

Wednesbury to Brierley Hill Extension

Transport and Works Act 1992

The Transport and Works

(Applications and Objections Procedure)

(England and Wales) Rules 2006



Explanatory Memorandum

TRANSPORT AND WORKS ACT 1992**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS
PROCEDURE) (ENGLAND AND WALES) RULES 2006**

THE MIDLAND METRO (WEDNESBURY TO BRIERLEY HILL LAND ACQUISITION) ORDER

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 Order the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927), (“the 2005 Order”), as the original powers of compulsory acquisition under that Order expired in 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.

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Part 2 of the Order contains provisions for the compulsory acquisition of land and rights over 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 3 (*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 Part 1 of 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. Paragraph (2) restricts the powers of compulsory acquisition of the Order in relation to the Dudley Canal No.1.

Article 4 (*Application of Part 1 of Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (“the 1965 Act”). This provision departs from the model clause to reflect recent changes introduced by the Housing and Planning Act 2016 (c.22). Paragraph (4) extends the time period allowed for the exercise of compulsory powers in the event of a challenge being made to the order under section 22 of the Transport and Works Act 1992. This has precedent in article 22 of the London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017/830).

Paragraph (5) reduces, in certain circumstances, the minimum periods required to be given in notices of entry. Paragraph (6) and 8(b) make it clear that in provisions of the 1965 Act inserted by the Housing and Planning Act 2016 references to taking possession of land are in relation to the exercise of compulsory acquisition powers and do not apply to the temporary possession or use of land under articles 8 and 9 of this Order. Paragraph (7) is a consequential amendment to substitute reference to the article of the Order imposing a time limit for the exercise of compulsory powers and paragraph 8(a) omits provisions of the 1965 Act which is not relevant to this Order. These modifications have precedent in article 19 of the Network Rail (Buxton Sidings Extension) Order 2017 (S.I.2017/1150).

Article 5 (*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 (“the 1981 Act”). 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 1981 Act by the Housing and Planning Act 2016. In particular, section 3 (preliminary notices) of the 1981 Act is omitted by the Housing and Planning Act 2016 and reference is made instead to section 14(A)(3) of the Transport and Works Act 1992 (c. 42), 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 11 (time limit for exercise of powers of acquisition) which is the period provided in the model clauses. In this article, as in article 5, the time period allowed for the exercise of compulsory powers in the event of a challenge being made to the order under section 22 of the Transport and Works Act is extended. All of the provisions follow the precedent of the Network Rail (Buxton Sidings Extension) Order 2017.

Article 6 (*Power to acquire new rights*) authorises the creation of easements or other rights over land and makes ancillary provision where rights are acquired. Paragraph (3) is based on precedent found in the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284). 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.

Paragraph (4) introduces Schedule 2 for the purpose of modifying legislation relating to compensation and the 1965 and 1981 Acts so as to apply to the compulsory acquisition of new rights under this Order. These are consequential modifications which, as regards compensation legislation and the 1965 Act, have precedent in the Network Rail (Buxton Sidings Extension) Order 2017, and as regards the 1981 Act have precedent in Schedule 14 to the High Speed Rail (London-West Midlands) Act 2017 (c.7) and the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017 (S.I.2017/1074)

Temporary possession of land

Article 7 (*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 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. The general power to occupy land within the Order limits does not apply to any dwelling house or any other occupied building, or to land over which only new rights are to be acquired. Paragraph (2) extends the notice period in the model clauses from 14 to 28 days in line with the equivalent notice period in article 34 of the 2005 Order..

Article 8 (*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 9 (*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 10 (*Extinction or suspension of 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 11 (*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 and the powers to take temporary possession of land under article 8.

PART 3

MISCELLANEOUS AND GENERAL

Article 12 (*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 13 (*Minerals*) is in the same terms as article 50 of the 2005 Order and deals with minerals underlying any land which is compulsorily acquired under the powers of the Order.

Article 14 (*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 15 (*Service of notices*) makes provisions as to the service of notices or other documents for the purposes of this Order.

Article 16 (*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 17 (*Protection for Network Rail*) contains specific protection for Network Rail Infrastructure Limited (Network Rail). In particular, it prohibits the Executive from entering railway property for the purposes of carrying out surveys and from acquiring or using rights over such land without the consent of Network Rail and it further provides (at paragraph (5) for the Executive and Network Rail to enter into agreements for the transfer to the Executive of any railway property shown on the deposited plans and described in the book of reference.

Article 18 (*Protection for Canal and River Trust*) contains specific protection for the Canal and River Trust. In particular, it prohibits the Executive from entering any waterway of the Canal and River Trust for the purposes of carrying out surveys and from acquiring or using rights over such waterways without the consent of Canal and River Trust.

Article 19 (*Existing Agreements*) provides that the agreement made in relation to the 2005 Order with Aquila Networks PLC applies equally to the Executive's exercise of powers under this Order.