



# Killingholme Generating Stations (Ancillary Powers) Act 1991

## 1991 CHAPTER viii

An Act to confer powers upon National Power PLC and PowerGen plc for the construction of ancillary works in connection with proposed generating stations at Killingholme and for the acquisition of lands and easements or rights for the purposes thereof; and for other purposes. [27th June 1991]

Whereas National Power PLC and PowerGen plc (hereinafter referred to as “the two companies”) are companies formed and registered under the Companies Act 1985 and, having been nominated by the Secretary of State for the purposes of section 66 (1) of the Electricity Act 1989, have been designated as generating companies:

And whereas by virtue of a scheme made by the Central Electricity Generating Board under the said section 66 (1) certain property of the Board has become vested in the two companies, including an area of land in the parish of North Killingholme in the borough of Glanford in the county of Humberside which has been divided between the two companies:

And whereas to meet requirements for the supply of electricity each of the two companies proposes to construct on the lands vested in that company a gas turbine generating station:

And whereas in operating each of the said generating stations quantities of water will be required for cooling purposes and the most convenient and economical method of obtaining the water will be to abstract it from and subsequently to discharge it into the river Humber:

And whereas it is expedient that each of the two companies should be empowered to acquire lands and easements or rights for the purpose of the construction of the works necessary for the abstraction of water from the river Humber and the subsequent discharge of water into the said river from each of the said generating stations as aforesaid and for other purposes connected therewith:

And whereas it is expedient that the other powers contained in this Act should be conferred on the two companies:

And whereas it is expedient that the other provisions contained in this Act should be enacted:

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And whereas the purposes of this Act cannot be effected without the authority of Parliament:

And whereas plans and sections showing the lines and levels of the works by this Act authorised, such plans showing also the lands which may be acquired or used compulsorily under the powers of this Act for or in connection with the said works and the other purposes mentioned in this Act, together with a book of reference to the said plans containing the names of the owners or reputed owners, lessees or reputed lessees, and of the occupiers of all such lands, and describing the same, have been deposited with the proper officer of the Humberside County Council and such plans, sections and book of reference are respectively referred to in this Act as the deposited plans, sections and book of reference:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows (that is to say):—

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Killingholme Generating Stations (Ancillary Powers) Act 1991.

#### 2 Incorporation of Acts

- (1) Section 16 of the Railways Clauses Consolidation Act 1845, and the provisions of that Act with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this Act and, as so incorporated, shall have effect as if—
- (a) for the words “the period by the special Act limited for the completion of the railway” there were substituted the words “the period of eight years from the commencement of the construction of any of the works authorised by the special Act”;
  - (b) the expression “the company” meant National Power and PowerGen or either of them; and
  - (c) the expression “the railway” meant the National Power works or the PowerGen works, as the case may be, and “the centre of the railway” meant the centre of any such works respectively.
- (2) (a) Part I of the Act of 1965 (except sections 4 and 27 and paragraph 3 (3) of Schedule 3 thereto), in so far as it is applicable for the purposes of this Act and is not inconsistent with the provisions thereof, shall apply to the compulsory acquisition of land under this Act as it applies to a compulsory purchase to which Part II of the Acquisition of Land Act 1981 applies and as if this Act were a compulsory purchase order under the said Act of 1981.
- (b) In subsection (1) of section 11 of the Act of 1965, as so applied, for the words “fourteen days” there shall be substituted the words “three months”.

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- (c) The Lands Clauses Consolidation Act 1845, shall not apply to the acquisition of land under this Act.

### 3 Interpretation

- (1) In this Act, unless the subject or context otherwise requires—
- “A.B. Ports” means Associated British Ports;
  - “the Act of 1965” means the Compulsory Purchase Act 1965;
  - “the appropriate company” means—
    - (a) in relation to the National Power works and in relation to any land in respect of which powers for compulsory acquisition are conferred upon National Power by this Act, National Power;
    - (b) in relation to the PowerGen works and in relation to any land in respect of which powers for compulsory acquisition are conferred upon PowerGen by this Act, PowerGen;
  - “land” includes any interest in or right over land and land covered with water;
  - “the level of high water” means the level of mean high-water springs;
  - “the limits of deviation” means the limits of deviation shown on the deposited plans;
  - “National Power” means National Power PLC;
  - “the National Power generating station” means such generating station as may be constructed by National Power in the parish;
  - “the National Power works” means Works Nos. 1 to 6 and any works, apparatus or conveniences constructed or provided by National Power as part of, or in connection with, or for the purposes of, those works or any of them;
  - “the parish” means the parish of North Killingholme in the borough of Glanford in the county of Humberside;
  - “PowerGen” means PowerGen plc;
  - “the PowerGen generating station” means such generating station as may be constructed by PowerGen in the parish;
  - “the PowerGen works” means Works Nos. 7 to 12 and any works, apparatus or conveniences constructed or provided by PowerGen as part of, or in connection with, or for the purposes of, those works or any of them;
  - “the river” means the river Humber;
  - “the rivers authority” means the National Rivers Authority;
  - “tidal work” means so much of any work authorised by this Act as is on, under or over tidal waters or tidal lands below the level of high water;
  - “the tribunal” means the Lands Tribunal;
  - “the works” means the works authorised by this Act and includes those works as renewed, diverted or altered under section 7 (Alteration and improvement of works) of this Act and the works authorised by section 6 (Power to make subsidiary works) of this Act and “work” shall be construed accordingly.
- (2) All areas, distances, lengths and directions stated in any description of works, powers or lands in this Act shall be construed as if the words “or thereabouts” were inserted after each such area, distance, length or direction.

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- (3) Any reference in this Act to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this Act.
- (4) References in this Act to reference points shall be construed as references to National Grid reference points.

## PART II

### WORKS

#### 4 Power to National Power to construct works

Subject to the provisions of this Act National Power may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown upon the deposited sections make and maintain the works hereinafter described together with all necessary works and conveniences connected therewith, namely:—

Work No. 1 One or more conduits and an intake commencing in the parish at reference point TA1702 1960 and extending into the river for a distance of 320 metres and there terminating;

Work No. 2 One or more conduits and an outfall commencing in the parish at reference point TA1702 1960 extending into the river for a distance of 250 metres and there terminating;

Work No. 3 One or more conduits and an intake commencing in the parish at reference point TA1704 1952 extending into the river for a distance of 360 metres and there terminating;

Work No. 4 One or more conduits and an outfall commencing in the parish at reference point TA1704 1952 extending into the river for a distance of 270 metres and there terminating;

Work No. 5 One or more conduits and an intake commencing in the parish at reference point TA1710 1946 extending into the river for a distance of 350 metres and there terminating;

Work No. 6 One or more conduits and an outfall commencing in the parish at reference point TA1710 1946 extending into the river for a distance of 250 metres and there terminating.

#### 5 Power to PowerGen to construct works

Subject to the provisions of this Act PowerGen may in the lines or situations and within the limits of deviation shown on the deposited plans and according to the levels shown upon the deposited sections make and maintain the works hereinafter described together with all necessary works and conveniences connected therewith, namely:—

Work No. 7 One or more conduits and an intake commencing in the parish at reference point TA1714 1939 and extending into the river for a distance of 360 metres and there terminating;

Work No. 8 One or more conduits and an outfall commencing in the parish at reference point TA1714 1939 extending into the river for a distance of 250 metres and there terminating;

Work No. 9 One or more conduits and an intake commencing in the parish at reference point TA1718 1932 extending into the river for a distance of 370 metres and there terminating;

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Work No. 10 One or more conduits and an outfall commencing in the parish at reference point TA1718 1932 extending into the river for a distance of 270 metres and there terminating;

Work No. 11 One or more conduits and an intake commencing in the parish at reference point TA1722 1925 extending into the river for a distance of 390 metres and there terminating;

Work No. 12 One or more conduits and an outfall commencing in the parish at reference point TA1722 1925 extending into the river for a distance of 290 metres and there terminating.

## **6 Power to make subsidiary works**

- (1) Subject to the provisions of this Act, the appropriate company may from time to time erect, construct and maintain whether temporarily or permanently all such works and conveniences as may be requisite or expedient for the purposes of or in connection with the construction, maintenance and use of the National Power works or the PowerGen works, as the case may be:

Provided that—

- (a) the appropriate company shall ensure that, so far as is reasonably practicable, any such works shall not unnecessarily narrow or obstruct the navigable waterway of the river or otherwise interfere with or impede navigation or obstruct the flow of water or the passage of fish;
  - (b) no such permanent works or conveniences shall be erected or constructed outside the limits of deviation.
- (2) On the completion of the National Power works or the PowerGen works, as the case may be, the appropriate company shall remove all temporary works placed by them under the powers of this section on, under or over land below the level of high water.

## **7 Alteration and improvement of works**

Subject to the provisions of this Act, the appropriate company may from time to time maintain, renew, divert and alter, temporarily or permanently, the National Power works or the PowerGen works, as the case may be, or any part of any such work:

Provided that nothing in this section shall authorise the appropriate company to deviate laterally beyond the limits of deviation.

## **8 Power to deviate**

In the construction of the National Power works or the PowerGen works, as the case may be, the appropriate company may deviate laterally from the lines or situations thereof shown on the deposited plans to any extent not exceeding the limits of deviation and may deviate vertically from the levels of that work shown on the deposited sections to any extent upwards or downwards.

## **9 Power to dredge**

- (1) Subject to the provisions of this Act the appropriate company may from time to time for the purpose of the construction, maintenance, alteration, improvement, diversion

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or user of the works, deepen, dredge, scour and improve and remove obstructions from the bed, foreshore and banks of the river adjoining or near to the works.

- (2) The appropriate company may use, appropriate and dispose of the materials from time to time dredged by them from the river:

Provided that no such materials shall be deposited below the level of high water except in such places and in accordance with such restrictions or regulations as may be approved or prescribed by the Secretary of State nor shall such materials be deposited on the foreshore or bed of the river without the consent of A.B. Ports.

- (3) (a) Nothing in this section shall authorise any interference with any subaqueous cable belonging to or used by British Telecommunications plc.
- (b) As early as possible, and in any event not less than 28 days, before any exercise of their powers under subsection (1) above within a distance of 50 yards of any subaqueous cable belonging to or used by British Telecommunications plc, the appropriate company shall give notice in writing to British Telecommunications plc of such intended exercise.
- (4) No materials dredged up or removed under the powers of this section shall be laid down or deposited in any place or manner so as to cover any subaqueous cable belonging to or used by British Telecommunications plc or any submarine gas main placed or maintained by British Gas plc or to impede in any way the inspection, maintenance, removal or renewal of any such cable or main.

## 10 Abstraction and discharge

- (1) (a) National Power may by means of the works abstract from the river such quantities of water as may be required for cooling purposes.
- (b) National Power may by means of the works discharge into the river any water so abstracted.
- (2) (a) PowerGen may by means of the works abstract from the river such quantities of water as may be required for cooling purposes.
- (b) PowerGen may by means of the works discharge into the river any water so abstracted.
- (3) Nothing in this section shall exempt the appropriate company from the provisions of Chapter I of Part III of the Water Act 1989 or Part IV of the Water Resources Act 1963 and National Power and PowerGen shall each be deemed to be entitled to make an application for a licence under the said Act of 1963 by virtue of section 27 of that Act.

## 11 Special exemptions

Section 6 (No erections in Humber below river lines or without licence above river lines) of the Humber Conservancy Act 1905 shall not apply to the works and section 8 (Sand &c. not to be removed from bed or foreshore of River Humber without licence of Commissioners) of that Act shall not apply to the exercise by the appropriate company of the powers of section 9 (Power to dredge) of this Act.

## 12 Temporary stoppage of highways, etc

- (1) The appropriate company during and for the purposes of the construction, maintenance, renewal, diversion or alteration of any of the National Power works or

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the PowerGen works, as the case may be, may temporarily stop up, alter, divert or otherwise interfere with any road, footpath or bridleway or any private right of way, and may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the road, footpath or bridleway or right of way from passing along and using the same.

- (2) The appropriate company shall provide reasonable access for foot-passengers, with or without animals, bona fide going to or from any such land, house or building.
- (3) The powers of subsection (1) above shall not be exercised in relation to any road without the consent of the highway authority having powers in relation thereto, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment as the consideration for the grant of a consent) as the highway authority may require, and any question whether such consent is unreasonably withheld, or any conditions so imposed are unreasonable, shall be determined by arbitration.
- (4) The powers of this section shall not be exercised with respect to any road unless not less than 21 days' notice in writing is given to—
  - (a) the traffic commissioner in whose area the road is situate;
  - (b) the operator over that road of a local service as defined in the Transport Act 1985;
  - (c) the chief fire officer of the fire authority; and
  - (d) the chief officer of police;except in a case of emergency when such notice as is practicable shall be given.
- (5) In the exercise of the powers of this section the appropriate company shall, whenever possible, provide a proper temporary substitute way before interrupting the traffic on any road or highway.

### **13 Tidal works not to be executed without approval of Secretary of State**

- (1) A tidal work shall not be constructed, renewed, diverted or altered except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by him before the work is begun.
- (2) If a tidal work is constructed, renewed, diverted or altered in contravention of this section or of any condition or restriction imposed under this section—
  - (a) the Secretary of State may by notice in writing require the appropriate company at their own expense to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the appropriate company they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice; or
  - (b) if it appears to the Secretary of State urgently necessary so to do, he may remove the tidal work or part of it and restore the site to its former condition;and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the appropriate company.

### **14 Provision against danger to navigation**

- (1) In case of injury to or destruction or decay of a tidal work or any part thereof, the appropriate company shall as soon as reasonably practicable notify A.B. Ports and

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shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as A.B. Ports shall from time to time direct.

- (2) If the appropriate company fail to notify A.B. Ports as required by this section or to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **15 Abatement of works abandoned or decayed**

- (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State or the rivers authority may by notice in writing require the appropriate company at their own expense either to repair and restore the work or any part thereof or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State or the rivers authority, as the case may be, thinks proper.
- (2) Where a work, authorised by this Act and consisting partly of a tidal work and partly of works on or over land above the level of high water, is abandoned or suffered to fall into decay and that part of the work on or over land above the level of high water is in such condition as to interfere or to cause reasonable apprehension that it may interfere with the right of navigation or other public rights over the foreshore, the Secretary of State or the rivers authority, as the case may be, may include that part of the work, or any portion thereof, in any notice under this section.
- (3) If, on the expiration of 30 days from the date when a notice under this section is served upon the appropriate company, they have failed to comply with the requirements of the notice, the Secretary of State or the rivers authority, as the case may be, may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the appropriate company.

## **16 Survey of tidal works**

- (1) The Secretary of State may at any time, if he deems it expedient, order a survey and examination of a tidal work constructed by the appropriate company or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the appropriate company.
- (2) The rivers authority may at their own expense at any time carry out a survey and examination of any such work as is referred to in subsection (1) above and the appropriate company shall provide the rivers authority free of charge with all such facilities as are reasonably necessary for that purpose.

## **17 Permanent lights on tidal works**

- (1) After the completion of a tidal work, the appropriate company shall at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as A.B. Ports shall from time to time direct.
- (2) If the appropriate company fail to comply in any respect with a direction given under this section, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.



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## **18 Lights on tidal works during construction**

- (1) The appropriate company shall at or near a tidal work during the whole time of the construction, renewal, diversion or alteration thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.
- (2) If the appropriate company fail to comply in any respect with a direction given under this section they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

## **PART III**

### **LANDS**

## **19 Power to acquire land**

- (1) Subject to the provisions of this Act the appropriate company may enter upon, take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as they may require for the purposes of the National Power works or the PowerGen works, as the case may be, or for the purposes of obtaining access thereto, obtaining materials for the construction thereof, or depositing spoil or other material excavated during the construction thereof or otherwise for the purposes of this Act or other purposes connected therewith.
- (2)
  - (a) The powers of the appropriate company for the compulsory acquisition of lands under this section shall not be exercised after 31st December 1993.
  - (b) The powers to acquire compulsorily any land shall for the purposes of this subsection be deemed to have been exercised if notice to treat has been served in respect of that land.

## **20 Purchase of rights**

- (1) In this section references to the purchase by the appropriate company of new rights are references to the purchase of rights to be created in favour of the appropriate company.
- (2) The appropriate company may for the purposes of constructing and using, maintaining, renewing, removing or altering the National Power works or the PowerGen works, as the case may be, or for the purpose of obtaining access to the works or for the purpose of doing any other thing necessary in connection with the works, purchase compulsorily such new rights as they may require over any of the lands which may be acquired under section 19 (Power to acquire land) of this Act as well as rights already in existence.
- (3) References in this section to rights over land include references to the right to do, or to place and maintain, anything in, on or under land or in the airspace above its surface.
- (4) The Act of 1965, as applied by this Act, shall have effect with the modifications necessary to make it apply to the compulsory purchase of rights under subsection (2) above as it applies to the compulsory purchase of land so that, in appropriate contexts, references in the Act of 1965 to land are read as referring, or as including references, to the rights or to land over which the rights are or are to be exercisable according to the requirements of the particular context.

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- (5) Without prejudice to the generality of subsection (4) above in relation to the purchase of rights in pursuance of subsection (2) above the enactments relating to compensation for the compulsory purchase of land shall apply with the necessary modifications as they apply to such compensation.

## **21 Correction of errors in deposited plans and book of reference**

- (1) If the deposited plans or the deposited book of reference are inaccurate in their description of any land, or in their statement or description of the ownership or occupation of any land, the appropriate company after giving not less than 10 days' notice to the owner, lessee and occupier of the land in question may apply to two justices having jurisdiction in the place where the land is situated for the correction thereof.
- (2) If on any such application it appears to the justices that the misstatement or wrong description arose from mistake, the justices shall certify the fact accordingly and shall in their certificate state in what respect any matter is misstated or wrongly described.
- (3) The certificate shall be deposited in the office of the Clerk of the Parliaments and a copy thereof in the Private Bill Office, House of Commons and with the proper officer of the Humberside County Council, the proper officer of the Glanford Borough Council and the proper officer of the North Killingholme Parish Council and thereupon the deposited plans and the deposited book of reference shall be deemed to be corrected according to the certificate and it shall be lawful for the appropriate company to take the land and execute the works in accordance with the certificate.
- (4) A person with whom a copy of the certificate is deposited under this section shall keep it with the other documents to which it relates.

## **22 Disregard of recent improvements and interests**

In determining a question with respect to compensation claimed in consequence of the compulsory acquisition of land or new rights under this Act, the tribunal shall not take into account any interest in land, or any enhancement of the value of any interest in land, by reason of any building erected, works executed, or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was, at the time of the erecting, executing or making of the building, works, improvement or alteration, directly or indirectly concerned if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration (as the case may be) was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

## **23 Extinction of private rights of way**

- (1) All private rights of way over any land which may be acquired compulsorily under this Act shall be extinguished on the acquisition of the land, whether compulsorily or by agreement, or on the entry on the land in pursuance of section 11 (1) of the Act of 1965, as applied by this Act, whichever is the sooner.
- (2) Any person who suffers loss by the extinguishment of any right under this section shall be entitled to be paid by the appropriate company compensation, to be determined in case of dispute by the tribunal.

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## **24 Grant of easements by persons under disability**

- (1) Any person empowered by the Act of 1965, as applied by this Act, to sell and convey or release lands may, if he thinks fit, subject to the provisions of the Act of 1965, grant to the appropriate company any easement or right required for the purposes of this Act over or in the lands, not being an easement or right of water in which some person other than the grantor has an interest.
- (2) The provisions of the Act of 1965 with respect to lands and rentcharges, so far as they are applicable, shall apply to any such grant and to any such easement or right as aforesaid.

## **PART IV**

### **PROTECTIVE PROVISIONS**

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

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

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

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

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

- (1) In this section—
  - “construction” includes execution and placing, renewal, diversion or alteration and removal, and “constructed” shall be construed accordingly;
  - “plans” includes sections and “approved plans” means plans approved or deemed to have been approved by A.B. Ports or settled by arbitration:
- (2) (a) Before commencing the construction of any part of a tidal work plans showing the general mode of construction thereof shall be delivered by the appropriate company to A.B. Ports for its reasonable approval, and such tidal work shall not be constructed otherwise than in accordance with approved plans and to the reasonable satisfaction of A.B. Ports;
- (b) Without prejudice to the generality of sub-paragraph (a) above, with the exception of any intake or outfall forming part of the works, no part of any tidal work shall be constructed otherwise than at a level of two metres or more below the bed of the river and with a minimum of two metres of a suitable covering material placed above that work:

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- (3) After the purpose for which any temporary works were placed or conveniences connected therewith in the river were constructed under the powers of this Act has been accomplished the appropriate company shall, with all reasonable dispatch, remove any such works or conveniences and if without reasonable cause they fail to do so A.B. Ports may remove the same, charging the appropriate company with the reasonable expense of so doing, and the appropriate company shall repay to A.B. Ports all such expense:
- (4) (a) The appropriate company shall before commencing any dredging in the river under the powers of this Act (other than maintenance dredging and except in an emergency) deliver to A.B. Ports for its reasonable approval plans defining the nature, extent and manner of such dredging, and such dredging shall not be carried out otherwise than in accordance with approved plans and in such manner as may be approved by A.B. Ports or as may be settled by arbitration;
- (b) In this paragraph “maintenance dredging” means dredging solely for the purpose of maintaining the bed, foreshore or banks of the river in the same condition as they were after dredging operations approved by A.B. Ports had been carried out:
- (5) If A.B. Ports fails to express its disapproval of any plans within two months after they have been delivered to it in pursuance of this section, it shall be deemed to have approved them:
- (6) If there shall be any inconsistency between any approved plans and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the tidal work to which the plans relate shall be constructed in accordance with the plans approved by the Secretary of State:
- (7) (a) If during the construction of or within the prescribed period after the completion of the National Power works or the PowerGen works, as the case may be, it is agreed between the appropriate company and A.B. Ports or, in default of agreement, it is proved to the satisfaction of an arbitrator to be appointed in accordance with section 31 (Arbitration) of this Act that any accumulation or erosion has been caused wholly or partly by the construction of any of the works or the carrying out of any dredging operation under section 9 (Power to dredge) of this Act, the appropriate company shall carry out such remedial work as may be agreed or in default of agreement as may be proved to the satisfaction of the arbitrator to have been caused by the construction of any of the works or the carrying out of any dredging operation as aforesaid and, if they refuse or fail so to do A.B. Ports may itself cause the work to be done and may recover the reasonable cost thereof from the appropriate company;
- (b) In this paragraph—
- “accumulation” means any accumulation of silt or other material which shall constitute an impediment to navigation;
- “erosion” means any erosion of any jetty or other structure of whatever nature owned or occupied by A.B. Ports;
- “remedial work” means—
- (i) in the case of an accumulation, its removal; and
- (ii) in the case of erosion such reconstruction works and other protective works or measures as may be necessary;

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“the prescribed period” means a period of 10 years and if during that period there has been an accumulation or erosion such as to give rise to an obligation by the appropriate company under this paragraph to carry out remedial work, a further period of 10 years:

- (8) During any dredging operations carried out by the appropriate company in the course of the construction of the National Power works or the PowerGen works, as the case may be, the appropriate company shall, if required by A.B. Ports, provide and maintain to the reasonable satisfaction of A.B. Ports—
- (a) such lighted mooring or other buoys at any deposit ground in the river which may be approved for the deposit of dredgings by the appropriate company from the site of the works; and
  - (b) take all such other steps as may be required by A.B. Ports to prevent danger to navigation:
- (9) The provisions of section 15 (Abatement of works abandoned or decayed), section 16 (Survey of tidal works) and section 18 (Lights on tidal works during construction) of this Act shall, with any necessary modifications, apply to A.B. Ports as if, in the case of the said section 15, A.B. Ports were named therein in addition to the Secretary of State and the rivers authority and, in the case of the other two sections, in addition to the Secretary of State and any expenses incurred by A.B. Ports in pursuance of either of the said sections 15 and 16 shall be recoverable from the appropriate company:
- Provided that—
- (a) if there is any inconsistency between any requirement or direction of the Secretary of State and of A.B. Ports the former shall prevail and the appropriate company shall be deemed to have complied with the provisions of those sections if they have complied with the requirement or direction of the Secretary of State;
  - (b) the annual survey of the river carried out by A.B. Ports in the performance of its functions as the navigation authority shall not be treated as a survey carried out under the said section 16:
- (10) The appropriate company shall at all reasonable times during construction of the works and thereafter allow A.B. Ports, its servants and agents, access to the National Power works or the PowerGen works, as the case may be:
- (11) The appropriate company shall not acquire compulsorily under the powers of this Act the interests of A.B. Ports in the lands numbered 2 and 3 in the parish on the deposited plans but the appropriate company may in accordance with the provisions of section 20 (Purchase of rights) of this Act acquire compulsorily such rights in the said lands as they may reasonably require for the purposes of the works:
- (12) The appropriate company shall pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or in consequence of the construction of a tidal work:
- (13) (a) Without prejudice to the other provisions of this section, the appropriate company shall be responsible for, and make good to A.B. Ports, all losses, costs, charges, damages and expenses however caused (including a proper proportion of the overhead charges of A.B. Ports) which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—

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- (i) the perusal of plans and the inspection of any of the works or the regulation of any dredging operation by A.B. Ports or its duly authorised representative;
  - (ii) the carrying out of such surveys, inspections, tests and sampling within the river as A.B. Ports after consultation with the appropriate company reasonably considers necessary to establish whether or not the discharge or dispersal of water into the river by means of any of the works is causing or has caused any damage to or deterioration of any existing jetty or other structure owned or occupied by A.B. Ports;
  - (iii) the construction or maintenance of any of the works or the carrying out of any dredging operation, the discharge or dispersal of water into the river by means of any of the works, the failure of any of the works or the undertaking by A.B. Ports of works or measures to prevent or remedy damage to any property of A.B. Ports arising from such construction, carrying out, discharge or dispersal, or failure;
  - (iv) any act or omission of the appropriate company or their servants or agents whilst engaged in the construction or maintenance of any of the works or the carrying out of any dredging operation;
- (b) Without prejudice to the generality of sub-paragraph (a) of this paragraph the appropriate company shall indemnify A.B. Ports from and against all claims and demands arising out of, or in connection with, such construction, carrying out, discharge or dispersal, failure or act or omission as is mentioned in that sub-paragraph;
- (c) A.B. Ports shall give to the appropriate company notice of any claim or demand made against it which is a claim or demand for which the appropriate company may be liable under this paragraph and no settlement or compromise of any such claim or demand shall be made without the consent in writing of the appropriate company:
- (14) The fact that any work or thing has been executed or done with the consent of A.B. Ports and in accordance with any conditions or restrictions prescribed by A.B. Ports or in accordance with plans approved or deemed to be approved by A.B. Ports or to its satisfaction or in accordance with any directions or award of an arbitrator or in accordance with any plans approved by the Secretary of State and any conditions or restrictions imposed by him, shall not relieve the appropriate company from any liability under the provisions of this section:
- (15) With the exception of any duty owed by A.B. Ports to the appropriate company expressly provided for in the foregoing provisions of this section, nothing in this Act shall be construed as imposing upon A.B. Ports, either directly or indirectly, any form of duty or liability to which A.B. Ports would not otherwise be subject which is enforceable by proceedings before any court:
- (16) Subject to the provisions of section 20 (Purchase of rights) of this Act, nothing in this Act shall affect prejudicially any statutory or other rights, powers or privileges vested in, or enjoyed by, A.B. Ports at the commencement of this Act or any title of A.B. Ports in, to or over any lands or foreshore held or acquired by it:
- (17) Any difference arising between the appropriate company and A.B. Ports under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

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## 27 For protection of rivers authority

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

(1) In this section—

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

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

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

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

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

- (b) for the protection of water resources;

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

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

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

- (b) water resources;

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

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

- (2) (a) Not less than 28 days before commencing to construct a specified work the appropriate company shall submit plans of such work to the rivers authority for their reasonable approval and shall not commence the specified work until such plans have been approved by the rivers authority or in the case of difference until they have been settled by arbitration:

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

- (b) Not less than 14 days before commencing any work of maintenance or repair of a specified work the appropriate company shall, except in the case of

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emergency, submit to the rivers authority for their information a notice of intention to commence the work and a description of the work:

- (3) Upon signifying their approval or disapproval of the said plans the rivers authority may specify any protective works which in their opinion should be carried out or undertaken by the appropriate company during the construction of the specified work and such of the works so specified as may be reasonably necessary for those purposes shall be constructed by the appropriate company at their own expense and under the supervision (if given) and to the reasonable satisfaction of the rivers authority:
- (4)
  - (a) Subject to the provisions of this section, a specified work shall not be constructed except in accordance with such plans as may be approved or deemed to be approved by the rivers authority as aforesaid or settled by arbitration and shall be constructed to the reasonable satisfaction of the engineer of the rivers authority who shall be given reasonable notice of the date and time on and at which the work is to be commenced;
  - (b) The appropriate company shall at all reasonable times during the construction of a specified work afford to the engineer of the rivers authority and his duly authorised representatives access to such specified work for the purposes of inspection;
  - (c) As soon as is reasonably practicable after the completion of a specified work or thereafter upon 14 days' notice in writing from the rivers authority requiring them so to do the appropriate company shall remove so much of the work as consists only of temporary works carried out for the purposes of such construction:
- (5) If there shall be any inconsistency between any plans approved or deemed to be approved by the rivers authority or settled by arbitration under the provisions of this section and the plans approved by the Secretary of State under section 13 (Tidal works not to be executed without approval of Secretary of State) of this Act the specified work shall be constructed in accordance with the plans approved by the Secretary of State:
- (6) If by reason of—
  - (a) the construction, maintenance or repair of any specified work;
  - (b) the failure of that work or of the appropriate company to maintain it; or
  - (c) any operations carried out by the appropriate company under section 9 (Power to dredge) of this Act;a sea defence work shall be breached or, as the case may be, a sea defence work or a watercourse shall at any time be injured or its efficiency as a sea defence work or watercourse is otherwise impaired, the rivers authority may fill in the breach or, as the case may be, make good such injury and in either such a case restore it to a proper standard of efficiency as a sea defence work or watercourse, as the case may be, and recover the reasonable cost thereof (including a proper proportion of the overhead charges of the rivers authority) from the appropriate company:
- (7) If the rivers authority have reasonable grounds for believing that damage to a sea defence work or watercourse is likely to take place or its efficiency as a sea defence work or watercourse is likely to be impaired in any of the circumstances mentioned in paragraph (6) above, they may carry out such protective works as may be agreed between the rivers authority and the appropriate company or as, in default of agreement, may be settled by arbitration and recover the reasonable cost thereof



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

- (8) Any additional expense which may be reasonably incurred by the rivers authority in maintaining any protective works which become part of the sea defence works or a watercourse shall on demand be repaid to the rivers authority by the appropriate company:
- (9) (a) Where a specified work is in, on or under a sea defence work or abuts upon any lands acquired by the appropriate company under this Act the rivers authority and their officers, servants, workmen, contractors and agents together with any vehicles, plant or machinery shall be entitled at all reasonable times and in an emergency at any time to enter upon the said specified work, the part of the sea defence work in, on or over it or the said land for the purpose of carrying out works in connection with the sea defence work or of obtaining access to the sea defence work;
- (b) A specified work shall not be constructed so as to prevent access during construction to a sea defence work or a watercourse by the rivers authority and their officers, servants, workmen, contractors and agents together with such vehicles, plant and machinery as may be reasonably necessary:
- (10) The rivers authority for the purpose of performing or in connection with the performance of any of their functions shall be entitled at all reasonable times and in an emergency at any time to inspect any of the authorised works or any work for the purposes of or in connection with the construction of such authorised work carried out under section 6 (Power to make subsidiary works) of this Act:
- (11) The appropriate company shall indemnify and hold harmless the rivers authority from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any injury or damage which may be caused or result to a sea defence work or watercourse or to the water resources of the rivers authority by or in consequence of the construction, maintenance or repair of an authorised work or any work for the purposes of or in connection with such first-mentioned work carried out under section 6 (Power to make subsidiary works) of this Act or of the failure or want of repair thereof or any subsidence caused by the construction thereof or in consequence of any act or omission of the appropriate company, their contractors, agents, workmen or servants whilst engaged upon an authorised work or any such other work as aforesaid:
- Provided that the rivers authority shall give to the appropriate company reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the appropriate company:
- (12) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the rivers authority or to their satisfaction or in accordance with any directions or award of an arbitrator shall not relieve the appropriate company from any liability under the provisions of this section:
- (13) Any difference arising between the appropriate company and the rivers authority under this section (other than a difference as to the construction of this section) shall be settled by arbitration.

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## 28 Provisions applicable to last two sections

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

## 29 For protection of British Coal Corporation

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

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

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

Provided that—

- (i) nothing in this paragraph shall impose any liability on the appropriate company in respect of any such claim or demand in so far as and to the extent

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- to which it is attributable to the act, neglect or default of any person other than the appropriate company, their contractors, agents, workmen or servants; and
- (ii) the Corporation shall give to the appropriate company immediate notice of any such claim or demand and no settlement or compromise thereof shall be made except with the consent of the appropriate company who (if they so elect) shall at their expense have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the same:
- (3) If any vessel or apparatus used in connection with the construction or maintenance of the works or with any operations carried out under the said section 9 is in such a position as is likely to constitute a material interference with the navigation of vessels proceeding to or leaving the jetty, the appropriate company shall on receiving notice in writing from the Corporation in the case of a vessel move it within 24 hours and in the case of apparatus move it within a reasonable time.

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

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

## **PART V**

### **MISCELLANEOUS AND GENERAL**

### **31 Arbitration**

Where under this Act any dispute or difference is to be referred to or determined by arbitration, then unless otherwise provided, such dispute or difference shall be referred to, and determined by, a single arbitrator to be agreed between the parties, or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

### **32 Defence of due diligence**

- (1) In proceedings for an offence under any provision of this Act mentioned in subsection (2) below, it shall be a defence for the appropriate company to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) The provisions referred to in subsection (1) above are the following:—
- section 14 (Provision against danger to navigation);
  - section 17 (Permanent lights on tidal works);
  - section 18 (Lights on tidal works during construction).
- (3) If in any case the defence provided under subsection (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the appropriate company shall not, without leave of the court, be entitled to rely on that defence unless, not less than 7 clear days before the hearing, they have served on the

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prosecutor a notice in writing giving such information as was then in their possession, identifying, or assisting in the identification, of that other person.

### **33 Crown rights**

- (1) Nothing in this Act affects prejudicially any estate, right, power, privilege or exemption of the Crown and in particular and without prejudice to the generality of the foregoing nothing in this Act authorises the appropriate company to take, use, enter upon or in any manner interfere with any land or hereditaments or any rights of whatsoever description (including any portion of the shore or bed of the sea or of any river, channel, creek, bay or estuary)—
- (a) belonging to Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners without the consent in writing of those commissioners; or
  - (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (2) A consent under subsection (1) above may be given unconditionally or subject to such conditions and upon such terms as shall be considered necessary or appropriate.

### **34 Saving for Duchy of Lancaster**

Without prejudice to the general law concerning the applicability of statutes to the Duchy of Lancaster, nothing in this Act shall extend or operate to authorise the appropriate company to take, use, enter upon or in any manner interfere with any land, hereditaments, soil, water or any manorial rights or any other rights of whatsoever description belonging to Her Majesty in right of Her Duchy of Lancaster without the consent in writing of the Chancellor for the time being of the said Duchy (which consent may be given either unconditionally or subject to such conditions and upon such terms as the said Chancellor shall deem necessary or appropriate) or take away, prejudice or diminish any estate, right, privilege, power or authority vested in or enjoyed or exercisable by Her Majesty, Her Heirs and Successors in right of Her said Duchy.

### **35 Saving for Trinity House**

Nothing in section 14 (Provision against danger to navigation) or section 17 (Permanent lights on tidal works) of this Act shall prejudice or derogate from any of the rights or privileges or the jurisdiction or authority of the Corporation of Trinity House of Deptford Strond.

### **36 Town and country planning**

In their application to development authorised by Part II (Works) of this Act, Article 3 of, and Class A in Part 11 of Schedule 2 to, the Town and Country Planning General Development Order 1988 shall have effect as if the authority to develop given by this Act were limited to such development begun within 10 years after the passing of this Act.

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**37 Repeal**

The Killingholme Generating Station (Ancillary Powers) Act 1972 is hereby repealed.