

SCHEDULES

SCHEDULE 4

HIGHWAYS

PART 3

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

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.
- (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—

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- (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.

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