



TRANSPORT AND WORKS ACT 1992

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

THE CARDIFF AND VALLEYS RAILWAYS (TRANSFER) ORDER 201[]

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedule to the draft Cardiff and Valleys Railways (Transfer) 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 contained in Schedule 1 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (“the model clauses”).

The Order is promoted by Keolis Amey Wales Cymru Limited (referred to as “the Company”), which is the company that has been appointed by the Welsh Ministers as the operator, and development partner for the railway lines linking Cardiff with the Rhondda, Cynon, Taff and Rhymney valleys (“the core Valley lines”). The Order provides for Network Rail Infrastructure Limited and to Transport for Wales (“TfW”) to agree a scheme transferring Network Rail’s undertaking in relation to the core Valley lines, together with certain statutory provisions and other rights and liabilities relating to the core Valley lines. The Order also provides for the onward transfer of that undertaking from TfW to the Company.

The precise extent of the railway lines that are to be transferred will be set out in the transfer scheme. The core Valley lines which may be included in the scheme are the following lines:

- the **Cardiff and Merthyr Line** between Cardiff Queen Street and Merthyr Tydfil, including the **Aberdare Branch Line** between Abercynon and Aberdare;
- the **Cardiff and Rhymney Line** between Cardiff Queen Street and Rhymney;
- the **Cardiff Bay Line**, or Butetown Branch Line, between Cardiff Bay and Cardiff Queen Street;
- the Cardiff City Line, or **Radyr Branch Line**, between Cardiff Central and Radyr;



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- the Cardiff Railway, or **Coryton Line**, between Cardiff Queen Street and Coryton;
 - the Rhondda Line, or **Treherbert Branch Line**, between Pontypridd and Treherbert;
 - the **South Wales Main Line** between Cardiff Central and Cardiff East Junction; and
 - a number of freight and disused lines that branch off those lines.

The core Valley lines are shown on the plan appended to this Memorandum. As indicated on the plan, it is currently proposed that Network Rail will retain an interest in the South Wales Main Line, with TfW Rail services running over Network Rail's infrastructure.

The Order is necessary because the existing powers and statutory powers and obligations relating to the railways cannot be transferred from Network Rail Infrastructure Limited to TfW and the Company without the statutory authority that the Order would provide. The Order would not authorise the acquisition of land or the construction of works.

The Order is based on the model clauses but occasionally departs from those clauses and follows previous precedent orders, in particular, The Cambrian Railways Order 2017 (referred to as "the Cambrian Order"). Where there is a departure from the model clauses, an explanation is provided below.

In particular, given the scale of this transfer, the Order also includes more detailed provisions on what may be included in a transfer scheme. These are predominantly based on Schedule 8 to the Railways Act 1993 and Schedule 31 to the High Speed Rail (London to West Midlands) Act 2017, both of which made provision for the transfer of railway undertakings.

Articles of the Order

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

Article 2 (Interpretation) defines the following terms that are used in the interpretation of the Order:

- "the company", namely the Company and its associated infrastructure company, Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited;
- "the core Valley lines", namely the railways authorised by the enactments listed in *Schedule 1*;



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- “the core Valley lines undertaking”, namely Network Rail’s undertaking in relation to the core Valley lines;
 - “Network Rail”, including Network Rail’s associated companies;
 - “the relevant date” for the purposes of the transfer power under *article 4*, namely the date on which the Order comes into force;
 - “statutory provision”, which includes statutory provisions of both a general and a special (i.e., local) nature;
 - “the transferred railways”, namely any of the core Valley lines that are transferred to TfW under *article 3*;
 - “transfer scheme”, namely a scheme to transfer any of the core Valley lines made using the power under *article 3*; and
 - “the undertaker”, namely TfW .

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

Article 3 (Agreements with Network Rail for transfer schemes) provides for Network Rail and TfW to enter into schemes enabling the transfer of the core Valley lines, including any statutory powers and obligations relating to them. The core Valley lines are the railways authorised by the various local Acts set out in detail in *Schedule 1*. This provision is not based on the model clauses but has precedent in other orders relating to the transfer of an undertaking where no works are being carried out, for example article 3 of the Cambrian Order. It provides that from the date that a transfer scheme comes into force, the railways will continue to be subject to all existing statutory and other provisions relevant to them, but that TfW as the ‘new’ railway undertaker is entitled to exercise all powers and is subject to all obligations relating to the railways, to the exclusion of Network Rail.

Article 4 (Further transfer of railways by undertaker) is not based on the Model Clauses but has precedent in article 5 of the Cambrian Order. It provides for TfW to sell or lease any part of the railways that have been transferred to it with the consent of the Welsh Ministers. This allows future reorganisation of the railways in Wales with the consent of the Welsh Ministers.

Under paragraph (3), the Welsh Ministers’ consent is not required if it is proposed to lease the railways to the Company, or its associated infrastructure company, Amey Keolis Infrastructure/Seilwaith Amey Keolis Limited. This is because the Welsh Ministers have already agreed that the Company should be granted a lease of the core Valley lines.



Article 5 (Power to operate and use railway) provides for TfW to operate and use the railway as part of a passenger and goods rail system. It is based on article 34 of the Model Clauses.

Paragraph (2) makes it clear that the Order does not cut across any of the restrictions on the Welsh Ministers' powers in relation to railways under the Railways Act 1993 or the Government of Wales Act 2006.

SCHEDULES

Schedule 1 (The railway enactments for the core Valley lines) lists the railway enactments which confer functions relating to each branch of the core Valley lines.

Schedule 2 (Power to make transfer schemes) makes provisions about transfer schemes, setting out the property, rights and liabilities that may be transferred under a scheme and making a number of ancillary provisions. Each of these provisions is based on a precedent in Schedule 8 to the Railways Act 1993 ("RA 1993"), which provided for the transfer of the undertaking of the British Railways Board to Railtrack, now Network Rail, or Schedule 31 to the High Speed Rail (London to West Midlands) Act 2017 ("HS2 Act"), which provides for the transfer of the railway authorised by that Act.

The table below specifies which enactment each of the transfer provisions is based on.

Provision of Schedule 2	Summary of provision	Derivation
<i>Paragraph 1 (General provisions about transfer schemes)</i>	This provides for transfer schemes to define the property to be transferred under them, and that where property is transferred, no third party rights of pre-emption, etc, are exercisable. If a person loses the ability to exercise such a right, they are entitled to compensation.	RA 1993 section 91 (Transfer schemes: general) and Schedule 8, paragraph 14 (Third parties affected by vesting provisions)



Provision of Schedule 2	Summary of provision	Derivation
<p><i>Paragraph 2 (Property, rights and liabilities that may be transferred)</i></p>	<p>This provides that the property which may be transferred under a scheme can include:</p> <ul style="list-style-type: none"> • rights and liabilities under employment contracts, • property that could not otherwise be transferred, • property acquired after the scheme is made, and • statutory rights and liabilities. 	<p>HS2 Act, Schedule 31, paragraph 1, (Property, rights and liabilities)</p>
<p><i>Paragraph 3 (Functions under local or private legislation)</i></p>	<p>This provides that a transfer scheme can transfer Network Rail’s functions under the local legislation which originally authorised the core Valley lines and any other relevant legislation.</p>	<p>RA 1993, section 92 (Functions under local or private legislation etc.)</p>
<p><i>Paragraph 4 (Proof of title by certificate)</i></p>	<p>This enables Network Rail and TfW to issue a joint certificate confirming that property has been transferred under a scheme.</p>	<p>RA 1993, Schedule 8, paragraph 6 (Proof of title by certificate)</p>
<p><i>Paragraph 5 (Transfer scheme may provide for contraventions etc. to be treated as not occurring)</i></p>	<p>This provides that transfer schemes may transfer property even if this would ordinarily give rise to a liability and that where such a transfer is made, no such liability arises.</p>	<p>HS2 Act, Schedule 31, paragraphs 7 and 8 (Provision for contraventions etc. to be treated as not occurring)</p>
<p><i>Paragraph 6 (Transfer scheme may impose obligations to enter into agreements or execute documents)</i></p>	<p>This provides that a transfer scheme may require Network Rail or TfW to enter into agreements with third parties as a consequence of the transfer.</p>	<p>HS2 Act, Schedule 31, paragraph 11 (Obligations to enter into agreements or execute instruments)</p>



Provision of Schedule 2	Summary of provision	Derivation
<i>Paragraph 7 (Supplementary provisions of schemes)</i>	This allows transfer schemes to include supplementary provisions, including in particular provision for things done pre-transfer by Network Rail to have effect as if they were done by TfW, and for TfW to continue actions started by Network Rail.	Subparagraph (1) derives from HS2 Act, Schedule 31, paragraph 12 (Supplementary provisions of schemes) Subparagraphs (3) and (4) derive from RA 1993, Schedule 8, paragraphs 8 to 13 (Construction of agreements, statutory provisions and documents)
<i>Paragraph 8 (Effect of transfer scheme)</i>	This provides for rights to be transferred or created as specified by the scheme.	HS2 Act, Schedule 31, paragraph 13 (Effect of scheme)
<i>Paragraph 9 (Variation of transfer schemes)</i>	This enables Network Rail and TfW to reach agreements varying the effects of a transfer scheme (e.g., to correct errors). This power may only be exercised within 12 months of the scheme having come into effect, and the variation needs to be approved by Welsh Ministers.	RA 1993, Schedule 8, paragraph 3 (Variation of transfers by agreement)
<i>Paragraph 10 (Transfer of employees and continuity of employment)</i>	This provides continuity of employment for any employees who transfer from Network Rail to TfW as a result of a transfer scheme. Sub-paragraphs (2) and (3) enable an employee who does not wish to be transferred to terminate their employment instead.	HS2 Act, Schedule 31, paragraphs 3 to 6 (Transfer of employees and continuity of employment)



Appendix: Plan of Core Valley Lines



