

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

17. The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the Environment Agency and the undertaker.

Commencement Information

II Sch. 13 para. 17 in force at 21.5.2020, see [art. 1](#)

18. In this Part of this Schedule—

“the Agency” means the Environment Agency;

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

“construction” includes execution, placing, altering, replacing, relaying, removal and excavation and “construct” and “constructed” have corresponding meanings;

“drainage work” includes any land which provides or is expected to provide flood storage capacity for Lake Lothing 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 Lake Lothing;

“plans” includes sections, drawings, sediment risk analysis, specifications, calculations 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 8 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 Lake Lothing and any other watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to the fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of Lake Lothing and habitats in its immediate vicinity; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, basins, sewers and passages through which water flows except a public sewer.

Commencement Information

I2 Sch. 13 para. 18 in force at 21.5.2020, see [art. 1](#)

19.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency or determined under paragraph 30.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental and recreational duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) Without limiting sub-paragraph (3), the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or 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—

- (a) to safeguard any drainage work against damage; or
- (b) 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.

(6) Any specified work, and all protective works required by the Agency under sub-paragraph (4) must be constructed—

- (a) without unreasonable delay in accordance with the plan approved under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officers to watch and inspect the construction of such works.

(7) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

Commencement Information

I3 Sch. 13 para. 19 in force at 21.5.2020, see [art. 1](#)

20. The undertaker must give to the Agency notice in writing of the commencement of any specified work not less than 14 days prior to its commencement and notice in writing of its completion not later than 7 days after such completion.

Commencement Information

I4 Sch. 13 para. 20 in force at 21.5.2020, see [art. 1](#)

21.—(1) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker 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 to the reasonable satisfaction of the Agency, and where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(2) Subject to sub-paragraph (3) if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (1) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(3) In the event of any dispute as to whether sub-paragraph (2) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in an emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined in accordance with paragraph 30.

Commencement Information

I5 Sch. 13 para. 21 in force at 21.5.2020, see [art. 1](#)

22.—(1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker 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 to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 26, 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 (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the 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 any expenditure incurred by the Agency in so doing is to be recoverable from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless

the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 30.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

Commencement Information

I6 Sch. 13 para. 22 in force at 21.5.2020, see [art. 1](#)

23. Subject to paragraph 26, 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 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 impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

Commencement Information

I7 Sch. 13 para. 23 in force at 21.5.2020, see [art. 1](#)

24. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 48 hours of the undertaker becoming aware of such obstruction.

Commencement Information

I8 Sch. 13 para. 24 in force at 21.5.2020, see [art. 1](#)

25.—(1) The undertaker must 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 undertaker 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) Subject to paragraph 26, 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 the fishery, the undertaker fails to take such steps as are described in a notice served pursuant to sub-

paragraph (1), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) Subject to paragraph 26, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expense incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice

Commencement Information

19 Sch. 13 para. 25 in force at 21.5.2020, see [art. 1](#)

26.—(1) The undertaker must indemnify the Agency in respect of all reasonable costs, charges and expenses which the Agency may incur—

- (a) in the examination or approval of plans under this Part of this Schedule; or
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

Commencement Information

110 Sch. 13 para. 26 in force at 21.5.2020, see [art. 1](#)

27.—(1) The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) In sub-paragraph (1), “costs” include—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs.

(3) The undertaker must indemnify the Agency against all liabilities, claims and demands arising out of or in connection with the authorised development or works otherwise outside of the matters referred to in sub-paragraphs (1)(a) and (1)(b).

(4) In sub-paragraph (3)—

- (a) “claims” and “demands” include as applicable—
 - (i) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
 - (ii) any interest element of sums claimed or demanded; and
- (b) “liabilities” include—

Changes to legislation: There are currently no known outstanding effects for the The Lake Lothing (Lowestoft) Third Crossing Order 2020, PART 3. (See end of Document for details)

- (i) contractual liabilities;
- (ii) tortious liabilities (including liabilities for negligence or nuisance);
- (iii) liabilities to pay statutory compensation or for breach of statutory duty; and
- (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

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Commencement Information

I11 Sch. 13 para. 27 in force at 21.5.2020, see [art. 1](#)

28. The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof is to be made without the agreement of the undertaker which agreement must not be unreasonably withheld.

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Commencement Information

I12 Sch. 13 para. 28 in force at 21.5.2020, see [art. 1](#)

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

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Commencement Information

I13 Sch. 13 para. 29 in force at 21.5.2020, see [art. 1](#)

30. Any difference or dispute arising between the Agency and the undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the Agency and the undertaker, be determined by arbitration in accordance with article 62 (arbitration).

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Commencement Information

I14 Sch. 13 para. 30 in force at 21.5.2020, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Lake Lothing (Lowestoft) Third Crossing Order 2020, PART 3.