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STATUTORY INSTRUMENTS

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**1995 No. 1236**

**TRANSPORT**

**The Foxfield Light Railway Order 1995**

*Made* - - - - - *3rd May 1995*

*Coming into force* - - - - - *4th May 1995*

The Secretary of State for Transport, on the application of the Foxfield Light Railway Society for an Order under the Light Railways Act 1896 (1) (hereinafter referred to as “the Act”), being satisfied in accordance with section 7 of the Act that its requirements in relation to the publication and service of notices, and consideration of objections, have been satisfied, and having considered the Order as required by section 9 of the Act, in exercise of the powers conferred on him by sections 7, 10 to 12 and 18 of the Act and section 121(4) of the Transport Act 1968 (2) and now vested in him (3) 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 Foxfield Light Railway Order 1995 and shall come into force on 4th May 1995.

**Interpretation**

2.—(1) In this Order, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

“the existing railway” means the existing railway of the Society described in Schedule 1 to this Order together with all lands and works relating thereto;

“the former railway” means the railway or former railway described in Schedule 2 to this Order together with all lands and works relating thereto;

“the new railway” means the railway authorised to be constructed, made and maintained pursuant to article 5 (Power to construct new railway) of this Order together with all works and lands relating thereto and, where any part of the said railway and works remains uncompleted, includes the site of that part;

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(1) 1896 c. 48; sections 7 and 9 were repealed in part by the Railways Act 1921 (c. 55), section 86(2) and Schedule 9; section 10 was repealed in part by the Statute Law (Repeals) Act 1986 (c. 12), Schedule 1; section 11 was amended by the Light Railways Act 1912 (c. 19), section 5(3), and the Railways Act 1921, section 73(1), and was repealed in part and further amended in respects not relevant to this Order; section 12 was repealed in part by the Finance Act 1929 (c. 21), section 6 and Schedule.

(2) 1968 c. 73.

(3) Railways Act 1921, section 68(1), and S.I.1970/1681, 1979/571 and 1981/238.

“the plans” and “sections” means respectively the plans and sections deposited with the Department of Transport at 2 Marsham Street, London SW1P 3EB in connection with the application for this Order;

“the railways” means the existing railway and the new railway, or either of them, as the case may require;

“the Society” means the Foxfield Light Railway Society incorporated under the Companies Acts 1948 to 1967 and having its registered office at Blythe Bridge (Caverswall Road) Station, Blythe Bridge, Stoke-on-Trent ST11 9EA.

(2) References in this Order to reference points shall be construed as references to the Ordnance Survey National Grid reference points.

### **Incorporation, application and modification of enactments**

(a) **3.** (1) (a) The following provisions of the Railways Clauses Consolidation Act 1845 (4), so far as they are applicable for the purposes of, and are not inconsistent with, or varied by, the provisions of this Order, are incorporated with, and form part of, this Order:—

section 16 (works to be executed);

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners),

except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 75 (omission to fasten gates); and

sections 78 and 85E (provisions with respect to mines lying under or near the railway).

(2) Any difference under the said sections 71 to 73 of the said Act of 1845, as so incorporated, between the Society and any other person shall be determined by arbitration.

(3) The following provisions shall apply to the railways:—

Regulation of Railways Act 1868 (5)

Section 22 (Communication between passengers and the company’s servants to be provided);

Regulation of Railways Act 1889 (6)

Section 1 (Power to order certain provisions to be made for public safety); and

Section 5 (Penalty for avoiding payment of fares).

(4) In its application to the railways, section 22 of the Regulation of Railways Act 1868 shall have effect as if the words “and travels more than twenty miles without stopping” were omitted therefrom.

(5) Sections 116, 117 and 118 of the Transport Act 1968 shall apply to the railways as if references therein to the Board were references to the Society.

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(4) 1845 c. 20.  
(5) 1868 c. 119.  
(6) 1889 c. 57.

### **Power to work existing railway as a light railway**

4. As from the coming into force of this Order the Society may maintain and work the existing railway as a light railway under the Act and this Order.

### **Power to construct new railway**

5.—(1) The Society may on the line of the former railway and in the lines or situations, and within the limits of deviation, shown on the plans construct and maintain the new railway with all necessary works and conveniences connected therewith and work the same as a light railway under the Act and this Order.

(2) The new railway shall be laid within the existing formation, and to the levels shown on the deposited sections, being not more than 5 metres above the original level of the former railway.

### **Level crossings**

6.—(1) The Society may maintain the level crossings where the existing railway crosses the highways mentioned in column 1 of Schedule 3 to this Order in the parishes and at the locations mentioned respectively in columns 2 and 3 of that Schedule.

(2) The Society shall not at any of the said crossings obstruct or hinder traffic or persons passing along the highway for longer than is reasonably necessary in taking any train, engine, carriage or truck across the highway.

(3) The Society shall provide and shall at all times maintain at the crossings mentioned in Part I of Schedule 3 to this Order such stiles or self-closing wicket gates (if any) and such signs, devices and appliances (if any) as the Secretary of State may require.

(4) The Society shall observe the conditions and requirements specified in Schedule 4 to this Order in relation to the crossing of the Cresswell to Dilhorne road mentioned in Part II of Schedule 3 to this Order.

(5) Nothing contained or incorporated in this Order shall require the provision of keepers at any level crossing.

(6) So much of this Order as requires the opening, closing, locking, manning or operation of the said Cresswell to Dilhorne road crossing, and the gates and facilities provided in connection therewith, may be complied with by the train crews or other proper persons travelling with the trains or engines on the railways.

### **Gauge and motive power**

7.—(1) The railways shall be operated on the standard gauge of 1,435 millimetres (4 feet 8½ inches).

(2) The motive power 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 approve.

(3) Nothing in this Order shall authorise the Society to use electrical 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 telecommunication apparatus as defined in Schedule 2 to the Telecommunication Act 1984(7) or with telecommunication by means of any such apparatus.

### **Conveyance of passengers**

8. No part of the new railway shall be used for the conveyance of passengers without the prior written permission of the Secretary of State.

### **Order may cease to apply to certain lands**

9.—(1) Upon the expiration or sooner determination of any agreement made between the British Coal Corporation and the Society under which the Society is the occupier of land used for any part of the existing railway, unless such agreement shall be extended, renewed or replaced by another such agreement or the Society shall become entitled to some other interest in the land, the rights, powers and privileges conferred, and the obligations and liabilities imposed, on the Society by or under this Order in relation to that part of the existing railway shall cease to have effect, but without prejudice to any pre-existing right of action of either party in respect of any breach by the other party.

(2) In this article “agreement” includes a lease, sublease, tenancy, licence and any other form of agreement.

### **For protection of National Rivers Authority**

10.—(1) For the protection of the National Rivers Authority (in this article referred to as “the Authority”) the provisions of this article shall, unless otherwise agreed in writing between the Society and the Authority, apply and have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991<sup>(8)</sup> or any byelaws made under that Act or the Land Drainage Act 1991<sup>(9)</sup> in relation to anything done under or in pursuance of this Order.

- (a) (3) (a) Before carrying out any works involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the railways the Society shall furnish to the Authority proper and sufficient plans thereof for the approval of the Authority and shall not carry out the said works until the said plans have been approved in writing by the Authority;
- (b) The approval of plans furnished under this paragraph shall not be unreasonably withheld and, if within two months after such plans have been supplied to the Authority, the Authority shall not have intimated its disapproval thereof and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied;
- (c) For the purposes of this paragraph “plans” includes sections, drawings, specifications, calculations and descriptions.
- (a) (4) (a) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the railways, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the Society in good repair and condition and free from obstruction;
- (b) Nothing in this paragraph shall have the effect of requiring the Society to carry out works of maintenance in respect of any culvert or structure which the Authority or any other person are liable to maintain.

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<sup>(8)</sup> 1991 c. 57.

<sup>(9)</sup> 1991 c. 59.

(5) If any obstruction is erected or raised or any culvert or structure is constructed, altered or replaced in contravention of this article the Society shall upon receiving notice from the Authority take such action as may be necessary to remedy the effect of the contravention to the Authority's satisfaction and in default the Authority may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Society as a debt due from them to the Authority.

(6) Any dispute or difference which may arise between the Authority and the Society under this article shall be determined by arbitration.

(7) The provisions of the Railways Clauses Consolidation Act 1845 applied by this Order shall be subject to the provisions of this article.

### **For the protection of sewerage and water undertakers**

**11.**—(1) For the protection of sewerage and water undertakers (in this article referred to as “the undertakers”) the provisions of this article shall, unless otherwise agreed in writing between the Society and the undertakers concerned, apply and have effect.

(2) In this article, “relevant pipe” in relation to any of the undertakers has the meaning given in section 179(7) of the Water Industry Act 1991<sup>(10)</sup> but does not include any apparatus in respect of which the relations between the undertakers and the Society are regulated by the provisions of Part III of the New Roads and Street Works Act 1991<sup>(11)</sup>.

(3) Nothing contained or incorporated in this Order shall authorise the Society to raise, sink or otherwise alter the position of, or in any way interfere with, any relevant pipe without the consent in writing of the undertakers concerned, such consent not to be unreasonably withheld.

(a) (4) (a) Where any relevant pipe is situated in or under any land owned or held for the purpose of the railways the Society shall at their own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave the relevant pipe accessible for the purpose of repairs;

(b) Nothing in this paragraph shall have the effect of requiring the Society to carry out works of maintenance in respect of any culvert which the undertakers or any other person are liable to maintain.

(5) The Society shall afford reasonable facilities to the undertakers for the execution and doing of all such works and things as may be reasonably necessary to enable them to inspect, repair, maintain, renew, replace, remove, alter or use any relevant pipe.

(6) The Society shall compensate the undertakers—

(a) for any damage done or disturbance caused to any relevant pipe; and

(b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers,

by reason or in consequence of the execution, maintenance, user or failure of any of the works authorised by this Order or otherwise by reason or in consequence of the exercise by the Society of the powers of this Order.

(7) Nothing in the foregoing paragraph shall entitle the undertakers to any payment in respect of damage attributable to the neglect or default of the undertakers, their servants or agents.

(8) Nothing in this Order shall prejudice or affect the rights of the undertakers in respect of any relevant pipe or the provisions of any agreement regulating the relationship between the Society and the undertakers with regard to any relevant pipe and whether made before or after this Order comes into force.

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<sup>(10)</sup> 1991 c. 56.

<sup>(11)</sup> 1991 c. 22.

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(9) The provision of the Railways Clauses Consolidation Act 1845 applied by this Order shall be subject to the provisions of this article.

(10) Any difference arising between the Society and the undertakers under this article shall be determined by arbitration.

**Arbitration**

**12.** Where under any provision contained or incorporated in this Order any difference is to be determined by arbitration, then such difference shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President for the time being of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Transport

3rd May 1995

*R. A. Allan*  
An Under Secretary,  
Department of Transport

SCHEDULE 1

Article 2

The existing railway

The existing railway of the Society in the District of Staffordshire Moorlands in the County of Staffordshire consisting of the main line of the said railway (4,900 metres in length), which commences at a point (reference point SJ 953 415) 10 metres from the site of the former junction between the said railway and the Stoke to Derby line of the British Railways Board in the parish of Forsbrook, extends through the parish of Caverswall and terminates in the parish of Dilhorne at a point (reference point SJ 976 447) on the south side of the track leading from Dilhorne Road to Foxfield Wood (the site of the former Foxfield Colliery) together with the engine release siding (220 metres in length) at Blythe Bridge which commences at a junction with the main line of the said existing railway of the Society 210 metres from its point of commencement, extends in a generally northerly direction and terminates at reference point SJ 951 418.

SCHEDULE 2

Article 2

The former railway

So much of the colliery railway within the site of the former Foxfield Colliery (250 metres in length) in the parish of Dilhorne in the District of Staffordshire Moorlands in the County of Staffordshire as commences at the point of termination of the existing railway, extends thence in a southerly direction and terminates at reference point SJ 976 446.

SCHEDULE 3

Article 6

PARTICULARS OF LEVEL CROSSINGS

PART I—CROSSINGS OF FOOTPATHS

(1) Footpath	(2) Parish	(3) Location of Crossing
Footpath 33	Caverswall	400 metres south of the junction of Footpath 33 with Caverswall Road.
Footpath 34 (on the north side of the railway) and Footpath 3 (on the south side of the railway)	Caverswall (on the north side of the railway) and Forsbrook (on the south side of the railway)	Adjacent to the Caverswall Road signal box at the point where the parish boundary intersects the railway.
Footpath O.1647	Forsbrook	50 metres to the west of a house or farm known as Cashheath.

N.B. The numbers of footpaths given in column (1) are the numbers of such footpaths given on the definitive map and in the statement for the relevant area prepared in accordance with section 53(1) of the Wildlife and Countryside Act 1981(12)

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(1) Footpath	(2) Parish	(3) Location of Crossing
Footpath 12 (on the west side of the railway) and Footpath 21 (on the east side of the railway)	Dilhorne (on the west side of the railway) and Forsbrook (on the east side of the railway)	200 metres south of the house or farm known as Creswellford at a point where the parish boundary intersects the railway.
Footpath 1	Dilhorne	50 metres to the east of Tickhill Lane.
Footpath 24	Dilhorne	200 metres to the west of a house or farm known as Blakeleybank.
Footpath 9	Dilhorne	10 metres to the south of Dilhorne Wood.

N.B. The numbers of footpaths given in column (1) are the numbers of such footpaths given on the definitive map and in the statement for the relevant area prepared in accordance with section 53(1) of the Wildlife and Countryside Act 1981(12)

## PART II—CROSSING OF PUBLIC CARRIAGE ROAD

(1) <i>Description of road</i>	(2) <i>Parish</i>	(3) <i>Location of Crossing</i>
Unclassified road from Caverswall to Dilhorne.	Dilhorne	100 metres east of the Cresswellford farm house.

### SCHEDULE 4

Article 6(4)

#### Conditions and requirements as to Caverswall to Dilhorne road crossing

1. The Society shall erect and at all times maintain good and sufficient gates across the existing railway at each side of the highway at the crossing of the highway and in connection with such level crossing the following provisions shall apply:

(a) such gates and any relevant safety equipment shall be erected, maintained and operated in such manner as the Secretary of State may require;

(b) such gates shall be kept constantly closed and locked across the railway and the protecting signals set constantly to Danger except during the time when engines, wagons, trucks or vehicles passing along the railway shall have occasion to cross the highway (when such gates shall be closed across the highway) and such gates shall be of such dimensions and so constructed as when closed across the railway or across the highway to fence in the railway sufficiently;

(c) the Society shall unless otherwise permitted by the Secretary of State in writing arrange for one or more proper persons to open and close the gates and the gates shall be manned during all such times as they are closed across the highway;

(d) on the approach of any engines, wagons, trucks or vehicles to the level crossing such gates shall be closed and locked across the highway before the protecting signals are set to Clear;

(12) 1981 c. 69.



(e) after any engines, wagons, trucks or vehicles which are passing along the rising gradient of the railway at the level crossing have crossed the highway the gates shall be kept closed and locked across the highway until such engines, wagons, trucks or vehicles have cleared the summit of that gradient.

**2.** The Society shall provide, maintain and operate at the level crossing such lights, traffic signs and other devices and appliances as the Secretary of State may from time to time require.