

EXPLANATORY MEMORANDUM TO

THE HIGH SPEED RAIL (LONDON - WEST MIDLANDS) (PLANNING APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE) (ENGLAND) REGULATIONS 2017

2017 No. 227

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Schedule 17 to the High Speed Rail (London – West Midlands) Act 2017 (the “Act”) disapplies section 78 of the Town and Country Planning Act 1990 (right to appeal against planning decisions and failure to take such decisions). In its place, Schedule 17 sets out the mechanism for the nominated undertaker (HS2 Ltd) to appeal against a planning authority’s decision to refuse a request for planning approval, impose conditions in granting planning approval and failure to take a decision within the time period prescribed.
- 2.2 The appeal is to be made to the Secretary of State for Transport and the Secretary of State for Communities and Local Government (the “appropriate Ministers”). Schedule 17 provides that, unless the appropriate Ministers direct otherwise, they will appoint a person to determine the appeal. These procedures are governed by the provisions set out in these Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These Regulations are largely based on the Crossrail (Planning Appeals) (Written Representations Procedure) (England) Regulations 2008 (2008 No. 2908) and the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009 (the “2009 Regulations”) (2009 No. 452).

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England only.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 These Regulations make provision for the nominated undertaker to appeal against a decision of a planning authority to refuse a request for planning approval for HS2 Phase One.
- 7.2 Although section 20 of the Act grants deemed planning permission for HS2 Phase One, the nominated undertaker will need to apply for planning approval of the detailed design of a range of elements of the scheme from planning authorities along the line of route. This will enable planning authorities to ensure that the design of permanent structures fits into the local environment.
- 7.3 Schedule 17 to the Act disapplies the appeals mechanism set out in the Town and Country Planning Act 1990 and so these Regulations set out the appeals process to be followed. These Regulations will assist with the delivery of HS2 Phase One by reducing unnecessary planning delay, which will aid the nominated undertaker in delivering the project on time and on budget.

8. Consultation outcome

- 8.1 The content of the provisions contained in these Regulations was the subject of an informal consultation with the HS2 Phase One Routewide Planning Forum.

9. Guidance

- 9.1 None. The appeals arrangements contained within these Regulations are self-explanatory and are based on the regime contained in the 2009 Regulations with which planning authorities will be familiar.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector. These Regulations provide for an alternative process for appeals by the nominated undertaker against a decision made by a planning authority.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 These Regulations do not contain a review provision and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply as these Regulations do not make regulatory provision in relation to any qualifying activity or amend regulatory provision made in relation to any qualifying activity.

12.2 These Regulations make provision for bespoke planning arrangements for HS2 Phase One concerning appeals by the nominated undertaker against the decision of a planning authority under Schedule 17 to the High Speed Rail (London – West Midlands) Act 2017. The nominated undertaker will submit requests for planning approval to planning authorities as part of its function in delivering HS2 Phase One on behalf of the Department.

13. Contact

13.1 Merida Mathen at the Department for Transport (Telephone: 020 7944 3732 or email: merida.mathen@dft.gsi.gov.uk) can answer any queries regarding the instrument.