

Nobel House
17, Smith Square
London SW1P 3JR



Telephone: 020 7238 4462

Email: Barbara.anning@defra.gsi.gov.uk

Web: www.defra.gov.uk

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Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance
Committee
Economic Commission for Europe
Environment, Housing and Land
Management Division
Bureau 348
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms Smagadi

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in Connection in connection with the planning of the Crossrail project in the metropolitan area (Ref: ACCC/C/2011/61)

Thank you for your letter of 10th September requesting further information in relation to Case ACCC/C/2011/61.

(i) Please provide information on how the requirements of article 6 of the Convention were met, and in particular the requirement of article 6, paragraph 2, by submitting to the committee a sample of the public notice.

1. The Committee have asked for an analysis of how each of the requirements of Article 6 was met in respect of the Crossrail Act. This is set out in the table below. The Committee also asked for examples of notice given re the use of the Hybrid procedure for Crossrail and consultation in relation to the Bill. Notice of the introduction of the Bill was published in newspapers circulating in the area of the proposed works in consecutive weeks as required by Private Business Standing Orders. The papers used were the London Gazette, The Times, the Evening Standard and a further 18 local papers. A document setting out the Notices of Introduction of Bill (in Parliament), Amendment of Provisions and of Further Environmental Information is attached. This document lists the papers where such notices were publicized. In addition to the steps taken by Crossrail London Rail

Links Ltd ("CLRL") and DfT (websites, newsletters, etc) prior to introduction of the Bill, the House of Commons produced a leaflet about petitioning a copy of which is attached. Copies of this leaflet were distributed by CLRL with the landowners notices served on all those named in the book of reference. The leaflet was also posted on the House of Commons website. Both the House of Commons and House of Lords provided information and guidance on dedicated Select committee websites. Both Houses produced written guidance – known as petitioning kits- to assist people wishing to present petitions. This document was also available on the internet and available on request as hard copy.

Requirement of Article 6

Compliance in respect of Crossrail

Article 6(2)

The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

See the closing submissions of the promoter a copy of which was provided to the Committee at the hearing at Appendix B, paras. 6 and 7 and see also the extracts of the Crossrail Bill Committee minutes provided to the committee at the hearing at pp. 19 – 20, paras 21424 and 21425. At para. 21425 it was said to the Committee that there had been

"extensive pre-Bill consultations on the proposals for the public awareness campaign in 2003 and the establishment of information centres, the second awareness campaign in 2004 followed by a second round of public information centres. There were 103 days of information centres at 55 locations across the Crossrail route attracting over 15,000 visitors. The consultation responses were evaluated and considered in the design of the project and mitigation measures associated with it. In 2005, before the Bill was deposited, an information round was implemented in information centres explaining the proposals for which powers are now sought in the Bill and an aggregated consultation report in September 2005 is available which summarises the consultation process. Secondly, additional notice of the likely proposals was given in the CLRL business case in July 2003 and in the Montague Report in July 2004. The Bill and the Environmental Statement give ample information on the proposals together with other information available from CLRL and DfT, both in electronic and paper format. Sir, you will note behind the Environmental Statement there sit a number of very detailed technical reports which have been brought out from time to time. They are all available on the Crossrail website along with the Environmental Statement."

(a) The proposed activity and the application on which a decision will be taken;

See also the opening of the promoter which at paras 32 – 40 gives an overview of the consultation undertaken:

(b) The nature of possible decisions or the draft decision;

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcross/235/6011703.htm>

(c) The public authority responsible for making the decision;

Please see also the attached document (referred to above) setting out the Notices of Introduction of Bill, Amendment of Provisions and or Further Environmental Provisions, together with lists of the places that such notices were deposited (libraries etc) and newspapers in which such information was publicised.

(d) The envisaged procedure, including, as and when this information can

The Bill was introduced to Parliament on 22 February 2005. Publicity given to this included the DfT news release 2005/0018 22 February 2005, and was widely reported in the press, including the BBC news website

(See <http://news.bbc.co.uk/1/hi/england/london/4289139.stm>)

be provided:

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate;

(iii) The time and venue of any envisaged public hearing;

(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

(vi) An indication of what environmental information relevant to the proposed activity is available; and

(e) The fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

Please also see the document at

<http://www.official-documents.gov.uk/document/cm66/6603/6603.pdf> which contains the text of some of the key press releases and announcements in the context of the consultation of the Environmental Statement

Article 6(3)

The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

Crossrail carried out extensive stakeholder and public consultation in advance of the Parliamentary process. In 2003 and 2004 over 50 days of exhibitions were held to explain the proposals at over 30 different locations. Over 200,000 invitations were distributed to the properties of residents and businesses along the proposed route. In addition Crossrail staff attended many meetings with councillors, local residents associations and businesses. Further details of this consultation can be found in the Aggregated Consultation Report published by Crossrail in September 2005 (attached and available for download at <http://www.crossrail.co.uk/railway/getting-approval/consultation-information/>).

On Introduction of the Bill newspaper notices were published which explained the right to petition and how to where further information on the **process could be obtained**. After Second Reading of the Bill, which took place on 19th July 2005 the public were given until 16th September 2005 to lodge petitions.

First Reading in the House of Lords took place on 14 December 2007, which triggered a new petitioning period that ended on 30 January 2008. The Bill secured Second Reading on 9 January 2008.

The government introduced several amendments to the Bill and after each such amendment was announced officially in the newspapers, the public were given 4 weeks to petition these amendments.

Commencing on 19 February, the Lords Select Committee sat in public for 29 days of hearings to consider the cases of 45 of the 113 petitions deposited against the Bill. The Committee reported the Bill on 19 May, and published its Special Report, explaining its decisions and recommendations, on 27 May. The Promoter issued its response to the Committee's Special Report on 5 June.

As explained above unless a petitioner indicated he did not wish to appear or withdrew his petition he had a right to appear before the Committees and be heard.

At the same time the Bill was introduced an Environmental Statement was published with supporting reports and a non-technical summary.

Standing Order 27A which provides for the deposit of an Environmental Statement at the time the Bill is deposited at the Private Bill Office. The Standing Orders require (see Standing Order 27A(6)) that the ES be made available for inspection. In relation to Crossrail the ES was deposited with the Bill and made available in paper and electronic copies and on the internet by the time of the First Reading in the House of Commons. A period of over 3 months (c. 108 days) was given to the public for responses to it (responses to the ES could also be given as part of the petitioning process – see below). The ES was publicised via Ministerial Statements, Department of Transport ("DfT") press releases, on the DfT website and via newspaper notices as well as by letters to Members of Parliament ("MPs"). Updating bulletins on Crossrail were also regularly published. Similar publicity and opportunities for consultation responses were made in respect of the supplementary ESs later produced.

Article 6(4)

Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

There was extensive consultation prior to the Bill being introduced to Parliament.

On being introduced there was a right to petition – see above as well as comment on the Environmental Statement.

Article 6(5)

Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

See above there were extensive consultations prior to the Bill being introduced.

Additional notice of the likely proposals was given in the CLRL business case in July 2003 and in the Montague Report in July 2004. These were published on relevant websites.

Article 6(6)

Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3

The Bill itself and the Environmental Statement gave ample information on the proposals as required by Article 6(6) of the Convention.

The ES complied fully with the requirements of the EIA Directive as regards content and these requirements mirror those in Article 6(6). There was a non-technical summary. The Committee is invited to look at this: <http://www.crossrail.co.uk/railway/getting-approval/crossrail-bill-supporting-documents/non-technical-summaries>

The ES and supporting reports were all available online: **see** <http://www.crossrail.co.uk/railway/getting-approval/crossrail-bill-supporting-documents/environmental-statement>

More generally as regards information as was explained to the Committee (see p. 20 of the minutes provided at para 21427):

"Deliberations and decisions made by Parliament with regard to Crossrail are made publicly available through a number of media, including Hansard, the internet and the Committee's own website. Committee proceedings are published on the website and can be listened to via the weblink or for a period of months as part of the internet archive of recordings. There is ample opportunity to hear and understand what is happening. The provision of information on the Bill has been extensive and widespread. In addition to depositing documents in public libraries and with local authorities and by responding to individual requests for additional information generally under the Freedom of Information Act provisions significant amounts of information have been made available electronically via the internet by, for example, both the CLRL and DfT website."

Further, the Select Committee hearings were open to the public to attend.

and 4. The relevant information shall

include at least, and without prejudice to the provisions of article 4:

(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

(b) A description of the significant effects of the proposed activity on the environment;

(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;

(d) A non-technical summary of the above;

(e) An outline of the main alternatives studied by the applicant; and

(f) In accordance with national legislation, the main reports and advice issued to the public authority at the time when the public concerned shall be informed in accordance

with paragraph
2 above.

Article 6(7) The procedures allowed:

Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

1. Written responses to the pre-Bill consultations
2. Written responses to the ES
3. Written petitions objecting to the Bill
4. The right to appear before the Committees if a petition had been lodged.

In addition, members of the public could always make representations to their local Member of Parliament. Several MPs deposited petitions and presented evidence on behalf of constituents.

Article 6(8)

Each Party shall ensure that in the decision due account is taken of the outcome of the public participation.

In relation to pre-Bill consultations there was an aggregated Consultation Report was published following these processes. The Committee will find at <http://www.crossrail.co.uk/assets/download/4397> an account of the extensive range of pre-introduction of the Bill consultations undertaken and the results of these which were then taken into account.

The Committees reported on petitions heard by them to Parliament so this could be taken into account.

A command paper was produced and presented to Parliament at Second and Third Reading, presenting and reporting on the representations that had been received after introduction of the Bill on the environmental statement and the subsequent supplementary environmental statements (see <http://www.official-documents.gov.uk/document/cm72/7250/7250.pdf>). In addition to reporting on Petitions heard by them, the Select Committee were instructed to report on those Petitions which fell outside their remit to consider so that these could be taken into account at Third Reading.

Article 6(9)

Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the

The Bill when passed became an Act of Parliament.

All such Acts are available online: <http://www.legislation.gov.uk/ukpga/2008/18/contents> along with explanatory notes: <http://www.legislation.gov.uk/ukpga/2008/18/notes/contents>.

The reasons for the decision to enact the Crossrail Bill were explained to Parliament by a Minister at Third Reading and summarised in Command Paper 7250 which was published and available to Parliament on Third Reading (as above, available at <http://www.official-documents.gov.uk/document/cm72/7250/7250.pdf>).

appropriate procedures.

Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based.

Article 6(10)

Not applicable

Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.

However, Crossrail Limited has put in place the "Commitments Delivery Tracker" which is a workflow based database that enables users to record, and track commitments. This ensures that the undertakings and assurances that were given by the promoters to petitioners during the select committee process are properly recoded and can be dealt with at the appropriate time. There is a team dedicated to ensuring compliance with these commitments.

Article 6(11)

Not applicable to Crossrail.

Each Party shall, within the framework of its national law, apply, to the extent feasible and appropriate, provisions of this article to decisions on whether to permit the deliberate release of genetically modified organisms into the environment.

(ii) **Please clarify who is “directly and specially affected” to submit to Parliament in writing a petition in which they set out their objections to the Bill and clarify the legal situation of the “standing test” in order to submit a petition under the Bill.**

2. As already explained an individual may petition if he or she is “directly and specially” affected by the bill. If the bill’s promoters object that a petitioner has no right to be heard, there is a body called the Court of Referees, a committee of senior back-bench MPs assisted by the Speaker of the House of Commons’s Counsel, which examines the grounds of each petition (known as the *locus standi*) and decides the case.
3. As explained the Standing Orders applied to a Hybrid Bill (see <http://www.publications.parliament.uk/pa/cm200506/cmstords/441/pvtbs01.htm>) also allow petitions in respect of:
 - a. “any society, association or other body, sufficiently representing amenity, educational, travel or recreational interests” (Standing Order 95(2)). As explained this definition would include environmental NGOs.
 - b. An inhabitant of a local authority area “injuriously affected by a bill or any provisions thereof” (Standing Order 96).
 - c. The Conservators having control, regulation or management of any forest, common or open space alleged to be injuriously affected by the Bill. (Standing Order 101).
4. As explained the Government as the promoter of the bill did not object to any of the petitions made. The total number of petitions received in the House of Commons against the bill as originally published was 365 (listed at <http://www.publications.parliament.uk/pa/cm200506/cmbills/001/001pet.htm>). An additional 101 petitions were received in response to Additional Provisions (amendments) introduced by the government at a later stage, bringing the total number of petitions received in the House of Commons to 466. In the House of Lords a total of 113 petitions was received (listed at <http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcross/112/11212.htm>). The House of Lords procedures did not allow for Additional Provisions to be made so no additional Petitions were received in respect of Additional Provisions as they were in the House of Commons. It will be seen that the petitioners included: local authorities, individuals, companies and NGOs. Among the NGOs were the Open Spaces Society and the Ramblers Association, Save Britain’s Heritage, the Royal Society for the Protection of Birds, the Cyclists Touring Club, the Confederation of British Industry, the Rail Freight Group, the Environment Agency and numerous residents associations and civic societies.
5. As explained in the opening speech, where petitions were made the Select Committees of the House of Commons and House of Lords were obliged to hear those petitions unless they were withdrawn or the petitioner chose not to appear before the Committees. Many of the objections made were dealt with by assurances or undertakings given by the DfT and withdrawn without being heard. It is explained in the House of Commons Select Committee First Special Report of Session 2006 -

2007, vol. 1 para. 12 p. 9 that "[t]he Committee heard from many, but not all, of the Petitioners during its hearings. Some Petitioners chose not to appear and some withdrew their petitions after negotiating a satisfactory undertaking with the Promoter of the Bill. All hearings took place in public and were transcribed and webcast". The House of Commons Select Committee sat for 84 days and heard 205 petitions and the House of Lords Select Committee sat for 29 days and heard 45 petitions. The petitions resulted in a number of amendments to the Bill as well a very large number of assurances and undertakings being given by the DfT to the petitioners in order to deal with their concerns. Following the first reading in the House of Lords in December 2007 there was a second petitioning period. This resulted in 29 further days of petitions being heard by the House of Lords Select Committee.

6. An Environmental Statement (nine volumes comprising 3,700 pages, plus a further 14,000 pages of technical reports, and a 55 page non-technical summary setting out the main findings) was prepared which described the findings of the assessment of the likely significant environmental effects (both negative and positive) of the Crossrail project. The public were invited to comment on this Environmental Statement (ES) when it was published. There was no locus requirement as regards comments on the Environmental Statement. 391 representations were received from 236 respondents on the Environmental Statement..

(iii) **Please elaborate on the arguments you presented during the discussion about the availability of review procedures and the implementation of article 9, paragraphs 2 and 3, of the convention, in the present situation of the Crossrail Bill.**

7. The Committee asked for the UK Government's submissions on Article 9 to be put in writing.
8. Article 2(2) of the Convention was drafted with a deliberate and clear exclusion for bodies acting in a legislative capacity. The Convention thus recognises the legitimacy of Parties using legislative processes to obtain development consents. The UK is not alone in this. The case-law of the European Court of Justice ("the CJEU") on the similar exemption in the EIA Directive shows that such processes are used in a number of other European countries e.g. Luxembourg and Belgium: see **Boxus v Region Wallonne** (C-128/09) [2012] Env. L.R. 14 and **Luxembourg v Linster** (C287/98) [2000] E.C.R. I-6917.
9. The committee must ask itself why the Convention was drafted with this exemption. The UK submits there are two reasons:
 - a. The exclusion is explained in the Implementation Guide. The Guide says that the exclusion "is due to the fundamentally different character of decision making ... in a legislative capacity, where elected representatives are more directly accountable to the public through the election process".
 - b. The exclusion mirrors one in the EIA Directive: see Article 1(5) of Directive 85/337; Article 1(4) of the new consolidated Directive 2011/92/EU. This provides that the EIA Directive "shall not apply to projects the details of which

are adopted by a specific act of national legislation, since the objectives of this Directive, including that of supplying information, are achieved through the legislative process". In the recent case of **Boxus v Region Wallonne** (C-128/09) [2012] C.E.C. 414; [2012] Env. L.R. 14 the Grand Chamber of the CJEU considered this exclusion in the context of both the EIA Directive and the Aarhus Convention saying:

"37 The provision lays down two conditions for the exclusion of a project from the scope of Directive 85/337. The first requires the details of the project to be adopted by a specific legislative act. Under the second, the objectives of the directive, including that of supplying information, must be achieved through the legislative process (see **World Wildlife Fund (WWF) v Autonome Provinz Bozen** (C-435/97) [1999] E.C.R. I-5613; [2000] Env. L.R. D14 at [57]).

50 It follows from art.2(2) of the Aarhus Convention , read together with arts 6 and 9 thereof, and from art.1(5) of Directive 85/337 that neither the Convention nor the directive applies to projects adopted by a legislative act satisfying the conditions set out in [37] of the present judgment."

The Convention has a very close relationship with the EIA Directive, something explained in the Implementation Guide. The exemption in Article 2(2) of the Convention was, it is suggested, drafted so that the Convention in this regard mirrored the EIA Directive's non-application to legislative acts. The UK submits that the Crossrail Act clearly meets the conditions in para. 37 of **Boxus** and so is exempt from the requirements of the EIA Directive. It would be unfortunate if the Committee were to hold that the position were different under the Convention. The UK also poses this question to the Committee: if the exemption in Article 2(2) is not applicable to the Crossrail Act then when would it ever be applicable? The Committee must be careful not to render the exemption which the Parties carefully and deliberately chose to include otiose and without effect.

10. In terms of Article 9. The provisions of Article 9(2) and (3) are inapplicable to the Crossrail Act:

- a. Article 9(2) concerns challenges to the legality of decision subject to the provisions of Article 6. Article 6 itself concerns decisions by "public authorities (see e.g. Article 6(2)(c)) as defined by the Convention. The Crossrail Act was passed by Parliament, an exclusively legislative body. Bodies acting in a legislative capacity are not "public authorities" for the purposes of the Convention: see Article 2(2). See in this regard what is said about the reasons for the exclusion in the Implementation Guide and in the **Boxus** case considered above.
- b. Article 9(3) also relates to challenges to the acts of private persons or public authorities. Parliament is clearly not a private person and as already noted the definition of public authority excludes bodies acting in a legislative capacity.

11. If the Committee were to hold contrary to all of the above that Article 9 was applicable then the UK says the following in the alternative.
12. First, in the UK an Act of Parliament is reviewable by the Courts on two bases:
- a. On the basis that the Act is contrary to EU law (such as for example the EIA Directive). It has been held that the domestic Courts can disapply an Act of Parliament and grant an injunction forbidding a public authority from obeying an Act if it is contrary to EU law: see **R (Secretary of State for Transport, ex p Factortame Ltd (No. 2))** [1990] AC 603;
 - b. As the Communicant accepts the Human Rights Act 1998 also allows a challenge by way of judicial review seeking a declaration of incompatibility in respect of an Act of Parliament where it is said to be in breach of rights in the European Convention on Human Rights.
13. Because of Parliamentary Sovereignty an Act is not challengeable on other domestic judicial review grounds. The sovereignty of Parliament is one of the fundamental tenets of the UK constitution. The Courts are thus, save in the respects set out above, unable to rule that enacted law is invalid.
14. Nor can an Act of Parliament be invalidated because it is contrary to an international treaty of convention to which the UK is party (the position with the EU and the European Convention is different because of Acts of Parliament have themselves allowed the Courts to rule on legality in those respects). The UK has a dualist system of law. See most recently the Supreme Court's decision in **Assange v Swedish Prosecution Authority** [2012] 2 W.L.R. 1275 at para. 265. In **R v Lyons** [2003] 1 AC 976 at para 27 Lord Hoffmann said "Parliament may pass a law which mirrors the terms of the treaty and in that sense incorporates the treaty into English law. But even then, the metaphor of incorporation may be misleading. It is not the treaty but the statute which forms part of English law. And English courts will not (unless the statute expressly so provides) be bound to give effect to interpretations of the treaty by an international court, even though the United Kingdom is bound by international law to do so".
15. The Committee asked if an Act of Parliament might be invalidated by reason of being in conflict with an International Convention or Treaty via EU law. In response these submissions are made:
- a. So far as we are aware, the UK Courts have not considered this issue;
 - b. For this to be possible at all the International Convention or Treaty in question would have to be directly applicable as a matter of EU law. Whether an International Convention or Treaty was directly applicable as a matter of EU law for these purposes is a question for the CJEU not this Committee to decide upon;
 - c. The CJEU has in this context ruled that Article 9(3) of the Aarhus Convention is not directly applicable: see **Lesoochranarske Zoskupenie VLK v Ministerstvo Zivotneho Prostredia Slovenskej Republiky** (C-240/09) [2011] Env. L.R. 28.

16. Moreover, in **Boxus** (see para. 54) the CJEU ruled that all that was required in terms of Article 9 of the Convention and Article 11 (ex 10a) of the EIA Directive in this context was that there could be court proceedings challenging whether that legislative act satisfies the conditions laid down in para. 37 of the judgment (see above) for the exclusion of legislative acts from the Aarhus Convention and EIA Directive. The domestic courts of the UK allow such a challenge.

17. It is contended that even if Article 9 is held to be applicable to the Crossrail Act it is clear from Article 2(2) of the Convention and from the Implementation Guide that legislative acts are fundamentally different in nature to administrative acts by public authorities not least because “elected representatives are more directly accountable to the public through the election process”. Because of this it is contended that if Article 9 is applicable in respect of such procedures it allows for judicial review on a more limited basis than is available for non-legislative acts. The review that is available of Acts of Parliament in the UK – see above – is thus sufficient to meet the requirements of Article 9 even if it were held to be applicable.

18. The Committee also asked if there were court remedies available if the Government in implementing Crossrail acted contrary to the conditions and limitations in the Crossrail Act itself. As was indicated at the hearing in this situation judicial review before the Courts would be available in the ordinary way. Moreover, a number of undertakings were given by the Government to Parliament and to third parties. Some of these are contractual and thus capable of enforcement in ordinary proceedings. In addition, reporting protocols have been agreed between the Department for Transport and Crossrail Limited setting out who should be informed if there are breaches of the undertakings and assurances. Depending on the severity of the breach officials, Ministers or Parliament will be informed.

19. Finally, the Committee asked if there were judicial remedies during the process in respect of a failure to provide information to the public. The answer is that there are. The Government as promoter is bound by the Environmental Information Regulations which gave effect to the Environmental Information Directive. If information is not provided when requested a complaint can be made to the Information Commissioner and proceedings brought before a tribunal.

(iv) Why was the avenue of the “hybrid bill” the preferred procedure for Crossrail and what were the alternatives?

20. The Crossrail Act was passed following a Hybrid Bill procedure. A Hybrid Bill is one with the characteristics of both a public bill and a private bill. It thus follows a procedure combining elements applicable to both private and public bills¹.

¹ Erskine May: *Parliamentary Practice 24th edition* states that “[public bills] relate to matters of public policy and are introduced directly by Members of either House. Private bills are bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority, and are promoted by the interested parties themselves by means of petitions deposited in accordance with the standing orders relating to private business”. Erskine May says in relation to Hybrid Bills that these are “public bills which are considered to affect specific private or local interests, in a manner different from the private or local interest of other persons or bodies of the same category, so as to attract the provisions of the standing orders relating to private business”

21. At the time when the Crossrail scheme was being considered, the Hybrid Bill process was the only method available to the government to promote a railway scheme. The scheme could have been promoted by a third party through under the Transport and Works Act 1992 but this would not have allowed the government to publicly state its support for the scheme in advance and the Secretary of State for Transport would have been required to decide the application on a quasi judicial basis. In addition, as explained at the hearing Hybrid Bill process was the best way of ensuring that all the powers and consents required to build Crossrail could be obtained because an order under the Transport and Works Act could not, on its own, secure all the necessary powers. This is because Crossrail required provisions to be made relating to the way that railways are regulated as well as planning permission for the railway itself. A Hybrid Bill allowed both of these things to be achieved in a single bill and so for the railway and its impacts to be properly considered in totality. It was estimated at the time that the process of securing the necessary powers and awarding the contract might have taken up to three years longer using the Transport and Works Act procedure (together with other necessary parallel approvals processes) than using the Hybrid Bill process. This would have unnecessarily delayed progress with the scheme and extended the uncertainty for those people affected by the project.

22. The Committee asked whether the UK could produce a document explaining the choice made to use the Hybrid Bill process for Crossrail. There was little, if any, public explanation given by the government of the decision to use the hybrid bill process for Crossrail or of possible alternatives to using that process (for example the Transport and Works Act 1992). This was because, as explained above, there was no suitable alternative available As Crossrail's website states: "[t]he Crossrail Bill was a so called hybrid bill which traditionally is used by the Government on behalf of railway companies and transport agencies to obtain authorisation for major projects deemed to be in the national interest, but which would also affect a large number of private interests. Such bills have been used periodically for rail and other major projects such as the Channel Tunnel, the Channel Tunnel Rail Link and the Dartford Tunnel."

Regards



DAVID HAMSON

PP BARBARA ANNING

Barbara Anning