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TRANSPORT (RAILWAY INFRASTRUCTURE) ACT, 2001

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ACTS REFERRED TO

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Regulation of Railways Acts, 1840 to 1889	
Roads Act, 1993	1993, No. 14
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Transport Act, 1963	1963, No. 17
Transport (Dublin Light Rail) Act, 1996	1996, No. 24
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TRANSPORT (RAILWAY INFRASTRUCTURE) ACT, 2001

AN ACT TO MAKE FURTHER PROVISION IN RELATION TO TRANSPORT, TO ESTABLISH A BODY TO BE KNOWN AS THE RAILWAY PROCUREMENT AGENCY OR, IN THE IRISH LANGUAGE, AN GHNÍOMHAIREACHT UM FHÁIL IARNRÓD, AND TO DEFINE ITS FUNCTIONS, TO ENABLE THE MINISTER FOR PUBLIC ENTERPRISE TO AUTHORISE, BY ORDER, THE CONSTRUCTION, OPERATION AND MAINTENANCE OF RAILWAYS, TO PROVIDE FOR THE ON-STREET REGULATION OF LIGHT RAILWAYS, TO MAKE FURTHER PROVISION IN RELATION TO CÓRAS IOMPAIR ÉIREANN, TO REPEAL SECTIONS 2 TO 11 OF THE TRANSPORT ACT, 1963, AND THE TRANSPORT (DUBLIN LIGHT RAIL) ACT, 1996, AND TO PROVIDE FOR CONNECTED MATTERS. [23rd December, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Transport (Railway Short title. Infrastructure) Act, 2001.

2.—(1) In this Act—

Interpretation.

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

“Act of 1963” means Transport Act, 1963;

“Act of 1993” means Roads Act, 1993;

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

“Act of 1996” means Transport (Dublin Light Rail) Act, 1996;

“Act of 2000” means Planning and Development Act, 2000;

“Agency” means Railway Procurement Agency established under section 9;

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“applicant” in *Part 3*, means the Agency, CIÉ, or any other person applying for a railway order;

“authorised person” means a person authorised as an authorised person under *section 36*;

“CIÉ” means Córas Iompair Éireann;

“driving” in relation to a light rail vehicle includes managing and controlling the vehicle, and “driver” and other cognate words shall be construed accordingly;

“environmental impact statement” shall be construed in accordance with *section 37(2)(d)*;

“establishment day” means the day appointed by the Minister under *section 8* to be the establishment day for the purposes of *Part 2*;

“functions” includes powers and duties and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

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

“light rail vehicle” means a vehicle with flanged wheels designed to run on a light railway;

“light railway” means a railway designated as a light railway in a railway order issued under *section 43*;

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

“metro” means a railway designated as a metro in a railway order issued under *section 43*;

“Minister” means Minister for Public Enterprise;

“planning authority” has the meaning assigned to it by the Act of 2000;

“public place” has the meaning assigned to it by the Act of 1961;

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

“railway” means a railway (whether above, on or under the ground) whose operation is authorised by a railway order;

“railway infrastructure” means any land, buildings, 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 under *section 43*;

“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(6)*;

“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 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

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operation of construction, excavation, tunnelling, demolition, extension, alteration, reinstatement, reconstruction, making good, repair or renewal; Pt.1 S.2

“rights” in relation to a railway order includes rights which exist or which are proposed to be created in the order;

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

“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 land required—

(i) for the purposes of a tunnel or tunnelling or anything connected therewith, or

(ii) for any other purpose connected with a railway order;

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended,

(c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act,

(d) a reference to a statutory instrument shall be construed as a reference to that instrument as amended, adapted or extended by any subsequent statutory instrument.

3.—The following are repealed—

Repeals.

(a) sections 2 to 11 of the Act of 1963, and

(b) the Act of 1996.

4.—(1) Any order made under the Act of 1963 or the Act of 1996 which is in force immediately before the repeal of those Acts shall continue in force as if made under this Act and *subsections (6) to (11) of section 43* shall apply to such orders and references in those orders made under the Act of 1996 to the Board shall be construed as references to the Agency.

Continuation of orders made under Act of 1963 and Act of 1996.

(2) For the avoidance of any doubt, any orders made under the Act of 1996 include the power to operate the railway in question.

(3) Notwithstanding the repeal of sections 2 to 11 of the Act of 1963, where an application for a railway works order has been made and not determined immediately before the repeal of those sections,

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Pt.1 S.4 then those sections continue to apply to the application until its determination.

Laying of orders and regulations before Houses of Oireachtas.

5.—Every order (other than an order under *section 8*) or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Offences by bodies corporate.

6.—Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect or default on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

Expenses.

7.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be authorised by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

RAILWAY PROCUREMENT AGENCY

Establishment day.

8.—The Minister shall by order appoint a day to be the establishment day for the purposes of this Part.

Establishment of Agency.

9.—(1) There shall stand established on the establishment day a body to be known as the Railway Procurement Agency, or in the Irish language, an Ghníomhaireacht um Fháil Iarnród, and in this Act referred to as the “Agency”, to perform the functions conferred on it by or under this Act.

(2) The Agency shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or any other property or an interest in land or any other property (freehold or leasehold).

(3) Before acquiring or disposing of land or an interest therein the Agency shall obtain an independent valuation of the land or interest therein.

(4) The Agency shall, subject to the provisions of this Act, be independent in the exercise of its functions.

(5) The Agency shall have all such powers as are necessary for or incidental or ancillary to the performance of its functions under this Act.

Seal of Agency.

10.—(1) The Agency shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal of the Agency shall be authenticated by the signature of—

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(a) the person appointed to chair the Agency, or

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(b) (i) a member of the Agency, or

(ii) a member of the staff of the Agency,

authorised by the Agency to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Agency and every document purporting to be an instrument made by the Agency and to be sealed with the seal of the Agency (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

11.—(1) The Agency shall have the following functions:

Functions of Agency.

(a) to secure the provision of, or to provide, such light railway and metro railway infrastructure as may be determined from time to time by the Minister;

(b) to monitor and publish regular reports on the safety of light railway and metro infrastructure;

(c) to enter into agreements with other persons in order to secure the provision of such railway infrastructure whether by means of a concession, joint venture, public private partnership or any other means; and

(d) to acquire and facilitate the development of land adjacent to any railway works subject to an application for a railway order under this Act where such acquisition and development contributes to the economic viability of the said railway works.

(2) The Minister may, with the consent of the Minister for Finance, by order confer on the Agency such additional functions in relation to public transport by rail or road as, from time to time, he or she considers appropriate.

(3) The Agency may exploit commercial opportunities arising from its functions.

(4) The exploitation of such commercial opportunities may be carried out by a railway undertaking on behalf of the Agency.

(5) The Agency may receive income (including any amount, right, interest, benefit or profit) arising from, or make payments (or otherwise provide consideration) in respect of functions referred to in *subsections (1)* and *(3)* or such additional functions assigned to it under *subsection (2)*.

(6) Where the Agency enters into an agreement with a person and in connection with the agreement another person makes a financial loan to, or provides any other form of finance for, a party to the agreement, the Agency shall be deemed to have the power to enter into an arrangement with that other person.

(7) The Agency may only act as the operator of a railway where authorised by the Minister by order.

(8) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

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Subsidiaries,
investments, joint
ventures, etc.

12.—(1) Such functions of the Agency as it may determine may be performed by a subsidiary and, accordingly, the Agency may, with the consent of the Minister and the Minister for Finance, for the purpose of such performance, acquire or form and establish one or more subsidiaries.

(2) The Agency or a subsidiary may, either by itself or with another person, with the consent of the Minister and the Minister for Finance, promote and take part in the formation or establishment of a company (within the meaning of the Companies Acts, 1963 to 2001), enter into joint ventures or partnerships for the purpose of fulfilling any of its functions.

(3) The Agency may, with the consent of the Minister and the Minister for Finance, acquire, hold and dispose of shares or other interests in a company and become a member of a company.

(4) The memorandum and articles of association of a subsidiary shall be in such form consistent with this Act as may be determined by the Agency with the consent of the Minister and the Minister for Finance.

(5) The Minister may give a direction in writing to the Agency on any matter relating to a subsidiary and the Agency shall comply or, as may be appropriate, secure compliance with the direction.

(6) A direction under this section in relation to the disposal of any assets or surpluses of a subsidiary shall not be given without the consent of the Minister for Finance.

(7) In this section “subsidiary” means a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of the Agency.

Charges for
services.

13.—(1) The Agency may make such charges as it considers appropriate in consideration of the performance of its functions, the provision by it of services and the carrying on by it of activities and shall record receipts from such charges as income.

(2) The Agency may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to it under the above.

Gifts.

14.—(1) The Agency may accept gifts of money, land, or other property, on such trusts, terms or conditions, if any, as may be specified by the donor.

(2) The Agency shall not accept a gift if the trusts, terms, or conditions attached to it would be inconsistent with or prejudice the operational independence and effective performance of the functions of the Agency.

(3) The Agency shall include details of any gift that exceeds, in its opinion, such amount as may be directed by the Minister, with the consent of the Minister for Finance, in the report under *section 18* for the year in which the gift is accepted.

Borrowings by
Agency.

15.—(1) The Agency or a subsidiary of the Agency may, from time to time, borrow money for the purpose of carrying out its functions but shall not do so without the consent of the Minister and the Minister for Finance.

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(2) The Agency shall exercise the powers conferred on it by this section so that the amount or amounts of principal which the Agency, inclusive of any borrowings by subsidiaries of the Agency, may at any time be liable to repay on foot of any liability or liabilities incurred under this section does not, or do not in their aggregate, exceed €600,000,000 (£472,538,400). Pr.2 S.15

(3) For the purposes of this section, moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated according to the rate of exchange for that currency and the currency of the State at the time such moneys were borrowed.

16.—(1) Without prejudice to section 6 of the Borrowing Powers of Certain Bodies Act, 1996, the Minister for Finance, after consultation with the Minister, may guarantee, in such form and manner and on such terms and conditions as he or she thinks fit, the due repayment of any moneys (including money in a currency other than the currency of the State) (or the payment of interest on such moneys) borrowed by the Agency. Guarantee by
Minister for
Finance of
borrowing by
Agency.

(2) The Minister for Finance shall, as soon as may be after the expiration of every financial year, lay before each House of the Oireachtas a statement setting out with respect to each guarantee under this section given during that year or given at any time before, and in force at, the commencement of that year—

- (a) particulars of the guarantee,
- (b) in case any payment has been made by him or her under the guarantee before the end of that year, the amount of the payment and the amount (if any) repaid to him or her on foot of the payment, and
- (c) the amount of moneys covered by the guarantee which was outstanding at the end of that year.

(3) Moneys paid by the Minister for Finance under a guarantee under this section shall be repaid to him or her (with interest thereupon at such rate or rates as he or she appoints) by the Agency within such period from the date of the advance of the moneys out of the Central Fund as may be specified by that Minister after consultation with the Agency.

(4) Where the whole or any part of moneys required by *subsection (3)* to be repaid to the Minister for Finance has not been paid in accordance with that subsection, the amount so remaining outstanding shall be repaid, at such times as the Minister for Finance shall determine, to the Central Fund out of moneys provided by the Oireachtas.

(5) Notwithstanding the provisions of moneys under *subsection (4)* to repay the amount to the Central Fund, the Agency shall remain liable to the Minister for Finance in respect of that amount, and that amount (with interest thereon at such rate or rates as the Minister for Finance appoints) shall be repaid to him or her by the Agency at such times and in such instalments as he or she appoints.

(6) Moneys paid by the Agency under *subsection (3)* or *(5)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance thinks fit.

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Advances by
Minister to Agency.

17.—The Minister may, from time to time, with the consent of the Minister for Finance, advance to the Agency out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Agency in the performance of its functions.

Reports and
information to
Minister.

18.—(1) As soon as may be after the end of the financial year of the Agency in which the establishment day falls and of each subsequent financial year of the Agency, but not later than 6 months thereafter, the Agency shall present a report to the Minister of its activities during that year and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(2) Each report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.

(3) The Agency shall, whenever so requested by the Minister, furnish to the Minister information in relation to such matters as he or she may specify concerning or relating to the scope of its activities generally, or in respect of any account prepared by the Agency or any report specified in *subsection (1)* or the policy or activities, other than the day to day activities, of the Agency.

Accounts and
audits.

19.—(1) The chief executive, under the direction of the Agency, shall cause to be kept on a continuous basis proper books of account of all income and expenditure of the Agency, and of the sources of such income and the subject matter of such expenditure, and of the property, assets and liabilities of the Agency and shall keep and shall account to the Agency for all such special accounts as the Minister or the Agency, with the consent of the Minister, may from time to time direct should be kept.

(2) The financial year of the Agency shall be the period of 12 months ending on the 31st day of December in any year, and for the purposes of this section and *section 18* the period commencing on the establishment day and ending on the following 31st day of December, shall be deemed to be a financial year.

(3) The Agency, the chief executive and the other members of the staff of the Agency shall, whenever so requested by the Minister, permit any person appointed by the Minister to examine the books and accounts of the Agency in respect of any financial year or other period and shall facilitate any such examination, and the Agency shall pay such fee therefor as may be fixed by the Minister.

(4) The accounts of the Agency for each financial year shall be prepared in such form and manner as may be specified by the Minister. The accounts shall be prepared by the chief executive and approved by the Agency as soon as practicable but not later than 3 months after the end of the financial year to which they relate for submission to an auditor for audit. A copy of the accounts and the auditor's report thereon shall be presented to the members of the Agency and to the Minister as soon as practicable and the Minister shall cause a copy of these documents to be laid before each House of the Oireachtas.

(5) For the purposes of *subsection (4)* the Agency shall appoint auditors.

(6) From time to time, and whenever so requested, the Agency shall account for the performance of its functions to a Committee of

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one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to its functions. Pr.2 S.19

20.—(1) The Agency shall consist of 8 members who shall direct and carry out the functions of the Agency in accordance with this Act and shall satisfy themselves as to the adequacy of the systems in place for that purpose and shall otherwise manage and review the workings of the Agency. Membership of Agency.

(2) Notwithstanding *subsection (1)*, until the first appointment to the Agency of a person consequent to an election having been held to which *subsection (3)* relates, the Agency shall consist of 7 members.

(3) One of the ordinary members of the Agency shall be a member of the staff of the Agency who shall be elected by secret ballot of the staff of the Agency in such manner as the Agency, with the agreement of the Minister, may determine.

(4) The Agency shall include the chief executive as a member of the Agency.

(5) The members of the Agency (other than the chief executive) shall, as soon as may be after the establishment day, be appointed by the Minister.

(6) Each member of the Agency shall be a person who in the opinion of the Minister has wide experience and competence in relation to one or more of the following areas—

- (a) railways,
- (b) transportation planning,
- (c) urban development,
- (d) industry,
- (e) trade union representation,
- (f) law,
- (g) commerce,
- (h) finance,
- (i) economics,
- (j) engineering, or
- (k) environmental matters.

(7) The Minister shall designate one member of the Agency as chairperson.

(8) There shall be paid to the members of the Agency such remuneration (if any) and such allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(9) Each member of the Agency shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.

(10) The Minister, when appointing an ordinary member of the Agency under *subsection (5)*, shall fix such member's period of membership which shall not exceed 5 years.

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(11) Such number, as decided by the Minister, of the first ordinary members of the Agency appointed under *subsection (5)* shall hold office for a period not exceeding 4 years from the date of their appointment as determined by the Minister by lot.

(12) A member of the Agency (other than the chief executive) shall not serve for more than 2 consecutive terms.

(13) A member of the Agency shall be disqualified from being such a member where he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) is convicted of an offence involving fraud or dishonesty,
- (e) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts, 1963 to 2001), or
- (f) has a conflict of interest of such importance, in the opinion of the Minister, that requires him or her to step down.

(14) A member of the Agency may at any time resign his or her membership by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later.

(15) A member of the Agency may at any time for stated reasons be removed from membership of the Agency by the Minister if, in the Minister's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Agency of the functions of the Agency.

(16) If a member of the Agency dies, resigns, retires, becomes disqualified or is removed from office, the Minister may appoint a person to be a member of the Agency to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Agency who occasioned the casual vacancy.

(17) The Minister shall, in so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Agency.

Chairperson of Agency.

21.—(1) The term of office of the chairperson of the Agency shall be 5 years.

(2) Where the chairperson of the Agency ceases to be a member of the Agency he or she shall also thereupon cease to be chairperson of the Agency.

(3) The chairperson of the Agency may at any time resign his or her office as chairperson by letter sent to the Minister and the resignation shall, unless previously withdrawn in writing, take effect at the commencement of the meeting of the Agency held next after the Agency has been informed by the Minister of the resignation.

(4) The chairperson of the Agency shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of *subsection (2)*

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or (3), hold office until the expiration of his or her period of membership of the Agency and, if he or she is re-appointed as a member of the Agency, he or she shall be eligible for re-appointment as chairperson of the Agency. Pr.2 S.21

22.—(1) The Agency shall hold such and so many meetings as may be necessary for the performance of its functions, but shall hold at least one meeting in each quarter of a year. Meetings of Agency.

(2) The Minister, in consultation with the chairperson of the Agency, shall fix the date, time and place of the first meeting of the Agency.

(3) The quorum for a meeting of the Agency shall be 4.

(4) At a meeting of the Agency—

(a) the chairperson of the Agency shall, if present, be the chairperson of the meeting, and

(b) if and so long as the chairperson of the Agency is not present or if the office of the chairperson is vacant, the members of the Agency who are present shall choose one of their number to be chairperson of the meeting.

(5) At a meeting of the Agency, each member of the Agency present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Agency's view on the matter shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.

(6) The Agency may act notwithstanding one or more vacancies among its members.

(7) Subject to this Act, the Agency shall regulate, by standing orders or otherwise, the procedure and business of the Agency.

23.—(1) There shall be a chief officer of the Agency who shall be known, and is referred to in this Part, as the chief executive. Chief executive of Agency.

(2) The chief executive shall be appointed by the Agency and may be removed from office, at any time for stated reasons, by the Agency and in accordance with the terms and conditions of his or her contract of service.

(3) The chief executive shall carry on and manage and control generally the administration and business of the Agency and perform such other functions as may be determined by the Agency.

(4) The chief executive shall provide the Agency with such information, including financial information, in relation to the performance of his or her functions as the Agency may from time to time require.

(5) The functions of the chief executive may be performed in his or her absence or when the position of chief executive is vacant by such member of the staff of the Agency as may from time to time be designated for that purpose by the Agency.

(6) The chief executive shall hold office for such term and upon and subject to such other terms and conditions (including terms and conditions relating to remuneration) as may be determined by the Agency, with the consent of the Minister and the Minister for Finance.

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(7) The chief executive shall, for the duration of his or her appointment, be an ex officio member of the Agency.

(8) The chief executive shall not hold any other office or position or carry on any business without the consent of the Agency.

(9) A chief executive of the Agency shall not, for a period of 12 months following his or her resignation, removal or retirement from office, hold any office or employment or act as consultant where he or she may be likely to use or disclose information acquired by him or her in the exercise of the functions of the Agency.

Staff of Agency.

24.—(1) The Agency may appoint such and such number of persons to be members of the staff of the Agency as it may determine.

(2) A member of the staff of the Agency shall—

(a) be paid out of moneys at the disposal of the Agency, such remuneration and allowances for expenses incurred by him or her as the Agency may determine, and

(b) hold his or her office or employment for such term upon and subject to such other conditions (including terms and conditions relating to remuneration) as may be determined by the Agency.

(3) The Agency may at any time remove any member of the staff of the Agency from being a member of its staff where that person fails to perform his or her functions satisfactorily.

(4) Every person designated by the Minister who, immediately before the establishment day, is a member of the staff of the Light Rail Project Office of CIÉ shall, on that day, be transferred to and become a member of the staff of the Agency.

(5) Save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned, a person referred to in *subsection (4)* shall not, while in the service of the Agency, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service (including those relating to tenure of office) than the scale of pay to which he or she was entitled and the terms and conditions of service (including conditions relating to tenure of office) to which he or she was subject immediately before the establishment day.

Superannuation.

25.—(1) The Agency shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such members of the staff of the Agency as it may think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) Every such scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

(4) A scheme or an amending scheme submitted by the Agency under this section shall, if approved by the Minister with the consent

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of the Minister for Finance, be carried out by the Agency in accordance with its terms. Pr.2 S.25

(5) Superannuation benefits, and the terms and conditions relating to superannuation benefits, granted under schemes under this section to, or in respect of, persons who, immediately before the establishment day, were members of the staff of CIÉ shall not be less favourable than those which applied immediately before that day.

(6) No superannuation benefit shall be granted by the Agency nor shall any other arrangements be entered into by the Agency for the provision of such a benefit to or in respect of a member of the staff of the Agency otherwise than in accordance with a scheme under this section or with the consent of the Minister and the Minister for Finance.

(7) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(8) Where, in the period beginning on the establishment day and ending immediately before the commencement of a scheme under this section, a superannuation benefit falls due for payment to or in respect of a person who was transferred to the staff of the Agency under *section 24*, the benefit shall be calculated by the Agency in accordance with such scheme, or such enactments in relation to superannuation, as applied to the person immediately before the establishment day and, for that purpose, his or her pensionable service with the Agency shall be aggregated with his or her previous pensionable service and shall be paid by the Agency.

(9) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

26.—(1) Where a member of the Agency—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament,
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy, or
- (d) becomes a member of a local authority,

Membership of either House of Oireachtas, European Parliament or local authority.

he or she shall thereupon cease to be a member of the Agency.

(2) Where a member of the staff of the Agency—

- (a) is nominated as a member of Seanad Éireann,
- (b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament, or

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(c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon stand seconded from his or her employment with the Agency and shall not be paid by, or be entitled to receive from, the Agency any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending when he or she ceases to be a member of that House or a representative in that Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is a member, be disqualified from becoming a member of the Agency, or a member of the staff of the Agency.

(4) A person who is a member of a local authority shall be disqualified from becoming a member of the Agency.

(5) The Agency shall not employ or otherwise retain in any capacity a person who would otherwise be disqualified under this section from becoming a member of the Agency save with the approval of the Minister.

(6) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Agency for the purposes of any superannuation benefits.

Code of conduct.

27.—(1) The Agency shall, following consultation with the Minister, draw up a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of its staff.

(2) The Agency shall publish any code of conduct drawn up under *subsection (1)*.

Declaration of interests.

28.—(1) On his or her appointment, the chief executive and each member of the Agency shall make a declaration in writing of his or her interests to the Minister, in such form as the Minister, following consultation with the Minister for Finance, may specify.

(2) On his or her appointment, each consultant and each member of the staff of the Agency at a grade or level specified before the appointment by the Agency, following consultation with the Minister, shall declare his or her interests in writing to the chairperson of the Agency and the chairperson shall inform the Agency at its next meeting of the interests declared and the names of those making the declarations.

(3) A person to whom *subsection (1)* or *(2)* applies shall, throughout the tenure of his or her appointment, amend and update his or her declarations of interests as required by the Minister or the Agency, as the case may be, of any changes in the interests held by the person.

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- (4) (a) A statement of the interests declared under *subsection (1)* shall be included in the next report prepared in accordance with *section 18* following the making of the declaration and any subsequent changes in a declaration shall also be included in a statement in the next available report. Pt.2 S.28
- (b) The form and content of the statement to be included in such report shall be agreed between the chairperson of the Agency, the Minister and the Minister for Finance.
- (c) Notwithstanding the provisions of *paragraph (a)*, it shall not be necessary to specify in a statement in such report the amount or monetary value of any interest, or the remuneration of any trade, profession, or employment included in the statement.

(5) In this section:

“employment” includes—

- (a) full-time employment,
- (b) part-time paid employment, where such employment is ongoing in the year of appointment or which arises in subsequent years,
- (c) temporary paid employment, being for a period of 16 weeks or more in the year of appointment or in subsequent years, or
- (d) being retained under contract, directly or indirectly, in any capacity as an adviser, consultant or lobbyist, or for the provision of services,

by or in any business related to the functions of the Agency;

“interests” includes—

- (a) employment by or on behalf of—
- (i) any business related to the functions of the Agency,
- (ii) any organisation representative of any business related to the functions of the Agency,
- (b) ownership of any business related to the functions of the Agency,
- (c) shares in, bonds or debentures of, or other like investments in any business related to the functions of the Agency, where the aggregate of such holdings exceed €13,000 (£10,238.33),
- (d) a directorship or shadow directorship (within the meaning of the Companies Acts, 1963 to 2001) in any business related to the functions of the Agency, held currently or during the previous two years, or
- (e) gifts of travel, holidays, transport, money (in excess of €650 (£511.92)) or other benefits, including benefits from any beneficial interest in or connected with any business

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related to the functions of the Agency, during the previous two years which were received by the person being appointed or by his or her spouse;

“ownership” includes any proprietary interest in any business related to the functions of the Agency, whether that interest is freehold, leasehold or beneficial, and shall apply—

(a) where the interest is held solely by the person being appointed or shared with one or more persons, or

(b) where the interest, at the time of appointment, has a value of €20,000 (£15,751.28) or more.

(6) The Agency shall, for the purposes of this section, keep a register (which is in this section referred to as the “register of interests”) and shall enter therein the particulars contained in declarations given to the Minister or the Agency under this section.

(7) The register of interests shall be available for inspection by any person at the Agency’s headquarters during office hours and a copy of the register or any entry in the register may be obtained by any person on the payment to the Agency of such fee (if any) as the Agency shall fix not exceeding the reasonable cost of making a copy.

(8) Where a person to whom *subsection (1)* applies, fails to make a declaration in accordance with that subsection or to update such declaration in accordance with *subsection (3)*, the Minister shall decide the appropriate course of action (including removal from office) to be taken.

(9) Where a person to whom *subsection (2)* applies, fails to make a declaration in accordance with that subsection or to update such declaration in accordance with *subsection (3)*, the Agency shall decide the appropriate course of action (including removal from office or termination of contract) to be taken.

Disclosure of interests.

29.—(1) Where the chief executive, a member of the Agency, a member of the staff of the Agency, or a consultant, adviser or other person engaged by the Agency, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Agency he or she shall—

(a) disclose to the Agency the nature of his or her interest in advance of any consideration of the matter,

(b) neither influence nor seek to influence a decision in relation to the matter,

(c) take no part in any consideration of the matter,

(d) if he or she is the chief executive, a member of the Agency, or a member of the staff of the Agency, withdraw from the meeting for so long as the matter is being discussed or considered by the Agency and shall not vote or otherwise act as such chief executive or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

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- (a) he or she or any connected relative or any nominee of his or her or any connected relative, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection, Pr.2 S.29
- (b) he or she or any connected relative is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative has a beneficial interest in, or material to, such a matter.
- (3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter—
- (a) by reason only of an interest of his or her or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter, or
- (b) if he or she can show that at the material time he or she was unaware, and in the circumstances could not possibly have been aware, that a connected person had an interest referred to in *subsection (2)*.
- (4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Agency and particulars of the determination shall be recorded in the minutes of the meeting concerned.
- (5) Where a disclosure is made to the Agency pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of the meeting concerned and, for as long as the matter to which the disclosure relates is being considered by the meeting, the person by whom the disclosure is made shall absent themselves from the meeting.
- (6) Where a person, other than a member of the Agency, referred to in this section fails to make a disclosure in accordance with this section, the Agency shall decide the appropriate action (including removal from office or termination of contract) to be taken.
- (7) Where a member of the Agency fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.
- (8) In this section “connected relative” means, in relation to a person to whom this section applies, the person’s spouse or partner, parent, brother, sister or child.

30.—(1) Save as otherwise provided by law and *subsection (4)*, a person shall not, without the consent of the Agency, disclose any confidential information obtained by him or her while performing (or as a result of having performed) duties as— Prohibition on unauthorised disclosure of confidential information.

- (a) a member of the Agency,
- (b) a member of the staff of the Agency (including the chief executive),
- (c) an adviser or consultant to the Agency or an employee of such person whilst performing duties relating to such advice or consultation,

or obtained while in performance of a service contract.

(2) In this section “confidential information” includes—

- (a) information that is expressed by the Agency or the Minister to be confidential either as regards particular information or as regards information of a particular class or description,
- (b) commercial information in relation to contractors, consultants, providers of finance, or any other person,
- (c) proposals of a commercial nature or tenders submitted to the Agency by contractors, consultants, or any other person.

(3) A person who contravenes *subsection (1)* is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both.

(4) Nothing in *subsection (1)* shall prevent the disclosure of information in a report made to the Agency or by or on behalf of the Agency to the Minister.

(5) The Third Schedule to the Freedom of Information Act, 1997, is amended by the insertion in Part I at the end thereof:

- (a) in column (2) of “*Transport (Railway Infrastructure) Act, 2001*”, and
- (b) in column (3) of “*Section 30*”.

31.—(1) A person who communicates with a member of the Agency or with a member of the staff of the Agency, or with a consultant, adviser or other person engaged by the Agency, for the purpose of influencing improperly his or her consideration of any matter which falls to be considered or decided by the Agency is guilty of an offence.

Prohibition on certain communications.

(2) If a member or a person to whom a communication is made becomes of opinion that a communication is in contravention of *subsection (1)*, it shall be his or her duty not to entertain the communication further and he or she shall inform forthwith the chairperson of the Agency in writing of the substance of such communication and the chairperson shall acknowledge in writing the receipt of such information.

(3) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both.

32.—(1) The Minister may give a direction in writing to the Agency in relation to any of the functions assigned to it by or under this Act and the Agency shall comply with the direction.

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Power of Minister to issue directions and guidelines to Agency.

(2) The Minister may, with the consent of the Minister for Finance, give policy, financial or other guidelines to the Agency in relation to the performance of the functions assigned to it by or under this Act and the Agency shall have regard to such guidelines when performing its functions.

(3) The Minister shall lay a copy of any direction or guidelines given by him or her under this section before each House of the Oireachtas.

33.—(1) On the establishment day all property, including choses-in-action, which immediately before that day was the property of CIÉ and was used in connection with any of the orders made under the Act of 1996 shall stand vested in the Agency without any assignment, unless, in respect of specified property, the Minister otherwise decides.

Transfer of property.

(2) The Minister shall, on the application of CIÉ or the Agency, issue a certificate in respect of specified property, certifying, as he or she thinks proper, that the property vested in the Agency under this section or did not so vest in the Agency and the certificate shall be conclusive evidence of the facts so certified.

(3) Every chose-in-action transferred by *subsection (1)* to the Agency may, after the establishment day, be sued on and recovered or enforced by the Agency in its own name and it shall not be necessary for the Agency or CIÉ to give notice to the person bound by the chose-in-action of the transfer effected by the subsection.

(4) The Minister may, by order or orders, on such occasions and on such terms and conditions as he or she sees fit, transfer such other property connected with light railway or metro from CIÉ to the Agency as it needs to carry out its functions.

(5) The Minister may, on the application of CIÉ, issue a certificate in respect of specific property, certifying, as he or she thinks proper, that the property shall not be transferred from CIÉ to the Agency at any point in time.

34.—(1) All rights or liabilities of CIÉ arising by virtue of any contract or commitment (expressed or implied) entered into by it before the establishment day in relation to any of the orders made under the Act of 1996 shall on that day stand transferred to the Agency.

Transfer of rights and liabilities.

(2) The Minister shall on the application of CIÉ or the Agency issue a certificate in respect of a specified contract or commitment certifying, as he or she thinks proper, that the rights and liabilities of CIÉ thereunder were transferred on the establishment day to the Agency under this section or were not so transferred to the Agency and the certificate shall be conclusive evidence of the facts so certified.

(3) Every right and liability transferred by *subsection (1)* to the Agency may, on or after the establishment day, be sued on, recovered or enforced by or against the Agency in its own name and it shall not be necessary for the Agency or CIÉ to give notice to the

person whose right or liability is transferred by this section of such transfer. Pt.2 S.34

35.—Where legal proceedings to which CIÉ is a party are pending immediately before the establishment day and the proceedings relate to any of the property, rights or liabilities transferred under *section 33 or 34*, the proceedings shall be continued with the substitution for CIÉ of the Agency. Continuation of pending legal proceedings.

PART 3

RAILWAY ORDERS

36.—(1) The Agency or CIÉ may authorise in writing persons to be authorised persons for the purposes of this Part. Surveys and inspections.

(2) An authorised person may, on production of his or her authorisation together with an appropriate form of identification if so requested by any person affected, for the purposes of this Part enter on any land and—

- (a) inspect and survey the land and make any inquiry, investigation or examination for the purpose of ascertaining whether or not the land is suitable for the purposes of the construction of a railway,
- (b) carry out any investigation or examination thereon preliminary or incidental to the purposes aforesaid,
- (c) bring thereon such other persons or equipment as he or she may reasonably consider necessary for the purposes of his or her functions under this section,
- (d) line sight, drill, bore, probe or excavate, or take such samples and carry out such tests as he or she reasonably considers necessary or expedient for the purposes of such functions,
- (e) if authorised by the Agency, inspect and survey the land and make any inquiry, investigation or examination for the purpose of ascertaining whether or not the land is suitable for the purposes of fulfilling any of the related functions of the Agency.

(3) An authorised person shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under *subsection (4)* authorising such entry.

(4) Where an authorised person is refused entry to any land, the Agency or CIÉ, as the case may be, may apply to a judge of the District Court assigned to the district court district in which the land is situated for a warrant authorising such entry, and upon the hearing of the application the judge shall, if satisfied that such entry is necessary or expedient, by warrant authorise such entry, on production of the warrant, if so requested.

(5) Whenever an authorised person exercises any of the functions conferred on him or her by *subsection (2)*, the Agency or CIÉ, as the case may be, shall be liable to make good all damage done to the land entered upon or interfered with by the exercise of such functions and to pay compensation in respect of any loss arising out Pt.3 S.36

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of or in the course of the performance of the functions of an authorised person under this section, and, if there is a failure to do so, any person affected by the damage or loss shall be entitled to compensation in respect thereof and such compensation shall be recoverable from the Agency or CIÉ, as the case may be, in default of agreement, in any court of competent jurisdiction.

37.—(1) The Agency, CIÉ, or any other person with the consent of the Agency, may apply to the Minister for a railway order. Application for a railway order.

(2) An application under *subsection (1)* shall be made in writing in such form as the Minister may specify and shall be accompanied by—

- (a) a draft of the proposed order,
- (b) a plan of the proposed railway works,
- (c) in the case of an application by the Agency or a person with the consent of the Agency, a plan of any proposed commercial development of land adjacent to the proposed railway works,
- (d) a book of reference to a plan required under this subsection (indicating the identity of the owners and of the occupiers of the lands described in the plan), and
- (e) a statement of the likely effects on the environment (referred to subsequently in this Part as an “environmental impact statement”) of the proposed railway works,

and a draft plan and book of reference shall be in such form as the Minister may specify or in a form to the like effect.

(3) The Minister shall acknowledge receipt of an application under this section within 14 days of receiving it.

(4) The construction of railway works, the subject of an application for a railway order under this Part, shall not be undertaken unless the Minister has granted an order under *section 43*.

38.—Each of the following shall be exempted development for the purposes of the Act of 2000— Exempted development.

- (a) development consisting of the carrying out of railway works, including the use of the railway works or any part thereof for the purposes of the operation of a railway, authorised by the Minister and specified in a railway order or of any incidental or temporary works connected with such development;
- (b) development consisting of the carrying out of railway works for the maintenance, improvement or repair of a railway that has been built pursuant to a railway order.

39.—(1) An environmental impact statement shall contain the following specified information— Environmental impact statement.

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- (a) a description of the proposed railway works comprising information on the site, design and size of the proposed railway works,
- (b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects,
- (c) the data required to identify and assess the main effects which the proposed railway works are likely to have on the environment,
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for its choice, taking into account the environmental effects, and
- (e) a summary in non-technical language of the above information.

(2) An environmental impact statement shall, in addition to and by way of explanation or amplification of the specified information referred to in *subsection (1)*, contain further information on the following matters—

- (a) (i) a description of the physical characteristics of the whole proposed railway works and the land-use requirements during the construction and operational phases,
- (ii) an estimate, by type and quantity, of the expected residues and emissions (including water, air and soil pollution, noise, vibration, light, heat and radiation) resulting from the operation of the proposed railway works;
- (b) a description of the aspects of the environment likely to be significantly affected by the proposed railway works, including in particular—
 - (i) human beings, fauna and flora,
 - (ii) soil, water, air, climatic factors and the landscape,
 - (iii) material assets, including the architectural and archaeological heritage, and the cultural heritage,
 - (iv) the inter-relationship between the matters referred to in this paragraph;
- (c) a description of the likely significant effects (including direct, indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative) of the proposed railway works on the environment resulting from—
 - (i) the existence of the proposed railway works,
 - (ii) the use of natural resources,
 - (iii) the emission of pollutants, the creation of nuisances and the elimination of waste,

and a description of the forecasting methods used to assess the effects on the environment;

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- (d) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information; and
- (e) a summary in non-technical language of the above information,

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to the extent that such information is relevant to a given stage of the consent procedure and to the specific characteristics of the railway works or type of railway works concerned, and of the environmental features likely to be affected, and the applicant may reasonably be required to compile such information having regard, inter alia, to current knowledge and methods of assessment.

- (3) (a) If a person, before applying to the Minister for a railway order, so requests, the Minister shall, after consulting the person and such bodies as may be specified by the Minister for that purpose, give a written opinion on the information to be contained in an environmental impact statement.
- (b) The giving of a written opinion in accordance with this subsection shall not prejudice the exercise by the Minister of his or her powers pursuant to this Act to require an applicant to furnish further information in relation to the effects on the environment of the proposed railway works.

(4) The European Communities (Environmental Impact Assessment) Regulations, 1989 to 2000, and the Local Government (Planning and Development) Regulations, 1994 to 2000, and the Act of 2000 and any regulation made thereunder in relation to environmental impact assessment shall not apply to anything done under an order made under this Act.

40.—(1) Whenever an application is made for a railway order, the applicant shall, within 14 days of the Minister acknowledging receipt of the application—

Publication of notice in relation to application for railway order.

- (a) deposit and keep deposited at such place or places, being a place or places which is or are easily accessible to the public, as may be appointed by the Minister, a copy of the draft order and all documents which accompanied the application, for not less than 28 days following the publication of the notice referred to in *paragraph (b)*,
- (b) publish a notice in one or more newspapers circulating in the area to which the order relates—
- (i) indicating that an application has been made for an order,
- (ii) indicating the times at which, the period during which and the place or places where a copy of the draft order and accompanying documents deposited under this section may be inspected,
- (iii) stating that a public inquiry will be held into the application,
- (iv) stating that the Minister will consider any submissions in relation to the proposed order or in relation to

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the likely effects on the environment of the proposed railway works which are submitted in writing to him or her by any person not later than 14 days after the end of the period specified in the notice referred to in *subparagraph (ii)*, and

- (v) stating that a copy of or extract from the draft order and accompanying documents may be purchased on payment of a fee not exceeding the reasonable cost of making such copy or extract,
- (c) serve on the planning authority in whose functional area (or any part thereof) the proposed railway works are proposed to be carried out and on such persons (if any) as the Minister may direct a copy of the draft order and accompanying documents and the notice referred to in *paragraph (b)*, and
- (d) serve a copy of the notice referred to in *paragraph (b)* together with relevant extracts from the documents referred to in *paragraph (a)* on every (if any) occupier and every (if any) owner of land referred to in the draft order.

(2) Members of the public may inspect a copy of a draft railway order and accompanying documents deposited under this section free of charge at the times and during the period specified in the notice referred to in *subsection (1)(b)* and may purchase copies of or extracts from any of the documents aforesaid on payment of a fee to the applicant not exceeding the reasonable cost of making such copies or extracts as may be fixed by the applicant.

(3) A person may, not later than 30 days after the end of the period specified in *subsection (2)*, make submissions in writing to the Minister in relation to the proposed railway order or the likely effects on the environment of the proposed railway works.

Further information to Minister.

41.—(1) Where the Minister is of the opinion that an environmental impact statement furnished under *section 37* does not comply with the provisions of *section 39*, or where he or she otherwise considers it necessary so to do, he or she shall require the applicant to furnish him or her with a document containing such further information in relation to the likely effects on the environment of the proposed railway works as he or she may specify and the applicant shall comply with any such requirement within any timescale decided by the Minister.

- (2) (a) If the document furnished under *subsection (1)* contains significant data in relation to the likely effects on the environment of the proposed railway works, the Minister shall require the applicant—
 - (i) to deposit and keep deposited at the place or each of the places appointed by the Minister, a copy of the aforesaid document,
 - (ii) to publish in one or more newspapers circulating in the area to which the proposed railway order relates a notice stating that further information in relation to the likely effects on the environment of the proposed railway works has been furnished to the Minister, that copies of the document containing the

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information will be available for inspection free of charge and for purchase by members of the public, at the place or each of the places appointed by the Minister, at specified times during the period of 28 days beginning on the day of publication of the notice and that submissions in relation to the further information may be made to the Minister before the expiration of the said period, and

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- (iii) to serve notice of the furnishing of the further information to the Minister, together with relevant extracts from the document aforesaid, on any person on whom notice was served pursuant to *section 40(1)* and to indicate to the person concerned that submissions in relation to the further information may be made to the Minister during the period of 28 days beginning on the day on which the notice is sent to the person concerned by the applicant.

- (b) Copies of further information in respect of which notice is published pursuant to a requirement under *subsection (2)(a)(ii)* shall be made available for purchase by members of the public during the period specified therein for such fee as the applicant may fix not exceeding the reasonable cost of making such copies.

(3) Members of the public may inspect the further information deposited under this section free of charge at the times and during the period specified in the notice referred to in *subsection (2)(a)(ii)*.

(4) A person may, during the appropriate period specified in *subsection (2)*, make submissions in writing to the Minister in relation to the further information deposited under this section.

42.—(1) (a) Where an application is made to the Minister for a railway order, the Minister shall, within 14 days of acknowledging such application, direct a public inquiry to be held into the application in the functional area of the local authority in which the railway is proposed to be situated or such one of the local authorities in which it is proposed to be situated as the Minister may determine.

Public inquiry into application for railway order.

- (b) Within 28 days of acknowledging such an application, the Minister shall, after consultation with An Bord Pleanála, appoint a person to be an inspector to hold the inquiry referred to in *paragraph (a)*.
- (c) The person appointed under *paragraph (b)* shall be a person who in the opinion of the Minister is independent, and has satisfactory experience, and competence in one or more of the following areas:
 - (i) transportation planning,
 - (ii) civil engineering,
 - (iii) land use planning,
 - (iv) architecture,
 - (v) law,

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- (vi) finance,
 - (vii) environmental matters, or
 - (viii) administration.
- (d) The inspector appointed to hold an inquiry shall publish in one or more newspapers circulating in the area to which the proposed railway order relates a notice stating where and when the inquiry shall commence and where the application for the order may be viewed and inviting submissions to the inquiry.
- (e) The inspector appointed to hold an inquiry shall hold the inquiry, which shall commence no earlier than the final date allowed for written submissions to the Minister under *section 40(3)* or *41(4)*, and shall prepare and submit to the Minister a report in writing of the findings of the inquiry and he or she may, if he or she so thinks fit, include in the report any recommendations he or she considers appropriate having regard to the inquiry and the Minister shall, without delay after such submission, cause the report to be published.
- (f) Where an inspector is appointed under *paragraph (b)*, the Minister may appoint a person or persons to act as an assessor or assessors to assist the inspector in relation to his or her functions under this section and a person or persons so appointed shall not take any part in the preparation of the report, the making of the findings or the recommendations (if any) under *paragraph (e)*.
- (g) Any interested person shall be entitled to appear and be heard at an inquiry under this section.

(2) The inspector appointed to hold an inquiry shall, for the purposes of the inquiry, consider—

- (a) the application made to the Minister under *section 37*;
- (b) the draft order and documents that accompanied the application;
- (c) any submission, whether written or oral, made to the inquiry, or any written submission to the Minister under *section 40(3)* or *41(4)*;
- (d) any alternatives to the application submitted to the inquiry;
- (e) the impact of the proposed railway, the subject of the application, on local communities;

and such other matters as the inspector considers appropriate.

(3) The inspector appointed to hold an inquiry may, for the purposes of the inquiry—

- (a) require, by summons, any person to attend as a witness to give evidence,

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- (b) require any person to produce such plans, books, papers and other documents (being in that person's custody or under his or her control) which the inspector may consider relevant and retain such plans, books, papers and documents for such time as he or she may reasonably require them, Pr.3 S.42
- (c) administer or cause to be administered an oath and take evidence under oath.
- (4) If a person—
- (a) on being duly summoned to attend as a witness under *subsection (3)* before an inquiry without just cause or excuse disobeys the summons,
- (b) being in attendance as a witness refuses to take an oath or to make an affirmation when legally required by the inspector to do so, or to produce any documents in his or her custody or control legally required by the inspector to be produced by him or her or to answer any question to which the inspector may legally require an answer,
- (c) wilfully gives evidence which is material to the inquiry and which he or she knows to be false or does not believe to be true,
- (d) by act or omission, obstructs or hinders the inspector in the performance of his or her functions, or
- (e) fails, neglects or refuses to comply with any requirement provided for under *subsection (3)(b)*, or does or omits to do any other thing and if such doing or omission would, if the inquiry had been the High Court, have been contempt of that Court,

the person is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both.

(5) A statement or admission made by a person before an inspector under this section shall not be admissible in evidence against that person in any criminal proceedings other than proceedings in relation to an offence under *subsection (4)*.

(6) A person duly summoned to attend as a witness under *subsection (3)* before an inquiry shall be allowed such expenses to be paid out of moneys provided by the Oireachtas as would be allowed to a witness summoned to attend before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the inspector to a taxing master of the High Court who, on request signed by the inspector, shall ascertain and certify the proper amount of the expenses.

(7) A witness at an inquiry under this section shall be entitled to the same immunities and privileges as a witness in a court.

(8) The Minister may, if he or she so thinks fit, appoint more than one person to be an inspector for the purposes of this section and references in this section to an inspector shall, in the case where more than one is so appointed, be construed accordingly.

(9) An inspector shall be independent in the performance of his or her functions.

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(10) (a) Where a public inquiry has been held under this section and the inspector is of the opinion that, having regard to the findings of the inquiry and all other relevant matters, there are sufficient reasons rendering it equitable to do so, the inspector may recommend that the whole or part of the costs of any person appearing before the inquiry be paid to the person by the Minister, with the consent of the Minister for Finance.

(b) Any costs referred to in *paragraph (a)* which refer to costs incurred by a person represented by counsel or solicitor shall be taxed by a taxing master of the High Court.

(11) An inspector shall cause copies of any documents or written submissions given or made to him or her at an inquiry under this section to be made available during the inquiry at the place where the inquiry is being held for inspection by members of the public.

(12) “inspector” means an inspector appointed under *subsection (1)(b)*.

Railway order.

43.—(1) Whenever an application is made under *section 37*, the Minister shall, before deciding whether to grant the order to which the application relates, consider the following—

(a) the application,

(b) the draft order and documents that accompanied the application,

(c) the report of the public inquiry held under *section 42*, and the recommendations (if any) contained therein,

(d) any submission duly made to him or her under *section 40(3)* or *41(4)* and not withdrawn,

(e) any submission duly made to him or her by a planning authority referred to in *section 40(1)(c)*,

(f) any additional information furnished to him or her under *section 41*.

(2) If, after such consideration, the Minister is of opinion that the application should be granted, he or she shall make an order authorising the applicant to construct, maintain, improve and, subject to *section 11(7)* in the case of the Agency, operate the railway or the railway works specified in the order or any part thereof, in such manner and subject to such conditions, restrictions and requirements (and on such other terms) as the Minister thinks proper and specifies in the order and the Minister shall furnish the applicant with a copy of the order.

(3) Where the Minister makes an order under *subsection (2)* which constitutes a substantial material departure from the recommendations contained in the report of the public inquiry held under *section 42*, the Minister shall lay a statement in writing before each House of the Oireachtas stating his or her reasons for such departure when the order is being laid before the Houses of the Oireachtas.

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(4) As soon as may be after the making of a railway order, the Minister shall publish a notice, in *Iris Oifigiúil* and in at least 2 newspapers circulating in the area to which the order relates, of the making of the railway order and of the places where, the period during which and the times at which copies thereof and any plan referred to therein may be inspected or purchased at a cost not exceeding the reasonable cost of making such copies. Pr.3 S.43

(5) A railway order shall come into operation—

- (a) in case an application for leave to apply for judicial review of the order has not been made, upon the expiration of 8 weeks, and
- (b) in case such an application has been made and has not been withdrawn, in so far as it has not been declared invalid or quashed pursuant to that review, upon the final determination of the proceedings concerned or such other date as may be determined in those proceedings, and
- (c) in case such an application has been made and is withdrawn, upon the date of the withdrawal.

(6) A person who has been granted a railway order may, with the consent of the Minister, make arrangements with another person to construct, maintain, improve or operate the railway or the railway works to which the order relates.

(7) (a) Subject to *paragraph (b)*, on application in that behalf by the railway undertaking to the Minister, the Minister may, if he or she considers it appropriate to do so, by order amend a railway order or the plan or book of reference relating to it and amendments under this paragraph may include a provision varying the route of the railway.

(b) Where, in the opinion of the Minister, an amendment of a railway order would, if made, constitute a substantial material variation in the railway works, the subject of the order, and the Minister so declares in a notice published in *Iris Oifigiúil*, *sections 37 to 43* shall apply in relation to the making of an order under *paragraph (a)* as they apply to a railway order and the application shall be deemed for the purposes of this Part to be an application for a railway order and this Part shall apply accordingly in relation to the application with any necessary modifications.

(8) The Minister may, if there is a failure or refusal to comply with a condition, restriction or requirement specified in a railway order, revoke the order.

(9) (a) Where the Minister proposes to revoke an order under this section, he or she shall notify the railway undertaking in writing of his or her proposal and of the reasons for it.

(b) The railway undertaking may, not later than 21 days from the date of the sending of the notification, make submissions in writing to the Minister and the Minister shall—

(i) before deciding the matter, take into consideration any submissions duly made to him or her under this

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paragraph in relation to the proposal and not withdrawn, and

- (ii) notify the railway undertaking in writing of his or her decision and of the reasons for it.

(10) A notification of a proposal of the Minister under *subsection (9)* shall include a statement that the railway undertaking may make submissions to the Minister not later than 21 days from the date of the sending of the notification and a notification of a decision of the Minister under *subsection (9)* shall include a statement that the railway undertaking may appeal to the High Court under *subsection (11)* against the decision not later than 21 days from the date of the sending of the notification.

(11) The railway undertaking may appeal to the High Court against a decision of the Minister under this section and that Court may, as it thinks proper, on the hearing of the appeal, confirm the decision of the Minister or direct the Minister to withdraw his or her decision and prohibit the making of the proposed order concerned.

Provisions in relation to railway order.

44.—(1) A railway order shall contain such provisions as the Minister considers necessary or expedient for the purpose of the order.

(2) Without prejudice to the generality of *subsection (1)*—

- (a) a railway order may specify any land or any substratum of land, the acquisition of which is, in the opinion of the Minister, necessary for giving effect to the order,
- (b) the order may specify any rights in, under or over land or water or, subject to the consent of the Minister for the Environment and Local Government, in, under or over any public road, the acquisition of which is, in the opinion of the Minister, necessary for giving effect to the order,
- (c) the order may specify the manner in which the railway or the railway works or any part thereof to which the order relates are to be constructed,
- (d) the order may fix the period within which the construction of the railway works is to be completed,
- (e) the order may contain provisions as to the manner in which the railway works are to be operated and maintained,
- (f) the order may contain such provisions as the Minister thinks proper for the protection of the public generally, of local communities and of any persons affected by the order,
- (g) the order may provide for the determination by arbitration of any specified questions arising thereunder,
- (h) the order may contain such provisions ancillary or incidental to any of the matters aforesaid as the Minister considers necessary and proper.

(3) The Minister may, in a railway order, designate the railway to which the order relates as a light railway or as a metro.

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45.—(1) Upon the commencement of a railway order, the Agency or CIÉ shall thereupon be authorised to acquire compulsorily any land or rights in, under or over land or any substratum of land specified in the order and, for that purpose, the railway order shall have effect as if it were a compulsory purchase order referred to in section 10(1) of the Local Government (No. 2) Act, 1960 (inserted by section 86 of the Housing Act, 1966), which has been duly made and confirmed and, accordingly, that section shall apply and have effect in relation to the order with the modifications that—

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Compulsory
acquisition of land.

- (a) references to the local authority shall be construed as including references to the Agency or CIÉ as the case may be,
- (b) references to the Minister for the Environment and Local Government shall be construed as including references to the Minister,
- (c) the reference in subsection (4)(a) to section 78 of the Housing Act, 1966, shall be construed as including a reference to subsections (1), (4) and (5) of that section,

and with any other necessary modifications.

(2) Where the Agency or CIÉ proposes to acquire land pursuant to *subsection (1)* and, in the opinion of the Agency or CIÉ, as the case may be, it is more efficient and economical to acquire additional adjoining land, the Agency or CIÉ, as the case may be, may do so with the consent of the Minister and of any person having an interest in or right in, under or over the adjoining land notwithstanding the fact that the adjoining land is not specified in the railway order.

(3) The Agency or CIÉ shall comply with any directions of the Minister in relation to land acquired by it pursuant to *subsection (1)*.

46.—As soon as may be after the making of a railway order, the railway undertaking shall—

Notification of
grant of railway
order.

- (a) deposit and keep deposited at the head office of the railway undertaking and at such other place as may be specified by the Minister, during the period of 5 years following the opening for traffic of the railway, a copy of the order and the plan referred to therein and the aforesaid order and plan shall, while so deposited, be open to inspection by members of the public free of charge, at all reasonable times, and copies of or extracts from any of the documents aforesaid may be purchased on payment of a fee to the railway undertaking not exceeding the reasonable cost of making such copies or extracts, and
- (b) serve a copy of relevant extracts from the railway order and the plan referred to therein on every planning authority for the area (or any part thereof) to which the order relates and to every (if any) occupier and every (if any) owner of land referred to in the railway order.

47.—(1) A person shall not question the validity of a railway order otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (“the Order”).

Judicial review of
railway order.

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(2) An application for leave to apply for judicial review under the Order in respect of a railway order or part thereof referred to in *subsection (1)* shall—

(a) be made within the period of 8 weeks commencing on the date on which the railway order was made unless the court considers that there is good and sufficient reason for extending the period within which the application shall be made, and

(b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Minister and the railway undertaking, and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the railway order is invalid or ought to be quashed, and that the applicant has a substantial interest (not limited to an interest in land or other financial interest) in the matter which is the subject of the application.

(3) The High Court may, before hearing an application referred to in *subsection (2)*, direct that notice of the application be also served on such persons (including any person who made a submission to the Minister in accordance with *section 40(3)* or *41(4)*) as the Court may specify.

(4) Notwithstanding an application for leave to apply for judicial review under the Order against a railway order, the application shall not affect the validity of the railway order and its operation unless, upon an application to the High Court, that Court suspends the railway order until the application is determined or withdrawn.

(5) (a) The determination of the High Court of an application for leave to apply for judicial review, or of an application for judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court or Supreme Court, which leave shall only be granted where the Court certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(b) This subsection shall not apply to a determination of the High Court, in so far as it involves a question as to the validity of any law, having regard to the provisions of the Constitution.

(6) Where an application is made for judicial review in respect of part only of a railway order, the High Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring to be invalid or quashing the remainder of the railway order or part of the railway order, and if the Court does so, it may make any consequential amendments to the remainder of the railway order or part of the railway order that it considers appropriate.

(7) References in this section to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

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- 48.—(1) (a) Upon the commencement of a railway order, the railway undertaking may, for the purposes of carrying out the works allowed under that order—
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Power of railway undertaking to carry out railway works and to enter land.
- (i) enter on any land the subject of the order and carry out on the land railway works authorised by the order,
 - (ii) enter on any other land and occupy it or otherwise make use of it for the purpose of carrying out the works aforesaid,
 - (iii) enter on any land for the purpose of carrying out any maintenance or improvement of the railway concerned,
 - (iv) enter on any land and attach to any wall, house or other building any bracket, cable or wire or other fixture required for the construction, operation or maintenance of the railway concerned,
 - (v) enter on any land and underpin or otherwise strengthen any house or other building affected or likely to be affected by the works or the railway aforesaid,
- and do on any such land all such other things as are, in its opinion, ancillary to, or reasonably necessary for, the purposes aforesaid.
- (b) Before exercising any power under *paragraph (a)*, the railway undertaking shall either—
- (i) obtain the consent of any owner or occupier of the land concerned, or
 - (ii) give to any owner or occupier of the land concerned not less than 14 days notice in writing stating its intention to enter on the land, the purposes for which the entry is intended to be made and that he or she may apply in accordance with *paragraph (c)* to the District Court for an order prohibiting entry.
- (c) A person to whom a notice has been given under this subsection may, not later than 14 days after the giving of the notice, apply, on notice to the railway undertaking, to the judge of the District Court having jurisdiction in the district court district in which the land is situated for an order prohibiting the entry and, upon the hearing of the application, the judge may, if he or she so thinks proper, either prohibit the entry or specify conditions to be complied with by the person making the entry.
- (d) Where a judge of the District Court prohibits under this subsection a proposed entry onto land, it shall not be lawful for any person to enter onto the land under *paragraph (a)*, and where a judge of the District Court specifies under this subsection conditions to be complied with by a person entering onto land,

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every person who enters onto the land under *paragraph (a)* shall comply with the conditions so specified.

- (2) (a) Where, in the opinion of the railway undertaking—
- (i) the exercise of a power conferred on it by *subsection (1)* is urgently required for the purpose of preventing or minimising injury, loss or damage to persons or property, and
 - (ii) it is not reasonably possible to comply, in relation to such exercise, with *paragraph (b)* of that subsection,
- the railway undertaking may exercise the power without having complied in relation to such exercise, with that paragraph.
- (b) Before exercising a power by virtue of this subsection, the railway undertaking shall give to any owner or occupier of the land notice of its intention to enter on the land, and of the purposes for which the entry is intended to be made.
 - (c) Where, in the opinion of the railway undertaking, it is not reasonably possible to comply with *paragraph (b)*, the railway undertaking may exercise the power concerned without having complied therewith and, as soon as may be thereafter, shall give to any owner or occupier of the land concerned a notice in writing specifying the powers exercised and the purposes of such exercise.
- (3) (a) Where an owner or occupier of land (other than a person whose land is acquired under *section 45*) suffers loss, injury or damage or incurs expenditure in consequence of the exercise by the railway undertaking of a power conferred on it by this section, the railway undertaking shall pay to him or her compensation in respect of the loss, injury, damage or expenditure and the amount of the compensation shall, in default of agreement, be determined by arbitration under and in accordance with the Lands Clauses Acts (other than sections 38 to 67 of the Lands Clauses Consolidation Act, 1845) and, for the purposes of those Acts, the railway undertaking shall be deemed to be the promoter of the undertaking and this Part and the railway order concerned shall be deemed to be the special Act; and, for the purposes of such determination, those Acts shall apply with any other necessary modifications and are incorporated (except insofar as they are inconsistent with and subject to any amendments or modifications, express or implied, thereof effected by this Act) with this Part.
- (b) In assessing the compensation payable to a person under *paragraph (a)*, regard shall be had to any benefit to any property of the person that arises or may reasonably be expected to arise from the exercise of the power concerned.

Lopping of trees.

49.—(1) The Agency, CIÉ, or a railway undertaking may lop, remove or cut any tree, shrub or hedge which obstructs or interferes with—

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- (a) surveys or inspections under *section 36*,
- (b) railway works authorised by a railway order,
- (c) the maintenance, operation or improvement of railway works or cables or other railway apparatus,
- (d) the operation of a railway,
- (e) the laying and erection of electric wires, or
- (f) the safe passage of the railway vehicles including the safety of any passengers on board such vehicles on a railway line.

(2) Subject to *subsection (4)*, before lopping or cutting any tree, shrub or hedge under this section, the Agency, CIÉ, or 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 to do so and, after the expiration of 28 days from the date of such service, the Agency, CIÉ, or 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 section, the expense incurred by him or her in so doing shall be paid to him or her on demand by the Agency, CIÉ, or railway undertaking, and the amount of such expenses shall be recoverable from the Agency, CIÉ, or railway undertaking, in default of agreement, as a simple contract debt in any court of competent jurisdiction.

(4) If a railway undertaking, for reasons of safety, needs to fell or lop any tree, shrub or hedge, the conditions in *subsection (2)* do not apply.

(5) Where a railway undertaking fells or lops any tree, shrub or hedge under *subsection (4)*, it shall give written notice to the owner or occupier of the land concerned informing them of such felling or lopping and the reasons for so doing.

(6) The requirement for a tree felling licence under *section 37* of the *Forestry Act, 1946*, does not apply to the Agency, CIÉ, or railway undertaking for the purposes of a railway development under this Part.

50.—(1) Upon the commencement of a railway order, the railway undertaking shall thereupon be authorised for the purpose of carrying out railway works or the operation, maintenance, repair or improvement of a railway or for any purpose incidental to the purposes aforesaid to—

Breaking up of roads, etc.

- (a) open, break up and, if necessary, alter the level or route of any public road, or
- (b) construct a new road.

(2) The railway undertaking shall not open, break up or alter the level or route of any public road or construct a new road without the prior consent in writing (which shall not be unreasonably withheld)

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of the road authority in whose functional area the road is situate or, in the case of a new road, to be situate.

(3) A consent under *subsection (2)* may be given by the road authority subject to such conditions, restrictions or requirements as it thinks fit and specifies in the consent and the railway undertaking shall comply with such conditions, restrictions or requirements (if any).

Safety of railways.

51.—No part of a railway shall be opened for—

- (a) testing and commissioning, or
- (b) passenger or freight traffic,

until the following has been demonstrated to the satisfaction of an inspector duly appointed by the Minister under the Regulation of Railways Act, 1871—

- (i) the safety and suitability of the railway, and of the vehicles to be used on such railway, and
- (ii) the appropriateness of the systems and procedures that will be used to ensure the safe operation of the railway.

Service of notices.

52.—(1) On request from an applicant or railway undertaking, and if the Minister is satisfied in relation to a notice required to be served under this Part that—

- (a) reasonable grounds exist for dispensing with the service of the notice, and
- (b) the dispensing with the service of the notice will not cause injury or damage to any person,

he or she may dispense with the service of the notice and every such dispensation shall have effect according to the terms thereof.

(2) Where a notice is required or authorised by or under this Part to be served on a person, it shall be addressed to him or her and shall be served on or given to him or her in any one of the following ways—

- (a) where it is addressed to him or her by name, by delivering it to him or her,
- (b) by leaving it at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service specified by the Minister, addressed to him or her at the address at which he or she ordinarily resides or, in a case in which an address for service has been furnished, at that address, or
- (d) where the address at which he or she ordinarily resides cannot be ascertained by reasonable inquiry and the notice is so required or authorised to be served in respect of any land or premises, by delivering it to some person over 16

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years of age resident or employed on such land or premises or by affixing it in a conspicuous position on or near such land or premises. Pt.3 S.52

(3) Where a notice is required by or under this Part to be served on an owner or occupier of any land or premises and the name of the owner or of the occupier, as the case may be, cannot be ascertained by reasonable inquiry, it may be addressed to “the owner” or “the occupier”, as the case may require, without naming him or her.

(4) A person who, at any time during the period of 12 weeks after a notice is affixed under *subsection (2)(d)*, removes, damages or defaces the notice without lawful authority is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both.

(5) For the purposes of this section, a company (within the meaning of the Companies Acts, 1963 to 2001) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

53.—A person who obstructs or interferes with or assists a person to obstruct or interfere with any person in the performance of a function conferred on that person under this Part is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both. Obstruction.

PART 4

ON-STREET REGULATION OF LIGHT RAILWAY

54.—(1) Subject to *subsection (2)*, a speed limit applying under Part IV (as amended by the Road Traffic Act, 1968 and the Act of 1994) of the Act of 1961 in respect of a public road shall apply to a light rail vehicle. Speed limits.

(2) Subject to *subsections (3) and (4)*, the Minister may make regulations prescribing in respect of any specified public road or parts of a public road the speed which shall be the speed limit on such road or roads for a light rail vehicle, and any such regulations shall be road regulations for the purposes of section 95(1) of the Act of 1961.

(3) Before making regulations under *subsection (2)*, the Minister shall give notice to—

(a) a local authority and the commissioners of any town in the area concerned, of the proposed regulations relating to public roads in the area and shall consider any representations made in writing to the Minister by such local authority or commissioners within the period (not being less than 28 days after the date of service of the notice) specified in the notice, and

(b) the Commissioner of the Garda Síochána of the proposed regulations and shall consider any representations made in writing to the Minister by the Commissioner within the

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period (not being less than 28 days after the date of service of the notice) specified in the notice.

(4) The Minister shall not make regulations under *subsection (2)* relating to national roads or motorways (within the meaning of the Act of 1993) without the prior consent of the National Roads Authority.

(5) A person who drives a light rail vehicle at a speed exceeding a speed limit applying in respect of a public road—

(a) under the Act of 1961 as applied by this section, or

(b) prescribed in regulations made under *subsection (2)*,

is guilty of an offence.

(6) A person guilty of an offence under *subsection (5)* shall be liable on summary conviction to a fine not exceeding €600 (£472.54).

Driving while unfit or under influence of intoxicant.

55.—The provisions of—

(a) sections 48 and 49 of the Act of 1961 (inserted by section 10 of the Act of 1994) (which relate to driving while unfit or under the influence of an intoxicant) shall apply to a person driving or attempting to drive a light rail vehicle,

(b) section 50 of the Act of 1961 (inserted by section 11 of the Act of 1994) (which relates to being in charge of a vehicle while under the influence of an intoxicant) shall apply to a person in charge of a light rail vehicle with intent to drive or attempt to drive the vehicle,

(c) Part III of the Act of 1994 (which relates to driving offences) shall apply to a person driving or in charge of a light rail vehicle or arrested under any of the provisions mentioned in that Part in respect of an offence connected with a light rail vehicle or in respect of an event mentioned in section 15 of that Act,

and, accordingly, any reference in those provisions to a mechanically propelled vehicle shall be construed as including a reference to a light rail vehicle.

Prohibition on person disqualified for holding driving licence from driving light rail vehicle on public road.

56.—(1) A person who is disqualified under the Act of 1961 for holding a driving licence (within the meaning of section 22 of the Act of 1961) shall not drive a light rail vehicle on a public road.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 (£1,968.91) or to imprisonment for a term not exceeding 3 months, or to both.

Compulsory insurance of light rail vehicles.

57.—Part VI of the Act of 1961 shall apply to light rail vehicles and, accordingly, any reference in that Part to a mechanically propelled vehicle shall be construed as including a reference to a light rail vehicle.

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- 58.**—The Minister may make regulations prescribing the minimum qualifications and competencies required by the driver of a light rail vehicle. Pt.4
Minimum qualifications and competencies required by driver of light rail vehicle.
- 59.**—(1) Where a member of the Garda Síochána alleges to a person driving a light rail vehicle that the member suspects that such person has committed an offence under this Part, or under the Road Traffic Acts, 1961 to 1995, the member may require such person to give his or her name and address to the member and may, if such person refuses or fails to give his or her name and address or gives a name or address which the member has reasonable grounds for believing to be false or misleading, arrest such person without warrant. Duty to give information to member of Garda Síochána.
- (2) Where a person, when his or her name and address is required of him or her under this section, refuses or fails to give his or her name and address or gives a name or address which is false or misleading, such person is guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €600 (£472.54).
- 60.**—(1) A person shall not use or take possession of a light rail vehicle without the consent of the railway undertaking concerned. Unauthorised taking or interference with light rail vehicle.
- (2) A person shall not, without lawful authority or reasonable cause, interfere or attempt to interfere with a light rail vehicle or get on or into or attempt to get on or into a light rail vehicle.
- (3) A person who contravenes *subsection (1) or (2)* is guilty of an offence.
- (4) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 6 months or to both.
- (5) Where a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under this section, he or she may arrest the person without warrant.
- 61.**—Regulations made under section 11 of the Act of 1961 shall not apply to a light rail vehicle. Restriction on application of regulations made under section 11 of Act of 1961.
- 62.**—Section 35(2) of the Act of 1994 is amended by the insertion after paragraph (d) of the following paragraph: Amendment of section 35(2)(d) of Act of 1994.
- “(dd) prohibiting or restricting pedestrians from using a specified road or specified parts of a road upon which there is a light railway (within the meaning of the *Transport (Railway Infrastructure) Act, 2001*).”.
- 63.**—(1) A person shall not excavate a public road or part thereof on which there is a light railway without the prior written consent of the road authority concerned and subject to any conditions contained in any such consent. Excavation or closure of public roads.

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(2) Before giving its consent under *subsection (1)*, a road authority shall obtain the written views of the Agency and shall consider any written objections or representations made by the Agency and not withdrawn.

(3) A person who contravenes *subsection (1)* is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 3 months or to both.

(4) Where a road authority proposes to excavate or close under section 75 of the Act of 1993 a public road or part thereof on which there is a light railway it shall obtain the written views of the Agency and shall consider any written objections or representations made by the Agency and not withdrawn before carrying out any such excavation or closure.

PART 5

MISCELLANEOUS

Trespass on railway.

64.—(1) A person who trespasses on a railway, that has been built pursuant to a railway order, and that is not on a public road or trespasses on any land, machinery or equipment used for the purposes of the railway, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €600 (£472.54).

(2) Where a person is charged with an offence under this section in respect of a trespass—

(a) the fact that he or she had not received a personal warning shall not be a ground of defence,

(b) he or she shall not, in any case, be convicted of the offence unless the railway undertaking proves to the satisfaction of the Court that, at the date of the trespass there was affixed at the station of the railway undertaking nearest to the place where the trespass is alleged to have been committed a prominent notice in legible characters warning persons not to trespass on the railways of the railway undertaking.

(3) A person lawfully crossing a railway of a railway undertaking by means of any accommodation works maintained in pursuance of section 68 of the Railways Clauses Consolidation Act, 1845, does not commit an offence under this section.

Unlawful use of railway.

65.—A person who uses or attempts to use, on a railway that has been built pursuant to a railway order, a vehicle with flange wheels or wheels suitable only for use on the rails of a railway without the written consent of the railway undertaking is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000 (£1,575.13) or to imprisonment for a term not exceeding 6 months or to both.

Power of Minister, Agency or a railway undertaking to make bye-laws in relation to railways.

66.—(1) The Minister, the Agency or a railway undertaking, with the consent of the Agency, may make bye-laws for the management, control, operation and the regulation of a railway, that has been built pursuant to a railway order, and in relation to the repair, improvement, extension and development thereof and, without prejudice to

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the generality of the foregoing, in relation to any one or more of the following matters— Pt.5 S.66

- (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 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 this section may contain such incidental, subsidiary and ancillary provisions as the Minister or the Agency, as the case may be, considers necessary or expedient for the purposes of the bye-laws.

(3) A person who contravenes a bye-law under this section is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €600 (£472.54).

67.—(1) If a member of the Garda Síochána reasonably suspects that a person has committed an offence under this Part, he or she may— Powers of arrest under Part.

- (a) arrest that person without warrant, or
- (b) require him or her to give his or her name and address and, if the person fails or refuses to do so or gives a name or address that the member reasonably suspects to be false or misleading, the member may arrest that person without warrant.

(2) A person who fails or refuses to give his or her name or address when required under *subsection (1)*, or gives a name or address which is false or misleading, is guilty of an offence and shall be liable on summary conviction to a fine not exceeding €600 (£472.54).

68.—Proceedings for an offence under this Part may be brought and prosecuted by the Agency, CIÉ, or railway undertaking operating the railway to which the offence relates. Prosecutions for offences under Part.

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Application of
Railways Acts.

69.—The Regulation of Railways Acts, 1840 to 1889, and any other Act relating to railways shall, in so far as they are not inconsistent with the provisions of this Act, apply to railway undertakings and any railway constructed under this Act.

Amendment to
section 43 of Act of
1993.

70.—Section 43 of the Act of 1993 is amended by the substitution for subsection (2A) (inserted by section 3 of the Roads (Amendment) Act, 1998) of the following subsection:

“(2A) Notwithstanding subsection (2) and section 46(4), direct access from any adjoining land to a motorway or from the motorway to such land may be granted by a road authority to the Railway Procurement Agency, an applicant or a railway undertaking (within the meaning of the *Transport (Railway Infrastructure) Act, 2001*) in respect of a railway (within the meaning of that Act)—

(a) authorised by a railway order under *section 43* of the *Transport (Railway Infrastructure) Act, 2001*, or

(b) the subject of an application for a railway order under *section 37* of that Act,

subject to such conditions as the road authority may decide, and, accordingly, any such access shall not be a contravention of subsection (2) or section 46(4).”.

Subsidiary of CIÉ.

71.—(1) Such functions of CIÉ as it may determine may be performed by a subsidiary and, accordingly, CIÉ may, with the consent of the Minister and the Minister for Finance, for the purpose of such performance, acquire or form and establish one or more subsidiaries.

(2) The memorandum and articles of association of a subsidiary shall be in such form as may be determined by CIÉ with the consent of the Minister and the Minister for Finance.

(3) The Minister may give a direction in writing to CIÉ on any matter relating to a subsidiary or the policies, programmes or activities of a subsidiary and CIÉ shall comply or, as may be appropriate, secure compliance with the direction.

(4) A direction under this subsection in relation to the disposal of any assets or surpluses of a subsidiary shall not be given without the consent of the Minister for Finance.

(5) In this section, “subsidiary” means a subsidiary (within the meaning of section 155 of the Companies Act, 1963) of CIÉ.

Amendment to
section 11 of
Transport (Re-
organisation of
Córás Iompair
Éireann) Act, 1986.

72.—(1) Section 11 of the Transport (Re-organisation of Córás Iompair Éireann) Act, 1986, is amended—

(a) in subsection (2)(a), by the substitution for “6” of “9”, and

(b) by the deletion of subsection (4),

and the said paragraph, as so amended, is set out in the Table to this section.

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(2) CIÉ shall, as soon as may be, amend the articles of association of the three companies formed pursuant to section 6 of the Transport (Re-organisation of Córas Iompair Éireann) Act, 1986, to give effect to the amendment affected by *subsection (1)*. Pr.5 S.72

TABLE

(a) the number of directors (including the chairman) shall not be more than 9;