

House of Lords and House of Commons

EXAMINATION OF AN ADDITIONAL PROVISION TO A HYBRID BILL

High Speed Rail (London - West Midlands)
Bill

fourth Additional Provision
(deposited on 12 October 2015)

Tuesday 24 November 2015

Before:

The Examiners of Petitions for Private Bills:

MR PETER DAVIS, Counsel for Domestic Legislation, House of Commons
MR MATTHEW HAMLYN, Clerk of Bills, House of Commons
MR PETER MILLEDGE, Counsel to the Chairman of Committees, House of
Lords
MS CHRISTINE SALMON PERCIVAL, Clerk of Private Bills, House of Lords

MRS ALISON GORLOV of Winckworth Sherwood appeared as the Parliamentary
Agent for the Bill.

There also appeared:

MR MARK AANENSEN, Parliamentary Clerk, Winckworth Sherwood
MR JAMES O'CONNOR, Solicitor, Eversheds
MR DARREN WHITE, Parliamentary Clerk, Eversheds
MR JAN PODKOLINSKI, Head of Hybrid Bill Preparation and Powers Team, HS2 Ltd
MS SHEERY SASSOON, Additional Provision Preparation Manager, HS2 Ltd
MR BRUCE MARTIN, Bill Deposit Manager, Hybrid Bill Preparation Team, HS2 Ltd
MR TIM MUSGRAVE, LWM Lead, Land & Property Manager, HS2 Ltd
MR PETER MILLER, Environment Director, HS2 Ltd
MR ADAM ROBERTS, TerraQuest (Land Referencing)
MR OWEN KELLY, Mouchel (Land Referencing)
MR TREVOR WILDING, Mott MacDonald (Land Referencing)

Memorialists:

MR RICHARD LLOYD, Agent of MR DAVID DISBERY, Memorialist, Heart of England
High Speed Railway Action Group
MR JOHN GLADWYN, Memorialist, Chiltern Society

(10.30 am)

1. **MR HAMLYN:** Good morning, everyone, and welcome to another session of examination of additional provision on the High Speed 2 Bill, as I shall informally call it. We have now got to Additional Provision 4, so I welcome the usual colleagues, many of whom now must become all too familiar with these rather grand rooms for this important process. We will also be joined today by two memorialists on behalf of the Heart of England High Speed Railway Action Group and the Chiltern Society. I will make a few preliminary remarks about how we are going to handle the process today and then we will all introduce ourselves and get stuck in. I should also say we are being webcast for viewers at home and there will be a published transcript in the usual way.

2. We are following broadly the same procedure that we followed for Additional Provision 3, which is that we will go through with the agent for the promoters all the Standing Orders where there is no memorial, where no one else has challenged compliance. We will deal with all those formally, the formal proving, and then we will move on to the memorialised Standing Orders and hear from the memorialists. We have agreed that that part will start not before 11 o'clock, unless everyone is here by then. The memorialists between them allege non-compliance with Standing Orders 12A, 13, 27 and 27A, so that is the batch we will take at the end, but we will go through all the other ones first.

3. When we get to the first memorial on behalf of the Heart of England High Speed Railway Action Group, we will invite the agent to make any preliminary

objections to the memorial as to whether all the allegations are in scope for AP4. Once we have heard from both sides, at that point we will retire to make a decision on the scope for the memorial. We will come back in—we will not throw you all out for those purposes because I hope it will not take us very long—and then we will move on to the substance of whichever of those memorialised Standing Orders we find to be in scope. Obviously, when we get to the memorialists, we will hear from both sides in the usual way on both memorials. Right at the end, we will then, I am afraid, clear the room, reach our decision on compliance on all the Standing Orders and then announce it in the usual way.

4. Unless any fellow Examiners want to tell me I have missed something out, which is not the case, for the record, for the webcast, I am Matthew Hamlyn. I am chairing today's session of the Examiners and I am Clerk of Public Bills in the House of Commons.

5. **MS SALMON PERCIVAL:** I am Christine Salmon Percival. I am Clerk of Private Bills in the House of Lords.

6. **MR MILLEDGE:** I am Peter Milledge, Counsel to the Chairman of Committees, House of Lords.

7. **MR DAVIS:** I am Peter Davis, Counsel for Domestic Legislation, House of Commons.

8. **MR HAMLYN:** Would the agents like to introduce themselves?

9. **MRS GORLOV:** Alison Gorlov, agent for the Bill.

10. **MR O'CONNOR:** James O'Connor, agent for the Bill.

11. **MR HAMLYN:** Thank you very much. I suggest, in that case, we kick off in the traditional manner with Standing Order 4 and would you like to do the proving?

12. **MRS GORLOV:** Yes, certainly. Mr Aanensen, will you pass in the newspapers marked 1 to 50 and mentioned in the proof and containing notice of the intention to submit the amendments? Mr O'Connor, do you prove that each notice contains a concise summary of the purposes of the amendments?

13. **MR O'CONNOR:** I do.

14. **MRS GORLOV:** Do you prove that, insofar as required by the Standing Orders, each notice contains the information given in the proof?

15. **MR O'CONNOR:** I do.

16. **MRS GORLOV:** And that the newspapers were made available in the offices mentioned on page 8 of the proof?

17. **MR O'CONNOR:** I do.

18. **MRS GORLOV:** Do you prove that each notice also states the time within which objections may be made as mentioned in the proof?

19. **MR O'CONNOR:** I do.

20. **MRS GORLOV:** And that each notice is headed and subscribed as mentioned in the proof?

21. **MR O'CONNOR:** I do.

22. **MRS GORLOV:** Sir, I consider that this Standing Order has been complied with.

limits of deviation in the Bill or outside the further provision that can be made under Clause 2(1)(b)?

463. **MR LLOYD:** Yes, I think that is true.

464. **MR MILLEDGE:** You are not suggesting that it falls outside the limits of deviation.

465. **MR LLOYD:** No.

466. **MR HAMLYN:** Are there any other questions or comments? I am conscious that Mr Gladwyn has been waiting patiently.

467. **MR GLADWYN:** Do not worry; I am enjoying it.

468. **MR HAMLYN:** I hesitate to say that I am glad someone is. We are all enjoying it. Chris, you have another question?

469. **MS SALMON PERCIVAL:** Yes, I have one very quick question to you, Mr Lloyd. We have gone between what is required by SO27 and then referenced it back to the environmental assessment, which is SO27A, but you have focused in your paragraph 8 on SO27. I just want to clarify that that was your intention.

470. **MR LLOYD:** I do not think that, without a proper definition in engineering terms of what is to be constructed, you can gauge the environmental impact correctly and openly, which is the purpose of the consultation and the whole process.

471. **MR HAMLYN:** Thank you very much. What I would now like to do is move on to 27A. We will follow the same procedure, Alison, if you and your colleague would like to start with the formal proving of 27A, and then we will invite Mr Gladwyn to speak to his memorial.

472. **MRS GORLOV:** Mr Martin and Mr Miller, as regards contents, do you prove that on 12 October 2015, you deposited, in accordance with SO26, copies of the supplementary environmental information containing the information referred to in Standing Order 27A, 1A and 3 of the House of Lords, and Standing Order 27A, 1A and 4 of the House of Commons? You deposited those in the Office of the Clerk of the Parliaments, the Private Bill Office in the House of Commons and at the offices of the government departments specified in the Standing Order 1A list.

473. **MR MARTIN:** I do.

474. **MR MILLER:** Yes.

475. **MRS GORLOV:** I think we have appendix C for you to look at, have we not?

476. **MR HAMLYN:** Yes.

477. **MRS GORLOV:** Do you want me to address this now?

478. **MR HAMLYN:** You have already put this in. If you want to speak to it, we will probably return to it once we have heard from Mr Gladwyn. Is that okay with you?

479. **MRS GORLOV:** Yes. On 22 October 2015, we were approached by Dr Conboy of the Chesham Society. You will have seen from appendix C that he advised that one of the tables in the transport assessment was a duplicate of the adjacent table, and he asked, reasonably, for the information that should have populated that table. He then emailed again on the 26th advising of further error. As a consequence of this, HS2 undertook a review of the whole transport assessment,

and it revealed that 23 out of 245 pages had either incorrect data or reference to incorrect data in a table.

480. None of this actually was the assessment itself; this was data. The transport assessment represents baseline and traffic forecast information and other data to support SES3 and the AP4 assessment. Now, the incorrect tables, but not the assessment itself, contained this baseline information and data relating to traffic impacts on certain roads and junctions within CFAs 7, that is Colne Valley, to 15, and that is Greatworth to Lower Boddington. The errors arose purely—I was going to say as typographical errors. It does not look like it, but that is what they are, because this is all about the transfer of the information into the volume. In transferring the assessment data used into the printed volume, these errors occurred and tables that should have been revised were not revised, and various other errors were made. As presented in the published document, these tables were wrong.

481. Those, however, were not the pieces of data that had been used in making the assessment. The assessment was correct and these errors were there in the published document, in the data that purportedly supported the assessments but, because of the misprints, actually did not. The incorrect data was there and it clearly had to be corrected.

482. The correct assessment data had already been provided to the highway authority. As soon it was identified, it was provided to Buckinghamshire County Council. Dr Conboy was provided with the correct information in relation to the

duplicate table on 27 October. On the 28th, he got the corrected table in response to his second email.

483. On 30 October, the website was updated with the corrected technical appendix and an electronic copy was sent to all the deposit locations. Dr Conboy was emailed on 2 November, advising him that there had been this full review and that the changes identified had been incorporated in the document available on the website.

484. Now, that of course still left the copies that were deposited elsewhere. SES3 and AP4 replacement USB sticks and, in the case where hard copies had been requested, hard copies as well were reissued to all the 171 Standing Order locations. Whether they got USBs or hard copies depended upon what they had originally asked us for. It is not a question of amending hard copy unless people want it. In whatever format they had requested, they had the corrected information send out by a combination of recorded delivery and first-class post, on Tuesday 3 November 2015. The whole exercise was completed on Wednesday 4 November.

485. We checked that they got the material; we were anxious that they should have the corrected material. There were emails and telephone calls. 30 out of 32 local authorities confirmed that they had received the material, as did 33 out of 35 parish councils and 54 out of 56 libraries. Parliament, of course, had three out of three; government departments 20 out of 20, as one would hope; the highways authorities 16 out of 16; the Environment Agency seven out of seven. HS2 admitted to having their two copies as well. Two locations said they had not received the material and

they were re-sent on 18 November. The people who have not responded, I am afraid, are still unresponsive, but we have no reason to believe that the material did not arrive in course of post. The short point is that we identified the changes that needed to be made and we published them. We also supplied them to Dr Conboy, who had kindly drawn them to our attention, and to the highway authority in particular, so the information was put out there, but the assessment itself was made on the basis of the correct information. The assessment is therefore correct.

486. **MR HAMLYN:** Therefore, given that, you are proving there is compliance.

487. **MRS GORLOV:** Indeed.

488. **MR HAMLYN:** Mr Gladwyn, it is over to you for your memorial.

489. **MR GLADWYN:** Thank you. I would just come back on that. As Ms Gorlov said, there were—what was it?—23 errors or errors on 23 pages of the transport assessment. It is not unreasonable that the information should be correct for one to assess whether the current information is correct. A lot of what was corrected, I quite agree, was baseline data from 2012. If you look at the baseline from 2012, that is how you judge whether the baseline at 2021 is correct.

490. It was clearly not correct in a number of cases, some of them quite serious. In one particular case, it changed the assessment so that it showed that there was a queue of 125 vehicles. The other point about it is though, as Ms Gorlov has said, that this data was sent out on 3 and 4 November by USB stick. That means that it would arrive maybe 5 or 6 November. Is it reasonable that that data should arrive so late, when we were due to petition on the 13th on AP4? Personally, I think it is too short a

time for someone to understand what the changes are and be able to react to them properly. That is where the nub of our case is. It is the lack of time that people have had to respond to revised information.

491. **MR HAMLYN:** That is a very clear summary. I note that, since first giving us appendix C, Ms Gorlov has also then produced a response to the Chiltern Society memorial, which goes to specific issues raised in the memorial. I would just say, Mr Gladwyn, looking at your memorial in detail, you make a specific point in paragraph 7 that the requirements in relation to Additional Provision 4 are not complied with because they do not meet the requirements of part 1 of Schedule 4 of the Town and Country Planning Act, et cetera, regulations. In paragraphs 9 onwards, you specify, as you say, a series of problems about the supplementary traffic data. Finally on paragraph 12, you complain that the traffic assessment has not been effectively carried out, because the correct hours or relevant hours were not assessed. Those are the salient points, if I understand it correctly. Alison, your paper then addresses those points. I do not know if you want to speak to that now in response.

492. **MRS GORLOV:** We have slightly strayed from the proof, have we not? I am not quite sure in what order we are doing things. Forgive me. I am quite happy to deal with it now, yes.

493. **MR HAMLYN:** When you took us to appendix C, I asked you if you were formally proving compliance at that point, and I thought that I heard you say that you did, but do you feel that there are more formal things you need to do to complete that formal provision before we go through the rest of the memorial?

494. **MRS GORLOV:** I think we perhaps have. I confess I have lost my place, but I thought that we had got to the end of the penultimate paragraph on page 27 of the proof. I said I would go through appendix C, but I do not think we did the rest of the SO27A proof, did we?

495. **MR HAMLYN:** If you would like to, do that now. I apologise for juggling things up. I was so keen to get on to the memorial but, if you would like to, do the formal bit on 27A.

496. **MRS GORLOV:** Perhaps I had better deal with that. Mr Martin, do you prove that the deposited supplementary environmental information and non-technical summary were made available for inspection and sale, as mentioned on page 27 of the statement of proofs?

497. **MR MARTIN:** I do.

498. **MRS GORLOV:** I consider that the Standing Order has been complied with in all respects except as regards time.

499. **MR HAMLYN:** Thank you for getting that on the record, and I am sorry I did not do those bits in the right sequence, to colleagues. Anyway, going back to the allegations raised in the memorial, you helpfully provided a response to the memorial, so would you like to speak to that now?

500. **MRS GORLOV:** Yes, certainly. Let me just get the memorial in front of me. In relation to paragraph 7, we say we have assessed the environmental effects of the works. As I have explained, the environmental assessment assesses what is proposed. Part of the proposed works includes the creation of the new haul road to serve the

relocated tunnel. It did not require additional powers. It is assessed in the SES. Now, as I understand it, the complaint is that the new haul road should have been assessed and it has been. The information required is in the environmental statement itself, and one suspects that perhaps the memorialist may have expected—this is the point we were discussing earlier—to see the Bill mirroring the environmental statement in ways that it does not, for the reasons I explained earlier.

501. **MR HAMLIN:** Mr Gladwyn, did you want to come back on that specific point?

502. **MR GLADWYN:** Yes. The point is that we understand the haul road and all of that, and that has to be dealt with in petitioning to the Select Committee. The only reason I have mentioned that is that the movement of the tunnel portal and the haul road has required a significant traffic assessment. It has identified major problems in Great Missenden, but that again is for the Select Committee.

503. What we are complaining about is that, in the Chilterns, we have very few roads. Some of those roads are identified as haul roads, and there are traffic assessments required on those roads and particularly on certain junctions. If you look at it, I gave you a list of the junctions that I was talking about. You will see that a number of those relate to the M40, because the major access from all of the construction in this area, in the central Chilterns, is back to the M40.

504. I give you a good example. They have done a very good job at identifying a major problem at the A355 and London End in Beaconsfield. It is already a horrendous junction, if you have to go through in the morning. It is going to be an

even more horrendous junction. That assessment has been done, great. At the other end of the road at Amersham, you have the A355 Gore Hill with the A413. That roundabout delivers about 95% to 98% of the cars to A355 London End. There has been no assessment on that junction and that is a major junction. It has traffic coming from the vent house at Chalfont St Giles, the vent house at Little Missenden, from the new vent shaft up on the B485 and also some from the portal. What we are saying is that, without seeing that, there are errors in the assessment. It is impossible for petitioners and for residents to assess what is happening.

505. **MR HAMLYN:** Just to clarify, you are accepting that there has been some assessment of some of the work, but it is not sufficient; it is not complete.

506. **MR GLADWYN:** That is right.

507. **MR DAVIS:** Mr Gladwyn, is your argument that, because of the missing stuff, the material was too late or that some of it, which should have been assessed, was not assessed at all, or is it a mixture of the two?

508. **MR GLADWYN:** It is the two. There is information that arrived far too late, considering the tight deadline on petitioning and, secondly, there is missing information. If you like, I can give you some other examples. There is a roundabout on the M40 at High Wycombe, called Handy Cross. Now, anybody who knows High Wycombe knows that Handy Cross is somewhere that you avoid any time in our two-hour rush hour, in the morning and in the evening. They are talking about bringing all the traffic through there. They are taking it down a road called the A4010, which frankly should be the B something or other. That comes down to the West

Wycombe road at Chapel Lane, again a really good assessment. You see all the issues there at Chapel Lane, but there is no indication of what the problems are going to be in getting to the motorway or from the motorway. Again, it is data that you need to understand what the environmental impact is of these changes.

509. **MR DAVIS:** Sorry, I have one supplementary question, Mr Gladwyn. Where in your memorial do you indicate that there is completely missing information, apart from information that arrived too late?

510. **MR GLADWYN:** Sorry, I will have to look. It is at paragraph 11.

511. **MR DAVIS:** That is it. Thank you, Mr Gladwyn.

512. **MR HAMLYN:** We got as far as the response from the promoter to paragraph 7. You also have the response, Mrs Gorlov, to paragraph 9, which is about the errors in the traffic data.

513. **MRS GORLOV:** Before we move on to that, could I just respond to what Mr Gladwyn said about paragraph 7?

514. **MR HAMLYN:** Of course.

515. **MRS GORLOV:** The complaint, it seems to be, is about the quality of the ES, not that the ES has not been done, but that its quality is inadequate, as Mr Davis just said and I think Mr Gladwyn confirmed. At risk of sounding legalistic, I should just flag up that we are required, under the Standing Orders, to produce an ES. Now, that cannot be a piece of rubbish. It has self-evidently got to be a genuine assessment, our genuine assessment, of what we believe the impacts are going to be. Our

assessment may not be the same as everybody else's. Different people may take different views. There is a degree of art in this science.

516. We have taken a view as to what ought to be done regarding all the relevant junctions. I do not know what that view is. I can find it out, if you wanted to know. We could ascertain it now, I daresay, but a view was taken as to what was the correct scope of the assessment, in order to reach the conclusions reported in the documents you have in front of you. Mr Gladwyn self-evidently does not agree with that view. The question to be asked is whether the assessment was reasonably put together, or was so grossly inadequate that it does not constitute a proper assessment at all. I feel fairly sure that that is not a judgment that you, as Examiners, would be awfully keen to have to make, but I think it may be the one you do have to make, in which case, if it is, I should ask HS2 to come back to us possibly a little later, with an explanation of how they reached the scope of the assessment that was produced.

517. **MR HAMLYN:** We had a discussion on at least one additional provision and possibly on the original Bill as to what is an environmental statement and, behind that, what methodologies HS2 has used in preparing them. As you have explained before, groups of experts will come to views on what are the standard operating procedures for doing environmental assessments. That may vary from one opinion to another, but thank you for that response. Would you like to talk to your comment on paragraph 9?

518. **MRS GORLOV:** Yes, certainly. The concern here is not only there were anomalies and errors. The concern is that the documents, having been amended online, paper copies were not also amended. Well, we do not quite follow that. Prior to the deposits, we contacted all the deposit locations. HS2 contacted them. They were asked what they wanted, what format they wanted to receive the information, whether electronically or in hard copy. As I explained earlier, the amended volume 5 of the transport assessment was re-sent to deposit locations in the format that they had originally requested.

519. They therefore received the following: Buckinghamshire Council, USB stick and hard copy. They got that on 4 November. Chiltern District Council got a USB stick on 4 November. Great Missenden, got a replacement USB stick and hard copy on the 5th. Great Missenden Parish had not originally received the document in hard copy, but they asked for the updated document in hard copy and got it. Little Missenden Parish Council wanted a USB stick, and they got that on 4 November. The same applies to Amersham. Not everybody there wanted hard copies, but all those that did got them in revised form.

520. The libraries received updated USB sticks, but none of them had requested hard copies. The only other way of acquiring these documents was via the online shop, and online documents were received from four individuals in the Chilterns. They wanted USB sticks, which were sent. No individual asked the online service to provide paper copies, so we were a little bewildered by this, because we have

provided amended material and, wherever it was requested in hard copy, it was provided in that format.

521. **MR HAMLYN:** Before we move on, Mr Gladwyn, did you want to come back quickly on that?

522. **MR GLADWYN:** Yes, just very quickly. The point is that I accept that it came to where the official depositories are. I am a Chiltern District councillor as well, and I am surprised Chiltern did not ask for it in hard copy, but that is a different matter. The point is though that a lot of people who were petitioning asked for hard copies, and there was no official contact to say that this particular volume has been updated. There was nothing published that I ever saw and I watch HS2 like a hawk. How were those people, all those potential petitioners, supposed to know about it? HS2 had the data, because they have sent the documents to everybody. It is another example of it being unsatisfactory, in terms of a type of petitioning deadline, 13 November, and when does the data come out? A week before. It is frankly unprofessional.

523. **MR DAVIS:** Mr Gladwyn, in relation to content with petitioners themselves, which was your last point, is there anything that you can point me to in Standing Order 27A, which is what we are discussing, which actually mentions the petitioners, as opposed to bodies?

524. **MR GLADWYN:** No, I am sorry. I am not a lawyer, and you must appreciate that I got my memorial in yesterday and I was told that I had to turn up this morning. I have not had time to do my homework quite as well.

525. **MR DAVIS:** It does not take away from the more general point but, on the last point, because you are mentioning petitioners specifically, unless I have read Standing Order 27A very badly, which I might have done, I cannot see anything about the petitioners themselves in there. Mrs Gorlov, you probably know your way around Standing Orders far better than I do.

526. **MRS GORLOV:** Perhaps I could come back on it. Before I mention that, could I just pick up one point that Mr Gladwyn made? He said that petitioners had hard copy; they did not get amended copy. We think they must have. I mentioned the four individuals who had ordered paper copies. As we understand it, that was everybody. We certainly were not unprofessional. We did not deliberately leave anybody out there with the wrong material. I will be told if I have got this wrong but, as I understand it, we identified four individuals from the Chilterns. Sorry, I beg your pardon; no individual ordered a paper copy, I am told. I am so sorry. We identified four individuals in the Chilterns. They ordered this material, but they ordered it in electronic format and they got USB sticks. We could not identify an individual who had ordered a paper copy. Now, if there was somebody out there, then I will accept it because Mr Gladwyn tells us so, but we were unable to identify anybody and, if we had, we would have sent them a corrected paper copy, as we did everybody else.

527. **MR GLADWYN:** I can give you the names of at least a couple of people who ordered paper copies, received the original paper copies and have not been contacted about the updated change. All I can say is, if you have a list of people who had the original documents, in the Chilterns, believe me, a lot of people would have

taken that. People have taken a lot of the stuff by paper. I do not know where your records are, but I can assure you that there is a conflict here.

528. **MRS GORLOV:** Perhaps Mr Gladwyn could just confirm that the paper copies he is referring to are copies of the transport assessment. They might have asked for the CFA for the portal or something different?

529. **MR GLADWYN:** No, it was for the traffic assessment.

530. **MR HAMLYN:** I am not sure we are going to get any further, in this room, on that point, but both sides are on the record. We are obviously trying to confirm whether or not there is compliance with a particular Standing Order. That will be us for us to decide and for us to decide what the Standing Order actually means. There were two or three other points that you made, Mrs Gorlov, in your response to the memorial.

531. **MRS GORLOV:** Before we get to that, can I just reiterate one thing? I advised that no paper copies were requested for AP4. That is absolutely categorical from what HS2 is telling me. It may be that there are some names to be given, but could I just deal with Mr Davis's point on SO27A?

532. **MR HAMLYN:** Yes, please.

533. **MRS GORLOV:** He is absolutely right. 27A is nothing to do with petitioning against the Bill. It is all about the environmental statement, which we are required to produce for compliance. The Standing Order is there for compliance with an EU directive. It is all about the separate ES procedure. That is why the newspaper notices in particular make clear that there is a date for submitting petitions to

Parliament and there is another date for passing representations to the Secretary of State, in respect of the environmental statement. The date for petitioning was earlier. The date for submitting representations is still to come. When Mr Gladwyn says the information was received too late to petition, it was received in pretty decent time for anybody who was concerned to raise it in a representation to the Secretary of State.

534. The whole object of 27A is to produce an ES and the material that goes with the ES. That can be the subject of representations. Now, it may very well inform somebody's view of petitioning points and a petition can deal with that. Now, I cannot put words into Mr Gladwyn's mouth, so I will not, but one could envisage the kinds of things that might be said about the unknown quantity that is the ES but, if there are detailed issues on the ES, the thing to do is to make representations to the Secretary of State, and there is still time to do that.

535. **MR HAMLYN:** Thank you for that. There are remaining three points in your response to the memorial. Would you like to address quickly, or, indeed, as long as you like, your comments on paragraphs 10, 11 and 12?

536. **MRS GORLOV:** I would like to remind myself what I am about to be talking about, if you do not mind.

537. **MR HAMLYN:** You have comments on paragraphs 10, 11 and 12.

538. **MRS GORLOV:** Yes, indeed we do. First on all, on errors in the accuracy of CFA8, CFA10 and CFA9, the data in the tables was incorrect. It has been corrected, as we have described. As I have explained earlier, the assessment itself was based on the correct data. It is all about cutting and pasting the wrong material. Now, as I said

before, we undertook a review of the whole transport assessment. The corrections were identified. They were included in the reissued material, but the point on paragraph 10 is that the assessment was based on the correct data.

539. **MR HAMLYN:** Thank you. Are there any other comments on that? Yes, Chris.

540. **MS SALMON PERCIVAL:** Mr Gladwyn, do you accept that the assessments are based on the correct data?

541. **MR GLADWYN:** I think they are based on incomplete data. As I have pointed out, there are junctions that have not been assessed. Without that, you cannot assess what the impact is.

542. **MS SALMON PERCIVAL:** Sorry, the specific question I wanted to know was about the errors, so not the things that you say are missing, but the things that were wrong and had to be corrected. Are you content about the assertion that the assessments were based on the correct data and that the extent of the errors is to do with the tables?

543. **MR GLADWYN:** Yes, but to carry out an assessment you need the tables. If the tables have incorrect data in them, it is difficult to draw a proper conclusion as to whether the environmental statement has been properly prepared.

544. **MS SALMON PERCIVAL:** I think it is the other way round though. What is being asserted is that the assessments, as described in the narrative, are correct and that the tables were incorrect?

545. **MR GLADWYN:** I understand the point you are making. The point I am making is that, where you find data that is inaccurate, therefore one becomes more uncertain about conclusions that are drawn from those data sets. I am not an environmental expert. I have no idea whether the work has been done properly or has not been done properly. We have had evidence in the past that the assessments were wrong. Dr Conboy has asked for another set of information, as to why a particular junction was assessed as having two vehicles in a queue and has now been assessed as having 87.

546. **MS SALMON PERCIVAL:** I am trying to keep separate in my head the distinction between the quality of the assessment and the self-evident errors that are marked in yellow, in volume 5. To what extent have those errors misled you?

547. **MR GLADWYN:** Until I saw the revised data, they misled me.

548. **MS SALMON PERCIVAL:** Because?

549. **MR GLADWYN:** They were indicating in one particular case, I think it is schedule 7.31, that the 2012 baseline was substantially higher than the 2021 baseline for the number of vehicles going through a road.

550. **MS SALMON PERCIVAL:** Thank you.

551. **MR HAMLIN:** That leaves us your comments on paragraph 11 and 12.

552. **MRS GORLOV:** I wonder if I might just comment on one thing that Mr Gladwyn said. He says that he was misled by the incorrect data and was unable to evaluate the assessment. That is the thrust of what he has been saying to you. The requirement, with which we say we have complied, is a requirement to assess and

provide a copy of that assessment. The promoter has provided a copy of the assessment, as has been pointed out. Its quality is a separate issue. The assessment was made, as a matter of fact, and one has to take it that this assertion is a truthful one. It is a matter of fact that the assessment that was made—not by Mr Gladwyn, not by Mr Lloyd, not by you or me, but by the people who were carrying out the assessment—on the basis of the correct data.

553. In evaluating the assessment, those of us who look at it from the outside would indeed look at the data and, if it is incorrect, we might very well be misled, as Mr Gladwyn was, but the actual assessment that was produced was based on the correct data. Now, Mr Gladwyn's memorial says that the number of errors raises doubts about the accuracy of the schedules of supplementary traffic. That is a slightly different point, but he seems to be saying that the doubt that is cast on the assessment is the doubt in his evaluation of it. The simple question is whether these errors cast doubt on the assessment as made. We say they do not, because they never informed the assessment as made. It was informed by the correct data.

554. **MR HAMLYN:** I understand your argument on that point. Did you want to speak to your remaining comments on paragraph 11 and 12?

555. **MRS GORLOV:** Yes indeed, the review of the junctions. This I realise is something about which the Chiltern Society feels strongly. It is another example of art and science, I think. As explained in our note, the assessment did look at what junctions should be assessed. It says, and I am reading from the paragraph quoted in the note, "During construction of the proposed scheme, junctions have been subject

to assessment in the cases where peak-hour two-way traffic flow, including proposed scheme traffic, is 500 vehicles or more and where there is a change in peak-hour two-way traffic flow of 5% or more, due to the proposed scheme, on any arm of the junction”.

556. That is the basis upon which an assessment is made. Traffic counts along the construction routes compared the expected level of construction with the traffic and do not identify any areas where there is an impact that exceeds 5%, so there was no assessment. Now, one understands that other people may take a different view. All we can say is that, on the basis of the work we did, we did not find traffic flows giving rise to an expectation of increased flows such as to warrant an assessment relating to those junctions.

557. **MR HAMLYN:** Mr Gladwyn, would you like to comment?

558. **MR GLADWYN:** Thank you, yes. I find that very interesting, because Bucks County Council has produced a list of 40 junctions that they want assessed. Bucks County Council is the highway authority for Buckinghamshire, and I understand that HS2 and Bucks County Council have discussed this and there has been disagreement about whether they should be assessed or not. That again gives us this degree of discomfort with what is being done. To give you my honest opinion, I think HS2 had too short a time to prepare this data before the time that they wanted to get it into Parliament. I am a chartered accountant; I have been in business for years. Everything I look at in there indicates that it is a piece of rushed work.

559. **MR HAMLYN:** Thanks for that. Finally, paragraph 12 is about when you measure traffic. It may be an art and science point again, I am suspecting.

560. **MRS GORLOV:** I do not think it is, actually. It is recognised that the roads are busy for an extended peak period, but the SES and AP4 ES do not attempt to identify the state of the roads throughout the peak traffic. What they are there to do are to consider the effect on flows from our construction traffic.

561. Now, if one looks at the traffic levels, they are generally highest between 8 am and 9 am and 5 pm and 6 pm. The construction hours that are proposed for HS2 are 8 am to 6 pm, so the assessment was made on the, I would say, not unreasonable basis that you do not start before 8 am because there is no HS2 construction traffic before that time and the same time in the evening. That is why, taking the peak periods overall as known, the assessed periods are strictly related to HS2's traffic.

562. Now, this is an approach that we believe has been accepted by the local highway authority, and we see it as the correct methodology. I do not actually know whether it is an art, rather than science, because we really are looking here at what the additional traffic does to the road, not what the road chooses to do for itself. There could be additional traffic flows whenever, for all sorts of reasons. We are looking at the additional construction traffic when it is there. It is not going to be there at 7 am.

563. **MR DAVIS:** You mention you use the hours, as I understand it, of work that is going on, of construction. As a matter of interest, why was a period not chosen that gave quarter of an hour either side of those works?

564. **MRS GORLOV:** I am not quite sure. Mr Miller?

565. **MR MILLER:** These are standard practices in environmental impact assessments for traffic assessments. An overarching thing that needs to be understood is that we carried out a scoping exercise for the whole of the project, which looks at the methodologies that are going to be applied to the assessment. We consulted on that back in 2012, and these methodologies have flowed through the impact assessment. What you are seeing is the product of all of that and these sorts of outcomes and, in general, construction traffic works between these hours. These are the standard hours and you can see that flowing through all sorts of things in our documentation, the codes of construction practice, for example, so that is a standard approach.

566. People do have different views on all of this because, even consulting on scopes of methodologies and consulting on environmental impact assessments, it is reasonable to anticipate that others have different views. Quite a lot of what the memorialists have talked about today has come up through the Select Committee process, and we recognise that there are some issues. It is important that we stick to our standard methodologies and that is what is written up in our documentation. Then we have a basis from which we can then work.

567. **MR HAMLYN:** Thank you very much. I am going to invite Mr Gladwyn to come back later. I have one factual question. I am not sure who the right person to answer from the promoter is. You say that the SES3 and AP4 do not attempt to identify the precise duration and profile of any impacts, but to consider the maximum likely impacts. Just for the record, is that point made in the SES generally? I do not have all the traffic management stuff in front of me, I am sorry, but does it say, "This is what these measurements are", as it were?

568. **MR MILLER:** This comes back to the approach in the environmental impact assessment. What we are trying to do is identify the significant environmental effects. On previous occasions when we have looked at Standing Order 27A, they are described as the main effects of the scheme. What the specialists are doing is applying the methodology to baseline information and during conclusions about overlaying a new railway and its construction in those circumstances. What the specialists are then doing is saying, out of all of that, there is a lot going on, but the main effect is this element of the work. That might go to a traffic effect at a junction. It might be the general extent of traffic on a road or it may go to an ecological evaluation of a particular river or a culvert extension. What the assessment is doing is trying to focus in on what those main effects are, using that sort of scoping methodology.

569. **MR HAMLYN:** Mr Gladwyn, I think you wanted to come back on that point.

570. **MR GLADWYN:** I am fascinated that we have work starting at 8 o'clock in the morning and that it does not generate any traffic before 8 o'clock in the morning. When are all these people who are going to be working at the portal going to arrive? They are going to arrive between 7 o'clock and 8 o'clock in the morning. That is when they are going to be travelling. That is when they are going to be impacting the roads. This idea that nothing happens before 8 o'clock is patently—I will not be too rude. I am fairly good at being rude.

571. Taking that into account, the other big thing in the Chilterns is that the majority of people work in London. How do they get to London? They go on the train. Where do they get the train? They get the train in Wendover, they get the train in Missenden and they get the train in Amersham. If you go down there between 7 o'clock and 8 o'clock in the morning, the rush hour is really steadily on. It is quite a serious business, and not to assess it is, in my opinion, another error. This was raised by a lot of those commenting on the original consultation, the original ES, raising what the particular points are in our area. We have had that conversation at CFAs and it has all been ignored. It is not a conversation; it is a one-way communication.

572. **MR HAMLIN:** Thank you for that response. Peter Milledge, do you have one final point?

573. **MR MILLEDGE:** Mr Gladwyn, in relation to your previous paragraph, paragraph 11, you told us that Bucks County Council, the highway authority, did not agree with the methodology there, which is to say the missing junctions.

574. **MR GLADWYN:** I said that they have produced a list of 40 junctions that they want assessed.

575. **MR MILLEDGE:** In relation to this one, the promoters are saying that this approach has been accepted by the highway authority. I am simply seeking your comment on that.

576. **MR GLADWYN:** Unfortunately, I have not been privy to those conversations. If the promoter says it, I assume it is said, but I am surprised, knowing the people in Bucks County Council, that that has been accepted.

577. **MR MILLEDGE:** You have no reason to think otherwise. Thank you.

578. **MR GLADWYN:** I have no reason to.

579. **MR MILLEDGE:** Thank you.

580. **MR HAMLYN:** Does anyone else have any further comments or questions, from either side of the table, on 27A?

581. **MRS GORLOV:** I wonder if I could just make a couple of points in response to a couple of things that have been said, first of all the question about the assessment of maximum likely impacts. The approach of the environmental assessment generally, and certainly in this case, is to report the worst case, and of course that is entirely right. One might say it is not really going to be that bad, and so report that actually it is not bad, knowing that, on a bad day, it might be quite bad, so you report the worst-case scenario and that is what is meant by maximum likely impacts. We submit that that is the correct approach; people ought to know the worst. That of course is what is least advantageous to a promoter.

582. Secondly, on this question of assessing the traffic flows before and after our working hours, the permitted working hours bind is not a question of there being a little bit of leeway and the constructor can start half an hour early if he fancies. He cannot. The construction traffic has to be between those hours, not down to the nanosecond—I will give you that—but that is what we are looking at. We are not assessing traffic jams overall; we are assessing the impact of construction traffic. That is all we can do. One assesses that window when there is actually going to be construction traffic.

583. Now, there may be traffic jams either end of that for all sorts of reasons. It is a bit problematic to try to measure them. One does not know what those reasons are. We do know when there are going to be construction lorries on the road. Now, I do not know if there is anything I can say about staff coming to site.

584. **MR MILLER:** That is quite a detailed point. I mentioned the code of construction practice, which does set out the working hours, and there is a little bit of movement either side of the working hours and the working day. I think Mr Gladwyn talked about the movement of workers to the sites and, yes, there will be movements of workers to the sites. They have to get to the site and carry out the works, but that will all be subject to a traffic management plan.

585. We have been talking about that in the Select Committee process, and the sorts of things that people are keen to hear about from us are if those workers can be moved around by buses, if they can be moved around by green transport, electric vehicles and that sort of thing. All of that is in the mix. We account for that and we

listen to what people say where there are particularly difficult circumstances that are faced. On a scheme of this nature, there are those sorts of circumstances that we have to face up to. It is all accounted for and it is subject to further debate, but that is quite detailed debate, compared to what is required under the Standing Orders.

586. **MR HAMLYN:** Thank you very much. Is there any more from this side?

587. **MR DAVIS:** I think we have now been through all the papers. In relation to the stuff that was incorrect, can I get the timing exactly right? These are questions for Mrs Gorlov. When did your 42-day period start and when does it end, or 42-day-plus, because that is the minimum?

588. **MRS GORLOV:** I am going to ask to be reminded of the dates. I want to make sure that I get this absolutely right. The consultation period for the SES expires on the 27th.

589. **MR DAVIS:** It expires on the 27th. When did it start?

590. **MRS GORLOV:** I am asking somebody to give me that date now. 16 October.

591. **MR DAVIS:** 16 October to 27 November. Now, the next thing is that you will be aware, of course, that there were previous occasions, particularly on the original environmental statement, where there was missing material from the environmental statement. The question arose of whether it was indeed a complete environmental statement or an incomplete one, at that time. Is there anything that you see as distinguishing this particular example from that one?

592. **MRS GORLOV:** Yes. The significance of the missing information is the essential issue, I think. The information that was missing was supporting material required to evaluate not the actual assessment, but whether the assessment was correct. The assessment itself is capable of being looked at and evaluated. We come to a conclusion: if we have got it right, this is the impact. Now, that is the first stage in the operation and that is the thing that I suggest most readers will be looking to make representations about. They look at the assessment. They see what the impacts are assessed to be, and they take a view as to whether that is something that they ought to shout about.

593. Now, it is a step back from that to see if the assessment itself is correct and one accepts that many people will want to do that. I do not think that those instructing me would accept that it is impossible to make a representation, a very fair representation, on the basis of the assessment itself. I do emphasise that the assessment was a correct assessment. It was capable of being understood. It was not capable, before 4 November, of being evaluated as to its correctness, but it was capable of being understood, comprehended and evaluated, in the sense of deciding what impacts it had on the reader and whether the reader therefore ought to make representations to the Secretary of State. We do not accept that it is the same.

594. We had an ES, which was a complete assessment, and it was not, therefore, something that could be regarded as an incomplete document in itself. It was incorrect. The underlying data was incorrectly presented and it affected evaluation. It did not affect the last three weeks or so of evaluation, I am bound to say. Everybody

has had a substantial period in which to decide whether the assessment as presented is one that they think is tolerable, in terms of tolerating those predicted outcomes, and they will have three weeks in which to evaluate whether that assessment itself is, in their view, correct.

595. **MS SALMON PERCIVAL:** Could I ask the same question in relation to AP2, where surveys concerning that were missing? You extended the consultation period on the ES because of that omission.

596. **MRS GORLOV:** Let me just be sure I say the right thing about this too. The distinction here is that there is nothing missing from the basis of assessment. There was nothing misleading in the assessment itself. That report was missing. It just was not there. To be perfectly honest, we cannot remember why we took the view that the missing assessment was such that something really needed to be done about it and, to be perfectly honest with you, I rather think it was because it was bats. People are very sensitive to bats and that is the reason.

597. **MR HAMLYN:** Why do not need to know why you decided, on that occasion. You have made the point for the record that you believe this is a different case, namely the assessment was complete and, therefore, as with the previous occasion, there were elements missing from the assessment. That is the difference.

598. **MRS GORLOV:** Indeed.

599. **MR GLADWYN:** May I make a point on this?

600. **MR HAMLYN:** Yes, Mr Gladwyn.

601. **MR GLADWYN:** On the evidence I gave you, you will notice that, on the volume 5 summary of changes, there is in fact additional information added. For instance, on 7.2 and 7.3, there are off-slips added with traffic data. There has not only just been correction of data; data has been added. I just wanted to make that point.

602. If may make one more comment, the key thing for most people in the Chilterns is not being able to comment on the environmental statement; it is being able to assess whether they wanted to petition. There are certain people in the area who, if they had realised what some of the traffic situation was going to be, might have wanted to petition, but the data came out so late it was very difficult for them to be able to take that decision. The date for petitioning was the 13th.

603. **MR HAMLYN:** We note that point in the record is all I can say on that. We have already been round what the purpose of 27A is. I am conscious that I am told that we only have this round until 2 o'clock and we, as the Examiners, need to reach a decision on the compliance with the Standing Orders. This is absolutely the last time of asking if anybody else has any more points they want to make or questions they want to raise.

604. **MRS GORLOV:** One thing I just ought to mention is that Mr Gladwyn was quoting from something. We have not seen what the something is. We will not comment on what he says about added data, because we have not seen it. That is not a criticism of anybody; it is just a statement of fact.

605. **MR HAMLYN:** It is on the record, a lawyer's caution. If I could ask the room to be cleared, we will suspend the meeting now. We will let you back in literally as soon as we can. Thank you very much.

The Examination was suspended from 1.24 pm until 1.48 pm

606. **MR HAMLYN:** Welcome back. Sorry to keep you waiting in the corridor. The Examiners thank everyone for their attendance and the extended evidence we had. These are our decisions on compliance and non-compliance with the Standing Orders. We find compliance with the following Standing Orders, which are 4, 4A, 5, 48, 50, 51, 54, 55, 57 and 224A/83A. We find non-compliance solely as regards time in 10, 12A, 13, 34, 35, 36, 37, 39, 40, 41, 45 and 27. We find substantive non-compliance with 27A, 33 and 42. For the record, 27A and 33 are also non-compliant as to time. For the avoidance of doubt, we find 27A non-compliant by reason of the inclusion of incorrect data relating to traffic, which only became correct once that information was replaced in the revised documentation.

607. What happens next is that our report is published, and that will simply be a recital of those Standing Order compliances and non-compliances. We will send this in writing to anyone who wants it for confirmation. Our report will then go to the Standing Orders Committees of the two Houses, who are groups of MPs. They will consider whether any of the Standing Orders that have not been complied with should be dispensed with, and, if so, whether the promoters of the Bill should be required to meet any particular conditions for non-compliance. That concludes our

meeting for today. Thank you all very much for coming, and I am sorry it took so long.

The Examination was adjourned at 1.50 pm