
STATUTORY INSTRUMENTS

2005 No. 1794

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part of certain properties

34.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 26) 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 only part of a house, building or factory or 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 he 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 shall be required to 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 shall be required to sell only the land subject to the notice to treat shall, unless the Executive agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determine 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) in the case of 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 shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determine 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) in the case of 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 shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determine 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 shall be 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 determine 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) that the material detriment is not confined to a part of the land subject to the counter-notice;

the notice to treat shall be 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 shall pay the owner compensation for any loss or expense occasioned to him 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 only part of a house, building or factory or of land consisting of a house with a park or garden, the Executive shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

Extinction or suspension of rights of way

35.—(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

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

whichever is sooner.

(2) All private rights of way over land of which the Executive takes temporary possession under this Order shall be 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 shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

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

(5) Paragraphs (1) and (2) shall 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) shall have effect subject to any notice given by the Executive that that paragraph shall not 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) shall have effect subject to any notice given by the Executive at any time before or after possession is taken that that paragraph shall not apply to any right of way specified in the notice or shall only 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 2 to this Order.

Time limit for exercise of powers of acquisition

36.—(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 shall be served under Part I of the 1965 Act, as applied to the acquisition of land by article 26; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981⁽¹⁾, as applied by article 27.

(2) The powers conferred by article 30 shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent 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.

(1) 1981 c. 66.