
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

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(1) (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—

(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

(1) 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.

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)(2) 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)(3) 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—

- (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) 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.

(3) 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).

- (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)(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) 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.

(4) 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).