



# Town and Country Planning Act 1968

## 1968 CHAPTER 72

### PART VI

#### MISCELLANEOUS CHANGES IN PLANNING LAW

##### *Statutory undertakers*

#### **69 New provision as to what is " operational land " of statutory undertakers.**

- (1) Where an interest in land is held by statutory undertakers for the purpose of the carrying on of their undertaking and—
  - (a) the interest was acquired by them after the commencement of this section ; or
  - (b) it was held by them immediately before that commencement, but the circumstances were then such that the land did not fall to be treated as operational land for the purposes of the principal Act,then the following subsection shall have effect for the purpose of determining whether the land is to be so treated and shall so have effect notwithstanding the definition of " operational land " in section 221(1) of the principal Act.
- (2) The land shall not be treated as operational land for the purposes of the principal Act unless one or both of the following conditions are satisfied with respect to it, namely—
  - (a) there is, or at some time has been, in force with respect to the land a specific planning permission for its development and that development, if carried out, would involve or have involved the use of the land for the purpose of the carrying on of the statutory undertakers' undertaking; or
  - (b) the undertakers' interest in the land was acquired by them as the result of a transfer under provisions of the Transport Act 1968 from other statutory undertakers and the land was, immediately before the transfer, operational land of those other undertakers.
- (3) A specific planning permission for the purpose of subsection (2)(a) above is a planning permission—

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- (a) granted on an application in that behalf under Part III of the principal Act or the enactments previously in force and replaced by that Part of that Act; 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 41 of the principal Act or section 35 of the Town and Country Planning Act 1947 ;

and the reference in paragraph (b) of this subsection to development which has received specific parliamentary approval shall be construed as referring to development authorised by a local or private Act of Parliament or by an order approved by both Houses of Parliament or by an order which has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Act 1945, being an Act or order which designates specifically both the nature of the development thereby authorised and the land upon which it may be carried out.

## **70 Planning applications and appeals by statutory undertakers.**

- (1) In the circumstances mentioned in subsection (2) below, section 159(1) of the principal Act (statutory undertakers' planning applications and appeals, if in respect of operational land, to be dealt with by Ministers) shall apply to an application or appeal by statutory undertakers in respect of land which is not operational land as it applies to an application or appeal in respect of land which is.
- (2) The said circumstances are that—
  - (a) an interest in the land in question is held by the undertakers with a view to its being used for the purpose of carrying on their undertaking ; or
  - (b) it is land in which they propose to acquire an interest with a view to its being so used,
 and (in either case) the planning permission, if granted on the application or appeal, would be for development involving the use of the land for that purpose.
- (3) The following provisions of the principal Act (being provisions which require certain planning decisions and orders affecting statutory undertakers to be subject to special parliamentary procedure) shall cease to have effect:—
  - (a) section 159(2) (decision on planning application in respect of operational land or appeal thereon), except as respects an application for planning permission made before the commencement of this section or an appeal from the decision on an application so made ;
  - (b) section 160(1) (decision of a government department refusing, or attaching conditions to, statutory authorisation for development), except as respects a decision made before that commencement;
  - (c) section 161(2) (order revoking or modifying planning permission in respect of operational land), except as respects an order of which notice has been given under that subsection before that commencement;
  - (d) section 162(2) (order requiring discontinuance of use etc. of operational land), except as respects an order of which notice has been given under that subsection before that commencement;

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- (e) section 163(3)(b) (compulsory purchase order with respect to land acquired by statutory undertakers for the purpose of their undertaking), except as respects an order made or confirmed before that commencement; and
- (f) section 165(3) (order extinguishing a right of way or rights of statutory undertakers in respect of apparatus under certain land), except as respects an order made before that commencement.

**71 Restriction on entitlement of statutory undertakers to compensation for adverse planning decisions.**

- (1) Except as provided by subsection (2) below, statutory undertakers shall not be entitled to compensation in respect of a decision mentioned in section 170(1)(a) or (b) of the principal Act (right to compensation in respect of certain decisions and orders) where that decision is made after the commencement of this section.
- (2) Subsection (1) above shall not apply to compensation in respect of a decision made in accordance with section 159 of the principal Act refusing planning permission for the development of operational land, or granting such permission subject to conditions, where—
  - (a) planning permission for that development would have been granted by a development order but for a direction given under such an order that planning permission so granted should not apply to the development; and
  - (b) it is not development which has received specific parliamentary approval (within the meaning given to that expression by section 69(3) of this Act).
- (3) Section 119 of the principal Act (compensation on refusal of planning permission or its grant subject to conditions) shall not apply in relation to planning permission for the development of operational land of statutory undertakers.

**72 Modifications of s.164 of principal Act.**

- (1) Section 164 of the principal Act (power of Minister, local planning authority or statutory undertakers, on acquisition or appropriation of land for development, by service of notice to secure extinguishment of statutory undertakers' rights over the land or the removal of their apparatus) shall be amended in accordance with this section.
- (2) A notice under that section shall not be served by the acquiring or appropriating authority unless they are satisfied that the extinguishment of the statutory undertakers' right or, as the case may be, the removal of their apparatus, is necessary for the purpose of carrying out any development with a view to which the land was acquired or appropriated.
- (3) The period referred to in subsection (1) of the said section (that is to say the period to be specified in a notice under the section as the period at the end of which the statutory undertakers' right will be extinguished or, as the case may be, before the end of which their apparatus shall be removed) shall be a period of not less than twenty-eight days from the date of service of the notice.

**73 Notice for same purposes as s. 164, but given by statutory undertakers to developing authority.**

- (1) Subject to the provisions of this section, where land has been acquired or appropriated as mentioned in section 164(1) of the principal Act, and—

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- (a) there is on, under or over the land any apparatus vested in or belonging to statutory undertakers; and
- (b) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or re-siting of the apparatus affected by the development,

the undertakers may serve on the acquiring or appropriating authority a notice claiming the right to enter on the land and carry out such works for the removal or re-siting of the apparatus or any part of it as may be specified in the notice.

- (2) Where, after the land has been acquired or appropriated as aforesaid, development of the land is begun to be carried out, no notice under this section shall be served later than twenty-one days after the beginning of the development.
- (3) Where a notice is served under this section, the authority on whom it is served may, before the end of the period of twenty-eight days from the date of service, serve on the statutory undertakers a counter-notice stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection.
- (4) If no counter-notice is served under subsection (3) above, the statutory undertakers shall, after the end of the period of twenty-eight days therein mentioned, have the rights claimed in their notice.
- (5) If a counter-notice is served under subsection (3) above, the statutory undertakers who served the notice under this section may either withdraw it or may apply to the Minister and the appropriate Minister for an order under this section conferring on the undertakers the rights claimed in the notice or such modified rights as the Minister and the appropriate Minister think it expedient to confer on them.
- (6) Where, by virtue of this section or of an order of Ministers thereunder, statutory undertakers have the right to execute works for the removal or re-siting of apparatus, they may arrange with the acquiring or appropriating authority for the works to be carried out by that authority, under the superintendence of the undertakers, instead of by the undertakers themselves.
- (7) Where works are carried out for the removal or re-siting of statutory undertakers' apparatus, being works which the undertakers have the right to carry out by virtue of this section or an order of Ministers thereunder, the undertakers shall be entitled to compensation from the acquiring or appropriating authority ; and the amount of the compensation shall be an amount calculated in accordance with subsections (2) to (4) of section 171 of the principal Act but reduced, in a case where the authority carry out the works, by the actual cost to the authority of doing so.
- (8) In subsections (2) to (4) of section 171 of the principal Act, as they apply for the purposes of this section, any reference to " the proceeding giving rise to compensation " shall, instead of being construed in accordance with subsection (5) of that section, be construed as a reference to the circumstances making it necessary for the apparatus in question to be removed or re-sited.