

EXPLANATORY MEMORANDUM TO
THE HINKLEY POINT HARBOUR EMPOWERMENT ORDER 2012
2012 No. 1914

1. This explanatory memorandum has been prepared by the Marine Management Organisation (“the MMO”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to enable NNB Generation Company Limited (Company Number: 06937084) (“the Applicant”) to carry out works for the construction, maintenance and use in Bridgwater Bay and on adjacent land in the district of West Somerset, of a harbour comprising a jetty and harbour-related works to facilitate the construction of a nuclear generating station at Hinkley Point in that district.

2.2 The Applicant is to be the statutory harbour authority for the harbour; this instrument defines the limits of the harbour and also provides powers to enable the efficient functioning and management of the harbour. This includes the power to:

- a) make byelaws for the management and regulation of the harbour;
- b) give directions to vessels; and
- c) lease, or grant the use or occupation of, land, works, buildings, equipment or other property forming part of the harbour

2.3 The instrument provides for the dismantling, demolition and removal of the jetty and related works and the reinstatement of the site when the jetty is no longer required for the construction of the nuclear generating station.

2.4 When these works are complete the instrument will cease to have effect on a date to be appointed by a resolution passed by the Applicant.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Applicant applied to the MMO on 9 December 2010 for the instrument to be made under section 16 of the Harbours Act 1964 (“the Act”).

4.2 The responsibility for the consideration of the application, and the making of any such order, passed to the MMO by virtue of the Harbours Act 1964

(Delegation of Functions) Order 2010 (S.I 2010/674) which delegated the Secretary of State functions under section 16 to the MMO except in relation to specified applications.

- 4.3 In accordance with paragraph 4 of Schedule 3 to the Act MMO decided that the application relates to a project which falls within Annex I to Council Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC and Directive 2003/35/EC of the European Parliament and of the Council.
- 4.4 In accordance with paragraph 6 of that Schedule, the MMO has –
 - (a) informed the Applicant of that decision, and the reasons for it; and
 - (b) given an opinion to the Applicant about the extent of the information referred to in Annex IV to that Directive which the applicant would be required to supply in the environmental statement and –
 - (i) in giving that opinion the MMO has taken into account the matters in sub-paragraph (3) of that paragraph; and
 - (ii) before giving that opinion the MMO has consulted the Applicant and such bodies with environmental responsibilities as the MMO thought appropriate.
- 4.5 In accordance with paragraph 8 of that Schedule, the MMO has directed the Applicant to supply the MMO with an environmental statement and as required by paragraph 9 of that Schedule the Applicant has complied with that direction.
- 4.6 Notices have been published by the Applicant in accordance with the requirements of paragraphs 10 and 10A of that Schedule.
- 4.7 In accordance with paragraph 12 of that Schedule, the Applicant has –
 - (a) served a notice complying with that paragraph on every local authority for the area in which is situated a public right of way over a footpath diverted or extinguished by this instrument; and
 - (b) caused a copy of that notice to be displayed in a prominent position at each end of a footpath which would by virtue of this instrument cease to be subject to a public right of way.
- 4.8 In accordance with paragraph 15 of that Schedule, the MMO has –
 - (a) consulted, and
 - (b) sent the environmental statement and any further information, by virtue of the supply of which paragraph 10A of that Schedule applies to such bodies likely to have an interest in the project by reason of their environmental responsibilities as the MMO thought appropriate.
- 4.9 The provisions of paragraph 17 of that Schedule have been satisfied.
- 4.10 In accordance with paragraph 19(1) of that Schedule the MMO has considered-
 - (a) the environmental statement and the further information falling within paragraph 10A of that Schedule;

- (b) the result of the consultations under paragraph 15 of that Schedule;
- (c) any representations made under paragraph 10(2)(f) of that Schedule;
- and
- (d) the report of the person appointed to hold an inquiry.

4.11 In accordance with paragraph 19(2) of that Schedule, the MMO has decided to make this instrument with modifications which do not appear to the MMO substantially to affect the character of the instrument.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Nuclear Power Generation (EN-6) demonstrate that there is an urgent need for new electricity generation plant, including nuclear power, and identify Hinkley Point as potentially suitable for the deployment of new nuclear generating station. This instrument is made in pursuance of the objectives set out in those policy statements.

7.2 The Marine Policy Statement, the National Policy Statement for Ports and National Planning Policy Framework amongst other policy documents set out criteria by which applications for harbour development are assessed.

8. Consultation outcome

8.1 In accordance with the Act a notice was placed in the London Gazette and for two consecutive weeks in the West Somerset Free Press detailing the application and how any objections or representations may be registered.

8.2 The MMO received objections and representations from 41 different persons or organisations. Following this, the MMO called a local public inquiry to examine the application and inform its determination.

8.3 In reaching its decision, the MMO has given full consideration to the objections and representations made and to the recommendations of the Inspector following the local public inquiry.

8.4 The MMO is satisfied that the making of the instrument is in line with current policy.

9. Guidance

9.1 The MMO does not propose to issue guidance in respect of the effects of the instrument. However, the Applicant will publish particulars, and serve copies, of the instrument in accordance with paragraph 24 of Schedule 3 to the Act.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument. The MMO considers there are no impacts and the changes are in line with policy.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Whilst the MMO will not actively monitor the operation of the provisions introduced by this instrument, it will consider any representations received in this respect and will take these into account in the future exercise of its powers.

13. Contact

13.1 Jonathan Peters at the Marine Management Organisation email: jonathan.peters@marinemanagement.org.uk.