

**PART I
PRELIMINARY**

ARTICLE 1

Citation

1. This Order may be cited as the DART Underground Electrified Heavy Railway Order 2011.

ARTICLE 2

Definitions / Interpretations

1. In this Order (save where the context otherwise requires): –

“Act of 1961” means the Road Traffic Act 1961;

“Act of 1993” means the Roads Act 1993;

“Act of 1994” means the Road Traffic Act 1994;

“Act of 2000” means The Planning and Development Act 2000, as amended by The Planning and Development (Strategic Infrastructure) Act 2006, and further amended by The Planning and Development (Amendment) Act 2010

“The Act”, “the Act of 2001”, “the 2001 Act” means the Transport (Railway Infrastructure) Act 2001 as amended and substituted by the Railway Safety Act 2005, the Planning and Development (Strategic Infrastructure) Act 2006, the Planning and Development (Amendment) Act 2010, the Local Government (Roads Transport Act) 2007, the Dublin Transport Authority Act, 2008 and the Public Transport Regulation Act, 2009;

“Apparatus” includes any sub-station, inspection chamber, junction box, booster station, pipe, sewer, drain, duct, tunnel, conduit, wire, cable, fibre, insulator, and such other thing as may be used by an Undertaker for or in connection with the provision of a service to the public;

“Applicant” means Córas Iompair Éireann and a railway undertaking;

“Construct” includes build, make, and put together;

“DART” means Dublin Area Rapid Transit;

“Deposited Plan” means the copy of the plan deposited together with this Order pursuant to section 46 of the Act;

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

“Land” has the meaning assigned to it by the Act of 2000 and 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;

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

“Maintain” includes inspect, repair, adjust, alter, remove, reconstruct, renew, replace and cognate words shall be construed accordingly;

“Mechanical Power” means electrical and any other motive power:

“Minister” means the Minister for Transport;

“Planning Authority” has the meaning assigned to it by the Act of 2000;

“Public Road” has the meaning assigned to it by the Act of 1993 but also includes any road which may become such a public road during the currency of this Order;

“Railway” means a railway (whether above, on or under the ground) whose operation is authorised by a railway order and includes a railway or part of a railway for which railway works are authorised by this Order;

“Railway Undertaking” means any person who has been granted a railway order or another person with whom that person has made arrangements under section 43(5) of the Act and includes the person who made the application for this Order, C oras Iompair  ireann;

“Railway Order” means an order made under section 43 of the Act of 2001;

“Reconstruct” means wholly or partly rebuild, repair, restore, replace, alter and cognate words shall be construed accordingly;

“Road” has the meaning assigned to it by the Act of 1993 and includes “bridge”;

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

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

- (i) for the purposes of a tunnel or tunneling or anything connected therewith, or
- (ii) for any other purpose connected with a railway order;

“Undertaker” means any person or body with power and authority in relation to apparatus to relocate or cause it to be relocated as provided for in Article 17.

“Works” includes railway works as defined in the Act but also includes where the context so requires or admits other works authorised by this Order including such acts or operations as are included in the meaning assigned to “works” in the definition of “railway works” contained in the Act. The methods by which such said acts or operations are executed include, but are not limited to, boring (by Tunnel Boring Machines or otherwise) mining, blasting, drilling, breaking, cutting and covering.

ARTICLE 3

Incorporation of Enactments

The Regulation of Railways Acts, 1840 – 1893 and any other Act relating to railways shall apply to the railway works authorised by this Order in 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 Act together with the Order shall be deemed to be the Special Act for the purposes of those enactments.

PART II
WORKS AND RELATED PROVISIONS

ARTICLE 4

**Construction, operation, improvement and maintenance of Railway and
Railway Works**

1. Subject to the provisions of this Order, the Railway Undertaking may, on the lines, in the places and according to the levels shown on the Deposited Plan, construct, operate improve and maintain the railway and railway works specified in the First Schedule and referred to in the Schedules hereto and execute the works and all other works and things necessary or ancillary thereto.
2. Construction of the works authorised by this Order shall be substantially completed at the end of the period of ten (10) years from the date this Order comes into force or within such further period as the Board may allow on the application of the Railway Undertaking.
3. The railway works authorised by this Order shall be executed, and the railway shall be operated, in accordance with the conditions, as set out in the Eleventh Schedule (Conditions), and in accordance with the understandings reached at the oral hearing, as set out in the Thirteenth Schedule (Agreement with Dublin City Council).
4. Paragraph 2 of this Article shall not apply to any works required for the operation, improvement or maintenance of the railway works authorised by this Order.
5. The railway may be operated by mechanical power.

ARTICLE 5

Discharge of Water

1. The Railway Undertaking may alter the level or the course of, or make use of for the drainage of water, any surface or underground watercourse or river, sewer or drain and may construct provide and use any underground or overground tanks or pipes to assist in such drainage in connection with the construction maintenance or operation of the railway works and for that purpose may make any convenient connections with any such surface or underground watercourse or river, sewer or drain, subject, however, to the following provisions:
 - (a) The Railway Undertaking shall not discharge any water into, or interfere with, any surface or underground watercourse or river, sewer or drain except with the consent of the sanitary authority to which it belongs which consent shall not be unreasonably withheld or delayed

and in accordance with such terms and conditions as such sanitary authority may reasonably impose;

- (b) The Railway Undertaking shall take such steps as may be reasonably practicable to ensure that any water discharged into any such public surface or underground watercourse or river, sewer or drain under the powers conferred on the Railway Undertaking by this Article is free from soil or polluting or deleterious material.

ARTICLE 6

Maximum Working Area

1. In constructing, maintaining and improving any of the Railway Works authorised by this Order, the Railway Undertaking may make modifications to allow for innovations in construction methods or technology but such that the extent of lands referenced to accommodate this Scheme, and any such modifications, has been limited to:
 - (i) 10 metres horizontally from the central lines of running tunnels;
 - (ii) 5 metres vertically upwards, and no limit vertically downwards, from the outside edge of running tunnels;
 - (iii) 15 metres horizontally and 15 metres vertically upwards from the central lines of cross passage tunnels;
 - (iv) 10 metres horizontally and 10 metres vertically upwards from the outside edge of platform tunnels;
 - (v) 20 metres horizontally from the outside edge of underground station boxes and shafts.

ARTICLE 7

Closure of Roads - Permanent and Temporary

1. The Railway Undertaking may, for the purpose of executing the railway works authorised by this Order or for any purpose incidental thereto, from time to time request a Road Authority by order to close permanently the roads specified in the Tenth Schedule to traffic and to close temporarily any one or more of the public roads specified in the Fourth Schedule to traffic and the following provisions shall apply in relation to such a request:
 - (a) The Railway Undertaking shall give to the Road Authority not less than twenty-one days prior notice in writing of its requirement to close permanently each such public road.

- (b) The Railway Undertaking shall give to the Road Authority not less than twenty-one days prior notice in writing of its requirement to close temporarily each such public road and such notice shall:
 - (i) Specify the road which is required to be closed temporarily;
 - (ii) State the period for which, in the reasonable opinion of the Railway Undertaking, it is necessary to close temporarily such road;
 - (iii) Give particulars of any alternative route or routes if any which the Railway Undertaking believes will be available while such road is closed temporarily;
 - (iv) Contain a brief description of the works which the Railway Undertaking proposes to carry out while such road is closed temporarily;
 - (v) State whether the order closing the road is required to be subject to conditions as to whether any and if so what traffic or persons may be allowed use the road and at what times and on what if any conditions.
- 2. A request made to a Road Authority under this Article shall not be unreasonably refused or delayed.

ARTICLE 8

Power to Alter Public Roads

- 1. Subject to the provisions of paragraph (2) of this Article the Railway Undertaking may in connection with or for the purpose of railway works in or adjacent to any public road and in accordance with the deposited plans and specified in the Tenth Schedule:
 - (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 said road; or
 - (b) Alter or interfere with the level of any kerb, footway, cycleway, verge or other land or structure within the boundary of the said road; or
 - (c) Realign the road where necessary.
- 2. Before exercising any power under paragraph (1) of this Article, the Railway Undertaking shall obtain the consent of the relevant Road Authority, which consent shall not be unreasonably withheld or delayed.

3. The works authorised by this Article may be constructed and maintained in, upon and under the public roads specified in the Ninth and Tenth Schedule.

ARTICLE 9

Construction of New Roads

1. The Railway Undertaking may, with the consent of the relevant Road Authority, (which consent shall not be unreasonably refused or delayed), construct the new roads specified in the Ninth 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 when completed, unless otherwise agreed between the Railway Undertaking and the Road Authority, be maintained by and at the expense of the Railway Undertaking for a period of 12 months from the date of its completion and at the expiration of that period shall be maintained by and at the expense of the Road Authority in whose functional area such new road is situated.

ARTICLE 10

Agreement between the Railway Undertaking and a Road Authority or other person

1. The Railway Undertaking may, from 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 or any other person 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 on which the Railway Undertaking 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.

ARTICLE 11

Tree Lopping

1. The Railway Undertaking may lop, remove or cut any tree, shrub or hedge that obstructs or interferes with any railway works authorised by this Order.
2. With regard to paragraph 1 above, where a tree, shrub or hedge lies on land not owned by the Railway Undertaking and for the purpose of works authorised by this Railway Order, needs to be lopped or cut, the Railway Undertaking shall serve on the owner or occupier of the land or, in the case of a public road, on the Road Authority charged with the maintenance of such road, on which such tree, shrub or hedge is standing, notice in writing of its intention so to lop or cut, and, after the expiration of 28 days from the date of such service the Railway

Undertaking may lop or cut any tree, shrub or hedge if the owner or occupier has not already done so.

3. Where an occupier or owner of land cuts or lops any tree, shrub or hedge under this article, the reasonable expense (if any) incurred by him or her in so doing shall be paid to him or her on demand by the Railway Undertaking, and the amount of such expenses shall be recoverable from the Railway Undertaking, in default of agreement as a simple contract debt in any court of competent jurisdiction.

PART III
ACQUISITION AND POSSESSION OF LAND AND RIGHTS

ARTICLE 12
Power to Acquire Land

1. Subject to the provisions of the Act the Railway Undertaking may acquire compulsorily all or such part of the land and any substratum of land shown on the deposited plan and described in the Second and Third Schedules and the rights in under or over land described in the Fifth Schedule as the Railway Undertaking may require for the construction, operation, improvement and maintenance of the railway works authorised by this Order and works incidental or ancillary thereto.
2. In relation to any such acquisition of land the provisions of sections 4 and 8 of the Railways Act 1851 shall not apply.

ARTICLE 13
Power to Temporarily Acquire and Occupy Land

1. Subject to the provisions of the Act the Railway Undertaking may enter upon and take up and retain temporary possession and occupation of the land, or any part of the land, shown on the deposited plan and specified in the Fourth Schedule.
2. In particular, but without prejudice to the generality of paragraph 1 hereof, the Railway Undertaking may enter upon and take up and retain temporary possession and occupation of such land or any part of such land for the provision of working sites and access for construction purposes or for or in connection with the railway works authorised by this Order and for such purposes may construct or remove any structures thereon or therefrom, cut and remove anything growing on such land or part thereof, and generally do all such things to on beneath and with such land as may be required to adapt them for or to facilitate the execution of the said works.
3. Before giving up possession of the land or any part of the land of which temporary possession and occupation may have been taken up pursuant to this Article the Railway Undertaking shall remove all temporary works and structures constructed by it on the said land and, subject to any contrary provision of this Order or any agreement to the contrary with the owners and occupiers of the said land, shall restore the said land to its former state as far as possible and as far as may be reasonably required to the reasonable satisfaction of the owners and occupiers.
4. The Railway Undertaking shall not be required to acquire any land of which temporary possession and occupation may have been taken up pursuant to this Article.

5. The Railway Undertaking shall pay to the owners and occupiers of land, of which it takes up temporary possession and occupation by virtue of this Article, such compensation for any loss thereby suffered as though it were loss suffered and the amount of the compensation determined in consequence of the exercise by the Railway Undertaking of a power conferred upon it by Section 48 of the Act.

ARTICLE 14

Acquisition of Easements and other Rights over Land

1. Subject to the provisions of the Act the Railway Undertaking may acquire compulsorily such rights over all or part of the land described in the Fifth Schedule as may be required for the purposes of the Railway or the railway works authorised by this Order

ARTICLE 15

Extinguishment of Rights, including Rights of Way and Temporary Interference with Rights

1. The Railway Undertaking may extinguish the public rights including the rights of way specified in the Sixth Schedule.
2. The Railway Undertaking may extinguish all private rights including the rights of way specified in the Seventh Schedule.
3. The Railway Undertaking may temporarily interfere with or stop up the rights of way specified in the Eighth Schedule of this Order.

ARTICLE 16

Period within which the Railway Undertaking may Compulsorily Acquire Land and Interests in Land¹

1. The powers conferred by this Order to acquire compulsorily land or rights in relation to land and to enter upon and take up temporary possession of land shall cease at the end of the period of seven (7) years beginning on the day upon which this Order comes into force
2. The power to acquire compulsorily land or rights in relation to land shall, for the purpose of this Article, be deemed to have been exercised where Notice to Treat has been served in respect of such land or rights before the end of the period mentioned in paragraph 1 of this Article.
3. Notwithstanding paragraph 1 of this Article, the Railway Undertaking shall be entitled to remain in temporary possession and occupation of land pursuant to Article 12 of this Order after the end of the period mentioned in paragraph 1 of this Article where possession of such land was taken before the end of such period.

¹ See 12th Schedule 'Explanatory Notes' in relation to the period set out.

PART IV
MISCELLANEOUS AND GENERAL

ARTICLE 17
Interference with Apparatus

1. Wherever the Railway Undertaking is authorised to execute works by virtue of this Order, and any apparatus will or may be affected in consequence thereof the following provisions shall apply:-
 - (a) Where land is acquired by or for the Railway Undertaking an Undertaker whose apparatus is under, in, over, along or across the said land or any part thereof may and, upon reasonable request by the Railway Undertaking, shall, without unreasonable delay, do one or more of the following:-
 - (i) remove the apparatus and place it or other apparatus in substitution for it in such other position or location as may be agreed with the Railway Undertaking;
 - (ii) take such further or other steps or make such further or other provision with the agreement of the Railway Undertaking as may secure the apparatus and the works of the Railway Undertaking and the proper functioning of each of them respectively from mutual interference or damage.
 - (b) Where the apparatus of an Undertaker is under, in, upon, over, along or across a public road, the Undertaker may and upon reasonable request by the Railway Undertaking shall without unreasonable delay do any one or more of the following:-
 - (i) remove the apparatus and place it or other apparatus in substitution for it in such other position or location as may be agreed with the Railway Undertaking;
 - (ii) take such further or other steps or make such further or other provision with the agreement of the Railway Undertaking as may secure the apparatus and the works of the Railway Undertaking and the proper functioning of each of them respectively from mutual interference or damage.
2.
 - (a) Subject to the provisions of sub-paragraph (b) hereof, the Railway Undertaking shall pay to the Undertaker an amount equal to the cost reasonably incurred by that Undertaker in the discharge of its obligations under paragraph (1) of this Article.

- (b) Where an Undertaker, in the course of the discharge of its obligations under paragraph (1) hereof, provides, in substitution for existing apparatus, improved or superior apparatus whether because of its type, construction, design, layout, placement or any other feature, the sum payable by the Railway Undertaking pursuant to sub-paragraph (a) of this paragraph shall nevertheless not exceed the cost that would have been reasonably incurred by the Undertaker if the substituted apparatus had not been such improved or superior apparatus.
- 3. An Undertaker for the discharge of its obligations under paragraph 1 hereof may permit the Railway Undertaking to carry out or cause to be carried out such portion of those obligations as the Undertaker may agree in accordance with such conditions as may be agreed between the Railway Undertaking and the Undertaker, provided, however, that an Undertaker shall not be obliged to enter into any such agreement.

ARTICLE 18

Arbitration

- 1. Should any dispute arise between the Railway Undertaking and any other party in relation to the execution of railway works authorised by or the powers or provisions granted by or contained in this Order, the following provisions shall apply:
 - (a) The Railway Undertaking and the Undertaker concerned shall use their best endeavours to resolve any such dispute on terms acceptable to both parties.
 - (b) If, after such period as the Railway Undertaking or the other party considers reasonable, such dispute has not been resolved to the satisfaction of both parties the following provisions shall apply:
 - (i) 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 such notice, nominate a person to arbitrate upon the subject matter of the dispute;
 - (ii) The party receiving such notice may, within the said period of 14 days, by a counter notice, either
 - (A) accept the Arbitrator nominated by the party serving the original notice or
 - (B) nominate not less than two alternative persons to act as such Arbitrator;

- (iii) If any one of the persons nominated by the parties is acceptable to both parties of the dispute then the subject matter of the arbitration shall be referred to such Arbitrator as soon as may be after such Arbitrator has indicated his willingness to act as Arbitrator;
- (iv) If, after service of such notice and such counter-notice, the parties fail to agree upon an Arbitrator or if an Arbitrator agreed upon has failed to indicate, within 14 days of being so requested, his willingness to act then 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;
- (v) Where the Arbitrator is so appointed by the Chairman of the Irish Branch of the Chartered Institute of Arbitrators, he or she 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 the said Institute.
- (vi) The provisions of the Arbitration Act 2010 shall apply to the arbitration and the decision of the Arbitrator in relation to the dispute and all matters connected therewith shall be binding on the parties thereto.

ARTICLE 19

Designation of Railway

The railway is designated as Electrified Heavy Railway.