

SCHEDULES

SCHEDULE 4

Article 21

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Environment Agency unless otherwise agreed in writing between the undertaker and the Environment Agency.

(2) In this Schedule—

“construction” (“*adeiladu*”) shall include execution, placing, altering, replacing, relaying and removal and “construct” (“*adeiledir*”) and “constructed” (“*adeiladwyd*”) shall be construed accordingly;

“damage” (“*difrod*”) shall include scouring, erosion and environmental damage and “damaged” (“*wedi'i ddifrodi*”, “*ac a ddifrodwyd*”) shall be construed accordingly;

“drainage work” (“*gwaith traenio*”) 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 or flood defence;

“the fishery” (“*y bysgodfa*”) shall mean any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

“plans” (“*planiau*”) shall include sections, drawings, specifications and method statements;

“specified work” (“*gwaith penodedig*”) 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—

- (a) affect any drainage work or the volumetric rate of 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;
- (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” (“*cwrs dŵr*”) shall include 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.

2.—(1) Before beginning to construct any specified work, the undertaker shall submit to the Environment Agency plans of the specified 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) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 13.

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

- (a) shall not be unreasonably withheld;

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- (b) shall be deemed to have been given if it is neither given nor refused in writing within 2 months of the submission of the plans for approval 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 requirements as the Environment 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 or in the discharge of its environmental and recreational duties.

(4) The Environment Agency shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. In particular the requirements which the Environment Agency may make under that paragraph include conditions requiring the undertaker 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 banks, walls or embankments) 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 and that the risk of flooding is not otherwise increased by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Environment Agency under paragraph 3, shall be constructed—

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

(2) The undertaker 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.

(3) If any part of the authorised works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Environment Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Schedule or (if the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the authorised work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Environment Agency reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 8, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, 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 undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) 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 (4) until the dispute has been finally determined.

5.—(1) Subject to the provisions of this Schedule and except to the extent that the Environment Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from doing so, the undertaker 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 held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Environment Agency reasonably requires.

(3) Subject to paragraph 8, 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) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Environment Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

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

6. Subject to paragraph 8, 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 drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Environment Agency and if the undertaker fails to do so, the Environment Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The 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—

- (i) the construction of any specified work; or
- (ii) the failure of any such work,

damage to the fishery is caused, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the 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) Subject to paragraph 8, 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 undertaker fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, 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 undertaker the reasonable cost of so doing provided that a notice specifying those steps is served on the undertaker as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

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8. Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) shall authorise the Environment Agency to execute works on or affecting any operational railway without the consent of the undertaker, such consent not to be unreasonably withheld.

9. The undertaker shall indemnify the Environment Agency in respect of all costs, charges and expenses which the Environment 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 Environment Agency under this Schedule.

10.—(1) Without affecting the other provisions of this Schedule, the undertaker shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, 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 or lowering of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

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

11. 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 Environment Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Schedule.

12. 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 Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109, and the 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).

13. Any dispute arising between the undertaker and the Environment Agency under this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 26 (arbitration), but shall otherwise be determined by the Welsh Ministers on a reference to them by the undertaker or the Environment Agency, after notice in writing by one to the other.

(1) 1991 c. 57

Document Generated: 2023-05-25

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