
STATUTORY INSTRUMENTS

2012 No. 1914

The Hinkley Point Harbour Empowerment Order 2012

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.

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 (1)), 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—

(1) 1995 c. 21.

- (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.

(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(2).

(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(3) 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.

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.

(2) There are amendments to section 70 not relevant to this Order.

(3) 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).

(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(4) (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(5) 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(6) (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.

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.

(4) 1980 c.66. Section 28 was amended by S.I. 2006/1177, Regulation 2 and the Schedule, Part I.

(5) S.I. 2012/1914

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