



# Town and Country Planning Act 1990

## 1990 CHAPTER 8

### PART XI

#### STATUTORY UNDERTAKERS

##### *Preliminary*

#### **264 Cases in which land is to be treated as not being operational land.**

- (1) This section applies where an interest in land is held by statutory undertakers for the purpose of carrying on their undertaking and—
  - (a) the interest was acquired by them on or after 6th December 1968; or
  - (b) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the 1962 Act.
- (2) Where this section applies in respect of any land then, notwithstanding the provisions of section 263, the land shall not be treated as operational land for the purposes of this Act unless it falls within subsection (3) or (4).
- (3) Land falls within this subsection if—
  - (a) there is, or at some time has been, in force with respect to it a specific planning permission for its development; and
  - (b) that development, if carried out, would involve or have involved its use for the purpose of the carrying on of the statutory undertakers' undertaking.
- (4) Land falls within this subsection if—
  - (a) the undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the <sup>M1</sup>Transport Act 1968, the <sup>M2</sup>Transport (London) Act 1969, the <sup>M3</sup>Gas Act 1986, the <sup>M4</sup>Airports Act 1986 [<sup>F1</sup>the Water Act 1989 or the Water Industry Act 1991] [<sup>F2</sup>or, in the case of land held by Canal & River Trust, the Public Bodies Act 2011] from other statutory undertakers; and

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- (b) immediately before transfer the land was operational land of those other undertakers.

[<sup>F3</sup>(4A) For the purposes of this section an interest in land acquired by Transport for London or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999) under or by virtue of that Act shall be taken to have been acquired by Transport for London or that subsidiary at the time and in the manner in which it was acquired by the relevant predecessor.

(4B) In subsection (4A) “relevant predecessor” means London Regional Transport or such other predecessor in title of Transport for London or the subsidiary of Transport for London as last acquired the interest in question—

- (a) as the result of such a transfer as is mentioned in paragraph (a) of subsection (4); and
- (b) in such circumstances as are mentioned in paragraph (b) of that subsection.]

(5) A specific planning permission for the purpose of subsection (3)(a) is a planning permission—

- (a) granted on an application in that behalf made under Part III; or
- (b) granted by provisions of a development order <sup>F4</sup>... granting planning permission generally for development which has received specific parliamentary approval; or
- (c) granted by a special development order in respect of development specifically described in the order;

[<sup>F5</sup>(ca) granted by a local development order or a neighbourhood development order;] or

- (d) deemed to be granted by virtue of a direction of a government department under section 90(1).

(6) In subsection (5)—

- (a) the reference in paragraph (a) to Part III includes a reference to Part III of the 1971 Act and the enactments in force before the commencement of that Act and replaced by Part III of it; and
- (b) the reference in paragraph (b) to development which has received specific parliamentary approval is a reference to development authorised—
  - (i) by a local or private Act of Parliament,
  - (ii) by an order approved by both Houses of Parliament; or
  - (iii) by an order which has been brought into operation in accordance with the provisions of the <sup>M5</sup>Statutory Orders (Special Procedure) Act 1945,

being an Act or order which designates specifically both the nature of the development authorised by it and the land upon which it may be carried out;

- (c) the reference in paragraph (d) to section 90(1) includes a reference to section 40 of the 1971 Act, section 41 of the 1962 Act and section 35 of the 1947 Act.

(7) This section shall not apply to land in the case of which an interest of the Postmaster General’s vested in the Post Office by virtue of section 16 of the <sup>M6</sup>Post Office Act 1969.

(8) Where an interest in land is held by [<sup>F6</sup>—

- (a) the Civil Aviation Authority, or

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(b) a person who holds a licence under Chapter I of Part I of the Transport Act 2000 or a company associated with that person,]

this section shall not apply for the purpose of determining whether the land is operational land in relation to the Authority [<sup>F7</sup>or the licence holder] for the purposes of this act.

### Textual Amendments

- F1** Words in s. 264(4)(a) substituted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\), ss. 2\(1\), 4\(2\), Sch. 1 para. 54](#)
- F2** Words in s. 264(4)(a) inserted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\), art. 1\(2\), Sch. 3 para. 9](#) (with arts. 4-6)
- F3** S. 264(4A)(4B) inserted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\), art. 2, Sch. 1 para. 14](#)
- F4** Words in s. 264(5)(b) repealed (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\), s. 240\(5\)\(j\), Sch. 12 para. 20\(a\), Sch. 25 Pt. 18](#); S.I. 2012/57, art. 4(1)(h) (with arts. 6, 7, 9-11); S.I. 2012/628, art. 8(a)(e) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4); S.I. 2013/797, arts. 1(2), 2
- F5** S. 264(5)(ca) inserted (15.11.2011 for specified purposes, 15.1.2012 for specified purposes, 6.4.2012 for specified purposes, 3.8.2012 for specified purposes, 6.4.2013 in so far as not already in force) by [Localism Act 2011 \(c. 20\), s. 240\(5\)\(j\), Sch. 12 para. 20\(b\)](#); S.I. 2012/57, art. 4(1)(h) (with arts. 6, 7, 9-11); S.I. 2012/628, art. 8(a) (with arts. 9, 12, 13, 16, 18-20) (as amended (3.8.2012) by S.I. 2012/2029, arts. 2, 4); S.I. 2012/2029, arts. 2, 3(a) (with art. 5) (as amended (6.4.2013) by S.I. 2013/797, art. 4); S.I. 2013/797, arts. 1(2), 2
- F6** S. 264(8)(a)(b) substituted for the words “the Civil Aviation Authority” (21.12.2001) by S.I. 2001/4050, art. 2, [Sch. Pt. III para. 13\(a\)\(i\)](#)
- F7** Words in s. 264(8) inserted (21.12.2001) by S.I. 2001/4050, art. 2, [Sch. Pt. III para. 13\(a\)\(ii\)](#)

### Modifications etc. (not altering text)

- C1** S. 264(3) modified (15.8.2013) by [The North Blyth Biomass Power Station Order 2013 \(S.I. 2013/1873\), arts. 1, 26](#) (with art. 30)
- C2** S. 264(3)(a) modified (18.12.1996) by 1996 c. 61, [s. 9\(9\)](#)
- S. 264(3)(a) modified (22.3.2001) by S.I. 2001/1451, [art. 7\(1\)](#)
- S. 264(3)(a) modified (29.3.2001) by S.I. 2001/1347, [art. 20\(3\)](#)
- S. 264(3)(a) modified (24.7.2001) by S.I. 2001/3627, [art. 31](#)
- S. 264(3)(a) modified (9.11.2001) by S.I. 2001/3682, [art. 17\(3\)](#)
- S. 264(3)(a) modified (18.7.2001) by S.I. 2001/2870, [art. 23\(1\)](#)
- S. 264(3)(a) modified (14.3.2002) by [The Chester Guided Busway Order 2002 \(S.I. 2002/412\), art. 14\(3\)](#) (with art. 38)
- S. 264(3)(a) modified (31.5.2002) by [The Greater Manchester \(Light Rapid Transit System\) \(Trafford Depot\) Order 2002 \(S.I. 2002/1327\), art. 14\(3\)](#)
- S. 264(3)(a) modified (12.8.2002) by [The Channel Tunnel Rail Link \(Thames Tunnel Approach\) Order 2002 \(S.I. 2002/1943\), art. 12](#)
- S. 264(3)(a) modified (28.4.2003) by [The Network Rail \(West Coast Main Line\) Order 2003 \(S.I. 2003/1075\), art. 36](#) (with art. 40)
- S. 264(3)(a) modified (4.3.2004) by [The Network Rail \(West Coast Main Line\) Order 2004 \(S.I. 2004/389\), art. 34](#) (with art. 38)
- S. 264(3)(a) modified (2.4.2004) by [The Docklands Light Railway \(Woolwich Arsenal Extension\) Order 2004 \(S.I. 2004/757\), art. 20\(3\)](#)
- S. 264(3)(a) modified (19.11.2004) by [The Scarweather Sands Offshore Wind Farm Order 2004 \(S.I. 2004/3054\), art. 29](#) (with art. 38)

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- S. 264(3)(a) modified (11.2.2005) by The Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), **art. 24(1)** (with arts. 65, 66)
- S. 264(3)(a) modified (22.3.2005) by The Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005/927), **art. 48(1)** (with art. 51)
- S. 264(3)(a) modified (4.5.2005) by The Telford Railfreight Terminal (Donnington) Order 2005 (S.I. 2005/1163), **art. 25(1)** (with art. 30)
- S. 264(3)(a) modified (22.7.2005) by The Midland Metro (Birmingham City Centre Extension, etc.) Order 2005 (S.I. 2005/1794), **art. 44(1)** (with art. 47)
- S. 264(3)(a) modified (26.8.2005) by The River Tyne (Tunnels) Order 2005 (S.I. 2005/2222), **art. 15** (with arts. 45(1), 48, Sch. 10 paras. 21, 29)
- S. 264(3)(a) modified (25.11.2005) by The Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005/3105), **art. 21(3)** (with arts. 3(5), 15(3))
- S. 264(3)(a) modified (11.1.2006) by The Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523), **art. 18(3)** (with art. 52)
- S. 264(3)(a) modified (11.1.2006) by The Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523), **art. 49(2)** (with art. 52)
- S. 264(3)(a) modified (22.11.2006) by The Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006/2905), **art. 17(3)** (with art. 43)
- S. 264(3)(a) modified (13.12.2006) by The Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117), **art. 44** (with arts. 34, 35(2))
- S. 264(3)(a) modified (13.12.2006) by The Luton Dunstable Translink Order 2006 (S.I. 2006/3118), **art. 18(3)**
- S. 264(3)(a) modified (23.8.2007) by The Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297), **art. 17(3)** (with arts. 3(6), 12(3))
- S. 264(3)(a) modified (28.9.2007) by The London Gateway Logistics and Commercial Centre Order 2007 (S.I. 2007/2657), **art. 27(3)** (with art. 19, Sch. 3 para. 13(2))
- C3** S. 264(3)(a) modified (22.7.2008) by Crossrail Act 2008 (c. 18), **s. 10(8)**
- C4** S. 264(3)(a) modified (14.10.2008) by The Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008/2512), **art. 34(3)** (with art. 36(3))
- C5** S. 264(3)(a) modified (18.9.2009) by The London Underground (Victoria Station Upgrade) Order 2009 (S.I. 2009/2364), **art. 15**
- C6** S. 264(3)(a) modified (20.7.2010) by The Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010/1721), **art. 28(3)**
- C7** S. 264(3)(a) modified (27.8.2010) by The Llangollen and Corwen Railway Order 2010 (S.I. 2010/2136), **art. 11(3)**
- C8** S. 264(3)(a) modified (1.2.2011) by The River Mersey (Mersey Gateway Bridge) Order 2011 (S.I. 2011/41), arts. 1, **47(3)** (with art. 51, Sch. 10 paras. 68, 85)
- C9** S. 264(3)(a) modified (21.4.2011) by The Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011/1072), arts. 1, **36(1)**
- C10** S. 264(3)(a) modified (26.9.2012) by The Network Rail (Ipswich Chord) Order 2012 (S.I. 2012/2284), arts. 1, **28** (with art. 26(2))
- C11** S. 264(3)(a) modified (13.11.2012) by The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012/2679), arts. 1, **39** (with art. 42(2))
- C12** S. 264(3)(a) modified (13.3.2013) by The Brechfa Forest West Wind Farm Order 2013 (S.I. 2013/586), arts. 1, **14**
- C13** S. 264(3)(a) modified (9.4.2013) by The Hinkley Point C (Nuclear Generating Station) Order 2013 (S.I. 2013/648), arts. 1, **40** (with arts. 48, 68, 79)
- C14** S. 264(3)(a) modified (15.6.2013) by The Galloper Wind Farm Order 2013 (S.I. 2013/1203), arts. 1, **29** (with arts. 11, 12)

#### Marginal Citations

- M1** 1968 c. 73.  
**M2** 1969 c. 35.

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**M3** 1986 c. 44.

**M4** 1986 c. 31.

**M5** 1945 c. 18.

**M6** 1969 c. 49.

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