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STATUTORY INSTRUMENTS

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**2012 No. 1914**

**The Hinkley Point Harbour Empowerment Order 2012**

**PART 1**

**PRELIMINARY**

**Citation, commencement and duration**

1.—(1) This Order may be cited as the Hinkley Point Harbour Empowerment Order 2012 and shall come into force on 16th August 2012.

(2) Save in respect of article 40 (saving for termination of this Order), this Order shall cease to have effect on the termination date.

(3) In this article and in article 40 “the termination date” means the date appointed by the Company by resolution after the closure date determined under article 39 (closure of the jetty and reinstatement) and the completion of the works required by that article.

(4) Not less than 28 days before the termination date proposed to be appointed under paragraph (3) the Company must publish in Lloyd’s List newspaper and in at least one local newspaper circulating in the district of West Somerset a notice containing a copy of the resolution proposed to be passed by the Company appointing that date.

**Interpretation**

2.—(1) In this Order—

“the 1845 Act” means the Bridgwater Navigation and Quays Act 1845(1);

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847(2);

“the 1961 Act” means the Land Compensation Act 1961(3);

“the 1990 Act” means the Town and Country Planning Act 1990(4);

“the 1995 Order” means the Town and Country Planning (General Permitted Development) Order 1995(5);

“the Bridgwater Harbour Authority” means Sedgemoor District Council in its capacity under the 1845 Act as the harbour authority for the Port of Bridgwater;

“the Company” means NNB Generation Company Limited, a company incorporated in England with registered number 06937084;

“the deposited plans and sections” means the plans and sections which are bound together and signed in duplicate with reference to this Order and marked “Hinkley Point Harbour Empowerment Order 2012 plans and sections” and which are deposited at the offices of

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(1) 1845 c.lxxxix.  
(2) 1847 c.27.  
(3) 1961 c.33.  
(4) 1990 c.8.  
(5) S.I. 1995/418.

the Marine Management Organisation and at the office of the Company at 14 King Square, Bridgwater, Somerset TA6 3DG; and a reference to a numbered sheet is a reference to that numbered sheet bound in the deposited plans and sections;

“development” has the meaning given by section 55 of the 1990 Act<sup>(6)</sup> and refers, save where the context otherwise requires, to the works and the other development permitted by the 1995 Order by virtue of article 16 (operational land for the purposes of the Town and Country Planning Act 1990);

“general direction” means a direction given by the Company under article 24 (general directions to vessels);

“the harbour” means the harbour as comprised within the harbour limits;

“the harbour limits” means the limits of the harbour as defined in article 21 (harbour limits);

“the harbour master” means the person appointed as such by the Company and includes his deputies and assistants and any other person for the time being authorised by the Company to act, either generally or for a specific purpose, in the capacity of harbour master;

“the Harbour Master for the Port of Bridgwater” means the person appointed under section 50 of the 1845 Act by Bridgwater Harbour Authority to carry out the functions of a water bailiff and known as the Harbour Master for the Port of Bridgwater;

“the jetty” means collectively Works Nos. 1, 2 and 3;

“land” includes land covered by water, any interest in land or right in, to or over land;

“the level of high water” means the level of mean high water springs;

“the level of low water” means the level of mean low water neaps;

“the local planning authority” means the West Somerset District Council and includes any successor body as local planning authority;

“master” in relation to a vessel means a person for the time being having or taking the command, charge or management of the vessel;

“material operation” has the meaning given by section 56(4) of the 1990 Act<sup>(7)</sup>;

“ordnance datum” means the datum-line or mean sea level to which all heights are referred in the Ordnance Survey;

“the Port of Bridgwater” means the port known as the Port of Bridgwater comprised within the area defined as the Navigation in section 101 of the 1845 Act;

“special direction” means a direction given by the harbour master under article 26 (special directions to vessels);

“tidal work” means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“vessel” means a ship, boat, or craft of any description and includes any other thing constructed or adapted for floating on or being submersed in water (whether permanently or temporarily); and

“works” means, save where the context otherwise requires, the works authorised by this Order, or as the case may require, any of, or any part of any of, those works.

(2) In this Order a reference to a work identified by a number shall be construed as a reference to the work so numbered in article 4 and to a condition identified by a number to the condition so numbered in Part 2 or 3 of Schedule 1.

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(6) Section 55 was amended by the Planning and Compensation Act 1991 (c.34), section 13.

(7) Section 56(4) was amended by the Planning and Compensation Act 1991 (c.34), Schedule 7, paragraph 10(2).

### **Incorporation of the Harbours, Docks and Piers Clauses Act 1847**

3.—(1) Sections 1 to 3, 34, 35, 37 to 39, 42, 51, 54, 55, 63 to 65, 77 and 78 of the 1847 Act are incorporated with this Order subject to the modifications in paragraphs (2) to (5).

(2) Section 34 (collector may enter vessels to ascertain rates payable) shall have effect subject to the insertion after the word “may” of the words “(on production, if so required, of a duly authenticated document showing his authority)”.

(3) Section 63 (penalty on vessels lying near the entrance of harbour or dock without permission)(8) shall have effect subject to the modification that for the words from “be liable to” to the end of the section there are substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”.

(4) Section 65 (harbour master may remove any vessel for the purpose of repairing harbour or dock if the master thereof neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

(5) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the harbour master” has the meaning given by article 2(1) (interpretation), the expression “the special Act” means this Order, the expression “the undertakers” means the Company and the expression “the harbour, dock, or pier” means the harbour; and

(b) for the definition of the word “vessel” in section 3 (interpretations in this and the special Act) there shall be substituted the definition of that word in article 2(1) (interpretation).

(6) All fines and forfeitures recoverable under the provisions of the 1847 Act as incorporated with this Order may be recovered summarily.

## **PART 2**

### **WORKS PROVISIONS**

#### **Power to construct works**

4.—(1) Subject to article 5 (power to deviate), the Company may in the lines and situations and upon the lands delineated on, and within the limits of deviation shown on, and according to the levels shown on, the deposited plans and sections, construct, maintain and use the following works—

Work No. 1 – A jetty of open piled construction including an elevated roadway and comprising a concrete deck supported on steel tubular piles commencing at a point at ST1953846080 and extending in a north westerly direction into Bridgwater Bay for a distance of 506 metres and terminating at a point at ST1928546519, the location of which is shown on sheet no. 2 and the sections of which are shown on sheets nos. 11 and 12.

Work No. 2 – A covered conveyor for transporting aggregates installed on Work No. 1 commencing at a point at ST1968845829 and extending in a north westerly direction for a distance of 788 metres and terminating at a point at ST1931146515, the location of which is shown on sheet no. 3 and the sections of which are shown on sheets nos. 11 and 12.

Work No. 3 – A pipeline for transporting cement and cement replacement products installed on Work No. 1 commencing at a point at ST1968846053 and extending generally in a north westerly direction for a distance of 655 metres and terminating at a point at ST1929246510, the location of which is shown on sheet no. 4 and the sections of which are shown on sheets nos. 11 and 12.

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(8) There are amendments to section 63 not relevant to this Order.

Work No. 4 – An area of hardstanding for the storage of construction materials such as aggregates, sand and cement comprising 8.4 hectares incorporating roadways, a covered area for the storage of sand and forming in part the site of Work No. 5 and site construction facilities and incorporating a separator for oil and water together with a water management zone, the location of which is shown on sheet no. 5 and the sections of which are shown on sheets nos. 11 and 12.

Work No. 5 – A series of eight silos for the storage of cement, the location of which is shown on sheet no. 6 and the sections of which are shown on sheet no. 12.

Work No. 6 – A service road, the location of which is shown on sheet no. 7 and the section of which is shown on sheet no. 11.

Work No. 7 – An access corridor along the foreshore to Works Nos. 1 to 3, the location of which is shown on sheet no. 7.

Work No. 8 – A rock extraction area to be used for sourcing material for the construction of Works Nos. 4 and 6, the location of which is shown on sheet no. 8 and the section of which is shown on sheet no. 11.

Work No. 9 – Areas for the storage respectively of the topsoil and subsoil excavated from the sites of Works Nos. 4 and 8, the location of which is shown on sheet no. 9 and the section of which is shown on sheet no. 11.

Work No. 10 – A security fence having a height not exceeding 1.8 metres to be constructed along the lines shown on sheet no. 10, details of which are shown on sheet no. 12.

(2) The Company may, for the purposes of the works authorised by paragraph (1), remove any vegetation or other objects or materials and dismantle, demolish and remove any structures or apparatus lying within the limits of deviation shown on the deposited plans and sections.

(3) The Company may reconstruct, extend, enlarge, replace or relay a work authorised by paragraph (1) within the limits of deviation provided for that work under article 5 (power to deviate) and may maintain and use that work as reconstructed, extended, enlarged, replaced or re-laid.

(4) In paragraph (1) a reference to a point is a reference to an Ordnance Survey National Grid reference point.

### **Power to deviate**

5.—(1) In carrying out the works authorised by article 4 (power to construct works), the Company may, except in the case of the works mentioned in paragraphs (2) to (4) and (6), deviate laterally from the lines or situations as shown on the deposited plans and sections to any extent not exceeding the limits of deviation shown on the deposited plans and sections and may, except in the case of the works mentioned in paragraphs (5) and (6), deviate vertically from the levels of the works as shown on the deposited plans and sections to any extent not exceeding 3 metres upwards and to such extent downwards as may be necessary or convenient.

(2) In carrying out Works Nos. 1 and 2, the Company may deviate laterally from the lines or situations as shown on the deposited plans and sections to any extent not exceeding 5 metres in any direction.

(3) In carrying out Work No. 3, the Company may—

- (a) as respects so much of the work as lies between the commencement of the work and the line showing the level of high water on sheet no. 4, deviate laterally from the lines or situations as shown on the deposited plans and sections to any extent not exceeding the limits of deviation shown on the deposited plans and sections; and
- (b) as respects so much of the work as lies between the line showing the level of high water on sheet no. 4 and the termination of the work, deviate laterally from the lines or situations

as shown on the deposited plans and sections to any extent not exceeding 5 metres in any direction.

(4) In carrying out that part of Work No. 4 which consists of the sand shed, the Company may deviate laterally from the lines or situations as shown on the deposited plans and sections to any extent not exceeding 10 metres in any direction, and as respects the remainder of Work No. 4 may deviate from the lines or situations as shown on the deposited plans and sections to any extent not exceeding the limits of deviation shown on the deposited plans and sections.

(5) In carrying out Work No. 5 and that part of Work No. 4 which consists of the sand shed, the Company may deviate vertically from the levels of the works as shown on the deposited plans and sections to such an extent downwards as may be found necessary or convenient.

(6) In carrying out Work No. 10, the Company may deviate vertically up to 0.5 metres above the height specified in article 4 (power to construct works) and laterally from the lines or situations as shown on the deposited plans and sections to any extent not exceeding 10 metres in any direction.

(7) In this article “sand shed” means the covered area for the storage of sand to be constructed as part of Work No. 4.

#### **Further powers as to works and extinguishment of rights**

6. The Company may, in connection with the construction of the works, enclose or reclaim from the foreshore and bed of the sea, and may hold and use as part of Work No. 1, so much of the foreshore and bed of the sea as is situated within the limits of deviation shown on the deposited plans and sections and is required for, or in connection with, the construction of the works, and thereupon any right of navigation or other public rights over that part of the sea and the foreshore shall be extinguished.

#### **Subsidiary works**

7.—(1) Subject to paragraph (3), the Company may from time to time within the limits of deviation shown on the deposited plans and sections construct, maintain and use such other works as may be necessary or convenient for the purposes of, or in connection with, or in consequence of, the construction, maintenance or use of the works or the harbour and for this purpose the Company may construct, maintain and use roads, buildings, sheds, offices, portacabins, workshops, depots, walls, foundations, fences, gates, tanks, pumps, conduits, pipes, drains, wires, mains, cables, electrical substations, signals, conveyors, cranes, lifts, hoists, lights, lighting columns, weighbridges, stairs, ladders, stages, platforms, dolphins, mooring posts, buoys, pontoons, catwalks, equipment, signage, machinery and appliances and such other works and conveniences (including levelling, raising and lowering of surfaces) as may be necessary or expedient.

(2) Subject to paragraph (3), the Company may also within the limits of deviation shown on the deposited plans and sections construct, maintain and use such other works as may be necessary or convenient for the purposes of, or in connection with, or in consequence of, the construction, maintenance or use of the works authorised by article 4 including—

- (a) works for the accommodation or convenience of vessels or for the loading and unloading of goods and the embarking and loading of personnel; and
- (b) works to alter the position of apparatus, including mains, sewers, drains, pipes, conduits, cables, electrical substations and electrical lines.

(3) Electrical works, mechanical works or equipment constructed, maintained or used pursuant to the powers conferred by this article, shall be so constructed, maintained or used, that any electricity generated or conveyed by any such works or equipment used therein or in connection therewith does not cause interference (whether by induction or otherwise) with any telecommunications apparatus or with telecommunication by means of any such apparatus.

### **Power to dredge**

8.—(1) The Company may, for the purposes of constructing, maintaining or using the works and of affording access to the harbour by vessels from time to time deepen, dredge, scour, cleanse, alter and improve so much of the bed, shores and channels of Bridgwater Bay as lies within the harbour limits and may use, appropriate or dispose of the materials (other than wreck within the meaning of section 255 (interpretation) of the Merchant Shipping Act 1995 (9)), from time to time dredged by it.

(2) The Company must not lay down or deposit such materials in any place below the level of high water otherwise than in such position and under such conditions and restrictions as may be approved or prescribed by the Marine Management Organisation.

### **Obstruction of work**

9. Any person who—

- (a) intentionally obstructs any person acting under the authority of the Company in setting out the lines of, or in constructing, the works; or
- (b) without reasonable excuse interferes with, moves or removes any pole, stake, station point or bench mark established for the purpose of such setting out,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Survey of tidal works**

10. The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work or a site upon which it is proposed to construct the work and any expense incurred by him in such a survey and examination shall be recoverable from the Company as a debt.

### **Provision against danger to navigation**

11.—(1) In the case of injury to, or destruction or decay of, a tidal work or any part of it, the Company must as soon as reasonably practicable notify Trinity House and the Bridgwater Harbour Authority and must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as Trinity House may from time to time direct.

(2) Subject to article 33 (defence of due diligence), if the Company fails to notify Trinity House or the Bridgwater Harbour Authority as required by paragraph (1) or to comply in any respect with a direction given under that paragraph, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

### **Abatement of works abandoned or decayed**

12.—(1) Where a tidal work is abandoned or has fallen into decay the Secretary of State may by notice in writing require the Company at its own expense to either repair and restore the work or any part of it, or remove the work and restore the site of the tidal work to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

(2) Where a work consisting partly of a tidal work and partly of works on or over land above the level of high water is abandoned or has fallen into decay and that part of the work on or over land above the level of high water is in such condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work or any portion of it, in any notice under this article.

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(9) 1995 c. 21.

(3) If, on the expiration of 30 days from the date when a notice under this article is served upon the Company, it has failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Company as a debt.

#### **Lights on tidal works during construction**

**13.**—(1) During the whole time of the demolition, construction, renewal, reconstruction or alteration of a tidal work the Company must at the outer extremity of that work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation, as Trinity House may from time to time direct.

(2) Subject to article 33, if the Company fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Permanent lights on tidal works**

**14.**—(1) After completion of a tidal work the Company must at the outer extremity of the work every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation, as Trinity House may from time to time direct.

(2) Subject to article 33, if the Company fails to comply in any respect with a direction given under paragraph (1) it shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

#### **Period for completion of works and termination of works powers**

**15.**—(1) Subject to paragraph (2), if the works are not completed within ten years from the coming into force of this Order, or such extended period as the Marine Management Organisation may, on the application of the Company, allow, then on the expiration of that period, or such extended period (as the case may be), the powers granted by this Order to the Company for constructing, maintaining and using the works shall cease to have effect except in relation to so much of the works as have by then been commenced by the carrying out of a material operation.

(2) Nothing in paragraph (1) shall apply to any works carried out under paragraph (3) of article 4 (power to construct works ) or article 7 (subsidiary works).

(3) Notwithstanding paragraphs (1) and (2), on the closure date determined under article 39 (closure of the jetty and reinstatement) any powers conferred on the Company still existing for constructing, maintaining and using the works shall cease to have effect.

#### **Operational land for purposes of the Town and Country Planning Act 1990**

**16.** The planning permission granted by article 3 of the 1995 Order for the development authorised by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (a case in which land is to be treated as operational land).

#### **Application and termination of permitted development rights**

**17.**—(1) In their application to the development authorised by this Order, or to other development carried out on land which falls to be treated as operational land of the Company in respect of its harbour undertaking by virtue of article 16 of this Order, article 3 of, and Parts 11 and 17 of Schedule 2 to, the 1995 Order (which permit development authorised by a harbour empowerment order designating specifically both the nature of the development thereby authorised and the land on which it may be carried out and development on operational land by statutory undertakers or their

lessees in respect of harbour undertakings) shall have effect as if the planning permission granted by that Order were limited to the development commenced by the carrying out of a material operation within ten years of the coming into force of this Order, or such extended period as the Marine Management Organisation may, on the application of the Company, allow.

(2) Nothing in sub-paragraph (1) shall apply to the maintenance of the works or of the other development mentioned in that paragraph.

(3) Article 3 of, and Class B of Part 17 of Schedule 2 to, the 1995 Order shall not permit the Company to construct or erect an educational building, car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation.

(4) Article 3 of the 1995 Order shall not permit the Company to carry out the development described in Class D of Part 17 of Schedule 2 to the 1995 Order (use of land by statutory undertakers for the spreading of dredged material).

(5) Notwithstanding paragraphs (1) and (2), on the closure date determined under article 39 (closure of the jetty and reinstatement) any planning permission granted by the 1995 Order still existing shall cease to have effect in respect of the development authorised by this order and the other development mentioned in paragraph (1), except in so far as required for the implementation of that article and the application of the conditions in Schedule 1 (planning and works conditions) relating to that article.

### **Planning and works conditions**

**18.**—(1) The powers conferred by articles 4 (power to construct works) and 7 (subsidiary works) are subject to the conditions in Schedule 1 (planning and works conditions).

(2) In their application to the works, article 3 of, and Part 11 of Schedule 2 to, the 1995 Order shall have effect as if the planning permission granted by that Order were subject to the conditions in Schedule 1.

(3) In their application to other development carried out on land which falls to be treated as operational land of the Company in respect of its harbour undertaking by virtue of article 16 of this Order, article 3 of, and Part 17 of Schedule 2 to, the 1995 Order shall have effect as if the planning permission granted by that Order were subject to the conditions in Schedule 1.

(4) The conditions in Schedule 1 shall be deemed to be conditions subject to which a planning permission was granted under section 70 (determination of applications: general considerations) of the 1990 Act<sup>(10)</sup>.

(5) Without prejudice to the generality of paragraph (4) but subject to paragraph (6), the provisions in the 1990 Act and all associated legislation, including the provisions relating to appeals and enforcement, shall apply in relation to the conditions in Schedule 1, as if the land within the limits of deviation shown on the deposited plans and sections were included within the area of the local planning authority.

(6) Sections 73 (determination of applications to develop land without compliance with conditions previously attached) and 73A (planning permission for development already carried out) of the 1990 Act<sup>(11)</sup> shall, in accordance with paragraphs (4) and (5), apply in relation to the conditions in Schedule 1 so as to enable those conditions to be removed or changed in their application to the works and development referred to in paragraphs (1) to (3) but shall not enable the local planning authority to grant planning permission in relation to any works or development below the level of low water.

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<sup>(10)</sup> There are amendments to section 70 not relevant to this Order.

<sup>(11)</sup> Section 73 was amended by the Planning and Compulsory Purchase Act 2004 (c.5), sections 42(2) and 51(3) and section 73A was inserted by the Planning and Compensation Act 1991 (c.34), Schedule 7, paragraph 16(1).



### **Stopping up etc. of footpaths and substitution of new public rights of way**

19.—(1) Subject to paragraph (3), the Company may, in connection with the construction of the works permanently stop up each of the footpaths specified in columns (1) and (2) of Schedule 2 (stopping up of footpaths and new public rights of way to be substituted) to the extent specified in column (3) of that Schedule.

(2) Subject to paragraph (3), upon the stopping up of a footpath referred to in paragraph (1), any right of way over the part of the footpath specified in relation to it in column (3) of Schedule 2 shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to a footpath specified in columns (1) and (2) of Schedule 2 until the substituted footpath specified in relation to it in column (4) of that Schedule has been provided to the reasonable satisfaction of the highway authority and is open for use.

(4) In providing the substituted footpaths specified in column (4) of Schedule 2, the Company may erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement shall not be unreasonably withheld.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(6) Any substituted footpath specified in column (4) of Schedule 2 provided under this article shall be a public footpath and, subject to paragraphs (7) to (10), in relation to that substituted footpath section 28 of the Highways Act 1980(12) (compensation for loss caused by public path creation order) shall apply as if the opening for use of a substituted footpath provided under this article had been effected in consequence of the coming into operation of a public path creation order.

(7) In its application by virtue of paragraph (6), section 28 of the Highways Act 1980 shall have effect with the modifications mentioned in paragraphs (8) to (10).

(8) In subsection (1), for the words “the authority by whom the order was made” there shall be substituted the words “NNB Generation Company Limited.”.

(9) For subsection (2), there shall be substituted—

“(2) A claim for compensation under this section shall be made to NNB Generation Company Limited in writing within 6 months from the coming into force of the Hinkley Point Harbour Empowerment Order 2012(13) and shall be served on NNB Generation Company Limited by delivering it at, or by sending it by pre-paid post to, the registered office of NNB Generation Company Limited”.

(10) Subsection (3) shall be omitted.

(11) For the purposes of paragraphs (6) to (10), section 307 of the Highways Act 1980(14) (disputes as to compensation which are to be determined by Upper Tribunal and related provisions), in its application to section 28 by virtue of subsection (1), shall have effect as if in subsection (2) for the words “the authority from whom the compensation in question is claimed”, there were substituted the words “NNB Generation Company Limited”.

(12) In this article “the highway authority” means the Somerset County Council and includes any successor body as highway authority and a reference in Schedule 2 and the next following article to a point identified by the letter F and a number shall be construed as a reference to the point so lettered and numbered on the footpaths maps in Schedule 3 (footpaths maps), which maps are reproduced as a composite map at sheet no. 14.

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(12) 1980 c.66. Section 28 was amended by S.I. 2006/1177, Regulation 2 and the Schedule, Part I.

(13) S.I. 2012/1914

(14) Section 307 was amended by S.I. 2009/1307, Schedule 1, paragraph 137.

### **Permanent stopping up of footpath and extinguishment of rights**

**20.**—(1) The Company may, in connection with the construction of the works, permanently stop up footpath WL23/56 between points F2, F21 and F22.

(2) All rights of way over or along that part of footpath WL23/56 so stopped up shall be extinguished and the Company may, without making any payment, appropriate and use for the purposes of the works the site of the footpath so stopped up.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

## **PART 3**

### **HARBOUR REGULATION**

#### **Harbour limits**

**21.**—(1) The limits of the harbour within which the Company shall exercise jurisdiction as the harbour authority and within which the powers of the harbour master shall be exercisable are—

- (a) the seaward limits, that is to say, the area bounded by an imaginary line commencing at a point at ST1945046126, then extending in a straight line to a point at ST1873246621, then extending in a straight line to a point at ST1964046879, then in a straight line to a point at ST1964046153, then following the level of high water to the point of commencement; and
- (b) the landward limits, that is to say—
  - (i) so much of the land lying within the limits of deviation of Work No. 1 as shown on the deposited plans and sections as is above the level of high water; and
  - (ii) all of the land lying within the limits of deviation of Work Nos. 4 to 9 as shown on the deposited plans and sections.

(2) The area described in paragraph (1)(a) is, for the purposes of identification only, shown edged by a black line on sheet no. 13 and, in the event that there is any discrepancy between the description of that area and the area shown on that sheet, the description shall prevail.

(3) In paragraph (1), a reference to a point is a reference to an Ordnance Survey National Grid reference point.

#### **Byelaws**

**22.**—(1) The Company may from time to time make byelaws for the efficient management and regulation of the harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

- (a) regulating the use, operation and superintendence of the harbour and the berths, quays, piers, warehouses, sheds, landing places, equipment, works and conveniences (including moorings) in the harbour;
- (b) regulating the admission to, the movement within, and the departure from, the harbour of vessels, or the removal of vessels;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods within the harbour;
- (d) regulating the berthing and mooring of vessels within the harbour;

- (e) preventing damage or injury to any goods, vehicle, plant, machinery, property or person within the harbour;
  - (f) regulating the conduct of all persons within the harbour not being members of a police force or officers or servants of the Crown whilst in the execution of their duties;
  - (g) regulating the placing and maintenance of moorings within the harbour;
  - (h) preventing and removing obstructions or impediments within the harbour;
  - (i) regulating in the harbour the use of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft;
  - (j) regulating or prohibiting the activities in the harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);
  - (k) regulating the launching of vessels within the harbour;
  - (l) prohibiting persons in, or entering, the harbour, or any part of the harbour, from smoking in open spaces in the harbour;
  - (m) regulating the movement and parking of vehicles within the harbour;
  - (n) regulating the exercise of the powers vested in the harbour master; and
  - (o) making the carrying out of specified harbour operations, or the conduct of persons in the harbour, subject to the approval (with or without conditions), control or direction of the harbour master, and for authorising the harbour master to take such action as may be reasonably required in default of compliance with any such condition, control or direction.
- (3) Byelaws made under this article may—
- (a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given under them, fines not exceeding level 3 on the standard scale;
  - (b) relate to the whole of the harbour or to any part of the harbour; and
  - (c) make different provision for different parts of the harbour or in relation to different classes of vessels or vehicles.
- (4) Before making a byelaw to regulate vessels using the harbour, the Company shall first obtain approval from the Secretary of State for Defence.

### **Confirmation of byelaws**

**23.**—(1) Byelaws made by the Company under this Order shall not come into operation until they have been confirmed by the Secretary of State.

(2) At least one month before an application for confirmation of byelaws is made by the Company to the Secretary of State, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws will be open to inspection must be published as follows—

- (a) once in the London Gazette; and
- (b) once in each of two successive weeks in a local newspaper circulating in the area in which the harbour is situated.

(3) Not later than the first date on which the notice under paragraph (2) is published, the Company must send a copy of the notice to the Chief Executive Officer of West Somerset District Council, to the Harbour Master for the Port of Bridgwater and to the Secretary of State.

(4) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws must be kept by the Company at the office of the harbour master and must at reasonable hours be open to public inspection without payment.

(5) The Company must supply a copy of the byelaws or of part of the byelaws to a person who applies for it on payment of a reasonable charge.

(6) During the period of one month after completion of the publication of the notice required by paragraph (2), a person may make in writing to the Secretary of State an objection to, or representation respecting, the byelaws to which the notice relates.

(7) Subject to paragraph (8), the Secretary of State may confirm the byelaws in the form submitted to him with such modifications as he thinks fit or may refuse to confirm them.

(8) Where the Secretary of State proposes to make a modification that appears to him to be substantial he must inform the Company and require it to take the steps he considers necessary for informing persons likely to be concerned with the modification, and the Secretary of State must not confirm the byelaws until such period has elapsed as he thinks reasonable for consideration of, and comment upon, the proposed modification by the Company and by other persons who have been informed of it.

(9) A copy of the byelaws when confirmed must be printed and deposited by the Company at the office of the harbour master and must at all reasonable hours be open to public inspection without payment, and a copy of the byelaws must on application be furnished to any person on payment of a reasonable charge.

### **General directions to vessels**

**24.**—(1) The Company may, after consultation with the Secretary of State for Defence, the Bridgwater Harbour Authority, the Chamber of Shipping and the Royal Yachting Association in each case of an exercise of the powers, give general directions for any of the following purposes—

- (a) for designating areas, routes or channels in the harbour and the approaches to the harbour which vessels are to use, or refrain from using, for movement or mooring; and
- (b) for requiring the master of a vessel to give to the harbour master information relating to the vessel reasonably required by the harbour master to identify the vessel, its cargo and its likely time of arrival at and departure from the harbour.

(2) Directions given under paragraph (1) may apply—

- (a) to all vessels or to a class of vessels designated in the direction;
- (b) to the whole of the harbour and the approaches and channels leading to the harbour, or to a part designated in the direction; and
- (c) at all times or at times designated in the direction,

and a direction given under this article must specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) A direction given by the Company under this article shall not apply in relation to any part of the Port of Bridgwater.

(4) The Company may, after consultation with the Secretary of State for Defence, the Bridgwater Harbour Authority, the Chamber of Shipping and the Royal Yachting Association, revoke or amend a direction given under this article.

### **Publication of general directions**

**25.**—(1) Notice of the giving of a general direction or of an amendment or revocation of a general direction must, except in case of emergency, be published by the Company as soon as practicable

once in Lloyd's List or some other newspaper specialising in shipping news; and, if the notice relates to the giving or amendment of a direction, the notice must state a place at which copies of the direction or the amended direction (as the case may be) may be inspected and bought, and the price of the direction or amended direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of an amendment or revocation of a general direction may be given in any manner the Company considers appropriate.

### **Special directions to vessels**

**26.**—(1) The harbour master may give a special direction under this article—

- (a) requiring a vessel anywhere within the harbour or the approaches to the harbour to comply with a requirement made in, or under, a general direction;
- (b) regulating the time at which and the manner in which a vessel shall enter into, go out of, or lie in or at the harbour;
- (c) for securing that vessels move only at certain times or during certain periods;
- (d) prohibiting the mooring of vessels in any particular part or parts of the harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel; and
- (f) regulating the manner in which within the harbour a vessel takes in or discharges (from ship to shore or shore to ship) personnel, cargo, fuel, water, ship's stores or ballast.

(2) A special direction may be given in any manner considered by the harbour master to be appropriate.

(3) Any special direction given by the harbour master under this article shall not apply in relation to any part of the Port of Bridgwater.

(4) The harbour master may revoke or amend a special direction.

### **Master's responsibility to be unaffected**

**27.** The giving of a general direction or a special direction shall not diminish, or in any other way affect, the responsibility of the master of the vessel to which the direction applies in relation to that vessel, persons on board, its cargo or any other person or property.

### **Failure to comply with directions**

**28.** The master of a vessel who fails without reasonable excuse to comply with a general direction or a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### **Enforcement of special directions**

**29.**—(1) Without prejudice to any other remedy available to the Company, if a special direction is not complied with within a reasonable time the harbour master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no one on board the vessel to comply with a special direction, the harbour master may proceed as if the direction had been given and not complied with; but the harbour master must not do so unless, after reasonable inquiry has been made, the master of the vessel cannot be found.

(3) Expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Company from the owner of the vessel as if they were a charge of the Company in respect of the vessel.

## **Charges**

**30.**—(1) The Company may levy charges for any services performed by it in the exercise and performance of its statutory powers and duties at the harbour.

(2) The Company may confer total or partial exemption from, allow rebates to or make compositions with any person with respect to, charges and may vary or extinguish any such exemption, rebate or composition.

(3) In this article “charges” means any charges other than ship, passenger and goods dues.

## **PART 4**

### **MISCELLANEOUS AND GENERAL**

#### **Power to lease etc.**

**31.**—(1) The Company may at any time for the purposes of the harbour lease or grant the use or occupation of, or any right or interest in, over or relating to, any lands, works, buildings, equipment or other property forming part of the harbour for such period or periods and on such terms and conditions as may be agreed between the Company and the person taking the same.

(2) The exercise of the powers of this Order, or the carrying out of any development under permitted development rights, by any person in pursuance of a lease or grant under paragraph (1) shall be subject to the same restrictions, conditions, liabilities and obligations as would apply under this Order, or by virtue of any agreement or undertaking by the Company, if those powers were exercised, or the development carried out, by the Company; and accordingly the provisions of this Order or of any such agreement or undertaking shall, as respects any exercise of the powers of this Order or the carrying out of any permitted development rights by the lessee or grantee, have effect (where the context so permits) as if any reference in those provisions to the Company included a reference to the lessee or the grantee, as the case may be.

(3) In this article “permitted development rights” means the planning permission granted by article 3 of, and Parts 11 and 17 of Schedule 2 to, the 1995 Order.

#### **Restriction on use of the works**

**32.** The Company must not use or permit the use of the works other than for the purposes of, or in connection with, the construction of energy related facilities at Hinkley Point, Somerset.

#### **Defence of due diligence**

**33.**—(1) In proceedings for an offence under any of the provisions mentioned in paragraph (2) it shall be a defence for the Company to prove that it took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) The provisions referred to in paragraph (1) are—

- (a) article 11 (provision against danger to navigation);
- (b) article 13 (lights on tidal works during construction); and
- (c) article 14 (permanent lights on tidal works).

(3) If in any case the reliance on the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, the Company shall not, without leave of the court, be entitled to rely on that defence unless, before the period of 7 clear days preceding the hearing, it has served on the prosecutor a notice in writing giving such information identifying, or assisting in the identification of, that other person as was then in its possession.

### **Saving for Trinity House**

34. Nothing in this Order shall prejudice or derogate from any of the rights, duties or privileges of Trinity House.

### **Saving for other consents etc.**

35. The carrying out of any works or operations pursuant to this Order is subject to the Company obtaining any consent, permission or licence required under any other enactment.

### **Disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010**

36. Regulation 73 of the Conservation of Habitats and Species Regulations 2010(15) shall not apply to planning permission for the development authorised by this Order granted as permitted development by article 3 of, and Parts 11 and 17 of Schedule 2 to, the 1995 Order, in respect of that part of the development which—

- (a) forms part of a plan or project which was subject to an appropriate assessment under regulation 61 of those Regulations in connection with the making of this Order; or
- (b) is subject to a further consent, permission or authorisation by a competent authority within the meaning of those Regulations.

### **Crown rights**

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Company or any licensee to take, use, enter upon or in any manner interfere with, any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and shall be deemed to have been given in writing where it is sent electronically.

### **For the protection of the Environment Agency**

38.—(1) Paragraph (2) shall have effect unless otherwise agreed with the Environment Agency.

(2) Notwithstanding article 5 (power to deviate) no part of any works falling within the descriptions set out in the following sub-paragraphs must be constructed, carried out or installed (as the case may be) below the corresponding level above ordnance datum specified in each sub-paragraph—

- (a) any soffits of the jetty head comprised within, or associated with, Work No. 1, 10.1 metres above ordnance datum;
- (b) the surface level of the jetty head at the termination of Work No. 1, 11.6 metres above ordnance datum;

- (c) the jetty surface elevation of the bankseat and the commencement of Work No. 1, 19.0 metres above ordnance datum;
- (d) the area of hardstanding comprised within Work No. 4, 17.0 metres above ordnance datum;
- (e) the base level of Work No. 8, 11.0 metres above ordnance datum; and
- (f) the surface level of Work No. 6 at the point where it crosses the Hinkley Point C drainage ditch, 10.3 metres above ordnance datum.

### **Closure of the jetty and reinstatement**

**39.**—(1) Subject to paragraph (2), on or before the closure date the Company must cease all operations at the harbour except to comply with this article, and after that date must, as soon as reasonably practicable, dismantle, demolish and remove (so far as constructed) -

- (a) the whole of the jetty and all tidal works associated with the jetty except for those parts of the jetty and works on the ground lying at the level of, or under, the ground or those parts of the jetty or works in the sea below the level of low water lying at the level of, or under, the bed of the sea; and
- (b) any other works owned by the Company as the harbour authority for the harbour (including any development constructed pursuant to permitted development rights under Parts 11 or 17 of Schedule 2 to the 1995 Order) as lie above the level of low water,

and must then reinstate the land so far as affected by so much of those works as lies above the level of low water to its condition prior to the construction of those works in accordance with a landscaping, mitigation and reinstatement strategy to be agreed with the local planning authority.

(2) Subject to paragraph (3), in this article the closure date is 31st December 2025 or such later date as the Marine Management Organisation may, on the application of the Company, allow.

(3) If any of the events specified in sub-paragraphs (a) and (b) occurs before the 31st December 2025 or (as the case may be) such later date, namely that -

- (a) development consent for a nuclear generating station at Hinkley Point has not been granted within 5 years of the date of coming into force of this Order or, though granted, has not been implemented by the carrying out of a material operation within the time specified in the development consent order; or
- (b) the jetty is no longer required by the Company for the construction of a nuclear generating station at Hinkley Point,

the closure date is, in the case of sub-paragraph (a), the date of expiry of that 5 year period or (as the case may be) of that time specified in the development consent order, or, in the case of sub-paragraph (b), the date appointed by resolution of the Company.

(4) Not less than 28 days before a closure date proposed to be appointed by resolution of the Company under paragraph (3), the Company must publish in Lloyd's List newspaper and in at least one local newspaper circulating in the district of West Somerset a notice containing a copy of the resolution proposed to be passed by the Company appointing that date.

(5) In their application to the works required by this article, article 3 of, and Parts 11 and 17 of Schedule 2 to, the 1995 Order shall have effect as if the planning permission granted by that Order were subject to the conditions in Schedule 1 relating to those works.

### **Saving for termination of this Order**

**40.**—(1) No proceedings or inquiries in respect of any situation, matter, thing, happening, act, refusal, neglect or failure occurring during the period before this Order ceased to have effect on the termination date in accordance with article 1(2), so far as relating to the harbour or any part or parts of the harbour (whether or not relating also to a part or parts of the Port of Bridgwater), including, but



without prejudice to the generality of the foregoing, proceedings for an offence committed or penalty incurred, or for recovery of expenses, rates, dues, fees or charges incurred, during that period, shall be affected by this Order ceasing to have effect on the termination date, and any such proceedings or inquiries may be commenced, continued and concluded, and any decision, judgment or ruling thereon may be enforced, as if this Order, and any relevant general or special direction or byelaw, had not ceased to have effect.

(2) Any period of time current in relation to any proceedings or inquiries mentioned in paragraph (1) when this Order ceases to have effect shall not be affected by its ceasing to have effect and may continue to run as if this Order, and any relevant general or special direction or byelaw, had not ceased to have effect.

Signed by authority of the Marine Management Organisation

19th July 2012

*J. Cross*  
Chief Executive Officer  
An authorised employee of the Marine  
Management Organisation