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STATUTORY INSTRUMENTS

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**2005 No. 2786**

The Leicestershire County Council (Ashby  
de la Zouch Canal Extension) Order 2005

PART 3

ACQUISITION AND POSSESSION OF LAND

**Power to acquire land**

**16.**—(1) For the purposes of the authorised works, the undertaker may acquire by compulsory purchase any land which is—

- (a) shown on the land plans; and
- (b) the extent, description and situation of which is specified in column two of the book of reference.

(2) This article is subject to article 19 (9).

**Application of Part 1 of the Compulsory Purchase Act 1965**

**17.**—(1) Part I of the 1965 Act, as modified by the provisions of this Order, shall apply to the acquisition of land under this Order as if—

- (a) it were a compulsory purchase to which Part 2 of, or Schedule 1 to, the Acquisition of Land Act 1981(1) applied; and
- (b) this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect for the purposes of this Order as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which contains a provision for two sufficient sureties where a bond is given) were omitted; and
- (b) in section 11(1), for the words “not less than fourteen days notice” there were substituted—
  - “(a) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, not less than one month’s notice; and
  - (b) in any other case, not less than three months’ notice.”.

**Powers to acquire new rights**

**18.**—(1) If, for the purposes of the authorised works, the undertaker requires easements or rights over any land referred to in article 16(1) it may—

- (a) acquire them by compulsory purchase; or

(b) create them.

(2) Where the undertaker acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in the land.

(3) Paragraph (2) is subject to section 8 of the 1965 Act, as substituted by paragraph 4 of Schedule 7.

(4) Where an easement or other right over land is created under paragraph (1)(b), Schedule 7 shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition of that easement or other right.

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

**19.**—(1) The undertaker may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 for the purpose specified in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works on that land including—
  - (i) the provision of means of access; and
  - (ii) buildings.

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

(3) The undertaker shall not, without the agreement of the owners of the land, remain in possession of any land under this article 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 (4) of Schedule 8.

(4) Subject to paragraph (5), before giving up possession of land under paragraph (3), the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of any owner or occupier of the land.

(5) Paragraph (4) shall not be taken to require the undertaker to replace a building removed under paragraph (1)(b).

(6) The undertaker shall pay compensation to the owners and occupiers of land for any loss or damage incurred by them as a consequence of the exercise 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 35, 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.

(9) Subject to paragraph (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(10) Paragraph (9) shall not apply in relation to rights created under article 18.

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

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

### **Disregard of certain interests and improvements**

**20.** For the purposes of assessing the compensation payable to any person on the acquisition from that person of any land, interest or right under this Order, if the tribunal is satisfied that—

- (a) the creation of an interest;
- (b) the erection of a building;
- (c) works executed; or
- (d) any improvement or alteration made,

was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation, it shall disregard that interest, building, improvement or alteration, or those works, as the case may be.

### **Acquisition of part of certain properties**

**21.**—(1) This article shall apply instead of section 8(1) of the 1965 Act in any case where—

- (a) a notice to treat is served under the 1965 Act on the owner in respect of a part only (“the notified part”) of any land occupied or managed as a single unit (“the relevant unit of land”); 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 undertaker a counter-notice objecting to the sale of the notified part and stating that he is willing and able to sell the whole of the relevant unit of land.

(3) If no such counter-notice is served within that period, the owner shall be required to sell the notified part.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the notified part shall, unless the undertaker agrees to take the land specified in the counter-notice, be referred to the tribunal.

(5) If on a reference under paragraph (4), the tribunal determine that the notified part can be taken—

- (a) without material detriment to the remainder of the relevant unit of land, and
- (b) where the relevant unit of land comprises a house with a park or garden, without seriously affecting the amenity or convenience of the house,

the owner shall be required to sell the notified part.

(6) If on a reference under paragraph (4), the tribunal determine that only part of the notified part can be taken—

- (a) without material detriment to the remainder of the land; and
- (b) where the land comprises a house with a park or garden, 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 a reference under paragraph (4), the tribunal determine that—

- (a) the notified part cannot be taken without material detriment to the remainder of the relevant unit of land; but
- (b) the material detriment is confined to only a part of the relevant unit of land, being a part specified in the counter-notice but not the notified part,

the notice to treat shall be deemed to be a notice to treat for that part of the relevant unit of land to which the material detriment is confined, in addition to the notified part, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land specified in the counter-notice, or if the tribunal determine that—

- (a) none of the notified part can be taken without material detriment to the remainder of the relevant unit of land or, where the relevant unit of land comprises a house with a park or garden, without seriously affecting the amenity or convenience of the house; and
- (b) the material detriment is not confined to only a part of the notified part,

the notice to treat shall be deemed to be a notice to treat for the whole of the relevant unit of land whether or not the whole of that land is land which the undertaker 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 the notified part, the undertaker 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 the owner compensation for any expense or other loss occasioned to him by the giving and withdrawal of the notice.

(10) In the case of a dispute under paragraph (9), the amount of compensation shall be determined by the tribunal.

(11) Where the owner is required under this article to sell only part of the relevant unit of land, the undertaker 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.

(12) In this article—

“the 1965 Act” means the 1965 Act as applied by article 17 of this Order; and

“owner” includes any lessee.

### **Extinction or suspension of private rights of way**

**22.**—(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 undertaker, whether compulsorily or by agreement, or
- (b) on the entry on the land by the undertaker under section 11(1) of the 1965 Act,

whichever is the sooner.

(2) All private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker 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.

### **Time limit for exercise of powers of acquisition**

**23.**—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 19 to enter upon and take temporary possession of land, shall cease to be exercisable at the end of the period of 5 years beginning on the day on which this Order comes into force.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 19 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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