

## SCHEDULE 10

### Protective provisions

## PART 21

### For the protection of the Environment Agency

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

(2) In this part of this Schedule –

“Agency” means the Environment Agency;

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

“flood risk activity permit” means an environmental permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2016 for the purposes of a flood risk activity;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991;

“specified work” means any development authorised by this Order and carried out in relation to or which may affect any drainage work.

**318.**—(1) Subject to sub-paragraph (4) the undertaker must, for the duration of the construction of the specified work, as far as reasonably practicable maintain in good repair and condition and keep free from obstruction any part of any drainage work which is situated on land held or occupied by the undertaker for the purposes of or in connection with the specified work, 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 Agency, the 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 Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) 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 (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may undertake the works reasonably necessary for such compliance, subject to the undertaker having the reasonable opportunity to supervise the planning and execution of such works to the extent reasonably necessary to ensure they are compliant with and do not compromise the undertaker’s ability to comply with the Pipeline Safety Regulations 1996 and any expenditure reasonably and properly incurred by the Agency in so doing is recoverable from the undertaker. Notwithstanding the foregoing, the Agency may not under any circumstances undertake any works to the pipeline itself which would or would be likely to conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those regulations or any other health and safety legislation relating the operation and maintenance of the pipeline.

(4) This paragraph does not apply to-

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- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
  - (b) any obstruction of a drainage work expressly authorised in the approval of a flood risk activity permit and carried out in accordance with the provisions of that flood risk activity permit provided that any obstruction is removed as soon as reasonably practicable.
- (5) Where the authorised development involves the crossing of any watercourse by open cut trench installation, the use of a dam as part of such installation works shall not constitute an obstruction for the purpose of these provisions.