

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>F1</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.

**F1** 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>F2</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>F3</sup>.

**F2** 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)

**F3** 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>F4</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>F5</sup>section 836]; and
- (b) references in [<sup>F6</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>F7</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.

**F4** 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)

**F5** 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)

**F6** 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)

**F7** 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.

(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, SCHEDULE.