



# Killingholme Generating Stations (Ancillary Powers) Act 1991

## 1991 CHAPTER viii

### PART IV

#### PROTECTIVE PROVISIONS

#### **25 For protection of Humber Bridge Board**

For the protection of the Humber Bridge Board (hereinafter in this section referred to as “the bridge board”) the following provisions shall unless otherwise agreed in writing between the appropriate company and the bridge board have effect:—

- (1) The bridge board shall not be liable to the appropriate company for any interference with or damage to the works caused by the construction, maintenance, repair, alteration or renewal of the bridge and other works authorised by the Humber Bridge Act 1959 except in any case in which such interference or damage was due to any negligent act or default on the part of the bridge board or any of their officers or servants or contractors:
- (2) Any difference arising between the appropriate company and the bridge board under this section shall be settled by arbitration.

#### **26 For protection of A.B. Ports**

For the protection of A.B. Ports, the following provisions shall, unless otherwise agreed in writing between the appropriate company and A.B. Ports, have effect:—

- (1) In this section—
  - “construction” includes execution and placing, renewal, diversion or alteration and removal, and “constructed” shall be construed accordingly;
  - “plans” includes sections and “approved plans” means plans approved or deemed to have been approved by A.B. Ports or settled by arbitration:

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- (2) (a) Before commencing the construction of any part of a tidal work plans showing the general mode of construction thereof shall be delivered by the appropriate company to A.B. Ports for its reasonable approval, and such tidal work shall not be constructed otherwise than in accordance with approved plans and to the reasonable satisfaction of A.B. Ports;
  - (b) Without prejudice to the generality of sub-paragraph (a) above, with the exception of any intake or outfall forming part of the works, no part of any tidal work shall be constructed otherwise than at a level of two metres or more below the bed of the river and with a minimum of two metres of a suitable covering material placed above that work;
- (3) After the purpose for which any temporary works were placed or conveniences connected therewith in the river were constructed under the powers of this Act has been accomplished the appropriate company shall, with all reasonable dispatch, remove any such works or conveniences and if without reasonable cause they fail to do so A.B. Ports may remove the same, charging the appropriate company with the reasonable expense of so doing, and the appropriate company shall repay to A.B. Ports all such expense:
- (4) (a) The appropriate company shall before commencing any dredging in the river under the powers of this Act (other than maintenance dredging and except in an emergency) deliver to A.B. Ports for its reasonable approval plans defining the nature, extent and manner of such dredging, and such dredging shall not be carried out otherwise than in accordance with approved plans and in such manner as may be approved by A.B. Ports or as may be settled by arbitration;
- (b) In this paragraph “maintenance dredging” means dredging solely for the purpose of maintaining the bed, foreshore or banks of the river in the same condition as they were after dredging operations approved by A.B. Ports had been carried out:
- (5) If A.B. Ports fails to express its disapproval of any plans within two months after they have been delivered to it in pursuance of this section, it shall be deemed to have approved them:
- (6) If there shall be any inconsistency between any approved plans and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the tidal work to which the plans relate shall be constructed in accordance with the plans approved by the Secretary of State:
- (7) (a) If during the construction of or within the prescribed period after the completion of the National Power works or the PowerGen works, as the case may be, it is agreed between the appropriate company and A.B. Ports or, in default of agreement, it is proved to the satisfaction of an arbitrator to be appointed in accordance with section 31 (Arbitration) of this Act that any accumulation or erosion has been caused wholly or partly by the construction of any of the works or the carrying out of any dredging operation under section 9 (Power to dredge) of this Act, the appropriate company shall carry out such remedial work as may be agreed or in default of agreement as may be proved to the satisfaction of the arbitrator to have been caused by the construction of any of the works or the carrying out of any dredging operation as aforesaid and, if they refuse or fail so to do A.B. Ports may itself cause the work to be done and may recover the reasonable cost thereof from the appropriate company;

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- (b) In this paragraph—
- “accumulation” means any accumulation of silt or other material which shall constitute an impediment to navigation;
  - “erosion” means any erosion of any jetty or other structure of whatever nature owned or occupied by A.B. Ports;
  - “remedial work” means—
    - (i) in the case of an accumulation, its removal; and
    - (ii) in the case of erosion such reconstruction works and other protective works or measures as may be necessary;
  - “the prescribed period” means a period of 10 years and if during that period there has been an accumulation or erosion such as to give rise to an obligation by the appropriate company under this paragraph to carry out remedial work, a further period of 10 years:
- (8) During any dredging operations carried out by the appropriate company in the course of the construction of the National Power works or the PowerGen works, as the case may be, the appropriate company shall, if required by A.B. Ports, provide and maintain to the reasonable satisfaction of A.B. Ports—
- (a) such lighted mooring or other buoys at any deposit ground in the river which may be approved for the deposit of dredgings by the appropriate company from the site of the works; and
  - (b) take all such other steps as may be required by A.B. Ports to prevent danger to navigation:
- (9) The provisions of section 15 (Abatement of works abandoned or decayed), section 16 (Survey of tidal works) and section 18 (Lights on tidal works during construction) of this Act shall, with any necessary modifications, apply to A.B. Ports as if, in the case of the said section 15, A.B. Ports were named therein in addition to the Secretary of State and the rivers authority and, in the case of the other two sections, in addition to the Secretary of State and any expenses incurred by A.B. Ports in pursuance of either of the said sections 15 and 16 shall be recoverable from the appropriate company:
- Provided that—
- (a) if there is any inconsistency between any requirement or direction of the Secretary of State and of A.B. Ports the former shall prevail and the appropriate company shall be deemed to have complied with the provisions of those sections if they have complied with the requirement or direction of the Secretary of State;
  - (b) the annual survey of the river carried out by A.B. Ports in the performance of its functions as the navigation authority shall not be treated as a survey carried out under the said section 16:
- (10) The appropriate company shall at all reasonable times during construction of the works and thereafter allow A.B. Ports, its servants and agents, access to the National Power works or the PowerGen works, as the case may be:
- (11) The appropriate company shall not acquire compulsorily under the powers of this Act the interests of A.B. Ports in the lands numbered 2 and 3 in the parish on the deposited plans but the appropriate company may in accordance with the provisions of section 20 (Purchase of rights) of this Act acquire compulsorily such rights in the said lands as they may reasonably require for the purposes of the works:

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- (12) The appropriate company shall pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work:
- (13) (a) Without prejudice to the other provisions of this section, the appropriate company shall be responsible for, and make good to A.B. Ports, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of A.B. Ports) which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—
- (i) the perusal of plans and the inspection of any of the works or the regulation of any dredging operation by A.B. Ports or its duly authorised representative;
  - (ii) the carrying out of such surveys, inspections, tests and sampling within the river as A.B. Ports after consultation with the appropriate company reasonably considers necessary to establish whether or not the discharge or dispersal of water into the river by means of any of the works is causing or has caused any damage to or deterioration of any existing jetty or other structure owned or occupied by A.B. Ports;
  - (iii) the construction or maintenance of any of the works or the carrying out of any dredging operation, the discharge or dispersal of water into the river by means of any of the works, the failure of any of the works or the undertaking by A.B. Ports of works or measures to prevent or remedy damage to any property of A.B. Ports arising from such construction, carrying out, discharge or dispersal, or failure;
  - (iv) any act or omission of the appropriate company or their servants or agents whilst engaged in the construction or maintenance of any of the works or the carrying out of any dredging operation;
- (b) Without prejudice to the generality of sub-paragraph (a) of this paragraph the appropriate company shall indemnify A.B. Ports from and against all claims and demands arising out of, or in connection with, such construction, carrying out, discharge or dispersal, failure or act or omission as is mentioned in that sub-paragraph;
- (c) A.B. Ports shall give to the appropriate company notice of any claim or demand made against it which is a claim or demand for which the appropriate company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the appropriate company:
- (14) The fact that any work or thing has been executed or done with the consent of A.B. Ports and in accordance with any conditions or restrictions prescribed by A.B. Ports or in accordance with plans approved or deemed to be approved by A.B. Ports or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the appropriate company from any liability under the provisions of this section:
- (15) With the exception of any duty owed by A.B. Ports to the appropriate company expressly provided for in the foregoing provisions of this section, nothing in this Act shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any court:

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- (16) Subject to the provisions of section 20 (Purchase of rights) of this Act, nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports at the commencement of this Act or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it:
- (17) Any difference arising between the appropriate company and A.B. Ports under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

## **27 For protection of rivers authority**

For the protection of the rivers authority the following provisions shall unless otherwise agreed in writing between the appropriate company and the rivers authority have effect:—

- (1) In this section—

“the authorised works” means the National Power works or the PowerGen works, as the case may be;

“construction” includes execution and placing, renewal, diversion or alteration and in relation to temporary works also includes removal, and “construct” and “constructed” have corresponding meanings;

“plans” includes drawings and specifications and a description of the method of carrying out the work; and as regards a work of maintenance, repair or renewal means a description of the work only;

“protective works” means any temporary or permanent works constructed or measures taken under paragraph (3) or paragraph (7) of this section necessary—

- (a) to ensure the stability of a sea defence work or to protect it or a watercourse from injury or to ensure the maintenance of the flow of all water which but for the construction of the specified works would have flowed through a watercourse;
- (b) for the protection of water resources;

“sea defence work” means so much of the sea defence as is for the time being under the jurisdiction of the rivers authority for the purpose of the Land Drainage Act 1976 and the Water Resources Act 1963 and includes the land lying between the said defence and the level of low water;

“specified work” means any authorised work or any work for the purposes of or in connection with the construction of such a work carried out under section 6 (Power to make subsidiary works) of this Act which will or may affect—

- (a) a sea defence work or watercourse under the control of the rivers authority; or
- (b) water resources;

“temporary works” means any temporary structures which may be necessary to enable the authorised works to be constructed;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers (other than sewers under the control of a local authority) and passages through which water flows, other than the river:

- (2) (a) Not less than 28 days before commencing to construct a specified work the appropriate company shall submit plans of such work to the rivers authority

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for their reasonable approval and shall not commence the specified work until such plans have been approved by the rivers authority or in the case of difference until they have been settled by arbitration:

Provided that if the rivers authority do not within 28 days after the receipt of any such plans signify to the appropriate company their disapproval thereof and the grounds for their disapproval they shall be deemed to have approved thereof;

- (b) Not less than 14 days before commencing any work of maintenance or repair of a specified work the appropriate company shall, except in the case of emergency, submit to the rivers authority for their information a notice of intention to commence the work and a description of the work:
- (3) Upon signifying their approval or disapproval of the said plans the rivers authority may specify any protective works which in their opinion should be carried out or undertaken by the appropriate company during the construction of the specified work and such of the works so specified as may be reasonably necessary for those purposes shall be constructed by the appropriate company at their own expense and under the supervision (if given) and to the reasonable satisfaction of the rivers authority:
- (4) (a) Subject to the provisions of this section, a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved by the rivers authority as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the engineer of the rivers authority who shall be given reasonable notice of the date and time on and at which the work is to be commenced;
  - (b) The appropriate company shall at all reasonable times during the construction of a specified work afford to the engineer of the rivers authority and his duly authorised representatives access to such specified work for the purposes of inspection;
  - (c) As soon as is reasonably practicable after the completion of a specified work or thereafter upon 14 days' notice in writing from the rivers authority requiring them so to do the appropriate company shall remove so much of the work as consists only of temporary works carried out for the purposes of such construction:
- (5) If there shall be any inconsistency between any plans approved or deemed to be approved by the rivers authority or settled by arbitration under the provisions of this section and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the specified work shall be constructed in accordance with the plans approved by the Secretary of State:
- (6) If by reason of—
- (a) the construction, maintenance or repair of any specified work;
  - (b) the failure of that work or of the appropriate company to maintain it; or
  - (c) any operations carried out by the appropriate company under section 9 (Power to dredge) of this Act;

a sea defence work shall be breached or, as the case may be, a sea defence work or a watercourse shall at any time be injured or its efficiency as a sea defence work or watercourse is otherwise impaired, the rivers authority may fill in the breach or, as the case may be, make good such injury and in either such a case restore it to a proper standard of efficiency as a sea defence work or watercourse, as the case may be, and

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recover the reasonable cost thereof (including a proper proportion of the overhead charges of the rivers authority) from the appropriate company:

- (7) If the rivers authority have reasonable grounds for believing that damage to a sea defence work or watercourse is likely to take place or its efficiency as a sea defence work or watercourse is likely to be impaired in any of the circumstances mentioned in paragraph (6) above, they may carry out such protective works as may be agreed between the rivers authority and the appropriate company or as, in default of agreement, may be settled by arbitration and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the rivers authority) from the appropriate company:
- (8) Any additional expense which may be reasonably incurred by the rivers authority in maintaining any protective works which become part of the sea defence works or a watercourse shall on demand be repaid to the rivers authority by the appropriate company:
- (9)
  - (a) Where a specified work is in, on or under a sea defence work or abuts upon any lands acquired by the appropriate company under this Act the rivers authority and their officers, servants, workmen, contractors and agents together with any vehicles, plant or machinery shall be entitled at all reasonable times and in an emergency at any time to enter upon the said specified work, the part of the sea defence work in, on or over it or the said land for the purpose of carrying out works in connection with the sea defence work or of obtaining access to the sea defence work;
  - (b) A specified work shall not be constructed so as to prevent access during construction to a sea defence work or a watercourse by the rivers authority and their officers, servants, workmen, contractors and agents together with such vehicles, plant and machinery as may be reasonably necessary:
- (10) The rivers authority for the purpose of performing or in connection with the performance of any of their functions shall be entitled at all reasonable times and in an emergency at any time to inspect any of the authorised works or any work for the purposes of or in connection with the construction of such authorised work carried out under section 6 (Power to make subsidiary works) of this Act:
- (11) The appropriate company shall indemnify and hold harmless the rivers authority from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage which may be caused or result to a sea defence work or watercourse or to the water resources of the rivers authority by or in consequence of the construction, maintenance or repair of an authorised work or any work for the purposes of or in connection with such first-mentioned work carried out under section 6 (Power to make subsidiary works) of this Act or of the failure or want of repair thereof or any subsidence caused by the construction thereof or in consequence of any act or omission of the appropriate company, their contractors, agents, workmen or servants whilst engaged upon an authorised work or any such other work as aforesaid:

Provided that the rivers authority shall give to the appropriate company reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the appropriate company:

- (12) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the rivers authority or to their satisfaction

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or in accordance with any directions or award of an arbitrator shall not relieve the appropriate company from any liability under the provisions of this section:

- (13) Any difference arising between the appropriate company and the rivers authority under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

## **28 Provisions applicable to last two sections**

- (1) If any requirements of the protected authority under the relevant enactment conflict with any requirements of the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the latter shall prevail.
- (2) In any case where any plans have been submitted to both protected authorities and either or both those authorities disapprove such plans the plans shall not be deemed to have been approved unless approved by both the authorities and in any arbitration proceedings which may take place as a result of the disapproval of one of the authorities the protected authority which is not a party to those proceedings shall be entitled to be heard in such proceedings and the plans as settled by such arbitration shall be deemed to have been approved by such protected authority (whether or not it has been heard in the proceedings).
- (3) In this section—  
“the protected authority” means A.B. Ports or the rivers authority;  
“the relevant enactment” means, in relation to A.B. Ports, section 26 (For protection of A.B. Ports) of this Act and, in relation to the rivers authority, section 27 (For protection of rivers authority) of this Act.

## **29 For protection of British Coal Corporation**

For the protection of the British Coal Corporation the following provisions shall, unless otherwise agreed in writing between the appropriate company and the British Coal Corporation, have effect:—

- (1) In this section—  
“the Corporation” means the British Coal Corporation and their successors in title;  
“the jetty” means the works authorised by the South Killingholme Jetty Empowerment Order 1968:
- (2) The appropriate company shall—  
(a) be responsible for and make good to the Corporation all costs, charges, damages and expenses which may be occasioned to or reasonably incurred by the Corporation by reason of the failure of the National Power works or the PowerGen works, as the case may be, or of any act or omission of the appropriate company or of any persons in their employ or of their contractors or others whilst engaged upon the construction or maintenance of the works or upon operations carried out under section 9 (Power to dredge) of this Act; and  
(b) indemnify the Corporation from and against all claims and demands arising out of or in connection with the construction or maintenance of the National Power works or the PowerGen works, as the case may be, or any such failure, act or omission as aforesaid;



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as a result of which any thing forming part of the works or used in connection with the construction or maintenance of the works or in connection with any such operations as aforesaid is carried downstream and causes damage to the jetty or any vessel moored or about to be moored to the jetty:

Provided that—

- (i) nothing in this paragraph shall impose any liability on the appropriate company in respect of any such claim or demand in so far as and to the extent to which it is attributable to the act, neglect or default of any person other than the appropriate company, their contractors, agents, workmen or servants; and
  - (ii) the Corporation shall give to the appropriate company immediate notice of any such claim or demand and no settlement or compromise thereof shall be made except with the consent of the appropriate company who (if they so elect) shall at their expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same:
- (3) If any vessel or apparatus used in connection with the construction or maintenance of the works or with any operations carried out under the said section 9 is in such a position as is likely to constitute a material interference with the navigation of vessels proceeding to or leaving the jetty, the appropriate company shall on receiving notice in writing from the Corporation in the case of a vessel move it within 24 hours and in the case of apparatus move it within a reasonable time.

### **30 For mutual protection of National Power and PowerGen**

The powers conferred upon National Power by this Act shall not be exercised south-east of an imaginary line drawn between reference point TA1714 1940 and reference point TA1746 1960 without the consent of PowerGen and the powers conferred upon PowerGen by this Act shall not be exercised north-west of that line without the consent of National Power.