means plans prepared by the Nominated Undertaker pursuant to the Environmental Statement for the management of ecology and other sites of importance to nature conservation prior to any works commencing on site. Plans are required to specify the ecological objectives of each ecological habitat creation area or site of nature conservation, the measures to be taken to establish and maintain these habitats and site together the detailed planting requirements and the monitoring regime for each site;

“Environmental Statement” means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with any additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;

“Injurious weeds” means those injurious weeds mentioned in section 1(2) of the 1959 Act and regulations made under that section;

“nominated undertaker” means High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill;

“Proposed Scheme” means Phase 2b (Crewe - Manchester) of High Speed 2 as defined in the Bill;

“Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio; **and**

“weed control measures” means appropriate measures for the treatment /control of invasive and non-native species employed by the nominated undertaker under its CoCP to control plants identified in the relevant provisions of 1959 Act and the 1981 Act; **and**

“within the Act limits” has the same meaning as in clause 63(2) of the Bill.

2. The Secretary of State will require the nominated undertaker to use reasonable endeavours during the construction of the Proposed Scheme to control weeds on land within the Act limits belonging to a farming business which has been either acquired permanently for, or occupied temporarily for the purposes of the Proposed Scheme either through the treatment or removal of weeds, in accordance with the implementation of weed control measures.

3. The Secretary of State will require the nominated undertaker during the construction of the Proposed Scheme to use reasonable endeavours to control weeds on land belonging to a farming business within the Act limits which is rendered inaccessible to a farmer/landowner but which is accessible to the nominated undertaker by reason of the execution of works to be authorised by the Bill on land belonging to the farmer/landowner but which is not required to be occupied by the nominated undertaker for those works. The obligation imposed on the nominated undertaker under this paragraph 3 will subsist until such time as the land so rendered inaccessible is either disposed of to a third party or returned to the ownership of the farmer/landowner.

4. Subject to paragraphs 2 and 3, during construction, the nominated undertaker will implement ~~annual~~ injurious weed control measures at least annually, including during spring. The aim is to implement injurious weed control measures before the flowering season and to minimise spread thereafter subject to the condition that the use of any weed control measures must (save in the case of the control of injurious weeds) be consistent with Ecology Site Management Plans on land identified for the execution of environmental mitigation works to be authorised under the Bill.

DRAFT

Water Supplies

Paragraphs which the Promoter intends to be included in IP C2

10.1 Where an existing private water supply to a farm or to any part of a farm is adversely and directly affected by the construction of the Proposed Works, and if requested by the farmer or landowner to do so, the nominated undertaker will take all necessary steps as quickly as practicable to either:

- meet the reasonable cost incurred by the farmer or landowner in the provision by the farmer or landowner of an alternative supply of water where there is no other practicable alternative means of supply available; or
- provide or procure on behalf of the farmer or landowner an alternative supply of water where reasonably practicable to do so if there is no other practicable alternative means of supply available.

10.2 Without prejudice to paragraph 10.1 but subject to paragraph 10.3 any private water supply pipes damaged during construction will be repaired or replaced as quickly as reasonably practicable ~~and normally within 24 hours.~~ Within the first 12 hours beginning with the time at which the damage and/or interruption of the water supply is first brought to the attention of the nominated undertaker and until ~~until~~ water supplies are reinstated and tested, ~~drinking~~ water will be provided by bottle and/or tanker as a temporary measure as appropriate to affected parties including for livestock as appropriate. ~~Provision of an interim water supply will also apply where supplies to livestock are temporarily interrupted.~~

10.3 For the avoidance of doubt:

- the repair of any damage to public water supplies caused by a water utility company ~~ies~~ working on behalf of the nominated undertaker will be the responsibility of that water utility company in accordance with the service delivery requirement applicable as between that company as a statutory undertaker and the farming business concerned but
- where such damage occurred, the nominated undertaker would still be responsible for the provision of or procuring the provision of temporary water supplies under paragraph 10.2.

Amanda Pownall
Petition Manager
HS2 Ltd

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29 June 2023

Amanda.Pownall@hs2.org.uk

Dear Amanda

High Speed Rail (Crewe – Manchester) Bill: Petition Hs2-P2b – 085 National Farmers Union

I write further to my letter of 27 June 2023 in response to your letter of 14 June to Louise Staples. This letter deals with the remaining points. We discussed them at our meeting today.

It is noted that the position of the Promoter is unchanged on a number of points. This letter does not deal with them. So far as any have not been heard by the Committee already, the NFU is likely to raise them.

Please note that the proposed amendments to the assurances attached in the Appendix to this letter are subject to the NFU's outstanding point about assurances all being in one place.

Use of Compulsory Powers for BNG and Environmental Mitigation - Petition paragraphs 1.7-1.12 (NFU slides point 2)

An explanation of the new draft assurance was given at our meeting on 29 June 2023. It confirmed the NFU's understanding of the new assurance. In cases where land is taken permanently for (say) a construction site and is not required for the permanent HS2 works but in the meantime has been identified for BNG, and the farmer has requested that the land be returned, then there will be engagement with the landowner on the terms of the return of the land, but only in respect of how the farmer could manage the BNG. In other words, if the nominated undertaker has identified that the land is suitable for BNG, even though it was not acquired for that purpose then it won't be returned to the farmer unless the farmer agrees to maintain it as BNG.

It was explained that the Crichel Down Rules require the Secretary of State to investigate whether there are other public purposes to which the land could be put first, before offering the land back to the original owner. I should be grateful if an explanation could be provided as to which of the "Exceptions from the obligation to offer back" in the Crichel Down Rules was being referred to. So far as I am aware, the land would not be needed by another government department (exception 1) nor would it be disposed of to a local authority or other body with compulsory purchase powers (exception 2).

In its petition the NFU was seeking clarification (which appears to have been given) that land would not be acquired for BNG. The idea that land may be held onto for BNG is completely new to the NFU. It seems to the NFU that the assurance being offered in response to that request for clarification amounts to compulsory acquisition for BNG by the back door. The chairman of the select committee has made clear what his (and other members') views are on the subject. The proposal appears to contradict what was said to the committee on 6

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March 2023 (paragraphs 234 to 237 of the transcript) or at least what the chairman may have understood was meant.

Please see proposed changes to the draft assurance in the **Appendix** to this letter.

It is likely that this point will be raised again in committee.

Utility works (including Electric Line Diversions) – Petition Paragraphs 1.15 - 1.19 (NFU slides point 3)

At the meeting, it was explained that the exceptions (b) and (c) in the new draft assurance (brand new utility connections) are required to provide certainty. When brand new utility connections are authorised in DCOs (and generally), it is usually the case that only powers to acquire rights are taken. See NFU exhibit A54(31) and the extract from the A14 DCO. It was explained at the meeting that the new electricity cables required for HS2, particularly for the traction supply, are on a different scale from that which would be required for a road scheme like the A14.

It was agreed that HS2 would endeavour to provide an indication of how many brand new electric lines are proposed on Phase 2b and where they are located. This would assist the NFU in their deliberations.

Pending the receipt of the further information, please see proposed amendments to the assurance in the Appendix.

It is likely that this point will be taken to committee if not agreed.

Plans - Petition Paragraphs 2.1 – 2.3 (NFU slides point 5)

The NFU are grateful for this revised assurance which is accepted.

Use of Multiple GVDs for each Farmer - Petition Paragraphs 3.1- 3.5 (NFU slides point 4)

Request 1 on slide A54(37) remains outstanding. The PRD (page 27) quotes from a letter of 5 January saying “The aim will be to limit the number of permanent acquisition notices to one per landowner where possible.”

On Request 2, the concerns of the NFU would be met on this point if the Promoter would, in cases where a landowner owns multiple plots that are subject to acquisition, prepare and send to the landowner a composite plan. The composite plan would not form part of the formal GVD or Notice to Treat (NTT) paperwork. It would show all the plots owned by the landowner that were subject to the GVD or NTT (and none owned by any other person), and show the GVD or NTT plot reference numbers and also the plot numbers in the book of reference. If there were a succession of GVDs and NTTs for the same landowner, then the composite plan would be updated on each occasion, showing the cumulative position across the estate.

The NFU has drafted assurances reflecting this in the Appendix.

This point was dealt with briefly at the end of the committee proceedings.

Maintenance of Farmland: Weed Control Measure Petition Paragraphs 4.1-4.2

See my letter of 26 June 2023.

It is likely that this point will be taken to committee if not agreed.

Prolonged Occupation of Farmland - Petition Paragraphs 5.1 – 5.4 (NFU slides point 12)

The view of the NFU is that the new assurances offered do not meet all the asks set out in slides A54(70) and A54(71).

This is one occasion where the confusion caused by commitments being contained in different locations is illustrated.

On request 1 in slide A54(70), the paragraphs you quote from section 2 of the F & G Guide do not require the nominated undertaker to describe the precise reason for taking temporary possession. At the meeting it was explained that HS2 would not provide that detail because they are not required to do so under compulsory purchase law.

On request 2, please explain how the proposed new paragraph 21.1.10 will be made subject to an assurance.

On the new proposed draft assurance, please explain what the “framework for handback arrangements” will consist of. Is it linked to the new 21.10.10? If so, this should be made more explicit or the details should be set out in more detail in the assurance.

I note that no comment is made on the proposed amendments in slide A54(71). The issue of land being used for successive different reasons when subject to temporary possession, with long gaps in between, remains a matter of concern for the NFU. It is likely that this point will be taken to committee if not agreed.

Prompt Agreement and Payment of Compensation - Petition Paragraphs 6.1-6.6 (NFU slides point 11)

The proposed new paragraphs 7.3, 7.4 and 7.5 and revised paragraph 7.1 do not deal with points 3 and 4 in the NFU's slide A54(67). They are:

3: The nominated undertaker should arrange a meeting with the claimant to discuss the claim before the nominated undertaker submits its report of the claim to the Promoter.

4. The nominated undertaker should be required to provide a reasonable explanation of how it valued any offer of an advance payment.

The revised wording in paragraph 7.1 only offers a breakdown in response to the farmer's request but does not offer an explanation as to how the advance payment proposed was calculated. At our meeting, it was suggested that this could be given consideration in cases where the claimant has provided its own explanation.

Please see proposed amended wording for the relevant paragraphs in the Appendix.

It is likely that this point will be taken to committee if not agreed.

Alternative Dispute Resolution Petition Paragraph 7.1 – 7.2

As mentioned at the meeting, the NFU has one remaining concern on ADR. It relates to the issue of the Promoter not agreeing to use it when requested by the farmer. The NFU understands there have been cases where ADR has been refused, because the Promoter disputes in principle that any compensation is payable, without any proper explanation. There should be good reason for refusing ADR. The NFU suggest that an assurance to that effect.

See the proposed assurance in the Appendix, based around paragraph 5.1.1 of the HS2 ADR Guidance.

It is likely that this point will be taken to committee if not agreed.

Use of Roads (Clause 14) – Petition Paragraphs 10.1-10.4 (NFU slides point 6)

See the attached alterations to Information Paper C2 and paragraph 22 of the F&G Guide.

It is likely that this point will be taken to committee if not agreed.

Access Licence – Petition Paragraphs 11.1-11.7 (NFU slides point 8)

The NFU looks forward to receiving the assurance mentioned at the meeting on the issue of uncapped indemnities, and notes that the position of the Promoter on longer notice periods and the provision of alternatives. The NFU is likely to take these points to committee if not agreed and a request which reflects slide A54(55) is in the Appendix.

Extent of Land-Take for Mitigation – Petition Paragraphs 13.1 – 13.5 (NFU slides point 2)

See response under the heading Use of Compulsory Powers for BNG and Environmental Mitigation above.

Right of Entry for Further High Speed Railway Works and Exercise of Rights of Entry – Petition Paragraphs 14.1-14.5

The NFU continues to consider this issue and will revert later.

Planning Consent for Replacement Buildings and Associated Dwellings – Petition Paragraphs 16.1-16.5

The NFU are not intending to pursue this issue further.

Utilities and Conduits Petition – Paragraphs 17.1 – 17.2

See the proposed further amendments to Information Paper C2 Rural Landowners and Occupiers Guide in the Appendix.

It is likely that this point will be taken to committee if not agreed.

Interruption of Water Supply- Petition Paragraphs 19.1 – 19.3 (NFU slides point 16)

See my letter of 26 June 2023. The issue was discussed at the meeting and it appeared that the requirement for a temporary replacement water supply to be provided within 12 hours is to be resisted.

It is likely that this point will be taken to committee if not agreed.

Accommodation Crossings – Petition Paragraph 20.1-20.2 (NFU slides point 7)

The NFU notes the reference to section 68 of the Railways Clauses Consolidation Act 1845 in the proposed amendment to paragraph 11.1 of Information Paper C2: Rural landowner and occupiers guide to compliance. The amendment does not address the issue raised in the NFU's request relating to the provision of a temporary crossing being made available following severance. See further proposed amendments in the Appendix.

It is likely that this point will be taken to committee if not agreed.

Land Drainage – Petition Paragraphs 21.1.21.5 (NFU slides point 14)

The assurances do not deal with the second bullet point set out on NFU Slide A54(75), which would require the Promoter to ensure that any new land drainage systems are put back in a condition that is at least as effective as the condition of those which they replace. This would be addressed by the addition of a new paragraph 11.1.10 in Section 11 of the Land Drainage of the F & G Guide (see Appendix).

It is likely that this point will be taken to committee if not agreed.

The NFU looks forward to hearing further following HS2's consideration of a disputes process.

Soils – Petition Paragraphs 22.1-22.7

See my letter of 27 June 2023.

Phase 1 and 2A Assurances – Petition Paragraphs 25.1-25.5 and Compliance with the Farmers and Growers Guide – Petition Paragraphs 26.1-26.2

The NFU continues to consider these points, and in particular is ensuring that the relevant wording in the various Information Papers and F&G Guide properly reflects the assurances agreed on Phases 1 and 2a.

The difficulties which the NFU face with the revised HS2 approach are illustrated in your letter, by the difficulties we have found in navigating around it. An example is in the response about prolonged occupation of farmland.

Enforcement of Assurances – Petition Paragraph 27.1-27.3

We await to hear further on the promoter's proposals on this subject. In the absence of any, the NFU intends to take the matter before the committee.

Agricultural Liaison Officer – Petition Paragraphs 28.1-28.2

The NFU are not intending to pursue this issue further and are satisfied with the assurances given.

I look forward to hearing from you.

Yours sincerely

Alastair Lewis
for Sharpe Pritchard LLP

CC: Louise Staples, Alice Sharlot: National Farmers Union

Appendix
High Speed Rail (West Midlands – Manchester) Bill
NFU Proposed Changes to Certain Assurances

Biodiversity Net Gain and Use of Land for Environmental Mitigation (NFU Slides Section 2)

Biodiversity Net Gain

- 1.1 Where agricultural land within Act Limits meets the criteria specified in paragraph 1.3 the Promoter shall ~~use reasonable endeavours to –~~
- 1.1.1 provide to the landowner reasonable details of the extent of land within Act Limits formerly within that landowner's ownership that is under consideration as a possible candidate site for delivery of biodiversity gains in accordance with the HS2 Environmental Sustainability Vision; and
- 1.1.2 ~~in the event that the former owner requests the return of that land from the Secretary of State, the Promoter will and the landowner agrees that the land may be used for delivery of biodiversity gains in accordance with the HS2 Environmental Sustainability Vision, the Promoter shall use~~ reasonable endeavours to engage with that landowner with a view to reaching agreement with that landowner on the terms of the return of that land.
- 1.2 Paragraph 1.1 does not apply to agricultural land which is intended to be used by the Promoter for any other purpose in connection with the works to be authorised by the Bill following completion of construction of those works.
- 1.3 The criteria mentioned in paragraph 1.1 are that the agricultural land in question –
- 1.3.1 is in the freehold ownership of the Secretary of State;
- 1.3.2 is being held for Phase 2b (Crewe – Manchester) purposes;
- 1.3.3 has been identified for delivering biodiversity gains; and
- 1.3.4 the Promoter is satisfied that the former owner of that land wishes to resume ownership of that agricultural land for agricultural purposes.

Environmental Mitigation

- 1.4 Notwithstanding coverage of such matters in the Environmental Statement, where agricultural land is included within the Book of Reference ~~and is as being~~ required for the purpose of environmental mitigation works, the Promoter will ~~prior to Royal Assent for the Bill write send a letter~~ to owners of that agricultural land providing a description and justification of those proposed works.
- 1.5 In the case where the use of the agricultural land for the purpose of environmental mitigation works is authorised by an Additional Provision to the Bill, the Promoter will send the letter to the owner before the Additional Provision is introduced in Parliament. In the case of other agricultural land, the Promoter will send the letter to the owner prior to Royal Assent. In the case where land is identified for the first time as being required for environmental mitigation works after Royal Assent then the Promoter will send the letter to the owner as soon as reasonably practicable after the land is so identified.
- 1.65 Without prejudice to the generality of paragraph 1.4 the letter will provide an explanation of the rationale for the location and extent of the proposed environmental mitigation works that have been identified. The explanation of the rationale will set out the reasons why environmental mitigation works are proposed within the Bill on that agricultural land (including an explanation as to how any metric has been used), the choice of proposed location and the planned engagement with the landowner during the detailed design stage of the works regarding these matters and how any metric has been used.
- 1.76 Where agricultural land has been identified as being required for the purposes of environmental mitigation works (including habitat creation) the Promoter will engage with the owner of that agricultural land pursuant

to paragraph 22(8) of the Farmers and Growers Guide in seeking to reach agreement with that landowner on the maintenance of those environmental mitigation works on the terms specified in paragraph 22(8) of the Farmers and Growers Guide.

1.87 The Promoter shall ~~use reasonable endeavours to~~ consult the National Farmers Union on its proposed Biodiversity Action Plan before it is finalised by the Promoter and on any significant proposed changes to the Plan once it is published.

1.89 In this assurance –

- 1.8.1 “Act Limits” has the same meaning as in clause 63(1) of the Bill;
- 1.8.2 “Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;
- 1.8.3 “Biodiversity Action Plan” means a plan prepared in respect of the Proposed Scheme which will set out mechanisms to achieve the Promoter’s ambition of securing biodiversity gains in line with the HS2 Environmental Policy;
- 1.8.4 “Biodiversity gains” means the contributions made by the Promoter in constructing the Proposed Scheme to the recovery of nature which includes ensuring that wildlife habitat is enhanced through development of the Proposed Scheme;
- 1.8.5 “Book of Reference” means a book of reference deposited in Parliament with the Bill or an Additional Provision to the Bill;
- 1.8.6 “Environmental Mitigation Works” means environmental works to mitigate the effects of the construction, maintenance and operation of any of works to be authorised under the Bill;
- 1.8.7 “Environmental Statement” means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with an additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;
- 1.8.8 “Farmers and Growers Guide” means a guide prepared by the Promoter to explain to farmers the policies of the Promoter in connection with the construction of the Proposed Scheme, a version of which dated January 2023 has been published on the Promoter’s website;
- 1.8.9 “High Speed Rail Project” means the Proposed Scheme, together with the Phase One Scheme and the Phase 2a Scheme;
- 1.8.10 “HS2 Environmental Policy” means a policy prepared by the Promoter establishing a framework for environmental protection and management for the High Speed Rail Project;
- 1.8.11 “HS2 Environmental Sustainability Vision” means the statement published in January 2022 setting out the Promoters vision for delivering the Proposed Scheme as an environmentally sustainable project;
- 1.8.12 “nominated undertaker” means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;
- 1.8.13 “other purpose” means a purpose other than the delivery of biodiversity gains;
- 1.8.14 “Phase One Scheme” means the railway scheme authorised under the High Speed Rail (London-West Midlands) Act 2017;

- 1.8.15 “Phase 2a Scheme” means the railway scheme authorised under the High Speed Rail (West Midlands -Crewe) Act 2021;
- 1.8.16 “Phase 2b (Crewe – Manchester) purposes” has the same meaning as in clause 62 of the Bill;
- 1.8.17 “Promoter” means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;
- 1.8.18 “Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill; and
- 1.8.19 “Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio.

Utility Diversions (NFU Slides section 3)

1. Where agricultural land is required within Act Limits for utility diversion works and not for any other purposes for which the land is required permanently the Promoter will only exercise powers to acquire rights and /or powers of temporary occupation in respect of the utility diversion works and will not acquire compulsorily the agricultural land including any mines and minerals present.

2. Paragraph 1 does not apply to –

(a) the construction of utility diversion works within the permanent railway corridor; or

~~(b) the construction of brand new utility connections between existing apparatus and third party infrastructure required in consequence of the construction of the Proposed Scheme; or~~

~~(c) the construction of brand new utility connections between existing apparatus and infrastructure constructed by the nominated undertaker as part of the Proposed Scheme; or~~

~~(db)~~ the construction of operational infrastructure where the relevant utility undertaking requires the freehold interest in the operational infrastructure concerned; or

~~(ec)~~ the overall cost to the project of exercising powers to acquire rights and powers of temporary occupation pursuant to paragraph 1 is materially greater than the cost of acquiring compulsorily the agricultural land, including any mines and minerals present.

3. Where any provision of paragraph 2(a) to ~~(ec)~~ applies to any proposal under paragraph 1 to exercise powers of compulsory acquisition over agricultural land, the Promoter may exercise powers of compulsory acquisition over the agricultural land concerned including any mines and minerals present.

4. Without prejudice to paragraph 2, the requirement on the Promoter under paragraph 1 to exercise powers to acquire rights or temporary powers of occupation does not apply where the freehold owner of the agricultural land in question makes a written request to the Promoter to acquire compulsorily the agricultural land in question.

5. In this assurance-

5.1 “Act Limits” has the same meaning as in clause 63(1) of the Bill;

5.2 “agricultural land” means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

5.3 “Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

5.4 “electronic communications apparatus” has the same meaning as in paragraph 1(1) of Schedule 17 to the Communications Act 2003;

5.5 “nominated undertaker” means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;

5.6 “operational infrastructure” means buildings and associated facilities required for the purposes of enabling the utility undertaker concerned to carry out its operational undertaking;

5.7 “powers to acquire rights” means the powers to be conferred under sections 4 and 5 of the Bill;

5.8 “powers of temporary occupation” means the powers of temporary occupation to be conferred under section 13 of the Bill;

5.9 “Promoter” means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;

5.10 “Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill;

5.11 “Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio;

5.12 “apparatus” has the same meaning as in paragraph 18(2)(a) of Part 2 of Schedule 32 to the Bill and includes electronic communications apparatus;

5.13 “utility undertaking” has the same meaning as in clause 63(1) of the Bill; and

5.14 “utility diversion works” means the execution of ~~authorised~~ works authorised by the Bill to divert the alignment of apparatus on agricultural land onto a different alignment across agricultural land.

Use of Multiple GVDs (NFU slides section 4)

NFU proposed new assurance

1. Where more than one plot of agricultural land is in the same ownership, and it is necessary for those plots to be acquired permanently under the Bill, the Promoter shall, unless the owner of the land requests otherwise, use reasonable endeavours to limit the number of permanent acquisition notices (where appropriate to a single notice) issued in respect of that land where the landowner owns more than one plot of land to be acquired permanently under the Bill.
2. In cases where an owner of agricultural land owns more than one plot of land to be acquired permanently under the Bill, the Promoter shall, if requested by the owner, use reasonable endeavours to prepare and issue to the owner a composite plan as soon as reasonably practicable after (a) the request was made or (b) the date of the first permanent acquisition notice, whichever is sooner.
3. In cases where an owner of agricultural land and one or more connected owners together own more than one plot of land to be acquired permanently under the Bill, the Promoter shall, if requested by the nominating owner use reasonable endeavours to prepare and issue to the nominating owner a composite plan no later than the date on which a permanent acquisition notice is issued to the nominating owner or connected owner.
4. If successive permanent acquisition notices are issued to the same owner or a connected owner on different dates, then the composite plan shall be updated and issued to the nominated landowner on each occasion that such notice is issued, showing the cumulative position across all land owned by the landowner and any connected owner as soon as reasonably practicable after (a) the request was made or (b) the date of the first permanent acquisition notice, whichever is sooner.
5. For the avoidance of doubt, the composite plan would be issued for information only and not form part of the permanent acquisition notice.
5. In this assurance:

“agricultural land” means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

“the Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

“composite plan” means a plan showing:

- (a) all the plots owned by the landowner and any connected owner that are subject to permanent acquisition notices under the Bill (and showing none owned by any other person),
- (b) the plot reference numbers for each plot taken from the permanent acquisition notice, and
- (c) the plot numbers for each plot taken from the book of reference.

“connected” includes connected by virtue of shared management of agricultural land;

“connected owner” means any owner of agricultural land that is subject to permanent acquisition under the Bill and

- (a) in respect of whom an owner of agricultural land owner has notified the Promoter that they are connected, such notification to be given no later than [42] days before the permanent acquisition notice in question has been issued (and for the avoidance of doubt, a land owner need only give notification once in respect of any connected owner); and
- (b) who the Promoter is satisfied is connected to the nominating owner;

“nominating owner” means the landowner who gives the notification referred to in the definition of “connected owner” above;

“permanent acquisition notice” means a preliminary notice of the making of a general vesting declaration or a notice to treat;

“Promoter” means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;

“Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill.

Prompt Agreement and Payment of Compensation (NFU slides section 11)

Paragraphs for IPC2

7.3 Paragraphs 7.4 to 7.8 shall apply where an agricultural/rural business owner submits to the Promoter a request for an advance payment of compensation pursuant to section 52 (1) and (2) of the Land Compensation Act 1973 arising from the authorisation of the acquisition of an agricultural /rural business (“an advance payment request”). An advance payment request must be made in accordance with section 52(2) of the Land Compensation Act 1973.

7.4 Once the Promoter has received a request, the agricultural/rural business owner will be provided with confirmation that the request has been received within 5 days of receipt.

7.5 Where further evidence or information is required by the Promoter, that evidence or information, together with an explanation of why it is required, will be requested by the Promoter within 14 days of the request for advance payment being received.

7.6 The nominated undertaker will arrange a meeting with the claimant to discuss the request for advance payment before it submits its report of the claim to the Secretary of State.

7.47.7 In making an advance payment of compensation to an agricultural/rural business owner in accordance with section 52 (2A) and (4) of the Land Compensation Act 1973, the Promoter will provide to the agricultural/rural business owner a breakdown of the advance payment of compensation being made and, if the agricultural/rural business owner has provided a reasonable explanation of how they have calculated the advance payment, provide a similar reasonable explanation.

7.57.8 A breakdown provided by the Promoter under paragraph 7.4 will identify the component elements of the advance compensation payment made to the agricultural/rural business owner, including disturbance payable in respect of the prospective compulsory purchase of that agricultural land/rural business and will identify the plot or plots of land in respect of which the payment relates.

7.1 Where an agricultural/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the nominated undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business. The estimate will include a breakdown on an equivalent basis as provided for in the Petitioner’s detailed request and, if the agricultural/rural business owner has provided a reasonable explanation of how they have calculated the amount of the estimated claim, provide a similar reasonable explanation.

Alternative Dispute Resolution

1. Paragraph 3.1.1 of HS2's Alternative Dispute Resolution Guidance (February 2023) says "Each case needs to be considered on its circumstances, but in general we should consider ADR in all cases where, through negotiation, it has become clear that the matter (or parts of it) cannot be resolved without outside support."
2. The Promoter shall give proper consideration to any request to participate in Alternative Dispute Resolution, provide reasons for any refusal and shall not refuse to do so solely for the reason that it considers there is no basis for a claim unless the claimant has failed to:
 - (a) participate in an exchange of information so each party can understand the other's case;
 - (b) participate in discussions with the claimant thoroughly and constructively, and
 - (c) try to reach a solution or narrow down the issues through direct negotiation (this could but need not include an agents and principals meeting to have taken place).
3. Following receipt of any claim for compensation in respect of Hs2 Phase 2b, other than a claim which the Promoter reasonably considers to be frivolous or vexatious, the Promoter will before deciding whether to agree to Alternative Dispute Resolution use reasonable endeavours to:
 - (a) participate in an exchange of information so each party can understand the other's case;
 - (b) participate in discussions with the claimant thoroughly and constructively, and
 - (c) try to reach a solution or narrow down the issues through direct negotiation (this could but need not include an agents and principals meeting to have taken place).

Use of Roads (NFU slides section 6)

New paragraph 13.1 of HS2 Phase 2b Western Leg Information Paper C2: Rural landowner and occupiers guide:

13.1 Without prejudice to paragraphs 13.2 and 13.3, when exercising powers under clause 14 of the Bill the nominated undertaker will have due regard to the access requirements of the farmer concerned and will use ~~best~~reasonable endeavours to minimise inconvenience to the farmers use of the private access road for agricultural purposes.

13.2 If despite paragraph 13.1, the farmer's reasonable use of the road is impeded, an alternative reasonable access will be provided.

13.23 The nominated undertaker will engage with the owner and occupier of agricultural land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

Paragraph 22.3 of the Farmers and Growers Guide:

22.3 Where land can be identified prior to detailed design as not being required for permanent works and will not be materially changed by construction of the Phase 2b Western Leg: The Promoter would be prepared to limit the exercise of compulsory purchase powers and would use powers of temporary occupation instead.

22.4 Where land forms part of the main access road to a farm holding or is land that is required for the purpose of modifying that access road, the Promoter would be prepared to limit the exercise of compulsory purchase powers and would use (a) powers of temporary occupation and/or (b) powers to acquire rights instead if the road is only required for HS2 construction access.

Access Licences (NFU slides section 8)

Direction Requested from the Select Committee:

The Promoter should amend its standard access licence (which allows the nominated undertaker to use private access roads) in accordance with the following directions:

- The references to the Secretary of State being able to terminate the Access Licence on giving 7 days' notice or immediate notice should be removed from the licence as these are unreasonable provisions.
- In any event, it should be a condition of termination (whether under the "no less than seven days' provision, or otherwise) that termination can only take place where a temporary access, which is equally suitable to the farmer's needs as the original access, is provided in its place.
- The Secretary of State's power to close or vary the route should be conditional on the Secretary of State providing a replacement route, which is equally suitable to the farmer's needs, in place of the original access. If the condition is not included, the Secretary of State's power to close or vary in the circumstances described should be removed from the Access Licence.
- [Uncapped indemnity may be raised depending on the assurance received]

Utilities and Conduits (NFU slides section 18)

Proposed amendments to Information Paper C2 Rural Landowners and Occupiers Guide as proposed to be amended by the Promoter:

- 11.2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned and including both the current and reasonably foreseeable operational needs of the landowner. Subject to any physical or safety constraints, there shall be a presumption that a sleeve or similar work will be installed by the nominated undertaker to enable cables or pipes to be carried along any accommodation overbridge or underbridge, whether or not such cables or pipes are required at the time the railway is constructed. Where shared use of accommodation bridges or underpasses would enable current or future operational needs of a landowner severed by the railway to be accommodated, the nominated undertaker will in a timely way discuss with the landowner the process of finalising the detailed design of the Proposed Scheme.

Accommodation Crossings (NFU slides section 7)

Proposed amendments to Information Paper C2 Rural Landowners and Occupiers Guide as proposed to be amended by the Promoter:

- 11.1 The provision of permanent accommodation works will depend on the individual circumstances on the holding and will usually be developed as the detailed design of the Proposed Scheme is undertaken **but in all cases accommodation works will be determined in accordance with section 68 of the Railways Clauses Consolidation Act 1845.**
- 11.2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned **and including both the current and reasonably foreseeable operational needs of the landowner. Where shared use of accommodation bridges or underpasses would enable current or future operational needs of a landowner severed by the railway to be accommodated, the nominated undertaker will in a timely way discuss with the landowner the process of finalising the detailed design of the Proposed Scheme.**
- 11.3 The nominated undertaker will discuss with each landowner the provision and timing of accommodation works as part of the compensation package.
- 11.4 Where a permanent accommodation crossing for agricultural vehicles is to be provided after agricultural land has been severed, a suitable temporary accommodation crossing for agricultural vehicles for use by the owner and occupier of the agricultural land will be put in place before that land is severed and thereafter will be available for use at all times by the owner and occupier of the land until the permanent accommodation crossing is available for use.
- 11.4 The structures of accommodation bridges, underpasses, culverts or sleeves over or under the Proposed Scheme will be maintained by the nominated undertaker. The maintenance of any surfaces or fences will need to be determined on a case-by-case basis. The landowner will normally be responsible for any surface over which that landowner will have exclusive use.
- 11.5 During construction, the nominated undertaker will maintain access to the rural landowner's land ~~as far as reasonably practicable~~ and where necessary under controlled conditions, without prejudice to the landowner's rights to maintain disturbance compensation.

Land Drainage (NFU slide section 14)

New paragraph to be inserted in Section 11 of the F&G Guide

- 11.1.1 The nominated undertaker will, prior to the completion of detailed design, undertake a programme of ground investigation and testing and to use the results from the ground investigations to validate the water infiltration assumptions used in the preliminary design undertaken before the Bill was submitted.
- 11.1.2 The nominated undertaker will engage with farmers and growers to identify the existing drainage arrangements on land holdings required for the construction of the new railway. In the first instance this will be established through correspondence and copies of relevant drainage plans and/or specialist survey were deemed appropriate.
- 11.1.3 The nominated undertaker will use reasonable endeavours to engage agricultural drainage consultants with working knowledge of the local conditions & prior to the commencement of significant works to construct the Proposed Scheme.
- 11.1.4 Prior to the commencement of significant construction works, land drains affected by the Phase 2b Western Leg works will, where practicable, be intercepted in a manner which maintains their efficiency throughout construction and as a result of the final as built design.
- 11.1.5 Where appropriate, plans to modify land drainage will be provided by the nominated undertaker.
- 11.1.6 Where natural drainage patterns are adversely affected by the Phase 2b Western Leg works, the provision of supplementary drainage or irrigation works will be considered, having regard to an assessment of compensation and the commercial justification.
- 11.1.7 The nominated undertaker will carry out work affecting existing drainage arrangements on landholdings required for the construction of the new railway to an appropriate specification after discussion with the landowner which may include the design and timing of any land drainage works required.
- 11.1.8 The nominated undertaker will comply with the measures set out in the CoCP regulating the impact on existing drainage arrangements on landholdings required for the construction of the new railway.
- 11.1.9 Provided that where a farmer/grower makes a request during the construction works for reinstatement of drainage works on specified land outside of Act limits;
 - it is appropriate and reasonable to do that work on that land;
 - the consent of all third-party interests in that land has been obtained;
 - all requisite statutory and environmental consents have been obtained for the proposed works; and
 - the reinstatement works are undertaken on land in the ownership of the farmer/grower who makes the request,
 - the nominated undertaker will carry out the requested drainage reinstatement works.
- 11.1.10 The nominated undertaker will ensure that any new land drainage systems implemented under paragraphs 11.1.4 to 11.1.9 above or otherwise (including any works carried out in compliance with the measures set out in the CoCP) are implemented so they are in a condition that is at least as effective as the condition of those which they replace.

Amanda Pownall
Petition Manager
HS2 Ltd

Your Ref:
Our Ref:
Email: alewis@sharpepritchard.co.uk
Direct Line: 07771 515 961

3 July 2023

Amanda.Pownall@hs2.org.uk

Dear Amanda

High Speed Rail (Crewe – Manchester) Bill: Petition Hs2-P2b – 085 National Farmers Union

I write further to my letters of 27 June and 29 June 2023 to clarify a few points.

Utility works (including Electric Line Diversions) – Petition Paragraphs 1.15 - 1.19 (NFU slides point 3)

As I mentioned in the letter of 3 July, it would assist the NFU, in considering the proposed “brand new utility connections” exceptions, if HS2 could provide an indication of how many brand new electric lines are proposed on Phase 2b and where they are located.

In that regard, it would assist the NFU if “brand new utility connections” could be defined more specifically, so that there is no confusion between a diversion and a brand new connection. If, as the NFU hopes is the case, the number of connections is relatively small, then this could be done by reference to the specific works.

Secondly, the NFU’s request for clarification extends to all utilities, not just electric lines. Electric lines were mentioned specifically as an example at the meeting last week, but the exceptions are more widely drawn. If there are to be no brand new connections for utilities other than electricity connections, then the exceptions should be narrowed accordingly.

Use of Roads (Clause 14) – Petition Paragraphs 10.1-10.4 (NFU slides point 6)

Unfortunately, the alterations to Information Paper C2 and paragraph 22 of the F&G Guide that were contained in the Appendix to my letter did not cover one of the requests in the NFU slides, namely how new private access roads should be treated. I attach as an Appendix to this letter a revised version of the proposed amendments to paragraph 22 of the F&G Guide. That change is shown highlighted in yellow as a new paragraph 22.5, and there is also a separate change to paragraph 22.4 which should be self-explanatory.

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Right of Entry for Further High Speed Railway Works and Exercise of Rights of Entry – Petition Paragraphs 14.1-14.5 (NFU Slides point 9)

In my letter of 29 June, I said the NFU were continuing to consider this issue. The position is that the NFU intends to put a case to the committee on request 1 in slide A54(61) but not requests 2 and 3.

Compulsory Acquisition and Temporary Possession Powers: Notice Periods (NFU Slides point 10)

Interest on Payments (NFU slides point 13)

I thought I would clarify that the NFU intends to take the above points in committee. They were in your list of points where the position of HS2 remains unchanged.

Yours sincerely

Alastair Lewis
for Sharpe Pritchard LLP

CC: Louise Staples, Alice Sharlot: National Farmers Union

Appendix

Use of Roads (NFU slides section 6)

New paragraph 13.1 of HS2 Phase 2b Western Leg Information Paper C2: Rural landowner and occupiers guide:

13.1 Without prejudice to paragraphs 13.2 and 13.3, when exercising powers under clause 14 of the Bill the nominated undertaker will have due regard to the access requirements of the farmer concerned and will use ~~best~~reasonable endeavours to minimise inconvenience to the farmers use of the private access road for agricultural purposes.

13.2 If despite paragraph 13.1, the farmer's reasonable use of the road is impeded, an alternative reasonable access will be provided.

13.23 The nominated undertaker will engage with the owner and occupier of agricultural land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

Paragraph 22.3 of the Farmers and Growers Guide:

22.3 Where land can be identified prior to detailed design as not being required for permanent works and will not be materially changed by construction of the Phase 2b Western Leg. The Promoter would be prepared to limit the exercise of compulsory purchase powers and would use powers of temporary occupation instead.

22.4 Where land forms part of the main access road to a farm holding or is land that is required for the purpose of modifying that access road, the Promoter would be prepared to limit the exercise of compulsory purchase powers and would use (a) powers of temporary occupation and/or (b) powers to acquire rights instead if the road is only required for construction or operation of the Phase 2b Western Leg HS2 construction access.

22.5 Where agricultural land is required for the provision of a new or replacement main access road to a farm holding (including in cases where the Promoter requires use of the access road for construction or operation of the Phase 2b Western Leg), the Promoter would be prepared to limit the exercise of compulsory purchase powers and would use (a) powers of temporary occupation and/or (b) powers to acquire rights instead.

Louise Staples
National Farmers Union

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[gov.uk/hs2](https://www.gov.uk/hs2)

3 July 2023

Dear Louise,

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL – HOUSE OF COMMONS SELECT COMMITTEE: PETITION HS2-P2B – 085 National Farmers Union

I am writing to you in my capacity as the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (Crewe - Manchester) Bill ('the Bill') currently before Parliament.

Further to the Promoters Response Document sent to you on 31 March 2023 which sets out the Promoter's position on the issues raised in the National Farmers Union (NFU) petition against the Bill in the House of Commons, my colleagues met with you and your client to discuss your petition issues on the 5 & 21 April, 3 May & 29 June 2023 and a series of draft proposed assurances are currently being discussed between us.

In this letter, I am writing to address the specific petition issues raised in paragraphs 27.1-27.3 of your petition in relation to enforcement of assurances and can confirm in relation to each of the points raised in paragraph 27.1-27.3 the following matters:

In response to your petition ask in paragraph 27.2, we are happy to put more detail into Section 19 of the Farmers & Growers Guide in relation to the procedure to be followed in relation to compliance with assurances and undertakings.

Following the Secretary of State's further consideration of arrangements for the resolution of disputes arising from commitments given by way of assurances, I am able to tell you that the Secretary of State has authorised the Promoter to offer the alternative options of assurances set out below to petitioners against the bill which could be applied in cases where a dispute resolution process was appropriate.

Firstly, an assurance which enables the beneficiary of the assurance to refer a dispute over that assurance to an independent commissioner similar to the HS2 Ltd Construction Commissioner who would be appointed to adjudicate on that dispute. This would be a simple inexpensive procedure and relate to disputes with a financial value no greater than £10k.

Secondly, in a case in which the value of a dispute is likely to be higher than £10k, an assurance which would enable reference for dispute to an independent adjudicator to a dispute value of up to £50k.

Thirdly, in a case in which either the beneficiary is not willing to accept a financial limit in relation to a potential dispute or the beneficiary wishes to have the benefit of seeking enforcement by his own direct action, then as you know, the Promoter is willing to enter into an agreement with a Petitioner.

The Petitioner would determine which one of these options they would wish to request by way of an assurance, on a case-by-case basis. We would be happy to include a summary of these arrangements in section 19 of the Farmers and Growers Guide, for ease of reference. In relation to the request stated in paragraph 27.3 of your petition, I refer you to our letter of the 4 May 2023 and to the assurance which I proposed in that letter on behalf of the Secretary of State as follows;

"[1.1] The Promoter will engage in good faith with farmers and rural business owners on the implementation by the Promoter of the policies set out in the Farmers and Growers Guide and to be applied in the construction of the Proposed Scheme and will on written request by a farmer/rural business owner provide to a farmer/rural business owner either an assurance or an undertaking to address an issue covered in the Farmers and Growers Guide referred to in paragraph 1.2 below and with which the farmer/rural business owner is directly concerned with.

[1.2] The sections of the Farmers and Growers Guide referred to in paragraph 1.1 are paragraphs [2.1.5, 2.1.6, 3.1.1, 3.1.2, 3.1.5, 6.1.2, 11.1.2, 11.1.3, 11.1.4, 12.1.2, 13.1.1, 13.1.2, 13.1.3, 14.1.2, 14.1.3, 14.1.4, 14.1.5, 15.1.4, 15.1.6 and 15.1.8 note – paragraph numbers to be reviewed to take account of further drafting changes to the draft Guide].

[1.3] Subject to paragraph 1.4 the Promoter will use reasonable endeavours to reach agreement with an agricultural or rural business owner to give effect to any of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three to the Farmers and Growers Guide with respect to the Subject Land.

[1.4] The conditions which must be satisfied in order for agreement to be reached pursuant to paragraph 1.2 are –

- a) agreement must extend to all parties interested in the [Subject Land] and be documented prior to the Commencement Date;*
- b) agreement must be capable of binding all required parties to observe any obligations forming part of the terms of the agreement reached under paragraph 1.3;*
- c) all relevant parties must have the requisite legal interest in the Subject Land;*
- d) the identity of all land which is to benefit from, or be the subject of obligations must be agreed between the parties; and*
- e) in the case of each of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three of the Farmers and Growers Guide the specific further conditions set out in each of those paragraphs will apply.*

[2.1] In this assurance –

"Commencement Date" means the date on which the Promoter serves a Statutory Notice on any owner or occupier of land in order that entry onto that land can be achieved in conformity with the Promoter's programme for construction of the Proposed Scheme;

"Farmers and Growers Guide" means the guidance document published by HS2 Ltd entitled the Phase 2b Farmers and Growers Guide which is intended to explain to farmers and rural landowners the policies to be applied by the Promoter to the construction of works to be authorised by the Phase 2b Bill in so far as it affects agricultural land;

"the nominated undertaker" refers to the body or bodies appointed by the Secretary of State to carry out the powers conferred under the Bill to construct and maintain the Proposed Scheme. The nominated

undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme;

"Promoter" means the Secretary of State for Transport or any successor Secretary of State or minister holding the Transport portfolio and includes as far as relevant any nominated undertaker exercising the powers or functions under the Bill by virtue of an order under clause 42 of the Bill;

"Proposed Scheme" means Phase 2b of HS2 as proposed to be authorised by the Bill;

"Statutory Notice" means the service by the Promoter of a notice on the owner or occupier of land in exercise of any powers of compulsory purchase or temporary occupation to be conferred under the Bill; and

"Subject Land" means land held for the purposes of an agricultural or rural business that has been identified as such for the purposes of paragraph 1.2."

In the light of that assurance which remains on offer for you to accept, we consider that we have responded positively and appropriately to para 27.3 of your petition. Given the terms in which your request was set out in 27.3, we consider that the assurance offered in our letter of the 4 May needs no further explanation or elaboration. We would be grateful for your confirmation that you accept that assurance in resolution of the request stated in para 27.3 of your petition.

I hope that this clarifies the position in relation to the issues regarding enforcement of assurances.

If you have any concerns or queries regarding the contents of this letter, please contact Amanda Pownall at Amanda.Pownall@hs2.org.uk.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Lucy Lagerweij', with a stylized, flowing script.

Lucy Lagerweij
Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

Alistair Lewis
Sharpe Pritchard

By email: ALewis@Sharpepritchard.co.uk

5 July 2023

Dear Alistair

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL – HOUSE OF COMMONS SELECT COMMITTEE: PETITION HS2-P2B-085 – NATIONAL FARMERS UNION

I am writing to you in my capacity as the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (Crewe - Manchester) Bill ('the Bill') currently before Parliament. I understand that your Client has concerns about the impact of Phase 2b of HS2 (known as 'the Proposed Scheme') and have submitted a petition on that basis against the Bill in the House of Commons.

Further to the Promoters Response Document sent to you on 31 March 2023 which sets out the Promoter's position on the issues raised in the National Farmers Union (NFU) petition against the Bill in the House of Commons, my colleagues met with you and your client to discuss your petition issues on the 5 & 21 April, 3 May & 29 June 2023. Assurances were previously offered to you in two letters dated 4 May 2023 addressing a number of points in your petition. I sent you a letter dated 3 July 2023 to address the enforcement of assurances.

A series of further draft assurances and amendments to information papers have also been discussed.

I am writing to you, on behalf of the Secretary of State for Transport, to offer your client the following additional assurances and amendments to Information Papers and the Farmers and Growers Guide which I hope address a number of the remaining issues you have raised:

Use of compulsory powers for environmental mitigation
Petition Paragraphs 1.7-1.12 NFU exhibit A54 (29)

We have clarified in discussions that there is no land in the Book of Reference specifically identified for Biodiversity Net Gain (BNG). In addition I am offering you the following assurance;

- 1.1 Where agricultural land within Act Limits meets the criteria specified in paragraph 1.3 the Promoter shall use reasonable endeavours to -
 - 1.1.1 provide to the former landowner reasonable details of the extent of land within Act Limits formerly within that landowner's ownership that is under consideration as a possible candidate site for delivery of biodiversity gains in accordance with the HS2 Environmental Sustainability Vision; and
 - 1.1.2 engage with the former owner with a view to reaching agreement on the terms of the return of that land to the former owner where there is agreement by the former owner for the delivery of biodiversity gains on that land in accordance with the HS2 Environmental Sustainability Vision; or
 - 1.1.3 engage with the former owner with a view to reaching agreement on the disposal of that land to the former owner where there is no agreement reached under paragraph 1.1.2 above and the former owner requires the return of the land to return to agricultural use.
- 1.2 Paragraph 1.1 does not apply to agricultural land which is intended to be used by the Promoter for any other purpose in connection with the works to be authorised by the Bill following completion of construction of those works.
- 1.3 The criteria mentioned in paragraph 1.1 are that the agricultural land in question -
 - 1.3.1 is in the freehold ownership of the Secretary of State;
 - 1.3.2 is being held for Phase 2b (Crewe - Manchester) purposes;
 - 1.3.3 has been identified for delivering biodiversity gains beyond the landscape and biodiversity mitigation plans set out in the Environmental Statement; and
 - 1.3.4 the Promoter is satisfied that the former owner of that land wishes to resume ownership of that agricultural land for agricultural purposes.
- 1.4 Notwithstanding coverage of such matters in the Environmental Statement, where agricultural land is included within the Book of Reference as being required for the purpose of environmental mitigation works, the Promoter will, prior to Royal Assent for the Bill write to owners of that agricultural land providing a description and justification of those proposed works.
- 1.5 Without prejudice to the generality of paragraph 1.4 the letter will provide an explanation of the rationale for the location and extent of the proposed environmental mitigation works that have been identified. The explanation of the rationale will set out the reasons why environmental mitigation works are proposed within the Bill on that agricultural land, the choice of proposed location and the planned engagement with the landowner during the detailed design stage of the works regarding these matters.
- 1.6 Where agricultural land has been identified as being required for the purposes of environmental mitigation works (including habitat creation) the Promoter will engage with the owner of that agricultural land pursuant to paragraph 22(8) of the Farmers and Growers Guide in seeking to reach agreement with that landowner on the maintenance of those environmental mitigation works on the terms specified in paragraph 22(8) of the Farmers and Growers Guide.
- 1.7 The Promoter shall use reasonable endeavours to consult the National Farmers Union on its proposed Biodiversity Action Plan before it is finalised by the Promoter and on any significant proposed changes to the Plan once it is published.
- 1.8 In this assurance -

"Act Limits" has the same meaning as in clause 63(1) of the Bill;

"Bill" means the High Speed (Crewe - Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to "the Bill" includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

"Biodiversity Action Plan" means a plan prepared in respect of the Proposed Scheme which will set out mechanisms to achieve the Promoter's ambition of securing biodiversity gains in line with the HS2 Environmental Policy;

"Biodiversity gains" means the contributions made by the Promoter in constructing the Proposed Scheme to the recovery of nature which includes ensuring that wildlife habitat is enhanced through development of the Proposed Scheme;

"Book of Reference" means a book of reference deposited in Parliament with the Bill;

"Environmental Mitigation Works" means environmental works to mitigate the effects of the construction, maintenance and operation of any of works to be authorised under the Bill;

"Environmental Statement" means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with an additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;

"Farmers and Growers Guide" means a guide prepared by the Promoter to explain to farmers the policies of the Promoter in connection with the construction of the Proposed Scheme, a version of which dated January 2023 has been published on the Promoter's website;

"High Speed Rail Project" means the Proposed Scheme, together with the Phase One Scheme and the Phase 2a Scheme;

"HS2 Environmental Policy" means a policy prepared by the Promoter establishing a framework for environmental protection and management for the High Speed Rail Project;

"HS2 Environmental Sustainability Vision" means the statement published in January 2022 setting out the Promoters vision for delivering the Proposed Scheme as an environmentally sustainable project;

"nominated undertaker" means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;

"other purpose" means a purpose other than the delivery of biodiversity gains;

"Phase One Scheme" means the railway scheme authorised under the High Speed Rail (London-West Midlands) Act 2017;

"Phase 2a Scheme" means the railway scheme authorised under the High Speed Rail (West Midlands -Crewe) Act 2021;

"Phase 2b (Crewe – Manchester) purposes" has the same meaning as in clause 62 of the Bill;

"Promoter" means the Secretary of State for Transport (or any successor Secretary of State or Minister holding the Transport portfolio) in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;

"Proposed Scheme" means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill; and

"Secretary of State" means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio.

Utility works

Petition paragraphs 1.15-1.19 NFU request – Exhibit A54 (35)

I am offering you an assurance in the following terms;

- "1. Where agricultural land is required within Act Limits for utility diversion works and not for any other purposes the Promoter will only exercise powers to acquire rights and powers of temporary occupation in respect of the utility diversion works and will not acquire compulsory the agricultural land including any mines and minerals present.
2. Paragraph 1 does not apply to –

- (a) the construction of utility diversion works within the permanent railway corridor; or
 - (b) the construction of brand new utility connections between existing apparatus and third party infrastructure required in consequence of the construction of the Proposed Scheme; or
 - (c) the construction of brand new utility connections between existing apparatus and infrastructure constructed by the nominated undertaker as part of the Proposed Scheme; or
 - (d) the construction of operational infrastructure where the relevant utility undertaking requires the freehold interest in the operational infrastructure concerned; or
 - (e) the overall cost to the project of exercising powers to acquire rights and powers of temporary occupation pursuant to paragraph 1 is materially greater than the cost of acquiring compulsorily the agricultural land, including any mines and minerals present.
3. Where any provision of paragraph 2(a) to (e) applies to any proposal under paragraph 1 to exercise powers of compulsory acquisition over agricultural land, the Promoter may exercise powers of compulsory acquisition over the agricultural land concerned including any mines and minerals present.
4. Without prejudice to paragraph 2, the requirement on the Promoter under paragraph 1 to exercise powers to acquire rights or temporary powers of occupation does not apply where the freehold owner of the agricultural land in question makes a written request to the Promoter to acquire compulsorily the agricultural land in question.
5. In this assurance-
- "Act Limits"** has the same meaning as in clause 63(1) of the Bill;
 - "agricultural land"** means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;
 - "Bill"** means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to "the Bill" includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;
 - "electronic communications apparatus"** has the same meaning as in paragraph 1(1) of Schedule 17 to the Communications Act 2003;
 - "nominated undertaker"** means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;
 - "operational infrastructure"** means buildings and associated facilities required for the purposes of enabling the utility undertaker concerned to carry out its operational undertaking;
 - "powers to acquire rights"** means the powers to be conferred under sections 4 and 5 of the Bill;
 - "powers of temporary occupation"** means the powers of temporary occupation to be conferred under section 13 of the Bill;
 - "Promoter"** means the Secretary of State for Transport in his capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;

“Proposed Scheme” means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill;

“Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio;

“ apparatus” has the same meaning as in paragraph 18(2)(a) of Part 2 of Schedule 32 to the Bill and includes electronic communications apparatus;

“utility undertaking” has the same meaning as in clause 63(1) of the Bill; and

“utility diversion works” means the execution of works authorised by the Bill to divert the alignment of apparatus on agricultural land onto a different alignment across agricultural land. “

Use of multiple use of GVDs for each farmer

Petition Paragraphs 3.1-3.5 NFU request exhibit A54 (37)

We have previously set out our response in the PRD, 5 January letter and 4 May letter. To provide further clarity on this issue, I propose to also add the additional paragraph below to Section Two of the Farmers and Growers Guide;

“The number of notices for permanent acquisition of land issued to an agricultural landowner will be reduced as far as reasonably practicable having regard for the economic and timely delivery of the land for the construction programme.

If requested by a landowner with details of all the affected parties with an interest in the land and with the consent of all the parties identified, HS2 Ltd will liaise with the Landowner and their agent to provide a consolidated plan of the affected land comprised within any notice(s) served.

This is to enable Landowners to identify their own land where it may be incorporated in a wider GVD of land. The plans are provided as part of the engagement with landowners and for information only. Landowners should ensure they are making reference to the plans included with the notice when making a claim for compensation.”

Maintenance of Farmland: Weed Control Measures

Petition Paragraphs 4.1-4.2 NFU request: Exhibit A57 (87)

Following your feedback, I am offering you the assurance in the following terms. This replaces the assurance offered in the letter of the 4 May:

“1. In this assurance -

“1959 Act” means the Weeds Act 1959;

“ the 1981 Act” means the Wildlife and Countryside Act 1981:

“Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

“CoCP” means a document setting out the measures and standards to which the nominated undertaker must adhere in order to provide effective planning, management and control of potential impacts on individuals, communities and the environment during construction of the Proposed Scheme, a draft of which is contained in volume 5 of the Environmental Statement;

“Ecology Site Management Plans” means plans prepared by the Nominated Undertaker pursuant to the Environmental Statement for the management of ecology and other sites of importance to nature conservation prior to any works commencing on site. Plans are required to

specify the ecological objectives of each ecological habitat creation area or site of nature conservation, the measures to be taken to establish and maintain these habitats and site together the detailed planting requirements and the monitoring regime for each site;

‘Environmental Statement’ means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with any additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;

“Injurious weeds” means those injurious weeds mentioned in section 1(2) of the 1959 Act and regulations made under that section;

“nominated undertaker” means High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill;

“Proposed Scheme” means Phase 2b (Crewe - Manchester) of High Speed 2 as defined in the Bill;

“Secretary of State” means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio;

“weed control measures” means appropriate measures for the treatment /control of invasive and non-native species employed by the nominated undertaker under its CoCP to control plants identified in the relevant provisions of 1959 Act and the 1981 Act and

“within the Act limits” has the same meaning as in clause 63(2) of the Bill

2. The Secretary of State will require the nominated undertaker to use reasonable endeavours during the construction of the Proposed Scheme to control weeds on land within the Act limits belonging to a farming business which has been either acquired permanently for, or occupied temporarily for the purposes of the Proposed Scheme either through the treatment or removal of weeds, in accordance with the implementation of weed control measures;

3. The Secretary of State will require the nominated undertaker during the construction of the Proposed Scheme to use reasonable endeavours to control weeds on land belonging to a farming business within the Act limits which is rendered inaccessible to a farmer/landowner but which is inaccessible to the nominated undertaker by reason of execution of works to be authorised by the Bill on land belonging to the farmer/landowner but which is not required to be occupied by the nominated undertaker for those works. The obligation imposed on the nominated undertaker under this paragraph 43 will subsist until such time as the land so rendered inaccessible is either disposed to a third party or returned to the ownership of the farmer/landowner.

4. Subject to paragraphs 2 and 3, during construction, the nominated undertaker will implement injurious weed control measures at least annually including during spring. The aim is to implement injurious weed control measures before the flowering season to minimise spread subject to the condition that the use of any weed control measures (including those for the purposes of controlling injurious weeds) must be consistent with Ecology Site Management Plans on land identified for the execution of environmental mitigation works to be authorised under the Bill.”

Prolonged Occupation of Farmland

Petition Paragraphs 5.1-5.4 NFU request: Exhibit A54 (70)

To address the concerns you have raised, I am able to offer you an assurance in the following terms;

“1. The Promoter shall consult the National Farmers Union on the framework for its proposed hand back arrangements in respect of the vacation of agricultural land that has been occupied temporarily by the Promoter to construct HS2 related works in the exercise of temporary possession powers.

2. In this assurance –

“Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill; and

“Temporary Possession Powers” means powers to be conferred under Part 1 of Schedule 15 to the Bill to occupy land temporarily and execute works provided for in paragraph 1 and 3 of Part 1 of Schedule 15 to the Bill.”

In addition, the following additional paragraph below will be added to the Farmers and Growers Guide at paragraph 21.1.10:

21.1.10 Where farmland has been subject to temporary occupation only, the Promoter will update the landowner from time to time pursuant to paragraph 21.1.9 above on the likely date of the end of occupation of that farmland. In parallel with that activity, the Promoter will engage with the landowner/farmer on (1) the planned date of completion of HS2 related works under paragraph 4(2) of Part 1 of Schedule 15 to the Bill, and (2) the planned date of vacation by the Promoter of the farmland occupied temporarily. For the purposes of paragraph 5(1) of Part 1 of Schedule 15 to the Bill, the Promoter will explain to the landowner/farmer the hand back process which will identify the steps to be taken by both the Promoter and the landowner/farmer. This will include the timing of those steps to facilitate the prompt restoration of the land in accordance with a scheme of restoration required to be agreed or determined under paragraph 5 (1) or (2) of Part 1 of Schedule 15 to the Bill. Paragraph 5 of Schedule 15 to the Bill requires the Promoter and the landowner/farmer to work together to ensure that the hand back of land is undertaken efficiently and economically and as quickly as possible following the completion of HS2 works.

Prompt Agreement and Payment of Compensation

Petition Paragraphs 6.1-6.6 NFU request – Exhibit A54 (67)

We previously offered amendments to paragraphs 7.3-7.5 of the HS Phase 2b Western Leg Information Paper C2: Rural Landowners and Occupiers Guide which was set out in my letter to you of the 4 May. Further to your feedback, the changes below will also be made to paragraphs 7.1, 7.4 & 7.7;

- “7.1** Where an agricultural/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the nominated undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business. *The estimate will include a breakdown on an equivalent basis as provided for in the Petitioner’s detailed request, and if the agricultural/rural business owner has provided a reasonable explanation of how they have calculated the amount of the estimated claim, provide a similar reasonable explanation.*
- 7.4** *Once the Promoter has received an advance payment request, if this has been sent to the Promoters email address as follows; LPClaims@hs2.org.uk, reasonable endeavours will be made for an automated acknowledgement email to be sent within five days of receipt.*
- 7.7** *Following the making of an advance payment of compensation to an agricultural/rural business owner in accordance with section 52 (2A) and (4) of the Land Compensation Act 1973, the Promoter will provide to the agricultural/rural business owner a breakdown of the advance*

payment of compensation being made *and, if the agricultural/rural business owner has provided a reasonable explanation of how they have calculated the advance payment, and the land to which it relates, provide a similar reasonable explanation.*"

Use of Roads

Petition Paragraphs 10.1-10.4 NFU request Exhibit A54 (46)

An additional inclusion to HS2 Phase 2b Western Leg Information Paper C2: Rural landowner and occupiers guide: Use of private access roads across agricultural land will be inserted at 13.1 and the existing paragraph 13.1 will be renumbered as 13.2:

13.1 Without prejudice to paragraph 13.2, when exercising powers under clause 14 of the Bill the nominated undertaker will have due regard to the access requirements of the farmer concerned and will use reasonable endeavours to minimise inconvenience to the farmers use of the private access road for agricultural purposes.

In addition, the following paragraph will be added to the Farmers and Growers Guide at section 22 to assist with further clarification;

[22.4] Where part of the main access road to a farm holding is required only for HS2 construction access or land adjacent to that main access road is required for the purpose of modifying that access road so that it can be used for HS2 construction access, the Promoter would be prepared to limit the exercise of compulsory purchase powers over the main access road and any adjacent land and would instead use (a) powers of temporary occupation and/or (b) powers to acquire rights instead provided that the exercise of such powers is sufficient to facilitate the use of the main access road for all required purposes in connection with the construction of the Proposed Scheme.

[22.5] Paragraph 22.4 above will not apply where the land comprising the main access road has been the subject of the service of a blight notice on the Secretary of State.

Access Licences

Petition Paragraphs 11.1-11.7 NFU Request – Exhibit A54 (55)

I am able to offer you an assurance in the following terms;

"1. In this assurance;

"Access Land"

means an area of agricultural land which requires a means of vehicular and pedestrian access over other land for the purposes specified in paragraph 2.2 below and which is held by the Secretary of State for the purposes of the Proposed Scheme;

"Access Licence"

means the Promoter's standard template temporary access licence offered in the form of a letter to the owner of agricultural land ("owner") where due to the compulsory acquisition by the Secretary of State of land for the purposes of the Proposed Scheme, a temporary means of vehicular and pedestrian access to Access Land is required by that owner (and/or any occupational tenant of the Access Land) over land held by the Secretary of State for the purposes of the Proposed Scheme;

"Act Limits"

has the same meaning as in clause 63(1) of the Bill;

"agricultural land"

means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

“the Bill”	means the High Speed Rail (Crewe - Manchester) Bill originally introduced into the House of Commons on 24 January 2022 and upon Royal Assent includes the resulting Act;
“HS2 Limited”	means- (a) High Speed Two (HS2) Limited; (b) any affiliate of High Speed Two (HS2) Limited; (c) any nominated undertaker appointed by the Secretary of State in accordance with the Bill;
“Indemnity”	And the successors and assignees of any legal entity within (a) to (c); means a form of indemnity to be included in an Access Licence which requires the owner of agricultural land as licensee under an Access Licence to indemnify HS2 Ltd and the Secretary of State and keep them indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from: (a) the terms of the Access Licence; (b) any breach of the Licensee’s obligations under the Access Licence; and/or (c) the exercise of the rights granted in the Access Licence.”
“the nominated undertaker”	means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Limited, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Promoter;
“owner”	means the freehold owner of the agricultural land in question;
“the Petitioner”	means the National Farmers Union;
“the Proposed Scheme”	means Phase 2b (Crewe- Manchester) of High Speed 2 as defined further in the Bill;
“the Promoter”	means the Secretary of State for Transport in the capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;
“Royal Assent”	means the date upon which Royal Assent is given to the Bill; and
“Secretary of State”	means the Secretary of State for Transport.

2. Access Licence

2.1 Where agricultural land is severed by the exercise by the Secretary of State of powers of compulsory acquisition for the purposes of the Proposed Scheme and where requested in writing by an owner of Access Land, the Secretary of State will require the nominated undertaker to use reasonable endeavours to provide to the owner of the Access Land an Access Licence.

2.2 The Promoter confirms that an Indemnity shall not be incorporated into an Access Licence where access is only required for:-

- (a) residential occupation and use of existing dwellings on the Access Land by the licensee; and/or
- (b) farming activities being carried out on the Access Land by the licensee.

2.3 For the avoidance of doubt this assurance will not apply to:

- (a) existing licences granting temporary access rights that have been entered into prior to the date hereof in respect of the Proposed Scheme; or

- (b) bespoke forms of licence or other agreements to grant temporary access rights that might be agreed in future on a case by case basis where an Access Licence is not appropriate in the circumstances; or
- (c) where the Promoter considers on a case by case basis that there are particular circumstances present in the proposal to grant an Access Licence which indicate that there is a material risk of the Promoter being exposed to losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability arising from the exercise by the licensee of rights under an Access Licence including but not limited to:
 - i. circumstances arising from the intended use of the Access Land in exercise of the licence conferred under an Access Licence that may lead to intensification of use;
 - ii. a significant increase in the volume of visitors, whether the general public or contractors and employees of the owner exercising or relying on the licence for access conferred under an Access Licence; or
 - iii. the transportation of materials, objects, liquids or substances which are capable of posing a risk to public health, safety, property or the environment or the carrying of articles which are inherently dangerous, toxic or contaminative under the licence for access conferred under an Access Licence."

Rights of Entry for Further High Speed Railway Works and Exercise of Rights of Entry

Petition Paragraphs 14.1-14.5 NFU Request Exhibit A54 (61)

I am able to offer you the following assurance;

1. "The Secretary of State will require the nominated undertaker to put in place procedures to ensure that the particular requirements of section 174 of the 2016 Act are brought to the attention of all persons seeking to enter agricultural land for the purposes of paragraphs 1 (1) and (2) of the Bill in exercise of the powers to be conferred on the nominated undertaker under Part 7 of the 2016 Act for the purposes of the Proposed Scheme.
2. In this assurance –
 - "2016 Act"** means the Housing and Planning Act 2016;
 - "Bill"** means the High Speed Rail (Crewe - Manchester) Bill originally introduced into the House of Commons on 24 January 2022 and upon Royal Assent includes the resulting Act;
 - "nominated undertaker"** means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Secretary of State;
 - "Proposed Scheme"** means Phase 2b (Crewe-Manchester) of High Speed 2 as defined in the Bill; and
 - "Secretary of State"** means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio."

Utilities and conduits

Petition paragraphs 17.1-17.2 NFU request Exhibit A54 (89)

I am proposing to add the additional text below to paragraph 11.2 of HS2 Phase 2b Western Leg Information Paper C2 Rural Landowners and Occupiers Guide;

11. 2 Accommodation works are taken to include accommodation bridges and access arrangements and will have regard to the commercial justification by the landowner, such as the value, use and location of the lands concerned *and including both the current and*

reasonably foreseeable operational needs of the landowner. Where shared use of accommodation bridges or underpasses would enable current or future operational needs of a landowner severed by the railway to be accommodated, the nominated undertaker will in a timely way discuss with the landowner the process of finalising the detailed design of the Proposed Scheme.

Interruption of Water Supply

Petition Paragraphs 19.1 – 19.3 NFU Request Exhibit 54 (83)

The following amendments will be made to HS2 Phase 2b Western Leg Information Paper C2 in section 10;

10.2 *"Without prejudice to paragraph 10.1 but subject to paragraph 10.3 any private water supply pipes damaged during construction will be repaired or replaced as quickly as reasonably practicable and normally within 24 hours of the damage being brought to the attention of the nominated undertaker. Within the first 12 hours beginning with the time at which the damage and /or interruption of the water supply is first brought to the attention of the nominated undertaker and until water supplies are reinstated and tested, the nominated undertaker will use reasonable endeavours to provide bottled water and/or a tanker as a temporary measure as appropriate to affected parties including for livestock as appropriate.*

10.3.1 *For the avoidance of doubt, the repair of any damage to public water supplies caused by utility companies working on behalf of the nominated undertaker will be the responsibility of that utility company in accordance with the service delivery requirement applicable as between that company as a statutory undertaker and the farming business concerned, and*

10.3.2 *Where damage to public water supplies does occur in the circumstances mentioned in paragraph 10.3.1 and the water utility company is not under a service delivery requirement towards the farming business concerned to temporarily supply bottled water and/ or a tanker within 12 hours of damage and/or interruption being brought to the nominated undertaker, the nominated undertaker will use reasonable endeavours to procure or provide bottled water and/or a tanker to that farming business as a temporary measure.*

Accommodation Crossings

Petition Paragraph 20.1-20.1 NFU Request Exhibit 54 (51)

The following amendment will be made to section 11 of HS2 Phase 2b Western Leg Information Paper C2:

"11.1 The provision of permanent accommodation works will depend on the individual circumstances on the holding and will usually be developed as the detailed design of the Proposed Scheme is undertaken *and where relevant accommodation works will be determined in accordance with section 68 of the Railways Clauses Consolidation Act 1845.*"

For HS2 Phase 2b Western Leg Information Paper E16: Drainage Works paragraph 5.4 will be amended as follows:

"5.4. Where this is not reasonably practicable, ditches will be provided with crossing points by culverts at appropriate locations *and where shared use of a culvert can meet both current and reasonably foreseeable land drainage needs of the existing farming business the nominated undertaker will use reasonable endeavours to incorporate the requirements for such a culvert in finalising the detailed design for the scheme provided that the farming business concerned*

engages in a timely way with the nominated undertaker that is consistent with the timely, economic and efficient delivery of the HS2 works."

Land drainage

Petition Paragraphs 21.1-21.5 NFU request – Field Drainage Exhibit A54 (51)

Section 11 of the Farmers and Growers Guide will be amended to read as follows;

- 11.1.1 The nominated undertaker will, prior to the completion of detailed design, undertake a programme of ground investigation and testing and to use the results from the ground investigations to validate the water infiltration assumptions used in the preliminary design undertaken before the Bill was submitted.
- 11.1.2 The nominated undertaker will engage with farmers and growers to identify the existing drainage arrangements on land holdings required for the construction of the new railway. In the first instance this will be established through correspondence and copies of relevant drainage plans and/or specialist survey were deemed appropriate.
- 11.1.3 The nominated undertaker will use reasonable endeavours to engage agricultural drainage consultants with working knowledge of the local conditions & prior to the commencement of significant works to construct the Proposed Scheme.
- 11.1.4 Prior to the commencement of significant construction works, land drains affected by the Phase 2b Western Leg works will, where practicable, be intercepted in a manner which maintains their efficiency throughout construction and as a result of the final as built design.
- 11.1.5 Where appropriate, plans to modify land drainage will be provided by the nominated undertaker.
- 11.1.6 Where natural drainage patterns are adversely affected by the Phase 2b Western Leg works, the provision of supplementary drainage or irrigation works will be considered, having regard to an assessment of compensation and the commercial justification.
- 11.1.7 The nominated undertaker will carry out work affecting existing drainage arrangements on landholdings required for the construction of the new railway to an appropriate specification after discussion with the landowner which may include the design and timing of any land drainage works required.
- 11.1.8 The nominated undertaker will comply with the measures set out in the CoCP regulating the impact on existing drainage arrangements on landholdings required for the construction of the new railway.
- 11.1.9 Provided that where a farmer/grower makes a request during the construction works for reinstatement of drainage works on specified land outside of Act limits;
 - it is appropriate and reasonable to do that work on that land;
 - the consent of all third-party interests in that land has been obtained;
 - all requisite statutory and environmental consents have been obtained for the proposed works; and
 - the reinstatement works are undertaken on land in the ownership of the farmer/grower who makes the request,

the nominated undertaker will carry out the requested drainage reinstatement works.

Soils

Petition Paragraphs 22.1-22.7 NFU request Exhibits 54 (79), 54 (80), 54 (81)

I am able to offer you the following update assurance to address the issues you have raised. This assurance replaces the assurance offered in the letter of the 4 May;

1. In these assurances:

"Bill"	the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to "the Bill" include any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill
"F&G Guide"	the Guide to Farmers and Growers affected by the Phase 2b Western Leg of HS2 to be published on Royal Assent of the Bill. References in this assurance to paragraph numbers in the F & G Guide are to the paragraph numbers in the version of the F & G Guide dated January 2023 published on the Promoter's website
"HS2 Works"	any works to be authorised under the Bill to be constructed temporarily on land comprised in an agricultural holding which is then in use for productive agricultural purposes and in respect of which a soil resource plan is to be prepared pursuant to paragraphs 9.13 of IPC2 and 3.4 of IPE19
"IPC2"	Phase 2b Western Leg Information Paper C2: Rural Landowners and Occupiers Guide
"IPE19"	Phase 2b Western Leg Information Paper E19: Soil Handling for soil restoration
nominated undertaker"	High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill
"Pre-construction Soil Survey Target Specification"	a. the identification of the physical characteristics of land profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed); b. the examination of soil pits at appropriate locations to provide additional detail on soil structure; and c. the provision of information on the following physical soil characteristics: i. soil horizon depths for topsoil and subsoil horizons; ii. soil textures of all horizons; iii. soil colour; iv. stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis; v. presence and characteristics of mottling, a soil wetness indicator; vi. presence of manganese concretions, a soil wetness indicator; vii. identification of gleyed horizons; viii. identification of slowly permeable layers; and ix. identification of impenetrable rock layers
"Record of Condition"	a record of condition to be carried out on an agricultural holding prior to the commencement of construction of HS2 works for the purposes of preparing a Soil Resource Plan which may include some or all of the following information relevant to the holding in question: a. details of existing crop regimes; b. the position and condition of existing field boundaries; c. the condition of existing access arrangements; d. the location and type of existing private water supplies;

- e. the type of agricultural use taking place;
- f. the condition of crops (if at a stage this can be assessed);
- g. the quality of grazing land;
- h. the existing weed burden;
- i. a Pre-construction Soil Survey target specification;
- j. weather conditions on the dates on which surveys were undertaken;
- k. the dates on which surveys were undertaken; and
- l. Grid references

“Soil Resource Plan” Means a soil resource plan to be prepared in respect of productive agricultural soils which are temporarily affected by the construction of HS2 Works and referred to in paragraph 14.1.4 of the F & G Guide and paragraphs 9.13 of IPC2 and 3.4 of IPE19.

2. The nominated undertaker shall use reasonable endeavours to engage with landowners and/or occupiers of agricultural holdings on the preparation by the nominated undertaker of a Soil Resource Plan prior to the commencement of HS2 works on the agricultural holding subject to the execution of HS2 works.
3. A record of condition will form part of the Soil Resource Plan, subject to access over the agricultural holding being made available to the nominated undertaker at such times as the nominated undertaker reasonably requires in order to prepare the record of condition (including any work necessary to enable the pre-construction Soil Survey Target Specification to be prepared.
4. Without prejudice to the generality of paragraph 3, the record of condition will include photographs, section drawings/plans and where appropriate video footage.”

If accepted, these assurances will be included in the Register of Undertakings and Assurances, which is held by the Department for Transport. Drafts of the Register will be published regularly during the passage of the Bill and it will be finalised after Royal Assent. A nominated undertaker will be contractually obliged to comply with all relevant undertakings and assurances set out in the Register. The assurance process is set out in Annex A.

I hope that the information set out above in relation to the issues raised in your petition to the House of Commons gives you the comfort required in order to withdraw your petition.

Petitions may be withdrawn by sending an email or letter to the Private Bill Office of the House of Commons informing the Clerk to the Select Committee that you wish to withdraw your petition: House of Commons Private Bill Office, House of Commons, London, SW1A 0AA
email: prbohoc@parliament.uk

If you have any further queries please don't hesitate to contact Amanda Pownall, Petition Manager on Amanda.pownall@hs2.org.uk.

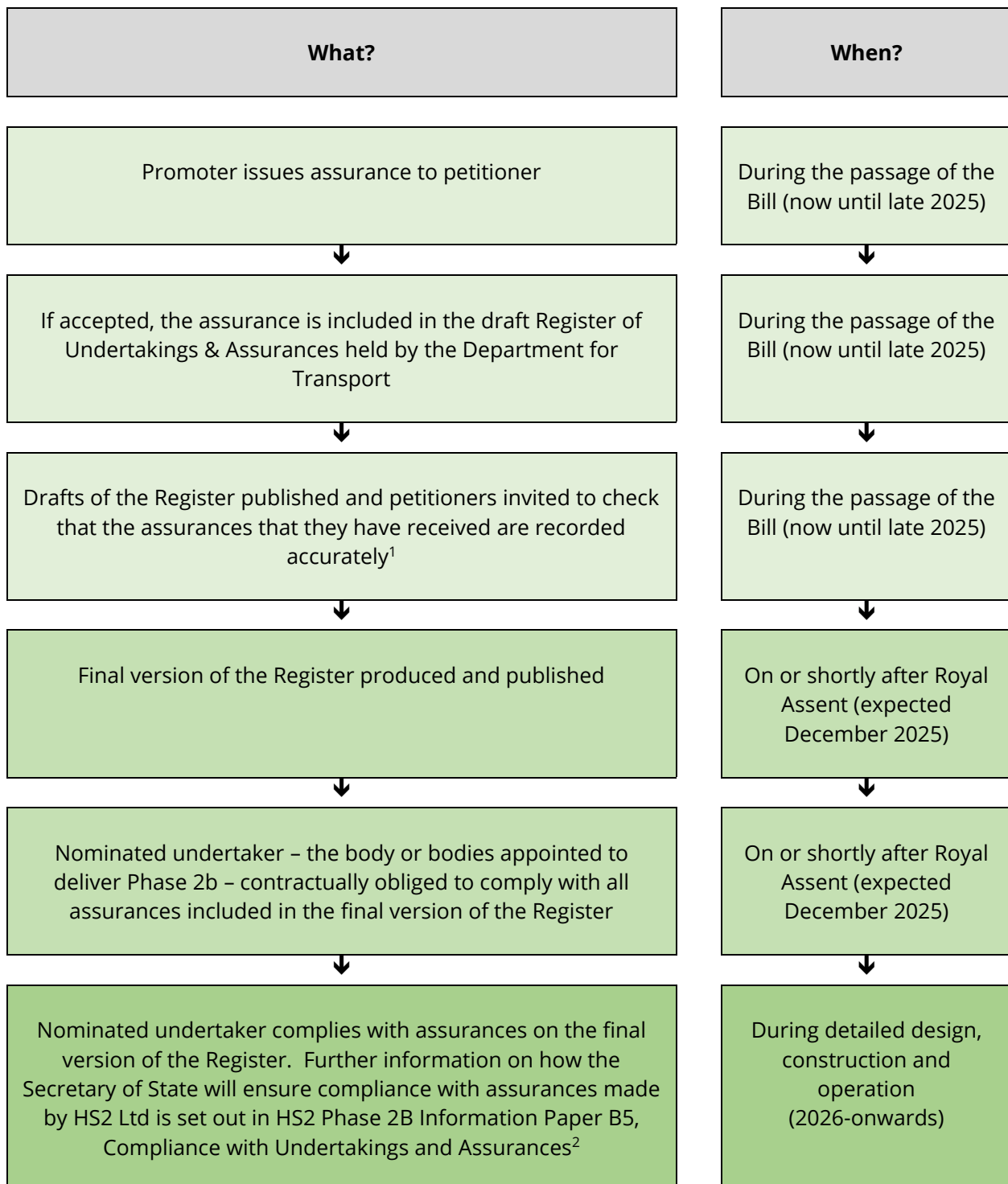
Yours sincerely



Lucy Lagerweij
Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

Annex A

ASSURANCES: STEPS AND TIMING



¹ The latest draft of the Register can be found at <https://www.gov.uk/government/publications/hs2-phase-2b-crewe-manchester-register-of-undertakings-and-assurances>

² A copy can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048801/B5_Compliance_with_undertakings_and_assurances_v1.pdf

Utility connections – operational infrastructure

On current plans, the following items of operational infrastructure and associated facilities will require the acquisition of the freehold interest in the land on which they are to be located –

1. Peacock Lane Autotransformer Feeder Station and traction power supply cables from National Grid supply point.
2. Crewe North Rolling Stock Depot permanent power supply facilities.
3. Annandale Depot power supply, water and waste water supply facilities.

Further requirements may be identified during the process of detailed design.

Railways Clauses Consolidation Act 1845

Section 68 Gates, bridges &c.

The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say,)

Such and so many convenient gates, bridges, arches, culverts, and passages, over, under, or by the sides of or leading to or from the railway, as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof;

Also sufficient posts, rails, hedges, ditches, mounds, or other fences, for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates, made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Railways Clauses Consolidation Act 1845

Section 68 Gates, bridges &c.

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places:

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

HS2

Alternative dispute resolution guidance

February 2023



www.hs2.org.uk

CS1834



Department
for Transport

High Speed Two (HS2) Limited has been tasked by the Department for Transport (DfT) with managing the delivery of a new national high speed rail network. It is a non-departmental public body wholly owned by the DfT.

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High Speed Two (HS2) Limited has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the HS2 website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard. Please contact High Speed Two (HS2) Limited.

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Foreword

High Speed Two (HS2) Limited (HS2 Ltd), acting on behalf of the Secretary of State for Transport) has bought a significant amount of land and property to build, run and maintain the proposed HS2 railway.

If compensation for your land and property has not been agreed, then either we or you can refer the case to the Upper Tribunal (Lands Chamber). The Upper Tribunal will decide the amount of compensation that you will receive. It can be costly to refer a case to the Upper Tribunal, due to the amount of evidence required, and it can take a long time for a decision to be made. To help make quicker decisions and reduce costs, we may offer alternative dispute resolution (ADR) instead to try to settle claims.

This booklet sets out the types of ADR and the steps we will take when making offers or considering proposals. It also includes the criteria for assessing which form of ADR might be the most appropriate, based on the details of each case and the nature of the dispute.

Disclaimer

The information in this booklet is for guidance only and is not a substitute for professional advice. Using this information is voluntary and we do not accept any liability arising from any inaccuracy or error.

Our commitment

Our Residents' Charter sets out the standards that we aim to meet when communicating with property owners. You can find out more at www.hs2.org.uk/documents/hs2-residents-charter/.

1 Introduction

- 1.1.1 If you have received a compulsory purchase notice from us or we have accepted your blight notice (the formal application asking us to buy your property), the level of your compensation will need to be agreed (or decided by the Upper Tribunal).
- 1.1.2 We will employ a suitably qualified professional adviser to act on our behalf during compensation negotiations. We will do our best to reach an agreement on compensation by directly negotiating with you or your advisers.
- 1.1.3 This booklet aims to provide guidance on other ways of resolving disputes when you and we cannot reach agreement by direct negotiation. Referring a case to the Upper Tribunal can be costly and time-consuming for both you and us, and there can be significant delays in a case being considered.
- 1.1.4 It is in both our interests to try to settle disputes by alternative methods where possible.
- 1.1.5 This guidance applies to property compensation matters where you have a right to refer the dispute to the Upper Tribunal. This includes claims following the temporary possession and occupation of land (under Schedule 16 of the High Speed Rail (London - West Midlands) Act 2017, or Schedule 15 of the High Speed Rail (West Midlands - Crewe) Act 2021) and works authorised by Schedule 2 of both acts.
- 1.1.6 It does not apply to:
- our non-statutory property schemes (those we do not have to offer by law), including Voluntary Purchase, Need to Sell, Cash Offer, Homeowner Payment, Streamlined Residential Blight, Prolonged Disturbance Compensation Scheme, Shimmer Cash Offer Scheme and Shimmer Relocation Assistance Scheme;
 - minor claims related to construction;
 - disputes over whether we have used our powers properly;
 - disputes to do with undertakings and assurances;
 - assessing compensation that has been paid in advance; or
 - any losses you may suffer while we occupy your land temporarily.
- 1.1.7 So far, all the land we need to build and run the railway has been in England. However, the Government introduced the High Speed Rail (Crewe – Manchester) Bill, which includes land in Scotland, into Parliament in January 2022. If this bill is made an Act of Parliament, we may need to update this booklet (to reflect the fact that Scotland has a separate legal system).

2 What is ADR?

2.1.1 Alternative dispute resolution (ADR) is any way of settling a dispute without going to a court or tribunal for a decision. We are encouraged by the courts and tribunals to use ADR to try to settle disputes involving compensation. There is widespread support for ADR from the government and the courts.

2.1.2 The following are some of the key features of ADR:

- Both parties (you and we) have to agree to refer their dispute to some form of ADR. Courts and tribunals can impose penalties on parties who unreasonably refuse to consider ADR.
- It allows you and us to find solutions which are not available through legal action. It also supports your and our commercial needs and interests and can protect or even improve our future relationship. Many forms of ADR are carried out in private and 'without prejudice' (which means any documents, notes of meetings, evidence provided and arguments recorded cannot be referred to in any Upper Tribunal or other formal proceedings). The result is only binding once we reach an agreement that can be enforced. The terms of this agreement can be confidential if necessary.
- It is flexible. The timing and method of ADR can be tailored to suit your and our needs. ADR may take place before a case has been referred to the Upper Tribunal (or while it is being referred). It may help resolve the whole matter or just parts of it to reduce time and expense at a tribunal.
- It is quick, and compared with legal action it is not expensive, particularly if it resolves the dispute at an early stage.

3 When is ADR appropriate?

- 3.1.1 Each case needs to be considered on its circumstances, but in general we should consider ADR in all cases where, through negotiation, it has become clear that the matter (or parts of it) cannot be resolved without outside support.
- 3.1.2 When producing this booklet, we used guidance from the Compulsory Purchase Association (CPA) on how to deal with compensation claims. The Land Compensation Claims Protocol 2018 produced by the CPA covers what is expected of parties before a case goes to the Upper Tribunal. It says that, before ADR, you and we should have:
1. exchanged enough information to understand each other's case;
 2. discussed each other's viewpoint thoroughly and constructively; and
 3. tried to reduce the number of issues the Upper Tribunal would have to decide on if the case were referred to them.
- 3.1.3 We and you should follow 1 to 3 above before referring a case to ADR. For number 3, we would expect Scott Schedules (schedules that set out your and our position and explain what the main differences are) or a formal statement of agreed facts to have been prepared (by either surveyors or solicitors we and you have appointed), so that we both know the matters that are still being disputed and that your and our agents have tried to reduce the number of matters that are still being disputed.
- 3.1.4 When you have served a blight notice or received a compulsory purchase notice, either you or your agent must serve a Form of Claim on us, to start your claim. If you do not have an adviser, we strongly recommend that you get professional advice from a suitably qualified surveyor. The Royal Institution of Chartered Surveyors (RICS) has recently published a Consumer Guide, which you can find at: <https://www.ricsfirms.com/media/1279/cpo-consumer-guide.pdf>.
- 3.1.5 Once we have received your Form of Claim, we will appoint our own agent to consider the amount that you have claimed. Negotiations will then take place to try to reach an agreement, which may include arranging an 'agents and principals' meeting. This is a meeting between you and us, and your and our advisers. It may also be useful to have a chairperson to make sure the meeting is orderly and that both of us have an equal opportunity to review, debate and present our case. A face-to-face discussion can help us both understand and clarify the points being disputed. We will usually ask for this meeting before ADR, to make sure we have tried all forms of direct negotiation.

- 3.1.6 If we cannot reach agreement at the meeting or through other negotiation then, as long as we have both met the criteria in paragraph 3.1.2 above, we should consider ADR. If either of us think ADR is not appropriate, we should explain why.

4 Different forms of ADR

- 4.1.1 The following forms of ADR are usually appropriate for the types of claims covered by this guidance booklet, depending on your case and the issues that are still being disputed.
- Faster evaluation of small-value disturbance disputes;
 - Independent expert determination;
 - Mediation; and
 - Early neutral evaluation (ENE).
- 4.1.2 The list above is not a full list. We can consider other forms of ADR, including a peer review (an evaluation of your and our positions by a suitably qualified person), a third valuation of your property (an additional valuation to inform negotiations), or arbitration (the appointment of a third party to consider the dispute based on the evidence that is presented to them, which can be used either as an alternative to the Upper Tribunal or as an additional form of ADR to reduce the number of areas being disputed before an Upper Tribunal hearing, depending on the case).
- 4.1.3 This guidance only discusses the methods of ADR we think are the most suitable for resolving these types of claims. If you think the ADR options above are not appropriate and that we should consider others, please write to us (through your Case Officer), saying why you think an alternative method of ADR might be appropriate. We will always try to make sure that the method of ADR we use is appropriate for the amount of compensation being disputed.
- 4.1.4 Table 1 below sets out summary guidance on each of the types of ADR. Further details about these are in appendices A to D at the end of this booklet. In suitable cases, most forms of ADR can be arranged to be carried out alongside each other.
- 4.1.5 The RICS Dispute Resolution Service has recently introduced its own ADR Service for Compulsory Purchase Disputes. You can find more details on the RICS website (www.rics.org/uk/products/dispute-resolution-service/adr-for-compulsory-purchase-disputes/). RICS is an independent and impartial professional body whose ADR schemes include independent expert and mediation.
- 4.1.6 The RICS ADR Service has a panel of surveyors who specialise in compulsory purchase and have a strong working knowledge of statutory compensation.
- 4.1.7 We will recommend using the RICS ADR Service when using a specialist compensation surveyor is appropriate. We are unlikely to use this service if legal points are still being disputed or if we need advice from other professionals, such as

an accountant or a valuer with specific knowledge of a particular geographical area or type of property. We would use the RICS ADR Service to support the ADR we offer if it is the best way of settling the dispute based on the facts of the case.

Table 1: Summary guidance for the different forms of ADR

Form of ADR	Outcome	Usually appropriate for	Main features	Who pays
Faster evaluation of small-value disturbance disputes	Not binding	• Small disturbance claims (less than £10,000).	• Our Residents' Commissioner will consider the items that are being disputed and make a recommendation based on the facts of each case. • It can be quicker than other forms of ADR. • The cost is low, compared with other options.	We each cover the costs of our own professional advisers.
Independent expert determination	Binding	• Disputes about the value of residential, business or agricultural properties. • Small-value disturbance claims.	• The expert will be independent and appointed by you and us or an independent third party. • The expert can use their own experience and knowledge to help decide the dispute. • The process is flexible and can be adapted to the situation. • There is no right of appeal, except in limited circumstances. • The outcome can be confidential. • it is not generally suitable in cases where there are factual or legal disputes.	The independent expert will decide if you and we should share the costs or if one of us should pay more, based on the outcome or our conduct.
Mediation	Not binding	• Can be considered in cases which cannot be resolved through direct negotiation. It is particularly suitable where the costs of legal action would be out of proportion to the claim. • There are no complex legal issues that need to be dealt with in order to settle the dispute.	• It is flexible and can help find solutions that would not be possible through the Upper Tribunal. • The mediator does not make a decision on the dispute – their task is to help us work out our own solution. • The mediator can give guidance on possible solutions which are fair to both sides. • It is without prejudice (see page 3) and confidential. • It could result in us agreeing on some parts of the dispute, even if the whole dispute is not resolved. This would reduce the number of issues to be sorted out by other methods. • It may have to take place over a long period if this is considered the most appropriate way of making progress with the claim.	The costs of mediation will be shared between us. And we each cover the costs of our own professional advisers.

Form of ADR	Outcome	Usually appropriate for	Main features	Who pays
Early neutral evaluation (ENE)	Not binding	• Matters where strong legal or expert opinions on both sides have led to stalemate. • Complex issues or more than one issue.	• It can be quicker than mediation or using an independent expert. • It gives us both a better understanding of the likely outcome of referring the case to an Upper Tribunal and the risks of taking legal action, which can help with a settlement. • It can reduce the number of issues being disputed. • It can reduce the costs of further negotiations. • It is confidential.	The costs will be shared between us. both We each have to pay the costs of our own professional advisers.

5 Processes and timescales

- 5.1.1 We will suggest ADR in appropriate cases when we have both exchanged enough information to understand each other's case, discussed our positions thoroughly and constructively, and tried to reach a solution or narrow down the issues through direct negotiation. We would usually expect an agents and principals meeting to also have taken place.
- 5.1.2 It is difficult to provide strict timescales for ADR as it depends on the flow of information between us and how we both conduct ourselves. You may want to choose ADR to speed up a decision on your case. We will deal with any requests for ADR as quickly as possible.
- 5.1.3 To request ADR, please fill out the form available on the HS2 website and send it to LPClaims@hs2.org.uk. We would also expect a copy to be sent to your case officer and our appointed agents. We will try to respond to you within two weeks, when we will either agree to your suggestion, explain why we consider other forms of ADR to be more appropriate, or say why we believe your case is not suitable for ADR.
- 5.1.4 How quickly ADR can go ahead will depend on several things, including:
- how complex your claim is;
 - how long it takes to agree which method of ADR to use;
 - the choice of expert, mediator or evaluator;
 - your and our availability (and that of our advisers); and
 - whether additional evidence, witness statements or other material is needed. If the case is referred to the Residents' Commissioner through faster evaluation of small-value disturbance disputes, ADR is likely to start sooner as the expert has already been chosen.
- 5.1.5 The process is set out below:
1. Once we have agreed an appropriate form of ADR, we will ask you to confirm, in writing, whether you have found a suitable expert, mediator or evaluator for us to consider. Before sending your proposals, please check that the expert, mediator or evaluator is likely to be available and that they do not have a conflict of interest. Please also include details of their proposed fee and a copy of their CV.
 2. We will confirm whether we agree with your choice. This will be based on our assessment of the expert's, mediator's or evaluator's experience and whether their fee is reasonable (as a publicly funded body, we have a duty to provide best value for the taxpayer). We will compare all quotes we receive against market

rates to make sure we are getting value for money. We will not agree to anyone who has a conflict of interest. If we do not agree with your proposals, we will set out our reasons, in writing, within two weeks.

3. If you do not suggest anyone or we disagree with your choice, we will suggest alternatives for you to consider. If you and we still can't agree, we will ask you if we can refer the matter to a third party, for example:
 - Royal Institution of Chartered Surveyors (RICS);
 - Central Association for Agricultural Valuers (CAAV);
 - Centre for Alternative Dispute Resolution (CEDR); or
 - IPOS Mediation (formerly In Place of Strife - IPOS).

These are independent organisations who would be impartial when choosing a suitably qualified expert or mediator. This is not a full list, and we will consider other ADR providers in appropriate cases.

5.1.6 Once an expert, mediator or evaluator has been appointed, we would usually expect ADR to be completed within three months. This will depend on the availability of the expert, mediator or evaluator and their timescales and requirements.

5.1.7 In Table 2 below we have set out a summary of the process and the timescales we would work to once a method of ADR has been suggested.

Table 2: Summary of the ADR process

Stage	Description	Timescale
1. Requesting ADR	Either you or we can ask for ADR. Before considering ADR, we should have exchanged enough information to understand each other's cases and discussed each other's positions thoroughly and constructively. We should also have had an agents and principals meeting. The party that proposes ADR should set out (with reasons) the method of ADR they would prefer, and fill out the request form that is included on our website.	
2. Confirmation	You or we should confirm whether we agree to the form of ADR that the other has suggested, within two weeks of receiving the letter proposing the ADR. If we think it is too early for you to request ADR or the case is unsuitable for ADR, or we disagree with the method you propose, we will explain this to you in writing. We may suggest other forms of ADR that we consider more appropriate.	2 weeks
3. Appointment	If we agree to faster evaluation of small-value disturbance, the expert will be the Residents' Commissioner). If you suggest an expert, mediator or evaluator, we will consider their experience, expertise, value for money (how reasonable their fees are) and whether there is a conflict of interest.	4 weeks

Stage	Description	Timescale
	If you do not suggest an expert, mediator or evaluator, or if we disagree with those you have put forward, we will suggest alternatives for you to consider. If we still can't agree, we will suggest that we agree to use a third party (such as RICS, CAAV, IPOS, CEDR or another professional body if appropriate) to make the appointment.	

6 How can I decide if ADR is right for me?

6.1.1 If you or your advisers want to know more about ADR before making a decision, we can help by:

- discussing the process with you and your advisers; or
- putting you in touch with organisations such as RICS, CAAV, CEDR and IPOS, or other professionals experienced in ADR who can give you more detailed, independent information.

6.1.2 Legal advisers and surveyors are usually able to provide advice on ADR. Various charities and not-for-profit organisations, such as Citizens Advice, may be able to give you free guidance.

Appendix A – Faster evaluation of small-value disturbance disputes

You can refer your case to the Residents' Commissioner:

- if we are buying your land or property as part of one of our statutory schemes (those we have to offer by law), or our Express Purchase scheme; and
- the amount of disturbance compensation being disputed is no more than £10,000.

How does it work?

Once you have given your permission for your case to be referred for ADR, we or the Department for Transport (DfT) (or both) will send the Residents' Commissioner a summary of the dispute and our discussions so far. Based on this evidence, the Residents' Commissioner will decide if it is appropriate to consider your case.

If the Residents' Commissioner agrees to accept your case, they will write to you confirming this and giving an idea of how long it will take to reach a decision, based on the evidence provided. If they decide not to accept your case, they will write to confirm this and give the reason why.

To help the Residents' Commissioner assess your case, you and we will need to provide some background evidence. The Residents' Commissioner may suggest the type of evidence that would help them reach a decision. You are expected to pay your own costs associated with providing evidence. However, if you run up extra costs while gathering evidence, the Residents' Commissioner may consider whether we should contribute to these costs.

What happens next?

We and the DfT will accept the Residents' Commissioner's evaluation of the compensation and their recommendation for what you should be paid. You do not have to accept their decision and you have the right to go to ADR or refer your case to the Upper Tribunal.

You usually have six years from the date we buy your land or property to refer your case to the Upper Tribunal, but you should get professional advice if this timescale becomes an issue.

The outcome of the evaluation will be confidential but not binding (you do not have to accept it). However, if you do not accept the Residents' Commissioner's evaluation and recommendation, you will not be able to use the evidence, evaluation and recommendation for other procedures, such as ADR or the Upper Tribunal.

Notes

The Residents' Commissioner is independent of us and the DfT.

They will handle all confidential information you provide to us sensitively and securely and in line with all relevant legislation, and they will only keep it for the length of time needed to deal with your case.

Frequently asked questions

Who decides which cases go to the Residents' Commissioner?

We or the DfT may refer a case to the Residents' Commissioner, or you can ask your Case Officer to refer your case.

Is the Residents' Commissioner's evaluation binding?

We are both expected to agree to keep to the Residents' Commissioner's evaluation. But you still have the right to go to ADR or refer your case to the Upper Tribunal.

Under what circumstances could the Residents' Commissioner refuse to accept my case?

There are some specific circumstances in which the Residents' Commissioner may not accept a case or may suggest another way of resolving it. These circumstances are as follows:

- if the amounts being disputed are (or are likely to be) over £10,000;
- if the amounts relate to:
 - the market value of the land we have bought;
 - severance (where we only need to buy part of your property and the value of the land you keep reduces);
 - injurious affection (where the value of the land you keep reduces as a result of the proposed construction or use of the railway); or
 - claims for items other than disturbance compensation.
- if the decision on the case is unusual, controversial or repercussive (in other words, may affect other cases, whether relating to HS2 or to other projects), or does not come under the Compensation Code (the law that governs compensation matters);
- if the case does not relate to HS2;

- if the case relates to a dispute involving our small claims scheme (the Construction Commissioner has responsibility for this); and/or
- if the case relates directly to the construction of the railway (the Construction Commissioner has responsibility for this).

Will you or the DfT pay my costs of preparing evidence for the Residents' Commissioner?

Not usually. But if the Residents' Commissioner needs more evidence than they have been given, and this leads to further costs, the Commissioner can recommend that we should contribute to those costs if they consider that they can be claimed back under the Compensation Code.

Will you or the DfT show me the evidence that you send to the Residents' Commissioner?

No, we will send the evidence direct to the Residents' Commissioner.

What if I want to challenge what you or the DfT say about my case?

You will be expected to present your own case to the Residents' Commissioner. This will be your opportunity to give your side of things. If the Residents' Commissioner wants further evidence from you or us, they will ask for it.

Will the Residents' Commissioner be able to provide an evaluation in every case?

The Residents' Commissioner will usually be able to provide an evaluation of a case. However, if there is not enough evidence to help them decide, they may not be able to provide an evaluation (but that is not likely to happen very often).

How long will it take the Residents' Commissioner to provide an evaluation of my case?

That will depend on how complicated your case is and the amount of evidence presented. If the Residents' Commissioner thinks it is unlikely that they will be able to deal with your case faster than ADR or the Upper Tribunal, you and we can choose one of those methods instead.

Appendix B – Independent expert

Using an independent expert can be a relatively quick and cost-effective way of deciding disputes, particularly those of a specialist or technical nature. It is a well-recognised way of settling disputes in almost all areas of commercial life. An independent expert's decision is binding.

Under this process, an independent person who is an expert on the subject being disputed is appointed. They will consider the evidence you and we put forward, weigh up the details of each argument and make a decision. They can use their own experience and knowledge of the issues when making their decision. They may decide on a different compensation amount than the one you and we put forward.

It is important that the expert has an in-depth knowledge of the issues being disputed, evaluates all the evidence, and gives you and us an opportunity to respond to the other's evidence so that we both have confidence in the process.

How does this apply to HS2?

The independent expert's decision is intended to be binding. It cannot be challenged, unless the expert has answered the wrong question (not the question they have been asked), there is evidence of fraud or bias, or the expert can be shown to have significantly misread or misunderstood the evidence.

You and we have to sign a contract at the beginning of the process. The contract sets out the terms of appointment and how the costs will be met, and states that the decision will be binding. The contract should also set out:

- how we, you and the expert will exchange material and evidence;
- the type of material we and you have to provide;
- whether we would be expected to comment on each other's evidence (usually referred to as providing rebuttal evidence); and
- the timescales for the expert to publish their decision.

The expert may draw up the contract or we can produce a contract for you and your adviser to consider.

Who appoints the independent expert?

We would try to agree on the choice of expert with you (as set out in this guidance booklet) or, as a last resort and if you agree, we would approach professional bodies such as the RICS, CAAV or Law Society.

How does the independent expert make their decision?

Once the expert is appointed, they will set out what they need from us both. This will probably include a request that we each:

- set out, in writing, an explanation of our cases and any facts and issues we have agreed on; and
- send them evidence to support our cases.

They will have a timetable for us to send the above information, and whether we should exchange this at the same time or one of us should go first in making our case.

Also, the expert will say whether we should respond to or comment on each other's material. This is often referred to as rebuttal evidence.

If the dispute is about the valuation of a residential property or piece of agricultural land, your and our valuations should be given to the expert at the same time and rebuttal evidence would not be needed. This will simplify the process and save time and costs for us both.

Once the independent expert has considered the material, they will issue a written judgement explaining their decision and how they have arrived at it. This decision will be binding on both of us, except in exceptional circumstances.

As part of the decision or after receiving further submissions from you and us, the independent expert will also decide who should pay their costs. These further submissions will usually be written representations setting out why one party should pay a higher or lower amount than the other.

How are the costs met?

We and you will initially share the costs equally (and each of us will be responsible for paying the costs of our own professional advisers). As part of their decision, the expert will say whether one of us should pay a higher contribution to the expert's costs or pay a proportion of the other side's costs. This will depend on the amount of the claim or your and our conduct during the case.

What are the advantages of using an independent expert?

The expert can use their own experience and knowledge to help decide the matter, so is not relying only on the information you and we provide. The process is flexible and can be adapted to the situation.

What are the disadvantages of using an independent expert?

There is no right to appeal against the decision except in limited circumstances. If one of us refuses to keep to the expert's decision, the other would have to ask the court to enforce the decision.

Appendix C – Mediation

Mediation is where a trained and independent third party (the mediator) works with the parties in a dispute to help them find a solution that is acceptable to both of them, but does not make a decision on the matter.

How does it apply to HS2?

Mediation is entirely confidential and ‘without prejudice’ (see page 3). Any agreement is also confidential and cannot be referred to or produced in formal proceedings.

Unlike early neutral evaluation (see Appendix D), a mediator’s aim is only to help parties reach an agreement. They do not comment on the merits of either case. A mediator may not necessarily have expert knowledge of compulsory purchase or valuation but will have skills and experience in mediation.

Using mediation does not take away any rights that you or we have to refer our case to the Upper Tribunal.

How does mediation work?

You and we would enter into an agreement to for the mediation. The agreement will cover:

- how mediation will be arranged and the process itself;
- confidentiality and privilege of information (which may prevent the sharing of confidential and sensitive material);
- how much information we share and the timetable for exchanging this information;
- how the mediation is ended; and
- responsibility for costs and the mediator’s fees.

The mediator controls the procedure from the time they are appointed. Usually, the following happens:

- The mediator fixes a date, time and venue that is convenient for everyone.
- They will ask each of us to produce a short summary setting out our arguments on the main issues, with copies of important documents. This goes to the mediator and both of us.
- On the day of the mediation, we and you sign the mediation agreement and begin the mediation. The mediator explains their role, says how things will be run, and asks us both to briefly comment on our position.

- We then move to separate rooms and the mediator will speak to each of us privately, to get a better understanding of our views and concerns, what we are disputing, and our problems and needs. What you and we say to the mediator is confidential – they cannot pass on the information without our permission. The mediator will build up the fullest possible picture of the dispute and then help both of us make constructive proposals and compromises, to try to reach a solution.
- The mediator is not an adviser. It is not their role to tell us what our rights are or how we should settle the dispute. They are impartial throughout the process.
- Neither you nor we need to change from our initial position before mediation if we do not want to, and we can leave the mediation at any time. The aim of mediation is to find a solution that is acceptable to both of us.
- If an agreement is reached, you and we will sign a settlement agreement that sets out the terms that have been agreed. The agreement will be binding on both of us. Your and our representatives usually prepare an outline of this document before mediation, that can then be finalised for us both to sign.

How will the costs be met?

In mediation, the parties usually agree in advance that they will each pay:

- their own costs; and
- 50% of the mediator's fees and expenses.

It is important that both you and we have a part in making mediation a success. For this reason, the costs are usually shared equally.

What are the advantages of mediation?

Mediation as a form of ADR is widely recognised as having a large number of advantages, as follows:

- It is entirely voluntary. Either of us can leave or end mediation at any time. The mediator cannot make us continue with the process.
- Communication problems between us can be overcome. The mediator is a neutral third party who can act as an intermediary between our different personalities and negotiating styles.
- The mediator can help us work through a stalemate situation.
- Confidentiality and privilege of information are key parts of mediation, and agreements to mediate usually include clauses to protect these.

- We and you have complete control over the choice of mediator and so can choose one who is most appropriate for the dispute. However, we cannot choose a judge if the matter goes to full trial.
- The legal costs, lost opportunity costs (for time lost focusing on a case and not on other matters) and management time can be reduced by using mediation.
- Mediation can produce outcomes that might not be possible through a court or tribunal.
- Personal, commercial and technical needs, interests, aims and objectives can be achieved through mediation. The process helps us both to identify underlying interests and the implications that various outcomes may have on those interests.
- The process is entirely flexible and can be tailored to meet your and our needs and all issues.
- We and you take an active part in the mediation process and control the outcome.
- Mediation can provide a solution more quickly compared with other forms of ADR or a referral to an Upper Tribunal. It can be arranged quickly, often within a few weeks.
- The process is low risk – there is nothing to lose by trying mediation.
- Mediation has a high success rate and produces lasting results. The statistics vary, but 65% to 85% of cases are settled by mediation, and some mediators advertise success rates of more than 90%. The outcome is likely to be more acceptable than that of a court or tribunal, as we both have responsibility for creating it.
- Even if mediation does not help to settle a dispute, both you and we are likely to have benefited from it by:
 - having the opportunity to listen to each other's points of view;
 - reducing the number of issues being disputed; and
 - testing the strengths and weaknesses of our cases and the strategies used in the run-up to any tribunal or court case.

What are the disadvantages of mediation?

There is no guarantee that all the points being disputed will be agreed. Also, mediation can be costly if considerable work is needed to prepare for it, which will then add to the overall costs of the dispute if the mediation is unsuccessful.

Appendix D – Early neutral evaluation

Early neutral evaluation (ENE) is a form of ADR in which an independent and impartial evaluator or panel is appointed to assess the merits of your and our cases.

The aim of ENE is to provide an objective and realistic view on the strengths and weaknesses of our cases, and act as a basis for negotiations.

ENE may relate to facts, evidence, technical issues or legal merits (or a combination of these). It can be used at any stage of a dispute. The process is voluntary and can only be carried out if you and we agree. Using ENE does not mean we cannot use other forms of dispute resolution. ENE is usually not binding and the process is usually 'without prejudice'.

The evaluator gives their view on what the outcome would be if the matter went to the Upper Tribunal. They do not resolve the dispute, or even necessarily make suggestions as to how it should be resolved, unless they are specifically asked to do so by either you or us. They have no power to award compensation and do not try to force you or us to accept proposed terms of a settlement.

The extent of analysis the evaluator provides will vary according to their experience, the time they have been asked to spend on the task and the material we and you give them.

How does ENE apply to HS2?

Like mediation, ENE is entirely confidential and 'without prejudice'. The evaluator's opinion cannot be produced or referred to in any later, formal hearings.

Using ENE does not take away any rights that you and we have to refer a case to the Upper Tribunal. ENE is an alternative to using mediation or an independent expert. However, if after ENE we still cannot settle our differences, mediation may be helpful in settling the dispute. In these circumstances, we, you and the mediator will be told the evaluator's or panel's opinion.

Who appoints the evaluator?

If ENE is to work, both we and you must have faith in the knowledge, expertise and independence of the evaluator (or panel if one is used) and respect their findings, even though we are not bound by them.

For this reason, we would aim to try to agree the choice of evaluator or panel with you. We would only appoint an evaluator from a professional body such as the RICS, CAAV or Law Society as a last resort and if you agree.

You and we will agree the members of the panel (numbers and expertise), to reflect the size and complexity of the issues being disputed.

How does ENE work?

When preparing for the evaluation, you and we need to agree:

- who to appoint as the evaluator or panel;
- the procedures they will use; and
- how we will prepare and provide summaries of our cases, a statement of agreed facts, and other necessary documents.

Once we have appointed the evaluator (or panel), they will meet us to read the key documents in the case and listen to our arguments.

Through informal meetings (sometimes with both of us and sometimes separately), the panel will help us to:

- identify the main issues;
- eliminate minor issues by compromising on or simply dropping them;
- test your and our claims and what we want to achieve from ADR; and
- establish the basic strengths or weaknesses of our positions.

Each of us will have an opportunity to present or develop our arguments, both privately and in front of the other. The evaluator or panel will invite you or us (or both of us) to produce further material or argument, for example, to consider whether we really want to continue with any part of the claim. They will balance the benefit of allowing us to discuss our positions and move on against the aim of ENE, which is to reduce costs and delay and get a faster result.

After minor issues have been dropped or compromised on, and the arguments put forward in full, the evaluator or panel will produce a reasoned, written opinion, setting out their view of the likely outcome of the case if it were to be taken to the Upper Tribunal. Their opinion is just that – an opinion. It is not a judgement, a decision or an order.

The meetings will have been held at your, our or the evaluator's offices and arranged informally. One benefit of this is that both of us work together regularly and get to know one another. This in itself can help in settling the dispute.

The next step is usually a negotiation based on the evaluator's or panel's opinion. If one of us (or, unusually, both of us) reject the opinion, it is not in any way binding and we can refer the dispute to the Upper Tribunal.

How are the costs met?

In ENE, the parties usually agree in advance that they will each pay:

- their own costs; and
- 50% of the evaluator's or panel's fees and expenses.

As ENE will be used in more complex issues, which take more time and expertise to resolve, we both have to be committed to its success. For this reason, we share the costs equally.

What are the advantages of ENE?

The potential benefits of ENE are that it:

- focuses on the matters in dispute;
- can be a quicker process than other ADR options;
- gives us a better understanding of the risks of taking legal action, which would be more costly;
- reduces the number of issues;
- reduces the costs of further negotiations; and
- is entirely confidential. There is no hearing, nothing is said or done in public, and the process is 'without prejudice'.

What are the disadvantages of ENE?

It may be costly if we need to do a lot of work to prepare for it. Also we can become 'fixed' in our positions once we receive the evaluator's or panel's opinion.

HS2

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

**Further Supplementary Slides
for
10 and 11 July 2023**

From: [Alastair Lewis](#)
To: [Stephen Collings](#) [REDACTED]
Cc: [Louise Staples](#); [Amanda Pownall](#); [Alice Sharlot](#); [Elizabeth Withers](#)
Subject: (0000103549/42) - High Speed Rail (Crewe to Manchester) Bill: NFU
Date: 06 July 2023 16:20:59
Attachments: [image944720.png](#)
[image813398.png](#)
[image647215.png](#)

Stephen,

As Amanda is on leave I thought it might help if I set out a brief update on some of the points raised in her letter of yesterday and at our discussion this morning.

Enforcement of Assurances/Compliance with F and G Guide (Petition points 26 and 27)

Following our discussion this morning, NFU suggest it would be sensible to defer these subjects pending the guidance which was mentioned.

Multiple GVDs (3), Water Supplies (19) and Soils (22)

Pending a final check for minor drafting points, these matters are agreed in principle.

Utility works (1.15 – 1.19)

We await details of the number and location of brand new utility works.

Use of roads (10)

New paragraph 22.4: As drafted this only applies to land required for construction access. NFU considers that it should also apply where an existing main access road to a farm is required for HS2 operational use. Rights should suffice in those circumstances – please could you take instructions?

Access licences (11)

In the exception in paragraph 2(c)(iii), please could consideration be given to a qualification along the lines of “(other than materials, objects, liquids or substances which are reasonably required for agricultural or residential purposes)”. The intention being that it doesn’t catch, for example, pesticides and heating oil.

Other points

Other points raised in Amanda’s letter remain under consideration.

As I will be out for the rest of today, please copy in Louise Staples to any reply.

Regards

Alastair

Alastair Lewis | Partner and Parliamentary Agent

For Sharpe Pritchard LLP

M: [REDACTED]
T: [REDACTED]
E: [REDACTED]

From: [Tracey Bailey](#)
To: [Alastair Lewis](#)
Cc: [Louise Staples](#); [Stephen Collings](#); [Alice Sharlot](#); [Amanda Pownall](#)
Subject: NFU
Date: 07 July 2023 17:51:51
Attachments: [external.png](#)

 External email >

Hello Alistair & Louise

As Amanda is out of the office, I am following up on your email following the meeting yesterday.

We agree to include the qualification you have requested to insert for the Access licence assurance at Para 2.3 c iii – (*other than materials, objects, liquids or substances which are reasonably required for agricultural or residential purposes*).

Regarding use of roads for HS2 operational purposes, we would need to deal with those situations on a case by case basis.

Many thanks

Tracey Bailey | Head of Petition Management | HS2 Ltd

Tel: [REDACTED]

From: [Alastair Lewis](#)
To: [Stephen Collings](#) [REDACTED]
Cc: [Louise Staples](#); [Amanda Pownall](#); [Alice Sharlot](#); [Elizabeth Withers](#)
Subject: RE: (0000103549/42) - High Speed Rail (Crewe to Manchester) Bill: NFU
Date: 07 July 2023 18:15:00
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Prolonged occupation,use of roads and weeds NFU proposed changes.docx](#)

Stephen

Further to my email below, there are some further points on which I should be grateful for a response.

Prolonged occupation of farmland

Please see the attached proposed revisions to paragraph 21.1.9 and new paragraph 21.1.10 of the Farmers and Growers Guide for consideration.

Referring to a previous request, please could clarification be given as to how a farmer would be able to enforce in the event of a breach of those paragraphs.

Use of Roads

Please see the attached proposed revisions to the proposed new paragraph 22.4 of the Farmers and Growers Guide. The NFU continues to ask for an additional paragraph 22.5, to deal with new access roads and a further version of the paragraph is also included for ease of reference. The drafting is subject to my client's approval.

Control of Weeds

Please see the attached proposed revisions to paragraph 4 of the proposed assurance. The drafting is subject to my client's approval.

I should be grateful to hear from you or Amanda on these points and those in my email below.

Regards

Alastair

From: Alastair Lewis [REDACTED]
Sent: Thursday, July 6, 2023 4:21 PM
To: Stephen Collings [REDACTED]
[REDACTED]
Cc: Louise Staples [REDACTED]; Amanda Pownall
[REDACTED]; Alice Sharlot [REDACTED]; Elizabeth Withers
[REDACTED]
Subject: (0000103549/42) - High Speed Rail (Crewe to Manchester) Bill: NFU

Stephen,

As Amanda is on leave I thought it might help if I set out a brief update on some of the points raised in her letter of yesterday and at our discussion this morning.

HS2 Phase 2B: National Farmers Union

NFU Proposed Changes to Prolonged Occupation of Farmland Assurance and F and G Wording

Prolonged Occupation of Farmland

Petition Paragraphs 5.1-5.4 NFU request: Exhibit A54 (70)

1. The Promoter shall consult the National Farmers Union on the framework for its proposed hand back arrangements in respect of the vacation of agricultural land that has been occupied temporarily by the Promoter to construct HS2 related works in the exercise of temporary possession powers.

2. In this assurance –

“Bill” means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to “the Bill” includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill; and

“Temporary Possession Powers” means powers to be conferred under Part 1 of Schedule 15 to the Bill to occupy land temporarily and execute works provided for in paragraph 1 and 3 of Part 1 of Schedule 15 to the Bill.

Farmers and Growers Guide paragraph 21.1.9 and new paragraph 21.1.10

21.1.9 For temporary occupation, a formal notice is served on landowners and occupiers under the Bill enabling the Promoter to take entry following a period of not less than 28 days. However, the detailed programme and likely date of occupation will normally be discussed with landowners and occupiers beforehand. We will also provide an indication of the period of planned occupation and a reasonably accurate description of the purpose(s) for which occupation is to be taken and update the landowner and occupier from time to time and pursuant to paragraph 6.1.2 HS2 Ltd will use reasonable endeavours to give in all cases at least three months (written) notice where land is to be temporarily occupied pursuant to Schedule 15.

21.1.10 Where farmland ~~is has been~~ subject to temporary occupation only, the Promoter will update the landowner from time to time pursuant to paragraph 21.1.9 above on the likely date of the end of occupation of that farmland and provide a reasonably accurate description of any proposed changes to the purpose(s) for which occupation is to be continued, where appropriate. In parallel with that activity, the Promoter will engage with the landowner/farmer on (1) the planned date of completion of HS2 related works under paragraph 4(2) of Part 1 of Schedule 15 to the Bill, and (2) the planned date of vacation by the Promoter of the farmland occupied temporarily. For the purposes of paragraph 5(1) of Part 1 of Schedule 15 to the Bill, the Promoter will explain to the landowner/farmer the hand back process which will identify the steps to be taken by both the Promoter and the landowner/farmer. This will include the timing of those steps to facilitate the prompt restoration of the land in accordance with a scheme of restoration required to be agreed or

determined under paragraph 5 (1) or (2) of Part 1 of Schedule 15 to the Bill. Paragraph 5 of Schedule 15 to the Bill requires the Promoter and the landowner/farmer to work together to ensure that the hand back of land is undertaken efficiently and economically and as quickly as possible following the completion of HS2 works.

Use of Roads

NFU Proposed Changes to Proposed new paragraph 22.4 in F and G Guide, plus further new paragraph 22.5

[22.4] Where part of the main access road to a farm holding is required only for HS2 construction access or land adjacent to that main access road is required for the purpose of modifying that access road so that it can be used for HS2 construction access or HS2 operations, the Promoter would be prepared to limit the exercise of compulsory purchase powers over the main access road and any adjacent land and would instead use (a) powers of temporary occupation and/or (b) powers to acquire rights instead provided that the exercise of such powers is sufficient to facilitate the use of the main access road for all required purposes in connection with the construction of the Proposed Scheme.

22.5 Where agricultural land is required for the provision of a new or replacement main access road to a farm holding (including in cases where the Promoter requires use of the access road for HS2 construction access or HS2 operations), the Promoter would be prepared to limit the exercise of compulsory purchase powers and would use (a) powers of temporary occupation and/or (b) powers to acquire rights instead.

Weed Control

Proposed changes to paragraph 4 of the proposed HS2 assurance

4. Subject to paragraphs 2 and 3, during construction, the nominated undertaker will implement injurious weed control measures at least annually including during spring. The aim is to implement injurious weed control measures before the flowering season to minimise spread subject to the condition that the use of any weed control measures (including those for the purposes of controlling injurious weeds) must be consistent with Ecology Site Management Plans on land identified for the execution of environmental mitigation works to be authorised under the Bill. The nominated undertaker will take into consideration different methods of weed control (including methods other than spraying) in seeking to achieve consistency with such Ecology Site Management Plans.

From: Tracey Bailey
Sent: Monday, July 10, 2023 1:24 PM
To: Alastair Lewis <[REDACTED]>
Cc: Louise Staples <[REDACTED]>; Stephen Collings <[REDACTED]>
<[REDACTED]>; Alice Sharlot <[REDACTED]>; Amanda Pownall
<[REDACTED]>; Richard W Smith (Acquisitions) <[REDACTED]>
Subject: RE: [EXTERNAL] RE: NFU

Hello Alistair

Thank you for your email of 18.15 on Friday.

Regarding your email of 6 July;

Enforcement of Assurances/Compliance with F&GG (petition points 26 & 27)

We agree it would be sensible to defer these subjects. Our current expectation is that the guidance will have been drafted by the autumn and the Promoter will engage with the NFU following production of the draft, with a view to resolving any issues. The intent is that final publication would take place before the Select Committee concludes its business so that there would be opportunity to raise any outstanding points in the context of your petition.

Multiple GVD's (3), water supplies (19), and Soils (22)

Noted

Utility works (1.15 – 1.19)

We have provided the details in the exhibits.

Use of roads (10)

Position remains as per my email of Friday. We are unable to make the changes you have requested.

Access Licences (11)

As per my email of Friday, we agree to the insert suggested.

In response to the issues in your further email of 6 July;

Prolonged occupation of farmland.

We propose an alternative amendment to 21.1.9 only, to read as follows;

21.1.9 For temporary occupation, a formal notice is served on landowners and occupiers under the Bill enabling the Promoter to take entry following a period of not less than 28 days. However, the detailed programme and likely date of occupation will normally be discussed with landowners and occupiers beforehand. We will also provide an indication of the period of planned occupation, likely use and update the landowner and occupier from time to time on these matters. Pursuant to paragraph 6.1.2 HS2 Ltd will use reasonable endeavours to give in all cases at least three months (written) notice where land is to be temporarily occupied pursuant to Schedule 15.

Use of roads

Position remains as per my email of Friday. We do not accept the changes you have requested.

Control of weeds

We accept the additional sentence you have requested and this will be added to paragraph 4 of the assurance.

BNG

We consider that the assurance offered addresses the requests raised regarding BNG and would like to inquire whether it is acceptable.

If you wished to meet to discuss any of these points, we could meet at 3pm and committee room 7 is available.

Many thanks

Tracey Bailey | Head of Petition Management | HS2 Ltd

Tel: [REDACTED]

From: Alastair Lewis <[REDACTED]>

Sent: Friday, July 7, 2023 6:17 PM

To: Tracey Bailey <[REDACTED]>

Cc: Louise Staples <[REDACTED]>; Stephen Collings <[REDACTED]>; Alice Sharlot <[REDACTED]>; Amanda Pownall <[REDACTED]>

Subject: [EXTERNAL] RE: NFU

Thank you Tracey, I have just sent a further email to Stephen, before seeing yours (see attached).

Alastair

Alastair Lewis | Partner and Parliamentary Agent

For Sharpe Pritchard LLP

M: [REDACTED]
T: [REDACTED]
E: [REDACTED]

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From: Tracey Bailey <[REDACTED]>

Sent: Friday, July 7, 2023 5:52 PM

To: Alastair Lewis <[REDACTED]>

Cc: Louise Staples <[REDACTED]>; Stephen Collings <[REDACTED]>
<[REDACTED]>; Alice Sharlot <[REDACTED]>; Amanda Pownall
<[REDACTED]>

Subject: NFU

Hello Alistair & Louise

As Amanda is out of the office, I am following up on your email following the meeting yesterday.

We agree to include the qualification you have requested to insert for the Access licence assurance at Para 2.3 c iii – (*other than materials, objects, liquids or substances which are reasonably required for agricultural or residential purposes*).

Regarding use of roads for HS2 operational purposes, we would need to deal with those situations on a case by case basis.

Many thanks

Tracey Bailey | Head of Petition Management | HS2 Ltd

Tel: [REDACTED]

Alistair Lewis
Sharpe Pritchard

By email: ALewis@Sharppritchard.co.uk

10 July 2023

Dear Alistair

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL – HOUSE OF COMMONS SELECT COMMITTEE: PETITION HS2-P2B-085 – NATIONAL FARMERS UNION

I am writing to you in my capacity as the Director of Hybrid Bill Delivery at HS2 Ltd, which is acting on behalf of the Promoter of the High Speed Rail (Crewe - Manchester) Bill ('the Bill') currently before Parliament. I understand that your Client has concerns about the impact of Phase 2b of HS2 (known as 'the Proposed Scheme') and have submitted a petition on that basis against the Bill in the House of Commons.

Further to the Promoters Response Document sent to you on 31 March 2023 which sets out the Promoter's position on the issues raised in the National Farmers Union (NFU) petition against the Bill in the House of Commons, my colleagues met with you and your client to discuss your petition issues on the 5 & 21 April, 3 May & 29 June 2023. Assurances were previously offered to you in two letters dated 4 May and 5 July 2023 addressing a number of points in your petition. I sent you a letter dated 3 July 2023 to address the enforcement of assurances.

Following further feedback, I am writing to you, on behalf of the Secretary of State for Transport, to offer your client the following changes to assurances and amendments to Information Papers and the Farmers and Growers Guide. These assurances replace the relevant assurances in the letter of the 5 July 2023.

Maintenance of Farmland: Weed Control Measures

Petition Paragraphs 4.1-4.2 NFU request: Exhibit A57 (87)

Following your feedback, I am offering you the assurance in the following terms. This replaces the assurance offered in the letter of the 4 May:

"1. In this assurance -

"**1959 Act**" means the Weeds Act 1959;

"**the 1981 Act**" means the Wildlife and Countryside Act 1981:

"Bill" means the High Speed (Crewe – Manchester) Bill originally introduced into Parliament on 24 January 2022 and references to "the Bill" includes any Act of Parliament enacting the Bill, and references in these assurances to clauses and provisions of, and works authorised by, the Bill are taken from the Bill as introduced into the House of Commons on 24 January 2022 but shall be modified as far as may be necessary to reflect changes in any Act of Parliament enacting the Bill;

"CoCP" means a document setting out the measures and standards to which the nominated undertaker must adhere in order to provide effective planning, management and control of potential impacts on individuals, communities and the environment during construction of the Proposed Scheme, a draft of which is contained in volume 5 of the Environmental Statement;

"Ecology Site Management Plans" means plans prepared by the Nominated Undertaker pursuant to the Environmental Statement for the management of ecology and other sites of importance to nature conservation prior to any works commencing on site. Plans are required to specify the ecological objectives of each ecological habitat creation area or site of nature conservation, the measures to be taken to establish and maintain these habitats and site together the detailed planting requirements and the monitoring regime for each site;

"Environmental Statement" means the environmental statement deposited in Parliament in connection with the Bill and includes any additional environmental statement deposited in Parliament in connection with any additional provision to the Bill or supplementary environmental statement deposited in connection with the Bill;

"Injurious weeds" means those injurious weeds mentioned in section 1(2) of the 1959 Act and regulations made under that section;

"nominated undertaker" means High Speed Two (HS2) Limited or such other person as may be appointed nominated undertaker under clause 42 of the Bill;

"Proposed Scheme" means Phase 2b (Crewe - Manchester) of High Speed 2 as defined in the Bill;

"Secretary of State" means the Secretary of State for Transport or any successor Secretary of State or Minister holding the Transport portfolio;

"weed control measures" means appropriate measures for the treatment /control of invasive and non-native species employed by the nominated undertaker under its CoCP to control plants identified in the relevant provisions of 1959 Act and the 1981 Act and

"within the Act limits" has the same meaning as in clause 63(2) of the Bill

2. The Secretary of State will require the nominated undertaker to use reasonable endeavours during the construction of the Proposed Scheme to control weeds on land within the Act limits belonging to a farming business which has been either acquired permanently for, or occupied temporarily for the purposes of the Proposed Scheme either through the treatment or removal of weeds, in accordance with the implementation of weed control measures;

3. The Secretary of State will require the nominated undertaker during the construction of the Proposed Scheme to use reasonable endeavours to control weeds on land belonging to a farming business within the Act limits which is rendered inaccessible to a farmer/landowner but which is inaccessible to the nominated undertaker by reason of execution of works to be authorised by the Bill on land belonging to the farmer/landowner but which is not required to be occupied by the nominated undertaker for those works. The obligation imposed on the nominated undertaker under this paragraph 43 will subsist until such time as the land so rendered inaccessible is either disposed to a third party or returned to the ownership of the farmer/landowner.

4. Subject to paragraphs 2 and 3, during construction, the nominated undertaker will implement injurious weed control measures at least annually including during spring. The aim is to implement injurious weed control measures before the flowering season to minimise spread subject to the condition that the use of any weed control measures (including those for the purposes of controlling injurious weeds) must be consistent with Ecology Site Management Plans on land identified for the execution of environmental mitigation works to be authorised under

the Bill. The nominated undertaker will take into consideration different methods of weed control (including methods other than spraying) in seeking to achieve consistency with such Ecology Site Management Plans.”

Prolonged Occupation of Farmland

Petition Paragraphs 5.1-5.4 NFU request: Exhibit A54 (70)

Paragraph 21.1.9 of the Farmers and Growers Guide will be amended as follows;

21.1.9 For temporary occupation, a formal notice is served on landowners and occupiers under the Bill enabling the Promoter to take entry following a period of not less than 28 days. However, the detailed programme and likely date of occupation will normally be discussed with landowners and occupiers beforehand. We will also provide an indication of the period of planned occupation, and likely use of the land and will update the landowner and occupier from time to time on these matters. Pursuant to paragraph 6.1.2 HS2 Ltd will use reasonable endeavours to give in all cases at least three months (written) notice where land is to be temporarily occupied pursuant to Schedule 15.

Access Licences

Petition Paragraphs 11.1-11.7 NFU Request – Exhibit A54 (55)

I am able to offer you an assurance in the following terms which replaces the assurance in my letter of the 5 July;

“1. In this assurance;

“Access Land”

means an area of agricultural land which requires a means of vehicular and pedestrian access over other land for the purposes specified in paragraph 2.2 below and which is held by the Secretary of State for the purposes of the Proposed Scheme;

“Access Licence”

means the Promoter’s standard template temporary access licence offered in the form of a letter to the owner of agricultural land (“owner”) where due to the compulsory acquisition by the Secretary of State of land for the purposes of the Proposed Scheme, a temporary means of vehicular and pedestrian access to Access Land is required by that owner (and/or any occupational tenant of the Access Land) over land held by the Secretary of State for the purposes of the Proposed Scheme;

“Act Limits”

has the same meaning as in clause 63(1) of the Bill;

“agricultural land”

means a land holding classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

“the Bill”

means the High Speed Rail (Crewe - Manchester) Bill originally introduced into the House of Commons on 24 January 2022 and upon Royal Assent includes the resulting Act;

“HS2 Limited”

means-

(a) High Speed Two (HS2) Limited;

(b) any affiliate of High Speed Two (HS2) Limited;

(c) any nominated undertaker appointed by the Secretary of State in accordance with the Bill;

“Indemnity”

And the successors and assignees of any legal entity within (a) to (c);

means a form of indemnity to be included in an Access Licence which requires the owner of agricultural land as licensee under an Access Licence to indemnify HS2 Ltd and the Secretary of State and keep them

indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:

- (a) the terms of the Access Licence;
- (b) any breach of the Licensee's obligations under the Access Licence; and/or
- (c) the exercise of the rights granted in the Access Licence."

"the nominated undertaker"

means the person who is, at the relevant time, the nominated undertaker under clause 42 of the Bill for the purposes of the works to which this assurance relates. The nominated undertaker may be HS2 Limited, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme or, in default of any such appointment, the Promoter;

"owner"

means the freehold owner of the agricultural land in question;

"the Petitioner"

means the National Farmers Union;

"the Proposed Scheme"

means Phase 2b (Crewe- Manchester) of High Speed 2 as defined further in the Bill;

"the Promoter"

means the Secretary of State for Transport in the capacity as promoter of the Bill and includes, so far as relevant, any nominated undertaker exercising any powers or functions under the Bill once enacted;

"Royal Assent"

means the date upon which Royal Assent is given to the Bill; and

"Secretary of State"

means the Secretary of State for Transport.

2. Access Licence

2.1 Where agricultural land is severed by the exercise by the Secretary of State of powers of compulsory acquisition for the purposes of the Proposed Scheme and where requested in writing by an owner of Access Land, the Secretary of State will require the nominated undertaker to use reasonable endeavours to provide to the owner of the Access Land an Access Licence.

2.2 The Promoter confirms that an Indemnity shall not be incorporated into an Access Licence where access is only required for:-

- (a) residential occupation and use of existing dwellings on the Access Land by the licensee; and/or
- (b) farming activities being carried out on the Access Land by the licensee.

2.3 For the avoidance of doubt this assurance will not apply to:

- (a) existing licences granting temporary access rights that have been entered into prior to the date hereof in respect of the Proposed Scheme; or
- (b) bespoke forms of licence or other agreements to grant temporary access rights that might be agreed in future on a case by case basis where an Access Licence is not appropriate in the circumstances; or

(c) where the Promoter considers on a case by case basis that there are particular circumstances present in the proposal to grant an Access Licence which indicate that there is a material risk of the Promoter being exposed to losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability arising from the exercise by the licensee of rights under an Access Licence including but not limited to:

- i. circumstances arising from the intended use of the Access Land in exercise of the licence conferred under an Access Licence that may lead to intensification of use;

- ii. a significant increase in the volume of visitors, whether the general public or contractors and employees of the owner exercising or relying on the licence for access conferred under an Access Licence; or
- iii. the transportation of materials, objects, liquids or substances which are capable of posing a risk to public health, safety, property or the environment or the carrying of articles which are inherently dangerous, toxic or contaminative under the licence for access conferred under an Access Licence. (other than materials, objects, liquids or substances which are reasonably required for agricultural or residential purposes)."

If accepted, these assurances will be included in the Register of Undertakings and Assurances, which is held by the Department for Transport. Drafts of the Register will be published regularly during the passage of the Bill and it will be finalised after Royal Assent. A nominated undertaker will be contractually obliged to comply with all relevant undertakings and assurances set out in the Register. The assurance process is set out in Annex A.

I hope that the information set out above in relation to the issues raised in your petition to the House of Commons gives you the comfort required in order to withdraw your petition.

Petitions may be withdrawn by sending an email or letter to the Private Bill Office of the House of Commons informing the Clerk to the Select Committee that you wish to withdraw your petition: House of Commons Private Bill Office, House of Commons, London, SW1A 0AA email: prbohoc@parliament.uk

If you have any further queries please don't hesitate to contact Amanda Pownall, Petition Manager on Amanda.pownall@hs2.org.uk.

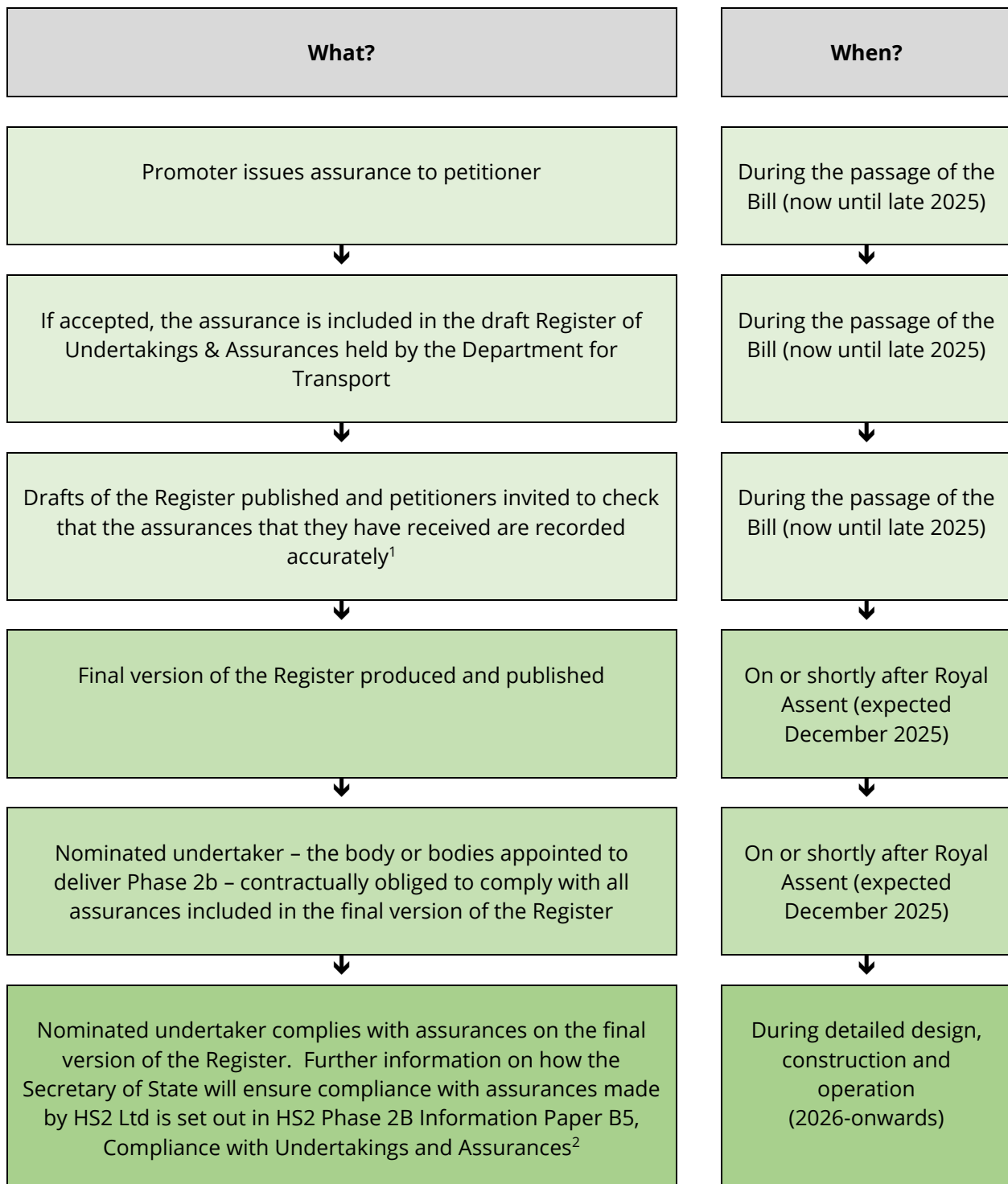
Yours sincerely



Lucy Lagerweij
Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

Annex A

ASSURANCES: STEPS AND TIMING



¹ The latest draft of the Register can be found at <https://www.gov.uk/government/publications/hs2-phase-2b-crewe-manchester-register-of-undertakings-and-assurances>

² A copy can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048801/B5_Compliance_with_undertakings_and_assurances_v1.pdf

House of Commons

High Speed Rail (Crewe - Manchester) Bill

1. Petitioner information

In the box below, give the name and address of each individual, business or organisation submitting the petition.

The National Farmers Union
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ

In the box below, give a description of the petitioners. For example, “We are the owners/tenants of the addresses above”; “My company has offices at the address above”; “Our organisation represents the interests of...”; “We are the parish council of...”.

The National Farmers Union of England and Wales (“the NFU”) was formed in 1908. The NFU represents 55,000 members in England and Wales and it is regularly consulted by the government on policy proposals across all departments. The railway that is proposed to be authorised by the Bill would be constructed through a large number of farms that are either owned, or tenanted, by farmers who are members of the NFU.

2. Objections to the Bill

In the box below, write your objections to the Bill and why your property or other interests are **directly and specially affected**. Please number each paragraph.

Only objections outlined in this petition can be presented when giving evidence to the Committee. You will not be entitled to be heard by the Committee on new matters not included in your written petition.

Introduction

- (i) The NFU represents trades, businesses and interests in the area to which the Bill relates, and those trades, businesses and interests will be injuriously affected by the Bill. A significant number of the NFU's members are liable to have their land compulsory acquired under the Bill.
- (ii) The NFU received a number of assurances from the Promoter in relation to Phases 1 and 2A of HS2 as a result of its petitioning against the two previous hybrid Bills in the House of Commons and the House of Lords. However, there are a number of instances where no assurances were given, or where the assurances given did not, in the NFU's view, go far enough in meeting its concerns. In addition, and most importantly, NFU members now have experience of the implementation of Phases 1 and 2A, and that has raised some new concerns.
- (iii) There is a theme which underlies a number of the concerns raised in this petition. HS2 Ltd. have taken a considerable amount of time, on both Phase 1 and Phase 2A, to finalise its design. Because HS2 Ltd did not make sufficient progress with its detailed design on Phase 1 before its powers of compulsory acquisition expired in February 2022, that led to the last minute wholesale compulsory acquisition of large areas of farmland just before that date. Much of that land will not be needed at all by HS2 Ltd, or is likely only to be needed temporarily for construction, or for the acquisition of rights, or for habitat mitigation. The NFU has raised its concerns about this in the strongest terms.
- (iv) The spirit, if not the letter, of a number of the assurances which the NFU and individual farmers were given by the Promoter was not complied with, and it is imperative that the Promoter must do much better on Phase 2B. Significant numbers of farmers have experienced real difficulty, including anxiety and stress because of the action and inaction of HS2 Ltd., particularly when it comes to the issue of wholly unnecessary land take. The NFU has been involved in many other nationally significant infrastructure projects over the years during which HS2 has been authorised and implemented, and none of those other projects has caused anywhere near the amount of difficulty, anxiety and stress, leading to mental health issues, as HS2.
- (v) For these reasons, after considerable thought, the NFU considers that unprecedented measures should be taken to restrict the powers of the Promoter on this occasion. The Promoter should not be permitted to think that it should be able to get away with poor behaviour because the HS2 project is large or (in its view) important.

- (vi) The NFU notes that (presumably in an attempt to address some of the issues mentioned above and elsewhere in this petition) the Bill is different from the Phase 1 and 2A Acts in that the powers of compulsory acquisition will expire after 8 years (extendable to 10) rather than 5 years (extendable to 10). As will be seen from the following paragraphs, the NFU does not consider that to be an adequate way to address the significant problems that have been met by its members so far.
- (vii) The NFU has raised some of its more serious concerns at ministerial level and at meetings with senior officials at the Department for Transport, and is yet to receive satisfactory responses.
- (viii) It should be noted that the order in which the points appear in the petition below does not reflect their relative importance to the NFU. Paragraphs towards the beginning of the petition are new matters which the NFU did not raise in its petitions on Phase 1 and Phase 2A, and which have been included in the light of experience.

1. Inappropriate use of compulsory purchase powers

Issue 1: GVDs being made unnecessarily because detailed design is incomplete

- 1.1 As mentioned in the introduction above, large areas of farmland have been and continue to be acquired permanently for Phase 1 and Phase 2A where it is clear that the land will not be required for permanent HS2 infrastructure. There have been many instances, particularly on Phase 1, where farmland has been acquired using the general vesting declaration ("GVD") procedure, meaning that the land is vested in HS2 Ltd without any opportunity for further discussion with the farmer. Examples where this have occurred include cases where:
 - 1.1.1. land has been acquired even though it is only required for construction purposes
 - 1.1.2. land has been acquired even though only rights are required over the land
 - 1.1.3. land has been acquired even though it is only required for environmental mitigation, and the landowner has not been given a reasonable opportunity to negotiate an arrangement whereby they keep the land and commit to maintaining it appropriately.
- 1.2 Furthermore, on Phase 2A, the NFU understands that the approach of HS2 Ltd is to execute GVDs over large areas of farmland, up to the full extent of the Act limits, without refining its design at all, and without the two-stage approach of land being taken temporarily first.
- 1.3 The NFU understands that as part of its land acquisition strategy, HS2 Ltd works through a process of design which ends with them settling a "Final Land Acquisition Boundary". The NFU considers that it should only be at the end of a detailed design process that GVDs should be served and only where it is clear that the land is required permanently.
- 1.4 During the promotion of the Bills for Phases 1 and 2A, the NFU secured assurances from the Promoter which were intended to prevent the above circumstances occurring. It is abundantly clear that those assurances on their own (which the NFU seeks again, but with modifications) need to be accompanied by further safeguards for farmers.

Requests

- 1.5 Request 1: That the Bill be amended so that when implementing compulsory purchase powers over farmland under clause 4 of the Bill it may not be done by GVD unless either the farmer has agreed or the Promoter has completed detailed design which demonstrates the land is required permanently. The Bill should be amended to set out an explanation of that detailed design process, including a “trigger point” after which GVDs can be executed. If the trigger point has not been reached by the time the 8 year limit for compulsory acquisition is approaching, then permanent acquisition of farmland should only be implemented by way of the notice to treat procedure, unless the farmer agrees otherwise.
- 1.6 Request 2: That the Bill is amended so that no powers of compulsory acquisition (whether by GVD or notice to treat) can be exercised over farmland in the first two years after Royal Assent unless the landowner agrees or has requested it or unless the Promoter has completed detailed design (i.e. reached the “trigger point” mentioned above) which demonstrates the land is required permanently.

Issue 2: Use of compulsory powers for Environmental Mitigation

- 1.7 The Promoter has included, in all three phases of HS2, large areas of farmland for use as environmental mitigation or for biodiversity net gain (“BNG”). There is no reason why a farmer should not be able to retain ownership of their land in such circumstances if the farmer is content to take on the burden of maintenance, subject to reasonable terms, including payment, being agreed which ensure the mitigation is maintained.
- 1.8 One of the problems that farmers on Phase 1 have encountered is that they have only recently been provided with drafts of management agreements and ecological site management plans (“ESMPs”) which they would have to sign up to if they were to retain ownership of land to be used for environmental mitigation – that in turn has created uncertainty and has made it difficult for the farmer to decide what to do. Furthermore, farmers need to be told in advance about the payments they will receive for carrying out the management, something which has still not happened on Phase 1. The ESMP requires annual monitoring and reporting.

Request

- 1.9 Where land is required for environmental mitigation or BNG, it should not be purchased compulsorily unless the farmer agrees otherwise or the Promoter has used its best endeavours to agree reasonable standard terms, including payment, for management of ecological mitigation or biodiversity net gain with the farmer and agreement has not been reached.
- 1.10 The standard terms should be re-drafted in consultation with the NFU and with land agents representing farmers along the route, with expert determination in case of dispute. On Phase 1, unnecessarily complex and onerous agreements are being proposed by HS2 Ltd for small areas of land where little maintenance would be required of the farmer.
- 1.11 Where the ESMP requires annual monitoring and reporting, it is likely that the farmer will need to appoint an ecologist to carry out these exercises. The cost of appointing an ecologist should fall on the Promoter and not the farmer

- and the NFU requests that the Promoter gives an assurance to provide for this.
- 1.12 There is no reason why standard terms could not be agreed or be advanced to a high level of agreement before any notice of occupation or acquisition is served. They should include terms relating to payment and should restrict to 30 years any obligation to maintain land which is to be taken for biodiversity net gain unless the farmer is prepared to accept a longer term.

Issue 3: Only temporary possession should be allowed in certain cases

- 1.13 Schedule 16 to the Bill contains a table which lists plots of land over which the Promoter can exercise powers to occupy temporarily under Schedule 15. It also lists the purposes for which each of those plots may be used temporarily. It should also be noted that Schedule 15 allows the Promoter to take temporary possession of any land within the Act limits, even if not listed in Schedule 16. As the land in Schedule 16 has been specifically identified as being required temporarily then the Bill should provide that it cannot be acquired permanently unless the landowner requests otherwise. This would be similar to other types of legislation which authorise infrastructure, such as development consent orders for nationally significant infrastructure projects.

Request

- 1.14 Schedule 15 should be amended so that it includes a provision which prohibits the exercise of powers of compulsory acquisition under clause 4 in respect of plots listed in Schedule 16, except in respect of airspace or subsoil or the acquisition of rights.

Issue 4: Utility works (including electric line diversions)

- 1.15 The NFU is aware of a number of cases in Phases 1 and 2A where HS2 Ltd has acquired farmland compulsorily even though it will eventually only require rights. Examples include where the Promoter only needs to acquire rights for carrying out and maintaining utility works (combined with temporary possession powers under Schedule 16 for construction where appropriate). An underlying reason for this inappropriate use of compulsory powers is, again, failure to progress detailed design expeditiously, and a lack of expediency on the part of HS2 Ltd to negotiate rights with farmers.
- 1.16 The NFU notes that clause 5(2) of the Bill, read with Schedule 8, means that, as regards the plots of land listed in that Schedule, only rights may be acquired, and for certain purposes. It is noted that there are no entries which say that the purpose of acquiring the right in question is the carrying out of utilities works. The only purpose mentioned in the table is the provision of access. The NFU also notes the provisions of subsections (3) to (9) of clause 5, which together should be adequate to enable rights to be acquired by or for the benefit of utility companies, particularly with the inclusion of subsections (6) and (7) which are not in the Phase 1 and 2A Acts.
- 1.17 Clause 2(5) of the Bill, which introduces Schedule 3, would enable the Promoter to undertake electric line diversions and other works specified in the table in Schedule 3. Where farmland is affected by these works, land should not be acquired permanently unless specifically required for other permanent infrastructure. This is another instance where the NFU believes

that land has been taken unnecessarily because of HS2 Ltd.'s failure to carry out detailed design expeditiously so has used the "kitchen sink" approach to acquisition on Phases 1 and 2A.

Requests

- 1.18 Request 1: The Promoter should be required to go through a thorough exercise, before the conclusion of the Select Committee proceedings, of identifying all areas of farmland where it is known that only rights will be required, in particular for utility works, and the Bill should be amended so those areas are listed in Schedule 8 or 16. If this means that the plans and book of reference need to be altered as well, for example to create new corridors of plots of land within the existing Bill limits that are only subject to acquisition of rights, then so be it.
- 1.19 Request 2: The Bill should be amended so that plots of farmland which are only included in the Bill limits because electric line diversions are being carried out on them should not be subject to compulsory acquisition. This could also be achieved by listing those plots in Schedule 16, thus making them susceptible only to temporary possession for construction purposes, whilst also ensuring (if the NFU's other suggestions are accepted) that rights can also be acquired to enable the permanent retention and maintenance of the electric lines over the land. Again, if this means reconfiguring the plots in the plans and book of reference, then so be it.

2. Acquisition of land for particular purposes

Issue 1: Plans

- 2.1 Farmers require certainty about how much of their land will be acquired permanently and why. The NFU has heard from a number of its members on Phase 1 and Phase 2A that they have been taken by surprise when land has been taken permanently in cases where the Community Area Map Books (which were used by the Promoter in petition response documents and when giving evidence to the Select Committees) show otherwise. In some cases, the differences between what those Map Books showed and what has actually happened in terms of permanent land take has been considerable.

Requests

- 2.2 Request 1: Before the start or at an early stage of the Select Committee proceedings, the Promoter should be required to make clear to farming petitioners and to the Select Committee that the Environmental Statement Community Area Map Books are illustrative not determinative. Colour coded versions of the land plans should be provided to farmers in advance of their appearance before the Select Committee indicating the potential extent of permanent and temporary land take under the Bill.
- 2.3 Request 2: Updated plans of the construction works should be provided to the farmer every 6 months once they are underway, and should be available to the farmer on a secure website/portal should the farmer request.

Issue 2: Purpose of acquisition or temporary possession should be limited by Schedule 6 or Schedule 16

- 2.4 The NFU notes that Schedule 6 to the Bill, as with the equivalent Schedules in the Phase 1 and 2A Acts, sets out a table which indicates the purpose for which certain parcels of land may be acquired or used. The NFU is unclear what the purpose of setting out these descriptions is if the Promoter is then able to acquire the land and use it for a different purpose. Similarly, Schedule 16 sets out the purposes for which temporary possession may be taken over certain parcels of land under Schedule 15.

Request

- 2.5 Request: Clause 4(2) of and Schedule 6 to the Bill should be amended, in respect of agricultural land, so that the effect is that the plots listed in Schedule 6 can only be acquired or used for the purposes listed in that Schedule. As regards temporary possession, Schedule 15 should be amended by the deletion of paragraph 1(1)(c) of Schedule 15.

3. Use of multiple GVDs for each farmer

Issue

- 3.1 In implementing Phase 1, HS2 Ltd has taken the approach of executing a large number of GVDs in relation to sometimes relatively small plots of land, often in the ownership of the same farmer. This leads to unnecessary work on the part of the farmers and their advisers in responding to each one separately and making separate compensation claims.
- 3.2 The NFU have been told that, on Phase 2A, HS2 Ltd. proposes to take all of the farmer's land, even if the land is only to be used temporarily, for ecological mitigation, or for exercising rights only. The NFU considers the approach adopted on Phase 1 has swung too far the other way on Phase 2A and considers a different approach (described below in Request 1) must be followed.
- 3.3 Also, on Phase 1, the Promoter has executed GVDs which include within their scope a number of different farms, which again causes unnecessary confusion.

Requests

- 3.4 Request 1: The Promoter should be required, if the farmer agrees, to combine multiple plots of land in the farmer's ownership into a smaller number of GVDs, and where appropriate, one GVD. For the avoidance of doubt, this request does not mean that the NFU supports the idea of a single GVD over all a farmer's land if some of the land should not be used at all or should only be used temporarily, for ecological mitigation or for exercising rights only.
- 3.5 Request 2: Any GVD served in relation to farmland should only include within its scope land which is in the ownership of one farming business or estate.

4. Maintenance of farmland: weed control measures

Issue

- 4.1 On Phases 1 and 2A there have been a number of cases where farmland has been acquired compulsorily or taken temporarily and then been left to lie unused for long periods of time and also where land has been severed and part of the severed land has become inaccessible. When that happens,

weeds are allowed to grow and the condition of the land deteriorates. Excessive weed growth could have a deleterious effect on adjoining farmland, because the weeds will spread. It will also be more difficult for the land to be restored to a good productive agricultural state if it is to be handed back to the farmer.

Request

- 4.2 The Promoter should be required to ensure that the Nominated Undertaker and its contractors carry out weed control measures on farmland that has been acquired permanently or taken temporarily but is not being used for HS2 purposes. This should be carried out at an appropriate time of the year and on at least an annual basis, or the farmer (if they request) should be given a licence and allowed to do it. In the case of land that has been severed and is inaccessible, the Promoter should be required to use reasonable endeavours to make arrangements for weed control measures to take place, and in default of agreement, should fund the cost of doing so by the landowner. These measures should be secured by assurance.

5. Prolonged occupation of farmland

Issue

- 5.1 On Phases 1 and 2A there have been a number of cases where farmland has been taken permanently or temporarily for one purpose, the purpose is met, and then HS2 Ltd remains in possession for long periods of time because it says it needs or might need to use the land again for another purpose, rather than handing it back to the farmer. In the meantime, the farmer could have used the land productively. This is another instance where expeditious detailed design would help to resolve the issue.
- 5.2 The temporary possession provisions of the Bill allow the Nominated Undertaker to remain in possession of land for as long as is required for the construction of the works, and then for a further maintenance period of up to one year after the works are completed. In total, this could amount to a considerable number of years.

Requests

- 5.3 Request 1: The Promoter should be required to ensure that the Nominated Undertaker or its contractor (including persons executing utility works) provides farmers with information (both before taking possession, and updated regularly during possession) about the precise reason for taking temporary possession, and the expected duration of the occupation of the land. The updates should set out the forecasted date of completion of the work for which temporary possession of the land was taken.
- 5.4 Request 2: When farmland has been taken for a purpose and the purpose has been met, and works are complete, the Promoter should be required to (i) inform the landowner that works are complete and (ii) explain the hand back process. The completion of the works will trigger the one-year period within which the Nominated Undertaker must no longer remain in temporary possession of the land which was taken, as set out in the paragraph 4 of Schedule 15 to the Bill.

6. Prompt agreement and payment of compensation

Issue

- 6.1 The NFU petitioned on the issue of prompt payment of compensation on Phases 1 and 2A and received an assurance on both occasions. The assurance said that the Secretary of State will, in line with wider Government policies, require the Nominated Undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of agricultural land/rural businesses.
- 6.2 Unfortunately, this assurance about prompt payment does not deal with a different issue that has arisen on Phase 1 and Phase 2A, namely that HS2 Ltd has not been negotiating and agreeing compensation (including advance payments) promptly. When land is acquired compulsorily, advance payments of compensation are usually made to the landowner before agreement is reached on the final level of compensation, but the amount of the advanced payment is determined by the Promoter. Delay in agreeing these payments can lead to considerable cash flow difficulties for farmers and difficulties for farmers in securing replacement land. Also, farmers have found on Phase 1 that HS2 Ltd. has not provided any reasoning behind their offers of advance payments, where they have been made. This is despite the farmers being required to provide full evidence of their advance payment claims.
- 6.3 There is also an issue with the way in which payment is currently made. Under Phase 1, the farmer's solicitor simply receives notification (usually at the eleventh hour) that payment is forthcoming. When the payment is made, there is no explanation as to how it has been calculated or for which claim it relates to. This information is essential.

Requests

- 6.4 Request 1: once the Promoter has received a claim, the claimant should be provided with confirmation that the claim has been received within no more than 5 days. Moreover, where further evidence or information is required, that evidence or information, together with an explanation of the same, should be requested within 14 days of the claim being submitted. The NFU understands that the Promoter's agent (known as the "supplier") will, within 3 or 4 weeks of receiving the claim, prepare a report to the Promoter in respect of the claim. The NFU requests that the supplier should arrange a meeting with the claimant to discuss the claim before the supplier submits its report of the claim to the Promoter.
- 6.5 Request 2: The Promoter should be required to provide a reasonable explanation of how it valued any offer of an advance payment.
- 6.6 Request 3: Any payment must be accompanied by a breakdown of the payment and how it has been calculated, together with a cross-reference to the original claim.

7. Alternative Dispute Resolution ("ADR")

Issue

- 7.1 Where a farmer does not agree the amount of, say, the advanced payment or final claim proposed by HS2 Ltd. and wishes the matter to be determined

by an expert under ADR, the farmer is disadvantaged by the fact there are no timescales for determination by ADR. On Phase 1, this has led to cases dragging on. Moreover, the number of experts available to determine the ADR is limited to those included on a list prepared by the Promoter, as described in paragraph 8.3 of HS2's document *Alternative Dispute Resolution, Guidance for compulsory purchase claims* ("the Guidance").

Request

- 7.2 The ADR process should be subject to reasonable time limits for each stage, for instance, the deadline by which the expert should be appointed. Moreover, in the usual way, the parties should either agree on the expert jointly, or if they are unable to do so, one of the parties should apply to, say, RICS, CAAV or the Law Society for an expert to be appointed. The practical effect of this would be to delete certain provisions from the Guidance, including paragraphs 8.3 and 8.4. In any event, no farmer should be prevented from proceeding to ADR if the farmer wishes to do so and the Guidance should be amended to reflect this.

8. Interest on Payments

Issue

- 8.1 The Acquisition of Land (Rate of Interest after Entry) Regulations 1995 ("the 1995 Regulations") specify the rate of interest that must be paid by an acquiring authority from the date of entry onto the land (which is the valuation date for compulsory purchase cases) until payment of compensation. This applies both in relation to advance payments and outstanding final payments of compensation. Currently the rate specified is 0.5% below the standard rate, which in turn is defined in broad terms as meaning the base rate. Since March 2009, this has meant that no interest has been payable when compensation amounts have been agreed or determined but not paid, removing any incentive for acquiring authorities to make payments to claimants promptly, particularly under current circumstances where property values are generally increasing at a higher rate.
- 8.2 The issue in relation to advanced payments was addressed in the government's consultation on further reform of the compulsory purchase system (March 2016). Paragraphs 43 and 44 set out their proposal, which is to introduce a penal interest rate of 8% above base rate. The consultation was followed up by the enactment of s196 of the Housing and Planning Act 2016, which enables the Treasury, by regulations, to set a rate of interest for outstanding advanced payments. So far, no rate has been set.

Requests

- 8.3 Request 1: The NFU proposes that the Bill should be amended so that the 1995 Regulations are disapplied in relation to compensation claims made in relation to the acquisition of land and interests in land under the Bill. Instead, the NFU proposes that the Bill should specify that compensation payments will attract interest from the date of entry at a figure which is above the standard rate and that it should require that all payments of compensation due to claimants are made within 30 days of the amount being agreed or

- determined and that compound interest should apply to all overdue payments.
- 8.4 Request 2: The NFU suggests that this proposal of a rate of 8% should be taken up in respect of the Bill.
- 8.5 Request 3: The Bill should be amended so as to provide that interest should accrue on outstanding final payments of compensation, not just on advanced payments.

9. Disposal of Surplus Land Policy for farmland

Issue

- 9.1 The Promoter has published Information Paper C6 (Disposal of Surplus Land) which explains how landowners will be offered the opportunity to re-acquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for the Proposed Scheme, where that land is not required for the operation of the Proposed Scheme.
- 9.2 In essence, the policy provides that the “Crichel Down” rules will apply in relation to the disposal of surplus land. This means that former owners will, as a general rule, be given first opportunity to repurchase the land at current market value, provided it has not materially changed in character since acquisition.
- 9.3 That means that if the land has increased in value in the interim, the previous owner has to pay the higher price. When the land is in an urban location, particularly if it is near a new station, this is understandable. But in the case of farmland, any increase in land value is very unlikely to be associated with the railway.
- 9.4 The reason for the NFU making a request this time for an adjustment to the land disposal policy again comes back to the way in which the Promoter has behaved on Phases 1 and 2A. If it is intent on acquiring significantly more land than it needs, then it should take some more responsibility for its actions.

Request

- 9.5 The Bill Promoter’s Surplus Land Policy should be amended so that, in the case of farmland, where it is offered back as surplus land, it should be the lower of (a) market value at the time of offer or (b) the agreed or determined market value when it was first acquired by the Promoter, together with interest.

10. Use of Roads (clause 14)

Issue

- 10.1 The NFU secured assurances on Phase 1 and Phase 2A about the use of the equivalent of clause 14 of the Bill. The assurances provided that the Nominated Undertaker will engage with the owner and occupier of the land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.
- 10.2 Unfortunately, an issue has arisen on Phase 1 and Phase 2A which is not addressed by that assurance. In some cases, HS2 Ltd.’s use of private farm

roads has meant that the farmer has been unable to use the road themselves when they need to, or if so, with considerable difficulty.

Requests

- 10.3 Request 1: The Bill should be amended or the Promoter should be required to provide a further assurance to the effect that where a private farm road is to be used by the Nominated Undertaker then due regard must be had to the requirements of the farmer to use the road and that the farmer's reasonable use of the road should not be impeded. If it is impeded, even temporarily, a further access must be provided.
- 10.4 Request 2: Connected with this, any main drive or access to the holding should remain within the land ownership of the farmer, whether it is an existing or new drive / access, and HS2 Ltd. should only be able to acquire rights in respect of it. The NFU seeks an assurance that an undertaking in these terms will be given to a landowner who requests this.

11. Access Licence

Issue

- 11.1 After HS2 Ltd. has taken possession of a farmer's land which could include an access route, following service of a GVD, HS2 Ltd. are granting an Access Licence to the farmer. The purpose of the Access Licence is to enable the farmer to continue using the access route. The Access Licence includes three provisions which concern the NFU, namely –
- 11.2 First, the Access Licence provides that it can be brought to an end by the Secretary of State giving “not less than [seven days] [24 hours] written notice; or on immediate notice in the event of the Licensee ... breaching any of [its] obligations and conditions”.
- 11.3 Second, the Access Licence allows the Secretary of State to close and / or vary the route capacity or specification of the Access Route at any time at its discretion.
- 11.4 Third, the farmer must provide HS2 Ltd. with an uncapped indemnity “against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from: [the] licence; Any breach of the Licensee's obligations in [the] licence; and/or the exercise of the rights granted in [the] licence”.

Requests

- 11.5 First, the references to the Secretary of State being able to terminate the Access Licence on giving 24 hours' notice or immediate notice should be removed from the licence as these are unreasonable provisions. In any event, it should be a condition of termination (whether under the “no less than seven days” provision, or otherwise) that termination can only take place where a temporary access, which is equally suitable to the farmer's needs as the original access, is provided in its place.
- 11.6 Second, the Secretary of State's power to close or vary the route should be conditional on the Secretary of State providing a replacement route, which is equally suitable to the farmer's needs, in place of the original access. (The exercise of this power without the requested condition would prove particularly problematic for a farmer if exercised at particularly sensitive times

- of the year, for instance during harvest). If the condition is not included, the Secretary of State's power to close or vary in the circumstances described should be removed from the Access Licence.
- 11.7 Third, the uncapped indemnity is unreasonable (it would not be possible for a farmer to secure insurance in respect of it) and should be removed from the Access Licence. Alternatively, it should be amended to refer to a capped figure which HS2 Ltd. must first agree with the NFU.

12. Compulsory Acquisition and Temporary Possession Powers: Notice Periods

Issue

- 12.1 Under paragraph 4(1) of Schedule 15 to the Bill, the Nominated Undertaker is required to give only 28 days' notice to the landowner before entering the land and taking possession. A period of 3 months is required to be given for permanent acquisition. The period of 28 days' notice is inadequate, particularly given the need for farmers to be able to make plans for the use of their land a long time in advance.
- 12.2 The NFU secured an assurance on the Phase 2A Bill which requires a period of 3 months' notice of temporary possession to be given in relation to farmland, plus an additional notification of 3 months in advance of the beginning of the quarter of the year in which the powers are to be exercised.

Requests

- 12.3 Request 1: Paragraph 4(1) of Schedule 15 should be amended to provide for a notice period of at least 3 months before the powers of temporary possession are exercised. This would bring the provisions into line with the assurance given to the NFU in respect of Phase 2A and with section 20 of the Neighbourhood Planning Act 2017, which although not yet in force at the time of writing this petition is a clear recent national precedent which the NFU sees no reason for dispensing with for HS2.
- 12.4 Request 2: The Promoter should be required to give, in relation to both permanent acquisition and temporary possession, similar assurances about notification of the quarter in which the powers will be exercised. There are also some changes to the drafting of the assurance which are needed as a result of practical experience on Phase 2A. In particular, there should be a requirement for the notification to be given in writing in a standard form.

13. Extent of Land-Take for Mitigation

Issue

- 13.1 The Promoter needs to be open about where it intends to locate areas of mitigation. The NFU does not dispute the principle of providing replacement land for habitat and woodland being taken as a result of the construction of the works. The NFU understands that HS2 Ltd.'s aim is that the location, size and form of the compensatory habitat creation areas will adhere to the Lawton report principles of "bigger, better, and more joined up". To illustrate the NFU's concern, the ES Non-technical summary says at paragraph 9.5: "Approximately 87ha of habitats of principal importance will be lost overall, including up to 53.5ha of semi-natural broad-leaved woodland. Where reasonably practicable, ecological compensation areas will be created to

- provide habitats of principal importance. A total of approximately 240ha of habitats of principal importance will be created.” This demonstrates how HS2 Ltd aims to create nearly three times the area of habitat compared to the area lost. This will be done at the expense of agricultural land and businesses. The NFU agrees with the principle of ‘no net loss’ and is unconvinced that larger areas of mitigation equate to better mitigation. As far as the NFU is concerned, the quality of the material being planted, and the way it will be managed, is more important than the surface area of the replacement land.
- 13.2 In addition, the NFU is concerned by the way in which habitat losses and gains will be measured using a modified version of the Defra biodiversity offsetting metric. In particular the NFU believes that compensatory mitigation planting and other ecological mitigation must be implemented in the right areas on the right type of land in order to maximise successful outcomes. The NFU considers further clarification must be given as to (i) why the 240ha of habitats of principle importance is the correct area to be created and (ii) why any area of a landowner’s holding has been chosen for the provision of replacement land for habitat mitigation.
- 13.3 The NFU is also concerned that significant areas which have been earmarked for habitat creation and tree planting will be taking some of the best and most versatile (BMV) land out of agricultural production. The NFU considers this to be unacceptable, given the amount of agricultural land already being lost to the scheme. It makes no sense to compensate for the loss of habitat and woodland by acquiring even more agricultural land.
- 13.4 The NFU would also stress that where the construction works result in fields being left in awkward shapes, it should not follow that those fields are chosen automatically for mitigation habitat. Good quality agricultural land, regardless of the awkwardness of its shape, should be retained as such. After all, it is possible that the awkwardly-shaped fields could be incorporated into other fields owned by farmer and could continue to be farmed.

Request

- 13.5 The NFU considers that the Promoter should be required:
- 13.5.1. to publish a metric which sets out with certainty how the Nominated Undertaker will assess the amount and type of mitigation that will be required to meet its aims, and be able to explain to a landowner why any part of their land has been chosen for the provision of habitat mitigation.
- 13.5.2. to notify farmers whether land is required for ecological meeting on the one hand or BNG on the other so that an appropriate term for any maintenance agreement can be agreed. As mentioned earlier in the petition, the NFU considers that BNG obligations should extend no longer than 30 years;
- 13.5.3. to set the target for biodiversity gain at no more than 10% for the project, given the amount of farmland that is to be lost as a result of the Bill;
- 13.5.4. to ensure that any additional farm land outside the Bill limits required to meet the biodiversity gain target is only acquired by agreement.

14. Rights of Entry for Further High Speed Railway Works and Exercise of Rights of Entry

Issue

- 14.1 Section 54 of the High Speed Rail (London – West Midlands) Act 2017 enables an authorised person to enter land, in connection with a Bill or proposed Bill authorising a high speed rail line, for the purpose of conducting surveys or facilitating compliance with EU protection legislation. It therefore applies in relation to the Phase 2A proposals, alongside the powers in the Bill itself, in paragraph 1 of Schedule 2.
- 14.2 The NFU is aware that in exercising its rights to enter land for the purposes of taking surveys, in relation to Phase 1 and Phase 2A, difficulties have arisen because of the form of notice used and the lack of liaison with landowners in advance. In particular, the form of notice does not specify what type of survey is to take place. A long list of possible types of survey is attached to a schedule and the landowner is told any of them might happen. Some are simply inspections of the land, (i.e. a walkover the land) but others are more substantial works, such as ground investigation works, like borehole drilling or digging trenches. Further, agents are receiving multiple emails at a time naming clients where surveys will take place but with no detail of the proposed works. This is unacceptable. Also, with lack of liaison, the powers can be exercised at inappropriate times, for example during harvesting.

Requests

- 14.3 Request 1: When the post-notice email is served on the landowner/agent, it must include more information than it does currently, including confirming the type of survey or surveys to be carried out, identifying the actual field(s) where any survey will be carried out, the date(s) of the proposed survey(s), and the notice must be accompanied by a plan of the affected field(s). Notice numbers should be identified.
- 14.4 Request 2: That the Nominated Undertaker be required to comply with the provisions of section 174 of the Housing and Planning Act 2016 in respect of notices served under section 54 of the High Speed Rail (London-West Midlands) Act 2017 and that an assurance is given that discussions take place in advance with farmers to ensure that surveys are not carried out at inappropriate times.
- 14.5 Request 3: any contractor accessing a farmer's land must attend with a copy of the relevant notice and (as importantly) correct identification. There have been, regrettably, instances of individuals with no connection to HS2 Ltd. seeking to gain access to farmer's properties, particularly areas where valuable equipment is stored.

15. Earthworks

Issue

- 15.1 There will be significant lengths of bund, made-up ground, depositing of spoil and ground reprofiling alongside the proposed railway, much of it on good quality agricultural land. The NFU is concerned about the long term responsibility for safety of earthworks on farmland.

Request

15.2 The NFU requests that the Promoter be required to give an assurance that the Nominated Undertaker will:

- 15.2.1. remain responsible for the safety and structure of all bunds, landscape earthworks including embankments and sustainable placement areas; and
- 15.2.2. be responsible for the liability for any losses associated with the failure of any type of earthworks.

16. Planning Consent for Replacement Buildings and Associated Dwellings

Issue

- 16.1 The construction of the Authorised Works will necessitate the demolition of agricultural buildings, including farm buildings, together with associated dwellings. Where the core farm business will survive, the farmer is likely to want to replace those buildings and the dwellings associated with them. In most cases this will require a full planning application. The uncertainty over whether an application will be approved and the time delays that can arise if a case goes to appeal can be extremely difficult and stressful for a business to manage. This is particularly acute where (as is often the case) the replacement building is to be located in protected land, such as the green belt.
- 16.2 As a result of concerns raised by the Select Committee of the House of Commons on the Bill for Phase 1, the then Minister for Planning wrote to Local Planning Authorities about this issue and the Promoter has provided assurances to the NFU which go some way to meeting its concerns. But there are matters of detail in respect of those assurances which remain outstanding.

Requests

- 16.3 Request 1: The NFU asks that the assurance given on this subject by the Promoter of the Phase 1 and Phase 2A Bills (assuming it is replicated in relation to Phase 2B) be altered so that it provides that the Nominated Undertaker would provide a statement in support of a planning application in cases where this issue applies, and that the Nominated Undertaker would respond promptly to any reasonable request by a farmer about the scope and likely amount of compensation that would be payable in the event that the farmer is displaced.
- 16.4 Request 2: That the Promoter be required to write a letter to all planning authorities along the route in which farmland is situated, requesting them to be sympathetic to farmers in these situations. A letter of this nature was sent on Phase 1 and Phase 2A.
- 16.5 Request 3: The NFU seeks a recommendation from the Select Committee that the Department for Levelling Up, Housing and Communities should provide further guidance to Local Planning Authorities on the subject of planning conditions:
 - 16.5.1. ensuring replacement of existing dwellings will be permitted;
 - 16.5.2. discouraging an agricultural tie on replacement premises where none exists on the current premises;

- 16.5.3. ensuring that conditions should only relate to design, materials used and access.

17. Utilities and Conduits

Issue

- 17.1 The NFU believes that it is essential that farmers are able to install utilities such as cables and pipes under the railway if land in their ownership is severed by the railway. This can be achieved by the construction of culverts underneath the railway by providing them at regular intervals along the route as part of the construction, in order to provide future proofing and to help ensure that connectivity (particularly high speed broadband for rural communities) is not stifled by the scheme. Furthermore, any HS2 infrastructure, such as bridges or culverts, that provides a connection between areas of severed farmland should be made available for the use of farmers, subject to safety and operational requirements, without any premium or ransom payment having to be made by the farmer.

Request

- 17.2 The NFU requests that the Promoter be required to give the following assurances:
- 17.2.1. conduits will be provided at regular intervals under the railway line as it passes through agricultural land (say every 300m) to take cabling or other utilities across the railway both now and in the future;
- 17.2.2. after construction, if a farmer makes a reasonable request for the use of an existing culvert, conduit or bridge or to construct a new one, then such use or construction should be permitted (payment by the farmer being limited to the actual cost of the works and additional maintenance).

18. Severance and Hedgerows

Issue

- 18.1 The severance of agricultural land by such a long linear scheme will result in some fields being left in awkward shapes. A common element of a claim for severance is the cost of removing hedges and fences in order to re-shape fields into a sensible layout. Since the introduction of the Hedgerows Regulations 1997, the removal of any hedge which is more than 20 metres long requires the consent of the Local Planning Authority. This will add time, cost and uncertainty for farmers who are affected.

Request

- 18.2 The Bill should be amended by the addition of the following clause:
- “Hedgerows

(1) The Hedgerows Regulations 1997 are amended as follows.

(2) After regulation 6(1)(h) insert—

“(ha) for rationalising field layouts where fields are severed by works constructed under the High Speed Rail (Crewe - Manchester) Act 2023;”.

19. Interruption of Water Supplies

Issue

19.1 The impact on water supplies, on which many of the NFU's members rely, should be considered and mitigated. The NFU submits that it is essential that the potential impact on the water supply for livestock farms and irrigation systems is properly assessed and suitable mitigation is provided. The Promoter has provided assurances to the NFU on this subject, and again, the NFU is concerned that they need to be strengthened.

Requests

19.2 That the assurances given to the NFU in respect of Phases 1 and 2A should apply to Phase 2B but modified so as to provide that if a farmer makes a reasonable request to the Nominated Undertaker for an alternative water supply, then it should be provided within 12 hours of notification by the farmer and until the issue that gave rise to the request has been remedied.

19.3 That the assurances be modified so that they apply to public water supplies as well as private water supplies, with appropriate modifications.

20. Accommodation Crossings

Issue

20.1 A large number of farms will be severed by the construction of the proposed railway line. Crossing points to provide access to severed land are essential and the loss of even small areas of land to some farm businesses could lead to the business not being viable. Accommodation crossings should be future proofed at the design stage so that they will be able to cater for the width, length and weight of modern agricultural machinery. Farmers need to have some certainty about the dimensions of proposed underpasses and overbridges. The crossings need to be in place before severance takes place, even if that means providing a temporary crossing first and then a permanent one later.

Request

20.2 The Promoter should be required to provide an assurance that in designing and constructing the authorised works, the Nominated Undertaker will ensure that—

20.2.1. all accommodation overbridges provided for farmers shall be no less than 5 metres wide and capable of taking a loading of 60 tonnes;

20.2.2. all underbridges provided for farmers will be no less than 5 metres wide and 5 metres high;

- 20.2.3. any new or modified vehicular farm access to the highway is at least 20 metres long and capable of use by all road legal agricultural vehicles;
- 20.2.4. all accommodation crossings required for agricultural use will be open for use before the land in question is severed and thereafter available for use at all times, including providing temporary crossings if necessary.

21. Land Drainage

Issue 1

- 21.1 The construction of the works will inevitably lead to alterations to field drainage along the line of the railway. The Promoter provided some assurances on this subject on Phase 1 and Phase 2A and the Promoter's Information Paper E16 (Land Drainage) sets out a number of commitments and other information about how the Promoter intends to deal with that issue, and some of the commitments are listed in the register of undertakings and assurances (entries A143 and 144). The NFU is concerned about two aspects of the assurances: first, the onus is on the farmer to maintain any new drainage systems and secondly, there is no requirement on the Nominated Undertaker to ensure that new drainage system is as effective as those which they replace. In other similar infrastructure schemes, the NFU has secured commitments on behalf of farmers which meet those concerns.

Request

- 21.2 That the Promoter be required to alter the assurances recorded in the register of undertakings and assurances in line with other infrastructure schemes, so as to:
 - 21.2.1. remove the onus on farmers to maintain drainage systems that have been imposed on them (unless the farmer agrees otherwise);
 - 21.2.2. ensure that any new land drainage systems are put back in a condition that is at least as effective as the condition of those which they replace;
 - 21.2.3. provide for a dispute resolution mechanism, based upon adjudication by a jointly appointed expert (or in default appointed by the President of the Institute of Civil Engineers).
 - 21.2.4. provide that where it is appropriate and reasonable to do so, and the consent of the relevant landowner has been obtained, the Nominated Undertaker will carry out works involving the reinstatement of drainage outside of the Bill limits.

Issue 2

- 21.3 On Phases 1 and 2A, NFU members have reported that inadequate drainage of HS2 Ltd.'s own construction compounds, access roads and other infrastructure has led to significant water dispersal onto and flooding of farmland. This is as a result of the absence of a proper construction drainage plan being prepared and implemented in advance.

Requests

21.4	<u>Request 1:</u> That the Promoter be required to ensure that the Nominated Undertaker employs a drainage consultant sufficiently far in advance of the start of the enabling works and the main construction works on each site, such that a proper construction drainage plan is in place that must be complied with by the Nominated Undertaker and its pre-works and main works contractors.
21.5	<u>Request 2:</u> If two (or more) drainage consultants are contracted to address field drainage issues, then they must work closely together to make sure that the construction drainage and field drainage will work together.
22. Soil	
<u>Issue 1</u>	
22.1	The NFU secured assurances of general application in relation to the Phase 1 and 2A Bills which set out a number of requirements on the Nominated Undertaker about soils which are temporarily affected, including the requirement to provide the relevant landowner with a soil plan.
<u>Request 1:</u>	
22.2	The assurances given to the NFU in relation to Phase 1 and 2A should apply to Phase 2B (a general point about the application of Phase 2A assurances is made later in this petition but this is seen to be one of particular importance).
<u>Request 2:</u>	
22.3	That the Promoter be required to alter the assurances recorded in the register of undertakings and assurances in line with other infrastructure schemes, so as to include the following details for the Record of Condition and Preconstruction Soil Survey Target Specification:
<u>Record of condition:</u>	
22.4	A Record of Condition will be undertaken pre -construction and will include the following: • Existing crop regimes • The position and condition of existing field boundaries • The condition of existing access arrangements • The location and type of existing private water supplies • The type of agricultural use taking place. • The condition of crops (if at a stage this can be assessed) • The quality of grazing land • The existing weed burden • Preconstruction Soil Survey target specification • Weather conditions • Date of survey • Grid reference
22.5	Photographs, drone and video footage including section drawings/plans should be included in the record of condition, alongside the Pre- construction

Soil Survey Target Specification and should be provided to the landowner and occupier, for agreement, prior to entry to the landholding.

The Pre-construction Soil Survey Target Specification

22.6 The Pre-construction Soil Survey Target Specification should include the identification of the physical characteristics of profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed). Soil pits will be examined at appropriate locations to provide additional detail on soil structure. The Pre-Construction Soil Survey will also provide information on the following physical soil characteristics: -

- soil horizon depths for topsoil and subsoil horizons;
- soil textures of all horizons;
- soil colour;
- stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;
- presence and characteristics of mottling, a soil wetness indicator;
- presence of manganese concretions, a soil wetness indicator;
- identification of gleyed horizons;
- identification of slowly permeable layers; and
- identification of impenetrable rock layers.

22.7 A copy of the Pre-Construction Soil Target Specification shall be provided to the Landowner and any Occupier prior to commencement of the Works.

23. Capital Gains Tax

Issue

23.1 The NFU considers that there should be a capital gains tax exemption in respect of compulsorily acquired property. The majority of farmers do not sell their land: it is passed from one generation to the next and so the prospect of paying capital gains tax is not one which arises often. Under the Bill, the NFU's members are likely to be faced with the prospect of paying the tax following the acquisition of their land. In the light of the involuntary nature of the acquisition process, the NFU considers that having to pay capital gains tax following acquisition would be unreasonable and that an exemption should be provided. In the absence of such an exemption, the NFU considers that the regime described in the following paragraphs should apply.

23.2 If the equivalence rule was always observed in compensation claims, no claimant should suffer uncompensatable losses due to taxation. In practice this is not always the case and, with the HS2 project, there are likely to be particular difficulties with the replacement of business assets in the form of farmland.

23.3 In the usual course of business, the Taxation of Chargeable Gains Act 1992 ("TCGA") allows for rollover relief from capital gains tax when the funds released by the sale of one business asset are re-invested in another business asset within one year prior to the sale or three years after it. Sections 247 to 248 of TCGA make provision about rollover relief in the case where land is acquired by way of compulsory acquisition. The linear nature

of the scheme means that many farmers and landowners are likely to seek to acquire farmland to replace that lost to the railway within a relatively narrow geographical area of search. Replacement land is most valuable to a farmer when it is physically very close to the rest of the holding. It does not make economic sense for the business if the replacement land is remote. Two issues therefore arise: the first is that land in a suitable location may not become available on the market within the timescale prescribed by the rollover relief rules; and the second is that there is likely to be an imbalance of supply and demand close to the line of the railway which could force land prices upwards.

- 23.4 The NFU attracted sympathy for their case from the Phase 1 Bill Commons Select Committee. In its final special report it states, in paragraph 364, that “as it will take HS2 some ten years to bring its Phase One rail project to fruition, there is a case for allowing farmers a comparable period for reinvestment”. The NFU acknowledges that HMRC can use its discretion to amend the time limits, but farmers require more certainty when they are acquiring new assets.

Requests

- 23.5 Request 1: In order to deal with the issue of lack of available land, the NFU has two alternative solutions, both of which could be met by recommendations to the government for changes to taxation legislation. The proposed recommendations for the select committee to consider are:

23.5.1. an amendment to the Taxation of Chargeable Gains Act 1992 to the effect that any disposal arising from the compulsory acquisition of farm land is exempted from Capital Gains Tax. It is likely that farmers unable to claim roll over relief would seek redress through individual claims for compensation from the Promoter and recent case law suggests that such a claim is possible. An exemption would simply remove the need to pay tax to the government (HMRC) only to then claim back the same amount as compensation from the government (HS2); or

23.5.2. an amendment to the Taxation of Chargeable Gains Act 1992 to provide alternative statutory time limits for the replacement of farm assets purchased compulsorily by HS2 under the Bill. The NFU suggests either a period of 9 years, beginning three years before and ending six years after the deemed date of disposal in line with HMRCs delegated discretion, or a period of 10 years in line with the Phase 1 Bill Select Committee's view in their Final Report.

- 23.6 Request 2: The Promoter should be required to alter its “Guide for Farmers and Growers” to include guidance on CGT and compensation with examples of the actions HS2 would expect farmers to take in seeking to mitigate any capital gains tax liability and acting reasonably for the purposes of making a compensation claim. This guidance should address the position both where a suitable replacement is found outside of the statutory period for rollover relief and where no suitable replacement can be found despite the claimant making every effort to do so.

24. Inheritance Tax

Issues

- 24.1 Issue 1: Where an estate is worth more than £325,000 an Inheritance Tax ("IHT") charge of 40% applies to the excess. There are a number of reliefs that may first be applied to an estate which would reduce the taxable value. For farmers the two main reliefs are Agricultural Property Relief (APR) and Business Property Relief (BPR) which can relieve up to 100% of the value of agricultural land or other business property. The availability of APR and BPR is dependent on their being qualifying assets held for at least two years prior to death or a lifetime transfer (seven years in the case of let agricultural property).
- 24.2 Where land is purchased under a compulsory purchase order it is likely to change the asset from one that qualifies for up to 100% IHT relief to cash which doesn't. New assets may be acquired which, if held long enough before death, would then qualify. There are also rules which allow a replacement asset to be acquired and for it to qualify for IHT reliefs immediately by virtue of the combined length of ownership of the old and new asset.
- 24.3 However, there is a clear risk that a farmer might die before replacing the monies received with further assets with the result that they incur IHT which would not otherwise have been payable. Similarly, there could be instances where the farmer is unable to find suitable replacement assets quickly enough and so finds that he does not then receive relief on the replacement asset.
- 24.4 Issue 2: Similar issues arise where land is taken temporarily, which under the Bill could be for some years. If the farmer were to die during the period when land is in occupation by the Nominated Undertaker, again the asset is likely to change from one that qualifies for up to 100% to one that does not.
- 24.5 Issue 3: NFU notes that, in HS2 Ltd.'s document *Information for Farmers and Growers – Capital Gains Tax and Inheritance Tax*, the section on IHT suggests that only the cost of IHT advice can be compensated. This is concerning and NFU would expect it to state that, provided reasonable steps have been taken to mitigate the IHT liability, the IHT could be compensated too. For instance, the IHT advice might be to invest in a portfolio of AIMs shares or in agricultural land in Scotland. The NFU considers reasonable mitigation could include a farmer actively seeking to replace the agricultural land used in their business and taken by HS2 with agricultural property that can be used in their business. There is a risk of tying up the compensation, preventing the farmer from being able to purchase land when it becomes available which could ensure the future viability of the farm business.

Requests

- 24.6 Request 1: The Select Committee recommend that HMRC add guidance to their Inheritance Tax manual to include a case study of a farmer affected by HS2. This should acknowledge the specific difficulty in replacing farmland taken for a major national infrastructure project such as HS2 and that there will be a positive presumption that the money will be reinvested in the farm business in the event of an untimely death unless there is clear evidence to the contrary.
- 24.7 Request 2: That HS2 Ltd be required to amend the relevant section of its *Information for Farmers and Growers – Capital Gains Tax and Inheritance Tax*, dealing with compensation so that it points out that Inheritance Tax will

	be compensated for where the deceased had taken reasonable steps to mitigate the liability and gives an indication of what the Promoter suggests would be reasonable mitigation or how such a claim should be made if the original compensation claim has been closed.
24.8	Request 3: That HMRC be recommended to alter its management powers (or if that is not an appropriate method, the government be recommend to make legislative changes) so that in cases where land taken temporarily is to be returned to agricultural use, the land shall be deemed for IHT purposes to remain in agricultural use throughout the period of temporary occupation.
25. Phase 1 and 2A Assurances	
<u>Issue</u>	
25.1	During the promotion of the Phase 1 and Phase 2A Bills, the NFU secured a number of assurances from the Promoter, which are of general applicability to farmers affected by the Phase 1 and 2A routes. The Phase 2A assurances should also apply to Phase 2B.
25.2	The Phase 1 and 2A Assurances were set out in two parts, Part A contained general assurances which apply generally, and Part B contained assurances which carried a heading implying that they were to be offered to farmers on a case by case basis. The NFU were horrified to find that HS2 did not offer these Part B assurances to all farmers affected by Phase 1, though it appears they have offered them on Phase 2A, following a request for the same. In some cases, the assurances are not acceptable now to the NFU, particularly in the light of what has happened on the ground. Examples of subjects where assurances are expected to be repeated, and require modification are:
25.2.1.	land acquisition policy;
25.2.2.	prompt payment of compensation;
25.2.3.	provision of Nominated Undertaker's estimate of compensation;
25.2.4.	earthworks;
25.2.5.	relocation of agricultural buildings;
25.2.6.	use of private roads;
25.2.7.	field drainage;
25.2.8.	detailed design;
25.2.9.	agricultural soils (a pre disturbance record of condition and Soil Survey Target Specification); and
25.2.10.	agricultural liaison officer.
<u>Requests</u>	
25.3	Request 1: The Promoter should be required to add to the register of undertakings and assurances for Phase 2B those assurances of general application given to the NFU on Phase 2A, subject to any alterations agreed between the NFU and the Promoter or resulting from recommendations of the select committee following consideration of the points raised in this petition.
25.4	Request 2: The Promoter should be required to repeat the Part B assurances, with modifications which will be raised by the NFU, and offer them to all farmers affected by Phase 2B, unless any of the assurances is clearly not relevant. Sufficient time should be given for farmers to agree to those assurances. Clear guidance should be given to all farmers affected by Phase

25.5	2B at an early stage (in other words now) about the process and the timescales for seeking Part B assurances and undertakings. The timescales should not place a cut-off date of the finalisation of the register of assurances and undertakings. There is no reason why the Part B assurances should not be contained in a legally binding agreement (or “undertaking” using the Promoter’s terminology). If a farmer requests such an agreement, then the Promoter should be required to enter into one.
26. Compliance with Farmers and Growers Guide	
<u>Issue</u>	
26.1	During the promotion of the Phase 1 and 2A Bills, the Promoter published a document called the Farmers and Growers Guide, in discussion with the NFU and others. A similar Guide is to be produced for Phase 2B. The Guide contains useful information about the implementation of the Bill, and also includes a number of statements which are in the form of a commitment or assurance, but which have not appeared in the register of undertakings and assurance and/or which have not been complied with on Phases 1 or 2a.
<u>Request</u>	
26.2	The Promoter should be required to give an assurance that the Promoter or Nominated Undertaker will comply with all the commitments in the Farmers and Growers and that the NFU will be consulted on any changes to the Guide.
27. Enforcement of Assurances	
<u>Issue 1</u>	
27.1	The procedures relating to how breaches of assurances are to be reported and dealt with is unclear for farmers, based on reported experiences on Phases 1 and 2a. Information Paper B5 (compliance with undertakings and assurances) gives very basic information about this subject. It says that the Promoter will give an undertaking to Parliament that he will take such steps as he considers reasonable and necessary to secure compliance with the EMRs. It gives no detail about how breaches of assurances should be reported, to whom, how they will be considered and what avenues are open should a farmer disagree with the outcome.
<u>Request 1</u>	
27.2	The Promoter should be required to provide a guide to farmers setting out details of how allegations of breaches of assurances will be dealt with, including information on the format of complaints, contact details of an individual to whom they should be made, details about how allegations will be handled (including timescales and opportunities for farmers to provide further input) in a day-to-day online guide of what to do.
<u>Request 2</u>	
27.3	A better alternative, mentioned above, is that Part B assurances (and other assurances secured by farmers, particularly if they relate to land, and the

benefit is intended to run with the land) should be contained in legally binding agreements, not assurances, which it seems are ultimately only enforceable by invoking contempt of Parliament procedures.

28. Agricultural Liaison Officer

Issue

The NFU secured an assurance on Phases 1 and 2 requiring an agricultural liaison officer to be appointed to deal with day-to-day issues raised by farmers. One issue that NFU members have encountered on Phases 1 and 2 is that as responsibility passes from the Nominated Undertaker to its contractors and sub-contractors, so does the identity of the agricultural liaison officer. This is unfortunate, because farmers have so far found that they have built up good relations with liaison officers only to find that they are likely to change when the main works contracts start. They have also found that there are a number of tiers of agricultural liaison officers which complicates matters and means that farmers find that when issues need escalating, it is difficult to do so.

Request

- 28.1 That the agricultural liaison officer be appointed directly by the Nominated Undertaker, and remain so appointed so as to provide more consistency and continuity. In addition, whether or not the officer is appointed by the Nominated Undertaker, there should only be two tiers of officer, with direct access being available for farmers to the senior tier officer (and project manager if different) for the relevant section of the route. This would be in line with procedures on Nationally Significant Infrastructure Projects.

3. What do you want to be done in response?

In the box below, tell us what you think should be done in response to your objections to the Bill. You do not have to complete this box if you do not want to.

You can include this information in your response to section 3 'Objections to the Bill' if you prefer. Please number each paragraph.

Please see the "Objections to the Bill" section above, and the requests set out in it.

March 2023

**HIGH SPEED RAIL (CREWE -
MANCHESTER) BILL**

**HOUSE OF COMMONS
SELECT COMMITTEE**

**Petition No. HS2-P2B-085:
National Farmers Union**

Promoter's Response Document

INTRODUCTION

This Promoter's Response Document (PRD) forms the Promoter's response to Petition No. HS2-P2B-085, from National Farmers Union.

In this PRD, 'the Promoter' means the Secretary of State and HS2 Ltd acting on their behalf.

The purpose of the PRD is to advise you and the Select Committee of the Promoter's position in relation to the petitioning points raised. It is intended that the PRD will alleviate many of the concerns raised in the petition. Further responses will be provided following engagement with the NFU on specific issues.

The Table of Contents overleaf lists the page number, petitioning points in the order they appear in the petition, and a summary statement of the issue(s) contained in the petition for quick reference. Other supporting material (e.g., reports, drawings, and photographs) referred to in the response are attached where applicable.

Copies of the HS2 Phase 2b Information Papers referred to in the response can be found at

[HS2 Phase 2b \(Crewe – Manchester\) Information Papers - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/614442/HS2_Phase_2b_Crewe_-_Manchester_Information_Papers.pdf).

Department for Transport
High Speed Two (HS2) Limited

BACKGROUND

The Petitioner is the National Farmers Union of England and Wales ("the NFU"). The Petitioner states that the NFU represents 55,000 members in England and Wales and it is regularly consulted by the government on policy proposals across all departments. The railway that is proposed to be authorised by the Bill would be constructed through a large number of farms that are either owned, or tenanted, by farmers who are members of the NFU.

PETITION NO. HS2-P2B-085

NATIONAL FARMERS UNION

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ATTACHMENTS

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Annex A	Letter regarding Land Acquisition Strategy dated 5 January 2023
Annex B	Letter of Assurance dated 17 March 2023

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: i-v

ISSUE RAISED: Introduction

PETITION PARAGRAPH: (i) The NFU represents trades, businesses and interests in the area to which the Bill relates, and those trades, businesses and interests will be injuriously affected by the Bill. A significant number of the NFU's members are liable to have their land compulsory acquired under the Bill.

(ii) The NFU received a number of assurances from the Promoter in relation to Phases 1 and 2A of HS2 as a result of its petitioning against the two previous hybrid Bills in the House of Commons and the House of Lords. However, there are a number of instances where no assurances were given, or where the assurances given did not, in the NFU's view, go far enough in meeting its concerns. In addition, and most importantly, NFU members now have experience of the implementation of Phases 1 and 2A, and that has raised some new concerns.

(iii) There is a theme which underlies a number of the concerns raised in this petition. HS2 Ltd. have taken a considerable amount of time, on both Phase 1 and Phase 2A, to finalise its design. Because HS2 Ltd did not make sufficient progress with its detailed design on Phase 1 before its powers of compulsory acquisition expired in February 2022, that led to the last minute wholesale compulsory acquisition of large areas of farmland just before that date. Much of that land will not be needed at all by HS2 Ltd, or is likely only to be needed temporarily for construction, or for the acquisition of rights, or for habitat mitigation. The NFU has raised its concerns about this in the strongest terms.

(iv) The spirit, if not the letter, of a number of the assurances which the NFU and individual farmers were given by the Promoter was not complied with, and it is imperative that the

Promoter must do much better on Phase 2B. Significant numbers of farmers have experienced real difficulty, including anxiety and stress because of the action and inaction of HS2 Ltd., particularly when it comes to the issue of wholly unnecessary land take. The NFU has been involved in many other nationally significant infrastructure projects over the years during which HS2 has been authorised and implemented, and none of those other projects has caused anywhere near the amount of difficulty, anxiety and stress, leading to mental health issues, as HS2.

(v) For these reasons, after considerable thought, the NFU considers that unprecedented measures should be taken to restrict the powers of the Promoter on this occasion. The Promoter should not be permitted to think that it should be able to get away with poor behaviour because the HS2 project is large or (in its view) important.

PROMOTER'S RESPONSE:

1. The Promoter does not accept that it has not complied with a number of assurances given on phase 1 and 2a or that it thinks it 'should be able to get away with poor behaviour' as alleged by the Petitioner. The Promoter has established channels of communication in place with the Petitioner that provides the opportunity for any issues in individual cases to be raised and discussed.

2. Hybrid Bills are the customary route used for authorising large railway schemes and particularly those of national significance such as HS2. The last four hybrid Bills considered by Parliament were for Crossrail in 2005-8, the Channel Tunnel Rail Link (HS1) in 1994-96 and HS2 Phase 1 in 2013-2017 and Phase 2a in 2017 to 2021.

3. As set out in HS2 Phase 2b Western Leg Information Paper C3: Land Acquisition Policy, the Bill seeks powers for the compulsory acquisition of land within limits. These are intended to ensure sufficient flexibility in the detailed design of the Proposed Scheme.

4. 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 HS2 Phase 2b Western Leg information papers C2: Rural landowners and occupiers guide and C6: Disposal of surplus land. Moreover, in Information paper C6 the operation of the Crichel Down Rules to agricultural land has been modified. The modification relates to

the requirement under the Crichel Down Rules to offer back surplus land to the original owner where the land has not been materially changed since acquisition by the Secretary of State. In the case of agricultural land that is acquired, an exception to the Rules set out in Information paper C6 provides that agricultural land that is acquired but becomes surplus must be offered back to the original owner provided that the land was previously used for long term agriculture or forestry , notwithstanding that in the intervening period of occupation by the Secretary of State, the land is materially changed before becoming surplus and available for disposal under the Crichel Down Rules.

5. If it is practicable to acquire a smaller area of land without compromising the Secretary of State's ability to secure the construction and implementation of the Proposed Scheme in a timely and economic manner, and it becomes clear that not all the land within limits is required, the Secretary of State will not generally seek to acquire this land and will be prepared to give necessary assurances to the landowners in question.

6. Landowners affected by the exercise of these compulsory powers of acquisition will be compensated according to the Compensation Code. The 'Compensation Code' is a collective term for the principles deriving from Acts of Parliament and case law, relating to compensation for compulsory acquisition. Its general purpose is to provide fair compensation for a person whose land has been compulsorily taken.

7. Further details about the Compensation Code are contained in HS2 Phase 2b Western Leg Information Paper C8: Compensation code for compulsory purchase.

Design

8. The Promoter considers that the level of design detail developed to date is sufficient for the deposit and promotion of a hybrid Bill. The detailed design stage of the project would take place in due course and at that stage more detailed information would be able to be shared with the Petitioner.

9. The level of design detail provided at this stage of the project is similar to that produced for other Private and hybrid Bills (including the Bill for Crossrail during its passage through Parliament in 2005-8) and for draft orders under the Transport & Works Act 1992.

10. Individual elements of the project, such as bridges and viaducts, would be designed to ensure that they are in keeping with local landscape character and setting.

11. Detailed design, materials and finishes would be subject to approval by the local planning authority under the planning regime established under Schedule 17 to the Bill.

12. This is explained in HS2 Phase 2b Western Leg Information Paper B2: The Main Provisions of the Planning Regime and HS2 Phase 2b Western Leg Information Paper D1: Design.

13. The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy at paragraph 5.1.5:

“Any decision to occupy land temporarily, rather than exercise powers to permanently acquire, would be subject to, and dependant on, the Secretary of State and a farmer or rural landowner entering into a satisfactory agreement prior to the exercise by the Secretary of State of any land acquisition powers, with respect to things such as the arrangements for reinstatement of the land, the level of compensation payable, and any required arrangements for the maintenance of any permanent structures or landscape works remaining in situ following construction. This would be subject to the level of available detailed design being sufficient to identify the precise requirements.”

14. In addition, the HS2 Phase 2b Guide for Farmers and Growers includes in Part 3, paragraph 22 a number of Scenarios for the potential use of temporary occupation powers rather than power of compulsory purchase. Paragraph 22.1 provides guidance on how the Promoter would consider exercising powers of temporary occupation and how it would engage with affected farmers/rural landowners and occupiers:

“In all cases an agreement between the Promoter, owners and occupiers of land will be required which reflects design information available at that point in time in contemplation of the exercise of powers of acquisition under the Bill to construct the Phase 2b Western Leg and shall be subject to the conditions set out in paragraph 5 above. Moreover, the absence of concluding an agreement in any of the scenarios set out below shall not prejudice the ability of the Promoter to exercise powers of compulsory acquisition of the Bill as required by the Promoter for the purposes of the Phase 2b Western Leg.”

15. The scenarios referred to above, and the corresponding guidance can be found in in Part 3 of the HS2 Phase 2b Guide for Farmers and Growers. The Promoter wrote to the National Farmers Union on 17 March 2023 providing more detail about the suite of binding assurances and conditional policy statements now incorporated into HS2 policy: see Annex B. Please see the Promoter’s response to Petition paragraph 25.1-25.5 and 26.1-26.2 below.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 1.1-1.6

ISSUE RAISED: GVDs being made unnecessarily because detailed design is incomplete

PETITION PARAGRAPH: 1.1 As mentioned in the introduction above, large areas of farmland have been and continue to be acquired permanently for Phase 1 and Phase 2A where it is clear that the land will not be required for permanent HS2 infrastructure. There have been many instances, particularly on Phase 1, where farmland has been acquired using the general vesting declaration ("GVD") procedure, meaning that the land is vested in HS2 Ltd without any opportunity for further discussion with the farmer. Examples where this have occurred include cases where:

- land has been acquired even though it is only required for construction purposes
- land has been acquired even though only rights are required over the land
- land has been acquired even though it is only required for environmental mitigation, and the landowner has not been given a reasonable opportunity to negotiate an arrangement whereby they keep the land and commit to maintaining it appropriately.

1.2 Furthermore, on Phase 2A, the NFU understands that the approach of HS2 Ltd is to execute GVDs over large areas of farmland, up to the full extent of the Act limits, without refining its design at all, and without the two-stage approach of land being taken temporarily first.

1.3 The NFU understands that as part of its land acquisition strategy, HS2 Ltd works through a process of design which ends with them settling a "Final Land Acquisition Boundary". The NFU considers that it should only be at the end of a detailed design process that GVDs should be served and only where it is clear that the land is required permanently.

1.4 During the promotion of the Bills for Phases 1 and 2A, the NFU secured assurances from the Promoter which were intended to prevent the above circumstances occurring. It is abundantly clear that those assurances on their own (which the NFU seeks again, but with modifications) need to be accompanied by further safeguards for farmers.

Requests

1.5 Request 1: That the Bill be amended so that when implementing compulsory purchase powers over farmland under clause 4 of the Bill it may not be done by GVD unless either the farmer has agreed or the Promoter has completed detailed design which demonstrates the land is required permanently. The Bill should be amended to set out an explanation of that detailed design process, including a “trigger point” after which GVDs can be executed. If the trigger point has not been reached by the time the 8 year limit for compulsory acquisition is approaching, then permanent acquisition of farmland should only be implemented by way of the notice to treat procedure, unless the farmer agrees otherwise.

1.6 Request 2: That the Bill is amended so that no powers of compulsory acquisition (whether by GVD or notice to treat) can be exercised over farmland in the first two years after Royal Assent unless the landowner agrees or has requested it or unless the Promoter has completed detailed design (i.e. reached the “trigger point” mentioned above) which demonstrates the land is required permanently

PROMOTER’S RESPONSE:

1. The Promoter needs certainty of delivery for the Proposed Scheme at the point it is deposited in Parliament. The powers of compulsory purchase included in the Bill are those which are necessary in order to enable the Secretary of State to acquire and to assemble all the land and rights which are required for Phase 2b purposes – in particular, to enable the Promoter to complete the detailed design of the Proposed Scheme, to construct the Proposed Scheme and to operate the Proposed Scheme.

2. A scheme of this magnitude continues to be developed and designed long after the enactment of the Bill. The land acquisition policy published by the Promoter and summarised in HS2 Phase 2b Western Leg Information Paper C3: Land acquisition policy, explains that the exercise of the compulsory purchase powers sought in the Bill would operate on the basis that the Secretary of State will acquire no greater land area than appears to him will be reasonably required following detailed design of the

Proposed Scheme. If it is practicable to acquire a smaller area of land without compromising the Secretary of State's ability to secure the construction and implementation of the Proposed Scheme in a timely and economic manner, and it becomes clear that not all the land within limits is required, the Secretary of State will not generally seek to acquire this land and will be prepared to give necessary assurances to the landowners in question.

3. The basis on which the Promoter would use compulsory purchase powers to permanently acquire land and interests in land is set out in under the sub-heading "Powers of the Bill" in response to petition paragraph i-v above.

4. Each instance of the use of permanent acquisition powers, including by General Vesting Declaration, is subject to a robust process to determine the project requirement for the land. This process follows the general approach set out in HS2 Phase 2b Western Leg Information Paper C3: Land acquisition policy. The Information Paper says:

"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."

5. The Promoter met with the Petitioner on 4 and 28 October 2022 to discuss this matter. The Promoter then wrote to the Petitioner on 5 January 2023 explaining the Promoter's position with regards to land within the hybrid Bill limits. The letter stated:

"The land and rights shown in the Book of Reference have been included because the Promoter considers them to be required for the purposes of delivering the Bill scheme. The scheme design in the hybrid Bill is described in very considerable detail in the published environmental statement. The scheme design as so described, and the practical delivery of that scheme, together provide the essential justification for the land acquisition powers sought in the Bill. Phase 2b Western Leg Information Papers C2: Rural Landowners and Occupiers Guide and C3: Land acquisition Policy set out circumstances where land may not be permanently acquired for the scheme or may only be taken on a temporary basis. These papers are not to be understood as implying any doubt on the part of the Promoter as to the need to acquire the land and rights included in the Book of Reference for the purposes of the Bill scheme.

The environmental statement was published alongside the deposit of the Bill in Parliament. Land and rights owners who question the need for the acquisition of their land for the purposes of the Bill scheme have been able to lodge a petition challenging the need for acquisition of their land or rights in the light of the

published environmental statement. A number of farmers have done so. The Select Committee process allows a farmer to request the Committee to consider whether their land or rights are required for the Bill scheme and, if found not to be justified, to direct its removal from the Book of Reference when the Committee reports the Bill.

Following enactment of the Bill, the exercise of compulsory acquisition powers will continue to focus on the effective delivery of the Bill scheme in accordance with the works powers and deemed planning permission conferred by Parliament. The aim will be to limit the number of permanent acquisition notices to one per landowner where possible. This will provide affected landowners with a level of certainty over the extent of land to be acquired and timing of acquisition.

Any land compulsorily acquired which it is unnecessary to retain permanently for the Bill scheme may be made available for disposal in accordance with the terms of Information Paper C6: Disposal of Surplus Land, which incorporates the Crichel Down rules. Paragraph 4.6 of Information Paper C6 states that "Where the Secretary of State intends to dispose of an interest in a site to which the Crichel Down Rules apply, holders of Qualifying Interests will, subject to the provisions of this Policy, be given first opportunity to acquire that interest at the market value before it is offered to the general market".

HS2 Ltd will of course continue to engage with farmers affected by the Bill scheme and are already discussing specific concerns with individual farmers whose land or rights are shown in the Book of Reference."

6. In HS2 Phase 2b Western Leg Information paper C6 the operation of the Crichel Down Rules to agricultural land has been modified. The modification relates to the requirement under the Crichel Down Rules to offer back surplus land to the original owner where the land has not been materially changed since acquisition by the Secretary of State. In the case of agricultural land that is acquired, an exception to the Rules set out in Information paper C6 provides that agricultural land that is acquired but becomes surplus must be offered back to the original owner provided that the land was previously used for long term agriculture or forestry, notwithstanding that in the intervening period of occupation by the Secretary of State, then land is materially changed before becoming surplus and available for disposal under the Crichel Down Rules.

7. A copy of the complete letter is included as Annex A to this Promoters Response Document.

Restrictions on the use of permanent acquisition powers

8. The Promoter is not prepared to introduce an amendment to the Bill to create a "trigger point" procedure or to prevent the use of compulsory acquisition powers over farmland in the first two years after Royal Assent. The Promoter has stated in

response to petition paragraph i-v above that the level of design information included in the Bill is adequate to justify the use of permanent acquisition powers.

Use of General Vesting Declarations (GVDs)

9. Clause 4 of the Bill makes provision for the use of General Vesting Declarations for the purposes of acquiring land for the Proposed Scheme. These powers are necessary in order to ensure that the Secretary of State has title to the land required to construct and operate the Proposed Scheme. For the reasons given above, it would be inappropriate to limit the Promoter's power to acquire land by GVD in the way contended for by the Petitioner.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 1.7-1.12

ISSUE RAISED: Use of compulsory purchase powers for environmental mitigation

PETITION PARAGRAPH: 1.7 The Promoter has included, in all three phases of HS2, large areas of farmland for use as environmental mitigation or for biodiversity net gain ("BNG"). There is no reason why a farmer should not be able to retain ownership of their land in such circumstances if the farmer is content to take on the burden of maintenance, subject to reasonable terms, including payment, being agreed which ensure the mitigation is maintained.

1.8 One of the problems that farmers on Phase 1 have encountered is that they have only recently been provided with drafts of management agreements and ecological site management plans ("ESMPs") which they would have to sign up to if they were to retain ownership of land to be used for environmental mitigation – that in turn has created uncertainty and has made it difficult for the farmer to decide what to do. Furthermore, farmers need to be told in advance about the payments they will receive for carrying out the management, something which has still not happened on Phase 1. The ESMP requires annual monitoring and reporting.

Requests

1.9 Where land is required for environmental mitigation or BNG, it should not be purchased compulsorily unless the farmer agrees otherwise or the Promoter has used its best endeavours to agree reasonable standard terms, including payment, for management of ecological mitigation or biodiversity net gain with the farmer and agreement has not been reached.

1.10 The standard terms should be re-drafted in consultation with the NFU and with land agents representing farmers along

the route, with expert determination in case of dispute. On Phase 1, unnecessarily complex and onerous agreements are being proposed by HS2 Ltd for small areas of land where little maintenance would be required of the farmer.

1.11 Where the ESMP requires annual monitoring and reporting, it is likely that the farmer will need to appoint an ecologist to carry out these exercises. The cost of appointing an ecologist should fall on the Promoter and not the farmer and the NFU requests that the Promoter gives an assurance to provide for this.

1.12 There is no reason why standard terms could not be agreed or be advanced to a high level of agreement before any notice of occupation or acquisition is served. They should include terms relating to payment and should restrict to 30 years any obligation to maintain land which is to be taken for biodiversity net gain unless the farmer is prepared to accept a longer term.

PROMOTER'S RESPONSE:

1. There is a balance to be struck in designing a new railway corridor across open countryside between the loss of agricultural land and the creation of new ecological habitats and landscape planting. In arriving at this balance, the Promoter has sought to limit disturbance to agricultural holdings and farm management, and to use severed areas for ecological mitigation and tree planting, wherever reasonably practicable and appropriate.

2. The Promoter is required to design a high-speed railway that meets modern standards of design, which necessitate the inclusion within the Proposed Scheme of earthworks, landscape planting and habitat creation to reduce impacts on the environment and integrate the Proposed Scheme into the landscape. Therefore, the design of the Proposed Scheme necessarily involves the conversion of land from agriculture to landscape planting and habitat creation to make the Proposed Scheme environmentally acceptable.

3. All ecological mitigation and compensation measures within the Proposed Scheme design are required in response to the assumed loss of existing habitats, and the Bill seeks powers to deliver all the required habitats to mitigate and compensation for predicted impacts. However, the Promoter remains open to discussions with landowners about alternative ways of delivering the necessary ecological mitigation and compensation measures required, as long as the proposals meet the requirements of the ES and the requirement to avoid or to reduce significant effects. As HS2 Phase 2b Western Leg Information Paper C2: Rural Landowners and Occupiers Guide sets out, the Promoter recognises the value of on-going communication with

landowners, occupiers and agents, including in relation to proposed mitigations. A similar approach has been taken in respect of proposed landscape planting to maintain landscape character and visual amenity.

4. It is important to note that the HS2 metric was not used to identify mitigation measures in response to impacts identified within the Environmental Statement (ES). The HS2 metric has only been used to measure the outcome (i.e. the balance of the 'biodiversity value of the habitats lost compared with the biodiversity value of the habitats gained' through planting and other mitigation measures) during the development of the design of the Proposed Scheme throughout the Environmental Impact Assessment (EIA) process.

5. The Promoter has made a commitment to seek to achieve a Net Gain in Biodiversity of +10%, in order to leave a legacy of more biodiversity than existed before construction. As HS2 Phase 2b Western Leg Information Paper E2: Ecology, sets out:

"...to deliver a net gain in biodiversity for replaceable habitats. To demonstrate progress towards this objective, habitat losses and gains will be measured using a modified version of the Department for Environment, Food and Rural Affairs' (Defra) biodiversity offsetting metric (the 'HS2 metric'). The HS2 metric was developed from the Defra biodiversity offsetting pilot metric in consultation with Defra and Natural England to make it appropriate for use on a large linear infrastructure scheme."

6. Hence, neither the objective of aiming to deliver a net gain in biodiversity for replaceable habitats nor the use of the HS2 metric as summarized above has resulted in any extension of the footprint of the Proposed Scheme otherwise arrived at through the EIA process for environmental design and mitigation.

7. HS2 Phase 2b Western Leg Information Paper E2: Ecology and HS2 Phase 2b Western Leg Information Paper E20: Maintenance of Landscaped Areas, explain that to satisfy the relevant licensing requirements and to maintain the requisite ecological value of proposed areas of mitigation and compensation, all such areas will need to be established successfully and managed appropriately.

8. The draft Environmental Memorandum contains a commitment to ensuring appropriate management by the Promoter and the nominated undertaker. HS2 Ltd is committed to monitoring the effectiveness of ecological mitigation and compensation measures for a sufficient period to ensure the objectives of the proposals for nature conservation are achieved. Natural England have provided advice on appropriate generic periods for maintenance, maintenance and monitoring during the establishment of ecologically-led habitat creation. As there are no published industry standards, the periods specified draw upon current Defra guidance and professional experience of typical management periods negotiated with stakeholders for other large-scale projects.

9. The land would be retained and maintained by the nominated undertaker, unless and until an effective and appropriate maintenance agreement is put in place.

Biodiversity Action Plan

10. HS2 intends to publish its Biodiversity Action Plan this autumn which will set out its strategy of how it will seek to deliver a 10% biodiversity and meet its policy objective for P2b. The strategy will include a process of identifying and delivering measurable gains in biodiversity in addition to areas of habitat creation already proposed within the Bill.

11. A variety of mechanisms are envisaged to realise biodiversity gain that will include:

- biodiversity gains within Bill (Act) limits (onsite): this will include refining the land take required for construction and protecting habitat within the construction boundary to further reduce biodiversity losses, as well as developing additional areas of habitat creation to those already described in the Environmental Statement where it is reasonable and practicable to do so;
- biodiversity gains outside Bill (Act) limits (offsite): delivering biodiversity gains away from where the effects have occurred, with a focus on delivering biodiversity gains within the same or adjacent local authorities. It is intended to secure this measure in partnership with other organisations, landowners, or relevant authorities and through the estate acquired for HS2; and
- purchase biodiversity units from the emerging commercial market (offsite): purchasing biodiversity units away from where ecological impacts occurred, with a focus on purchasing biodiversity units within the same or adjacent local authorities.

12. Following the publication of the Biodiversity Action Plan, the Promoter will engage with relevant stakeholders, including the NFU, on its contents and explore opportunities for partnership working to contribute to delivering the BAPs ambitions.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 1.13-1.14

ISSUE RAISED: Only temporary possession should be allowed in certain cases

PETITION PARAGRAPH: 1.13 Schedule 16 to the Bill contains a table which lists plots of land over which the Promoter can exercise powers to occupy temporarily under Schedule 15. It also lists the purposes for which each of those plots may be used temporarily. It should also be noted that Schedule 15 allows the Promoter to take temporary possession of any land within the Act limits, even if not listed in Schedule 16. As the land in Schedule 16 has been specifically identified as being required temporarily then the Bill should provide that it cannot be acquired permanently unless the landowner requests otherwise. This would be similar to other types of legislation which authorise infrastructure, such as development consent orders for nationally significant infrastructure projects.

Request

1.14 Schedule 15 should be amended so that it includes a provision which prohibits the exercise of powers of compulsory acquisition under clause 4 in respect of plots listed in Schedule 16, except in respect of airspace or subsoil or the acquisition of rights.

PROMOTER'S RESPONSE:

1. The Petitioners request to prohibit the exercise of powers of compulsory acquisition under clause 4 in respect of plots listed in Schedule 16 is satisfied by Schedule 15, part 1 paragraph 2(3) which states:

“The power under section 4(1) (power to acquire land compulsorily) is not exercisable in relation to land specified in the table in Schedule 16.”

2. This clause, already included in the Bill, addresses the Petitioners request and it is the Promoter's position that no further change to the Bill in this regard is necessary.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 1.15-1.19

ISSUE RAISED: Utility works (including electric line diversions)

PETITION PARAGRAPH: 1.15 The NFU is aware of a number of cases in Phases 1 and 2A where HS2 Ltd has acquired farmland compulsorily even though it will eventually only require rights. Examples include where the Promoter only needs to acquire rights for carrying out and maintaining utility works (combined with temporary possession powers under Schedule 16 for construction where appropriate). An underlying reason for this inappropriate use of compulsory powers is, again, failure to progress detailed design expeditiously, and a lack of expediency on the part of HS2 Ltd to negotiate rights with farmers.

1.16 The NFU notes that clause 5(2) of the Bill, read with Schedule 8, means that, as regards the plots of land listed in that Schedule, only rights may be acquired, and for certain purposes. It is noted that there are no entries which say that the purpose of acquiring the right in question is the carrying out of utilities works. The only purpose mentioned in the table is the provision of access. The NFU also notes the provisions of subsections (3) to (9) of clause 5, which together should be adequate to enable rights to be acquired by or for the benefit of utility companies, particularly with the inclusion of subsections (6) and (7) which are not in the Phase 1 and 2A Acts.

1.17 Clause 2(5) of the Bill, which introduces Schedule 3, would enable the Promoter to undertake electric line diversions and other works specified in the table in Schedule 3. Where farmland is affected by these works, land should not be acquired permanently unless specifically required for other permanent infrastructure. This is another instance where the NFU believes that land has been taken unnecessarily because of HS2 Ltd.'s failure to carry out detailed design expeditiously

so has used the “kitchen sink” approach to acquisition on Phases 1 and 2A.

Requests

1.18 Request 1: The Promoter should be required to go through a thorough exercise, before the conclusion of the Select Committee proceedings, of identifying all areas of farmland where it is known that only rights will be required, in particular for utility works, and the Bill should be amended so those areas are listed in Schedule 8 or 16. If this means that the plans and book of reference need to be altered as well, for example to create new corridors of plots of land within the existing Bill limits that are only subject to acquisition of rights, then so be it.

1.19 Request 2: The Bill should be amended so that plots of farmland which are only included in the Bill limits because electric line diversions are being carried out on them should not be subject to compulsory acquisition. This could also be achieved by listing those plots in Schedule 16, thus making them susceptible only to temporary possession for construction purposes, whilst also ensuring (if the NFU’s other suggestions are accepted) that rights can also be acquired to enable the permanent retention and maintenance of the electric lines over the land. Again, if this means reconfiguring the plots in the plans and book of reference, then so be it.

PROMOTER’S RESPONSE:

1. As set out in the Promoters response to paragraph 1.1-1.6 of the petition, the Promoter needs certainty of delivery for the Scheme at the point it is deposited in Parliament. A scheme of this magnitude continues to be developed and designed long after deposition and such design refinements may result in less land being required.
2. In order to carry out the utility diversions required by the Bill, it is necessary for the Promoter to have powers to grant permanent rights to statutory undertakers. The Promoter would seek to engage with farmers and rural landowners to secure those rights by agreement. However, to be certain that the Promoter is able to grant the rights required by statutory undertakers, it is necessary that the Promoter retains the ability to acquire a freehold interest in the land.
3. The Promoter does not consider that compulsory purchase powers sought in the Bill need any amendment.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 2.1-2.3

ISSUE RAISED: Plans

PETITION PARAGRAPH: 2.1 Farmers require certainty about how much of their land will be acquired permanently and why. The NFU has heard from a number of its members on Phase 1 and Phase 2A that they have been taken by surprise when land has been taken permanently in cases where the Community Area Map Books (which were used by the Promoter in petition response documents and when giving evidence to the Select Committees) show otherwise. In some cases, the differences between what those Map Books showed and what has actually happened in terms of permanent land take has been considerable.

Requests

2.2 Request 1: Before the start or at an early stage of the Select Committee proceedings, the Promoter should be required to make clear to farming petitioners and to the Select Committee that the Environmental Statement Community Area Map Books are illustrative not determinative. Colour coded versions of the land plans should be provided to farmers in advance of their appearance before the Select Committee indicating the potential extent of permanent and temporary land take under the Bill.

2.3 Request 2: Updated plans of the construction works should be provided to the farmer every 6 months once they are underway, and should be available to the farmer on a secure website/portal should the farmer request.

PROMOTER'S RESPONSE:

Engagement with farmers impacted by the Proposed Scheme

1. The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“5.4 The Promoter will require the nominated undertaker to use reasonable endeavours to keep affected agricultural/rural businesses informed of the progress of the Bill and of likely target dates for implementation of the Proposed Scheme.”

2. The Promoter considers that this commitment provides an appropriate basis for ongoing engagement with farmers during the construction works.

3. On Phase 1 and Phase 2a of the Scheme the nominated undertaker has introduced an online portal called “Track my property case”. This portal provides a consolidated online resource which allows impacted property owners and occupiers to see relevant statutory notices that they have received. It also provides progress information about claims and acquisitions negotiations.

Bill Plans and the Environmental Statement Plans

4. The Petitioner has asked that the Promoter makes clear that the Environmental Statement Community Area Map Books are illustrative not determinative. This is a misunderstanding of the position. The Map Books are not illustrative. Rather they show the land required for construction and operation of the Proposed Scheme and the purposes for which that land is required. The Community Area Reports, which accompany the Map Books, explain why the land is required.

5. The Environmental Statement Community Area Map Books do not show the detailed design in its concluded state. To that extent, there is some flexibility, which is necessary to enable the detailed design process to be concluded without prejudicing the timely and effective delivery of the Proposed Scheme.

6. The HS2 Phase 2b Western Leg Information Paper B3: Limits on Parliamentary plans explains how the Parliamentary Plans show the powers sought within the Bill. The Information Paper says:

“3.1 The Parliamentary plans and sections show the centreline of the main works, the Limits of Deviation (LOD) and the Limits of Land to be Acquired or Used (LLAU). The plans also show the course of proposed permanent diversions of public footpaths and bridleways.

3.2 The LOD are used to show the limits within which the scheduled works, as listed in Schedule 1 of the Bill, may be constructed. These limits show the extent of the proposed works based on the design developed to the stage necessary for the preparation of the Bill. The LOD provides allowances for contingencies, working spaces and similar factors. This is achieved by including powers to deviate from the position of the works shown on the Parliamentary plans by a small amount; this deviation is restricted by the LOD marked on the plans.

3.3 The scheduled works can be constructed anywhere within their specific LOD. The scheduled works cannot be constructed outside of their specified LOD. 3.4 Separate LODs show the limits within which the proposed permanent diversions of public footpaths and bridleways may be provided. Those limits are shown in red on the Parliamentary plans to differentiate them from the other limits shown on the Parliamentary plans.

3.4 The LLAU are used to show additional limits for other works (i.e. ancillary works such as the provision of environmental mitigation) as well as the limits of land required in connection with the construction and future maintenance of the project.”

7. The extent of permanent acquisition powers can be seen using the parcels identified on these Bill Plans and the relevant schedules within the Bill and the Additional Provision.

8. In addition to the Bill plans, which show the extent of the powers sought by the Bill, the Promoter has published an Environmental Statement. This Environmental Statement includes maps relevant to each community area, which are provided in Volume 2. These maps should be read in conjunction with the relevant Community Area report.

9. These maps show the existing environment (Map Series CT-10), proposed construction (Map Series CT-05) and operational stages (Map Series CT-06) of the Proposed Scheme.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE – MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 2.4-2.5

ISSUE RAISED: Purpose of acquisition or temporary possession should be limited by Schedule 6 or Schedule 16

PETITION PARAGRAPH: 2.4 The NFU notes that Schedule 6 to the Bill, as with the equivalent Schedules in the Phase 1 and 2A Acts, sets out a table which indicates the purpose for which certain parcels of land may be acquired or used. The NFU is unclear what the purpose of setting out these descriptions is if the Promoter is then able to acquire the land and use it for a different purpose. Similarly, Schedule 16 sets out the purposes for which temporary possession may be taken over certain parcels of land under Schedule 15.

Request

2.5 Request: Clause 4(2) of and Schedule 6 to the Bill should be amended, in respect of agricultural land, so that the effect is that the plots listed in Schedule 6 can only be acquired or used for the purposes listed in that Schedule. As regards temporary possession, Schedule 15 should be amended by the deletion of paragraph 1(1) of Schedule 15.

PROMOTER'S RESPONSE:

1. The HS2 Phase 2b Western Leg Information Paper B9: Introduction to hybrid Bill powers explains the powers conferred by the Bill, once enacted.

2. The information paper states:

“5.2 Clause 4 of the Bill contains the power to compulsorily acquire land within the limits of deviation (LoD) and the limits of land to be acquired or used (LLAU), provided that the land is required for Phase 2b (Crewe - Manchester) purposes. This includes a power to compulsorily acquire airspace, subsoil, easements and other rights over land. Additional information is provided in a number of Schedules, including:

- Schedule 6: this sets out a non-exhaustive list of purposes for which land within the LLAU may be permanently acquired or used.
- Limiting Schedule 6 to specific purposes listed in the schedule would preclude the construction of a large number of works provided for in the Bill and would deprive the Secretary of State of the powers to construct the Proposed Scheme as expressly authorised by Parliament.”

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 3.1-3.5

ISSUE RAISED: Use of multiple GVDs for each farmer

PETITION PARAGRAPH: 3.1 In implementing Phase 1, HS2 Ltd has taken the approach of executing a large number of GVDs in relation to sometimes relatively small plots of land, often in the ownership of the same farmer. This leads to unnecessary work on the part of the farmers and their advisers in responding to each one separately and making separate compensation claims.

3.2 The NFU have been told that, on Phase 2A, HS2 Ltd. proposes to take all of the farmer's land, even if the land is only to be used temporarily, for ecological mitigation, or for exercising rights only. The NFU considers the approach adopted on Phase 1 has swung too far the other way on Phase 2A and considers a different approach (described below in Request 1) must be followed.

3.3 Also, on Phase 1, the Promoter has executed GVDs which include within their scope a number of different farms, which again causes unnecessary confusion.

Requests

3.4 Request 1: The Promoter should be required, if the farmer agrees, to combine multiple plots of land in the farmer's ownership into a smaller number of GVDs, and where appropriate, one GVD. For the avoidance of doubt, this request does not mean that the NFU supports the idea of a single GVD over all a farmer's land if some of the land should not be used at all or should only be used temporarily, for ecological mitigation or for exercising rights only.

3.5 Request 2: Any GVD served in relation to farmland should only include within its scope land which is in the ownership of one farming business or estate.

PROMOTER'S RESPONSE:

Number of notices served

1. The Promoter wrote to the Petitioner on 5 January 2023 explaining the Promoter's intention with respect to the use of General Vesting Declarations. The letter said:

"Following enactment of the Bill, the exercise of compulsory acquisition powers will continue to focus on the effective delivery of the Bill scheme in accordance with the works powers and deemed planning permission conferred by Parliament. The aim will be to limit the number of permanent acquisition notices to one per landowner where possible. This will provide affected landowners with a level of certainty over the extent of land to be acquired and timing of acquisition."

Land Acquisition Policy

2. In petition paragraph 1.5 the Petitioner has asked that the use of permanent possession powers is delayed until a certain level of development of detailed design. In other places the Petitioner has sought to limit the scope of the nominated undertaker's ability to use temporary possession powers (petition paragraph 1.5).

3. In their petition Paragraph 3.4, the Petitioner suggests that the Promoter should be required to combine multiple plots of land in the farmer's ownership into a smaller number of GVDs.

4. The Promoter suggests that the Petitioners request on this subject are inconsistent and would lead to an approach to the exercise of the powers sought by the Bill that would cause delay to the construction of the Proposed Scheme and uncertainty for landowners impacted by the proposals.

5. As set out in HS2 Phase 2b Western Leg Information Paper C3: Land Acquisition Policy;

"in any individual case, the exercise of [powers for the compulsory acquisition of land within limits] 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."

6. The letter to the NFU of 5 January 2023 confirms the intention to limit the number of permanent acquisition notices to one per landowner where possible, which addresses the Petitioner's request.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 4.1-4.2

ISSUE RAISED: Maintenance of farmland: weed control measures

PETITION PARAGRAPH: 4.1 On Phases 1 and 2A there have been a number of cases where farmland has been acquired compulsorily or taken temporarily and then been left to lie unused for long periods of time and also where land has been severed and part of the severed land has become inaccessible. When that happens, weeds are allowed to grow and the condition of the land deteriorates. Excessive weed growth could have a deleterious effect on adjoining farmland, because the weeds will spread. It will also be more difficult for the land to be restored to a good productive agricultural state if it is to be handed back to the farmer.

Request

4.2 The Promoter should be required to ensure that the Nominated Undertaker and its contractors carry out weed control measures on farmland that has been acquired permanently or taken temporarily but is not being used for HS2 purposes. This should be carried out at an appropriate time of the year and on at least an annual basis, or the farmer (if they request) should be given a licence and allowed to do it. In the case of land that has been severed and is inaccessible, the Promoter should be required to use reasonable endeavours to make arrangements for weed control measures to take place, and in default of agreement, should fund the cost of doing so by the landowner. These measures should be secured by assurance.

PROMOTER'S RESPONSE:

1. The draft Code of Construction Practice (CoCP) provides that reasonable precautions will be taken in relation to the handling and storage of agricultural and forestry soils, including the following, as appropriate:

- the control of weeds on soil stores, either through treatment or removal;
- appropriate measures for the treatment/control of invasive, non-native species (both plants and animals) and injurious weeds will be implemented;
- appropriate construction, handling, treatment and disposal procedures will be implemented in relation to these and any other species listed in Schedule 9, Part I or Part II of Section 62 the Wildlife and Countryside Act 1981, as amended, or the Weeds Act 1959 to prevent the spread of such species. Advice in the Environment Agency's publication: Managing invasive non-native plants, April 2010, will also be referenced in determining the strategy;
- route-wide measures will be implemented to promote bio-security and minimise the risk that invasive non-native species and diseases are spread as a consequence of the project; and
- a programme of works will be implemented that will reflect the fact that it can take a number of years to eradicate invasive species such as Japanese knotweed.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 5.1-5.4

ISSUE RAISED: Prolonged occupation of farmland

PETITION PARAGRAPH: 5.1 On Phases 1 and 2A there have been a number of cases where farmland has been taken permanently or temporarily for one purpose, the purpose is met, and then HS2 Ltd remains in possession for long periods of time because it says it needs or might need to use the land again for another purpose, rather than handing it back to the farmer. In the meantime, the farmer could have used the land productively. This is another instance where expeditious detailed design would help to resolve the issue.

5.2 The temporary possession provisions of the Bill allow the Nominated Undertaker to remain in possession of land for as long as is required for the construction of the works, and then for a further maintenance period of up to one year after the works are completed. In total, this could amount to a considerable number of years.

Requests

5.3 Request 1: The Promoter should be required to ensure that the Nominated Undertaker or its contractor (including persons executing utility works) provides farmers with information (both before taking possession, and updated regularly during possession) about the precise reason for taking temporary possession, and the expected duration of the occupation of the land. The updates should set out the forecasted date of completion of the work for which temporary possession of the land was taken.

5.4 Request 2: When farmland has been taken for a purpose and the purpose has been met, and works are complete, the Promoter should be required to (i) inform the landowner that works are complete and (ii) explain the hand back process. The completion of the works will trigger the one-year period within

which the Nominated Undertaker must no longer remain in temporary possession of the land which was taken, as set out in the paragraph 4 of Schedule 15 to the Bill.

PROMOTER'S RESPONSE:

1. Schedule 15 of the Bill requires the Promoter to return the land to the owner 12 months after completion of the works and with the agreement of the owner and the Local planning authority to how it is to be restored which must be gained within six months of completion of the works. On that basis the Promoter does not believe that there is any uncertainty over the requirement to hand land back. Often land is needed for multiple requirements due to the length and complexity of the construction programme so the Promoter must have the ability and flexibility to carry out multiple elements of work on land and not be restricted to define a single element of work in relation to each requirement.

2. The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“5.4 The Promoter will require the nominated undertaker to use reasonable endeavours to keep affected agricultural/rural businesses informed of the progress of the Bill and of likely target dates for implementation of the Proposed Scheme.”

3. The Promoter considers that this commitment provides an appropriate basis for ongoing engagement with farmers during the construction works.

4. Section 2 of the Farmers and Growers Guide sets out the approach to communication and engagement with all farmers, landowners and rural business owners. Section 6.1.3 states

“HS2 Ltd will be in regular communication with farmers during the design and construction of the Western Leg and will seek to provide early and timely advice on the proposed timescales for the start and duration of works affecting the farm.”

5. Section 20 of the Farmers and Growers Guide explains the Agricultural Liaison Service. It states:

“On earlier phases of the project, HS2 Ltd agreed with the National Farmers Union and the Country Land and Business Association to establish an Agricultural Liaison Service providing individuals experienced in agricultural matters in place and contactable by telephone 24 hours a day, 7 days per week, during the construction of HS2 works on agricultural land. A similar approach to the taken for the Phase 2b Western Leg in due course. Further information about the service, including contact details, will be provided to farmers affected by the Phase 2b Western Leg

scheme following the appointment of the service following Royal Assent for the scheme.”

6. The Promoter needs certainty of delivery for the Scheme at the point it is deposited in Parliament. Land that is required temporarily will be handed back once the use of the land is no longer required. Having flexibility ensures the delivery of the best scheme possible. The promoter does not consider that the compulsory purchase powers sought in the Bill need any amendment.

7. Landowners are eligible to claim compensation under one of the Heads of Claim set out in Section 4 of the HS2 Phase 2b Information Paper C8: Compensation Code for Compulsory Purchase, depending upon the specifics of the individual case and the Compensation Code provides for the payment of fair compensation to an owner whose land is compulsorily purchased for public works.

8. Under paragraph 4 (5) or paragraph 7 (3) of Schedule 15 to the Bill, compensation is payable to the owner and/or occupier of land of which possession is taken under the powers given by schedule 15 for any loss which they may suffer by reason of the exercise of those powers in relation to their land.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 6.1-6.6

ISSUE RAISED: Prompt agreement and payment of compensation

PETITION PARAGRAPH: 6.1 The NFU petitioned on the issue of prompt payment of compensation on Phases 1 and 2A and received an assurance on both occasions. The assurance said that the Secretary of State will, in line with wider Government policies, require the Nominated Undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of agricultural land/rural businesses.

6.2 Unfortunately, this assurance about prompt payment does not deal with a different issue that has arisen on Phase 1 and Phase 2A, namely that HS2 Ltd has not been negotiating and agreeing compensation (including advance payments) promptly. When land is acquired compulsorily, advance payments of compensation are usually made to the landowner before agreement is reached on the final level of compensation, but the amount of the advanced payment is determined by the Promoter. Delay in agreeing these payments can lead to considerable cash flow difficulties for farmers and difficulties for farmers in securing replacement land. Also, farmers have found on Phase 1 that HS2 Ltd. has not provided any reasoning behind their offers of advance payments, where they have been made. This is despite the farmers being required to provide full evidence of their advance payment claims.

6.3 There is also an issue with the way in which payment is currently made. Under Phase 1, the farmer's solicitor simply receives notification (usually at the eleventh hour) that payment is forthcoming. When the payment is made, there is no explanation as to how it has been calculated or for which claim it relates to. This information is essential.

Requests

6.4 Request 1: once the Promoter has received a claim, the claimant should be provided with confirmation that the claim has been received within no more than 5 days. Moreover, where further evidence or information is required, that evidence or information, together with an explanation of the same, should be requested within 14 days of the claim being submitted. The NFU understands that the Promoter's agent (known as the "supplier") will, within 3 or 4 weeks of receiving the claim, prepare a report to the Promoter in respect of the claim. The NFU requests that the supplier should arrange a meeting with the claimant to discuss the claim before the supplier submits its report of the claim to the Promoter.

6.5 Request 2: The Promoter should be required to provide a reasonable explanation of how it valued any offer of an advance payment.

6.6 Request 3: Any payment must be accompanied by a breakdown of the payment and how it has been calculated, together with a cross-reference to the original claim.

PROMOTER'S RESPONSE:

Advanced Payments

1. Statutory provision for advanced payments is made by section 52 of the Land Compensation Act 1973 as amended by sections 194 and 195 of the Housing and Planning Act 2016 and section 38 of the Neighbourhood Planning Act 2017. Section 52, as amended, states that if requested and subject to sufficient information being made available by the claimant, the acquiring authority must make an advance payment on account of any compensation which is due for the acquisition of any interest in land.

2. The amount payable in advance is 90% of the agreed sum for the compensation or 90% of the acquiring authority's estimate of the compensation due, if the acquiring authority takes possession before compensation has been agreed.

Information provided by the Acquiring Authority to Claimants

3. The HS2 Phase 2b Western Leg Information Paper C8: Compensation code for compulsory purchase explains how claims for advanced payment should be made. The information paper states at 5.3 that:

"Claims for advance payment should be in writing, set out the nature of the interest held in land and be fully evidenced and justified. If insufficient information has been included, then HS2 Ltd can request additional information within 28 days of receiving the request. All applications for advanced payments need to be made

in writing on a claim form with all the relevant property ownership and other relevant details for consideration by HS2.”

4. Further information can be found within the Department for Levelling Up, Housing and Communities (DLUHC) and Scottish Government guidance, details of which are set out in the references of the Information Paper.

5. The DLUHC guidance provides details which acquiring authorities are expected to provide to claimants. These include providing claimants with information as to the kinds of evidence they may be expected to provide as a part of their claim. This guidance has been issued by HS2 Ltd on previous phases of the HS2 project where compulsory purchase powers have been granted.

6. The DLUHC guidance also states that acquiring authorities should encourage claimants to seek professional advice in relation to their compensation claim. HS2 Phase 2b Western Leg Information Paper C8 states

“It is important that claimants obtain the right professional advice from practitioners experienced in compulsory purchase and compensation. Further information can be found in HS2 Phase 2b Western Leg Information Paper C9: Recovery of costs by property owners.”

Sufficient information

7. The DHLUC guidance states:

“As the amount payable is 90% of the acquiring authority’s estimate of the compensation due, it is in the interests of claimants to provide early and full information to the authority to ensure that the estimate is as robust as possible.”

8. The Government has provided a model claim form setting out the information required for acquiring authorities to make a robust assessment of the claim.

Timing of advanced payments

9. Section 52(1) of the Land Compensation Act 1973 as amended by section 195 of the Housing and Planning Act 2016 allows a claim for an advance payment to be made and paid at any time after the compulsory acquisition has been authorised. However, an acquiring authority must make an advance payment within two months of receipt of the claim or any further information requested under subsection 52(2A)(b) or 52ZC(2), or the date the notice of entry was issued or general vesting declaration was executed, whichever is the later.

10. Experience suggests that it is often necessary to seek further information from claimants to allow a full assessment of the amount of an advanced payment to be made. Where appropriate, the nominated undertaker would encourage full engagement through the process of making a claim, including meetings between parties. The Promoter believes that there is no need for additional timescales or

deadlines to be applied to this process beyond those already provided by the relevant statutes.

Information relating to the payment

11. Where the claim is fully evidenced and particularised, the nominated undertaker would normally as a matter of best practice respond on each particularised element of the claim. Where a claim does not set out evidence or does not itemise the heads of claim which make up the overall claim amount, it may not be appropriate for the nominated undertaker to provide details of its assessment. This is to protect the nominated undertaker position in respect of elements of the claim assessment which are based in incomplete evidence and follows the principle that the onus is on the claimant to prove their loss.

12. Solicitors acting for HS2 Ltd on previous phases of the HS2 project where advanced payments are being made include a Deed of Receipt when making a payment. The Deed of Receipt includes details of the relevant compulsory purchase notice or notices that the payment relates to. This ensures that any payment is accompanied by an appropriate breakdown of the payment and confirmation of the original notice against which the claim has been made.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 7.1-7.2

ISSUE RAISED: Alternative Dispute Resolution ("ADR")

PETITION PARAGRAPH: 7.1 Where a farmer does not agree the amount of, say, the advanced payment or final claim proposed by HS2 Ltd. and wishes the matter to be determined by an expert under ADR, the farmer is disadvantaged by the fact there are no timescales for determination by ADR. On Phase 1, this has led to cases dragging on. Moreover, the number of experts available to determine the ADR is limited to those included on a list prepared by the Promoter, as described in paragraph 8.3 of HS2's document Alternative Dispute Resolution, Guidance for compulsory purchase claims ("the Guidance").

Request

7.2 The ADR process should be subject to reasonable time limits for each stage, for instance, the deadline by which the expert should be appointed. Moreover, in the usual way, the parties should either agree on the expert jointly, or if they are unable to do so, one of the parties should apply to, say, RICS, CAAV or the Law Society for an expert to be appointed. The practical effect of this would be to delete certain provisions from the Guidance, including paragraphs 8.3 and 8.4. In any event, no farmer should be prevented from proceeding to ADR if the farmer wishes to do so and the Guidance should be amended to reflect this.

PROMOTER'S RESPONSE:

1. If compensation for land and property has not been agreed, then either the Promoter or the Claimant can refer the case to the Upper Tribunal (Lands Chamber). The Upper Tribunal would decide the amount of compensation that the claimant would receive. The Promoter recognises that it can be costly to refer a case to the Upper Tribunal, due to the amount of evidence required, and it can take a long time for a decision to be made.

2. To help make quicker decisions and reduce costs, the Promoter may offer alternative dispute resolution (ADR) instead of referring cases to the Upper Tribunal to try to settle claims. HS2 Ltd has published the document “Alternative Dispute Resolution: Guidance for compulsory purchase claims” (the ADR Guidance).

3. The ADR Guidance sets out three forms of Alternative Dispute Resolution (ADR).

- Early Neutral Evaluation;
- Mediation; and
- Independent Expert Determination.

4. The number of cases proceeding to ADR has significantly increased over the course of the last 18 months, and the speed at which it has been implemented has increased as it has been used more widely.

5. The Petition states that “the number of experts available to determine the ADR is limited to those included on a list prepared by the Promoter”. This is a misinterpretation of the ADR Guidance. The Guidance explains in section 5 a procedure for considering experts suggested by the Claimant and a mechanism for using an independent third party to appoint an expert if the parties cannot reach agreement on this. This process has come out of discussions with the Petitioner.

6. If the Claimant does not want to proceed with the expert proposed by HS2 Ltd, the Guidance sets out that the Claimant can put forward their own suggestions for an appropriately qualified expert. In the vast majority of instances, HS2 Ltd have accepted the Claimant’s proposed Expert/Mediator. If a suitable party cannot be agreed between the parties, only then will HS2 Ltd agree that this should proceed to the RICS or CAAV to appoint a respective party.

7. The Promoter remains a strong advocate of ADR and acknowledges that it can be a more cost effective and quicker means of settling a dispute relative to cases proceeding to the Upper Tribunal (Lands Chamber) for determination.

8. The introductory text for the ADR Guidance states that prior to embarking on ADR meaningful negotiations between the parties should have taken place. This includes a need for sufficient information to have been exchanged to enable each party to understand each other’s positions, and that both parties should have sought to narrow the points that are in dispute. The steps in advance of ADR that the Promoter considers needs to be completed are based on the Compulsory Purchase Association’s Land Compensation Claims Protocol 2018.

9. Although usually considerably cheaper than going to court, ADR can often still be expensive for both parties. This is because of the costs associated with the preparation of evidence and the cost of the third party who is instructed to determine or to facilitate discussion concerning the dispute. As such HS2 Ltd consider that it is

reasonable for the above steps to be considered when considering each formal ADR Request.

10. In the Promoter's experience, there are a number of cases where claimants seek to initiate the ADR process before other channels of negotiation have been exhausted. The ADR Guidance sets out the Promoters commitment to ensure that once both parties have agreed that it is appropriate for a case to proceed to ADR, that parties are appointed promptly, and a proactive approach is adopted so that the full benefits of ADR can be realised.

11. Section 5 of the ADR Guidance includes indicative timescales. The guidance includes the following statement about the challenges with setting out precise timescales. It states:

"It is difficult to provide strict timescales for ADR as it depends on the flow of information between us and how we both conduct ourselves. You may want to choose ADR to speed up a decision on your case. We will deal with any requests for ADR as quickly as possible."

12. Table 2 in this section of guidance sets out a summary of the process and the timescales the nominated undertaker would work to once a method of ADR has been suggested. This indicates that the Nominated Undertaker would expect both parties to work towards confirming the form of ADR within two weeks of a request being accepted and to have made the appointment of an expert four weeks after that.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 8.1-8.5

ISSUE RAISED: Interest on Payments

PETITION PARAGRAPH: 8.1 The Acquisition of Land (Rate of Interest after Entry) Regulations 1995 ("the 1995 Regulations") specify the rate of interest that must be paid by an acquiring authority from the date of entry onto the land (which is the valuation date for compulsory purchase cases) until payment of compensation. This applies both in relation to advance payments and outstanding final payments of compensation. Currently the rate specified is 0.5% below the standard rate, which in turn is defined in broad terms as meaning the base rate. Since March 2009, this has meant that no interest has been payable when compensation amounts have been agreed or determined but not paid, removing any incentive for acquiring authorities to make payments to claimants promptly, particularly under current circumstances where property values are generally increasing at a higher rate.

8.2 The issue in relation to advanced payments was addressed in the government's consultation on further reform of the compulsory purchase system (March 2016). Paragraphs 43 and 44 set out their proposal, which is to introduce a penal interest rate of 8% above base rate. The consultation was followed up by the enactment of s196 of the Housing and Planning Act 2016, which enables the Treasury, by regulations, to set a rate of interest for outstanding advanced payments. So far, no rate has been set.

Requests

8.3 Request 1: The NFU proposes that the Bill should be amended so that the 1995 Regulations are disapplied in relation to compensation claims made in relation to the acquisition of land and interests in land under the Bill. Instead,

the NFU proposes that the Bill should specify that compensation payments will attract interest from the date of entry at a figure which is above the standard rate and that it should require that all payments of compensation due to claimants are made within 30 days of the amount being agreed or determined and that compound interest should apply to all overdue payments.

8.4 Request 2: The NFU suggests that this proposal of a rate of 8% should be taken up in respect of the Bill.

8.5 Request 3: The Bill should be amended so as to provide that interest should accrue on outstanding final payments of compensation, not just on advanced payments.

PROMOTER'S RESPONSE:

1. The Promoter considers that the arrangements for the payment of interest should follow the general law in force. The rate of interest to be paid by an acquiring authority is set out under the Acquisition of Land (Rate of Interest after Entry) Regulations 1995. The 1995 Regulations were amended by the Acquisition of Land (Rate of Interest after Entry) (Amendment) Regulations 2016 which sets the interest rate at zero subject to the base rate set by the Bank of England being less than 0.5%.

2. Consequently, there is no need for the Bill to provide for new regulations relating to interest payable as Section 32 of the Land Compensation Act 1961 already provides that the rate of interest be 'such rate as may from time to time be prescribed by regulation made by the Treasury'. The Promoter sees no case to treat landowners affected by compulsory purchase any differently from other landowners subject to compulsory purchase for other public schemes.

3. Any new regulations are to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. There is already provision in existing statute for new regulations to be made should policy demand. For the purpose of clarity, the Acquisition of Land (Rate of Interest After Entry) Regulations 1995 do not apply interest to 'Compensation amounts agreed but not paid' but to all compensation from valuation date up until the date of payment whether agreed or not.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 9.1-9.5

ISSUE RAISED: Disposal of Surplus Land Policy for farmland

PETITION PARAGRAPH: 9.1 The Promoter has published Information Paper C6 (Disposal of Surplus Land) which explains how landowners will be offered the opportunity to reacquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for the Proposed Scheme, where that land is not required for the operation of the Proposed Scheme.

9.2 In essence, the policy provides that the "Crichel Down" rules will apply in relation to the disposal of surplus land. This means that former owners will, as a general rule, be given first opportunity to repurchase the land at current market value, provided it has not materially changed in character since acquisition.

9.3 That means that if the land has increased in value in the interim, the previous owner has to pay the higher price. When the land is in an urban location, particularly if it is near a new station, this is understandable. But in the case of farmland, any increase in land value is very unlikely to be associated with the railway.

9.4 The reason for the NFU making a request this time for an adjustment to the land disposal policy again comes back to the way in which the Promoter has behaved on Phases 1 and 2A. If it is intent on acquiring significantly more land than it needs, then it should take some more responsibility for its actions.

Request

9.5 The Bill Promoter's Surplus Land Policy should be amended so that, in the case of farmland, where it is offered back as

surplus land, it should be the lower of (a) market value at the time of offer or (b) the agreed or determined market value when it was first acquired by the Promoter, together with interest.

PROMOTER'S RESPONSE:

1. HS2 Phase 2b Information Paper C3: Land Acquisition Policy outlines how landowners will be compensated for the acquisition of their land required for the construction and operation of the Proposed Scheme. Section 4 "Worksites and other temporary land requirements" explains:

"4.1 The Bill contains permanent acquisition powers to acquire the freehold interests in worksites due to the length of time they will be occupied.

4.2 Worksites are often formed from a number of different land parcels in different ownership and fall into two categories:

- Where the nature of the site or part of the site will not materially change, and no new railway works will be constructed on the site. These sites can often be returned to their original use. In these cases, if the landowner wishes, and it is practicable and economic for the nominated undertaker to do so, and at no greater burden to the public purse, they will normally be willing to discuss with the owner the temporary use of that land with each request considered on a case by case basis. When considering whether it is economic to do so, the Secretary of State may require the compensation for the temporary occupation of land to be agreed prior to exercising powers under the Bill as enacted; and
- Where the nature of the site will materially change (e.g. through demolition of existing buildings or construction of railway works on the site) or where land or property is planned to be developed, the freehold interest will be acquired.

4.3 In respect of land that is and will remain in long term agricultural or forestry use only, the Secretary of State will normally consider it economic to exercise temporary possession powers where practicable. There are some exceptions to this policy – for more details, see the Farmers and Growers Guide.

4.4 In considering the question of material change, the Secretary of State will apply the approach set out in the Crichel Down Rules.

4.5 Once it is no longer required for construction, worksite or other use, land that has been acquired for that purpose may be offered back to the original

owner in line with the Land Disposal Policy. Further details about this are contained in Information Paper C6: Disposal of surplus land.”

2. HS2 Phase 2b Western Leg Information Paper C6: Disposal of surplus land sets out how landowners will be offered the opportunity to re-acquire a beneficial interest in land that has been compulsorily purchased from them in order to carry out the works required for the Proposed Scheme, where that land is not required for the operation of the Proposed Scheme. Paragraph 4.1 and 4.2 state:

“4.1 Where any land has been acquired compulsorily for the construction of the Proposed Scheme and is no longer required for the satisfactory completion of the works, or not required in connection with the operation of the Proposed Scheme, it will be sold subject to the Crichel Down Rules.

4.2 The Crichel Down Rules have been developed for over half a century and have been endorsed by previous Governments”

3. HS2 Phase 2b Western Leg Information Paper C6 goes on to explain that the Crichel Down Rules are set out in the Department for Levelling Up, Housing and Communities Guidance on Compulsory Purchase Process and The Crichel Down Rules. The basic principle behind the Crichel Down Rules is that where Government wishes to dispose of land to which the Crichel Down Rules apply former owners will, as a general rule, be given first opportunity to repurchase the land at current market value, provided it has not materially changed in character since acquisition.

4. The Promoter sees no reason to depart further from these well established Rules which apply equally to other land acquired by other public bodies for other public projects which impact on agricultural land. There is no justification for placing former landowners affected by the Proposed Scheme in an advantageous position in comparison to landowners whose land has been acquired compulsorily for other public works schemes.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 10.1-10.4

ISSUE RAISED: Use of Roads (clause 14)

PETITION PARAGRAPH: 10.1 The NFU secured assurances on Phase 1 and Phase 2A about the use of the equivalent of clause 14 of the Bill. The assurances provided that the Nominated Undertaker will engage with the owner and occupier of the land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill, the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.

10.2 Unfortunately, an issue has arisen on Phase 1 and Phase 2A which is not addressed by that assurance. In some cases, HS2 Ltd.'s use of private farm roads has meant that the farmer has been unable to use the road themselves when they need to, or if so, with considerable difficulty.

Requests

10.3 Request 1: The Bill should be amended or the Promoter should be required to provide a further assurance to the effect that where a private farm road is to be used by the Nominated Undertaker then due regard must be had to the requirements of the farmer to use the road and that the farmer's reasonable use of the road should not be impeded. If it is impeded, even temporarily, a further access must be provided.

10.4 Request 2: Connected with this, any main drive or access to the holding should remain within the land ownership of the farmer, whether it is an existing or new drive / access, and HS2 Ltd. should only be able to acquire rights in respect of it. The NFU seeks an assurance that an undertaking in these terms will be given to a landowner who requests this.

PROMOTER'S RESPONSE:

1. Vehicle access to property and land will be maintained where reasonably practicable. However, there may be works which cannot be undertaken without hindering or preventing access to particular land or premises. The Promoter would require the nominated undertaker to ensure that liaison takes place with the occupiers of premises whose access is liable to be particularly affected by the Proposed Scheme. Reasonable notice will be given of planned alterations to access.
2. This is explained further in HS2 Phase 2b Western Leg Information Paper D10: Maintaining access to residential and commercial property during construction and HS2 Phase 2b Western Leg Information Paper D3: Code of Construction Practice.
3. The Promoter is not able to accept the request in the terms set out in petition paragraph 10.4. In appropriate cases it may be possible to offer easements to affected landowners subject to specific circumstances.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 11.1-11.7

ISSUE RAISED: Access Licence

PETITION PARAGRAPH: 11.1 After HS2 Ltd. has taken possession of a farmer's land which could include an access route, following service of a GVD, HS2 Ltd. are granting an Access Licence to the farmer. The purpose of the Access Licence is to enable the farmer to continue using the access route. The Access Licence includes three provisions which concern the NFU, namely –

11.2 First, the Access Licence provides that it can be brought to an end by the Secretary of State giving “not less than [seven days] [24 hours] written notice; or on immediate notice in the event of the Licensee ... breaching any of [its] obligations and conditions”.

11.3 Second, the Access Licence allows the Secretary of State to close and / or vary the route capacity or specification of the Access Route at any time at its discretion.

11.4 Third, the farmer must provide HS2 Ltd. with an uncapped indemnity “against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from: [the] licence; Any breach of the Licensee's obligations in [the] licence; and/or the exercise of the rights granted in [the] licence”.

Requests

11.5 First, the references to the Secretary of State being able to terminate the Access Licence on giving 24 hours' notice or immediate notice should be removed from the licence as these are unreasonable provisions. In any event, it should be a condition of termination (whether under the “no less than seven days” provision, or otherwise) that termination can only

take place where a temporary access, which is equally suitable to the farmer's needs as the original access, is provided in its place.

11.6 Second, the Secretary of State's power to close or vary the route should be conditional on the Secretary of State providing a replacement route, which is equally suitable to the farmer's needs, in place of the original access. (The exercise of this power without the requested condition would prove particularly problematic for a farmer if exercised at particularly sensitive times of the year, for instance during harvest). If the condition is not included, the Secretary of State's power to close or vary in the circumstances described should be removed from the Access Licence.

11.7 Third, the uncapped indemnity is unreasonable (it would not be possible for a farmer to secure insurance in respect of it) and should be removed from the Access Licence.

Alternatively, it should be amended to refer to a capped figure which HS2 Ltd. must first agree with the NFU.

PROMOTER'S RESPONSE:

1. The HS2 Phase 2b Guide for Farmers and Growers states:

"9.1.12 During construction, the nominated undertaker will maintain access to the rural landowner's land under controlled conditions where necessary and reasonably practicable, and without prejudice right to claim disturbance compensation. Similarly, access across or around construction works for livestock and machinery will be provided under controlled conditions where necessary and reasonably practicable, and without prejudice to the rights to disturbance compensation under the compensation code."

2. The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says at 11.5:

"During construction, the nominated undertaker will maintain access to the rural landowner's land where reasonably practicable and where necessary under controlled conditions, without prejudice to the landowner's rights to maintain disturbance compensation."

3. The controlled conditions referred to in this commitment may relate to the safety of farmer, their livestock, the contractors working on site or members of the public in addition to considerations around cost and programme. In order to maintain safe working in proximity to HS2 works it is reasonable and necessary for the nominated undertaker to maintain the ability to bring the access licence to an end at short notice or to vary the access route offered.

4. The access licence would grant the former owner of the land a right to enter onto a construction site for the proposed scheme. The indemnity in the licence states:

“The Licensee shall indemnify the Secretary of State and keep them indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:

- This licence;
- Any breach of the Licensee’s obligations in this licence; and/or
- The exercise of the rights granted in this licence.”

5. Such indemnities are consistent with responsible estate management and something any reasonable and well-informed landowner would include in a licence of this type. It is reasonable for individuals to be responsible for their actions as well as those of persons who have express or implied authority to exercise those rights on their behalf and control their potential liability under the terms of the licence by complying with the provisions of the licence. It would be impractical to assess the potential risk in cost terms of a breach of the Licensee’s obligations in the licence or the losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from such a breach. For that reason, it is reasonable to require an uncapped liability.

6. If a former owner or occupier of land suffers losses as a result of being unable to access land possessed for the purposes of the Proposed Scheme, the landowner would be able to make a claim for disturbance compensation, which would be assessed in accordance with the compensation code. This is further explained in the HS2 Phase 2b Western Leg Information Paper C8: Compensation code for compulsory purchase.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 12.1-12.4

ISSUE RAISED: Compulsory Acquisition and Temporary Possession Powers: Notice Periods

PETITION PARAGRAPH: 12.1 Under paragraph 4(1) of Schedule 15 to the Bill, the Nominated Undertaker is required to give only 28 days' notice to the landowner before entering the land and taking possession. A period of 3 months is required to be given for permanent acquisition. The period of 28 days' notice is inadequate, particularly given the need for farmers to be able to make plans for the use of their land a long time in advance.

12.2 The NFU secured an assurance on the Phase 2A Bill which requires a period of 3 months' notice of temporary possession to be given in relation to farmland, plus an additional notification of 3 months in advance of the beginning of the quarter of the year in which the powers are to be exercised.

Requests

12.3 Request 1: Paragraph 4(1) of Schedule 15 should be amended to provide for a notice period of at least 3 months before the powers of temporary possession are exercised. This would bring the provisions into line with the assurance given to the NFU in respect of Phase 2A and with section 20 of the Neighbourhood Planning Act 2017, which although not yet in force at the time of writing this petition is a clear recent national precedent which the NFU sees no reason for dispensing with for HS2.

12.4 Request 2: The Promoter should be required to give, in relation to both permanent acquisition and temporary possession, similar assurances about notification of the quarter in which the powers will be exercised. There are also some changes to the drafting of the assurance which are needed as a result of practical experience on Phase 2A. In

particular, there should be a requirement for the notification to be given in writing in a standard form.

PROMOTER'S RESPONSE:

1. The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

"6.1 The Bill provides for a minimum of three months' notice of entry to be given where land is to be acquired outright. A longer notice period will be provided where reasonably practicable.

6.2 Notwithstanding the requirements under the Bill to give 28 days' notice of entry under Part 1 of Schedule 15 of the Bill in relation to the temporary occupation of land the nominated undertaker will use reasonable endeavours in all cases to provide a minimum of three month's written notice, and furthermore in advance of any formal notification required under the Bill, to notify an agricultural or rural landowner in writing of the expected quarter of the calendar year in which the land is planned to be occupied temporarily under the Bill.

6.3 The nominated undertaker will seek to be in regular communication with landowners during the construction of the Proposed Scheme and will seek to provide advice on the proposed timescale for the start and duration of works affecting their properties."

2. This commitment contained within HS2 Phase 2b Western Leg Information Paper C2 replicates the commitment given to the Petitioner on a previous phase of the project.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 13.1-13.5

ISSUE RAISED: Extent of Land-Take for Mitigation

PETITION PARAGRAPH: 13.1 The Promoter needs to be open about where it intends to locate areas of mitigation. The NFU does not dispute the principle of providing replacement land for habitat and woodland being taken as a result of the construction of the works. The NFU understands that HS2 Ltd.'s aim is that the location, size and form of the compensatory habitat creation areas will adhere to the Lawton report principles "of "bigger, better, and more joined"up". To illustrate the NFU's concern, the ES Non-technical summary says at paragraph 9.5: "Approximately 87ha of habitats of principal importance will be lost overall, including up to 53.5ha of semi-natural broad-leaved woodland. Where reasonably practicable, ecological compensation areas will be created to provide habitats of principal importance. A total of approximately 240ha of habitats of principal importance will be created." This demonstrates how HS2 Ltd aims to create nearly three times the area of habitat compared to the area lost. This will be done at the expense of agricultural land and businesses. The NFU agrees with the principle of 'no net loss' and is unconvinced that larger areas of mitigation equate to better mitigation. As far as the NFU is concerned, the quality of the material being planted, and the way it will be managed, is more important than the surface area of the replacement land.

13.2 In addition, the NFU is concerned by the way in which habitat losses and gains will be measured using a modified version of the Defra biodiversity offsetting metric. In particular the NFU believes that compensatory mitigation planting and other ecological mitigation must be implemented in the right areas on the right type of land in order to maximise successful outcomes. The NFU considers further clarification must be given as to (i) why the 240ha of habitats of principle importance is the correct area to be created and (ii) why

any area of a landowner's holding has been chosen for the provision of replacement land for habitat mitigation.

13.3 The NFU is also concerned that significant areas which have been earmarked for habitat creation and tree planting will be taking some of the best and most versatile (BMV) land out of agricultural production. The NFU considers this to be unacceptable, given the amount of agricultural land already being lost to the scheme. It makes no sense to compensate for the loss of habitat and woodland by acquiring even more agricultural land.

13.4 The NFU would also stress that where the construction works result in fields being left in awkward shapes, it should not follow that those fields are chosen automatically for mitigation habitat. Good quality agricultural land, regardless of the awkwardness of its shape, should be retained as such. After all, it is possible that the awkwardly-shaped fields could be incorporated into other fields owned by farmer and could continue to be farmed.

Request

13.5 The NFU considers that the Promoter should be required:

- to publish a metric which sets out with certainty how the Nominated Undertaker will assess the amount and type of mitigation that will be required to meet its aims, and be able to explain to a landowner why any part of their land has been chosen for the provision of habitat mitigation;
- to notify farmers whether land is required for ecological meeting on the one hand or BNG on the other so that an appropriate term for any maintenance agreement can be agreed. As mentioned earlier in the petition, the NFU considers that BNG obligations should extend no longer than 30 years;
- to set the target for biodiversity gain at no more than 10% for the project, given the amount of farmland that is to be lost as a result of the Bill;
- to ensure that any additional farm land outside the Bill limits required to meet the biodiversity gain target is only acquired by agreement.

PROMOTER'S RESPONSE:

Loss of land

1. Agriculture is the most common land use crossed by the Proposed Scheme, and the loss of agricultural land is inevitable in the construction of a new railway. The Promoter aims to design a high speed railway that meets modern standards of design that would include earthworks, landscape planting and habitat creation, to reduce impacts on the environment and protect communities.

2. In those cases where agricultural land disturbed by the Proposed Scheme is not required to be retained permanently by the Secretary of State, it will be restored to an agricultural use, but in some cases the design of the Proposed Scheme necessarily involves the conversion of land from agriculture; not only for the construction of the railway, but also for landscape planting and habitat creation to make it environmentally acceptable.

3. The aim is to make the most sustainable use of agricultural land disturbed during the construction of the Proposed Scheme, seeking to limit disturbance to agricultural holdings, providing access to land for farm management, and using severed areas of land for ecological mitigation and tree planting, where appropriate and reasonably practicable.

4. In selecting the proposed route, the design of the Proposed Scheme has sought to avoid best and most versatile (BMV) agricultural land, balanced against a number of other environmental and engineering considerations.

Impact assessment

5. The Promoter has undertaken extensive investigation of the effects of the Proposed Scheme on farms, estates and rural businesses, through a programme of farm and business impact assessments, environmental surveys (including soils and Agricultural Land Classification) and direct discussions with farmers and landowners along the route of the Proposed Scheme, including the effects and the possible mitigation options arising from land severance.

6. The approach adopted to assessing the impacts on agriculture, forestry and soils in the Environmental Statement (ES) is derived from national policy and accords with the advice given in good practice guides for the preparation of Environmental Impact Assessments (EIA). It has been a long-standing feature of national policy to seek to safeguard higher quality (BMV) agricultural land by directing development to areas of lower quality land, wherever possible.

7. The method employed to determine the quality of agricultural land that would be affected by Proposed Scheme relies on the well-established Agricultural Land Classification (ALC) guidance and criteria which grade agricultural land between Grades 1 and 5, depending on the extent and severity of limitations to agricultural use. BMV agricultural land comprises Grades 1, 2 and 3a.

8. The ALC survey undertaken for the Proposed Scheme determines the agricultural land quality of the land within the construction boundary on the basis of existing geology, soil, topographic and agro-climatic information, using the results of existing

soil and ALC surveys and targeted detailed ALC surveys undertaken for the project. This approach to classifying the agricultural land affected has been agreed with Defra and Natural England and was set out in the Environmental Impact Assessment Scope and Methodology Report, Volume 5 of the ES.

9. Environmental impacts are also controlled through the planning regime established under Schedule 17 to the Bill. Schedule 17 includes conditions requiring various matters to be subject to the approval of the relevant planning authority. Schedule 17 allows relevant planning authorities to refuse to approve or condition the approval of plans and specifications. This is explained in HS2 Phase 2b Western Leg Information Paper B2: Main Provisions of the Planning Regime.

10. HS2 intends to publish its Biodiversity Action Plan this autumn which will set out its strategy of how it will seek to deliver a 10% biodiversity and meet its policy objective for P2b. The strategy will include a process of identifying and delivering measurable gains in biodiversity in addition to areas of habitat creation already proposed within the Bill.

11. A variety of mechanisms are envisaged to realise biodiversity gain that will include:

- biodiversity gains within Bill (Act) limits (onsite): this will include refining the land take required for construction and protecting habitat within the construction boundary to further reduce biodiversity losses, as well as developing additional areas of habitat creation to those already described in the Environmental Statement where it is reasonable and practicable to do so;
- biodiversity gains outside Bill (Act) limits (offsite): delivering biodiversity gains away from where the effects have occurred, with a focus on delivering biodiversity gains within the same or adjacent local authorities. It is intended to secure this measure in partnership with other organisations, landowners, or relevant authorities and through the estate acquired for HS2; and
- purchase biodiversity units from the emerging commercial market (offsite): purchasing biodiversity units away from where ecological impacts occurred, with a focus on purchasing biodiversity units within the same or adjacent local authorities.

12. Following the publication of the Biodiversity Action Plan, the Promoter will engage with relevant stakeholders, including the NFU, on its contents and explore opportunities for partnership working to contribute to delivering the BAPs ambitions.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 14.1-14.5

ISSUE RAISED: Rights of Entry for Further High Speed Railway Works and Exercise of Rights of Entry

PETITION PARAGRAPH: 14.1 Section 54 of the High Speed Rail (London – West Midlands) Act 2017 enables an authorised person to enter land, in connection with a Bill or proposed Bill authorising a high speed rail line, for the purpose of conducting surveys or facilitating compliance with EU protection legislation. It therefore applies in relation to the Phase 2A proposals, alongside the powers in the Bill itself, in paragraph 1 of Schedule 2.

14.2 The NFU is aware that in exercising its rights to enter land for the purposes of taking surveys, in relation to Phase 1 and Phase 2A, difficulties have arisen because of the form of notice used and the lack of liaison with landowners in advance. In particular, the form of notice does not specify what type of survey is to take place. A long list of possible types of survey is attached to a schedule and the landowner is told any of them might happen. Some are simply inspections of the land, (i.e. a walkover the land) but others are more substantial works, such as ground investigation works, like borehole drilling or digging trenches. Further, agents are receiving multiple emails at a time naming clients where surveys will take place but with no detail of the proposed works. This is unacceptable. Also, with lack of liaison, the powers can be exercised at inappropriate times, for example during harvesting.

Requests

14.3 Request 1: When the post-notice email is served on the landowner/agent, it must include more information than it does currently, including confirming the type of survey or surveys to be carried out, identifying the actual field(s) where any survey will be carried out, the date(s) of the proposed

survey(s), and the notice must be accompanied by a plan of the affected field(s). Notice numbers should be identified.

14.4 Request 2: That the Nominated Undertaker be required to comply with the provisions of section 174 of the Housing and Planning Act 2016 in respect of notices served under section 54 of the High Speed Rail (London-West Midlands) Act 2017 and that an assurance is given that discussions take place in advance with farmers to ensure that surveys are not carried out at inappropriate times.

14.5 Request 3: any contractor accessing a farmer's land must attend with a copy of the relevant notice and (as importantly) correct identification. There have been, regrettably, instances of individuals with no connection to HS2 Ltd. seeking to gain access to farmer's properties, particularly areas where valuable equipment is stored.

PROMOTER'S RESPONSE:

1. This objection relates to the High Speed Rail (London to West Midlands) Act 2017 and is not therefore a matter for the Select Committee.

2. However, as HS2 Phase 2b Western Leg Information Paper C13; Site Access for Surveys sets out, at each stage of the planning, design and implementation of the Proposed Scheme, the Promoter and its agents, contractors and representatives require access to private land to undertake surveys and investigations for a variety of purposes, including but not limited to:

- environmental, wildlife and other surveys to support the preparation of Environmental Statements and information to support the preparation of hybrid Bills; and,
- farm impact and business impact assessments for the hybrid Bill(s); geological investigations and intrusive site investigations (involving boreholes and trial pits) to inform detailed design and engineering; and archaeological and other site investigation.

3. The Promoter is happy to continue to consult the Petitioner on the survey programme and operation of the licence scheme, as it already does through regular liaison meetings. HS2 will generally look to accommodate farmers requests on timing, however there will be programme and seasonality constraints on the survey programme that will continue to necessitate access for survey at times that may not be the most convenient.

4. Access licences for surveys are offered prior to gaining Royal Assent of the Bill. If a licence is not entered into, the provisions of the Housing and Planning Act 2016 can be

used to gain access for surveys. The Bill has provisions for service of notice to gain access for surveys under Schedule 2 of the Bill.

5. HS2 Ltd's contractors carrying out surveys under notice have a process to send a letter to the landowner which details what type of survey they are planning on carrying out on the land. In that letter Contact details of the contractor are provided if the landowner wishes to seek further information. A phone call is made to the landowner prior to attending site.

6. HS2 Ltd survey contractors attend site with a standard Letter of Authority. This letter is used by contractors as an effective means of identify themselves when gaining access to the land. This access would only be taken following service of a notice under the survey powers granted by Schedule 2 of the relevant Bill.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 15.1-15.2

ISSUE RAISED: Earthworks

PETITION PARAGRAPH: 15.1 There will be significant lengths of bund, made-up ground, depositing of spoil and ground reprofiling alongside the proposed railway, much of it on good quality agricultural land. The NFU is concerned about the long term responsibility for safety of earthworks on farmland.

Request

15.2 The NFU requests that the Promoter be required to give an assurance that the Nominated Undertaker will:

- remain responsible for the safety and structure of all bunds, landscape earthworks including embankments and sustainable placement areas; and
- be responsible for the liability for any losses associated with the failure of any type of earthworks.

PROMOTER'S RESPONSE:

1. HS2 Phase 2b Western Leg Information Paper E20; Maintenance of Landscaped Areas, sets out how the landscape areas created along the Proposed Scheme will be maintained. Paragraph 3.5 states that after an initial period of maintenance, the nominated undertaker would seek to return the majority of land to previous landowners or other interested parties (such as local wildlife trusts, woodland trust, local authorities), where agreement can be reached that will ensure the continued objectives of the landscaping are maintained into the future.

2. The HS2 Phase 2b Guide for Farmers and Growers includes in Part 3, paragraph 22 a number of Scenarios for the potential use of temporary occupation powers rather than power of compulsory purchase. Paragraph 22.1 provides guidance on how the Promoter would consider exercising powers of temporary occupation and how it would engage with affected farmers/rural landowners and occupiers:

"In all cases an agreement between the Promoter, owners and occupiers of land will be required which reflects design information available at that point in time in

contemplation of the exercise of powers of acquisition under the Bill to construct the Phase 2b Western Leg and shall be subject to the conditions set out in paragraph 5 above. Moreover, the absence of concluding an agreement in any of the scenarios set out below shall not prejudice the ability of the Promoter to exercise powers of compulsory acquisition of the Bill as required by the Promoter for the purposes of the Phase 2b Western Leg.”

3. Paragraph 22.5 of the Guide says:

“22.5 Where land is required only temporarily for construction purposes but will be materially changed by construction of the Phase 2b Western Leg, but that change does not require maintenance for HS2 purposes: The exercise of Schedule 15 powers rather than powers of permanent acquisition would be dependent upon the landowner entering into an agreement with the Promoter prior to the intended date of exercise by the Promoter of powers of acquisition under the Bill on terms satisfactory to the Promoter which provides that the land need not be restored to its former condition following completion of construction activity.”

4. Please see the Promoter’s response to Petition paragraph 25.1-25.5 and 26.1-26.2 below, which contains further details about this conditional policy statement.

5. The Nominated Undertaker will remain responsible for the safety and structure of all bunds, landscape earthworks including embankments and sustainable placement areas on land owned by the Secretary of State, as required by law.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 16.1-16.5

ISSUE RAISED: Planning Consent for Replacement Buildings and Associated Dwellings

PETITION PARAGRAPH: 16.1 The construction of the Authorised Works will necessitate the demolition of agricultural buildings, including farm buildings, together with associated dwellings. Where the core farm business will survive, the farmer is likely to want to replace those buildings and the dwellings associated with them. In most cases this will require a full planning application. The uncertainty over whether an application will be approved and the time delays that can arise if a case goes to appeal can be extremely difficult and stressful for a business to manage. This is particularly acute where (as is often the case) the replacement building is to be located in protected land, such as the green belt.

16.2 As a result of concerns raised by the Select Committee of the House of Commons on the Bill for Phase 1, the then Minister for Planning wrote to Local Planning Authorities about this issue and the Promoter has provided assurances to the NFU which go some way to meeting its concerns. But there are matters of detail in respect of those assurances which remain outstanding.

Requests

16.3 Request 1: The NFU asks that the assurance given on this subject by the Promoter of the Phase 1 and Phase 2A Bills (assuming it is replicated in relation to Phase 2B) be altered so that it provides that the Nominated Undertaker would provide a statement in support of a planning application in cases where this issue applies, and that the Nominated Undertaker would respond promptly to any reasonable request by a farmer about the scope and likely amount of compensation that would be payable in the event that the farmer is displaced.

16.4 Request 2: That the Promoter be required to write a letter to all planning authorities along the route in which farmland is situated, requesting them to be sympathetic to farmers in these situations. A letter of this nature was sent on Phase 1 and Phase 2A.

16.5 Request 3: The NFU seeks a recommendation from the Select Committee that the Department for Levelling Up, Housing and Communities should provide further guidance to Local Planning Authorities on the subject of planning conditions:

- ensuring replacement of existing dwellings will be permitted;
- discouraging an agricultural tie on replacement premises where none exists on the current premises;
- ensuring that conditions should only relate to design, materials used and access.

PROMOTER'S RESPONSE:

1. The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“3. Relocation of farm buildings and facilities

3.1.1 The Promoter acknowledges that in some cases, it may be necessary for farmers to relocate or re-provide agricultural buildings displaced by the Western Leg works and that these buildings may need to be relocated or re-provided before the original facility is lost. Where such a need arises, HS2 Ltd will provide appropriate assistance, including the provision of a statement of impact and timing, where the replacement facility needs to be provided pursuant to a deemed planning consent under the Town and Country Planning (General Permitted Development) (England) Order 2015, or a separate application for planning consent.

3.1.2 Where a farmer can demonstrate that a planning consent referred to in paragraph 3.1.1 to relocate an agricultural building is unlikely to be obtained the Secretary of State will consider a request from the farmer to exercise the powers of clause 47 of the Bill. The Secretary of State will consider the request in accordance with the policy relating to the reinstatement of undertakings set out in section 7 of HS2 Information Paper C7, Business Relocation.

3.1.3 In paragraph 3.1.1 an agricultural building includes a residential building occupied as part of an agricultural unit and a statement of impact and timing means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural building(s) in question and the timescales in which those impacts are intended to be implemented.

3.1.4 Under clause 47 of the Bill, the nominated undertaker has the power to reinstate (either on its existing site or on different land within the Bill limits) the whole or part of an undertaking where the Secretary of State judges the public interest demands such reinstatement. Recognising the public interest in mitigating the impacts of the Phase 2b Western Leg on agricultural businesses along the route, the Secretary of State accepts that the criteria for reinstatement under this power may be satisfied in relation to the replacement of facilities which are critical to the operation of an agricultural business.

3.1.5 The Secretary of State acknowledges that proper professional costs and fees reasonably incurred by a farmer in seeking to identify suitable alternative premises at which to relocate an agricultural building under paragraph 3.1,1 above and which is subject to the exercise of the power of compulsory acquisition under the Bill, may properly form the basis of a Head of Claim as part of any disturbance claim arising from the acquisition of that land under the Bill.”

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 17.1-17.2

ISSUE RAISED: Utilities and Conduits

PETITION PARAGRAPH: 17.1 The NFU believes that it is essential that farmers are able to install utilities such as cables and pipes under the railway if land in their ownership is severed by the railway. This can be achieved by the construction of culverts underneath the railway by providing them at regular intervals along the route as part of the construction, in order to provide future proofing and to help ensure that connectivity (particularly high speed broadband for rural communities) is not stifled by the scheme. Furthermore, any HS2 infrastructure, such as bridges or culverts, that provides a connection between areas of severed farmland should be made available for the use of farmers, subject to safety and operational requirements, without any premium or ransom payment having to be made by the farmer.

Request

17.2 The NFU requests that the Promoter be required to give the following assurances:

- conduits will be provided at regular intervals under the railway line as it passes through agricultural land (say every 300m) to take cabling or other utilities across the railway both now and in the future;
- after construction, if a farmer makes a reasonable request for the use of an existing culvert, conduit or bridge or to construct a new one, then such use or construction should be permitted (payment by the farmer being limited to the actual cost of the works and additional maintenance).

PROMOTER'S RESPONSE:

Private utilities

1. Where an existing private utility is severed by the proposed scheme, the nominated undertaker would be required to address the impact either through accommodation works or by way of compensation for losses that arise as a result of the severance.

2. As set out in Phase 2b Western Leg Information Paper C3: Land acquisition policy;

“The Bill generally includes full land acquisition powers”. Information paper Phase 2b Western Leg Information Paper C8: Compensation code for compulsory purchase explains that “The Compensation Code is applied by the Bill to compulsory purchase of land required for the Proposed Scheme. The principal purpose of the Compensation Code is to provide for the payment of fair compensation to a landowner whose land is compulsorily purchased for public works.”

3. This means that the landowner would receive, among other heads of claim, compensation for the value of the land, any disturbance suffered as a result of the acquisition and, where appropriate, compensation for the loss of value of any retained land as a result of the acquisition. The Promoter believes there is no need for any further commitments to provide rights over land that has been acquired under the compensation code in this way.

4. The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“8.1.1 Where land is to be acquired or temporarily occupied for the construction of the Phase 2b Western Leg, it is likely that some form of accommodation works will be provided to allow the continuation of the activities adjacent to the railway. This may include the provision of new or altered accesses to or around farms, fencing, land drainage, the re-provision of built facilities and the provision of services. Appropriate accommodation works will be discussed on a case-by-case basis and in a timely manner.

8.1.2 The provision of permanent accommodation works will depend on the individual circumstances of the holding and usually be developed as the detailed design of the Phase 2b Western Leg is undertaken. Accommodation works are taken to include accommodation bridges and other access arrangements and will have regard to the Page 11 commercial justification by the landowner, such as the value, use and location of the lands concerned.

8.1.3 The structures of accommodation bridges, underpasses, culverts or sleeves over or under HS2 will be maintained by HS2 Ltd. The maintenance of access way surfaces or services within will need to be determined on a case-by-case basis. The farmer will normally be responsible for any surface over which they will have exclusive use.

8.1.4 HS2 Ltd will discuss with each landowner the provision and timing of accommodation works as part of the compensation package.”

5. Structures that cross over or under the proposed railway introduce complexity and risk for both construction and operation and are likely to add cost for long term maintenance. The design of the Proposed Scheme seeks to minimise the number of these crossing structures. The Promoter would be prepared to consider accommodating private utilities through existing crossing structures, on a case-by-case basis.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 18.1-18.2

ISSUE RAISED: Severance and Hedgerows

PETITION PARAGRAPH: 18.1 The severance of agricultural land by such a long linear scheme will result in some fields being left in awkward shapes. A common element of a claim for severance is the cost of removing hedges and fences in order to re-shape fields into a sensible layout. Since the introduction of the Hedgerows Regulations 1997, the removal of any hedge which is more than 20 metres long requires the consent of the Local Planning Authority. This will add time, cost and uncertainty for farmers who are affected.

Request

18.2 The Bill should be amended by the addition of the following clause:

"Hedgerows

(1) The Hedgerows Regulations 1997 are amended as follows.

(2) After regulation 6(1)(h) insert—

"(ha) for rationalising field layouts where fields are severed by works constructed

under the High Speed Rail (Crewe - Manchester) Act 2023;"

PROMOTER'S RESPONSE:

1. The Promoter does not accept that the Bill should be amended as proposed by the Petitioner in paragraph 18.2. Regarding the important hedgerows that fall within Bill limits, the Hedgerow Regulations 1997 do not apply (because under clause 18 the Bill grants planning permission).

2. However, in respect of the hedgerows that fall outside Bill limits, the responsibility is subject to the appropriate regulatory authorities under the Hedgerow Regulations 1997.

3. Local authorities would, therefore, still be required to approve plans relating to hedgerows falling under these regulations. As HS2 Phase 2b Information Paper C2:

Rural Landowners and Occupiers Guide sets out, the Promoter recognises that good communication will assist all parties during the construction of the Proposed Scheme. The nominated undertaker would therefore take reasonable steps to liaise with affected landowners, occupiers and agents, as appropriate, as well as with local authorities under the Code of Construction Practice.

4. It is accepted that the construction and operation of HS2 would cause disruption to agricultural holdings. HS2 has employed consultants to assist in understanding how holdings operate and how they will be affected by the construction and wherever possible the location of mitigation proposals has sought to minimise the effect on agricultural businesses. New access tracks and bridges/underpasses have been provided, where justified.

5. Where the acquisition of small parcels of severed land has been considered expedient essential for the mitigation of the scheme that acquisition has been proposed as part of the compulsory acquisition of land.

6. Where a landowner has been disadvantaged by the project, they would be entitled to compensation, as set out in Section 4 of HS2 Phase 2B Information Paper C8: Compensation Code for Compulsory Purchase, depending upon the specifics of the individual case.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 19.1-19.3

ISSUE RAISED: Interruption of Water Supplies

PETITION PARAGRAPH: 19.1 The impact on water supplies, on which many of the NFU's members rely, should be considered and mitigated. The NFU submits that it is essential that the potential impact on the water supply for livestock farms and irrigation systems is properly assessed and suitable mitigation is provided. The Promoter has provided assurances to the NFU on this subject, and again, the NFU is concerned that they need to be strengthened.

Requests

19.2 That the assurances given to the NFU in respect of Phases 1 and 2A should apply to Phase 2B but modified so as to provide that if a farmer makes a reasonable request to the Nominated Undertaker for an alternative water supply, then it should be provided within 12 hours of notification by the farmer and until the issue that gave rise to the request has been remedied.

19.3 That the assurances be modified so that they apply to public water supplies as well as private water supplies, with appropriate modifications.

PROMOTER'S RESPONSE:

1. As set out in Section 8 of HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide, where private utilities for a holding are affected by proposed works, alternative supplies would be provided where practicable.
2. Where the public utilities for a holding are affected by the proposed works, except when agreed otherwise, alternative supplies will be installed before the existing supply is disconnected. Further information can be found in HS2 Phase 2b Western Leg Information Paper D8: Maintenance of public utilities.

3. The Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says at 10.1:

“Where an existing private water supply to a farm is adversely and directly, affected by the construction of the Proposed Works, the nominated undertaker will, if requested by the farmer or landowner to do so, provide or procure or meet the reasonable cost of the provision of an alternative supply of water where reasonably practicable to do so and if there is no other practicable alternative means of supply available.”

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 20.1-20.2

ISSUE RAISED: Accommodation Crossings

PETITION PARAGRAPH: 20.1 A large number of farms will be severed by the construction of the proposed railway line. Crossing points to provide access to severed land are essential and the loss of even small areas of land to some farm businesses could lead to the business not being viable. Accommodation crossings should be future proofed at the design stage so that they will be able to cater for the width, length and weight of modern agricultural machinery. Farmers need to have some certainty about the dimensions of proposed underpasses and overbridges. The crossings need to be in place before severance takes place, even if that means providing a temporary crossing first and then a permanent one later.

Request

20.2 The Promoter should be required to provide an assurance that in designing and constructing the authorised works, the Nominated Undertaker will ensure that—

- all accommodation overbridges provided for farmers shall be no less than 5 metres wide and capable of taking a loading of 60 tonnes;
- all underbridges provided for farmers will be no less than 5 metres wide and 5 metres high;
- any new or modified vehicular farm access to the highway is at least 20 metres long and capable of use by all road legal agricultural vehicles;
- all accommodation crossings required for agricultural use will be open for use before the land in question is severed and thereafter available for use at all times, including providing temporary crossings if necessary.

PROMOTER'S RESPONSE:

1. HS2 Ltd has published a Phase 2b Farmers and Growers Guide which explains the Promoter's policies on agricultural property matters, covering the relocation of farm buildings and facilities, the acquisition or occupation of land, and compensation. It also covers construction activity, accommodation works, access, fencing, land restoration, land drainage and floodplain replacement. The guide would include a bespoke farmer's record of the undertakings and assurances made in respect of each holding.
2. At this stage, the guide principally covers matters leading up to the point of entry. It will be updated and reissued at regular intervals as the project develops.
3. Many site-specific concerns that affect farm holdings can only be resolved when the detailed design stage is reached, and the Promoter recognises that this evolving situation may present difficulties for farmers. Through the implementation of the engagement strategy set out within the Farmers and Growers Guide, the Promoter aims to engender a spirit of co-operation to assist farmers to prepare for the next stages of the design, construction and operation of the new railway.
4. The accommodation works considered necessary for farming were included within the Proposed Scheme based on the information gained by the Promoter through Farm Impact Assessments of affected land holdings and with regard to design considerations. Appropriate accommodation works would be discussed on a case-by-case basis. The provision of permanent accommodation works would depend on the individual circumstances of the holding and would usually be developed as the detailed design of the Proposed Scheme is undertaken.
5. Further details are set out in HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 21.1-21.2

ISSUE RAISED: Land Drainage – Maintenance

PETITION PARAGRAPH: 21.1 The construction of the works will inevitably lead to alterations to field drainage along the line of the railway. The Promoter provided some assurances on this subject on Phase 1 and Phase 2A and the Promoter's Information Paper E16 (Land Drainage) sets out a number of commitments and other information about how the Promoter intends to deal with that issue, and some of the commitments are listed in the register of undertakings and assurances (entries A143 and 144). The NFU is concerned about two aspects of the assurances: first, the onus is on the farmer to maintain any new drainage systems and secondly, there is no requirement on the Nominated Undertaker to ensure that new drainage system is as effective as those which they replace. In other similar infrastructure schemes, the NFU has secured commitments on behalf of farmers which meet those concerns.

Request

21.2 That the Promoter be required to alter the assurances recorded in the register of undertakings and assurances in line with other infrastructure schemes, so as to:

- remove the onus on farmers to maintain drainage systems that have been imposed on them (unless the farmer agrees otherwise);
- ensure that any new land drainage systems are put back in a condition that is at least as effective as the condition of those which they replace;
- provide for a dispute resolution mechanism, based upon adjudication by a jointly appointed expert (or in default appointed by the President of the Institute of Civil Engineers).
- provide that where it is appropriate and reasonable to do so, and the consent of the relevant landowner has been obtained, the Nominated Undertaker will carry

out works involving the reinstatement of drainage outside of the Bill limits.

PROMOTER'S RESPONSE:

Field drainage reinstatement

1. The approach taken to land drainage issues during the preliminary design of the Proposed Scheme and the further measures to be taken during detailed design, construction and operation of the Proposed Scheme, are explained in HS2 Phase 2b Western Leg Information Paper E16: Land drainage.

2. Paragraph 6.3 of HS2 Phase 2b Western Leg Information Paper C2: Rural Landowners and Occupiers Guide, makes clear that construction activity would be controlled through the Bill and EMRs which, amongst other things, require the nominated undertaker to identify watercourses and, where known, field drainage layouts and outfalls into watercourses or ditches, fixed irrigation pipes and sources of irrigation water and fixed water supplies for livestock.

3. HS2 Phase 2b Western Leg Information Paper E15: Water Resources, Flood Risk and Authorisation of Related Works explains that once the Bill is enacted a bespoke regime would be put in place controlled by protective provisions. The protective provisions on land drainage and flood risk have been developed to ensure that the duties of relevant authorities to manage flood risk and watercourses are not unduly affected by construction and operation of the Proposed Scheme. The Environment Agency, Internal Drainage Boards and Lead Local Flood Authorities would be able to:

- approve (or refuse approval of) detailed plans for work affecting watercourses;
- through approving plans, impose reasonable conditions or safeguard flood risk management infrastructure against damage;
- enforce the conditions they impose; and
- take corrective action to any completed works in order to keep them in good repair at the expense of the nominated undertaker (i.e. the builder and/or operator of the Proposed Scheme).

4. Furthermore, the draft code of Construction Practice, HS2 Phase 2b Western Leg Information Paper E1: Control of Environmental Impacts and HS2 Phase 2b Western Leg Information Paper E15: Water Resources, Flood Risk and Authorisation of Related Works describe additional controls over the management of water and the interaction with relevant agencies and regulators, including the Environment Agency.

5. Paragraph 11 of the Farmers and Growers Guide contains further information regarding land drainage.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 21.3 – 21.5

ISSUE RAISED: Land Drainage – Construction

PETITION PARAGRAPH: 21.3 On Phases 1 and 2A, NFU members have reported that inadequate drainage of HS2 Ltd.'s own construction compounds, access roads and other infrastructure has led to significant water dispersal onto and flooding of farmland. This is as a result of the absence of a proper construction drainage plan being prepared and implemented in advance.

Requests

21.4 Request 1: That the Promoter be required to ensure that the Nominated Undertaker employs a drainage consultant sufficiently far in advance of the start of the enabling works and the main construction works on each site, such that a proper construction drainage plan is in place that must be complied with by the Nominated Undertaker and its pre-works and main works contractors.

21.5 Request 2: If two (or more) drainage consultants are contracted to address field drainage issues, then they must work closely together to make sure that the construction drainage and field drainage will work together.

PROMOTER'S RESPONSE:

1. HS2 Phase 2b Information Paper E15: Water Resources, Flood Risk and Authorisation of Related Works, describes how it is the design aim of the Proposed Scheme for no increase in the risk of flooding, including for vulnerable during the lifetime of the development, taking projected climate change impact into account. The Promoter will continue to engage with the statutory authorities, including the Environment Agency and Lead Local Flood Authorities during the development of the Proposed Scheme to discuss potential issues.

2. A comprehensive assessment of the effect of the Proposed Scheme on surface water drainage and flood risk was undertaken and detailed within Volume 5, Water

Resources Flood Risk Assessment of the Environmental Statement (ES) published in January 2022. Updates to the original assessment were included within the Supplementary Environmental Statement 1 and Additional Provision 1 Environmental Statement published in July 2022 (SES1 and AP1 ES).

3. These included an assessment of changes in runoff as a result of construction and operation, as well as changes to surface water flow paths and drainage ditches resulting from the presence of the Proposed Scheme as a linear feature intersecting natural surface water drainage ditches and flow paths.

4. In relation to the control of surface water runoff during operation and construction HS2 Phase 2b Information Paper E15: Water Resources, Flood Risk and Authorisation of Related Works, explains how the design of the Proposed Scheme includes Sustainable Drainage Systems (SuDS) to control the rate, volume and quality of runoff from the rail corridor and other infrastructure, taking projected climate change impacts into account. These systems would help to avoid an increase in flood risk and would help to maintain natural flow regimes by encouraging storm water to soak into the ground or, where that is not reasonably practicable, would discharge it into watercourses or surface water/combined sewers at a controlled rate. Examples of SuDS include balancing ponds, swales, infiltration trenches and other forms. Where possible, these drainage systems would also help to avoid having an adverse effect on the quality of the water which the runoff flows into by removing soluble and suspended pollutants.

5. Where necessary, further surveys, ground investigation and monitoring would be undertaken as the design and implementation details are developed.

6. Protective provisions, included at Part 4 of Schedule 32 to the Bill, require approval for details of works likely to affect flood risk, water quality, or groundwater by the appropriate body, prior to undertaking works. In relation to surface water the appropriate body for approval is explained at section 10 of HS2 Phase 2b Information Paper E15: Water Resources, Flood Risk and Authorisation of Related Works. The appropriate body for approval in relation to groundwater is the Environment Agency in England and the Scottish Environment Protection Agency (SEPA) in Scotland. Therefore, no works affecting groundwater or surface water could be undertaken until the appropriate body is satisfied that the impacts from both construction and operation of the works are properly understood and that any mitigation and monitoring is adequate.

7. Section 11 of the Farmers and Growers guide sets out the approach to land drainage. It states that the nominated undertaker will engage with farmers and growers to identify the existing drainage arrangements on land holdings required for the construction of the Proposed Scheme. Section 11.1.4 states:

“HS2 will use an appropriate specialist to advise on drainage works”.

8. HS2 Phase 2b Western Leg Information Paper E16, section 5 sets out the approach to refinements for land drainage during detailed design and construction. Section 5.6 sets out how this will be carried out and states that;

“the nominated undertaker will utilise appropriate drainage consultants to advise on drainage works and will engage with the landowner in respect of the pre and post drainage schemes that are required. The nominated undertaker will use reasonable endeavours to engage drainage consultants with working knowledge of the local conditions.”

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 22.1-22.7

ISSUE RAISED: Soil

PETITION PARAGRAPH: 22.1 The NFU secured assurances of general application in relation to the Phase 1 and 2A Bills which set out a number of requirements on the Nominated Undertaker about soils which are temporarily affected, including the requirement to provide the relevant landowner with a soil plan.

Requests

22.2 The assurances given to the NFU in relation to Phase 1 and 2A should apply to Phase 2B (a general point about the application of Phase 2A assurances is made later in this petition but this is seen to be one of particular importance).

22.3 That the Promoter be required to alter the assurances recorded in the register of undertakings and assurances in line with other infrastructure schemes, so as to include the following details for the Record of Condition and Preconstruction Soil Survey Target Specification:

Record of condition:

22.4 A Record of Condition will be undertaken pre - construction and will include the following:

- Existing crop regimes
- The position and condition of existing field boundaries
- The condition of existing access arrangements
- The location and type of existing private water supplies
- The type of agricultural use taking place.
- The condition of crops (if at a stage this can be assessed)
- The quality of grazing land
- The existing weed burden
- Preconstruction Soil Survey target specification

- Weather conditions
- Date of survey
- Grid reference

22.5 Photographs, drone and video footage including section drawings/plans should be included in the record of condition, alongside the Pre- construction Soil Survey Target Specification and should be provided to the landowner and occupier, for agreement, prior to entry to the landholding.

The Pre-construction Soil Survey Target Specification

22.6 The Pre-construction Soil Survey Target Specification should include the identification of the physical characteristics of profiles at a standard density of 100 metre intervals (with additional profiles examined where the 100 metre grid sampling does not enable a suitable density of sampling in an agricultural enclosure that will otherwise be missed). Soil pits will be examined at appropriate locations to provide additional detail on soil structure. The Pre Construction Soil Survey will also provide information on the following physical soil characteristics:

- soil horizon depths for topsoil and subsoil horizons;
- soil textures of all horizons;
- soil colour;
- stone contents, estimated from augering, confirmed by soil pit excavation/and or sample analysis;
- presence and characteristics of mottling, a soil wetness indicator;
- presence of manganese concretions, a soil wetness indicator;
- identification of gleyed horizons;
- identification of slowly permeable layers; and
- identification of impenetrable rock layers.

22.7 A copy of the Pre-Construction Soil Target Specification shall be provided to the Landowner and any Occupier prior to commencement of the Works

PROMOTER'S RESPONSE:

Agricultural soils – reinstatement

1. The nominated undertaker would aim to make the most sustainable use of agricultural land disturbed during the construction of the Proposed Scheme. Where agricultural uses are to be resumed on land disturbed during the construction, the design objective is to avoid any reduction in long term capability, which would

downgrade the quality of the disturbed land, through the adoption of good practice techniques in handling, storing and reinstating soils on that land.

2. HS2 Phase 2b Western Leg Information Paper C2: Rural Landowners and Occupier's Guide makes clear that construction activity would be controlled through the powers in the Bill and draft Environmental Minimum Requirements (EMRs) to which the nominated undertaker would be bound. The Bill will also enable qualifying local authorities to exercise control over certain construction arrangements. These controls would mitigate potential avoidable impacts on agricultural land and soils. The controls would include:

- reinstating any agricultural land which is used temporarily during construction, to agriculture, where this is the agreed end-use"; and
- "providing a method statement for stripping, handling, storage and replacement of agricultural, forestry and woodland soils to reduce risks associated with soil degradation on areas of land to be returned to agriculture, forestry and woodland following construction. This will include any remediation measures necessary following completion of the works.
- Prior to works commencing, soil surveys would be undertaken to record agricultural and forestry soils disturbed for the Proposed Scheme, including topsoil and subsoil, covering depth, texture, structure and other soil properties. Where land used temporarily for construction is reinstated to agricultural use, reinstatement works would be implemented in accordance with the contract specification and guidance.
- Section 6 of the draft Code of Construction Practice (CoCP) sets out the measures that would be undertaken to restore temporarily disturbed agricultural land back to agricultural use. This would involve the stripping, storage and reinstatement of soils disturbed by the Proposed Scheme, largely with reference to the Construction Code of Practice for the Sustainable Use of Soils on Construction Sites' (Defra 2009). The draft Code of Construction Practice (CoCP) is supplemented by HS2 Phase 2B Information Paper E19: Soil Handling for Land Restoration.

3. The draft Code of Construction Practice (CoCP) assumes a five-year aftercare period for land restored to agriculture. Section 4.5.1 of the draft Environmental Memorandum states that:

"The High Speed Rail Phase 2b (Crewe – Manchester) Bill requires that, upon completion of construction works, where temporary possession of sites has been undertaken, they shall be returned to a condition in accordance with a scheme to be agreed with both the owners of the land and the relevant planning authority. In a case where the site has been permanently acquired, it must, after use has

finished, be restored in accordance with the scheme agreed with the relevant planning authority.”

4. The five-year aftercare period has been widely applied for the restoration of agricultural land over a number of decades, in respect of surface mineral sites and more widely. It is derived from a number of authoritative external sources, but most notably the Construction Code of Practice for the Sustainable Use of Soils on Construction Sites’ (DEFRA 2009). In view of this, the Promoter considers that a five year after-care period should be sufficient in most cases. Where exceptional difficulties become evident, however, it may be necessary to extend the period by agreement.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 23.1-23.6

ISSUE RAISED: Capital Gains Tax

PETITION PARAGRAPH: 23.1 The NFU considers that there should be a capital gains tax exemption in respect of compulsorily acquired property. The majority of farmers do not sell their land: it is passed from one generation to the next and so the prospect of paying capital gains tax is not one which arises often. Under the Bill, the NFU's members are likely to be faced with the prospect of paying the tax following the acquisition of their land. In the light of the involuntary nature of the acquisition process, the NFU considers that having to pay capital gains tax following acquisition would be unreasonable and that an exemption should be provided. In the absence of such an exemption, the NFU considers that the regime described in the following paragraphs should apply.

23.2 If the equivalence rule was always observed in compensation claims, no claimant should suffer uncompensatable losses due to taxation. In practice this is not always the case and, with the HS2 project, there are likely to be particular difficulties with the replacement of business assets in the form of farmland.

23.3 In the usual course of business, the Taxation of Chargeable Gains Act 1992 ("TCGA") allows for rollover relief from capital gains tax when the funds released by the sale of one business asset are re-invested in another business asset within one year prior to the sale or three years after it. Sections 247 to 248 of TCGA make provision about rollover relief in the case where land is acquired by way of compulsory acquisition. The linear nature of the scheme means that many farmers and landowners are likely to seek to acquire farmland to replace that lost to the railway within a relatively narrow geographical area of search. Replacement land is most valuable to a farmer when it is physically very close to the rest

of the holding. It does not make economic sense for the business if the replacement land is remote. Two issues therefore arise: the first is that land in a suitable location may not become available on the market within the timescale prescribed by the rollover relief rules; and the second is that there is likely to be an imbalance of supply and demand close to the line of the railway which could force land prices upwards.

23.4 The NFU attracted sympathy for their case from the Phase 1 Bill Commons Select Committee. In its final special report it states, in paragraph 364, that “as it will take HS2 some ten years to bring its Phase One rail project to fruition, there is a case for allowing farmers a comparable period for reinvestment”. The NFU acknowledges that HMRC can use its discretion to amend the time limits, but farmers require more certainty when they are acquiring new assets.

Requests

23.5 Request 1: In order to deal with the issue of lack of available land, the NFU has two alternative solutions, both of which could be met by recommendations to the government for changes to taxation legislation. The proposed recommendations for the select committee to consider are:

23.5.1 an amendment to the Taxation of Chargeable Gains Act 1992 to the effect that any disposal arising from the compulsory acquisition of farm land is exempted from Capital Gains Tax. It is likely that farmers unable to claim roll over relief would seek redress through individual claims for compensation from the Promoter and recent case law suggests that such a claim is possible. An exemption would simply remove the need to pay tax to the government (HMRC) only to then claim back the same amount as compensation from the government (HS2); or

23.5.2 an amendment to the Taxation of Chargeable Gains Act 1992 to provide alternative statutory time limits for the replacement of farm assets purchased compulsorily by HS2 under the Bill. The NFU suggests either a period of 9 years, beginning three years before and ending six years after the deemed date of disposal in line with HMRCs delegated discretion, or a period of 10 years in

line with the Phase 1 Bill Select Committee's view in their Final Report.

23.6 Request 2: The Promoter should be required to alter its "Guide for Farmers and Growers" to include guidance on CGT and compensation with examples of the actions HS2 would expect farmers to take in seeking to mitigate any capital gains tax liability and acting reasonably for the purposes of making a compensation claim. This guidance should address the position both where a suitable replacement is found outside of the statutory period for rollover relief and where no suitable replacement can be found despite the claimant making every effort to do so.

PROMOTER'S RESPONSE:

Relief from Capital Gains Tax (GCT)

1. The HS2 document Information for Farmers and Growers: Capital Gains Tax and Inheritance Tax provides information for Farmers and Agricultural Businesses on Capital Gains Tax in respect of compulsorily acquired property.

2. The document explains that:

"HMRC have confirmed they will extend [the time limits for rollover reinvestment] where there is a real intention to acquire a replacement asset and there are acceptable reasons to extend up to 3 years before or six years after the land disposal."

3. The document goes on to explain:

"In accordance with the general duty to mitigate, where the farmer shows a real intention to acquire a replacement asset, and reasonable steps are taken to acquire such replacement asset in accordance with HMRC's published practice, if such investment is not possible despite such intention and the taking of such reasonable steps, the Capital Gains Tax may be included as a potential head of claim in the notice of claim following entry under Part 1 of the LCA. Farmers are recommended to seek appropriate professional advice: professional fees reasonably incurred may form part of that claim."

Changes to tax legislation

4. Matters relating to wider government policy on taxation are outside the scope of the Bill. The Promoter considers that it is reasonable to expect landowners and agricultural businesses to operate within the existing legal framework.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 24.1-24.8

ISSUE RAISED: Inheritance tax

PETITION PARAGRAPH: 24.1 Issue 1: Where an estate is worth more than £325,000 an Inheritance Tax ("IHT") charge of 40% applies to the excess. There are a number of reliefs that may first be applied to an estate which would reduce the taxable value. For farmers the two main reliefs are Agricultural Property Relief (APR) and Business Property Relief (BPR) which can relieve up to 100% of the value of agricultural land or other business property. The availability of APR and BPR is dependent on their being qualifying assets held for at least two years prior to death or a lifetime transfer (seven years in the case of let agricultural property).

24.2 Where land is purchased under a compulsory purchase order it is likely to change the asset from one that qualifies for up to 100% IHT relief to cash which doesn't. New assets may be acquired which, if held long enough before death, would then qualify. There are also rules which allow a replacement asset to be acquired and for it to qualify for IHT reliefs immediately by virtue of the combined length of ownership of the old and new asset.

24.3 However, there is a clear risk that a farmer might die before replacing the monies received with further assets with the result that they incur IHT which would not otherwise have been payable. Similarly, there could be instances where the farmer is unable to find suitable replacement assets quickly enough and so finds that he does not then receive relief on the replacement asset.

24.4 Issue 2: Similar issues arise where land is taken temporarily, which under the Bill could be for some years. If the farmer were to die during the period when land is in occupation by the Nominated Undertaker, again the asset is

likely to change from one that qualifies for up to 100% to one that does not.

24.5 Issue 3: NFU notes that, in HS2 Ltd.'s document Information for Farmers and Growers – Capital Gains Tax and Inheritance Tax, the section on IHT suggests that only the cost of IHT advice can be compensated. This is concerning and NFU would expect it to state that, provided reasonable steps have been taken to mitigate the IHT liability, the IHT could be compensated too. For instance, the IHT advice might be to invest in a portfolio of AIMs shares or in agricultural land in Scotland. The NFU considers reasonable mitigation could include a farmer actively seeking to replace the agricultural land used in their business and taken by HS2 with agricultural property that can be used in their business. There is a risk of tying up the compensation, preventing the farmer from being able to purchase land when it becomes available which could ensure the future viability of the farm business.

Requests

24.6 Request 1: The Select Committee recommend that HMRC add guidance to their Inheritance Tax manual to include a case study of a farmer affected by HS2. This should acknowledge the specific difficulty in replacing farmland taken for a major national infrastructure project such as HS2 and that there will be a positive presumption that the money will be reinvested in the farm business in the event of an untimely death unless there is clear evidence to the contrary.

24.7 Request 2: That HS2 Ltd be required to amend the relevant section of its Information for Farmers and Growers – Capital Gains Tax and Inheritance Tax, dealing with compensation so that it points out that Inheritance Tax will be compensated for where the deceased had taken reasonable steps to mitigate the liability and gives an indication of what the Promoter suggests would be reasonable mitigation or how such a claim should be made if the original compensation claim has been closed.

24.8 Request 3: That HMRC be recommended to alter its management powers (or if that is not an appropriate method, the government be recommend to make legislative changes) so that in cases where land taken temporarily is to be returned to agricultural use, the land shall be deemed for IHT purposes to remain in agricultural use throughout the period of temporary occupation.

PROMOTER'S RESPONSE:

Relief from Inheritance Tax

1. As the Petitioner acknowledges, the HS2 document Information for Farmers and Growers: Capital Gains Tax and Inheritance Tax provides information for Farmers and Agricultural Businesses on Inheritance Tax for compensation proceeds which form part of a farmer's estate on death.
2. This document recommends that appropriate professional advice is sought on the matter of Inheritance Tax for compensation proceeds which form part of a farmer's estate on death. The document suggests that the reasonable cost of such specific Inheritance Tax advice may be included as a potential head of claim for compensation.
3. The guidance contained within this document is limited to fees due to the highly case specific nature of an inheritance tax charge. Matters relating to wider government policy on taxation are outside the scope of the Bill.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 25.1-25.5

ISSUE RAISED: Phase 1 and 2A Assurances

PETITION PARAGRAPH: 25.1 During the promotion of the Phase 1 and Phase 2A Bills, the NFU secured a number of assurances from the Promoter, which are of general applicability to farmers affected by the Phase 1 and 2A routes. The Phase 2A assurances should also apply to Phase 2B.

25.2 The Phase 1 and 2A Assurances were set out in two parts, Part A contained general assurances which apply generally, and Part B contained assurances which carried a heading implying that they were to be offered to farmers on a case by case basis. The NFU were horrified to find that HS2 did not offer these Part B assurances to all farmers affected by Phase 1, though it appears they have offered them on Phase 2A, following a request for the same. In some cases, the assurances are not acceptable now to the NFU, particularly in the light of what has happened on the ground. Exam11.1 subjects where assurances are expected to be repeated, and require modification are:

25.2.1 land acquisition policy;

25.2.2 prompt payment of compensation;

25.2.3 provision of Nominated Undertaker's estimate of compensation;

25.2.4 earthworks;

25.2.5 relocation of agricultural buildings;

25.2.6 use of private roads;

25.2.7 field drainage;

25.2.8 detailed design;

25.2.9 agricultural soils (a pre disturbance record of condition and Soil Survey Target Specification); and

25.2.10 agricultural liaison officer.

Requests

25.3 Request 1: The Promoter should be required to add to the register of undertakings and assurances for Phase 2B those assurances of general application given to the NFU on Phase 2A, subject to any alterations agreed between the NFU and the Promoter or resulting from recommendations of the select committee following consideration of the points raised in this petition.

25.4 Request 2: The Promoter should be required to repeat the Part B assurances, with modifications which will be raised by the NFU, and offer them to all farmers affected by Phase 2B, unless any of the assurances is clearly not relevant. Sufficient time should be given for farmers to agree to those assurances. Clear guidance should be given to all farmers affected by Phase 2B at an early stage (in other words now) about the process and the timescales for seeking Part B assurances and undertakings. The timescales should not place a cut-off date of the finalisation of the register of assurances and undertakings.

25.5 There is no reason why the Part B assurances should not be contained in a legally binding agreement (or “undertaking” using the Promoter’s terminology). If a farmer requests such an agreement, then the Promoter should be required to enter into one.

PROMOTER’S RESPONSE:

1. The Promoter has been willing to offer the Part B assurances (as appropriate to each individual case) to farmers affected by the Phase1 and 2a schemes.
2. The Promoter met with the Petitioner on 4 and 28 October 2022 to discuss the matter of assurances offered on previous phases. The Promoter wrote to the Petitioner on 17 March 2023. This letter provided details of a change of approach discussed in those meetings. That change of approach is to increase the visibility of, and effectiveness of the provision of comfort to agricultural businesses affected by Phase 2b of HS2. The letter stated:

“In the promotion of previous HS2 Bills, it has been the practice to provide to the NFU a suite of assurances. These assurances have consisted of a set of assurances given to the NFU itself (the Part A assurances) which though expressed for the benefit of individual businesses were presented to the NFU to enforce in a

representative capacity. A further set of assurances were provided which were expressed to be directed towards agricultural businesses and rural landowners, but which were required to be agreed on case-by-case basis between the agricultural business concerned and the Promoter (the Part B assurances).

In the light of our dealings in relation to the Phase One and 2a Acts, you have invited HS2 Ltd to consider how HS2 Ltd could ensure that all Part B assurances may be applied to all farmers without the need to petition. Many of these assurances concern quite site specific issues relating to the particular concerns of individual farmers in the context of their particular businesses. Therefore, in order to accommodate your request, we have adapted the assurances previously put forward and converted them into firstly a set of binding assurances and secondly a set of conditional policy statements and incorporated each set of commitments into information papers and guidance documents respectively.

The Part A assurances concern specific policy areas that have general application to farmers/rural landowners and occupiers. These have therefore been incorporated as commitments into various Information Papers.

To assist you and your members with locating these assurances and conditional policy statements, I have set out in Annex A assurances relevant to the concerns of the NFU previously incorporated in Part A of the set of assurances set out in the letter to you of 5 Oct 5 2022. Annex B contains an overview of NFU Conditional Policies (to provide an equivalent commitment to assurances in Part B of the Phase 2a NFU Assurances). For ease of comparison, Annexes A and B of this letter retain the assurance numbering that corresponds with the letter sent to the NFU on 5th October 2022, a copy of which is attached for ease of reference. I also attach as Annex C, a simple table cross referencing in tabular form the proposed new commitments with the new proposed location of commitments as assurances and Conditional Policy Statements”

3. A copy of the complete letter, including its Annexes, is included as an Annex to this Promoters Response Document.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 26.1-26.2

ISSUE RAISED: Compliance with Farmers and Growers Guide

PETITION PARAGRAPH: 26.1 During the promotion of the Phase 1 and 2A Bills, the Promoter published a document called the Farmers and Growers Guide, in discussion with the NFU and others. A similar Guide is to be produced for Phase 2B. The Guide contains useful information about the implementation of the Bill, and also includes a number of statements which are in the form of a commitment or assurance, but which have not appeared in the register of undertakings and assurance and/or which have not been complied with on Phases 1 or 2a.

Request

26.2 The Promoter should be required to give an assurance that the Promoter or Nominated Undertaker will comply with all the commitments in the Farmers and Growers and that the NFU will be consulted on any changes to the Guide.

PROMOTER'S RESPONSE:

1. HS2 Ltd has published a Phase 2B Farmers and Growers Guide which explains the Promoter's policies on agricultural property matters, covering the relocation of farm buildings and facilities, the acquisition or occupation of land, and compensation. It also covers construction activity, accommodation works, access, fencing, land restoration, land drainage and floodplain replacement. The guide would include a bespoke farmer's record of the undertakings and assurances made in respect of each holding.
2. At this stage, the guide principally covers matters leading up to the point of entry. It will be updated and reissued at regular intervals as the project develops.
3. Many site-specific concerns that affect farm holdings can only be resolved when the detailed design stage is reached, and the Promoter recognises that this evolving situation may present difficulties for farmers. Through the implementation of the engagement strategy set out within the Farmers and Growers Guide, the Promoter

aims to engender a spirit of co-operation to assist farmers to prepare for the next stages of the design, construction and operation of the new railway.

Assurance relating to the Farmers and Growers Guide

4. In order to give effect to the implementation of the Conditional Policy Statements as assurances (described in the response to Petition paragraphs 25.1-25.5 above), the Promoter has offered the Petitioner the following specific assurance. This assurance, if accepted, would regulate the way in which any request received from an agricultural business owner for a specific assurance based on a Conditional Policy Statement, would be handled by the Promoter arising from discussions on the impact of the scheme on a particular agricultural business.

"[1.1] The Promoter will engage in good faith with farmers and rural business owners on the implementation by the Promoter of the policies set out in the Farmers and Growers Guide and to be applied in the construction of the Proposed Scheme.

[1.2] Subject to paragraph 1.3 the Promoter will use reasonable endeavours to reach agreement with an agricultural or rural business owner to give effect to any of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three to the Farmers and Growers Guide with respect to the Subject Land.

[1.3] The conditions which must be satisfied in order for agreement to be reached pursuant to paragraph 1.2 are –

- a. agreement must extend to all parties interested in the [Subject Land] and be documented prior to the Commencement Date;
- b. agreement must be capable of binding all required parties to observe any obligations forming part of the terms of the agreement reached under paragraph 1.2;
- c. all relevant parties must have the requisite legal interest in the Subject Land;
- d. the identity of all land which is to benefit from, or be the subject of obligations must be agreed between the parties; and
- e. in the case of each of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three of the Farmers and Growers Guide, the specific further conditions set out in each of those paragraphs will apply.

[2.1] In this assurance –

"Commencement Date" means the date on which the Promoter serves a Statutory Notice on any owner or occupier of land in order that entry onto that land can be achieved in conformity with the Promoter's programme for construction of the Proposed Scheme;

"Farmers and Growers Guide" means the guidance document published by HS2 Ltd entitled the Phase 2b Farmers and Growers Guide which is intended to explain to farmers and rural landowners the policies to be applied by the Promoter to the

construction of works to be authorised by the Phase 2b Bill in so far as it affects agricultural land;

“the nominated undertaker” refers to the body or bodies appointed by the Secretary of State to carry out the powers conferred under the Bill to construct and maintain the Proposed Scheme. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme;

“Promoter” means the Secretary of State for Transport or any successor Secretary of State or minister holding the Transport portfolio and includes as far as relevant any nominated undertaker exercising the powers or functions under the Bill by virtue of an order under clause 42 of the Bill;

“Proposed Scheme” means Phase 2bB of HS2 as proposed to be authorised by the Bill;

“Statutory Notice” means the service by the Promoter of a notice on the owner or occupier of land in exercise of any powers of compulsory purchase or temporary occupation to be conferred under the Bill; and

“Subject Land” means land held for the purposes of an agricultural or rural business that has been identified as such for the purposes of paragraph “

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 27.1-27.3

ISSUE RAISED: Enforcement of Assurances

PETITION PARAGRAPH: 27.1 The procedures relating to how breaches of assurances are to be reported and dealt with is unclear for farmers, based on reported experiences on Phases 1 and 2a. Information Paper B5 (compliance with undertakings and assurances) gives very basic information about this subject. It says that the Promoter will give an undertaking to Parliament that he will take such steps as he considers reasonable and necessary to secure compliance with the EMRs. It gives no detail about how breaches of assurances should be reported, to whom, how they will be considered and what avenues are open should a farmer disagree with the outcome.

Requests

27.2 Request 1: The Promoter should be required to provide a guide to farmers setting out details of how allegations of breaches of assurances will be dealt with, including information on the format of complaints, contact details of an individual to whom they should be made, details about how allegations will be handled (including timescales and opportunities for farmers to provide further input) in a day-to-day online guide of what to do.

27.3 Request 2: A better alternative, mentioned above, is that Part B assurances (and other assurances secured by farmers, particularly if they relate to land, and the benefit is intended to run with the land) should be contained in legally binding agreements, not assurances, which it seems are ultimately only enforceable by invoking contempt of Parliament procedures.

PROMOTER'S RESPONSE:

Compliance with undertakings and assurances

1. HS2 Phase 2b Information Paper B5: Compliance with undertakings and assurances, outlines how the Promoter will ensure that any commitments given to Parliament on its behalf during the passage of the Bill will be recorded and complied with.

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.

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.

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.

Recording undertakings and assurances

5. 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.

6. 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. 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.

7. 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).

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

9. In order to give effect to the implementation of the Conditional Policy Statements as assurances (described in the response to Petition paragraphs 25.1-25.5 above), the Promoter has offered the Petitioner a specific assurance. This assurance, if accepted, would regulate the way in which any request received from an agricultural business owner for a specific assurance based on a Conditional Policy Statement, would be handled by the Promoter arising from discussions on the impact of the scheme on a particular agricultural business.

HOUSE OF COMMONS SELECT COMMITTEE

HIGH SPEED RAIL (CREWE - MANCHESTER) BILL

PROMOTER'S RESPONSE TO PETITION OF: National Farmers Union

PETITION NO: HS2-P2B-085

PARAGRAPH NO: 28.1-28.2

ISSUE RAISED: Agricultural Liaison Officer

PETITION PARAGRAPH: 28.1 The NFU secured an assurance on Phases 1 and 2 requiring an agricultural liaison officer to be appointed to deal with day-to-day issues raised by farmers. One issue that NFU members have encountered on Phases 1 and 2 is that as responsibility passes from the Nominated Undertaker to its contractors and sub-contractors, so does the identity of the agricultural liaison officer. This is unfortunate, because farmers have so far found that they have built up good relations with liaison officers only to find that they are likely to change when the main works contracts start. They have also found that there are a number of tiers of agricultural liaison officers which complicates matters and means that farmers find that when issues need escalating, it is difficult to do so.

Request

28.2 That the agricultural liaison officer be appointed directly by the Nominated Undertaker, and remain so appointed so as to provide more consistency and continuity. In addition, whether or not the officer is appointed by the Nominated Undertaker, there should only be two tiers of officer, with direct access being available for farmers to the senior tier officer (and project manager if different) for the relevant section of the route. This would be in line with procedures on Nationally Significant Infrastructure Projects.

PROMOTER'S RESPONSE:

1. The HS2 Phase 2b Western Leg Information Paper E19: Soil handling for land restoration says:

"7.2 The nominated undertaker will put in place agricultural liaison officers who will be available by telephone 24 hours a day, 7 days per week, during the

construction of the Proposed Scheme on agricultural land. More information will be available on this after Royal Assent to the Bill.

7.3: The Secretary of State will require that the Nominated Undertaker will:
Provide the name and contact details of the agricultural liaison service provider(s) (and any replacement) to the NFU before he or she takes up his or her post;

Arrange meetings between the agricultural liaison service providers(s) and the NFU on a regular basis, and at least every three months to discuss the activities of the agricultural liaison service provider.”

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Louise Staples
The National Farmers Union
Agriculture House
Stoneleigh Park
Stoneleigh
Warwickshire
CV8 2TZ

5 January 2023

Dear Louise,

Thank you for our discussions on both 4th and 28th of October. I hope you found both sessions informative and the information provided was considered helpful.

Ahead of the commencement of the Select Committee proceedings, I thought it would be beneficial to review some particular points included in your petition, and discussed during both meetings, with regards to land within the Hybrid Bill limits, and to set out the Promoter's position on the issues and concerns you raised.

Your petition states that; *"The NFU understands that as part of its land acquisition strategy, HS2 Ltd works through a process of design which ends with them settling a "Final Land Acquisition Boundary". The NFU considers that it should only be at the end of a detailed design process that GVDs should be served and only where it is clear that the land is required permanently"* and that *"The Bill be amended so that when implementing compulsory purchase powers over farmland under clause 4 of the Bill it may not be done by GVD unless either the farmer has agreed, or the Promoter has completed detailed design which demonstrates the land is required permanently"*.

The land and rights shown in the Book of Reference have been included because the Promoter considers them to be required for the purposes of delivering the Bill scheme. The scheme design in the hybrid Bill is described in very considerable detail in the published environmental statement. The scheme design as so described, and the practical delivery of that scheme, together provide the essential justification for the land acquisition powers sought in the Bill. Phase 2b Western Leg Information Papers C2: Rural Landowners and Occupiers Guide and C3: Land acquisition Policy set out circumstances where land may not be permanently acquired for the scheme or may only be taken on a temporary basis. These papers are not to be understood as implying any doubt on the part of the Promoter as to the

need to acquire the land and rights included in the Book of Reference for the purposes of the Bill scheme.

The environmental statement was published alongside the deposit of the Bill in Parliament. Land and rights owners who question the need for the acquisition of their land for the purposes of the Bill scheme have been able to lodge a petition challenging the need for acquisition of their land or rights in the light of the published environmental statement. A number of farmers have done so. The Select Committee process allows a farmer to request the Committee to consider whether their land or rights are required for the Bill scheme and, if found not to be justified, to direct its removal from the Book of Reference when the Committee reports the Bill.

Following enactment of the Bill, the exercise of compulsory acquisition powers will continue to focus on the effective delivery of the Bill scheme in accordance with the works powers and deemed planning permission conferred by Parliament. The aim will be to limit the number of permanent acquisition notices to one per landowner where possible. This will provide affected landowners with a level of certainty over the extent of land to be acquired and timing of acquisition.

Any land compulsorily acquired which it is unnecessary to retain permanently for the Bill scheme may be made available for disposal in accordance with the terms of Information Paper C6: Disposal of Surplus Land, which incorporates the Crichel Down rules. Paragraph 4.6 of Information Paper C6 states that *"Where the Secretary of State intends to dispose of an interest in a site to which the Crichel Down Rules apply, holders of Qualifying Interests will, subject to the provisions of this Policy, be given first opportunity to acquire that interest at the market value before it is offered to the general market"*.

HS2 Ltd will of course continue to engage with farmers affected by the Bill scheme and are already discussing specific concerns with individual farmers whose land or rights are shown in the Book of Reference.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'S. McFarlane', with a long horizontal line extending to the right.

Stephen McFarlane

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Louise Staples

The National Farmers Union

Agriculture House

Stoneleigh Park

Stoneleigh

Warwickshire

CV8 2TZ

17 March 2023

Dear Louise,

I am writing to you to follow up on recent discussions regarding the proposed change of approach to assurances that we have identified to increase the visibility of, and effectiveness of the provision of comfort to agricultural businesses affected by Phase 2b of HS2.

In the promotion of previous HS2 Bills, it has been the practice to provide to the NFU a suite of assurances. These assurances have consisted of a set of assurances given to the NFU itself (the Part A assurances) which though expressed for the benefit of individual businesses were presented to the NFU to enforce in a representative capacity. A further set of assurances were provided which were expressed to be directed towards agricultural businesses and rural landowners, but which were required to be agreed on case-by-case basis between the agricultural business concerned and the Promoter (the Part B assurances). On Phase 2a assurances were offered via letter dated 31 May 2018 and 18 April 2019, copies of which are attached for ease of reference.

In the light of our dealings in relation to the Phase One and 2a Acts, you have invited HS2 Ltd to consider how HS2 Ltd could ensure that all Part B assurances may be applied to all farmers without the need to petition. Many of these assurances concern quite site specific issues relating to the particular concerns of individual farmers in the context of their particular businesses. Therefore, in order to accommodate your request, we have adapted the assurances previously put forward and converted them into firstly a set of binding assurances and secondly a set of conditional policy statements and incorporated each set of commitments into information papers and guidance documents respectively.

The Part A assurances concern specific policy areas that have general application to farmers/rural landowners and occupiers. These have therefore been incorporated as commitments into various Information Papers.

To assist you and your members with locating these assurances and conditional policy statements, I have set out in Annex A assurances relevant to the concerns of the NFU previously incorporated in Part A of the set of assurances set out in the letter to you of 31 May 2018 and 18 April 2019. Annex B contains an overview of NFU Conditional Policies (to provide an equivalent commitment to assurances in Part B of the Phase 2a NFU Assurances). For ease of comparison, Annexes A and B of this letter retain the assurance numbering that corresponds with the 31 May 2018 letter. I also attach as Annex C, a simple table cross referencing in tabular form the proposed new commitments with the new proposed location of commitments as assurances and Conditional Policy Statements.

Following discussions between the Promoter and the agricultural business concerned and in order to give effect to the implementation of Conditional Policy Statements as assurances, the Promoter is also willing to offer the NFU the following specific assurance. This assurance will regulate the way in which any request received from an agricultural business owner for a specific assurance based on a Conditional Policy Statement, would be handled by the Promoter arising from discussions on the impact of the scheme on a particular agricultural business.

Accordingly, on behalf of the Secretary of State for Transport, I propose to formally offer an assurance to the NFU in the following terms:

“[1.1] The Promoter will engage in good faith with farmers and rural business owners on the implementation by the Promoter of the policies set out in the Farmers and Growers Guide and to be applied in the construction of the Proposed Scheme.

[1.2] Subject to paragraph 1.3 the Promoter will use reasonable endeavours to reach agreement with an agricultural or rural business owner to give effect to any of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three to the Farmers and Growers Guide with respect to the Subject Land.

[1.3] The conditions which must be satisfied in order for agreement to be reached pursuant to paragraph 1.2 are –

- a) agreement must extend to all parties interested in the [Subject Land] and be documented prior to the Commencement Date;
- b) agreement must be capable of binding all required parties to observe any obligations forming part of the terms of the agreement reached under paragraph 1.2;
- c) all relevant parties must have the requisite legal interest in the Subject Land;
- d) the identity of all land which is to benefit from, or be the subject of obligations must be agreed between the parties; and

e) in the case of each of the specific arrangements set out in paragraphs 22.1 to 22.11 of Part Three of the Farmers and Growers Guide the specific further conditions set out in each of those paragraphs will apply.

[2.1] In this assurance –

“Commencement Date” means the date on which the Promoter serves a Statutory Notice on any owner or occupier of land in order that entry onto that land can be achieved in conformity with the Promoter’s programme for construction of the Proposed Scheme;

“Farmers and Growers Guide” means the guidance document published by HS2 Ltd entitled the Phase 2b Farmers and Growers Guide which is intended to explain to farmers and rural landowners the policies to be applied by the Promoter to the construction of works to be authorised by the Phase 2b Bill in so far as it affects agricultural land;

“the nominated undertaker” refers to the body or bodies appointed by the Secretary of State to carry out the powers conferred under the Bill to construct and maintain the Proposed Scheme. The nominated undertaker may be HS2 Ltd, or it may be another body or bodies appointed to oversee the construction and operation of the Proposed Scheme;

“Promoter” means the Secretary of State for Transport or any successor Secretary of State or minister holding the Transport portfolio and includes as far as relevant any nominated undertaker exercising the powers or functions under the Bill by virtue of an order under clause 42 of the Bill;

“Proposed Scheme” means Phase 2b of HS2 as proposed to be authorised by the Bill;

“Statutory Notice” means the service by the Promoter of a notice on the owner or occupier of land in exercise of any powers of compulsory purchase or temporary occupation to be conferred under the Bill; and

“Subject Land” means land held for the purposes of an agricultural or rural business that has been identified as such for the purposes of paragraph 1.2. “

If accepted, the assurances will be included in the Register of Undertakings and Assurances, which is held by the Department for Transport. Drafts of the Register will be published regularly during the passage of the Bill, and it will be finalised after Royal Assent. A nominated undertaker will be contractually obliged to comply with all relevant undertakings and assurances set out in the Register.

If you have any queries, please don't hesitate to contact Tracey Bailey at tracey.bailey@hs2.org.uk who will be your point of contact going forward.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Lucy Lagerweij', with a large, stylized initial 'L'.

Lucy Lagerweij
Director, Hybrid Bill Delivery
High Speed Two (HS2) Limited

Annex A – Summary of commitments relevant to the concerns of the NFU

1. Agricultural Liaison Service

The HS2 Phase 2b Western Leg Information Paper E19: Soil handling for land restoration says:

“7.2 The nominated undertaker will put in place agricultural liaison officers who will be available by telephone 24 hours a day, 7 days per week, during the construction of the Proposed Scheme on agricultural land. More information will be available on this after Royal Assent to the Bill.

7.3: ‘The Secretary of State will require that the Nominated Undertaker will:

- Provide the name and contact details of the agricultural liaison service provider(s) (and any replacement) to the NFU before he or she takes up his or her post;
- Arrange meetings between the agricultural liaison service providers(s) and the NFU on a regular basis, and at least every three months to discuss the activities of the agricultural liaison service provider.”

2. Land Acquisition – Agricultural Land Acquired for the Purposes of the Permanent Railway Corridor

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“3.3 In circumstances where agricultural land is permanently required for the purposes of the construction of the permanent railway corridor forming part of the Proposed Scheme, the Secretary of State will not exercise their temporary powers of acquisition prior to its permanent acquisition. There are a number of exceptions to this where agricultural land may still be occupied temporarily in advance of compulsory purchase and details of where land may be occupied temporarily in advance of acquisition are set out in Appendix 1 of this Information Paper.”

Appendix 1 of this Information Paper says:

“1.1 Where –

- detailed design plans of the proposed railway works are sufficiently advanced to enable the Secretary of State to assess, in his opinion, the extent of relevant land required permanently for the construction, operation and maintenance of the permanent railway corridor comprised within the Scheduled Works for the Bill, and

- the exercise of such powers is in his opinion required for the timely and economic delivery of the Proposed Scheme,

the Secretary of State will exercise acquisition powers over relevant land rather than the nominated undertaker seeking to exercise temporary possession powers over relevant land.

1.2 In advance of the exercise by the Secretary of State of acquisition powers over relevant land pursuant to paragraph 1.1, the nominated undertaker shall not, save where otherwise agreed with the relevant landowner, or where subject to paragraph 1.3, exercise temporary possession powers over relevant land.

1.3 Pursuant to paragraph 1.2, the nominated undertaker may exercise temporary possession powers over relevant land in advance of acquisition powers where in the reasonable opinion of the nominated undertaker, the relevant land is required to be occupied temporarily for the purpose of –

- programme critical construction works including but not limited to, works to establish construction access routes,
- environmental mitigation works,
- utility works; or
- highway works, which cannot be undertaken pursuant to the exercise of acquisition powers whilst also being consistent with the timely and economic delivery of the Proposed Scheme.

1.4 In this Appendix –

“acquisition powers” means the power of compulsory acquisition of land to be conferred on the Secretary of State under clause 4 of the Bill;

“agricultural land” means land classified as agricultural land as described in the Agricultural Land Classification of England and Wales, published by the Ministry of Agriculture, Fisheries and Food in October 1988;

“relevant landowner” means the freehold owner and occupier of agricultural land;

“relevant land” means the whole or part of agricultural land belonging to the relevant landowner which is subject to the exercise by the Secretary of State of acquisition powers for the purposes of the construction, operation and maintenance of the permanent railway corridor comprised within the Scheduled Works for the Bill;

“Scheduled Works” has the same meaning as in clause 63 of the Bill;

“temporary possession powers” means the power of temporary occupation of land to be conferred on the nominated undertaker under paragraph 1(2) of schedule 15 to the Bill.”

3. Prompt Payment of Compensation

The HS2 Phase 2b Western Leg Information Paper C8: Compensation code for compulsory purchase says:

“6.1 The Promoter will, in line with wider government policies, require the nominated undertaker to pay promptly compensation that has been agreed or determined by the Upper Tribunal of the Lands Chamber to be payable to a claimant under the Bill in respect of the compulsory acquisition of land.”

4. Estimated Claims for Compensation

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“7.1 Where an agricultural/rural business owner submits to the Promoter detailed particulars of an estimated claim for compensation arising from the compulsory acquisition of agricultural land/a rural business (a “detailed request”), the Promoter will provide in writing within three months of receipt of the detailed request the nominated undertaker’s estimate of the compensation (including for disturbance) payable in respect of the compulsory purchase of that agricultural land/rural business.

7.2 Where possession of land is taken by the nominated undertaker under Schedule 15 of the Bill and an owner occupier or agricultural tenant submits to the Promoter a particularised and evidenced claim for compensation based upon agricultural losses arising from the temporary occupation of agricultural land pursuant to paragraph 1 of Part 1 of Schedule 15 to the Bill (a “compensation request”), the Promoter will make interim payments of compensation as appropriate on a case-by-case basis. For example, payments could be made on a three monthly, six monthly or (as a minimum) annual basis taking account of the particular characteristics of the agricultural business in question. Before making the interim payments, the nominated undertaker may require the owner occupier or agricultural tenant to enter into a temporary possession agreement in advance of the exercise of powers.”

5. Relocation Matters

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy

“15.1.6 Where there is a compelling need for a farmer or rural business owner to relocate, and a business case has been approved by the Secretary of State that relates to that relocation, the Secretary of State will use reasonable endeavours to reach an agreement with that farmer/rural business owner on the terms of that relocation.

15.1.7 An agreement under paragraph 15.1.6 may provide that compensation will be paid in advance of entry after Royal Assent, so that the land in question would be transferred without any existing mortgage over the land in question and that suitable security for any advanced payment will be adequately secured.”

6. Liability and Claims

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“13.3 The Secretary of State confirms that the nominated undertaker will be liable to agricultural and rural business owners for the actionable acts and omissions of the nominated undertaker’s contractors and subcontractors in constructing the works authorised by the Bill, and as a consequence the Secretary of State will require the nominated undertaker to set in place arrangements to deal promptly with any claims made by agricultural and rural business owners arising as a consequence of the construction of the works authorised by the Bill (including as a consequence of the acts or omissions of the nominated undertaker’s contractors and sub-contractors).

13.4 The Secretary of State will require the nominated undertaker to implement contractual monitoring, reporting and enforcement procedures to ensure that third party claims against the nominated undertaker arising out of the execution of HS2 works on the agricultural/rural business owner’s land are being dealt with promptly and effectively.”

7. Water Supply

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“10.1 Where an existing private water supply to a farm is adversely and directly, affected by the construction of the Proposed Works, the nominated undertaker will, if requested by the farmer or landowner to do so, provide or procure or meet the reasonable cost of the provision of an alternative supply of water where reasonably practicable to do so and if there is no other practicable alternative means of supply available.

10.2 Where the supply is so affected temporarily by the construction of works for the Proposed Scheme, then the alternative supply need only be supplied for the period during which it is so affected.”

8. Borrow Pits

The HS2 Phase 2b Western Leg Information Paper D12: Borrow Pits says:

“4.4 Further details regarding borrow pits and the depth of excavation are presented in the main ES within the relevant Volume 2, MA02 Community Area report, the Volume 5 Borrow pit report and map book of the main ES and other relevant Volume 5 topic reports of the main ES.”

9. Provision of Information

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“5.4 The Promoter will require the nominated undertaker to use reasonable endeavours to keep affected agricultural/rural businesses informed of the progress of the Bill and of likely target dates for implementation of the Proposed Scheme.”

Annex B – NFU Conditional Policy (to provide an equivalent commitment to assurances in Part B of the NFU Assurances)

10. Notices of Entry and Taking Possession

The **HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers** guide says:

“6.1 The Bill provides for a minimum of three months’ notice of entry to be given where land is to be acquired outright. A longer notice period will be provided where reasonably practicable.

6.2 Notwithstanding the requirements under the Bill to give 28 days’ notice of entry under Part 1 of Schedule 15 of the Bill in relation to the temporary occupation of land the nominated undertaker will use reasonable endeavours in all cases to provide a minimum of three month’s written notice, and furthermore in advance of any formal notification required under the Bill, to notify an agricultural or rural landowner in writing of the expected quarter of the calendar year in which the land is planned to be occupied temporarily under the Bill.

6.3 The nominated undertaker will seek to be in regular communication with landowners during the construction of the Proposed Scheme and will seek to provide advice on the proposed timescale for the start and duration of works affecting their properties.”

11. Relocation of Agricultural Buildings

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“3. Relocation of farm buildings and facilities

3.1.1 The Promoter acknowledges that in some cases, it may be necessary for farmers to relocate or re-provide agricultural buildings displaced by the Western Leg works and that these buildings may need to be relocated or re-provided before the original facility is lost. Where such a need arises, HS2 Ltd will provide appropriate assistance, including the provision of a statement of impact and timing, where the replacement facility needs to be provided pursuant to a deemed planning consent under the Town and Country Planning (General Permitted Development) (England) Order 2015, or a separate application for planning consent.

3.1.2 Where a farmer can demonstrate that a planning consent referred to in paragraph 3.1.1 to relocate an agricultural building is unlikely to be obtained the

Secretary of State will consider a request from the farmer to exercise the powers of clause 47 of the Bill. The Secretary of State will consider the request in accordance with the policy relating to the reinstatement of undertakings set out in section 7 of HS2 Information Paper C7, Business Relocation.

3.1.3 In paragraph 3.1.1 an agricultural building includes a residential building occupied as part of an agricultural unit and a statement of impact and timing means a statement describing the impact of the work proposed to be undertaken in relation to the agricultural building(s) in question and the timescales in which those impacts are intended to be implemented.

3.1.4 Under clause 47 of the Bill, the nominated undertaker has the power to reinstate (either on its existing site or on different land within the Bill limits) the whole or part of an undertaking where the Secretary of State judges the public interest demands such reinstatement. Recognising the public interest in mitigating the impacts of the Phase 2b Western Leg on agricultural businesses along the route, the Secretary of State accepts that the criteria for reinstatement under this power may be satisfied in relation to the replacement of facilities which are critical to the operation of an agricultural business.

3.1.5 The Secretary of State acknowledges that proper professional costs and fees reasonably incurred by a farmer in seeking to identify suitable alternative premises at which to relocate an agricultural building under paragraph 3.1,1 above and which is subject to the exercise of the power of compulsory acquisition under the Bill, may properly form the basis of a Head of Claim as part of any disturbance claim arising from the acquisition of that land under the Bill.”

In addition, the HS2 Phase 2b Western Leg Information Paper B8: Time limits in the Bill says:

“3.7 Clause 46 of the Bill allows the Promoter to reinstate businesses affected by the scheme onto other land within the limits shown on the plans. The Bill also allows the Secretary of State to direct planning permission for these reinstatement works, subject to the same 10-year limitation as described in paragraph 3.6 above.”

In addition, HS2 Ltd’s approach to supporting businesses and other organisations that would have land taken for the construction or operation of the Proposed Scheme is provided in the HS2 Phase 2b Western Leg Information Paper C7: Business relocation, in particular paragraphs 3 to 7.

12. Identification of land for the relocation of agricultural buildings

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“15.1.8 If prior to the giving of notice of entry or prior to the notice of vesting under a general vesting declaration to acquire land permanently (whether or not before Royal Assent);-

15.1.8.1. a farmer identifies suitable land for the relocation of an agricultural building (which includes a residential building occupied as part of an agricultural unit and whether within or outside the ownership of the farmer concerned); and

15.1.8.2. the farmer provides to HS2 Ltd detailed particulars substantiating the relocation,

HS2 Ltd will confirm whether or not it accepts that the land identified and the evidence provided represents a reasonable basis for the farmer’s claim for compensation in the event that the Bill receives Royal Assent and the Secretary of State exercises his powers of compulsory acquisition.”

In addition, **the HS2 Phase 2b Western Leg Information Paper B8**: Time limits in the Bill says:

“Planning consent for relocation of businesses

3.7 Clause 46 of the Bill allows the Promoter to reinstate businesses affected by the scheme onto other land within the limits shown on the plans. The Bill also allows the Secretary of State to direct planning permission for these reinstatement works, subject to the same 10-year limitation as described in paragraph 3.6 above.”

In addition, HS2 Ltd’s approach to supporting businesses and other organisations that would have land taken for the construction or operation of the Proposed Scheme is provided in the HS2 Phase 2b Western Leg Information Paper C7: Business relocation, in particular paragraphs 3 to 7.

13. Professional costs and fees.

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“3. Relocation of farm buildings and facilities

3.1.1 The Promoter acknowledges that in some cases, it may be necessary for farmers to relocate or re-provide agricultural buildings displaced by the Western Leg works and that these buildings may need to be relocated or re-provided before the original facility is lost. Where such a need arises, HS2 Ltd will provide appropriate assistance, including the provision of a statement of impact and timing, where the replacement facility needs to be provided pursuant to a deemed planning consent under the Town and

Country Planning (General Permitted Development) (England) Order 2015, or a separate application for planning consent.”

Scenarios for the potential use of temporary occupation powers rather than power of compulsory purchase.

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy at paragraph 5.1.5:

“Any decision to occupy land temporarily, rather than exercise powers to permanently acquire, would be subject to, and dependant on, the Secretary of State and a farmer or rural landowner entering into a satisfactory agreement prior to the exercise by the Secretary of State of any land acquisition powers, with respect to things such as the arrangements for reinstatement of the land, the level of compensation payable, and any required arrangements for the maintenance of any permanent structures or landscape works remaining in situ following construction. This would be subject to the level of available detailed design being sufficient to identify the precise requirements.”

In addition, the HS2 Phase 2b Guide for Farmers and Growers includes in Part 3, paragraph 22 a number of Scenarios for the potential use of temporary occupation powers rather than power of compulsory purchase. Paragraph 22.1 provides guidance on how the Promoter would consider exercising powers of temporary occupation and how it would engage with affected farmers/rural landowners and occupiers:

“In all cases an agreement between the Promoter, owners and occupiers of land will be required which reflects design information available at that point in time in contemplation of the exercise of powers of acquisition under the Bill to construct the Phase 2b Western Leg and shall be subject to the conditions set out in paragraph 5 above. Moreover, the absence of concluding an agreement in any of the scenarios set out below shall not prejudice the ability of the Promoter to exercise powers of compulsory acquisition of the Bill as required by the Promoter for the purposes of the Phase 2b Western Leg.”

The Assurance offered to the NFU on in the letter to which the Annex is attached sets out further commitments in relation to how an agreement would be entered into with individual affected farmers/rural landowners and occupiers.

The scenarios referred to above, and the corresponding guidance in Part 3 of the HS2 Phase 2b Guide for Farmers and Growers are set out below:

14. Land acquisition - Where land can be identified at this stage as not being required for permanent works and is not materially changed.

“22.3 Where land can be identified prior to detailed design as not being required for permanent works and will not be materially changed by construction of the Phase 2b Western Leg: The Promoter would be prepared to limit the exercise of compulsory purchase powers and would use powers of temporary occupation instead.”

15. Land acquisition - Where land cannot be identified at this stage, but it may be possible to do so following detailed design

“22.4 Where possession of land is not required before completion of detailed design and the Promoter is satisfied, following detailed design of the project, that land is not required for the accommodation of any permanent works authorised by the Bill: The Promoter would be prepared to limit the exercise of compulsory purchase powers and would use powers of temporary occupation instead.”

16. Land acquisition - Where land is materially changed but there is no need for maintenance of that change

“22.5 Where land is required only temporarily for construction purposes but will be materially changed by construction of the Phase 2b Western Leg, but that change does not require maintenance for HS2 purposes: The exercise of Schedule 15 powers rather than powers of permanent acquisition would be dependent upon the landowner entering into an agreement with the Promoter prior to the intended date of exercise by the Promoter of powers of acquisition under the Bill on terms satisfactory to the Promoter which provides that the land need not be restored to its former condition following completion of construction activity.”

17. Land acquisition - Where land is materially changed and there is a need for an obligation to maintain

“22.6 Where land is required only for construction of the Phase 2b Western Leg and will be materially changed by the construction of the Phase 2b Western Leg, and that change needs to be maintained for HS2 purposes: The exercise of Schedule 15 powers would be dependent upon the landowner entering into an agreement in a form satisfactory to the Promoter which provides that (a) the land need not be restored to its former condition following completion of construction activity on the land; (b) restricting removal or interference with land or works adjoining the railway ; (c) providing support or protection to the railway. and (d) makes provision for maintenance arrangements including where appropriate rights for the Promoter to

enter onto the land and carry out require maintenance works, enforcement powers and the imposition of covenants/grant of rights as may be required.”

In addition, where the land is the location of ecological mitigation:

“22.7 Where land is required only for construction of the Phase 2b Western Leg and will be materially changed by the construction, in that it will be the location for ecological mitigation, and that mitigation needs to be maintained for HS2 purposes: The exercise of Schedule 15 powers would be dependent upon the Promoter being satisfied that the detailed design of the mitigation has been undertaken and that the farmer/rural landowner is able to secure the maintenance of that mitigation (having regard to the nature and objectives of the mitigation to be provided). The exercise of Schedule 15 powers would also be dependent upon the farmer/rural landowner entering into an agreement with the Promoter in a form satisfactory to the Promoter which provides that (a) the land need not be restored to its former condition following completion of construction activity on the land; (b) provides for the maintenance of the environmental mitigation to be provided on or by that land and (c) makes provision for maintenance arrangements including where appropriate step in rights. enforcement powers and the imposition of covenants/ grant of rights as may be required. Where the detailed design of the mitigation has not been undertaken by the time the land is required for construction purposes the land will be acquired and may be returned after the completion of construction pending entry into an agreement for maintenance of the ecological mitigation works proposed.”

18. Land acquisition – Where land is occupied temporarily but the Petitioner requests the Secretary of State to acquire

“22.9 Where land is occupied temporarily by a nominated undertaker and an agreement is proposed under either paragraph 22.6 or 22.7 above and the landowner requests that the Promoter acquires the land prior to entry into an agreement: The Promoter will consider the need to acquire the land and where he is satisfied that the land is required for permanent works the Promoter will give notice of acquisition as soon as reasonably practicable.”

19. Land acquisition - Where land is required for the acquisition of Rights

“22.8 Where land is required only for construction of the Phase 2b Western Leg, but permanent rights (and/or the imposition of restrictions) are required over the land (for example, in respect of rights of access for inspection, or for maintenance of services): The Promoter or a statutory undertaker authorised by the Promoter may exercise powers to permanently acquire such rights over the property, but as regards the remainder of the land a nominated undertaker will only exercise temporary powers of occupation under the Bill.”

20. Use of Private Roads

The HS2 Phase 2b Western Leg Information Paper C2: Rural landowners and occupiers guide says:

“13.1 The Nominated Undertaker will engage with the owner and occupier of agricultural land with respect to the particular purpose(s) he expects to exercise the powers under clause 14 of the Bill., the type of vehicle(s) to be used, the purpose of the use and the expected frequency and period of use.”

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“9.1.2 During construction, the nominated undertaker will maintain access to the rural landowner's land under controlled conditions where necessary and reasonably practicable, and without prejudice right to claim disturbance compensation. Similarly, access across or around construction works for livestock and machinery will be provided under controlled conditions where necessary and reasonably practicable, and without prejudice to the rights to disturbance compensation under the compensation code.”

21. Drainage

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“11 Land drainage

11.1.1 The nominated undertaker will engage with farmers and growers to identify the existing drainage arrangements on land holdings required for the construction of the new railway. In the first instance this will be established through correspondence and copies of relevant drainage plans and/or specialist survey where deemed appropriate.

11.1.2 Prior to the commencement of significant construction works, land drains affected by the Phase 2b Western Leg works will, where practicable, be intercepted in a manner which maintains their efficiency. Work will be carried out to an appropriate specification after discussion with the farmer affected.

11.1.3 Where appropriate, plans to modify land drainage will be provided by the nominated undertaker.

11.1.4 HS2 will use an appropriate specialist to advise on drainage works. Where natural drainage patterns are adversely affected by the Phase 2b Western Leg works,

the provision of supplementary drainage or irrigation works will be considered, having regard to an assessment of compensation and the commercial justification.”

22. Detailed design

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“2.1.5 As part of the wider engagement with farmers, landowners and rural business owners, HS2 Ltd will be required to consult with the owner/tenant of an agricultural holding regarding the detailed design of works proposed to be undertaken on any part of that holding and HS2 Ltd will. take account of those responses, and as far as reasonably practicable (having regard to all other relevant factors):

- seek to minimise the loss of Grade 1, 2 and 3a agricultural land; and
- through engagement, seek to accommodate reasonable proposals to modify the detailed design of the works for the purposes of facilitating the efficient management of the agricultural holding in question, following completion of construction of the Phase 2b Western Leg works and in so far as reasonably practicable.

2.1.6 Having identified the concerns of each individual farmer, HS2 Ltd or the nominated undertaker will enter into arrangements following the principles set out in this Guide and how they apply to each individual farm.”

In addition, the Guide contains the following further explanation of policy related to how HS2 Ltd would work with farmers in relation to specific elements of the design of the proposed scheme:

- Section 8 – Accommodation works
- Section 9 – Access
- Section 10 – Fencing
- Section 11 – Land drainage
- Section 12 – Flood replacement areas
- Section 13 – Services
- Section 14 – Land Restoration

23. Agricultural soils

The HS2 Phase 2b Guide for Farmers and Growers contains the following conditional policy:

“14 Land restoration

14.1.1 Where land is occupied temporarily, HS2 Ltd will give up occupation no later than 12 months after the completion of the relevant construction works unless otherwise agreed with the landowner.

14.1.2 HS2 Ltd will utilise appropriately qualified specialists to provide advice on the restoration of agricultural land.

14.1.3 Except for where any land is used temporarily, before giving up possession HS2 Ltd will reinstate the land to such condition as may be agreed with the landowner and the relevant planning authority. An agreed record of the existing condition of the land will be made as necessary, before any works start.

14.1.4 HS2 Ltd will work with landowners and farmers whose productive agricultural soils are temporarily affected by the construction of the works, with the intention of bringing agricultural soils back to enable their former use before construction of the works to construct the Phase 2b Western Leg on the relevant land. In consultation with the relevant landowner, HS2 Ltd will prepare a soil resource plan in advance of construction that includes:

- a pre-disturbance record of the soil's physical characteristics;
- a target specification, set by the nominated undertaker and informed by a suitably qualified agricultural soils scientist or practitioner, for agricultural soils being restored to agriculture after temporary use;
- a method of assessing the suitability of handling soils based on plastic limit (i.e. to avoid moving soils when wet and plastic so that they do not compact when replaced);
- advice on stripping topsoil and subsoil to the correct depth;
- recommendations of the most suitable equipment for soil handling;
- advice on soil storage (e.g. heights and management of soil stores);
- advice on alleviating compaction after replacement;
- a schedule of aftercare maintenance, to include soil testing, appropriate to the target specification for a period of up to five years following completion of the relevant construction work; and
- a final report to determine the final handover condition of the agricultural soil.

14.1.5 Should the target specification not be met by the expiry of the period of five years for aftercare maintenance, then, if the landowner has fully complied with a schedule of aftercare, HS2 Ltd, informed by a suitably qualified agricultural soils scientist or practitioner, may extend that period by a further five years.

14.1.6 The requirement for a soil resource plan will be incorporated in the draft CoCP, and will form part of the EMRs, with which the nominated undertaker will be bound to comply."

Annex C – Summary Table

NFU Assurance from Phase 2a	Location of Assurance
Assurance A01 – Agricultural Liaison Service	Amendments to paragraph 7.2 of IP E19
Assurance A02 – Land Acquisition – Agricultural Land Acquired for the Purposes of the Permanent Railway Corridor	Paragraph 3.3 of, and Annex 1 of IP C2
Assurance A03 – Prompt Payment of Compensation	Paragraph 6.1 of IP C8: Compensation Code for Compulsory Purchase
Assurance A04 – Estimated Claims for Compensation	Paragraphs 7.1 and 7.2 of IP C2
Assurance A05 – Relocation Matters	Paragraph 15 of the F&G Guide (see also paragraph 3.7 of IP B8: Time Limits in the Bill (Planning Consent for the Relocation of Businesses) and Paras 3 to 7 inc. of IP C7: Business Relocation) for related provisions.
Assurance A06 – Liability and Claims	Paragraphs 16.3 and 16.4 of IP C2 (see also IP C10: Small Claims Scheme for similar provisions)
Assurance A07 – Water Supply	Paragraphs 13.1 and 13.2 of IP C2
Assurance A08 – Borrow Pits	IP D12 (Borrow Pits) refers to a Borrow Pit Report as part of the ES
Assurance A09(a) – Notice of taking temporary possession	Paragraph 6.2 of IP C2. (see also paragraph 6.1.2 of the F&G Guide)
Assurance B09 – Provision of Information	Paragraph 5.4 of IP C2.
Assurance B10 – Notices of Entry and Taking Possession	Paragraph 6.1 of IP C2. See also paragraph 4.3 of IP C3 (Land Acquisition Policy)
Assurance B11 – Relocation of Agricultural Buildings	Paragraph 3 of the F&G Guide See also paragraph 3.7 of IP B8: Time Limits in the Bill (Planning Consent for the Relocation of Businesses), and Paragraphs 3 to 7 inc. of IP C7: Business Relocation) for related provisions.
Assurance B12 – Identification of land for the relocation of agricultural Buildings	Paragraph 15 of the F&G Guide (see also paragraph 3.7 of IP B8: Time Limits in the Bill (Planning Consent for the Relocation of Businesses) and Paras 3 to 7 inc. of IP C7: Business Relocation) for related and similar provisions.
Assurance B13 – Professional costs and fees.	Paragraph 3 of F&G Guide
Assurance B14 – Land acquisition - Where land can be identified at this stage as not being required for permanent works and is not materially changed.	Paragraph 5 and 22 of the F&G Guide.
Assurance B15 – Land acquisition - Where land cannot be identified at this stage, but it may be possible to do so following detailed design	Paragraph 5 and 22 of the F&G Guide.

Assurance B16 – Land acquisition - Where land is materially changed but there is no need for maintenance of that change	Paragraph 5 and 22 of the F&G Guide
Assurance B17 – Land acquisition - Where land is materially changed and there is a need for an obligation to maintain	Paragraph 5 and 22 of the F&G Guide
Assurance B18 – Land acquisition – Where land is occupied temporarily but the Petitioner requests the Secretary of State to acquire	Paragraph 5 and 22 of the F&G Guide.
Assurance B19 – Land acquisition - Where land is required for the acquisition of Rights	Paragraph 5 and 22 of the F&G Guide.
Assurance B20 – Use of Private Roads	Paragraph 13.1 of IP C2
Assurance B21 – Drainage	Paragraphs 5.1-5.6 and 6.3 of IP E16
Assurance B22 – Detailed design	Paragraph 12 of IP:C2 and paragraphs 2.1.5, 2.1.6, 11-14 of the F&G Guide
Assurance B23 – Agricultural soils	Paragraphs 10 of IP C2.