

YG-DCO-104(D)

Yorkshire Green Energy Enablement (GREEN) Project

Volume 8

Document 8.12(D) Protective Provisions Progress Schedule (Clean)

**Final Issue D
September 2023**

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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
06/06/2023	B	Final	Updated for Deadline 4
11/07/2023	C	Final	Updated for Deadline 5
06/09/2023	D	Final	Updated for Deadline 7

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 Bespoke protective provisions have now been included on the face of the **draft DCO (Document 3.1(F))** for all statutory undertakers who have requested bespoke provisions. The content of the bespoke provisions for the benefit of the Canal and River Trust (Part 3 of Schedule 15), Northern Powergrid (Northeast) plc, and Northern Powergrid (Yorkshire) Plc (both covered in Part 5 of Schedule 15) have been fully agreed.
- 2.1.2 Agreement on the bespoke protective provisions for the benefit of Network Rail (Part 4 of Schedule 15), National Highways (Part 6 of Schedule 15), National Gas Transmission (Part 7 of Schedule 15) and Northern Gas Networks (Part 8 of Schedule 15) has not yet been reached.
- 2.1.3 Taking each undertaker in turn, the below table sets out further detail on 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,	Deemed to be a statutory undertaker for the purposes of the Acquisition of Land Act	Yes – Relevant Representation received 9 February 2023.	Protective provisions for the benefit of Northern Powergrid (Yorkshire) PLC are included in Part 5 to Schedule 15 of the draft DCO (Document 3.1(F)) .	Agreement reached.	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
		C8-24, 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, E3-37, E3-38,	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 Country Planning Act 1990	Section 138 engaged. Section 127 engaged.	The form of these protective provisions is agreed.		

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		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, F1-23, F1-25, F1-28					

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		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, B3-70, B3-72, B4-25, B4-26, B5-17, B5-18, B5-19, B5-47, B5-51, B5-54,	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 Country	No Relevant Representation received. Section 138 engaged. Section 127 engaged.	Protective provisions for the benefit of Northern Powergrid (Northeast) PLC are included in Part 5 to Schedule 15 of the draft DCO (Document 3.1(F)) . The form of these protective provisions is agreed.	Agreement reached	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
		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	Planning Act 1990				
Network Rail Infrastructure Limited (NRIL)	Rail transport infrastructure and services	Compulsory Acquisition of Rights: 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	By virtue of Section 8 Acquisition of the Land Act 1981 as being within the definition of "railway" Section 138 - By virtue of	Yes – Relevant Representation received 13 February 2023. Section 138 engaged. Section 127 engaged.	Protective provisions for the benefit of Network Rail are included in Part 4 to Schedule 15 of the draft DCO (Document 3.1(F)) . A Section 127/138 Statement in respect of Network Rail (Document 8.27.1)	It will not be possible for National Grid and Network Rail to reach agreement by the end of the examination.	Details of issues preventing National Grid from reaching agreement with Network Rail are presented in the

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		<p>Temporary Use:</p> <p>B2-55, B3-29, B3-30, B3-31, B3-32, B3-34, B3-39, B3-73</p>	<p>Section 262(1) Town and Country Planning Act 1990 as being within the definition of "railway"</p>		<p>[REP5-086] was submitted to the examination at Deadline 5.</p> <p>Specific points of disagreement were submitted to the examination at Deadline 6 in Proposed Protective Provisions to benefit Network Rail (Document 8.30.1) [REP6-063]. The points of difference have since narrowed significantly to those which are confirmed within the Statement of Common Ground between National Grid and Network Rail (Document 8.5.11(D)) submitted at Deadline 7.</p>		<p>Applicant's Position Statement – Protective Provisions Not Yet Agreed with Network Rail (Document 8.34.3) submitted at Deadline 7 .</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
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 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 are included in Part 2 to Schedule 15 of the draft DCO (Document 3.1(F)) . 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. A final SoCG between National Grid and Cellnex was submitted to the Examination at Deadline 5	Not applicable protective provisions are not in dispute.	None

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					(Document 8.5.17(B)) [REP5-061] which confirms agreement has been reached.		
Hutchison 3G UK Limited	Telecommunications	<p>Compulsory Acquisition of Rights: D1-07, D1-09, D1-10, D1-13, D1-15</p> <p>Extinguishment of Private Rights: 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	No Relevant Representation received. Section 138 engaged. Section 127 not engaged.	Protective provisions for the protection of Operators of Electronic Communications Code Networks are included in Part 2 to Schedule 15 of the draft DCO (Document 3.1(F)) . The content of these protective provisions is not in dispute with Hutchinson 3 EE.	Not applicable protective provisions are not in dispute.	None

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			code network"				
BT (Openreach Limited)	Telecommunications	<p>Compulsory Acquisition of Rights:</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,</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 are included in Part 2 to Schedule 15 of the draft DCO (Document 3.1(F)).</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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		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 National Gas Transmission are included in Part 7 to Schedule 15 of the draft DCO (Document 3.1(F)) . These are not agreed by National Gas Transmission and negotiations continue. A Section 127/138 Statement in respect	National Grid is attempting to make further progress before Deadline 8.	Details of issues preventing National Grid from reaching agreement with National Gas Transmission are presented in the Applicant's

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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"		of National Gas Transmission (Document 8.27.3) [REP5-088] was submitted to the examination at Deadline 5. Specific points of disagreement have been submitted to the examination at Deadline 6 in Proposed Protective Provisions to benefit National Gas Transmission (Document 8.30.3) [REP6-065] . These points of disagreement remain but negotiations are continuing with the hopes of reaching agreement by Deadline 8.		Position Statement – Protective Provisions Not Yet Agreed with National gas Transmission (Document 8.34.4) submitted at deadline 7.'

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Northern Gas Networks Limited	Gas distribution	<p>Compulsory Acquisition of Rights:</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, 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>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> <p>Section 138 - By virtue of Section 262(3) Town and Country Planning Act 1990 as being within the definition of "gas transporter"</p>	<p>No Relevant Representation received. Representation made to the ExA but no formal objection has been received.</p> <p>Section 138 engaged.</p> <p>Section 127 not engaged.</p>	<p>Protective provisions for the benefit of Northern Gas Networks are included in Part 8 to Schedule 15 of the draft DCO (Document 3.1(F)).</p> <p>A Section 127/138 Statement in respect of Northern Gas Networks (Document 8.27.4) [REP5-089] was submitted to the examination at Deadline 5.</p> <p>Specific points of disagreement have been submitted to the examination at Deadline 6 in Proposed Protective Provisions to benefit Northern Gas Networks (Document 8.30.4)</p>	<p>National Grid is attempting to make further progress before Deadline 8.</p>	<p>Details of issues preventing National Grid from reaching agreement with Northern Gas Networks are presented in the Applicant's Position Statement – Protective Provisions Not Yet Agreed with Northern Gas Networks (Document 8.34.6) submitted at Deadline 7.</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
		D1-04, D1-08 Temporary Use: D1-18, D1-35, D1-85			[REP6-066]. These issues have since narrowed considerably so that only the indemnity wording is in dispute.		
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 are included in Part 3 to Schedule 15 of the draft DCO (Document 3.1(F)) . These are agreed by the Canal and River Trust. A final SoCG between National Grid and the Canal and River Trust was submitted to the Examination at Deadline 5 (Document 8.5.15(B)) [REP5-057] and confirms	Agreement reached	None

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					agreement has been reached.		
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, 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,</p>	<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 Water Act 1989.</p> <p>By virtue of Section 262(3) of the Town and Country</p>	<p>No Relevant Representation received.</p> <p>Section 138 engaged.</p> <p>Section 127 not engaged.</p>	<p>Protective provisions for the benefit of water undertakers (which also includes electricity, gas and sewerage undertakers) are included in Part 1 to Schedule 15 of the draft DCO (Document 3.1(F)). These are agreed by Yorkshire Water and a related side agreement has also been agreed with Yorkshire Water.</p>	<p>Side agreement agreed.</p> <p>Protective Provisions in the draft DCO (Document 3.1(F)) are agreed.</p>	None

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		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, 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,	Planning Act 1990 as being within the definition of “water or sewerage undertaker”.				

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		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, 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,	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.	Protective Provisions for the benefit of National Highways have been included within Part 6 to Schedule 15 of the draft DCO (Document 3.1(F)) .	National Grid and National Highways have reached a final position and agreement on all matters has not been possible.	Details of issues preventing National Grid from reaching agreement with National Highways are

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		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, 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		Section 127 engaged.	<p>These are not fully agreed by National Highways.</p> <p>A Section 127/138 Statement in respect of National Highways (Document 8.27.2) [REP5-087] was submitted to the examination at Deadline 5.</p> <p>Specific points of disagreement have been submitted to the examination at Deadline 6 in Proposed Protective Provisions to benefit National Highways (Document 8.30.2) [REP6-064]. The points of difference have since narrowed significantly to indemnity and lands wording, which are</p>		presented in the Applicant's Position Statement – Protective Provisions Not Yet Agreed with National Highways (Document 8.34.5) submitted at Deadline 7.

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					confirmed within the Statement of Common Ground between National Grid and National Highways (Document 8.5.14(C)) submitted at Deadline 7.		
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 because, whilst Article 19 (Discharge of Water) of the draft DCO (Document 3.1(F)) modifies the application of the byelaws, IDB consent is not required for modification/disapplication of byelaws made under Section 66 of the Land Drainage Act 1991.	Not applicable	None
Foss (2008) Internal	IDB	-	For the purposes of S127 and S138 of the	Yes – Relevant Representation made 9	Not applicable because, whilst Article 19 (Discharge of Water) of the draft	Not applicable	None

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Drainage Board			Planning Act 2008, Foss (2008) Internal Drainage Board is not a Statutory Undertaker.	February 2023 Section 127 not engaged Section 138 not engaged	DCO (Document 3.1(F)) modifies the application of the byelaws, IDB consent is not required for modification/disapplication of byelaws made under Section 66 of the Land Drainage Act 1991.		
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 because, whilst Article 19 (Discharge of Water) of the draft DCO (Document 3.1(F)) modifies the application of the byelaws, IDB consent is not required for modification/disapplication of byelaws made under Section 66 of the Land Drainage Act 1991.	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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