
STATUTORY INSTRUMENTS

2017 No. 1214

**The Blackpool Tramway (Blackpool
North Extension) Order 2017**

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

26. The promoter may acquire compulsorily so much of the land shown on the deposited plans as lying within the permanent limits 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 tram system undertaking.

Application of Part 1 of the 1965 Act

27.—(1) Part 1 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) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(2)(extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the 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 36 (time limit for exercise of powers of acquisition) of the Blackpool Tramway (Blackpool North Extension) Order 2017(3)”.

(5) In section 11A(4) (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”.

(1) 1981 c. 67.

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

(3) S.I. 2017/1214.

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

(6) 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 36 (time limit for exercise of powers of acquisition) of the Blackpool Tramway (Blackpool North Extension) Order 2017”.

(7) In Schedule 2A(5) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 30(3) (power to acquire subsoil only) of the Blackpool Tramway (Blackpool North Extension) Order 2017, which excludes the acquisition of subsoil only from this Schedule.”;

(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 article 20 (safeguarding works to buildings), 32 (temporary use of land for construction of works) or 33 (temporary use of land for maintenance of works) of the Blackpool Tramway (Blackpool North Extension) Order 2017.”

Application of Compulsory Purchase (Vesting Declarations) Act 1981

28.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(6) 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(7) (time limit for general vesting declaration).

(5) In section 5B(8) (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 and 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Blackpool Tramway (Blackpool North Extension) Order 2017”.

(6) In section 6(9) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

(7) In section 7(10) (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(11) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

(5) As inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016 (c. 22).

(6) 1981 c. 66.

(7) As inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

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

(9) 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 (c. 22).

(10) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(11) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

“(2) But see article 30(3) (power to acquire subsoil only) of the Blackpool Tramway (Blackpool North Extension) Order 2017, which excludes the acquisition of subsoil only from this Schedule.”

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land by article 27 (application of Part 1 of the 1965 Act).

Powers to acquire new rights

29.—(1) The promoter 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) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the promoter acquires a right over land under paragraph (1) the promoter is not required to acquire a greater interest in that land.

(3) Schedule 4 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 article of a right over land by the creation of a new right.

Powers to acquire subsoil only

30.—(1) The promoter may compulsorily acquire so much of the subsoil of the land within the permanent limits as may be required for any purpose for which that land may be acquired instead of acquiring the whole of the land.

(2) Where the promoter acquires any part of the subsoil of land under paragraph (1) the promoter is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the promoter acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

31.—(1) The promoter may enter upon and appropriate so much of the surface, subsoil of, or airspace over, any street shown on the deposited 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 airspace for those purposes or any other purpose ancillary to its tram system undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the promoter being required to acquire any part of the street or any easement or right in the street.

(3) 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 promoter 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.

(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, on or under 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

32.—(1) The promoter 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 specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) as shown on the deposited plans as lying within the temporary limits 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(12) (powers of entry) of the 1965 Act or no declaration has been made under section 4(13) (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land; and

(c) construct temporary works (including the provision of means of access) and buildings on the land.

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

(3) The promoter 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 or works specified in relation to that land in column (4) of Schedule 5; 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 or works for which temporary possession of the land was taken unless the promoter has, by 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 in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the promoter must remove all temporary works and restore the land to the reasonable

(12) 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.

(13) Section 4 was amended by section 184 and 185 of, and paragraph 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

satisfaction of the owners of the land; but the promoter is not required to replace a building removed under this article.

(5) The promoter 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 65 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(14) (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 promoter takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(15) (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 27(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

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

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from that work if such possession is 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 promoter 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.

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

(4) The promoter may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of 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 promoter must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The promoter 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.

(14) 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.

(15) 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).

(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 prejudice to article 65 (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 promoter takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) The powers of 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 27(1) (application of Part 1 of the 1965 Act).

(12) In this article—

- (a) “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; and
- (b) any reference to land within a specified distance of a work includes, in the case of a 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.

Compensation

Disregard of certain interests and improvements

34.—(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

Extinction or suspension of private rights of way

35.—(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 acquisition of the land by the promoter, whether compulsorily or by agreement; or

(b) on the entry on the land by the promoter under section 11(1)(16) (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 promoter 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 promoter.

(3) Subject to the provisions of this article, all private rights of way over land of which the promoter takes temporary possession under this Order are suspended and unenforceable for as long as the promoter 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) 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.) of the 1990 Act(17) applies.

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

(a) any notice given by the promoter before

(i) the completion of the acquisition of;

(ii) the promoter's appropriation of;

(iii) the promoter's entry onto; or

(iv) the promoter's taking temporary possession of,

the land, 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 promoter and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(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 those deriving title from or under the 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

36.—(1) After the end of the period of five 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 27 (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 by article 28 (application of Compulsory Purchase (Vesting Declarations) Act 1981)(18).

(2) The powers conferred by article 32 (temporary use of land for construction of works) to enter upon and take temporary possession of land cease at the end of the period mentioned in

(16) 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.

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

(18) 1981 c. 66. Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Part 1 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

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paragraph (1); but nothing in this paragraph prevents the promoter from remaining in possession of land in accordance with article 33 (temporary use of land for maintenance of works) after the end of that period, if the land was entered and possession of it was taken before the end of that period.