

## SCHEDULES

### SCHEDULE 4

#### HIGHWAYS

#### PART 3

##### CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

###### *Construction and alteration*

- 12 (1) Where under this Act the nominated undertaker—
- (a) constructs a new highway, or
  - (b) alters a highway, otherwise than by carrying out street works within the meaning of Part 3 of the New Roads and Street Works Act 1991,
- the construction or alteration must be completed to the reasonable satisfaction of the highway authority.
- (2) Where work mentioned in sub-paragraph (1) has been completed to the reasonable satisfaction of a highway authority, it must certify that fact in writing to the nominated undertaker.
- (3) If the nominated undertaker requests a highway authority to issue a certificate under sub-paragraph (2) and the highway authority does not before the end of the period of 28 days beginning with the date on which the request was made—
- (a) issue a certificate under that sub-paragraph, or
  - (b) notify the nominated undertaker of its decision to refuse to issue such a certificate,
- it is to be treated as having issued such a certificate at the end of that period.
- (4) Any dispute with a highway authority under this paragraph must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- 13 (1) Sub-paragraph (2) applies where under this Act the nominated undertaker—
- (a) constructs a new highway which is constituted by or comprises a carriageway, or
  - (b) realigns a highway which is constituted by or comprises a carriageway.
- (2) The construction or realignment must be carried out in accordance with plans, sections and specifications approved by the highway authority at the request of the nominated undertaker; and such approval is not to be unreasonably withheld.
- (3) Any dispute with a highway authority under sub-paragraph (2) must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.

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- (4) If, on application by the nominated undertaker for the approval of plans, sections or specifications under sub-paragraph (2), the highway authority fails to notify the nominated undertaker of its decision on the application before the end of 28 days beginning with the date on which the application was made, it is to be treated as having approved the plans, sections or specifications as submitted.
- 14 (1) Where under this Act the nominated undertaker is authorised to stop up or interfere with an existing highway or part of an existing highway, it may enter into an agreement with the controllers of the highway concerning the construction (or contribution towards the expenses of construction) of—
- (a) any new highway to be provided in substitution,
  - (b) any alteration of the existing highway, and
  - (c) any related matters.
- (2) Where the nominated undertaker has entered into an agreement under sub-paragraph (1) with the controllers of an existing highway, the nominated undertaker may, by agreement with them, delegate to them the power of constructing—
- (a) any new highway to be provided in substitution, or
  - (b) any alteration of the existing highway,
- including any bridge over any railway.
- (3) Works executed by the controllers of an existing highway under a delegation agreement under sub-paragraph (2) which could have been carried out by them under section 64 or 184 of the Highways Act 1980 are to be treated for the purposes of section 86(3) of the New Roads and Street Works Act 1991 as having been so carried out by them.
- (4) References in this paragraph to the controllers of a highway are to the persons having the charge, management or control of it.
- 15 (1) This paragraph applies in relation to a work authorised by this Act which appears to the Secretary of State to constitute—
- (a) the construction of an extension to a trunk road or special road, or
  - (b) the realignment of a trunk road or special road.
- (2) The Secretary of State may by regulations made by statutory instrument provide that the highway comprising the extension or realignment is to become a trunk road or special road (or both) as from a date—
- (a) specified in the regulations, or
  - (b) if the regulations so provide, specified in an instrument in writing after the making of the regulations.
- (3) Where, under regulations under this paragraph, a highway becomes a special road—
- (a) the regulations must specify the special road authority for the highway,
  - (b) the highway is to be regarded as provided by the specified special road authority under a scheme under section 16 of the Highways Act 1980 made on the day the regulations are made, and
  - (c) the highway is to be regarded as so provided for the use of traffic of such classes referred to in Schedule 4 to that Act as may be provided for in the regulations (and the regulations may make different provision for different parts of the highway).

- (4) Provision under sub-paragraph (3)(c) may be expressed by reference to classes of traffic which are at any time authorised under a scheme under section 16 of the Highways Act 1980 in relation to the road of which the highway is a realignment or extension.

#### *Roads constructed as highways*

- 16 (1) This paragraph applies where under this Act the nominated undertaker constructs a road as a highway.
- (2) The resulting highway is created on the date on which the road is first open for public use.
- (3) For the purposes of sub-paragraph (2), the date on which the road is first open for public use is the date on which the resulting highway is taken to be first open for public use for the purposes of paragraph 17(2).
- (4) Where the resulting highway is a temporary highway, it ceases to be a highway on the day after the date on which the road is last open for public use.
- (5) For the purposes of sub-paragraph (4), the date on which the road is last open for public use is to be taken to be the date notified by the nominated undertaker, in accordance with sub-paragraph (6), to the highway authority as being the date on which the road is to be last open for public use.
- (6) The notification must be given to the highway authority by the nominated undertaker at least 28 days before the date on which the road is to be last open for public use.

#### *Maintenance*

- 17 (1) Sub-paragraph (2) applies where under this Act the nominated undertaker—
- (a) provides a new highway, or
  - (b) alters a highway, otherwise than by carrying out street works within the meaning of Part 3 of the New Roads and Street Works Act 1991.
- (2) The new or altered highway must be maintained by and at the expense of the nominated undertaker for a period of 12 months from—
- (a) the date of practical completion, or
  - (b) if later, the date on which it is first open for public use;
- and after the end of that period must be maintained by and at the expense of the highway authority.
- (3) Sub-paragraph (2) is subject to—
- (a) any agreement between the nominated undertaker and the highway authority as to alternative arrangements relating to the maintenance of the highway, and
  - (b) sub-paragraph (4), in respect of a period for which the nominated undertaker is under a duty to maintain the highway.
- (4) Unless otherwise agreed between the highway authority and the nominated undertaker, the highway authority must ensure, so far as reasonably practicable, that safe passage along the new or altered highway is not endangered by snow or ice.

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- (5) Where the highway authority is satisfied that a highway mentioned in sub-paragraph (2) is practically complete or is open for public use, it must, at the request of the nominated undertaker, certify to it in writing the date of practical completion of the highway or, as the case may be, the date on which it was first open for public use.
- (6) If the highway authority refuses a request to issue a certificate under sub-paragraph (5), or if the nominated undertaker disputes the date given in a certificate under that sub-paragraph, the matter must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- (7) For the purposes of sub-paragraph (2), the date of practical completion of a highway, or the date on which it is first open for public use, is to be taken to be—
- (a) where the date has been determined under sub-paragraph (6), the date so determined, and
  - (b) where it has not, the date certified under sub-paragraph (5).
- (8) Sub-paragraph (2) does not have effect to impose any obligation in relation to—
- (a) the structure of any bridge carrying a highway over any railway of the nominated undertaker, or
  - (b) the structure of any tunnel carrying a highway under any such railway.
- (9) Nothing in this paragraph affects the operation of section 87 of the New Roads and Street Works Act 1991.
- 18 Where the nominated undertaker is responsible for maintaining a bridge carrying either of the following over a railway—
- (a) a new highway constructed under this Act, or
  - (b) a highway altered under this Act,
- the nominated undertaker may, by agreement with the persons having the charge, management or control of the highway, delegate to them the function of maintaining the bridge.
- 19 Section 58(1) and (2) of the Highways Act 1980 (special defence in action against highway authority for damages for non-repair of highway) applies to an action against the nominated undertaker in respect of damage resulting from its failure to maintain a highway under paragraph 17(2) or (3)(a) as it applies to an action against a highway authority as mentioned in section 58(1) of that Act (and references in section 58(1) and (2) to the highway authority are to be read accordingly).
- 20 Notwithstanding anything in section 46 of the Railways Clauses Consolidation Act 1845, as incorporated with this Act (see paragraph 4 of Schedule 28 to this Act), the nominated undertaker is not liable to maintain the surface of any highway under or over which the scheduled works are constructed, or the immediate approaches to any such highway.

#### *Bridges carrying highways*

- 21 Each of sections 116 and 117 of the Transport Act 1968 (duties as respects bridges carrying highways over railways) has effect as if the nominated undertaker were one of the boards mentioned in the section in question.