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STATUTORY INSTRUMENTS

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**2012 No. 1914**

**The Hinkley Point Harbour Empowerment Order 2012**

**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(1) 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

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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.