

LONDON LUTON AIRPORT LIMITED

Transport and Works Act 1992

Transport and Works (Applications and Objections Procedure)

(England and Wales) Rules 2006

# THE LONDON LUTON AIRPORT PASSENGER TRANSIT SYSTEM ORDER

Explanatory memorandum

Rule 10(2)(b)

- 1 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<sup>1</sup> (**Order**).
- 2 An application for the Order has been made by London Luton Airport Limited (**LLAL**), a company wholly owned by Luton Borough Council. LLAL is the owner of London Luton Airport.
- 3 The Order would confer powers on LLAL to operate the proposed passenger transit system that will provide a mode of transit for passengers between Luton Airport Parkway Station and the Central Terminal at London Luton Airport (**passenger transit system**). Planning permission for the passenger transit system was granted by Luton Borough Council on 30 June 2017 under reference 17/00283/FUL and Central Bedfordshire Council on 7 July 2017 under reference CB/17/00716/FULL. All the land and rights needed for the construction of the passenger transit system have been acquired by LLAL.
- 4 The provisions in the draft Order are based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006<sup>2</sup> (**model clauses**) as well as precedents contained in other orders made under the Transport and Works Act 1992,<sup>3</sup> in particular The London Cable Car Order 2012<sup>4</sup> (**cable car order**).
- 5 **Article 1** (*Citation and commencement*) provides for the commencement and citation of the order.
- 6 **Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order.
- 7 **Article 3** (*Statutory Authority for the passenger transit system*) provides statutory authority for LLAL to operate and maintain the passenger transit system and provides LLAL with a defence of statutory authority in any claim for nuisance, whether civil or criminal, and in respect of the escape of things from land. The article specifically provides LLAL with a defence to a claim of statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990<sup>5</sup> if it can show that the nuisance complained of is a consequence of the operation of the passenger transit system and that it cannot reasonably be avoided.
- 8 **Article 4** (*Byelaws relating to the passenger transit system*) provides LLAL with the power to make byelaws in respect of the operation and use of the passenger transit system regulating the use and working of the passenger transit system, travel on the passenger transit system, maintenance of order on the passenger transit system and associated premises, the conduct of all persons while on the passenger transit system and associated premises. The article provides authority for byelaws to include byelaws with respect to tickets issued for entry onto and travel on the passenger transit system and the evasion of payment of fares and other charges. It also provides that byelaws may provide that any person contravening them shall be liable on summary conviction to a fine for each offence not exceeding level 3 on the standard scale or any specified lesser amount. The article provides a power for LLAL to obviate or remove a danger, annoyance or hindrance to the public or LLAL in the event of contravention of a byelaw. The articles gives effect to the byelaws set out in the schedule to the draft Order and provides that those byelaws shall apply to the passenger transit system until such time as they are

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<sup>1</sup> S.I. 2006/1466.

<sup>2</sup> S.I. 2006/1954.

<sup>3</sup> 1992 c. 42.

<sup>4</sup> S.I. 2012/472.

<sup>5</sup> 1990 c. 43.

amended or revoked by byelaws made under article 4 (Article 53 of the Nottingham Express Transit System Order 2009<sup>6</sup> is a precedent).

- 9 **Article 5** (*Exclusion of Luton Airport Byelaws*) provides that the London Luton Airport Byelaws, which apply to London Luton Airport, do not apply to the passenger transit system.
- 10 **Article 6** (*Power to charge fares*) enables LLAL to charge fares for the carrying of passengers on the passenger transit system, or for any other services or facilities or services provided in connection with the passenger transit system, as it thinks fit. The first part of article 6 is consistent with clause 36 of the model clauses. The article also enables LLAL to enter into and carry into effect agreements with other persons providing public passenger transport services to enable the issue of tickets and the making of through ticketing arrangements for the purpose of co-ordinating the provisions of those services with the operation of the passenger transit system. Clause 36 of the model clauses provides a partial precedent. It has been adapted to refer specifically to agreements with any franchise operator designated under section 23 Railways Act 1993<sup>7</sup> to enable agreements with the train operating companies serving Luton Airport Parkway Station to be entered into for the purpose of enabling through ticketing arrangements. Articles 6 to 13 provide LLAL with the primary powers in relation to the charging of fares and penalty fares (as further explained in relation to the commentary for those articles) while Part 3 of the Byelaws provide further powers to regulate the purchase and use of tickets for travel on the passenger transit system.
- 11 **Article 7** (*Operation of penalty fares*) contains procedural requirements relating to the power to charge penalty affairs contained in article 8. It defines what constitutes the production of a fare ticket or general travel authority, when the penalty fare provisions shall have effect, circumstances in which the penalty fare provisions shall cease to have effect, and a requirement to publish a notice in a local newspaper circulating in the area of Luton Borough Council and Central Bedfordshire Council stating the date on which penalty fare provisions come into effect and cease to have effect. Articles 59 and 60 of the Nottingham Express Transit Order 2009<sup>8</sup> provide a partial precedent.
- 12 **Article 8** (*Penalty fares*) requires passengers to provide a fare ticket or general travel authority if required to do so by an authorised person and creates a liability to pay a penalty fare if they fail to do so. It also provides that a passenger shall not be liable to pay a penalty fare if there were no facilities for the sale of a ticket at the relevant passenger transit system station at which they started or ended their journey. The article also contains provisions relating to the burden of proof that applies in any action for the recovery of the penalty fare. Article 61 of the Nottingham Express Transit Order 2009<sup>9</sup> is a precedent.
- 13 **Article 9** (*Amount of penalty fare*) states the amount of a penalty fare and that it shall be payable to LLAL before the expiration of a period of 21 days beginning with the day after the day on which the journey in respect of which it is payable is completed. It also enables LLAL to vary the amount of the penalty fare provided that the Secretary of State has provided written consent to the variation and a notice of the variation is published in a newspaper circulating in the area of Luton Borough Council and Central Bedfordshire Council. Article 61 of the Nottingham Express Transit System Order 2009 provides a precedent.
- 14 **Article 10** (*Document to be issued in connection with penalty fare requirement*) requires an authorised person who issues a penalty fare to provide the passenger issued with the penalty

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<sup>6</sup> S.I. 2009/1300.

<sup>7</sup> 1993 c. 43.

<sup>8</sup> S.I. 2009/1300.

<sup>9</sup> S.I. 2009/1300.

fare with a receipt for the payment or a notice stating that the requirement to pay a penalty fare has been made. Article 63 of the Nottingham Express Transit System Order 2009 is a precedent.

- 15 **Article 11** (*Notice of penalty fare provisions*) requires LLAL to erect a notice at each passenger transit system station and in every carriage operating on the passenger transit system indicating the circumstances in which liability to pay a penalty fare arises and the amount of the penalty fare. Article 64 of the Nottingham Express Transit System Order 2009 is a precedent.
- 16 **Article 12** (*Supplementary provisions*) requires a passenger issued with a penalty fare to provide to the authorised person who requires payment, their name and address and a passenger who fails to do so shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale. The article also requires an authorised person to produce evidence of their authority to a passenger if asked to do so. Article 65 of the Nottingham Express Transit System Order is a precedent.
- 17 **Article 13** (*Exclusion of double liability*) provides that where a passenger has become liable to pay a penalty fare under article 8, no proceedings may be brought against that passenger under byelaws made pursuant to the order if the passenger has paid the penalty fare within the stated period or an action has been brought against the passenger for recovery of the penalty fare. Article 66 of the Nottingham Express Transit System Order 2009 provides a precedent.
- 18 **Article 14** (*Power to contract for police services*) enables LLAL to enter into any agreement with a police authority and its chief officer for the provision of policing services for or in connection with the passenger transit system. Article 8 of the cable car order is a precedent.
- 19 **Article 15** (*Powers of disposal, agreements for operation, etc.*) enables LLAL to transfer, charge or otherwise dispose of LLAL's interest in the passenger transit system to another person, to grant a property interest in the passenger transit system and to enter into any agreement with any person to be, with the Secretary of State's consent, responsible for any powers and duties under the order either exclusively or concurrently with LLAL or any other person. Clause 35 of the model clauses provides a precedent.
- 20 **Article 16** (*Application of Landlord and Tenant Law*) provides that if any agreement for leasing to any person the whole or any part of the passenger transit system or for its maintenance, use or operation is entered into, any enactment or rule of law regulating the rights and obligations of landlords and tenants shall not apply to such agreement. The article is consistent with clause 37 of the model clauses.
- 21 **Schedule** (*London Luton Airport passenger transit system byelaws*) sets out the byelaws that shall apply to the passenger transit system pursuant to article 5 of the order and which are required to enable the LLAL to maintain good order on the passenger transit system and ensure its effective and safe operation. The byelaws attached to the cable car order provide a precedent.
- 22 **Byelaw 1** (*Citation and commencement*) provides for the citation and commencement of the byelaws.
- 23 **Byelaw 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the byelaws.
- 24 **Byelaw 3** (*Queuing or waiting*) provides a power for the operator or an authorised person to require any person to queue or wait to enable order or safety on or near the passenger transit system to be regulated.

- 25 **Byelaw 4 (Dangerous items)** provides a prohibition on the bringing of dangerous items onto the passenger transit system and provides LLAL with a power to remove a dangerous item from the passenger transit system if a person fails to remove it having been asked to do so by the operator or an authorised person.
- 26 **Byelaw 5 (Smoking)** states that a person may not smoke or vape on any part of the passenger transit system.
- 27 **Byelaw 6 (Alcohol and controlled drugs)** places a prohibition on persons who are drunk or under the influence of controlled drugs from entering or remaining on the passenger transit system. It also provides that a person must not enter or remain on the passenger transit system while in possession of an open container of alcohol or consume alcohol while on the passenger transit system unless permitted to do so by written permission from the operator or an authorised person. Sub-paragraph 4 provides that where an authorised person reasonably believes that a person is unfit to enter or remain on the passenger transit system as a result of being drunk or being under the influence of controlled drugs or in possession of alcohol in contravention of the byelaw, the authorised person may require the person to leave the passenger transit system, prevent that person from entering or remaining on the passenger transit system and remove any alcohol or controlled drugs.
- 28 **Byelaw 7 (Unfit condition)** states that a person must not enter or remain on the passenger transit system if, in the reasonable opinion of an authorised person, the person is in an unfit or improper condition or the person's clothing may soil or damage any part of the passenger transit system.
- 29 **Byelaw 8 (Unacceptable behaviour)** contains a list of types of behaviour which are prohibited on the passenger transit system.
- 30 **Byelaw 9 (Music, sound, advertising and similar activities)** contains a list of activities which are prohibited on the passenger transit system.
- 31 **Byelaw 10 (Stations and other premises on the passenger transit system)** requires persons using the passenger transit system to comply with automatic ticket barriers, notices by an entrance or exit on any part of the passenger transit system indicating how it must be used, notices relating to the use of emergency exits, the use of lifts and compliance with notices relating to such lifts.
- 32 **Byelaw 11 (Carriages)** sets out restrictions on the use of carriages forming part of the passenger transit system.
- 33 **Byelaw 12 (General safety)** prohibits any person from obstructing or interfering with any part of the passenger transit system and from dropping any items which are capable of injuring or endangering any person or damaging any property and prohibits the activation of any emergency or communication system on any part of the passenger transit system without reasonable cause.
- 34 **Byelaw 13 (Safety instructions)** prohibits any person without reasonable cause to disobey any notice displayed on the passenger transit system containing reasonable instructions in relation to safety on that particular part of the transit system, or any instructions issued by an authorised person in the event of an emergency.
- 35 **Byelaw 14 (Unauthorised access and loitering)** prohibits any person from entering, attempting to enter or remaining on any part of the passenger transit system, or any land of LLAL in dangerous proximity to the passenger transit system, where a notice is displayed prohibiting

access, or stating that the area is reserved for a certain category of person only. Byelaw 14 further requires a person not to loiter if asked to leave the passenger transit system by an authorised person, and requires that any person under 12 years of age must be accompanied by an adult if they enter onto the passenger transit system.

- 36 **Byelaw 15** (*Causing obstruction with a conveyance*) provides that motorised mobility scooters, bicycles or other conveyances must not be used on any part of the passenger transit system in contravention of any sign, and prohibits the same being left in such a manner, other than in accordance with a reasonable direction from an authorised person, or in such a manner as to cause obstruction or hindrance.
- 37 **Byelaw 16** (*Pedestrian only areas*) provides that persons may only enter the passenger transit system on foot except in circumstances where there is a notice permitting access with specified conveyances or where the operator or an authorised person has given permission for such conveyances to be brought onto the passenger transit system.
- 38 **Byelaw 17** (*Control of animals*) relates to the regulation of the presence and behaviour of animals on the passenger transit system.
- 39 **Byelaw 18** (*Compulsory ticket areas*) provides that a person may not enter a compulsory ticket area on the passenger transit system unless that person has a valid ticket. It also requires a person to hand over a ticket for inspection when asked to do so by an authorised person.
- 40 **Byelaw 19** (*Altering tickets and use of altered tickets*) provides that a person must not alter any ticket with the intent of defrauding or prejudicing the operator and states that a person must not knowingly use or attempt to use any ticket which has been altered in any way.
- 41 **Byelaw 20** (*Unauthorised buying or selling of tickets*) states that a person must not sell or buy any ticket other than from an authorised ticket machine.
- 42 **Byelaw 21** (*Fare offences committed on behalf of another person*) states that a person must not buy a ticket on behalf of another person, or transfer or produce a ticket on behalf of another person, with the intention of enabling such other person to travel without having paid the correct fare.
- 43 **Byelaw 22** (*Name and address*) requires any person reasonably suspected by an authorised person of breaching or attempting to breach any of the byelaws to give that person's name and address when requested to do so by an authorised person.
- 44 **Byelaw 23** (*Compliance with instructions*) states that a person must carry out the instructions of an authorised person where such person is acting within the powers given to the authorised person under the byelaws.
- 45 **Byelaw 24** (*Removal of persons*) requires any person who is reasonably believed by an authorised person to be in breach of any of the byelaws to leave the passenger transit system when asked to do so by an authorised person. It also provides that any person who fails to comply with the instructions of an authorised person may be removed by an authorised person using reasonable force.
- 46 **Byelaw 25** (*Identification of authorised persons*) requires an authorised person who is exercising any power conferred on an authorised person by any of the byelaws to produce a form of identification when requested to do so.

- 47 **Byelaw 26** (*Offence and level of fines*) provides that any person who breaches any of the byelaws commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 48 **Byelaw 27** (*Notices*) states that a person is not subject to any penalty for breach of any of the byelaws by disobeying a notice unless it is proved to the satisfaction of the court that the notice referred to in the particular byelaw was displayed.
- 49 **Byelaw 28** (*Breach by authorised persons*) exempts authorised persons from compliance with a number of specified byelaws.