

SCHEDULES

SCHEDULE 6

PROTECTION OF CERTAIN PERSONS

PART 2

PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Interpretation

10.—(1) For the protection of the Environment Agency the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Environment Agency, have effect.

(2) In this Part—

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

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

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

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“erosion” means any erosion of the bed or banks of the Ouseburn or the River Tyne;

“the fishery” means any waters containing fish and fish in, or migrating to or from, the River Tyne or the Ouseburn and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (ii) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (iii) cause obstruction to the free passage of fish or damage to any fishery; or
- (iv) affect the conservation, distribution or use of water resources; and

“watercourse” shall include all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

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Approval of plans

11.—(1) Before beginning to construct any specified work, the Council shall submit to the Environment Agency plans of the work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Without prejudice to sub-paragraph (1) above, the Council shall secure and provide the Environment Agency with all necessary hydraulic and other information necessary to identify and quantify potential effects of construction, maintenance and operation of any specified work upon flood defence and such information shall be accompanied by an assessment of the likely effects and of any remedial measures necessary to address them.

(3) No specified work shall be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 19.

(4) Any approval of the Environment Agency required under this Part—

- (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 a refusal accompanied by a statement of the grounds for refusal) within 2 months of the submission of plans for approval; and
- (c) may be given subject to such reasonable requirements as the Environment Agency may impose in the discharge of its environmental and recreational duties for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution.

Conditions relating to works

12.—(1) Without prejudice to the generality of sub-paragraph 11(4), the requirements which the Environment Agency may impose under that sub-paragraph include—

- (a) conditions as to the time and the manner in which any work or operation is to be carried out;
- (b) conditions requiring the Council at its own expense—
 - (i) to provide or maintain means of access for the Environment Agency;
 - (ii) 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 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;
 - (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction or following the completion of the specified works; and
 - (iv) 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.

(2) Any specified work, and all protective works required by the Environment Agency under sub-paragraph (1)(b)(ii), shall be constructed—

- (a) within such period (if any) as the Environment Agency may specify at the time of approval or upon an application by the Council thereafter (such approval not to be unreasonably withheld);
- (b) in accordance with plans approved or deemed to have been approved or settled under this Part; and

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(c) to the reasonable satisfaction of the Environment Agency, and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(3) The Council shall give to the Environment 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.

(4) 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, the Environment Agency may by notice in writing require the Council, at the Council's own expense, to comply with the requirements of this Part or (if the Council so elects and the Environment 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 as the Environment Agency reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the Council, it has failed to begin taking steps to comply with the requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the Council.

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

Accumulation and erosion

13.—(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 in the Ouseburn or the River Tyne which adversely affects flood flows or drainage, which is reasonably attributable to the construction, maintenance or operation of such work, the Council shall, if so required by the Environment 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 the effects of such alteration to tidal flow in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, the Environment 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 effect of an alteration to tidal flow arise which adversely affects flood flows or drainage in consequence of such construction, maintenance or operation 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 or effect of an alteration of tidal flow shall, from time to time and to the extent that any accumulation or erosion or effect of an alteration of tidal flow adversely affects flood flows or drainage and is reasonably attributable to the construction, maintenance 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 effect of alteration of tidal flow a period of 10 years elapses without any further accumulation or erosion or effect of alteration of tidal flow.

(3) For the purposes of sub-paragraphs (1) and (2) above—

(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 Environment Agency;

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- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and protective measures as may be reasonably required by the Environment Agency; and
- (c) in the case of the effects of alteration of tidal flow, the remedy shall be the carrying out of such works and measures as may be reasonably required by the Environment Agency in order to avoid a recurrence of such effects.

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

(5) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (4) the Council shall not unreasonably delay the execution of any remedial action required under sub-paragraphs (1) or (2).

(6) The impoundment or release of water by means of the scheduled works shall not of themselves be an effect of alteration of tidal flow for the purposes of this paragraph.

(7) The Council and the Environment Agency shall consult the Port Authority in relation to any action taken under this paragraph with a view to co-ordinating or reconciling any such action with any action taken under paragraph 7.

Repair of specified works

14.—(1) Before commencing the construction of a specified work the Council shall procure at its expense in liaison with and to the reasonable satisfaction of the Environment Agency a survey of any drainage work liable to be affected by that specified work.

(2) The Council shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land owned by the Council or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

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

(4) If any drainage work referred to in sub-paragraph (2) is not maintained to the reasonable satisfaction of the Environment Agency, the Environment 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 Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the drainage work and restore the site to its former condition, to such extent and within such limits as the Environment 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 drainage work is served under sub-paragraph (4) on the Council, the Council has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter completed them within such reasonable period as may be specified in the notice, the Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Council.

(6) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (4), the Environment Agency shall not, except in a case of an emergency, exercise the powers of sub-paragraph (5) until the dispute has been finally determined.

15. If by reason of any specified work or by reason of the failure of any such work or of the Council to maintain it, 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 the Council to the reasonable satisfaction of the Environment Agency and if the Council fails to do so within such reasonable period as the Environment Agency may require by notice in writing to the Council, the Environment Agency may make good the same and recover from the Council any expenditure reasonably incurred by it in so doing.

Protection of fishery

16.—(1) Without prejudice to the other provisions of this Part, the Council shall take all such measures as may be reasonably practicable to prevent any interruption in the 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 such work,

damage is caused to the fishery, or the Environment Agency has reason to expect that such damage may be caused, the Environment 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 Environment Agency of any damage or expected damage to the fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the Council any expenditure reasonably incurred by it in so doing.

(4) In any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment 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 a notice specifying those steps is served on the Council as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

Indemnities

17.—(1) The Council shall indemnify the Environment Agency in respect of all reasonable and proper costs incurred, charges paid and expenses met by the Environment Agency—

- (a) in the examination or approval of plans under this Part; or
- (b) in the inspection of the construction of the specified works or any protective works required by the Environment Agency under this Part.

(2) Without prejudice to the other provisions of this Part, the Council shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Environment 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 of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or

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(e) 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 the Council, its contractors, agents, workmen or servants whilst engaged upon any such work.

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

(4) Prior to incurring any expense which it may seek to recover under this paragraph, the Environment Agency shall, except in a case of urgency, serve notice on the Council informing it of the Environment Agency's intentions and requiring it within such time as the Environment Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Environment Agency to incur such costs.

(5) Nothing in this part of this schedule shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the negligent act or omission of the Environment Agency, its officers, servants or, if not the Council, its contractors or agents.

Deemed consents

18. For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991⁽¹⁾ (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 Environment Agency under this Part with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, consent or an approval under that section.

Disputes

19. Any dispute arising between the Council and the Environment Agency under this Part shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs.

(1) 1991 c. 57.