

## SCHEDULES

### SCHEDULE 4

Section 3(2)

#### HIGHWAYS

##### PART 1

##### HIGHWAY ACCESS

- 1 (1) The nominated undertaker may, for Phase 2a purposes—
- (a) form and lay out means of access, and
  - (b) improve existing means of access,
- at any place within the Act limits.
- (2) In the case of works at a place shown on the deposited plans which require the opening of an access on to, or the alteration of, a highway used by vehicular traffic, the power under sub-paragraph (1) is exercisable on giving at least 28 days' notice to the highway authority.
- (3) Works which are the subject of a notice under sub-paragraph (2) may not be carried out at the place shown on the deposited plans if, within 28 days of the giving of the notice, the highway authority objects to the works being carried out there by giving the nominated undertaker notice to that effect.
- (4) The only ground on which the highway authority may object under sub-paragraph (3) is that works under sub-paragraph (1) should be carried out instead at another place within the Act limits to prevent or reduce—
- (a) injury to local amenity, or
  - (b) prejudicial effects on road safety or on the free flow of traffic in the local area,
- and are reasonably capable of being carried out there.
- (5) If, in the case of works under sub-paragraph (1) at a place shown on the deposited plans, the works require the opening of an access on to, or the alteration of, a highway used by vehicular traffic, they must be carried out in accordance with plans and specifications approved by the highway authority at the request of the nominated undertaker.
- (6) The only ground on which the highway authority may refuse to approve plans or specifications for the purposes of sub-paragraph (5) is that they ought to be modified to prevent or reduce—
- (a) injury to local amenity, or
  - (b) prejudicial effects on road safety or on the free flow of traffic in the local area,
- and are reasonably capable of being so modified.

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- (7) Works under sub-paragraph (1) may only be carried out at a place not shown on the deposited plans if the highway authority consents to the siting of the works; and such consent is not to be unreasonably withheld.
- (8) Works under sub-paragraph (1) at a place not shown on the deposited plans must be carried out in accordance with plans and specifications approved by the highway authority at the request of the nominated undertaker; and such approval is not to be unreasonably withheld.
- (9) In considering whether to give consent for the purposes of sub-paragraph (7), or approval for the purposes of sub-paragraph (8), in a case where the works require the opening of an access on to, or the alteration of, a highway used by vehicular traffic, the highway authority must have regard in particular to effects on road safety and on the free flow of traffic in the local area.
- (10) If, on application by the nominated undertaker for the approval of plans or specifications under sub-paragraph (5) or (8), the highway authority fails to notify the nominated undertaker 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 approved the plans or specifications as submitted.
- (11) If a highway authority which receives an application for consent under sub-paragraph (7) 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.
- (12) Where an objection under sub-paragraph (3) leads to the carrying out of works under sub-paragraph (1) at a place not shown on the deposited plans, sub-paragraphs (5), (7) and (8) have effect in relation to the works as if the place were shown on the deposited plans.
- (13) Any dispute with a highway authority under this paragraph must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.

## 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;

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- (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—
    - (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).
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- (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.

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- (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
  - (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

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- (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.

*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)

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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.
- (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.

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- (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—
    - (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

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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.

**PART 3**

CONSTRUCTION AND MAINTENANCE OF HIGHWAYS

*Construction and alteration*

- 12 (1) Where under this Act the nominated undertaker—
- (a) constructs 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,
- the construction or alteration must be completed to the reasonable satisfaction of the highway authority.
- (2) Where work mentioned in sub-paragraph (1) has been completed to the reasonable satisfaction of a highway authority, it must certify that fact in writing to the nominated undertaker.
- (3) If the nominated undertaker requests a highway authority to issue a certificate under sub-paragraph (2) and the highway authority does not before the end of the period of 28 days beginning with the date on which the request was made—
- (a) issue a certificate under that sub-paragraph, or
  - (b) notify the nominated undertaker of its decision to refuse to issue such a certificate,
- it is to be treated as having issued such a certificate at the end of that period.
- (4) Any dispute with a highway authority under this paragraph must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- 13 (1) Sub-paragraph (2) applies where under this Act the nominated undertaker—
- (a) constructs a new highway which is constituted by or comprises a carriageway, or
  - (b) realigns a highway which is constituted by or comprises a carriageway.
- (2) The construction or realignment must be carried out in accordance with plans, sections and specifications approved by the highway authority at the request of the nominated undertaker; and such approval is not to be unreasonably withheld.
- (3) Any dispute with a highway authority under sub-paragraph (2) must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.



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- (4) If, on application by the nominated undertaker for the approval of plans, sections or specifications under sub-paragraph (2), the highway authority fails to notify the nominated undertaker 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 approved the plans, sections or specifications as submitted.
- 14 (1) Where under this Act the nominated undertaker is authorised to stop up or interfere with an existing highway or part of an existing highway, it may enter into an agreement with the controllers of the highway concerning the construction (or contribution towards the expenses of construction) of—
- (a) any new highway to be provided in substitution,
  - (b) any alteration of the existing highway, and
  - (c) any related matters.
- (2) Where the nominated undertaker has entered into an agreement under sub-paragraph (1) with the controllers of an existing highway, the nominated undertaker may, by agreement with them, delegate to them the power of constructing—
- (a) any new highway to be provided in substitution, or
  - (b) any alteration of the existing highway,
- including any bridge over any railway.
- (3) Works executed by the controllers of an existing highway under a delegation agreement under sub-paragraph (2) which could have been carried out by them under section 64 or 184 of the Highways Act 1980 are to be treated for the purposes of section 86(3) of the New Roads and Street Works Act 1991 as having been so carried out by them.
- (4) References in this paragraph to the controllers of a highway are to the persons having the charge, management or control of it.
- 15 (1) This paragraph applies in relation to a work authorised by this Act which appears to the Secretary of State to constitute—
- (a) the construction of an extension to a trunk road or special road, or
  - (b) the realignment of a trunk road or special road.
- (2) The Secretary of State may by regulations made by statutory instrument provide that the highway comprising the extension or realignment is to become a trunk road or special road (or both) as from a date—
- (a) specified in the regulations, or
  - (b) if the regulations so provide, specified in an instrument in writing after the making of the regulations.
- (3) Where, under regulations under this paragraph, a highway becomes a special road—
- (a) the regulations must specify the special road authority for the highway,
  - (b) the highway is to be regarded as provided by the specified special road authority under a scheme under section 16 of the Highways Act 1980 made on the day the regulations are made, and
  - (c) the highway is to be regarded as so provided for the use of traffic of such classes referred to in Schedule 4 to that Act as may be provided for in the regulations (and the regulations may make different provision for different parts of the highway).

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- (4) Provision under sub-paragraph (3)(c) may be expressed by reference to classes of traffic which are at any time authorised under a scheme under section 16 of the Highways Act 1980 in relation to the road of which the highway is a realignment or extension.

*Roads constructed as highways*

- 16 (1) This paragraph applies where under this Act the nominated undertaker constructs a road as a highway.
- (2) The resulting highway is created on the date on which the road is first open for public use.
- (3) For the purposes of sub-paragraph (2), the date on which the road is first open for public use is the date on which the resulting highway is taken to be first open for public use for the purposes of paragraph 17(2).
- (4) Where the resulting highway is a temporary highway, it ceases to be a highway on the day after the date on which the road is last open for public use.
- (5) For the purposes of sub-paragraph (4), the date on which the road is last open for public use is to be taken to be the date notified by the nominated undertaker, in accordance with sub-paragraph (6), to the highway authority as being the date on which the road is to be last open for public use.
- (6) The notification must be given to the highway authority by the nominated undertaker at least 28 days before the date on which the road is to be last open for public use.

*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.

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- (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—
- (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.
- Bridges carrying highways*
- 21       Each of sections 116 and 117 of the Transport Act 1968 (duties as respects bridges carrying highways over railways) has effect as if the nominated undertaker were one of the boards mentioned in the section in question.

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