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STATUTORY INSTRUMENTS

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**1994 No. 2809 (N.I. 16)**

**The Ports (Northern Ireland) Order 1994 <sup>F1</sup>**

- - - - - 2nd November 1994

<b>F1</b> functions transf. SR 1999/481
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*Introductory*

***Title and commencement.***

1.—(1) This Order may be cited as the Ports (Northern Ireland) Order 1994.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

***Interpretation***

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F2</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“accounting year”, in relation to a relevant port authority, means any period in respect of which the authority is required under section 30 of the Harbours Act (Northern Ireland) 1970<sup>F3</sup> to prepare an annual statement of accounts;

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992<sup>F4</sup>;

“the Department” means the Department of the Environment or, if the harbour in relation to which a relevant port authority is or immediately before a transfer under Article 4 was the harbour authority is a fishery harbour, the Department of Agriculture;

“body” means a body corporate;

“equity share capital” has the meaning given by [<sup>F5</sup>section 548 of the Companies Act 2006];

“fishery harbour” has the meaning given in Article 1(2) of the Ministries (Transfer of Functions) Order (Northern Ireland) 1973<sup>F6</sup> (which transferred responsibility for fishery harbours to the Department of Agriculture);

“harbour” and “harbour authority” have the same meanings as in the Harbours Act (Northern Ireland) 1970;

“liability” includes an obligation;

“local statutory provision” includes—

- (a) a provision contained in a document made or issued under any local statutory provision (including a statutory provision confirming a provisional order); and

(b) a provision of any other instrument which is in the nature of a local statutory provision; “relevant port authority” has the meaning given in Article 3(3), and references to a former relevant port authority are references to any body which immediately before a transfer under Article 4 was a relevant port authority;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“statutory provision” has the meaning given in section 38(1) of the Harbours Act (Northern Ireland) 1970;

“subsidiary” and “wholly-owned subsidiary” have the meanings given by [F7section 1159 of the Companies Act 2006].

(3) References in this Order to—

- (a) the scheme;
- (b) the successor company; and
- (c) the authority,

are explained in Article 4(4).

(4) For the purposes of this Order the time when a disposal of securities or of rights to require the issue of securities of a company is made shall be determined as it would fall to be determined in accordance with section 28 of the 1992 Act for the purposes of tax on chargeable gains.

(5) In this Order—

- (a) references, in relation to a notice under Article 11(4)(a) or Article 14(3) affecting a harbour, to publication of the notice by local advertisement are references to publication in each of two successive weeks in one or more local newspapers circulating in the locality where the harbour is situated; and
- (b) references, in relation to such a notice, to the date of the first local advertisement are references to the date of the first publication of the notice in a local newspaper circulating in the locality where the harbour is situated.

(6) For the purposes of paragraph (5) a notice under Article 11(4)(a) or Article 14(3) relating to a scheme for the purposes of a proposed transfer under Article 4 of property, rights and liabilities and functions of a relevant port authority is to be regarded as affecting any harbour for which that authority is the harbour authority.

(7) For the purposes of any provision to which this paragraph applies a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in that provision shall be regarded as employed by the company or other body so mentioned.

(8) Paragraph (7) applies to the following provisions of this Order (all of which are concerned with participation by employees of a company in ownership of its equity share capital or related matters)—

- (a) Article 4(3)(c);
- (b) Article 7(3);
- (c) Article 15(3)(b);
- (d) Article 21;
- (e) Article 22(3)(b) and (6).

(9) References in this Order, in relation to any company, to maximising participation of employees of the company in ownership of its equity share capital shall be construed in accordance with Article 21.

- F2** 1954 c. 33 (NI)  
**F3** 1970 c. 1 (NI)  
**F4** 1992 c. 12  
**F5** Art. 2(2): words in the definition of "equity share capital" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 150(2)(a)** (with art. 10)  
**F6** S.R. & O. (N.I.) 1973 No. 128  
**F7** Art. 2(2): words in the definition of "subsidiary" and "wholly-owned subsidiary" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 150(2)(b)** (with art. 10)

### *Transfer of statutory port undertakings*

#### **Formation of companies for purposes of transfer of certain statutory port undertakings**

**3.—**(1) Any relevant port authority may form a company whose objects include the acquisition of property, rights and liabilities and the assumption of functions of the authority by virtue of a transfer under Article 4.

(2) Any company formed under paragraph (1) shall be a company limited by shares and registered under <sup>F8</sup>the Companies Act 2006].

(3) In this Order “relevant port authority” means any body which is a harbour authority, other than a company having a share capital or a district council.

- F8** Words in art. 3(2) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 150(3)** (with art. 10)

#### **Transfer of undertakings**

**4.—**(1) This Article applies where a scheme is made under this Order in relation to a relevant port authority which—

- (a) specifies a company formed in pursuance of Article 3 which is a wholly-owned subsidiary of the authority to be the authority's successor company for the purposes of this Order; and
- (b) makes the necessary supplementary provision for the purposes of the transfer provided for under this Article.

(2) Subject to paragraph (3), on the date on which the scheme takes effect—

- (a) all property, rights and liabilities of the authority; and
- (b) all functions conferred or imposed on the authority by any local statutory provision,

are transferred to and by virtue of this Article become property, rights and liabilities or (as the case may be) functions of the successor company.

(3) The transfer under paragraph (2)(a) does not apply—

- (a) to the securities of the successor company held by the authority;
- (b) to any rights or liabilities of the authority in respect of such securities held by a nominee of the authority; or
- (c) to any liability of the authority incurred by virtue of Article 22 in connection with any proposal for maximising participation by employees of the successor company in ownership of its equity share capital.

(4) In this Order, in relation to any transfer under this Article of property, rights, liabilities and functions of a relevant port authority—

- (a) references to the scheme are references to the scheme made for the purposes of the transfer;
- (b) references to the successor company are references to the company specified in the scheme as that authority's successor company; and
- (c) references to the authority are references to the body whose property, rights, liabilities and functions are the subject of the transfer.

(5) Part I of the Schedule (supplementary provisions of general application) has effect in relation to a transfer under this Article.

(6) In relation to any such transfer, the reference in paragraph (1)(b) to the necessary supplementary provision for the purposes of the transfer is a reference to provision of any one or more of the descriptions mentioned in Part II of the Schedule (supplementary provisions which may be included in schemes).

### *Disposal of ownership of the successor company*

#### ***Initial issue of securities of the successor company***

**5.—**(1) Following the transfer to the successor company under Article 4 of property, rights, liabilities and functions of the authority, the successor company shall issue such securities of the company as the authority may direct—

- (a) to the authority; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the authority.

(2) The authority shall not give a direction under paragraph (1) at a time when the successor company has ceased to be a wholly-owned subsidiary of the authority.

(3) Securities required to be issued in pursuance of this Article shall be issued or allotted at such times and on such terms (as to allotment) as the authority may direct.

(4) Shares issued in pursuance of this Article—

- (a) shall be of such nominal value as the authority may direct; and
- (b) shall be issued as fully paid and treated for the purposes of [F9 the Companies Acts (as defined in section 2(1) of the Companies Act 2006)] as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.

<p><b>F9</b> Words in art. 5(4)(b) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), <b>Sch. 1 para. 150(4)</b> (with art. 10)</p>
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#### ***Disposal by the authority of its holding in the successor company***

**6.—**(1) The authority shall exercise its powers under Article 5 in such manner as appears to it to be calculated to facilitate the disposal in accordance with this Article of the whole of the authority's holding in the successor company.

(2) For the purposes of this Article, that holding is to be regarded as consisting of—

- (a) the shares subscribed for by the authority or by any nominee of the authority on the formation of the successor company; and
- (b) all securities of the successor company issued or rights to require the issue of such securities initially allotted to the authority in pursuance of that Article.

(3) The authority shall provide for the disposal of all securities or rights comprised in that holding in such manner, at such times and on such terms as the authority thinks fit.

(4) Where any such securities or rights are disposed of in pursuance of any provision made under paragraph (3) a sum equal to 32.5 per cent. of the consideration given for the securities or rights shall be payable by the authority to the successor company within the period of 60 days beginning with the day on which the disposal is made.

### ***Control by the Department over exercise of authority's functions under Articles 5 and 6***

7.—(1) The authority shall not—

- (a) exercise any power conferred on it by Article 5; or
- (b) make any provision for the disposal of any securities or rights in pursuance of the authority's duty under Article 6(3),

without the consent of the Department.

(2) The Department may give the authority directions requiring the authority—

- (a) to exercise any such power in a specified manner; or
- (b) to make in pursuance of that duty provision of any specified description.

(3) The Department shall in exercising its powers under paragraph (2) have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital of the successor company to—

- (a) managers or other persons employed by the company; or
- (b) another company the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed.

(4) In this Article “specified” means specified in directions given by the Department under this Article.

### ***Supplementary provisions as to authority's functions***

8.—(1) The authority may do anything which it considers necessary or desirable for the purpose of carrying out any of its functions under Articles 5 and 6.

(2) The successor company shall—

- (a) so far as it is reasonably able to do so, make available for the use of the authority such premises and other facilities as the authority may require for the purpose of carrying out its functions under this Order; and
- (b) if so directed by the authority, meet on behalf of the authority any expenses incurred by the authority in carrying out its functions under this Order, or such part of any such expenses as the authority may direct.

### ***Dissolution of the authority***

9.—(1) Once the Department is satisfied—

- (a) that the functions of the authority under Articles 5 and 6(3) have been completely carried out;
- (b) that nothing further remains to be done by the authority under any provision made by the scheme; and
- (c) that the authority has met all expenses and liabilities incurred by it in carrying out its functions under this Order (including in particular liabilities in respect of levy under Article 15(1) or corporation tax on chargeable gains) other than—

- (i) any expenses met by the successor company in accordance with Article 8(2)(b); or
- (ii) any liabilities which the Department considers should be transferred to the successor company under paragraph (2),

the Department may, after consulting the authority, by order dissolve the authority on a day specified in the order.

(2) On that day any property, rights and liabilities to which the authority is entitled or subject immediately before that day (whether or not capable of being transferred or assigned by the authority) are transferred to and by virtue of this Article become property, rights and liabilities of the successor company.

### ***Treatment of net proceeds of disposal of ownership***

**10.**—(1) Subject to paragraph (2), an amount equal to the aggregate amount of the sums paid by the authority to the successor company under Article 6(4) shall be treated as accumulated realised profits of the successor company.

(2) The amount which under paragraph (1) falls to be treated as accumulated realised profits of the successor company shall be—

- (a) increased by any amount by which the asset value on the transfer to the successor company under Article 9 exceeds the liability amount; or
- (b) reduced by any amount by which the liability amount on that transfer exceeds the asset value,

as the case may require.

(3) In paragraph (2)—

“the asset value” means the aggregate value of the assets transferred; and

“the liability amount” means the aggregate amount of the liabilities transferred.

(4) For the purposes of this Article the value of any asset and the amount of any liability transferred to the successor company under Article 9 shall be taken to be its value or amount determined in accordance with any provision made by the scheme under paragraph 11 of the Schedule (transitional provision as to accounts, etc., of the successor company).

### ***Procedure for schemes***

#### ***Schemes made by a relevant port authority***

**11.**—(1) Any relevant port authority may, with a view to securing the transfer under Article 4 of the property, rights, liabilities and functions of the authority to a company formed in pursuance of Article 3, submit to the Department a scheme prepared by the authority for the purposes of the proposed transfer.

(2) Together with any such scheme the authority submitting it shall submit to the Department a copy of the memorandum and articles of the company.

(3) The documents submitted under paragraph (2) with any such scheme are referred to in this Article, in relation to the scheme, as the associated company documents.

(4) Where an authority has submitted such a scheme to the Department, the authority shall—

- (a) publish in the *Belfast Gazette* and by local advertisement the required notice relating to the scheme; and
- (b) take such steps as are reasonably practicable to serve a copy of that notice on—
  - (i) every employee of the authority; and

- (ii) every person who has power to appoint or nominate for appointment one or more members of the authority or who is required to be consulted in relation to any such appointment.
- (5) The required notice relating to such a scheme is a notice—
  - (a) stating that the authority has submitted to the Department a scheme prepared by the authority for the purposes of a proposed transfer under Article 4 to a company formed by the authority of the authority's property, rights, liabilities and functions;
  - (b) naming a place where copies of the scheme and the associated company documents may be seen at all reasonable hours; and
  - (c) stating that any person who wishes to make representations to the Department with respect to—
    - (i) the proposed transfer; or
    - (ii) any provisions of the scheme or of the associated company documents,should do so in writing before the end of the period of 42 days beginning with the date (specifying it) of the first local advertisement.
- (6) Paragraph (7) only applies where—
  - (a) the requirements of paragraphs (4) and (5) have been met in relation to a scheme submitted to the Department under this Article; and
  - (b) the period allowed for making representations to the Department with respect to the proposed transfer or any provisions of the scheme or of the associated company documents has expired.
- (7) The Department shall decide whether or not to confirm the scheme after considering any such representations duly made before the end of that period and not withdrawn; and the Department, if it decides to confirm the scheme—
  - (a) may do so either without modifications or with such modifications as it thinks fit after consulting the authority which submitted the scheme; and
  - (b) may first (if it thinks fit) give the authority a direction requiring the authority, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company mentioned in paragraph (1) as may be specified in the direction.
- (8) Confirmation of a scheme shall be given by an order made by the Department; and a scheme so confirmed shall take effect on the date on which the order confirming it comes into operation or on such date as may be specified in that order.

### ***Schemes initiated by the Department***

- 12.**—(1) The powers of the Department under this Article shall not be exercisable until after the end of the period of two years beginning with the date on which this Article comes into operation.
- (2) The Department may give to a relevant port authority which has not formed a company in pursuance of Article 3 and which meets the annual turnover requirement a direction requiring the authority to form such a company before such date as may be specified in the direction.
- (3) Where a relevant port authority which meets the annual turnover requirement—
  - (a) has formed such a company; or
  - (b) is given a direction under paragraph (2) requiring the authority to do so before a date specified in the direction;

the Department may give to the authority a direction requiring the authority (in a case within subparagraph (b), after first forming the company) to submit to the Department, before such date as may be specified in the direction, a scheme prepared by the authority for the purposes of a transfer to the company under Article 4 of the authority's property, rights, liabilities and functions.

(4) In preparing that scheme the authority shall take into account any advice given by the Department as to the provisions that the Department regards as appropriate for inclusion in the scheme.

(5) The provisions of Article 11 (other than paragraph (1)) shall apply in relation to a scheme submitted under this Article as they apply in relation to a scheme submitted under that Article.

(6) Before giving any direction to a relevant port authority under this Article the Department shall consult the authority.

(7) Where after consulting a relevant port authority under paragraph (6) with respect to any direction or directions which the Department is considering giving to the authority under this Article the Department determines not to give the direction, or either or both of the directions, under consideration it shall give the authority written notification of its decision.

(8) In any case within paragraph (7) the powers of the Department under this Article shall cease to be exercisable in relation to the authority until after the end of the period of five years beginning with the date on which the required notification is given.

(9) Directions under paragraphs (2) and (3) may be given at the same time if the Department thinks fit.

(10) In this Article “the annual turnover requirement” means the annual turnover requirement under Article 13.

### ***The annual turnover requirement for the purposes of Article 12***

**13.—**(1) A relevant port authority meets the annual turnover requirement mentioned in Article 12 at the time when any direction is given to that authority by the Department under that Article if the annual turnover of the authority exceeded the turnover limit in the case of at least two of the last three accounting years of the authority ending before that time.

(2) For the purposes of paragraph (1), the annual turnover of a relevant port authority for any accounting year of the authority is the aggregate, as stated in any statement of accounts prepared under section 30 of the Harbours Act (Northern Ireland) 1970<sup>F10</sup> in respect of that accounting year, of all sums received by the authority during that year.

(3) The reference in paragraph (2) to sums received by the authority does not include sums received by way of grant from any public authority or any capital receipts or loans.

(4) In paragraphs (5) to (7) “the base date” means the date on which this Order comes into operation.

(5) For the purposes of this Article—

- (a) the turnover limit, in relation to any accounting year of a relevant port authority, is the turnover limit applicable to the reference year in which that accounting year ends;
- (b) the reference years are the year ending immediately before the base date, the year beginning with that date and each succeeding year beginning with an anniversary of that date; and
- (c) the turnover limit applicable to a reference year is £5 million unless paragraph (6) applies, in which case it is the amount determined under that paragraph.

(6) Where in the case of any anniversary of the base date the retail prices index for the month in which that anniversary falls shows a percentage increase over that for the month in which the base



date falls, the turnover limit applicable to the reference year beginning with that anniversary shall be an amount arrived at by—

- (a) increasing the sum of £5 million by a percentage equal to that percentage increase; and
- (b) rounding the result to the nearest £100,000.

(7) The Department of Finance and Personnel shall publish in the Belfast Gazette the turnover limit applicable to any reference year beginning with an anniversary of the base date as soon as practicable after that anniversary.

(8) The reference in paragraph (6) to the retail prices index is a reference to the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer; and if that index is not published for any month relevant for the purposes of that paragraph that reference shall be read as a reference to any substituted index or index figures published by that Office for that month.

**F10** 1970 c. 1 (NI)

### ***Schemes made by the Department***

**14.**—(1) Where—

- (a) a scheme ( “the authority's scheme”) has been submitted to the Department by a relevant port authority under Article 12; but
- (b) it appears to the Department that the scheme does not accord with any advice given by the Department as mentioned in paragraph (4) of that Article and cannot be made to do so by any modifications which it is within the power of the Department to make,

the Department may itself make a scheme for the purposes of a transfer under Article 4 to the company specified in the authority's scheme of the authority's property, rights, liabilities and functions.

(2) The Department shall consult the authority concerned before preparing the scheme.

(3) Before making the scheme the Department shall publish in the Belfast Gazette and by local advertisement a notice—

- (a) stating that the Department proposes to make a scheme for the purposes of a proposed transfer under Article 4 to a company formed by the authority of the authority's property, rights, liabilities and functions;
- (b) naming a place where copies of the proposed scheme and any associated company documents may be seen at all reasonable hours; and
- (c) stating that any person who wishes to make representations to the Department with respect to—
  - (i) the proposed transfer; or
  - (ii) any provisions of the proposed scheme or of any associated company documents;should do so in writing before the end of the period of 42 days beginning with the date (specifying it) of the first local advertisement.

(4) On or before the date of the first local advertisement the Department shall serve on the relevant port authority in question—

- (a) a notice complying with paragraph (5); and
- (b) a copy of the proposed scheme.

(5) A notice under paragraph (4)(a) must—

- (a) state that the Department proposes to make the scheme; and

- (b) direct the authority concerned to take such steps as are reasonably practicable to give such information as may be specified in the notice, in such manner as may be so specified, to every person on whom that authority would be required under Article 11(4)(b) to serve notice relating to such a scheme prepared by that authority.
- (6) The Department shall not make the scheme until after the end of the period allowed for making representations with respect to the proposed transfer or any provisions of the proposed scheme or of any associated company documents.
- (7) The Department shall decide whether or not to make the scheme after considering any such representations duly made before the end of that period and not withdrawn; and the Department, if it decides to make the scheme—
  - (a) may make it as proposed or with such modifications as the Department thinks fit after consulting the authority concerned; and
  - (b) may first (if it thinks fit) give the authority a direction requiring the authority, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company mentioned in paragraph (1) as may be specified in the direction.
- (8) Any scheme made by the Department under this Article shall be made by order; and a scheme so made shall take effect on the date on which the order in question comes into operation or on such date as may be specified in that order.
- (9) References in this Article to any associated company documents are references to any documents submitted under Article 11(2) with the authority's scheme.

### *Levy on initial disposals of securities of successor companies*

#### ***Levy on initial disposals of securities of successor companies***

- 15.—**(1) A levy shall be chargeable on the disposal of securities of a company made in pursuance of any provision for such disposal made under Article 6(3) by a former relevant port authority.
- (2) Levy shall be charged at the rate of 50 per cent. on the consideration given for the securities disposed of.
- (3) There shall be allowed as a deduction from the amount on which levy would otherwise be chargeable any expenditure wholly and exclusively incurred for the purposes of the disposal by the former relevant port authority, being—
- (a) fees, commissions or remuneration paid for professional services;
  - (b) costs incurred in pursuance of Article 22 in connection with any proposal for maximising participation by employees of the company whose securities are the subject of the disposal in ownership of its equity share capital (whether or not the disposal is made for the purposes of implementing any such proposal);
  - (c) costs of transfer; or
  - (d) costs of advertising.
- (4) Where—
- (a) a scheme has been effected or arrangements have been made (whether before or after a disposal) whereby the value of securities disposed of has been materially reduced; and
  - (b) the aim or one of the aims of the scheme or arrangements is decreasing liability to levy,
- the amount on which levy would be chargeable apart from this paragraph shall be increased by such amount as appears to the Department to be appropriate.

(5) The Department, with the consent of the Department of Finance and Personnel, may by order substitute for the percentage for the time being specified in paragraph (2) such other percentage as may be specified in the order.

### ***Payment of levy***

**16.—**(1) Levy chargeable on a disposal shall be paid to the Department by the former relevant port authority by which the disposal was made.

(2) The amount of the levy shall be assessed by the Department which shall serve a notice of assessment on the former relevant port authority stating the date of issue of the notice of assessment and the effect of paragraph (3).

(3) The amount assessed shall be payable within the period of three months beginning with the day on which the disposal was made or within the period of 30 days beginning with the date of issue of the notice of assessment, if that period ends later.

(4) A person who is liable to make a payment of levy but does not make payment of the amount due during the period within which it is payable shall also pay to the Department interest on the unpaid levy at the rate applicable under paragraph (5) from the first day after the end of that period until payment of the levy is made; and the interest shall be paid without deduction of tax.

(5) The rate applicable under this paragraph shall be—

- (a) the rate from time to time prescribed under section 178 of the Finance Act 1989<sup>F11</sup> for the purpose of any enactment (whether or not extending to Northern Ireland) specified in an order made under this paragraph by the Department of Finance and Personnel;
- (b) such other rate as may be so specified.

(6) A disposal made by a nominee of the former relevant port authority shall be regarded for the purposes of this Article as made by the authority.

**F11** 1989 c. 26

### ***Information for purposes of levy***

**17.—**(1) Where—

- (a) a former relevant port authority; or
- (b) a nominee of such an authority,

makes a disposal of securities on which levy is chargeable, the authority shall give to the Department not later than 30 days after the day on which the disposal is made, written notification that the disposal has been made.

(2) The Department may by notice in writing require—

- (a) a former relevant port authority;
- (b) any nominee of such an authority which has made a disposal of securities on which levy is chargeable;
- (c) a person to whom such a disposal has been made; or
- (d) a company whose securities have been the subject of such a disposal;

to deliver to the Department documents, or to furnish to it particulars, to which paragraph (3) applies within such time, not less than 30 days after the date of the notice, as may be specified in the notice.

(3) This paragraph applies to—

- (a) documents specified or described in the notice under paragraph (2) which are in the possession or power of the person to whom the notice is given and which (in the opinion of the Department) contain, or may contain, information relevant to a liability to levy or to the amount of such a liability; and
  - (b) particulars specified or described in the notice which the Department may reasonably require as being relevant to, or to the amount of, such a liability.
- (4) Where a former relevant port authority fails to give a notification in accordance with paragraph (1), or such an authority or any other person fails to comply with a notice under paragraph (2), the authority or that other person shall be liable—
- (a) to a penalty not exceeding £300; and
  - (b) if the failure continues after a penalty is imposed under sub-paragraph (a), to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this sub-paragraph has already been imposed).
- (5) Where a person fraudulently or negligently furnishes any incorrect particulars in response to a notice under paragraph (2) he shall be liable to a penalty not exceeding £3,000.
- (6) Proceedings for a penalty under this Article shall be instituted by the Department before the High Court and any penalty imposed by the court shall be paid to the Department.
- (7) Proceedings within paragraph (6) may not be instituted later than six years after the date on which the penalty was incurred or began to be incurred.
- (8) Any proceedings within paragraph (6) shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947<sup>F12</sup>.

**F12** 1947 c. 44

### <sup>F13</sup>**Notice of assessment: supplementary provisions**

**17A.**—(1) Where a notice of assessment has been served under Article 16(2) on a former relevant port authority ( “the authority”), the authority may, within the period mentioned in Article 16(3), by notice in writing request the Department to reconsider the amount of the assessment.

The request shall set out the grounds on which the authority alleges that the amount assessed is incorrect.

(2) If it appears to the Department that there are reasonable grounds for believing that the amount of the assessment may be excessive, the Department may direct that Article 16(3) and (4) shall not apply to the whole amount of the assessment but only to such lesser amount as the Department may specify.

(3) If a request for reconsideration is duly made, the Department shall reconsider the amount of the assessment and may confirm or reduce it.

An appeal lies to the High Court from any decision of the Department under this paragraph.

(4) The Department may reconsider the amount of an assessment under Article 16(2) in any other case, if the Department thinks fit, and may confirm or reduce it.

(5) When the amount of the assessment is finally determined—

- (a) if the amount of the assessment is less than the amount paid by the authority, the Department shall make such payment to the authority as is required to put the authority in the same position as if the reduced amount had been specified in the original assessment;

- (b) if a further amount is payable by the authority, Article 16(3) and (4) shall apply in relation to that amount as if the reference to the date of issue of the notice of assessment were a reference to the date of the determination.
- (6) Except as provided by this Article a notice of assessment under Article 16(2) shall not be questioned in any legal proceedings whatsoever.]

**F13** 1995 NI 10

***Supplementary and consequential provisions relating to levy***

- 18.**—(1) In Articles 15 to 17 and this Article “levy” means levy under Article 15(1).
- (2) For the purposes of those Articles and this Article a disposal of rights to require the issue of securities of a company shall be treated as a disposal of the securities.
- (3) A payment of levy by a former relevant port authority shall be allowable as a deduction from the consideration in the computation under the 1992 Act of the gain accruing to the authority on a disposal of securities on which levy is chargeable; but, subject to that, no payment of levy, interest on unpaid levy or penalty under Article 17 shall be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (4) Section 17(1) of that Act (disposals and acquisitions treated as made at market value) shall not apply to a disposal of securities of a company on which levy is chargeable.

*Levy on disposals of land, etc.*

***Levy on disposals of land, etc.***

**19.**—(1) Where property, rights, liabilities and functions of a relevant port authority are transferred under Article 4 to a company ( “the chargeable company”), a levy under this Article shall be chargeable in respect of any gain accruing to the company on a chargeable disposal of—

- (a) relevant land; or
- (b) a relevant estate in land;

made within the period of ten years beginning with the date on which the company ceases to be a wholly-owned subsidiary of the body which immediately before the transfer was the relevant port authority in question ( “the levy period”).

- (2) For the purposes of paragraph (1)—
- (a) land is relevant land if—
- (i) it is transferred by the transfer; or
- (ii) it belongs both immediately before and immediately after the transfer to a transferred 51 per cent. subsidiary; and
- (b) an estate in land is a relevant estate if—
- (i) it is transferred by the transfer;
- (ii) it belongs both immediately before and immediately after the transfer to a transferred 51 per cent. subsidiary; or
- (iii) it is an estate of any specified description in land which is relevant land or in land in which a relevant estate within head (i) or (ii) subsists at the time of the transfer.
- (3) The levy shall be charged—
- (a) at the rate of 25 per cent. on the amount of the gain, in the case of a disposal made within the first five years of the levy period;

- (b) at the rate of 20 per cent. on the amount of the gain, in the case of a disposal made within the sixth or seventh year of that period; and
  - (c) at the rate of ten per cent. on the amount of the gain, in the case of a disposal made during the remainder of that period.
- (4) The levy shall be paid by the chargeable company to the Department.
- (5) There is a disposal of land or an estate in land for the purposes of this Article and Article 20 if there would be such a disposal for the purposes of the 1992 Act.
- (6) In addition, there is such a disposal for the purposes of this Article in any case where—
- (a) there would be such a disposal for the purposes of the 1992 Act by virtue of section 178(3) or (5) or 179(3) or (6) of that Act (deemed disposal of assets by company leaving a group) if the relevant six-year limit were disregarded; and
  - (b) the operative time falls within the levy period.
- (7) For the purposes of paragraph (6)—
- (a) “the relevant six-year limit” means in relation to section 178(3) or 179(3) the six-year period mentioned in section 178(1) or 179(1) and in relation to section 178(5) or 179(6) the six-year period mentioned in section 178(5)(a) or 179(6)(a); and
  - (b) “the operative time” means—
    - (i) in relation to section 178(3) or 179(3), the time when the company in question ceases for the purposes of that section to be a member of the group referred to in subsection (1) of that section; and
    - (ii) in relation to section 178(5) or 179(6), the time when the company in question ceases to satisfy the conditions specified in section 178(6) or 179(7).
- (8) The Department may by order make provision—
- (a) for determining when and by whom any disposal of land or an estate in land is to be regarded for the purposes of this Article as being made;
  - (b) specifying the descriptions of disposal which are to be chargeable disposals for the purposes of this Article;
  - (c) for determining in what circumstances a gain is to be regarded for the purposes of this Article as accruing to the chargeable company on such a disposal and the amount of any gain so accruing; and
  - (d) for the administration, assessment, collection and recovery of levy under this Article;
- and the order may contain such supplementary, incidental or consequential provisions as appear to the Department to be appropriate.
- (9) Without prejudice to the generality of paragraph (8), the provision authorised by that paragraph includes in particular provision—
- (a) for treating a disposal of land or an estate in land as being made at any specified time notwithstanding that it is not the time at which the disposal takes place, or is to be regarded as taking place, for the purposes of the 1992 Act (including that Act as it applies by virtue of paragraph (6));
  - (b) for treating a gain as accruing to the chargeable company in specified circumstances on a disposal of land or an estate in land notwithstanding that no actual benefit accrues to that company on the disposal (including in particular circumstances where the disposal is made by a person other than that company);
  - (c) for treating a disposal made in specified circumstances as having been made for consideration of any specified description;

- (d) with respect to the principles, assumptions and methods to be applied in making any valuation of land or an estate in land for the purpose of determining the amount of any gain accruing on a disposal;
  - (e) with respect to the payment of interest at such rate as may be specified, or as may be determined by or under the order, in respect of any amount of levy not paid within the period during which it is payable in accordance with the order;
  - (f) imposing penalties (including continuing penalties) in respect of contraventions of provisions of any order under this Article; and
  - (g) applying for any purposes of the order any statutory provisions relating to corporation tax on chargeable gains with such modifications as may be specified.
- (10) The provision referred to in paragraph (9)(a) includes provision for treating a disposal as being made at a time falling within the levy period notwithstanding that for the purposes there mentioned it takes place, or is to be regarded as taking place, before the beginning of that period.
- (11) In this Article—
- (a) “specified” means specified in an order under this Article; and
  - (b) “transferred 51 per cent. subsidiary” means, in relation to a transfer under Article 4, a company which—
    - (i) immediately before the transfer is an effective 51 per cent. subsidiary of the relevant port authority in question; and
    - (ii) by virtue of the transfer becomes such a subsidiary of the chargeable company.
- (12) In paragraph (11)(b) “effective 51 per cent. subsidiary” has the meaning that it would have for the purposes of sections 170 to 181 of the 1992 Act by virtue of subsections (7) and (8) of section 170 if the word “or” were substituted for the word “and” at the end of paragraph (a) of subsection (7) (by virtue of which, for a company to be an effective 51 per cent. subsidiary of another company, that other company must meet conditions both as to entitlement to profits and as to entitlement to assets on a winding up).

### ***Supplementary and consequential provisions relating to levy under Article 19***

**20.**—(1) The Department may, with the consent of the Department of Finance and Personnel, by order substitute for any percentage specified in Article 19(3) such other percentage as may be specified in the order.

(2) Subject to paragraphs (3) and (4), any amount payable or paid by any company in respect of levy under that Article on any disposal shall be allowable as a deduction from the consideration in the computation under the 1992 Act of the gain accruing to that company or to any other person on the disposal.

References below in this Article, in relation to any disposal on which levy under that Article is chargeable, to the levy amount are references to any amount so payable or paid in respect of the levy.

(3) Paragraph (2) shall not apply where—

- (a) apart from the deduction of the levy amount an allowable loss would accrue to the company or to any other person on the disposal; or
- (b) such a loss would so accrue if the levy amount were deducted;

but in the latter case the person making the disposal shall be treated for the purposes of corporation tax on chargeable gains as if the disposal had been made for a consideration of such amount as would secure that neither a gain nor a loss would accrue to that person.

(4) Paragraph (2) shall not apply where a disposal on which levy under Article 19 is chargeable is one which, by virtue of section 139(1) or 171(1) of the 1992 Act (company reconstructions and

amalgamations and transfers within groups of companies), is treated as made for a consideration ( “the original consideration”) giving rise to neither a gain nor a loss.

(5) Where in any case within paragraph (4) the original consideration is less than the market value at the time of the disposal of the land or estate in land which is the subject of the disposal, the consideration for which the disposal is treated by the provision in question as being made shall be increased by—

- (a) the levy amount; or
- (b) the excess of that market value over the original consideration,

whichever is the less.

(6) Except as provided in paragraphs (2) to (5), no amount payable or paid in respect of levy under Article 19 or interest on such levy shall be allowed as a deduction or otherwise taken into account in computing any income, profits or losses for any tax purposes.

(7) In this Article “allowable loss” has the same meaning as in the 1992 Act.

### *Employee participation*

#### ***Maximising employee participation***

**21.** In this Order references, in relation to any company, to maximising participation by employees of the company in ownership of its equity share capital are references to securing the disposal of the whole or a substantial part of its equity share capital ( “the relevant equity”) to—

- (a) managers or other persons employed by the company; or
- (b) another company ( “the acquiring company”) the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed;

where the persons so employed participating in acquiring the relevant equity or (as the case may be) in ownership of the acquiring company's equity share capital comprise the greatest possible number of persons so employed.

#### ***Financial assistance for proposals to maximise employee participation in equity of successor companies***

**22.—**(1) The power under paragraph (2)—

- (a) is exercisable by a body which is a relevant port authority in any case where that body proposes to form or has formed a company in pursuance of Article 3; and
- (b) is exercisable by a body which was such an authority immediately before the transfer under Article 4 to a company formed by that body of its property, rights, liabilities and functions;

and references in this Article, in relation to any such body, to the relevant company are references to the company it proposes to form or has formed (as the case may require).

(2) The body concerned may on such terms as it thinks fit agree with any persons who at the time of the agreement qualify for assistance from it under this Article—

- (a) to indemnify those persons in respect of the whole or any part of any expenditure to which paragraph (4) applies; or
- (b) to discharge on their behalf the whole or any part of any liability to which that paragraph applies.

(3) For the purposes of paragraph (2) persons qualify for assistance under this Article from any body if—

- (a) each of them satisfies the employment condition as regards assistance from that body;



- (b) they have formulated a proposal for maximising participation by employees of the relevant company in ownership of its equity share capital; and
  - (c) they appear to the body concerned to have a reasonable prospect of securing that the objective of the proposal is achieved.
- (4) This paragraph applies to any expenditure or liability of the persons concerned incurred wholly and exclusively for the purposes of the proposal mentioned in paragraph (3)(b).
- (5) Where in accordance with paragraph (3) different persons would qualify for assistance under this Article from any body in respect of different proposals, only such of them as appear to the body concerned to have the best prospect of securing that the objective mentioned in sub-paragraph (b) of that paragraph is achieved shall be regarded as qualifying for such assistance.
- (6) A person satisfies the employment condition as regards assistance under this Article from any body—
- (a) so long as it is a relevant port authority, if he is employed by it; and
  - (b) after it has ceased to be such an authority, if he is employed by the relevant company.

### *Miscellaneous*

#### ***Stamp duty***

- 23.** No transfer effected by this Order shall give rise to any liability to stamp duty.

#### ***Directions***

- 24.—**(1) Any person to whom any directions are given in pursuance of any provision of this Order shall give effect to those directions.
- (2) Any directions given by the Department shall be in writing.

#### ***Orders***

- 25.** Orders under paragraph (8) of Article 11 as that paragraph applies in relation to a scheme submitted under Article 12 and orders under Article 14(8), 15(5), 16(5), 19 or 20(1) shall be subject to affirmative resolution.

## SCHEDULE

Article 4(5) and (6).

### SUPPLEMENTARY PROVISIONS WITH RESPECT TO TRANSFERS UNDER ARTICLE 4

## PART I

### SUPPLEMENTARY PROVISIONS OF GENERAL APPLICATION

#### *Interpretation*

**1.** In this Part—

“the transfer date” means the date on which the transfer takes effect; and

“the transfer” means the transfer in question under Article 4 (and references to the transferor and the transferee and to transferred property, rights, liabilities or functions shall be read accordingly).

#### *Construction of agreements, statutory provisions and documents*

**2.—**(1) Where any transferred rights or liabilities are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, that agreement shall have effect on and after that date as if—

- (a) the transferee had been a party to the agreement; and
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after that date, a reference to the transferee; and
- (c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after that date, a reference—
  - (i) to such person as the transferee may appoint; or
  - (ii) in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the person referred to in the agreement.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such nature that rights and liabilities under it could be assigned by the transferor.

**3.—**(1) Paragraph 2 (except sub-paragraph (1)(a)) shall apply in relation to—

- (a) any statutory provision;
- (b) any provision of any agreement to which the transferor was not a party; and
- (c) any provision of any document other than an agreement;

as it applies in relation to an agreement to which the transferor was a party.

(2) Sub-paragraph (1) has effect in relation to any such provision only if and so far as the provision relates to—

- (a) any of the transferred property, rights, liabilities or functions; or
- (b) any business or activity to which any of the transferred property, rights, liabilities or functions relates.

(3) In relation to any such provision, references in paragraph 2(1)(b) and (c) to the transferor and to any persons employed by, or engaged in the business of, the transferor include references

made by means of a general reference to a class of persons of which the transferor is one, without the transferor being specifically referred to.

4.—(1) The transferee and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any transferred right or liability as they would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to—

(a) any transferred property, right, liability or function; or

(b) any agreement or enactment relating to any such property, right, liability or function;

shall be continued by or against the transferee to the exclusion of the transferor.

(3) This paragraph is without prejudice to the generality of paragraphs 2 and 3.

5. Paragraphs 2 to 4 have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

#### *Transfer of rights and liabilities relating to employment*

6. For the purposes of the [<sup>F14</sup>Transfer of Undertakings (Protection of Employment) Regulations 2006] Article 4 shall be regarded as effecting a transfer to which those regulations apply of the whole of the transferor's undertaking, including any part of it which is not in the nature of a commercial venture; and accordingly in those regulations, as they apply in relation to such a transfer, references to the undertaking apply to all activities (of whatever description) carried on before the transfer by the transferor.

**F14** Words in *Sch. para. 6* substituted (6.4.2006) by virtue of *Transfer of Undertakings (Protection of Employment) Regulations 2006* (S.I. 2006/246), reg. 20(3), *Sch. 2 para. 1(g)* (with reg. 21(1))

## PART II

### SUPPLEMENTARY PROVISIONS WHICH MAY BE INCLUDED IN SCHEMES

#### *Interpretation*

7. References in this Part to the statutory accounts of the successor company are references to—

(a) any accounts prepared by that company for the purposes of any provision of [<sup>F15</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)], including group accounts but excluding any accounts so prepared by virtue of any provision of the scheme made under paragraph 13; and

(b) any statement of accounts prepared by that company under section 30 of the Harbours Act (Northern Ireland) 1970<sup>F16</sup>.

**F15** Words in *Sch. para. 7(a)* substituted (6.4.2008) by *Companies Act 2006 (Consequential Amendments etc) Order 2008* (S.I. 2008/948), arts. 2(2), 3(1)(b), *Sch. 1 para. 198(2)* (with arts. 6, 11, 12)

**F16** 1970 c. 1 (NI)

8. References in this Part to the last statutory accounts of the relevant port authority in question are references to the last statement of accounts prepared by that authority under section 30 of the

Harbours Act (Northern Ireland) 1970 before the date on which the transfer under Article 4 takes effect.

*Description of provisions*

**9.** Provision altering the constitution of the authority.

**10.—**(1) Provision imposing obligations on the authority with respect to—

- (a) the keeping of accounts and records in relation to the accounts;
- (b) the preparation in respect of any period in respect of which such a statement is required by the scheme of a statement of accounts relating to the state of affairs and the income and expenditure of the authority; and
- (c) the audit of the authority's accounts by auditors qualified for the purpose in accordance with the scheme;

and requiring copies of audited accounts and the report of the auditor on such accounts to be sent to the Department.

(2) Provision under this paragraph may include in particular a requirement that any such statement of accounts should comply with requirements imposed by the Department in such manner, and with respect to such matters, as may be specified in the scheme.

**11.—**(1) Provision that—

- (a) for the purposes of any statutory accounts of the successor company and for such other purposes (if any) as may be prescribed the value of any asset and the amount of any liability transferred to the successor company under Article 4 or 9 shall be taken to be the pre-transfer value of that asset or (as the case may be) the pre-transfer amount of that liability;
- (b) a prescribed amount not exceeding any accumulated realised profits of the relevant port authority in question at the date of the transfer under Article 4 shall be treated as accumulated realised profits of the successor company;
- (c) subject to any provision made by virtue of head (a) or (b), for the purposes of any statutory accounts of the successor company the amount to be included in respect of any item shall be determined as if anything done by the authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

(2) For the purposes of sub-paragraph (1)(a) the pre-transfer value of an asset or (as the case may be) the pre-transfer amount of a liability is—

- (a) in the case of an asset or liability transferred under Article 4, the value or (as the case may be) the amount which would have been assigned to that asset or liability for the purposes of the last statutory accounts of the relevant port authority in question if the accounting year of that authority dealt with in those accounts had ended immediately before the date of the transfer; and
- (b) in the case of an asset or liability transferred under Article 9, the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the last statement of accounts prepared by the authority by virtue of any provision of the scheme made under paragraph 10.

(3) In sub-paragraph (1) “prescribed”, in relation to any provision that may be made by the scheme, means specified or described in or determined in accordance with the scheme.

**12.—**(1) Provision requiring the successor company either—

- (a) to prepare a statement of accounts relating to the state of affairs and the income and expenditure of the relevant port authority in question in respect of any residual accounting period of that authority; or
  - (b) to deal with those matters in its statutory accounts in respect of any period which consists of or includes any residual accounting period of that authority.
- (2) Provision under sub-paragraph (1)(a) may include provision corresponding to that authorised under paragraph 10 in relation to the authority's accounts.
- (3) Provision under sub-paragraph (1)(b) may impose requirements with respect to the manner in which the matters there mentioned are to be dealt with in the successor company's statutory accounts.
- (4) References in this paragraph to a residual accounting period of the relevant port authority are references to any period falling after the end of the accounting year of that authority dealt with in the authority's last statutory accounts.

**13.—**(1) Provision for applying [<sup>F17</sup>sections 836 to 840 of the Companies Act 2006] relevant accounts for determining whether a distribution is lawful) in relation to any initial distribution of the successor company as if—

- (a) the accounts prepared by that company in accordance with the provision authorised in this paragraph were accounts relevant under [<sup>F18</sup>section 836]; and
  - (b) references in [<sup>F19</sup>section 839] to initial accounts included references to any such accounts.
- (2) The accounts referred to in sub-paragraph (1) are such accounts as, on such assumptions as may be specified in or made in accordance with any provision of the scheme, would have been prepared under [<sup>F20</sup>Part 15 of the Companies Act 2006] in respect of the last accounting year of the relevant port authority in question ending before the date on which the transfer under Article 4 takes effect.
- (3) The provision that may be made by the scheme with respect to those accounts includes provision corresponding to that authorised under paragraph 11(1)(c) in relation to statutory accounts of the successor company.
- (4) The reference in sub-paragraph (1) to an initial distribution of the successor company is a reference to any distribution declared—
- (a) during the accounting reference period of that company which includes the date on which the transfer under Article 4 takes effect; or
  - (b) before any accounts of that company are laid or delivered to the registrar of companies in respect of that period.

**F17** Words in Sch. para. 13(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 198(3)(a) (with arts. 6, 11, 12)

**F18** Words in Sch. para. 13(1)(a) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 198(3)(b) (with arts. 6, 11, 12)

**F19** Words in Sch. para. 13(1)(b) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 198(3)(c) (with arts. 6, 11, 12)

**F20** Words in Sch. para. 13(2) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 198(3)(d) (with arts. 6, 11, 12)

**14.—**(1) Such supplementary, incidental or consequential provision as appears to the relevant port authority in question (or, where the scheme is made by the Department, to the Department) to be necessary or expedient for the purposes or in consequence of, or in connection with, the operation of any provision of this Order or of the scheme.

**Changes to legislation:** *There are currently no known outstanding effects for the The Ports (Northern Ireland) Order 1994. (See end of Document for details)*

(2) Provision under this paragraph may include in particular provision for repealing or amending any local statutory provision affecting the relevant port authority in question or any harbour for which that authority is the harbour authority; and any such provision may be made so as to take effect on the date on which the scheme takes effect or on the date on which the authority is dissolved under Article 9.

**Changes to legislation:**

There are currently no known outstanding effects for the The Ports (Northern Ireland) Order 1994.