



# Town and Country Planning (Scotland) Act 1997

## 1997 CHAPTER 8

### PART X

#### STATUTORY UNDERTAKERS

##### *Preliminary*

#### **214 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 or water and a relevant airport operator (within the meaning of Part V of the <sup>M1</sup>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 Part V of the Airports Act 1986), means an airport to which that Part of that Act applies.
- (3) Subject to [<sup>F1</sup>subsections (5) to (5B)], for the purposes of the provisions mentioned in subsection (4) any public gas transporter, [<sup>F2</sup>any universal postal service provider in connection with the provision of a universal postal service] and the Civil Aviation Authority shall be deemed to be statutory undertakers and their undertakings statutory undertakings.
- (4) The provisions referred to in subsection (3) are sections 26, 57, 69, 70, 77(3), 90 to 92, 94, 99, 121(11)(b), 194(2)(a), 196 to 198, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), and Schedules 6, 7, 14 and 16.

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(5) Subsection (4) shall apply—

- (a) as respects [<sup>F3</sup>a universal postal service provider in connection with the provision of a universal postal service], as if the reference to sections 26, 194(2)(a), 196, 200, 202(4)(b), 205(3)(e), 208(2), 215(1) and (2) and 277(2) and (3) were omitted;
- (b) as respects the Civil Aviation Authority, as if the references to sections 200, 215(1) and (2) and 277(2) and (3) were omitted and the reference to Schedule 16 included the words “except paragraph 3”; and
- (c) as respects any public gas transporter, as if the reference to Schedule 7 were omitted and the reference to Schedule 16 included the words “except paragraphs 1 and 3”.

[<sup>F4</sup>(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 <sup>M2</sup>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 2 of Schedule 4 to that Act.

(7) The provisions referred to in subsection (6) are—

- (a) sections 26, 77(3), 90 to 92, 94, 99, 194(2)(a), 196, 200, 205(3)(e), 215(1) and (2), 216, 218, 219, 221 to 236, 239(10)(a), 255, 270(9), 277(2) and (3), Schedule 14 and paragraphs 2(2)(a) and (3)(a) of Schedule 16;
- (b) sections 121(11)(b), 197 and 198; and
- (c) sections 202(4)(b) and 208(2) and paragraphs 1, 6(2)(b)(iii) and (3), 8(5) and (7) and 9(1), (3) and (4) of Schedule 16.

#### Textual Amendments

- F1** Words in s. 214(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(2)(a)**
- F2** Words in s. 214(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(2)(b)**
- F3** Words in s. 214(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(3)**
- F4** S. 214(5B) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 112(4)**

#### Marginal Citations

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

## 215 Meaning of “operational land”.

(1) Subject to the following provisions of this section and to section 216, in this Act “operational land” means, in relation to statutory undertakers—

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- (a) land which is used for the purpose of carrying on their undertaking, and
  - (b) 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.
- [<sup>F5</sup>(2D) Subsection (1) does not apply in relation to a universal postal service provider.
- (2E) Subject to subsections (3) and (4) and section 216, in this Act “operational land” means, in relation to a universal postal service provider, land—
- (a) 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
  - (b) in which the provider, or a company associated with him, holds an interest for any such purpose]
- (3) In sections 77(3), 218 to 236 and paragraph 6 of Schedule 6 “operational land”, in relation to [<sup>F6</sup>a universal postal service provider.] and the Civil Aviation Authority, means land of the Post Office’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) may define a class of land by reference to any circumstances whatsoever, and
  - (b) 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.
- (5) In the case of [<sup>F7</sup>a universal postal service provider] or the Civil Aviation Authority, if any question arises as to whether land belonging to either of them falls within a class defined by such regulations, it shall be determined by the Secretary of State.

#### Textual Amendments

- F5** S. 215(2D)(2E) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 113(2)
- F6** Words in s. 215(3) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 113(3)
- F7** Words in s. 215(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), Sch. 1 para. 113(4)

## 216 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 8th December 1969, 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 1947 Act.
- (2) Where this section applies in respect of any land then, notwithstanding the provisions of section 215, 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—

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- (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 statutory undertakers' interest in the land was acquired by them as the result of a transfer under the provisions of the <sup>M3</sup>Transport Act 1968, the <sup>M4</sup>Gas Act 1986 or the <sup>M5</sup>Airports Act 1986 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,
  - (b) granted by provisions of a development order granting planning permission generally for development which has received specific parliamentary approval,
  - (c) granted by a special development order in respect of development specifically described in the order,
  - (d) deemed to be granted by virtue of a direction of a government department under section 57(1), or
  - (e) deemed to be granted by virtue of paragraph 27 of Schedule 9 to the <sup>M6</sup>Post Office Act 1969.
- (6) In subsection (5)—
- (a) the reference in paragraph (a) to Part III includes a reference to Part III of the 1972 Act and the enactments in force before the commencement of that Act and replaced by Part III of it,
  - (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, <sup>F8</sup> . . .
    - (iii) by an order which has been brought into operation in accordance with the provisions of the <sup>M7</sup>Statutory Orders (Special Procedure) Act 1945,

[<sup>F9</sup>;or

    - (iv) by an order which has been brought into operation in accordance with the provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999 <sup>F10</sup> or of an enactment comprised in, or contained in an instrument made under, an Act of the Scottish Parliament providing, or making provision for, the special procedure referred to in section 94(2) of the Scotland Act 1998]

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, and
  - (c) the reference in paragraph (d) to section 57(1) includes a reference to section 37 of the 1972 Act and section 32 of the 1947 Act.

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- (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>M8</sup>Post Office Act 1969.
- (8) Where an interest in land is held by the Civil Aviation Authority this section shall not apply for the purpose of determining whether the land is operational land in relation to the Authority for the purposes of this Act.

**Textual Amendments**

- F8** Word in s. 216(6)(b)(ii) repealed (27.7.2000) by S.I. 2000/2040, art. 2, **Sch. Pt. I para. 20(a)**, Pt. III
- F9** S. 216(6)(b)(iv) and preceding word inserted (27.7.2000) by S.I. 2000/2040, art. 2, **Sch. Pt. I para. 20(b)**
- F10** S.I. 1999/1593.

**Marginal Citations**

- M3** 1968 c. 73.
- M4** 1986 c. 44.
- M5** 1986 c. 31.
- M6** 1969 c. 48.
- M7** 1945 c. 18.
- M8** 1969 c. 49.

<sup>F11</sup>**217** .....

**Textual Amendments**

- F11** S. 217 repealed (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 127(3) Pt IV**; S.I. 1998/3178, **art. 3**

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