

EXPLANATORY MEMORANDUM

TRANSPORT AND WORKS, ENGLAND AND WALES

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CANALS AND INLAND WATERWAYS, ENGLAND AND WALES

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

Summary

These Rules, which revise the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, are designed to:

- **make the process for considering Transport and Works Act 1992 (TWA) Order applications, and objections to them, more efficient and effective; and**
 - **implement the amendments that have been made to the European Directive on Environmental Impact Assessments (EIA) by EC Directive 2003/35/EC.**
1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006, in accordance with Standing Order 26.
 2. A copy of the Instrument is submitted with this Memorandum.

Enabling power

3. The powers enabling this Instrument to be made are contained in sections 6, 6A, 7(3)(b) and (c) and (4) and 10 of the Transport and Works Act 1992. The National Assembly for Wales' agreement is required before this Instrument can be made.

Background

4. Orders under section 1 of the Transport and Works Act 1992 (TWA) are the usual means of authorising railway, tramway and other guided transport projects in England and Wales. Orders under section 3 of the TWA may authorise inland waterway projects and works interfering with navigation rights in England and Wales. Applications are made by the promoters of schemes (either public authorities or private companies) to the relevant Secretary of State, or to the National Assembly for Wales in respect of projects wholly in Wales.
5. The nature and size of schemes for which TWA Orders are sought can vary considerably, ranging from small scale heritage railway projects to major new heavy rail schemes. Many Orders relate to light rail, tramway and guided busway

projects. Other projects for which TWA approval has been sought include off shore wind farms, barrages and new footbridges across rivers. The procedures therefore need to be sufficiently adaptable to cater for a very wide range of projects.

6. Although there have, in the last few years, been significant improvements in the time taken to decide TWA Order applications, decision times can be improved further by making the procedures more efficient and effective. Delay in issuing decisions causes prolonged uncertainty for the promoters of schemes and for objectors, and is liable to result in increased costs of implementing a scheme.

Effect

7. The effect of these Rules, which revise the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, is to:
 - make the process for considering TWA Order applications, and objections to them, more efficient and effective; and
 - implement the amendments that have been made to the European Directive on Environmental Impact Assessments (EIA) by EC Directive 2003/35/EC (the Public Participation Directive).
8. Many of the procedural changes are directed at the early stages of the process, as it is considered that the provision of fuller information by applicants at the outset will lead to better understanding of proposals, which in turn will save time and effort later on. In addition, steps have been taken to reduce bureaucracy in the process, such as by reducing the amount of paper that has to be circulated and by removing some unnecessary or duplicated requirements. For example: the removal of the necessity to serve advance notices on specified bodies; a new requirement for applicants to submit a draft Order 28 days before making an application; plus a need for applicants to submit an Explanatory Memorandum with their draft Order justifying the Order's provisions; a requirement on the applicant to submit a summary of responses they have undertaken, and a concise statement of aims of the project; a power for the Assembly to require further information if not satisfied the adequate information has been provided; to set tighter timetables and a more disciplined process for written representations. Overall, the changes are expected to produce a quicker decision-making process, in the interests of all interested parties.
9. At the same time as amending the procedures, the fees payable by applicants (which were last revised in 2000) have been raised by an average of 10%, so as to give a fairer reflection of the costs of processing applications. The fee for an application relating to the transfer of an undertaking has been increased by 33.3%, but in monetary terms this represents an increase of only £500 (from £1,500 to £2,000) and it reflects more fairly the costs of processing this type of application. A transfer of undertaking is where an applicant seeks an Order for a transfer of responsibilities e.g. the responsibility for maintaining and operating a railway, or land acquisition.

10. The Public Participation Directive is a Directive "providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC". Article 3 of the Directive amends Directive 85/337/EEC (known as "the EIA Directive") in regard to securing improved public participation in development consent processes.
11. The changes made to implement Article 3 of the Public Participation Directive (and the amendments it makes to the EIA Directive) are not substantial, as the TWA procedures already provided for extensive public participation and were, therefore, already largely compliant with the amended Directive. The proposed new Rules are compliant with the EIA Directive in its amended form.

Target implementation

12. It is intended that this Instrument will proceed to Plenary on 24 May 2006 for the Assembly to confirm, approve or give its consent to the Rules. The Department for Transport will then lay the Rules before Parliament at the end of May/early June 2006.

Financial Implications

13. There are no direct costs to the Assembly in respect of the changes introduced by these Rules. A Regulatory Impact Assessment (RIA) has been drafted by the DfT and this indicates that the measures to improve the TWA Applications process are expected to produce net cost benefits to applicants and objectors, through a more efficient and less bureaucratic applications procedure and from quicker decisions.
14. The impact on the public sector should similarly be positive. No extra staff will be required to administer the new procedure rules, and expected resultant savings in the time spent processing TWA applications will benefit the public purse.

Consultation

With Stakeholders

15. The Department for Transport carried out two consultation exercises into the proposals to improve the TWA Applications process. The first exercise took place between 2 September 2003 and 2 December 2003. Whilst the second ran from July 2005 to October 2005. Those consulted in Wales included: Cadw; the Campaign for the Protection of Rural Wales; the Civic Trust for Wales; the Countryside Council for Wales, the Design Commission for Wales, the WDA, the Welsh Local Government Association, and the Welsh Trail Riders Association as well as many national bodies representing both English and Welsh interests. Respondents to both consultation exercises were largely supportive of the main changes proposed to the Rules, including the primary aim of securing a more 'frontloaded' process in order to save time later on in the procedures and the measures to reduce bureaucracy. The consideration of responses (which were mainly on detailed drafting points) has led to a number of refinements of the proposals. However, nothing arising from the two consultation exercises indicates that the proposals require substantial change.

With Subject Committee

16. These Rules were notified to the Environment, Planning and Countryside Committee, via the Environment, Planning and Countryside Minister's Report, on 11 May 2006 (EPC(2)-07-06(p.4)). At that meeting a Member queried whether the TWA Act could be used by telephone mast operators as a means of circumventing the planning process. Welsh Assembly Government officials explained that it could not be used for that purpose. No other issues were raised.