

SCHEDULES

SCHEDULE 15

Article 44

FOR PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Environment Agency (in this Schedule referred to as “the Agency”) the provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Agency, have effect.

2. In this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and, in relation to temporary works, 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 used for providing flood storage capacity for any watercourse, and land shown on indicative floodplain maps published by the Agency from time to time as being available to provide flood storage capacity for any watercourse, and any bank, wall, embankment or other structure or 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 (other than works required in an emergency) 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 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;

“the Thames inlet” means the inlet of the River Thames within the land numbered 92 and 107 on the deposited plans; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991)^{M1} and passages through which water flows (whether or not the flow is intermittent).

Marginal Citations

M1 1991 c. 56.

3.—(1) Before beginning to construct any specified work and again at the written request of the Agency following its completion, DLRL shall at its own expense and to the reasonable satisfaction

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of the Agency, conduct a survey of the condition of the river wall on each side of the River Thames so far as situated within 30 metres in each direction of the outermost extremity of that work or, in the case of Work No. 5, within 75 metres in each direction of the outermost extremity of that work and submit a report on their condition to the Agency.

(2) DLRL's obligations under sub-paragraph (1) in relation to the north side of the River Thames shall be subject to DLRL obtaining all necessary consents and permissions to carry out the surveys, which it shall use all reasonable endeavours to obtain.

(3) If any defects are identified in the initial survey conducted pursuant to sub-paragraph (1), being defects which may be affected by the construction of the specified works, DLRL shall monitor the defects not less than once every four weeks, where tides permit, during the construction of the specified works in accordance with such reasonable requirements as the Agency may specify or, if the Agency reasonably requires having regard to the results of any such monitoring, at such lesser intervals as the Agency may specify.

(4) In addition to the survey and monitoring work carried out under sub-paragraphs (1) and (3), DLRL shall install and maintain monitoring equipment and carry out monitoring of drainage work structures to the reasonable satisfaction of the Agency for movement, including settlement, in all areas likely to be affected by any specified work. DLRL shall continue monitoring until such time as the Agency gives its written consent that the monitoring may cease, such consent not to be unreasonably withheld. For the purpose of monitoring settlement, DLRL shall establish survey pins in drainage work structures whose structural integrity may be at risk due to settlement from the construction of Work No. 1 or 5.

(5) DLRL shall immediately notify the Agency should the results of the monitoring indicate any of the following—

- (a) settlement of 5 mm or more between consecutive readings;
- (b) angular distortion in excess of 1/2,500;
- (c) total settlement of any part of a drainage work in excess of 20 mm; or
- (d) movement of defects in a drainage work such that damage greater than Degree 2 as specified in the Building Research Establishment Report No. CP 51/78^{M2} can be expected.

(6) Before beginning to construct any specified work above the surface of the bed of the River Thames and thereafter at two weekly intervals until its completion, or at such greater intervals as the Agency may agree (such agreement not to be unreasonably withheld) for the period following the completion of its foundation works, DLRL shall at its own expense and to the reasonable satisfaction of the Agency survey the levels of the foreshore within the Thames inlet and within 50 metres to the west and east of the Thames inlet at points agreed by the Agency, such agreement not to be unreasonably withheld, and submit a report on those levels to the Agency.

(7) If, during the construction of any specified work, any defects in the river wall deteriorate DLRL shall immediately cease the construction of those of the authorised works causing, or likely to be causing that deterioration, unless to do so could cause the defects to deteriorate further, and not re-commence the construction otherwise than in accordance with such reasonable requirements as shall be specified by the Agency as soon as reasonably practicable after it has been notified of the deterioration, which may include changes to working methods and the completion of mitigation works.

(8) The Agency will supply to DLRL within 28 days of any request (whenever made) copies of all plans, drawings, records and calculations relating to the manner of construction and condition of the river walls on each side of the River Thames that the Agency has in its possession or under its control.

(9) In exercising the powers of articles 15 and 30 in relation to the River Thames DLRL will not moor against the river wall on the south side of the River Thames, or on the foreshore adjacent to that wall more than two barges at any one time without the Agency's consent.

Marginal Citations

M2 This report is entitled Soil Sampling, 9th International Conference on Soil Mechanics and Foundation Engineering. Speciality Session 2. Papers and Discussions. Behaviour of Foundations and Structures by J. B. Burland et al Vol. 9th 1977. Shelfmark 8404.907. British Library.

4.—(1) Before beginning to construct any specified work, DLRL shall submit to the Agency plans of the work and such further particulars available to it as the Agency may 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 settled in accordance with paragraph 12 and, where applicable, in accordance with any requirements specified under paragraph 3(7).

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

(a) shall not be unreasonably withheld;

(b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of plans for approval in writing and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may impose for the protection of any drainage work or the fishery or water resources, for the prevention of flooding or water pollution and in the discharge of its environmental and recreational duties.

(4) No part of Work No 5. may be constructed above the surface of the bed of the River Thames without the Agency's consent.

5. Without prejudice to the generality of paragraph 4, the requirements which the Agency may impose under that paragraph include conditions requiring DLRL at its own expense 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.

6.—(1) Any specified work, and all protective works required by the Agency under paragraph 4, 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) DLRL 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 works comprising a structure in, over, under or within 16 metres of a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require DLRL, at DLRL's own expense, to comply with the requirements of this Schedule or (if DLRL so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work 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.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when notice under sub-paragraph (3) is served upon DLRL, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious

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progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from DLRL.

(5) In the event of any dispute as to whether sub-paragraph (3) is 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 shall not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been determined.

7.—(1) 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 work is otherwise damaged, such impairment or damage shall be made good by DLRL to the reasonable satisfaction of the Agency and, if DLRL fails to do so, the Agency may make good the same and recover from DLRL the expense reasonably incurred by it in so doing.

(2) Subject to the provisions of this Schedule and except to the extent that the Agency or any other person is liable to maintain any drainage work and is not precluded by the exercise of the powers of this Order from doing so, DLRL shall from the commencement of the construction of the specified works until their completion maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by DLRL for the purposes of or in connection with the specified works, whether or not the drainage work is to be constructed under the powers of this Order or is already in existence.

(3) In so far as any drainage work mentioned in sub-paragraph (2) has been the subject of a survey conducted under paragraph 3(1) then it shall be maintained pursuant to sub-paragraph (2) to the same standard of repair and condition as that survey showed it to be in before commencement of the specified work concerned.

(4) If any such work which DLRL is liable to maintain pursuant to sub-paragraph (2) is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require DLRL to repair and restore the work, or any part thereof, or (if DLRL so elects and the Agency consents in writing, such consent not to be unreasonably withheld), to remove the work and restore the site (including any 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 in respect of any work is served on DLRL under sub-paragraph (4), DLRL has failed to begin to take steps to comply with the reasonable requirements of the notice or has not thereafter made reasonably expeditious progress towards repairing and restoring the work or removing the work and restoring the site, as the case may be, the Agency may do anything reasonably necessary to ensure compliance with the notice and may recover from DLRL any expenditure reasonably incurred by it in so doing.

(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 an emergency, exercise the powers of sub-paragraph (5) until the dispute has been determined.

(7) If any maintenance of a drainage work carried out by DLRL pursuant to sub-paragraph (2) is not required as a result of, or is not attributable to the construction of the specified works, then DLRL may recover the expenditure reasonably incurred by it in maintaining the drainage work from the person who is ordinarily liable to maintain that work.

(8) In the event that the Agency recovers from DLRL any expenditure for work carried out by it under sub-paragraph (5) in respect of maintenance that is not required as a result of, or is not attributable to the construction of the specified works, then DLRL may in turn recover from the person who is ordinarily liable to maintain the drainage work so much of that expenditure as that person would ordinarily have incurred in maintaining the work.

8.—(1) Without prejudice to the other provisions of this Schedule, DLRL shall take all such measures as may be reasonably practicable to prevent any interruption to 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 DLRL 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 the fishery, DLRL fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from DLRL 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 DLRL the reasonable cost of so doing provided that a notice specifying those steps is served on DLRL as soon as is reasonably practicable after the Agency has taken, or begun to take, the steps specified in the notice.

9. DLRL shall indemnify the Agency in respect of all 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 and reports under this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

10.—(1) Without prejudice to the other provisions of this Schedule, DLRL 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 works or any sewers, drains and 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 groundwater;

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

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

11.—(1) 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 Agency, or to its satisfaction, or in accordance with any directions or award by an arbitrator, shall not relieve DLRL from any liability under the provisions of this Schedule.

(2) Sub-paragraph (1) shall not apply to the extent that such liability arises from a failure by the Agency properly to perform its functions.

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12.—(1) Unless the parties agree to arbitration under article 55, any difference arising between DLRL and the Agency under paragraph 4 shall be settled by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by DLRL or the Agency after notice by one to the other.

(2) Where a reference is made under sub-paragraph (1), DLRL and the Agency shall pay such of the reasonable costs of the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport incurred in the determination of that reference as the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport jointly shall direct.

(3) Subject to sub-paragraph (1), any difference arising between DLRL and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be resolved by an arbitrator under article 55.

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