

**TRANSPORT AND WORKS ACT 1992**

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS  
PROCEDURE) (ENGLAND AND WALES) RULES 2006**

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**THE MIDLAND METRO (BIRMINGHAM CITY CENTRE EXTENSION, ETC.) (EDGBASTON  
EXTENSION LAND ACQUISITION) ORDER**

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**EXPLANATORY MEMORANDUM**

This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure)(England and Wales) Rules 2006 (S.I. 2006 No.1466).

Application for the Order has been made by West Midlands Combined Authority (“the Executive”), which is the successor body to the West Midlands Passenger Transport Executive. The Order would confer further powers of compulsory acquisition on the Executive for the purpose of the works authorised by the Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 (S.I. 2005 No. 1794), (“the 2005 Order”) as the original powers of compulsory acquisition under that Order expired on 22 July 2010.

This Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No.1954) (“the model clauses”) as adapted in the 2005 Order in order to ensure consistency with that Order.

**PART 1**

**PRELIMINARY**

Part 1 contains preliminary provisions

**Article 1** (*Citation and commencement*) provides for the citation and the coming into force of the Order.

**Article 2** (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in the article to provide clarity, taking into account the specific provisions of the Order. In particular, “the authorised works” are defined as being the works authorised by the 2005 Order.

**Article 3** (*Disapplication of legislative provisions*) is not in the model clauses. It provides for the disapplication of any provisions in the forthcoming Neighbourhood Planning Act which would alter the arrangements and timescales required in relation to the service of notices for temporary occupation of land as authorised in articles 8 and 9 of this Order.

## PART 2

### ACQUISITION AND POSSESSION OF LAND

#### *Powers of acquisition*

Part 2 of the Order contains provisions for the compulsory acquisition of land and for the temporary use of land for the purposes of the works authorised by the 2005 Order. It also provides for the payment of compensation.

**Article 4** (*Power to acquire land*) confers on the Executive powers of compulsory acquisition of so much of the land specified in column (1) of the table in Schedule 1 (*acquisition of land*) as may be required for any of the purposes specified in relation to that land in column (2) of that table.

**Article 5** (*Application of Part 1 of Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965. This provision departs from the model clause to reflect recent changes introduced by the Housing and Planning Act 2016 (c.22). Paragraphs (4) and (5) reduce, in certain circumstances, the minimum periods required to be given in notices to treat whilst paragraph (7) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 8 and 9 of this Order. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017 (c.7).

**Article 6** (*Application of Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981. Article 5 gives the Executive the option to acquire land by General Vesting Declaration method rather than through the notice to treat procedure and provides for that Act to have effect subject to certain modifications. This article departs from the model clauses to take account of the amendments made to the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016. In particular, section 3 (preliminary notices) of the Compulsory Purchase (Vesting Declarations) Act 1981 is omitted by the Housing and Planning Act 2016 whilst section 5A (which was inserted by the Housing and Planning Act 2016) is omitted for the purposes of this Order. Clause 5A, if not specifically excluded, would limit the time period for the execution of a General Vesting Declaration to three years from the date upon which the Order becomes operative. This would be inconsistent with the period of five years provided for in article 12 (time limit for exercise of powers of acquisition) which is the period provided in the model clauses. These provisions have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

**Article 7** (*Power to acquire new rights*) makes ancillary provision where rights over land are acquired. Paragraph (4) is based on precedent found in the Network Rail (Ipswich Chord) Order 2012<sup>(1)</sup>. It provides for the acquisition of rights by statutory undertakers (rather than the Executive) in circumstances where the relevant land is required for the diversion or relocation of their apparatus and the Secretary of State gives consent. Such provision is appropriate because the dominant tenement to be benefitted by such rights is the statutory undertaking of the undertaker rather than the Executive's land and it is therefore necessary for the relevant statutory undertaker to acquire the rights.

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<sup>(1)</sup> S.I. 2012 No. 2284

### *Temporary possession of land*

**Article 8** (*Temporary use of land for construction of works*) enables the Executive to take temporary possession of land listed 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 certain other land within the Order limits for use in connection with the construction of the authorised works and makes provision for the payment of compensation. Paragraph (2) extends the notice period in the model clauses from 14 to 28 days in line with the equivalent notice period in article 30 of the 2005 Order. This power does not apply to any house, garden or occupied building.

**Article 9** (*Temporary use of land for maintenance of works*) empowers the Executive to take temporary possession of land within the Order limits if such possession is reasonably required for the maintenance of the Order works. In a limitation on the scope of the model clauses, this power is limited to land lying within 20 metres from the Order works. Temporary works may be constructed on the land as reasonably necessary and provision is made for notice and compensation. This power does not apply to any house, garden, occupied building or to land over which only new rights are to be acquired.

### *Compensation*

**Article 10** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal will disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

### *Supplementary*

**Article 11** (*Extinction or suspension of private rights of way*) provides, in paragraphs (1) and (2) for the extinguishment of private rights of way over land compulsorily acquired and the suspension of private rights of way in respect of land temporarily occupied. Paragraph (3) provides for payment of compensation. Paragraph (5) departs from the model clause to provide that paragraphs (1) and (2) may be overridden by alternative arrangements agreed between the Executive and the person entitled to the private right of way. It does not matter whether any such agreement was made before or after the coming into force of the Order. In a further departure from the model clauses, paragraph (6) empowers the Executive to prevent, by notice, the application of paragraphs (1) and (2) in relation to the extinguishment of any particular rights of way.

**Article 12** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

**Article 13** (*Statutory undertakers, etc.*) introduces Schedule 4 to the Order (*provisions relating to statutory undertakers, etc.*) which contains specific safeguards for statutory undertakers with apparatus on land acquired under the Order.

**Article 14** (*Minerals*) is in the same terms as article 46 of the 2005 Order and deals with minerals underlying any land which is compulsorily acquired under the powers of the Order.

**Article 15** (*Certification of plans, etc.*) provides for the Executive to submit to the Secretary of State for certification the book of reference and the land plans after the making of this Order.

**Article 16** (*Service of notices*) makes provisions as to the service of notices or other documents for the purposes of this Order.

**Article 17** (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or any other rule of law.

**Article 18 (Crown rights)** is not in the model clauses, but makes it explicit that the Order is not intended to authorise the compulsory acquisition of any Crown or government department's rights without written consent. It has recent precedent in a different context in the Lynn and Inner Dowsing Offshore Windfarms (Amendment) Order 2011 (SI 2011 No. 84) and a similar provision is also to be found in the Network Rail (Pont Briwet)(Land Acquisition) Order 2013 (SI 2013 No. 767 (W.92)).