

Transport and Works Act orders

A brief guide



For enquiries specific to the Transport and Works Act, please see the contact information at the bottom of page 2.

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Introduction

- 1** An order made under the Transport and Works Act 1992 (the TWA) is the usual way of authorising a new railway or tramway scheme in England and Wales. Other types of scheme that can be authorised by TWA orders are described in this guide.
- 2** Applications for TWA orders are made, in England, to the relevant Secretary of State and, in Wales, to the Welsh Assembly Government. Applications are made by (or on behalf of) the promoters of the scheme. The procedure that has to be followed allows any interested person to have their say before the Secretary of State or the Welsh Assembly Government take their decision.
- 3** The kinds of scheme that may be authorised by a TWA order can have a very important role to play in improving the country's infrastructure. Better public transport services, for example, can help reduce traffic congestion, help people get to their destination more quickly, and generally give people a better quality of life.
- 4** But schemes that are sent for approval under the TWA can also give rise to objections from people whose property or business is affected, or who may be concerned about the effect on the local environment. The purpose of the procedure is to allow the Secretary of State, or the Welsh Assembly Government, to come to an informed view on whether it is in the public interest to make the TWA order.
- 5** The Secretary of State or the Welsh Assembly Government consider each application carefully and without bias. They make decisions only after considering all the comments made – sometimes through a public inquiry.

They can make TWA orders (with or without amendments) or they can reject them.

- 6 This guide takes you through the TWA procedure, by using questions and answers. We have written it mainly for the benefit of those who want to take part in the procedure, or who are considering whether to do so.
- 7 If you need more guidance on the procedure, or an explanation of anything in the booklet, please let us know. Our contact details are below. Please note, though, that we cannot discuss the merits of any particular case, or give any indication of what the decision might be.

Important note

- 8 Although we have made every effort to make sure that this guide is accurate, it is not legally binding. If you want to take part in the TWA process, you should decide whether to get your own legal or other professional advice.

Who are we?

- 9 We are the TWA Orders Unit in the Department for Transport. You can contact us at:

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See Q17 for more information about our role.

Questions and answers

Part 1 – General

Q1 What is a TWA order?

Orders under the Transport and Works Act 1992 (the TWA) can authorise guided transport schemes (see Q2) and certain other types of infrastructure project in England and Wales.

Promoters of schemes of this kind often need a range of powers to put their scheme into practice.

Under the TWA, a promoter can apply to the Secretary of State (or to the Welsh Assembly Government for schemes entirely in Wales) for an order giving those powers. The order, if made, is known as a TWA order.

The powers that can be given in a TWA order can be very wide-ranging. For example, the promoter of a new railway or tramway scheme may need compulsory powers to buy land or to close streets. A TWA order can grant these powers.

Putting the scheme into practice could affect people's enjoyment of their property and affect the environment. Because of this, applications for TWA orders have to follow a set procedure which allows people to give their views on the proposals.

Q2 What types of scheme can a TWA order cover?

Orders under the TWA can relate to the construction or operation of the following kinds of transport system:

- railways and tramways;

- externally guided buses, monorails and certain other types of guided transport; and
- trolley vehicle systems.

TWA orders can also relate to:

- the construction or operation of an inland waterway; and
- certain types of works that interfere with rights of navigation in waters up to the limits of the territorial sea. These include bridges, piers, barrages, tunnels, offshore wind farms and so on.

Q3 Who can apply for a TWA order?

The TWA does not limit who can apply for an order. This can be private companies and public authorities.

Typical TWA order applicants are Network Rail, passenger transport executives, London Underground, local authorities, private operators of heritage and leisure railways, and private companies wanting to develop guided transport schemes or works that interfere with navigation rights.

Q4 Who decides whether or not to make a TWA order?

In England it is the relevant Secretary of State who decides whether or not to make an order. For example, if the scheme is for a transport purpose, this is the Secretary of State for Transport. Public notices, which are published before and after an application is made, say which Secretary of State will make the decision.

In Wales, the Welsh Assembly Government decides whether or not to make TWA orders. References in the rest of this guide to ‘the Secretary of State’ include the Welsh Assembly Government.

Q5 What can a TWA order allow a promoter to do?

The kinds of matters that can be authorised by a TWA order include:

- powers to construct, alter, maintain and operate a transport system or inland waterway;
- powers to carry out and use works that interfere with navigation rights;
- compulsory powers to buy land;
- the right to use land (for example, for access or for a work site);
- amendments to, or exclusion of, other legislation;
- the closure or alteration of roads and footpaths;
- provision of temporary alternative routes;
- safeguards for public service providers and others; and
- powers for making bylaws.

These are only typical examples – it is not a full list. The powers applied for must be relevant to the scheme. They may relate to matters that are necessary to support the scheme – for example, providing a park-and-ride site in connection with a new tramway or guided bus scheme.

Q6 Does the TWA order include planning permission?

A TWA order does not in itself grant planning permission. But the organisation applying for the order can ask the Secretary of State to grant planning permission for any development described in the order.

The Secretary of State would only grant planning permission if he or she decided to make the TWA order. He or she would do so at the same time as the order was made, and may attach conditions to it. On the other hand, the organisation applying for a TWA order may apply for planning permission, separately, to the local planning authority (usually the district or unitary council).

Planning permission may not be needed for some kinds of work, such as replacing railway and tramway track on an existing transport system.

Q7 What about listed building consent and other consents?

Sometimes a scheme requires a listed building consent or a conservation area consent or another type of consent in addition to a TWA order. In that case, the organisation applying for the TWA order usually applies for these consents at the same time as they apply for the order.

Where the different (but related) applications require decisions from different Secretaries of State, the Government departments involved liaise to make sure the whole process is co-ordinated.

Q8 What is involved in a TWA order application?

Applications for TWA orders, and objections to them, must follow the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules. If you want a copy of the latest (2006) version of the Rules you can get one from The Stationery Office Ltd, whose contact details are given in the answer to Q39, quoting SI 2006 number 1466. Or you can view the Rules on-line at <http://www.opsi.gov.uk>.

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;
- 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 (see Q9 below).

Q9 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.

Part 2 – Making your views known

Q10 How can I object to a TWA order application?

The notices of the application (see Q9) 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.

When objecting to a TWA order application, **please write clearly** – giving your name and address in block capitals if you are writing your letter by hand.

Please note that, in the interests of fairness, we must send a copy of your objection to the applicant. We may also let others have a copy if they ask for it (including any personal information contained in it). If the case goes to a public inquiry, your objection is sent to the inspector who is holding the inquiry and it is made available for inspection in a library of inquiry documents.

We write to you to let you know we have received your objection and give you a reference number. We keep details of your objection on a database, which we only use for correspondence in connection with the TWA order application.

You may send petitions against an application to the Secretary of State. They are treated as one objection made by the person or group organising the petition. Individually signed letters are accepted as individual objections.

Please note that TWA order applications are decided entirely on the merits of the arguments and not by comparing the numbers of objection and support letters received.

If you want to write a letter of support, please see Q15.

Q11 What are statutory time limits?

So that the procedures are disciplined, there are time limits for the various steps that the Secretary of State and everyone else involved have to follow. These are set out in the Applications and Objections Procedure Rules and – if a public local inquiry is held – in the Inquiries Procedure Rules.

The main time limits are set out in the answers in this guide. The Secretary of State can extend the deadlines if he or she considers this necessary, in which case we inform all those with an interest.

Q12 Who is a statutory objector?

A ‘statutory objector’ is normally someone whose land, or rights in land, may be bought compulsorily under the TWA order, and who makes an objection in line with the rules. This could be an owner, a lessee, an occupier or a tenant of the land (or any building on it).

Any local authority for the area in which any works would be carried out would also be a statutory objector if they made objections to the application.

If you are a statutory objector, the following rights apply.

- You can, if you wish, have your objection heard before a person appointed by the Secretary of State. We will ask you about this when we acknowledge your objection. However, you cannot be heard privately. If necessary the Secretary of State will arrange for either a public inquiry or a less formal (but still public) hearing.
- If a public inquiry is held, whether or not you asked for one, you are entitled to speak at it.
- You can require the inspector to carry out a site visit during or after an inquiry, accompanied by you or your representative and at least one representative of the applicant. Inspectors do, however, make at least one site visit as a matter of course.
- If you are successful (or partly successful) in opposing the proposed compulsory purchase of your land, you are usually awarded your costs (see Q39).

Q13 What if my objection is late?

The Secretary of State may be prepared to accept an objection which is made after the end of the objection period. But he or she would not wish to hold up the procedures because of that, and you might miss out on some of the guidance given at different stages of the procedures. You could also lose out on some of the benefits of being a ‘statutory objector’.

So you are advised to make any objection within the objection period – both in your own interests and in fairness to the other people involved.

Q14 What can I achieve by objecting?

All objections and other comments are carefully considered before a decision is taken on a TWA order. The outcome is certainly not a foregone conclusion. In the past, orders have been rejected or amended, or have had conditions attached to a related planning permission, as a result of objections.

Q15 How can I support an order application?

You can support a TWA order application in exactly the same way as you can object to it – see the answer to Q10. You should provide the same information, and in the same way, as is set out in that answer.

As long as you meet those requirements, your letter will be considered as part of the TWA process. A copy is sent to the applicant, and may be disclosed to others.

Q16 What if I support a scheme, but object to part of it?

It is not uncommon for people to support a scheme generally, but to object to a part of it which affects their own interests. In that case, their letter is treated as an objection.

Occasionally, comments are expressed in a neutral way – perhaps raising a query on the effect of part of an order, or making a number of points which do not seem to support or oppose an order. These letters would be considered as part of the application process in the same way as any objection and support letters.

Q17 What is the role of the Transport and Works Act (TWA) Orders Unit?

We receive objections and other letters on behalf of the Secretary of State for Transport, and carry out the subsequent procedures on his or her behalf. We also process applications for schemes in Wales, on behalf of the Welsh Assembly Government – although the eventual decision in these cases rests with the Assembly.

We are unbiased and so are neutral when we deal with the TWA order applicant, objectors and supporters. We aim to make sure that the procedures are carried out fairly and properly.

We will be glad to offer guidance on the procedures, but we cannot discuss the merits of a case.

Part 3 – The next steps

Q18 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. These different procedures are explained in more detail over the next few pages.

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 (see Q21).

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 (see Q22).

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.

Q19 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.

Q20 What is a public inquiry?

A public inquiry, before an inspector, is a way of allowing everyone involved to present their cases orally, and to test the arguments of other people, within a structured framework.

Some people, like the applicant and statutory objectors, are entitled to give evidence and to cross-examine other people. Anyone else can do so with the inspector's permission. It is normal practice for inspectors to allow anyone to speak who has something relevant to say.

The procedures before and during the inquiry are explained further in Part 4. The pre-inquiry procedures are designed to make sure that everybody can exchange as much information as possible before the inquiry opens. This allows the inquiry to focus on the main issues in dispute.

Inquiries are held at a suitable local venue, although with schemes affecting a very wide area it might be necessary to hold the inquiry at several venues.

Q21 What is a hearing?

The Secretary of State may arrange a hearing instead of an inquiry. Hearings are still held in public but they are usually like a round-the-table discussion, led by the inspector. They should allow everybody to present their case in a more relaxed and less formal atmosphere than at an inquiry. As with an inquiry, the inspector would provide a report afterwards to the Secretary of State, giving recommendations.

However, a hearing is unlikely to be suitable where there are many people involved, or where there are complicated technical issues involved which are likely to need testing by cross-examination.

As there are likely to be very few TWA cases that a hearing will be suitable for, this guide does not provide detailed guidance on the procedure. Should it be decided to hold a hearing, we would write to everybody involved to let them know about the procedure.

Q22 What are written representations?

If there are relatively few objections, and no statutory objector wishes to use their right to be heard, the Secretary of State may deal with the application on the basis of written submissions alone. The applicant and objectors are each invited in turn to comment in writing on the other's arguments. This usually provides a quicker route to a decision and is less costly and time-consuming for everyone involved.

We inform everyone involved that we are processing the case in this way, and ask the applicant to provide comments on each objection within 28 days. We then send the applicant's comments

to the objectors, who have 21 days to provide any further comments. If the objectors have no further comments to make, the Secretary of State may proceed to decide the application.

If any objector provides further comments, the applicant is given a further opportunity to respond. If the applicant does not want to add anything else, the procedure then closes (unless the Secretary of State requires further information). If, however, the applicant raises any new matters, we would send these to the objectors, setting a deadline for further comment.

The Secretary of State will not want the process to last any longer than necessary by carrying out endless exchanges. Please note that any comments received outside the specified time limits may be disregarded.

Q23 Is use of e-mail permitted?

When sending letters and other documents under the procedure rules, you can do this by e-mail or other electronic means – provided that the person receiving the document consents to this. Likewise, if the applicant wishes to send you a document electronically, they must first obtain your consent.

If you agree to receive a document electronically, but when you receive it you find it unsuitable (for example, you have difficulty reading or printing it) you can, within 7 days, ask to be sent a paper copy.

For our part, we are usually happy to receive letters by e-mail, as this helps to save time and expense. But if you wish to send a longer document to us by e-mail, or by a computer disk, you should check with us first.

If the case you are interested in does not require a public inquiry, please go to Part 5.

Part 4 – Public inquiries

Q24 How do I appear at a public inquiry?

When we acknowledge your objection or comment, we ask if you would like to appear (that is, present oral evidence) at an inquiry, if one is held.

If you tell us that you would, and an inquiry is held, we ask you to provide a written statement of case (see Q25) within 6 weeks (or any longer period that the Secretary of State may allow).

If you decide later that you do not, after all, want to appear at the inquiry, you can still send more written evidence to the inspector – preferably before the inquiry opens.

Q25 What is a statement of case?

A statement of case is a written statement containing full details of the case that you want to present to the inquiry. This should include a list of any documents that you intend to refer to or give as evidence, and copies of those documents (or just relevant extracts, if the documents are long).

You must send your statement of case to us and to the applicant, who makes all statements available for inspection. You will in turn receive a copy of the applicant's statement. Anybody who is asked to provide a statement of case and who does so is entitled to appear at the inquiry.

If you wish to comment on somebody else's statement, you can do so at any time up to 6 weeks before the inquiry opens. You should send any further comments to the Secretary of State (at the address at the end of the Introduction), to the applicant, and to the person whose statement you are commenting on (if that is not the applicant). Alternatively, you may make additional comments in a proof of evidence (see Q30) or at the inquiry itself.

The purpose of this pre-inquiry exchange of statements of case is to allow everybody to familiarise themselves with the other side's arguments so that everybody is well prepared for the inquiry. This helps to make best use of time at the inquiry, which can then focus on the matters that are really in dispute.

If you consider that you have already set out your case in full in your objection letter, you could ask for your objection letter to be treated as your statement of case. But please bear in mind that the fuller the statements of case are, the more this helps the inquiry. **There is nothing to be gained from deliberately withholding arguments or evidence until the inquiry opens.**

Q26 Does the inquiry deal with planning issues?

If the TWA order application comes with a request for planning permission (see Q6), this is considered at the same public inquiry.

The inspector will wish to hear evidence about the planning merits of the scheme and about any conditions that should be set. His or her report will include conclusions and recommendations on whether or not planning permission should be given, and on what conditions should be set if permission is given.

Q27 What about listed building consent and other consents?

The inquiry may also consider any other related applications, such as an application for listed building consent or conservation area consent.

An assessor may be appointed to advise the inspector about these consents at the inquiry. If so, the assessor may ask questions at the inquiry and write a report to the inspector afterwards on whether or not the consents should be given.

Q28 What is a pre-inquiry meeting?

Where a TWA inquiry is likely to run for some time, the inspector will probably wish to hold a pre-inquiry meeting. This is usually held at the same venue as the inquiry, and normally takes place about a couple of months before the inquiry opens, although this can vary.

The meeting is mainly to discuss the practical arrangements for the inquiry and to set an inquiry programme. **There can be no discussion at the meeting of the merits of the application or of any related consents.**

Anyone who intends to appear at the public inquiry is invited to attend this meeting, and they will find it helpful to do so. It also helps the inspector to plan the inquiry if he or she knows who wants to speak about which issues, whether they will call witnesses, how long their evidence may take and so on. The inquiry programme officer (see Q29) circulates an agenda for the pre-inquiry meeting beforehand.

Q29 Who is the programme officer?

For other than very short inquiries, a programme officer is usually appointed to help the inspector in preparing for the inquiry, including recording and sending out inquiry documents, and to assist the inspector at the inquiry itself.

The programme officer, once appointed, works for the inspector, and is therefore required to act neutrally.

Q30 What is a statement of matters?

Before the inquiry, the Secretary of State provides a list of the issues that he or she particularly wants to be informed about in order to come to a decision. This is to help the inquiry focus on the key issues and is known as a ‘statement of matters’.

The inspector is expected to make sure that these matters are examined and reported on. But this does not prevent the inspector from hearing evidence on any other matters that he or she considers relevant.

We send the statement of matters to those who want to appear at the inquiry and to all statutory objectors. If you do not receive a copy, you can get one from us or from the inquiry programme officer.

Q31 What are proofs of evidence?

Often, people who plan to speak at an inquiry wish to read from a prepared statement – known as a ‘proof of evidence’. Unlike a statement of case, this sets out word-for-word what somebody plans to say. If you intend to produce a proof of evidence, you must send it to the inspector and to the applicant no later than

4 weeks before the inquiry opens (or any later date that the inspector may specify).

If your proof of evidence is longer than 1,500 words, you must send with it a written summary. You must also enclose a copy of any documents you have mentioned in it (or relevant extracts) **unless** these have already been supplied with your, or somebody else's, statement of case (see Q25).

Arrangements for sending in proofs of evidence are usually discussed at the pre-inquiry meeting.

The applicant must make all proofs of evidence and summaries available for inspection. Applicants are also required to send a copy of their proof of evidence and summary to any statutory objector and to anyone else who has provided a statement of case.

The reason for this arrangement is to save time at the inquiry. It means that people who had previously planned to read out a long prepared statement need only read out a summary of it. (You can **only** read out the summary unless the inspector allows otherwise.)

However, since the full proofs of evidence are available for inspection before and during the inquiry, they are treated as though they have been given in evidence, and questions may be asked on them. In this way, nobody is disadvantaged.

Q32 What happens at a public inquiry?

The procedure to be followed at the inquiry is largely for the inspector to decide. The inspector will want to make sure the inquiry is run efficiently and effectively, and that those who want to present evidence are given a fair opportunity to have their say.

The inspector sets the order in which evidence is given and questions are asked. However, the applicant normally begins and has the final right of reply.

To make sure the inquiry runs efficiently, the inspector may refuse to allow somebody to give evidence or to cross-examine if this appears to the inspector to be irrelevant or repeating what has already been said. The inspector may also ask any person behaving in a disruptive way to leave. In either situation, the person affected may give written evidence before the inquiry closes.

The inspector has the power to adjourn (suspend) the inquiry if necessary – for example, if somebody needs time to consider some new evidence that has been presented. The inspector either announces at the inquiry when and where it will re-open, or else gives reasonable notice of these arrangements.

Q33 Do I need a solicitor at the inquiry?

Nobody has to be represented at an inquiry by a solicitor or any other professional representative. It is entirely up to you whether you think a solicitor could help you to present your arguments more effectively.

Inspectors are used to hearing evidence from unrepresented individuals, some of whom are unused to speaking at a public inquiry, and they allow for this. Their concern is with the merits of the arguments rather than with who makes them. Whoever gives evidence is advised to:

- stick to the point;
- be as brief as possible;

- avoid repeating points that have already been made; and
- make sure their evidence is relevant to the topic that is being discussed.

Q34 How will I know when I am due to appear at the inquiry?

You should contact the programme officer who can tell you when it will be your turn to give evidence. The programme officer also lets you know about any changes to the timetable.

Q35 Will the inquiry inspector make a site visit?

The inspector may visit the site alone before or during the inquiry.

The inspector may also, during or after an inquiry, visit a site with a representative of the applicant and any statutory objector (and must do so if those people ask him to). However, the merits of the case cannot be discussed during a site visit.

Q36 Can I give more evidence during or after the inquiry?

If you decide before the close of the inquiry that you want to add to evidence you have already given, you may do this in writing or, with the permission of the inspector, orally.

If you want to present more arguments or evidence after the inquiry has closed, you must contact the Secretary of State (by writing to the address at the end of the Introduction) rather than the inspector.

The Secretary of State has the power to disregard any representations received after the inquiry. If, however, the Secretary of State considers that the new evidence is important enough to affect the decision, he or she would give others who appeared at the inquiry an opportunity to comment on it. In certain circumstances, the inquiry may be re-opened, although this is very unusual.

Q37 What if I decide to withdraw my objection?

You are free to withdraw your objection at any time up to the decision. This can often arise as a result of negotiations with the applicant. If the inquiry is still running, you should tell the inspector. If it is after the inquiry, you should tell us as soon as possible.

Q38 What happens when the public inquiry ends?

Once the inspector has formally closed the inquiry, he or she writes a report to the Secretary of State. This summarises the arguments presented and gives the inspector's conclusions and recommendations.

There is no hard and fast rule for how long it takes an inspector to write a report, as this depends on factors like how complicated the case is and how long the inquiry lasted.

Q39 Can I claim my costs for appearing at the public inquiry?

Those who take part in an inquiry are normally expected to meet their own costs. The limited exceptions to this are as follows.

Firstly, if one person considers that another has acted unreasonably and has, as a result, caused them to run up unnecessary costs, they can apply for costs. This might arise, for example, where somebody, without good reason, causes an inquiry to be adjourned or drawn out unnecessarily – such as by sending in a statement of case or proof of evidence late, or by unreasonably raising a fresh issue at a late stage.

To claim back costs because of unreasonable behaviour, you should apply to the inspector before the inquiry closes (unless you are claiming that somebody has unreasonably caused the inquiry to be cancelled at a late stage, in which case you should apply immediately to the Secretary of State).

The inspector considers the arguments of both sides and makes a recommendation to the Secretary of State, who usually takes the decision on costs when deciding the TWA order application. If you apply after the inquiry, we would only accept it if you can show a very good reason for not having applied sooner.

Secondly, if you are a statutory objector and, when the TWA decision is made, you are successful (or partly successful) in opposing the proposed compulsory purchase of the land in which you have an interest, you would usually be awarded costs. We write to any successful statutory objectors when the TWA decision is announced and, at the same time, invite the applicant to say if there is any reason why costs should not be given.

You can find more advice on awards of costs, including examples of unreasonable behaviour, in Circular 3/94 issued by the former Department of Transport (ISBN 0 11 551289 6). You can get a copy from:

The Stationery Office Ltd
PO Box 29
Norwich
NR3 1GN.

Phone 0870 600 5522.

Website: www.tso.co.uk/bookshop

Part 5 – The decision

Q40 What is the decision stage?

The decision stage is when:

- the inspector has reported to the Secretary of State following an inquiry or hearing; or
- the written representations procedure has ended; or
- all objections have been withdrawn,

and the Secretary of State is in a position to consider what decision to take on the TWA order application.

At that stage, the Secretary of State should usually have enough information before him or her to decide the application (and any associated request for a planning permission). If so, he or she comes to a decision and sets out the reasons for it in a decision letter. This is sent to the applicant and to other people who are interested in the outcome.

If a public inquiry has been held, we send copies of the inspector's conclusions and recommendations with the decision letter. We also send a full copy of the inspector's report to anyone who asks for it within 4 weeks of the date of the decision.

Once the decision letter has been issued, we arrange for a notice of the decision to be published in the London Gazette, and the applicant arranges for a notice to go in local newspapers. The TWA order is then signed, a process known as ‘making’ the order.

If the Secretary of State decides to grant planning permission for the proposed development, he or she issues a planning direction when the order is made. The planning direction is likely to include conditions.

The TWA order usually comes into force 3 weeks after it is made. The text of the order is made available on the website of the Office of Public Sector Information at: <http://www.opsi.gov.uk/stat.htm> and paper copies can be purchased from The Stationery Office Ltd (see Q39 for contact details).

Q41 What is a ‘minded to’ letter?

Occasionally, the Secretary of State may consider that he or she does not have enough information to come to a fully-informed decision – even though he or she has a good idea of what the decision is likely to be. For example, there may be one particular aspect of a scheme, or of the proposed order, that he or she needs more information on before reaching a final decision.

In that case, the Secretary of State may decide to issue a letter to everyone involved saying what decision he or she is ‘minded to’ take from the information so far available, but explaining that he or she needs more information on a particular matter or matters. This is known as a ‘minded to’ letter. It is not a decision letter.

Q42 Does the TWA order have to be approved by Parliament?

TWA orders do not normally have to be presented to Parliament before they can come into force.

Very occasionally, though, a ‘special parliamentary procedure’ has to take place before the TWA order can come into force. This may arise because no replacement land is being provided for public open space which can be acquired compulsorily under the TWA order.

In that event, both Houses of Parliament have the opportunity to consider the TWA order. If the special parliamentary procedure is successfully completed, the TWA order comes into force, and is printed and published in the usual way.

Q43 Can I appeal against the decision?

If the Secretary of State decides to make a TWA order, you can challenge this decision in the High Court under section 22 of the TWA – but only on points of law or failure to follow correct procedure.

You can make a legal challenge on the grounds that the decision is not within the powers of the TWA, or that any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been met. You must apply to the High Court within 6 weeks from the day when the decision notice is published in the London Gazette.

If you believe that you have grounds for challenging the decision in the Court, you should get legal advice before taking any

action. An unsuccessful challenge could lead to costs being awarded against you.

The Secretary of State's decision is final unless the Court decides otherwise (and 'sets aside' the decision).

Q44 Can I challenge a decision to reject an order?

If you want to challenge the Secretary of State's decision not to make an order, you may ask for permission from the High Court to start judicial review proceedings.

Any planning direction issued can also be judicially reviewed.

If you want to apply to the Court for permission to review a decision, you should get legal advice.

Q45 How long does the TWA order process take altogether?

This mainly depends on how complicated the proposed order is, how many people object to it and whether a public inquiry is held.

If a public inquiry is held, it may be 6 months or more from the date of the application before the inquiry opens. The length of the inquiry itself mainly depends on how many people want to speak and how complicated the issues are. The inspector then needs to write a report, and the Secretary of State needs to consider the report and come to a decision. This all takes time. The written representations procedure normally provides a quicker route to a decision.

At the decision stage, we work to the following target timescales for issuing the Secretary of State's decision:

- If no objections are made, within 3 months from the end of the objection period.
- If all objections made are withdrawn, within 3 months from when the last objection is withdrawn.
- If the application is dealt with by written representations, within 4 months after the end of the written exchanges.
- If a hearing is held, within 4 months from when we receive the report of the hearing.
- If a public inquiry is held, within 6 months from when we receive the inspector's report.

Q46 Can't the procedure be simpler and quicker?

Although the procedure does seem complicated, it is designed to be equally fair to TWA order applicants and to those who oppose an application, by giving everyone a full opportunity to have their say.

The statutory deadlines make sure that progress can be made without either side using unfair tactics to delay the procedure. The rules concerning the public inquiry are modelled on the ones used for planning inquiries and allow all sides to take part in an efficiently-run inquiry.

The aim of the system is to make sure that the Secretary of State can come to an open, fair and unbiased decision that takes proper account of all the relevant issues.

Q47 Is any other information available about the TWA order procedure?

You can find a much fuller guide to TWA order procedures on our website at: www.dft.gov.uk/strategy/twa. It can be found by following the link 'Guidance on TWA Procedures'. You can also get printed copies from us (see the Introduction for contact details).