

**TRANSPORT AND WORKS ACT 1992****TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE) (ENGLAND AND WALES) RULES 2006**

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**THE HEATHROW AIRTRACK ORDER**

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**EXPLANATORY MEMORANDUM**

This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (SI 2006 No. 1466).

Application for the Order has been made by Heathrow Airport Limited (“the Company”). The Order would confer powers on the Company to construct and operate a new section of railway track between Heathrow Terminal 5 and Staines together with associated new track alignments and depot facilities at Feltham. The purpose of the Order is to enable direct rail services to run between Heathrow Terminal 5 and Guildford, Reading and London Waterloo. The Order would permit the Company to acquire land and interests in land in connection with the construction of the railway.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (SI 2006 No. 1954) (“the model clauses”), but on occasion it departs from them. Where there is such a departure from the model clauses, an explanation is provided below.

**PART 1****PRELIMINARY**

Part 1 contains preliminary provisions.

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

*Article 2 (Interpretation)* contains provisions for the interpretation of words and phrases used in the Order.

*Article 3 (Incorporation of Railways Clauses Acts)* incorporates, subject to amendments, various provisions in the Railway Clauses Consolidation Act 1845 (c. 20) and the Railways Clauses Consolidation Act 1863 (c. 92).

*Article 4 (Application of 1991 Act)* provides for the application of the New Roads and Street Works Act 1991 (c. 22).

**PART 2****WORKS PROVISIONS***Principal Powers*

**Article 5** (*Power to construct and maintain works*) authorises the construction and maintenance of the principal works proposed (“the scheduled works”) which are described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. The main scheduled work provides for the construction of a railway crossing from the edge of Staines Moor through Stanwell Moor to Heathrow Terminal 5. A separate scheduled work authorises the construction of a short length of railway across the South Street surface car park in Staines. Article 5 also provides for the construction and maintenance of works necessary or expedient for the purposes of the authorised works and these works are specified in paragraph 3. Such works include a new station building at Staines Station (together with ancillary facilities) and depot facilities at Feltham. The carrying out of works which are necessary or expedient, or for purposes ancillary to, the construction of the authorised works may be done on land which is outside the limits of deviation for the scheduled works specified in Schedule 2. Amongst the ancillary works specified in Schedule 2 is one authorising alterations to a proposed footbridge at Staines Station. The erection of the footbridge is not itself authorised by this Order, but if it is erected before the construction of the authorised works powers to alter it are required to take account of the relocation of station infrastructure which is authorised by the Order.

In an extension to the model clauses, article 5 enables the Company to carry out and maintain (within the limits of deviation for the scheduled works or the limits of land to be acquired or used generally) landscaping and other works to mitigate the effects of construction, maintenance or operation as well as works which are for the benefit or protection of land. Such provision is commonly included in Orders authorising railways, for instance in article 5 of the Network Rail (Thameslink 2000) Order 2006 (SI 2006 No. 3117).

**Article 6** (*Power to deviate*) provides for limits within which the Company can deviate in the construction and maintenance of the proposed works.

#### *Streets*

**Article 7** (*Power to alter the layout of streets*) is based on the model clauses relating to the tramways and permits the Company to alter the layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld). This is required in order to make essential adjustments to the street layout where the railway crosses the existing South Street car park in Staines. A street authority which fails to notify the Company of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent.

**Article 8** (*Power to execute street works*) confers authority on the Company to interfere with, and execute works in or under, streets within the limits of deviation for the scheduled works and the limits of land to be acquired or used for the purposes of the proposed works.

**Article 9** (*Stopping up of streets*) provides for the permanent stopping up of certain streets identified in Schedule 3. All but one of the stopped up streets will be replaced by substitutes specified in Part 1 of Schedule 3. Article 9(3) prevents any stopping up of those roads identified in Part 2 of Schedule 3 unless one of the conditions specified in article 9(4) applies. Where a road is closed, article 9(5) extinguishes all rights of way over it and allows the Company to use the site for the purposes of the proposed works. Article 9(6) provides for the payment of compensation.

Paragraph (8) ensures that the replacement for the footbridge on the north-western side of Staines Station will be treated as the footbridge required to be provided by section 19 of the South Western Railway (Various Powers) Act 1880 (c. clxxxiii). That Act requires the footbridge to be kept open and maintained for use by passengers and the public.

Paragraph (9) ensures that the existing highway as specified shall be treated as substitute cycle track for the cycle track adjacent to Station Path which is to be stopped-up.

**Article 10** (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. Where the street is specified in Schedule 4, the Company is obliged only to consult the relevant street authority. If the Company wishes temporarily to stop up streets which are not so specified in Schedule 6, it will need to

obtain the consent of the relevant street authority. A street authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent. In an extension to the model clauses, article 10 also confers a power on the Company to use any street stopped up under the article 10 powers as a temporary working site. Such provision was included within article 16 of the Network Rail (Thameslink 2000) Order 2006.

**Article 11** (*Access to works*) confers the power to form and lay out means of access or to improve means of access to streets within the limits of deviation for the scheduled works and the limits of land to be acquired or used at the points marked on the deposited plans. Such power may be exercised without the approval of the highway authority. In respect of locations within the limits of deviation, but which are not marked on the deposited plans, the Company's exercise of powers to provide or improve existing access must be approved by the highway authority, such approval not to be unnecessarily withheld. A street authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

**Article 12** (*Construction and maintenance of new or altered streets*) makes provision for any new highway to be completed to the reasonable satisfaction of the highway authority and for its maintenance by the Company for a period of 12 months. It further provides that in relation to a street alteration or diversion, either of which must be completed to the street authority's satisfaction, the altered or diverted part of the street only shall be maintained by the Company for a period of 12 months.

**Article 13** (*Construction of bridges and tunnels*) provides for any bridges and tunnels for carrying a highway constructed under the Order to be so constructed in accordance with plans and specifications to be approved by the highway authority (which approval shall not be unreasonably withheld). A highway authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

**Article 14** (*Agreements with street authorities*) authorises the Company to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets.

**Article 15** (*Replacement and closure of footpath level crossings*) authorises the stopping up of specified footpaths which are situated on the level with the proposed railway. The Company may only exercise these powers once it has provided a new substituted footpath for that to be stopped up. This provision is not included within the model clauses, but follows provisions included for instance in article 21 of the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (SI 2005 No. 927). The closure is required on grounds of safety because of the increased use of the railway by Airtrack services.

**Article 16** (*Creation of public paths*) provides for the creation of public footpaths on land over which the Company only has powers of temporary possession. The footpaths, but not the land, are required on a permanent basis. Article 16 is modelled on paragraphs (6) to (12) of article 8 of the Network Rail (West Coast Main Line) Order 2003 (SI 2003 No. 1075) and compensation will be payable to the landowner concerned as if the new footpath had been created under section 26 of Highways Act 1980 (c. 66).

**Article 17** (*Use of private roads for construction*), which is not in the model clauses, is modelled on provision in paragraph 3 of Schedule 5 to the Crossrail Act 2008 (c. 18). It authorises the temporary passage of the Company's vehicles etc along private roads situated within the limits of the Order in connection with construction of the works. Provision is made for compensation.

#### *Supplemental powers*

**Article 18** (*Discharge of water*) enables the Company to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the proposed works with the approval and (if provided) superintendence of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. A relevant

authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

*Article 19 (Protective works to buildings, roads or apparatus of a statutory undertaker)* permits the Company to carry out certain protective works before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to buildings, roads or apparatus of a statutory undertaker which may be affected by the works. Provision is made for certain restrictions and the payment of compensation.

*Article 20 (Power to survey and investigate to land)* confers upon the Company power to survey and investigate land and to make trial holes after notifying the owners and occupiers of land. It includes provision for payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. A highway or street authority which fails to respond to an application for consent within 14 days of the application being made is deemed to have given its consent.

### **PART 3**

#### **ACQUISITION AND POSSESSION OF LAND**

##### *Powers of acquisition*

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of, or in connection with, the authorised works and the Company's railway undertaking. It further provides for the payment of compensation.

*Article 21 (Power to acquire land)* confers on the Company powers of compulsory acquisition of land within the limits of deviation and identified on the plan and described in the book of reference, for or in connection with the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 2 for the purpose specified in that Schedule.

*Article 22 (Application of Part 1 of the Compulsory Purchase Act 1965)* applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56).

*Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)* provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66) and provides for that Act to have effect subject to certain modifications. It gives the Company the option to acquire land by this method rather than through the notice to treat procedure.

*Article 24 (Power to acquire new rights)* makes ancillary provision where rights over land are acquired. In an extension to the model clauses, article 24 enables the Company to impose restrictive covenants in relation to land which is above an underground railway. It is justified on the basis that the Company may need to impose restrictions for the protection of the proposed railway in respect of development carried out in the land above the railway. It follows provision in article 23 of the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006 No. 2905). Schedule 5, which is introduced by article 24, makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions.

*Article 25 (New rights, etc., only to be acquired in certain lands)* is not taken from the model clauses, but is included in order to reduce blight. It provides that only easements and other rights may be acquired, or restrictive covenants imposed over, the land specified in Schedule 6. The Company does not have power to acquire such land itself. The principle behind this provision is preceded in article 25 of the Docklands Light Railway (Stratford International Extension) Order 2006.

**Article 26** (*Power to acquire subsoil or airspace only*) authorises the Company to acquire the subsoil in or airspace over any land without acquiring the whole of that land. In certain cases it will be necessary only to acquire a stratum of land above or below the surface (e.g. to accommodate a bridge over a road or the foundations of a bridge in the subsoil) and in the absence of article 26 the Company would be obliged to acquire the whole interest in the land. It follows the model clause relating to the acquisition of the subsoil, but extends to the acquisition of airspace (there are precedents for this in e.g. the Glasgow Airport Rail Link Act 2007(2007 asp1), section 13).

**Article 27** (*Rights under or over streets*) permits the Company to use a street within the limits of deviation for the scheduled works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right it. Provision is made for the payment of compensation.

#### *Temporary possession of land*

**Article 28** (*Temporary use of land for construction of works*) enables the Company, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 7 and (ii) land within the scope of paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (e.g. the Docklands Light Railway (Stratford International Extension) Order 2006. It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required.

The provisions also depart from the model clauses in allowing (as well as temporary works), permanent works of mitigation to be constructed and left on the land, without a requirement for these to be removed.

**Article 29** (*Temporary use of land for maintenance of works*) provides for the Company to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the authorised or ancillary works in the five years following the opening of the railway. The Company may construct temporary works and buildings on such land if they are reasonably required for the maintenance of the authorised or ancillary works.

#### *Compensation*

**Article 30** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal shall disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

**Article 31** (*Set-off for enhancement in value of retained land*) provides that, in assessing the compensation payable to any person in respect of the acquisition of any land or new rights over land, the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

#### *Supplementary*

**Article 32** (*Acquisition of part of certain properties*) provides an alternative procedure where the Company acquire compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965.

**Article 33** (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In addition to the provisions of the model clauses, paragraph (6) of this article provides for the Company to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool

City Centre to Kirkby) Order 2005 (SI 2005 No. 120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order.

**Article 34** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

**Article 35** (*Defence to proceedings in respect of statutory nuisance*) provides the Company with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c. 43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (c. 40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Article 46 of the Docklands Light Railway (Stratford International Extension) Order 2006 is a precedent.

**Article 36** (*Planning permission and supplementary matters*) modifies planning legislation in respect of the application of Tree Preservation Orders and as to the treatment of land as operational land.

**Article 37** (*Power to lop trees overhanging the authorised works*) enables the Company to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised railway and danger to passengers and users. Provision is included for compensation.

**Article 38** (*Common land and public open space*) provides for equivalent land to be given as exchange land for the purposes of section 19 of or Schedule 3 to the Acquisition of Land Act 1981 (c. 67) to the owners of the common land and public open space land acquired by or in which rights are acquired by the Company in and adjoining Staines Commons and public open space land in Feltham. The particular land which is to be exchanged is specified in Schedule 8. Article 38 also disapplies the Metropolitan Commons Supplemental Act 1880 (43 & 44 Vict. c. xxxvii) (which governs Staines Commons) in respect of that part of the common land in Staines Commons which is so acquired. It also provides for the suspension of the operation of that Act in relation to such common land which is temporarily occupied.

**Article 39** (*Authority for statutory undertakers to drive mechanically propelled vehicles*) enables statutory undertakers to drive vehicles across and park such vehicles on footpaths and bridleways situated within specified plots. This would be required in order to gain access to apparatus under or adjoining the footpaths or bridleways and would otherwise be prohibited by section 34 of the Road Traffic Act 1988 (c. 52).

**Article 40** (*Power to operate and use railway*) authorises the Company to operate and use the railway.

**Article 41** (*Power to transfer undertaking*) enables the Company, with the Secretary of State's consent, to transfer certain of or all its powers under the Order or to allow certain or all of its powers to be exercised by another party for a specified period.

**Article 42** (*Power to charge fares*) authorises the Company to charge, or to waive charges, for carrying passengers or goods on the railway.

**Article 43** (*Application of landlord and tenant law*) overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc., of the authorised works.

**Article 44** (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with the Company's apparatus.

**Article 45** (*Trespass*) makes it a criminal offence for anyone to trespass on any part of the railway or in the Company's land in dangerous proximity to the railway or to railway apparatus.

**Article 46** (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 19 or article 20 a criminal offence.

**Article 47** (*Disapplication and modification of Water Resources Act 1991 provisions*) disapplies the requirement under section 24(1) of the Water Resources Act 1991 (c. 57) that anyone abstracting water from any course of supply must have a licence. The disapplication of section 24(1) only operates where the abstraction is for the purposes of constructing authorised works. A limited amount of dewatering, requiring such a licence is anticipated in connection with the construction of the authorised works. The Environment Agency may not, however, be able to grant such a licence to the Company because of its obligation under section 39 of the Water Resources Act 1991 not to derogate from rights granted under any existing licence. The Agency will have the ability to approve details of and improve conditions on any such construction under the protective provisions for the Agency in Schedule 11 to the Order. Paragraph 15 of Schedule 14 of the Crossrail Act 2008 (c. 18) is precedent for this provision.

Article 47 also disapplies section 48A of the Water Resources Act 1991 in connection with the exercise of powers under the Order. Section 48A provides that a person abstracting water from underground strata must not cause loss or damage to another person and that any person suffering damage or loss may bring a claim for statutory breach against the abstractor. Without its disapplication, the restriction in section 48A could prevent the authorised works from being constructed since a person suffering damage or loss may, in addition to claiming compensation, bring an injunction preventing their continuation. Section 46 of the Crossrail Act 2008 (c. 18) is precedent for this provision.

**Article 48** (*Statutory undertakers etc.*) introduces Schedule 9 to the Order which contains specific safeguards for statutory undertakers.

**Article 49** (*for the protection of specified undertakers*) introduces Schedule 10 which contains detailed protection for gas, electricity, water and sewerage undertakers in relation to the authorised works.

**Article 50** (*for the protection of the Environment Agency*) introduces Schedule 11 which contains detailed protection for the Environment Agency.

**Article 51** (*for the protection of fuel pipelines*) introduces Schedule 12, which contains detailed protection in respect of fuel pipelines. It is based on paragraphs 4 to 7 of Schedule 7 to the Piccadilly Line (Heathrow T5 Extension) Order 2002 (SI 2002 No. 1065).

**Article 52** (*Certification of plans etc.*) requires the Company to submit the book of reference and land plans to the Secretary of State for certification after the making of this Order.

**Article 53** (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

**Article 54** (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any enactment, contract or other rule of law.

**Article 55** (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.