

Guidance Note for Promoters of Light Rail - Changes to the Transport and Works Act Order Process and Devolution of TWAO Decision-making

The Government issued a press release on 2 July this year promising the fastest infrastructure planning in a generation as procedural rules for nationally significant infrastructure projects (NSIPs) are overhauled, “*putting the Government on track to exceed its target of at least 150 major infrastructure decisions in this Parliament*”.¹

For reasons which may seem obvious given its inherent local (or regional) focus, light rail falls outside the scope of the Planning Act 2008 and there is no qualifying threshold at which light rail becomes nationally significant for the purposes of the development consent order (DCO) process. It follows that the widely publicised raft of reforms to the DCO regime introduced by the Planning and Infrastructure Act 2025 (2025 Act) which are intended to make it more flexible, proportionate, and responsive do not apply to tram or guided busway schemes.

Less noise has been made about amendments made by the 2025 Act to streamline and improve the Transport and Works Act Order (TWAO) regime, which are also to be welcomed, as well as the radical change to TWAO decision-making anticipated as a result of the English Devolution and Community Empowerment Act 2026 (EDCE Act).

CHANGES TO THE TRANSPORT AND WORKS ACT

Sections 36 to 47 of Chapter 3 (Transport infrastructure) of Part 1 of the 2025 Act have introduced a series of significant changes to the Transport and Works Act 1992 (1992 Act). This briefing is concerned with those changes of potential relevance to light rail promotions.

Duty to hold a public inquiry or hearing

The right of a statutory objector² to require a public inquiry to be held has been removed³. The objector must now make a request in writing for an inquiry and the Secretary of State⁴ will consider whether the objection is “*serious enough to merit such treatment*”.

In principle, this would be a welcome change for promoters when, for example, a single outstanding objection from a statutory objector could be considered

just as thoroughly and fairly by means of written representations. In practice, however, little may change as Government guidance⁵ suggests that the type of objection this would apply to is a mere objection accompanied by no information or an objection solely about compensation for compulsory purchase.

Inquiry costs

The applicant is responsible for meeting the costs associated with holding an inquiry, such as the venue and the Inspector’s fees, although the Secretary of State has always enjoyed a discretion to direct that they be paid by someone else. Now, that power to direct may be exercised by the Inspector on behalf of the Secretary of State.

Further, the applicant will be required “*to pay the costs in question, unless the person exercising the power considers that there is a good reason to exercise it differently*.” What will constitute a “good reason” has yet to be seen, but this does perhaps indicate a move towards making the most obdurate objectors more accountable.

Statutory Deadlines for decision-making

In another welcome change to the current position, the Secretary of State may now make rules about deadlines for deciding applications, as well as for discrete procedural steps. This will require secondary legislation to be brought forward. It is anticipated that prescribed periods will be capable of being varied in individual cases.

In a move clearly aimed at slow-payers, a requirement under the rules (for example, to make a decision on the application) may now be postponed if a fee payable in connection with the application (such as the Inspector’s fees) has not been paid.

Publication of decision and time for bringing challenge

The requirement to publish the making of the decision in the London Gazette is removed. Instead, notice of the decision will be published on a government website, and will include information regarding the right to challenge the validity of the decision and the procedures for doing so.

¹ <https://www.gov.uk/government/news/fastest-infrastructure-building-in-a-generation-as-planning-rules-overhauled>

² A statutory objector is an objector that falls into one of the categories in subsection (4) of section 11 of the 1992 Act, including the relevant local authority or the owner or occupier of land subject to compulsory purchase.

³ Subject to transitional arrangements.

⁴ Or Welsh Ministers as the case may be.

⁵ <https://www.gov.uk/government/publications/transport-and-works-act-orders-a-brief-guide-2006/transport-and-works-act-orders-a-brief-guide--2>

Fees for certain services

Less welcome to promoters of TWAOs may be the prospect of regulations which would, once in force, allow prescribed local authorities to charge an applicant for the provision of advice, information or other assistance (including responding to consultation).

The devil will be in the detail of the regulations and any accompanying guidance but this provision will bring the TWAO regime into line with DCOs, the basic rationale being “the beneficiary pays principle” and the desirability of host local authorities being able to fund the resources necessary to participate in the application process.

Simplification of local authority governance

It is no longer necessary for a local authority to go through the mechanism of formally confirming its resolution to promote or object to a TWAO.

Deemed grant of listed building consent (not yet in force)

The making of a TWAO confers statutory authority to construct, maintain and operate the development concerned but does not provide planning permission. It has always been possible, however, to apply for a grant of deemed planning consent from the Secretary of State alongside the application for statutory powers. For the first time, from a date yet to be appointed, it will also be possible to secure a grant of deemed listed building consent. This will simplify the current position which requires the calling in by the Secretary of State of a separate application.

Prescriptive model clauses to be replaced by guidance

From 1 September 2026 the prescribed model clauses, last modified in 2006, will be replaced with guidance about the preparation of draft orders. The principal advantage of this will be to allow amendments to former model provisions to be made without the need for further statutory instrument. Most orders include a number of provisions that are entirely standard but must nevertheless be specifically explained and justified as departures from the prescribed clauses. It is to be expected that the guidance will allow for greater flexibility in drafting the precise powers required for individual schemes.

It is worth noting, however, that there was generally good reason behind the wording of individual model clauses and anyone drafting orders without the discipline of using, or explaining departures from, model clauses must make sure that they do not inadvertently miss something that later provides crucial to implementation of the scheme. It will still be vital to use experienced parliamentary lawyers to draft orders who can advise on the need for and wording of each provision.

RIGHT TO REQUEST

The other piece of legislation with the potential to change dramatically the landscape for local and regional mass transit schemes in England is the EDCE Act, which received Royal Assent on 26 April.

The EDCE Act provides for the further devolution of powers and transfer of decision-making from central government to Strategic Authorities of which there are several tiers. The top tier is the newly defined “Established Mayoral Strategic Authority” (**EMSA**). There are currently seven EMSAs: Greater London Authority (a bit of a special case) and the regional combined authorities: Greater Manchester; Liverpool City Region; North East; South Yorkshire; West Midlands; and West Yorkshire. These authorities will benefit from longer term integrated funding than previously, with more devolved functions and independence than other Strategic Authorities.

Of particular interest for promoters of light rail is section 53 of the EDCE Act (Requests by mayors of EMSAs for changes) which allows one or more EMSA mayors to notify the Secretary of State of changes relating to strategic authorities which they “believe would secure, or contribute to securing, the effective exercise of functions in relation to any aspect of competence”. In exercising this function, the mayors must have regard to guidance issued by the Secretary of State and, once notification is given, the Secretary of State must respond within six months with a decision and the reasons for it.

It has been widely reported that the Right to Request is intended to be the mechanism by which EMSA mayors may seek devolved powers to authorise mass transit systems in their administrative areas (i.e. those schemes that require a TWAO, currently determined by the Secretary of State for Transport).

Whilst devolution of decision-making will necessitate amendments to the 1992 Act and associated procedural rules, announcements in May demonstrate that the Government is not dawdling on this issue. It has already established a Mass Transit Task Force tasked with improving the delivery of transit systems⁶ and, in a written statement to the House of Commons, the Secretary of State for Housing, Communities and Local Government stated that:⁷

As part of the first round of that new Right to Request process, we are now signing off on a series of new power transfers. As previously announced by the Transport Secretary, we will devolve decisions on Transport and Works Act Orders to Mayors, with a consultation to be launched in the autumn to consider the scope of powers to be devolved. This will provide Mayors more tools to get on with building public transport, like tram networks.

⁶ <https://www.gov.uk/government/news/new-mass-transit-taskforce-to-reshape-the-future-of-transport-in-towns-and-cities>

⁷ <https://commonsbusiness.parliament.uk/Document/105401/Pdf?subType=Standard>

It will be interesting to see how potential conflicts of interest are managed in circumstances where a mayor is empowered to determine a scheme brought forward by its own EMSA.

DUTY TO COLLABORATE

Another development that could prove interesting in the context of bringing forward ambitious regional transport schemes is the new duty of mayoral collaboration introduced by section 23 of the EDCE Act, which is intended to provide a formal process by which mayors can collaborate with their neighbours to deliver projects and strategies together.⁸ The power to request collaboration is very broad - mayors have the power to request collaboration from an adjoining mayor (or mayors) on "any matter which relates to any aspect of any area of competence". Factors to be taken into account when making and receiving requests to collaborate are the improvement of the economic, social, or environmental wellbeing of those who live or work in the relevant areas and the mayors must have regard to any relevant government guidance.

It will be interesting to see how the power is used, and in what contexts, but our view is that it could be relevant to the development of regional public transport infrastructure.

JUDICIAL REVIEW

The Government is currently consulting on whether its recent reforms to judicial review, as it applies to NSIP schemes,⁹ should be extended to other consenting mechanisms, including the TWAQ regime.¹⁰ However, our understanding based on the consultation material is that the Government is primarily concerned with major infrastructure projects directed out of the DCO regime under the new section 35B of the Planning Act 2008 (introduced by the 2025 Act) and other strategically important developments,¹¹ rather than TWAQ orders generally. If reform is limited in this way, it will not affect the authorisation of light rail schemes, but it will be interesting to see what consultation feedback the Government receives on this point and whether, in particular, it might be persuaded that all TWAQs should be subject to the same rules.

CONCLUSION

The changes to the TWAQ regime are to be welcomed and we await with interest the consultation on devolution of decision-making powers. The TWAQ regime remains an important mechanism for authorising transport infrastructure in England and Wales. The statutory process calls for teamwork from the promoter across different disciplines, all operating to specific deadlines to produce relevant and timely input. Early, effective communication and consultation with interested parties and the public will continue to be of vital importance, particularly where decisions are taken locally.

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⁸ <https://www.gov.uk/government/publications/english-devolution-and-community-empowerment-bill-guidance/english-devolution-and-community-empowerment-bill-guidance>

⁹ In summary, the recent reforms in respect of NSIP judicial reviews were targeted at reducing delays for projects consented under the DCO process, and include the removal of a right of appeal for claims which are deemed totally without merit, and the introduction of target timescales for any NSIP judicial reviews.

¹⁰ Open consultation: Judicial review reforms: Beyond Nationally Significant Infrastructure Projects (16 July 2026) <<https://www.gov.uk/government/consultations/judicial-review-reforms-beyond-nationally-significant-infrastructure-projects>> (Consultation Paper). Consultation is open until 27 August 2026.

¹¹ The examples given in the Consultation Paper of strategically important developments include electricity network projects and large grid-scale battery storage projects (which are currently determined under the Town and Country Planning Act 1990) and significant housing developments (of over 150 homes).

This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.