

2005 No. 3143

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The East Somerset Railway Order 2005

Made - - - - - *10th November 2005*

Coming into force - - *1st December 2005*

ARRANGEMENT OF ARTICLES

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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) (“the 1992 Act”), for an order under sections 1 and 5 of that Act;

And whereas the Secretary of State received no objections to that application;

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 in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 4th November 2005;

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, the 1992 Act hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the East Somerset Railway Order 2005 and shall come into force on 1st December 2005.

^(a) S.I. 2000/2190.

^(b) 1992 c. 42, as amended by S.I. 1995/1541 and S.I. 1998/2226.

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 1 of Part 2 of the Communications Act 2003^(a);

“the lease” means any lease of the railways granted by the owner to the undertaker pursuant to Article 3(1) of this Order;

“the owner” means BRB (Residuary) Limited;

“the railways” means the railways described in the Schedule to this Order together with all lands and works relating thereto, to the extent that the same are vested in the owner at the date upon which this Order comes into force, and are held or used by the owner for the purposes of its railway undertaking;

“the transfer date”, in relation to any part of the railways, means the date on which that part is leased or sold by the owner to the undertaker under Article 3;

“the undertaker” means East Somerset Railway Company Limited, a company incorporated under the Companies Act 1985^(b) as a company limited by guarantee, and whose registered office is at Cranmore Railway Station, Shepton Mallet, Somerset, BA4 4QP.

(2) All distances, lengths, measurements and directions stated in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, length, measurement and direction, and distances between points on a railway shall be taken to be measured along the railway.

Transfer of railways to undertaker

3.—(1) The owner may lease the railways or any part of the railways to the undertaker on such terms and conditions as may be agreed between the owner and the undertaker.

(2) The owner and the undertaker may also enter into, and carry into effect, agreements providing for the sale to, and vesting in, the undertaker of the railways or any part of the railways on such terms and conditions as may be agreed between the owner and the undertaker.

(3) Except as may be otherwise provided in this Order, as from the transfer date the railways or any part thereof shall continue to be subject to all statutory and other provisions applicable to the railways at that date (insofar as the same are still subsisting and capable of taking effect) and the undertaker shall, to the exclusion of the owner, 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 railways (insofar as the same are still subsisting and capable of taking effect), to the intent that the owner shall be released from all such obligations.

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

(5) Any enactment by which the railways were authorised shall have effect subject to the provisions of this Order.

Transfer of railways by undertaker

4.—(1) The undertaker may, with the consent of the Secretary of State—

(a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1), references in this Order to the undertaker shall include references to the transferee or the lessee.

^(a) 2003 c. 21.

^(b) 1985 c. 6.

(3) The exercise of the powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Operation of the railways

5.—(1) The undertaker may operate and use the railways 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 railways 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 electric power as motive power on the railways 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 railways, 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.

Maintenance of approved works, etc.

6.—(1) Where pursuant to regulations(a) made under section 41 of the 1992 Act (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 railways, such works, plant and equipment shall not be used in a state or condition other than that in which they were at the time that the approval was given unless any change thereto does not materially impair the safe operation of the railways.

(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

10th November 2005

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

(a) See S.I. 1994/157.

SCHEDULE

Article 2(1)

THE RAILWAYS

In the County of Somerset, Village of Cranmore, near Shepton Mallet:

Railway No. 1—An existing railway (637 metres in length), consisting of part of the former Wells/Witham Branch Line (now known as the East Somerset Railway Line), commencing at a point at mile post 6 and extending east past Cranmore Station and terminating at a point 10.9 metres west of the public overbridge which carries a public highway known as Piers Road and which is located at Ordnance Survey grid ST668431.

Railway No. 2—An existing railway consisting of two sidings forming part of the Wells/Witham Branch Line (now known as the East Somerset Railway Line), commencing at a junction with Railway No. 1 at a point 406 metres east of its western most point, and extending in a generally north eastern direction (the northern most siding being 169 metres in length and the southern most siding being 98 metres in length).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order relates to the portions of the East Somerset Railway at Cranmore near Shepton Mallet in Somerset which at the date of this Order are owned by BRB (Residuary) Limited (“the Owner”).

The Order authorises the Owner to transfer the portions of the railway to East Somerset Railway Company Limited together with certain statutory and other rights and liabilities. The Order also makes provision for the safety of works and equipment.

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The East Somerset Railway Order 2005

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