

YG-DCO-104(C)

# Yorkshire Green Energy Enablement (GREEN) Project

**Volume 8**

**Document 8.12(C) Protective Provisions Progress Schedule (Clean)**

**Final Issue C**

**July 2023**

**Planning Inspectorate Reference: EN020024**

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# Contents

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<b>1.</b>	<b>About this document</b>	<b>1</b>
1.1	Introduction	1
<b>2.</b>	<b>Protective Provisions – Progress Schedule</b>	<b>2</b>
2.1	Table update on progress	2
2.2	Explanatory Note	23

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	Table 2.1 – Protective Provisions – Progress Schedule	2
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## Version History

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Document	Version	Status	Description / Changes
26/04/2023	A	Final	Current position of all Protective Provisions as of Deadline 2
06/06/2023	B	Final	Updated for Deadline 4
11/07/2023	C	Final	Updated for Deadline 5

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# 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 by the end of examination. Where agreement has not been reached in respect of the specific bespoke wording to be applied for a statutory undertaker's protective provisions by the current Deadline 5, a section 127 and 138 statement has been submitted to the examination. These statements cross refer to statements of common ground with each statutory undertaker, which have been updated for Deadline 5 to reflect each party's position.
- 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

<b>Statutory Undertaker name</b>	<b>Nature of Undertaking</b>	<b>Land/rights affected</b>	<b>How are they a Statutory Undertaker</b>	<b>Representation made/S127 engaged and/or S138 engaged</b>	<b>Status of Discussions including Status of protective provisions and/or commercial agreement</b>	<b>Estimate of the timescale for securing agreement</b>	<b>Envisaged impediments to the securing of such agreements</b>
Northern Powergrid (Yorkshire) PLC	Electricity Transmission	<b>Compulsory Acquisition of Rights:</b> B1-23, B1-30, B2-37, B4-02, C4-01, C4-08, C8-12, C8-15, C8-16, C8-18,	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 Northern Powergrid (Yorkshire) PLC have been added as a new Part 5 to Schedule 15 of	Agreement reached.	None

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		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, E3-33, E3-34, E3-35, E3-36,	Schedule 16, paragraph 2(2)(g) of the Electricity Act 1989  Section 138 – By virtue of Section 226(6) Town and Country Planning Act 1990	Section 127 engaged.	the <b>draft DCO (Document 3.1(D))</b> . The form of these protective provisions is agreed.		

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		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, F1-13, F1-17, F1-18, F1-20, F1-					



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		23, F1-25, F1-28  <b>Temporary Use:</b>  B1-21, C9-28, D1-18, D1-21, D1-80, D1-81, E6-13					
Northern Powergrid (Northeast) PLC	Electricity Transmission	<b>Compulsory Acquisition of Rights:</b>  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, B3-70, B3-72,	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	No Relevant Representation received.  Section 138 engaged.  Section 127 engaged.	Protective provisions for the benefit of Northern Powergrid (Northeast) PLC have been added as a new Part 5 to Schedule 15 of the <b>draft DCO (Document 3.1(D))</b> . The form of these protective provisions is agreed.	Agreement reached	None

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		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  <b>Temporary Use:</b>  B1-19, B3-40, B3-45, B4-24, B5-21, B5-24, B5-27	226(6) Town and Country Planning Act 1990				
Network Rail Infrastructure Limited (NRIL)	Rail transport infrastructure and services	<b>Compulsory Acquisition of Rights:</b>  B2-36, B2-37, B2-40, B2-68, B3-28, B3-35,	By virtue of Section 8 Acquisition of the Land Act 1981 as being within the	Yes – Relevant Representation received 13 February 2023.	Protective provisions for the benefit of Network Rail have been included within the DCO (part 4).	National Grid is aiming to reach agreement by the end of Examination but this may	Updates to Network Rail's standard form protective provisions from the precedent

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		B3-37, B3-39, C1-02, C1-17, E5-04, E5-15, E6-22, E6-36  <b>Temporary Use:</b>  B2-55, B3-29, B3-30, B3-31, B3-32, B3-34, B3-39, B3-73	definition of "railway" Section 138 - By virtue of Section 262(1) Town and Country Planning Act 1990 as being within the definition of "railway"	Section 138 engaged.  Section 127 engaged.	These are not agreed by Network Rail and so negotiations are continuing.  An update has been made to Part 4 of Schedule 15 in the <b>draft DCO (Document 3.1(D))</b> which reflects the progress made between the parties but this position is still not in agreement. A Statement of Common Ground between National Grid and Network Rail has been submitted to the examination at	not be possible.	position previously confirmed in National Grid DCOs. National Grid are considering the extent to which it is able to update the approach which has been followed between the parties on previous Projects.

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					Deadline 5, wherein there is a summary of the points of disagreement in respect of the protective provisions. A Section 127/138 Statement in respect of Network Rail ( <b>Document 8.27.1</b> ) has been submitted to the examination at Deadline 5.		
Cellnex UK Limited  (On Tower UK 5 Limited in the Book of Reference)	Telecommunications	<b>Compulsory Acquisition of Rights:</b>  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)	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	Not applicable protective provisions are not in dispute.	None

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			includes "electronic communications apparatus kept installed for the purposes of an electronic communications code network"		<p>included within the DCO (part 2).</p> <p>One query has been raised by 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.</p> <p>A final SoCG between National Grid and Cellnex has been submitted to the Examination at Deadline 5 which confirms agreement has been reached.</p>		

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Hutchison 3G UK Limited	Telecommunications	<p><b>Compulsory Acquisition of Rights:</b> D1-07, D1-09, D1-10, D1-13, D1-15</p> <p><b>Extinguishment of Private Rights:</b> D1-04, D1-08</p>	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 electronic communications code network”	<p>No Relevant Representation received.</p> <p>Section 138 engaged</p> <p>Section 127 not engaged</p>	<p>Protective provisions for the protection of Operators of Electronic Communications Code Networks have been included within the DCO.</p> <p>The content of these protective provisions is not in dispute with Hutchinson 3 EE.</p>	Not applicable protective provisions are not in dispute.	None

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BT (Openreach Limited)	Telecommunications	<p><b>Compulsory Acquisition of Rights:</b></p> <p>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, F1-07, F1-13, F1-17, F1-18, F1-20, F1-28,</p>	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”	<p>No Relevant Representation received.</p> <p>Section 138 engaged</p> <p>Section 127 not engaged.</p>	<p>Protective provisions for the protection of Operators of Electronic Communications Code Networks have been included within the DCO.</p> <p>The content of these protective provisions is not in dispute with BT.</p>	Not applicable protective provisions are not in dispute.	None

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		<p><b>Compulsory Acquisition of Land:</b></p> <p>F1-10, F1-15, F1-23</p> <p><b>Temporary Use:</b></p> <p>D1-72,</p>					
National Gas Transmission plc	Gas distribution	<p><b>Compulsory Acquisition of Rights:</b></p> <p>D1-28, D1-29, D1-32, D1-39, D1-46, D1-56, E3-08, E3-13,</p>	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.	<p>Yes – Relevant Representation received on 13 February 2023.</p> <p>Section 138 engaged</p> <p>Section 127 engaged</p>	<p>Protective provisions for the benefit of gas undertakers (which also includes electricity, water and sewerage undertakers) have been included within the DCO.</p> <p>These are not agreed by National Gas Transmission</p>	National Grid is aiming to reach agreement by the end of the Examination.	National Grid is only able to agree Protective Provisions which are reflective of the scale of impacts on National Gas Transmission's apparatus.



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			Section 138 - By virtue of Section 262(3) Town and Country Planning Act 1990 as being within the definition of "gas transporter"		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.  A Statement of Common Ground between National Grid and National Gas Transmission has been submitted to the examination at Deadline 5, wherein there is a summary of the points of disagreement in respect of the		

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					<p>protective provisions.</p> <p>A Section 127/138 Statement in respect of National Gas Transmission (<b>Document 8.27.3</b>) has been submitted to the examination at Deadline 5.</p>		
Northern Gas Networks Limited	Gas distribution	<p><b>Compulsory Acquisition of Rights:</b></p> <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,</p>	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	<p>No Relevant Representation received. Representation made to the ExA but no formal objection has been received.</p> <p>Section 138 engaged.</p>	Protective provisions for the benefit of gas undertakers (which also includes electricity, water and sewerage undertakers) have been included within the DCO.	National Grid is aiming to reach agreement by the end of Examination	None

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		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  <b>Extinguishment of Private Rights:</b> D1-04, D1-08  <b>Temporary Use:</b> D1-18, D1-35, D1-85	Gas Act 1995.  Section 138 - By virtue of Section 262(3) Town and Country Planning Act 1990 as being within the definition of "gas transporter"	Section 127 not engaged.	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.  A Statement of Common Ground between National Grid and Northern Gas Networks has been submitted to the examination at Deadline 5, wherein there is		

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					<p>a summary of the points of disagreement in respect of the protective provisions.</p> <p>A Section 127/138 Statement in respect of Northern Gas Networks <b>(Document 8.27.4)</b> has been submitted to the examination at Deadline 5.</p>		
Canal and River Trust	Navigation authority	-	The Trust has a duty under S105 Transport Act 1968 to maintain commercial waterways in	Yes – Relevant Representation received on 7 February 2023.	Protective provisions for the benefit of the Canal and River Trust have been included within the DCO (Part 3).	Agreement reached	None

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			a suitable condition for use.	Section 138 engaged. Section 127 engaged.	These have been updated within the draft DCO <b>(Document 3.1(D))</b> at Deadline 5 and are now agreed by the Canal and River Trust.  A final SoCG between National Grid and the Canal and River Trust has been submitted to the Examination at Deadline 5 and confirms agreement has been reached.		
Yorkshire Water Services Limited	Water and waste water services	<b>Compulsory Acquisition of Rights:</b> B2-07, B2-26, B2-29, B2-37, B2-39, B2-41,	Deemed to be a statutory undertaker for the purposes of	No Relevant Representation received.  Section 138 engaged	Protective provisions for the benefit of water undertakers (which also includes	Side agreement agreed.  Protective Provisions are agreed as sit	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
		B2-42, 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, C6-09, C8-12, C8-18, C8-28, C8-29, C8-33, C9-23, C9-27,	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) of the Town and Country Planning Act 1990 as being within the definition of "water or sewerage	Section 127 not engaged	electricity, gas and sewerage undertakers) have been included within the DCO.  The protective provisions within Part 1 of the draft DCO ( <b>Document 3.1(D)</b> ) are agreed by Yorkshire Water and a related side agreement has also been agreed with Yorkshire Water.	on the face of the draft DCO.	

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		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  <b>Temporary Use:</b>  B2-06, B2-14, B2-28, B2-34, B2-48, B2-49,	undertaker".				

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		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	<p><b>Compulsory Acquisition of Rights:</b></p> <p>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,</p>	By virtue of Section 8 Acquisition of the Land Act 1981 as being within the definition of "road transport"	<p>Yes – Relevant Representation received 20 January 2023.</p> <p>Section 138 engaged.</p> <p>Section 127 engaged.</p>	<p>Protective Provisions for the benefit of National Highways have now been included within Part 6 of the draft DCO.</p> <p>These are not agreed by National Highways and engagement continues to try and reach an agreed position.</p>	National Grid is aiming to reach agreement by the end of Examination but this may not be possible.	As explained further within the response to written question 4.2.8 ( <b>Document 8.25.1</b> ), National Grid is only able to agree Protective Provisions which are reflective of the scale of impacts on the



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		<p>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><b>Temporary Use:</b></p> <p>B2-48, B3-05, B3-06, E7-27, E7-37, E7-43, F1-31, F1-34, F1-37</p>			<p>A Statement of Common Ground between National Grid and National Highways has been submitted to the examination at Deadline 5, wherein there is a summary of the points of disagreement in respect of the protective provisions.</p> <p>A Section 127/138 Statement in respect of National Highways (<b>Document 8.27.2</b>) has been submitted to the</p>		Strategic Road Network.

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					examination at Deadline 5.		
Ainsty (2008) Internal Drainage Board	IDB	<p><b>Compulsory Acquisition of Rights:</b></p> <p>B4-11, B4-15, B4-21, B4-22, B5-34</p> <p><b>Temporary Use:</b></p> <p>B4-10, B4-18, B4-23,</p>	For the purposes of S127 and S138 of the Planning Act 2008, Ainsty (2008) Internal Drainage Board is not a Statutory Undertaker.	<p>Yes – Relevant Representation made 9 February 2023</p> <p>Section 127 not engaged</p> <p>Section 138 not engaged</p>	Not applicable as Article 19 (Discharge of Water) of the <b>draft DCO (Document 3.1(D))</b> is being updated and byelaws not being disapplied.	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.	<p>Yes – Relevant Representation made 9 February 2023</p> <p>Section 127 not engaged</p> <p>Section 138 not engaged</p>	Not applicable as Article 19 (Discharge of Water) of the <b>draft DCO (Document 3.1(D))</b> is being updated and byelaws not being disapplied.	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
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) of the <b>draft DCO (Document 3.1(D))</b> is being updated and byelaws not being disapplied.	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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