



Department
for Transport

From the Secretary of State
The Rt. Hon. Grant Shapps

Great Minster House
33 Horseferry Road
London
SW1P 4DR

Tel: 0300 330 3000
E-Mail: grant.shapps@dft.gov.uk

Web site: www.gov.uk/dft

Stuart McMillan MSP
Convener of the Delegated Powers
and Law Reform Committee
The Scottish Parliament
T1.01, Chamber Office
Edinburgh
EH99 1SP

26 April 2022

Dear Stuart,

Re: High Speed Rail (Crewe – Manchester) Bill and delegated powers

Thank you for your letter of 4 April requesting an explanation of the powers being sought through the High Speed Rail (Crewe – Manchester) Bill.

As you will be aware, my officials have been working closely with colleagues in both Transport Scotland and more widely with Scottish drafters and Scottish Government to formulate this first ever cross-border hybrid Bill. I am grateful to the teams in Scotland for the support they have shown my officials over the last few years in this matter. The powers in the Bill were also discussed with the Scottish Transport Minister last year, before the Bill was introduced.

Turning to the detail of your letter, I note that Schedule 17 and Clause 58 reflect cases where in England, the decision is made jointly between the Secretary of State for Transport and another government department. It is recognised that input from another government department with responsibilities in these areas is helpful, but as applied to Scotland, this joint decision needed to be replaced by a consultation.

This is because, in such cases, a joint decision would involve two different governments. Getting a joint decision from two departments of the same government does not create the same risk of deadlock in the case of disagreement, since there are mechanisms within government to ensure that inter-departmental differences can be resolved.

When alternative resolutions were first considered, it was noted that the UK Government and the Scottish Government have no escalation mechanism between them, nor can they act as a single entity.

Requiring a joint decision out of two separate Governments therefore raises the risk of delay in a case where they cannot agree. This was considered to present too much of a risk of major delay in the delivery of the HS2 project. Nevertheless, requiring consultation means that there will be input from the relevant Scottish Government Department, whilst maintaining the seamless development and implementation of the project.

In the case of Schedule 5, paragraph 15, the designation of trunk roads and motorways in England is a matter purely within my jurisdiction. When applied to Scotland, it is considered appropriate to provide the Scottish Government opportunity for input into the decision, via consultation. Again, as explained above, this avoids having the risk of a potentially unresolved joint decision.

You note there are powers included in the Bill that are exercised by the Transport Secretary without a requirement for consultation with or consent from the Scottish Ministers. These are all decisions which in England are made by the Secretary of State for Transport alone, without reference to other government departments. The same regime has therefore been applied to Scotland in this Bill. This reflects the point that these are decisions which are made by me as Promoter of the project, rather than in the more general transport jurisdiction sense. Similarly, Paragraph 13 allows for the Secretary of State to designate qualifying authorities where they have given a satisfactory undertaking as to their handling of planning matters.

Schedules 18 and 19 are also not modified to require consultation with Scottish Ministers. Clause 19 is concerned with a decision to extend the time limit for the duration of planning permission if that is necessary for delivery of the project. Paragraph 5 of Schedule 18 allows for the Secretary of State to disapply the Bill listed building regime where it is no longer required in order to deliver the project and paragraph 3 of Schedule 19 allows the same decision to be made in relation to the disapplication of the ancient monuments regime. Again, in all these cases, the functions are central to my role as Promoter of the legislation in Parliament and as the Minister who has sought the powers that allow it to be delivered.

Regarding what consultation will mean in practice, the form of consultation is not prescribed and there are no formal requirements.

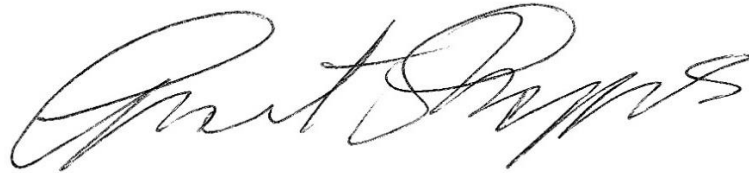
However, any consultation would be in accordance with established Gunning principles for consultation, i.e.:

1. The proposals are still at a formative stage.
2. A final decision has not yet been made, or predetermined, by the decision makers.
3. There is sufficient information to give 'intelligent consideration'. The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.

4. There is adequate time for consideration and response. There must be sufficient opportunity for consultees to participate in the consultation.
5. Conscientious consideration' must be given to the consultation responses before a decision is made.

I trust this explanation satisfies the committee. I would like to reiterate again my thanks to Scottish officials for their ongoing support and assistance to my officials with this first ever cross-border hybrid Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Grant Shapps', written in a cursive style.

Rt Hon Grant Shapps MP

SECRETARY OF STATE FOR TRANSPORT