



Ports Act 1991

1991 CHAPTER 52

PART II

DISPOSAL BY PORT OF LONDON AUTHORITY OF THE PORT OF TILBURY

Disposal of the Port of Tilbury

- 21 Power of Port of London Authority to form a company to operate the port of Tilbury**
- (1) The Port of London Authority (referred to below in this Part as “the Port Authority”) shall have power to form a company for the purpose of carrying on—
- (a) that part of their undertaking which consists in operating the port of Tilbury; and
 - (b) any activities which appear to them to be incidental to or connected with operating the port of Tilbury.
- (2) The company formed by the Port Authority shall be a company limited by shares and registered under the Companies Act 1985.
- 22 Transfer to the company of relevant property, etc., of the Port Authority**
- (1) Where the Port Authority have formed a company in pursuance of section 21 above, they may submit to the Secretary of State a scheme providing for the transfer to the company of any property, rights or liabilities of the Port Authority which it appears to them to be appropriate to transfer to that company.
- (2) In preparing such a scheme the Port 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 (and, in particular, as to the description of property, rights and liabilities which it is in his view appropriate to transfer to the company).

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- (3) Together with a scheme submitted under subsection (1) above the Port Authority shall submit to the Secretary of State a copy of the memorandum and articles of the company.
- (4) A scheme so submitted requires confirmation by the Secretary of State; and if the Secretary of State decides to confirm the scheme he may do so either without modifications or with such modifications as he thinks fit after consulting the Port Authority.
- (5) If it appears to the Secretary of State that a scheme so submitted does not accord with any advice given by him as mentioned in subsection (2) above, he may either—
- (a) confirm the scheme under subsection (4) above with modifications; or
 - (b) after consulting the Port Authority, make a scheme of his own providing for the transfer to the company of any property, rights or liabilities of the Port Authority which it appears to him to be appropriate to transfer to that company.
- (6) Before—
- (a) confirming a scheme so submitted (with or without modifications); or
 - (b) making a scheme of his own under subsection (5)(b) above;
- the Secretary of State may first (if he thinks fit) give the Port 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 as may be specified in the direction.
- (7) A scheme under this section may define the property, rights and liabilities to be transferred by the scheme—
- (a) by specifying the property, rights and liabilities in question; or
 - (b) by referring to all the property, rights and liabilities comprised in any specified part of the undertaking of the Port Authority;
- or partly in one way and partly in the other.
- (8) On the date on which a scheme under this section takes effect—
- (a) the property, rights and liabilities affected by the scheme shall, subject to subsection (1) of section 23 below, be transferred and vest in accordance with the scheme; and
 - (b) subject to any provision made by the scheme under subsection (4)(b) of that section, all functions of the Port Authority under any local statutory provision, to the extent to which that provision relates—
 - (i) to any property, right or liability transferred by the scheme; or
 - (ii) to any part of the undertaking of the Port Authority so transferred;
 shall be transferred to and by virtue of this subsection become functions of the company.
- (9) Confirmation of a scheme submitted under subsection (1) above shall be given by order made by the Secretary of State; 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 the order.
- (10) 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.

23 Supplementary provisions relating to the transfer under section 22

- (1) Subject to any provision made under subsection (3) below by the scheme under section 22 above, Schedule 2 to this Act (general supplementary provisions) has effect in relation to the transfer under subsection (8) of section 22 above; and the effect of that subsection is subject to the provisions of that Schedule.
- (2) The scheme shall contain the required provision for the protection of pension rights described in section 24 below.
- (3) The scheme may contain—
 - (a) provision of any of the descriptions mentioned in subsection (4) below; and
 - (b) such other supplementary, incidental and consequential provisions as may appear to the Port Authority (or, where the scheme is made by the Secretary of State, to the Secretary of State) to be necessary or expedient for the purposes or in consequence of, or in connection with, the transfer under section 22(8) above.
- (4) The descriptions of provision referred to in subsection (3)(a) above are—
 - (a) provision with respect to the consideration to be provided by the company for any transfer made by the scheme;
 - (b) provision for excepting from the transfer of functions under section 22(8)(b) above functions of the Port Authority under—
 - (i) any statutory provision specified in the scheme;
 - (ii) statutory provisions of any description so specified; or
 - (iii) statutory provisions of any such description with the exception of any statutory provision so specified;
 - (c) provision for excepting any provisions specified in the scheme from the application of paragraph 7 of Schedule 2 to this Act (which provides for construing certain references in statutory and other provisions to the Port Authority as references to the company);
 - (d) provision for treating any person who is both an employee and a director of the company as an officer of the Port Authority for the purposes of paragraph 6 of Schedule 2 to the Port of London Act 1968 (appointment of officers of the Port Authority as members of the Port Authority) as regards any time when the company is a subsidiary of the Port Authority; and
 - (e) provision for repealing or amending any local statutory provision which relates—
 - (i) to any property, right or liability transferred by the scheme in accordance with subsection (8)(a) of section 22 above;
 - (ii) to any part of the undertaking of the Port Authority so transferred; or
 - (iii) to any function transferred by subsection (8)(b) of that section;or is otherwise affected by the operation of the transfer under subsection (8) of that section.
- (5) The granting by the scheme to the company of a lease of any property shall be regarded for the purposes of—
 - (a) section 22 above and this section; and
 - (b) Schedule 2 below;as a transfer of that property to the company by the scheme.

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24 The required provision for the protection of pension rights

- (1) Subject to subsection (2) below, this section applies to—
- (a) any person transferred by virtue of the transfer under section 22(8) above from the employment of the Port Authority to that of the company who—
 - (i) immediately before the date of the transfer was a member of the Port of London Authority Pension Fund (“the Fund”); and
 - (ii) ceased to be such a member by virtue of the transfer; and
 - (b) any person who, after that date, acquires pension rights under any pension scheme provided or amended in pursuance of any provision made in accordance with the following provisions of this section by the scheme under section 22 above (a “relevant pension scheme”) by reason of the death of a person within paragraph (a) above;
- but only, in the case of any person within paragraph (b) above, as respects the pension rights by virtue of which he falls within that paragraph.
- (2) Any person to whom this section applies may elect in such manner as may be prescribed that this section shall cease to apply to him; and if any person within subsection (1)(a) above—
- (a) ceases to be in continuous employment; or
 - (b) voluntarily withdraws from a relevant pension scheme;
- otherwise than in such circumstances as may be prescribed, this section shall cease to apply to him except as respects pension rights which have accrued to him before that time.
- (3) The required provision for the protection of pension rights mentioned in section 23(2) above is provision for the purpose of securing that—
- (a) no person within subsection (1)(a) above is placed in any worse position by reason of—
 - (i) ceasing to be a member of the Fund by virtue of the transfer of employment mentioned in subsection (1)(a); or
 - (ii) being prevented from continuing to participate in or acquire pension rights under a relevant pension scheme by any subsequent change of employer which does not affect his continuity of employment;
 - (b) no person to whom this section applies is placed in any worse position by reason of—
 - (i) any winding up, in whole or in part, of a relevant pension scheme; or
 - (ii) any amendment of a relevant pension scheme which results in benefits under that scheme being reduced or contributions by employees being increased.
- (4) The references in subsection (3) above to any worse position shall be construed, in relation to a person within subsection (1)(a) above, as references to a position which is any worse than his position immediately before he ceases to be a member of the Fund.
- (5) Provision made by virtue of subsection (3) above may impose duties (whether as to the provision or amendment of pension schemes, the purchase of annuities, the making of payments or otherwise) on persons, other than the Port Authority, who are or have been employers of persons within subsection (1)(a) above.
- (6) Duties imposed on any person by any such provision may include duties owed to persons of whom he is not and has not been an employer.

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- (7) The scheme under section 22 above may also provide for any dispute arising under any such provision to be referred to arbitration.
- (8) So much of Schedule 13 to the Employment Protection (Consolidation) Act 1978 as has effect for the purpose of ascertaining whether any employment is continuous shall apply for the purposes of subsections (2) and (3) above as if those subsections were contained in that Act.
- (9) In this section—
- “employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;
 - “pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;
 - “pension rights”, in relation to any person, includes—
 - (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
 - (b) any expectation of the accruer of a pension to or in respect of him;and includes a right of allocation in respect of the present or future payment of a pension;
 - “pension scheme” means any scheme for providing pensions to or in respect of any persons;
 - “the Port of London Authority Pension Fund” refers to the Port of London Authority Pension Fund established under section 5 of the Port of London Act 1928; and
 - “prescribed” means prescribed by the scheme under section 22 above.

25 Special provision with respect to works licences

- (1) Where any property transferred by the scheme under section 22 above consists of or comprises any work requiring a works licence, a works licence to maintain and retain the work shall be regarded as having been granted by the Port Authority to the company on the date on which the transfer takes effect.
- (2) Such a licence shall be regarded as having been granted—
- (a) for a consideration to be agreed or assessed in accordance with section 67 of the Port of London Act 1968 (taking the reference in subsection (1) of that section to the applicant as a reference to the company); and
 - (b) on such other terms (including conditions as to variation and revocation of the licence and reassessment of the consideration from time to time) as may be specified in the scheme in relation to the work in question or any class or description of works to which it belongs.
- (3) In this section “work” and “works licence” have the meanings given by section 2(1) of the Port of London Act 1968; and a work is one requiring a works licence if a person other than the Port Authority is prohibited by section 70 of that Act from maintaining or retaining it without such a licence.

26 Powers of disposal in relation to the company

- (1) Following the transfer to the company under section 22(8) above of property, rights, liabilities and functions of the Port Authority, the Port Authority shall have power to provide for the disposal of securities of the company in such manner, at such time or times and on such terms as they think fit.
- (2) The exercise of the power under subsection (1) above requires the consent of the Secretary of State; and at any time when the company is a subsidiary of the Port Authority the Port Authority may not, without that consent, in exercise of their control over the company permit—
 - (a) any disposal by the company of any securities of a body corporate which is the company’s subsidiary; or
 - (b) any disposal by the company of any part of the company’s undertaking, or of any assets of the company (other than securities within paragraph (a) above) which appears to the Port Authority to affect materially the structure of the company’s business.
- (3) Subsection (2) above as it applies to the exercise by the Port Authority of their control over the company is without prejudice to any incapacity of the company to make any such disposal as is there mentioned if that disposal would be incompatible with any statutory functions of the company.
- (4) The Secretary of State may from time to time give to the Port Authority directions requiring them—
 - (a) to secure the issue by the company of such securities of the company as may be specified; or
 - (b) to exercise their power under subsection (1) above in a specified manner;
 but the Secretary of State shall not give directions under paragraph (a) above at a time when the company has ceased to be a wholly-owned subsidiary of the Port Authority.
- (5) In exercising his powers under subsection (4) above the Secretary of State shall have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital of the company to—
 - (a) managers or other persons employed by the company; or
 - (b) another company the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed.
- (6) In subsection (4) above “specified” means specified in directions given by the Secretary of State under that subsection.

27 Power of Secretary of State to require exercise of Port Authority’s powers under sections 21 and 22

- (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 the Port Authority a direction requiring them to form a company in pursuance of section 21 above before such date as may be specified in the direction.
- (3) Where the Port Authority—
 - (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 Port Authority a direction requiring them (in a case within paragraph (b) above, after first forming the company) to submit to him a scheme under section 22(1) above before such date as may be specified in the direction.
- (4) Before giving any direction to the Port Authority under this section the Secretary of State shall consult the Port Authority.
- (5) Directions under subsections (2) and (3) above may be given at the same time if the Secretary of State thinks fit.

Supplementary

28 Financial assistance for proposal to maximise employee participation in equity of the company

- (1) Where the Port Authority propose to form or have formed a company in pursuance of section 21 above (“the relevant company”), they may on such terms as they think fit agree with any persons who at the time of the agreement qualify for assistance under this section—
- (a) to indemnify those persons in respect of the whole or any part of any expenditure to which subsection (3) below applies; or
- (b) to discharge on their behalf the whole or any part of any liability to which that subsection applies.
- (2) For the purposes of subsection (1) above persons qualify for assistance under this section if—
- (a) each of them satisfies the employment condition;
- (b) they have formulated a proposal for maximising participation by employees of the relevant company in ownership of its equity share capital; and
- (c) they appear to the Port Authority to have a reasonable prospect of securing that the objective of the proposal is achieved.
- (3) This subsection applies to any expenditure or liability of the persons concerned incurred wholly and exclusively for the purposes of the proposal mentioned in subsection (2)(b) above.
- (4) Where in accordance with subsection (2) above different persons would qualify for assistance under this section in respect of different proposals, only such of them as appear to the Port Authority to have the best prospect of securing that the objective mentioned in paragraph (b) of that subsection is achieved shall be regarded as qualifying for such assistance.
- (5) A person satisfies the employment condition as regards assistance under this section—
- (a) before the transfer under section 22(8) above, if he is employed by the Port Authority in that part of their undertaking which consists in operating the port of Tilbury; and
- (b) after that transfer, if he is employed by the relevant company.

29 Rateable values of relevant hereditaments during transitional period

- (1) Regulations made by the Secretary of State may modify any order made under paragraph 3(1) of Schedule 6 to the Local Government Finance Act 1988 (special provision as to rateable value of non-domestic hereditament of prescribed class) as it applies for determining the rateable value at any time falling within the transitional period of any hereditament to which subsection (2) below applies.
- (2) This subsection applies to a hereditament if it is one as regards which either the Port Authority or the company is under section 43 of that Act (liability to non-domestic rate in respect of occupied hereditaments) subject to a non-domestic rate in respect of a financial year falling within the transitional period.
- (3) Regulations under this section may make different provision in relation to different hereditaments to which the regulations apply and in relation to different financial years, or different parts of any financial year, falling within the transitional period.
- (4) In this section—
 - “financial year” means a period of twelve months beginning with 1st April;
 - “the transitional period” means—
 - (i) where the transfer under section 22(8) above takes effect on 1st April in any year, the period comprising the financial year beginning with that date and the next succeeding financial year; or
 - (ii) in any other case, the period comprising the financial year beginning last before the date on which that transfer takes effect and the two next succeeding financial years;and section 64 of that Act (hereditaments) and any regulations made under that section shall apply for the purposes of this section as they apply for the purposes of Part III of that Act.

30 Interpretation of Part II

In this Part—

- “the company” means the company formed by the Port Authority in pursuance of section 21;
- “lease” includes an agreement for a lease;
- “the Port Authority” has the meaning given by section 21(1); and
- “the port of Tilbury” means the Port Authority’s docks and landing places (both within the meaning given by section 2(1) of the Port of London Act 1968) at Tilbury in the borough of Thurrock in the county of Essex.