

## SCHEDULES

### SCHEDULE 11

Article 36

#### FOR PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Environment Agency (in this Schedule referred to as “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 any bank, wall, embankment or other structure or appliance constructed or used for defence against water or for the drainage of land;

“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; or
- (c) affect the conservation, distribution or use of water resources; and

“watercourse” has the same meaning as in the Land Drainage Act 1991(1).

3.—(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 10 and, where applicable, in accordance with any conditions or requirements specified under sub-paragraph (3).

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

- (a) shall not be unreasonably withheld or delayed;
- (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 conditions or requirements as the Agency may impose—
  - (i) for the protection of any drainage work or water resources,
  - (ii) for the prevention of flooding or water pollution, or

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(1) 1991 c. 59.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(iii) in the discharge of its environmental and recreational duties.

4. Without prejudice to the generality of paragraph 3, the conditions or 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 flood 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.

5.—(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 specified works comprising a structure in, over or under a watercourse 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, DLRL 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 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.

6. 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.

7. 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.

8.—(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 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 raising of the water table in land adjoining the authorised works or any sewers or watercourses;

(c) any flooding or increased flooding of any such lands; or

(d) inadequate water quality in any watercourse or other surface waters or in groundwater, which is caused by the construction of any of the specified 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.

**9.—**(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.

**10.** Any difference arising between DLRL and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 47 (arbitration).