
STATUTORY INSTRUMENTS

2005 No. 1794

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

25.—(1) The Executive may acquire compulsorily—

- (a) so much of the land in the City shown on the land plans within the limits of deviation and described in the book of reference as may be required for or in connection with the authorised works; and
- (b) so much of the land in the City specified in column (1) of Part 1 of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part;

and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its tramway undertaking.

(2) In the case of the land shown numbered 596 on the land plans, subject to article 28(4) the powers conferred by this article shall only be exercisable in relation to the stratum of that land below the level of the first floor of the building situated thereon.

(3) In paragraph (2), “the first floor” means the floor above the ground floor.

Application of Part I of Compulsory Purchase Act 1965

26.—(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—

- (a) 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; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—

(1) 1981 c. 67.

- (i) in a case where the notice to treat relates only to the acquisition of an easement or other right over the land, a reference to notice of one month; or
- (ii) in any other case, a reference to notice of 3 months.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

27.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply 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—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below 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 the London Gazette and 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, for subsections (5) and (6) 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 the London Gazette and 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 25.

Powers to acquire new rights

28.—(1) The Executive may acquire compulsorily such easements or other rights over any land in the City referred to in paragraph (1)(a) or (b) of article 25 as may be required for any purpose for which that land may be acquired under that provision.

(2) The Executive may acquire compulsorily such easements or other rights over any land in the City specified in column (1) of Part 2 of Schedule 2 to this Order (being land shown on the land plans and described in the book of reference) as may be required for any of the purposes specified in relation to that land in column (2) of that Part.

(3) In paragraphs (1) and (2), the power compulsorily to acquire easements or other rights includes the power to do so by creating them as well as by acquiring easements or other rights already in existence.

(4) The power conferred by paragraph (1) shall, notwithstanding article 25(2), be exercisable with respect to the whole of the land shown numbered 596 on the land plans (and shall accordingly not be restricted to the stratum of that land mentioned in article 25(2)).

(5) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 4 to this Order), where a right over land is acquired under paragraph (1) or (2) the body acquiring the right shall not be required to acquire a greater interest in the land.

(6) In relation to land to which this paragraph applies, paragraph (1) or (2) (as the case may be) shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(7) Paragraph (6) applies to any of the land shown numbered 510, 513 to 529, 547, 548, 551 to 553, 559, 560, 577 and 579 on the land plans which is or will be required for use in altering or relocating apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989(3), a gas transporter within the meaning of Part I of the Gas Act 1986(4), a water undertaker within the meaning of the Water Industry Act 1991(5), a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(8) Schedule 4 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 Order of a right over land by the creation of a new right.

Rights under or over streets

29.—(1) The Executive may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose connected with or ancillary to the authorised tramway.

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

(3) The Executive shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any person suffering loss by the exercise of that power shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraphs (2) and (3) shall not apply in relation to—

- (a) any subway or underground building;
- (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street.

Temporary possession of land

Temporary use of land for construction of works

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

(3) 1989 c. 29.
(4) 1986 c. 44.
(5) 1991 c. 56.

- (a) enter upon and take temporary possession of—
 - (i) any of the land in the City specified in column (1) of Schedule 5 to this Order for the purpose specified in relation to that land in column (2) of that Schedule relating to the authorised works specified in column (3) of that Schedule, and
 - (ii) any of the relevant land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and 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 28 days before entering upon and taking temporary possession of land under this article the Executive shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Executive may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of any land specified in column (1) of Schedule 5 to this Order, after the end of the period of one year beginning with the date of completion of the work or works specified in relation to that land in column (3) of Schedule 5 to this Order; or
 - (b) in the case of the relevant land, after the end of the period of one year beginning with the date of completion of the work or works for which temporary possession of the land was taken unless the Executive has, before 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.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive shall not be required to replace a building removed under this article.
- (5) The Executive 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 50, 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 the Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.
- (9) Paragraph (1)(a)(ii) shall not authorise the Executive to take temporary possession of—
- (a) any dwelling house or garden belonging to a dwelling house; or
 - (b) any building (other than a dwelling house) if it is for the time being occupied.
- (10) In this article—
- “building” includes any structure or erection; and
 - “the relevant land” means any land within the Order limits other than—
 - (a) the land specified in column (1) of Part 2 of Schedule 2 to this Order;
 - (b) the land specified in column (1) of Schedule 5 to this Order; and

- (c) the land shown numbered 597 to 600 and 604 on the land plans.

Temporary use of land for maintenance of works

31.—(1) At any time during the maintenance period relating to any scheduled works, the Executive may—

- (a) enter upon and take temporary possession of any land within the Order limits and lying within 20 metres from those works if such possession is reasonably required for the purpose of, or in connection with, maintaining the works or any ancillary works connected with them;
- (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 the Executive to take temporary possession of—

- (a) any dwelling house or garden belonging to a dwelling house;
- (b) any building (other than a dwelling house) if it is for the time being occupied; or
- (c) any land specified in column (1) of Part 2 of Schedule 2 to this Order (but without prejudice to the power to acquire rights pursuant to article 28(2) in relation to that land).

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

(4) The Executive 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 and restore the land to the reasonable satisfaction of the owners of the land.

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

(6) The Executive 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 50, 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 the Executive takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) The Executive may not, in the exercise of the powers of this article, enter—

- (a) the land specified in column (1) of Part 2 of Schedule 2 to this Order;
- (b) the land shown numbered 597 to 600 and 604 on the land plans.

(11) 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 use;
- (b) “building” includes structure or any other erection; and
- (c) any reference to land within a specified distance of a work includes, in the case of 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.

Temporary use of land for carrying out of accommodation and mitigation works

32.—(1) The Executive may, in relation to any of the land shown numbered 596 to 600 and 604 on the land plans, enter upon and take temporary possession of the land and carry out any such works with respect to it as are referred to in article 6(3)(f) and (g), including the alteration of any building on the land (in this article referred to as “the accommodation works”).

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive shall serve notice of the intended entry on the owners and occupiers of the land, together with a specification and description of the accommodation works that it intends to carry out on the land.

(3) Any person on whom a notice has been served under paragraph (2) may, by serving a counter notice within the period of 21 days beginning with the day on which the notice was served on him, require the question whether the accommodation works should be carried out to be referred to arbitration under article 53.

(4) The Executive may not remain in possession of any land under this article after the completion of the accommodation works for which possession was taken; but it may upon not less than 14 days' notice served on the occupier of the land, enter thereafter for the purpose of inspecting and remedying any defects in the accommodation works.

(5) The Executive shall pay compensation to the owners and occupiers of any 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) Where the carrying out of the accommodation works has mitigated the amount of any loss or damage arising from the carrying out of any of the other works authorised by this Order, that mitigation of loss or damage shall be taken into account in calculating the compensation (if any) payable under this Order or any other enactment in respect of that loss or damage.

(7) 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.

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

Compensation

Disregard of certain interests and improvements

33.—(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

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(6), 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.