EXPLANATORY MEMORANDUM TO

THE HIGH SPEED RAIL (WEST MIDLANDS – CREWE) (PLANNING APPEALS) (WRITTEN REPRESENTATIONS PROCEDURE) REGULATIONS 2021

2021 No. 182

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 (West Midlands - Crewe) Act 2021 (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 unreasonable 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 Housing, 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.

2.3 The High Speed Rail (West Midlands - Crewe) Act 2021 is also known as "HS2 Phase 2a" or "Phase 2a".

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations are largely based on the High Speed Rail (London – West Midlands) (Written Representations Procedure) (England) Regulations 2017 (2017 No. 227), 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).

6.2 Paragraph 23(10) of Schedule 17 to the Act disapplies the appeals process set out in the Town and Country Planning Act 1990. These Regulations are needed to make provision for an alternative appeals process.

7. Policy background

What is being done and why?

7.1 The Act grants deemed planning permission for Phase 2a of the High Speed Rail scheme, and as such the normal procedure of making a planning application to a local authority, as set out in the Town and Country Planning Act 1990, does not apply.

7.2 However, the nominated undertaker will still need to apply for planning approval in relation to the detailed design of a range of elements for the High Speed Rail scheme from planning authorities along the line of the Phase 2a route. The matters on which the nominated undertaker will need to apply for planning approval are set out in Part 1 of Schedule 17. The process of applications for planning approval will enable the planning authorities to ensure that the design of permanent structures fits into the local environment.

7.3 It is possible that a planning authority could refuse a request for planning approval for works relating to Phase 2a of the High Speed Rail scheme, could set unreasonable conditions on approval or could delay its determination beyond the period prescribed in Schedule17. These Regulations make provision to enable the nominated undertaker to appeal the decision, or lack thereof, in these cases.

7.4 Appeals under this alternative process are to be made to the Secretary of State for Transport and the Secretary of State for Housing, Communities and Local Government as the appropriate Ministers. Unless the appropriate Ministers direct otherwise, the determination of the appeal must, instead of being carried out by them, be carried out by a person appointed by them for that purpose. This person would generally be a Planning Inspector appointed by the Planning Inspectorate on behalf of the appropriate Ministers. An appeal under these Regulations is to be dealt with on the basis of written representations, unless the person deciding the appeal directs otherwise.

7.5 The purpose of these Regulations is to assist with the delivery of Phase 2a of High Speed Two, reducing unnecessary planning delay, and so enable the nominated undertaker to deliver the scheme in a timely and cost effective way.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not a relevant issue for these Regulations which make provision for an appeals process as provided by Schedule 17 to the Act.

10. Consultation outcome

10.1 The HS2 Phase 2a Planning Forum (the "Planning Forum") acts as the focus for liaison between HS2 Ltd and the Phase 2a 'line of route' local planning authorities on matters concerning town planning, environment and related matters of cross boundary and route-wide generic interest.

10.2 These local planning authorities are Newcastle-under-Lyme Borough Council, East Staffordshire Borough Council, Stafford Borough Council, Staffordshire County Council, Shropshire Council, Lichfield District Council, and Cheshire East Council.

10.3 The provisions contained in these Regulations were the subject of consultation with senior planning officers at the Planning Forum meeting in July 2018 for comments on the approach being adopted. The consultation was limited to the local planning authorities along the line of route of HS2 Phase 2a, as these are the only affected parties. At the July meeting, a presentation was provided to summarise the proposed approach, with time allowed for discussion and questions. The presentation included information on the relevant elements of the Phase 2a Bill which disapply the appeals process set out in the Town and Country Planning Act 1990, the detail of the approach which would be taken, and to provide links to relevant information, including the HS2 Phase One Appeal Regulations and Guidance. The presentation was circulated after the meeting, and the Planning Forum members were given the opportunity to send comments within a four week period after the July meeting.

10.4 The only comment received was about the need for the Planning Inspectorate (PINS) to have a suitable resource to process this work in addition to their normal planning appeal work. In response, the Department explained that it was working with PINS to put in place an appropriate Service Level Agreement.

10.5 A draft of the guidance on planning appeals was also presented to members at the Planning Forum meeting in September 2019, with time allowed for discussion and questions. The presentation and the draft guidance were circulated after the meeting, and the Planning Forum members were given the opportunity to send comments within four weeks after the September meeting. A draft of this guidance is attached to this explanatory memorandum.

10.6 The only comment received on the draft guidance was about whether a planning authority could approve an application after an appeal has been made, if agreement could be reached with the nominated undertaker. It was confirmed by the nominated undertaker that the provisions of Schedule 17 to the Phase 2a Bill did not allow this to happen.

10.7 Since these matters were originally discussed, the Planning Forum have and will continue to be kept up to date and given opportunities to raise comments and ask further questions.

11. Guidance

11.1 A draft of the guidance on the appeals process has been shared with the relevant local planning authorities through the Planning Forum and the guidance will be published on the gov.uk website at the time the SI is made.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no significant 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.

12.3 An Impact Assessment has not been prepared for this instrument because it is not regulatory and imposes no new burden on local authorities. This position was agreed with the Department for Transport Better Regulation unit.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to continue engagement with the affected local authorities through the HS2 Phase 2a Planning Forum, which meets on a quarterly basis unless otherwise decided by its members.

14.2 The regulation does not include a statutory review clause.

15. Contact

15.1 Amanda John at the Department for Transport. Telephone: 07768 082786 or email: amanda.john@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jon Griffiths, Deputy Director for HS2 Phase 2a, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Stephenson MP at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.