
STATUTORY INSTRUMENTS

2016 No. 545

**The Midland Metro (Birmingham City Centre Extension,
etc.) (Land Acquisition and Variation) Order 2016**

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

20. The Executive may acquire compulsorily so much of the land in the City specified in column (1) of Part 1 of Schedule 1 (acquisition of land) (being land shown on the land plan and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part and may use any land so acquired for those purposes or for any other purposes that are ancillary to its tramway undertaking.

Application of Part 1 of the 1965 Act

21.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the 1981 Act 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, has 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

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(1) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981 has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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)” substitute “(1)” and after “given” insert “and published”.
- (5) In that section, for subsections (5) and (6) substitute—
 - “(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
 - (b) omit subsection (2).
- (7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 20 (power to acquire land).

Power to acquire new rights

- 23.**—(1) The Executive may acquire compulsorily such easements or other rights over any land in the City referred to in article 20 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision.
- (2) Subject to paragraph (4) the Executive may acquire compulsorily such easements or other rights over any land in the City specified in column (1) of Part 2 of Schedule 1 (acquisition of rights only) (being land shown on the land plan and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part.
- (3) In paragraphs (1) and (2), the power compulsorily to acquire easements or other rights includes the power to do so by creating them as well as by acquiring easements or other rights already in existence.
- (4) In exercising its powers under paragraph (2) the Executive may not acquire rights over plots 16, 17, 18, 19, 20, 21, 23, 24, 25, 31 and 32 unless any existing buildings in those plots have been demolished in accordance with the planning permission.
- (5) Subject to section 8 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 2 (modification of compensation and compulsory purchase enactments for creation of new rights)), where a right over land is acquired under paragraph (1) or (2) the person acquiring the right is not required to acquire a greater interest in the land.
- (6) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the Executive may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.
- (7) Schedule 2 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

Rights under or over streets

24.—(1) The Executive may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the Order works and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised tramway.

(2) Subject to paragraph (4) the power under paragraph (1) may be exercised in relation to a street without the Executive 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 Executive acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

Temporary possession of land

Temporary use of land for construction of works

25.—(1) The Executive may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of—
 - (i) any of the land in the City specified in column (1) of Schedule 3 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule, and
 - (ii) any of the relevant land in respect of which no notice of entry has been served under section 11(2) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on the land; and
- (d) construct any permanent works specified in relation to that land in column (2) of Schedule 3 or any mitigation works on that land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Executive may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(2) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

- (a) in the case of any land specified in column (1) of Schedule 3 (land of which temporary possession may be taken), after the end of the period of one year beginning with the date of completion of the works specified in relation to that land in column (2) of Schedule 3; or
- (b) in the case of the relevant land, after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the Executive has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive is not required to replace a building removed under this article or restore the land on which any works have been constructed under paragraph (1) (d).
- (5) The Executive must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection)(3) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a) except that the Executive is not to be precluded from acquiring new rights over any land specified in Part 2 of Schedule 1 (acquisition of land and rights) under article 23 (power to acquire new rights).
- (9) Where the Executive takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority)(4) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 21(1) (application of Part 1 of the 1965 Act).
- (11) Paragraph (1)(a)(ii) does not authorise the Executive to take temporary possession of—
- (a) any dwelling house or garden belonging to a dwelling house; or
 - (b) any building (other than a dwelling house) if it is for the time being occupied.
- (12) In this article “the relevant land” means any land within the Order limits other than—
- (a) the land specified in column (1) of Part 2 of Schedule 1 (acquisition of land); and
 - (b) the land specified in column (1) of Schedule 3 to this Order.

Temporary use of land for maintenance of works

26.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the Order works, the Executive may—

(3) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(4) Section 13 was amended by sections 62(3) and 139 of, and paragraph 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from those works if such possession is reasonably required for the purpose of maintaining the works or any ancillary works connected with them; and
 - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the Executive to take temporary possession of—
- (a) any house or garden belonging to a house;
 - (b) any building (other than a house) if it is for the time being occupied; or
 - (c) any land specified in column (1) of Part 2 of Schedule 1 (acquisition of land and rights) (but without affecting the power to acquire rights under article 23(2) (power to acquire new rights) in relation to that land).
- (3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Executive may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance works for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the Executive must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Executive must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the Executive takes possession of land under this article, it is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority)(5) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 21(1) (application of Part 1 of the 1965 Act).
- (11) In this article—
- (a) “the maintenance period”, in relation to the Order works, means the period of 5 years beginning with the date on which the work is opened for use; and
 - (b) any reference to land within a specified distance of a work includes, in the case of work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

(5) As amended by sections 62(3) and 139(4)-(9) of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

Compensation

Disregard of certain interests and improvements

27.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Acquisition of part of certain properties

28.—(1) This article applies instead of section 8(1)(6) (other provisions as to divided land) of the 1965 Act (as applied by article 21 (application of the 1965 Act)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming part only of a house, building or manufactory or part only of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the Executive a counter-notice objecting to the sale of the land subject to the notice to treat and stating that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner must sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must sell only the land subject to the notice to treat is, unless the Executive agrees to take the land subject to the counter-notice, to be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner must sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat forms part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the Executive is authorised to acquire compulsorily under this Order.

(8) If the Executive agrees to take the land subject to the counter-notice, or if the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the Executive is authorised to acquire compulsorily under this Order.

(9) In any case where by virtue of a determination by the tribunal under this article a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the Executive may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and if it does so it must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell part only of a house, building or manufactory or part only of land consisting of a house with a park or garden, the Executive must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of rights of way

29.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the Executive, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the Executive under section 11(1) or (2) (powers of entry) of the 1965 Act,

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land of which the Executive takes temporary possession under this Order are suspended and unenforceable for as long as the Executive remains in lawful possession of the land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right of way to which section 271 or 272 (extinguishment of rights of statutory undertakers etc.)⁽⁷⁾ of the 1990 Act applies.

(5) Paragraphs (1) and (2) have effect subject to any agreement made (whether before or after this Order comes into force) between the Executive and the person entitled to the private right of way.

(6) Paragraph (1) has effect subject to any notice given by the Executive that that paragraph is not to apply to any right of way specified in the notice where the notice is given before whichever is the soonest of the events specified in sub-paragraphs (a) or (b) of that paragraph.

(7) Paragraph (2) has effect subject to any notice given by the Executive at any time before or after possession is taken that that paragraph is not to apply to any right of way specified in the notice or is only to apply to the right of way to the extent specified in the notice.

(8) This article does not apply to any of the land specified in column (1) of Part 2 of Schedule 1 (acquisition of land).

Time limit for exercise of powers of acquisition

30.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act, as applied to the acquisition of land by article 21 (application of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981⁽⁸⁾, as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 25 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Executive remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

(7) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(8) 1981 c.66.