

## SCHEDULES

### SCHEDULE 4

Article 79

#### PROTECTION OF THE ENVIRONMENT AGENCY

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

2. In this Schedule—

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

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying and removal; and “construct” and “constructed” have corresponding meanings;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment, outfall or other structure or appliance constructed or used for land drainage, defence against water (including sea water) or tidal monitoring;

“erosion” means any erosion of the bed or shore of the sea or of the bed or banks of the rivers comprised in the harbour;

“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;

“outfall” means—

- (a) any existing land drainage outfall for which the Agency is responsible; or
- (b) any sewer, pipe or drain provided for groundwater, surface water or storm overflow sewerage;

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

“protected work” means any work, structure or other apparatus owned or maintained by, or under the control of, the Agency for the purposes of any of its statutory functions;

“specified work” means any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, 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 the passage through which water flows (whether or not the flow is intermittent) except a public sewer.

3. The powers conferred on the Authority by article 16 shall not apply to a protected work without consent of the Agency (which consent shall not be unreasonably withheld).

4. The Authority shall maintain to the reasonable satisfaction of the Agency any work or structure comprised in the undertaking which is constructed or used for land drainage or defence against water (including sea water).

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5. Except in a case of emergency, not less than 28 days before requiring action under article 21 the Authority shall give notice to the Agency of the action intended together with reasonable particulars thereof and shall, in requiring such action, comply with such requirements of the Agency as are notified by the Agency to the Authority within the said 28 days, being requirements reasonably necessary to prevent pollution of any watercourse, to safeguard it against damage or to secure that its efficiency for land drainage purposes is not impaired, or requirements reasonably necessary to safeguard other works of the Agency.

6.—(1) Except in a case of emergency, before exercising the powers of articles 18, 25 or 27, the Authority shall consult the Agency and comply with any reasonable requirements which may be made by the Agency within 28 days of being so consulted for preventing pollution of waters in the area.

(2) In a case of emergency, the Authority shall give to the Agency such notice of the exercise (or of the intention to exercise, as the case may be) any of the said powers as is reasonably practicable in the circumstances.

7.—(1) Before beginning to construct any specified work, the Authority shall submit to the Agency plans of the work and such further particulars available to them as the Agency may reasonably require.

(2) Without prejudice to sub-paragraph (1), the Authority shall ensure that any of their contractors shall provide the Agency with all necessary hydraulic information in order to identify and quantify any effects of accumulation or erosion or alteration of the tidal flow or littoral drift which are likely to be caused by any specified work and such information shall be accompanied by an appropriate assessment of that information and of any remedial measures which may be reasonably necessary having regard to any such likely effects.

(3) Any 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 24.

(4) 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 in writing (and in the case of refusal, with a statement of the grounds for refusal) within two months of the submission of plans for approval;

(c) 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.

8. Without prejudice to the generality of paragraph 7, the requirements which the Agency may impose under that paragraph include—

(a) conditions as to the time at which and the manner in which any work is to be carried out;

(b) conditions requiring the Authority at its own expense—

(i) to provide or maintain means of access for the Agency;

(ii) to provide compensatory habitat for habitat lost or damaged by the specified works;

(iii) 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, outfalls and other new works and the strengthening, repair or renewal of existing banks, walls or embankments, outfalls or other works) as are reasonably necessary to safeguard any drainage work against damage or to secure

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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;

- (iv) to monitor accumulation, erosion or alterations of the tidal flow or littoral drift arising during the construction or following the completion of the specified works;
- (v) to provide, maintain and operate a system of monitoring water quality in the harbour;
- (vi) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

**9.** Any specified work, and all compensatory habitat and protective works required by the Agency under paragraph 7, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved under this Schedule; 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.

**10.** The Authority 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.

**11.** If any part of the specified works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with this Schedule, the Agency may by notice in writing to the Authority require the Authority, at the Authority's expense, to comply with this Schedule or (if the Authority 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 an extent and within such limits as the Agency reasonably requires.

**12.** Subject to paragraph 13, if within a reasonable period, being not less than 28 days from the date when a notice under paragraph 11 is served on the Authority, they have failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards fulfilling those requirements, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Authority.

**13.** In the event of any dispute as to whether paragraph 11 is properly applicable to any work in respect of which a notice has been served under that 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 paragraph 12 until the dispute has been finally determined.

**14.—(1)** If, during the construction of a specified work or within 10 years after the completion of such work there is created an accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage, or reasonable expectation of damage, the Authority, if so required by the Agency before or within the period of 10 years after such completion, shall, remedy such accumulation, erosion or alteration of tidal flow or littoral drift, in the manner specified in sub-paragraph (4) and , if they refuse or fail so to do, the Agency may itself cause the work to be done and may recover the reasonable cost thereof from the Authority.

(2) Should any accumulation or erosion or alteration of the tidal flow or littoral drift which causes damage or reasonable expectation of damage, arise in consequence of such construction within the said period of 10 years and be remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion or alteration of the tidal flow or littoral drift shall from time to time be so remedied by the Authority during the said period of 10 years and at any time thereafter, save that the Authority's obligation under this paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of the tidal flow or littoral drift a period of 10 years

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elapses without any further accumulation or erosion or alteration of the tidal flow or littoral drift caused or created in consequence of such construction.

(3) In sub-paragraphs (1) and (2), “damage” means any damage to the bed or banks of a river 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.

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

(5) In the event that surveys, inspection, tests or sampling establish that such accumulation or erosion or alteration of tidal flow or littoral drift would have been caused in any event by factors other than the construction of a specified work the Authority shall be liable to remedy such accumulation or erosion or alteration of tidal flow or littoral drift only to the extent that the same is attributable to such construction.

**15.** For the purposes of paragraphs 10 and 14(1) the date of completion of a work shall be the date on which it is brought into use.

**16.—(1)** Subject to sub-paragraph (2), the Authority 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 Authority 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, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

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

(3) If any such work which the Authority is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Authority at the Authority’s own expense to repair and restore the work, or any part thereof, or (if the Authority so elects and the Agency 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 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 Authority 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 Authority.

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

**18.—(1)** The Authority shall take all 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 Authority 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 Authority fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Authority 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 the Authority the reasonable cost of so doing provided that notice specifying those steps is served on the Authority as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**19.** The Authority 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;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule;
- (c) in the examination of monitoring records provided under this Schedule.

**20.—(1)** Without prejudice to the other provisions of this Schedule the Authority 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 the construction of any specified work or by reason of its maintenance, repair, alteration, renewal, removal, existence or use or any act or omission of the Authority, its contractors, agents, workmen, or servants whilst engaged upon any such work.

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

**21.** 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 its contractors or agents) relieve the Authority from any liability under this Schedule.

**22.** Except as otherwise provided by this Schedule nothing in this Order or the 1986 Act shall prejudice or affect in their application to the Agency the powers, rights, jurisdiction and obligation conferred, arising or imposed under the Land Drainage Act 1991<sup>(1)</sup>, the Salmon and Freshwater Fisheries Act 1975<sup>(2)</sup>, the Water Resources Act 1991<sup>(3)</sup> or any other enactment, byelaw or regulation relating to the Agency.

**23.** For the purposes of section 109 of the Water Resources Act 1991 (as to structures in, over or under a main river) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed to constitute a consent under that section.

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(1) 1991 c. 59.  
(2) 1975 c. 51.  
(3) 1991 c. 57.

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**24.—(1)** Unless the parties agree to arbitration any difference arising between the Authority and the Agency under paragraph 8 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 Authority 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 by either party, after notice in writing to the other, or, in default of agreement, by the President of the Institution of Civil Engineers.

**25.** Paragraphs 7 to 24 shall apply in relation to works or dredging licensed by the Authority under this Order to be carried out by a person other than the Agency, as they apply to a specified work constructed by the Authority; and, accordingly, references in those provisions to the Authority shall be construed as including references to the holder of the relevant licence.