

SCHEDULES

SCHEDULE 11

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF DRAINAGE AUTHORITIES

1.—(1) The following provisions of this Part of this Schedule shall apply for the protection of each drainage authority unless otherwise agreed between the undertaker and the drainage authority concerned.

(2) In this Part of this Schedule—

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

“drainage authority” means the Environment Agency or, within the area of the Swavesey Internal Drainage Board or the Old West Internal Drainage Board, that board except in relation to a drainage work forming part of a main river as defined in the Water Resources Act 1991;

“drainage work” means 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;

“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;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 9 metres of a watercourse or is otherwise likely to affect any drainage work or the volumetric flow of water in or flowing to or from any drainage work; and

“watercourse” includes all rivers, streams, ditches, drains, 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 drainage authority plans of the work and such further particulars available to it as the drainage authority may within 28 days of the submission of 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 drainage authority, or determined under paragraph 11.

(3) Any approval of the drainage authority 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 within 56 days of the submission of plans for approval and in the case of a refusal, accompanied by a statement of the grounds of refusal, and

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- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or fishery and for the prevention of flooding.

3. Without prejudice to the generality of paragraph 2, the requirements which the drainage authority 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 the specified work.

4.—(1) Any specified work, and all protective works required by a drainage authority under paragraph 3, shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule,
- (b) to the reasonable satisfaction of the drainage authority.

(2) The undertaker shall give the drainage authority 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 works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this part of this schedule, the drainage board concerned may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage board concerned 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 and within such limits as the drainage authority concerned reasonably requires.

(4) Subject to paragraph (5), 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 to take steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the drainage authority concerned 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 drainage authority concerned shall not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) 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 and on land owned by the undertaker or which it otherwise has control of 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 of the Order or is already in existence.

(2) If any such work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority concerned, that drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part thereof, or (if the undertaker so elects and the drainage authority 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 drainage authority concerned reasonably required.

(3) 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 to take steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the drainage authority concerned may do anything necessary for such compliance and may recover the expenditure reasonably incurred by it in doing so from that person.

(4) In the event of any dispute as to the reasonableness of a notice served under sub-paragraph (2), the drainage authority concerned shall not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

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

7. The undertaker shall indemnify the drainage authority concerned in respect of all costs, charges and expenses which it may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this part of this schedule,
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

8.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify each drainage authority 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 drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence,
- (b) any raising or lowering of the water table in land adjoining the works authorised by the Order or any sewers, drains or watercourses,
- (c) any flooding or increased flooding of any such lands,

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 drainage authority concerned shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld.

9. The fact that any work or thing has been constructed or done in accordance with a plan approved or deemed to be approved by a drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator shall not relieve the undertaker of any liability under the provisions of this part of this Schedule.

10. 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 consent or approval given or deemed to be given by the Environment Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an approval under that section.

11. Any dispute arising under this Part of this Schedule between the undertaker and a drainage authority (other than a difference as to its meaning or construction) shall, if the parties agree,

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be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs on a reference to him by the undertaker or the drainage authority concerned after notice in writing by one to the other.