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## SCHEDULES

### SCHEDULE 4

#### HIGHWAYS

#### PART 2

##### INTERFERENCE WITH HIGHWAYS

###### *Stopping up*

- 2 (1) The nominated undertaker may, for the purposes of or in connection with the construction of the works authorised by this Act, stop up each highway or part of a highway specified in table 1 or 2 in Schedule 5.
- (2) Where a highway or part of a highway is specified in table 1 in Schedule 5, it may not be stopped up under sub-paragraph (1) unless all of the land which abuts on it falls within one or more of the following categories, namely—
- (a) land to which there is no right of access directly from the highway or part to be stopped up;
  - (b) land to which there is reasonably convenient access otherwise than directly from the highway or part to be stopped up;
  - (c) land the owners and occupiers of which have agreed to the stopping up of the highway or part;
  - (d) land which is in the possession of the Secretary of State.
- (3) Where a highway or part of a highway is specified in columns (1) and (2) of table 2 in Schedule 5—
- (a) it may not be stopped up under sub-paragraph (1) until the date on which the new highway to be provided in substitution for the highway or part, as specified in column (3) of table 2, is first open for public use, but
  - (b) the nominated undertaker may, at any time before that date, temporarily stop up so much of the highway or part as is within the Act limits for the purposes of or in connection with the provision of the new highway to be provided in substitution for the highway or part.
- (4) Before exercising the power conferred by sub-paragraph (3)(b) in relation to a highway or part of a highway, the nominated undertaker must consult the highway authority.
- (5) The purpose of consultation under sub-paragraph (4) is to ensure public safety and, so far as reasonably practicable, to reduce public inconvenience.
- (6) Where a new highway specified in column (3) of table 2 in Schedule 5 is provided in exercise of the powers conferred by this Act, the date on which the new highway is first open for public use is to be taken for the purposes of sub-paragraph (3) to be—

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- (a) where a date has been determined in relation to the highway under paragraph 17(6), the date so determined, and
    - (b) where it has not, the date certified under paragraph 17(5).
  - (7) There is no need to reinstate a highway or part of a highway in relation to which the power conferred by sub-paragraph (3)(b) has been exercised where the exercise of the power comes to an end on the exercise, in relation to the highway or part, of the power under sub-paragraph (1).
- 3
- (1) The nominated undertaker may, for the purposes of or in connection with the construction of the works authorised by this Act, stop up a bridleway or footpath, or part of a bridleway or footpath, where—
    - (a) the bridleway or footpath (or part) is within the Act limits, and
    - (b) there is no power under paragraph 2 to stop up the bridleway or footpath (or part).
  - (2) The power under sub-paragraph (1) may not be exercised unless the proposed stopping up has been confirmed by the appropriate Ministers on application by the nominated undertaker.
  - (3) The appropriate Ministers must grant an application under sub-paragraph (2) if, but only if, they are satisfied—
    - (a) that an alternative bridleway or footpath has been provided,
    - (b) that an alternative bridleway or footpath will be provided before the proposed stopping up takes place, or
    - (c) that the provision of an alternative bridleway or footpath is not required.
  - (4) Where the appropriate Ministers grant an application under sub-paragraph (2), they must notify the nominated undertaker of the basis on which the application is granted.
  - (5) Where an application under sub-paragraph (2) is granted on the basis that an alternative bridleway or footpath will be provided, the proposed stopping up may not take place until the alternative has been provided.
  - (6) Before making an application under sub-paragraph (2), the nominated undertaker must publish in at least one local newspaper circulating in the relevant area a notice—
    - (a) specifying—
      - (i) the bridleway or footpath, or part, proposed to be stopped up,
      - (ii) what, if any, alternative bridleway or footpath is proposed, and
      - (iii) if no alternative is proposed, the reasons why,
    - (b) specifying a place in the relevant area where a map or plan illustrating the proposals may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the publication of the notice (“the publication date”),
    - (c) stating that any person may within that period make representations about confirmation under sub-paragraph (2) of the proposed stopping up, and
    - (d) specifying the manner in which such representations may be made.
  - (7) Not later than the publication date, the nominated undertaker must—
    - (a) give a copy of the notice, together with any map or plan to which it refers, to every local authority whose area includes any of the land on which the bridleway or footpath, or part, proposed to be stopped up is situated, and

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- (b) cause a copy of the notice to be displayed in a prominent position at the ends of the bridleway or footpath, or part, proposed to be stopped up.
- (8) Before granting an application under sub-paragraph (2), the appropriate Ministers must consider any representations made to them in accordance with the nominated undertaker's notice which have not been withdrawn.
- (9) Unless they direct otherwise, the appropriate Ministers' functions in relation to an application under sub-paragraph (2) must, instead of being carried out by them, be carried out by a person appointed by them for the purpose.
- (10) In sub-paragraph (6), references to the relevant area are to the area in which the bridleway or footpath, or part, proposed to be stopped up is situated.
- (11) In sub-paragraph (7)(a), “local authority” means—
  - (a) the council of a county, district or parish,
  - (b) a joint authority established by Part 4 of the Local Government Act 1985,
  - (c) a housing action trust established under Part 3 of the Housing Act 1988, and
  - (d) the parish meeting of a rural parish not having a separate parish council.
- (12) In this paragraph, references to the appropriate Ministers are to the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs and, in relation to the carrying out of any functions, are to those Ministers acting jointly.

*Effect of stopping up of highway*

- 4 (1) On a highway or part of a highway being stopped up under paragraph 2(1) or 3—
  - (a) all rights of way over or along it are extinguished, and
  - (b) the Secretary of State may appropriate and use, without making any payment, so much of the site of it as is bounded on both sides by land owned by the Secretary of State.
- (2) The nominated undertaker must compensate any person who suffers loss by the extinction under this paragraph of a private right of way.
- (3) Any dispute as to a person's entitlement to compensation under sub-paragraph (2), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the Land Compensation Act 1961.
- (4) The Secretary of State is not entitled to any mines or minerals under land which the Secretary of State is entitled to appropriate and use under sub-paragraph (1)(b), with the exception of minerals necessarily extracted or used in the construction of the undertaking which the nominated undertaker is authorised to carry on by this Act.
- (5) Part 3 of Schedule 2 to the Acquisition of Land Act 1981 (regulation of the working of mines or minerals underlying an authorised undertaking) has effect in relation to the working of any mines or minerals underlying land which the Secretary of State is entitled to appropriate and use under sub-paragraph (1)(b) as if—
  - (a) references to the undertaking were to the undertaking which the nominated undertaker is authorised to carry on by this Act,
  - (b) in paragraphs 3 to 5 and 7 to 9, references to the acquiring authority were to the nominated undertaker, and
  - (c) in paragraph 6, the first reference to the acquiring authority were to the nominated undertaker.

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*Creation of public rights of way over new footpaths, bridleways etc*

- 5 (1) This paragraph applies where a footpath, bridleway or other kind of way specified in column (3) of table 2 in Schedule 5 (substitute highways) or in table 3 in that Schedule (new rights of way) is provided in exercise of the powers conferred by this Act.
- (2) A public right of way of the kind specified in column (3) of table 2 or in table 3 in Schedule 5 (as the case may be) is created on the date on which the footpath, bridleway or other way is first open for public use.
- (3) Section 28 of the Highways Act 1980 (compensation for loss suffered by landowner) applies as if the public right of way created by virtue of sub-paragraph (2) had been created by an order under section 26 of that Act (public path creation orders).
- (4) In its application by virtue of sub-paragraph (3), section 28 of that Act has effect as if it were modified as follows—
- (a) in subsection (1), for “the authority by whom the order was made” there were substituted “ the Secretary of State ”;
- (b) for subsection (2) there were substituted—
- “(2) A claim for compensation under this section must be made by notice in writing to the Secretary of State before the end of the period of 6 months beginning with the day on which the public right of way first becomes exercisable.”;
- (c) subsection (3) were omitted.
- (5) In its application to a claim under section 28 of that Act (as applied by virtue of sub-paragraph (3)), section 307 of that Act (determination of disputes as to compensation) has effect as if, in subsection (2), for “the authority from whom the compensation in question is claimed” there were substituted “ the Secretary of State ”.
- (6) For the purposes of sub-paragraph (2), the date on which a path or way is first open for public use is to be taken to be—
- (a) where a date has been determined in relation to the path or way under paragraph 17(6), the date so determined, and
- (b) where it has not, the date certified under paragraph 17(5).

*Deviation of new footpaths, bridleways etc*

- 6 (1) This paragraph applies where the nominated undertaker, in exercise of the powers conferred by this Act, provides a footpath, bridleway or other kind of way which is specified in column (3) of table 2 in Schedule 5 (substitute highways) or in table 3 in that Schedule (new rights of way).
- (2) In providing the path or way, the nominated undertaker may deviate laterally to any extent from the lines shown on the deposited plans, within the limits shown on those plans (and references in this Part of this Schedule to a highway specified in column (3) of table 2 or in table 3 in Schedule 5 are to be construed accordingly).

*Permanent obstruction*

- 7 (1) The powers under section 2(1), (3) and (5) may be exercised in such a way as to obstruct the highway, but only with the consent of the highway authority, such consent not to be unreasonably withheld.

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- (2) Any dispute with a highway authority under sub-paragraph (1) must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- (3) If a highway authority which receives an application for consent under sub-paragraph (1) fails to notify the applicant 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 granted it.

#### *Temporary interference*

- 8 (1) For the purposes of the works authorised by this Act, the nominated undertaker may—
  - (a) temporarily stop up or alter or divert any highway or part of a highway;
  - (b) for any reasonable time divert traffic from, and prevent persons passing along, any highway or part of a highway;
  - (c) break up or interfere with any highway or part of a highway (including any sewer, drain or tunnel in it);
  - (d) temporarily remove any street furniture in or beside a highway.
- (2) The nominated undertaker must provide reasonable access for pedestrians going to or from premises abutting on a highway affected by the exercise of the powers under sub-paragraph (1)(a) to (c) if there would otherwise be no such access.
- (3) Before exercising the powers under sub-paragraph (1) in relation to a highway, and to an extent, specified in table 4 in Schedule 5, the nominated undertaker must consult the relevant authority.
- (4) The purpose of consultation under sub-paragraph (3) is to ensure public safety and, so far as reasonably practicable, to reduce public inconvenience.
- (5) Before exercising the powers under sub-paragraph (1) in relation to a highway, or to an extent, not specified in table 4 in Schedule 5, the nominated undertaker must obtain the consent in writing of the relevant authority.
- (6) Consent under sub-paragraph (5) must not be unreasonably withheld, but may be given subject to such conditions as the relevant authority may reasonably require in the interest of public safety or convenience.
- (7) If a relevant authority which receives an application for consent under sub-paragraph (5) fails to notify the applicant 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 granted the application.
- (8) Any dispute with a relevant authority about consent under sub-paragraph (5) must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- (9) There is no need to reinstate a highway or part of a highway in relation to which any of the powers under sub-paragraph (1)(a) to (c) has been exercised where the exercise of the power comes to an end on the exercise, in relation to the highway or part, of the power under paragraph 2(1) or 3(1).
- (10) In this paragraph—

“relevant authority” means—

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- (a) the highway authority, in the case of the powers in sub-paragraph (1) (a) to (c);
  - (b) the owner of the street furniture, in the case of the power in sub-paragraph (1)(d);
- “street furniture” includes traffic signs, street lighting and bus shelters.

*Street works*

- 9 (1) The nominated undertaker may, for the purposes of the works authorised by this Act, enter upon any highway within the Act limits and—
- (a) place, maintain or alter, or change the position of, apparatus in it,
  - (b) remove apparatus from it, and
  - (c) execute any works required for, or incidental to, any works authorised by paragraph (a) or (b).
- (2) In this paragraph, “apparatus” has the same meaning as in Part 3 of the New Roads and Street Works Act 1991.
- 10 (1) Works executed under this Act in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the New Roads and Street Works Act 1991 (street works) as major transport works if—
- (a) they are of a description mentioned in section 86(3)(a), (c) to (e), (g) or (h) of that Act (which defines what highway authority works are major highway works), or
  - (b) they are works which, had they been executed under the powers of the highway authority, might have been carried out in exercise of the powers under section 64 (dual carriageways and roundabouts) or 184 (vehicle crossings over footways and verges) of the Highways Act 1980.
- (2) Sub-paragraph (1) does not apply to works executed under powers delegated to a highway authority by an agreement under paragraph 14(2) of this Schedule (construction delegation agreements).

*Working sites in highways*

- 11 Any highway or part of a highway which is stopped up under paragraph 2(3)(b) or 8(1)(a) may be used as a working site if it is within the Act limits.

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