



Ports Act 1991

1991 CHAPTER 52

PART I

TRANSFER OF STATUTORY PORT UNDERTAKINGS

Procedure for schemes

9 Schemes made by a relevant port authority

- (1) Any relevant port authority may, with a view to securing the transfer under section 2 above of the property, rights, liabilities and functions of the authority to a company formed in pursuance of section 1 above, submit to the appropriate Minister a scheme prepared by the authority for the purposes of the proposed transfer.

- (2) Together with any such scheme the authority submitting it shall submit to the appropriate Minister a copy of the memorandum and articles of the company.

The documents submitted under this subsection with any such scheme are referred to below in this section, in relation to the scheme, as the associated company documents.

- (3) Where an authority have submitted such a scheme to the appropriate Minister, the authority shall—
- (a) publish by Gazette and local advertisement the required notice relating to the scheme; and
 - (b) take such steps as are reasonably practicable to serve a copy of that notice on—
 - (i) every employee of the authority; and
 - (ii) every person who has power to appoint or nominate for appointment one or more members of the authority or who is required to be consulted in relation to any such appointment.

- (4) The required notice relating to such a scheme is a notice—

- (a) stating that the authority have submitted to the Minister a scheme prepared by the authority for the purposes of a proposed transfer under section 2 above to a

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- company formed by the authority of the authority's property, rights, liabilities and functions;
- (b) naming a place where copies of the scheme and the associated company documents may be seen at all reasonable hours; and
- (c) stating that any person who wishes to make representations to the Minister with respect to—
 - (i) the proposed transfer; or
 - (ii) any provisions of the scheme or of the associated company documents;
 should do so in writing before the end of the period of forty-two days beginning with the date (specifying it) of the first local advertisement.
- (5) Subsection (6) below only applies where—
 - (a) the requirements of subsections (3) and (4) above have been met in relation to a scheme submitted to the appropriate Minister under this section; and
 - (b) the period allowed for making representations to him with respect to the proposed transfer or any provisions of the scheme or of the associated company documents has expired.
- (6) The Minister shall decide whether or not to confirm the scheme after considering any such representations duly made to him before the end of that period and not withdrawn; and if he decides to confirm the scheme—
 - (a) he may do so either without modifications or with such modifications as he thinks fit after consulting the authority who submitted the scheme; and
 - (b) he may first (if he thinks fit) give the authority a direction requiring them, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company mentioned in subsection (1) above as may be specified in the direction.
- (7) Confirmation of a scheme shall be given by an order made by the Minister; and a scheme so confirmed takes effect on the date on which the order confirming it comes into force or on such date as may be specified in that order.

10 Schemes initiated by the Secretary of State

- (1) The powers of the Secretary of State under this section are not exercisable until after the end of the period of two years beginning with the date on which this Act is passed.
- (2) The Secretary of State may give to a relevant port authority who have not formed a company in pursuance of section 1 above and who meet the annual turnover requirement a direction requiring them to form such a company before such date as may be specified in the direction.
- (3) Where a relevant port authority who meet the annual turnover requirement—
 - (a) have formed such a company; or
 - (b) are given a direction under subsection (2) above requiring them to do so before a date specified in the direction;
 the Secretary of State may give to the authority a direction requiring them (in a case within paragraph (b) above, after first forming the company) to submit to him, before such date as may be specified in the direction, a scheme prepared by the authority for the purposes of a transfer to the company under section 2 above of the authority's property, rights, liabilities and functions.

- (4) In preparing that scheme the authority shall take into account any advice given by the Secretary of State as to the provisions he regards as appropriate for inclusion in the scheme.
- (5) The provisions of section 9 above (other than subsection (1)) shall apply in relation to a scheme submitted under this section as they apply in relation to a scheme submitted under that section (but reading references to the appropriate Minister as references to the Secretary of State).
- (6) Before giving any direction to a relevant port authority under this section the Secretary of State shall consult the authority.
- (7) Where after consulting a relevant port authority under subsection (6) above with respect to any direction or directions which he is considering giving to the authority under this section the Secretary of State determines not to give the direction, or either or both of the directions, under consideration he shall give the authority written notification of his decision.
- (8) In any case within subsection (7) above the powers of the Secretary of State under this section shall cease to be exercisable in relation to the authority until after the end of the period of five years beginning with the date on which the required notification is given.
- (9) Directions under subsections (2) and (3) above may be given at the same time if the Secretary of State thinks fit.
- (10) In this section “the annual turnover requirement” means the annual turnover requirement under section 11 below.

11 The annual turnover requirement for the purposes of section 10

- (1) A relevant port authority meet the annual turnover requirement mentioned in section 10 above at the time when any direction is given to that authority by the Secretary of State under that section if the annual turnover of the authority’s port undertaking exceeded the turnover limit in the case of at least two of the last three accounting years of the authority ending before that time.
- (2) References in this section, in relation to a relevant port authority, to the authority’s port undertaking are references to all activities of the authority in relation to which the authority are required under section 42(1) of the Harbours Act 1964 to prepare annual statements of accounts.
- (3) For the purposes of subsection (1) above, the annual turnover of a relevant port authority’s port undertaking for any accounting year of the authority is the aggregate, as stated in any statement of accounts prepared under section 42(1) in respect of that accounting year, of all sums received by the authority during that year.
- (4) The reference in subsection (3) above to sums received by the authority does not include sums received by way of grant from any public authority or any capital receipts or loans.
- (5) Where a relevant port authority are required under section 42(2) of the Harbours Act 1964 to prepare annual statements of accounts relating to activities carried on by the authority and subsidiaries of the authority—
 - (a) the reference in subsection (2) above to activities of the authority shall be read as including a reference to activities of any subsidiary of the authority;

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- (b) the references in subsections (2) and (3) above to section 42(1) shall be read as references to section 42(2); and
 - (c) the reference in subsection (3) above to sums received by the authority shall be read as including a reference to sums received by any subsidiary of the authority which are shown in the statement of accounts there mentioned (and subsection (4) above shall apply accordingly).
- (6) For the purposes of this section—
- (a) the turnover limit, in relation to any accounting year of a relevant port authority, is the turnover limit applicable to the reference year in which that accounting year ends;
 - (b) the reference years are the year ending immediately before the date on which this Act is passed (“the base date”), the year beginning with that date and each succeeding year beginning with an anniversary of that date; and
 - (c) the turnover limit applicable to a reference year is £5 million unless subsection (7) below applies, in which case it is the amount determined under that subsection.
- (7) Where in the case of any anniversary of the base date the retail prices index for the month in which that anniversary falls shows a percentage increase over that for the month in which the base date falls, the turnover limit applicable to the reference year beginning with that anniversary shall be an amount arrived at by—
- (a) increasing the sum of £5 million by a percentage equal to that percentage increase; and
 - (b) rounding the result to the nearest £100,000.
- (8) The Secretary of State shall publish in the London Gazette and the Edinburgh Gazette the turnover limit applicable to any reference year beginning with an anniversary of the base date as soon as practicable after that anniversary.
- (9) The reference in subsection (7) above to the retail prices index is a reference to the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer; and if that index is not published for any month relevant for the purposes of that subsection that reference shall be read as a reference to any substituted index or index figures published by that Office for that month.

12 Schemes made by the Secretary of State

- (1) Where—
- (a) a scheme (“the authority’s scheme”) has been submitted to the Secretary of State by a relevant port authority under section 10 above; but
 - (b) it appears to the Secretary of State that the scheme does not accord with any advice given by him as mentioned in subsection (4) of that section and cannot be made to do so by any modifications it is within his power to make;
- the Secretary of State may himself make a scheme for the purposes of a transfer under section 2 above to the company specified in the authority’s scheme of the authority’s property, rights, liabilities and functions.
- (2) The Secretary of State shall consult the authority concerned before preparing the scheme.
- (3) Before making the scheme the Secretary of State shall publish by Gazette and local advertisement a notice—

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- (a) stating that he proposes to make a scheme for the purposes of a proposed transfer under section 2 above to a company formed by the authority of the authority's property, rights, liabilities and functions;
 - (b) naming a place where copies of the proposed scheme and any associated company documents may be seen at all reasonable hours; and
 - (c) stating that any person who wishes to make representations to him with respect to—
 - (i) the proposed transfer; or
 - (ii) any provisions of the proposed scheme or of any associated company documents;should do so in writing before the end of the period of forty-two days beginning with the date (specifying it) of the first local advertisement.
- (4) On or before the date of the first local advertisement the Secretary of State shall serve on the relevant port authority in question—
 - (a) a notice complying with subsection (5) below; and
 - (b) a copy of the proposed scheme.
- (5) A notice under subsection (4)(a) above must—
 - (a) state that the Secretary of State proposes to make the scheme; and
 - (b) direct the authority concerned to take such steps as are reasonably practicable to give such information as may be specified in the notice, in such manner as may be so specified, to every person on whom that authority would be required under section 9(3)(b) above to serve notice relating to such a scheme prepared by that authority.
- (6) The Secretary of State shall not make the scheme until after the end of the period allowed for making representations to him with respect to the proposed transfer or any provisions of the proposed scheme or of any associated company documents.
- (7) The Secretary of State shall decide whether or not to make the scheme after considering any such representations duly made to him before the end of that period and not withdrawn; and if he decides to make the scheme—
 - (a) he may make it as proposed or with such modifications as he thinks fit after consulting the authority concerned; and
 - (b) he may first (if he thinks fit) give the authority a direction requiring them, before such date as may be specified in the direction, to secure that such alterations are made to the memorandum and articles of the company mentioned in subsection (1) above as may be specified in the direction.
- (8) Any scheme made by the Secretary of State under this section shall be made by order; and a scheme so made takes effect on the date on which the order in question comes into force or on such date as may be specified in that order.
- (9) References in this section to any associated company documents are references to any documents submitted under section 9(2) above with the authority's scheme.