



# Transport and Works Act 1992

Standard Note: SN/BT/103  
Last updated: 14 April 2010  
Author: Louise Butcher  
Section: Business and Transport

---

The *Transport and Works Act 1992* (TWA) introduced a Ministerial Order-making system in England and Wales to authorise the construction of new transport infrastructure, including railways, tramway, other guided transport systems, inland waterways and works interfering with the rights of navigation. Orders may also provide for a number of ancillary matters such as the compulsory acquisition of land and the making of byelaws. The Act brought the procedures for authorising public transport and inland waterways more into line with those that had applied for many years to highway projects and other large developments, such as airports and power stations. Previously most of these types of projects required approval by Parliament through Private Bills.

This Note explains why the TWA was introduced and how it works.

More information on transport issues can be found on the relevant topical page of the [Parliament website](#).

## Contents

<b>1</b>	<b>Background</b>	<b>2</b>
<b>2</b>	<b>The rules</b>	<b>3</b>
<b>3</b>	<b>Changes to the TWA procedure, 2004-2006</b>	<b>5</b>
<b>4</b>	<b>Devolved areas</b>	<b>7</b>

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

# 1 Background

The *Transport and Works Act 1992* (TWA) came into force on 1 January 1993. Instead of depositing a Private Bill a promoter now has to apply for a Transport and Works Order (TWO) from the Secretary of State. Historically, most of the projects covered would have required approval by Parliament through Private Bills, so the TWA marked a fundamental procedural change. The Act covers both construction and operation.

There are broadly five stages if applying for an Order and its subsequent handling. An additional stage will occur if the Secretary of State judges that a proposal raises an issue of national significance. In such cases both Houses of Parliament must each pass a resolution approving the principle of the proposal before a local public inquiry is held. So far the only case to be judged 'of national significance' is that of Central Railway.<sup>1</sup>

The TWA came about as part of the Government's response to the Report of the Joint Committee on Private Bill Procedure set up in 1987. Members of Parliament were worried that the increasing volume of Private Bills was taking up a disproportionate amount of Parliament's time and placing demands on the time of Members to the detriment of their other responsibilities for public legislation and constituency business. Much of the burden was being provided by growing numbers of sometimes controversial bills seeking Parliamentary authorisation for particular construction works, such as the building of a bridge, a marina or a new railway. In the nineteenth century, Private Bills had been the only means of securing the necessary authority to implement such works. However, the evolution of Government in the twentieth century, including the rise of the planning system, began to provide alternative methods of securing the requisite authorities for at least some aspects of projects previously requiring Parliamentary approval.

The Joint Committee concluded that Private Bills were no longer the appropriate mechanism for authorising proposals that were essentially for works and associated land acquisition.<sup>2</sup> *Inter alia*, the Committee recommended the establishment of a non-Parliamentary authorisation procedure for certain types of proposals for which an Act of Parliament was previously required. In particular it was proposed that new railway and tramway works and a wider range of harbour measures should in future be approved by a Minister following a public inquiry, if necessary into a draft Order.<sup>3</sup> The report was debated in both Houses of Parliament.<sup>4</sup>

In June 1990 the Government set out its proposals for the new Order-making procedure.<sup>5</sup> The detailed proposals for Ministerial Orders relating to rail, light rail/rapid transit projects were spelt out in Chapter IV of the document. Reaction to the proposals was mainly favourable and the Government announced its response to representations in a Written Answer. The relevant portions on the new Order-making procedure for rail and light rail/rapid transit projects were as follows:

The Government are persuaded, in the light of the generally favourable reaction to the proposals, that legislation should be introduced at the earliest opportunity to establish new order-making powers for railway, tramway and other rapid transit systems, and

---

<sup>1</sup> for more information on this project see HC Library standard note [SN/BT/688](#)

<sup>2</sup> [Report of the Joint Committee on Private Bill Procedure](#) (session 1987-88), HL 97 and HC 625, July 1988, paras 31-32

<sup>3</sup> *ibid.*, recommendations 4-9, p52

<sup>4</sup> [HC Deb 20 April 1989, cc476-550](#) and [HL Deb 17 May 1989, cc1180-1212](#)

<sup>5</sup> HMG, [Private Bills and New procedures: a consultation document](#), Cm 1110, June 1990

inland waterway works, and to extend the range of harbour orders. The procedures will be broadly similar to those outlined in paragraphs 14 and 15 and 23 to 29 of the consultation document except in regard to two important aspects.

For schemes of national significance we now propose that Parliament should have a role earlier in the procedure; issues of policy and principle would be considered by Parliament separately and in advance of public inquiries. This change will enable Parliament to debate and establish the principle of the very biggest schemes so that the subsequent public inquiry would be limited to considerations of more local and detailed aspects for which it is better suited. We see this as a more satisfactory arrangement. If Parliament does not like the scheme in principle neither promoters nor objectors would be put to the expense of a public inquiry. Moreover, public inquiries into schemes of national significance undertaken before the principle has been settled could become unmanageable and extremely long. Finally we were persuaded by the argument of some consultees that the rejection of a project by Parliament after a public inquiry might serve to undermine the public inquiry system.

Parliamentary consideration would take the form of a debate on a resolution moved by the Government in both Houses. Parliament would, of course, require sufficient information to make a decision. We expect that the draft order, including an assessment of the impact on the environment, would be available before a debate took place. This would provide the basis for justifying the project in broad terms.

Secondly, the Government has concluded that the proposal for local authorities to deal with a first tier of schemes of essentially local significance should be dropped. These schemes would instead be decided by Ministers or be delegated to persons appointed by the Secretary of State. Only a small number of respondents to the consultation document expressed enthusiasm for this proposal and we consider that too few schemes would be suitable for decisions by local authorities to warrant establishing a separate procedure to handle them.<sup>6</sup>

Effectively the system of Ministerial Orders provides for a means of avoiding the need for special enactments to secure authorisation of railway, tramway and other guided schemes, canal works and works interfering with navigation. The TWA implemented these proposals.

## 2 The rules

The *Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006* (SI 2006/1466)<sup>7</sup> set out the procedure for applying for an order and its subsequent handling. The Department for Transport's guide to TWA Orders sets out how an application should be made, the period allowed for objections and how members of the public can object:

### **What is involved in a TWA order application?**

[...] The Rules specify the documents which must be sent with an application. These vary according to the type of order being applied for. The typical documents needed for a proposal involving works are:

- a draft order and an explanatory memorandum;
- a concise statement of the aims of the proposals;

---

<sup>6</sup> [HC Deb 17 May 1991, cc300-301W](#)

<sup>7</sup> these rules replaced previous versions from 1992 ([SI 1992/2902](#)) and 2000 ([SI 2000/2190](#))

- a report summarising the consultations carried out by the applicant;
- plans and cross sections;
- an environmental statement;
- a book of reference, including names of owners and occupiers of land to be bought compulsorily;
- the estimated costs of the proposed works; and
- the funding arrangements.

The organisation applying for the order ('the applicant') has to arrange for these documents to be available for inspection by the public, free of charge. Usually, this would be during normal office hours in the organisation's office and in local public libraries. Details are given in the notices about the scheme ...

### **How do I know that an organisation has applied for a TWA order?**

When an organisation applies for a TWA order, they must advertise it in local newspapers. If the scheme involves works, they must also post notices at the site and along the route of the works.

They must send a notice direct to all owners and occupiers affected by the compulsory purchase of property, and to certain other people and organisations set out in the rules.

For a scheme that is large or important, it is likely that there will be articles about it in the local press. There may also be local meetings or exhibitions.

### **How can I object to a TWA order application?**

The notices of the application ... give a date by which any objections, or other comments, should be sent to the Secretary of State, and give the address you should write to.

The time allowed in the notices must be at least 6 weeks from the date of the application. This is known as 'the objection period'. This period may be extended, for example to allow for a public holiday.

If you object, your objection must:

- give the reasons for your objection;
- be in writing (this may include faxes and e-mails);
- say who is making the objection;
- give an address to which further correspondence should be sent; and
- be received by the Secretary of State before the end of the objection period.

[...]

### **What happens after the end of the objection period?**

If there is no opposition to the application, the Secretary of State can proceed to give his or her decision.

If an application has opposition, the Secretary of State must decide, within 28 days of the end of the objection period, whether to hold a public inquiry or a hearing, or whether to carry out 'exchanges of written representations' between everyone involved ... The Secretary of State may decide to extend that 28-day period if there is good reason to do so. For example, applicants sometimes ask to be given more time to negotiate with objectors, to see if they can persuade them to withdraw their objection (which might affect the choice of procedure).

If there are many objections, or the case raises complicated issues, the Secretary of State is likely to arrange for a public inquiry to be held by an inspector. A public inquiry is also likely to be held where a statutory objector exercises their right to be heard because they oppose compulsory purchase.

A hearing is a less formal alternative to a public inquiry. It is more like a round-the-table discussion ...

If there are not many objectors, if no statutory objector wants to be heard, and if the case does not appear to raise complicated issues, the Secretary of State carries out exchanges of written representations ...

Once the Secretary of State has decided which procedure to follow, we write and tell the applicant, the objectors and any other people who have made comments.

If an inquiry or hearing is to be held, the applicant advertises the date, time and venue in local newspapers.

#### **What happens if a scheme is of national significance?**

Very occasionally, the Secretary of State may consider that a scheme is so big and so important that it is of national significance. In that case, a special procedure applies.

The proposals must be referred to Parliament for approval (of the principle of the scheme) before a public inquiry can be held.

The Secretary of State must decide within 56 days of receiving an application whether it is of national significance and, if it is, give notice to that effect. We tell everyone involved about the procedures that follow.

If both Houses of Parliament pass a resolution approving the proposals, the application goes on to an inquiry. The Secretary of State would not have to make the order even though Parliament had approved the scheme in principle. If, on the other hand, the proposals were rejected by either House, the application cannot proceed any further.<sup>8</sup>

### **3 Changes to the TWA procedure, 2004-2006**

As indicated in the previous section, the TWA Order rules have been updated since they were originally published in 1992. In September 2003 the Department for Transport announced a consultation on proposals to streamline proposals under the TWA. The then Transport Minister, David Jamieson, announced that the Department was proposing changes to three pieces of secondary legislation in order to improve the process under which TWA applications were handled:

The kinds of project that we are asked to approve under the TWA can have a very important role to play in improving our transport infrastructure and giving people a better quality of life. At the same time, these schemes often give rise to objections that

---

<sup>8</sup> DfT, *Transport and Works Act orders: A brief guide*, August 2006, pp7-15

need to be carefully considered. We therefore want to ensure that the TWA process is as efficient as possible and delivers quicker decisions, while not reducing the opportunity for objectors to make their views known.

The former Department for Transport, Local Government and the Regions asked consultants to review the effectiveness of the present TWA system and to make recommendations for improving and speeding up the process. Having considered their report, we believe they have identified a number of areas where the procedures could be improved and modernised and we are proposing that many of their recommendations should be taken forward, particularly those for amending the statutory procedure rules. Having worked these up in more detail, we are now inviting views on our proposed changes.<sup>9</sup>

The outcome of the consultation was announced in March 2004 in two parts, the first pertaining to the application rules and the second to the inquiry rules. The main proposed changes to the application rules were:

to require applicants to send the Secretary of State, at least 28 days before an application is made, a draft of the proposed Order; and a draft Explanatory Memorandum explaining the purpose and effect of the Order provisions;

to require applicants to submit with their applications a summary report of their consultations; an Explanatory Memorandum; and a concise statement of the aims of their proposals;

to enable the Secretary of State to require further information where he is not satisfied that adequate information has been provided with an application (such power to be exercised within 28 days of the application);

to delete a present requirement for applicants to have to give advance notice of their proposed applications to certain statutory bodies;

to provide for the electronic transmission of documents, where the recipient agrees to service by this means;

to exempt applicants from having to serve copies of documents that the prospective recipient has confirmed they do not require;

to remove some duplication that presently exists in the requirements upon applicants to serve notices on those affected by a scheme, and to update the list of bodies entitled to receive a notice;

to provide a suitably disciplined and timetabled 'end to end' process for exchanging written representations in cases that do not go to an inquiry;

to make other miscellaneous changes designed to simplify or clarify the rules and remove anomalies.<sup>10</sup>

The main proposed changes to the inquiry rules were:

to require the Secretary of State to provide, before an inquiry, a statement of the matters about which he particularly wishes to be informed;

---

<sup>9</sup> DfT press notice, "[Jamieson announces proposals to improve the handling of TWA applications](#)", 2 September 2004

<sup>10</sup> DfT, [Summary of main proposed changes to TWA procedures](#), 24 March 2004

to give those parties who provide a pre-inquiry statement of their case an opportunity to comment, before the inquiry, on statements provided by others;

to provide for the electronic transmission of documents, where the recipient agrees to receive documents by this means;

to require an Inspector's proposed timetable for a major inquiry to be agreed in advance with the Secretary of State;

for major inquiries only, to enable the Secretary of State to appoint a 'technical adviser' to provide an expert assessment of technical or scientific evidence; and to appoint a 'mediator' to try to resolve differences between parties (subject to prior consultation with affected parties);

to enable parties to produce an agreed 'statement of common ground', setting out the factual information on which they are agreed, with the statement then being put before the inquiry;

to require parties to provide proofs of evidence not later than 4 weeks before an inquiry, rather than 3 weeks as at present;

to exempt applicants from having to distribute documents before an inquiry that the prospective recipient confirms it does not require;

to give Inspectors a power to curtail cross-examination which threatens the inquiry timetable; and

to enable the Secretary of State to disregard written representations received after an inquiry.<sup>11</sup>

The changes to the inquiry rules came into force on 23 August 2004 under the *Transport and works (inquiries procedure) rules 2004* (SI 2004/2018). The new rules for the applications procedure are contained in the 2006 Statutory Instrument, highlighted in the previous section.

#### **4 Devolved areas**

Scotland has a different system for new railway works. The *Private Legislation Procedure (Scotland) Act 1936* provides the machinery by which persons must proceed if they wish to obtain Parliamentary powers in regard to matters affecting public or private interests in Scotland. The procedure is different from that relating to a Private Bill in England and Wales. The scope of Orders under the 1936 Act is far wider than is the case for other special procedure Orders where the subject matter is limited to the particular concerns of the enabling Act. The 1936 Act, by contrast, covers virtually every matter in respect of which persons are entitled to seek Parliamentary powers by means of a Private Bill. Railway or other projects crossing the border with England are likely to be subject to Private Bill procedure before the UK Parliament rather than a combination of applications under the 1936 Act and the TWA.

Since the passing of the *Government of Wales Act 1998*, which established the National Assembly for Wales, applications for TWA orders relating wholly to Wales are now determined by the Assembly. TWA applications which relate to both England and Wales – for

---

<sup>11</sup> *ibid.*

example a new railway line crossing the border – would be determined by the relevant Secretary of State.

The TWA does not apply either in Northern Ireland, where such works may be authorised by Private Bills, Orders in Council and subordinate Orders.