
STATUTORY INSTRUMENTS

2020 No. 141

**The Midland Metro (Birmingham
Eastside Extension) Order 2020**

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

28.—(1) The Authority may acquire compulsorily so much of the land shown on the works and land plans as lying within the permanent limits and described in the book of reference 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 purposes that are ancillary to its tramway undertaking.

(2) This article is subject to article 32 (new rights only to be acquired in certain lands).

(3) This article does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

Application of Part 1 of the 1965 Act

29.—(1) Part 1 (compulsory purchase under the Acquisition of Land Act 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 Acquisition of Land Act 1981(1) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) In its application by virtue of paragraph (1), Part 1 of the 1965 Act has effect subject to the following modifications.

(3) Omit section 4 (time limit for giving notice to treat).

(4) In section 4A(1)(2) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 40 (time limit for exercise of powers of acquisition) of the Midland Metro (Birmingham Eastside Extension) Order 2020(3)”.

(1) 1981 c. 67.

(2) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(3) S.I. 2020/141.

(5) In section 11(1B)(4) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(5) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 40 (time limit for the exercise of powers of acquisition) of the Midland Metro (Birmingham Eastside Extension) Order 2020(6)”.

(8) In Schedule 2A(7) (counter-notice requiring purchase of land not in notice to treat)—

(a) omit paragraphs 1(2) and 14(2); and

(b) after paragraph 29 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (works to safeguard buildings and the operation of the authorised tramway), 34 (temporary use of land for construction of works) and 35 (temporary use of land for maintenance of works) of the Midland Metro (Birmingham Eastside Extension) Order 2020.”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

30.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(8) applies as if this Order were a compulsory purchase order.

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

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(9) (time limit for general vesting declaration).

(5) In section 5B(10) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 40 (time limit for exercise of powers of acquisition) of the Midland Metro (Birmingham Eastside Extension) Order 2020”.

(6) In section 6(11) (notices after execution of declaration), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(3) of the Transport and Works Act 1992”.

(4) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(5) As inserted by section 186(3) of the Housing and Planning Act 2016.

(6) [S.I. 2020/141](#).

(7) As inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

(8) [1981 c. 66](#).

(9) Inserted by section 182(2) of the Housing and Planning Act 2016.

(10) As inserted by section 202(2) of the Housing and Planning Act 2016.

(11) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.

(7) In section 7(12) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(13) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 28 (power to acquire land).

Powers to acquire new rights

31.—(1) The Authority 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) This article is subject to article 32 (new rights only to be acquired in certain lands).

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

(4) Schedule 5 has 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 of a right over land by the creation of a new right.

(5) Paragraph (1) does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

New rights only to be acquired in certain lands

32. In the case of land specified in Schedule 6 (acquisition of new rights only) the Authority’s powers of compulsory acquisition under article 28 (power to acquire land) and article 31 (power to acquire new rights) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of—

- (a) exercising the powers conferred by article 20 (attachment of equipment to buildings) and using and maintaining any apparatus affixed in the exercise of those powers; or
- (b) creating rights of way over any land within the permanent limits.

Rights under or over streets

33.—(1) The Authority 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) Paragraph (1) does not apply to—

- (a) any interest in the surface, subsoil of, or air space over, any street which has been acquired by the Secretary of State under the compulsory acquisition powers in the 2017 Act; or
- (b) the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

(3) Subject to paragraph (5), the power under paragraph (1) may be exercised in relation to a street without the Authority being required to acquire any part of the street or any easement or right in the street.

(12) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(13) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(4) Subject to paragraph (6) 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 Authority 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, the amount of such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Paragraph (3) does 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.

(6) Compensation is not payable under paragraph (4) 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

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

- (a) enter upon and take temporary possession of—
 - (i) so much of the land shown on the works and land plans as lying within the temporary limits and specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the scheduled works specified in column (4) of that Schedule; and
 - (ii) any of the land within the permanent limits in respect of which no notice of entry has been served under section 11(14) (powers of entry) of the 1965 Act or 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 that land; and
- (d) construct any of the authorised works on that land.

(2) Not less than 14 days before exercising the powers of paragraph (1) the Authority must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Authority may not, without the agreement of the owners of the land, remain in possession of any land of which temporary possession has been taken under this article—

- (a) in the case of land lying within the temporary limits, after the end of the period of 2 years beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land within the permanent limits, after the end of the period of 2 years beginning with the date of completion of the work for which temporary possession of the land was taken unless the Authority has, by the end of that period, served a notice of entry

(14) 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), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Authority must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Authority is not required to replace a building removed under this article.

(5) The Authority 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 38 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(15) (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 (5).

(8) Where the Authority takes possession of land under this article, the Authority is not required to acquire the land or any interest in it.

(9) Section 13(16) (refusal to give possession to acquiring authority) 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 29(1) (application of Part 1 of the 1965 Act).

(10) Paragraph (1) does not apply to the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

Temporary use of land for maintenance of works

35.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the scheduled works, the Authority may—

- (a) enter upon and take temporary possession of any land within the Order limits reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; 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 Authority to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied; or
- (c) the vaults beneath Corporation Street forming part of the land numbered 4 on the works and land plans.

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

(4) The Authority 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.

(15) 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.

(16) 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).

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Authority must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Authority 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 38 (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 Authority takes possession of land under this article, the Authority is not required to acquire the land or any interest in it.

(10) The powers conferred by this article must not be exercised in relation to any street without the consent of the street authority, which must not be unreasonably withheld.

(11) Section 13 (refusal to give possession to acquiring authority) 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 29(1) (application of Part 1 of the 1965 Act).

(12) In this article, "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for public use.

Compensation

Disregard of certain interests and improvements

36.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of any land or interest in 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.

Set-off for enhancement in value of retained land

37.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity, which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 31 (powers to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are acquired; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

38. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Supplementary

Extinction or suspension of private rights of way

39.—(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 Authority, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Authority under section 11(1)(17) (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 owned by the Authority which is within the permanent limits and is required for the purposes of this Order, are extinguished on the appropriation of the land for any of those purposes by the Authority.

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

(4) 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.

(5) Paragraphs (1), (2) and (3) have effect subject to—

- (a) any notice given by the Authority before the completion of the acquisition of the land, the Authority's appropriation of it, the Authority's entry onto it or the Authority's taking temporary possession of it, as the case may be, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) between the Authority and the person in or to whom the right of way in question is vested or belongs.

(6) If any such agreement as is referred to in paragraph (5)(b) which is made with a person in or to whom the right of way is vested or belongs is expressed to have effect also for the benefit of

(17) 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 (2006 No 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

those deriving title from or under that person, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

40.—(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 29 (application of Part 1 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, as applied to this Order by article 30 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The power conferred by article 34 (temporary use of land for construction of works) to enter upon and take temporary possession of land ceases at the end of the period mentioned in paragraph (1); but this paragraph does not prevent the Authority from remaining in possession of land in accordance with article 34 after the end of that period, if the land was entered and possession of it was taken before the end of that period.