

SCHEDULES

SCHEDULE 5

Sections 15 to 17.

PROVISIONS SUPPLEMENTING SECTIONS 15 TO 17

PART I

FURTHER PROVISIONS RELATING TO THE DISSOLUTION OF THE NATIONAL PORTS COUNCIL

Duty of Council to facilitate the carrying into effect of section 15 and this Schedule

- 1 It is the duty of the Council to give to the Secretary of State all such information, to prepare all such documents and to do all such other things as appear to him to be necessary or expedient for facilitating the carrying into effect of section 15 and this Schedule and for enabling him to exercise any functions conferred or imposed on him by or by virtue of that section or this Schedule.

Final accounts of the Council

- 2 (1) The Council shall (if they have not done so before the appointed day) comply after that day with subsections (1) to (4) and subsection (7) of section 8 of the Harbours Act 1964 (which relate to the making and publication of periodical reports by the Council and the preparation, audit and publication of their accounts) in relation to their last normal accounting period before the appointed day ; and they shall also comply with those subsections in respect of the interval (if any) between the end of that accounting period and the appointed day, and that interval shall by virtue of this paragraph be an accounting period for the purposes of those subsections.
- (2) In sub-paragraph (1) " normal accounting period " means an accounting period, within the meaning of the Harbours Act 1964 of not less than twelve months.
- (3) The Secretary of State shall lay before each House of Parliament a copy of each report made to him by virtue of sub-paragraph (1), of the statement of accounts attached thereto and of any report on that statement by the auditors.

Disposal of confidential documents belonging to the Council

- 3 (1) It is the duty of the Council to set aside any documents belonging to them the disclosure of the contents of which to the Secretary of State would be a breach of confidence and, notwithstanding section 15(1)(b), such documents do not vest in the Secretary of State on the appointed day.
- (2) References in this paragraph to breach of confidence are to—
- (a) the disclosure otherwise than as permitted by section 46 of the Harbours Act 1964 of information furnished to the Council in pursuance of requirements imposed under section 4 or 41 of that Act; or

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- (b) the disclosure of information furnished to the Council otherwise than in pursuance of requirements so imposed, being information which in the opinion of the Council ought to be treated as confidential, not being, in either case, information which the Secretary of State would be entitled to require from any person in exercise of any power conferred on him by this Act or the Harbours Act 1964.
- (3) Where a document which is set aside in pursuance of sub-paragraph (1) also contains information which could be disclosed to the Secretary of State without a breach of confidence, the Council shall, if he so directs, extract that information and furnish it to him.
- (4) Subject to sub-paragraph (3), documents which are set aside in pursuance of sub-paragraph (1) shall be destroyed or otherwise disposed of by the Council in such manner as the Secretary of State may direct so as to prevent any breach of confidence.
- (5) The preceding provisions of this paragraph—
- (a) do not apply to documents relating to legal or other proceedings to which the Secretary of State becomes a party on the appointed day in place of the Council; and
 - (b) do not affect the Council's duty under paragraph 1.
- (6) In this paragraph—
- " document " includes any device in which information is recorded or stored ;
 - " information " includes forecasts.

Continuance of Council until residual functions completed to Secretary of State's satisfaction

- 4 (1) No amendment or repeal made by this Act affects—
- (a) the continuance of the Council for the purposes of paragraphs 1 to 3 or their powers and duties under those paragraphs ; or
 - (b) the continued operation for those purposes of the provisions of the Harbours Act 1964 relating to the constitution and proceedings of the Council;
- and the Council shall cease to exist when the Secretary of State, being satisfied that their duties under those paragraphs have been completed, so directs by order made by statutory instrument.
- (2) Section 15(1)(b) does not affect the continuance of employment with the Council, but on the Council ceasing to exist—
- (a) any contract of employment with the Council then in force shall cease to have effect, except as regards rights previously accrued and liabilities previously incurred; and
 - (b) any rights and liabilities of the Council then existing shall by virtue of this paragraph become rights and liabilities of the Secretary of State.
- (3) The Secretary of State shall pay to members of the Council, in respect of the period beginning with the appointed day and ending with the Council ceasing to exist, such remuneration (whether by way of salary or fees) and such allowances as, with the approval of the Minister for the Civil Service, he may determine.

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- (4) The Secretary of State shall, as soon as possible after determining the amount of any remuneration or allowances payable under sub-paragraph (3), lay a statement of his determination before each House of Parliament.
- (5) As from the appointed day, the Secretary of State shall make available to the Council such facilities as the Council or their auditors may reasonably require for performing the duties imposed on them by or by virtue of paragraphs 1 to 3 ; and the remuneration of the auditors and any other expenses incurred by the Council in connection with the performance of those duties on and after the appointed day shall be defrayed by the Secretary of State.

Modification of agreements and documents

- 5 (1) Every agreement, other than a contract of employment, to which the Council are a party immediately before the appointed day, whether in writing or not and whether or not of such a nature that rights and liabilities thereunder could be assigned by the Council, has effect as from that date as if—
 - (a) the Secretary of State had been a party to the agreement; and
 - (b) for any reference to the Council there were substituted, as respects anything falling to be done on or after the appointed day, a reference to the Secretary of State.
- (2) Other documents, not being enactments, which refer to the Council shall be construed in accordance with sub-paragraph (1) so far as applicable.

Legal remedies and pending proceedings

- 6 (1) Where any right, liability or obligation is transferred to the Secretary of State by virtue of section 15(1)(b) or paragraph 4(2)(b), he and all other persons have the same rights, powers and remedies (and, in particular, the same rights as to the taking or resisting of legal proceedings) for ascertaining, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Secretary of State.
- (2) Any pending legal proceedings by or against the Council which relate to any property, right, liability or obligation transferred to the Secretary of State by virtue of section 15(1)(b) or paragraph 4(2)(b) may be continued by or against the Secretary of State.
- (3) Any reference in sub-paragraph (1) or (2) to legal proceedings shall be construed as including a reference to any application to an authority, and any reference to the taking or resisting of legal proceedings shall be construed accordingly.

Compensation for loss of office

- 7 If it appears to the Secretary of State that a person who ceases to hold office as a member of the Council on the Council ceasing to exist should receive compensation for loss of office, he may pay that person such sum as, with the approval of the Minister for the Civil Service, he may determine.

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Compensation for loss of employment

- 8 (1) The Council shall, if they have not done so before the passing of this Act, make a scheme (referred to in this paragraph as the "compensation scheme") for the payment of compensation, whether by way of a lump sum or periodic payments or by a combination of those methods, to or in respect of persons employed by them who suffer loss of employment which is properly attributable to the winding up of the Council.
- (2) The compensation scheme must—
- (a) provide for the payment of compensation to be at the discretion of the Council; and
 - (b) include provision for an appeal body to determine questions arising.
- (3) For the avoidance of doubt, it is declared that the expenses of the Council in making payments under the compensation scheme are administrative expenses of the Council within section 4 of the Harbours Act 1964 (under which such expenses may be funded by charges imposed on harbour authorities), and that the Council's borrowing powers under section 5 of that Act are exercisable for the purpose of making such payments.
- (4) As from the appointed day—
- (a) the administration of the compensation scheme is the responsibility of the Secretary of State, subject to any direction under sub-paragraph (5); and
 - (b) the expenses of administering the scheme and of making payments under it shall be defrayed by the Secretary of State.
- (5) The Secretary of State may direct that the compensation scheme be administered by such person as may be specified in the direction; and a direction under this sub-paragraph may be revoked or varied by the Secretary of State by a further direction under this sub-paragraph.
- (6) The Secretary of State may make such amendments to the compensation scheme as appear to him necessary or expedient in consequence of the winding up of the Council or of the transfer of the administration of the scheme under or by virtue of this paragraph.

Pensions

- 9 (1) In this paragraph—
- (a) " the pension scheme " means the National Ports Council Pension Scheme;
 - (b) " the pension fund " means any assets held on trust for the purposes of the pension scheme ; and
 - (c) " pension rights " includes all forms of right to or eligibility for the present or future payment of a pension, gratuity or other like payment.
- (2) Subject to any direction under sub-paragraph (3), the administration of the pension scheme is the responsibility of the Secretary of State as from the appointed day and on that day the pension fund shall vest in him to be held by him for the purposes of the scheme on the same trusts as subsisted immediately before that day.
- (3) The Secretary of State may direct—
- (a) that the pension scheme be administered by, and the pension fund vest in, such person as may be specified in the direction ;

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- (b) that the payment of any pension payable otherwise than under the pension scheme to a former member of the Council be the responsibility of such person as may be specified in the direction ;
and a direction under this sub-paragraph may be revoked or varied by the Secretary of State by a further direction under this sub-paragraph.
- (4) The Secretary of State may make such amendments to the pension scheme as appear to him necessary or expedient in consequence of the winding up of the Council or of the transfer of the administration of the scheme under or by virtue of this paragraph ; but no such amendment shall prejudice any pension rights existing under the scheme immediately before the amendment takes effect.
- (5) There shall be defrayed by the Secretary of State—
- (a) any expenses incurred on or after the appointed day in administering or making payments under the pension scheme, so far as those expenses cannot be met from the pension fund ; and
 - (b) any expenses incurred on or after that day in administering or paying any such pension as is mentioned in sub-paragraph (3)(b).

Transfer to the Secretary of State of certain of the Council's former functions

- 10 (1) In section 30(4) of the Harbours Act 1964 (duty of authority to supply copy of list of charges) for " the Council " there is substituted as from the appointed day " the Secretary of State " .
- (2) In section 31 of the Harbours Act 1964 (right of objection to certain charges) as from the appointed day—
- (a) for " the Council " , wherever occurring, there is substituted " the Secretary of State " , and where necessary in consequence of that substitution for pronouns and verbs in the plural there are substituted corresponding pronouns and verbs in the singular ; and
 - (b) in subsection (13) the words from " and in relation " to the end are repealed.
- (3) Sections 30(4) and 31 of the Harbours Act 1964, and any enactment applying in relation to inquiries under the said section 31, have effect as from the appointed day as if anything previously done by or in relation to the Council (including any direction given by the Council and in force immediately before that day) had been done by or in relation to the Secretary of State.

Information for the Secretary of State

- 11 In section 41 of the Harbours Act 1964 (power to obtain information and forecasts), and in section 2 of the Harbours (Loans) Act 1972 (which extends that power), as from the appointed day—
- (a) for "the Council", wherever occurring, there is substituted " the Secretary of State " ; and
 - (b) for " their functions " , wherever occurring, there is substituted " his functions " ;
- and any notice served by the Council under the said section 41 and not complied with before the appointed day has effect on and after that day as if it had been served by the Secretary of State and as if the information or forecasts required by it were required to be furnished to him.

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Pending proceedings for harbour reorganisation scheme

- 12 A harbour reorganisation scheme submitted to the Secretary of State by the Council under section 18 of the Harbours Act 1964 which is being proceeded with under Schedule 4 to that Act immediately before the appointed day shall be proceeded with as from that day—
- (a) as if it were one proposed to be made by the Secretary of State under that section and Schedule as amended by paragraph 6 of Schedule 6 to this Act; and
 - (b) as if anything done under and in accordance with the provisions applicable to schemes submitted by the Council had been the corresponding thing to be done under and in accordance with the provisions applicable to schemes proposed to be made by the Secretary of State.

Saving for proceedings under Part I of the Docks and Harbours Act 1966

- 13 The repeal by this Act of the provisions of Part I of the Docks and Harbours Act 1966 (licensing of dock employers) relating to the functions of the Council does not affect the operation of those provisions in relation to any objection or representation made by the Council before the appointed day, but as from that day the Council shall take no further part in proceedings under that Act.

Textual amendments to facilitate repeals

- 14 (1) The following amendments (which do not alter the effect but facilitate express repeals in passages referring to the Council) have effect as from the appointed day.
- (2) In section 17(1)(a), (b) and (g) of the Harbours Act 1964 and in Parts I, II and VII of Schedule 3 to that Act for " the Minister ", wherever occurring, there is substituted " the Secretary of State ".
- (3) In section 17(1) of the Harbours Act 1964, at the end of the paragraphs there is inserted—
- “and the said Parts I, II and VII shall have effect with respect to the procedure for the making of orders by the Minister of Agriculture, Fisheries and Food with the substitution, except in paragraph 6(2), of references to him for references to the Secretary of State.”
- (4) In paragraph 4(5) and paragraph 8(4) of Schedule 3 to the Harbours Act 1964, and in paragraph 3(6) of Schedule 4 to that Act, for the opening words down to " reported on and" (which require the Secretary of State, before making an order or confirming a scheme, to consider a report of the Council and the documents reported on) there is in each case substituted—
- “After considering the objections (if any) made and not withdrawn, and the reports of any person who held an inquiry and any person appointed for the purpose of hearing an objector, the Secretary of State”.
- (5) In paragraph 2(d) of Schedule 4 to the Harbours Act 1964 for " such a local lighthouse authority as aforesaid " there is substituted " a local lighthouse authority who are not a harbour authority ", and for " the like documents as would be required to be served in compliance with sub-paragraph (c) above had the scheme been submitted by the Council" there is substituted " a copy of the scheme, together (if copies of a map or maps were deposited with it) with a copy of that map, or copies of those maps,

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and, in any event, with a notice stating that the scheme has been submitted to the Secretary of State and that, if the authority served desire to make to the Secretary of State objection to the scheme, they should do so in writing (stating the grounds of their objection) before the expiration of the period of forty-two days from the date on which the notice is served on them ".

- (6) In section 2(5) of the Dock Work Regulation Act 1976 for " others appearing " there is substituted " such persons and bodies as appear ".

Power to adjust local enactments

- 15 (1) If it appears to the Secretary of State that the operation of section 15(1)(a) or of any of the preceding paragraphs of this Schedule in relation to any enactment of local application (including any provision of a public general Act as applied by such an enactment) is uncertain or produces a result which is anomalous or confusing, he may by order direct that the enactment shall have effect as may be specified in the order, or not have effect, as may appear to him requisite in consequence of section 15 and this Schedule.
- (2) An order under this paragraph shall have effect from such date as may be specified in the order, which may be a date before the making of the order but not earlier than the appointed day.
- (3) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

PART II

FURTHER PROVISIONS WITH RESPECT TO CHARGING SCHEMES

Preliminary

- 16 In the following provisions of this Schedule "charging scheme" and "harbour authority" have the same meaning as in section 17.

Procedure for making charging scheme

- 17 (1) Before he makes a charging scheme the Secretary of State shall publish in such manner as he thinks fit a notice—
- (a) stating that he proposes to make the scheme;
 - (b) specifying a place where copies of the draft scheme may be obtained free of charge by harbour authorities affected by the scheme ; and
 - (c) stating that a harbour authority who desire to make to the Secretary of State objections to the scheme should do so in writing before the expiration of such period from the date of publication of the notice (not being less than 42 days) as may be specified in the notice,
- and shall send a copy of the scheme to each harbour authority known to him whom he believes to be affected by the scheme.
- (2) The Secretary of State shall consider any objections duly made to him with respect to the draft scheme and may, if he thinks fit to do so, make the scheme either without

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modification or with such modifications as he thinks fit (but not including any that in any way increase the charges proposed in the draft scheme).

- (3) A charging scheme shall come into operation on such date as may be specified in the scheme.

Supplementary and incidental provisions

- 18 A charging scheme may include such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient.

Information

- 19 (1) Without prejudice to the generality of paragraph 18, a charging scheme may provide for requiring a harbour authority to whom the scheme relates to furnish to the Secretary of State, and if so required to verify, such information as he may require for the purposes of the scheme, being information relating to—
- (a) any harbour (within the meaning of the Harbours Act 1964) which that harbour authority are engaged in improving, maintaining or managing ; or
 - (b) any activities carried on by them at such a harbour; or
 - (c) any property used by them for the purpose of such a harbour,
- and may provide that failure to comply with any such requirement is an offence punishable on summary conviction with a fine not exceeding such sum (not greater than £500) as may be specified in the scheme.
- (2) No person shall disclose any information furnished to him in pursuance of a requirement imposed under sub-paragraph (1) except—
- (a) with the consent of the person by whom it was furnished ; or
 - (b) in the form of a summary of information so framed as not to enable particulars relating to the businesses of individual persons to be ascertained from it; or
 - (c) for the purpose of enabling the Secretary of State to discharge his functions under this Part; or
 - (d) for the purposes of any legal proceedings.
- (3) It is an offence for a person—
- (a) to make in response to a requirement imposed under subparagraph (1) a statement which is false in a material particular and which he knows to be so false;
 - (b) to disclose any information in contravention of sub-paragraph (2).
- (4) An offence under sub-paragraph (3) is punishable—
- (a) on summary conviction with imprisonment for a term not exceeding six months, or a fine not exceeding the prescribed sum (within the meaning of section 32 of the Magistrates' Courts Act 1980 or section 289B of the Criminal Procedure (Scotland) Act 1975), or both ;
 - (b) on conviction on indictment, with imprisonment for a term not exceeding two years, or a fine, or both.

Repayments and avoidance of over-payments

20 If it appears to the Secretary of State that the contributions paid or to be paid under charging schemes made by him exceed or are likely to exceed the amount necessary for the purpose mentioned in section 16(1), he shall by order made by statutory instrument make such provision as appears to him necessary or expedient for—

- (a) terminating or reducing liabilities imposed by virtue of those schemes ; or
- (b) entitling authorities who have paid contributions imposed by virtue of those schemes to repayment of such proportion of those charges as may be determined by the Secretary of State;

and such an order may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including provision for modifying so much of any of those schemes as relates to the manner of payment of contributions payable under the scheme.