

YG-DCO-104(B)

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.12(B) Protective Provisions Progress Schedule (Tracked)

Final Issue AB
April/June 2023

Planning Inspectorate Reference: EN020024

Infrastructure Planning (Applications, Prescribed Forms and Procedure)
Regulations 2009 Regulation 5(2)(q)

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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 |
| <u>06/06/2023</u> | <u>B</u> | <u>Final</u> | <u>Updated for Deadline 4</u> |
| | | | |
| | | | |

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 5. Should agreement not be reached in respect of the specific bespoke wording to be applied for a statutory undertaker's protective provisions by Deadline 5, a section 127 and 138 statement will be submitted to the examination reflecting each party's position and justification for the wording National Grid proposes to include on the face of the draft DCO.

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, | Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of | Yes – Relevant Representation received 9 February 2023. Section 138 engaged | Protective provisions for the benefit of electricity undertakers (part 1) (which also includes gas, water and | 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 |
|---------------------------|-----------------------|---|---|--|--|--|--|
| | | C8-16, C8-18, C8-24, C8-27, C8-29, C8-30, 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, | Schedule 16, paragraph 2(2)(g) of the Electricity Act 1989 Section 138 – By virtue of Section 226(6) Town and Country Planning Act <u>1990</u> | Section 127 engaged. | sewerage undertakers) have been 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 | | |

| 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 |
|---------------------------|-----------------------|--|-------------------------------------|--|--|--|--|
| | | E3-33, E3-34, E3-35, E3-36, E3-37, E3-38, 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, | | | Northeast entity. <u>The issues between the parties have narrowed considerably and agreement is anticipated in advance of Deadline 5.</u> | | |

| 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 |
|------------------------------------|--------------------------|---|--|--|--|--|--|
| | | F1-13, F1-17, F1-18, F1-20, 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, | 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 | 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. | 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 |
|---------------------------|-----------------------|--|---|--|---|--|--|
| | | B3-65, B3-66, B3-67, B3-68, 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 | Section 138 – By virtue of Section 226(6) Town and Country Planning Act 1990 | | 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. <u>The issues between the parties have narrowed</u> | | |

| 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 |
|--|--|--|---|---|--|---|--|
| | | | | | <u>considerably and agreement is anticipated in advance of Deadline 5.</u> | | |
| Network Rail Infrastructure Limited (NRIL) | Rail transport infrastructure and services | <p>Compulsory Acquisition of Rights:</p> <p>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</p> <p>Temporary Use:</p> <p>B2-55, B3-29, B3-30, B3-31, B3-32, B3-34, B3-39, B3-73</p> | <p>By virtue of Section 8 Acquisition of the Land Act 1981 as being within the definition of "railway"</p> <p>Section 138 - By virtue of Section 262(1) Town and Country Planning Act <u>1990</u> as being within the definition of "railway"</p> | <p>Yes – Relevant Representation received 13 February 2023.</p> <p>Section 138 engaged.</p> <p>Section 127 engaged.</p> | <p>Protective provisions for the benefit of Network Rail have been included within the DCO (part 4).</p> <p>These are not agreed by Network Rail and so negotiations are continuing with a view to reaching a suitable update to be incorporated</p> | <p><u>Before National Grid is aiming to reach agreement by Deadline 5 but this may not be possible.</u></p> | <p><u>None Updates to Network Rail's standard form protective provisions from the precedent position previously confirmed in National Grid DCOs. National Grid are considering the extent to which it is able to update the approach</u></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 |
|--|-----------------------|---|--|--|---|--|--|
| | | | | | into the draft DCO. | | <u>which has been followed between the parties on previous Projects.</u> |
| 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 “electronic communications apparatus kept installed for the purposes of an electronic communications | 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 (part 2). The content of these protective provisions is not in dispute with Cellnex UK. One query has been raised by | 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 |
|---------------------------|-----------------------|---|--|--|---|--|--|
| | | | code network” | | Cellnex UK regarding the provision for outages. National Grid has responded to this query and explained that no amendment to the protective provisions is required. | | |
| 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 | 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 | 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 |
|---------------------------|-----------------------|--|---|---|--|--|--|
| | | | communications apparatus kept installed for the purposes of an electronic communications code network” | | provisions is not in dispute 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, | 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 | 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 |
|-------------------------------|-----------------------|---|---|---|---|--|--|
| | | E7-17, E7-18, E7-23, E7-25, E7-30, E7-38, E7-38a, E7-44, E7-44a, E7-47, 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, | communications code network” | | | | |
| National Gas Transmission plc | Gas distribution | Compulsory Acquisition of Rights: D1-28, D1-29, D1-32, D1-39, | Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act | Yes – Relevant Representation received on 13 February 2023. Section 138 engaged | Protective provisions for the benefit of gas undertakers (which also includes | <u>National Grid is aiming to reach agreement by</u> Before Deadline 5 | <u>None</u> <u>National Grid is only able to agree Protective Provisions which are reflective of</u> |

| 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 |
|---------------------------|-----------------------|--|--|--|--|--|---|
| | | D1-46, D1-56, E3-08, E3-13, | <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 <u>1990</u> as being within the definition of “gas transporter”</p> | Section 127 engaged | <p>electricity, water and sewerage undertakers) have been included within the DCO.</p> <p>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.</p> | <u>but this may not be possible.</u> | <u>the scale of impacts on National Gas Transmission's apparatus.</u> |
| Northern Gas | Gas distribution | Compulsory Acquisition of Rights: | Deemed to be a statutory | No Relevant Representation received. | Protective provisions for the benefit of | 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 |
|---------------------------|-----------------------|---|---|---|---|--|--|
| Networks Limited | | <p>B2-05, B2-24, B2-30, B2-35, B2-60, B3-09, B3-10, B3-12, B3-14, C8-12, 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>undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 4, paragraph 2(xxix) of the Gas Act 1995.</p> <p>Section 138 - By virtue of Section 262(3) Town and Country Planning Act <u>1990</u> as being within the definition of “gas transporter”</p> | <p>Section 138 engaged.</p> <p>Section 127 not engaged.</p> | <p>gas undertakers (which also includes electricity, 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</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 |
|---------------------------|-----------------------|--|--|--|--|--|--|
| | | Temporary Use: D1-18, D1-35, D1-85 | | | DCO once in agreed form. | | |
| 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 | 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>incorporated into the draft DCO.</p> <p><u>National Grid consider the issues between the parties have narrowed and are now mainly points of drafting rather than substance.</u></p> | | |
| Yorkshire Water Services Limited | Water and waste water services | <p>Compulsory Acquisition of Rights:</p> <p>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,</p> | Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act 1981 by virtue of Schedule 25, paragraph 1(2) (xxvii) of the | <p>No Relevant Representation received.</p> <p>Section 138 engaged</p> <p>Section 127 not engaged</p> | Protective provisions for the benefit of water undertakers (which also includes electricity, gas and sewerage undertakers) have been included within the DCO. | <p>Side agreement currently being negotiated .</p> <p>Protective Provisions before Deadline 5<u>are agreed as sit on the</u></p> | 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 |
|---------------------------|-----------------------|---|--|--|---|--|--|
| | | B3-48, 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, 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, | Water Act 1989. Section 138 By virtue of Section 262(3) <u>of the Town and Country Planning Act 1990</u> as being within the definition of “water or sewerage undertaker”. | | 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. <u>The issues regarding the side agreement have narrowed and National Grid consider these to now be matters of drafting rather than substance.</u> | <u>face of the draft DCO.</u> | |

| 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 |
|---------------------------|-----------------------|---|-------------------------------------|--|---|--|--|
| | | E3-16, 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 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, | | | | | |

| 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 |
|---------------------------|-----------------------|---|--|---|--|--|--|
| | | 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, 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, | 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 anticipated that bespoke protective provisions will be included on the face of the DCO to protect National Highways' interests. | <u>National Grid is aiming to reach agreement by</u> Before <u>Deadline 5 but this may not be possible.</u> | <u>National Grid is only able to agree Protective Provisions which are reflective of the scale of impacts on the Strategic Road Network.</u> 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 |
|---------------------------------------|-----------------------|--|--|--|---|--|--|
| | | 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 Temporary Use: B2-48, B3-05, B3-06, E7-27, E7-37, E7-43, F1-31, F1-34, F1-37 | | | | | |
| Ainsty (2008) Internal Drainage Board | IDB | Compulsory Acquisition of Rights: B4-11, B4-15, B4-21, B4-22, B5-34 Temporary Use: | 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 |

| 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 |
|-------------------------------------|------------------------------|-----------------------------|--|--|--|---|---|
| | | B4-10, B4-18, B4-23, | | | | | |
| 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 Act 2008, Kyle (2008) Internal Drainage Board is not a Statutory Undertaker. | No Relevant Representation made. Section 127 not engaged S138 not engaged | Not applicable as Article 19 (Discharge of Water) is being updated. | Not applicable | None |

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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