

2019 No. 882

TRANSPORT AND WORKS, ENGLAND

**The Midland Metro (Birmingham City Centre Extension, etc.)
(Edgbaston Extension Land Acquisition) Order 2019**

Made - - - - - 16th April 2019

Coming into force - - - - - 7th May 2019

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

Objections to that application have been withdrawn.

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

The Secretary of State, having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.

Notice of the Secretary of State’s determination was published in the London Gazette on 2nd April 2019.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3 to 5, 11, 16 and 17 of Schedule 1 to, the 1992 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019 and comes into force on 7th May 2019.

(a) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627 and S.I. 2017/1070.
(b) 1992 c. 42; section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29), section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1984 Act” means the Road Traffic Regulation Act 1984(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised works” means the works authorised by the Midland Metro (Birmingham City Extension, etc.) Order 2005(g);

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection, or any part of a building, structure or erection;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“the Executive” means West Midlands Combined Authority established under article 3 of the West Midlands Combined Authority Order 2016(h);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

“the Order limits” mean the limits so described on the land plans;

“owner” in relation to land has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(i);

“statutory undertaker” means—

(c) any person who is a statutory undertaker for any of the purposes of the 1990 Act; and

(d) any public communications provider within the meaning of section 151(1) of the Communications Act 2003(j); and

“the tribunal” means the Lands Chamber of the Upper Tribunal.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface.

(3) All directions, distances, areas, lengths and points stated in any powers or lands are approximate.

(a) 1961 c. 33.

(b) 1965 c. 56.

(c) 1980 c. 66.

(d) 1981 c. 66.

(e) 1984 c. 27.

(f) 1990 c. 8.

(g) S.I. 2005/1794.

(h) S.I. 2016/653.

(i) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(j) 2003 c. 21.

Disapplication of legislative provisions

3. The provisions of the Neighbourhood Planning Act 2017(a) are disappplied insofar as they relate to temporary occupation of land under articles 8 (temporary use of land for construction of works) and 9 (temporary use of land for maintenance of works).

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

4. The Executive may acquire compulsorily so much of the land specified in column (1) of Part 1 of Schedule 1 (acquisition of land) (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 Part 1 of that Schedule and may use any land so acquired for those purposes or for any other purposes that are ancillary to its tramway undertaking.

Application of Part 1 of the 1965 Act

5.—(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(b) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, 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)(c) (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 order under section 1 or 3), the five year period mentioned in article 12 (time limit for exercise of powers of acquisition) of the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019”.

(5) In section 11(1B)(d) (powers of entry) in a case where a notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(e) (powers of entry: further notices of entry)—

- (a) in sub-section 1(a), after “land” insert “under that provision”,
- (b) in subsection (2), after “land” insert “under than provision”.

(7) 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 12 (time limit for exercise of powers of acquisition) of the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019”.

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

- (a) omit paragraphs 1(2) and 14(2); and
- (b) after paragraph 29 insert—

(a) 2017 c. 20.

(b) 1981 c. 67.

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

(d) As inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016 (c. 22).

(e) As inserted by section 186(3) of the Housing and Planning act 2016 (c. 22).

“PART 4 INTERPRETATION

30. In this Schedule, references to entering and taking possession of land do not include doing so under article 8 (temporary use of land for construction of works) and article 9 (temporary use of land for maintenance of works) of the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019.”

Application of the 1981 Act

- 6.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act has effect with the following modifications.
- (3) In section 5(a) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit section 5A(b) (time limit for general vesting declaration).
- (5) In section 5B(1)(c) (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 or 3), the five year period mentioned in article 12 (time limit for exercise of powers of acquisition) of the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019”.
- (6) In section 6(d) (notices after execution of general vesting 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(e) of the Transport and Works Act 1992”.
- (7) In section 7(f) (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(g) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 4 (power to acquire land).

Power to acquire new rights

- 7.**—(1) The Executive may acquire compulsorily such easements or other rights over any land—
- (a) referred to in article 4 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision; or
- (b) within the Order limits, specified in column (1) of Part 2 of Schedule 1 (acquisition of rights only) as may be required for the purposes specified in relation to that land in column (2) of that Part.
- (2) In paragraph (1), 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.

(a) As amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

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

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

(d) 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).

(e) As inserted by S.I. 2017/16.

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

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

(3) 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 2 (modification of compensation and compulsory purchase enactment for the creation of new rights)) where the Executive acquires a right over land under paragraph (1) the Executive is not required to acquire a greater interest in that land.

(4) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the Executive may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(5) Schedule 2 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 Order of a right over land by the creation of a new right.

Temporary possession of land

Temporary use of land for construction of works

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

(a) enter upon and take temporary possession of—

- (i) any of the land specified in column (1) of Schedule 3 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule; and
- (ii) any of the relevant land in respect of which no notice of entry has been served under section 11(a) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

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

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

(d) construct any permanent works specified in relation to that land in column (2) of Schedule 3 or any mitigation works on that land.

(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the Executive must 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 3, after the end of the period of one year beginning with the date of completion of the works specified in relation to that land in column (2) of Schedule 3; 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 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 1981 Act.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Executive must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Executive is not required to replace a building

(a) 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), 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.

removed under this article or restore the land on which any works have been constructed under paragraph (1)(d).

(5) The Executive 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 of the 1961 Act.

(7) Without affecting article 17 (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)(a) 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) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a) except that the Executive is not to be precluded from acquiring new rights over any land specified in Part 2 of Schedule 1 (acquisition of rights) under article 7 (power to acquire new rights).

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

(10) Section 13(b) (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 4(1) (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(a)(ii) does not authorise the Executive 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.

(12) In this article “the relevant land” means any land within the Order limits other than the land specified in column (1) of Schedule 3 to this Order.

Temporary use of land for maintenance of works

9.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the authorised 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 maintaining the works or any ancillary works connected with them; 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 Executive to take temporary possession of—

- (a) any house or garden belonging to a house;
- (b) any building (other than a house) if it is for the time being occupied; or
- (c) any land specified in column (1) of Part 2 of Schedule 1 (acquisition of land) (but without affecting the power to acquire rights under article 7(2) (power to acquire new rights) 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 must serve notice of the intended entry on the owners and occupiers of the land.

(a) 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.

(b) 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).

(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.

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

(6) The Executive 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.

(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 of the 1961 Act.

(8) Without affecting article 17 (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 Executive takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) 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 4(1) (application of Part 1 of the 1965 Act).

(11) In this article—

- (a) “the maintenance period”, in relation to the authorised works, means the period of 5 years beginning with the date on which the work is opened for use; and
- (b) 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.

Compensation

Disregard of certain interests and improvements

10.—(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 rights of way

11.—(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 date of acquisition of the land by the Executive, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the Executive under section 11(1) or (2) (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 of which the Executive takes temporary possession under this Order are 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 is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) 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 applies.

(5) Paragraphs (1) and (2) 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) has effect subject to any notice given by the Executive that that paragraph is not to 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) has effect subject to any notice given by the Executive at any time before or after possession is taken that that paragraph is not to apply to any right of way specified in the notice or is only to 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 1 (acquisition of land).

Time limit for exercise of powers of acquisition

12.—(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 5 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act, as applied by article 6 (application of the 1981 Act).

(2) The powers conferred by article 7 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents 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.

PART 3

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

13. Schedule 4 (provisions relating to statutory undertakers, etc.) has effect.

Minerals

14.—(1) Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land 1981 Act have effect in relation to land to which article 4 (power to acquire land) applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

(2) In their application under paragraph (1), Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981 have effect with the following modifications—

- (a) references to the acquiring authority are to be construed as references to the Executive; and
- (b) references to the undertaking are to be construed as references to the Executive's tramway undertaking.

Certification of plans, etc.

15. The Executive must, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference and the land plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

16.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient, and subject to paragraphs (5) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

17. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Crown Rights

18.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, in particular, nothing in this Order authorises the Executive or any other person to take, use, enter upon or in any manner interfere with any land, hereditament or rights of whatsoever description belonging to a government department without the consent in writing of that government department.

(2) Consent under this article may be given unconditionally or subject to such terms or conditions as may be considered necessary or appropriate.

Signed by authority of the Secretary of State

16th April 2019

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULES

SCHEDULE 1

Articles 4, 7, 8, 9 and 11

ACQUISITION OF LAND AND RIGHTS

PART 1

ACQUISITION OF LAND

<i>(1)</i> <i>Number of land show on the land plans</i>	<i>(2)</i> <i>Purposes for which land may be acquired</i>
1	Realignment and re-surfacing of highway, installation and maintenance of utility apparatus.
8, 9 and 11	Construction and maintenance of the authorised works.
10	Construction and maintenance of authorised works and closure of private access.

PART 2

ACQUISITION OF RIGHTS ONLY

<i>(1)</i> <i>Number of land show on the land plans</i>	<i>(2)</i> <i>Purposes for which right may be acquired</i>
7	Access to and maintenance of signalling equipment.

SCHEDULE 2

Article 7

ACQUISITION OF RIGHTS IN LAND: APPLICATION OF COMPULSORY PURCHASE LEGISLATION

Compensation enactments

1. The enactments for the time being in force with respect to the compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification set out in sub-paragraph (2).

(2) For section 5A(5A)(a) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

(a) As inserted by section 103 of the Planning and Compulsory Purchase Act 2004 (c. 5) and further amended by sections 190 and 199 of, and paragraph 1 of Schedule 16, paragraph 4 of Part 2 of Schedule 17 and paragraph 9 of Part 2 of Schedule 18 to the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 2 to the Midland Metro (Birmingham City Centre Extension, etc.) (Edgbaston Extension Land Acquisition) Order 2019 (“the 2019 Order”)),
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 2 to the 2019 Order) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modification set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act, as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” substitute “a right over land is acquired”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by article 5 (application of Part 1 of the 1965 Act) to the acquisition of land under article 4 (power to acquire land), applies to the compulsory acquisition of a right by the creation of a new right under article 7—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5. —(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is, or is to be, exercisable.

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had, not only to the extent (if any) to which the value of the land over which the right is acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

- (a) section 9(4) (failure of owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

(a) 1972 c. 26.

are so modified as to secure that, as against persons with interests in land which are expressed to be overridden by the deed, the right which is to be acquired compulsorily is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right as well as the notice required by subsection (1) of that section (as it applies to a compulsory acquisition under article 4 (power to acquire land)), it has power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry, 11B(c) (counter-notice requiring possession to be taken on specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of that Act are modified accordingly.

(6) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the land, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 5(7) (application of Part 1 of the 1965 Act) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
2. In this Schedule “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

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- (a) 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), 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.
- (b) Section 11A was inserted by section 186(2) of the Housing and Planning Act 2016 (c. 22).
- (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
- (d) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning act 2016 (c. 22).
- (e) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
- (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

Response to counter-notice

5. On receiving the counter-notice the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they³ must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 3

Article 8

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Number of land shown on the land plans</i>	(2) <i>Purposes for which temporary possession may be taken</i>
2, 14	Construction of permanent works on that land to tie in different levels, working site and access during construction.
3, 4	Construction access and working site. Construction of permanent bridge strengthening works.
5	Construction compound.
7	Installation of permanent traffic signalling apparatus, construction of permanent works to realign highway and working site.
12	Construction of permanent works on that land to alter private road and tie in different levels and access during construction.
13	Construction of permanent works on that land to alter private road, provide a turning head and tie in different levels and access during construction.

SCHEDULE 4

Article 13

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274 (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus)(a) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Executive and is appropriated or used (or about to be used) by it for the purposes of the authorised works or for purposes connected with the authorised works; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(b) which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by that

(a) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(b) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the Executive compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

(6) In this paragraph—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications code” has the same meaning as in section 106(1) (application of the electronic communications code) of the 2003 Act(b);

“electronic communications code network” means an electronic communications network within the meaning of the 2003 Act to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the 1980 Act.

(a) 2003 c. 21.

(b) Section 106 was amended by section 4(3) to (9) of the Digital Economy Act 2017 (c. 30).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers further powers of compulsory acquisition on the West Midlands Combined Authority (“the Executive”) for the purpose of the works authorised by the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 (“the 2005 Order”). Powers for compulsory acquisition under the 2005 Order expired on 22nd July 2010.

A copy of the land plans and the book of reference referred to in this Order may be inspected at the offices of the Executive at 16 Summer Lane, Birmingham, B19 3SD.

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