

**DEPARTMENT FOR TRANSPORT
2022**

Transport and Works Act 1992

**Transport and Works (Applications and Objections Procedure)
(England and Wales) Rules 2006**

**THE HIGH SPEED RAIL (LONDON – WEST MIDLANDS) ACT
2017(AMENDMENT)(BROMFORD TUNNEL) ORDER**

Explanatory Memorandum

Rule 10(2)(b)

1. This memorandum explains the purpose and effect of the one substantive article in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006¹.
2. Application for the Order has been made by High Speed Two (HS2) Limited ("the Company"), the company responsible for delivering and promoting the UK's new high speed rail network and being an executive non-departmental public body sponsored by the Department for Transport.
3. Under the High Speed Rail (London – West Midlands) (Nomination) Order 2017, HS2 Ltd was appointed as the nominated undertaker for all purposes of the scheduled works of the High Speed Rail (London – West Midlands) Act 2017 ("the 2017 Act") and for any other purposes under that Act in so far as those purposes are connected to those works or otherwise for Phase One purposes.
4. The 2017 Act received Royal Assent on 23 February 2017 and authorises the construction and operation of Phase One of the proposed high speed railway between London and the West Midlands which is approximately 143 miles (230 kilometres (km)) in length.
5. The purpose of the Order for which application has been made is a narrow one, namely to facilitate the construction under the 2017 Act of a small section of the high speed railway authorised under the Act within tunnel.
6. The Order would achieve this by making a very minor amendment to the description of Work No. 3/157 in Schedule 1 to the 2017 Act. The effect of the amendment would be to remove a legal impediment to the part of the High Speed railway authorised by that work being constructed within the tunnel under the powers conferred by the Act, rather than partly on the viaduct (being less than 30 metres in length) originally envisaged under the Act.
7. The proposal to construct this small part of the railway in tunnel forms part of a wider proposal to extend the Bromford Tunnel authorised under the Act (located on the outskirts of Birmingham near the proposed HS2 Interchange Station) eastwards. This proposal results in there being no requirement to construct the viaduct originally proposed as part of Work No. 3/157.
8. The part of the high speed railway comprising the Bromford Tunnel authorised to be constructed under the Act proposed to be extended eastwards is described as Work No. 3/203 in Schedule 1 to the Act-

*'Work No. 3/203 - A railway (2.86 kilometres in length, **in tunnel** [emphasis added]) commencing by a junction with Work No. 3/200 at its termination, passing westwards and*

¹ S.I. 2006/1466.

terminating by a junction with Work No. 3/205 at a point 245 metres north-west of the junction of Wolsey Drive and Bromford Lane;’.

9. The centreline representing this work is shown on sheet nos. 3-107 to 3-103 of the deposited plans accompanying the Act². As required by Parliamentary Standing Orders, the centre line of the work is shown as a dotted line indicating that the proposed railway is tunnel.
10. On sheet no. 3-103 the tunnelled section of the railway ends and the proposed railway is then represented by a solid centre line (denoting that it is no longer in tunnel) which is numbered Work No 3/200. That work is described as follows in Schedule 1 to the Act –

*‘Work No. 3/200 - A railway (2.06 kilometres in length) commencing by a junction with Work No. 3/157 at its termination, passing generally westwards and terminating at a point 165 metres south of the junction of Cadbury Drive and Beale Close. Work No. 3/200 includes a **viaduct** [emphasis added] over Work No. 3/202 and **bridge** [emphasis added] over a Work No. 3/202A;’.*

11. Works Nos. 3/202 and 3/202A referred to at the end of the description of Work No 3/200 are described in Schedule 1 to the Act as follows –

‘Work No. 3/202 - A diversion of the River Tame commencing at a point 505 metres west of the bridge carrying the Birmingham and Derby Line over the River Tame and terminating at a point 210 metres east of the junction of Orton Way with Tameside Drive;

Work No. 3/202A - A diversion of Plants Brook commencing by a junction with Work No. 3/202 at a point 72 metres south-east of the culvert carrying Plants Brook beneath the Birmingham and Derby Line and terminating at the southern end of that culvert;’.

12. The centre line of Work No. 3/200 continues from sheet no 3-103 to sheet no. 3-102 (where it can be seen passing over Works Nos. 3/202A and 3/202 and the [commencement]³) of the viaduct referred to in the works description is indicated. Work No. 3/200 ends on sheet no. 3-101 with a junction with Work No. 3/157 (on the cut-line).
13. The centre line of the railway then continues on sheet no 3-28 of the deposited plans and is represented as a solid centreline labelled as Work No 3/157 which is described as follows in Schedule 1 to the Act –

² It should be noted that the proposed extension of the Bromford Tunnel would be in an easterly direction from that tunnel as authorised under the Act and the explanation of the proposed extension of the Bromford Tunnel is described in that way. However, the works described in Schedule 1 to the Act and shown on the deposited plans are described and shown running in an east to west direction. The way in which the extension is described is therefore in an opposite way to the description of the works in the Act and as shown on the deposited plans.

³ It is a requirement of Parliamentary Standing Orders to indicate on the plans any proposed viaduct. The label on the plan is ‘Termination of Viaduct’. The ‘commencement’ of this viaduct is indicated on the centreline of Work No. 3/157 on sheet no. 3-28 (see footnote 1 above regarding the ‘orientation’ of the deposited plans and descriptions of works).

*'Work No. 3/157 - A railway (1.13 kilometres in length) **partly on viaduct** [emphasis added] commencing by a junction with the termination of Works Nos. 3/151, 3/152, 3/153 and 3/154 passing westwards and terminating by a junction with Work No. 3/200 at a point 317 metres north-west of the bridge carrying Water Orton Road over the M6 Motorway;'*

14. The part of the railway described as being on viaduct within the description of Work No. 3/157 is that part of the railway (which is less than 30 metres) shown on sheet no 3-28 between the labels *'Termination of Work No. 3/157 Total Length of Work 1.13km'* and *'Commencement of Viaduct'* shown on that sheet. Work No. 3/157 then continues on to sheet no. 3-27 of the deposited plans where it finishes at a junction with a number of other railway works.
15. The proposal to extend the Bromford tunnel eastward would require the two railway works described as Works Nos. 3/157 and 3/200 in Schedule 1 to the Act to be constructed in tunnel.
16. As mentioned above, Work No. 3/200 is described as including a viaduct over Work No. 3/202 and a bridge over Work No. 3/202A. Similarly Work No 3/157 is described as being partly on viaduct.
17. In respect of Work No 3/200, under the extended tunnel proposal, it would not be necessary to construct Works Nos. 3/202 and 3/202A (the diversions of the River Tame and Plants Brook respectively) because the tunnel would pass beneath the river and brook. In respect of this, the legal view is that because there would no longer be a need to construct those works, the part of the description of Work No. 3/200 that describes that work including a viaduct and a bridge falls away. Unlike Work No. 3/157, no legal issue arises in terms of constructing Work No. 3/200 in tunnel.
18. In respect of Work No. 3/157, the legal view is that since no part of Work No. 3/157 would be required to be constructed on viaduct, if that work were to be constructed in tunnel, this would conflict with the description of the work in the Phase One Act and the powers under the Act do not therefore extend to authorising it being constructed entirely in tunnel.
19. In view of this, the most expedient way forward is to amend the description of Work No.3/157 by means of the proposed Order⁴ to remove the words 'partly on viaduct' and thereby removing the legal impediment to the railway being constructed within the proposed extended Bromford Tunnel.
20. It should be mentioned that by virtue of Paragraph 1(2)(b) of Schedule 1 to the 2017 Act, power is conferred for all of the works described in that Schedule

⁴ Section 5(3)(a) of the Transport and Works Act 1992 (subject matter of orders under sections 1 and 3) provides that an Order made under section 1 or 3 of that Act may apply, modify or exclude any statutory provision which relates to any matter as to which an Order could be made under section 1.

(including, in particular, Work No. 3/157) to deviate '*vertically downwards to any extent*' from the levels shown on the deposited sections accompanying the Act.

21. Sufficient flexibility for Work No. 3/157 (as well as for Work No. 3/200) to be constructed at the lower level required for them to be within the extended Bromford tunnel is therefore provided under the 2017 Act and it is only the legal impediment in respect of the description of Work No. 3/157 referred to in paragraph 20 above which prevents that Work from being constructed within the extended Bromford tunnel
22. **Article 1** (*Citation and commencement*) provides for the commencement and citation of the Order.
23. **Article 2** (*Amendment of High Speed Rail (London – West Midlands) Act 2017*) amends the description of Work No 3/157 in Schedule 1 to the 2017 Act to remove the words 'partly on viaduct' included in that description.

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High Speed Two (HS2) Limited
Two Snowhill
Snow Hill Queensway
Birmingham B4 6GA

Eversheds Sutherland (International) LLP
One Wood Street
London EC2V 7WS

Solicitors and Parliamentary Agents