

**2009 No. 3281**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

**The South Devon Railway Order 2009**

*Made* - - - - - *9th December 2009*

*Coming into force* - - - - - *30th December 2009*

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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 2006<sup>(a)</sup> for an Order under sections 1 and 5 of the Transport and Works Act 1992<sup>(b)</sup> (“the 1992 Act”).

The Secretary of State received no objections to that application.

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the Secretary of State’s 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 30th November 2009.

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:—

## PART 1

### PRELIMINARY

#### **Citation and commencement**

1. This Order may be cited as the South Devon Railway Order 2009 and shall come into force on 30th December 2009.

#### **Interpretation**

2.—(1) In this Order—

“the altered railways” means the railways specified in Part 2 of Schedule 1 (“the railways”), together with all lands and works relating to the altered railways vested in the owner or the undertaker, as the case may be, at the date on which this Order is made and are held or used by the owner or the undertaker, as the case may be, for the purposes of its railway undertaking;

“the authorised works” means the new railways and any other works authorised by this Order, or any part of them;

“the deposited plans” and “the deposited sections” mean respectively the plans and sections certified by the Secretary of State as the plans and sections for the purposes of 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<sup>(c)</sup>;

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(a) S.I. 2006/1466.

(b) 1992 c. 42. As amended by S.I. 1995/1541, S.I.1998/2226, S.I. 2000/3199 and S.I. 2006/958.

(c) 2003 c. 21.

“the existing railways” means the original railways and the altered railways;

“the limits of deviation” means the limits of deviation shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” shall be construed accordingly;

“the new railways” means the railways specified in Part 3 of Schedule 1 together with all lands and works relating to those railways;

“the original Acts” means the Buckfastleigh, Totnes and South Devon Railway Act 1864(a) and the Buckfastleigh, Totnes and South Devon Railway Act 1865(b);

“the original railways” means the railways specified in Part 1 of Schedule 1, together with all lands and works relating to those railways vested in the owner or the undertaker, as the case may be, at the date upon which this Order is made and are held or used by the owner or the undertaker, as the case may be, for the purposes of its railway undertaking;

“the owner” means Dart Valley Railway Plc a company incorporated under the Companies Acts 1948 to 1967 (registration number 00852020) as a public limited company and whose registered office is at Queens Park Station, Torbay Road, Paignton, Devon TQ4 6AF;

“the railways” means the original railways, the altered railways and the new railways;

“the transfer date”, in relation to any part of the existing railways, means the date on which that part is sold by the owner to the undertaker under article 9 (transfer of railways to undertaker); and

“the undertaker” means the South Devon Railway Trust, a company incorporated under the Companies Acts 1948 to 1967 (registration number 01157099) as a company limited by guarantee and whose registered office is at The Station, Buckfastleigh, Devon, TQ11 0DZ.

(2) All distances, directions and lengths stated in the descriptions of the railways or in any description of powers or lands are approximate; and distances between points on a railway shall be taken to be measured along the railway.

### **Incorporation of Railways Clauses Consolidation Act 1845**

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(c) shall be incorporated in this Order and shall be applied to the new railways—

- 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 77 (presumption that minerals excepted from acquisition of land);
- sections 78 to 85E and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(d); and
- section 145 (recovery of penalties).

(2) In the provisions of the Railways Clauses Consolidation Act 1845 incorporated into this Order—

“the company” means the undertaker;

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision; and

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(a) 1864 c. cclviii.  
 (b) 1865 c. xli.  
 (c) 1845 c. 20.  
 (d) 1923 c. 20.

“the special Act” means this Order.

## PART 2

### CONSTRUCTION AND MAINTENANCE OF RAILWAYS

#### **Power to construct new railways**

4.—(1) The undertaker may construct and maintain the new railways.

(2) Subject to article 6 (power to deviate), the new railways may only be constructed within the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

#### **Subsidiary works**

5.—(1) The undertaker may, within the limits of deviation, carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the new railways, namely—

- (a) works to alter the position of any apparatus, including mains, sewers, drains and cables;
- (b) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the other authorised works; and
- (c) facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(2) The undertaker may, within the limits of deviation, carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the new railways.

(3) The undertaker may remove any works constructed by it under this Order which have been constructed as temporary works or which it no longer requires.

(4) In constructing and maintaining the new railways the undertaker may, within the limits of deviation, lay and install such number of railway lines, switches and crossings as may be necessary or expedient.

#### **Power to deviate**

6.—(1) In constructing or maintaining any of the new railways, the undertaker may—

- (a) deviate laterally from the lines or situations shown on the deposited plans within the limits of deviation relating to that railway shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 3 metres upwards; and
  - (ii) to any extent downwards as may be found to be necessary or convenient.

(2) Without limiting the scope of paragraph (1), in constructing or maintaining the new railways the undertaker may, to the extent it thinks fit, deviate from their points of commencement and termination shown on the deposited plans.

#### **Access to works**

7. The undertaker may, with the approval of the highway authority, such approval not to be unreasonably withheld, for the purposes of the construction or operation of the new railways, form and lay out such means of access or improve existing means of access, to streets within the limits of deviation as the undertaker reasonably requires for those purposes.

### **Power to maintain altered railways**

8.—(1) Regardless of anything to the contrary contained in any enactment, with effect from the transfer date the undertaker may maintain the altered railways in the lines and situations, and within the limits of deviation, shown on the deposited plans, and in accordance with the levels shown on the deposited sections.

(2) As from the transfer date the original Acts shall apply to the altered railways as if they formed part of the railways authorised to be constructed by the original Acts.

## **PART 3**

### **TRANSFER OF RAILWAYS**

#### **Transfer of railways to undertaker**

9.—(1) The owner and the undertaker may enter into and carry into effect agreements providing for the sale to, and vesting in, the undertaker of the existing railways or any part of the existing railways.

(2) Except as may be otherwise provided in this Order, as from the transfer date—

- (a) the existing railways or any part of them shall continue to be subject to all statutory and other provisions applicable to the existing railways at that date (in so far as those provisions are still subsisting and capable of taking effect); and
- (b) the undertaker shall to the exclusion of the owner—
  - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges relating to the existing railways or any part of them; and
  - (ii) be subject to all obligations, statutory or otherwise, relating to the existing railways or any part of them (in so far as those provisions are still subsisting and capable of taking effect) to the intent that the owner shall be released from all such obligations.

#### **Transfer of railways by undertaker**

10.—(1) In this article—

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

“the transferee” means any person to whom the railways, or any part of them, are or is leased or sold in accordance with this article; and

“the transferred undertaking” means so much of the railways as is leased or sold in accordance with this article.

(2) The undertaker may, with the consent of the Secretary of State—

- (a) lease the railways, or any part of them, to any person; or
- (b) sell the railways, or any part of them, to any person,

on such terms and conditions as may be agreed between the undertaker and the transferee.

(3) Paragraph (2) shall apply to the existing railways with effect from the date on which they are transferred to the undertaker under article 9 (transfer of railways to undertaker).

(4) Except as may be otherwise provided in this Order—

- (a) the transferred undertaking shall continue to be subject to all statutory or other provisions applicable to the transferred undertaking at the date of the lease or sale (in so far as the those provisions are still subsisting and capable of taking effect); and
- (b) the transferee shall, to the exclusion of the undertaker—
  - (i) be entitled to the benefit of, and to exercise, all rights, powers and privileges applicable to the transferred undertaking; and

- (ii) be subject to all obligations, statutory or otherwise, relating to the transferred undertaking (in so far as those provisions are still subsisting and capable of taking effect) to the intent that the undertaker shall be released from all such obligations.

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

## PART 4

### MISCELLANEOUS AND GENERAL

#### **Obstruction of construction of authorised works**

11. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of the undertaker in setting out the lines of the authorised works or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of the undertaker,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Power to operate and use railways**

12.—(1) The undertaker may operate and use the railways and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) 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).

(3) Subject to paragraphs (4) and (5), 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 Office of Rail Regulation may in writing approve.

(4) Nothing in this Order shall authorise the use of 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.

(5) 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.

#### **Certification of plans, etc.**

13. The undertaker shall, as soon as practicable after the making of this Order, submit copies of the deposited plans and the deposited sections to the Secretary of State for certification that they are true copies of, respectively, the plans and sections referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### **Revocation**

14. As from the transfer date the Orders referred to in columns (1) and (2) of Schedule 2 (Orders revoked) shall be revoked to the extent specified in column (3) of that Schedule.

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

Signed by authority of the Secretary of State

9th December 2009

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

## SCHEDULE 1

Article 2

### THE RAILWAYS

#### PART 1

##### THE ORIGINAL RAILWAYS

So much of the railways authorised by the original Acts as is situated between a point 197.14 metres north of its junction with the Totnes to Newton Abbot railway of Network Rail Infrastructure Limited and Milepost 7 (measured from a point at the centre of the Network Rail Infrastructure Limited station at Totnes) at Buckfastleigh Station.

#### PART 2

##### THE ALTERED RAILWAYS

The alterations made to the original railways, consisting of the following railways in the county of Devon —

In the district of South Hams, Town of Totnes—

Railway No. T1. A railway (276 metres in length), commencing at a junction with the original railway at a point 120 metres south of the south-eastern parapet of Hampstead Bridge, curving in a southerly direction and terminating at a point 101 metres south-south-east of the south face of Totnes Littlehempston station building.

Railway No. T2. A railway (177 metres in length), commencing at a junction with the original railway at a point 192 metres south of the south-eastern parapet of Hampstead Bridge, curving in a southerly direction and terminating at a junction with Railway No. T1 at a point 78 metres south-south-east of the south face of Totnes Littlehempston station building.

Railway No. T3. A railway (184 metres in length), commencing at a junction with the original railway at a point 75 metres south of the south-eastern parapet of Hampstead Bridge, curving in a southerly direction and terminating at a point 7 metres north of the north face of Totnes Littlehempston station building.

Railway No. T4. A railway (137 metres in length), commencing at a junction with Railway No. T3 at a point 125 metres south of the south-eastern parapet of Hampstead Bridge, curving in a southerly direction and terminating at a point 7 metres north of the north face of Totnes Littlehempston station building.

In the district of South Hams, parish of Staverton—

Railway No. S1. A railway (320 metres in length), in the form of a loop and associated siding commencing at a junction with the original railway at a point 180 metres south-west of the south-western face of the Staverton Station building, curving in a westerly direction parallel to the existing railway and terminating at a point 155 metres west of the western face of the former Station Master's House. Railway No. S1 includes a junction with the existing railway at a point 25 metres west of the western face of the former Station Master's House.

Railway No. S2. A railway (159 metres in length), commencing at a junction with the original railway at a point 165 metres south-west of the south-western face of the Staverton Station building, curving in a north-easterly direction and terminating at a point 7 metres west of the south-western face of the Staverton Station building.

Railway No. S3. A railway (49 metres in length), commencing at a junction with Railway No. S2 at a point 115 metres south-west of the south-western face of the Staverton Station building, curving in a south-westerly direction and terminating at a point 165 metres west of the south-western face of the Staverton Station building.

In the district of Teignbridge, parish of Buckfastleigh—

Railway No. B1. A railway (370 metres in length), commencing at a point 18 metres north of the north abutment of the Car Park Access Bridge to the south of Buckfastleigh Station, extending in a northerly direction through the railway works and terminating at a point 162 metres north of Milepost 7.

Railway No. B2. A railway (162 metres in length), commencing at a junction with the original railway at a point 20 metres south of Milepost 7, curving north and terminating at a point 104 metres north of Milepost 7.

Railway No. B3. A railway (138 metres in length), commencing at a junction with the original railway loop line 7 metres south-east of Milepost 7, curving north and terminating at a point 77 metres north of Milepost 7.

Railway No. B4. A railway (120 metres in length), commencing at a junction with Railway No. B1 at a point 78 metres north of the north abutment of the Car Park Access Bridge and terminating at a point 200 metres north of the north abutment of the Car Park Access Bridge.

Railway No. B5. A railway (115 metres in length), commencing at a junction with Railway No. B1 at a point 86 metres north of the north abutment of the Car Park Access Bridge and terminating at a point 200 metres north of the north abutment of the Car Park Access Bridge.

## PART 3

### THE NEW RAILWAYS

In the district of South Hams, Town of Totnes—

Work No. T5. A railway (114 metres in length), commencing at a junction with Railway No. T3 at a point 120 metres south of the south-eastern parapet of Hampstead Bridge, curving in a north-westerly direction and terminating at a point adjacent to the south-eastern parapet of Hampstead Bridge.

Work No. T6. A railway (137 metres in length), commencing at a junction with Railway No. T4 at a point 165 metres south of the south-eastern parapet of Hampstead Bridge, curving in a southerly direction and terminating at a point 20 metres south-west of the south face of Totnes Littlehempston station building.

In the district of Teignbridge, parish of Buckfastleigh—



Work No. B6. A railway (277 metres in length), commencing at a junction with Railway No. B1 at a point 94 metres north of the north abutment of the Car Park Access Bridge, extending in a northerly direction and terminating at a point 156 metres north of Milepost 7.

Work No. B7. A railway (117 metres in length), commencing at a junction with Work No. B6 70 metres north-east of Milepost 7 and terminating at a point 156 metres north of Milepost 7.

Work No. B8. A railway (177 metres in length), commencing at a junction with Work No. B6 at a point 130 metres north of the north abutment of the Car Park Access Bridge, extending in a northerly direction and terminating at a point 113 metres north-east of Milepost 7.

Work No. B9. A railway (197 metres in length), commencing at a junction with Work No. B6 at a point 108 metres north of the north abutment of the Car Park Access Bridge, extending in a northerly direction and terminating at a point 115 metres north-east of Milepost 7.

Work No. B10. A railway (172 metres in length), commencing at a junction with Work No. B9 at a point 135 metres north of the north abutment of the Car Park Access Bridge, extending in a northerly direction and terminating at a point 118 metres north-east of Milepost 7.

Work No. B11. A railway (98 metres in length), commencing at a junction with Work No. B10 at a point 170 metres north of the north abutment of the Car Park Access Bridge, extending in a southerly direction and terminating at a point 82 metres north-east of the north abutment of the Car Park Access Bridge. Work No. B11 includes a turntable.

## SCHEDULE 2

Article 14

### ORDERS REVOKED

<i>(1)</i> <i>SI Number</i>	<i>(2)</i> <i>Short title</i>	<i>(3)</i> <i>Extent of revocation</i>
SI 1967/1756	British Railways Board (Totnes and Ashburton) Light Railway Order 1967	The whole Order except articles 1 to 4 and the Schedule
SI 1969/508	British Railways Board (Totnes and Ashburton) Light Railway (Transfer) Order 1969	The whole Order
SI 1992/926	Dart Valley Light Railway Plc (Totnes and Ashburton) Light Railway (Transfer) Order 1992	The whole Order

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order relates to the existing branch railway from Totnes to Buckfastleigh. At present, the railway is leased by its owners Dart Valley Railway Plc to the South Devon Railway Trust.

The Order authorises the sale of the railway line to the Trust, gives statutory authority for the maintenance of certain existing lengths of track now forming part of the branch and gives statutory authority for the construction and maintenance of new lengths of railway to form part of the branch. In addition, the Order makes other provisions in relation to these railways, and revokes in whole or in part certain Light Railway Orders which are spent or otherwise unnecessary.

Copies of the plans and sections referred to in the Order may be inspected at The Railway Station, Buckfastleigh, Devon, TQ11 0DZ.

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STATUTORY INSTRUMENTS

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**2009 No. 3281**

**TRANSPORT AND WORKS, ENGLAND**

**TRANSPORT, ENGLAND**

The South Devon Railway Order 2009

£5.50