Major infrastructure projects: the hybrid Bill experience

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What is authorisation for?

- Clause 39 of the Magna Carta states that people cannot be deprived of their liberty or their land.
- Human Rights Act 1998 incorporates these rights.
- Building a big infrastructure project involves interfering with these fundamental rights.
- Authorisation is a process whereby such rights can be taken from people in a lawful manner.
- Land can only be taken from a person where it is the public interest, and in accordance with processes set out in law.
- Key objective is to achieve certainty for the promoter and justice for affected parties.
Historical perspective

- Seeking rights above others has always been an issue – usually resolved by getting Private Act of Parliament
- First mention is a petition to the Crown dated 1290 to levy tolls on a road
- First Act is dated 1421, relates to a road at Abingdon
- First turnpike road Act – 1663, part of Great North Road
- First canal Act – 1759, Bridgewater canal
- First railway Act – 1758, Middleton colliery
- First steam railway Act – 1821, Stockton to Darlington
- Railway mania of the 1840s - in one year there were 700 railway Bills in Parliament
How do we do it now?

- Until the 1990s, use of private Acts was the norm
- No longer use private Acts – considered to be too much of a burden on Parliament
- There are now several authorisation routes:
  - schemes where no powers are needed, or small scale schemes – normal planning legislation
  - medium sized schemes – Transport & Works Act 1992
  - nationally significant schemes – Planning Act 2008, as amended by the Localism Act 2011
- Exceptional schemes – Act of Parliament – enables Parliament to act as decision maker
Act of Parliament

• Main benefits:
  - Shows Government support for project
  - Principle of the scheme is established early, at Second Reading of the Bill in the House of Commons
  - Can amend existing primary legislation or create bespoke legislative regime
  - Changes can be introduced during the process
Acts of Parliament

• Used relatively infrequently - examples include:
  • Channel Tunnel 1987
  • Dartford-Thurrock Crossing 1988
  • Severn Bridge 1992
  • Channel Tunnel Rail Link/HS1 1996
  • Crossrail 2008
  • Phase 1 of HS2 2013
  • Phase 2A of HS2
  • Phase 2B of HS2
  • Crossrail 2

• Obtained by promoting a ‘hybrid’ Bill in Parliament
Hybrid Bill

Has characteristics of public and private Bills:

- Public: legislation that affects us all
- Private: affects specific individuals/organisations in a particular way

Promotion of a hybrid Bill combines elements of public and private Bills:

- The principle of the proposal is debated in Parliament
- Details are scrutinised by a Select Committee in both Houses
- Individuals directly affected by the proposal have a right to petition and be heard by the Committees
- Bill also goes through normal ‘public’ Bill stages just like other primary legislation
Bill documents

• The Bill itself
• Plans and Sections
• Estimate of Expense
• Book of Reference
• Supporting documentation:
  ▪ Environmental Statement (50,000+ pages)
  ▪ Additional documents (e.g. consultation report, impact assessments)
• Rules for preparing and promoting *private* Bills are set out in the Parliamentary Standing Orders of both Houses – rules originally prepared in the 1840s which have evolved over time and been amended to reflect legal and policy changes
  • For example, SO27A relates to environmental assessment and SO224A relates to public participation
Environmental Minimum Requirements

- Code of Construction Practice
- Planning Memorandum
- Heritage Memorandum
- Environmental Memorandum

- Register of Undertakings and Assurances
- Information Papers
Hybrid Bill process

Bill deposit
- Plus all supporting documentation

First Reading
- Authorises printing of Bill
- Procedural step
- No debate at this point

ES consultation
- Public consultation on the Environmental Statement

Second Reading
- Principles of Bill established
- Debate on the floor of the House
- Sets length of petitioning period
- Premise of the Bill assured

Petitioning period
- Duration set at Second Reading

Select Committee
- Petitions heard in front of Select Committee
- Members must be unconnected to project

Public Bill Committee
- Further consideration and possible amendments made by MPs

Third Reading/Report
- House considers Bill
- Further consideration and possible amendments made by MPs

House of Lords
- The Bill now normally follows a similar process through the House of Lords as it has through the Commons

House of Commons
- Any amendments to the Bill made by the House of Lords are now debated and approved by the House of Commons (Commons Consideration of Lords Amendments)

Royal Assent
House of Commons Select Committee

- Similar but different to Departmental Select Committees
- No route MPs or MPs linked to the construction or railway industries
- Membership drawn from proportional make-up of the House (i.e. Government majority)
- Quasi-judicial (operates more like a court)
- Often given an instruction (motion passed at Second Reading) seeking to clarify principle of the Bill
- Decides locus standi challenges
- Anyone ‘directly and specially affected’ by the Bill can petition
- Hears petitions against the Bill presented to it
- Can amend but cannot reject the Bill (principle assured at Second Reading)
House of Commons Select Committee
House of Lords Select Committee

- Similar but different to Departmental Select Committees
- No Peer with a conflict
- Traditionally chaired by a Crossbencher, with membership drawn from proportional make-up of the House (i.e. no Government majority)
- Quasi-judicial (operates more like a court)
- Decides locus standi challenges
- Anyone ‘directly and specially affected’ by the Bill can petition
- Hears petitions against the Bill presented to it
- By convention cannot require Promoter to bring forward an Additional Provision (when the second House)
- Can amend but cannot reject the Bill (principle assured at Second Reading)
Past experience (1)

Introduced November 1994
Second Reading January 1995
Start of Select Committee February 1995
End of Select Committee January 1996

993 petitions (2 batches of APs with 51 petitions): 71 sitting days

Lords Second Reading May 1996
Start of Lords Select Committee June 1996
End of Lords Select Committee October 1996

293 petitions: 31 sitting days
Royal Assent December 1996
Past experience (2)

Introduced
February 2005
Second Reading
July 2005
Start of Select Committee
January 2006
End of Select Committee
October 2007
365 petitions (4 batches of APs with 99 petitions): 84 sitting days

Lords Second Reading
January 2008
Start of Lords Select Committee
February 2008
End of Lords Select Committee
May 2008
113 petitions: 29 sitting days
Royal Assent
July 2008
HS2 Phase 1

Introduced: November 2013
Second Reading: April 2014
Start of Select Committee: July 2014
End of Select Committee: February 2016
1,918 petitions (5 batches of APs with 668 petitions): 159 sitting days

Lords Second Reading: April 2016
Start of Lords Select Committee: May 2016
End of Lords Select Committee: December 2016
822 petitions: 64 sitting days
Royal Assent: February 2017
Select Committees in the Commons and Lords

3,408 petitions - objections - received against the Bill in the Commons and Lords

1,892 petitions heard by the Select Committees

230 petitions withdrawn/petitioner did not appear

21,500+ exhibits exchanged

3,500+ assurances given

3,000+ Promoter’s Response Documents issued

400+ significant changes made to the proposals by means of APs in the House of Commons
From start to finish

1,337 petitions – 2 years 2 months

577 petitions – 3 years 6 months

3,408 petitions – 3 years 4 months
The Hybrid Bill Delivery Directorate

Hybrid Bill Delivery Director

- Preparation and Powers
- Parliamentary Management (and Systems)
- Petition Management - Major Organisations and Complex Agreements (and Undertakings & Assurances)
- Petition Management - Individuals and Communities (and Project Controls)
- Delivery
Managing the process (1)

BEFORE I MAKE MY DECISION, I'D LIKE TO ASK FOR YOUR OPINIONS.

IT'S SUPPOSED TO MAKE YOU FEEL "ENGAGED."

AND YOU ACTUALLY PLAN TO LISTEN TO US?

I'M HOPING IT WILL LOOK THAT WAY ON THE OUTSIDE.
Managing the process (2)

“I beseech you, in the bowels of Christ, think it possible that you may be mistaken”

Oliver Cromwell, 1650
Questions?