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SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

FOR PROTECTION OF NATIONAL RIVERS AUTHORITY

- 5 For the protection of the National Rivers Authority (in this paragraph referred to as “the river authority”) the following provisions shall, unless otherwise agreed in writing between the Corporation and the rivers authority, have effect;—
- (1) In this paragraph—
- “construction” includes execution, placing and altering and, in relation to temporary works, includes removal; and “construct” and “constructed” have corresponding meanings;
 - “drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water;
 - “plans” includes sections, drawings, specifications and method statements;
 - “specified work” means so much of any permanent or temporary work or operation authorised by this Act (other than works required in an emergency) as is situated in, on, under, over or within 8 metres of a drainage work; and
 - “watercourse” has the meaning given in section 72 of the Land Drainage Act 1991;
- (2) (a) Before beginning to construct any specified work, the Corporation shall submit to the rivers authority plans of the work and such further particulars available to them as the rivers authority may reasonably require;
- (b) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the rivers authority, or settled in accordance with sub-paragraph (10) below;
- (c) Any approval of the rivers authority required under this paragraph—
- (i) shall not be unreasonably withheld;
 - (ii) shall be deemed to have been given if it is neither given nor refused in writing and with a statement of the grounds for refusal within two months of the submission of plans for approval;
 - (iii) may be given subject to such reasonable requirements as the rivers authority may impose for the protection of any drainage work or water resources for the prevention of flooding and water pollution and in the discharge of its environmental and recreational duties;
- (3) Without prejudice to the generality of sub-paragraph (2) above, the requirements which the rivers authority may impose under that sub-paragraph include conditions requiring the Corporation at their own expense to construct such protective works

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whether temporary or permanent during the construction of the specified works (including the provision of flood banks, walls or embankments and 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) Any specified work, and all protective works required by the rivers authority under sub-paragraph (2) above, shall be constructed to the reasonable satisfaction of the rivers authority and the rivers authority shall be entitled by its officer to watch and inspect the construction of such works:
- (5) If by reason of the construction of any specified work the efficiency of any drainage work for flood defence purposes is impaired or that work is damaged, such impairment or damage shall be made good by the Corporation to the reasonable satisfaction of the rivers authority and, if the Corporation fail to do so, the rivers authority may make good the same and recover from the Corporation the expense reasonably incurred by it in so doing:
- (6) The Corporation shall indemnify the rivers authority in respect of all reasonable costs, charges and expenses which the rivers authority may reasonably incur or have to pay or which it may sustain—
 - (a) in the examination or approval of plan under this paragraph;
 - (b) in the inspection of the construction of the specified works or any protective works required by the rivers authority under this paragraph:
- (7) (a) Without prejudice to other provisions of this paragraph the Corporation shall indemnify the rivers authority 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 rivers authority by reason of—
 - (i) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
 - (ii) any raising of the water table in land adjoining the works or any sewers, drains and watercourses; or
 - (iii) any flooding or increased flooding of any such lands; or
 - (vi) inadequate water quality in any watercourse or other surface waters or in groundwater;

which is caused by the construction of any of the works or any act or omission of the Corporation, their contractors, agents, workmen or servants whilst engaged upon any such work;

 - (b) The rivers authority shall give to the Corporation reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the Corporation:
- (8) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the rivers authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Corporation from any liability under the provisions of this paragraph:

Provided that this sub-paragraph shall not apply to the extent that such liability arises from a failure by the rivers authority properly to perform its functions:
- (9) For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under watercourses) as applying to the construction of any authorised work,

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any consent or approval given or deemed to be given by the rivers authority under this paragraph with respect to such construction shall be deemed also to constitute a consent or approval under that section:

- (10) Any difference arising between the Corporation and the rivers authority under this paragraph (other than a difference as to its meaning or construction) shall be referred to and settled by arbitration.