

RAILWAY ORDER

TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 (AS AMENDED AND SUBSTITUTED)

DUBLIN TO CORK RAILWAY LINE (ELIMINATION & UPGRADE OF LEVEL CROSSINGS BETWEEN LIMERICK JUNCTION AND MALLOW) ORDER 2021

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PREAMBLE

(Including reasons and considerations)

AN BORD PLEANÁLA (“the Board”) in exercise of the powers conferred on it by section 43 of the Transport (Infrastructure) Act 2001 (as amended and substituted) (“the 2001 Act”) having considered an application, duly made on the 20th day of May 2021 by Córas Iompair Éireann (“the applicant”), for a Railway Order (“the order”), authorising railway works and all works necessary to enable the applicant to eliminate and, where necessary, upgrade seven numbered level crossings and carry out all associated and ancillary works along a 24 kilometre section of the Dublin to Cork Railway Line as follows:

- XC187 – Fantstown – Closure of existing level crossing: Divert traffic along existing roads to existing overbridge approximately 3 kilometres to the north east,
- XC 201 – Thomastown – Closure of existing level crossing. New road-over-rail bridge: Tie into existing local road to south and new junction on Regional Road R515 to north,
- XC209 – Ballyhay – Upgrade existing level crossing to a 4-barrier CCTV controlled level crossing,
- XC211 – Newtown – Closure of existing level crossing. New access road immediately east of the existing road-over-rail bridge to the north of XC211 Newton, tie in to existing local road to the east of XC211 Newtown,
- XC212 – Ballycoskery (Ballyhea Village) Closure of existing level crossing. New road-over-rail bridge to tie into existing local road to east and west of level crossing, new car park to existing school. Tie into Beechwood Estate and Ballyhea National School to north and existing local road to south,
- XC215 – Shinanagh – Closure of existing level crossing. New access road to tie into existing road-over-rail bridge approximately 1 kilometre to the north, and
- XC219 – Buttevant – Closure of existing level crossing. Construction of a new road-over-rail bridge and tie in to existing regional road to east and west.

AND HAVING CONSIDERED:

- (a) the nature, scale and extent of the proposed development,
- (b) the characteristics of the sites and of the general vicinity,
- (c) national, regional and local policy support for improvements to railway and road safety and regional accessibility and connectivity, including:
 - National Planning Framework, 2018,
 - National Development Plan 2021–2030,
 - National Investment Framework for Transport in Ireland, 2021,
 - Smarter Travel – A Sustainable Transport Future: A New Transport Policy for Ireland 2009 – 2020,
 - Climate Action Plan 2023 and Climate Action Plan 2024,
 - Regional Spatial and Economic Strategy for the Southern Region,
 - Limerick Development Plan 2022–2028,
 - Cork County Development Plan 2022–2028,
- (d) The Draft Railway Order and supporting documents and drawings submitted with the application, including the Environmental Impact Assessment Report and the Natura Impact Statement, and the documentation submitted at the oral hearing,
- (e) the submissions on file including those from prescribed bodies, the relevant local authorities, the observers and persons affected by the proposed land acquisition, and the submissions made at the oral hearing, and
- (f) the report of the Inspector.

Appropriate Assessment: Stage 1:

The Board considered the Natura Impact Statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the only European Sites in respect of which the proposed development has the potential to have a significant effect are the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and the Kilcolman Bog Special Protection Area (Site Code: 004095).

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the two European Sites, namely, the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and the Kilcolman Bog Special Protection Area (Site Code: 004095), in view of the Sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the Sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the Sites' conservation objectives.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development taking into account:

- (i) the nature, scale and extent of the proposed development,
- (ii) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (iii) the submissions made in the course of the application and at the oral hearing; and
- (iv) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would accord with national, regional and local planning and related transport policy, would not have an unacceptable impact on the landscape or biodiversity of the area, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would result in improvements to road traffic and railway safety, reliability and efficiency. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

AND BEING OF OPINION THAT THE SAID APPLICATION SHOULD BE GRANTED and being also of the opinion that the acquisition of the land and any substratum of land specified in this Order are necessary for giving effect to this Order,

HEREBY AUTHORISES:

The applicant to construct, maintain, improve and operate the railway works and works specified herein or any part thereof, in such manner and subject to such conditions, modifications, restrictions and requirements (and on such other terms) as the Board thinks proper and specifies herein.

AND the Board hereby **ORDERS** as follows:

PART I
PRELIMINARY

ARTICLE 1

Citation

(1) This Order maybe cited as the ‘Dublin to Cork Railway Line (Elimination & Upgrade of Level Crossings between Limerick Junction and Mallow) Order 2020’

ARTICLE 2

Definitions/Interpretations

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

“Act of 1961” means the Road Traffic Act 1961, as amended and substituted;

“Act of 1993” means the Roads Act, 1993, as amended and substituted;

“Act of 2000” means the Planning and Development Act 2000, as amended and substituted;

“The Act”, “the Act of 2001”, “the 2001 Act” means the Transport (Railway Infrastructure) Act 2001 as amended and substituted;

“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 or the railway undertaking;

“authorised works” means the scheduled works and any other works authorised by this Order or any part of them and includes railway works and works and includes those described in the schedules to this Order;

“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) 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, improve and operate, 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;

“level crossing” means an at grade intersection between a railway line and a road or passage;

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

“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;

“national road authority” means the authority with responsibility for national roads, established under the Act of 1993, namely Transport Infrastructure Ireland;

“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 all documents which accompany the application, including alignment drawings/plans, structural drawings/plans, property drawings/plans, all plans submitted to the Board pursuant to section 37(3) of the Principal Act and plans deposited or to be deposited at the head office of the Railway Undertaking pursuant to section 46(a) of the Principal Act;

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

“Principal Act” means the Transport (Railway Infrastructure) Act, 2001 as amended and substituted;

“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 an existing railway, including the railway constructed, maintained, improved and operated pursuant to the Great Southern and Western Railway (Extension to Cork and Limerick) Act 1845 (as amended and substituted) and otherwise known as the Cork Dublin to Cork railway line or a railway or part of a railway for which railway works and works are authorised by this Order;

“railway infrastructure” means any land, buildings, bridges, structures, equipment, systems, vehicles, services or other thing used in connection with, or necessary or incidental to, the movement of passengers or freight by railway;

“railway order” means an order made under section 43 of the Principal Act;

“railway undertaking” means the person who made the application for this Order, namely Córas Iompair Éireann, or a person with whom such person has made an arrangement pursuant to

section 43 (5) of the Principal Act;

“railway works” means any works required for the purposes of a railway or any part of a railway, including works ancillary to the purposes aforesaid such as the elimination, closure and upgrade of level crossings, the provision of bridges including road-over-rail bridges, the parking by buses or by persons using vehicles who intend to complete their journey by railway, and relocation of utilities, and in this definition “works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal;

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

“rights” includes rights which exist or which the Railway Undertaking is authorised to create by this Order

“relevant road authority” is a road authority in relation to a road or a proposed road the subject of this Railway Order and in whose functional area the road is located or is proposed to be constructed;

“road authority” means the road authority as defined in the 1993 Act and includes the council of a county, the corporation of a county or other borough and a local authority as defined in the Local Government Act 2001 (as amended) or the national road authority or Transport Infrastructure Ireland;

“road” has the meaning assigned to it by the Act of 1993 and includes any bridge, road-over-rail bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway;

“scheduled works” means the works specified in the Schedules to this Order or any part of them and shall also include all such other works and railway works referred to in this Order and the Schedules to this Order;

“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;

“undertaker” means any person or body with power and authority in relation to apparatus to relocate or cause it to be relocated;

“works” includes any act or operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal and includes railway works as defined in the 2001 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 2001 Act and the methods by which such said acts or operations are executed;

(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 scheduled 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.

(6) Terms assigned in the defined Acts and used in this Order have the meanings assigned to them in those Acts unless otherwise herein appears.

ARTICLE 3
Incorporation of Enactments

(1) The Regulation of Railways Acts, 1840–1893 and any other Act relating to railways shall apply to the railway works authorised by this Order 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.

PART II
RAILWAY WORKS, WORKS
AND RELATED PROVISIONS

ARTICLE 4
Construction, operation, improvement and maintenance of
railway works and works

(1) Subject to the provisions of this Order, the Railway Undertaking may—in the places and areas and on the lines shown on the Plans and in accordance with the authorised railway works and works including those more particularly described in the Schedules hereto – permanently remove and eliminate existing level crossings and level crossing infrastructure including all level crossing gates and do all such ancillary works in relation to the extinguishment of public and/or private rights of way across the level crossing; construct new road-over-rail bridges in place of existing level crossings as alternative accesses across the Dublin Cork Railway Line; effect an upgrading by the replacement of an existing level crossing with a 4-barrier CCTV controlled level crossing; upgrade, realign and/or close existing roads; construct new roads and carry out the railway works and works referred to in the Schedules hereto and execute the authorised and scheduled works or any part thereof and all other necessary or ancillary works or things;

(2) Subject to the provisions of this Order, the Railway Undertaking may, in the places and

areas and on the lines and according to the levels shown on the Plans construct, improve, maintain and operate the railway works, works and railway specified in the Schedules hereto and execute the railway works and works and all other works and things necessary or ancillary thereto.

(3) Construction of the works authorised by this Order shall be completed at the end of the period of 10 years from the date this Order comes into force or within such further period as An Bord Pleanála may allow on the application of the Railway Undertaking.

(4) Paragraph (3) of this Article shall not apply to any works required for the operation or maintenance of the railway works authorised by this Order or for any works which are required for safety purposes

(5) The Railway Undertaking shall construct and maintain at its own expense each CCTV apparatus and new crossing barriers constructed by the Railway Undertaking pursuant to this Order.

(6) The Railway Undertaking shall construct and maintain at its own expense each new gate, wall, fence or such other structure associated with closing and/or stopping up and/or preventing access across all proposed level crossings to be extinguished pursuant to this Order.

(7) The Railway Undertaking shall demolish at its own expense any existing building or structure required to pursuant to this Order and set out in the First Schedule.

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 watercourse or any sewer or drain and may construct provide and use any underground or overground tanks or pipes or outfalls or culverts to assist in such drainage in connection with the construction, maintenance or operation of the works and for that purpose may make any convenient connections with any such surface watercourse, sewer or drain, subject, however, to the following provisions:

- (a) The Railway Undertaking shall not discharge any water into, or interfere with, any surface watercourse, 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 watercourse, sewer or drain under the powers conferred on the Railway Undertaking by this Article is free from soil or polluting or deleterious material;
- (c) Should any dispute occur in relation to any of the provisions of this Article between the Railway Undertaking and the sanitary authority such dispute shall be referred to arbitration in accordance with the provisions of Article 17 of this Order

ARTICLE 6

Deviation & Maximum Working Area

- (1) In constructing, maintaining, improving and executing any of the railway works and works authorised by this Order, the Railway Undertaking may make modifications to allow for innovations in construction methods or technology and may deviate horizontally by 0.5 metres from the positions shown on the plans;
- (2) In constructing, maintaining, improving and executing any of the railway works and works authorised by this Order, the Railway Undertaking may make modifications to allow for innovations in construction methods or technology and may deviate vertically from the levels shown on plans to any extent not exceeding 1 metre upwards or downwards.

ARTICLE 7

New roads including public roads and bridges which may be constructed and roads including public roads which may be altered, realigned or closed

(1) In addition to and or in exercise of the powers conferred by section 50 of the Principal Act and subject to paragraph (2) of this Article, the Railway Undertaking may in connection with or for the purpose of railway works or works on, in, over, under or adjacent to and in proximity to any road and any public road and in accordance with the plans herein do any one or more of the following:

- (a) alter the width of the carriageway of the road including 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 of other land within the boundary of the road;
- (c) realign or alter 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;
- (e) stop up or close part of the road;

(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 authorised works may be executed on, in, over, under or adjacent to the roads including public roads specified in the Fifth Schedule.

(4) The Railway Undertaking may, with the consent of the relevant Road Authority, construct new roads, including bridges and road-over-rail bridges, specified in the Fifth Schedule with all necessary works connected therewith by way of diversion from or in substitution for or in replacement of or an extension of an existing road or public road or as an additional road

(5) Each new road constructed under this Article shall, unless otherwise agreed between the Railway Undertaking and the 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

(6) Should any dispute occur in relation to any of the provisions of this Article between the

Railway Undertaking and the Road Authority such dispute shall be referred to arbitration in accordance with the provisions of Article 17 of this Order.

(7) The construction of bridges by the Railway Undertaking in accordance with Article 4 herein and referred to in the First and Fifth Schedules hereof include bridges to carry a road or public road over the railway including all works referred to herein with all necessary and ancillary works connected therewith.

(8) Subject to paragraph (9) of this Article, the Railway Undertaking shall maintain at its own expense each bridge constructed by the Railway Undertaking pursuant to this Order to carry a public road over the railway

(9) Where a bridge carries a public road over the railway, the Railway Undertaking 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.

(10) Before exercising any power under paragraph (7) of this Article, the Railway Undertaking shall obtain the consent of the relevant Road Authority, which consent shall not be unreasonably withheld or delayed.

(11) Should any dispute occur in relation to any of the provisions of this Article between the Railway Undertaking and the Road Authority such dispute shall be referred to arbitration in accordance with the provisions of Article 17 of this Order.

(12) Any person exercising any power lawfully vested in any person to open or break up any road to which this Order relates or any road in which a railway is laid or to lay down, repair, alter or remove any apparatus, shall in all respects comply with any reasonable conditions

specified by the Railway Undertaking as necessary for or in connection with the construction, maintenance, improvement operation or protection of the railway or the railway works.

(13) No powers referred to in this Article shall be exercised so as to affect a railway or its safety or operation without the prior consent in writing of the Railway Undertaking, which consent shall not be unreasonably withheld or delayed.

(14) Further to the provisions of this Article, the Railway Undertaking may, for the purpose of executing the works authorised by this Order or for any purpose incidental thereto, request a Road Authority by order to close permanently any roads specified in the Fifth Schedule to traffic and to close temporarily any one or more of the roads, including public roads specified in the Fifth 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 road including each 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 road including each 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.

(15) A request made to a Road Authority under paragraph (14) shall not be unreasonably refused or delayed

(16) The Railway Undertaking shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the powers conferred by paragraph (14)

(17) The Railway Undertaking may provide such access for vehicular traffic along the road closed in consequence of the exercise of the powers conferred by paragraph (14) as the Railway Undertaking from time to time considers reasonable having regard to the nature of the works and the need to preserve the safety of persons and vehicles permitted to use the road, and the Railway Undertaking may impose such restrictions and conditions upon the passage of vehicles

on the road as it considers reasonable in the circumstances.

(18) The provisions of paragraphs (14) to (17) are without prejudice to the power of the Railway Undertaking to execute, in an emergency, works immediately necessary to eliminate or reduce danger or risk to persons or property.

ARTICLE 8

Tree Lopping

(1) The Railway Undertaking may lop, remove or cut any tree, shrub or hedge that obstructs or interferes with any works authorised by this Order, subject to any mitigation or other specific actions relevant to trees protected by a Tree Preservation 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.

ARTICLE 9

Period within which the Railway Undertaking is authorised to carry out the authorised and scheduled 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 10 years beginning on the date on which this Order comes into operation pursuant to section 43(4) of the Principal Act.

(2) Paragraph 1 of this Article does not apply to any works which are required for safety or maintenance purposes in connection with the operation of the railway.

PART III - ACQUISITION AND POSSESSION OF LAND AND RIGHTS

ARTICLE 10

Power to acquire land

(1) Subject to the Principal Act, the Railway Undertaking may acquire compulsorily and use all or such part of the lands shown on the plans and specified in the Second Schedule and the rights in under or over land described in the Second Schedule as the Railway Undertaking may require for the purposes of the execution of the works authorised by this Order and the operation of the railway or for purposes 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 11

Power to temporarily acquire and occupy land

(1) Subject to the Principal Act, the Railway Undertaking may enter upon, occupy and take

temporary possession of the land shown in the plan and specified in the Third Schedule or any part of that land, for the purpose of carrying out the authorised works.

(2) In particular, and without prejudice to the generality of paragraph 1—

(a) the Railway Undertaking may—

(i) enter on and take temporary possession of that land for the provision of working sites and access for construction purposes or for purposes in connection with the works authorised by this Order, 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 Railway Undertaking 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 railway works, the Railway Undertaking 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 Third Schedule and subject to any agreement to the contrary with the owners and occupiers of the land, the Railway Undertaking 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 Railway Undertaking shall not be required to acquire any land of which it takes temporary possession pursuant to this Article.

(5) The Railway Undertaking 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 Railway Undertaking 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.

ARTICLE 12

Acquisition of Easements and other rights over land

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

ARTICLE 13

Extinguishment of public rights of way and temporary interference with rights including rights of way

(1) The Railway Undertaking may extinguish the public rights of way shown on the plans and specified in the Fourth Schedule for the purposes of the execution of the works and authorised works and the operation of the railway or for purposes incidental or ancillary to those purposes.

(2) The Railway Undertaking may extinguish the public rights specified in the Fourth Schedule.

(2) The Railway Undertaking may temporarily interfere with or stop up the public rights, including public rights of way specified in the Fourth Schedule of this Order.

ARTICLE 14

Use of air space

(1) Without prejudice to Article 13, the Railway Undertaking may enter on and use so much of the air-space over a road or 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 of this Article may be exercised in relation to a road or public

road without the Railway Undertaking being required to acquire any part of the road or any easement or other right in relation to the surface of the road.

ARTICLE 15

Period within which the Railway Undertaking may compulsorily acquire land and interests in land

(1) The powers conferred on the Railway Undertaking by this Order compulsorily to acquire permanently land or rights over land, water or a road and, subject to paragraph 3, the power conferred to enter upon and take temporary possession of land shall cease at the end of the period specified in the Act of 2000, section 217(6), 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 Railway Undertaking 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.

(2) Notwithstanding paragraph 1, the Railway Undertaking shall be entitled to remain in temporary possession of land pursuant to this Order after the end of the period mentioned in paragraph 1 where possession of the land was taken before the end of that period.

PART IV
MISCELLANEOUS AND GENERAL

ARTICLE 16
Interference with Apparatus

(1) This Article applies where it appears to the Railway Undertaking, 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 Railway Undertaking, 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 Railway Undertaking,

(b) take such further or other steps or make such further or other provision with the agreement of the Railway Undertaking 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 Railway Undertaking 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 Railway Undertaking 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 Railway Undertaking 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 Railway Undertaking 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 substation,

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.

ARTICLE 17

Arbitration

(1) Paragraphs 2 to 4 apply to any dispute arising between the Railway Undertaking and any other party in relation to the execution of the authorised works or the exercise by the Railway Undertaking of the powers granted by this Order

(2) The Railway Undertaking and the other party shall use their best endeavours to resolve the dispute on mutually acceptable terms

(3) If, after such period as the Railway Undertaking 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.

(4) 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.

ARTICLE 18

Agreement between the Railway Undertaking and Road Authorities

(1) The Railway Undertaking 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 any one or more 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 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 19

Byelaws

(1) Pursuant to the power conferred by Section 66 of the Principal Act, the Railway Undertaking 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 prevention of the commission of nuisances in or upon railway vehicles or apparatus,
- (b) the prevention of trespass upon and/ or damage to railway vehicles or apparatus,
- (c) 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

(2) Bye-laws under paragraph 1 may contain such incidental, subsidiary and ancillary provisions as the Railway Undertaking 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.