

**AWARDS OF COSTS IN APPLICATIONS PROCEEDINGS UNDER
SECTION 6 OF THE TRANSPORT AND WORKS ACT 1992**

DOT

INFORMATION

SECRET

INTRODUCTION

1. This Circular gives guidance on awards of costs in connection with public inquiries or hearings held into applications for orders made under section 6 of the Transport and Works Act 1992. So far as practicable it is consistent with the guidance in DOE Circular 8/93 (Welsh Office Circular 23/93), but with some necessary adaptations to reflect the different statutory procedures and provisions under the Act. It takes into account comments received following public consultation on draft proposals.
2. Part I of the Act provides for an order-making procedure to authorise the construction or operation of railways, tramways, trolley vehicle systems, other guided transport systems, inland waterways, and structures interfering with rights of navigation, as well as ancillary matters such as compulsory acquisition of land. Section 11 designates those with a right to be heard in respect of an objection to a proposed order, and gives the Secretary of State the discretionary power to make awards of costs in respect of inquiries or hearings where unnecessary expense is incurred by one or more parties as the result of unreasonable behaviour by another party.
3. The major differences between TWA applications and planning applications and appeals are:
 - the TWA application is made direct to the Secretary of State and not to the local planning authority;
 - in addition to their own costs, applicants meet the cost of the public inquiry or hearing; it is reasonable to assume therefore that applicants are unlikely to engage in behaviour which would disrupt or delay proceedings unnecessarily, since much of any abortive cost would fall on them;
 - under the Act there are no "principal" or "third" parties as described in the DOE/WO Circular, only applicants and objectors, the latter being sub-divided into statutory and non-statutory, with a further division of "statutory" into local authorities in whose area the proposed works would be carried out; and owners, occupiers and lessees whose land or rights in land would be compulsorily acquired under the proposals in the application. Although designated as statutory objectors, local authorities will not qualify for the costs awards outlined in Annex 5, unless they own part or all of the land in question. ("Local authority" is defined in section 11(4) of the Act). The non-statutory category includes objectors who attend an inquiry without having prepared statements of case and who rely upon the Inspector's discretion to allow them to appear.



Terminology

4. In this Circular, the terms identified below have the meaning shown opposite:

"applicant"	- the person making the TWA application;
"CPO"	- compulsory acquisition provision in an application for a TWA order;
"the IPR"	- The Transport and Works (Inquiries Procedure) Rules 1992;
"non-statutory objector"	- an interested party not falling within section 11(4) of the Act but who either (a) has obtained a right to appear at an inquiry or hearing by serving an outline statement under rule 6 or a statement of case under rule 7 of the IPR, or by serving a pre-hearing statement; or (b) is allowed to appear on the exercise of the Inspector's discretion;
"statutory objector"	- those persons, as described in section 11(4) of the Act, with a statutory right to have their objection heard at an inquiry or hearing ie local authorities for areas in which works would be carried out under the order if made, and persons whose land or rights in land would be acquired compulsorily under the provisions in the order;
"the Act"	- the Transport and Works Act 1992;
"TWA applications"	- applications made under section 6 of the Act for orders under sections 1 and 3 relating to transport systems, inland waterways and works interfering with rights of navigation.

Organisation of the guidance in this Circular

5. Annexes 1 to 5 to this Circular provide guidance as follows:

- Annex 1: general principles for awards of costs for unreasonable behaviour
- Annex 2: general procedural requirements in respect of applications and objections: unreasonable behaviour
- Annex 3: application of costs policy to objectors in proceedings
- Annex 4: the costs application
- Annex 5: costs in respect of applications for orders containing compulsory acquisition provisions

A brief summary of the criteria for award of costs on grounds of unreasonable behaviour is in the Appendix to this Circular.

Explanatory Pamphlet

6. An explanatory pamphlet ("Costs Awards in Order-Making Proceedings under the Transport and Works Act 1992 – a Guide for Applicants and Objectors") is obtainable on request from the TWA Processing Unit, Department of Transport, P2/025A, 2 Marsham Street, London SW1P 3EB.

Scope of Arrangements

7. The guidance in Annexes 1 to 5 applies to all public inquiries or hearings conducted in respect of applications made under Section 6 of the Act.

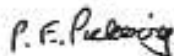
The Power to Award Costs

8. Section 11(5) of the Act enables the Secretary of State to make an order as to the costs of parties at an inquiry. This power is applied to hearings by sub-section 11(6) of the Act. **The Secretary of State determines only the extent of any costs payable, not the actual amount (paragraph 4 of Annex 4 refers).**

9. Section 11(5)(b) of the Act enables costs to be awarded against any party whose unreasonable behaviour in respect of a TWA application results in the late cancellation of an inquiry or hearing, so that unnecessary expense is incurred by other parties.

Manpower and Cost Implications

10. This Circular is not expected to have additional manpower or administrative cost implications for local authorities.



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London Borough Councils
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The Town Clerk, City of London

Chairmen of Passenger Transport Authorities
Secretaries of Passenger Transport Executives

The Chairman

British Railways Board
London Transport
Railtrack

UNREASONABLE BEHAVIOUR: A SUMMARY OF THE CRITERIA¹

Applicants are at risk of an award of costs against them if, for example, they:

- (1) fail to comply with the procedural requirements for inquiries or hearings including compliance with the IPR or Code of Practice for Hearings (paragraphs 3 and 4 of Annex 2);
- (2) withdraw an application after being notified of the date and location of start of an inquiry under rule 11 of the IPR or of a hearing (paragraphs 8 to 12 of Annex 2);
- (3) fail to attend an inquiry or hearing (paragraph 7 of Annex 2);
- (4) introduce new or amended evidence late in the proceedings (paragraph 4 of Annex 2).

Objectors are at risk of an award of costs against them if, for example, they:

- (1) fail to comply with the procedural requirements for inquiries or hearings, including compliance with the IPR or Code of Practice for Hearings (paragraphs 3 and 5 of Annex 2);
- (2) withdraw their objection without any material change in circumstances after being notified of the date and location of the start of inquiry or of the arrangements for a hearing (paragraphs 8 to 12 of Annex 2);
- (3) fail to attend an inquiry or hearing, thereby causing an adjournment (paragraph 7 of Annex 2).

¹ This brief summary is based on the full statement of policy in Annexes 1 to 3. It is illustrative and not comprehensive.

**GENERAL PRINCIPLES FOR AWARDS OF COSTS FOR
UNREASONABLE BEHAVIOUR IN PROCEEDINGS IN RESPECT OF
APPLICATIONS FOR ORDERS UNDER SECTION 6 OF THE TRANSPORT AND WORKS
ACT 1992**

Introduction

1. All parties presenting evidence to an inquiry or hearing will be at risk of an award of costs against them if unreasonable behaviour by them causes other parties to incur expense unnecessarily.
2. In the order-making proceedings to which this guidance applies, the parties normally meet their own expenses associated with an inquiry or hearing, though applicants will in addition meet the administrative costs of the proceedings, including, for example, the costs of the Inspector, the venue and the programme officer.
3. Except for applications containing compulsory acquisition provisions (which are dealt with in Annex 5), costs are awarded only when what is termed "unreasonable" behaviour is held to have occurred. Annex 2 gives examples of "unreasonable" behaviour, either directly or indirectly by reference to what is expected of parties in respect of applications made under section 6 of the Act. The word "unreasonable" is used in its ordinary meaning, as reflected in the High Court's judgement in the case of **Manchester City Council -v- Secretary of State for the Environment and Mercury Communications Limited [1988] J.P.L. 774**.
4. The principle that the parties normally meet their own expenses means that, in proceedings to which this Circular (except Annex 5) applies, awards of costs do not necessarily "follow the event". A decision on a costs application, when made, does not follow directly from the result of the TWA application itself. An applicant for an order would not be awarded costs simply because the Secretary of State determines to make the order. Nor, except as described in paragraph 1 of Annex 5, would objectors be awarded their costs just because the Secretary of State has decided not to make the order.
5. Examples of unreasonable behaviour, and more detailed guidance on the circumstances in which parties may be at risk of an award of costs, are given in Annex 2. A summary is in the Appendix to the Circular. Guidance on seeking an award of costs is in Annex 4.

Disciplining effect of costs regime

6. The availability of costs, on specific application, is intended to bring a greater sense of discipline to all parties involved in the procedures under the Act. A decision to award costs against one of the parties to the proceedings is not a punishment. The discipline fostered by the availability of costs awards is **not** intended to deter persons entitled or permitted to give evidence to an inquiry or hearing from so doing, but rather to ensure that applicants are not put to expense unnecessarily as a result of unreasonable use of that entitlement or permission. The power to award costs against applicants serves to reinforce the discipline on them not to behave unreasonably, which already exists because the costs of the inquiry or hearing are met by them.

General conditions for an award

7. Before an award of costs is made, the following conditions will normally need to be met:
 - (1) one of the parties has sought an award at the appropriate stage of the proceedings (as explained in Annex 4);

- (2) the party against whom costs are sought has behaved unreasonably; and
- (3) this unreasonable conduct has caused the party seeking costs to incur expense unnecessarily because of the manner in which another party has behaved (for example because the arranged inquiry or hearing had to be cancelled, adjourned or extended, resulting in abortive preparatory work or unnecessary additional expense).

Separate application and costs jurisdiction

8. When submitting the report and recommendations in respect of the inquiry or hearing to the Secretary of State, the Inspector will report separately on any application for an award of costs and usually make a recommendation for consideration by the Secretary of State in deciding whether to make an award. The decision on the TWA application **will not be affected in any way** by the fact that an application for costs has been made. The determination of a costs application is a separate jurisdiction. A decision whether to award costs is usually made by the Secretary of State after a decision is taken on whether to make the TWA order.

Award of a party's costs where an inquiry or hearing is cancelled or aborted: section 11(5)(b) of the Act

9. Significant unnecessary expense may be incurred by applicants or objectors in preparing for an inquiry or hearing which then has to be cancelled or aborted because of the late withdrawal of the application or of objections. In accordance with section 11(5)(b) of the Act, an award of costs may be made, on specific application, against one party to enable other parties to recover costs incurred unnecessarily by the late cancellation of the inquiry or hearing, or in respect of proceedings which are held and immediately aborted. Examples are where, after the date for the inquiry has been notified, the applicant withdraws the application, or where an objector withdraws his or her objection without any material change in circumstances, resulting in cancellation of the inquiry or hearing. Detailed guidance is in paragraphs 8 to 12 of Annex 2.

10. The availability of costs awards in such circumstances is not intended to deter a party from withdrawing an application or objection, even at a late stage, particularly if there are justifiable grounds for doing so. Applicants are expected to negotiate with objectors and the withdrawal of an objection at any stage of the proceedings achieved by means of a negotiated settlement, would not constitute grounds for a costs award – see also paragraph 11 of Annex 2.

Costs in hearing cases

11. Hearings are informal, unlike inquiries. They proceed in accordance with the "Transport and Works Act 1992 Code of Practice for Hearings", a copy of which is sent to the parties with notification of the arrangements. It is unusual for parties to be legally represented. The principles governing awards of costs in these cases are exactly the same as for inquiry cases.

**GENERAL PROCEDURAL REQUIREMENTS IN PROCEEDINGS IN RESPECT OF
APPLICATIONS FOR ORDERS UNDER SECTION 6 OF THE ACT: UNREASONABLE
BEHAVIOUR: AWARDS AGAINST APPLICANTS OR OBJECTORS**

Definitions

1. The terms "applicant", "statutory objector" and "non-statutory objector" are explained in paragraph 4 of the main text of the Circular.

Requests for an oral hearing

2. Costs will not be awarded simply because a statutory objector has asked to be "heard". Such objectors have a statutory right to ask for an opportunity to appear before a person appointed by the Secretary of State. The exercise of that right will not, in itself, be regarded as unreasonable, even if the objection could have been adequately dealt with by written representations. Similarly, non-statutory objectors may give notice of an intention or wish to give evidence to an inquiry or hearing and, if an inquiry or hearing is held and they have provided an outline statement of case (under IPR 6) or full statement of case (under IPR 7), they will have a statutory right to appear. However, once the date and location of an inquiry or hearing have been formally notified, the parties will be at risk of an award of costs if their conduct prior to, or during, the proceedings is unreasonable.

Procedural conduct in inquiry and hearing cases

3. Applicants and objectors who wish to give evidence to an inquiry are expected to comply with the normal statutory procedural requirements, specified in the IPR. Similarly parties to hearings are expected to comply with the non-statutory code of practice for hearings. However, failure to comply with the IPR, or the hearings code, will not necessarily amount to unreasonable behaviour such as could lead to an award of costs. A pre-condition for an award of costs is that a party has incurred expense unnecessarily as the result of non-compliance by another party.

4. In the case of **an applicant**, the following are examples of what may be regarded as unreasonable behaviour in inquiry or hearing cases, resulting in an award of costs if abortive expense is incurred:

- failing to provide an adequate pre-inquiry, or pre-hearing, statement of case – for example, unclear presentation of facts or arguments. This might cause another party to undertake identifiable abortive work in preparing for the inquiry or hearing; or it might lead to an adjournment (see next indent); or
- causing an inquiry or hearing to be adjourned or unnecessarily prolonged by the late submission without good reason of a statement of case, or of an amendment or addition to a statement of case, or of a proof of evidence; or by failure, without good reason, to provide any required summary of a proof of evidence so that the whole proof has to be read at the proceedings; or
- causing an objector to call a professional witness to attend unnecessarily – for example where a technical issue could have been resolved satisfactorily by prior discussion.

5. Statutory objectors and other persons who have expressed a wish to appear at an inquiry or hearing may be considered to have acted unreasonably where they:

- fail to provide an adequate pre-inquiry, or pre-hearing, statement of case, causing the applicant to incur unnecessary costs, including costs arising from any consequential adjournment;
- cause an inquiry or hearing to be adjourned or unnecessarily prolonged by the late submission, without good reason, of a statement of case, or of an amendment or addition to a statement of case, or of a proof of evidence; or fail, without good reason, to provide any required summary of a proof of evidence so that the whole proof has to be read at the proceedings;
- cause another party to call a professional witness to attend unnecessarily – for example where a technical issue could have been resolved satisfactorily by prior discussion;
- introduce, without good reason, a new ground for objection at a late stage in the proceedings (see also paragraphs 7 to 12 below),

Due allowance will be made for persons who lack experience in these matters and who are not professionally represented. Deliberately unco-operative behaviour by **any** objector, whether or not professionally-represented, may also be a ground for an award of costs – for example a refusal to co-operate in supplying relevant information or the late submission of evidence, so that the proceedings have to be adjourned or prolonged unnecessarily.

Notices of Withdrawal of Application or Objection

6. A decision by the applicant or any objector to withdraw an application or objection must be notified to the Secretary of State **in writing**. A faxed letter would be acceptable. No action to cancel the inquiry or hearing or to rearrange the programme of the proceedings will be taken on the strength of oral statements of intention to withdraw.

Failure to attend an inquiry or hearing

7. Where an inquiry or hearing has not been cancelled, the failure of the applicant to attend, or be represented at, an arranged inquiry or hearing is likely to result in an award of costs against the applicant. Unless it can be demonstrated, in any particular case, that there was good reason for the failure to attend, an award of costs may be made against the applicant in respect of costs incurred after formal notification of the inquiry or hearing arrangements, including preparatory work and attendance of objectors. Objectors who have stated a wish to be heard, but who fail to attend or be represented at an arranged inquiry or hearing without good reason, run a similar risk of a costs award being made against them. Parties should telephone the inquiry or hearing venue themselves, or make arrangements for someone else to telephone, it, in the event of sudden illness or other genuine reason, they are unable to attend. The inquiry or hearing can then be adjourned, or appearances of witnesses at the inquiry reprogrammed, without causing undue delay and expense to other parties.

Withdrawal of an application or an objection resulting in late cancellation of an inquiry or hearing: section 11(5)(b) of the Transport and Works Act 1992

8. The provision for an award of costs to be made in these circumstances is not intended to dissuade the parties from pursuing negotiations, with a view to resolving the differences between them. When the parties are initially notified that an application is to be dealt with by way of an inquiry or hearing, they may wish to ask that a decision regarding the start of the inquiry or hearing be deferred while discussions take place. The Secretary of State may agree to this, and is likely to do so if a mutually acceptable outcome is anticipated.

9. If an application or objection is withdrawn, without any material change in circumstances, after the date on which the Secretary of State is subsequently satisfied that the parties had received formal notification of the arrangements for an inquiry or hearing, an award of costs may be made against the party concerned in accordance with section 11(5)(b) of the Act. (An example of a material change in circumstances would be where a mutually satisfactory protective provision for inclusion in the draft order had been agreed between the applicant and objector). The date of receipt of the formal notification of the inquiry or hearing, after which a party will be at risk of an award of costs, will be taken as **three working days after the date of posting of the notification letter** (to allow for first class postal delivery and receipt), unless it is subsequently shown that the notification was not received in that time. Any award would relate only to unnecessary expenses incurred by other parties, in preparing for the abortive inquiry or hearing. In any costs application, parties will strengthen their position if they can show that they issued their statements of case or proofs of evidence in accordance with the Secretary of State's timetable and that the statement of case was fully communicated to the other parties well before the application or objection was withdrawn.

10. Objectors can minimise the risk of an award of costs against them, or the extent of any award of costs, by notifying the Secretary of State and the applicant **immediately** if they conclude, on re-examination of their case, that their grounds for objection cannot in the circumstances be supported by substantial evidence; and if they confirm that they will not be contesting the application in those respects.

11. When an application is to be dealt with by way of inquiry or hearing, the Secretary of State will advise objectors that if they subsequently decide to withdraw their objections, for example as a result of successful negotiations with the applicant, they should do so without delay, and if possible **before** arrangements are settled for the inquiry or hearing. Otherwise, if the applicant has incurred expense unnecessarily as a result, objectors run the risk of a possible award of costs against them unless they can show that an earlier withdrawal of the objection was not practicable in the particular circumstances. (It is recognised that an objector cannot be expected to give notice of withdrawal until negotiations have been concluded and a legally-binding agreement reached). Only costs directly associated with the inquiry or hearing can be subject to a costs award. Additional costs incurred by the applicant as a consequence of the time taken by the Department to process an application are not eligible (see paragraph 4 of Annex 4).

Withdrawal of an application or an objection too late for an inquiry or hearing to be cancelled

12. When an application is to be dealt with by an inquiry or hearing, the Secretary of State will advise applicants and objectors that they should provide notification in writing of any withdrawal soon enough for the inquiry or hearing to be cancelled (assuming that is a consequence) and for the other parties to be contacted, and the cancellation publicised locally. Parties will be expected to ensure that notification of any withdrawal is received by the Secretary of State **no later than three working days before the inquiry or hearing is due to start**, which should be sufficient for the Secretary of State to respond by cancelling the arrangements. If the parties fail to notify the Secretary of State of withdrawal before this time-limit, with the result either that the inquiry or hearing is opened and immediately aborted, or that the other parties are present at the venue in anticipation that it will open, the party withdrawing will run the risk of an award against it, of the preparation **and** attendance costs of the other parties. Such an award is likely to be made, unless it can be demonstrated, in any particular case, that there is good reason for not making one.

APPLICATION OF COSTS POLICY TO OBJECTORS IN PROCEEDINGS

General policy on awards of costs to, or against, objectors

1. The terms "applicant", "statutory objector" and "non-statutory objector" are explained in paragraph 4 of the main text of the Circular.
2. Statutory objectors whose land, or rights in land, would be compulsorily acquired by provisions in a TWA application (CPO provisions) may find themselves in a position where, in order to defend their private rights, they are compelled to object to the CPO and to pursue that objection to a public inquiry. Other objectors choose to participate in TWA application proceedings and to incur expense in preparatory work for an inquiry or hearing, at which they attend to give evidence; in so doing, they act on their own initiative. For this reason, statutory objectors subject to CPO are accorded special status where the applicant is unsuccessful or only partially successful in securing those powers in respect of their land – see Annex 5.
3. So far as unreasonable behaviour is concerned, statutory and non-statutory objectors will be treated similarly, should their own behaviour cause abortive expense to other parties. Statutory objectors who insist on exercising their right to be heard and then change their minds without good reason, causing the inquiry or hearing to be cancelled at a late stage, or to take place when it would not otherwise have been necessary, would be especially at risk of an award of costs against them.
4. The provisions for awards of costs in this Circular (and the procedures under which they are made) do **not** apply to the Crown. This includes Government Departments, who may be represented as official bodies in TWA applications proceedings but cannot be applicants for section 1 or 3 orders. Inspectors are therefore not expected to hear applications for costs against, or on behalf of, Government Departments in respect of inquiries or hearings into section 1 or 3 order applications. If any party considers that they have incurred unnecessary costs directly as a result of unreasonable conduct by a Government Department, it is open to the party to approach that Department directly. Under the Citizen's Charter, all public bodies should be able to provide information about their complaints procedures. Details of contact addresses are obtainable on request from the TWA Processing Unit, Department of Transport, P2/025A, 2 Marsham Street, London, SW1P 3EB.

Late cancellation of an inquiry or hearing

5. Where unreasonable conduct causes the cancellation of an inquiry or hearing, for example where an applicant withdraws an application after the date for the inquiry or hearing has been formally notified (see paragraph 9 in Annex 2), objectors – both statutory and non-statutory – may be awarded costs in their favour. For an award of costs to be entertained, objectors will need to demonstrate that they have been required to incur unnecessary expense, such as in preparatory work for their appearance at the inquiry or hearing (by for example being given notice by the Secretary of State that they must provide a statement of case).
6. Any applications by objectors for costs against the applicant relating to the late cancellation of an inquiry or hearing will need to demonstrate that:
 - (1) any unnecessary expenses claimed could not have been avoided; and
 - (2) the applicant has behaved unreasonably in causing the cancellation of the inquiry or hearing.

Abortive or adjourned inquiries or hearings

7. Similar principles will apply where an inquiry or hearing is opened and immediately closed because the applicant has withdrawn the application, or an objector has withdrawn the objection without good reason, at such a late stage that it was impracticable to cancel the proceedings – see paragraph 12 in Annex 2. The party which has behaved unreasonably will be liable to an award of costs in respect of necessary preparatory work and of travelling costs to and from the inquiry or hearing venue.

8. Where a party fails, without good reason, to attend an inquiry or hearing (paragraph 7 in Annex 2), so that it has to be adjourned or aborted, that party will similarly run the risk of an award of costs related to any unnecessary costs incurred by other parties.

THE COSTS APPLICATION

Unreasonable behaviour before or during inquiry or hearing

1. As costs are awarded on the basis of unreasonable conduct, it should be clear before the conclusion of the inquiry or hearing whether there are grounds for an application for costs. **Any such application should therefore normally be made to the Inspector before the end of the inquiry or hearing.** The Inspector would then usually consider the application and any submissions by the party against whom the application is made at the end of the proceedings and before the inquiry or hearing is closed. It should then be possible to deal with the application simply and speedily. The Inspector will submit a report to the Secretary of State on the costs application, usually with a recommendation, enabling the Secretary of State to decide whether or not to award costs. The Inspector's separate report to the Secretary of State on the application for a TWA order **will not be affected in any way** by the fact that an application for costs has been made. An application for costs after the close of the inquiry or hearing should be made to the Secretary of State – see paragraph 4 below.

Late cancellation of inquiry or hearing

2. If an arranged inquiry or hearing is cancelled as a direct result of the applicant's withdrawal of the application or of the withdrawal of an objection by an objector, any application for costs should be made **immediately** in writing to the Secretary of State. If some delay is unavoidable, the application should be made no later than four weeks after receiving confirmation (from the Secretary of State) that the inquiry or hearing has been cancelled. The decision whether the action which caused the cancellation of the inquiry or hearing was unreasonable will then be taken on the basis of an exchange of written submissions. Particular attention will be paid to the circumstances and timing of the action and to the stated justification. The decision on costs will therefore be made solely on the basis of material information which will have been made available to the relevant parties for prior comment.

Abortive inquiry or hearing

3. Where an inquiry or hearing is opened and then aborted because a party has withdrawn the application or the objection too late to cancel the proceedings, the other party or parties should make an application for costs to the Inspector before the inquiry or hearing is closed.

Late application for costs

4. An application for costs made to the Secretary of State after the inquiry or hearing is closed, or later than four weeks after it is cancelled, will be accepted only if the party applying for costs can show good reason for not having applied earlier. If such an application is accepted, it will be determined by the Secretary of State on the basis of the costs application papers and an exchange of written submissions, and normally without seeking any advice from the Inspector who held the inquiry or hearing. A party wishing to apply for costs after completion of the proceedings should do so at the earliest opportunity. If the Secretary of State accepts the application, the parties involved should be as concise and sparing as reasonably possible in their exchange of submissions, and observe the time limits set by the Secretary of State. If this is not done, the application may be determined, without further delay, on the basis of the submissions already available.

Scope of award

5. Sections 11(5) and 11(6) of the Transport and Works Act 1992 apply to inquiries and hearings into TWA applications the provisions of section 250(5) of the Local Government Act 1972, with minor modifications. The latter provision empowers the Secretary of State to make orders as to the costs of the parties at an inquiry or hearing. This is interpreted as enabling the Secretary of State to award to a party the costs necessarily and reasonably incurred in relation to the proceedings under consideration. Where costs are awarded against an objector, these costs may include the expenses incurred by the applicant in the preparation of the case for the inquiry. The power does not extend to awards of compensation for indirect losses (such as those which may result from delay in obtaining order-making powers under the TWA application process).

Amount of award

6. The Secretary of State does **not** determine the amount of costs payable. The party awarded costs should in the first instance submit details of their costs to the other party, with a view to reaching agreement on the amount. If they are unable to agree, the party awarded costs can refer the case to a Taxing Officer of the Supreme Court for determination. When an award of costs is made, the parties will be sent a guidance note on taxation procedure.

Full awards

7. A full award of costs relates to costs incurred during the period starting on the date when the Secretary of State receives an application for an order under section 6 of the Act and ending on the date when the processing of that application is concluded, normally by determination or withdrawal.

Partial awards

8. Some cases do not justify a full award of costs. In these circumstances a partial award may be made. An example would be where an adjournment has been caused unnecessarily by the unreasonable conduct of one of the parties. In this case the award of costs would be limited to the extra expense caused by the adjournment. Another example would be where a statutory objector is partly successful in opposing compulsory purchase provisions – see paragraph 3 of Annex 5.

COSTS IN RESPECT OF APPLICATIONS FOR ORDERS CONTAINING COMPULSORY ACQUISITION² PROVISIONS

General principles

1. Where a statutory objector (as defined in section 11(4)(b) of the Transport and Works Act 1992) – essentially an owner, occupier or lessee – successfully opposes compulsory acquisition provisions, an award of costs will be made in favour of such an objector unless there are exceptional reasons for not doing so. The award will be made against the applicant: it does **not**, of itself, imply unreasonable behaviour by the applicant.

2. To enable an award to be made on grounds of success, the claimant must have made a formal objection to the application for the order; the application must have been the subject of a public inquiry which the claimant must have attended (or been represented at); and the claimant must have been heard as a statutory objector. In addition, the claimant must have had the objection sustained by the Secretary of State's refusal to make the order or to grant the applicant the compulsory acquisition provisions, or by the Secretary of State's decision to exclude from the granting of those provisions the whole, or part of, the claimant's property.

Partly successful objections

3. Where a statutory objector (under section 11(4)(b)) is partly successful in opposing compulsory acquisition provisions, the Secretary of State will normally make a partial award of costs. Such cases arise, for example, where the Secretary of State, in determining to approve an application and make an order, excludes part of the objector's land.

Plural objections

4. In proceedings under the Transport and Works Act, compulsory acquisition powers can be sought only as ancillary matters to works provisions in the order in question. Thus inquiries into section 6 applications are unlikely to consider compulsory acquisition issues in isolation. Where a statutory objector (under section 11(4)(b)), who also makes representations about other related matters in a TWA application, appears at the inquiry and is successful in objecting to the compulsory acquisition powers, he or she will be entitled to an award in respect of those powers only. An objector is not, however, precluded from applying for the costs relating to the other matters on the grounds that another party has acted unreasonably.

Applications for award of costs

5. No application for costs need be made at the inquiry by successful objectors to compulsory acquisition provisions; the Secretary of State will write to the parties concerned as quickly as practicable. Applications from statutory objectors in respect of unreasonable behaviour should be made to the Inspector at the inquiry – see paragraph 1 of Annex 4.

² "Compulsory acquisition" has the meaning given in Schedule 7, Part II, Note 1(1) of the Transport and Works (Applications and Objection Procedure) Rules 1992 – ie it includes the compulsory extinguishment of easements and other private rights over land (including private rights of navigation over water) and the acquisition of rights to place equipment in a street but does not include the acquisition of rights of temporary use of land.

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THE DEPARTMENT
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DOT
INFORMATION
CENTRE

14 September 1994

Dear Sir/Madam

TRANSPORT AND WORKS ACT 1992 :
DEPARTMENT OF TRANSPORT CIRCULAR 3/94 - AWARDS OF COSTS IN APPLICATIONS
PROCEEDINGS UNDER SECTION 6 OF THE TRANSPORT AND WORKS ACT 1992

The Transport and Works Act 1992, which came into force on 1 January 1993, introduced a new Ministerial order-making system in England and Wales for authorising the construction and operation of railways and certain other forms of transport. It provides a mechanism for the Secretary of State to grant statutory authority for matters which would previously have been authorised by the promotion of a private Bill in Parliament or, where appropriate, a Light Railway Order under the Light Railways Act 1896.

Subsections 11(5) and (6) of the 1992 Act give powers for the Secretary of State to award costs to or against applicants for orders under section 1 or 3 of the Act and to or against objectors to those orders which are subject to a public inquiry or hearing.

The Government's principles and policies governing awards of costs have been published under cover of an Administrative Circular (3/94), and I enclose a complimentary copy of it for your retention. I also enclose a copy of the Department's Guide, intended mainly for applicants and objectors in respect of applications under the 1992 Act, concerning those matters outlined in the Circular.

Yours faithfully

R J WAND
TWA Processing Unit

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