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STATUTORY INSTRUMENTS

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**1994 No. 2809**

**The Ports (Northern Ireland) Order 1994**

*Procedure for schemes*

**Schemes made by a relevant port authority**

**11.**—(1) Any relevant port authority may, with a view to securing the transfer under Article 4 of the property, rights, liabilities and functions of the authority to a company formed in pursuance of Article 3, submit to the Department 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 Department a copy of the memorandum and articles of the company.

(3) The documents submitted under paragraph (2) with any such scheme are referred to in this Article, in relation to the scheme, as the associated company documents.

(4) Where an authority has submitted such a scheme to the Department, the authority shall—

- (a) publish in the Belfast Gazette and by 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.

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

- (a) stating that the authority has submitted to the Department a scheme prepared by the authority for the purposes of a proposed transfer under Article 4 to a 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 Department 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 42 days beginning with the date (specifying it) of the first local advertisement.

(6) Paragraph (7) only applies where—

- (a) the requirements of paragraphs (4) and (5) have been met in relation to a scheme submitted to the Department under this Article; and
- (b) the period allowed for making representations to the Department with respect to the proposed transfer or any provisions of the scheme or of the associated company documents has expired.

(7) The Department shall decide whether or not to confirm the scheme after considering any such representations duly made before the end of that period and not withdrawn; and the Department, if it decides to confirm the scheme—

- (a) may do so either without modifications or with such modifications as it thinks fit after consulting the authority which submitted the scheme; and
- (b) may first (if it thinks fit) give the authority a direction requiring the authority, 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 paragraph (1) as may be specified in the direction.

(8) Confirmation of a scheme shall be given by an order made by the Department; and a scheme so confirmed shall take effect on the date on which the order confirming it comes into operation or on such date as may be specified in that order.

### **Schemes initiated by the Department**

**12.**—(1) The powers of the Department under this Article shall not be exercisable until after the end of the period of two years beginning with the date on which this Article comes into operation.

(2) The Department may give to a relevant port authority which has not formed a company in pursuance of Article 3 and which meets the annual turnover requirement a direction requiring the authority to form such a company before such date as may be specified in the direction.

(3) Where a relevant port authority which meets the annual turnover requirement—

- (a) has formed such a company; or
- (b) is given a direction under paragraph (2) requiring the authority to do so before a date specified in the direction;

the Department may give to the authority a direction requiring the authority (in a case within subparagraph (b), after first forming the company) to submit to the Department, 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 Article 4 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 Department as to the provisions that the Department regards as appropriate for inclusion in the scheme.

(5) The provisions of Article 11 (other than paragraph (1)) shall apply in relation to a scheme submitted under this Article as they apply in relation to a scheme submitted under that Article.

(6) Before giving any direction to a relevant port authority under this Article the Department shall consult the authority.

(7) Where after consulting a relevant port authority under paragraph (6) with respect to any direction or directions which the Department is considering giving to the authority under this Article the Department determines not to give the direction, or either or both of the directions, under consideration it shall give the authority written notification of its decision.

(8) In any case within paragraph (7) the powers of the Department under this Article 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 paragraphs (2) and (3) may be given at the same time if the Department thinks fit.

(10) In this Article "the annual turnover requirement" means the annual turnover requirement under Article 13.

### **The annual turnover requirement for the purposes of Article 12**

13.—(1) A relevant port authority meets the annual turnover requirement mentioned in Article 12 at the time when any direction is given to that authority by the Department under that Article if the annual turnover of the authority 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) For the purposes of paragraph (1), the annual turnover of a relevant port authority for any accounting year of the authority is the aggregate, as stated in any statement of accounts prepared under section 30 of the Harbours Act (Northern Ireland) 1970<sup>(1)</sup> in respect of that accounting year, of all sums received by the authority during that year.

(3) The reference in paragraph (2) 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.

(4) In paragraphs (5) to (7) “the base date” means the date on which this Order comes into operation.

(5) For the purposes of this Article—

- (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 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 paragraph (6) applies, in which case it is the amount determined under that paragraph.

(6) 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.

(7) The Department of Finance and Personnel shall publish in the Belfast Gazette the turnover limit applicable to any reference year beginning with an anniversary of the base date as soon as practicable after that anniversary.

(8) The reference in paragraph (6) 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 paragraph that reference shall be read as a reference to any substituted index or index figures published by that Office for that month.

### **Schemes made by the Department**

14.—(1) Where—

- (a) a scheme (“the authority’s scheme”) has been submitted to the Department by a relevant port authority under Article 12; but
- (b) it appears to the Department that the scheme does not accord with any advice given by the Department as mentioned in paragraph (4) of that Article and cannot be made to do so by any modifications which it is within the power of the Department to make,

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(1) 1970 c. 1 (N.I.)

the Department may itself make a scheme for the purposes of a transfer under Article 4 to the company specified in the authority's scheme of the authority's property, rights, liabilities and functions.

(2) The Department shall consult the authority concerned before preparing the scheme.

(3) Before making the scheme the Department shall publish in the Belfast Gazette and by local advertisement a notice—

- (a) stating that the Department proposes to make a scheme for the purposes of a proposed transfer under Article 4 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 the Department 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 42 days beginning with the date (specifying it) of the first local advertisement.

(4) On or before the date of the first local advertisement the Department shall serve on the relevant port authority in question—

- (a) a notice complying with paragraph (5); and
- (b) a copy of the proposed scheme.

(5) A notice under paragraph (4)(a) must—

- (a) state that the Department 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 Article 11(4)(b) to serve notice relating to such a scheme prepared by that authority.

(6) The Department shall not make the scheme until after the end of the period allowed for making representations with respect to the proposed transfer or any provisions of the proposed scheme or of any associated company documents.

(7) The Department shall decide whether or not to make the scheme after considering any such representations duly made before the end of that period and not withdrawn; and the Department, if it decides to make the scheme—

- (a) may make it as proposed or with such modifications as the Department thinks fit after consulting the authority concerned; and
- (b) may first (if it thinks fit) give the authority a direction requiring the authority, 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 paragraph (1) as may be specified in the direction.

(8) Any scheme made by the Department under this Article shall be made by order; and a scheme so made shall take effect on the date on which the order in question comes into operation or on such date as may be specified in that order.

(9) References in this Article to any associated company documents are references to any documents submitted under Article 11(2) with the authority's scheme.

