

Hybrid Bills and other consent procedures: October 2014

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Hybrid Bills

Hybrid Bills: general introduction (1)

- Hybrid – elements of both public and private bills
 - “a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class”
(Speaker Hylton-Foster, HC Deb 10 December 1962 c45)
- Generally used by Government to obtain consent for major national infrastructure
- Hybrid Bills in the last 20 years (First Reading to Royal Assent)
 - Cardiff Bay Barrage Act 1993 (Nov 1991-Nov 1993)
 - Channel Tunnel Rail Link Act 1996 (Nov 1994-Dec 1996)
 - Crossrail Act 2008 (Feb 2005-July 2008)
 - HS2 (25 Nov 2013 - ???)



Crossrail Act 2008

CHAPTER 18

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House of Commons Select Committee on the Crossrail Bill

Crossrail Bill

First Special Report of Session 2006–07

Volume I

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 18 October 2007*

HC 235-I

Published on 23 October 2007
by authority of the House of Commons
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Hybrid Bills: general introduction (2)



- In general:
 - No need for the promoter to prove the Bill
 - Principle of the Bill determined at Second Reading HoC
 - Procedure governed by private bill standing orders and instructions to special select committee imposed the HoC (so far 2 instructions for HS2 Committee)
 - Committal to special select committees to resolve objections raised by individual petitions to Parliament which stand referred to the Committee
 - Restrictions on standing on those who may petition and be heard – no right for members of the public to petition and be heard (though they may comment in writing on the ES)

Hybrid Bills: general introduction (3)

- To petition, a person or body must be directly and specially affected by a Bill provision. No specific locus hearings for Crossrail, but there were for HS2 Phase 1 Bill
 - “‘Locus standi’ can be defined as the right of a petitioner to be heard against the bill on the grounds that he or she is specially, directly and injuriously affected by its provisions. If the promoters challenge a petitioner's locus standi, the matter will be argued before the select committee, who will decide for or against the petitioner's right to appear.” (HoC Petitioning Kit 2013-14)
- Petition issues may range widely from e.g. mitigation of impacts (e.g. Smithfield dust issues with Crossrail), objection to specific works or extent of land take, to promoting alternative proposals within Bill limits (new Liverpool St tube ticket hall with Crossrail).

STANDING ORDERS
OF THE
HOUSE OF COMMONS



PRIVATE BUSINESS

2005

Ordered by The House of Commons to be printed
21st July 2005

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LONDON—THE STATIONERY OFFICE LIMITED

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Hybrid Bills: general introduction (4)

- Some issues may be ruled out by the Instruction to SC, e.g. HS2 HoC Instruction 1 (HC Hansard 29.4.14, Col 770)
 - “2. The Committee shall not hear any Petition to the extent that it relates to whether or not there should be a spur from Old Oak Common to the Channel Tunnel Rail Link.”
- Standing Orders for Private Business 2005 (with amendments)
- SO 224A introduced 26.6.13 to comply with EIA requirements. It requires independent examination by an assessor of the ES and responses.
- SO 224 – Examiners determine whether the Private Bill SoS apply to a public bill (i.e. is hybrid) and certify compliance with SO requirements for private business which then allows the bill to go to Second Reading



Hybrid Bills: House of Commons Background Paper

Standard Note: SN/PC/6736

Last updated: 11 December 2013

Author: Richard Kelly

Section: Parliament and Constitution Centre



A hybrid bill has characteristics of both a public bill and a private bill, that is, although it is of general application, the content of such a bill would significantly affect the interests of certain individuals or organisations. Speaker Hylton-Foster described a hybrid bill as “a public bill which affects a particular private interest in a manner different from the private interests of other persons or bodies of the same category or class”.*

Bills which propose to undertake works of national importance, but in a local area, have usually been hybrid. Hybrid bills may be introduced by the Government or by a backbencher. They are introduced only rarely, the last occasions being the *High Speed Rail (London-West Midlands) Bill*, on 25 November 2013; and the *Crossrail Bill* in 2005.

The procedures followed in Parliament in considering hybrid bills incorporate aspects of both public bill and private bill procedures. Promoters of hybrid bills do not need to prove the need for their bill (promoters of private bills do). Between a hybrid bill's introduction and second reading, time is provided for members of the public to comment on the environmental statement published with the Bill. Following Second Reading, hybrid bills are committed to a select committee to allow those affected by the Bill to petition against aspects of the Bill to which they object. After the select committee has reported, a hybrid bill is considered in Committee, on Report and debated at Third Reading, like a public bill. Separate House of Commons Background Papers review public bill procedure and private bill procedure.**

This Background Paper outlines the procedures followed in considering a hybrid bill in the House of Commons. Erskine May's description of hybrid bill procedure can be found on pages 652-658 of *Parliamentary Practice* (24th edition, 2011).

Another Standard Note, [Railways: high speed rail \(HS2\)](#) (SN/BT/316), provides information on HS2; and the Library will be publishing a research paper on the Hybrid Bill for Commons Second Reading, expected sometime in spring 2014.

* HC Deb 10 December 1962 c45

** [House of Commons Background Paper: Public Bills](#), SN/PC/6507; [House of Commons Background Paper: Private Bills](#), SN/PC/6508

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How to Petition against a Hybrid Bill in the House of Commons



Session 2013–14

Hybrid Bills: general introduction (5)

- Petitions following Second Reading regulated by decision at Second Reading and any Instructions
- Must be deposited with Private Bill Office within the time set
- Petitions by those directly affected summarises their objections and is a request to be allowed to argue their objections before the Committee. The hearing of the objection will be defined by the terms of the petition.
- Guidance on petitioning and petitioning template available
 - “How to Petition against a Hybrid Bill in the House of Commons” (Session 2013–14)
- Objections may be resolved by undertakings from the promoter
- Procedure may seem more arcane than inquiry or examination procedures, but in fact simpler in many respects

Hybrid Bills: general introduction (6)

- Practical guidance on Hybrid Bills and petitioning available on Parliament website, including guidance specific to HS2 Bill
- Additional provisions may be promoted during the Committee stage and this will be subject to supplementary EIA and to petitioning (subject to meeting the locus requirements)
- Once the Committee has concluded it will report with its recommendations (which it may already have announced) and amendments and recommitted to Committee of the whole House or Public Bill Committee and then proceeds as for public bills
- The Bill is then sent to the HL which provides a further opportunity for petitioning and HL Select Committee hearings
- Hybrid Bills once they receive Royal Assent are published as a Public & General Act

The following Roll A agents may be able to represent you:

Berwin Leighton Paisner LLP (Ms Helen Kemp) Adelaide House London EC4R 9HA 020 7760 1000 www.blplaw.com	Bircham Dyson Bell LLP (Mr Ian McCulloch Mr Paul Thompson Mr Nick Brown) 50 Broadway London SW1H 0BL 020 7783 3437 www.bdb-law.co.uk
Pinsent Masons LLP (Mr Robbie Owen) 30 Crown Pl, Earl Street London EC2A 4ES 020 7418 7000 www.pinsentmasons.com	Sharpe Pritchard LLP (Mr Alastair Lewis Mr Emyr Thomas) Fulwood Place London WC1V 6HG 020 7405 4600 www.sharpepritchard.co.uk
Veale Wasbrough Vizards LLP (Mr Ron Perry) Barnards Inn, 86 Fetter Lane London EC4A 1AD 020 7405 1234 www.vwv.co.uk	

If you wish someone other than a Roll A agent to represent you, they will need to become a Roll B agent. You will find instructions on how to arrange for this in our "Guide to petitioning against a hybrid Bill" (see above).

Your MP can deposit your petition on your behalf.

The deadline for depositing the petition

It is important that we receive all petitions by the deadline set by the House of Commons. This deadline will be announced once the Hybrid Bill has passed Second Reading. Please check our website or call or email the Private Bill Office to make sure you know when the deadline is.

When the Bill reaches House of Lords, a deadline for petitioning there will be announced.

Fees

You will have to pay a one-off fee of £20 when you deposit your petition at the House of Commons. There is no subsequent charge, for example for appearance before the committee.

Arrangements for paying fees will be publicised nearer the petitioning period.

Terminology

The HS2 Bill will be a **hybrid bill**, having some features of a public bill and some of a private bill. **Public bills** relate to the general law of the land which affects everybody. **Private bills** make particular provisions affecting individuals, institutions or localities differently from the general law, and are therefore subject to their own scrutiny requirements.

If you want to know more

If you want to know more you can contact the Private Bill Office in the House of Commons on 020 7219 3750 and prbhoc@parliament.uk. You can check our web page which is updated regularly:

www.parliament.uk/about/how/laws/bills/private/office/

More information about the HS2 project is available on the HS2 website: www.hs2.org.uk.

If you have difficulty understanding the enclosed, you are strongly advised to contact a Citizen's Advice Bureau.

إذا كنت تواجه صعوبة في فهم الوثائق الواردة، فإننا نوصيك بتلقي المساعدة من أخصائنا في مجال الاستشارة المدنية أو مكتب استشارة المواطنين.

यदि आपको संलग्न दस्तावेजों को समझने में कठिनाई हो तो आप एक नागरिक सलाह कार्यालय या सिटीजनस आडवाइस ब्यूरो से सहायता ले सकते हैं।

Haddii aad dhibaato ku qabtid garashada macluumaadka ku lifaaqan, waxaa lagugu talinayaa inaad la xiriirto qareen ama Xafiiska Talo-siinta Muwaacanka.

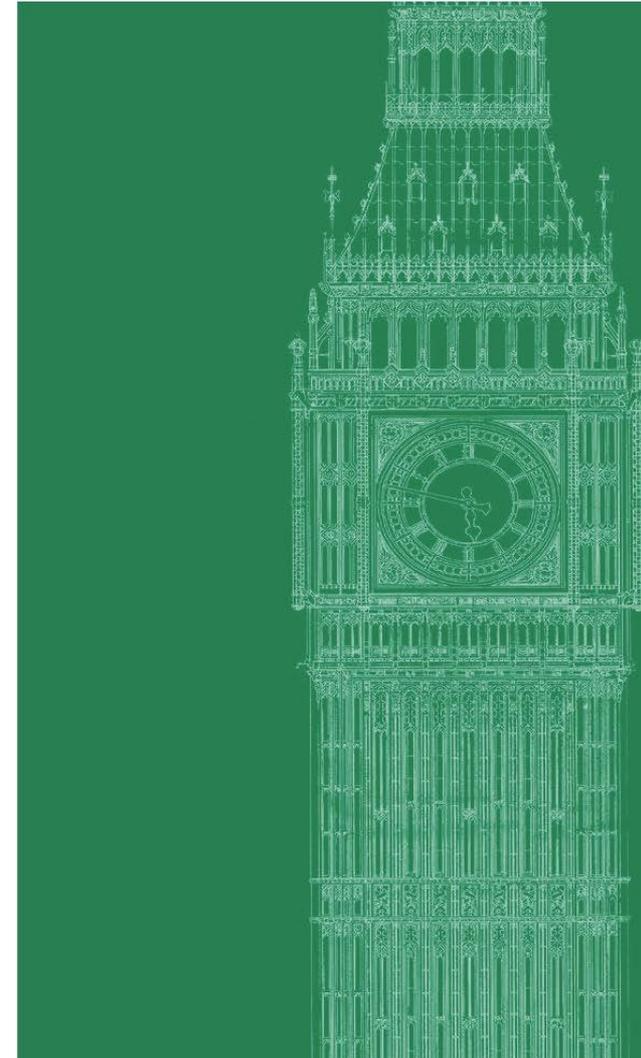
ہاں سپیڈ ریل (ہائس ٹو ہائیٹس مائیلنگز) - پارلیمنٹی نوٹس
اگر آپ کو منسلک سمجھنے میں دشواری پیش آتی ہے تو آپ سے پرزہ سفارش کی جاتی ہے کہ آپ کسی سولسٹر یا سٹیٹن پلاننگ بیورو سے رابطہ کریں۔

November 2013



HOUSE OF COMMONS

High Speed Rail (London – West Midlands) Bill What you need to know



Processes for consent

Preparation for submission and examination (1)



- The general regulatory procedures, primarily in the planning process under the Town & Country Planning Act 1990, Transport & Works Act 1992, the development consent process under the Planning Act 2008 have significant procedures to be completed prior to consideration and determination.
- See e.g.
 - Part III TCPA 1990; Development Management Procedure Order 2010
 - Part I TWA 1992; Transport & Works (Applications and Objections Procedure) (England & Wales) Rules 2006
 - Parts 5 and 6 of the PA 2008; Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
- TCPA restricted in what may be consented i.e. only planning; PA 2008 DCO process encompasses many of the regulatory requirements; TWA lies in between but restricted to railways; tramways; trolley vehicle systems; prescribed systems using a mode of guided transport.

Preparation for submission and examination (2)



- Numerous additional regulations covering procedural matters e.g. fees, forms, consultation, objections, inquiry/examination procedure, cost etc. Considerably fewer procedural rules and guidance for hybrid bills other than the Standing Orders for Private Business and specific instructions given to select committees
- Large amount of procedural guidance for planning applications and DCO applications as well as national policy guiding the determination of the merits of the application – e.g. NPPF, NPPG, procedural circulars and guides (planning), NPS and guidance notes (DCOs)
- Substantial guidance documents on planning appeals, call-ins, enforcement and lawful development certificates and guidance for DCO examinations e.g. *Planning Act 2008: examination of applications for development consent* (April 2013) and *Planning Act 2008: procedures for the compulsory acquisition of land* (Sept 2013)

Preparation for submission and examination (3)



- Subject matter of hybrid bills not limited though since they are generally promoted by central government, they are generally matters of public if not national significance and their provisions, as primary legislation, may authorise a specific project for all purposes including compulsory purchase and may modify general legislation to meet the requirements of the specific project
- Ability to amend prior to completion of the process, probably greater with hybrid bills (within the limits of deviation approved at second reading or further approved by the HoC) than the more restrictive approaches in planning (see e.g. ***Wheatcroft Ltd v Secretary of State*** (1982) 43 P. & C.R. 233) and DCO procedure (see *Planning Act 2008: examination of applications for development consent* §§105-107).

Preparation for submission and examination (4)



- As noted the right of persons to petition and be heard against the terms of a hybrid bill are restricted
- Unlike hybrid bill locus restrictions, planning inquiries (and informal hearings) do provide a wide scope for public participation even if those wishing to present their views do not have an individual interest. This is reflected in the wide standing rules for judicial review of such decisions – see ***Walton v Scottish Ministers*** [2013] P.T.S.R. 51
- Transport and Works (Applications & Objections Procedure) (England and Wales) Rules 2006 allow objections to be made and for objectors to be heard at inquiry (or in writing if written procedure is used) provided reg. 21. The only restrictions are procedural i.e. they must be in writing, set out certain details and explain the nature of the objections.

Preparation for submission and examination (5)



- DCO processes are more controlled and restrict more than the planning process the right of the general public to participate. “Interested parties” within s. 102 PA 2008 are given important entitlements before, during and after the examination process including the right to be invited to a preliminary meeting; the right to require, and be heard at, an open-floor hearing; the right to be heard at an issue-specific hearing, if one is held; the rights to be notified of when the Examining Authority has completed its examination and of the reasons for the decision.
- “Interested parties” includes persons who have made “relevant representations” (which must be made in the correct form) made within a prescribed time but with limited rights to be permitted to make late representations with the agreement of the Examining Authority.

Environmental impact assessment: 1

- EIA is common to all consent procedures.
- Each procedure has its own form of EIA regulations
- The position with hybrid bills is different since there is a form of legislative exemption from EIA in Directive 2011/92/EU:

“4. This Directive shall not apply to projects the details of which are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process.”
- The legislative exemption has been interpreted by CJEU to require the substance of EIA to be met during the legislative process. See *Boxus v Region Wallonne* (C-128/09) [2011] E.C.R. I-9711 and *R. (Buckinghamshire CC) v Secretary of State* [2014] 1 W.L.R. 324.

Environmental impact assessment: 2

- During the course of the HS2 litigation, which included a complaint that the legislative process (see SO 27A) would not meet the requirements of EIA, SO 224A was introduced to meet the requirements of the EIA Directive. This introduces a new requirement for independent assessment prior to second reading
- Procedures are set down for the assessment of supplementary EIA following second reading
- The great length of the HS2 ES and the processing of representations has nonetheless been met by a very general assessment report which generally does not grapple with detailed issues. Whilst this to a degree is consistent with the broad discretion afforded to planning authorities when determining the adequacy of EIA, in the case of hybrid bills this may be the only opportunity open to members of public to make formal representations on a project unless they have locus to petition

Comparison

Hybrid Bills: comparison (1)

- Each procedure strikes a different balance between detailed consideration of proposals and public participation and the need for projects to undergo a procedure which is not disproportionately lengthy
- Hybrid bills provide a wider scope for the subject-matter of projects and inclusion of provision of all necessary consents
- Fewer procedural regulations for pre-examination and examination procedure
- Question whether EIA will be as rigorously considered under HoC SO 224A though since newly introduced, and only applied so far to HS2 Phase I Bill, its operation in practice is still a matter for scrutiny in the light of practice
- Advantage to the promoter in that much stricter limitation on those who may (a) petition and (b) appear before select committee

Hybrid Bills: comparison (2)

- Further advantage to the promoter and the public interest in the scheme in that the overall process may be relatively speedy – contrast Crossrail with 113 sitting days (84+29) with the T5 public inquiry – 525 sitting days. However, the streamlining of hearings for planning and DOC open floor hearings provides advantages in this respect, though the overall process may still take longer than the bill process
- Advantage to a petitioner that the powers of Parliament are more extensive than those of the decision-maker under the usual regulatory regimes which gives greater flexibility in terms of amending legislation
- Rights of general public limited to lobbying MPs, campaigning etc. except in limited cases where they overlap with individual issues which may be the subject of petitioning or where the select committee adopts a flexible approach to the locus requirement.

Hybrid Bills: comparison (3)

- Committees also appear to consider themselves less constrained at making significance changes. E.g. during Crossrail
 - New ticket hall required for Liverpool St tube
 - Additional station required at Woolwich
 - Sanctioned move of depot from Romford to Old Oak Common
- Advantages for promoter in that the procedures can be guided by the Government through the HoC
- Committee process largely in the hands of the Committee itself, subject to instructions, though willing to discuss general approach prior to the start of hearings (Crossrail and HS2). Simple procedure for advance exchange of material for hearings in operation for HS2 (as it was for Crossrail).

Hybrid Bills: comparison (4)

- Hearings tend to be -
 - less concerned with the level of technical detail considered at inquiries and examinations
 - focussed on major concerns, including specific issues with regard to impact on individual interests
 - shorter in terms of consideration of each petition than compared e.g. with CPO objections or issues at planning inquiry
- Greater reluctance to consider the detail of proposals so very much in the hands of what committee members are willing and able to read in advance

Hybrid Bills: comparison (5)

- “The Committee will take time to hear and understand petitioners’ arguments. However, unnecessarily lengthy argument on either side will be deprecated, as will reading out of speeches without good reason. Petitioners should feel free to include in their evidence a summary of their arguments, of no more than two pages. If they do, they can assume the Committee will have read it and that there will be no need to expand on it in the hearing.”

(HS2 information on procedures for petition appearances)

- Chairman of HS2 SC (Mr Robert Syms MP)
“Before we commence, I reiterate that short submissions will find more favour with the Committee than lengthy, repetitious arguments and reading out of papers. We normally start, if it’s okay with the petitioners, with just a slight overview from the proposers....” (3.9.14, a.m.)

Hybrid Bills: comparison (6)

- Overall, hybrid bill process can be a faster and more comprehensive form for obtaining consent for the promoter
- However, given the acceptance of the principle of the bill by second reading, the practical ability to use the select committee process as a vehicle for general public opposition and to influence those examining the project provisions is very limited.
- Contrast broad planning/TWA rights to object and be heard and more limited rights of interested parties under PA 2008.
- Except through normal Parliamentary democratic processes members of the public without locus have no means of registering their objections or having them considered through the decision-making process - contrast the ability to appear to oppose a planning appeal for a new superstore, wind farm or housing estate.