

SCHEDULES

SCHEDULE 9

PROTECTION OF INTERESTS

PART 6

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“Flood Protection Work” means work to or creation of any watercourse, 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 or flood defence; and

“relevant navigation” has the same meaning as in article 16 (powers in relation to relevant navigations or watercourses).

71.—(1) Where, in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Agency to a relevant navigation or other main river, it must give the Agency 56 days’ written notice of that requirement.

(2) Except in cases of emergency where the undertaker interferes with or obstructs access by the Agency to a relevant navigation or other main river and it is not possible for the undertaker to give the Agency the notice required under sub-paragraph (1), a suitable alternative access must be provided prior to and for the duration of any such interference.

72. If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest of the Agency in any land or proposes to interfere with, or remove, any of the Agency’s apparatus, it must give the Agency 56 days’ written notice before any such interest is acquired or any apparatus is interfered with or removed.

73. The undertaker must maintain, inspect and retain any Flood Protection Work comprised in or affected by the authorised development in accordance with a retention, inspection and maintenance plan to be prepared by the undertaker as part of the flood compensation scheme to be approved under requirement 23 in Part 1 (requirements) of Schedule 2.

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74. The undertaker must allow the Agency reasonable access to any Flood Protection Work comprised in or affected by the authorised development at all reasonable times for the purposes of ascertaining whether the undertaker is complying with the provisions of paragraph 73.

75.—(1) Where maintenance of any Flood Protection Work specified in the approved retention, inspection and maintenance plan is not carried out to the reasonable satisfaction of the Agency, the Agency may by notice require the undertaker to carry out the maintenance in question to such extent as the Agency reasonably requires.

(2) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any Flood Protection Work is served under sub-paragraph (1) the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(3) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not, except in a case of urgency, exercise the powers of sub-paragraph (2) until the dispute has been finally determined.

76. If by reason of the construction of the authorised development or of the failure of any such works the efficiency of any Flood Protection Work is impaired, or any such Flood Protection Work is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover the expenditure reasonably incurred by it in doing so from the undertaker.

77. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans or other matter under this Part of this Schedule; and
- (b) in the inspection of the construction of any Flood Protection Work required by the Agency under this Part of this Schedule.

78. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to have been approved by the Agency, or to its satisfaction, does not (in the absence of negligence on the part of the Agency, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

79. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is to be determined in accordance with article 42 (arbitration) of the Order.