

SCHEDULES

SCHEDULE 7

Article 41.

ERNE DRAINAGE AND NAVIGATION

PART I

GENERAL PROVISIONS

The principal agreement

1. In this Schedule, “the principal agreement” means the agreement made on the 4th September 1950 between the Ministry of Finance and the Electricity Supply Board, Dublin (in this Schedule referred to as “the Board”), but, where any agreement has been made pursuant to paragraph 2, it means the said agreement made on the 4th September 1950 as supplemented or modified by the agreement made pursuant to paragraph 2.

2.—(1) Subject to the provisions of this paragraph, the Ministry may at any time enter into further agreements with the Board (in this paragraph referred to as “supplemental agreements”) for supplementing or modifying the principal agreement.

(2) A supplemental agreement shall not be entered into until it has been laid before each House of Parliament for the statutory period, but, if, during that period, a resolution is passed by either House declaring that the supplemental agreement so laid ought not to be entered into by the Ministry, the Ministry shall not enter into the agreement, but without prejudice to the power to make a new supplemental agreement.

3. For the purposes of carrying the principal agreement into effect, the Ministry may exercise the powers conferred on it under any of the following provisions of this Schedule and all such other powers as may be necessary for, or incidental to, the due performance by the Ministry of its obligations under the principal agreement.

Drainage of Upper and Lower Lough Erne

4. The Ministry shall be the drainage authority for the purpose of reducing the flooding caused to land in Northern Ireland by the waters of Upper or Lower Lough Erne (in this Schedule referred to as “the Loughs”) and of the portion of the River Erne which is in Northern Ireland.

Works schemes

5.—(1) The Ministry may prepare a scheme or schemes for the purposes of the carrying out of works which the Ministry considers necessary—

- (a) for giving effect to any of the provisions of the principal agreement;
- (b) for reducing the flooding of land around the Loughs.

(2) A scheme prepared under this paragraph shall contain such particulars with regard to such matters and shall be in such form as the Ministry may consider fit and, in particular, and without prejudice to the generality of the foregoing provisions, shall contain such provisions as the Ministry

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may consider necessary for the implementation of^{F1} Article 40(2) of the Water (Northern Ireland) Order 1999] and for the protection of rights or interests affected by the scheme.

(3) The authorised officers, agents and servants of the Ministry may, at all reasonable times, on production (if so required) of their authority, enter on any land and do there all such things as may appear to them to be reasonably necessary or expedient for the purposes of the preparation of a scheme.

(4) Every reference in this Schedule to a scheme shall be construed as including every map, drawing, plan, section and schedule annexed to such scheme.

F1 1999 NI 6

6.—(1) After the preparation of a scheme, the Ministry shall—

- (a) send a copy of the scheme to such district councils as the Ministry may consider appropriate;
- (b) publish in the Belfast Gazette and such one or more newspapers as it shall consider appropriate a notice stating that the scheme has been prepared and also stating the place or places and times at which, and the period, not being less than twenty-eight days, during which, a copy of the scheme will be available for inspection;
- (c) serve on every person appearing to the Ministry to be the owner, lessee or occupier of any land proposed in the scheme to be acquired or otherwise directly interfered with, a copy of the public notice, together with a statement that the scheme proposes the acquisition of, or interference with, such land; and
- (d) serve on any person appearing to the Ministry to be an owner or lessee of any fishery proposed in the scheme to be interfered with a copy of the public notice, together with a statement informing that person of the proposed interference.

(2) Every notice published under this paragraph shall contain or be accompanied by a statement to the effect that any person who considers that his interests will be prejudicially affected by the scheme may, in the manner and within the time, not being less than twenty-eight days, specified in the statement or notice, send to the Ministry any observations in regard to the scheme which he wishes to make.

(3) A district council to which a copy of a scheme is sent by the Ministry in pursuance of this paragraph—

- (a) shall cause such copy to be exhibited in its principal offices or other convenient place during the period required to be specified in that behalf under sub-paragraph (2) with respect to the scheme, and shall permit such copy to be inspected during normal office hours by any person claiming to be interested therein;
- (b) shall examine and consider the scheme; and
- (c) may, at any time within twenty-eight days after the date of the publication in the Belfast Gazette pursuant to sub-paragraph (2) of the notice relating to such scheme, send to the Ministry any observations in regard to the scheme which it wishes to make.

7. After the expiration of twenty-eight days from the service of notices in pursuance of paragraph 6, the Ministry may, after considering any observations sent to it under that paragraph and after holding such inquiry (if any) as the Ministry considers necessary, by order confirm the scheme in whole or in part, and either without modifications or with such modifications (which may include variations, additions or exceptions) as the Ministry considers fit (and such scheme or part thereof as so confirmed is in this Schedule referred to as a “confirmed scheme”).

8. For the purposes of this Schedule, the provisions of this Order specified in Part II of this Schedule shall, with the modifications thereof specified in Part III of this Schedule, apply in relation to the Loughs and such portion of the River Erne as is in Northern Ireland in like manner as those provisions apply in relation to any other watercourse to which this Order applies, and those provisions, as so modified, shall have effect as if they were provisions of this Schedule.

9.—(1) Where, in carrying out works under this Schedule—

- (a) any road, bridge, culvert or embankment has been improved as a means of communication or otherwise in consequence of the carrying out of those works, such proportion of the cost of such works as ought fairly to be borne by the authority liable to maintain such road, bridge, culvert or embankment, or any portion thereof, shall be borne by that authority;
- (b) any extra expenses are incurred by the Ministry by reason of the carrying out of additional works at the request or requirement of any authority pursuant to the principal agreement, such extra expenses shall be borne by the authority at whose request or requirement the additional works were carried out.

(2) Any dispute between the Ministry and an authority as to the amounts which, under the foregoing provisions of this paragraph, fall to be borne by that authority shall be referred to arbitration^{F2} . . .

(3) For the purposes of this paragraph, “authority” means any person entitled or liable to maintain any road, bridge, culvert or embankment, or any part thereof, whether under any public general, local or private statutory provision or under any order of court, scheme, deed or other instrument, or otherwise, and the provisions of any such statutory provision shall have effect subject to the foregoing provisions of this paragraph.

F2 1996 c.23

10.—(1) Where, in pursuance of the provisions of the principal agreement, such works have been carried out as will, in the opinion of the Ministry, enable the water levels of the Loughs and River Erne to be controlled and regulated in accordance with those provisions, the Ministry shall, by order made after consultation with the Board, prescribe the date on and from which those water levels shall be so controlled and regulated.

(2) For the purposes of this Schedule, the date of completion of any works carried out under any confirmed scheme shall be such date as may be certified by an order made by the Ministry in that behalf.

(3) Notice of the making of any order under this paragraph shall be published in the Belfast Gazette and any such one or more newspapers as the Ministry may consider appropriate.

Finance

11.—(1) For the purposes of the principal agreement, the account known as the Erne Development Account shall continue in being as such and shall continue to be administered and controlled by the Ministry.

(2) There shall be paid to the credit of the Erne Development Account—

- (a) all sums paid by the Board to the Ministry pursuant to the provisions of the principal agreement;
- (b) such sums as are paid by any authority to the Ministry pursuant to paragraph 9 in consequence of works carried out under, or for the purposes of giving effect to, the principal agreement; and
- (c) such other sums as the Ministry may determine.

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(3) There shall be charged to and paid out of the Erne Development Account all expenses properly incurred by the Ministry pursuant to the provisions of the principal agreement, together with any other sums which the Ministry and the Board agree should be so charged and paid.

Miscellaneous and general

Paras. 12, 13, 13A rep. by 1999 NI 6

14.—(1) An Arbitration Tribunal constituted in accordance with the provisions of the principal agreement may determine, in accordance with those provisions, any dispute or difference between the Ministry and the Board arising out of the principal agreement.

(2) Subject to sub-paragraph (4), the Ministry shall, on the request of a Tribunal constituted as aforesaid, cause to be produced for inspection by the Tribunal such documents, books, records or accounts in its possession as are relevant to the matter at issue before the Tribunal.

(3) Subject to sub-paragraph (4), a Tribunal constituted as aforesaid may, for the purpose of determining any such dispute or difference, by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents or articles in his custody or under his control which relate to any matter pending before the Tribunal, and may hear, receive and examine evidence on oath, and for that purpose may administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined.

(4) Nothing in sub-paragraph (2) or (3) shall authorise a Tribunal constituted as aforesaid to require any person to produce any book or document, or to answer any question, which he would be entitled, on the ground of privilege or otherwise, to refuse to produce or answer if the Tribunal were a proceeding in a court of law.

(5) Any person who—

- (a) refuses or wilfully neglects to attend when required to do so by any Tribunal constituted as aforesaid or to give evidence in the manner required by the Tribunal; or
- (b) who wilfully gives false evidence before the Tribunal or wilfully alters, suppresses, cancels, destroys or refuses to produce any document or article which he may be required by the Tribunal to produce;

shall, without prejudice to any of the provisions of the [^{F3} Perjury (Northern Ireland) Order 1979], be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 100, or to both.

(6) Counsel of the Bar of Ireland or any solicitor entitled to practise in the Republic of Ireland may, notwithstanding any other statutory provision, practise in connection with any hearing in Northern Ireland of any Arbitration Tribunal constituted as aforesaid, and may appear and represent the Board at such hearing.

(7) Any award of a Tribunal constituted as aforesaid may, by leave of the High Court, be entered as a judgment in terms of the Award, and shall thereupon have the same force and effect as a judgment or order of the High Court.

F3 1979 NI 19

15. Notwithstanding anything to the contrary in any statutory provision, stamp duty shall not be chargeable in respect of any agreement entered into, pursuant to this Schedule, by the Ministry with the Board, or of any agreement entered into by the Ministry with any person other than the Board for the purpose of carrying the principal agreement into effect.

16. In this Schedule—

- “the Board” has the meaning assigned to it by paragraph 1;
- “confirmed scheme” has the meaning assigned to it by paragraph 7;
- “the Loughs” has the meaning assigned to it by paragraph 4;
- “the principal agreement” has the meaning assigned to it by paragraph 1.

PART II

PROVISIONS OF THE ORDER APPLIED FOR THE PURPOSES OF THIS SCHEDULE

17. The provisions of this Order applied by paragraph 8 of this Schedule are as follows—

<i>Provision</i>	<i>Subject Matter</i>
Part I	Introductory.
<i>Article</i>	
7	General powers of Ministry with respect to the carrying out of works.
10	Powers of the Ministry in relation to the acquisition and disposal of land.
14	Carrying out of drainage schemes.
17	Compensation for certain losses due to construction of drainage works.
18	Compensation for consequential injury to canals, fisheries, etc.
19	Matters to be regarded in assessing compensation.
20	Disposal of surplus lands, etc.
21	Powers of maintenance in relation to designated watercourses, etc.
25	Power of Ministry to carry out works on behalf of other persons.
26	Power of Ministry to contribute to cost of works.
31	Noxious weeds.
34	Power of Ministry to carry out experimental work, etc.
35	Provision as to recovery of expenses.
36	Miscellaneous offences.
37	Entry and inspection of land, etc.
40	Protection of fisheries.
Schedule 2	Description of drainage works, etc.

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Schedule 3	Modification of Schedule 6 to the Local Government Act (Northern Ireland) 1972.
Schedule 6	Protection of watercourses.

PART III

MODIFICATIONS OF THE PROVISIONS APPLIED BY PART II

18. The provisions of this Order specified in Part II shall, in their application for the purposes of this Schedule, have effect with the following modifications—

- (a) references therein to a watercourse shall be construed as including references to the Loughs and to such portion of the River Erne as is in Northern Ireland;
- (b) references therein to this Order shall be construed as references to this Schedule;
- (c) references therein to—
 - (i) a scheme or a drainage scheme carried out under this Order, or any part thereof;
 - (ii) drainage works;
 - (iii) drainage purposes or to purposes connected with drainage;shall respectively be construed as references to—
 - (A) a scheme or schemes confirmed under this Schedule;
 - (B) works carried out under any provision contained in this Schedule or any confirmed scheme made thereunder; and
 - (C) the purposes of any such provision or scheme;
- (d) references therein to sea defences and sea defence works shall be omitted;
- (e) in Article 7, the words “Without prejudice to the generality of the provisions of Article 6,” shall be omitted;
- (f) in Article 17—
 - (i) for paragraph (1) there shall be substituted the following—
 - “(1) Where any person—
 - (a) suffers any permanent loss or damage by reason of—
 - (i) the entry by the Ministry on any land owned or occupied by him; or
 - (ii) by the construction of works thereon carried out under any provision of Schedule 7 or any confirmed scheme made thereunder; or
 - (iii) by direct interference with any land belonging to him; or
 - (b) satisfies the Ministry that he has suffered, or is likely to suffer, permanent loss or damage by reason of the control or regulation of the water levels of the Loughs and River Erne in accordance with the provisions of the principal agreement referred to in that Schedule;the Ministry shall, subject to and in accordance with the provisions of that Schedule, pay to him reasonable compensation in respect of such loss or damage.” ; and
 - (ii) the word “forthwith” in paragraph (4) shall be omitted, and after the word “Ministry”, where it occurs for the first time in that paragraph, there shall be inserted the words “ within three years from the date of completion of the work from which, or from the operation of which, the claim arises ”;
 - (g) in Article 18(1), the words “or to any water power or other water right” shall be omitted;

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(h) in Schedule 2, paragraph 3 shall be omitted.

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Changes and effects yet to be applied to :

- Sch.7 para.9(2) rev.in pt. by [1996 c. 23 s. 107\(2\)Sch.4](#)
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