

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF HIGHWAYS ENGLAND

Application

1. The provisions of this Part of this Schedule have effect, and apply to the HE works, unless otherwise agreed in writing between the undertaker and Highways England.

Commencement Information

II Sch. 13 Pt. 2 para. 1 in force at 30.10.2019, see [art. 1](#)

Interpretation

2.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker, in compliance with Interim Advice Note 184 or any successor document;
- (b) list of suppliers and materials used;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals, any information required by Series 1300 and 1400 of the Specification for Highway Works;
- (g) organisation and methods manuals for all products used in the construction of the authorised development;
- (h) as constructed programme;
- (i) test results and records as required by the detailed design information and during the construction phase of the project;
- (j) RSA 3 and exceptions agreed;
- (k) health and safety file; and

- (l) other such information as is necessary to enable Highways England to update all relevant databases and to ensure compliance with the Highways England Asset Data Management Manual as in operation at the relevant time including CCTV surveys;

“the bond sum” means the sum equal to 120% of the cost of the carrying out of the phase of the HE works concerned (to include all costs including the commuted sum) or such other sum agreed between the undertaker and Highways England;

“the cash surety” means the sum of £150,000 or such other sum agreed between the undertaker and Highways England;

“county highway works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 7, 9, 12, 13, 14, 15, 16 and 17 on the works plans, the general arrangement of which is shown on the highway plans and any ancillary works thereto;

“commuted sum” means such sum as calculated for each phase as provided for in paragraph 9 of this Part of this Schedule and to be used to fund the future cost of maintaining the HE works;

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the HE works or any phase of the HE works and approved by Highways England in accordance with paragraph 3(3) of this Part of this Schedule;

“detailed design information” means drawings, specifications and calculations as appropriate for the following, and in accordance with the general arrangements of the HE works shown on the highway plans, unless otherwise agreed between Highways England and the undertaker—

- (a) site clearance details;
- (b) boundary, environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment;
- (d) drainage and ducting as required by Series 500 of the Specification for Highways Works, HD 43/04, IAN 147/12 and SD 15 Parts 1 – 6 inclusive;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification (SEAF);
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) motorway communications as required by the Designs Manual for Roads and Bridges;
- (l) highway structures and any required structural approval in principle (AIP);
- (m) landscaping;
- (n) agreed departures from the Designs Manual for Roads and Bridges standards;
- (o) a report of walking, cycling and horse riding carried out in accordance with the Design Manual for Roads and Bridges Standard HD42/17 or any successor document;
- (p) Stage 2 Road Safety Audit and exceptions agreed and, in the event that any works are not commenced within five years of the date of the Stage 1 Road Safety Audit, a further Stage 1 Road Safety Audit and exceptions agreed;
- (q) utilities diversions;
- (r) topographical survey;

- (s) maintenance and repair strategy in accordance with Designing for Maintenance Interim Advice Note 69/15 or any successor document; and
- (t) health and safety information including any asbestos survey required by GD05/16 or any successor document,

where relevant to the phase concerned;

“dilapidation survey” means a survey of the condition of the roads, bridges and retaining walls which will be the subject of the physical works comprised in the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraph 5(1)(b) to (d) and (5) of this Part of this Schedule;

“the excess” means the amount by which Highways England estimates that the costs referred to in paragraph 5(1)(b) to (d) of this Part of this Schedule will exceed the estimated costs pursuant to paragraph 5(5)(b);

“HE works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 8 and 11 on the works plans, the general arrangement of which is shown on the highway plans, and any ancillary works;

“nominated persons” means the undertaker’s representatives or the contractors’ representatives on site during the carrying out of the HE works as notified to Highways England from time to time;

“phase” means that part of the HE works which is to be carried out in separate phases in the areas identified as Works Nos. 8 and 11 on the works plans or such other phasing arrangements as agreed with Highways England;

“programme of works” means a document setting out the sequence and timetabling of the phase of the HE works in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard and the approved audit team will include a member of Highways England East Midlands Asset Delivery Road Safety Team;

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges Standard HD 19/15 or any successor document;

“utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice.

Commencement Information

I2 Sch. 13 Pt. 2 para. 2 in force at 30.10.2019, see [art. 1](#)

Prior approvals and security

3.—(1) No work must commence on any phase of the HE works until the detailed design information and a programme of works in respect of that phase have been submitted to and approved by Highways England.

(2) Highways England must nominate a person who will be a single point of contact on behalf of Highways England for consideration of the detailed design information and who will co-ordinate the Highways England response to the details submitted.

(3) No works must commence on any phase of the HE works other than by a contractor employed by the undertaker for that phase but first approved by Highways England.

(4) No work must commence on any phase of the HE works until Highways England has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 9 of this Part of this Schedule or some other form of security acceptable to Highways England.

(5) No work must commence on any phase of the HE works until Stage 1 and Stage 2 Road Safety Audits have been carried out in respect of that phase and all recommendations raised incorporated into an amended design approved by Highways England or any relevant exceptions approved by Highways England.

(6) No work must commence on any phase of the HE works until the undertaker demonstrates to the satisfaction of Highways England that the walking, cycling and horse riding assessment and review process for that phase has been adhered to in accordance with the Design Manual for Roads and Bridges Standard HD 42/17 or any successor document.

(7) No work must commence on any phase of the HE works until a scheme of traffic management has been submitted by the undertaker and approved by Highways England for that phase, such scheme to be capable of amendment by agreement between the undertaker and Highways England from time to time.

(8) No work must commence on any phase of the HE works until stakeholder liaison has taken place for that phase in accordance with a scheme for such liaison agreed between the undertaker and Highways England.

(9) No work must commence on any phase of the HE works until Highways England has approved the audit brief and CVs for all road safety audits and exceptions to items raised, if appropriate, for that phase in accordance with the Road Safety Audit Standard.

(10) No work must commence on any phase of the HE works until the undertaker has agreed the commuted sum for that phase with Highways England to be calculated in accordance with paragraph 9 of this Part of this Schedule.

(11) No work must commence on any phase of the HE works until a dilapidation survey for that phase has been carried out by the undertaker and has been submitted to and approved in writing by Highways England.

(12) No work must commence on any phase of the HE works until the scope of all routine maintenance to be carried out by the undertaker during the construction of the phase concerned has been agreed in writing by Highways England, such maintenance only to include winter maintenance of the phase concerned where—

- (a) access to carry out such maintenance by Highways England is not available by virtue of the works being carried out on that phase; and
- (b) any winter maintenance is needed immediately prior to the opening of any carriageway to traffic where that carriageway had been closed for the purposes of the carrying out of the phase concerned.

Commencement Information

I3 Sch. 13 Pt. 2 para. 3 in force at 30.10.2019, see [art. 1](#)

Carrying out of works

4.—(1) The undertaker must prior to commencement of each phase of the HE works give Highways England 28 days' notice in writing of the date on which that phase will start unless otherwise agreed by Highways England.

(2) The undertaker must comply with Highways England's usual road space booking procedures prior to and during the carrying out of each phase of the HE works and no HE works for which a road space booking is required is to commence without a road space booking having first been secured. It will be necessary for an assessment of the highway network and impact of any road closures on diversion routes to be carried out including any impact related to the county highway works. It is acknowledged by Highways England that in the event that the aforementioned assessment indicates no safety or operational concerns then the HE works can proceed at the same time as Highways England's M1 J13-16 Smart Motorway scheme with road space booking being shared where practicable. In the event that the aforementioned assessment indicates that both schemes cannot be accommodated at the same time then Highways England, in its absolute discretion will decide when a road space booking can be issued to the undertaker.

(3) Each phase of the HE works must be carried out to the satisfaction of Highways England in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and Highways England;
- (b) the Design Manual for Roads and Bridges, the Specification for Highway Works (contained within the Manual of Contract Documents for Highway Works), all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(1), and any amendment to or replacement thereof for the time being in force, save to the extent that they are inconsistent with the general arrangement of the HE works as shown on the highway plans or a departure from such standards has been approved by Highways England;
- (c) such approvals or requirements of Highways England that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the HE works being undertaken; and
- (d) all aspects of the Construction (Design and Management) Regulations 2015(2) or any statutory amendment or variation of the same and in particular the undertaker, as client, must ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of Highways England.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by Highways England (whose identity must be previously notified to the undertaker by Highways England) to gain access to the HE works and the county highway works for the purposes of inspection and supervision and the undertaker must provide to Highways England contact details of the nominated persons with whom Highways England should liaise during the carrying out of the HE works.

(5) At any time during the carrying out of the HE works the nominated persons must act upon any reasonable request made by Highways England in relation to the carrying out of the HE works as soon as practicable following such request being made to the nominated persons save to the extent that the contents of such request are inconsistent with or fall outside the contractor's obligations under its contract with the undertaker or the undertaker's obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the HE works having been given notice of an alleged breach and an adequate opportunity to remedy it by Highways England, Highways England, on giving the undertaker 14 days' notice in writing to that effect, is entitled to either—

- (a) carry out and complete that phase of the HE works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or

(1) [S.I. 2016/362](#).

(2) [S.I. 2015/51](#).

- (b) carry out such necessary works of reinstatement of the highway and other land and premises of Highways England,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(7) If at any time the undertaker, in carrying out the authorised development, causes any damage or disruption to the strategic road network not hereby authorised, then Highways England is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of Highways England, Highways England, on giving to the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works as Highways England acting reasonably deem appropriate to remedy the damage or disruption, and the undertaker must within 28 days of receipt of the itemised costs pay to Highways England the costs so incurred by Highways England.

(8) Nothing in this Part of this Schedule prevents Highways England from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to Highways England of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the authorised development. This provision applies to all areas of the authorised development including any area of traffic management deployed under the traffic management plan approved pursuant to paragraph 3(7) of this Part of this Schedule to facilitate delivery of the authorised development.

(9) The undertaker, in carrying out each phase of the HE works, must at its own expense divert or protect all utilities as may be necessary to enable the HE works to be properly carried out, and all agreed alterations to existing services must be carried out to the reasonable satisfaction of Highways England.

(10) During the construction of each phase of the HE works the undertaker is responsible for all routine maintenance at its cost within that phase (including winter maintenance where required to be undertaken by the undertaker in accordance with paragraph 3(12)) of this Part of this Schedule. All routine maintenance must be carried out in accordance with the scope of routine maintenance operations agreed by Highways England in accordance with paragraph 3(12).

Commencement Information

I4 Sch. 13 Pt. 2 para. 4 in force at 30.10.2019, see [art. 1](#)

Payments

5.—(1) The undertaker must fund the whole of the cost of the HE works and all costs incidental to the HE works and must also pay to Highways England in respect of each phase of the HE works a sum equal to the whole of any costs and expenses which Highways England incur, including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the HE works and arising out of them and their implementation, including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of supervision of that phase; and
- (d) all administrative costs in relation to paragraphs (a) and (b),

together comprising “the estimated costs”.

(2) The sums referred to in sub-paragraph (1) do not include any sums payable from the undertaker to the contractor but do include any value added tax which is payable by Highways England in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs.

(3) The undertaker must pay to Highways England upon demand and prior to such costs being incurred the total costs that Highways England believe will be properly and necessarily incurred by Highways England in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the HE works provided that this sub-paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(4) The undertaker must make the payments of the estimated costs as follows—

- (a) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(a), (b) and (d) to Highways England prior to Highways England undertaking those tasks;
- (b) the undertaker must pay a sum equal to the anticipated cost of the tasks referred to in sub-paragraph (1)(c) prior to commencing that phase;
- (c) if at any time after the payment in respect of a phase referred to in sub-paragraph (4)(a) and (b) has become payable, Highways England reasonably estimates that the costs in respect of that phase referred to in sub-paragraph (1) will exceed the estimated costs for that phase, it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to Highways England within 28 days of the date of that notice a sum equal to the excess.

(5) Within 91 days of the issue of the handover certificate for each phase of the HE works in accordance with paragraph 7 of this Part of this Schedule, Highways England must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 91 day period—

- (a) if the account shows a further sum as due to Highways England the undertaker must pay to Highways England the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs Highways England must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the other party interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

Commencement Information

I5 Sch. 13 Pt. 2 para. 5 in force at 30.10.2019, see [art. 1](#)

Provisional certificate

6. As soon as—

- (a) each phase of the HE works has been completed; and
- (b) a Stage 3 Road Safety Audit for that phase has been carried out and any resulting recommendations complied with and any exceptions agreed,

Highways England must issue a provisional certificate of completion in respect of that phase, such certificate not to be unreasonably withheld or delayed.

Commencement Information

I6 Sch. 13 Pt. 2 para. 6 in force at 30.10.2019, see [art. 1](#)

Handover certificate and defects period

7.—(1) As soon as, in respect of a phase—

- (a) the undertaker has carried out a dilapidation survey in accordance with paragraph 3(11) of this Part of this Schedule and completed any remedial works necessary to bring that area into as good a condition as when it was originally surveyed, such works to be first agreed with Highways England;
- (b) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense together with any ancillary equipment that will become the responsibility of the highway authority; and
- (c) the as built information has been provided to Highways England,

Highways England must forthwith issue a handover certificate in respect of that phase, such certificate not to be unreasonably withheld or delayed.

(2) The undertaker must at its own expense remedy any defects in any phase of the HE works as are reasonably required to be remedied by Highways England during a period of 12 months from the date of the handover certificate in respect of that phase. All identified defects are to be remedied in accordance with the following timescales—

- (a) in respect of matters of urgency, within 24 hours of receiving notification (urgency to be determined at the absolute discretion of Highways England);
- (b) in respect of matters which Highways England consider to be serious defects or faults, within 14 days of receiving notification or if a road space booking is required at the time when the road space is available, whichever is the later; and
- (c) in respect of all other defects notified to the undertaker, within 4 weeks of receiving notification or if a road space booking is required at the time when the road space is available, whichever is the later.

(3) Following the issue of the handover certificate in respect of a phase, Highways England is to be responsible for the HE works within that phase which will thereafter be maintained by and at the expense of Highways England, save for any soft landscaping works which are to be established and thereafter maintained for a period of 3 years by and at the expense of the undertaker.

(4) The undertaker must submit Stage 4 Road Safety Audits for each phase as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

Commencement Information

I7 Sch. 13 Pt. 2 para. 7 in force at 30.10.2019, see [art. 1](#)

Final certificate

8. Highways England must issue the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 7(2) of this Part of this Schedule or if later on the date on which any defects or damage arising from defects during that period have been made good to the reasonable satisfaction of Highways England, such certificate not to be unreasonably withheld or delayed.

Commencement Information

I8 Sch. 13 Pt. 2 para. 8 in force at 30.10.2019, see [art. 1](#)

Security

9.—(1) Subject to paragraph 3(4) of this Part of this Schedule the undertaker must provide security for the carrying out of the HE works as follows—

- (a) prior to the commencement of each phase, the HE works within that phase must be secured by a bond from a bondsman first approved by Highways England drafted substantially as detailed in Form 1 contained in paragraph 17 of this Part of this Schedule, or such other form that may be agreed between the undertaker and Highways England, to indemnify Highways England against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase under the provisions of this Part of this Schedule, provided that the maximum liability of the bond does not exceed the bond sum relating to that phase; and
- (b) prior to the commencement of the HE works, the undertaker must provide the cash surety which may be utilised by Highways England in the event of the undertaker failing to meet its obligations to make payments under paragraph 5 of this Part of this Schedule or to carry out works the need for which arises from a breach of one or more of the obligations of the undertaker (which will be a single cash surety for the entirety of the HE works).

(2) Each bond sum and the cash surety (the latter in respect of the final phase only) is to be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor, Highways England must, in writing, authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 80% of those payments provided that an evaluation of the HE works completed and remaining has been carried out by the undertaker and audited and agreed by Highways England to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors. Highways England will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the HE works plus an additional 20%;
- (b) within 20 working days of completion of each phase of the HE works (as evidenced by the issuing of the provisional certificate in respect of that phase in accordance with paragraph 6(1) of this Part of this Schedule) Highways England must, in writing, release the bond provider from its obligations in respect of 80% of the bond sum relating to that phase (“the revised bond sum”) save insofar as any claim or claims have been made against the bond and/or liability on its part has arisen prior to that date, in which case Highways England will retain a sufficient sum to meet all necessary costs; and
- (c) within 20 working days of the issue of the final certificate for each phase of the HE works referred to in paragraph 8 of this Part of this Schedule, Highways England must, in writing,

release the bond provider from its obligations in respect of the revised bond sum relating to that phase and (in respect of the final phase) release the remainder of the cash surety to the undertaker save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date, in which case Highways England will retain a sufficient sum to meet all necessary costs.

Commencement Information

I9 Sch. 13 Pt. 2 para. 9 in force at 30.10.2019, see [art. 1](#)

Commuted sums

10. The undertaker must pay to Highways England the commuted sum calculated in accordance with FS Guidance S278 Commuted Lump Sum Calculation Method dated 18th January 2010 within 28 days of the date that each phase of the HE works becomes maintainable by Highways England in accordance with paragraph 7(3) of this Part of this Schedule.

Commencement Information

I10 Sch. 13 Pt. 2 para. 10 in force at 30.10.2019, see [art. 1](#)

Insurance

11. The undertaker must prior to commencement of the HE works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) against any legal liability for damage, loss or injury to any property or any person as a direct result of the execution of the HE works or any part thereof by the undertaker.

Commencement Information

I11 Sch. 13 Pt. 2 para. 11 in force at 30.10.2019, see [art. 1](#)

Indemnification

12.—(1) The undertaker must in relation to the carrying out of the HE works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify Highways England from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design and carrying out of the HE works, provided that—

- (a) the foregoing indemnity does not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of Highways England or its officers, servants, agents or contractors or any person or body for whom it is responsible;
- (b) Highways England must notify the undertaker immediately upon receipt of any claim; and
- (c) Highways England must, following the acceptance of any claim, notify the quantum to the undertaker in writing, and the undertaker must within 14 days of the receipt of such notification pay to Highways England the amount specified as the quantum of such claim.

(2) The undertaker must notify Highways England of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify

Highways England of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

Commencement Information

I12 Sch. 13 Pt. 2 para. 12 in force at 30.10.2019, see [art. 1](#)

Warranties

13. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill, care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant, such warranties to be provided to Highways England before that phase commences.

Commencement Information

I13 Sch. 13 Pt. 2 para. 13 in force at 30.10.2019, see [art. 1](#)

Land transfer

14.—(1) Following the issuing of the final certificates for all the HE works, Highways England may serve notice on the undertaker that it wishes to take a freehold transfer of land within the then extent of highway land which is not in the ownership of HE but has been acquired by the undertaker for the purposes of carrying out the HE works.

(2) If the undertaker receives a notice under sub-paragraph (1), the undertaker must co-operate in a freehold transfer of the land which is the subject of the notice and complete such transfer as soon as reasonably practicable at no cost to Highways England, which includes the undertaker being responsible for the reasonable legal costs incurred by Highways England in connection with such transfer.

Commencement Information

I14 Sch. 13 Pt. 2 para. 14 in force at 30.10.2019, see [art. 1](#)

Approvals

15.—(1) Any approvals, consents or agreements required or sought from or with Highways England pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

(2) If Highways England fail to notify the undertaker of its decision in respect of any approval, consent or agreement pursuant to the provisions of this Part of this Schedule within 28 days of the specified day, the undertaker may serve upon Highways England written notice requiring Highways England to give their decision within a further 28 days beginning on the date upon which Highways England received written notice from the undertaker. Subject to subparagraph (3), if by the expiry of the further 28 days Highways England has failed to notify the undertaker of its decision, Highways England are to be deemed to have given the relevant approval, consent or agreement.

(3) Any further notice given by the undertaker to Highways England under subparagraph (2) must include a written statement that the provisions of subparagraph (2) apply to the relevant approval, consent or agreement.

- (4) In this paragraph “specified day” means—
- (a) the day on which particulars of the matter are received by Highways England under the provisions of this Part of this Schedule; or
 - (b) the day on which the undertaker provides Highways England with any further particulars of the matter that have been reasonably requested by Highways England within 28 days of the date in sub-paragraph (2)(a),

whichever is the later.

Commencement Information

I15 Sch. 13 Pt. 2 para. 15 in force at 30.10.2019, see [art. 1](#)

Expert determination

16.—(1) Article 48 (arbitration) does not apply to this Part of this Schedule except in respect of sub-paragraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person, who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute, acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other, and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

- (4) The expert must—
- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
 - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
 - (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b); and
 - (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 48.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

Commencement Information

I16 Sch. 13 Pt. 2 para. 16 in force at 30.10.2019, see [art. 1](#)

17. Form 1 as referred to in paragraph 9—

Form 1

Bond – Highways England

BY THIS BOND [] [(Company Regn No)] whose registered office is situate at [] (“**the undertaker**”) and [] [(Company Regn No)] whose registered office is situate at [] (“**the Surety**”) are jointly and severally bound to [] of [] (“**the []**”) this [] day of [] 200[] in the sum of [] pounds (£[Surety Sum to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as the Northampton Gateway Rail Freight Interchange Order 2019 (“**the DCO**”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to Highways England such sums as are therein provided **NOW THE CONDITIONS** of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 2 of Schedule 13 to the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by Highways England thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by Highways England under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of Highways England shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 9 of Part 2 of Schedule 13 to the DCO.

[Attestation]

Commencement Information

I17 Sch. 13 Pt. 2 para. 17 in force at 30.10.2019, see [art. 1](#)

Commencement Information

I16 Sch. 13 Pt. 2 para. 16 in force at 30.10.2019, see [art. 1](#)

I17 Sch. 13 Pt. 2 para. 17 in force at 30.10.2019, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, PART 2.