
STATUTORY INSTRUMENTS

2013 No. 648

The Hinkley Point C (Nuclear Generating Station) Order 2013

PART 2

Provisions relating to temporary jetty works

Preliminary

Interpretation of Part 2

49. In this Part—

“the 1845 Act” means the Bridgwater Navigation and Quays Act 1845⁽¹⁾;

“the 1847 Act” means the Harbours, Docks and Piers Clauses Act 1847⁽²⁾;

“area of seaward construction activity” means the area of the sea within the Order limits shown on the works plan;

“Bridgwater Harbour Authority” means Sedgemoor District Council in its capacity under the 1845 Act as the harbour authority for the Port of Bridgwater;

“general direction” means a direction given by the undertaker under article 72 (general directions to vessels);

“harbour” means the harbour as comprised within the harbour limits to be constructed by the undertaker in pursuance of the powers conferred on it by this Order, and all other works, land, buildings, ancillary works, plant, property and conveniences connected with it, as from time to time existing within the harbour limits;

“harbour limits” means the limits of the harbour as specified in article 58;

“harbour master” means the person appointed as such by the undertaker and includes that person’s deputies and assistants and any other person for the time being authorised by the undertaker to act, either generally or for a specific purpose, in the capacity of harbour master;

“Harbour Master for the Port of Bridgwater” means the person appointed by Bridgwater Harbour Authority to carry out the functions of a water bailiff under section 50 of the 1845 Act and known as the Harbour Master for the Port of Bridgwater;

“the harbour undertaking” means the harbour undertaking of the undertaker as authorised from time to time;

“level of high water” means the level of mean high-water springs;

“level of low water” means the level of mean low water neaps;

⁽¹⁾ 1845 c.1xxxix.

⁽²⁾ 1847 c. 27. Sections 24, 94 and 95 were repealed by the Statute Law (Repeals) Act 1993 (c. 50); section 26 was repealed by section 56(4) of, and Schedule II to, the Courts Act 1971 (c. 23); section 28 was amended by section 141 of and Schedule 11 to, the Post Office Act 1969 (c. 48); sections 54, 67 and 98 were amended by section 46 of the Criminal Justice Act 1982 (c. 48); section 71 was amended by S.I 1987/37; section 91 was repealed by the Statute Law Revision Act 1894 (c. 56); section 93 was repealed by the Statute Law Revision Act 1875 (c. 66); and section 96 was repealed by the Perjury Act 1911 (c. 6), section 17. There are other amendments to the 1847 Act which are not relevant to this Order.

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“ordnance datum” means the datum line or mean sea level to which all heights are referred in the Ordnance Survey;

“Port of Bridgwater” means the port known as the Port of Bridgwater comprised within the area defined as the Navigation in section 101 of the 1845 Act;

“special direction” means a direction given by the harbour master under article 73 (special directions to vessels);

“temporary jetty” means Work Nos. TJ1, TJ2 and TJ3;

“temporary jetty harbour empowerment order” means the Hinkley Point Harbour Empowerment Order 2012(3);

“tidal work” means so much of any work authorised by this Order as is on, under or over tidal waters or tidal lands below the level of high water;

“Trinity House” means the Corporation of Trinity House of Deptford Strond; and

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

Commencement of Part 2

50.—(1) Subject to paragraph (4), this Part, except for this article and article 49, shall not have effect until—

- (a) the date on which a notice is served under this article by the undertaker on West Somerset District Council and the Marine Management Organisation; or
- (b) one year from the relevant date,

whichever is earlier.

(2) In paragraph (1) “the relevant date” means—

- (a) the date on which this Order comes into force; or
- (b) where the making of this Order becomes the subject of any statutory challenge proceedings or judicial review proceedings, the date on which any such proceedings have been finally determined,

whichever is later.

(3) For the purposes of this article—

- (a) statutory challenge proceedings are finally determined—
 - (i) when the court has given judgement in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or
 - (ii) when any appeal is finally determined; and
- (b) proceedings by way of judicial review are finally determined—
 - (i) when permission to bring a claim for judicial review has been refused and no further application can be made;
 - (ii) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(iii) when any appeal is finally determined.

(4) In the event that the temporary jetty harbour empowerment order is quashed, this Part shall have immediate effect.

Duration of temporary jetty powers

51.—(1) After the closure date determined in accordance with article 82 (closure of the jetty and reinstatement) and the completion of the works required by that article, the undertaker shall appoint by resolution a date on which this Part shall cease to have effect.

(2) Except as provided in article 83 (saving for termination of Part 2) this Part shall cease to have effect on that date.

(3) Before appointing a date under paragraph (1), and not less than 28 days before the date proposed to be appointed, the undertaker 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 undertaker appointing that date.

Effect of Order on temporary jetty harbour empowerment order

52.—(1) The undertaker shall continue to exercise jurisdiction as the harbour authority, and the powers of the harbour master shall continue to be exercisable, only in respect of so much of the harbour constituted by the temporary jetty harbour empowerment order as lies within the harbour limits.

(2) The provisions of this Part shall apply instead of the provisions of the temporary jetty harbour empowerment order.

(3) The temporary jetty harbour empowerment order shall cease to have effect and, in particular—

- (a) the undertaker shall cease to exercise any of the powers conferred by article 4 (power to construct works) or 7 (subsidiary works) of the temporary jetty harbour empowerment order; and
- (b) all conditions imposed by the temporary jetty harbour empowerment order shall cease to be enforceable.

(4) Any development carried out under any of the powers conferred by article 4 or 7 of the temporary jetty harbour empowerment order which does not comply with the requirements may be subject to enforcement action as if it had been carried out under this Order.

(5) Any byelaw made, direction given or other thing done under, or for the purposes of, a provision of the temporary jetty harbour empowerment order shall continue to have effect as if it had been made, given or done under, or for the purposes of, the corresponding provision of this Order.

(6) In the event that the temporary jetty harbour empowerment order is quashed—

- (a) paragraphs (1) to (5) shall cease to have effect; and
- (b) paragraph 46 of the First Schedule of the agreement between NNB Generation Company Limited and West Somerset District Council dated 2nd December 2011 and known as the HEO bilateral agreement shall be abrogated in its entirety.

Incorporation of the Harbours, Docks and Piers Clauses Act 1847

53.—(1) With the exception of sections 4, 6 to 23, 25, 27, 31, 32, 33, 36, 40 to 50, 52, 53, 59, 60 to 63, 66 to 71, 79 to 90, 92 and 97 to 102, the 1847 Act is incorporated in this Order subject to the modifications stated in paragraphs (2) and (3).

(2) Section 34 (collector may enter vessels to ascertain rates payable) shall have effect subject to the insertion after the word “may” of the words “(on production if so required, of a duly authenticated document showing his authority)”.

(3) In construing the 1847 Act as so incorporated—

- (a) the expression “the special Act” means this Order;
- (b) the expressions “the Promoters of the undertaking” and “the undertakers” mean the undertaker;
- (c) the expression “the harbour, dock or pier” means the harbour;
- (d) the expressions “limits” and “prescribed limits” mean the harbour limits;
- (e) the expression “near the pier” does not extend beyond the harbour limits;
- (f) the expression “the harbour master”, in relation to the harbour, has the meaning given by article 49(1)(interpretation of Part 2); and
- (g) the definition of “vessel” in article 49(1) shall be substituted for the definition in section 3 of the 1847 Act (interpretation).

(4) All fines and forfeitures recoverable under the provisions of the 1847 Act as incorporated within this Order may be recovered summarily.