

TWA 1992 and other development consent mechanisms



Matthew Henderson
Landmark Chambers

Overview

- Principal mechanisms:
 - TCPA 1990
 - PA 2008
 - TWA 1992
 - Hybrid Bills
- Some other sector specific mechanisms – e.g. Electricity Act 1989

TWA 1992 – types of project

- s. 1 TWA 1992 – *‘an order relating to, or to matters ancillary to, the construction or operation of a transport system of any of the following kinds, so far as it is in England and Wales’*:
 - railway
 - tramway
 - trolley vehicle system
 - system using a mode of guided transport prescribed by order – SI 1992/3231 and 1997/1951 – (i) aerial cableway; (ii) lift; (iii) magnetic levitation; (iv) monorail; (v) road-based with cable guidance; (vi) road-based with rail guidance; (vii) road-based with side guidance; (viii) track-based with side guidance.

- s. 3 TWA 1992 – *‘an order relating to, or to matters ancillary to’*:
 - inland water
 - Interference with rights of navigation
 - prescribed by order – SI 1992/3230 and 1997/2906 – (i) barrage; (ii) bridge; (iii) cable; (iv) fountain; (v) land reclamation; (vi) navigational aid; (vii) observation structure; (viii) offshore installation; (ix) pier; (x) pipeline; (xi) tunnel; (xii) utilities structure.

PA 2008 – type of project

- s. 31 PA 2008 - *‘development [which] is or forms part of a nationally significant infrastructure project’*
- NB s. 1(1A) TWA 1992 – subject to ss. 33(2) and 120(9) PA 2008
- s. 14(1) PA 2008 – definition of nationally significant infrastructure project (“NSIP”) includes:
 - highway development
 - construction or alteration of harbour facilities
 - construction or alteration of a railway
 - Construction or alteration of a rail freight interchange
- Subject to limits and thresholds – e.g.
 - highway development – s. 22(4) PA 2008 – 15 hectares of motorway; 12.5 hectares of other highway with speed limit over 50mph;
 - railways – s. 25(1) PA 2008 – construction – wholly in England; part of approved operator’s network; 2km continuous stretch of track; not on operational land of a railway undertaker or on land acquired for construction of railway; not permitted development.

TWA 1992 - scope of order (1)

- s. 5(1) TWA 1992 – ‘*include those [matters] set out in Schedule 1*’:
 - construction, alteration, repair, maintenance, demolition and removal
 - civil engineering or other works
 - acquisition of land, whether compulsorily or by agreement (and payment of compensation)
 - creation and extinguishment of rights over land (including rights of navigation over water) whether compulsorily or by agreement
 - carrying out of surveys and taking of soil samples
 - charging of tolls & fares
 - making of byelaws
 - & others!

- May be in relation to more than one scheme, system or mode of transport
- Application, modification or exclusion of statutory provisions
- Amendments, repeals and revocations of statutory provisions of local application

TWA 1992 – scope of order (2)

- TWA order does not confer PP – but:
 - s. 16 TWA 1992 allows applicant to ask SoS to deem grant of PP pursuant to s. 90(2A) TCPA 1990 where TWA order made
 - can obtain PP from LPA under TCPA 1990
- s. 19 TWA 1992 – disapplies need for consent under s. 34 Coast Protection Act 1949
- s.15 TWA 1992 – regulations – SI 1992/3138 and 1993/1119:
 - assimilation of procedures – SMC, LBC, CAC – if within 10 weeks (or later but with direction)
 - concurrent consideration of applications under Part 7 of the Transport Act 1968
- s. 5 – in principle possible to exclude other statutory requirements – but “very exceptional circumstances”

PA 2008 – scope of order

- Construction and use – see s. 157 PA 2008
- s. 33 PA 2008 – do not require: planning permission; consent under the Green Belt (London and Home Counties) Act 1938; Pipe-lines Act 1962; Gas Act 1965; Ancient Monuments and Archaeological Areas Act 1979; Electricity Act 1989; Listed Buildings Act. (Note also s. 149A PA 2008)
- s. 115 – PA 2008 – consent for associated development
- s. 120(3) PA 2008 – *‘provision relating to, or to matters ancillary to the development for which consent is granted’* – see also Schedule 5: e.g. excavation/mining; diversion of watercourses and highways; removal of statutory undertakers’ rights and apparatus; operation and maintenance of a transport system; charging tolls, fares etc.
- s. 122 PA 2008 – compulsory acquisition of land – only if: required for development to which DCO relates; required to facilitate or is incidental to the development; or is replacement land under ss. 131 & 132.

Application procedures

- ss. 6, 7 & 10 TWA 1992 – Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006
- Part 5 PA 2008 – note also ss. 42, 47, 48 PA 2008 and the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

Thank you for listening

© Copyright Landmark Chambers 2021

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
🌐 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers/)