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STATUTORY INSTRUMENTS

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**2019 No. 882**

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

**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(1) 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)(2) (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)(3) (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(4) (powers of entry: further notices of entry)—

- (a) in sub-section 1(a), after “land” insert “under that provision”,

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(1) 1981 c. 67.

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

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

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

(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—

## “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(5) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(6) (time limit for general vesting declaration).

(5) In section 5B(1)(7) (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(8) (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(9) of the Transport and Works Act 1992”.

(7) In section 7(10) (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(11) (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).

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

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

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

(8) 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).

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

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

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

## 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.

(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<sup>(12)</sup> (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.

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<sup>(12)</sup> 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.

(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 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)(13) 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(14) (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—

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(13) 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.

(14) 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).

- (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.
- (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.