

# Hinkley Point C

# Development Consent Order Application

**Draft  
Development  
Consent Order**

Doc Ref 5.3  
October 2011

## Explanatory Memorandum



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**THE PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND  
PROCEDURE) REGULATIONS 2009**

**REGULATION 5(2)(c)**

**THE PROPOSED HINKLEY POINT C (NUCLEAR GENERATING STATION) ORDER**

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**EXPLANATORY MEMORANDUM**

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**1. INTRODUCTION**

- 1.1 This explanatory memorandum accompanies an application for development consent for a nuclear generating station and associated development (the "Application") by NNB Generation Company Limited (the "undertaker"). The memorandum explains the purpose and effect of each article of, and Schedule to, the draft Hinkley Point C (Nuclear Generating Station) Order (the "Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup>.
- 1.2 The Order is based on the model provisions contained in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>2</sup> (the "Model Provisions") but in certain instances departs from them. Where there is such a departure from the Model Provisions an explanation of the new provision is provided and any relevant precedents are identified.
- 1.3 The Order is drafted in two Parts. Part 1 authorises all development and ancillary powers required for the project, save for the development of a temporary jetty, conveyor-belt and pipeline ("temporary jetty works"). Part 2 includes provisions relating solely to the authorisation of the temporary jetty works and ancillary powers related to those works. The undertaker is currently seeking consent for the temporary jetty works via applications for a Harbour Empowerment Order ("HEO") and related Transport and Works Act Order ("TWAO"). In the event that the HEO and TWAO are granted and safe from legal challenge, the undertaker will withdraw its request for the IPC to grant Part 2 of the Order and will remove the description of the temporary jetty works set out in Schedule 1 Part 1A of the Order. The undertaker will, however, continue to seek power to close the temporary jetty via the Order if this power is not granted in the HEO.

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<sup>1</sup> S.I. 2009/2264

<sup>2</sup> S.I. 2009/2265

- 1.4 The drafting of Part 1 is based on Schedule 1 of the Model Provisions (“General Model Provisions”).
- 1.5 The drafting of Part 2 is based on Schedule 3 of the Model Provisions (“Harbour Model Provisions”).
- 1.6 The Order does not include articles which are not relevant to the proposed development. However, for ease of reference, the articles in Part 1 of the Order are given the same numbering as the corresponding articles in the General Model Provisions. Articles in Part 2 follow the same order as the articles in the Harbour Model Provisions, save that the numbering commences at Article 44 (following on from the numbering of Part 1).
- 1.7 Where a particular Model Provision is not used in the Order, it is stated as “*not used*”. Where articles have been added which do not feature in the Model Provisions, these are numbered as “A” or “B” (e.g., article 2A) in order to preserve the numbering scheme of the Model Provisions.
- 1.8 Prior to the granting of an Order, it is intended that all “not used” articles would be removed and the remaining articles would be numbered to run sequentially in the usual manner.
- 1.9 In addition to the Order itself, a **Mark-up of the Proposed Order Against the Model Provisions** is included as part of the Application.

## **2. THE PURPOSE OF THE ORDER**

- 2.1 Pursuant to section 14(1)(a) and 15(2) of the Planning Act 2008<sup>3</sup> (“2008 Act”) an onshore generating station in England and Wales with a capacity of more than 50MW is a nationally significant infrastructure project (“NSIP”).
- 2.2 Section 31 of the 2008 Act provides that development consent is required to the extent that development is or forms part of an NSIP.
- 2.3 As the proposed nuclear generating station is an onshore electricity generating station to be located wholly within England and has a capacity of 3,260MW, it is an NSIP for the purposes of the 2008 Act and must be authorised by the Infrastructure Planning Commission (the “Commission”) to which the undertaker is making its Application.

### **Hinkley Point C Development Site**

- 2.4 The Order would authorise the following development on the main development site (“Hinkley Point C Development Site”) :-
- 2.5 a proposed nuclear generating station, having two nuclear reactors and capable of generating a total of up to 3,260MW of electricity, including:
  - two UK European Pressurised Water Reactors (UK EPRs) consisting of reactor buildings, fuel buildings, nuclear auxiliary buildings, and diesel generator buildings;
  - turbine halls;

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<sup>3</sup> c.29

- operational service centre; and
  - intermediate level waste and spent fuel stores.
- 2.5 other supporting buildings and infrastructure, including:
- offices, workshops, storage, staff support facilities and transport infrastructure;
  - public information centre for visitors;
  - cooling water tunnels and associated infrastructure;
  - sea wall incorporating the existing coastal footpath;
  - new electricity sub-station and overhead power lines within the site;
  - emergency access route to the south connecting into Stogursey Lane;
  - car parking for operational staff, visitors and for planned maintenance periods; and
- 2.6 temporary facilities including construction areas and facilities including a temporary jetty for bulk aggregate delivery and an accommodation campus (see “Associated Development” below), spoil disposal areas and landscape modelling and integration.

#### **Associated Development**

- 2.7 Pursuant to section 115(2) of the 2008 Act, development consent may also be granted for associated development. This is defined as development associated with the NSIP, having regard to guidance on associated development issued by the Secretary of State for Communities and Local Government<sup>4</sup> (the "Guidance"). The Guidance requires that associated development “*should not be an aim in itself but should be subordinate to and necessary for the development and effective operation to its design capacity of the NSIP<sup>5</sup> that is the subject of the application*”. In particular, the Guidance states that associated development may include “*measures necessary to mitigate the impacts of the primary development.*”
- 2.8 The Order seeks consent for the following development, which is referred to as "associated development" and the "associated development sites" throughout the Application documentation:
- an accommodation campus and associated leisure facilities for construction workers on the Hinkley Point C Development Site;
  - two off-site accommodation campuses and associated facilities for construction workers in Bridgwater;
  - a park and ride facility at Williton;
  - a park and ride facility at Cannington;

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<sup>4</sup> *Guidance on associated development: Applications to the Infrastructure Planning Commission* (Department for Communities and Local Government) (September 2009).

<sup>5</sup> Emphasis in bold is taken from the original.

- a bypass around the west of Cannington;
- a refurbished and extended wharf at Comwich, and the provision of a freight logistics/storage facility to the south-east of Comwich;
- a park and ride facility, freight logistics facility, courier consolidation facilities and an induction centre at Junction 23 of the M5 motorway; and
- a park and ride facility, freight management facility at Junction 24 of the M5 motorway.

2.9 The undertaker recognises that some of the development proposed on the Hinkley Point C Development Site is likely to constitute associated development within the meaning of section 115(2) of the Act, rather than part of the NSIP itself (the temporary jetty and the public information centre, for example). However, in some cases the distinction is less clear (the sea wall, offices and workshops, for example). In any event, the undertaker is confident that all elements of the proposed development either constitute part of the NSIP or are "associated development" within the meaning of section 115(2). However, this is ultimately a matter for the Commission.

2.10 The Order also seeks consent for highway works at the following locations, all of which the undertaker considers would constitute associated development:

- A38 Bristol Road/The Drove Junction;
- A39 Broadway/A38 Taunton Road Junction;
- A38 Bristol Road/Wylds Road Junction;
- Wylds Road/The Drove Junction;
- A39 New Road/B3339 Sandford Hill Roundabout;
- Junction 23 Roundabout;
- Washford Cross Roundabout;
- Claylands Corner Junction;
- C182 Farrington Hill Lane, Horse Crossing;
- Cannington Traffic Calming Measures; and
- Huntworth Roundabout.

### **Ancillary powers**

2.11 The Order seeks a number of powers ancillary to the above development.

2.12 The Order seeks powers to acquire land and rights compulsorily or by agreement in accordance with sections 120(4) and 122 of, and Schedule 5 to, the 2008 Act. A justification for these powers is set out in full in the **Statement of Reasons** that accompanies the Application.

- 2.13 The Order seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. For this reason under sections 117 and 120(5) of the 2008 Act the Order must be made by Statutory Instrument. The Order is, therefore, drafted in that form.
- 2.14 Without prejudice to the obtaining of all other necessary consents, the Order would also give the undertaker power to operate the generating station.

### **3. DRAFT ORDER**

- 3.1 The purpose and effect of articles in Parts 1 and 2 of the Order are summarised below.

## **PART 1**

### **PRELIMINARY**

Articles 1 and 2 of the Order contain preliminary provisions.

**Article 1A (Citation and commencement)** provides for the commencement and citation of the Order.

**Article 1 (Interpretation)** provides for the interpretation of the Order.

The definitions in article 1 have been amended and supplemented to reflect the particular circumstances of the authorised project. Amongst other things, this article defines the “*permanent limits*” of land, to allow the identification of land which may be acquired compulsorily.

It also defines the “*undertaker*” as NNB Generation Company Limited.

The temporary jetty works are excluded from the definition of “*authorised development*”. However, the definition of the “*authorised project*” includes the temporary jetty works, which has the effect of applying the provisions in Part 1 of the Order which refer to the “*authorised project*” (including, in particular, those relating to compulsory acquisition) to the temporary jetty works. This is a slightly different approach to the approach used in the Model Provisions but provides for the particular circumstances of the development authorised by this Order.

A new paragraph 4 provides that “All areas described in square metres in the book of reference are approximate.” This is intended to clarify the position of the areas in the book of reference.

### **OPERATIVE PROVISIONS**

Articles 2 to 43 of the Order contain provisions for, and relating to, the authorised project, the compulsory acquisition of land and rights and miscellaneous and general provisions.

### **PRINCIPAL POWERS**

**Article 2 (Development consent, etc., granted by the Order)** would grant development consent for the authorised development within the Order limits thereby authorising the construction of the authorised development. The authorised development means the development under sections 14(1)(a) and 15(2) of the 2008 Act and associated development under 115(2) of the 2008 Act. Schedule 1 Part 1 describes the authorised development. No power is sought to carry out “ancillary works” and therefore this element of the model drafting is deleted. Article 2 makes provision for the works authorised by the Order to be constructed in the lines or situations shown on the works plans and in accordance with the approved plans. Limits of deviation are provided for the offshore cooling-water infrastructure meaning that the construction of the Work Nos. referred to in articles

2(3) and 2(4) may deviate from the positions shown on the plans to the extent noted in these articles. Such power to deviate is required in order to allow for engineering and geological issues which may arise when constructing the cooling water and fish return tunnel infrastructure. The authorised project must also be carried out in accordance with the requirements set out in Schedule 10 (Requirements). These are provisions corresponding to planning conditions.

**Article 2A (Effect of the Order on the site preparation permission)** In advance of submitting this Application, the undertaker sought planning permission from West Somerset District Council ("WSDC") to carry out site preparation works at the Hinkley Point C Development Site. WSDC has now resolved to grant the site preparation permission. The permission is expected to be granted shortly, once a section 106 agreement between the undertaker and WSDC has been completed. The Order includes provisions authorising the same site preparation works for which planning permission will be granted. Article 2A therefore contains provisions which deal with the relationship between the planning permission and the Order in relation to the site preparation works. If the site preparation works have not been completed pursuant to the site preparation permission before the Order is granted, this article would enable the undertaker to serve notice on WSDC informing it that the undertaker will complete the site preparation works pursuant to the provisions of the Order, rather than the site preparation permission. For the purposes of this article, the date on which the notice is served is known as the "transitional date". In such circumstances, the Order provides that all conditions of the site preparation permission will cease to have effect. However, where WSDC has (prior to the transitional date) approved details, plans or other matters pursuant to the conditions of the site preparation permission listed in Schedule 13, article 2A(5) provides that such approval shall constitute deemed approval for the purpose of the corresponding requirement of the Order set out in that Schedule. The list of corresponding conditions and requirements set out in Schedule 13 cannot be finalised until WSDC has granted the planning permission and imposed the conditions. The conditions listed in Schedule 13 refer to the draft conditions likely to be imposed by WSDC as at the date of submission of this Application. The article also deals with the reinstatement obligations contained in the draft site preparation permission and in the draft site preparation permission section 106 agreement, which are binding on the undertaker unless expressly modified by a specified means. The Order may be used to modify those obligations and article 2A(6) provides that the reinstatement obligations will be abrogated (removed) on the transitional date.

**Article 3 (Maintenance of authorised project)** makes provision for the maintenance of the authorised project.

**Article 3A (Authorisation of use)** would authorise the operation and use of the development and all other works authorised by the Order. This provision has been added pursuant to section 120 and paragraph 5 of Part 1 of Schedule 5 to the 2008 Act. It has been included to ensure that the undertaker has the benefit of statutory authority conferred by section 158 of the 2008 Act when using the development authorised by the Order.

**Article 4 (Benefit of Order)** provides that NNB Generation Company Limited has the sole benefit of the Order. This is different from the approach used in the General Model Provisions. However, statutory powers are usually extended only to the body on whom they are conferred, and it seems appropriate in this case that only NNB Generation Company Limited has the benefit of the Order unless the Secretary of State has given his consent otherwise under article 5.

**Article 5 (Consent to transfer benefit of Order)** makes provision to enable the undertaker to transfer any or all of the benefit of the provisions of the Order and related statutory rights or to grant any or all of the benefit of the provisions of the Order and related statutory rights to another person, with the consent of the Secretary of State.



**Article 6 (Application of the 1991 Act)** applies Part 3 of the 1991 Act to highway works carried out by the undertaker which would have been major highway works under the 1991 Act had they been carried out by the highway authority. This is intended to give effect to model article 32(7) whereby the cost sharing provisions under section 85 of the 1991 Act are to apply to such works, and to apply the co-ordination measures of section 84 to such works whereby the undertaker and other statutory undertakers must co-operate to secure the efficient implementation of the works. The drafting of paragraph (1) of this article is based on article 12 of the Model Provisions relating to railways (contained in Schedule 2 to those provisions) amended to make clear that works carried out by the undertaker may be treated as major highway works. Paragraph (2) is taken from article 3 of the Luton Dunstable Translink Order 2006/3118.

**Article 7 (Defence to proceedings in respect of statutory nuisance)** provides that no one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintaining of the authorised project and notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or where the noise is unavoidable. The article differs from General Model Provision 7 in removing provision for a defence against nuisance attributable to use of the authorised development where the use is in accordance with a scheme of noise monitoring or attenuation imposed pursuant to a requirement of the Order. This has been removed because no such requirement is included in the Order.

## **STREETS**

**Article 8 (Street Works)** would confer authority on the undertaker to interfere with and execute works in, on or under the streets specified in Schedule 2 (streets subject to street works) within the Order limits and for the purposes of the authorised project. In a departure from the Model Provisions, paragraphs (2) and (3) have been omitted from this article. Since a statutory right for the purposes of the 1991 Act is defined as including any right under subordinate legislation, this would include one granted by the Order. This means that paragraph (2) is unnecessary. Paragraph (3) is also unnecessary. It is assumed that this paragraph was included to ensure that relevant provisions of the 1991 Act which apply to street works (i.e. works to apparatus) apply also to other works in streets authorised in this article. However, the Model Provision is confusing. It is considered unnecessary for section 83 of the 1991 Act to apply if the works being undertaken are not works for road purposes, and it is assumed that this was not intended.

**Article 8A (Stopping up footpaths on the HPC Development Site)** would confer authority on the undertaker to permanently stop up the footpaths specified in Part 1 of Schedule 3 and to temporarily stop up the footpaths specified in Part 2 of Schedule 3 to the extent specified. The footpaths in Schedule 3 may not be stopped up unless the specified diversion route described in article 8A(2) has first been provided to the reasonable satisfaction of the street authority. Article 8A(3) provides that the diversion route must be maintained until completion and opening of the footpaths on the HPC development site listed in Schedule 5 (status of footpaths created or improved). Article 8A has been added to ensure that the undertaker has the power to close all footpaths on the Hinkley Point C Development Site in order to carry out the works on that site, provided that the specified diversion route around the boundary of the site has first been provided.

**Article 9 (Permanent stopping up of streets)** whose heading has been modified for clarity between it and article 11, would confer authority on the undertaker to stop up the streets (both roadways and footpaths) specified in Schedule 4 to the extent specified. The article provides that where a street is stopped up, all rights of way shall be extinguished and the undertaker may use the site of the street (where bounded by its own land) for the purposes of the authorised project. Where a substitute street is to be provided as identified in columns (1) and (2) of Part 1 of Schedule 4, the

street must not be stopped up until the substitute street or a temporary alternative route has been provided to the reasonable satisfaction of the street authority. An exception is made in the case of the stopping up of a short section of footpath BW 5/8 which crosses the alignment of the proposed Cannington bypass. In this case, it will not be possible to provide a point-to-point diversion route or the replacement section of footpath prior to stopping up the section of footpath in question. Article 9(3) provides that where no substitute is to be provided, the street may not be stopped up unless the undertaker is the occupier of the land which abuts the street, or there is no right of access to the street, or there is a reasonably convenient alternative access to the land which abuts the street or the owners and occupiers of the land have agreed to the stopping up. Any person who suffers loss by the suspension or extinguishment of any private right of way under the article shall be entitled to compensation which in the case of dispute will be determined according to the procedures of Part 1 of the Land Compensation Act 1961. The powers of this article are also subject to the rights of statutory undertakers in relation to their apparatus as provided for in article 33 of the Order.

**Article 10 (Status of footpaths created or improved)** would provide for the footpaths identified in columns (1) and (2) of Part 2 of Schedule 5 to have the status identified in column (3) of that Schedule from the date that the highway authority is satisfied that they have been created or improved to the standard specified in column (3) of the Schedule. This article differs from the corresponding General Model Provision, in that the Order article deals only with the *status* of the public rights of way created or improved (i.e., footpath or bridleway). The General Model Provision deals with the extinguishment and re-provision of public rights of way. Provisions for the extinguishment or re-provision of footpaths (as opposed to their status) are contained in articles 8A, 9 and 11 of the Order.

**Article 11 (Temporary stopping up of streets)** would permit the temporary stopping up of streets (both roadways and footpaths) during, and for the purposes of, the authorised project. Reasonable alternative access must be provided if there would otherwise be no access. In the case of streets specified in Schedule 6 (streets to be temporarily stopped up) they may only be stopped up following consultation with the street authority, although the street authority's consent is not required. In the case of other streets that may be temporarily stopped up under this article, the street authority must give its consent and may attach reasonable conditions in doing so. A requirements not to unreasonably withhold this consent has been inserted, which is preceded in the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. A time limit of 28 days after which a street authority which fails to respond to an application for consent is deemed to have given its consent has been added to paragraph (6) of this article. As the works proposed under paragraph 4(b) are temporary in nature and will provide greater flexibility and certainty in delivering the authorised development it is considered that this approach is justified. This has precedent in recent TWA Orders, including in the Network Rail (Thameslink 2000) Order 2006, the Network Rail (Nuneaton North Chord) Order 2010 and the Network Rail (Hitchin (Cambridge Junction)) Order 2011. The addition of this requirement also permits a refusal to be referred to arbitration without which there would be no appeal mechanism against a highway authority's decision. The article also makes provision for the payment of compensation to those who suffer loss as a result of the suspension of a private right of way under this article which shall be determined in the case of dispute in accordance with the procedures of Part 1 of the Land Compensation Act 1961.

**Article 12 (Access to works)** would confer powers for the purposes of the authorised project to provide or improve accesses in the locations specified in Schedule 7 (access to works) or, provided the planning authority following consultation with the highway authority has given its consent, at other locations within the Order limits. If the street authority has failed to make a decision within 28 days of the undertaker's application, the street authority will be deemed to have granted consent.

This departure from the corresponding Model Provisions is explained in the commentary on article 11.

**Article 12A (Construction and maintenance of new, altered or diverted streets)** makes provision for street alterations or diversions to be completed to the reasonable satisfaction of the highway authority, for maintenance by the undertaker for a period of 12 months, and by the relevant authority thereafter. This clause is not provided in the Model Provisions. However, it is needed in order to provide a mechanism for adoption of new or altered streets by the highway authority where the undertaker carries out highway works pursuant to rights granted to it by the Order. The approach ensures that the interests of the highway authority are safeguarded for a 12 month period. The same or a similar approach is reflected in the Model Provisions relating to railways<sup>6</sup> and is well precedented in TWA Orders. Although it is not an article that is relevant to all applications for development consent, it is appropriate to include it in this Order. Finally, this article provides the undertaker with a defence to action taken against it in respect of maintenance of any street that is the subject of this article.

**Article 13 (Agreements with street authorities)** would authorise street authorities and the undertaker to enter into agreements relating to the construction of new streets, carrying out of works in the street and the stopping up, alteration or diversion of streets.

#### **SUPPLEMENTAL POWERS**

**Article 14 (Discharge of water)** would enable the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval may be subject to reasonable terms and conditions but shall not be unreasonably withheld). As explained in article 11, in an approach adopted there and elsewhere, in a departure from the Model Provisions a person who fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. In paragraph (7) the wording of the Model Provisions has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010<sup>7</sup>.

**Article 15 (Protective works to buildings)** would authorise the undertaker to carry out protective works to any building within the Order limits where it considers this necessary or expedient in advance of, during or up to five years after, the carrying out of any part of the authorised project in the vicinity of that building. This article also contains incidental powers. The undertaker may (a) enter the building and land in its curtilage for the purposes of deciding how to exercise its powers and duties under this article and (b) enter the building, that land or adjacent land to carry out the works. The undertaker must (except in the case of an emergency) give not less than 14 days' notice to owners and occupiers of its intention to exercise these powers. The article also contains provision and an applicable procedure enabling the owner to question whether such works are necessary and expedient. This article also makes provision in relation to the payment of compensation both in relation to loss or damage caused by the undertaker carrying out the protective works and where, within a specified period, the protective works are shown not to be sufficient.

**Article 16 (Authority to survey and investigate the land)** would confer upon the undertaker a power to enter upon land for the purposes of surveying or investigating it, including a power to make trial holes, carry out ecological or archaeological investigations and to use and leave

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<sup>6</sup> Schedule 2 to The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

<sup>7</sup> [S.I. 2010/675](#)

apparatus on the land in question for those purposes. The power to enter land and leave apparatus is subject to a requirement on the undertaker to give at least 14 days' notice to owners and occupiers of the land. The undertaker may be asked to provide evidence of its authority to enter the land. The power to make trial holes is also limited but if the highway authority or street authority has failed to make a decision within 28 days of the undertaker's application to do so within, respectively, the highway boundary or private street, each will be deemed to have granted consent. This departure from the corresponding Model Provisions is explained in the commentary on article 11. This article also makes provision in relation to the payment of compensation.

#### **Article 17 (not used)**

### **POWERS OF ACQUISITION**

**Article 18 (Compulsory acquisition of land)** General Model Provision 18 provides that land is "*discharged*" of "*all rights, trusts and incidents*" at such time as it vests in the undertaker. Article 18 of the Order modifies General Model Provision 18, to provide a more proportionate approach in the context of the authorised project. The proposed Order drafting follows the approach generally taken in TWA Orders (for example, article 29 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005). The article permits the undertaker to acquire the land listed in the book of reference and to use this land for the purposes authorised by the Order. Articles 2 and 3A of the Order authorise the construction and use of the works described in Schedule 1. Therefore, by operation of section 158 of the 2008 Act, the undertaker has statutory authority to construct and operate the authorised project even where in so doing the undertaker breaches or interferes with rights and restrictive covenants which may burden the land. For this reason, it is not necessary or proportionate to include General Model Provision 18 without modification, as the General Model Provision would 'cleanse' the title entirely without regard to whether this is necessary for the particular authorised activities.

**Article 18A (Statutory authority to override easements and other rights)** provides, for the avoidance of doubt, that by virtue of section 158 of the 2008 Act in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to user of land arising by virtue of contract. It also provides that by virtue of section 152 of the 2008 Act, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a Model Provision, but is added to clarify the position with regard to rights burdening land required for the authorised project.

#### **Article 19 (not used)**

**Article 20 (Time limit for exercise of authority to acquire land compulsorily)** requires the undertaker to exercise its powers to acquire or possess land within five years of the date on which the Order comes into force, although the undertaker may remain in occupation of land entered pursuant to article 28 beyond that period.

**Article 21 (Compulsory acquisition of rights)** enables the undertaker to acquire rights by the creation of new rights. There is no need for this article to provide expressly for the acquisition of existing rights, since their acquisition will automatically follow from the acquisition of the land to which they are attached. Article 21(2) modifies General Model Provision 21 for the same reasons that General Model Provision 18 has been modified by article 18. The proposed drafting follows the usual drafting used in Transport and Works Act Orders (for example, article 32 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005). Schedule 8 modifies the provisions of the Compulsory Purchase Act 1965 so as to apply them also to the creation of a new right under

this article. In the absence of this modification, compensation provisions will not apply to the acquisition of new rights.

**Article 22 (Private rights of way)** would extinguish all private rights of way over land subject to compulsory acquisition from the date of acquisition of land or on the date of entry, whichever is earlier. Private rights of way over land owned by the undertaker within the Order limits would be extinguished on appropriation of the land by the undertaker for the purposes of the Order. All private rights of way over land that is temporarily possessed by the undertaker would also be suspended and unenforceable. This article also makes provision in relation to the payment of compensation. There is a saving in this article for statutory undertakers. Provision is made that the extinguishment will not apply where the undertaker serves notice to this effect prior to acquiring, appropriating, entering or taking temporary possession of the land in question. The provision will also not apply where an agreement to this effect is made between the undertaker and the owner of land benefitting from the private right of way.

**Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)** provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 which contains vesting procedures for land subject to compulsory purchase.

**Article 24 (Acquisition of subsoil only)** would authorise the undertaker to compulsorily acquire so much of, or such rights in, the subsoil of any land referred to in article 18. It confirms that in such circumstances the undertaker would not be required to acquire an interest in any other part of that land.

**Article 25 (not used)**

**Article 26 (Acquisition of part of certain properties)** would enable the undertaker to acquire a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in certain circumstances to require the whole to be taken, with disputes being determined by the Lands Chamber of the Upper Tribunal. This provision would substitute for section 8(1) of the Compulsory Purchase Act 1965.

**Article 27 (Rights under or over streets)** provides that the undertaker may use a street for the authorised project without being required to acquire any part of the street or any easement or right in the street, subject to certain provisions for compensation.

**Article 28 (Temporary use of land for carrying out the authorised project)** provides that the undertaker may enter upon and take possession of land specified in Schedule 9 for the purposes described in that Schedule. It may also carry out other activities set out in the article including, in a departure from the Model Provisions, works of mitigation, without a requirement for these to be removed. This would enable mitigation works to remain in place, without the undertaker needing to retain a permanent interest in the land. The undertaker must give not less than 14 days' notice of its intention to exercise its powers under this article and may not occupy the land for longer than the period specified in the article. Prior to vacating the land, the undertaker is subject to a requirement to restore any such land used in this way. In a modification to the General Model Provision, the undertaker may exercise its powers under this article on more than one occasion. However, this modification merely makes clear the intended scope of this power, rather than expanding the scope of the General Model Provision. Compensation is payable to the owners and occupiers of land who suffer loss or damage arising from the undertaker's exercise of this power. Art 28 (9) has been amended to make clear that the compensation payable under this article is compensation payable for injurious affection which would normally arise under section 10 of the Compulsory Purchase Act 1965 but which arises instead under s152 of the 2008 Act.



**Article 29 (Temporary use of land for maintaining authorised project)** provides that the undertaker may enter upon and take temporary possession of land within the Order limits (except for houses, gardens or any other building for the time being occupied) reasonably required to maintain the authorised project. The undertaker may construct such temporary works and buildings on the land as may be reasonably necessary for that purpose during a period of five years from the date of that part of the authorised project being first opened for use. The undertaker must give not less than 28 days' notice of its intended exercise of the power conferred by this article. The undertaker may only remain on land for so long as it is reasonably necessary to carry out the maintenance works. The undertaker is again subject to requirements as to reinstatement, and compensation is payable to owners and occupiers of land who suffer loss or damage from the undertaker's exercise of this power.

**Article 30 (Not used)**

**Article 31 (Statutory undertakers)** applies provisions relating to statutory undertakers contained in the Town and Country Planning Act 1990 and would give the undertaker power to extinguish rights of statutory undertakers, subject to certain conditions, in relation to land acquired, appropriated, used or about to be used by the undertaker. This approach is a departure from General Model Provision 31, which provides that the undertaker may "*extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers*" shown on a plan and described in the book of reference. In practice, it is impracticable to show and describe all such apparatus and so a more general power is required. The article adopts drafting generally used in Transport and Works Act Orders, such as paragraphs 1(1) and 1(2) of Schedule 11 to the Merseytram (Liverpool City Centre to Kirkby) Order 2005.

**Article 32 (Apparatus and rights of statutory undertakers in stopped-up streets)** provides that the undertaker may, where a street is stopped-up, require a statutory undertaker to relocate affected apparatus or provide other apparatus in substitution for the existing apparatus. The article provides that the undertaker shall reimburse the statutory undertaker in such circumstances.

**Article 33 (Recovery of costs of new connections)** provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 31.

**MISCELLANEOUS AND GENERAL**

**Article 33A (Abrogation of restriction on the development of Bridgwater C)** provides that the user restriction imposed under section 33 of the Local Government (Miscellaneous Provisions) Act 1982 in the transfer dated 5th August 1993 between (1) Sedgemoor District Council (2) E&C Developments Limited and (3) Safeway Stores Plc in respect of part of the Bridgwater C site ("the restricted land"), shall be extinguished from the date that the restricted land is acquired, appropriated for the authorised project or entry is taken by the undertaker, whichever is the earlier. This restriction would otherwise prevent the Bridgwater C site from being used other than for recreational purposes.

**Article 33B (Modification of obligation under North East Bridgwater section 106 agreement)** provides that clause 4.4 of a s106 agreement relating to development of the 'North East Bridgwater' site, shall be amended to remove the obligation on the owner of land adjacent to the Bridgwater A site to provide a playing field on that adjacent site before the existing playing-field on the Bridgwater A site is removed. This modification is necessary to ensure that the undertaker's development of the Bridgwater A site does not impede development of the adjoining land.

**Article 34 (not used)**

**Article 35 (Application of landlord and tenant law)** would disapply the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised project or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised project or any part of it entered into by the undertaker.

**Article 36 (Operational land for the purposes of the 1990 Act)** provides that for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 the development consent granted by the Order shall be treated as specific planning permission in respect of the permanent operational elements of the authorised project, being (a) the permanent development site within the Hinkley Point C Development Site (b) the new access road into the permanent development site (c) the emergency access road into the site (d) Comwich Wharf; and (e) the existing access road into Comwich Wharf.

**Article 37 (not used)**

**Article 38 (not used)**

**Article 39 (Felling or lopping of trees)** would enable the undertaker to fell or lop trees and shrubs near any part of the authorised project for the purposes of preventing obstruction or interference with the authorised project and danger to users of the authorised project. Provision is included for the payment of compensation for loss and damage and its determination in the event of a dispute.

**Article 40 (Trees subject to tree preservation orders)** would enable the undertaker to fell or lop the trees subject to tree preservation orders described in Schedule 10 for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. The article gives deemed consent under the relevant tree preservation order and disappplies the duty to replace a tree contained in section 206(1) of the 1990 Act. Provision is included for the payment of compensation for loss and damage and its determination in the event of a dispute.

**Article 41 (Certification of plans etc)** would require the undertaker to submit copies of the book of reference, plans and any other documents referred to in the Order to the decision maker for certification as true copies, following the making of the Order.

**Article 41A (Service of notices)** makes provision as to the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served, as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a development consent order. The notice provisions from the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 have been inserted.

**Article 42 (Arbitration)** makes provision for differences arising under any provision of the Order, other than those referred to the Upper Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.

**Article 42A (Power to close harbour)** provides for the undertaker to close the harbour and dismantle the temporary jetty when, in the reasonable opinion of the undertaker, it is no longer required in connection with the construction of the Hinkley Point C Development Site. The undertaker must, by resolution, as soon as practicable, appoint a date (“the first appointed day”) for ceasing operations at the temporary jetty and dismantling and removing the temporary jetty. As soon as reasonably practicable after the first appointed date, the undertaker must dismantle, demolish and remove the temporary jetty works and reinstate or restore the site of those works. The undertaker is not required to remove temporary jetty works lying at the level of or under ground level or the sea bed. After the first appointed day operations at the harbour must cease, and

the undertaker ceases to have any powers as a harbour authority, except so far as are needed to dismantle and remove the works and restore the site. When in the reasonable opinion of the undertaker, the temporary jetty works have been removed and the site restored, the undertaker must by resolution appoint a second day ("the second appointed day") for the final closure of the harbour. On that day the undertaker will cease to be the harbour authority, any byelaws and directions relating to the harbour under Part 2 will cease to have effect and all powers and duties relating to the harbour will cease.

The article makes provision for publication of the first and second appointed day by notice in Lloyd's list and a local newspaper circulating in the district of West Somerset at least 28 days before the first or second appointed day (as the case may be).

This article is not provided for in the General Model Provisions. However, it will be required in the event that (i) the HEO is granted but without provisions to close the harbour; or (ii) the temporary jetty is consented via this Order. In the event that the HEO is granted containing provisions authorising the closure of the harbour, this provision may be removed from the draft Order."

**.Article 43 (not used)**

**PART 2**

**4. INTRODUCTION TO PART 2**

- 4.1 Part 2 authorises the undertaker to construct, maintain and operate in Bridgwater Bay a harbour which comprises the temporary jetty works as defined in the Order to facilitate the construction of the proposed nuclear generating station. The Undertaker is constituted as the harbour authority for the proposed new harbour as defined by the harbour limits prescribed by the Order. The undertaker would therefore assume all the responsibilities of a harbour authority including, in particular, the obligations under the Port Marine Safety Code (issued by DfT in October 2009) to manage navigation, construction activities and other operations within the harbour. To enable the undertaker to comply with those obligations, the Order gives powers to the undertaker to regulate the harbour.
- 4.2 As mentioned in paragraph 1.4 above, Part 2 is based on the model provisions for harbours in Schedule 3 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "Harbour Model Provisions").
- 4.3 The temporary jetty provisions have been prepared so as to secure, so far as practicable, consistency with the provisions of the draft Hinkley Point (Temporary Jetty) Harbour Empowerment Order (the "HEO"). This has led to some departures from the Harbour Model Provisions which are noted below.
- 4.4 In order to keep the temporary jetty works self-contained they have been included in Part 1A of Schedule 1 of the Order. The temporary jetty works are defined in article 1 and are excluded from the definition of "authorised development". However, the definition of the "authorised project" includes the temporary jetty works, which has the effect that the provisions in Part 1 of the Order which refer to the "authorised project" (including, in particular, those relating to compulsory acquisition) apply to the temporary jetty works.

## PRELIMINARY

**Article 44 (interpretation)** sets out definitions for the terms used in Part 2 which are not also used in Part 1. The additional definitions are taken from the HEO and are needed for the additional provisions which have been added to the Harbour Model Provisions.

**Article 45 (incorporation of the Harbours, Docks, and Piers Clauses Act 1847)** incorporates specific provisions of the Harbours, Docks and Piers Clauses Act 1847. The 1874 Act sets out common form provisions which potentially apply to a harbour if they are adopted by a harbour order relating to it. For example, the provisions incorporated by article 45 include provisions which would permit the undertaker as the harbour authority to appoint a harbour master and provisions to permit that harbour master to require vessels to be removed for the purpose of repairing the harbour. It is not mandatory to incorporate provisions of the 1847 Act, its purpose being to save applicants for harbour orders having to set out lengthy common form provisions expressly in their particular harbour order.

The following provisions of the 1847 Act (which are incorporated by Harbour Model Provision 2) have not been incorporated because they are not needed or are not appropriate in this case:

- Section 27 (tonnage of vessels);
- Section 33 (harbour to be opened to the public on payment of harbour dues) - the proposed jetty will only be used for the purposes of, or in connection with, the construction of the proposed nuclear generating station and related works and will not be open for public use;
- Section 36 (master to produce certificate of registry) - this is unnecessary;
- Sections 40-46 (provisions about harbour rates) - these provisions are unnecessary since the harbour will not be open to the public on payment of harbour dues;
- Section 52 (power for harbour master to make directions) - this provision is replaced by article 86C;
- Section 53 (penalty for non-compliance with directions) - this is replaced by article 86G;
- Section 59 (vessels entering the harbour to be dismantled) - this provision applies to sailing vessels and is not needed;
- Section 71 (penalties for offence) - this provision cannot be included in the Order by virtue of section 120(8) of the 2008 Act;
- Section 99 (saving for Crown and Admiralty) - this is replaced by article 96A; and
- Section 100 (saving for Revenue Department) - this is replaced by article 96A.

**Section 77 (light houses etc of the 1847 Act, which is not incorporated by Harbour Model Provision 2, has been included at the request of Trinity House).**

## PRINCIPAL POWERS

**Article 46 (development consent etc for the temporary jetty works)**, taken with sheets 7, 8 and 9 of the works plan, would grant development consent to construct the four numbered works listed in Part 1A of Schedule 1 together with the other development authorised by Part 2 which is development within the meaning of section 32 of the 2008 Act. It also gives consent for any works

within article 50 which do not constitute development as defined by section 32, such as the provision of equipment.

Article 46(2) links the temporary jetty works in Part 1A of Schedule 1 to sheets 7, 8 and 9 of the works plan by spelling out that, subject to article 46A (limits of deviation), those works are to be constructed in the lines and situations shown on the works plans and the levels shown on the sections shown on sheet 10. This is a standard approach for works of this kind used in model clause 4(2) of the Model Clauses for Railways prescribed by the Secretary of State by the Transport and Works (Model Clauses for Railways and Tramways) Order 2006. It is also precedented in many Harbour Orders including, for example, article 3 of the Harwich Parkeston Quay Harbour Revision Order 2010 and article 4 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

Article 46(3), which gives power to remove vegetation or other objects or materials for the purposes of the temporary jetty works, is included to achieve consistency with the HEO and is precedented in Harbour Orders, for example article 4(2) of Loch Ryan Port (Harbour Empowerment) Order 2009.

The temporary jetty works, which are described as Works Nos. TJ1, TJ2 and TJ3 in Part 1A of Schedule 1, consist of the jetty, a covered conveyor to be installed on the jetty and a pipeline to be installed on the jetty and extending beyond it. Those works are referred to below as (the "temporary jetty works").

**Article 46A (power to deviate)** restricts the powers in article 46 by providing parameters, or "limits of deviation" (which is the standard term used in the prescribed Model Clauses for Railways and commonly used in Harbour Orders), within which the works authorised by article 46 must be positioned and the construction works may be carried out.

As respects the lateral limits, the starting point for each of the temporary jetty works is the position of the centre line for that work shown on the works plan. A distinction is drawn between the parameters for the positioning of each of those works and the parameters for the area within which construction may take place.

- Work No. TJ1 - the location of the jetty is confined to that shown on sheet 7 of the works plan subject only to a tolerance of 5 metres (see article 46A(2)). The construction activity for the jetty must be carried out within the limits of deviation for work No. TJ1 shown on sheet 7 (article 50(2)).
- Work No. TJ2 - the parameters for the covered conveyor are the same as for the jetty ie, the location of the conveyor is confined to that shown on sheet 8 of the works plan subject only to a tolerance of 5 metres (article 46A(2)). The construction activity for the conveyor must be carried out within the limits of deviation for Work No. TJ1 shown on sheet 8 (article 50(2)).
- Work No. TJ3 - the position of the part of the pipeline to be constructed on the jetty in the sea below mean high water is similarly confined to that shown on sheet 9 of the works plan subject only to a tolerance of 5 metres (article 46A(3)(a)). The remainder of the pipeline above mean high water must be positioned, and all construction activities for the pipeline must be carried out, within the limits of deviation for Work No. TJ3 shown on sheet 9 (articles 46A(3)(b) and 50(2)).

The height of the temporary jetty works must be no greater than 3 metres above the level shown for the work in question on the relevant section on sheet 10 of the works plan.



The lateral and height restrictions applicable to each work would also apply to any alteration to the works carried out under article 49.

As mentioned above, powers to deviate are part of the standard approach used in the Transport and Works Act and Harbour Orders for works of this kind and are preceded in Model Clause 5 of the prescribed Model Clauses for Railways and in many Harbour Orders including article 7 of the Harwich Parkeston Quay Harbour Revision Order 2010 and article 5 of the Loch Ryan Port (Harbour Empowerment) Order 2009. The limits of deviation provided by article 46A are the same as those in the draft HEO.

**Article 47 (period for completion of works)** provides that the power to construct and maintain the temporary jetty works will expire if they are not completed within 10 years except as regards any works which have been substantially started. The time limit may be extended by the decision maker. That time limit does not apply to the other jetty works which are associated with the temporary jetty works or which are required to maintain the temporary jetty works because those powers need to be ongoing throughout the time that the jetty is in operation.

**Article 48 (limits of harbour)** and **Schedule 12 (limits of harbour)** together set out the harbour limits within which the undertaker is to exercise jurisdiction as harbour authority and the powers of the harbour master are to be exercisable. The seaward limits (below the level of mean high water) are described in Schedule 12 and, for identification purposes, are shown on sheet 6 of the works plan. The landward limits consist of the land within the limits of deviation of Works Nos. TJ1, TJ2 and TJ3 (shown on sheets 7, 8 and 9 of the works plan) which is above the level of mean high water. Harbour Model Provision 5 has been modified. The Harbour Model Provision assumes that there is an existing harbour authority. In this case a provision is needed to constitute the undertaker as the harbour authority. It is also helpful to third parties to state expressly that the harbour master's powers are exercisable within the harbour limits. An express provision that the description of the seaward harbour limits prevails over the area shown on the plan has been included to avoid any doubt in the event of inconsistency. Such a provision is well precedented, for example in article 17(2) of the Whiteness Marina Harbour Revision Order 2008. This approach is the same as the HEO.

**Article 49 (maintenance of temporary jetty works)** gives the undertaker the power to maintain the temporary jetty works and to alter, enlarge, replace, relay, extend or construct the temporary jetty works. Those powers must be exercised within the limits of deviation for those works provided by article 46A (power to deviate) which are explained above. Those limits are more restrictive than the harbour limits provided by Harbour Model Provision 6. The Harbour Model Provision has been modified to reflect article 4(3) of the draft HEO which is based on several precedents, for example article 4(3) of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 50 (subsidiary works)** contains powers to enable the undertaker to construct the temporary jetty works and confers power to carry out subsidiary works needed for the construction and operation of the jetty including works related to the accommodation of vessels and the loading and unloading of goods. The references in Harbour Model Provision 7 to "Order limits" have been changed to references to the limits of deviation for the temporary jetty works to restrict the area within which the subsidiary works can be constructed. The model provision has also been modified to include some additional items which appear in the corresponding provision of the HEO.

Article 50(3) is based on Harbour Model Provision 7(3). However, it appears in square brackets in the Order because it appears to be unnecessary since development consent removes the need for planning permission (see section 33(1)(a) of the 2008 Act).

**Articles 51 to 62 (not used)** – the relevant powers are included in Part 1.

## SUPPLEMENTAL POWERS

**Article 63 (right to dredge)** gives the undertaker rights to dredge within the harbour limits for the purpose of constructing and maintaining the temporary jetty works and enabling vessels to access the jetty. Those powers are subject to requirements in the Marine and Coastal Access Act 2009 to obtain marine licences. In addition, the approval of the Marine Management Organisation (the "MMO") is required to deposit any dredgings below mean high water springs, which approval can be given subject to conditions or restrictions.

Articles 64 to 69 give powers to the Secretary of State and Trinity House, as the General Lighthouse Authority, to ensure that the jetty and other tidal works (ie, works below mean high water springs) are properly maintained, marked and lit so that they do not become a danger to navigation or interfere with public rights of navigation or any other public rights. These provisions are in standard form and are included in all Harbour Orders which confer powers to construct tidal works. Some additional provisions have been included for the benefit, and at the request, of Bridgwater Harbour Authority (ie, Sedgmoor District Council in their capacity as the harbour authority for the Port of Bridgwater).

**Article 64 (tidal works not to be executed without approval of Secretary of State)** provides that the undertaker must not construct, reconstruct or alter a tidal work (other than works whose construction has begun within 10 years of the coming into force of the Order) except in accordance with plans and sections approved, and subject to any conditions or restrictions imposed, by the Secretary of State. The Secretary of State has power to require unauthorised works to be removed and the site of the works to be restored. In default, the Secretary of State can do so himself and recover the costs from the undertaker. Under article 64(3) the undertaker must give Bridgwater Harbour Authority copies of plans for which the Secretary of State's approval has been sought.

**Article 65 (abatement of works abandoned or decayed)** gives the Secretary of State power to require the undertaker to repair and restore, or to remove and restore the site of, any tidal work which is abandoned or has fallen into decay. Such a requirement can extend to a work which is partly above and partly below mean high water springs. In default the Secretary of State can undertake the work himself and recover the costs from the undertaker.

**Article 66 (survey of tidal works)** makes provision for surveys and examinations of tidal works or prospective sites for tidal works to be carried out by the Secretary of State.

**Article 67 (lights on tidal works etc during construction)** requires the undertaker to comply with directions given by Trinity House to display lights for the prevention of danger to navigation during the construction period of any tidal works.

**Article 68 (provision against danger to navigation)** requires the undertaker to notify Trinity House and Bridgwater Harbour Authority if there is any damage or decay to a tidal work and to lay down buoys and lights or take such other steps to prevent damage to navigation as Trinity House may direct.

**Article 69 (permanent lights on tidal works)** requires the undertaker to comply with directions given by Trinity House to display lights for the prevention of danger to navigation at the end of tidal works when they have been completed.

**Article 70 (rights to lease etc)** gives the undertaker the power to lease or grant rights or interests over land forming part of the harbour for the purposes of the harbour. Such lease may include provisions delegating to the lessee or grantee powers or duties under the Order except for specified

key functions including powers relating to byelaws, the appointment of a harbour master and the lighting and marking of the harbour.

**Articles 71 to 86 (not used)** – the relevant powers are included in Part 1.

## **HARBOUR REGULATIONS**

**Articles 86A (byelaws) and 86B (confirmation of byelaws)** together provide for the undertaker to make byelaws for the efficient management and regulation of the harbour subject to confirmation by the Secretary of State. Section 120(8) of the 2008 Act precludes byelaws and penal provisions being included in a development consent order ("DCO"). However, that position is proposed to be changed by the Localism Bill currently before Parliament (paragraph 71 of Schedule 13) which is expected to receive Royal Assent shortly. The Localism Bill contains powers for the Secretary of State to make transitional provisions which could be exercised so as to enable pending applications for a DCO to be determined by the Secretary of State and for such DCOs to include byelaws and penal provisions. Articles 86A, 86B and 86G have therefore been included in the draft Order against the possibility that there will be power to include them in the Order when the application is determined. If that is not the case they will be removed from the draft Order.

**Article 86A (byelaws)** provides for the undertaker to make byelaws for the efficient management and regulation of the harbour and sets out the matters for which byelaws may make provision. These include the regulation and movement of vessels, the unloading of goods, the conduct of persons within the harbour and the prevention of damage or injury to goods, vehicles, plant, machinery, property or persons. Under article 86A(3) the byelaws may include provisions making breach of the byelaws a summary offence punishable with a fine not exceeding level 3 on the standard scale (currently £1,000). Similar provisions are included in a number of Harbour Orders eg, article 19 of the Loch Ryan (Harbour Empowerment) Order 2009 and article 56 of the Maryport Harbour Revision Order 2007.

Any byelaws must be approved by the Secretary of State for Defence. This provision has been included at the request of the Ministry of Defence.

**Article 86B (confirmation of byelaws)** provides that byelaws made by the undertaker cannot come into operation unless and until they have been confirmed by the Secretary of State. Notice of a proposed application to the Secretary of State for confirmation of byelaws must be published in local newspapers and the London Gazette and a copy sent to West Somerset District Council, the Harbour Master of Bridgwater Harbour Authority and the Secretary of State. The proposed byelaws must be open for public inspection and an opportunity is given for interested persons to make representations or objections to the Secretary of State. The Secretary of State may confirm the byelaws, modify them or refuse to confirm them. Once they have been confirmed, copies must be made available for public inspection.

The procedure for making and confirming byelaws is modelled on that used for local authority byelaws under section 236 of the Local Government Act 1972 and is preceded in many Harbour Orders including section 11 of the Dover Harbour Revision Order 2006.

Articles 86C to 86G make provision for the undertaker to make and enforce general and special directions.

**Article 86C (general directions to vessels)** gives the undertaker power to make, revoke and amend general directions for regulating vessel movements. The undertaker must consult with the Secretary of State for Defence, Bridgwater Harbour Authority, the Chamber of Shipping and the Royal Yachting Association before making, revoking or amending general directions. There is a

further protective provision for Bridgwater Harbour Authority. The Harbour Model Provisions do not make provision for power to make general directions. However, the Port Marine Safety Code (issued by DfT in October 2009) recommends harbour authorities to seek powers to make general directions for the safety of navigation. The power to make such directions is necessary for the control of navigation around the temporary jetty for safety and security.

As explained in the introductory note for articles 86A and 86B, there is currently no power to include a criminal sanction for breach of general directions (see section 120(8) of the 2008 Act). It is possible that the legal position will change by the time the Order application falls to be determined. However, the directions are enforceable even if no criminal sanction can be imposed. In the event of a breach of a general direction, the harbour master could issue a specific direction requiring compliance with the general direction. In default, the remedy under article 86H would be available. Non-compliance would also have implications for civil liability.

There are many precedents for Article 86C in Harbour Orders, for example article 21 of the Loch Ryan Port (Harbour Empowerment) Order 2009 and article 25 of the Penzance Harbour Revision Order 2009.

Consultation with the Chamber of Shipping and the Royal Yachting Association is precedented. Consultation with the Secretary of State for Defence and Bridgwater Harbour Authority has been included at their request.

**Article 86D (publication of general directions)** provides that, except in an emergency, notice of general directions must be published in a newspaper specialising in shipping news and the directions must be available for public inspection and sale. In an emergency, notice of the directions must be given in any manner the undertaker considers appropriate. Similar provisions are included in other harbour orders, for example article 22 of the Loch Ryan Port (Harbour Empowerment) Order 2009 and article 26 of the Penzance Harbour Revision Order 2009.

**Article 86E (special directions to vessels)** enables the harbour master to give specific directions to specific vessels for specific movements. These differ from general directions which are requirements of general application and so capable of being published in advance. As with the power to make general directions there is a protective provision for Bridgwater Harbour Authority. It is usual in modern Harbour Orders to include provisions setting out powers to make special directions in updated form rather than relying on the incorporation of section 52 of the Harbours, Docks and Piers Clauses Act 1847 as is done in Harbour Model Provision 2. This makes the provisions more accessible both for the harbour master and to harbour users.

Specific directions are enforceable under article 86H regardless of whether a criminal sanction for non-compliance can be included in the Order. See the note on article 86C. There are many precedents for this provision in Harbour Orders, for example article 27 of the Penzance Harbour Revision Order 2009 and article 23 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 86F (master's responsibility to be unaffected)** provides that the responsibility of the master of a vessel is not affected by the giving of a direction. This is a well precedented provision in Harbour Orders, for example article 28 of the Penzance Harbour Revision Order 2009 and article 24 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 86G (failure to comply with directions)** provides that the master of a vessel who fails without reasonable excuse to comply with a general or special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

This provision is provisionally included in the Order against the possibility that there will be power to include it by the time the Order falls to be determined. See the note to article 86C above. The provision is well precedented. See, for example, article 29 of The Penzance Harbour Revision Order 2009 and article 25 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 86H (enforcement of special directions)** provides that the harbour master may enforce a special direction which is not complied with within a reasonable time by putting persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the directions. Expenses incurred in enforcing a special direction can be recovered by the undertaker from the owner of the vessel. Article 86H is an updated version of Section 58 of the Harbours, Docks and Piers Clauses Act 1847. It is precedented in many Harbour Orders, for example article 30 of The Penzance Harbour Revision Order 2009 and section 26 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 86I (charges)** enables the undertaker to charge for services performed by the undertaker in the exercise and performance of its statutory duties as harbour authority. It is usual for harbour authorities to be empowered to make charges for services provided by them in that capacity.

This provision is precedented in many Harbour Orders, for example Article 27 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Articles 87 to 95 (not used)** – the relevant provisions are included in Part 1.

**Article 95A (use of temporary jetty)** provides that the jetty can only be used for the purposes of, or in connection with, the construction of energy related facilities at Hinkley Point C. This provision has been included at the request of the Ministry of Defence and precludes the use of the jetty for recreational or general commercial purposes.

**Article 96 (saving for Trinity House)** provides that the rights and duties of Trinity House, the General Lighthouse Authority, are unaffected by the Order.

**Article 96A (Crown rights)** contains a saving for Crown Rights. This provision is an updated version of sections 99 and 100 of the Harbours, Docks and Piers Clauses Act 1847 (which are incorporated by Harbour Model Provision 2) and is invariably included in Harbour Orders instead of incorporating sections 99 and 100 of the 1947 Act. See, for example, article 40 of the Penzance Harbour Revision Order 2009 and Article 32 of the Loch Ryan Port (Harbour Empowerment) Order 2009.

**Article 97 (disapplication of regulation 73 of the Conservation of Habitats and Species Regulations 2010)** is commonly included in Harbour Orders to remove an unintended circulatory in regulation 73 of the Habitat Regulations. Article 73 is intended to ensure that an appropriate assessment is made in all relevant cases by disapplying permitted development rights, thereby requiring a specific application for planning permission to be made to the local planning authority who will then make an appropriate assessment. The MMO is the competent authority under the Habitats Regulations in the case of a Harbour Order and an appropriate assessment will therefore already have been made by the MMO. So in a Harbour Order case article 73 would, if not disapplied, have the unintended effect of requiring a second appropriate assessment to be made by the local planning authority with a consequential and unnecessary overlap of jurisdiction with the MMO. However, the disapplication of article 73 appears to be unnecessary in the case of a development consent order. Development consent removes the need for planning permission (section 33(1)(a) of the 2008 Act) so permitted development under Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 does not come into play. Article 97 has therefore been included in square brackets.



## SCHEDULES

**Schedule 1 (Authorised project)** Part 1 of this Schedule specifies the authorised development. Part 1A specifies the temporary jetty works. Part 2 of this Schedule lists the approved plans.

**Schedule 2 (Streets subject to street works)** sets out those streets subject to street works.

**Schedule 3 (Footpaths to be stopped up on the main site)** sets out the footpaths to be stopped up on the main site. Part 1 of this Schedule sets out those to be permanently stopped up. Part 2 of this Schedule sets out those to be temporarily stopped up.

**Schedule 4 (Streets to be permanently stopped up)** sets out the streets which are to be stopped up and for which substitute streets are to be provided (Part 1) or for which no substitutes are to be provided (Part 2).

**Schedule 5 (Status of footpaths created or improved)** sets out the intended status of the footpaths to be created or improved.

**Schedule 6 (Streets to be temporarily stopped up)** sets out the streets which are to be temporarily stopped up.

**Schedule 7 (Access to works)** sets out the new or improved accesses to be constructed.

**Schedule 8 (Modification of compensation and compulsory purchase enactments for creation of new rights)** sets out the modification of the statutory provisions applicable to compensation and compulsory purchase under the Order where new rights are to be acquired.

**Schedule 9 (Land of which temporary possession may be taken)** specifies the purpose for which the undertaker may take temporary possession of specified parcels of land listed in the book of reference and shown on the land plans.

**Schedule 10 (Trees subject to tree preservation orders – article 40)** specifies those trees subject to tree preservation orders that may be felled or lopped under the Order.

**Schedule 11 (Requirements)** sets out the requirements which apply to the carrying out of works under the Order. The requirements follow the general form of those in the Model Provisions but have been revised and added to where particular issues affecting the authorised project justify an amendment to those provisions.

**Schedule 12 (Limits of Harbour)** describes the limits of the harbour created by the Order.

**Schedule 13 (Deemed approval of requirements)** lists the requirements deemed to be approved under the Order where they are approved under the site preparation permission.