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STATUTORY INSTRUMENTS

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**2005 No. 1794**

The Midland Metro (Birmingham City  
Centre Extension, etc.) Order 2005

PART 3

ACQUISITION AND POSSESSION OF LAND

*Powers of acquisition*

**Power to acquire land**

**25.**—(1) The Executive may acquire compulsorily—

- (a) so much of the land in the City shown on the land plans within the limits of deviation and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land in the City specified in column (1) of Part 1 of Schedule 2 to this Order (being land shown on the land plans 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 connected with or ancillary to its tramway undertaking.

(2) In the case of the land shown numbered 596 on the land plans, subject to article 28(4) the powers conferred by this article shall only be exercisable in relation to the stratum of that land below the level of the first floor of the building situated thereon.

(3) In paragraph (2), “the first floor” means the floor above the ground floor.

**Application of Part I of Compulsory Purchase Act 1965**

**26.**—(1) Part I 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 I of the 1965 Act, as so applied, shall have effect as if—

- (a) 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; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—

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(1) 1981 c. 67.

- (i) in a case where the notice to treat relates only to the acquisition of an easement or other right over the land, a reference to notice of one month; or
- (ii) in any other case, a reference to notice of 3 months.

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

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

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

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

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below 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 the London Gazette and 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) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion, or
- (b) he 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 the London Gazette and 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 Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 25.

### **Powers to acquire new rights**

**28.**—(1) The Executive may acquire compulsorily such easements or other rights over any land in the City referred to in paragraph (1)(a) or (b) of article 25 as may be required for any purpose for which that land may be acquired under that provision.

(2) 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 2 to this Order (being land shown on the land plans 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) The power conferred by paragraph (1) shall, notwithstanding article 25(2), be exercisable with respect to the whole of the land shown numbered 596 on the land plans (and shall accordingly not be restricted to the stratum of that land mentioned in article 25(2)).

(5) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 4 to this Order), where a right over land is acquired under paragraph (1) or (2) the body acquiring the right shall not be required to acquire a greater interest in the land.

(6) In relation to land to which this paragraph applies, paragraph (1) or (2) (as the case may be) shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(7) Paragraph (6) applies to any of the land shown numbered 510, 513 to 529, 547, 548, 551 to 553, 559, 560, 577 and 579 on the land plans which is or will be required for use in altering or relocating apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989(3), a gas transporter within the meaning of Part I of the Gas Act 1986(4), a water undertaker within the meaning of the Water Industry Act 1991(5), a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(8) Schedule 4 to this Order shall have 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**

**29.**—(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 authorised works and may use the subsoil or air-space for those purposes or any other purpose connected with or ancillary to the authorised tramway.

(2) 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) The Executive shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraphs (2) and (3) shall not apply in relation to—

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

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(3) 1989 c. 29.  
(4) 1986 c. 44.  
(5) 1991 c. 56.