

SCHEDULE

Article 2(2)

THE DUNDEE PORT AUTHORITY TRANSFER SCHEME 1995

The Dundee Port Authority, being a relevant port authority within the meaning of section 1(3) of the Ports Act 1991, make this Scheme under Part I of that Act.

Citation and interpretation

- 1.—(1) This Scheme may be cited as the Dundee Port Authority Transfer Scheme 1995.
- (2) In this Scheme, unless the context otherwise requires—
 - “the 1991 Act” means the Ports Act 1991;
 - “the Authority” means the Dundee Port Authority;
 - “the dissolution date” means the date on which the Authority are dissolved by an order made under section 7 of the 1991 Act;
 - “local statutory provision” means—
 - (a) a provision contained in, or in a document made or issued under, any local Act (including an Act confirming a provisional order); or
 - (b) a provision of any other instrument which is in the nature of a local enactment;
 - “the Successor Company” means the company specified in paragraph 3 below;
 - “the transfer date” means the date upon which this Scheme takes effect.

Purpose of Scheme

2. This Scheme is made with a view to securing the transfer to the Successor Company under section 2 of the 1991 Act of—
 - (a) all property, rights and liabilities of the Authority other than—
 - (i) the securities of the Successor Company held by the Authority;
 - (ii) any rights or liabilities of the Authority in respect of such securities held by a nominee of the Authority; and
 - (iii) any liability of the Authority incurred by virtue of section 19 of the 1991 Act in connection with any proposal for maximising participation by employees of the Successor Company in ownership of its equity share capital; and
 - (b) all functions conferred or imposed on the Authority by any provision contained in—
 - (i) the Dundee Harbour and Tay Ferries Order Confirmation Act 1952(1);
 - (ii) the Dundee Harbour Revision Order 1969(2);
 - (iii) the Dundee Harbour Order Confirmation Act 1975(3);
 - (iv) the Dundee Port Authority Order Confirmation Act 1975(4); or
 - (v) the Dundee Port Authority Order Confirmation Act 1980(5);or in any other local statutory provision.

(1) 1952 c.xx.
(2) S.I.1969/1488.
(3) 1975 c.xvii.
(4) 1975 c.xviii.
(5) 1980 c.xxxiv.

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Specification of Successor Company

3. Port of Dundee Limited, a company formed in pursuance of section 1 of the 1991 Act and registered under the Companies Act 1985(6) with the number 155442 which is a wholly-owned subsidiary of the Authority, is hereby specified to be the Authority's successor company for the purposes of Part I of the 1991 Act.

Accounts of Authority from 1st January 1995 to transfer date

4.—(1) The statutory accounts prepared by the directors of the Successor Company in respect of a period which consists of or includes the whole or any part of the residual accounting period of the Authority shall deal with the affairs of the Authority during so much of the residual accounting period as falls within that period as well as, and as one with, the affairs of the Successor Company.

(2) In this paragraph—

- (a) “statutory accounts” means, in relation to the Successor Company,—
 - (i) any accounts prepared by that company for the purposes of any provision of the Companies Act 1985, including group accounts; and
 - (ii) any statement of accounts prepared by that company under section 42 of the Harbours Act 1964(7);
- (b) references to the residual accounting period of the Authority are references to the period beginning with 1st January 1995 and ending with the date of the day before the transfer date.

Accounts of Authority after transfer date

5.—(1) It shall be the duty of the Authority—

- (a) to keep proper accounts in respect of the period beginning with the transfer date and ending immediately before the dissolution date and proper records in relation to the accounts; and
- (b) to prepare in respect of each new accounting period a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Authority.

(2) A statement of accounts of the Authority prepared in pursuance of sub-paragraph (1)(b) above shall be audited by auditors appointed by the Authority, and a person shall not be qualified to be so appointed unless that person is eligible for appointment as a company auditor in accordance with section 25 of the Companies Act 1989.

(3) The Authority shall send to the Secretary of State a copy of the statement of accounts prepared in pursuance of sub-paragraph (1)(b) above together with a copy of the auditor's report on it.

(4) In this paragraph “new accounting period” means—

- (a) a period of twelve months beginning with the transfer date or with an anniversary of that date; and
- (b) any period of less than twelve months which begins with the transfer date or an anniversary of that date and ends immediately before the dissolution date.

Transitional provisions with respect to reserves, etc.

6.—(1) For the purposes of any statutory accounts of the Successor Company, the value of any asset and the amount of any liability transferred to the Successor Company under section 2 or 7 of

(6) 1985 c. 6.

(7) 1964 c. 40; section 42 was substituted by the Transport Act 1981 (c. 56), Schedule 6 paragraph 10 and amended by the Companies Act 1989 (c. 40), Schedule 10, paragraph 26.

the 1991 Act shall be taken to be the pre-transfer value of that asset or (as the case may be) the pre-transfer amount of that liability.

(2) An amount equal to the accumulated realised profits of the Authority at the transfer date shall be treated as accumulated realised profits of the Successor Company.

(3) Subject to sub-paragraphs (1) and (2) above, for the purposes of any statutory accounts of the Successor Company the amount to be included in respect of any item shall be determined as if anything done by the Authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Successor Company.

(4) For the purposes of sub-paragraph (1) above the pre-transfer value of an asset or (as the case may be) the pre-transfer amount of a liability is—

(a) in the case of an asset or liability transferred under section 2 of the 1991 Act, the value or (as the case may be) the amount which would have been assigned to that asset or liability for the purposes of the last statement of accounts prepared by the Authority under section 42 of the Harbours Act 1964 before the transfer date if the accounting year of the Authority dealt with in that statement of accounts had ended immediately before the transfer date; and

(b) in the case of an asset or liability transferred under section 7 of the 1991 Act, the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the last statement of accounts prepared by the Authority in pursuance of paragraph 5 above.

(5) Any reference in this paragraph to the statutory accounts of the Successor Company is a reference to—

(a) any accounts prepared by that company for the purposes of any provision of the Companies Act 1985, including group accounts; and

(b) any statement of accounts prepared by the Successor Company under section 42 of the Harbours Act 1964.

Dividend by Successor Company before laying or delivery of accounts

7.—(1) Where it is proposed to declare a distribution during the accounting reference period of the Successor Company which includes the transfer date, or before any accounts are laid or delivered to the registrar of companies in respect of that period, sections 270 to 276 of the Companies Act 1985⁽⁸⁾ (relevant accounts for determining whether a distribution is lawful) shall apply in relation to the distribution as if—

(a) such accounts as are mentioned in sub-paragraph (2) below were accounts relevant under section 270; and

(b) references in section 273 to initial accounts included references to any such accounts.

(2) The accounts referred to in sub-paragraph (1)(a) and (b) above are such accounts as, on the assumptions stated in sub-paragraph (3) below, would have been prepared under Part VII of the Companies Act 1985⁽⁹⁾ in respect of the relevant year.

(3) Those assumptions are—

(a) that the relevant year had been a financial year of the Successor Company;

(b) that the transfer effected by section 2(2) of the 1991 Act had been a vesting of all the property, rights, liabilities and functions to which the Authority were entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;

⁽⁸⁾ Sections 271, 272, 273 and 276 were amended by the Companies Act 1989, Schedule 10, paragraphs 4, 5, 6 and 7.

⁽⁹⁾ Part VII consists of sections 221 to 262A, which were inserted by the Companies Act 1989, sections 2 to 22.

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- (c) that the value of any asset and the amount of any liability of the Authority transferred to the Successor Company by virtue of the said section 2(2) had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by the Authority in respect of their financial year immediately preceding the relevant year;
- (d) that any securities of the Successor Company issued or allotted on any terms before the declaration of the distribution had been issued or allotted on those terms before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the Successor Company to be necessary or expedient for the purposes of this paragraph.

(4) For the purposes of such accounts as are mentioned in sub-paragraph (2) above the amount to be included in respect of any item shall be determined as if anything done by the Authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Successor Company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the Successor Company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Authority had been realised and retained by the Successor Company.

(5) Any such accounts shall not be regarded as statutory accounts for the purposes of paragraph 4 or 6 above.

(6) In this paragraph—

“the relevant year” means the last financial year of the Authority ending before the transfer date; and

“financial year”, in relation to the Authority, means any period of twelve months ending with 31st December.

Retirement benefits scheme

8. The transfer effected by section 2(2) of the 1991 Act shall not affect any entitlement to benefits or other rights under any deeds or other documents constituting a scheme established by the Authority for the payment of pensions, lump sums, gratuities or other like benefits to or in respect of employees or former employees of the Authority; and, accordingly, for the purposes of any such deed or other document (as it has effect by virtue of section 2(2) of, and paragraphs 1 and 2 of Schedule 1 to, that Act in relation to employment with the Successor Company)—

- (a) any period of employment with the Authority shall count as employment with the Successor Company; and
- (b) any decision taken, or other thing done, before the transfer date by the Authority shall be treated as having been taken or done by the Successor Company.

Constitution of the Authority

9.—(1) For the avoidance of doubt it is hereby declared that, notwithstanding section 2(2) of the 1991 Act and paragraphs 1 and 2 of Schedule 1 to that Act, the provisions of section 5 of and Schedule 1 to the Dundee Port Authority Order 1975(10) and the provisions of the Dundee Port Authority Harbour Revision Order 1992(11) (all which make provision as respects the constitution of the Authority) shall have no effect in relation to the Successor Company.

(10) *Secc.xviii.*

(11) *S.I. 1992/1435.*

(2) For the purposes of the local statutory provisions providing for the constitution of the Authority in their application to the Authority on and after the transfer date—

- (a) the chief executive of the Successor Company (whether designated by that company as chief executive or otherwise) shall be taken to be the chief executive of the Authority;
- (b) a manager of the Successor Company shall be taken to be an officer of the Authority; and
- (c) an employee of the Successor Company shall be taken to be an employee of the Authority.

Accordingly—

- (i) if the person who is the chief executive of the Authority immediately before the transfer date becomes the chief executive (however designated) of the Successor Company on the transfer date, he shall not thereby cease to be an ex-officio member of the Authority;
- (ii) any person who, immediately before the transfer date, is an officer of the Authority and (in that capacity) a member of the Authority and who on that date becomes an employee of the Successor Company shall not thereby cease to be a member of the Authority; and
- (iii) any person who immediately before the transfer date is the elected member of the Authority and who on that date becomes an employee of the Successor Company shall not thereby cease to be the elected member of the Authority.

(3) On or at any time after the transfer date the Secretary of State may, if he thinks fit, appoint one or more persons to be members of the Authority in addition to the members appointed in pursuance of the Dundee Port Authority Harbour Revision Order 1992:

Provided that the number of persons appointed in pursuance of this sub-paragraph and in office for the time being shall not be more than four.

(4) For the avoidance of doubt it is hereby declared that paragraphs 2, 3, 4, 6 and 7 of Part I of Schedule 1 to the Dundee Port Authority Order 1975 shall apply in respect of a person appointed in pursuance of sub-paragraph (3) above.

(5) A person appointed in pursuance of sub-paragraph (3) above shall come into office on such date and, subject to the provisions of paragraphs 3, 4 and 7 of Part I of Schedule 1 to the Dundee Port Authority Order 1975, shall continue in office for such period as the Secretary of State may specify when he makes the appointment.

Repeals

10.—(1) On the transfer date the enactments specified in Part I of the Schedule to this Scheme shall be repealed to the extent specified in the third column of that Schedule.

(2) On the dissolution date the enactments specified in Part II of that Schedule shall be repealed to the extent specified in the third column of that Schedule.

IN WITNESS WHEREOF Dundee Port Authority have caused their Common Seal to be hereunto affixed the seventeenth day of January 1995.

B G Duncan

Deputy Chairman

J J Watson

Chief Executive