

SCHEDULE 6

Article 20

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the Company and the Agency.

(2) Where any consent, approval or agreement is required to be given by the Agency, pursuant to this Schedule, it shall not be unreasonably withheld or delayed.

(3) In this Schedule—

“accumulation” means any accumulation of silt or other material causing damage or a reasonable expectation of damage to flood defences managed by the Agency;

“the Agency” means the Environment Agency;

“completion” in relation to any work means the date on which it is brought into use;

“damage” includes scouring and erosion 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, outfall or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or shore of the sea or of the bed or banks of any river;

“excluded work” means a tidal work as defined in article 2(1) and any work referred to in article 5 (power to dredge the Severn Estuary);

“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;

“outfall” means—

(a) any existing land drainage outfall for which the Agency is responsible;

(b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

“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, 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.

*Specified works*

2.—(1) Before beginning to construct any specified work other than an excluded work, the Company shall submit to the Agency for its approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

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- (2) Any approval of the Agency required under this paragraph—
  - (a) shall be deemed to have been given if, within 42 days of the submission of the plans for approval, it is neither—
    - (i) given in writing; or
    - (ii) refused in writing (the refusal being accompanied by a statement of the grounds for refusal within 42 days of the submission of the plans for approval); and
  - (b) may be given subject to such reasonable conditions as the Agency may impose for—
    - (i) the protection of any drainage work;
    - (ii) the protection of the fishery;
    - (iii) the protection of water resources;
    - (iv) the prevention of flooding; or
    - (v) the prevention of pollution.
3. The conditions which the Agency may impose under paragraph 2 include—
  - (a) conditions as to the time and the manner in which any work is to be carried out; and
  - (b) conditions requiring the Company at its own expense—
    - (i) to provide or maintain means of access for the Agency;
    - (ii) 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.
- 4.—(1) Subject to sub-paragraph (2)—
  - (a) any specified work (other than an excluded work), and all protective works required by the Agency under paragraph 2(2)(b), shall be constructed within such period (if any) as the Agency may specify at the time when it gives its approval under paragraph 2, or may approve at any later time on application by the Company;
  - (b) any specified work (other than an excluded work) shall be constructed in accordance with the plans approved or deemed to have been approved or settled under this Schedule and in accordance with any conditions imposed under paragraph 2; and
  - (c) any protective works required by the Agency under paragraph 2(2)(b) shall be constructed to the reasonable satisfaction of the Agency,

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

(2) The Company shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work other than an excluded work and notice in writing of its completion not later than 7 days after its completion.

(3) If any part of a specified work (other than an excluded work) 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 Company at the Company's own expense to comply with the requirements of this Schedule or (if the Company so elects and the Agency in writing consents) to remove, alter or pull down that work and, in the case of removal, to restore the site to its former condition to such extent as the Agency reasonably requires.

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

(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 sub-paragraph (3), or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

#### *Surveys and maintenance of drainage works*

**5.—**(1) Before commencing the construction of a specified work liable to affect a drainage work, the Company 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.

(2) Subject to sub-paragraph (3), the Company shall, from the commencement of the construction of any specified work 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 Company or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(3) The obligation imposed on the Company by sub-paragraph (2) does not apply where the Agency or another person other than the Company is liable to maintain the drainage work in question and is not precluded by the exercise of the powers of this Order from doing so.

(4) If any drainage work referred to in sub-paragraph (2) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Company to repair and restore that drainage work, or any part of it, or (if the Company so elects and the Agency in writing consents), to remove the drainage work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(5) If within a reasonable period, being not less than 28 days beginning with the date on which a notice under sub-paragraph (4) is served on the Company, it has failed to begin taking steps to comply with the reasonable requirements of the notice and subsequently complete 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 Company.

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

#### *Damage to flood defences*

**6.—**(1) If, during the construction of a specified work or within 10 years after the completion of any such work, there is caused or created an accumulation or erosion which causes damage to flood defences, the Company shall, if it is proven by the construction of the specified work to have caused such damage or the reasonable expectation of such damage and if so required by the Agency before or within the period of 10 years after such completion, remedy such accumulation or erosion to the extent and commensurate with the damage it is proven to have caused, in the manner specified in

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sub-paragraph (4), and, if it refuses or fails to do so, the Agency may itself cause work to be done and may recover the reasonable cost from the Company.

(2) Should any accumulation or erosion which causes damage to flood defences or the reasonable expectation of such damage arise within the period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion proven to have been caused by the specified works shall from time to time be remedied in accordance with sub-paragraph (1) by the Company during the period of 10 years and at any time subsequently, except that the Company's obligation under this paragraph shall cease in the event that, following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion proven to have been caused by the specified works being caused or created.

(3) In sub-paragraphs (1) and (2), "damage" means any damage to the bed or banks of the river or any adverse effect upon the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991<sup>(1)</sup>.

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such other protective works or measures as may be reasonably required by the Agency; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be reasonably required by the Agency.

(5) In the event that surveys, inspections, tests or sampling establish that such accumulation or erosion would have been caused in any event by factors other than the construction of a specified work the Company shall be liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction.

#### *Impairment of efficiency of drainage work for flood defence purposes*

7. If by reason of the construction of any specified work, or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the Company to the reasonable satisfaction of the Agency; and if the Company fail to do so within such reasonable period as the Agency may require by notice in writing to the Company, the Agency may make good such impairment or damage and recover from the Company the expense reasonably incurred by it in so doing.

#### *Protection of the fishery*

8.—(1) The Company 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 written notice on the Company 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.

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(1) 1991 c. 57.

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

(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 Company the reasonable cost of so doing provided that written notice specifying those steps is served on the Company 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

**9.—**(1) The Company 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, for the purpose of compliance with this Schedule, of the construction of the specified works or any protective works required by the Agency under this Schedule.

(2) The Company shall indemnify the Agency against all claims, demands, proceedings, costs, damages, expenses or losses, 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 works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any land adjoining the works; 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 Company, its contractors, agents or employees whilst engaged upon the specified works.

(3) The Agency shall give to the Company reasonable notice of any such claim, demand, or proceedings and no settlement or compromise of any such claim, demand, proceedings, costs, damages, expenses or losses shall be made without the consent of the Company which shall not be unreasonably withheld and if the Company shall not give such consent the Agency shall diligently defend such claim or demand.

**10.** The fact that any work or thing has been executed or done by the Company 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 Company from any liability under paragraph 9.

### *Approvals*

**11.—**(1) For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991<sup>(2)</sup> (abstraction and impounding of water) and section 109 of that Act (structures in, over or under a main river ) as applying to the construction of any specified work any consent or approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to

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(2) Section 109 is amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 128, and is prospectively amended by the Marine and Coastal Access Act 2009 (c. 23), section 82.

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constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

(2) Section 23 of the Land Drainage Act 1991<sup>(3)</sup> (prohibition on obstructions etc in watercourses) and any byelaws made under that Act or the Water Resources Act 1991 shall not apply to anything done under or in pursuance of this Order.

#### *Disputes and differences*

**12.**—(1) Any dispute arising between the Company and the Agency under this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly.

(2) In the case of any conflict between any approval or consent given by the Agency pursuant to this Schedule and any condition or restriction imposed on any approval by the Secretary of State under article 10 (tidal works not to be executed without approval of Secretary of State), the terms of the approval of the Secretary of State shall prevail.

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(3) 1991 c. 59. Section 23 is amended by the Environment Act 1995, section 120 and Schedule 22, paragraphs 191 and 192. This section is prospectively amended by the Flood and Water Management Act 2010 (c. 29) section 31 and Schedule 2, paragraphs 25 and 32.