

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF HIGHWAYS ENGLAND

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,

Changes to legislation: There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, Paragraph 5. (See end of Document for details)

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

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

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