

## SCHEDULES

### SCHEDULE 7

Article 43

#### PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions shall, unless otherwise agreed in writing between the Environment Agency (in this article referred to as “the Agency”) and the Council, have effect.

2. In this Schedule—

“accumulation” means any accumulation of silt or other material;

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

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

“drainage work” means any bank, wall or embankment of the Back Water Channel and any outfall or other structure or appliance constructed or used for land drainage, defence against sea water or tidal monitoring;

“erosion” means any erosion of the bed or shore of the Back Water Channel;

“the fishery” means the Back Water Channel and fish in, or migrating to or from, the Back Water Channel, and the spawn, habitat or food of such fish;

“plans” includes sections, descriptions, drawings, specifications and method statements and other such particulars;

“specified work” means any permanent or temporary work or operation authorised by this Order (which includes any dredging and any exploratory geotechnical investigations that may be undertaken); 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 within the meaning of the Water Industry Act 1991<sup>(1)</sup>.

3.—(1) Before beginning to construct any specified work, the Council 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 as settled in accordance with paragraph 13.

(3) Any approval of the Agency 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 within 2 months of the submission of the plans for approval; and

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

(4) Any specified work, and all protective works required by the Agency under sub-paragraph (3), shall be constructed—

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(1) 1991 c. 56.

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- (a) within such period (if any) as the Agency may consent to at the time of approval or upon an application by the Council thereafter (such consent not to be unreasonably withheld); and
- (b) to the reasonable satisfaction of the Agency;

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

4. The Council shall 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.

5.—(1) If any part of the works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing to the Council require the Council, at the Council's own expense, to comply with the requirements of this Schedule or (if the Council so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to alter the work to the reasonable satisfaction of the Agency.

(2) Subject to sub-paragraph (3), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (1) is served on the Council, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious 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 the Council.

(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 shall not, except in emergency, exercise the powers conferred by sub-paragraph (2) until the dispute has been finally determined.

6.—(1) If, during the construction of any specified work, or within 10 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow which in whole or in part is reasonably attributable to the construction of such work and which causes damage or reasonable expectation of damage, the Council shall, if so required by the Agency before or within the period of 10 years after such completion and to the extent that it is so attributable, remedy such accumulation or erosion or alteration to tidal flow in the manner specified in sub-paragraph (4) and, if it refuses to do so, the Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the Council.

(2) Should any accumulation or erosion or alteration of tidal flow arise which causes such damage or reasonable expectation of damage arise within the said period of 10 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion shall to the extent that it is reasonably attributable to the construction or operation of any specified work be so remedied by the Council during the said period of 10 years and at any time thereafter, save that the Council's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of tidal flow a period of 10 years elapses without any further accumulation or erosion or alteration of the tidal flow.

(3) In sub-paragraphs (1) and (2) and in paragraph 7(5) "damage" means any damage 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(2).

(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 reasonably be required by the Agency;

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(2) 1991 c. 57.

(b) in the case of erosion or alteration of tidal flow, the remedy shall be the carrying out of such reconstruction works and protective works or measures as may reasonably be required by the Agency.

(5) To the extent that the Council establishes by surveys, inspections, tests or sampling that such accumulation or erosion or alteration of tidal flow referred to in paragraphs (1) or (2) would have been caused in any event by factors other than the construction or operation of a specified work, the Council shall not be liable to remedy such accumulation or erosion or alteration of tidal flow.

(6) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (5) the Council shall not unreasonably delay the execution of any remedial action required under sub-paragraphs (1) or (2).

7.—(1) Subject to sub-paragraph (2), the Council shall from the commencement of the construction of the specified works 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 on land owned by the Council or which it has control of or is in occupation of for the purposes of or in connection with the construction of the specified works.

(2) The obligation imposed on the Council under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such drainage work and is not precluded by the exercise of the powers of the Order from doing so.

(3) If any such specified work is no longer required by the Council or is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Council at the Council's own expense to repair and restore the drainage work, or any part thereof, or (if the Council so elects and the Agency consents, such consent not to be unreasonably withheld) to remove the specified work and restore the site (including any sea defences) to its former condition, to such an extent and within such limits as the Agency reasonably requires.

(4) If, on the expiration of 30 days from the date on which a notice is served upon the Council it has failed to comply with the requirements of the notice, the Agency may execute the works specified in the notice, and any expenditure incurred by it in so doing shall be recoverable from the Council.

(5) If by reason of the construction of any specified work or by reason of the failure of that work or of the Council to maintain it, 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 Council to the reasonable satisfaction of the Agency and, if the Council fails to do so, the Agency may make good the same and recover from the Council the expense reasonably incurred by it in so doing.

8.—(1) The Council 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 notice on the Council 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 a fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Council the expense reasonably incurred by it in doing so.

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(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 Council the reasonable cost of so doing provided that notice specifying those steps is served on the Council as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**9.—(1)** The Council shall indemnify the Agency in respect of all reasonable 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 of the construction of the specified works or any protective works required by the Agency under this Schedule.

(2) Without prejudice to the other provisions of this Schedule the Council 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, or
- (b) any damage to the fishery, or
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers or watercourses, or
- (d) any flooding or increased flooding of any such lands,

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

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

**10.** 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 of an arbitrator, shall not (if it was done without neglect or default on behalf of the Agency, of any person in its employ or of its contractors or agents) relieve the Council from any liability under the provisions of this Schedule.

**11.** Nothing in paragraph 7(5) or 9(2) shall impose any liability on the Council in respect of accumulation or erosion or alteration of the tidal flow other than such accumulation or erosion or alteration of the tidal flow which the Council is liable to remedy under paragraph 6(1) or (2).

**12.** Except as otherwise provided by this Schedule nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligations conferred, arising or imposed under the Land Drainage Act 1991<sup>(3)</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>(4)</sup>, the Water Resources Act 1991<sup>(5)</sup> or any other enactment, byelaw or regulation relating to the Agency.

**13.—(1)** Unless the parties agree to arbitration any difference arising between the Council and the Agency shall be settled by the Secretary of State for Environment, Food and Rural Affairs on a reference to him by either party after notice in writing to the other.

(2) Subject to sub-paragraph (1), any difference arising between the Council and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be referred to and settled by a single arbitrator appointed by agreement between the parties on reference to him

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(3) 1991 c. 59.  
(4) 1975 c. 51.  
(5) 1991 c. 56.

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by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.