



Transport Act 1981

1981 CHAPTER 56

PART II

RECONSTITUTION OF BRITISH TRANSPORT DOCKS BOARD

5 Associated British Ports and its Holding Company

- (1) As from the appointed day, the British Transport Docks Board shall be known as Associated British Ports and the following provisions of this Part have effect with respect to the constitution, powers and duties of that body.
- (2) As from the appointed day, a company (referred to in this Part as " the Holding Company") shall have the powers in relation to Associated British Ports conferred on it by the following provisions of this Part, being powers corresponding to the powers of a holding company over a wholly-owned subsidiary; and for the purposes of any enactment Associated British Ports shall be deemed to be such a subsidiary of the Holding Company.
- (3) The Secretary of State shall by order made by statutory instrument taking effect on the appointed day designate as the Holding Company a company limited by shares, formed and registered under the Companies Act 1948, in which all the issued shares are held by the Secretary of State or by nominees for him.
- (4) In this Part the " appointed day " means such day as the Secretary of State may, with the consent of the Treasury, appoint for the purposes of this section by order made by statutory instrument.

6 The financial structure

- (1) The commencing capital debt of Associated British Ports and any liability of Associated British Ports in respect of sums borrowed from the Secretary of State are extinguished as from the appointed day.
- (2) On the appointed day—

Status: This is the original version (as it was originally enacted).

- (a) Associated British Ports shall issue to the Holding Company such securities, and pay to the Holding Company such sum of money, as the Secretary of State may direct; and
 - (b) the Holding Company shall issue to the Secretary of State or, if he so directs, to nominees for him such shares and securities of the company, and shall pay to him such sum of money, as he may direct.
- (3) Shares issued in pursuance of subsection (2)(b) shall be of such nominal value and shall be deemed to have been issued for such consideration as the Secretary of State may direct.
- (4) The Secretary of State may give directions as to the manner in which the various matters provided for by the preceding provisions of this section are to be dealt with in the accounts of Associated British Ports and the Holding Company for the period beginning with or including the appointed day.
- (5) In ascertaining for the purposes of section 39 of the Companies Act 1980 the profits of the Holding Company which are available for distribution, any amount which by virtue of the Secretary of State's direction is to be treated as a revenue reserve of the company shall be treated as accumulated, realised profits of the company.
- (6) In ascertaining for the purposes of section 56 of the Companies Act 1948 what amount falls to be treated as a premium received on the issues of shares by the Holding Company in pursuance of subsection (2)(b), the amount which in accordance with the Secretary of State's direction is to be deemed to be the consideration for the issue shall be taken to be reduced by such amount as the Secretary of State may direct to be treated as a revenue reserve of the company.
- (7) The Secretary of State shall not give any directions for the purposes of this section without the consent of the Treasury, and shares or securities of the Holding Company held by the Secretary of State or by nominees for him shall not be disposed of except with the consent of the Treasury and in such manner and on such terms as the Treasury may direct.
- (8) There shall be paid into the Consolidated Fund—
 - (a) any sum paid to the Secretary of State by the Holding Company under subsection (2)(b);
 - (b) any dividends or other sums received by the Secretary of State or his nominees in right of, on the disposal of or otherwise in connection with any shares or securities of the Holding Company.
- (9) Directions given by the Secretary of State under this section to Associated British Ports or the Holding Company shall be in writing.
- (10) The first report prepared by the directors of the Holding Company under section 157 of the Companies Act 1948 after the appointed day shall contain a statement of every direction given by the Secretary of State under this section.

7 Constitution of Associated British Ports, etc.

- (1) Associated British Ports continues to be a body corporate.
- (2) The members of Associated British Ports shall be known as directors.

- (3) The number of directors of Associated British Ports shall be determined by the Holding Company from time to time, but shall not be less than five or more than thirteen.
- (4) The directors of Associated British Ports shall be appointed by the Holding Company for such period as the Holding Company may determine but, without prejudice to any claim for damages for breach of contract, may be removed by the Holding Company at any time.
- (5) The provisions of Schedule 2 have effect with respect to the constitution and proceedings of Associated British Ports and related matters.

8 Powers of Associated British Ports

- (1) The provisions of Schedule 3 have effect with respect to the powers of Associated British Ports.
- (2) In favour of a person dealing in good faith with Associated British Ports, any transaction decided on by the directors of Associated British Ports shall be deemed to be one which it is within the capacity of Associated British Ports to enter into and the power of the directors shall be deemed to be free of any limitation imposed by or by virtue of any provision of this Part.
- (3) A person dealing with Associated British Ports is not bound to enquire as to the capacity of Associated British Ports to enter into a transaction or as to any such limitation on the powers of the directors as is mentioned in subsection (2), and shall be presumed to have acted in good faith unless the contrary is proved.
- (4) Associated British Ports shall exercise its control over its subsidiaries so as to ensure that they do not engage in activities which Associated British Ports itself has no power to engage in.

9 General duties of Associated British Ports

- (1) It is the duty of Associated British Ports to provide port facilities at its harbours to such extent as it may think expedient.
- (2) Associated British Ports shall have due regard to efficiency, economy and safety of operation as respects the services and facilities provided by it and its subsidiaries.
- (3) In the performance of its functions Associated British Ports shall have regard to the interests in general of its employees and the employees of its subsidiaries.
- (4) This section does not impose any form of duty or liability enforceable, either directly or indirectly, by proceedings before any court.

10 Provisions of the Companies Acts applying to Associated British Ports

- (1) The provisions of the Companies Acts 1948 to 1980 mentioned in subsection (2) apply to Associated British Ports, subject to the adaptations specified in subsection (3), as if Associated British Ports were a public company registered in England and Wales under the Companies Act 1948 and as if the directors of Associated British Ports were the directors of such a company ; and the supplementary provisions of those Acts relating to the interpretation, operation and enforcement of those provisions apply accordingly.
- (2) The provisions referred to in subsection (1) are the following—

Status: This is the original version (as it was originally enacted).

Subject-matter	Provisions applied
1. Financial assistance for purchase of shares, &c.	Companies Act 1948, section 54.
2. Register of charges.	Companies Act 1948, sections 104 and 105.
3. Accounts and audit.	Companies Act 1948, sections 149 to 156, 158(2), 161, 163, 196, 454(1) and Schedule 8; Companies Act 1967, sections 3 to 8, 11, 13 and 14 (except subsections (2) and (7)); Companies Act 1976, sections 1 to 6, 12, 13, 18 and 19; Companies Act 1980, sections 54 to 56, 58 and 59.
4. Directors' report.	Companies Act 1948, section 157; Companies Act 1967, sections 15 to 20 and 22.
5. Disclosure by directors of interests in contracts, &c.	Companies Act 1948, section 199.
6. Power of Court to give relief in certain cases.	Companies Act 1948, section 448.
7. Restrictions on distributions.	Companies Act 1980, sections 39, 40 and 43.

- (3) The provisions mentioned in subsection (2) apply to Associated British Ports with the following adaptations—
- (a) any reference to the date of incorporation of Associated British Ports shall be construed as a reference to the appointed day;
 - (b) any reference to the registered office of Associated British Ports shall be construed as a reference to its principal office;
 - (c) any reference to the members of Associated British Ports shall be construed as a reference to the Holding Company and any reference to shares in Associated British Ports shall be disregarded ;
 - (d) documents required to be laid before Associated British Ports in general meeting shall instead be sent to the Holding Company, and any reference to documents so laid shall be construed accordingly.
- (4) The Secretary of State may by regulations make such amendments of subsections (1) to (3) as appear to him necessary or expedient in consequence of changes in company law coming into force after the passing of this Act.
- (5) Regulations under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

11 Payments to Holding Company out of profits of Associated British Ports

- (1) The directors of Associated British Ports shall from time to time pay to the Holding Company such sums as appear to them to be justified by the profits of Associated British Ports.

- (2) For the purpose of sections 39 and 40 of the Companies Act 1980 (restrictions on distributions) such payments by Associated British Ports are distributions.
- (3) For the purpose of the said section 40 (restriction on extent to which distributions may reduce a company's net assets) the undistributable reserves of Associated British Ports include—
 - (a) any capital reserve arising from the capital debts extinguished by section 6(1);
 - (b) any reserve arising from payments made by the Holding Company on terms that the amount paid form part of Associated British Ports' undistributable reserves.
- (4) In section 157(1) of the Companies Act 1948 (directors' report) as it applies to Associated British Ports the reference to the amount recommended by the directors to be paid by way of dividend shall be construed as a reference to the amount proposed by them to be paid to the Holding Company under subsection (1).

12 Documents to be kept available for inspection, 13. Transfer of functions of Holding Company

- (1) Associated British Ports shall keep at its principal office—
 - (a) a copy of any rules for the time being prescribed by the Holding Company under paragraph 4 of Schedule 2 with respect to the proceedings of the directors of Associated British Ports;
 - (b) a statement of the limit for the time being set by the Holding Company under paragraph 21(5) of Schedule 3 on the aggregate amount of borrowing and guarantees by Associated British Ports and its subsidiaries; and
 - (c) a statement of any restrictions for the time being imposed by the Holding Company under paragraph 22 of that Schedule on the financial arrangements which may be entered into by Associated British Ports and its subsidiaries;and those documents shall, during normal business hours, be made available for inspection by any person on request.
- (2) It is an offence for Associated British Ports to fail to comply with a request under subsection (1).
- (3) An offence under subsection (2) is punishable on summary conviction with a fine not exceeding £200.

13 Transfer of functions of Holding Company.

- (1) The Holding Company may nominate another company to be Holding Company in its place and, subject to subsection (2), the provisions of this Part thenceforth have effect as if references to the Holding Company were references to the nominated company.
- (2) A nomination under this section does not affect references to the Holding Company in section 6, this subsection and paragraphs 4, 7(1) and (4) and 8 of Schedule 4; and those references remain references to the company designated under section 5(3).
- (3) A nomination under this section does not affect the validity of anything done before the nomination takes effect by or in relation to the company making the nomination, and anything which when the nomination takes effect is in process of being done by or in relation to that company may, if it relates to any functions transferred by virtue of the nomination, be continued by or in relation to the company nominated.

Status: This is the original version (as it was originally enacted).

- (4) Any appointment or rule made, limit set, restriction imposed, or other thing done by or on behalf of a company making a nomination under this section in connection with any functions transferred by virtue of the nomination shall, if in force when the nomination takes effect, have effect as if made, set, imposed or done by or on behalf of the nominated company so far as that is required for continuing its effect after the nomination takes effect.
- (5) A company may not be nominated under this section unless it is controlled by the company designated under section 5(3); and if a company so nominated ceases to be so controlled—
- (a) its functions as Holding Company cease to be exercisable except for the power conferred by this section ; and
 - (b) it shall forthwith nominate under this section the company designated under section 5(3) or a company controlled by that company.
- (6) In this section " company " means a company limited by shares which is formed and registered under the Companies Act 1948; and for the purposes of this section a company is controlled by another company if, and only if, all the issued voting shares in the company are held by that other company or by a company controlled by that other company.

14 Provisions supplementary to ss. 5 to 13

- (1) The provisions of Part I of Schedule 4, being provisions supplementary to or consequential on the other provisions of this Part, have effect as from the appointed day.
- (2) The other provisions of this Part have effect subject to the transitional provisions and savings contained in Part II of that Schedule.
- (3) In this Part—
- " the appointed day " has the meaning given by section 5(4);
 - " enactment" means any provision of a public general Act, of a local, private or personal Act, of a provisional order confirmed by an Act or any regulations, order, scheme, byelaws or similar instrument made under an Act;
 - " harbour " has the same meaning as in the Harbours Act 1964;
 - "the Holding Company", subject to section 13(1), means the company designated by the Secretary of State under section 5(3);
 - " pension", in relation to a person, means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of him, and includes a gratuity so payable and a return of contributions to a pension fund, with or without interest thereon or any other addition thereto and any sums payable on or in respect of the death of that person;
 - " pension fund " means a fund established for the purposes of paying pensions;
 - " pension scheme " includes any form of arrangement for the payment of pensions, whether subsisting by virtue of an Act of Parliament, trust, contract or otherwise ;
 - " port facilities " means—
- (a) the constructing, improving, maintaining, regulating, managing, marking or lighting of a harbour or any part thereof ;

Status: This is the original version (as it was originally enacted).

- (b) the berthing, towing, moving or dry-docking of a ship which is in, or is about to enter, or has recently left, a harbour;
 - (c) the loading or unloading of goods, or embarking or disembarking of passengers, in or from any such ship;
 - (d) the lighterage or the sorting, weighing, warehousing or handling of goods in a harbour; and
 - (e) the movement of goods within a harbour;
- " shares " includes stock;
- " securities", in relation to a body corporate, includes debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of that body ;
- " subsidiary " means a subsidiary as defined in section 154 of the Companies Act 1948 ;
- " wholly-owned subsidiary " means a subsidiary all the issued shares of which are beneficially owned by the body of which it is a subsidiary, or by one or more other wholly-owned subsidiaries of that body, or partly by that body and partly by any wholly-owned subsidiary of that body.
- (4) References in this Part to Associated British Ports' business or undertaking include any business or undertaking carried on by a subsidiary of Associated British Ports.
 - (5) References in this Part to Associated British Ports' harbours include any harbour for the time being owned or managed by Associated British Ports or by any of its subsidiaries.