

SCHEDULE 10

Protective provisions

PART 17

For the protection of National Highways Limited

Payments

229.—(1) The undertaker must pay to National Highways a sum equal to the whole of any reasonable costs and expenses which National Highways incurs (including costs and expenses for using internal or external staff and costs relating to any work which becomes abortive) in relation to the specified works and in relation to any approvals sought under this Order, or otherwise incurred under this Part, including—

- (a) the checking and approval of the information required under paragraph 227(2);
- (b) the supervision of the specified works;
- (c) any costs reasonably incurred under paragraph 228(7) of this Part, and
- (d) any value added tax which is payable by National Highways in respect of such costs and expenses and for which it cannot obtain reinstatement from HM Revenue and Customs, together comprising “the NH costs”.

(2) National Highways must provide the undertaker with a schedule showing its reasonable estimate of the NH costs prior to the commencement of the specified works and the undertaker must pay to National Highways the reasonable estimate of the NH costs prior to commencing the specified works and in any event prior to National Highways incurring any cost.

(3) If at any time after the payment referred to in sub-paragraph (2) has become payable, National Highways reasonably believes that the NH costs will exceed the reasonably estimated NH costs it may give notice to the undertaker of the amount that it reasonably believes the NH costs will exceed the estimate of the NH costs (the excess) and the undertaker must pay to National Highways within 28 days of the date of the notice a sum equal to the excess.

(4) National Highways must give the undertaker a final account of the NH costs referred to in sub-paragraph (1) above within 91 days of the date of completion of the specified works as set out in the programme of works.

(5) Within 28 days of the issue of the final account:

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

(6) If any payment due under sub-paragraph (2) above, 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 3% above the Bank of England base lending rate from time to time being in force 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.