

## SCHEDULES

### SCHEDULE 33

#### PROTECTIVE PROVISIONS

##### PART 1

##### HIGHWAYS AND TRAFFIC

- 1 (1) The following provisions of this Part have effect, unless otherwise agreed in writing between the nominated undertaker and the highway authority concerned.
- (2) In this Part—
  - “plans” includes sections and specifications;
  - “property of the highway authority” means any apparatus of the highway authority affixed to or placed under any highway.
- (3) Part 3 of the New Roads and Street Works Act 1991 does not apply in relation to any matter which is regulated by this Part.
- 2 Wherever in this Part provision is made with respect to the approval or consent of the highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the highway authority may require, but must not be unreasonably withheld.
- 3 In exercising the powers conferred by this Act in relation to any highway the nominated undertaker must—
  - (a) have regard to the potential disruption of traffic which may be caused, and
  - (b) seek to minimise such disruption so far as is reasonably practicable.
- 4 (1) This paragraph applies to the construction of any tunnel, subway or other structure authorised by this Act under and within 8 metres of the surface of any highway which comprises a carriageway.
- (2) The nominated undertaker must not, without the consent of the highway authority, carry out works to which this paragraph applies except in accordance with plans submitted to, and approved by, the highway authority.
- (3) If, within 28 days after such plans have been submitted, the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.
- (4) This paragraph does not apply to street works within the meaning of Part 3 of the New Roads and Street Works Act 1991.
- 5 In the construction of any part of the works to which paragraph 4 applies under a highway no part of it may, except with the consent of the highway authority, be so constructed as to—
  - (a) interfere with the provision of proper means of drainage of the surface of the highway, or

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(b) be nearer than two metres to the surface of the highway.

- 6 (1) The provisions of this paragraph have effect in relation to, and in relation to the construction of, any new bridge, or any extension or alteration of an existing bridge, which carries—
- (a) any part of the works authorised by this Act over a highway, or
  - (b) a highway over any part of those works.

Any such new bridge, or (as the case may be) any bridge so extended or altered, is referred to in this paragraph as “the bridge”.

- (2) Before commencing the construction of, or the carrying out of any work in connection with, the bridge which involves interference with a highway, the nominated undertaker must submit to the highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating to the work, and the bridge must not be constructed and the works must not be carried out except in accordance with the plans submitted to, and approved by, the highway authority.
  - (3) If, within 28 days after the plans have been submitted, the highway authority has not approved or disapproved them, it is to be deemed to have approved the plans as submitted.
  - (4) If the bridge carries any part of the works authorised by this Act over any highway—
    - (a) it must be constructed in such manner as to prevent so far as may be reasonably practicable the dripping of water from the bridge, and
    - (b) the highway authority may, at the cost of the nominated undertaker, provide and place such lamps and apparatus as may from time to time be reasonably necessary for efficiently lighting any highway under or in the vicinity of the bridge.
- 7 The nominated undertaker must—
- (a) secure that so much of the works authorised by this Act as is constructed under any highway must be so designed, constructed and maintained as to carry the appropriate loading recommended for highway bridges by the Secretary of State at the time of construction of the works, and
  - (b) indemnify the highway authority against, and make good to the highway authority, the expenses which the highway authority may reasonably incur in the maintenance or repair of any highway, or any tunnels, sewers, drains or apparatus in the highway, by reason of non-compliance with the provisions of this paragraph.
- 8 (1) Any officer of the highway authority duly appointed for the purpose may at all reasonable times, on giving to the nominated undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Act which—
- (a) is in, over or under any highway, or
  - (b) which may affect any highway or any property of the highway authority, during the carrying out of the works.
- (2) The nominated undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the highway authority on or under any highway, the nominated undertaker must adopt such measures and

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precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.

- 9 (1) The nominated undertaker must not alter, disturb or in any way interfere with any property of the highway authority on or under any highway, or the access to that property, without the consent of the highway authority.
- (2) Any alteration, diversion, replacement or reconstruction of any such property which may be necessary must be made by the highway authority or the nominated undertaker as the highway authority thinks fit, and the expense reasonably incurred by the highway authority in so doing must be repaid to the highway authority by the nominated undertaker.
- (3) If, within 28 days after a request for consent has been submitted, the highway authority has not given or refused such consent, it is to be deemed to have consented to the request as submitted.
- 10 The nominated undertaker must not remove any soil or material from any highway except so much as is excavated in the carrying out of the works authorised by this Act.
- 11 (1) If the highway authority, after giving to the nominated undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in consequence of the construction of the works authorised by this Act—
- (a) in the signposting of traffic diversions,
  - (b) in the taking of other measures in relation to those diversions, or
  - (c) in the repair of any highway by reason of the diversion of traffic from a road of a higher standard,
- the nominated undertaker must repay to the highway authority the amount of any such expense reasonably so incurred.
- (2) Sub-paragraph (3) applies in respect of an amount which, but for that sub-paragraph, would be payable to the highway authority by virtue of sub-paragraph (1) in respect of the repair of any highway.
- (3) If the highway fell or would have fallen due for repair as part of the maintenance programme of the highway authority at any time within ten years of the repair being carried out by the nominated undertaker, so as to confer on the highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the highway authority is liable or by deferment of the time for such work in the ordinary course), the amount payable to the highway authority must be reduced by the amount which represents that benefit.
- 12 The nominated undertaker must not, except with the consent of the highway authority—
- (a) deposit any soil or material, or store any plant, in or over a highway to which the public continues to have access so as to obstruct or render less safe the use of the highway,
  - (b) deposit any soils or materials on any such highway outside a hoarding,
  - (c) erect or retain on or over such a highway any scaffolding or other structure which obstructs the highway unless the structure comprises screening which has been approved under Schedule 17 (planning conditions),
- but if within 28 days after request for it any such consent is neither given nor refused it is to be deemed to have been given.

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- 13 The nominated undertaker must, if reasonably so required by the highway authority, provide and maintain to the reasonable satisfaction of the highway authority, during such time as the nominated undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Act, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.
- 14 (1) Where any part of any highway has been broken up or disturbed by the nominated undertaker and not permanently stopped up or diverted, the nominated undertaker must—
- (a) make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the highway authority, and
  - (b) maintain the same to the reasonable satisfaction of the highway authority for such time as may reasonably be required for the permanent reinstatement of the highway.
- (2) The reinstatement of that part of the highway must be carried out by the nominated undertaker to the reasonable satisfaction of the highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991.
- 15 (1) This paragraph applies where damage to any highway or property of the highway authority on or under any highway is caused by, or results from—
- (a) the construction of any work authorised by this Act, or
  - (b) any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon such work.
- (2) In the case of damage to a highway, the nominated undertaker may make good such damage to the reasonable satisfaction of the highway authority.
- (3) The nominated undertaker must pay compensation to the highway authority—
- (a) in a case where the nominated undertaker does not make good such damage to a highway;
  - (b) in the case of damage to property of the highway authority.
- 16 The fact that any act or thing may have been done in accordance with plans approved by the highway authority must not (if it was not attributable to the act, neglect or default of the highway authority or of any person in its employ or its contractors or agents) exonerate the nominated undertaker from any liability, or affect any claim for damages, under this Part or otherwise.
- 17 (1) Any dispute arising between the nominated undertaker and the highway authority under this Part is to be determined by arbitration if—
- (a) the parties agree, or
  - (b) the dispute relates to the amount of any sum payable under this Part,
- but must otherwise be determined by a person appointed by the Secretary of State.
- (2) Any person appointed by the Secretary of State under sub-paragraph (1) must, in determining any dispute arising under this Part, have regard to such matters as may be specified by the Secretary of State on making the appointment.

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