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STATUTORY INSTRUMENTS

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**2013 No. 648**

**The Hinkley Point C (Nuclear Generating Station) Order 2013**

**PART 1**

**General provisions**

*Principal powers*

**Development consent for authorised development etc.**

3.—(1) Subject to the provisions of Schedule 2 (requirements) (“the requirements”) and the other provisions of this Order, the undertaker is granted development consent for the authorised development, to be carried out in the lines or situations shown on the works plans and in accordance with the approved plans.

(2) In constructing or maintaining any of the authorised development, the undertaker may deviate laterally from the lines or situations shown on the works plans within the limits of deviation relating to that work shown on those plans.

(3) In constructing or maintaining Work No. 2A, Work No. 2C and Work No. 2E, the undertaker may deviate vertically to any extent provided that no part of these works is less than 10 metres below the seabed or more than 50 metres below the seabed.

(4) In constructing or maintaining Work No. 2G the undertaker may deviate vertically to any extent provided that no part of these works is more than 25 metres below the seabed.

(5) Paragraphs (1), (2), (3) and (4) only authorise the carrying out of works within the Order limits.

**Effect of the Order on the site preparation permission**

4.—(1) If the undertaker serves a notice on West Somerset District Council under this article—

- (a) the undertaker shall cease to carry out development under the site preparation permission; and
- (b) the conditions of the site preparation permission shall cease to have effect, except for Conditions G4, R1, R2, R3, R4, R5 and R6.

(2) The undertaker may not carry out Work No. 1A under this Order until notice has been served under paragraph (1).

(3) Notwithstanding paragraph (2), the undertaker may exercise any other powers under this Order in respect of any part of the authorised project prior to or following service of notice under paragraph (1).

(4) Without prejudice to the generality of paragraph (3), the undertaker may discharge any requirement at any time prior to or following the service of notice under paragraph (1).

(5) Where details, plans or any other matters have been approved or agreed by West Somerset District Council pursuant to a condition of the site preparation permission in column (1) of

Schedule 3 prior to the date on which the undertaker serves notice under paragraph (1) they shall be deemed to have been approved for the purpose of the corresponding requirement in column (2) of Schedule 3.

#### **Maintenance of authorised project**

5. The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

#### **Authorisation of use**

6. Subject to the provisions of this Order and to the requirements the undertaker may operate and use the authorised project.

#### **Benefit of Order**

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the undertaker.

#### **Consent to transfer benefit of Order**

8.—(1) The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations (including development consent obligations within the meaning of section 106A of the 1990 Act) as would apply if those benefits or rights were exercised by the undertaker.

#### **Application of the 1991 Act**

9.—(1) Where the undertaker carries out works under this Order in relation to a highway which consists of or includes a carriageway and the works carried out are—

- (a) of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of the 1991 Act (which defines what highway authority works are major highway works); or
- (b) works which, had they been executed by the highway authority, could have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageway and roundabouts),

the works shall be treated for the purposes of Part 3 of the 1991 Act (street works) as if they were major highway works carried out by the highway authority.

(2) In the application of Part 3 of the 1991 Act to works within paragraph (1) by virtue of paragraph (1), the references in that Part to the highway authority concerned shall be construed as references to the undertaker.

### **Application of the 1990 Act**

**10.**—(1) This article applies to the resumption of the use of land used for the temporary associated development works for the use for which it was normally used before this Order was made.

(2) Where this article applies, section 57(2) of the 1990 Act (planning permission required for development) shall apply as if the development consent granted under this Order were planning permission granted for a limited period.

### **Application of the 2010 Regulations**

**11.**—(1) The Community Infrastructure Levy Regulations 2010(1) shall apply to the authorised development as if regulation 5(2) of those Regulations (meaning of “planning permission”) referred to development consent which is deemed to be granted for a limited period by an order made under section 114(1)(a) of the 2008 Act (grant or refusal of development consent) rather than to planning permission which is granted for a limited period.

(2) Development consent is deemed to be granted for a limited period for the temporary associated development works, Work No. 1A(b) and any other temporary buildings or works authorised by this Order.

### **Defence to proceedings in respect of statutory nuisance**

**12.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(2) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(3); or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Sections 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) and section 65(8) (corresponding provision in relation to consent for registered noise level to be exceeded) of the Control of Pollution Act 1974 shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

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(1) S.I. 2010/948, amended by S.I. 2011/987.

(2) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

(3) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c. 25). There are other amendments to the 1974 Act which are not relevant to this Order.