

2004 No. 1817

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Eden Valley Railway Order 2004

Made - - - - - *13th July 2004*

Coming into force - - - - - *3rd August 2004*

Whereas an application has been made to the Secretary of State, in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(a) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992(b), for an order under sections 1 and 5 of that Act;

And whereas the objection to that application has been withdrawn;

And whereas the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change to the proposals;

And whereas notice of the Secretary of State's determination was published in the London Gazette on 1st July 2004;

Now, therefore, the Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1, 8, 15 and 17 of Schedule 1 to, that Act and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

(1) This Order may be cited as the Eden Valley Railway Order 2004 and shall come into force on 3rd August 2004.

Interpretation

2.—(1) In this Order—

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter I of Part 2 of the Communications Act 2003(c);

(a) S.I. 2000/2190.

(b) 1992 c.42, as amended by S.I. 1998/2226.

(c) 2003 c.21.

“the railway” means the railway described in the Schedule to this Order together with all lands and works relating thereto;

“the relevant date” means the date of the coming into force of this Order in relation to so much of the railway as at that date is owned by the Trust and in relation to any other part of the railway, the date upon which that part is transferred to the Trust;

“the Trust” means the Eden Valley Railway Trust, a company incorporated under the Companies Act 1985(a) and whose registered office is at 1 Victoria Road, Barnard Castle, County Durham, DL12 8HW; and

“the undertaker” means the Trust and following any sale, lease or underlease under article 4 this expression shall mean or include the transferee within the meaning of that article.

(2) Any enactment by which the construction and operation of the railway was authorised shall have effect subject to the provisions of this Order.

Transfer of rights and obligations to undertaker, etc

3.—(1) Except as may be otherwise provided in this Order, as from the relevant date the railway or any part of it shall continue to be subject to all statutory and other provisions applicable to it at that date (in so far as the same are still subsisting and capable of taking effect) and the undertaker shall, to the exclusion of BRB (Residuary) Limited, be entitled to the benefit of, and to exercise, all rights, powers and privileges, and, subject to paragraph (2), be subject to all obligations, statutory or otherwise, relating to the railway (in so far as the same are still subsisting and capable of taking effect), to the intent that BRB (Residuary) Limited shall be released from all such obligations.

(2) Without prejudice to the generality of paragraph (1), sections 116 to 118 of the Transport Act 1968(b) shall, as from the relevant date, apply to the railway or the relevant part of it as if references to the British Railways Board were references to the undertaker.

Transfer of railway by undertaker

4.—(1) In this article—

“lease” includes an underlease and “lease” where used as a verb shall be construed accordingly;

“the transferor” means any person by whom the railway, or any part of it, is leased or sold pursuant to this article;

“the transferee” means any person to whom the railway, or any part of it, is leased or sold pursuant to this article; and

“the transferred undertaking” means so much of the railway as is leased or sold pursuant to this article.

(2) The undertaker may, with the consent of the Secretary of State, sell or lease the railway, or any part of it, to any person on such terms and conditions as may be agreed between the undertaker and that person.

(3) Except as may be otherwise provided in this Order, the transferred undertaking shall continue to be subject to all statutory and other provisions applicable to it at the date of the sale or lease (in so far as the same are still subsisting and capable of taking effect) and the transferee shall, to the exclusion of the transferor, be entitled to the benefit of, and to exercise, all rights, powers and privileges, and be subject to all obligations, statutory or otherwise, relating to the transferred undertaking (in so far as the same are still subsisting and capable of taking effect), to the intent that the transferor shall be released from all such obligations.

(4) Paragraph (3) shall have effect during the term of any lease granted, and from the operative date of any sale, under paragraph (2).

(a) 1985 c.6.
(b) 1968 c.73.

Operation of railway

5.—(1) The undertaker may operate and use the railway as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Subject to paragraphs (3) and (4), the motive power to be used on the railway shall be steam, diesel-electric, diesel, internal combustion, electric-battery or such other motive power as the Secretary of State may in writing approve.

(3) Nothing in this Order shall authorise the use of electrical power as motive power on the railway unless such power is obtained from storage batteries or from a source of generation entirely contained in, and carried along with, the engines and carriages.

(4) If electrical power is used as motive power on the railway, such electrical power shall not be used in such a manner as to cause, or be likely to cause, any interference with any electronic communications apparatus or with the use of such apparatus.

Safety of approved works, etc

6.—(1) Where pursuant to regulations(a) made under section 41 of the Transport and Works Act 1992 (approval of works, plant and equipment) approval has been obtained from the Health and Safety Executive with respect to any works, plant or equipment (including vehicles) forming part of the railway, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time when the approval was given unless any change thereto does not materially impair the safe operation of the railway.

(2) If without reasonable cause the provisions of paragraph (1) are contravened, the undertaker shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by, or with the consent of, the Health and Safety Executive or the Director of Public Prosecutions.

Signed by authority of the
Secretary of State for Transport

13th July 2004

Ellis Harvey
Head of the Transport and Works Act Orders Unit,
Department for Transport

(a) S.I. 1994/157.

SCHEDULE

Article 2

THE RAILWAY

A portion (approximately 9,300 metres in length) of the existing Eden Valley branch railway in the county of Cumbria, district of Eden, as authorised by the Eden Valley Railway Act 1858^(a), commencing in the town of Appleby at a point immediately to the south of the level crossing carrying the unclassified road known as Station Road over the railway and terminating in the town of Warcop at the existing terminus at Flitholme.

^(a) 1858 c.xiv.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the transfer to the Eden Valley Railway Trust of the statutory powers to maintain and operate a portion of the existing Eden Valley branch railway in the county of Cumbria, district of Eden, extending from Appleby to Warcop, and makes other provisions as to the railway. The applicant for the Order is the Eden Valley Railway Trust.

STATUTORY INSTRUMENTS

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The Eden Valley Railway Order 2004

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