HS2: Understanding the procedures

A summary by *Green Balance*, June 2010

The Chilterns Conservation Board has requested a straightforward report to explain the procedures by which decisions will be influenced and taken on High Speed 2. This is the proposed new high speed railway initially from London to Birmingham and later intended to connect to cities further north in England and Scotland. Responses have been requested by the Board to six questions, plus suggestions on how best to challenge the proposals. These are provided below after a short explanatory background note.

Background

1.
The Labour Government proposed to develop a high speed railway from London to Birmingham and beyond under the enthusiastic patronage of the then Secretary of State for Transport, Lord Adonis. The Government set up a company, HS2 Limited, to advise it on the stations, route options & preferences, and other practicalities of the first phase of the line from London to Birmingham, with outline suggestions for routes beyond. HS2 Ltd also sought to establish the evidence base for such a high speed line, and to use this to shape its proposals. HS2 Limited reported at the end of 2009. Its main report to the Government and a series of supporting documents were published in March 2010, together with the Government's response in the form of a report to Parliament High Speed Rail by the Secretary of State.

2.
HS2 Limited's preferred route passes through the heart of the Chilterns Area of Outstanding Natural Beauty, in tunnel from the Chalfonts to Amersham and then through the Missenden Valley to Wendover. Engineering proposals for the line and elevation have been worked up for this route in some detail, with a scheme accurate to within 25 metres laterally. The preferred alternative to the preferred route would also pass through the heart of the Chilterns, slightly to the south west and emerging at Princes Risborough. A further alternative, near Watford, King's Langley and Leighton Buzzard close to the West Coast Main Line railway, would also pass through the Chilterns AONB but over a shorter distance than the other two options. The Labour Government accepted the preferred route as a basis for detailed evaluation, with further consultation proposed on this in the autumn of 2010. The work of HS2 Limited was closely guarded during 2009, primarily to minimise blighting properties on the preferred route – which would in many cases become unsaleable as a result. Now that there is a clear proposal, an 'exceptional hardship scheme' has been proposed, to buy closely-affected property in circumstances where owners can demonstrate a pressing need to sell. Consultation on this proposal, extended by the Coalition Government, closes this month, with the intention of establishing the scheme shortly afterwards.

3.
Following the General Election, the new Coalition Government has reviewed the proposals. In principle, the Government wishes to continue with the project, with its 'programme for government' published on 20th May 2010 stating:

“We will establish a high speed rail network as part of our programme of measures to fulfil our joint ambitions for creating a low carbon economy. Our vision is of a truly national high speed rail network for the whole of Britain. Given financial constraints, we will have to achieve this in phases.”

4.
The route, however, is to be reviewed. One complicating factor in this process will be the support which the Government is currently giving to the creation of a high speed railway to Heathrow, which was in the Conservative party manifesto. Being west of London, any direct connection of HS2 to Heathrow will tend to pull the route west out of London, thereby encouraging an onward route north-west through the Chilterns to Birmingham. Lord Mawhinney, a former Secretary of State for Transport, has been commissioned (first by Lord Adonis and then with revised terms of reference by the new Secretary of State for Transport, Philip Hammond) to lead a short inquiry into the options for Heathrow, and his report is awaited. The nature, timing and level of public engagement in the review of routes is unclear at present.

5.
The previous Transport Secretary’s report to parliament suggested that a single Hybrid Bill would be used to authorise not only the London to Birmingham section of HS2 but also the network as far as Manchester and Leeds. This would save parliamentary time, increase certainty about additional sections of route beyond Birmingham, and potentially allow some works for the later stages to be carried out concurrently with construction of the initial route between Birmingham and London. To achieve this, detailed route proposals would have to be brought forward for the routes north of Birmingham, a Strategic Environmental Assessment (SEA) carried out (and possibly Environmental Impact Assessments [EIA] too), and consultations completed satisfactorily. The new Government’s commitment to a high speed network, and not just a London to Birmingham railway, suggests that they too will find attractive the idea of a single Hybrid for a substantial part of the network. This arrangement will inevitably postpone the introduction of the enlarged Hybrid Bill as much additional work must be done first, but, once introduced, it may be more difficult to amend the route significantly because of the increased interdependence of each part of the package upon the rest.

6.
With the problems of European national debts compounding the UK’s own problems, there is an increased likelihood of major expenditure on large capital projects like HS2 being delayed. On the other hand, even if construction is delayed, preparatory work such as route selection is relatively cheap and may proceed as planned. The cautious assumption to make, therefore, is that discussion on high speed routes will continue without delay.

1.
Explain the process for securing permission for HS2 via a Hybrid Bill

7.
A Hybrid Bill in parliament is a means of authorising projects, particularly major projects, as an alternative (and not additional) to securing consents under planning and other necessary laws. The procedures commonly associated with major developments handled by the

planning system – such as consideration by local authorities, public inquiries, and their associated procedures for engaging the public – will therefore not happen at all.

8.
A Hybrid Bill is so-called because it has the characteristics partly of a Public Bill and partly of a Private Bill. Public Bills change the law as it applies to the general population, and are mostly promoted by the Government. Private Bills are usually promoted by organisations, like local authorities and private companies, to give themselves powers additional to or in conflict with the general law, but these only change the law to affect the interests of specific individuals or organisations rather than the general public. A Hybrid Bill is typically one of general interest but primarily with local effects only. The most recent Hybrid Bill to pass through parliament was the Crossrail Bill.

9.
A Hybrid Bill to authorise HS2 or a successor network of high speed railway lines will be presented by a Minister and will have the backing of the full machinery of the Government. This means, critically, that the Bill is highly likely to have enough support in parliament to be voted through even if objections are raised and changes proposed to the Bill during its passage.

10.
The authorisation procedure for a Hybrid Bill is complex, so Government support will also benefit the Bill in that steps will almost certainly have been taken to ensure that the Bill is compliant with preliminary procedures (required by Standing Orders), such as advertisements and the drawing up of necessary plans. In cases of doubt, though, the Clerks of Bills for each House in parliament, in their role as Examiners, have the power to refer the Bill to the Standing Orders Committee for scrutiny.

11.
Every Bill must be approved by both Houses of parliament. Whether a Bill begins its passage in the House of Commons or the House of Lords is immaterial, though politically contentious Bills normally begin in the House of Commons.

12.
When a Hybrid Bill is laid on the Table in a House (as a ‘dummy’ copy) it is deemed to have been read a first time. The Bill is then printed. The first major opportunity for debate on the Bill is on the Motion that the Bill be read a second time. This second reading debate is on the floor of the whole House, so any Member can speak. This is an opportunity for expression of views and recommendations on the principles and broad features of the proposals, rather than line-by-line consideration, in effect suggesting matters which should be attended to at later stages in the Bill’s passage. The debate gathers the mood of the House towards the scheme. The second reading is extremely likely to be voted through, as this is effectively a Government Bill. The House thereby establishes the need for the scheme, so the Bill cannot later be rejected by that House following subsequent scrutiny.

13.
After second reading the Bill is sent to a select committee for close scrutiny. This committee will be made up of members chosen partly by the House and partly by the Committee of Selection. The number of members is small: for example, the Channel Tunnel Bill in 1985-86 had nine. Other than the Minister promoting the Bill, the other members are expected not to

have any vested interest in the outcome of the Bill. Whilst ensuring fairness, this can also mean that some members do not take an especially enthusiastic interest in the issues. Furthermore, the commitment to what may be an extremely lengthy task of a year or more in effect ties up a significant amount of members' parliamentary time, which they may resent.

14.
Individuals or organisations who oppose the Bill can submit petitions against it. The motion to refer the Bill to a select committee normally also sets down the requirements for submitting petitions against the Bill. There is a not a universal right to submit petitions, and only individuals or organisation with an appropriate status may do so. Obviously interested parties such as landowners and immediate neighbours may petition, but so also may registered societies and amenity organisations whose purposes would be adversely affected. Petitioners need to state their interest in the Bill. They must meet the stipulated (usually short) timescale for submission and conform to a set of rules. Where the promoter challenges the standing of the petitioner, the select committee decides who may or may not be heard on which sections of the Bill. There is also a Court of Referees, which is a committee of senior back-benchers assisted by Speaker's Counsel, who decide who has the standing to petition, and their decisions are binding on the select committee.

15.
Prospective petitioners should act early. They should establish exactly what problems the proposal would cause and what should be done about them. This requires, for instance, close and early examination of the Strategic Environmental Assessment, any Environmental Impact Assessment, and other documentation, identification of mitigation, identification of compensatory arrangements, and all the consequences: for example, if additional land is needed for tree-planting or screening, then there must be provision in the Bill for the compulsory acquisition of the land needed for that. Petitioners will be likely to make the most impact if parties with related interests pool their resources and act as one. Combined organisations with a unified few will carry greater weight in their negotiations with the promoters and in their impression on the committee.

16.
The Government will have appointed parliamentary agents to act for them, supported by a company which has access to the necessary expertise in all technical matters. Petitioners may also commission parliamentary agents (i.e. specialist lawyers) to represent them, though this is very expensive. Petitioners such as individuals and non-government organisations may either represent themselves (though this is risky for the inexperienced in the complex field of parliamentary procedure) or appoint someone with the appropriate experience to act on their behalf. Petitioners will achieve most by negotiating with the Government's appointed intermediary bodies for the changes they want, outside the committee. There are protocols for negotiation so that outcomes are fair for affected parties (e.g. so that no one party has more or less advantage from a negotiated amendment). The critical requirement for petitioners is skill in negotiation, as the promoters will be disinclined to concede much ground. This is a matter of picking the right issues to negotiate on and knowing how and how far to press them: the promoters need to believe that petitioners may well be successful in front of the committee. Gaining the interest of the committee chairman is also critical, and therefore choosing issues most likely to achieve this. Where negotiations are successful with the promoters, and an agreed solution is put to the committee, petitioners should seek not just an assurance (which can be reneged upon later with impunity) but a finite undertaking in front of the committee which is then binding on the promoter.

17.
Major changes to the Bill are unlikely to be secured and there are procedural difficulties in seeking them. For example, an alternative section of route could only be required if that had been worked up in as much detail and with appropriate procedures as had the proposed route. As the Government is hardly likely to do this work voluntarily, petitioners would either need to pay for the technical work themselves and satisfy all the other procedural requirements, at great expense and with enormous difficulty in the time available, or persuade the select committee that an obviously superior alternative existed and should be studied by the Government before the Bill should proceed. In the latter case, the committee would advise the promoters that this alternative should be brought forward as an amendment. That would probably have the effect of delaying further consideration of the Bill perhaps for a year or so while all the technical work and procedural requirements were satisfied, and would not be lightly proposed (as well as being strenuously resisted by the Government).

18.
The procedure in the select committee is that each petitioner in turn presents their case through an advocate, who may call witnesses if necessary. Witnesses are normally examined on oath (which is no different from a planning inquiry into an enforcement appeal). After each petition has been heard, the promoters present their response in reply. The committee considers each clause of the Bill and then returns the Bill to the House with or without amendment. It may make a special report to the House on the subject matter of the Bill if it so wishes.

19.
The House then considers the report of the select committee. Normally this debate on the ‘report stage’ of the Bill will be on the floor of the House, though it could be handled by a standing committee. The final stage in the House, the debate on the ‘third reading’ of the Bill then takes place on the floor of the House. At both report and third reading, the debates are on detailed amendments to the Bill, whether those proposed by the select committee or those sought by members of the House. Any member of the House may contribute.

20.
After a Bill has been voted its third reading, it passes to the other House. Here, the Bill passes through comparable procedures, with the results of all amendments in the first House taken as the starting point for debates in the other House. If the second House proposes any further amendments, the Bill must be returned to the first House for those amendments to be considered. Usually these will be accepted, but if there is dispute the Bill must be returned as necessary until both Houses agree it. The Bill can then receive Royal Assent.

21.
The Bill will contain provisions which allow Ministers to implement a range of detailed changes to the law to facilitate the development. These will be approved by Statutory Instruments, which are a subsidiary type of legislation on which amendments cannot be proposed. (The Statutory Instrument Committee either approves or rejects the draft provisions, but, as membership of the committee reflects the balance of the parties in parliament, the Government can always vote through its proposals.)

2.
To identify the opportunities for public involvement through formal consultation and other means

22.
The likelihood is that there will be a single round of formal consultation by the Government on its proposals for HS2. If the proposals of the Labour Government were carried forward, the consultation stages would comprise an informal consultation on the proposals announced in March 2010 (which it called 'pre-consultation'), followed by a formal consultation in the autumn of 2010 on the more fully worked-up scheme. The Transport Secretary's report to parliament *High Speed Rail* stated that "Of fundamental importance to this process [of engagement and consultation] will be formal public consultation on the detail of HS2 Ltd's recommended route option from London to Birmingham, and on the Government's strategic proposals for high speed rail" (paragraph 9.2). The Labour Government's plans for formal consultation were set out in paragraphs 9.19-26 of that report.

23.
On the assumption that the Coalition Government evaluates further options not only for London to Birmingham but for the shape of the national network as a whole, the likelihood is that the procedures previously followed will be repeated:

(i) During the preparation of routes and options, there may or may not be informal consultations (probably depending on the implications for blight);

(ii) Upon publication of the proposals there would be informal consultation (as there was in March 2010);

(iii) The proposals would be worked up in detail, supported by statutorily necessary documents such as an Environmental Statement, and on publication there would be formal consultation on these.

24.
There are consultation requirements in SEA (and EIA) which cannot be overlooked. Also, it is clear that had the scheme been promoted through the planning system (probably as a major infrastructure project through the Infrastructure Planning Commission) there would also have been a requirement for formal consultation: even though a Hybrid Bill procedure will be used instead, there is a legitimate expectation that consultation proposals comparable with planning procedures would be followed. In addition, the Government will be mindful of its commitment to transparency as well as to its obligations under the Aarhus Convention (on access to information, public participation in decision-making and access to environmental justice), which would also support consultation. Following the formal consultation, there are publicity requirements legally necessary under the Hybrid Bill procedure, which can inspire petitions against the Bill (see item (1) above).

25.
There is, however, a difference between formal consultation and accommodating the views expressed. Statements in the Transport Secretary's March 2010 report to parliament give a flavour of the Labour Government's approach to procedures, which are likely to be shared by

the Coalition Government. It is abundantly clear that the Labour Government had in mind the promotion of its preferred route, and that the consultation process was intended to reinforce this rather than revise it in any substantive way. The then Transport Secretary's report to parliament makes the following statements:

(i) "On the basis of the evidence provided, the Government's assessment is that HS2 Ltd's recommended route is viable, subject to further work being completed to mitigate a number of specific environmental impacts" (paragraph 9.1): this does not imply that alternative routes remain open for serious consideration;

(ii) "The Government proposes to begin formal consultation in the autumn, following completion of the additional work requested by the Government from HS2 Ltd on its recommended route from London to the West Midlands. This consultation will provide an opportunity for all interested parties to express their views on HS2 Ltd's recommended route and on the mitigation measures that HS2 Ltd proposes to reduce any potential adverse impacts on individuals, communities and the environment" (paragraph 9.21): attention remains focused on the preferred route (a feature also of paragraphs 9.24 and 9.26).

26.
The reality is that momentum builds behind an emerging preferred route, and any Government will become increasingly disinclined to depart from a route in which it has invested more and more money and political capital. The Government's will wish to avoid undue exposure to legal challenge on the grounds that its consultations were inadequate. However, already apparent are the less-than-enthusiastic interest in alternative routes noted above, and the studied absence of alternatives worked up in as much detail as the preferred route. There remains an issue whether or not a formal consultation on HS2 serves any real purpose even if it meets the requirements of the law.

27.
In these circumstances, interested parties should engage at an early a stage as possible in the route-selection process, before the Government has developed a preference which it feels increasingly inclined to defend. The formal consultation will set down useful markers on the position of everyone with an interest, but there is a real risk that by that stage any substantive change to the proposal may in practice be extremely difficult to accommodate.

3.
Explain the role of MPs, Select Committees etc.

28.
The role of parliamentarians would be concentrated in the period in which a Hybrid Bill was under consideration. The role of Members of Parliament and of Lords was outlined in item (1) above, both in their own right as individuals and through Select Committees in each House to consider the Hybrid Bill.

29.
In addition, there is nothing to stop or discourage parliamentarians – especially Members of Parliament as elected representatives of the people – from expressing their views at any stage during the working up of the HS2 proposals (though those holding any kind of Government office are more constrained in the part they can take than those without).

4.
Identify relevant major national and EU legislation and provide a summary of why it is relevant.

30.
There is extensive UK legislation to make provision for developments subject to satisfying specified requirements and also to provide protection to the public and to the environment. These range from control of pollution to health & safety. A project like HS2 might easily be required to comply with 40 or more laws. Many requirements are technical, where HS2 can be permitted if certain obligations are met (within specified levels of risk). Examples might be measures to avoid additional flood risk, to culvert watercourses, and to ensure that water discharged from the land taken by the railway meets clear quality standards. So far as laws protecting the environment are concerned, there are none which set down absolute constraints on developments like HS2. In each case, the objective of protecting the environmental asset is tempered by the possibility that there may be other overriding interests. Deciding the balance of advantage between competing interests is usually a judgement reached in the light of established policy, not stated in the legislation itself. Some examples illustrate this:

(i) Legislation on Areas of Outstanding Natural Beauty is set out in the National Parks and Access to the Countryside Act 1949 as amended by the Environment Act 1995. In 2000 this legislation was supplemented by the Countryside and Rights of Way Act, which introduced a 'duty of regard' to AONBs:

"In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty."

31.
The definition of 'relevant authorities' is widely drawn to cover all Ministers, public bodies, statutory undertakers and persons holding public office.

32.
This is a very general statement more intended to draw the attention of such bodies to the importance the Government attaches to protected landscapes than to impose sanctions. The wording is difficult to enforce in any meaningful way, and parties affected could, if asked, usually claim to be complying with the provision in ways they might suggest. In the case of HS2, the promoters would no doubt refer to their efforts to avoid the Chilterns AONB and to their proposal to place part of the route through the AONB in tunnel.

(ii) Sites of Special Scientific Interest (for wildlife and geology) are established under the 1949 Act and the Wildlife and Countryside Act 1981 (as amended). Government policy on development threats to SSSIs is set out in Planning Policy Statement 9 *Planning and Geological Conservation* at paragraph 8: "Where a proposed development on land within or outside a SSSI is likely to have an adverse effect on an SSSI (either individually or in combination with other developments), planning permission should not normally be granted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special

scientific interest and any broader impacts on the national network of SSSIs." Even if HS2 were to affect an SSSI, therefore, the presence of the SSSI would not necessarily be of overriding importance in route selection in the face of a project deemed by the Government to be nationally important.

(iii) One of the strongest policies for resisting development through the town and country planning system is applied to areas designated as 'green belt' to prevent the sprawl of large urban areas (and for other purposes). Here there is a 'presumption against' all but the most narrowly drawn kinds of development in designated areas, which is a tighter constraint than applies through policies aimed at other kinds of protection. Even so, there is scope to grant planning permission for development in the green belt as an exception to policy where a sufficiently overriding case can be made. However, green belt is only a policy and does not rely for its effectiveness on any specific legislation: it could be abandoned tomorrow if the Government so wished. HS2 would pass through the Metropolitan Green Belt. The policy issues would need to be considered but, as any route between London and Birmingham would have to pass through the green belts of both those conurbations, the Government can be expected to argue that the national interest in high speed rail is a justifiable exception to normal green belt policy.

33.
The position with key items of European legislation, as incorporated into UK law, is different. Some of this law is procedural and some is substantive. The main laws of interest concern Environmental Impact Assessment, Strategic Environmental Assessment and European protected wildlife sites (Special Areas of Conservation and Special Protection Areas). The procedural requirements of EIA and SEA have proved more onerous than some parties anticipated, while there is a much higher order of compliance imposed by the law on European wildlife sites than is typical in UK law.

(a) The Directive introducing Environmental Impact Assessment was passed in 1985 and came into effect in UK law in 1988. It requires fundamentally that any project 'likely to have a significant effect on the environment' cannot be determined unless an Environmental Impact Assessment has been carried out first. The procedures for deciding whether or not as Assessment is needed, what should be studied, and the procedures for engagement with interested parties (amongst other matters) are all prescribed in law. HS2 Limited had commissioned an Environmental Impact Statement and anticipated that this would be published with the formal consultation documents in the autumn of 2010. The expectation would be that any new scheme proposed by the Coalition Government would also need to be accompanied by an EIA.

34.
There is now understood to be a suggestion from HS2 Ltd that an EIA is not necessary to accompany a Hybrid Bill. It is indeed true that Article 1(5) of the Directive states:

"This 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."

35.
However, this may not be as definitive as it may appear, since there might well be an arguable case in law that the legislative procedures adopted did not in reality achieve the

objectives of the Directive. A Government which took a Hybrid Bill on HS2 to parliament without an EIA would therefore be taking a risk that there would be no legal challenge on this point, or that it would win if there was. Even if that were the case, the absence of an EIA would appear to indicate that the Government did not care much about the environment and was cutting corners: whether the loss of credibility would be justified by the saving in cost would be a matter for the Government. The transparency of a good Environmental Statement can also assist all parties, ensuring that relevant issues have been carefully studied, helping to improve the project as it is developed, and perhaps allaying fears: the Government would be unwise to view it purely as a burden, rather than as good practice which can offer real improvements to schemes.

(b) The Directive covering Strategic Environmental Assessment was passed in 2001 and came into effect in UK law in 2004. Broadly speaking, it aims to do for plans and programmes what the EIA Directive does for projects. It requires that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment. Whilst a high speed railway from London to Birmingham might be considered a project, and therefore ordinarily subject to EIA, a nationwide network of high speed railways (of which the London to Birmingham element was the first) would be a programme and therefore subject to SEA. The aim in a case like this would be to ensure that the overall strategy was environmentally sound, so that unsustainable development implemented piecemeal could be avoided. HS2 Limited accepted that an SEA was necessary, because the line to Birmingham has been envisaged from the outset as part of a larger network.

36.
In the case of SEA there is no omission from preparation for plans or programmes decided by specific legislation. For the purpose of the Directive, plans and programmes include those "which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government" (Article 2(a)).

37.
Authorities which prepare and/or adopt such a plan or programme must prepare a report on its likely significant environmental effects, consult environmental authorities and the public, and take the report and the results of the consultation into account during the preparation process and before the plan or programme is adopted. They must also make information available on the plan or programme as adopted and how the environmental assessment was taken into account. In the case of HS2, the intention under Labour Government's proposals had been to prepare and publish an SEA to coincide with the autumn 2010 consultation. As the Coalition Government has indicated that it has in mind a different network, it would have to prepare a revised SEA for it.

38.
The information required in a strategic environmental assessment is set out in the Directive. This includes an assessment of the environmental protection objectives, established at international, Community or national level, which are relevant to the programme, and the way those objectives and any environmental considerations have been taken into account during its preparation. This would clearly require an exposition of the Government's strategic approach to the Chiltern Hills AONB and, in association with other obligations, its proposals for avoiding and minimising adverse impacts on this protected area and the consideration of alternative options for the network.

(c) Special Protection Areas (SPAs) are designated under a Directive from 1979 and provide measures to conserve wild birds, their eggs and their habitats. It is commonly called the Birds Directive. Special Areas of Conservation SACs) are designated under a Directive from 1992 and provide measures to conserve natural habitats and associated wild fauna and flora. The Directive is commonly called the Habitats Directive. SPAs and SACs together form 'Natura 2000', a Europe-wide network of areas of special nature conservation interest. The legislation currently giving effect to these Directives is known as the Habitats Regulations of 1994.

39.
There is no free-standing policy on development affecting Natura 2000 sites, as all the necessary statements of objectives, methods and desired outcomes are specified within the legislation itself. In outline, the Habitats Regulations restrict the granting of planning permission for development which is likely significantly to affect a Natura 2000 site which is not directly connected with or necessary to the management of the site. They require that an 'appropriate assessment' is first carried out of the implications of the development for the site's conservation objectives. This is subject to a series of rigorous steps, all of which take a precautionary approach – erring on the side of not allowing development if there is a risk of compromising the integrity of the wildlife interest in the site. The Habitats Regulations prohibit the grant of planning permission unless the decision-maker is satisfied, if necessary with the imposition of restrictions on the permission, that no development could be carried out under the permission which would be likely to adversely affect the integrity of the Natura 2000 site.

40.
The legislation provides that, if the decision-taker is unable to conclude that the proposed development (however restricted) will not adversely affect the integrity of the site, then permission must not be granted except in closely defined circumstances. These circumstances are, in outline, that:

- there are no alternative solutions that would have a lesser impact;
- there are imperative reasons of overriding public interest.

Circular 6/2005 (*Biodiversity and Geological Conservation: Statutory Obligations and their Impact within the Planning System*) makes clear that there will be few cases where it can be judged that imperative reasons of overriding public interest will allow a development to proceed which may have a potentially negative effect on the integrity of a European site.

41.
HS2 is likely to have to demonstrate that it will not adversely affect the integrity of any SAC or SPA, or at the very least that, if it does, the adverse effect of any realistic alternative on the same or other such sites would be worse. Natural England would be the primary agency advising on the impacts of the proposals on Natura 2000 sites.

5.
Explain the importance, if any, of the European Landscape Convention.

42.
The European Landscape Convention was adopted by the Council of Europe in 2000. As a Treaty it was signed by the UK Government in February 2006, ratified in November 2006 and came into effect in the UK in March 2007. It is not an EU Directive, so its application is not compulsory in EU Member States (the UK could withdraw from it at any time), and not enforceable in the manner of a Directive.

43.
The convention adopts a broad and non-scientific definition of landscape: "landscape means an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors." Central features of the convention's approach to landscape are that:

- it covers all land and water, recognising that all landscapes are distinctive – including urban landscapes – and that all merit consideration, not just those special areas worthy of protection for their beauty;
- landscape is important in its own right, not just as scenery or a backdrop;
- landscape has many values, not all of them tangible, which matter to people;
- landscape is dynamic, so the convention emphasises the management of change and the creation of new landscapes as well as managing those we inherit.

44.
The convention encourages signatories to recognise the importance of landscape, alongside biodiversity and cultural heritage. It takes a positive approach to landscapes by encouraging signatories to develop policies for their protection, management and planning. Its style is therefore influencing and raising awareness, offering flexibility in application rather than aiming to penalise shortcomings.

45.
Specific measures promoted by the Convention, include:

- the recognition of landscape in law;
- the identification and assessment of landscape, and analysis of landscape change, with the active participation of stakeholders;
- setting objectives for landscape quality, with the involvement of the public;
- the implementation of landscape policies, through the establishment of plans and practical programmes for the protection, management and planning of landscape;
- improved consideration of and integration of landscape in existing and future sectoral and spatial policy and regulation;
- monitoring what is happening to the landscape;
- raising awareness of the value of landscape among all sectors of society, and of society's role in shaping it;
- promoting landscape training and education among landscape specialists, other related professions, and in school and university courses;
- European co-operation.

46.
The UK is considered to be broadly compliant with the convention.

47.
The European Landscape Convention is not conceptualised as having a direct impact on projects like HS2. It is more concerned with national governments taking a strategic view on the merit of landscape as a concept. Furthermore, by its emphasis on all landscapes and not just the most attractive, it does not offer to the Chiltern Hills any more support in the face of HS2 than does English legislation and policy for Areas of Outstanding Natural Beauty. The convention would apply equally to affected places outside the AONB.

If the site does not host a priority natural habitat type or species, permission can be granted if the proposed development has to be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. Such reasons would need to be sufficient to override the harm to the ecological importance of the designation. If the site hosts a priority habitat or species, and there is no alternative solution, the only considerations which can justify the grant of planning permission are (a) those which relate to human health, public safety, or beneficial consequences of primary importance to the environment or (b) other imperative reasons of overriding public interest agreed by the European Commission. There must be some doubt that HS2 could satisfy such requirements.