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STATUTORY INSTRUMENTS

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**2009 No. 1300**

**The Nottingham Express Transit System Order 2009**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**29.**—(1) The promoter may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits as may be required for or in connection with the authorised works and may use any land so acquired for those purposes or for any other purpose ancillary to its tramway undertaking.

(2) Nothing in paragraph (1) shall authorise the promoter to acquire compulsorily any of the lands mentioned in Schedule 6 (land not to be acquired compulsorily), or any rights over those lands, but the promoter may acquire by agreement any part of those lands, or any rights over them, and use them, for the purposes referred to in that paragraph.

(3) This article is subject to article 34 (new rights only to be acquired in certain lands).

**Application of Part 1 of the Compulsory Purchase Act 1965**

**30.**—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

**Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**31.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1), shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

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(1) 1981 c. 67.  
(2) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land by article 30 (application of Part 1 of the Compulsory Purchase Act 1965).

### **Power to acquire new rights**

**32.**—(1) The promoter may compulsorily acquire such easements or other rights over any land within the permanent limits as may be required for any purpose for which that land may be acquired, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) the promoter shall not be required to acquire a greater interest in that land.

(3) Schedule 7 shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article or article 34 (new rights only to be acquired in certain lands) of a right over land by the creation of a new right.

### **Power to acquire subsoil only**

**33.**—(1) The promoter may compulsorily acquire so much of, or such rights in, the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

(2) Where the promoter acquires any part of, or rights in, the subsoil of land under paragraph (1) the promoter shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 40 (acquisition of part of certain properties) from applying where the promoter acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **New rights only to be acquired in certain lands**

**34.**—(1) In the case of the land specified in Schedule 8 (acquisition of new rights only) the promoter's powers of compulsory acquisition under article 29 (power to acquire land) shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 19 (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers.

(2) Where the promoter acquires easements or other new rights in the land specified in Schedule 8, article 32(2) (power to acquire new rights) shall apply as it applies to the acquisition of a new right under that article.

### **Rights under or over streets**

**35.**—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or air space over, any street shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works and may use the surface, subsoil and air space for those purposes or any other purpose ancillary to its tramway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the promoter acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting on to the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker, to whom section 85 of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) The promoter may exercise the powers of paragraph (1) and appropriate any other land shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works, regardless of anything contained in or done pursuant to section 53 of the Nottingham Inclosure Act or Part 1 of, or Schedule 2 to, the Commons Act 2006(3).