

**EXPLANATORY MEMORANDUM TO**  
**THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS**  
**PROCEDURE) (ENGLAND AND WALES) RULES 2006**

**2006 No. 1466**

1. This explanatory memorandum has been prepared by the Department for Transport. It is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The instrument revises the procedures governing the making of applications for, and objections to, Orders under sections 1 and 3 of the Transport and Works Act 1992 ("the TWA").

2.2 These Rules are designed to:-

(a) make the process for considering TWA Order applications, and objections to them, more efficient and effective; and

(b) implement the amendments that have been made to the European Directive on Environmental Impact Assessments (EIA) by EC Directive 2003/35/EC.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The Committee's attention is drawn to paragraph 7.6 below regarding the proposed increases in fees for making applications.

**4. Legislative background**

4.1 The instrument is an Order made by the Secretary of State under powers conferred by sections 6, 6A, 7(3)(b) and (c) and (4) and 10 of the TWA. It replaces the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000 (SI 2000/2190), subject to transitional provisions.

4.2 In addition to the amendments made to improve the process for considering TWA Order applications, the instrument also implements the amendments required to comply with EC Directive 2003/35/EC (known as "the Public Participation Directive").

4.3 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. A Transposition Note showing how Directive 2003/35/EEC has been implemented in the TWA procedures is attached to this Memorandum.

## **5. Extent**

5.1 This instrument applies to England and Wales. It has been made with the agreement of the National Assembly for Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Orders under section 1 of the 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.

7.2 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.

7.3 Although there have, in the last few years, been significant improvements in the time taken to decide TWA Order applications, the Department is keen to improve decision times 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.

7.4 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 duplicatory requirements. Overall, the changes are expected to produce a quicker decision-making process, in the interests of all interested parties.

7.5 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.

7.6 At the same time as amending the procedures, the Department has raised the fees payable by applicants (which were last revised in 2000) by an average of 10%, so as to give a fairer reflection of the Department's costs in 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 Department's costs of processing this type of application. Following consultation, there have been no objections to these increases.

## **8. Impact**

8.1 A Regulatory Impact Assessment (RIA) is attached to this memorandum. 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.

8.2 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.

8.3 The Department carried out two consultation exercises into its proposals to improve the TWA applications process. The RIA includes details of the consultation undertaken. In summary, respondents to the two 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 led the Department to believe that its proposals require substantial change.

## **9. Contact**

9. Ellis Harvey, Head of the TWA Orders Unit at the Department for Transport, 9<sup>th</sup> Floor, Southside, 105 Victoria Street, London SW1E 6DT (e-mail [ellis.harvey@dft.gsi.gov.uk](mailto:ellis.harvey@dft.gsi.gov.uk); telephone 0207 944 2483) can answer queries regarding the instrument.

## TRANSPOSITION NOTE

**TRANSPORT AND WORKS ACT 1992 ("TWA")**

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006 ("The Rules")**

**TRANSPORT AND WORKS (ASSESSMENT OF ENVIRONMENTAL EFFECTS) REGULATIONS 2006 ("The ECA Regulations")**

**ARTICLE 3 OF COUNCIL DIRECTIVE 2003/35/EC, WHICH AMENDS THE PUBLIC PARTICIPATION AND ACCESS TO JUSTICE REQUIREMENTS OF COUNCIL DIRECTIVE 85/337/EEC ("the EIA Directive": this was previously amended by Directive 97/11/EC)**

ARTICLE	OBJECTIVE	IMPLEMENTATION	RESPONSIBILITY
3.1	Article 3.1 incorporates into the EIA Directive definitions of "the public" and "the public concerned", with the latter including non-governmental organisations (NGOs) promoting environmental protection.	We do not consider that it is necessary, or would be helpful, to incorporate similar definitions into the Rules. It is already clear whether particular provisions apply to the public at large or to the public concerned.	The Secretary of State.
3.2	Projects serving national defence purposes were previously excluded from the scope of the EIA Directive. The replacement provision enables such projects to be exempted on a case by case basis if compliance would adversely affect those purposes.	Rule 7(3) and paragraphs 4 and 5 of Schedule 7 have been amended to enable the Secretary of State to exempt from EIA requirements projects which serve national defence purposes where the carrying out of an EIA would have an adverse effect on those purposes.	Only the Secretary of State may exempt a project from the EIA requirements of the Rules.

3.3	Where, exceptionally, a Member State exempts a project from the requirements of the EIA Directive and requires an alternative form of assessment, any information obtained under that alternative form of assessment is to be made available to the public concerned.	It is unnecessary for the Rules to accommodate this amendment as they do not provide for an alternative form of assessment to the normal EIA. The view is taken that (except where an exemption is given for national defence reasons) any TWA projects should continue to be subject to the full EIA requirements.	The Secretary of State
3.4	This amends the public participation requirements in Article 6 of the EIA Directive. The main changes are to specify in more detail the information about which the public is to be informed; and to require publicity to be given to environmental information which only becomes available after initial publicity has been given to the proposals.	<p>Most of the new notification and consultation requirements are already adequately catered for in the TWA and in the existing Transport and Works (Applications and Objections Procedure) Rules 2000 ("the Applications Rules"). To the extent that they are not, the following necessary amendments have been made to the TWA (through the ECA Regulations) and to the Applications Rules.</p> <ul style="list-style-type: none"> <li>• To ensure that the Secretary of State has the necessary power to introduce all the required amendments to the Applications Rules, the ECA Regulations insert a new section 6(2B) in the TWA.</li> <li>• The ECA Regulations amend section 7(3)(b) of the TWA, so as to ensure that suitable public notices of any draft orders which the Secretary of State proposes to make under section 7 are published in both the London Gazette and in local newspapers.</li> <li>• The ECA Regulations amend section 9(3)(a) of the TWA, so as to ensure that suitable public notices of any application which the Secretary of State considers to be</li> </ul>	The Secretary of State is responsible for complying with the publicity requirements of sections 7(3)(b) and 9(3)(a), and for ensuring that TWA applicants comply with the publicity requirements imposed on them under the TWA and the Applications Rules.

		<p>of national significance are published in local newspapers.</p> <ul style="list-style-type: none"> <li>• The prescribed forms of notice of application in Schedule 2 to the Rules have been amended to ensure that the public are informed where a project is subject to an EIA.</li> <li>• Rules 14(1) and (5) have been amended with regard to the information to be included in London Gazette notices and the notices to go to Schedule 6 bodies to ensure that the notices specify where a project is subject to an EIA.</li> <li>• A new rule 16(4) has been introduced to enable the Secretary of State to direct the applicant to take such steps as are necessary to ensure that the public are informed if a project is likely to have significant effects on the environment of another Member State.</li> <li>• A new rule 17(6) has been introduced to ensure that (where the Secretary of State considers it necessary) any further environmental information provided voluntarily by the applicant is publicised in the same way as the initial environmental information.</li> </ul>	
3.5	This amends Article 7 of the EIA Directive, relating to projects with significant transboundary effects, so that the information requirements of the amended Article 6 of the EIA Directive apply also to transboundary cases.	We consider that the amended rule 16, taken in conjunction with the other rule changes, meets the requirements of the amended paragraphs 1 and 2 of Article 7 of the EIA Directive.	The Secretary of State is responsible for arranging for information to be supplied to other

	It also amends article 7.5 to require Member States to ensure effective public participation within their own territory for projects located outside their territory but which could affect their environment.	Compliance with the amended Article 7.5 is outside the scope of the TWA procedures and requires central co-ordination within Government.	Member States in such cases.
3.6	This amends Article 9 of the EIA Directive, dealing with the requirement to publicise the decision made on an application. The information to be made available to the public now has to include information about the public participation process.	<p>The ECA Regulations amend section 14(2) of the TWA so as to require decision notices to give (amongst other things) information about the public participation process.</p> <p>The ECA Regulations insert a new section 14(2A) into the TWA, and amend section 14(4), so as to ensure that suitable public notices of all TWA decisions are published in both the London Gazette and in local newspapers.</p>	The Secretary of State is responsible for ensuring that decision notices give the required information, and for publishing the London Gazette notice. The applicant is responsible for publishing the local newspaper notices.
3.7	This introduces a new Article 10a into the EIA Directive, requiring that members of the public with a sufficient interest have access to a review procedure to challenge the legality of decisions, acts or omissions subject to the public participation provisions of the Directive. It also requires that practical information is made available to the public about access to such a procedure.	<p>It is considered that the existing procedures for challenging TWA decisions (in section 22 of the Act and by judicial review) already satisfy the requirement for a review procedure.</p> <p>The amended section 14(2) of the TWA (see Article 3.6 above) requires decision notices to give information about the right to challenge the validity of the decision, and the procedures for doing so.</p>	The Secretary of State.
3.8	This amends Annex I of the EIA Directive, which lists the types of project for which EIA is	The definition of “the Directive” in rule 4 has been updated to include a reference to Directive 2003/35/EC.	It is for the Secretary of State to ensure that an

	<p>automatically required, to make it clear that it includes any change or extension to an Annex I project where the change or extension itself meets the Annex I criteria.</p>	<p>The provisions of rule 7 (which cover the requirement for an environmental statement) make direct reference to Annex I of the EIA Directive, so the amendment to Annex I will be incorporated automatically without the need for any further amendment.</p>	<p>EIA is undertaken for any Annex I project.</p>
3.9	<p>This is a corollary to the amendment to Annex I described under 3.8 above. It clarifies that Annex II to the EIA Directive, which lists types of development that are subject to EIA only if they are likely to have significant environmental effects, only includes those changes or extensions to development which do not fall within Annex I.</p>	<p>The definition of “the Directive” in rule 4 has been updated to include a reference to Directive 2003/35/EC.</p> <p>The provisions of rule 7 make direct reference to Annex II of the EIA Directive, so the amendment to Annex II will be incorporated automatically without the need for any further amendment.</p>	<p>It is for the Secretary of State to ensure that an EIA is undertaken for any Annex II project which is likely to have significant environmental effects.</p>

Department for Transport