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## SCHEDULES

### SCHEDULE 1

Section 2(5), (6).

#### SUPPLEMENTARY PROVISIONS WITH RESPECT TO TRANSFERS UNDER SECTION 2

#### PART I

##### SUPPLEMENTARY PROVISIONS OF GENERAL APPLICATION

###### *Construction of agreements, statutory provisions and documents*

- 1 (1) Where any transferred rights or liabilities are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, that agreement shall have effect on and after that date as if—
- (a) the transferee had been a party to the agreement; and
  - (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after that date, a reference to the transferee; and
  - (c) any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the transferor and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after that date, a reference—
    - (i) to such person as the transferee may appoint; or
    - (ii) in default of appointment, to a person employed by, or engaged in the business of, the transferee who corresponds as nearly as may be to the person referred to in the agreement.
- (2) This paragraph applies to any agreement whether in writing or not and whether or not of such nature that rights and liabilities under it could be assigned by the transferor.
- 2 (1) Paragraph 1 above (except sub-paragraph (1)(a)) shall apply in relation to—
- (a) any statutory provision;
  - (b) any provision of any agreement to which the transferor was not a party; and
  - (c) any provision of any document other than an agreement;
- as it applies in relation to an agreement to which the transferor was a party.
- (2) Sub-paragraph (1) above has effect in relation to any such provision only if and so far as the provision relates to—
- (a) any of the transferred property, rights, liabilities or functions; or
  - (b) any business or activity to which any of the transferred property, rights, liabilities or functions relates.
- (3) In relation to any such provision, references in paragraph 1(1)(b) and (c) above to the transferor and to any persons employed by, or engaged in the business of, the transferor include references made by means of a general reference to a class

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of persons of which the transferor is one, without the transferor being specifically referred to.

- 3 (1) The transferee and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any transferred right or liability as they would have had if that right or liability had at all times been a right or liability of the transferee.
- (2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to—
- (a) any transferred property, right, liability or function; or
  - (b) any agreement or enactment relating to any such property, right, liability or function;
- shall be continued by or against the transferee to the exclusion of the transferor.
- (3) This paragraph is without prejudice to the generality of paragraphs 1 and 2 above.
- 4 Paragraphs 1 to 3 above have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

*Transfer of rights and liabilities relating to employment*

- 5 For the purposes of the [<sup>F1</sup>Transfer of Undertakings (Protection of Employment) Regulations 2006] section 2 above shall be regarded as effecting a transfer to which those regulations apply of the whole of the transferor’s undertaking, including any part of it which is not in the nature of a commercial venture; and accordingly in those regulations, as they apply in relation to such a transfer, references to the undertaking apply to all activities (of whatever description) carried on before the transfer by the transferor.

**Textual Amendments**

- F1** Words in Sch. 1 para. 5 substituted (6.4.2006 with application in accordance with reg. 21(1)) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 1\(c\)](#)

*Interpretation of Part I*

- 6 In this Part of this Schedule—
- “the transfer date” means the date on which the transfer takes effect; and
  - “the transfer” means the transfer in question under section 2 above (and references to the transferor and the transferee and to transferred property, rights, liabilities or functions shall be read accordingly).

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## PART II

### SUPPLEMENTARY PROVISIONS WHICH MAY BE INCLUDED IN SCHEMES

#### *Description of provisions*

- 7 Provision altering the constitution of the authority.
- 8 Provision imposing obligations on the authority with respect to—
- (a) the keeping of accounts and records in relation to the accounts;
  - (b) the preparation in respect of any period in respect of which such a statement is required by the scheme of a statement of accounts relating to the state of affairs and the income and expenditure of the authority; and
  - (c) the audit of the authority's accounts by auditors qualified for the purpose in accordance with the scheme;
- and requiring copies of audited accounts and the report of the auditor on such accounts to be sent to the appropriate Minister.
- Provision under this paragraph may include in particular a requirement that any such statement of accounts should comply with requirements imposed by the appropriate Minister in such manner, and with respect to such matters, as may be specified in the scheme.
- 9 (1) Provision that—
- (a) for the purposes of any statutory accounts of the successor company and for such other purposes (if any) as may be prescribed the value of any asset and the amount of any liability transferred to the successor company under section 2 or 7 above 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;
  - (b) a prescribed amount not exceeding any accumulated realised profits of the relevant port authority in question at the date of the transfer under section 2 above shall be treated as accumulated realised profits of the successor company;
  - (c) subject to any provision made by virtue of the preceding provisions of this sub-paragraph, 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.
- (2) For the purposes of sub-paragraph (1)(a) 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 above, 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 statutory accounts of the relevant port authority in question if the accounting year of that authority dealt with in those accounts had ended immediately before the date of the transfer; and
  - (b) in the case of an asset or liability transferred under section 7 above, 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 by virtue of any provision of the scheme made under paragraph 8 above.

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- (3) In sub-paragraph (1) above “prescribed” , in relation to any provision that may be made by the scheme, means specified or described in or determined in accordance with the scheme.
- 10 (1) Provision requiring the successor company either—
- (a) to prepare a statement of accounts relating to the state of affairs and the income and expenditure of the relevant port authority in question in respect of any residual accounting period of that authority; or
  - (b) to deal with those matters in its statutory accounts in respect of any period which consists of or includes any residual accounting period of that authority.
- (2) Provision under sub-paragraph (1)(a) above may include provision corresponding to that authorised under paragraph 8 above in relation to the authority’s accounts.
- (3) Provision under sub-paragraph (1)(b) above may impose requirements with respect to the manner in which the matters there mentioned are to be dealt with in the successor company’s statutory accounts.
- (4) References in this paragraph to a residual accounting period of the relevant port authority are references to any period falling after the end of the accounting year of that authority dealt with in the authority’s last statutory accounts.
- 11 (1) Provision for applying [F<sup>2</sup>sections 836 to 840 of the Companies Act 2006] (relevant accounts for determining whether a distribution is lawful) in relation to any initial distribution of the successor company as if—
- (a) the accounts prepared by that company in accordance with the provision authorised below in this paragraph were accounts relevant under [F<sup>3</sup>section 836]; and
  - (b) references in [F<sup>4</sup>section 839] to initial accounts included references to any such accounts.
- (2) The accounts referred to in sub-paragraph (1) above are such accounts as, on such assumptions as may be specified in or made in accordance with any provision of the scheme, would have been prepared under [F<sup>5</sup>Part 15 of the Companies Act 2006] in respect of the last accounting year of the relevant port authority in question ending before the date on which the transfer under section 2 above takes effect.
- (3) The provision that may be made by the scheme with respect to those accounts includes provision corresponding to that authorised under paragraph 9(1)(c) above in relation to statutory accounts of the successor company.
- (4) The reference in sub-paragraph (1) above to an initial distribution of the successor company is a reference to any distribution declared—
- (a) during the accounting reference period of that company which includes the date on which the transfer under section 2 above takes effect; or
  - (b) before any accounts of that company are laid or delivered to the registrar of companies in respect of that period.

#### Textual Amendments

- F2** Words in Sch. 1 para. 11(1) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), [Sch. 1 para. 179\(2\)\(a\)](#) (with arts. 6, 11, 12)

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- F3** Words in Sch. 1 para. 11(1)(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 179(2)(b)** (with arts. 6, 11, 12)
- F4** Words in Sch. 1 para. 11(1)(b) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 179(2)(c)** (with arts. 6, 11, 12)
- F5** Words in Sch. 1 para. 11(2) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 179(3)** (with arts. 6, 11, 12)

- 12 Such supplementary, incidental or consequential provision as appears to the relevant port authority in question (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 operation of any provision of Part I above or of the scheme.

Provision under this paragraph may include in particular provision for repealing or amending any local statutory provision affecting the relevant port authority in question or any harbour for which that authority are the harbour authority; and any such provision may be made so as to take effect on the date on which the scheme takes effect or on the date on which the authority are dissolved under section 7 above.

#### *Interpretation of Part II*

- 13 References in this Part of this Schedule to the statutory accounts of the successor company are references to—
- (a) any accounts prepared by that company for the purposes of any provision of [<sup>F6</sup>the Companies Act 2006], including group accounts but excluding any accounts so prepared by virtue of any provision of the scheme made under paragraph 11 above; and
  - (b) any statement of accounts prepared by that company under section 42 of the <sup>M1</sup>Harbours Act 1964.

#### **Textual Amendments**

- F6** Words in Sch. 1 para. 13(a) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), **Sch. 1 para. 179(4)** (with arts. 6, 11, 12)

#### **Marginal Citations**

- M1** 1964 c. 40.

- 14 References in this Part of this Schedule to the last statutory accounts of the relevant port authority in question are references to the last statement of accounts prepared by that authority under section 42 of the <sup>M2</sup> Harbours Act 1964 before the date on which the transfer under section 2 above takes effect.

#### **Marginal Citations**

- M2** 1964 c. 40.

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## SCHEDULE 2

Section 23(1).

### GENERAL SUPPLEMENTARY PROVISIONS WITH RESPECT TO TRANSFER UNDER SECTION 22

#### *Division and apportionment of property etc.*

- 1 (1) This paragraph applies where the transfer is or includes a transfer of all property, rights and liabilities comprised in a specified part of the Port Authority's undertaking, but shall not apply to any such rights or obligations under a contract of employment.
- (2) Any property, right or liability held or subsisting—
- (a) partly for the purpose of a part of the Port Authority's undertaking which is transferred; and
  - (b) partly for the purpose of a part of that undertaking which is retained by the Port Authority;
- shall, where the nature of the property, right or liability permits, be divided or apportioned between the Port Authority and the company in such proportions as may be appropriate.
- (3) Where any estate or interest in land falls to be so divided—
- (a) any rent payable under a lease in respect of that estate or interest; and
  - (b) any rent charged on that estate or interest;
- shall be correspondingly divided or apportioned so that the one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (4) Any property, right or liability held or subsisting as mentioned in sub-paragraph (2) above the nature of which does not permit its division or apportionment as so mentioned shall be transferred to the company or retained by the Port Authority according to which of them appear at the transfer date likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent, subject to such arrangements for the protection of the other of them as may be agreed between them.

#### *Identification of property, rights and liabilities*

- 2 (1) It shall be the duty of the Port Authority and the company, whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities transferred to the company or retained by the Port Authority or for making any such arrangements as are mentioned in paragraph 1(4) above and as will—
- (a) afford to the Port Authority and the company as against one another such rights and safeguards as they may require for the proper discharge of their respective functions; and
  - (b) make as from such date, not being earlier than the transfer date, as may be specified in that agreement or instrument such clarifications and modifications of the division of the Port Authority's undertaking as will best serve the proper discharge of the respective functions of the Port Authority and the company.
- (2) Any such agreement shall provide so far as it is expedient—

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- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
  - (b) for the granting of indemnities in connection with the severance of leases and other matters;
  - (c) for responsibility for registration of any matter in any description of statutory register.
- 3 (1) If the Port Authority or the company represents to the Secretary of State, or it appears to the Secretary of State without such a representation, that it is unlikely in the case of any matter on which agreement is required to be reached under paragraph 2(1) above that such agreement will be reached, the Secretary of State may, whether before or after the transfer date, give a direction determining that matter.
- (2) A direction under sub-paragraph (1) above may include any provision which might have been included in an agreement under paragraph 2(1) above.
- (3) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the company shall be regarded as having been transferred to the company by the scheme under section 22 above.

*Right to production of documents of title*

- 4 Where on the transfer the Port Authority are entitled to retain possession of any documents relating in part to the title to, or to the management of, any land or other property transferred to the company, the Port Authority shall be deemed to have given to the company an acknowledgment in writing of the right of the company to production of that document and to delivery of copies of it; and section 64 of the <sup>M3</sup>Law of Property Act 1925 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

**Marginal Citations**

M3 1925 c. 20.

*Proof of title by certificate*

- 5 (1) The Port Authority and the company may issue a joint certificate stating that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by the scheme under section 22 above to the company; and any such certificate shall be conclusive evidence for all purposes of that fact.
- (2) If, after the end of the period of one month beginning with the date of a request by the Port Authority or the company for the preparation of such a joint certificate as respects any property, interest, right or liability, the Port Authority and the company have failed to agree on the terms of the certificate, they shall refer the matter to the Secretary of State and issue the certificate in such terms as the Secretary of State may direct.

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*Construction of agreements, statutory provisions and documents*

- 6 (1) Where any transferred rights or liabilities are rights or liabilities under an agreement to which the Port Authority were a party immediately before the transfer date, that agreement shall have effect on and after that date—
- (a) as if the company had been a party to the agreement; and
  - (b) as if for any reference (whether express or implied and, if express, however worded) to the Port Authority there were substituted, as respects anything falling to be done on or after that date, a reference to the company; and
  - (c) as if any reference (whether express or implied and, if express, however worded) to a person employed by, or engaged in the business of, the Port Authority and holding a specified office or serving in a specified capacity were, as respects anything falling to be done on or after that date, a reference—
    - (i) to such person as the company may appoint; or
    - (ii) in default of appointment, to a person employed by, or engaged in the business of, the company who corresponds as nearly as may be to the person referred to in the agreement; and
  - (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the Port Authority and the company, as if the agreement constituted two separate agreements separately enforceable by and against the Port Authority and the company as regards the part of the property, rights or liabilities retained by the Port Authority or (as the case may be) the part vesting in the company, and not as regards the other part; and paragraph (d) above shall apply in particular to the covenants, stipulations and conditions of any lease by or to the Port Authority.
- (2) This paragraph applies to any agreement whether in writing or not and whether or not of such nature that rights and liabilities under it could be assigned by the Port Authority.
- 7 (1) Paragraph 6 above (except sub-paragraph (1)(a)) shall apply in relation to—
- (a) any statutory provision;
  - (b) any provision of any agreement to which the Port Authority were not a party; and
  - (c) any provision of any document other than an agreement;
- as it applies in relation to an agreement to which the Port Authority were a party.
- (2) Sub-paragraph (1) above has effect in relation to any such provision only if and so far as the provision relates to—
- (a) any of the transferred property, rights, liabilities or functions; or
  - (b) any business or activity to which any of the transferred property, rights, liabilities or functions relates.
- (3) In relation to any such provision, references in paragraph 6(1)(b) and (c) above to the Port Authority and to any persons employed by, or engaged in the business of, the Port Authority include references made by means of a general reference to a class of persons of which the Port Authority are one, without the Port Authority being specifically referred to.
- 8 (1) The company and any other person shall, as from the transfer date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications



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to any authority) for ascertaining, perfecting or enforcing any transferred right or liability as they would have had if that right or liability had at all times been a right or liability of the company.

- (2) Any legal proceedings or applications to any authority pending on the transfer date by or against the Port Authority, in so far as they relate to—
- (a) any transferred property, right, liability or function; or
  - (b) any agreement or enactment relating to any such property, right, liability or function;

shall be continued by or against the company to the exclusion of the Port Authority.

- (3) This paragraph is without prejudice to the generality of paragraphs 6 and 7 above.

- 9 Paragraphs 6 to 8 above have effect for the interpretation of agreements, statutory provisions and other instruments subject to the context, and shall not apply where the context otherwise requires.

#### *Transfer of rights and liabilities relating to employment*

- 10 (1) For the purposes of the <sup>M4</sup>Transfer of Undertakings (Protection of Employment) Regulations 1981 section 22(8) above shall be regarded as effecting a transfer to which those regulations apply of a part of the Port Authority's undertaking comprising all activities of the Port Authority which by virtue of the transfer cease to be carried on by the Port Authority, including any such activities which themselves form a part of the Port Authority's undertaking which is not in the nature of a commercial venture.
- (2) Accordingly in those regulations, as they apply in relation to the transfer, references to the part of the undertaking transferred apply to all such activities of the Port Authority (of whatever description).

#### **Marginal Citations**

**M4** [S.I. 1981/1794](#).

#### *Third parties affected by vesting provisions*

- 11 (1) Without prejudice to the generality of paragraphs 6 to 9 above, any transaction effected between the Port Authority and the company in pursuance of paragraph 2(1) above or of a direction under paragraph 3 above shall be binding on all other persons, and notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the Port Authority and the company.
- (2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the Port Authority and as to part by or against the company, it shall be the duty of the Authority and the company, to give that person written notification of that fact.
- (3) If such a person applies to the Secretary of State and satisfies him that the transaction operated unfairly against him the Secretary of State may give such directions to the Port Authority and the company as appear to him appropriate for varying the transaction.

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- (4) If in consequence of the transfer or of anything done in pursuance of the provisions of this Schedule—
- (a) the rights or liabilities of any person other than the Port Authority or the company or a wholly-owned subsidiary of either body which were enforceable against or by the Port Authority become enforceable as to part against or by the Port Authority and as to part against or by the company; and
  - (b) the value of any property or interest of that person is thereby diminished;
- such compensation as may be just shall be paid to that person by the Port Authority, the company or both.
- (5) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (4) above, or as to the person to whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Lord Chancellor.
- (6) Where the Port Authority or the company purports by any conveyance or transfer to transfer to some person other than the Port Authority or the company or a wholly-owned subsidiary of either body for consideration any land or other property which before the transfer date belonged to the Port Authority, or which is an interest in property which before that date belonged to the Port Authority, the conveyance or transfer shall be as effective as if both the Port Authority and the company had been parties to it and had thereby conveyed or transferred all their interest in the property conveyed or transferred.
- (7) A court shall have the power set out in sub-paragraph (8) below if, at any stage in proceedings before it to which the Port Authority or the company and a person other than the Port Authority or the company or a wholly-owned subsidiary of either body are parties, it appears to it that the issues in the proceedings—
- (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the Port Authority and the company have not yet effected; or
  - (b) raise a question of construction on the relevant provisions of this Act which would not arise if the Port Authority and the company constituted a single person.
- (8) In any such case the court may, if it thinks fit, on the application of a party to the proceedings other than the Port Authority or the company or a wholly-owned subsidiary of either body, hear and determine the proceedings on the footing that such one of the Port Authority or the company as is a party to the proceedings represents and is answerable for the other of them, and that the Port Authority and the company constitute a single person.
- (9) Any judgement or order given by a court in proceedings determined on that footing shall bind both the Port Authority and the company accordingly.
- (10) It shall be the duty of the Port Authority and the company to keep one another informed of any case where either of them may be prejudiced by sub-paragraph (6) above or any judgement or order given by virtue of sub-paragraph (8) above.
- (11) If either body claims that it has been so prejudiced and that the other body ought to indemnify or make a payment to it on that account and has unreasonably failed to meet that claim, the body making the claim may refer the matter to the Secretary of State for determination by the Secretary of State.

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### *Interpretation*

12 In this Schedule—

- (a) “transfer date” means the date on which the transfer takes effect;
- (b) “the transfer” means the transfer under subsection (8) of section 22 above;
- (c) references to transferred property, rights or liabilities are references to property, rights or liabilities transferred by the scheme under that section in accordance with paragraph (a) of that subsection; and
- (d) references to transferred functions are references to functions transferred by paragraph (b) of that subsection.

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**Changes and effects yet to be applied to :**

- s. 29 repealed by [2003 c. 26 Sch. 8 Pt. 1](#)