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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**

*Powers of acquisition*

**Power to acquire land**

**29.**—(1) Merseytravel may acquire compulsorily so much of the land shown on the works and land 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 connected with, or ancillary to, its tram system undertaking.

(2) Nothing in paragraph (1) shall authorise Merseytravel to acquire compulsorily any of the lands mentioned in Schedule 3 to this Order, or any rights over those lands, but Merseytravel may acquire by agreement any part of those lands, or any rights over them, and use them, for the purposes referred to in that paragraph.

(3) This article is subject to articles 34 and 35(2).

**Application of Part I of the Compulsory Purchase Act 1965**

**30.**—(1) Part I of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply 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 I of the 1965 Act, as so applied, shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

**Application of Compulsory Purchase (Vesting Declarations) Act 1981**

**31.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply to Merseytravel as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

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(1) 1981 c. 67.  
(2) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)”, and after “given” there shall be inserted “and published”.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

(8) References to the Compulsory Purchase Act 1965 shall be construed as references to that Act as applied to the acquisition of land under article 30.

### **Powers to acquire new rights**

**32.**—(1) Merseytravel 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 section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where Merseytravel acquires a right over land under paragraph (1) Merseytravel shall not be required to acquire a greater interest in that land.

(3) Schedule 7 to this Order shall have 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 or article 34 of a right over land by the creation of a new right.

### **Powers to acquire subsoil only**

**33.**—(1) Merseytravel 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 Merseytravel acquires any part of the subsoil of land under paragraph (1) Merseytravel shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 39 from applying where Merseytravel acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

### **New rights only to be acquired in certain lands**

**34.**—(1) In the case of the land specified in Schedule 8 to this Order Merseytravel’s powers of compulsory acquisition under article 29 shall be limited to the acquisition of such easements or other new rights in the land as it may require for the purposes of exercising the powers of article 19(1) and using and maintaining any apparatus affixed in the exercise of those powers.

(2) Where Merseytravel acquires easements or other new rights in the land specified in Schedule 8, article 32(2) shall apply as it applies to the acquisition of a new right under that article.

### **Rights under or over streets**

**35.**—(1) Merseytravel 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 connected with or ancillary to its tram system undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without Merseytravel being required to acquire any part of the street or any easement or right in the street and, except in relation to a street which is subject to stopping up pursuant to article 11, the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to 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 Merseytravel acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation, the amount of such compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraph (2) shall 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 shall not be payable under paragraph (3) to any person who is an undertaker, to whom section 85 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**

**36.**—(1) Merseytravel 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 for the purpose specified in relation to that land in column (3) of Schedule 9 to this Order relating to the scheduled works (or any of them) 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 of the 1965 Act or no declaration has been made under section 4 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) Merseytravel shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Merseytravel 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 9 to this Order; 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 Merseytravel 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, Merseytravel shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Merseytravel shall not be required to replace a building removed under this article.

(5) Merseytravel shall 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, shall be determined under Part I of the 1961 Act.

(7) Without prejudice to article 76, nothing in this article shall affect any liability to pay compensation under section 10(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) Where Merseytravel takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(9) Merseytravel shall not exercise the powers of this article in relation to any land within the permanent limits in the ownership or control of a local authority without the consent of the local authority, such consent not to be unreasonably withheld, and if within 28 days after any application for such consent has been submitted the local authority has not refused its consent and given the grounds for refusal, it shall be deemed to have given its consent.

(10) In this article "building" includes any structure or other erection.

(11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1).

### **Temporary use of land for maintenance of works**

37.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, Merseytravel 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, or in connection with, 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) shall not authorise Merseytravel 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 Merseytravel shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) Merseytravel 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, Merseytravel shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) Merseytravel shall 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, shall be determined under Part I of the 1961 Act.
- (8) Without prejudice to article 76, nothing in this article shall affect any liability to pay compensation under section 10(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 (6).
- (9) Where Merseytravel takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (10) The powers of this article shall not be exercised in relation to any street without the consent of the street authority, which shall not be unreasonably withheld.
- (11) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 30(1).
- (12) In this article—
  - (a) “building” includes any structure or other erection;
  - (b) “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
  - (c) 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**

**38.—**(1) In assessing the compensation (if any) payable to any person on the acquisition from him of any land under this Order, the tribunal shall 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 he 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*

**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.