IN PARLIAMENT

HOUSE OF COMMONS

SESSION 2013-14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

P E T I T I O N

Against the Bill – Praying to be heard by counsel, &c.

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TO THE HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN PARLIAMENT ASSEMBLED.

THE HUMBLE PETITION OF THE NATIONAL FARMERS UNION OF ENGLAND AND WALES

SHEWETH as follows:

1. A Bill (hereinafter called "the Bill") has been introduced into and is now pending in your honourable House intituled "A Bill to Make provision for a railway between Euston in London and a junction with the West Coast Main Line at Handsacre in Staffordshire, with a spur from Old Oak Common in the London Borough of Hammersmith and Fulham to a junction with the Channel Tunnel Rail Link at York Way in the London Borough of Islington and a spur from Water Orton in Warwickshire to Curzon Street in Birmingham; and for connected purposes".

2. The Bill is presented by Mr Secretary McLoughlin, supported by The Prime Minister, Mr Chancellor of the Exchequer, and Secretary Theresa May, Secretary Vince Cable, Secretary Iain Duncan Smith, Secretary Eric Pickles, Secretary Owen Paterson, Secretary Edward Davey, and Mr Robert Goodwill.

3. Clauses 1 to 36 set out the Bill's objectives in relation to the construction and operation of the railway mentioned in paragraph 1 above. They include provision for the construction of works, highways and road traffic matters, the compulsory acquisition of land and other provisions relating to the use of land, planning permission, heritage issues, trees and noise. They include clauses which would disapply and modify various enactments relating to special categories of land including burial grounds, consecrated land, commons and open spaces, and other matters, including overhead lines, water, building regulations and party walls, street works and the use of lorries.

4. Clauses 37 to 42 of the Bill deal with the regulatory regime for the railway.

5. Clauses 43 to 65 of the Bill set out a number of miscellaneous and general provisions, including provision for the appointment of a Nominated Undertaker ("the Nominated Undertaker") to exercise the powers under the Bill, transfer schemes, provisions relating to statutory undertakers and the Crown, provision about the compulsory acquisition of land for regeneration, reinstatement works and provision about further high speed railway works. Provision is also made about the application of Environmental Impact Assessment Regulations.

6. The works proposed to be authorised by the Bill ("the Authorised Works") are specified in clauses 1 and 2 of and Schedule 1 to the Bill. They consist of scheduled works, which are described in Schedule 1 to the Bill and other works, which are described in clause 2 of the Bill.

7. Your Petitioner is the National Farmers Union of England and Wales. Formed in 1908 your Petitioner represents the interests of farmers throughout the England and Wales and it currently has more than 56,000 members. It is regularly consulted by the government on policy proposals across all

departments. The Bill would authorise the compulsory acquisition of certain interests in land or property of your Petitioner, to which it objects, and in accordance with the standing orders of your honourable House, notice has been served on your Petitioner of the intention to seek such compulsory powers. In addition, the railway that is proposed to be authorised by the Bill would be constructed through a large number of farms that are either owned, or tenanted, by farmers who are members of your Petitioner.

8. Your Petitioner alleges that its rights, interests and property, and those of its members, will be injuriously affected by the provisions of the Bill, and your Petitioner accordingly objects thereto for the reasons, amongst others, hereinafter appearing.

Introduction: A Fair Approach

9. Your Petitioner, along with the Central Association of Agricultural Valuers ("CAAV") and the Country Land and Business Association Limited ("CLA"), have been engaging with HS2 Ltd since 2010 on a range of issues affecting rural land and businesses along the proposed HS2 route.

10. A number of the points raised in this petition relate to the application of the national compulsory purchase code which, if the Bill is passed into law as it stands, will apply in relation to the compulsory acquisition of interests in land under the Bill and in relation to injurious affection arising from the Authorised Works.

11. The compulsory purchase code is complex, having evolved in a piecemeal fashion. There is widespread dissatisfaction with the operation of the regime from claimants, who find it a complex, unwieldy, unfair and very lengthy process. Few would agree that the current code is especially good at implementing the equivalence principle of putting claimants back into the position they would have been in if it were not for the scheme.

12. The HS2 project will have a very significant effect on a large number of claimants spread over a wide geographical area for a number of years. It will have the greatest impact on land and property owners and occupiers since the main motorway building projects of the 1960s. The large size and long timescale of the project are such that the principle of equivalence is even more important for claimants.

A Duty of Care

13. There is an opportunity for the promoters of the HS2 scheme to demonstrate that the interests of those affected can be given proper weight and due consideration during the development of a major infrastructure project by adopting a statutory Duty of Care to those affected by the construction of the Authorised Works.

14. Your Petitioner proposes to your honourable House that the Bill should be amended so as to confer on either or both the Secretary of State and the Nominated Undertaker a duty of care in respect of their dealings with owners and occupiers of land whose interests are affected by the construction or operation of the Authorised Works.

15. For instance, in respect of those who are to have land acquired, the duty should require the Secretary of State or Nominated Undertaker to –

a) always act in good faith;
b) consult before and during acquisition;
c) act fairly throughout the process;
d) pay promptly, and always within no more than 28 days of reaching an agreement to pay;
e) pay interest on any late payments at a rate between 4% and 8% above the Bank of England base rate;
f) provide an effective means of dispute resolution, involving an independent person;

g) indemnify against losses caused by acquirer's agents, contractors and sub-contractors;

h) incorporate, where necessary, a programme of accommodation works within the construction phase of HS2 to minimise long-term impacts on farm businesses; ; and

i) ensure an agricultural liaison officer and agricultural helpline are available 24 hours a day from the start of construction and ensure a liaison officer is available to address concerns after the construction stage has been completed.

Extension of time limit to exercise powers of compulsory acquisition

16. Clause 4(1) gives the Secretary of State powers of compulsory acquisition over the land within the Act limits, that is, within the limits of deviation and the limits of land to be acquired or used on the plans accompanying the Bill. To be acquired, the land must be needed for "Phase One purposes" a term defined in clause 62.

17. Clause 10(1) provides that the compulsory purchase power conferred by clause 4(1) is to expire 5 years from the date when the Bill receives Royal Assent; however, clause 10(2) also gives the Secretary of State the power, by order, to extend that period. The 5 years may be extended once in respect of any particular land and for a maximum of an additional 5 years. Subsections (3) and (4) of clause 10 also relate to the order-making power.

18. Your Petitioner is particularly concerned by the Secretary of State's order-making power. Giving the Secretary of State five years from Royal Assent to exercise his powers of compulsory acquisition is sufficient; the order-granting power is unreasonable and excessive. The prospect of compulsory acquisition is already a cause of serious blight for those of your Petitioner's members whose land is within the Bill limits and your Petitioner is concerned by the possibility of land belonging to its members being sterilised for up to a decade. If, after 5 years from Royal Assent, the Secretary of State has failed to exercise

his powers of compulsory acquisition over land, he should not be given any longer. Your Petitioner submits that subsections (2), (3) and (4) of clause 10 should be omitted from the Bill.

Temporary possession and use of land

19. Your Petitioner submits to your honourable House that the Bill should allow the Secretary of State to acquire no more land than that which is needed for the project itself; accordingly, your Petitioner is disappointed by the wide-ranging nature of the powers of acquisition contained in the Bill and considers that these powers should be limited as described in the following paragraphs.

20. As mentioned above, clause 4(1) gives the Secretary of State powers of compulsory acquisition over the land within the Act limits. It introduces Schedule 5 which includes a table which describes the purposes for which land set out in the table may be acquired.

21. Many of the purposes described in the table are temporary in nature and your Petitioner is concerned by the possibility of its members' land being acquired permanently for a temporary purpose. Your Petitioner considers it inappropriate for the Bill to contain a power to acquire land permanently when the nominated undertaker's requirement is for a temporary use only. Your Petitioner submits that, in these circumstances, the Secretary of State should seek to enter into a construction lease on commercial terms with the landowner. Your Petitioner notes that, in respect of HS1, Union Railways Property worked with NFU and CLA to develop a scheme in respect of the acquisition and temporary occupation of agricultural land. As part of this work, NFU and CLA helped to prepare two versions of a Licence and Options Agreement in respect of land which was needed for HS1. As an alternative to the powers described above being contained in the Bill, your Petitioner would welcome working with the promoter and other affected bodies in order to develop a similar agreement for HS2.

22. If your Petitioner is to work with the Promoter in developing a scheme, it is essential that its recent experience of working on the promoter's document *Rural landowner's and occupier's guide* is not repeated. Here, your Petitioner was given less than 48 hours to comment on a draft version of the guide and detailed comments were duly provided. Your Petitioner was disappointed when the final version of the guide was published and failed to include any of the points raised by your Petitioner. Owing to this, your Petitioner considers the guide to be a less than satisfactory document and would request that it is revised incorporating your Petitioner's comments, and is re-published as soon as possible.

23. Your Petitioner notes that clause 14 introduces Schedule 15, which makes provision for temporary possession and use of land for the purposes of Phase One works. If your honourable House considers that the Secretary of State should retain powers of acquisition in respect of land to be used temporarily, your Petitioner submits that where any agricultural land set out in the table in Schedule 5 is to be acquired for a temporary purpose, it should be moved from that schedule to Schedule 15.

Use of roads

24. Clause 15 confers on the Nominated Undertaker a power to use any roads on the land specified in the table in Schedule 8 or paragraph 2 of Schedule 11 for the purposes of Phase One of High Speed 2.

25. Your Petitioner is concerned that its members could be adversely and disproportionately disadvantaged by the arrangements as they currently stand under clause 15, especially, for instance, when its members need to use heavy machinery on the roads, or at harvest time.

26. Your Petitioner therefore submits that the regime under clause 15 should be amended in respect of roads which serve or are located on agricultural land. The clause should provide that, in advance of the use of any such road the Nominated Undertaker –

a) must consult with the landowner and tenant of the agricultural land about the proposals for the use of the road and their views must be taken fully into account by the Nominated Undertaker before it decides to proceed with the proposal;

b) can only authorise minimal use of the road as is necessary for the construction of the works;

c) should be required to give reasonable notice to the landowner and tenant of the proposed start and end dates for the road use. A minimum notice period should be included on the face of the Bill and that period should not be less than 28 days.

Land acquisition plans should be colour coded

27. Under the Transport and Works Act Order regime, land acquisition plans often show the different types of land interests being taken in different colours. This makes it easier to distinguish between, for instance, land which is being acquired permanently, land which is being acquired temporarily, and land for which the sub-soil only is being acquired. The land acquisition plans produced for the Bill are not colour coded in this way and so it is not straightforward to identify the extent or type of interest which is proposed to be taken.

28. Your Petitioner proposes to your honourable House that the Secretary of State should be required, as soon as possible, to produce additional colour coded land acquisition plans. In addition, your Petitioner proposes that your honourable House should recommend that for future hybrid bill promotions, the promoter must prepare colour coded land acquisition plans.

Time limit on deemed planning permission

29. Clause 20 provides that, for scheduled works, a deemed planning permission (which is granted by clause 19) applies only to works begun no later than ten years after the Bill has received the Royal Assent. The clause allows the

Secretary of State to extend this time limit by statutory instrument, which will be subject to the negative resolution procedure.

30. Your Petitioner considers that ten years is sufficient to implement a deemed planning permission and that if that time limit is to be extended by any instrument there should be exceptional reasons for doing so. In addition, the instrument should be subject to the affirmative resolution procedure and so could not become law unless approved by both Houses of Parliament.

Compulsory acquisition of land for regeneration or relocation

31. Clause 47 enables the Secretary of State to acquire land compulsorily if the Secretary of State considers that the construction or operation of Phase One of High Speed 2 gives rise to an opportunity for regeneration or development of that land.

32. Your Petitioner objects to this clause in the strongest terms possible. Clause 4 already provides the Secretary of State with a comprehensive and generous array of compulsory purchase powers; moreover, local planning authorities already enjoy similar powers. There is no need for these powers to be extended to the Secretary of State since it would result in further blight for your Petitioner's members, particularly those located near railway lines and train stations.

33. If the Secretary of State wishes to acquire land which falls outside of the limits of deviation then he ought to seek to enter into a commercial transaction with the landowner, without having to rely on a new compulsory purchase power.

Rights of entry for further high speed railway works and exercise of rights of entry

34. Clause 51 allows an authorised person to enter land, in connection with a Bill or proposed Bill authorising a high speed rail line, for the purpose of conducting surveys or facilitating compliance with EU protection legislation. Land may only be entered if it is within 500 metres of the centre of a proposed line of route.

35. Your Petitioner considers this provision to be unfair. Those who will be affected by it, i.e. those whose land will be entered, might not be aware now that they are affected and so will not have the opportunity to petition against this provision of the Bill. For instance, it is likely that those who will be affected by Phase Two of High Speed 2 will be affected by this provision. So, your Petitioner requests that this new power should be omitted from the Bill.

36. Your Petitioner considers that if the power is to be retained in the Bill, compensation should be paid when an authorised person enters land for the purposes mentioned under clause 51, and not just to rectify damage, as the clause currently provides. A minimum amount of compensation should be paid for entering agricultural land.

37. Furthermore, your Petitioner should be consulted in respect of what that amount should be in relation to agricultural land and your Petitioner's views taken into account before the amount is set. Your Petitioner would stress that, at the beginning of 2012, your Petitioner together with the CAAV and CLA, agreed with the promoter, on behalf of their members, that the promoter would pay compensation for accessing and carrying out surveys on their members' land. The amount of compensation paid under clause 51, as amended as your Petitioner suggests, should not be less than that which was agreed between your Petitioner, CAAV, CLA and the promoter in 2012.

38. It is noted that subsection (5) of clause 52 (exercise of rights of entry) provides that where any damage is caused to land or other property in exercise of the right of entry or in the carrying out of a survey for the purposes of which any right of entry has been conferred, compensation may be recovered by any person suffering damage from the person exercising the right of entry.

39. Your Petitioner considers that compensation should be recoverable for any damage caused to agricultural land in addition to any amount paid to enter onto land.

Temporary possession for maintenance of works

40. Paragraph 6 of Schedule 15 allows the Nominated Undertaker, during the maintenance period for any work (defined as the period beginning when the work is completed and ending five years after the date on which the work is brought into general use) to enter upon and take possession of land within the Act limits and within 20 metres of any work within Schedule 1, and to construct temporary works, if reasonably required for maintaining the work.

41. The Nominated Undertaker must give at least 28 days' notice to the owners and occupiers of the land before taking possession and your Petitioner considers this period to be insufficient. The nature of your Petitioner's members' work means that a longer notice period of notice will be required. Your Petitioner considers that a period closer to six months would be necessary to give your Petitioner's members' sufficient time to make all necessary arrangements in advance of possession being taken.

Land-take for mitigation

42. Your Petitioner does not dispute the principle of providing replacement land for habitat land and woodland being taken as a result of the construction of the works. Your Petitioner considers, however, that the amount of the replacement land should not be any greater than that which has been lost and so disagrees with the promoter's aim of promoting mitigation that adheres to the Lawton report principles of "bigger, better, and more joined up". Indeed, your Petitioner is unconvinced that bigger mitigation equates to better mitigation. As far as your Petitioner is concerned, the quality of the material being planted, and the way it will be managed, is more important than the surface area of the replacement land.

43. In addition, your Petitioner is concerned by the way in which habitat losses and gains will be measured using a modified version of the Defra biodiversity offsetting metric, not least since your Petitioner is unaware of the evidential base which would justify the use of this new metric.

44. Your Petitioner is also concerned that significant areas which have been earmarked for habitat creation and tree planting will be taking some of the best and most versatile land out of agricultural production. Your Petitioner considers this to be unacceptable, given the amount of agricultural land already being lost to the scheme. It simply makes no sense to compensate for the loss of habitat and woodland land by acquiring even more agricultural land and your Petitioner submits that habitat mitigation should take place on low grade agricultural land or land which is currently out of production.

45. If compensatory mitigation is going to be provided it should be done, first, through direct negotiation with landowners. One of the reasons for this approach is that the landowner or tenant farmer is more likely to know where the replacement mitigation should be located. Owing to this, compulsory acquisition should not be the starting point.

46. Your Petitioner would suggest a two-stage process for providing replacement land for mitigation purposes.

The first stage

47. First, landowners should be provided with an opportunity to express an interest in having their land used for habitat creation or tree planting and they should be remunerated properly for doing so. The opportunity to express an interest should not be restricted to landowners whose land falls within the Bill limits.

The second stage

48. Secondly, only if no expression of interest is forthcoming within a reasonable timeframe, or if no agreement can be entered into, should the Secretary of State be able to rely on his powers of compulsory acquisition.

49. Your Petitioner submits that a similar regime should operate where the Secretary of State proposes to create new replacement rights of way. Before exercising powers of compulsory acquisition, your Petitioner submits that the

Secretary of State should first approach landowners to see whether they are able to suggest appropriate areas of land for the provision of the replacement right of way and, if suitable land can be found, the new right of way should be created through an agreement between the Secretary of State and the landowner. Compulsory acquisition should be the last resort.

Liability for contractors

50. In compulsory purchase cases, an acquiring authority deals with claimants and acquires interests in or over their land, but the construction work on the scheme is usually carried out by contractors and sub-contractors. In practice, claimants often find that the acquiring authority is reluctant to accept responsibility for the actions of contractors when they have caused loss or damage. The claimants in these cases have no direct legal relationship with the contractor. Only the Secretary of State or the Nominated Undertaker will have that relationship in the case of the construction of the Authorised Works. This is likely to lead to difficulties and delays in settling claims. It would be helpful if the Secretary of State expressly accepted that the Nominated Undertaker will be liable to claimants for the actions of its contractors and sub-contractors so that claimants understand that all dealings are to be with the Nominated Undertaker only and not directly with any other party.

51. Your Petitioner proposes to your honourable House that the duty of care mentioned above should include provision that the Nominated Undertaker will be liable for the actions of contractors and sub-contractors to those who are affected by the construction of the works, including those whose land and interests in land are to be acquired.

Statutory Ombudsman

52. The nature of a major scheme like Phase One of HS2 is that it will impact on the day-to-day lives and businesses of very many people. Inevitably there will be disputes and grievances on a wide range of matters, many of which will be minor in terms of economic impact, but which nevertheless cause distress to

those affected. Either as part of the duty of care proposed by your Petitioner above or separately, those affected should be able to have their grievances heard swiftly by an independent third party empowered to offer a remedy.

53. Your Petitioner proposes to your honourable House that the Bill should be amended so as to make provision for a statutory Ombudsman to handle complaints from claimants with powers to order remedies. In order for the proposal to be effective, the Ombudsman would need powers to fine HS2 Ltd or its contractors, or to order it to remedy matters where it had failed in its dealings with those aggrieved. Disputes over the amount of compensation payable in relation to any claim under the compensation code would still be referred to the Lands Chamber and would not form part of this proposal.

Interest on payments

54. The Acquisition of Land (Rate of Interest after Entry) Regulations 1995 ("the 1995 Regulations") specify the rate of interest that must be paid by an acquiring authority from the date of entry onto the land (which is the valuation date for compulsory purchase cases) until payment of compensation. Currently the rate specified is 0.5% below the standard rate, which in turn is defined in broad terms as meaning the base rate. Since March 2009, this has meant that no interest has been payable when compensation amounts have been agreed or determined but not paid, removing any incentive for acquiring authorities to make payments to claimants promptly, particularly under current circumstances where property values are generally increasing at a higher rate. The Bill should specify that all payments due to claimants are made promptly and that a positive compound interest rate will apply to overdue payments.

55. Your Petitioner proposes to your honourable House that the Bill should be amended so that the 1995 Regulations are disapplied in relation to compensation claims made in relation to the acquisition of land and interests in land under the Bill. Instead, your Petitioner proposes that the Bill should specify that compensation payments will attract interest from the date of entry

at a figure which is above the standard rate. Your Petitioner proposes that this figure should be between 4% and 8%. The Bill should require that all payments of compensation due to claimants are made within 30 days of the amount being agreed or determined and that compound interest should apply to all overdue payments.

Bunds and made-up ground

56. It is clear from the Environmental Statement that there will be significant lengths of bund, made-up ground, "sustainable placement" and ground reprofiling alongside the proposed railway, much of it on good quality agricultural land.

57. Your Petitioner is concerned that these works will effectively obliterate large portions of farms and so threaten their viability. Accordingly, your Petitioner submits that, where agricultural land will be lost, the promoter should be put to strict proof that there are no viable alternatives for the disposal of the spoil in question. For instance, excavated material might be required in development elsewhere in the country and so the promoter should take all reasonable endeavours to explore whether this is the case. In any event, good quality agricultural land should not be taken for excavated material.

58. In addition, in your Petitioner's submission, the Bill should be amended so as to include a provision requiring the Nominated Undertaker, unless the landowner agrees otherwise, to remain responsible for the safety and maintenance of land which is altered in the way described in paragraph 56 and to be responsible for liability for any losses associated with the failure of such operations, such as settlement or slippage.

59. The Environmental Statement says that noise barriers in rural locations should generally be provided by landscape earthworks, or bunds, rather than by fence barriers. Your Petitioner does not agree and considers that decisions should be made on a case by case basis. In some circumstances, for instance, a fence barrier will be preferable as less agricultural land will be lost. It is also noted

that, in respect of HS1, noise barriers in rural locations are considered to be a successful means of mitigating noise and so their use should be encouraged in respect of this project also.

Accommodation works

60. A large number of farms will be severed as a result of the construction of the proposed railway. Accommodation works in general and crossing points in particular are matters of significant importance for those affected. Well-designed accommodation works which meet the farmer's needs are likely to reduce substantially a claim for compensation and maintain the viability of farms. HS2 Ltd or the Nominated Undertaker should, at a very early stage, seek to agree a specification for accommodation works with affected farmers. That would help to mitigate the impact of the scheme. The specification must allow your Petitioner's members to request that a crossing be provided. Moreover, the width of agricultural machinery, along with its weight, will need to be properly considered in the planning for new tracks, bridges or underpasses. The specification might also include the width, height, weight limit and final surface. Once agreed, the specification should be binding on the Nominated Undertaker.

61. Your Petitioner would also stress that where the construction works result in fields being left in awkward shapes, it should not follow that those fields are chosen automatically for mitigation habitat. As is mentioned elsewhere in this petition, only low grade agricultural land should be used for habitat mitigation. Good quality agricultural land, regardless of the awkwardness of its shape, should be retained as such. After all, it is possible that the awkwardly-shaped fields could be incorporated into other fields owned by farmer and could continue to be farmed.

62. Your Petitioner proposes to your honourable House that HS2 Ltd should be required to undertake that it will, at a very early stage, seek to agree with the landowner and/or agricultural tenant concerned a suitable specification for

accommodation works where they are required as a result of the construction of the Authorised Works, and that the specification, once agreed, will be binding on the Nominated Undertaker.

Access to severed land

63. The Environmental Statement states that severed land will continue to be used where access is available and, if required, new field accesses to severed parcels of land will be created from public highways. A lot of land is going to be severed in this way and your Petitioner considers that in some cases creating a new access off the highway will not enable the farming business to continue. For some, the cost of driving the extra distance by road to access the land will be too high. For livestock holdings, particularly dairy, direct access to blocks of severed land will be needed for a business to continue and for the farm to remain viable. Sometimes, for instance, the access along a country lane may not be wide enough to cope with agricultural machinery and so a new bridge or underpass to access severed land will be essential.

64. The Environmental Statement also states that the HS2 project will seek to minimise structural disruption by incorporating inaccessible severed land for mitigation works. The decision as to whether a piece of land is inaccessible must be made with the landowner and agricultural tenant of the land. In addition, while your Petitioner agrees that land which is truly inaccessible should be used for mitigation, doing so must not take precedence over efforts to first providing access to severed land.

Planning consent for replacement buildings and associated dwellings

65. The construction of the Authorised Works will necessitate the demolition of agricultural buildings, including farm buildings, storage facilities, workshops and manufacturing units, together with associated dwellings. Where the core farm business will survive, the farmer is likely to want to replace those buildings and the dwellings associated with them. In most cases this will require a full planning application. While the cost of dealing with planning can

be factored into the compensation payable, the uncertainty over whether an application will be approved and the time delays that can arise if a case goes to appeal can all be very difficult for a business to manage. The development of some agricultural buildings is already permitted development, subject to conditions, including limits on size.

66. Your Petitioner notes that the Bill contains provision, in clause 48, enabling the Nominated Undertaker to carry out reinstatement works within the Act limits. In theory, that clause could be utilised so as to meet the concerns of your Petitioner but there is no certainty in that regard, for a number of reasons, most notably that it only applies to reinstatement works within the Bill limits.

67. Your Petitioner proposes that the Bill should be amended so as to ensure that the process for relocating farm buildings that are lost are capable of being reinstated more easily. This could be achieved by clause 48 being amended so as to ensure that it will apply in any case where land is available for reinstatement works, and to remove other uncertainties. Alternatively, the Bill should make provision for an amendment to the Town and Country Planning (General Permitted Development) Order 1995 so that the replacement of any building used for business purposes and any associated dwelling which is acquired under the provisions of the Bill will be permitted development subject only to the prior approval procedure. The permitted development should allow for modern building materials and, if appropriate, modern design and layout, but the size of the replacement building should be restricted to the size of the original. A local planning authority would then be able to consider siting and access under the prior approval process, as for other permitted development.

Severance and hedgerows

68. The severance of agricultural land by such a long linear scheme will result in some fields being left in awkward shapes. A common element of a claim for severance is the cost of removing hedges and fences in order to re-shape fields into a sensible layout. Since the introduction of the Hedgerows Regulations

1997, the removal of any hedge which is more than 20 metres long requires the consent of the local planning authority. This will add time, cost and uncertainty for farmers who are affected.

69. Your Petitioner proposes to your honourable House that the Bill should be amended to provide that the Hedgerow Regulations 1997 do not apply to hedges which have to be removed to allow the reasonable re-organisation of field boundaries where land has been acquired by HS2.

Soils management

70. Your Petitioner would stress the importance of the need to avoid environmental impacts to soils during construction of the project. Soil which will be affected must be stripped and stored so that the land can later be returned to agricultural use and to its pre-construction condition. Your Petitioner knows through experience from storing soils on other schemes, including HS1, that it is very difficult to return soil to its original condition. Farmers will stress that it takes a long time for soil to grow crops to the same yield and quality after it has been disturbed. Owing to this, your Petitioner considers that the promoter must fund an aftercare period of at least 10 years to ensure stabilisation of the soil structure.

Drainage

71. Your Petitioner considers it is essential that where drainage systems and water supplies for livestock are affected by HS2, they must be re-instated as soon as possible. It is not acceptable for such re-instatement to be carried out "where practicable": all field drainage must be restored, or a new system installed, to ensure that the drainage of fields is returned to full working order in the shortest time possible.

Balancing ponds

72. A number of your Petitioner's members have voiced concern about the balancing ponds proposed to be located on their farms. It is essential that

landowners are consulted, and their views taken properly into account, before the location of any balancing pond is determined.

Groundwater quality

73. The Environmental Statement acknowledges that tunnelling and piling could affect groundwater quality and could also temporarily affect the public water supply. The impact on private water supplies, on which many of your Petitioner's members rely, must also be considered and mitigated. Your Petitioner submits that it is essential that the potential impact on the water supply for livestock farms, particularly dairy farms, is properly assessed and suitable mitigation is provided.

Loss Payments

74. The provisions of Part III of the Land Compensation Act 1973 ("the 1973 Act") will apply in relation to land acquired compulsorily under the Bill. Part III includes provisions entitling those with certain qualifying interests to home loss payments, basic loss payments and occupier's loss payments. These are summarised below.

The home loss payment

75. Sections 29 to 32 of the 1973 Act provide for a payment ("the home loss payment" or "HLP") to be made to a person who is displaced from a dwelling.

76. A claimant who is an owner of a freehold or a lease exceeding three years is entitled to 10% of the market value of his interest, subject to a maximum of £47,000 and a minimum of £4,700. Any other claimant is entitled to £4,700. It is noted that the Secretary of State has the power to vary the multiplier and to prescribe a different maximum or minimum.

The Basic Loss Payment

77. Section 33A(2) of the 1973 Act provides for a payment ("the basic loss payment" or "BLP") of 7.5% of the value of a qualifying person's interest in land, up to a maximum of £75,000.

78. BLP is payable to a person who has a qualifying interest in land; whose interest is acquired compulsorily; and to the extent that he is not entitled to a home loss payment in respect of any part of the interest.

Occupiers Loss Payments – agricultural land

79. The Occupiers Loss Payment (OLP) is payable to a person if he has a qualifying interest in agricultural land; the interest is acquired compulsorily; and he occupied the land for a certain period. The maximum amount that may be paid is £25,000.

80. In your Petitioner's humble submission, in respect of this scheme, HLP, BLP and OLP should be replaced with a single loss payment of 30%, which should not be subject to an upper limit. This would reflect the uncompensated loss of the purchase being compulsory and not of the landowner's choosing. It would also reflect the unrecoverable expenses necessarily committed prior to the scheme being confirmed, the variation in valuations, and the limits on decision making during the scheme's planning and delivery which might stagnate farming businesses along the route.

81. The best solution would be for the question to be settled at a national level by amendments being made to sections 33A to 33C of the 1973 Act, but your Petitioner acknowledges that your honourable House is not in a position to make such an amendment in the Bill. Your Petitioner therefore proposes to your honourable House that those sections should be applied with modifications by the Bill to clarify that in relation to compulsory acquisition under the Bill, loss payments are to be assessed by reference to the entirety of the claim and that loss payments should be at the rate of 30% and uncapped.

Capital Gains Tax

82. Your Petitioner considers that there should be a capital gains tax exemption in respect of compulsorily acquired property. Your Petitioner wishes to emphasise that the majority of farmers do not sell their land: it is passed from one generation to the next and so the prospect of paying capital gains tax is not one which arises often. Under the Bill, however, your Petitioner's members are likely to be faced with the prospect of paying the tax following the acquisition of their land. In the light of the involuntary nature of the acquisition process, your Petitioner considers that having to pay capital gains tax following acquisition would be unreasonable and that an exemption should be provided. In the absence of such an exemption, your Petitioner considers that the regime described in the following three paragraphs should apply.

83. If the equivalence rule was always observed in compensation claims, no claimant should suffer uncompensatable losses due to taxation. In practice this is not always the case and, with the HS2 project, there are likely to be particular difficulties with the replacement of business assets in the form of farmland.

84. In the usual course of business, the Taxation of Chargeable Gains Act 1992 ("TCGA") allows for rollover relief from capital gains tax when the funds released by the sale of one business asset are re-invested in another business asset within one year prior to the sale or three years after it. Sections 247 to 248 of TCGA make provision about rollover relief in the case where land is acquired by way of compulsory acquisition. The linear nature of the scheme means that many farmers and landowners are likely to seek to acquire farmland to replace that lost to the railway within a relatively narrow geographical area of search. Replacement land is most valuable to a farmer when it is physically very close to the rest of the holding. It does not make economic sense for the business if the replacement land is remote. Two issues therefore arise: the first is that land in a suitable location may not become available on the market within the timescale prescribed by the rollover relief

rules; and the second is that there is likely to be an imbalance of supply and demand close to the line of the railway which could force land prices upwards.

85. Your Petitioner humbly requests that the Bill be amended so as to address the issues raised above, to make the position fairer on the claimant. The preferred solution would be to provide a capital gains tax exemption in respect of compulsorily acquired property. An alternative solution would be to extend the period in which rollover relief can be claimed. This could be achieved by your honourable House amending the Bill so as to include a provision applying TCGA with modifications so that assets acquired for the HS2 scheme will be eligible for rollover relief if they are replaced within 2 years before or 6 years after the acquisition.

Stamp Duty Land Tax

86. When a replacement asset is acquired following compulsory acquisition, stamp duty land tax (SDLT) may be due on the acquisition cost. This would usually be included as part of the claim provided that the SDLT fell due within 12 months of the claim. For the reasons outlined above in relation to capital gains tax, this timescale is unlikely to be reasonable for the HS2 project.

87. Your Petitioner proposes to your honourable House that the period for claiming the cost of SDLT on the acquisition of a replacement asset as a legitimate part of a compensation claim against the acquiring authority in relation to land acquired under the Bill should be extended.

Inheritance tax

88. Where an estate is worth more than £325k an Inheritance Tax ("IHT") charge of 40% applies to the excess. There are however a number of reliefs that may first be applied to an estate which would reduce the taxable value. For farmers the two main reliefs are Agricultural Property Relief (APR) and Business Property Relief (BPR) which can relieve up to 100% of the value of agricultural land or other business property. The availability of APR and BPR is dependent on their

being qualifying assets held for at least two years prior to death or a lifetime transfer (seven years in the case of let agricultural property).

89. Where land is purchased under a compulsory purchase order it is likely to change the asset from one that qualifies for up to 100% IHT relief to cash which doesn't. New assets may be acquired which, if held long enough before death, would then qualify. There are also rules which allow a replacement asset to be acquired and for it to qualify for IHT reliefs immediately by virtue of the combined length of ownership of the old and new asset.

90. However there is a clear risk that a farmer might die before replacing the monies received with further assets with the result that they incur IHT which would not otherwise have been payable. Similarly, there could be instances where the farmer is unable to find suitable replacement assets quickly enough and so finds that he does not then receive relief on the replacement asset.

91. Your Petitioner submits that where compensation is paid and the farmer dies afterwards then, provided the farmer has taken reasonable steps to replace the asset (albeit without success) at the time of death, then the farmer's estate should be excused having to pay IHT in respect of the compensation payment.

Value added tax

92. Land is ordinarily exempt from VAT and the majority of land that will be taken by HS2 will therefore be exempt. However it is possible to make an election for a parcel of land or your entire holding of land to be subject to VAT. This is favourable where a landowner intends to incur costs that are subject to VAT, as it allows the landowner to recover the VAT charged on his costs.

93. Your Petitioner submits that the promoter should be obliged to make all reasonable endeavours to find out whether the land has been opted for VAT and, if so, the promoter should be obliged to pay VAT, in addition to any compensation agreed, for the land where the land has been subjected to an option to tax for VAT purposes.

Stoneleigh Park

94. Your Petitioner's headquarters, Agriculture House in Stoneleigh Park, Warwickshire, will also be affected by the Bill.

Background to Stoneleigh Park

95. Over seventy organisations are based in Stoneleigh Park, including GEA Farm Technologies, the Agriculture and Horticulture Development Board and the Royal Agricultural Society of England. Your Petitioner employs around 350 people and around 230 of them work at Stoneleigh Park. The remaining employees visit headquarters fairly regularly for meetings, seminars and conferences. In addition, at least once a month, Stoneleigh Park hosts a large meeting for your Petitioner's members when at least 100 members attend. There are also more regular small scale meetings with members. Car use at Stoneleigh Park is frequent and heavy and good access from the highway to your Petitioner's headquarters is essential.

96. Stoneleigh Park is listed in the Book of Reference which accompanied the Bill as plot number 77 in the parish of Stoneleigh in the district of Warwick, in the county of Warwickshire. Under Schedule 5 to the Bill, plot number 77 can be acquired for the purpose of the "diversion or installation of, or works to, utilities apparatus". Plot number 77, however, constitutes a large portion of Stoneleigh Park and it is not clear why the promoter requires extensive powers of acquisition for works which in reality would require a limited amount of landtake for a limited period of time.

97. In addition to the above, your Petitioner is particularly concerned that the Bill grants acquisition rights over all accesses to Stoneleigh Park to the promoter. No alternatives have been proposed to be put in place by the Promoter and, as a result, your Petitioner submits that the Promoter undertake that current levels of access to Stoneleigh Park will remain in place throughout construction and operation of the high speed rail line. At the moment, it is unclear whether suitable access to Stoneleigh Park from the public highway will be provided at

all times. Clearly, this could compromise your Petitioner's employees' ability to get to work and so your Petitioner submits that suitable access to Stoneleigh Park from the public highway must be maintained at all times from both the main and northern entrances.

Compulsory purchase, generally

98. Previous Governments have foregone the opportunity afforded by the Law Commission's proposals to re-write the compulsory purchase code for the 21st century. The Bill presents a chance to make changes to the code as it applies to Phase One of HS2 and set a precedent for the future, not least for Phase Two of HS2, which will affect a large number of your Petitioner's members. If your Petitioner's proposals are accepted and found to work well, this would provide a springboard for further reforms to the compulsory purchase code which would benefit future schemes.

General

99. There are other clauses and provisions in the Bill which, if passed into law as they now stand, will prejudicially affect the rights and interest of your Petitioner and its members and other clauses and provisions necessary for their protection and benefit are omitted therefrom.

YOUR PETITIONER THEREFORE HUMBLY PRAYS

your Honourable House that the Bill may not pass into law as it now stands and that it be heard by itself, its counsel, agents and witnesses in support of the allegations of this petition, against so much of the Bill as affects the property, rights, and interests of your Petitioners and in support of such other clauses and amendments as may be necessary and proper for its protection and benefit.

AND YOUR PETITIONER will ever pray, &c.

SHARPE PRITCHARD LLP

Agents for the National Farmers Union of England and Wales

HOUSE OF COMMONS

SESSION 2013-14

HIGH SPEED RAIL (LONDON – WEST MIDLANDS) BILL

P E T I T I O N

of

THE NATIONAL FARMERS UNION

OF ENGLAND AND WALES

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AGAINST,

BY COUNSEL, &c.

SHARPE PRITCHARD LLP

Elizabeth House

4-7 Fulwood Place

London WC1V 6HG

Parliamentary Agents