

PART 1.
PRELIMINARY

1 Citation

This Order may be cited as the Railway (Luas Broombridge - St. Stephen's Green to Broombridge) Order, 2011.

2 Interpretation

(1) In this Order—

“Act of 1919” means the Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 Geo. 5, c. 57)

“Act of 1993” means the Roads Act, 1993 (No. 14 of 1993);

“Agency” means the Railway Procurement Agency and includes:

- (i) any person with whom or with which (as the case may be) the Railway Procurement Agency has made an arrangement pursuant to section 43(5) of the Principal Act; and
- (ii) in respect of the performance of any function of the Railway Procurement Agency, any person duly authorised by the Railway Procurement Agency to perform that function;

“authorised works” means the works specified in the First Schedule to this Order or any part of them and any works required for the purposes of the railway or any part of the railway, including works ancillary to the purposes aforesaid such as parking by buses or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities and any other works authorised by this Order or any part of them;

“Board” means An Bord Pleanála;

“book of reference” means the book of reference to the plan, submitted to the Board pursuant to section 37(3)(d) of the Principal Act and certified by the Board as the book of reference for the purpose of this Order;

“construct” includes build, make and put together;

“execute” includes construct, maintain and improve, and cognate words shall be construed accordingly;

“land” includes tenements, hereditaments, houses and buildings and any other structure, land covered by water and any estate, right or interest in or over land and

includes any substratum of land or substrata of land;

“limits of deviation” means the limits of deviation for the authorised works mentioned in Article 6;

“limits of land to be used temporarily” means the limits so shown and described in the plan;

“Minister” means the Minister for Transport;

“occupier” includes a person occupying land under a tenancy for a period of more than one month;

“owner” in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion and includes also a person holding or entitled to the rents and profits of the land under a lease or agreement the unexpired term whereof exceeds three years;

“plan” means the plan of the proposed railway works together with a plan of any proposed commercial development of land submitted to the Board pursuant to section 37(3)(b) of the Principal Act and deposited or to be deposited at the head office of the Agency pursuant to section 46(a) of the Principal Act;

“Principal Act” means the Transport (Railway Infrastructure) Act, 2001 (No. 55 of 2001);

“public road” means a public road within the meaning of the Act of 1993 and includes any road which may become a public road during the currency of this Order;

“railway” means the railway authorised by this Order or any part of it;

“rights” includes rights which exist or which the Agency is authorised to create by this Order;

“relevant road authority” in relation to a road or a proposed road, means the road authority in whose functional area the road is located or is proposed to be constructed;

“road authority” has the meaning assigned to it by the Act of 1993;

“road” has the meaning assigned to it by the Act of 1993;

“stop” means a halting place where passengers or intending passengers may alight from or board railway vehicles,

“substratum of land” means any subsoil or anything beneath the surface of land required—

- (i) for the purposes of the authorised works, or
- (ii) for any other purposes connected with this Order;

“works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal;

- (2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in or on land or in the air-space over its surface.
- (3) Any reference in this Order to a work identified by the number of the work shall be construed as a reference to the work of that number authorised by this Order.
- (4) References in this Order to points identified by letters, with or without numbers, shall be construed as reference to the points marked on the plan.
- (5) All distances, directions and lengths stated in the description of the authorised works or in any description of powers or lands shall be construed as if the words “or thereabouts” were inserted after each such distance, direction and length, and distances between points on a scheduled work shall be taken to be measured along the scheduled work.

3 Incorporation of enactments

The Regulation of Railways Acts, 1840-1893 and any other Act relating to railways shall apply to the railway so far as they are applicable for the purposes of and are not inconsistent with or varied by the provisions of this Order, and the Principal Act together with the Order shall be deemed to be the Special Act for the purposes of those enactments.

4 Designation of railway

The railway is designated as a light railway.

PART 2. WORKS PROVISIONS

5 Power to execute works

- (1) Subject to the provisions of this Order, the Agency may, on the lines, in the places and according to the levels shown on the plan, execute the authorised works or any part thereof and all other necessary or ancillary works or things.
- (2) Subject to section 11(7) of the Principal Act, the Agency may operate and maintain the railway or any part thereof in the manner and subject to the conditions (including, in

particular, the conditions set out in the Fourteenth Schedule), restrictions and requirements specified in this Order.

- (3) In executing the authorised works, the Agency may lay and install such number of railway lines, switches and crossings as it deems necessary or expedient and without prejudice to the generality of the foregoing may lay down either single or interlacing tracks of parallel rails in places where double tracks are shown on the plan.

6 Deviation

In executing any of the authorised works the Agency may —

- (a) where those works are situated in a public road —
- (i) deviate laterally by any distance not exceeding 2.5 metres from the lines or situations shown on the plan,
 - (ii) deviate vertically by any distance not exceeding 1 metre upwards from the levels shown on the plan,
 - (iii) deviate vertically by any distance not exceeding 1 metre downwards from the levels shown on the plan,
 - (iv) deviate longitudinally by any distance not exceeding 20 metres,
- (b) where those works form part of an underpass or are situated otherwise than in a public road —
- (i) deviate laterally by any distance not exceeding 5 metres from the lines or situations shown on the plan,
 - (ii) deviate vertically by any distance not exceeding 2 metres upwards from the levels shown on the plan,
 - (iii) deviate vertically by any distance not exceeding 2 metres downwards from the levels shown on the plan,
 - (iv) deviate longitudinally by any distance not exceeding 20 metres,
- (c) where those works relate to the attachment or fixing of a bracket, cable, wire, fixture or other thing to a protected structure, deviate in any direction by any distance not exceeding 0.75 metres from the situations shown on the plan.

7 Power to alter layout of public roads

- (1) In exercise of the powers conferred by section 50 of the Principal Act and subject to that section and to paragraph (2), the Agency may in connection with or for the

purpose of the authorised works on, in, over, under or adjacent to any public road and in accordance with the plan do any one or more of the following:

- (a) alter the width of the carriageway of the road by altering the width of any footway, cycle track, verge or other land within the boundary of the road;
 - (b) break up, alter or interfere with the level of any carriageway, kerb, footway, cycle track, verge or other land within the boundary of the road;
 - (c) realign the road;
 - (d) carry out works to the carriageway of the road for the purpose of deterring or inhibiting vehicles other than authorised vehicles from passing along the tracks of the railway or from passing along any particular section or sections of the road.
- (2) Before exercising any power under paragraph (1) the Agency shall obtain the consent of the relevant road authority, which consent shall not be unreasonably withheld or delayed.
- (3) The authorised works may be executed on, in, over, under or adjacent to the public roads specified in the Twelfth Schedule.

8 Temporary closure of public roads

- (1) Subject to paragraph (3), the Agency may, for the purpose of executing the authorised works or for any purpose incidental thereto, request the relevant road authority by order temporarily to close a public road to traffic, and paragraphs (2) to (8) apply in relation to such a request.
- (2) The Agency shall give the road authority notice in writing of its requirement to close the road and the notice shall—
- (a) specify the road which is required to be temporarily closed,
 - (b) state a period for which, in the reasonable opinion of the Agency, it is necessary temporarily to close the road,
 - (c) give particulars of any alternative route or routes (if any) which the Agency believes will be available while the road is temporarily closed, and
 - (d) contain a brief description of the works which the Agency proposes to carry out while the road is temporarily closed.
- (3) Within 12 days of the receipt by a road authority of a notice referred to in paragraph (2), the road authority shall give at least 14 days' notice of its intention to close the road—

- (a) in at least one newspaper circulating in the area in which the road is situated, and
 - (b) in writing to the Superintendent of the Garda Síochána within whose district the road is situated.
- (4) The notice required to be given by paragraph (3) shall—
- (a) contain the information set out in the notice given to the road authority by the Agency, and
 - (b) state that objections may be made in writing to the road authority in relation to the proposed temporary closure of the road before a specified date (which date shall not be less than 3 days after the publication of the notice).
- (5) A road authority shall consider any objections made to it in writing pursuant to paragraph (4) and not withdrawn.
- (6) Where a road authority, having complied with paragraphs (3) to (5), decides to close a road temporarily, it shall give at least 7 days' notice of its decision—
- (a) in each newspaper in which the notice of its intention temporarily to close the road was published, and
 - (b) in writing to the Superintendent of the Garda Síochána within whose district the road is situated,

and the temporary closure shall not take effect earlier than the date specified in the notice of intention under paragraph (3). The notice of decision required to be given by this paragraph shall contain the information specified in paragraph (2).

- (7) The Agency shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the powers conferred by this Article.
- (8) The Agency may provide such access for vehicular traffic along the road closed in consequence of the exercise of the powers conferred by this Article as the Agency from time to time considers reasonable having regard to the nature of the authorised works and the need to preserve the safety of persons and vehicles permitted to use the road, and the Agency may impose such restrictions and conditions upon the passage of vehicles on the road as it considers reasonable in the circumstances.
- (9) Paragraphs (1) to (8) are without prejudice to the power of the Agency to execute in an emergency works immediately necessary to eliminate or reduce danger or risk to persons or property.

9 New roads

- (1) The Agency may, with the consent of the relevant road authority, construct the new roads specified in the Eleventh Schedule with all necessary works connected therewith either by way of diversion from or in substitution for an existing public road or as an additional road.
- (2) Each new road constructed under this Article shall, unless otherwise agreed between the Agency and the relevant road authority, be maintained by and at the expense of the relevant road authority upon the expiry of the period of twelve months after its completion, the commencement of which period shall be certified by notice in writing given by the Agency to the relevant road authority.

10 Bridges

Where a bridge carries a public road over the railway, the Agency and the relevant road authority may enter into agreements upon such terms as may be agreed between them for the maintenance, improvement, or relaying of the road surface.

11 Fixing of brackets etc. to buildings and erection of poles

- (1) Without prejudice to the exercise by the Agency of its powers under section 48(1)(a)(iv) of the Principal Act, the Agency may enter on the lands specified in the Seventh Schedule and may attach to any wall, house, building or structure thereon any bracket, cable or wire or other fixture required for or in connection with the construction, operation, maintenance or improvement of the railway and may do on such land all such other things as are, in the opinion of the Agency, ancillary to or reasonably necessary for such purposes.
- (2) Without prejudice to the generality of paragraph (1), the fixtures that may be attached pursuant to that paragraph to a wall, house, building or structure include equipment, instruments and gear for monitoring the effect on such wall, house, building or structure of the authorised works and the operation of the railway, and the Agency may from time to time and at such times as the Agency shall determine re-enter the lands in question for the purpose of inspecting such equipment, instruments and gear and for taking readings.
- (3) The Agency may enter on the lands specified in the Eighth Schedule and may erect thereon any pole or poles required for or in connection with the construction, operation, maintenance or improvement of the railway.

12 Underpinning and strengthening of buildings

- (1) The Agency may, in accordance with section 48 of the Principal Act, enter on any land and underpin or otherwise strengthen any house, building or structure affected or likely to be affected by the authorised works or the railway and may do on such land

all such other things as are, in the opinion of the Agency, ancillary to or reasonably necessary for such purposes.

- (2) Where any house, building, or other structure has been underpinned or strengthened in accordance with section 48 of the Principal Act and this Article, the Agency may from time to time thereafter, in accordance with that section and this Article, re-enter on the land and do such further underpinning or strengthening or other activity reasonably necessary for the purposes aforesaid as the Agency deems necessary or expedient.

13 Discharge of water

- (1) Subject to paragraphs (2) and (13), the Agency may use any public watercourse, sewer or drain for the drainage of water in connection with the execution of the authorised works and the operation or maintenance of the railway, and for that purpose may make any convenient connections with any such watercourse, sewer or drain.
- (2) The Agency shall not discharge any water into any public watercourse, sewer or drain except—
 - (a) with the consent of the sanitary or other authority responsible for that watercourse, sewer or drain, which consent shall not be unreasonably withheld or delayed, and
 - (b) in accordance with such terms and conditions as that authority reasonably imposes.
- (3) The Agency shall take such steps as are reasonably practicable to ensure that any water discharged into a public watercourse, sewer or drain under the powers conferred on the Agency by this Article is free from soil or polluting or deleterious material.

14 Characteristics of the railway

- (1) The railway shall be operated by electrical or any other mechanical motive power.
- (2) So far as is practicable the railway shall be laid, constructed and maintained so as to ensure that the uppermost surface of the rails of the railway is generally level with the adjacent surface of the ground on which it is laid.
- (3) The gauge of the railway shall be nominally 1435 millimetres.

15 Period within which Agency is authorised to carry out the authorised works

- (1) Subject to paragraph (2) and so far as is reasonably practicable, execution of the authorised works shall be substantially completed by the end of the period of 7 years beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.

- (2) Execution of Work number 73 [possible future Grangeegorman Stop] shall, so far as is reasonably practicable, be substantially completed by the end of the period of 15 years beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.
- (3) Paragraphs (1) and (2) do not apply to any works which are required for safety or maintenance purposes in connection with the operation of the railway.

PART 3.

ACQUISITION AND POSSESSION OF LAND

16 Power to acquire land

- (1) Subject to the Principal Act, the Agency may acquire compulsorily and use all or such part of the lands shown on the plan and specified in the Second Schedule as the Agency may require for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- (2) Subject to the Principal Act, the Agency may acquire compulsorily and use all or such part of the substrata of lands shown on the plan and specified in the Third Schedule as the Agency may require for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.
- (3) Without prejudice to Article 20 and subject to the Principal Act, the Agency may acquire compulsorily and use all of the basements specified in the Sixth Schedule or such parts thereof as the Agency considers necessary to acquire for the purposes of the execution of the authorised works and the operation of the railway.

17 Acquisition of rights

Subject to the Principal Act, the Agency may acquire compulsorily such rights over the lands, water, railways or roads shown on the plan and specified in the Fifth Schedule as may be required for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes, together with such rights as are necessary for the full and free exercise at all times of the first-mentioned rights.

18 Extinguishment of public rights of way

The Agency may extinguish the rights shown on the plan and specified in the Ninth Schedule for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.

19 Extinguishment of private rights

The Agency may extinguish the rights of way shown on the plan and specified in the Tenth Schedule for the purposes of the execution of the authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.

20 Use of air space

- (1) Without prejudice to Article 16, the Agency may enter on and use so much of the air-space over a public road as is reasonably required for the purposes of, or in connection with the execution of the authorised works and the operation, maintenance or improvement of the railway or for purposes incidental or ancillary to those purposes.
- (2) The power under paragraph (1) may be exercised in relation to a public road without the Agency being required to acquire any part of the road or any easement or other right in relation to the surface of the road.

21 Temporary possession of land

- (1) Subject to the Principal Act, the Agency may enter upon, occupy and take temporary possession of the land shown in the plan and specified in the Fourth Schedule or any part of that land, for the purpose of carrying out the authorised works or for purposes incidental or ancillary to that purpose.
- (2) In particular, and without prejudice to the generality of paragraph (1)—
 - (a) the Agency may—
 - (i) enter on and take temporary possession of that land for the provision of working sites and access for construction purposes, and
 - (ii) for those purposes, remove any structures thereon, construct other structures, cut and remove anything growing on that land or part thereof, and generally do all things to and on that land that are required to adapt it for those working sites or that access,
 - (b) where, in the exercise of the powers conferred on the Agency by the Principal Act and this Order, a part of a building has been compulsorily acquired or interfered with for the purpose of carrying out the authorised works, the Agency may enter on, and take temporary possession of, another part of that building with a view to minimising the damage or injury done or likely to be done by the acquisition or removal of, or interference with, that part of the building so acquired or interfered with.
- (3) Before giving up possession of land specified in the Fourth Schedule, and subject to any agreement to the contrary with the owners and occupiers of the land, the Agency shall remove all temporary works and structures constructed by it on the land and shall restore the land as far as possible to its former state.
- (4) The Agency shall not be required to acquire any land of which it takes temporary possession pursuant to this Article.
- (5) The Agency shall pay to the owners and occupiers of land of which it takes temporary possession under this Article compensation for any loss, injury or damage thereby

suffered or expenditure thereby incurred as if that loss, injury, damage or expenditure were suffered or incurred in consequence of the exercise by the Agency of a power conferred upon it by section 48 of the Principal Act, and the amount of the compensation shall be determined in accordance with that section.

22 Period within which the Agency may compulsorily acquire land and interests in land

- (1) The powers conferred on the Agency by this Order compulsorily to acquire land or rights over land, water or a road and the power conferred by Article 21 to enter upon and take temporary possession of land shall cease at the end of the period specified in Article 15(1) and 15(2) beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.
- (2) The powers of the Agency compulsorily to acquire land or rights over land shall, for the purposes of this Article, be deemed to have been exercised if a notice to treat has been served in respect of the land or rights before the end of the period mentioned in paragraph (1).
- (3) Notwithstanding paragraph (1), the Agency shall be entitled to remain in temporary possession of land pursuant to Article 21 after the end of the period mentioned in paragraph (1) where possession of the land was taken before the end of that period.

PART 4. MISCELLANEOUS AND GENERAL

23 Interference with apparatus

- (1) This Article applies where it appears to the Agency, in relation to apparatus in the vicinity of a place in which it proposes to execute authorised works, that -
 - (a) the functioning of the apparatus will, or is likely to, interfere with the execution of those works or the proper functioning of the railway, or
 - (b) the execution of the authorised works or the operation of the railway will or is likely to interfere with the proper functioning of the apparatus.
- (2) The relevant undertaker may and, upon reasonable request by the Agency, shall without unreasonable delay do either or both of the following:
 - (a) remove the apparatus and/or relocate it or other apparatus in substitution for it in such other position or location as may be agreed with the Agency,
 - (b) take such further or other steps or make such further or other provision with the agreement of the Agency as secures the apparatus and the authorised works and the proper functioning of each of them respectively from mutual interference or damage.

- (3) Subject to paragraph (4), the Agency shall pay to the undertaker an amount equal to the cost reasonably incurred by the undertaker in the discharge of its obligations under paragraph (2).
- (4) Where an undertaker, in the course of the discharge of obligations under paragraph (2), unnecessarily provides, in substitution for existing apparatus, apparatus that, whether because of its type, construction, design, layout, placement or any other feature, is an improved or superior version of the existing apparatus, the sum payable by the Agency under paragraph (3) shall not exceed the cost that would have been reasonably incurred by the undertaker if the substituted apparatus had not been an improved or superior version of the existing apparatus.
- (5) An undertaker may permit the Agency to carry out or cause to be carried out such portion of the undertaker's obligations under this Article as the undertaker agrees, in accordance with such conditions as are agreed between the Agency and the undertaker, but the undertaker is not obliged to enter into any such agreement.
- (6) In this Article —

“apparatus” means any item of infrastructure (including, in particular, any sub-station, inspection chamber, junction box, booster station, pipe, sewer, drain, duct, tunnel, pylon, conduit, wire, cable, fibre or insulator) used for or in connection with the provision or acceptance of a service to the public;

“undertaker”, in relation to apparatus, means a person or body with power and authority, independently of the operation of this Order, to locate or relocate the apparatus, or cause it to be located or relocated, as provided for in this Article.

24 Arbitration

- (1) The provisions of this Article shall not apply to any dispute concerning the matters referred to in the Fourteenth Schedule which are described in that Schedule as determinable by the Board.
- (2) Subject to paragraph (1), paragraphs (3) to (5) apply to any dispute arising between the Agency and any other party in relation to the execution of the authorised works or the exercise by the Agency of the powers granted by this Order.
- (3) The Agency and the other party shall use their best endeavours to resolve the dispute on mutually acceptable terms.
- (4) If, after such period as the Agency or the other party considers reasonable, the dispute has not been resolved to the satisfaction of both parties, the following shall apply:
 - (a) either party may, by 14 days' notice in writing to the other party, require the subject-matter of the dispute to be submitted to a single arbitrator and shall, in

that notice, nominate a person to arbitrate upon the subject matter of the dispute;

- (b) the party receiving the notice may, within that period of 14 days, by a counter-notice, either —
 - (i) accept the arbitrator nominated by the party serving the original notice, or
 - (ii) nominate at least 2 alternative persons to act as arbitrator;
- (c) if any one of the persons nominated by the parties is acceptable to both parties, the subject-matter of the dispute shall be referred to the arbitrator as soon as may be after that person has indicated his or her willingness to act as arbitrator;
- (d) if —
 - (i) after service of the notice and counter-notice, the parties fail to agree upon an arbitrator, or
 - (ii) the person agreed upon to be the arbitrator has failed to indicate, within 14 days of being so requested, his or her willingness to act,

either party may apply to the Chairman for the time being of the Irish Branch of the Chartered Institute of Arbitrators for the appointment of an arbitrator;

- (e) the arbitrator so appointed by the Chairman of the Irish Branch of the Chartered Institute of Arbitrators shall notify the parties in writing of his or her appointment as soon as may be thereafter and shall conduct the arbitration in accordance with the rules of the Irish Branch of that Institute.
- (5) The Arbitration Act 2010 shall apply to the arbitration, and the decision of the arbitrator in relation to the dispute and all matters connected with it shall be binding on the parties.

25 Agreement between the Agency and a road authority

The Agency may, from time to time, enter into and carry into effect and thereafter from time to time alter, renew or vary contracts, agreements or arrangements with a road authority in relation to —

- (a) laying down, making, paving, metalling or keeping in repair any road and the railway thereon, or
- (b) altering the levels of the whole or any part of any road in which the Agency is authorised to lay down the railway,

and the proportion to be paid by them, or either of them, of the expenses of any such works.

26 Interference with roads

If, in the course of constructing or maintaining the railway, the Agency interferes with any public road, it shall make good all damage done by it to the public road.

27 Rights of third parties to open up roads etc.

- (1) Subject to paragraphs (2) and (3), nothing in this Order takes away or abridges any power lawfully vested in any person to open or break up any road in which a railway is laid or to lay down, repair, alter or remove any apparatus, as defined in Article 23.
- (2) No power referred to in paragraph (1) shall be exercised so as to affect the railway or its operation without the prior consent in writing of the Agency, which consent shall not be unreasonably withheld or delayed.
- (3) A person exercising a power to which paragraph (1) relates shall in all respects comply with any reasonable conditions specified by the Agency as necessary for or in connection with the construction, maintenance, operation or protection of the railway.

28 Bye laws

- (1) Pursuant to the power conferred by section 66 of the Principal Act, the Agency may make bye-laws for the management, control, operation and the regulation of the railway and in relation to the repair, improvement, extension and development thereof and, without prejudice to the generality of the foregoing, in relation to any one or more of the following matters—
 - (a) the regulation of the times of arrival and departure of railway vehicles,
 - (b) the prevention of the commission of nuisances in or upon railway vehicles,
 - (c) the prevention of trespass upon and/ or damage to railway vehicles,
 - (d) the removal from or the prohibition of the use on a railway line of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway,
 - (e) the fixing, altering, charging and recovery of fares, fees, tolls and charges in respect of the travelling upon or use of railway vehicles,
 - (f) the general regulation, subject to any statutory provisions in that behalf, of the travelling upon or use of railway vehicles and the working of railway transport services by a railway undertaking,

- (g) the safe custody and redelivery or disposal of any property found on or in any railway vehicle of a railway undertaking and the fixing of charges in respect thereof.
- (2) Bye-laws under paragraph (1) may contain such incidental, subsidiary and ancillary provisions as the Agency considers necessary or expedient for the purposes of the bye-laws.
- (3) A person who contravenes a bye-law under paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €600 or such other fine as may be fixed from time to time by law.