

SCHEDULES

SCHEDULE 3

Article 21

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Agency the following provisions shall, unless otherwise agreed in writing between the Promoter and the Agency, have effect.

Definitions applying to this Schedule

2. In this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” shall be construed accordingly;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

Pre-conditions to commencing any specified work affecting a drainage work

3.—(1) Before beginning to construct any specified work, the Promoter shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 14.

(3) Any approval of the Agency required under this paragraph—

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- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused in writing (and in the case of a refusal, accompanied by a statement of the grounds for refusal) within 42 days of the submission of the plans for approval; and
- (c) may be given subject to such reasonable conditions or requirements as the Agency may impose—
 - (i) for the protection of any drainage work,
 - (ii) for the protection of the fishery,
 - (iii) for the protection of water resources,
 - (iv) for the prevention of flooding or pollution, or
 - (v) in the discharge of its environmental and recreational duties.

4. Without prejudice to the generality of paragraph 3, the conditions or requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the Promoter at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to provide compensatory habitat for habitat lost or damaged by the specified works;
 - (iii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work; and
 - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

5.—(1) Subject to sub-paragraph (2), any specified work, and all compensatory habitat and protective works required by the Agency under paragraph 4, shall be constructed—

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the Promoter thereafter (such approval not to be unreasonably withheld or delayed);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to water and inspect the construction of such works.

(2) The Promoter shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of the specified works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Promoter, at the Promoter's own expense, to comply with the requirements of this Schedule or (if the Promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and,

where removal is required, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Promoter, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Promoter.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

Survey of any drainage work liable to be affected by a specified work

6. Before commencing the construction of a specified work the Promoter shall procure at its expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by that specified work.

Maintenance by the Promoter of any drainage work liable to be affected by a specified work

7.—(1) Subject to sub-paragraph (2), the Promoter shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Promoter or which it otherwise has control of, or is in occupation of, for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(2) The obligation imposed on the Promoter under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of this Order from doing so.

(3) If any drainage work referred to in sub-paragraph (1) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Promoter to repair and restore the work, or any part thereof, of (if the Promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the Promoter, the Promoter has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Promoter.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not except in a case of emergency exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

Impairment of efficiency of drainage work for flood defence

8. If by reason of the construction of any specified work, or of the failure of any such work, or of the Promoter to maintain it, the efficiency of any drainage work for flood defence purposes is

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impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the Promoter to the reasonable satisfaction of the Agency and if the Promoter fails to do so within such reasonable period as the Agency may require by notice in writing to the Promoter, the Agency may make good the same and recover from the Promoter the expense reasonably incurred by it in so doing.

Protection of fishery

9.—(1) The Promoter shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Promoter requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Promoter fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Promoter the expense reasonably incurred by it in so doing.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Promoter the reasonable cost of so doing provided that notice specifying those steps is served on the Promoter as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity as to costs and expenses

10. The Promoter shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and
- (b) in the inspection of the construction of the specified works or any compensatory habitat or protective works required by the agency under this Schedule.

11.—(1) Without prejudice to the other provisions of this Schedule, the Promoter shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or recovered from or incurred by the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains or watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Promoter, its contractors, agents or employees whilst engaged upon the specified works.

(2) The Agency shall give to the Promoter reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the consent of the Promoter, which shall not be unreasonably withheld.

No relief of liability

12. The fact that any work or thing has been executed or done by the Promoter in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Promoter from any liability under the provisions of this Schedule.

Approvals deemed and not deemed

13.—(1) For the purposes of section 109 of the Water Resources Act 1991(1) (as to structures in, over or under watercourses) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a consent under that section.

(2) Except as otherwise provided by this Schedule, nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991(2), the Salmon and Freshwater Fisheries Act 1975(3), the Water Resources Act 1991 or any enactment, byelaw or regulation relating to the Agency.

Arbitration

14. Any dispute arising between the promoter and the Agency under this Schedule shall, if the parties agree, be determined by arbitration in the London Court of International Arbitration and in accordance with its rules, but shall otherwise be referred to the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly.

(1) 1991 c. 57.
(2) 1991 c. 59.
(3) 1975 c. 51.