Status: *Point in time view as at 18/12/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Channel Tunnel Rail Link Act 1996, Part III. (See end of Document for details)*

SCHEDULES

SCHEDULE 15

PROTECTIVE PROVISIONS

PART III

PROTECTION OF LAND DRAINAGE, FLOOD DEFENCE, WATER RESOURCES AND FISHERIES

Modifications etc. (not altering text)

C1 Sch. 15 Pt. III (ss. 1-12) applied (with modifications) (19.2.1999) by S.I. 1999/537, art. 13(1), **Sch. 3 paras. 1-8**
Sch. 15 Pt. III (paras. 1-12) applied (with modifications) (22.3.2001) by S.I. 2001/1451, art. 15(1), **Sch. 3 para. 1(j)**
Sch. 15 Pt. III applied (with modifications) (12.8.2002) by S.I. 2002/1943, **art. 15(1)(d)**

1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the Agency, have effect.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal;

"drainage work" means any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse at intervals not less frequent than—

(a) in the case of land in a rural area, once in 50 years, and

(b) in the case of land in an urban area, once in 100 years,

or, if more frequent, the appropriate return period for the watercourse for which capacity is provided, and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"fishery" means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food of such fish;

"plans" includes sections, drawings, specifications and method statements;

"specified work" means so much of any permanent or temporary work authorised by Part I of this Act (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is likely to—

(a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;

Status: *Point in time view as at 18/12/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Channel Tunnel Rail Link Act 1996, Part III. (See end of Document for details)*

(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; and

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

2 (1) Before beginning to construct any specified work, the nominated undertaker shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 14 days of the submission of the plans 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 determined under paragraph 12 below.

(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 28 days of the submission of the plans for approval; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution.

3 The requirements which the Agency may make under paragraph 2 above include conditions requiring the nominated undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) 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,

during the construction of the specified work.

4 (1) Any specified work, and all protective works required by the Agency under paragraph 2 above, 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) The nominated undertaker 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 or under a watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the nominated undertaker at the nominated undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the nominated undertaker 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) below, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) above is served

upon the nominated undertaker, 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 nominated undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) above is properly applicable to any work in respect of which 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) above until the dispute has been finally determined.

5 (1) Any work constructed under Part I of this Act for the purpose of providing a flood defence shall be maintained to the reasonable satisfaction of the Agency by the person who has control of the work.

(2) If any such work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require that person to repair and restore the work, or any part thereof, or (if the person having control of the work so elects and the Agency in writing consents, 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.

(3) 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 under sub-paragraph (2) above on the person who has control of that work, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter 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 that person.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers of sub-paragraph (3) above until the dispute has been finally determined.

6 (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, so as to require remedial action, such impairment or damage shall be made good by the nominated undertaker to the reasonable satisfaction of the Agency.

(2) If such impaired or damaged drainage work for flood defence purposes is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the nominated undertaker to restore it to its former standard of efficiency or where necessary to construct some other work in substitution therefor.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of impaired or damaged drainage work for flood defence purposes is served under sub-paragraph (2) above on the nominated undertaker, the nominated undertaker has failed to begin taking steps to comply with the requirements of the notice and has not thereafter made reasonably expeditious progress towards its 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 nominated undertaker.

Status: *Point in time view as at 18/12/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Channel Tunnel Rail Link Act 1996, Part III. (See end of Document for details)*

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (3) above until the dispute has been finally determined.

7 (1) The nominated undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any 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 a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the nominated 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) 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 nominated undertaker fails to take such steps as are described in sub-paragraph (2) above, the Agency may take those steps and may recover from the nominated undertaker 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 a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the nominated undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the nominated undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8 (1) The nominated undertaker shall indemnify the Agency from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for flood defence purposes,

(b) any damage to a fishery,

(c) any raising or lowering of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses, or

(d) any flooding or increased flooding of any such lands,

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

(2) The Agency shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

9 Nothing in paragraph 8 above shall require the nominated undertaker to indemnify the Agency in respect of any claim, demand, proceedings or damages which the Agency could reasonably make, take against or recover from any other person.

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 relieve the nominated undertaker from any liability under the provisions of this Part of this Schedule.

11 For the purposes of section 5 of the [M1]Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 and Chapter II of Part II of the [M2]Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, a consent or approval under those sections, and the nominated undertaker shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

Marginal Citations

M1 1879 c. cxcviii.

M2 1991 c. 57.

12 (1) Any dispute arising between the nominated undertaker and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the appropriate Ministers acting jointly.

(2) In sub-paragraph (1) above, the reference to the appropriate Ministers—

(a) in the case of a dispute concerning fisheries, flood defence or land drainage, is to the Secretary of State for the Environment, the Secretary of State for Transport and the Minister of Agriculture, Fisheries and Food, and

(b) in the case of any other dispute, is to the Secretary of State for the Environment and the Secretary of State for Transport.

Status:
Point in time view as at 18/12/1996.

Changes to legislation:
There are currently no known outstanding effects for the Channel Tunnel Rail Link Act 1996, Part III.