

EXPLANATORY MEMORANDUM TO
THE TRANSPORT AND WORKS (APPLICATIONS, OBJECTIONS AND
INQUIRIES PROCEDURE) (AMENDMENT) (ENGLAND AND WALES) RULES
2023

2023 No. 795

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006/1466) and the Transport and Works (Inquiries Procedure) Rules 2004 (S.I. 2004/2018) (collectively “the TWA Rules”). Presently the TWA Rules require that an application for an order under the Transport and Works Act 1992 (c.42) (“the 1992 Act”) is required to be submitted and progressed in paper form, unless a direction from the Secretary of State waiving certain requirements under the TWA Rules has been granted, or consent from statutory consultees is obtained.
- 2.2 This instrument will enable applications applied for under the 1992 Act to be submitted and progressed in an electronic form, instead of in paper form.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales in respect of amendments to the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 and England only for amendments to the Transport and Works (Inquiries Procedure) Rules 2004.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 1 of the 1992 Act allows orders to be granted in relation to the construction or operation of a transport system for one of the following transport systems – a railway; a tramway; a trolley vehicle system; and a system using a mode of guided transport. Section 3 of the 1992 Act allows orders to be granted in relation to the construction or

operation of an inland waterway or carrying out works which interfere with rights of navigation in waters within or adjacent to England and Wales.

- 6.2 Section 6 of the 1992 Act allows the Secretary of State to make rules on the form, content and approach to making and, where necessary for interested parties and the public to inspect, an application for an order under the 1992 Act. Section 9 of the Tribunal and Inquiries Act 1992 (c. 53) allows the Lord Chancellor to make rules on the procedure to be followed for statutory inquiries held by or on behalf of ministers.
- 6.3 The TWA Rules are the respective rules made under each of these enabling powers and require that an applicant for an order under the 1992 Act must submit and progress its application in paper form.
- 6.4 This legislative change will amend the TWA Rules to enable applications for an order under the 1992 Act to be submitted and progress by electronic means including, for England only, where it is determined by the Secretary of State that an inquiry should be held.

7. Policy background

What is being done and why?

- 7.1 The TWA Rules require that an applicant for an order under the 1992 Act must submit and progress its application in paper form.
- 7.2 Most organisations share documents electronically. Electronic transmission results in a quicker transfer of information and documents to those affected by the application proposals. These can be updated with relative ease, and can improve the accessibility and opportunity to respond to the proposals for consultees, i.e. electronic documents can be enlarged, large text versions produced or accessed through text reading software. It is also more environmentally friendly, reducing the paper used to print documents.
- 7.3 These changes to the TWA Rules will enable applications for an order under the 1992 Act to be submitted and progress by electronic means including, for England only, where it is determined by the Secretary of State that an inquiry should be held. Applicants will still be required to provide notice of an application being made and it will still be possible, where required by an interested party, for them to request paper copies of application documents.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Whilst this instrument amends other instruments there is no plan to consolidate the relevant legislation.

10. Consultation outcome

- 10.1 The legislative change was subject to a four-week consultation from 10th March 2023 to 7th April 2023. The consultation was posted on the Government website and councils, transport authorities, regulators, statutory consultees and legal firms who are

involved in preparing, responding or may be affected by applications for Transport and Works Act Orders were notified.

- 10.2 The consultation document can be found at <https://www.gov.uk/government/consultations/moving-away-from-paper-documents-to-progress-an-order-application-under-the-transport-and-works-act-1992>¹ or a paper copy can be requested from the contact and address at paragraph 15.1 below.
- 10.3 Twelve responses were received, and the Consultation Outcome can be found at <https://www.gov.uk/government/consultations/moving-away-from-paper-documents-to-progress-an-order-application-under-the-transport-and-works-act-1992>². Ten of the twelve who responded supported the need for the change in legislation and all but two supported the specific change proposed. The Government is satisfied that the change proposed will not reduce the ability for people to engage with the TWA process and that it may provide accessibility benefits.
- 10.4 Welsh Ministers were consulted on and agreed with the proposals, subject to clarified drafting being incorporated referencing the Welsh Ministers instead of the Welsh Assembly and noting the powers being exercised under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

11. Guidance

- 11.1 When this legislative change is implemented, we will consider whether practical guidance is necessary.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the proposed changes will not impose any direct obligations or costs on industry, business or any other body.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that there is no formal periodic review of this statutory instrument. However, officials at the Department for Transport will monitor implementation of the changes provided by this statutory instrument and may issue guidance in the future.
- 14.2 The instrument does not include a statutory review clause.

¹ <https://www.gov.uk/government/consultations/moving-away-from-paper-documents-to-progress-an-order-application-under-the-transport-and-works-act-1992>

² <https://www.gov.uk/government/consultations/moving-away-from-paper-documents-to-progress-an-order-application-under-the-transport-and-works-act-1992>

15. Contact

- 15.1 Natasha Kopala at the Department for Transport, telephone: 07769 234115 or email: Natasha.Kopala@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Martin Gilmour, Deputy Director for the Planning Transport and Housing Division at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.