



Town and Country Planning Act 1990

1990 CHAPTER 8

PART XI

STATUTORY UNDERTAKERS

Preliminary

262 Meaning of “statutory undertakers”.

- (1) Subject to the following provisions of this section, in this Act “statutory undertakers” means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power and a relevant airport operator (within the meaning of Part V of the ^{M1}Airports Act 1986).
- (2) Subject to the following provisions of this section, in this Act “statutory undertaking” shall be construed in accordance with subsection (1) and, in relation to a relevant airport operator (within the meaning of that Part), means an airport to which that Part of that Act applies.
- (3) Subject to [^{F1}subsections (5) to (5B)], for the purposes of the provisions mentioned in subsection (4) any [^{F2}public gas transporter], water or sewerage undertaker, the National Rivers Authority, [^{F3}any universal postal service provider in connection with the provision of a universal postal service][^{F4}, the Civil Aviation Authority and a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services)] shall be deemed to be statutory undertakers and their undertakings statutory undertakings.
- (4) The provisions referred to in subsection (3) are sections 55, 90, 101, 108(3), ^{F5} . . . , 139 to 141, 143, 148, 170(12)(b), 236(2)(a), 237 to 241, 245, 247(4)(b), 253, 257(2), 263(1) and (2), 264, 266 to 283, 288(10)(a), 306, 325(9), 336(2) and (3), paragraph 18 of Schedule 1 and Schedules 8, 13 and 14.
- (5) Subsection (4) shall apply—

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- (a) as respects [^{F6}a universal postal service provider in connection with the provision of a universal postal service], as if the reference to sections 55, 247(4)(b), 253 and 257(2) were omitted; and
- (b) as respects [^{F7}a universal postal service provider in connection with the provision of a universal postal service][^{F8}, the Civil Aviation Authority and a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services)] as if—
 - (i) the references to sections 245, 263(1) and (2) and 336(2) and (3) were omitted; and
 - (ii) after the words “ 266 to 283” there were inserted the words “ (except section 271 as applied by section 13 of the Opencast Coal Act 1958)”.

[^{F9}(5A) For the purposes of this Act

- (a) a person who holds a licence under Chapter I of Part I of the Transport Act 2000 shall not be considered to be a statutory undertaker unless the person is carrying out activities authorised by the licence;
- (b) the person's undertaking shall not be considered to be a statutory undertaking except to the extent that it is the person's undertaking as licence holder.]

[^{F10}(5B) The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service shall be taken to be his statutory undertaking for the purposes of this Act; and references in this Act to his undertaking shall be construed accordingly.]

- (6) Any holder of a licence under section 6 of the ^{M2}Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking—
 - (a) for the purposes of the provisions mentioned in subsection (7)(a), if he holds a licence under subsection (1) of that section;
 - (b) for the purposes of the provisions mentioned in subsection (7)(b), if he is entitled to exercise any power conferred by Schedule 3 to that Act; and
 - (c) for the purposes of the provisions mentioned in subsection (7)(c), if he is entitled to exercise any power conferred by paragraph 1 of Schedule 4 to that Act.
- (7) The provisions referred to in subsection (6) are—
 - (a) sections 55, 108(3), ^{F5}. . . , 139 to 141, 143, 148, 236(2)(a), 237, 245, 253, 263(1) and (2), 264, 266 to 283, 288(10)(a), 306, 325(9) and 336(2) and (3), paragraph 18 of Schedule 1 and Schedule 13;
 - (b) sections 170(12)(b) and 238 to 241; and
 - (c) sections 247(4) and 257(2) and Schedule 14.

Textual Amendments

- F1** Words in s. 262(3) substituted (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(1), **Sch. 1**, para. 80(2)(a)
- F2** Words in s. 262(3) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 18(2)**; S.I. 1996/218, **art. 2**
- F3** Words in s. 262(3) substituted (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(1), **Sch. 1 para. 80(2)(b)**
- F4** Words in s. 262(3) substituted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 6(2)**; S.I. 2001/869, **art. 2**
- F5** Word in s. 262(4)(7)(a) repealed (25.9.1991) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), ss. 31, 84(6), **Sch. 6 para. 22**, **Sch. 19 Pt. II** (with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 4)
- F6** Words in s. 262(5)(a) substituted (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(1), **Sch. 1 para. 80(3)**

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- F7** Words in s. 262(5)(b) substituted (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(1), **Sch. 1 para. 80(3)**
- F8** Words in s. 262(5)(b) substituted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 6(3)**; S.I. 2001/869, **art. 2**
- F9** S. 262(5A) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 6(4)**; S.I. 2001/869, **art. 2**
- F10** S. 262(5B) inserted (26.3.2001) by S.I. 2001/1149, arts. 1(2), 3(1), **Sch. 1 para. 80(4)**

Modifications etc. (not altering text)

- C1** S. 262 applied (10.11.1993) by 1993 c. 28, s. 169, **Sch. 20 Pt. II para. 19(2)**; S.I. 1993/2762, **art. 3**
- C2** S. 262(1) extended (14.3.2002) by The Chester Guided Busway Order 2002 (S.I. 2002/412), **art. 34** (with **art. 38**)
- S. 262(1) modified (11.1.2006) by The Cambridgeshire Guided Busway Order 2005 (S.I. 2005/3523), arts. 18(4), 49(1) (with **art. 52**)
- S. 262(1) modified (13.12.2006) by The Luton Dunstable Translink Order 2006 (S.I. 2006/3118), **art. 18(4)**

Marginal Citations

- M1** 1986 c. 31.
- M2** 1989 c. 29.

263 Meaning of “operational land”.

- (1) Subject to the following provisions of this section and to section 264, in this Act “operational land” means, in relation to statutory undertakers—
- land which is used for the purpose of carrying on their undertaking; and
 - land in which an interest is held for that purpose.
- (2) Paragraphs (a) and (b) of subsection (1) do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings.
- [^{F11}(2A) Subsection (1) does not apply in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000.
- (2B) Subject to section 264, in this Act “operational land” means, in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000, land—
- which is used by the licence holder, or by a company associated with it, for the purpose of carrying out activities authorised by the licence, or
 - in which the licence holder, or a company associated with it, holds an interest for that purpose.
- (2C) If for the purposes of this Act a question arises whether land is operational land in relation to a person who holds a licence under Chapter I of Part I of the Transport Act 2000 the question must be decided by the Secretary of State.]
- [^{F12}(2D) Subsection (1) does not apply in relation to a universal postal service provider.
- ^{F12}(2E) Subject to subsections (3) and (4) and section 264, in this Act “operational land” means, in relation to a universal postal service provider, land—
- which is used by the provider, or by a company associated with him, for any purpose in connection with the provision of a universal postal service, or
 - in which the provider, or a company associated with him, holds an interest for any such purpose.]

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- (3) In sections 108(3), ^{F13} . . . , 266 to 283 and Part II of Schedule 8 “operational land”, in relation to [^{F14}a universal postal service provider] and the Civil Aviation Authority, means land of the [^{F15}provider’s] or, as the case may be, of the Authority’s of any such class as may be prescribed by regulations.
- (4) Such regulations—
- (a) shall be made—
 - (i) in the case of [^{F16}a universal postal service provider], by the appropriate Minister and the Secretary of State acting jointly; and
 - (ii) in the case of the Civil Aviation Authority, by the appropriate Minister;
 - (b) may define a class of land by reference to any circumstances whatsoever, and
 - (c) in the case of the Civil Aviation Authority, may make provision for different circumstances, including prescribing different classes of land for the purposes of different provisions.

Textual Amendments

- F11** S. 263(2A)(2B)(2C) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 7** (with s. 106); S.I. 2001/869, **art. 2**
- F12** S. 263(2D)(2E) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 81(2)**
- F13** Words in s. 263(3) repealed (25.9.1991) by **Planning and Compensation Act 1991** (c. 34, SIF 123:1), ss. 31, 84(6), **Sch. 6 para. 23**, **Sch. 19 Pt. II** (with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 4)
- F14** Words in s. 263(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 81(3)(a)**
- F15** Words in s. 263(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 81(3)(b)**
- F16** Words in s. 263(4)(a)(i) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 81(4)**

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 ^{M3}Transport Act 1968, the ^{M4}Transport (London) Act 1969, the ^{M5}Gas Act 1986, the ^{M6}Airports Act 1986 [^{F17}the Water

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- Act 1989 or the Water Industry Act 1991] from other statutory undertakers;
and
- (b) immediately before transfer the land was operational land of those other undertakers.
- (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 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; 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 ^{M7}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 ^{M8}Post Office Act 1969.
- (8) Where an interest in land is held by

[^{F18}—

- (a) the Civil Aviation Authority, or
- (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 [^{F19}or the licence holder]for the purposes of this act.

Textual Amendments

F17 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](#)

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F18 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)**

F19 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)

- C3** 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)

Marginal Citations

- M3** 1968 c. 73.
M4 1969 c. 35.
M5 1986 c. 44.
M6 1986 c. 31.
M7 1945 c. 18.
M8 1969 c. 49.

265 Meaning of “the appropriate Minister”.

- (1) Subject to the following provisions of this section, in this Act “the appropriate Minister” means—
- ^{F20}(a)
- ^{F21}(a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour, pier or lighthouse undertaking, the Civil Aviation Authority, a person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000, or a relevant airport operator (within the meaning of Part 5 of the Airports Act 1986), the Secretary of State for Transport;
- (b) in relation to statutory undertakers carrying on an undertaking for the supply of hydraulic power, the ^{F22}Secretary of State for Trade and Industry;
- (c) in relation to ^{F23}a universal postal service provider], the Secretary of State for Trade and Industry; and
- ^{F24}^{F25}(d) in relation to any other statutory undertakers, the First Secretary of State.]]
- (2) For the purposes of sections 170(12), 266 to 280, 325(9) and 336(2) and (3) and Part II of Schedule 8, “the appropriate Minister”, in relation to a ^{F26}public gas transporter] or a holder of a licence under section 6 of the ^{M9}Electricity Act 1989, means the ^{F22}Secretary of State for Trade and Industry].
- (3) For the purposes of sections 170(12), 266 to 280, 325(9) and 336(2) and (3) and Part II of Schedule 8 and Schedule 14 “the appropriate Minister”—

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- (a) in relation to the National Rivers Authority, means the Secretary of State or the Minister of Agriculture, Fisheries and Food; and
 - (b) in relation to a water or sewerage undertaker, means the Secretary of State.
- (4) References in this Act to the Secretary of State and the appropriate Minister—
- (a) if the appropriate Minister is not the one concerned as the Secretary of State, shall be construed as references to the Secretary of State and the appropriate Minister; and
 - (b) if the one concerned as the Secretary of State is also the appropriate Minister, shall be construed as references to him alone,
- and similarly with references to a Minister and the appropriate Minister and with any provision requiring the Secretary of State to act jointly with the appropriate Minister.

Textual Amendments

- F20** S. 265(1)(a) repealed (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 11, **14(a)**
- F21** S. 265(1)(a) inserted (25.11.2002) by [The Transfer of Functions \(Transport, Local Government and the Regions\) Order 2002 \(S.I. 2002/2626\)](#), art. 20, **Sch. 2 para. 15(4)(a)**
- F22** Words in s. 265(1)(2) substituted (5.7.1992) by S.I. 1992/1314, art. 3(3), **Sch. para. 1(f)**
- F23** Words in s. 265(1)(c) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 82**
- F24** S. 265(1)(d) substituted (26.1.1998) by S.I. 1997/2971, art. 6(1), Sch. paras. 11, **14(b)**
- F25** S. 265(1)(d) substituted (25.11.2002) by [The Transfer of Functions \(Transport, Local Government and the Regions\) Order 2002 \(S.I. 2002/2626\)](#), art. 20, **Sch. 2 para. 15(4)(b)**
- F26** Words in s. 265(2) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 18(3)**; S.I. 1996/218, **art. 2**

Modifications etc. (not altering text)

- C4** S. 265(1)(d): functions transferred to the Secretary of State for Transport (25.11.2002) by [The Transfer of Functions \(Transport, Local Government and the Regions\) Order 2002 \(S.I. 2002/2626\)](#), **art. 6** (with arts. 7, 8)
- C5** S. 265(3)(a)(4): functions transferred to the Secretary of State for Environment, Food and Rural Affairs (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), **art. 3(1)(g)(2)** (with art. 6)

Marginal Citations

- M9** 1989 c. 29.

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