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STATUTORY INSTRUMENTS

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**2005 No. 120**

**The Merseytram (Liverpool City Centre to Kirkby) Order 2005**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Supplementary*

**Acquisition of part of certain properties**

**39.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 30) 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 Merseytravel 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 Merseytravel 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 Merseytravel is authorised to acquire compulsorily under this Order.

(8) If Merseytravel 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) 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 Merseytravel 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, Merseytravel 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, shall pay to 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, Merseytravel 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 private rights of way**

**40.—**(1) Subject to the provisions of this article, 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 Merseytravel, whether compulsorily or by agreement; or
- (b) on the entry on the land by Merseytravel under section 11(1) of the 1965 Act;

whichever is sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by Merseytravel which is within the permanent limits and is required for the purposes of this Order, shall be extinguished on the appropriation of the land for any of those purposes by Merseytravel.

(3) Subject to the provisions of this article, all private rights of way over land of which Merseytravel takes temporary possession under this Order shall be suspended and unenforceable for as long as Merseytravel 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 shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(5) 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.) or paragraph 2 of Schedule 11 to this Order applies.

- (6) Paragraphs (1), (2) and (3) shall have effect subject to—
- (a) any notice given by Merseytravel before the completion of the acquisition of the land, Merseytravel's appropriation of it, Merseytravel's entry onto it or Merseytravel's taking temporary possession of it, as the case may be, that any or all of those paragraphs shall 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 Merseytravel 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 him, it shall be 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**

**41.**—(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 under article 30; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 31.

(2) The powers conferred by article 36 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent Merseytravel from remaining in possession of land in accordance with article 36 after the end of that period, if the land was entered and possession of it was taken before the end of that period.