

1990 No. 1338

PILOTAGE

**The Pilotage Act 1987 (Pilotage Commission: Transfer of
Property, Rights and Liabilities) Order 1990**

<i>Made</i> - - - -	<i>2nd July 1990</i>
<i>Laid before Parliament</i>	<i>10th July 1990</i>
<i>Coming into force</i>	<i>31st July 1990</i>

Whereas pursuant to section 26(2) of the Pilotage Act 1987(a) (hereinafter referred to as “the Act”) the Pilotage Commission submitted, on 14th March 1989, to the Secretary of State a scheme for the winding-up of the Commission and the disposal of the property, rights and liabilities of the Commission and the arrangements to be made as respects its staff;

And whereas section 26(3) of the Pilotage Act 1987 provides for the property, rights and liabilities of the Pilotage Commission to be transferred and arrangements to be made as respects any staff of the Pilotage Commission by Order in accordance with a scheme made under section 26(2) of the Act as modified by the Order:

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred on him by section 26(3) of the Pilotage Act 1987 and of all other powers enabling him in that behalf hereby makes the following Order:-

1. This Order may be cited as the Pilotage Act 1987 (Pilotage Commission: Transfer of Property, Rights and Liabilities) Order 1990 and shall come into force on 31st July 1990.

2. In this Order “the Scheme” means the Scheme submitted to the Secretary of State by the Pilotage Commission pursuant to section 26(2) of the Pilotage Act 1987, and set out in Schedule 1 hereto.

3. The Scheme shall come into operation subject to the modifications set out in Schedule 2 to this Order.

4. The property, rights and liabilities of the Pilotage Commission are hereby transferred in accordance with Article 2 of the Scheme subject to the modifications to the Scheme set out in Schedule 2.

5. The arrangements as respects the staff of the Pilotage Commission shall be in accordance with Article 3 of the Scheme.

(a) 1987 c.21.

2nd July 1990

Patrick McLoughlin
Parliamentary Under-Secretary of State
Department of Transport

SCHEDULE 1

Article 2

SCHEME FOR THE ABOLITION OF THE PILOTAGE COMMISSION

Pursuant to its obligations under Section 26(2) of the Pilotage Act 1987, the Pilotage Commission hereby submits to the Secretary of State a scheme for the winding up of the Pilotage Commission and the disposal of the property, rights and liabilities of the Commission and the arrangements to be made as respects its staff, including in particular proposals concerning the payment of pensions in respect of staff or former staff and any compensation to be paid to staff for loss of employment.

Interpretation

1.—(1) In this Scheme—

“Competent Harbour Authority” has the meaning set out in Section 1 of the Pilotage Act 1987;

“Commission” means the Pilotage Commission;

“Commissioners” means the Commissioners of the Commission;

“EPCA” means the Employment Protection (Consolidation) Act 1978(a);

“Insolvency Act” and “Insolvency Rules” mean, respectively, the Insolvency Act 1986(b) and the Insolvency Rules 1986(c) as amended by the Insolvency (Amendment) Rules 1987(d). References in the Insolvency Act and Insolvency Rules to “the company” shall be deemed to be references to “the Commission”;

“Liquidation Date” means the date on which the Commissioners shall pass a resolution for the winding-up of the Commission in accordance with paragraph (1) of Article 2 hereof;

“Liquidators” means the persons appointed pursuant to paragraph (1) of Article 2 hereof;

(2) The Interpretation Act 1978(e) shall apply for the interpretation of this Scheme as it applies for the interpretation of an Act or Parliament and as if this Scheme was an Act of Parliament.

(3) Words and expressions defined in the Insolvency Act and Insolvency Rules and used in this Scheme shall except insofar as the context otherwise requires have the meaning ascribed to them in the Insolvency Act and Insolvency Rules.

Winding up of the Commission and disposal of property, rights and liabilities

2.—(1) The Commission shall be wound up by the passing of a unanimous resolution of the Commissioners present at a meeting of the Commissioners duly held in accordance with the Commission’s regulations on or prior to 31 August 1989. Such resolution shall appoint William Morys Roberts and Nigel James Hamilton, both of Ernst & Young, Becket House, 1 Lambeth Palace Road, London SE1 7EV, chartered accountants and authorised insolvency practitioners, or such other person or persons who are authorised insolvency practitioners as the Commissioners may decide, as joint liquidators for the purpose of winding-up the Commission’s affairs and distributing its assets. The Liquidators shall have the power to act singly.

(2) The winding up of the Commission is deemed to commence at the time of the passing of the resolution passed pursuant to paragraph (1) of this Article from which time the Commission shall cease to carry on its business except so far as may be required for its beneficial winding up and the powers of the Commissioners shall cease save for the powers set out in paragraph (3) of this Article and save as the Liquidators sanction their continuance.

(a) 1978 c.44.

(b) 1986 c.45.

(c) S.I. 1986/1925.

(d) S.I. 1987/1919.

(e) 1978 c.30.

(3) The following powers of the Commissioners shall continue after the Liquidation Date until such time as the Liquidators are released from their office pursuant to paragraph (15) of this Article:

- (a) to approve the final accounts and final report of the Commission;
- (b) to receive reports from the Liquidators and statements of their receipts and payments;
- (c) to hold meetings with the Liquidators at their request;
- (d) to receive reports from the Liquidators on such matters as appear to the Liquidators to be, or as the Commissioners have indicated to the Liquidators as being, of concern to them in relation to the liquidation;
- (e) to approve the remuneration of the Liquidators;
- (f) to sanction exercise by the Liquidators of any of the powers set out in Part I of Schedule 4 to the Insolvency Act;
- (g) to give such directions to the Liquidators as regards the liquidation as the Commissioners may require or the Liquidators may request;
- (h) to certify the proportion that the payments made by each Competent Harbour Authority to the Commission in respect of levies raised by the Commission for the period from 1 October 1988 to 30 June 1989 bears to the total of such payments made by all the Competent Harbour Authorities in respect of such levies for such period.

(4) At any meeting of the Commission held in connection with the powers set out in paragraph (3) of this Article, each Commissioner (whether present himself, or by his representative) has one vote; and a resolution is passed when a majority of the Commissioners present or represented have voted in favour of it. Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the liquidation.

(5) In accordance with this paragraph, the Liquidators may seek to obtain the agreement of the Commissioners to a resolution pursuant to paragraph (3) of this Article by sending to every Commissioner (or his representative designated for the purpose) a copy of the proposed resolution. Where the Liquidators make use of the procedure allowed by this paragraph, they shall send out to the Commissioners or their representatives (as the case may be) a statement incorporating the resolution to which their agreement is sought, each resolution (if more than one) being set out in a separate document. The resolution is deemed to have been passed by the Commissioners if and when the Liquidators are notified in writing by a majority of the Commissioners that they concur with it. A copy of every resolution passed under the paragraph and a note that the Commissioners' concurrence was obtained, shall be kept with the records of the liquidation.

(6) Within the 5 weeks immediately preceding the Liquidation Date, or on the Liquidation Date but before the passing of the resolution, a majority of the Commissioners shall make a statutory declaration to the effect that they have made a full inquiry into the Commissioner's affairs and that, having done so, they have formed the opinion that the Commission will be able to pay its debts in full, together with interest (at the rate set out in Rule 4.93(6) of the Insolvency Rules) within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration. Such statutory declaration shall embody a statement of the Commission's assets and liabilities as at the latest practicable date before the making of the declaration and shall be delivered to the Secretary of State for Transport before the expiration of 15 days immediately following the Liquidation Date.

(7) The Liquidators may with the sanction of the majority of the Commissioners exercise any of the powers set out in Part I of Schedule 4 to the Insolvency Act and without sanction exercise any of the powers set out in Part II or Part III of Schedule 4 to the Insolvency Act. The Liquidators shall also have the power to

- (a) summon meetings of the Commissioners for the purpose of obtaining their sanction or for any other purpose they may think fit;
- (b) open one or more bank accounts; and
- (c) invest monies coming into their hands on behalf of the Commission either in money market deposits with the bank or in treasury bills.

(8) In the event that any issue may arise in connection with the winding up of the Commission that, in the event that the issue were to arise in connection with the winding up of a company would fall to be resolved in accordance with the provisions of the Insolvency Act and Insolvency Rules, the Liquidators shall be entitled to apply the provisions of the Insolvency Act and Insolvency Rules applicable to a members' voluntary winding up of a company so as to resolve the issue.

(9) The Liquidators shall before the expiration of 15 days immediately following the Liquidation Date publish in the London Gazette, the Edinburgh Gazette and the Times newspaper and deliver to the Secretary of State for Transport a notice that the Commission passed on the

Liquidation Date a resolution for its winding up and notice of their appointment and shall also publish in the London Gazette, the Edinburgh Gazette and the Times newspaper notice that any claims against the Commission must be submitted in writing to the Liquidators within such period as is specified in the notice, being no less than 28 days from the date of publication of the notice.

(10) A person claiming to be a creditor of the Commission and wishing to recover his debt in whole or in part must submit his claim in writing to the Liquidators. Forms of proof shall be sent out by the Liquidators to every creditor of the Commission who is known to them or is identified in the Commission's statement of affairs before the expiration of 15 days immediately following the Liquidation Date. The creditor's proof of debt shall include those matters set out in Rule 4.75 of the Insolvency Rules, and shall specify any documents by reference to which the debt can be substantiated. The Liquidators may call for details of any matter specified in said Rule 4.75 or for the production to them of such documentary or other evidence as they may require.

(11) All claims by creditors, other than those not provable under any enactment or rule of law whether on grounds of public policy or otherwise, are provable as debts against the Commission whether they are present or future, certain or contingent, ascertained or sounding only in damages. A proof may be rejected for dividend or admitted for dividend either for the whole amount claimed by the creditor, or for part of that amount. If the Liquidators reject a proof in whole or in part, they shall prepare a written statement of their reasons for doing so, and send it forthwith to the creditor. If a creditor is dissatisfied with the Liquidators' decision with respect to his proof (including any decision on the question of preference) he may apply to the court for the decision to be reversed or varied within 21 days of receiving such statement. In the event of such an application the court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the creditor who lodged the proof in question (if it is not himself) and to the Liquidators. The Liquidators shall, on receipt of the notice, file in court the relevant proof, together with a copy of the statement. After the application has been heard and determined, the proof shall, unless it has been wholly disallowed, be returned by the court to the Liquidators.

(12) The provisions of Rules 4.86 to 4.94 inclusive of the Insolvency Rules shall apply to the quantification of claims and the provisions of Rule 4.182A of the Insolvency Rules shall apply as to distributions in the winding up of the Commission.

(13) The Liquidators shall pay all the Commission's preferential debts (within the meaning given by section 386 of the Insolvency Act) in priority to all other debts. Subject to prior payment of such debts, the Commission's property shall be applied in satisfaction of the Commission's liabilities *pari passu* and, subject to that application, be distributed to each Competent Harbour Authority in the same proportion that the payments made by each Competent Harbour Authority to the Commission in respect of levies raised by the Commission for the period from 1 October 1988 to 30 June 1989 bears to the total of such payments made by all the Competent Harbour Authorities in respect of such levies for such period. The Commission will upon request by the Liquidators provide a certificate as to such payments and the proportions thereof.

(14) The Liquidators shall prepare accounts of all receipts and payments and a report of their acts and dealings within 28 days after being requested to do so by a majority of the Commissioners or the Secretary of State for Transport. The Liquidators shall also prepare and submit a final account and report upon completion of the winding up which shall be submitted to the Secretary of State for Transport, each Commissioner and each Competent Harbour Authority.

(15) The Liquidators shall when submitting the final account and report of the winding up to the Secretary of State for Transport certify in writing to the Secretary of State that the assets of the Commission have been realised, there are no unsettled claims of which they are aware, the liabilities of the Commission have been paid and any surplus has been distributed in accordance with paragraph (13) of this Article. The Liquidators shall automatically be released from their office 14 days after the date of such certificate.

Arrangements in respect of staff

3.—(1) The contracts of all persons employed by the Commission on the Liquidation Date shall determine with effect from the Liquidation Date and all such persons shall be deemed to have been dismissed by the Commission by reason of redundancy on the Liquidation Date.

(2) All persons employed by the Commission on the Liquidation Date shall subject to paragraphs (4) and (6) of this Article be entitled to the higher of

- (a) the amount due on redundancy under the terms of the contract of employment between those persons and the Commission, or
- (b) the total of (i) three times the lump sum redundancy payment applicable to male employees under the terms of the EPCA as modified pursuant to paragraphs (3) and (4) of this Article and (ii) any additional payments to which employees may be entitled pursuant to paragraph (5) of this Article

PROVIDED THAT such entitlement shall not affect the right of such persons to receive notice to terminate their contract of employment or payment in lieu of such notice, and PROVIDED also that the payments made pursuant to sub-paragraph (b) of this Article shall include the entitlement of the persons entitled to receive payments under sub-paragraph (b) of this Article to a redundancy payment in respect of this employment.

(3) The calculation of a "week's pay" as provided for under the EPCA for the purpose of computing a redundancy payment under paragraph (2) of this Article shall ignore the maximum limit set under the EPCA where the employee's weekly gross pay exceeds this figure, and shall substitute the weekly gross pay of the employee concerned at the Liquidation Date.

(4) Except in the case of the employees referred to in paragraph (5) of this Article, the total redundancy payment based on "week's pay" that may accrue to any employee under paragraph (2) of this Article shall be subject to a maximum of 90 weeks' pay or the gross pay which the employee would have received if paid at the level of remuneration payable to the employee on the Liquidation Date for the period between the Liquidation Date and the employee's sixty-fifth birthday, whichever is the lesser, and to the provision of the "tapering" of entitlement in relation to all employees aged between sixty-four and sixty-five set out in paragraph 4 of Schedule 4 to the EPCA.

(5) Those employees who are entitled to receive redundancy payments calculated under paragraph (2) of this Article who are aged fifty and over on the Liquidation Date shall subject to paragraph (6) of this Article also be entitled to additional compensation of one week's pay for each year or part of a year of employment that has accrued to them between their fiftieth and sixtieth birthdays, and a half week's pay for each year or part of a year that has accrued to them between their sixtieth and sixty-fifth birthdays. Such additional weeks' pay are not subject to the limitation of the maximum of 90 weeks' pay applied to the basic redundancy calculation under paragraph (4) of this Article but the provision for the "tapering" of entitlement in relation to all employees aged between sixty-four and sixty-five in paragraph 4 of Schedule 4 to the EPCA shall apply.

(6) The combined product of the basic redundancy and the additional weeks' pay payable under paragraph (2) and (5) of this Article, respectively, shall not exceed the gross pay which the employee would have received if paid at the level of remuneration payable to the employee on the Liquidation Date for the period between the Liquidation Date and the employee's sixty-fifth birthday.

(7) Subject as provided in paragraph (8) of this Article, persons who are employed in pensionable employment by the Commission on the Liquidation Date shall be entitled to receive, in addition to the sums payable to them under paragraphs (2) and (5) of this Article, a sum equal to 23% of their annual pensionable earnings multiplied by the number of years or parts of years remaining before their normal retirement age or the age of sixty-five, whichever is the fewer, to a maximum of $6\frac{2}{3}$ years.

(8) No payment shall be made under paragraph (7) of this Article to any person who at the date of his dismissal

- (a) is under the age of fifty;
- (b) has less than five years of pensionable service; or
- (c) is entitled under the terms of his employment with the Commission to enhancement of pension entitlement in the event of redundancy.

Citation and Commencement

4. This Scheme may be cited as the Scheme for the Abolition of the Pilotage Commission and shall come into operation upon the date specified in the order made by the Secretary of State under section 26(3) of the Pilotage Act 1987.

SCHEDULE 2

Article 3

Modifications to the Scheme

1. In Article 1 of the Scheme the following definition shall be added:

"the Liquidation Funds" means the Liquidation Funds established under paragraphs 15 and 20 of the Trinity House London District and Headquarters Transfer Scheme and paragraph 13 of the Isle of Wight Transfer Scheme both made on 30 June 1988 under section 24(6) of the Pilotage Act 1987; and "the Transfer Schemes" means those two Schemes.

2. In Article 2 of the Scheme:-

- (a) in paragraph (1), for "31 August 1989" there shall be substituted "30 September 1990";
- (b) in paragraph (2), the words "for the purposes of its functions under section 28(8) of the Pilotage Act 1987 and" shall be inserted after "except"; and "for the purpose of carrying out their functions under the said section 28(8) and" shall be inserted after "save" where it first appears;
- (c) in paragraph (3)(h) "31st July 1989 and for the period 1 November 1989 to 31 December 1989" shall be substituted for "30 June 1989";
- (d) in paragraph (4)
 - (i) "(whether present himself, or by his representative)" and "or represented" shall be deleted;
 - (ii) the following sentence shall be inserted after the first sentence: "In the event of equality of votes the chairman shall have a casting vote, and a resolution is also passed if he exercises his casting vote in favour of it";
 - (iii) "by the liquidators" shall be inserted after "in writing";
- (e) in paragraph (5)
 - (i) "(or his representative designated for that purpose)" and "or their representatives (as the case may be)" shall be omitted;
 - (ii) the following sentence shall be inserted after the third sentence: "In the event of equality of votes the chairman shall have a casting vote, and a resolution is also passed if he exercises his casting vote in favour of it";
 - (iii) "by the liquidators" shall be inserted after "a note";
- (f) paragraph (6) shall be omitted;
- (g) in paragraph (10) "or is identified in the Commission's statement of affairs before the expiration of 15 days immediately following the Liquidation Date" shall be omitted;
- (h) in paragraph (13) "31st July 1989 and for the period 1 November 1989 to 31 December 1989" shall be substituted for "30 June 1989";
- (i) there shall be added as paragraph (16) the following:-

"The Competent Harbour Authorities shall be responsible following completion of the winding-up of the Commission for any liabilities of the Commission which may remain outstanding in the proportions specified in paragraph (13) above."

3. Article 2 shall be subject to the further modification that as respects the property and rights of the Commission so far as they are dealt with under the Transfer Schemes, the Scheme shall have effect as if Article 2 did not apply and the Scheme provided that such property and rights, including the Liquidation Funds, shall on the Liquidation Date (as defined in Article 1 of the Scheme) vest in the Secretary of State on trust to deal with the same and the income thereof, subject to the duty to discharge the liabilities charged thereon, in accordance with, and with all the powers (including the power to charge for and recover administration and other costs out of the Liquidation Funds) conferred by, the Transfer Schemes establishing the Liquidation Funds respectively but as though in each such Transfer Scheme all references to the Commission were references to the Secretary of State.

EXPLANATORY NOTE

(This note is not part of the Order)

1. In accordance with section 26(2) of the Pilotage Act 1987 the Pilotage Commission submitted, on 14th March 1989, to the Secretary of State a scheme for the winding-up of the Commission and the disposal of the property, rights and liabilities of the Commission and the arrangements to be made as respects its staff. The Scheme is set out in Schedule 1 to the Order.

2. This Order, made under section 26(3) of the Pilotage Act 1987, makes provision for the transfer of the property, rights and liabilities of the Pilotage Commission on its abolition and makes arrangements for the Commission's staff, in accordance with that Scheme subject to certain modifications which are set out in Schedule 2.

3. The modifications principally provide:

- (1) that the Pilotage Commissioners (rather than the liquidators organising the winding-up) exercise the Commission's continuing function under s.28(8) of the Pilotage Act 1987 of determining disputes about entitlements to payment under pilots' compensation schemes;
- (2) that competent harbour authorities will remain liable, in the same proportion that they receive assets, for any outstanding liabilities after the Commission's abolition (the Scheme provides for all known liabilities to be discharged before its completion); and
- (3) that the Commission's assets (and functions) in connection with two Schemes under section 24 of the Pilotage Act 1987 (transfer of property, rights and liabilities of pilotage authorities to competent harbour authorities) are vested in the Secretary of State to deal with them in accordance with the respective Schemes. The two Schemes are the only uncompleted ones, following the abolition of pilotage authorities on 1st October 1988.