

TRANSPORT AND WORKS ACT 1992

THE TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006

THE BRECON MOUNTAIN RAILWAY (LIGHT RAILWAY) ORDER 202[]

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of the draft order as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006. It also highlights and explains the requirement for and impact of any departures from the Model Clauses for Railways and Tramways) Order 2006 (the **Model Clauses**).

The Order is promoted by the Vale of Rheidol Railway Limited (referred to as the **Undertaker**). The Order provides for the Brecon Mountain Railway Company Limited (the **Owner**) to transfer the entire undertaking to the Undertaker. The Order also seeks to provide clarity of the powers granted to the Undertaker by omitting some of the consent provisions contained in the Brecon Mountain Railway (Light Railway) Order 1980 (the **Original Order**) in recognition that the undertaking is now a fully operational railway and no further construction is contemplated.

The Order is necessary to transfer the existing powers, statutory powers and obligations relating to the undertaking from the Owner to the Undertaker which cannot be done without statutory authority such as would be provided by the Order.

The Order does not authorise the construction of any works or the acquisition of land.

The Order is based on the Original Order and the Model Clauses but departs from these where appropriate in the light of previous precedent orders, in particular The Caernarfon and Dinas Welsh Highland Railway (Transfer and Governance) Order 2022 (referred to as the **Welsh Highland Order**) and (less frequently) The South Devon Railway Order 2009 (referred to as the **South Devon Order**).

Where there is a departure from the Model Clauses, an explanation is provided below.

Articles of the Order

Article 1 (Title and commencement) provides for the commencement and citation of the Order.

Article 2 (Interpretation) provides the definitions to be applied to specific phrases in the interpretation of the Order.

“the Original Order” means The Brecon Mountain Railway (Light Railway) Order 1980;

“the Owner” means the Brecon Mountain Railway Company Limited, a company incorporated under the Companies Act 1967 (company number 01409791) as a company limited by shares, whose registered office is at Pant Station, Pontsticill, Merthyr Tydfil, Wales CF48 2UP;

“the railway” means the railway known as the ‘Brecon Mountain Railway’, which is a railway 8,720 metres or thereabouts in length including a tunnel commencing in the County and District of

Merthyr Tydfil at reference point SO 059097 and terminating in the County of Powys at reference point SO 058170;

“the Transfer Date”, means in relation to the railway, the date on which title passes from the Owner to the Undertaker under article 3 (transfer of railway to Undertaker);

“the Transferee” means any person to whom the railway, or any part of the railway, is leased or sold under the powers conferred by article 4 (transfer of railway by the Undertaker);

“the Transferred Undertaking” means so much of the railway as is leased or sold under the powers conferred by this Order; and

“the Undertaker” means the Vale of Rheidol Railway Limited, a company incorporated under the Companies Act 1985 (company number 02188631) a company limited by shares whose registered office is at Park Avenue, Aberystwyth, Ceredigion, Wales SY23 1PG.

None of these definitions are set out in the Model Clauses.

Article 2(2) is a re-wording of Model Clause 1(3) which has been adapted to make it more suitable for the railway where there are no scheduled works and new construction is not authorised under the Order.

Article 2(2) has been included to recognise that there may be non-material deviations between the lengths and directions given in relation to the railway and the actual lengths and directions on the ground. The clause tracks the wording of article 4(2) of the Original Order but in updated and accessible language.

The language used in article 2(2) of the Order finds precedent in article 2(2) the Welsh Highland Order.

Having regard to the principles surrounding the accessibility of law, article 2(3) provides further information to the reader on the meaning of the reference points given in the definition of the railway and where the plans can be inspected.

Article 2(4) makes it clear how the provisions of the Original Order and the Order interact. Where there is any deviation from or inconsistency between the two orders, the provisions of the Order will prevail. It also makes it clear that the intention is not to revoke the Original Order but only to make the changes necessary to allow the transfer of the railway in its fully operational state to the Undertaker.

Article 3 (*Transfer of railway to undertaker*) is the operative article providing for the transfer of the railway, along with any existing statutory powers and obligations in the Original Order, to the Undertaker. It authorises the Owner and the Undertaker to enter into any agreements that may be required to achieve the transfer.

The article recognises that the transfer date is not yet known.

Upon completion of the transfer, the Undertaker will be entitled to exercise all powers subject to the obligations relating to the railway to the exclusion of the Owner. At completion the Owner will be simultaneously released from liability.

The article is not based on the Model Clauses. However, the form of the article has precedent in article 9 of the South Devon Order and article 3 of the Welsh Highland Order. Both the South Devon Order and the Welsh Highland Order relate to the transfer of an undertaking without new works.

Article 4 (*Transfer of railway by undertaker*) is based on the Model Clauses. As the Order does not authorise the construction of works, Model Clause 35 has been amended to remove any reference to 'construct'.

No physical works are contemplated by the Undertaker.

The article has precedent in article 4 of the Welsh Highland Order.

Article 5 (*Power to operate and use railway*)- articles 5(1) and 5(3) are based on Model Article 34 and articles 5(1) and 5(5) of the Welsh Highland Order.

The article reaffirms the right to operate the railway but without the consent provisions of article 8(3) of the Original Order. This is because the railways is now fully operational and used for the conveyance of passengers.

Article 5(2) represents the incorporation of article 36 of the Model Articles. As the railway does not transport goods, article 36 has been modified to remove any reference to 'goods'. This provision allows the Undertaker the discretion to charge a fare for transporting passengers on the railway. It also allows the Undertaker to determine, again at their discretion, at what level any such fares should be set and gives the Undertaker the ability to alter any fare structure as and when they deem it to be necessary.

Article 6 (*Motive power*) amends but does not revoke article 9 of the Original Order. It amends the Original Order to provide the Undertaker with the flexibility to operate the railway with additional forms of motive power not available when the Original Order was granted. The article does not alter the nominal gauge of the railway nor the need to seek the consent of the Forestry Commissioners for the use of any motive power other than oil-fired steam, internal combustion or electricity on any part of the railway lying north of reference point SO 063125 as stipulated in article 9 of the Original Order.

Articles 6 has precedent in articles 5(2)-5(4) of the Welsh Highland Order.

Isca Legal LLP

Solicitors to the Applicant, the Vale of Rheidol Railway Limited

20 January 2025