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Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

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Version History

Document	Version	Status	Description / Changes
26/04/2023	A	Final	Current position of all Protective Provisions as of Deadline 2

1. About this document

1.1 Introduction

- 1.1.1 At Written Question 4.0.3, the Examining Authority (ExA) requested an updated table on progress of Protective Provisions.
- 1.1.2 This document summarises the current position of Protective Provisions currently being negotiated with each statutory undertaker, along with details of their undertaking, their land/rights affected by the DCO, and an estimate of likely timescales to reach agreement.

2. Protective Provisions – Progress Schedule

2.1 Table update on progress

2.1.1 Where bespoke protective provisions have not yet been included on the face of the draft DCO, and bespoke provisions have been requested by a statutory undertaker, these are being progressed with a view to including the most up to date draft of each bespoke provision within the draft DCO at Deadline 3.

2.1.2 Taking each undertaker in turn, the below table sets out the current position regarding protective provisions:

Table 2.1 – Protective Provisions – Progress Schedule

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
Northern Powergrid (Yorkshire) PLC	Electricity Transmission	Compulsory Acquisition of Rights: B1-23, B1-30, B2-37, B4-02, C4-01, C4-08, C8-12, C8-15, C8-16, C8-18, C8-24, C8-27, C8-29, C8-30,	Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 16, paragraph 2(2)(g) of the	Yes – Relevant Representation received 9 February 2023. Section 138 engaged Section 127 engaged.	Protective provisions for the benefit of electricity undertakers (part 1) (which also includes gas, water and sewerage undertakers) have been	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		C8-31, C8-33, C8-34, C9-06, C9-23, C9-27, C9-30, C9-33, C9-35, C9-42, C9-44, C9-45, C9-46, C9-48, C9-50, C9-51, C9-52, D1-01, D1-02, D1-04, D1-05, D1-06, D1-07, D1-10, D1-12, D1-13, D1-15, D1-16, D1-30, D1-61, D1-65, D1-66, D1-67, D1-68, D1-76, D1-82, E2-05, E2-13, E2-14, E2-15, E2-16, E2-17, E3-17, E3-19, E3-23, E3-31, E3-33, E3-34, E3-35, E3-36, E3-37, E3-38,	Electricity Act 1989 Section 138 – By virtue of Section 226(6) Town and Country Planning Act 1990		included within the DCO. These are not agreed by Northern Power Grid and so bespoke protective provisions are currently being negotiated for this statutory undertaker and will be included within the draft DCO once in agreed form. This will protect both the Yorkshire and Northeast entity.		

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		E3-40, E3-41, E3-41a, E3-45, E3-46, E3-48, E3-49, E5-05, E5-11, E5-14, E5-15, E5-16, E5-21, E5-23, E6-06, E6-09, E6-12, E6-16, E6-28, E6-33, E6-36, E6-41, E6-43, E6-44, E6-46, E7-05, E7-18, E7-22, E7-23, E7-25, E7-29, E7-30, E7-32, E7-36, E7-38, E7-38a, E7-39, E7-41, E7-44, E7-44a, E7-45, E7-48, E7-49, E7-50, E7-53, F1-07, F1-13, F1-17, F1-18, F1-20,					

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		F1-23, F1-25, F1-28 Temporary Use: B1-21, C9-28, D1-18, D1-21, D1-80, D1-81, E6-13					
Northern Powergrid (Northeast) PLC	Electricity Transmission	Compulsory Acquisition of Rights: B1-61, B1-63, B1-65, B1-66, B2-41, B2-42, B2-46, B2-53, B2-74, B2-75, B2-79, B3-02, B3-07, B3-08, B3-09, B3-13, B3-14, B3-21, B3-22, B3-23, B3-26, B3-43, B3-65, B3-66, B3-67, B3-68,	Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 16, paragraph 2(2)(g) of the Electricity Act 1989 Section 138 – By virtue of Section 226(6) Town and	No Relevant Representation received. Section 138 engaged. Section 127 engaged.	Protective provisions for the benefit of electricity undertakers (part 1) (which also includes gas, water and sewerage undertakers) have been included within the DCO. These are not agreed by Northern Power	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		B3-70, B3-72, B4-25, B4-26, B5-17, B5-18, B5-19, B5-47, B5-51, B5-54, B5-55, B5-56, C1-02, C1-03, C1-04, C1-05, C1-06, C1-13, C2-04, C2-07, C4-02, C4-04, C4-07, C4-06, C4-09, C8-13, C8-14, C8-17 Temporary Use: B1-19, B3-40, B3-45, B4-24, B5-21, B5-24, B5-27	Country Planning Act		Grid and so bespoke protective provisions are currently being negotiated for this statutory undertaker and will be included within the draft DCO once in agreed form. This will protect both the Yorkshire and Northeast entity.		
Network Rail Infrastructure Limited (NRIL)	Rail transport infrastructure and services	Compulsory Acquisition of Rights:	By virtue of Section 8 Acquisition of the Land Act 1981 as being	Yes – Relevant Representation received 13 February 2023.	Protective provisions for the benefit of Network Rail have been	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		B2-36, B2-37, B2-40, B2-68, B3-28, B3-35, B3-37, B3-39, C1-02, C1-17, E5-04, E5-15, E6-22, E6-36 Temporary Use: B2-55, B3-29, B3-30, B3-31, B3-32, B3-34, B3-39, B3-73	within the definition of "railway" Section 138 - By virtue of Section 262(1)Town and Country Planning Act as being within the definition of "railway"	Section 138 engaged. Section 127 engaged.	included within the DCO (part 4). These are not agreed by Network Rail and so negotiations are continuing with a view to reaching a suitable update to be incorporated into the draft DCO.		
Cellnex UK Limited (On Tower UK 5 Limited in the Book of Reference)	Telecommunications	Compulsory Acquisition of Rights: D1-28, D1-29, D1-32, D1-46, D1-56	S138 applies to Cellnex UK because the definition of "relevant apparatus" at Section 138(3)(b) includes	No Relevant Representation received. Section 138 engaged. Section 127 not engaged.	Protective provisions for the protection of Operators of Electronic Communications Code Networks have been included	Not applicable protective provisions are not in dispute.	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
			"electronic communications apparatus kept installed for the purposes of an electronic communications code network"		within the DCO (part 2). The content of these protective provisions is not in dispute with Cellnex UK.		
Hutchison 3G UK Limited	Telecommunications	Compulsory Acquisition of Rights: D1-07, D1-09, D1-10, D1-13, D1-15 Extinguishment of Private Rights: D1-04, D1-08	S138 applies to Hutchinson 3 EE because the definition of "relevant apparatus" at Section 138(3)(b) includes "electronic communications apparatus kept installed for the purposes of an	No Relevant Representation received. Section 138 engaged Section 127 not engaged	Protective provisions for the protection of Operators of Electronic Communications Code Networks have been included within the DCO. The content of these protective provisions is not in dispute	Not applicable protective provisions are not in dispute.	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
			electronic communications code network”		with Hutchinson 3 EE.		
BT (Openreach Limited)	Telecommunications	Compulsory Acquisition of Rights: D1-06, D1-38, D1-44, D1-45, D1-50, D1-71, D1-74, E3-19, E3-21, E3-22, E3-24, E3-25, E3-27, E3-28, E3-29, E3-30, E3-37, E3-38, E3-40, E3-41a, E3-43, E5-06, E6-28, E6-33, E6-36, E6-40, E7-17, E7-18, E7-23, E7-25, E7-30, E7-38, E7-38a, E7-44, E7-44a, E7-47,	S138 applies to BT because the definition of “relevant apparatus” at Section 138(3)(b) includes “electronic communications apparatus kept installed for the purposes of an electronic communications code network”	No Relevant Representation received. Section 138 engaged Section 127 not engaged.	Protective provisions for the protection of Operators of Electronic Communications Code Networks have been included within the DCO. The content of these protective provisions is not in dispute with BT.	Not applicable protective provisions are not in dispute.	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		F1-07, F1-13, F1-17, F1-18, F1-20, F1-28, Compulsory Acquisition of Land: F1-10, F1-15, F1-23 Temporary Use: D1-72,					
National Gas Transmission plc	Gas distribution	Compulsory Acquisition of Rights: D1-28, D1-29, D1-32, D1-39, D1-46, D1-56, E3-08, E3-13,	Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 4, paragraph 2(xxxi) of the Gas Act 1995.	Yes – Relevant Representation received on 13 February 2023. Section 138 engaged Section 127 engaged	Protective provisions for the benefit of gas undertakers (which also includes electricity, water and sewerage undertakers) have been	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
			Section 138 - By virtue of Section 262(3) Town and Country Planning Act as being within the definition of “gas transporter”		included within the DCO. These are not agreed by National Gas Transmission and so bespoke protective provisions are currently being negotiated for this statutory undertaker and will be included within the draft DCO once in agreed form.		
Northern Gas Networks Limited	Gas distribution	Compulsory Acquisition of Rights: B2-05, B2-24, B2-30, B2-35, B2-60, B3-09, B3-10, B3-12, B3-14, C8-12,	Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act	No Relevant Representation received. Section 138 engaged.	Protective provisions for the benefit of gas undertakers (which also includes electricity,	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		<p>C8-18, C8-24, C8-27, C8-28, C8-29, C8-30, C8-33, D1-02, D1-03, D1-06, D1-07, D1-09, D1-10, D1-11, D1-14, D1-15, D1-16, D1-19, D1-23, D1-27, D1-32, D1-33, D1-39, D1-56, D1-77, D1-84, E7-45, F1-39</p> <p>Extinguishment of Private Rights:</p> <p>D1-04, D1-08</p> <p>Temporary Use:</p> <p>D1-18, D1-35, D1-85</p>	<p>1981 by virtue of Schedule 4, paragraph 2(xxxi) of the Gas Act 1995.</p> <p>Section 138 - By virtue of Section 262(3) Town and Country Planning Act as being within the definition of "gas transporter"</p>	<p>Section 127 not engaged.</p>	<p>water and sewerage undertakers) have been included within the DCO.</p> <p>These are not agreed by Northern Gas Network and so bespoke protective provisions are currently being negotiated for this statutory undertaker and will be included within the draft DCO once in agreed form.</p>		

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
Canal and River Trust	Navigation authority	-	The Trust has a duty under S105 Transport Act 1968 to maintain commercial waterways in a suitable condition for use.	Yes – Relevant Representation received on 7 February 2023. Section 138 engaged. Section 127 engaged.	Protective provisions for the benefit of the Canal and River Trust have been included within the DCO (Part 3). These are not agreed by the Canal and River Trust and so negotiations are continuing with a view to reaching a suitable update to be incorporated into the draft DCO.	Before Deadline 5	None
Yorkshire Water	Water and waste water services	Compulsory Acquisition of Rights:	Deemed to be a statutory	No Relevant Representation received.	Protective provisions for the benefit of	Side agreement currently	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
Services Limited		B2-07, B2-26, B2-29, B2-37, B2-39, B2-41, B2-42, B2-46, B2-50, B2-51, B2-52, B2-53, B2-57, B2-58, B2-62, B2-68, B2-72, B2-73, B3-42, B3-43, B3-48, B3-53, B5-08, B5-11, B5-12, B5-14, B5-15, B5-18, B5-19, B5-23, B5-25, B5-40, B5-46, B5-49, B5-54, B5-55, B5-56, B5-57, C1-02, C1-03, C1-05, C1-06, C1-09, C1-13, C1-15, C1-16, C2-09, C4-03, C4-12, C6-02, C6-03, C6-05,	undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 25, paragraph 1(2) (xxvii) of the Water Act 1989. Section 138 By virtue of Section 262(3) as being within the definition of “water or sewerage undertaker”.	Section 138 engaged Section 127 not engaged	water undertakers (which also includes electricity, gas and sewerage undertakers) have been included within the DCO. Whilst it is understood that these are not objected to by Yorkshire Water, an agreement is being negotiated with Yorkshire Water to ensure that their assets are satisfactorily protected.	being negotiated. Protective Provisions before Deadline 5	

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		C6-09, C8-12, C8-18, C8-28, C8-29, C8-33, C9-23, C9-27, C9-38, C9-39, C9-41, C9-52, D1-30, D1-38, D1-41, D1-44, D1-50, D1-73, D1-74, D1-75, E3-16, E3-23a, E3-38, E3-41a, E5-17, E6-06, E6-19, E6-20, E6-22, E6-28, E6-33, E6-40, E7-18, E7-19, E7-22, E7-23, E7-40, E7-53, F1-07, F1-10, F1-12, F1-13, F1-15, F1-17, F1-20, F1-23, F1-28					

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		Temporary Use: B2-06, B2-14, B2-28, B2-34, B2-48, B2-49, B2-55, B2-61, B2-64, B3-40, B3-44, B3-45, B3-52, B3-54, B5-24, B5-27, B5-28, B5-58, B5-59, D1-37, D1-72, E7-27, E7-34					
National Highways	Highways Authority	Compulsory Acquisition of Rights: B2-30, B2-35, B2-47, B2-52, B2-59, B2-60, B2-65, B2-66, B2-67, B3-01, B3-07, B3-08, B3-09, B3-11, B3-66, B3-74,	By virtue of Section 8 Acquisition of the Land Act 1981 as being within the definition of "road transport"	Yes – Relevant Representation received 20 January 2023. Section 138 engaged. Section 127 engaged.	No protective provisions have been provided for the benefit of National Highways in the DCO to date. Following engagement with National Highways, it is	Before Deadline 5	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
		<p>B3-75, D1-17, D1-24, D1-60, E6-02, E6-10, E7-04, E7-05, E7-07, E7-08, E7-10, E7-11, E7-12, E7-14, E7-15, E7-19, E7-24, E7-29, E7-32, E7-33, E7-36, E7-38, E7-38a, E7-39, E7-44, E7-44a, E7-45, E7-47, E7-48, E7-49, E7-50, E7-51, E7-52, E7-53, F1-30, F1-39</p> <p>Temporary Use:</p> <p>B2-48, B3-05, B3-06, E7-27, E7-37, E7-43, F1-31, F1-34, F1-37</p>			<p>anticipated that bespoke protective provisions will be included on the face of the DCO to protect National Highways' interests.</p>		

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
Ainsty (2008) Internal Drainage Board	IDB	Compulsory Acquisition of Rights: B4-11, B4-15, B4-21, B4-22, B5-34 Temporary Use: B4-10, B4-18, B4-23,	For the purposes of S127 and S138 of the Planning Act 2008, Ainsty (2008) Internal Drainage Board is not a Statutory Undertaker.	Yes – Relevant Representation made 9 February 2023 Section 127 not engaged Section 138 not engaged	Not applicable as Article 19 (Discharge of Water) is being updated.	Not applicable	None
Foss (2008) Internal Drainage Board	IDB	-	For the purposes of S127 and S138 of the Planning Act 2008, Foss (2008) Internal Drainage Board is not a Statutory Undertaker.	Yes – Relevant Representation made 9 February 2023 Section 127 not engaged Section 138 not engaged	Not applicable as Article 19 (Discharge of Water) is being updated.	Not applicable	None
Kyle Internal Drainage Board	IDB	-	For the purposes of S127 and S138 of the Planning	No Relevant Representation made.	Not applicable as Article 19 (Discharge of	Not applicable	None

Statutory Undertaker name	Nature of Undertaking	Land/rights affected	How are they a Statutory Undertaker	Representation made/S127 engaged and/or S138 engaged	Status of Discussions including Status of protective provisions and/or commercial agreement	Estimate of the timescale for securing agreement	Envisaged impediments to the securing of such agreements
			Act 2008, Kyle (2008) Internal Drainage Board is not a Statutory Undertaker.	Section 127 not engaged S138 not engaged	Water) is being updated.		

2.2 Explanatory Note

2.2.1 The definitions of statutory undertaker for the purposes of Section 127 and 138 of the Planning Act 2008 are different. Please see extracts from both sections below.

2.2.2 Extract from Section 127(8) Planning Act 2008:

(8) In this section—

“statutory undertakers” has the meaning given by section 8 of the Acquisition of Land Act 1981 (c. 67) and also includes the undertakers—

(a) which are deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment;

(b) which are statutory undertakers for the purposes of section 16(1) and (2) of that Act (see section 16(3) of that Act).

2.2.3 Extract from Section 8 Acquisition of Land Act 1981:

(8)(1) In this Act, unless the context otherwise requires, “statutory undertakers” means—

(a) any person authorised by any enactment to construct, work or carry on—

- (i) any railway, light railway, tramway, road transport, water transport, canal or inland navigation undertaking, or*
 - (ii) any dock, harbour, pier or lighthouse undertaking, or*
 - (iii) any undertaking for the supply of hydraulic power, or*
 - (b) the Civil Aviation Authority [or a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence)], or*
 - (c) [a universal service provider in connection with the provision of a universal postal service]*
- and in this subsection “enactment” means any Act or any order or scheme made under or confirmed by an Act.*

2.2.4 Extract from Section 138(4A) Planning Act 2008:

(4A) In this section “statutory undertakers” means persons who are, or are deemed to be, statutory undertakers for the purpose of any provision of Part 11 of TCPA 1990.

2.2.5 Extract from Section 262 Town and Country Planning Act 1990:

262 (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 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 subsections (5) to (5B), for the purposes of the provisions mentioned in subsection (4) any gas transporter, water or sewerage undertaker, the Environment Agency, the Natural Resources Body for Wales, any universal postal service provider in connection with the provision of a universal postal service, 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.

(6) Any holder of a licence under section 6 of the Electricity Act 1989 shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking.

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