

2007 No. 3234

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The East Kent Railway Order 2007

Made - - - - - *9th November 2007*

Coming into force - - - *30th November 2007*

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), for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Secretary of State has considered the objections made and not withdrawn and has determined to make an order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 12th October 2007.

Accordingly, 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, makes the following Order:—

Citation and commencement

1. This Order may be cited as the East Kent Railway Order 2007 and shall come into force on 30th November 2007.

Interpretation

2.—(1) In this Order—

“the 1993 Order” means the East Kent Light Railway Order 1993(c);

“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(d);

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985(e)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“the owner” means BRB (Residuary) Limited;

(a) S.I. 2000/2190.

(b) 1992 c.42, as amended by S.I. 1995/1541, 1998/2226, 2000/3139, 2006/557 and 2006/958.

(c) S.I. 1993/2154.

(d) 2003 c.21.

(e) S.I. 1985 c.6.

[DFT 15160L]

“the railway” means the railway described in the Schedule together with all lands and works relating to it which—

- (a) are held by the owner at the date when this Order comes into force; or
- (b) were at any time vested in the former British Railways Board, and which at the date when this Order comes into force are owned by or leased to the undertaker, or otherwise occupied by the undertaker;

“the relevant date” means—

- (a) in relation to any part of the railway which at the date when this Order comes into force is owned by the owner, the date upon which that part is transferred by the owner to the Trust;
- (b) in relation to any other part of the railway, the date when this Order comes into force;

“the Trust” means the East Kent Railway Trust, a company incorporated under the Companies Act 1985, whose registered number is 04294363 and whose registered office is at EKR Station, Station Road, Shepherdswell, Dover, Kent CT15 7PD; and

“the undertaker” means the Trust and following any sale, lease or underlease under article 5 (transfer of railway by undertaker) 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.

(3) 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 railway to undertaker

3. The owner and the undertaker may enter into and carry into effect agreements providing for the sale to and vesting in the undertaker of any part of the railway which is vested in the owner at the date when this Order comes into force on such terms and conditions as may be agreed between the owner and the undertaker.

Transfer of rights and obligations to undertaker, etc.

4.—(1) Except as may be otherwise provided in this Order, as from the relevant date—

- (a) 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 they are still subsisting and capable of taking effect); and
- (b) the undertaker shall, to the exclusion of the owner or, as the case may be, Network Rail—
 - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the railway; and
 - (ii) subject to paragraph (2), be subject to all obligations, statutory or otherwise, relating to the railway (in so far as they are still subsisting and capable of taking effect), to the intent that the owner or, as the case may be, Network Rail shall be released from all such obligations.

(2) Sections 116 to 118 of the Transport Act 1968^(a) 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

5.—(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 under the powers conferred by this article;

(a) 1968 c.73.

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

“the transferred undertaking” means so much of the railway as is leased or sold under the powers conferred by 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—

(a) 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 they are still subsisting and capable of taking effect); and

(b) the transferee shall, to the exclusion of the transferor—

(i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the transferred undertaking; and

(ii) be subject to all obligations, statutory or otherwise, relating to the transferred undertaking (in so far as they 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 the powers conferred by this article.

Operation of railway

6.—(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.

(5) Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993(a) or section 5 of the Regulation of Railways Act 1889(b).

Safety of approved works, etc.

7.—(1) This article applies where approval has been obtained under regulations(c) made under section 41 of the 1992 Act(d) (approval of works, plant and equipment) from a specified authority with respect to any works, plant or equipment (including vehicles) forming part of the railway.

(2) The works, plant and equipment as mentioned in paragraph (1) 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 to their state or condition does not materially impair the safe operation of the railway.

(3) If without reasonable cause the provisions of paragraph (2) 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.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this article except by, or with the consent of, a specified authority or the Director of Public Prosecutions.

(a) 1993 c.43, as amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

(b) 1889 c.57.

(c) S.I.1994/157; see the transitional provisions and savings in regulation 29 of S.I. 2006/599.

(d) 1992 c.42; section 41 of the 1992 Act was amended by regulation 6 of S.I. 2006/557.

Amendment and revocation

- 8.—(1) As from the relevant date—
- (a) so much of the 1993 Order as is not revoked by this Order shall have effect as if references to the Society were references to the undertaker; and
 - (b) the provisions of the 1993 Order mentioned in paragraph (2) shall be revoked.
- (2) The provisions of the 1993 Order referred to in paragraph (1) are—
- (a) Paragraphs (2), (3) and (4) of article 3 (Incorporation of General Acts);
 - (b) Article 4 (Transfer of rights etc. in the Railway to the Society);
 - (c) Article 5 (Gauge of the Railway and motive power);
 - (d) Article 6 (Restrictions as to conveyance of passengers).

Signed by authority of the Secretary of State for Transport

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

9th November 2007

THE RAILWAY

A portion (3,450 metres in length) of the railway authorised by the East Kent Light Railway Orders 1911 to 1931^(a) in the County of Kent, District of Dover, commencing in the parish of Eythorne at a point (National Grid Reference TR 2853 5003) 3 metres beyond the north-east bridge abutment adjacent to Wigmore Lane (which point is situated 1 kilometre to the north-east of Lower Eythorne) and terminating in the parish of Shepherdswell with Coldred at a point in the vicinity of the Network Rail substation (National Grid Reference TR 2575 4837) where the gate crosses the railway, together with all the lands relating to the railway and lying between those points, including the branch line (139 metres in length) comprised in the Shepherdswell passenger station of the undertaker.

^(a) 1911 Cd. 5771, 1911 Cd. 5917, 1912 Cd. 6500, 1920 Cd. 1004, SR & O 1931/430.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the transfer from BRB (Residuary) Limited to the East Kent Railway Trust of the existing East Kent railway, together with certain statutory provisions and other rights and liabilities. The Order also makes provision for the safety of works and equipment. The applicant for the Order is the East Kent Railway Trust.

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The East Kent Railway Order 2007

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