Dear Joan,

Thank you for your letter of 14 October, about the HS2 hybrid Bill process and its compliance with the Aarhus Convention, and, more broadly, the effects of HS2 on the environment.

Environmental assessment has always been at the heart of the proposals for the construction and operation of HS2. In developing the project, the Government and HS2 Ltd’s aim has been to enable the nation to take full advantage of the significant opportunities and benefits offered by the project while reducing the adverse environmental effects of the project as far as reasonably practicable.

Turning to your specific questions, I will address these in the order in which they were raised, for ease of reference. You asked whether the Aarhus Convention applies to the current hybrid Bill parliamentary process and, if so, whether the obligations of the Convention have been met.

The UK is a State Party to the Aarhus Convention and, as such, the Convention applies to the hybrid Bill process. Clearly parliamentary process is a matter for Parliament not the Government. However, in planning for the hybrid Bill, Parliament’s procedures were amended so as to make it clearer that the UK had met the objectives of the Environmental Impact Assessment Directive (EIA Directive) and had met its international obligations under the Aarhus Convention.

This has been done by changing Standing Orders to incorporate a formal consultation period for the Environmental Statement (ES) between introduction of the hybrid Bill, and 2nd Reading in the House of Commons. This ensured that the public were made aware of the environmental effects of the project, and that they had the opportunity to comment.
In addition, a requirement was introduced that a summary of the public’s views, produced by an independent assessor, should be shared with Parliament before Parliament made a decision on the principle of the Bill. Similar arrangements for public participation apply to any supplementary ES that may be filed during the passage of the Bill, as I explain below. In this way the hybrid Bill process is compliant with the Aarhus Convention.

You also asked about the Government’s plans to produce a Supplementary Environmental Statement (SES) as and when additional analysis on environmental impacts is produced. Since the deposit of the Bill and ES in November 2013, further ecological surveys have been commissioned and we expect that work to confirm the precautionary approach and results contained in the ES. These surveys are due to be complete in the autumn and we expect that following this an SES will be prepared to account for any new information provided by these additional surveys, together with any changes made to the current proposals arising from the HS2 Bill Select Committee. Any SES would be published alongside an Additional Provision to the Bill while the Bill is before the Select Committee of the House of Commons.

You further questioned the extent of public consultation on any such additional environmental information. Again this is dealt with in Standing Orders, which require a consultation on such information that is at least 42 days in duration. Consultation responses are passed to the independent assessor appointed by Parliament, Golder Associates, who provide a report to the House, as the decision-makers on the scheme, for consideration at 3rd Reading.

Your letter also asks for further reflections on the points raised in the letter from the Rt Hon Cheryl Gillan MP letter of 17 September 2014. I am aware that Simon Kirby, of HS2 Ltd, has also commented on these in his reply to you and I enclose a copy of that for ease of reference.

Ms Gillan asserts that claimed errors in the ES leave the Select Committee misinformed. However, this is not the case. Where petitioners feel that information in the ES is incorrect they are able to bring any evidence and witnesses they wish to demonstrate that view, in support of their petition points. The Committee will then be able to determine whether there is an error, whether it has any material impact and what, if anything, should be done as a result of it. This is completely in keeping with their role and purpose. Counsel for the Promoter confirmed the position in response to the petitions of Warwickshire County Council and North Warwickshire District Council during the Select Committee’s meeting on the morning of 28 October 2014.
Ms Gillan raises concerns about the use of information papers during the Select Committee process. Unlike the ES, which assesses the impact of the proposed scheme, HS2 Ltd’s information papers provide factual, non-technical, accessible and user-friendly guides to policies, strategies and technical issues (such as tunnels) and are a tool to help people better understand aspects of the scheme. As such they are not part of the ES and so not subject to public consultation. The information papers do provide information about the design standards and mitigation strategy for construction and operation of the scheme upon which the assessment set out in the ES is founded. Both the design standards and mitigation strategy are explained in Volume 1 of the ES. They have therefore been both available for public comment and are matters that may be raised by petitioners in support of the hearing of their petitions, under the procedures that I have set out above.

The letter also highlights the use of the report produced by Golder Associates, who summarised the public consultation responses on the ES for Parliament. The report by Golder Associates was commissioned by the House Authorities to meet the requirement of Standing Orders to summarise the issues raised in consultation responses. The Government played no role in the preparation of this report. Ms Gillan suggests that this report does not provide sufficient detail to enable decisions to be made during the Select Committee process. However, the Select Committee’s role is to consider and to report its conclusions in response to the cases presented by petitioners. The instruction to Select Committee does not require it to undertake a wider reporting role. Nor does the Select Committee decide whether the proposed scheme should be granted development consent. That is the role of the House.

I hope that you find this response useful. You might also find useful the comments that the Government’s lead Counsel made to the Select Committee regarding the EIA process in his opening statement. I enclose these with this letter.

Yours sincerely

[Signature]

ROBERT GOODWILL
115. I now return, as I said I would, to the topic of Environmental Impact Assessment and the complaint that the Environmental Statement is inadequate in the sense of being legally unfit for purpose. I am afraid that a little bit of law is needed to set the context. Environmental Impact Assessment, EIA, derives from European Union law. It is a process of information gathering and project assessment that is designed to improve environmental decision-making in relation to large projects and projects that are proposed in sensitive locations. The basic principles are set out in a European Union Directive and apply to the United Kingdom through statutory Regulations. You will find a summary of the legal framework in Information Paper B5. The cover sheet is on your screens.

116. In a nutshell, the law requires the following: firstly, the preparation of an Environmental Statement that contains a range of specified information about the project; secondly, the opportunity for public participation so that people can comment on that statement, and thirdly that the body charged with deciding whether the project should be allowed to proceed, termed “the competent authority”, should take the accumulated product of that process, termed, “the environmental information” into account for the purposes of making that decision. As you might expect, there must also be arrangements to ensure that the project is carried out broadly in accordance with that assessment otherwise the purpose of the process would be undermined. Finally, there must be an explanation given for the decision to grant consent and the main measures included to mitigate its environmental effects.

117. These then might be described as the objectives set by European Union and national law for any Environmental Impact Assessment of a major project. In the case of a project that is promoted under a statutory consent procedure, such as an application for planning permission, the national regulations set out the procedural rules for the assessment of the project’s likely environmental impacts but in the case of a project such as the Bill, which is promoted by way of a specific act of national legislation, the statutory rules do not apply. Instead, European Union law requires that the objectives to which I referred a few moments ago should be met through the legislative process itself.

118. This was the issue that the Supreme Court was asked to rule upon at the beginning of this year in the case brought by Buckinghamshire County Council, Hillingdon London Borough Council, and others. The councils argued that the procedures of this House that govern a hybrid Bill were inadequate and unfit for purpose that is for the purpose of meeting the objectives of European Union Environmental Impact Assessment. The Supreme Court rejected the councils’ case. In doing so, the Court was well aware of the conventional role assigned to this Committee, as part of parliamentary scrutiny of the hybrid Bill and in particular that the focus of your Committee’s business is upon the concerns of those who are directly and specially affected by the Bill rather than an overall environmental assessment of the Bill.

119. So, there is no substance in the argument put forward by some petitioners that the law requires this Committee to act as a kind of auditor of the overall adequacy of the Environmental Statement and, indeed, as Ms Qureshi has pointed out already, the Environmental Audit Committee has already taken evidence and reported on such matters and has received a response from the Government.
120. This is greatly reinforced by the position consistently taken by the courts, including the House of Lords in a well-known case called Edwards, in relation to disputes about the adequacy of information presented in Environmental Statements.

Time and again the courts have emphasised that the function of the Environmental Statement is to inform statutory bodies, the public and the decision maker about the likely environmental impacts of a project. It forms part of the process of Environmental Impact Assessment. It is not an end in itself.

121. Now, the practice has grown up over the years amongst those opposing major projects, and their lawyers, of trying to turn the Environmental Statement into a sort of obstacle course. Cases have been presented which subject the Environmental Statement to the sort of close forensic line-by-line and word-by-word scrutiny that one might apply to the disputed terms of a commercial contract. Now, of course, we lawyers enjoy that kind of pedantry but your Committee will be very relieved to hear that the courts have said emphatically that it has no place in the consideration of Environmental Statements.

Indeed, the Committee will see after a moment’s thought why that should be. As I have said, the Environmental Statement forms part of the process of Environmental Impact Assessment. It is intended to stimulate discussion, debate and the submission of further information by the public concerned with the project and other interested parties. The fact that such persons may detect shortcomings, dispute judgments or assert inadequacies in the information presented in the Environmental Statement is to be expected. Indeed, it would be astonishing if the Environmental Statement of so major a project as that promoted by this Bill were to pass without widespread criticism and comment. It follows that for your Committee to spend time reviewing the adequacy of the Environmental Statement in isolation would be to waste your time. It will be far more in keeping with the role and purpose of the Environmental Statement within the overall process of Environmental Impact Assessment and far more productive for you to use the Environmental Statement as appropriate as a tool to assist your consideration of the issues raised by petitioners as they appear before you. In that context, petitioners will be well able to tell you where they consider the information and the assessment presented in the Environmental Statement to need improvement, refinement, correction, supplementing and so forth, and petitioners will be able to put forward their evidence and arguments to remedy such asserted inadequacies. In this way the Environmental Statement will have served its proper purpose since it will have generated information for the Committee to take into account in its consideration of the issues raised by individual petitions.

122. In light of this analysis on the topic of the Environmental Statement it remains for me simply to confirm as I now do that the Environmental Statement does indeed include information about the project that ranges comprehensively across the conventional subject matter of such statements. It provides a detailed description of the project and of its likely environmental effects, both beneficial and adverse, direct, indirect, and cumulative, and of the range of measures that are proposed for the purpose of mitigating its adverse effects. It covers in very considerable detail all those matters that are required of it under the terms of Standing Order 27A. As I have said, the main statement is accompanied by a non-technical summary that presents its key findings in a form that is suitable for consumption by those who are content to forego the sumptuous technical feast that is laid out in the extensive refectory of the main suite of Environmental Statement documentation. It is a feast that I would be delighted to forego myself but I fear I shall not be given that privilege.