

## SCHEDULE

### 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))

**Changes to legislation:**

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