EXPLANATORY MEMORANDUM TO

THE TRANSPORT AND WORKS (ASSESSMENT OF ENVIRONMENTAL EFFECTS) REGULATIONS 2006

2006 No. 958

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

2. Description

2.1 The instrument amends the Transport and Works Act 1992 ("the TWA") to enable the procedures for considering applications for Orders under Part I of the TWA to comply with a European Directive on public participation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative background

4.1 European Directive 85/337/EC (known as "the EIA Directive") has been amended by Article 3 of EC Directive 2003/35/EC (known as "the Public Participation Directive"). In order to ensure that the procedures for considering applications for TWA Orders comply fully with the amended EIA Directive, it is necessary to:

i. revise the secondary legislation governing the making of applications and objections to them (currently the Transport and Works (Applications and Objections Procedure (England and Wales) Rules: SI 2000 No. 2190). Before the proposed new Rules can be made, however, it is necessary to insert a new section 6(2B) into the TWA in order to give an enabling power for some of the required changes.

ii. amend section 7 of the TWA, relating to publicity for draft Orders which the Secretary of State proposes to make under section 7;

iii. amend section 9 of the TWA, relating to publicity for applications which the Secretary of State considers to be of national significance; and

iv. amend section 14 of the TWA, relating to publicity for making or refusing TWA Orders.

4.2 The instrument, which is made by the Secretary of State under section 2(2) of the European Communities Act 1972, makes the necessary amendments to sections 6, 7, 9 and 14 of the TWA. It is intended to make the new Rules, referred to at i. above, once this instrument comes into force, thereby ensuring full compliance with the Directive.

5. Extent

5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for Transport has made the following statement regarding Human Rights: In my view the provisions of the Transport and Works (Assessment of Environmental Effects) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 Orders made under section 1 of the TWA are the usual means of authorising railway, tramway and other guided transport projects in England and Wales. Orders under section 3 of the TWA may authorise inland waterway projects and works interfering with navigation rights in England and Wales. Applications are made by the promoters of schemes (either public authorities or private companies) to the relevant Secretary of State, or to the National Assembly for Wales in respect of projects wholly in Wales.

7.2 The Public Participation Directive is a Directive "providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC". Article 3 of the Directive amends Directive 85/337/EEC ("the EIA Directive") in regard to securing improved public participation in development consent processes.

7.3 In the context of the procedures for considering and determining applications for TWA Orders, the changes required to implement the amended EIA Directive are not substantial, as the TWA procedures already provided for extensive public participation and are therefore already largely compliant with the amended Directive.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument, as it will place negligible additional burdens on business. The revisions to section 14 will mean that, in a very few cases, applicants will need to arrange for a newspaper notice of a decision where they do not presently have to do so, but this is likely only to affect one or two decisions a year. The revisions to sections 7 and 9, which relate to the publishing of newspaper notices by the Secretary of State, will not place any additional burdens on business.

8.2 The new section 6(2B) is an enabling power for some of the changes to be included in the proposed new Transport and Works (Applications and Objections Procedure) Rules. The combination of this instrument and the new Rules will ensure full implementation of the provisions of the amended EIA Directive.

8.3 The Department consulted on the proposed changes to the TWA at the same time as consulting on the proposed new Rules. Consultation respondents were

supportive of the changes proposed to the TWA, apart from one suggestion that section 14 should be amended so that newspaper notices are published for all application decisions, rather than just for applications which include works proposals. Following further consideration, the Department has agreed and incorporated this amendment.

8.4 The Regulatory Impact Assessment which has been prepared in relation to the proposed new Rules takes account of the minimal effects of this instrument as part of the wider implementation of Directive 2003/35/EC. A copy of that Regulatory Impact Assessment will be available from the Department for Transport, Zone 2, Floor 9, Southside, 105 Victoria Street, London SW1E 6DT

9. Contact

9. Ellis Harvey, Head of the TWA Orders Unit at the Department for Transport, 9th Floor, Southside, 105 Victoria Street, London SW1E 6DT (e-mail ellis.harvey@dft.gsi.gov.uk; telephone 0207 944 2483) can answer queries regarding the instrument.

Department for Transport