

LEGISLATIVE CONSENT MEMORANDUM
HIGH SPEED RAIL (LONDON-WEST MIDLANDS) BILL

Draft Legislative Consent Motion

1. The Draft Motion, which will be lodged by the Cabinet Secretary for Infrastructure, Investment and Cities is:

“That the Parliament agrees that the relevant provisions of the High Speed Rail (London-West Midlands) Bill 2013, relating to works required in Scotland for HS2 Phase 1 and to the exercise of the related right of entry to property, in so far as these matters should fall within the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Background

2. This memorandum has been lodged by Nicola Sturgeon MSP, Cabinet Secretary for Infrastructure, Investment and Cities, under Rule 9.B.1 (a) of the Parliament’s Standing Orders. The High Speed Rail (London – West Midlands) Bill was introduced to the House of Commons on 25 November 2013. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2013-14/highspeedrailondonwestmidlands.html>

3. A previous LCM in connection with the related High Speed Rail (Preparation) Bill (“the Preparation Bill”) was agreed by the Scottish Parliament on 5 September 2013. The Preparation Bill enables the Secretary of State to incur expenditure in preparation for a high speed railway transport network. The need for an LCM in that context arises because the Bill includes a power for the Secretary of State to incur expenditure by way of grant in relation to preparations for high speed rail in Scotland and this could already be enabled, to some extent, by way of an Act of the Scottish Parliament. The LCM agreed by the Parliament in this connection can be found here:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/64588.aspx>

The purpose of the High Speed Rail (London-West Midlands) Bill and the reasons for seeking an LCM in relation to it are set out below.

Content of the High Speed Rail (London- West Midlands) Bill

4. The High Speed Rail (London- West Midlands) Bill (“the Bill”) is a substantial Bill which will confer the powers necessary to construct Phase 1 of the High Speed 2 (HS2) rail project between London and the West Midlands.

5. The Bill also makes provision for the acquisition of the land required for the construction of Phase 1.

Provisions which relate to Scotland

6. The Bill, on introduction, has two main provisions which relate directly and expressly to Scotland.

7. Clause 49 empowers the Scottish Ministers to authorise works which may be required in Scotland (and which could not already be provided for wholly within devolved competence) for Phase 1 Purposes. An example of the works that might be required for Phase 1 purposes could be platform alterations or depot extensions. Clause 52 of the Bill provides for Scottish Ministers to consent to the exercise of the powers of entry (enabling the taking of surveys and compliance with EU Environmental legislation) where the land in question is owned by certain statutory undertakers (e.g. public gas transporters).

8. As these provisions confer powers on the Scottish Ministers, this alteration to Ministers' executive competence will require the consent of the Scottish Parliament.

Reasons for seeking a Legislative Consent Motion

9. Under Schedule 5 of the Scotland Act 1998, the provision and regulation of railway services is a reserved matter.

10. However, as a result of Orders made under the Scotland Act 1998, the Scottish Parliament was given legislative competence in relation to the promotion and construction of railways starting and ending within Scotland. Further to that, provisions within the Railways Act 2005 (which was supplemented by an LCM (Railways Bill S2M-2244) gave Scottish Ministers additional powers/functions in relation to railway matters e.g. the passenger rail franchise.

11. That said, it is recognised that it is possible that the construction and operation of Phase 1 of HS2 may well give rise to a need for works in Scotland which could not currently be authorised/enabled within devolved competence.

12. Consequently, the Bill will confer additional powers on Scottish Ministers in relation to High Speed Rail matters in Scotland.

13. It is also recognised that the Scottish Ministers have been given certain functions (by or under the Scotland Act 1998) in relation to statutory undertakers and as such, it should be Scottish Ministers rather than the Secretary of State who give consent to the exercise of powers of entry over land held by those undertakers.

14. These adjustments to the executive competence of Scottish Ministers require the consent of the Scottish Parliament.

Consultation

15. The UK Government have carried out substantial consultation on Phase 1 of the HS2 project (London – Birmingham) in relation to environmental factors including environmental impact assessment, design refinement, property compensation and safeguarding of the route from development. Consultation on Phase 2 of HS2 (Birmingham-Leeds/Manchester) has already taken place in relation to the Exceptional Hardship Scheme and the general Phase 2 Consultation is currently under way, being launched on 17 July 2013 and running until 31 January 2014.

16. On 1 November 2013, the Scottish Government announced a joint study between Transport Scotland, the Department for Transport and HS2 Ltd into High Speed Rail options to Scotland from Manchester/Leeds at the end of HS2 Phase 2.

Financial Implications

17. The Scottish Government funds rail infrastructure related to rail in Scotland (with the exception of infrastructure related to safety matters or compliance with disability discrimination legislation).

18. As the Bill will confer a new power on the Scottish Ministers in relation to works required to be carried out in relation to infrastructure in Scotland for Phase 1 purposes, it is anticipated that DfT may expect Ministers to fund any works so authorised. However, this will be the subject of further dialogue and negotiation with DfT. It is unclear at this early stage precisely what works will be required and as such it is not possible to estimate the precise financial implications.

Conclusion

19. The view of the Scottish Government that it is in the best interests of the Scottish people and good governance that the relevant provisions of the Bill, in so far as they alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.

**Scottish Government
December 2013**