

Transport and Works Act orders



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HISTORY

In 1838 Parliament was able to deal with the 62 private bills deposited in a session.

By 1991 Parliament was struggling to deal with half that number.

Solution: get works bills out of Parliament and allow the schemes to be authorised by the Secretary of State aided by an inspector.



Ambit of the TWA Regime (1)

Railways and Tramways:
section 1 TWA

Section 3 TWA

Construction or operation of inland waterway
Works which interfere with rights of
navigation and are of a description in an
order under section 3 – see the 1992 Order

Section 33(2) Planning Act 2008 if DCO
required development may not be authorised
by the TWA



Ambit of the TWA Regime (2)



Section 2

Secretary of State may prescribe modes of guided transport to bring them within section 1

Aim to allow flexibility

Secretary of State has made two orders (1992 order and 1997 amendment)

Ambit of the Regime (3)

Orders made under s.1(1)(d) – guided transport

T+W (Guided Transport Modes) Order 1992 – Article 2

(1) The Secretary of State may make 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—

- (a) aerial cableway;
- (b) lift;
- (c) magnetic levitation;
- (d) monorail;
- (e) road-based with cable guidance;
- (f) road-based with rail guidance;
- (g) road-based with side guidance;
- (h) track-based with side guidance.

Ambit of the Regime (4)

S.4 of the TWA confers a similar power:

The T+W (Description of Works Interfering with Navigation) Order 1992 – Article 2 provides:

2. Descriptions of works

The Secretary of State hereby prescribes works of the following descriptions for the purposes of

section 3(1)(b)(ii) of the Act:

- (a) barrage; (b) bridge; (c) cable; (cc) fountain; (d) land reclamation;
- (e) navigational aid; (ee) observation structure; (f) offshore installation;
- (g) pier; (h) pipeline; (i) tunnel; (j) utilities structure.

Ambit of Regime (5)

- DCO projects are excluded from the regime
- Otherwise the regime is wide, and can be used for a wide variety of transport projects
- The Secretary of State has the power to make further orders to prescribe further description of works.
- Given the Government's levelling up agenda and transport related infrastructure initiatives (Bus Back Better etc..)- it can be expected that more orders will be made under the TWA

Extent of the Powers (1)

Section 5(1) matters “include those” set out in Schedule 1 TWA

Model Clauses:

Section 8 TWA

Transport and Works (Model Clauses for Railways and Tramways) Order 2006

The ambit of the model clauses gives an indication of the extent of the powers

Compulsory acquisition (paragraph 3 of Schedule 1)

Highways – stopping up, street works etc..

Extent of the Powers (2)

Deemed PP (section 90(2A) TCPA 1990)

Section 15 TWA 1992 – assimilating procedures

Listed building consents, and scheduled monument consents –

The Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992

Transport Act 1968 (classification and maintenance of Canal and River Trust's and other waterways)

The Transport and Works Applications (Inland Waterways Procedure) Regulations 1993

Extent of the Powers (3)

Section 5(3) TWA 1992

(3) An order under section 1 or 3 above may—

(a) apply, modify or exclude any statutory provision which relates to any matter as to which an order could be made under section 1 or, as the case may be, 3, and

(b) make such amendments, repeals and revocations of statutory provisions of local application as appear to the Secretary of State to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order;

and for the purposes of this subsection “statutory provision” means provision of an Act of Parliament or of an instrument made under an Act of Parliament.

1.6 of A Guide to TWA Procedures – SofS only prepared to agree to disapplication of statutory requirements in ‘exceptional circumstances’

Advantages and Disadvantages (1)



Inquiry Procedure

Procedure can be lengthy causing

- Delay
- Expense
- Require attendance of witnesses for many days

Advantages and Disadvantages (2)

Inquiry

Clear rules for statements of case and evidence

A promoter can use the initial part of the inquiry to establish the justification for the scheme.

Statutory objectors (section 11(4) TWA 1992) have a right to be heard.

Allows for a thorough examination of the scheme

Advantages and Disadvantages (3)

The influence of policy statements in the decision-making process

There is no equivalent to section 104(3) Planning Act 2008 (in relation to National Policy Statements).

Section 38(6) Planning and Compulsory Purchase Act does not apply to the determination of deemed applications for planning permission

A flexible approach can be taken

Conclusions (1)

The system established by the Transport and Works Act 1992 achieves its intended purposes.

The system could be used more flexibly to make it more effective in operation

Secretary of State

- Greater use of the section 2 powers (guided transport system,)
- Greater use of the section 15 powers (e.g. marine licensing- equivalent to section 149A Planning Act 2008 for DCOs)
- Re-issue the TWA Guide to procedures

Conclusions (2)

Inspectors

PIM – more extensive case management directions

Inquiries

- Effective case management
- Consider more effective use of roundtables (subject to agreement of the parties)

Promoters

More extensive use may be made of section 5(3) TWA



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