

TRANSPORT AND WORKS ACT 1992

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

THE CHINNOR AND PRINCES RISBOROUGH RAILWAY (CHINNOR BRANCH AND RISBOROUGH SIDINGS) ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article in, and the schedule to, the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (SI 2006 No.1466) (the "TWAO").

The Chinnor and Princes Risborough Railway Association ("the Association") holds a long lease ("the main lease") of part of the former Watlington branch line ("the Railway") from Network Rail Infrastructure Limited ("Network Rail"). The Order would provide for the transfer from Network Rail to the Association of the statutory rights and liabilities relating to that Railway for the duration of that lease and to the exclusion of Network Rail. The Order would further authorise the sub-leasing of the Railway, and the transfer of the statutory rights and liabilities relating to it, by the Association to the Chinnor and Princes Risborough Railway Company Limited, a wholly-owned subsidiary of the Association and leaves open the possibility of transfer to a third party with the consent of the Secretary of State but without the need for a further statutory instrument.

The Order is required because the existing statutory powers and obligations relating to the Railway cannot be transferred from Network Rail to the Association or any other person without the statutory authority that the Order would provide. The Order would not authorise the acquisition of land or construction of works, and all the land to which it relates is currently occupied by the Association as lessee.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (SI 2006 No.1954) ("the Model Clauses"), but on occasion it departs from them. Where there is a departure from the Model Clauses, an explanation is provided below.

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

Article 2 (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order. Paragraph (2) is not included in the model clauses but makes it clear that any enactment authorising the construction or operation of the Railway shall have effect subject to the provisions of this Order. This provision has precedent in, for example, the Nene Valley Railway (Fletton Branch) Order 2012 (S.I. 2012 No. 1993).

Article 3 (*Transfer of rights and obligations to the Association; leasing to Company*) is not based on the model clauses. Paragraph (1) has precedent in other orders where a railway has been

transferred or leased to a heritage undertaking such as, for example, article 3 of The Swanage Railway Order 2014 (S.I 2014 No.1604), article 3 of the Cambrian Railways Order 2017 (S.I. 2017 No. 370) and article 4 of the Babbacombe Cliff Railway Order 2009 (S.I. 2009 No. 872). It provides that, as from the relevant date (meaning, in this case, the date on which the Order comes into force) and for the duration of the lease from Network Rail, the Railway continues to be subject to all existing statutory and other provisions relating to it and the Association is entitled to exercise all the powers and is subject to all the obligations relating to the Railway to the exclusion of Network Rail (save insofar as applies to the exercise by Network Rail of its rights under the main lease).

Paragraph (1A) provides that rights, whether statutory or otherwise, that relate both to the Railway and to Network Rail's retained undertaking under the main lease are exercisable by each party concurrently.

Paragraph (2) empowers the Association to sub-lease the Railway or any part of it to the Company together with the statutory rights, powers, privileges and obligations vested in the Association in accordance with paragraph (1), subject to the consent in writing of Network Rail (such consent not to be unreasonably withheld or delayed). Paragraph (3) provides that, for the duration of such sub-lease, the Company shall, to the exclusion of the Association, be entitled to exercise all rights powers and privileges and be subject to all obligations relating to the Railway. Paragraph (4) distinguishes Network Rail's retained undertaking from the Railway as defined in article 2.

Precedents for arrangements empowering the Association to lease its railways to the Company are found in article 4 of the Chinnor and Princes Risborough Railway Order 1994 (S.I 1994 No. 1803) and article 4 of the Chinnor and Princes Risborough Railway (Extension) Order 1995 (S.I. 1995 No. 2458).

Article 4 (*Transfer of railway by undertaker*) provides for the Undertaker to lease any part of the Railway with the consent of Network Rail (such consent not to be unreasonably withheld or delayed) and with the consent of the Secretary of State. "The Undertaker" is defined in article 2 as the Association, and includes the Company or any transferee within the meaning of this article. Paragraph (3) provides for such transferee to assume the statutory powers and obligations relating to the Railway for the duration of the underlease to the exclusion of the transferor. This provision would enable a new entity to take over the running of the railway with permission of Network Rail, but only with the consent of the Secretary of State. That new entity may be the Company or some other (currently unidentified) third party. Similar arrangements have ample precedent in heritage railway orders including the Swanage Railway Order 2014 and The South Devon Railway Order 2009 (S.I 2009 No. 3281).

Article 5 (*Operation of railway*) allows the undertaker to operate the railway as a system, or part of a system, of transport for the carriage of passengers and goods and makes provisions as to the motive power which may be used. Paragraph (1) of this article is based on paragraph 34 of the model clauses while paragraphs (2) to (5) concerning motive power have precedent in, for example, article 12 of the South Devon Railway Order 2009.

Article 6 (*Dispute resolution*) is not in the model clauses but provides that any differences between the Undertaker and Network Rail under the Order are to be determined by the Secretary of State for Transport. In the event of a dispute, it will ultimately be for the Secretary of State to decide whether a proposed transferee is a fit and proper person to carry out the statutory undertaking.

Article 7 (*Saving for main lease*) is not in the model clauses but is included to provide protection for Network Rail. Paragraph (1) makes explicit that the Order does not affect the provisions of the main lease. Paragraph (2) provides that Network Rail is not required to consent to an onward

lease of the Railway, or any part of it, under articles 3 or 4, to any person unless there has also been a sub-lease pursuant to the main lease. Paragraph (3) provides that, upon agreeing to a sub-letting of the main lease, Network Rail shall be deemed to have also given its consent to a transfer of the statutory powers for the purposes of articles 3(2) and 4(2).