

SHARPE PRITCHARD<sup>®</sup>

# HS2 BILL- LB CAMDEN

Petitioning in the House of Lords

Alastair Lewis

Sharpe Pritchard

## Petitioning – a two stage process

- Drafting and then depositing the petition in Parliament
- Appearing on the petition at select committee stage: not obligatory

# What's happened and what's next?

- Consideration and third reading in the House of Commons: 23 March
- First reading in the House of Lords: 23 March
- Easter recess: 24 March to 10 April
- Petitioning Period: from 23 March until 18 April at 5pm
- Second reading: 14 April
- Select committee: mid May (possibly) until (?)

# Recess dates

<b>Recess</b>	<b>Rise of the House</b>	<b>Return of the House</b>
Easter	23 March 2016	11 April 2016
May Bank Holiday	28 April 2016	3 May 2016
Queen's Speech		18 May 2016
Whitsun	26 May 2016	6 June 2016
Referendum	15 June 2016	27 June 2016
Summer	21 July 2016	5 September 2016
Summer	15 September 2016	10 October 2016

## Who can petition?

- General: see the Petitioning Kit: it's very useful
- Any individual or body can deposit a petition, so long as they pay the fee, are over 18 years old, comply with the procedures and the petition is in the correct form
- Petitioning Kit says that individuals, groups of individuals, organisations and businesses “specially and directly affected” by the bill can petition, as can local authorities.

# Effect of Commons petitioning

- The Lords process is completely separate, so:
  - If you didn't petition in the Commons, you can petition in the Lords
  - If you did petition in the Commons, and you want to be heard again, you must submit a further petition to the Lords

# Time for depositing a petition

- Petitions must be deposited strictly on time – no later than the final date
- Hours within which petitions can be deposited in person
  - 10.00 to 5.00pm Mon-Fri (except bank holidays)
  - 9.30 to 3.00pm Fri
  - 11.00 to 1.00pm Non-sitting days
- Don't leave it till the last minute: 5.00pm is the cut off time on the last day (including electronic submissions)

# Electronic Submission of Petitions

- Unlike in the Commons, a petition can be sent in by email to [hlprivatebills@parliament.uk](mailto:hlprivatebills@parliament.uk)
- It must be in the form of a signed PDF attached to the email
- Type “HS2 petition” in the subject line
- You should receive a receipt on the same day with your petition number
- You must then post the original signed petition with the number (see address at end)

# Postal Submission of Petitions

- This can be done, but postal delays will not be taken into account if you miss the deadline.
- See address at end.
- Is it worth the risk?
- Check it has arrived.

# Submission of Petitions in person

- A petition can be deposited in person at Committee Room 2A in the House of Lords (just along from Room 5 where the Commons committee sat)
- It can be done by the petitioner or anyone on behalf of the petitioner (not necessarily an Agent)
- You should make an appointment to deposit: you can book a provisional slot now by email or post – an appointment module will appear on Lords web page (see end)

# What must be deposited?

- See template documents in the Kit
- The signed petition
- The £20 fee: cheques made out to “The House of Lords Account”: can be sent in after electronic submission of petition
- If deposited by a “Roll B” Agent:
  - A completed application form
  - A certificate of respectability – not required if acted as Agent in the Commons
  - A letter of authority: for organisations and formal groups, this can follow shortly after, but must set out the resolution in favour (extract of minutes) and must be signed by someone with authority to do so.
- A completed cover sheet (contact details etc)

# Parliamentary Agents

- Roll A Agents: firms like Sharpe Pritchard
- Roll B Agents: Individuals who are agents only for the purposes of this one Bill
- Businesses or companies must be represented by an agent

# Informal groups of Individuals

- If there is more than one petitioner, they must all be named on the front
- They must all sign it too, unless they are all represented by an Agent who is not one of them
- One of them can deposit the petition and present the case in committee, even though they are not an Agent

# Organisations or formal groups

- Must be represented by an Agent
- Must have held a meeting and passed a resolution authorising deposit of a petition against the Bill (a resolution to oppose the Bill in Parliament generally passed before a Commons petition was deposited will suffice) and naming the Agent.
- Note: the letter of authority to be sent to the Lords must set out the resolution (an extract of the meeting minutes will suffice). This can be done shortly after deposit.

# Form of Petition

- See the template in the Kit
- It's different from the Commons – more modern: use the template for topping and tailing
- Note: paragraph 1 of the template is aimed at individuals and businesses. It sets out why you are specially and directly affected. For councils and organisations the wording will be different
- Set out who the petitioner is and describe the property affected
- Set out the concerns and remedies sought (see later)
- Use headings if your petition is long. Use page numbers
- Try to order your points logically
- Sign or seal the petition

# The petition - concerns

- Include all your points
- There is no need to go into great detail
- Avoid hyperbole, CAPITAL LETTERS and exclamation marks!!!
- Technically the petition should only relate to concerns about the bill, the ES and supporting documents, but committees will usually hear grievances (particularly from individuals) about lack of consultation etc

# Concerns - examples

- Construction:
  - Lorry routes/effect on traffic
  - Hours of working
  - Noise
  - Dust
  - Ecology
  - Lighting
  - Lack of consultation

## Concerns - examples

- Operation/permanent effects:
  - Landscape and visual effects
  - Noise
  - Effect on road/footpath network/accommodation crossings for farmers etc
  - Ecology
  - Amount of land take too much

## Concerns - examples

- Compensation/rights over land
  - Inadequate compensation for landowners
  - Inadequate notice periods for entry onto land
  - Too much land take
  - Land required for construction sites should only be taken temporarily

# The petition - remedies

- When setting out each concern, set out what it is you want the select committee to do. This can include:
  - Asking the select committee to require the promoter to give an undertaking or assurance about a particular matter
  - Asking for changes in the route alignment (but see later on additional provisions)
  - Asking for the bill and/or the deposited plans to be amended
  - Asking the select committee to require the promoter to amend one of the Bill's supporting documents (eg the code of construction practice, information papers)

# The petition – remedies - examples

- See House of Commons Select Committee Special Reports for examples (link at end)
- See also Register of Undertakings and Assurances

# The petition – remedies - examples

- HS1 – House of Lords (1)
  - Mid-Kent tunnel rejected but further lowering required
  - Retained wall cuttings for ancient woodlands
  - Charing: lowering of viaduct if practicable (shows importance of having idea of costs)
  - Eyhorne St: extension of tunnel and lowering
  - M2 at Sellindge: undertaking given that noise levels would not increase – backed by requirement that M2 would be resurfaced if they did
  - HGVs not to use a further rural road
  - Construction bridge across Regents Canal to minimise use of public roads
  - Newington: construction site should not be used

# The petition – remedies - examples

- HS1 – House of Lords (2)
  - Forum to be set up to resolve location of a feeder station
  - Inter-departmental working group on blight (set up after Commons) should investigate 2 particularly bad cases
  - Further efforts to be made in providing rehousing solution for King’s Cross residents
  - CTRL required to purchase 3 houses even though occupiers failed the hardship test and 1 further should receive extra compensation for moving costs
  - Undertaking to provide businesses with full information about date and terms of any relocation required
  - Farmers whose land is taken temporarily for construction should retain the freehold
  - Encouraged DfT funding for Medway Towns northern relief road

# The petition – common concerns

- Joint petitions will no doubt be appreciated by Parliament, but
- Joint petitions should be avoided if there is any possibility that the petitioners may have diverging views in the future
- Shared drafting on generic points is certainly acceptable

# What happens after petition deposit?

- Second reading and announcement of committee membership
- The promoter should contact you in due course:
  - to let you know if they intend to challenge your locus
  - to let you know when your petition is timetabled for consideration by the committee (David Walker)
  - to provide you with a petition response document

# The principle of the Bill

- The select committee is prohibited from hearing points that go outside the principle of the bill
- So you can't challenge HS2 in principle

# Additional Provisions

- There is likely to be an argument, at some point, about whether the select committee can make decisions that would require an additional provision.
- There are precedents for and against.
- So for those who consider they might ask for one (for example a change which would go outside the Bill limits) it is best to put it in the petition.

## Select Committee composition/timing

- Composition – probably 7 peers: they should have no “constituency” or other interest: names likely to be announced on 2<sup>nd</sup> reading
- Quorum likely to be 3
- Quasi-judicial process: hears evidence from petitioners and promoters. Counsel/experts involved
- Timing – Kit says be prepared to be heard from mid-May and says likely to be geographical order.

# Differences between Commons and Lords Committees

- Attendance: most of them will attend most of the time
- Attention: unlikely to be diverted so much
- Formality: unlikely to be more formal than Commons
- Might sit on Monday mornings/Thursday afternoons

# Committee order of proceedings

- Opening statement by counsel for promoters
- Procedural matters
- Challenges to locus standi
- Arguments about additional provisions (possibly)
- Route wide cases?
- Petitioners' cases
- Likely to start with Birmingham and end in Camden
- Likely to progress geographically by local authority area
- Promoters agents will discuss timetabling with petitioners
- Site visits interspersed
- Decisions may be announced at convenient times

## What is *locus standi*?

- The general rule is that only those who are specially and directly affected by a hybrid bill are entitled to appear before a select committee on a petition
- The rules relating to *locus* are set out in 3 places:
  - The standing orders of Parliament
  - Precedent cases (many of them old)
  - Erskine May (Textbook on procedure)

## Who decides on *locus standi*?

- This is for the select committee to decide
- It is for the promoter (the Secretary of State) to challenge the *locus standi* of petitioners
- In the Commons, relatively few challenges were made on petitions against the Bill. More challenges were made on petitions against the APs

## Whose locus will not be challenged?

- Local authorities with land within the bill limits
- Owners, lessees and occupiers of land within the bill limits
- Statutory undertakers whose apparatus is to be affected

## Whose locus should not be challenged?

- Groups who sufficiently represent any trade, business or interest in an area to which a bill relates (including amenity, educational, travel or recreational interests) alleging the interest will be affected to a material extent.
- Individuals and businesses who have been assessed in the Environmental Statement as being directly affected by the works, even if their land is not being acquired.

## Locus: Action groups

- In the Commons HS2 refrained from challenging long-standing action groups with whom they have met and corresponded
- Action groups should have held a meeting on notice to all members, and pass a resolution in favour of petitioning against the Bill in Parliament.

# Select Committee Appearance

- Petitioners can appear in person or represented by a parliamentary agent or counsel
- A statement can be made by the representative and they can call witnesses to give evidence (but don't have to)
- This is the opportunity to expand on the points in the petition and make the case for the remedy sought
- The committee will wish to know precisely what it is the petitioner wants them to do.

# Watching the proceedings

- Attending in person: best way to see how the committee works
- Watching on the internet: see link at end
- Reading the transcripts
- Look at Commons proceedings

# The Clerk

- Advises the committee on procedure
- Will advise petitioners on procedure to some degree
- Channel of communications to committee
- Sits with the committee

## Other key people

- Tim Mould QC and James Strachan QC: counsel for the promoter (plus a team)
- HS2 witnesses: as in Commons
- Winckworth Sherwood and Eversheds: the two firms of agents acting for the promoter
- David Walker of Winckworth Sherwood: primary contact for programming

## Notice of hearing

- In the Commons, the committee asked that petitioners be given at least four weeks' notice of hearings to petitioners, unless there are exceptional reasons for not doing so.
- Before then, Winckworth Sherwood (probably David Walker) will contact petitioners to discuss dates

# Availability

The Kit: “We will make every effort to accommodate reasonable needs but the timetable is subject to progress and therefore petitioners will need to be flexible. The Committee is likely to want the petitions grouped geographically and there will, therefore, be little scope for radically altering the timetable to suit individual petitioners.”

## Time estimates

- David Walker should ask for a time estimate from petitioners and it will be transmitted to the committee. Petitioners may need to justify requests for long time periods
- In the Commons, the committee loaded the programme towards the end.

# Petition response document

- Response to each paragraph of the petition
- Quite detailed, but likely to be in standard form, referring to information papers
- Study the information papers – they are important

# Committee Room

- Committee Room 4: in main building near to where Commons committee was
- No advance notice needed to enter, but give plenty of time for security
- Members sit at a horseshoe table, parties face them, public sit behind the parties
- Members and public have screens for displaying documents

# Etiquette

- Participants are not expected to stand when addressing the committee
- Addressing members as “my Lord”, “my Lady” is correct but “Lord X”, “Lady Y”, “sir”, “madam”, etc will be acceptable
- Quasi-judicial role: the committee should not be approached informally or outside the room, and submissions should not be sent to the members directly
- Dress appropriately
- Don’t be late: be there at the beginning of the day unless the clerk has said you can come later

# Should an appearance be made at all?

- Don't expect the committee to read the petition of a petitioner who does not appear
- Therefore, if they want their views to be made known, petitioners should appear on their petition, or lend support to another petitioner who does appear (eg by letter of support or appearing as a witness or presenting a joint case)

# Order of proceedings: scenario 1: no evidence called by petitioner

- Counsel for promoters may make brief introductory remarks (unless petitioner objects)
- Petitioner (or representative) makes statement to the committee (referring to documents, if any)
- Committee may ask questions (during or after the statement)
- Counsel for promoters respond and may be questioned by committee
- Petitioner (or representative) responds

# Order of proceedings: scenario 2: evidence called by petitioner

- Witnesses sworn in/affirmed by clerk
- Counsel for promoter may make brief introductory remarks (unless petitioner objects)
- Petitioner (or representative) makes brief opening remarks and calls witnesses (referring to documents, if any)
- Committee may ask questions (during or after the giving of evidence) and counsel may cross-examine each witness. Petitioner may re-examine on points raised
- Counsel for promoter may call evidence (but does not have to): procedure as above
- Counsel for promoter sums up and may be questioned by committee
- Petitioner (or representative) responds and may be questioned by committee

# Presentation tips

Commons Committee: Section 8 of the final Special Report - deprecates repetition of points and passes comment on the number of petitioners who were not directly affected.

# Presentation tips

- Committee is unlikely to be impressed with:
  - Repetition
  - Waffle
  - Aggressiveness to HS2 or (especially) to the committee
  - Complaining without explaining what remedy is sought from the committee
  - Pulling rabbits out of the hat: do not come forward with new engineering solutions at the last minute
  - Bombardment of correspondence

# Presentation tips

- Committee is likely to be impressed with:
  - Concise delivery of the key points: choose your battles carefully – you don't have to fight every point
  - Joint presentations
  - Interesting and informative exhibits and evidence (but not too many)

# An intimidating experience?

- Committee should treat petitioners fairly and with respect
- Committee likely to put petitioners without professional representation at their ease

# Early preparation

- Never too early to begin preparation (see evidence preparation later)
- In Commons, any exhibits to be given to committee had to be sent to HS2 no later than two clear working days in advance of the appearance, along with names of witnesses and person who will present the case (rule applied to HS2 as well)

## Joint cases

- The committee will appreciate petitioners with similar concerns clubbing together and making a joint appearance through one spokesperson (with or without evidence in support)

# Select Committee evidence

- Your notes of what you will say to the committee do not have to be given in advance (or at all) to the promoter or the committee
- Exhibits (slides) are likely to have to be exchanged. They bring the evidence alive. Use photographs, maps, letters of support etc.
- Repetition should be avoided as should lengthy evidence unless necessary. The committee will appreciate punchy evidence that gets to the point
- Witnesses are liable to be cross-examined by the promoter's barrister and by the committee

# Select Committee evidence

- Explain who you are and where you live
- Summarise what the evidence covers and what the committee is being asked to do
- Explain the problem being tackled
- Explain the solution
- Refer to exhibits throughout

## Technical evidence

- If promoter agrees an alternative design is achievable in engineering terms, then no need to provide detailed engineering evidence: give it to them well in advance (no rabbits out of hats) and seek to agree feasibility
- If technical reports and evidence is going to be relied on, seek to agree in advance if possible

# Exhibits

- Essential part of the case: this is what the committee will have in front of them, on screen and they may have a hard copy
- They will be numbered by HS2
- Use photographs, maps, tables, short textual extracts, bullet points
- Set out what you want the committee to do
- Let the exhibits tell the story: imagine someone picking them up having not heard the evidence: would they still be able to see what was being sought and understand why?

# Assumptions to be made

- Assume:
  - The committee will not read any document given in advance
  - The committee will not read any lengthy or complicated document
  - The committee will not spend time “out of hours” working on the documents
  - The committee will be familiar with HS2’s counsel and main witnesses

# Negotiations

- HS2 leave things late
- Is there value in negotiating? Yes
- If meeting with other petitioners – make sure you are coordinated
- Accepting offers before Select Committee – can you accept some, but fight on other points?
- When to stop pushing for more mitigation – what are the committee realistically likely to accept?
- Withdrawing the petition

# Negotiations: points to remember

- Keep copies of correspondence
- Keep a note of meetings and seek to agree minutes
- “Without prejudice” correspondence and notes can’t be used as evidence

# Undertakings and assurances

- See information paper B4
- Register of undertakings and assurances
- Overarching undertaking to Parliament given in opening address

# Nature of undertakings and assurances

- Legally binding formal agreements: the best option but likely to be agreed by HS2 only where there is a land or money interest. Enforceable in the courts
- Assurances and undertakings in a letter or in the PRD: make sure that HS2 agree that they will be entered in the Register of Undertakings and Assurances
- Information Papers: these are not binding unless they are reflected in an undertaking or assurance that itself is in the Register. Possibly might give rise to legitimate expectation claim in courts if breached
- How binding are assurances and undertakings? Unlikely to be enforceable in the courts – Bill of Rights: but consider the precedents (HS1 and Crossrail) and future Bill promotions

# Committee decisions

- Decisions unlikely to be announced at the end of each case
- Encouragement may be given to HS2/petitioners to resolve concerns and report back
- Some “big ticket” decisions may be made early
- Other decisions likely to be left to the end or at recesses but indications given some may come sooner
- Government may respond: and may not agree

# What can the committee do?

- Changes in the route alignment – so long as they are within the “broad alignment” of the railway (see earlier slide on APs)
- Amend the bill and/or the deposited plans
- Require the promoter to give an undertaking or assurance about a particular matter
- Require the promoter to amend one of the Bill’s supporting documents (eg the code of construction practice, information papers, the environmental minimum requirements)
- Provide encouragement for promoters/petitioners to reach agreement
- Make recommendations to government/give “warm words”

# How will the committee decide?

- It is likely that in most cases it will simply be a case of cost vs benefit
- Committee will reject expensive engineering alterations where they are unconvinced that they are justified: eg the tunnels in the Commons

## After the Committee

- The Bill is reprinted with any amendments, then goes back to the floor of the House for Report Stage and then Third Reading
- Then the Bill gets Royal Assent and becomes an Act of Parliament
- And then ...

# Useful Contacts

- Lords Private Bill Office:
  - Email: [hlprivatebills@parliament.uk](mailto:hlprivatebills@parliament.uk)
  - Tel: 020 7219 2468
  - Fax: 020 7219 2571
  - Post: House of Lords Private Bill Office, House of Lords, London SW1A 0PW
- Lords Petitioning Kit: <http://tinyurl.com/hh78rp8>
- Watching proceedings: [www.parliamentlive.tv](http://www.parliamentlive.tv)
- HS2 Information papers: <http://tinyurl.com/pf8uk97>
- Commons Select Committee: <http://tinyurl.com/p8koc9x>

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