

## SCHEDULE

Article 2

### THE TEES AND HARTLEPOOL PORT AUTHORITY SCHEME 1991

The Tees and Hartlepool 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:—

#### **Commencement, citation and interpretation**

1.—(1) This Scheme shall come into effect on the date specified in the Order confirming this Scheme made by the Secretary of State under section 9(7) of the 1991 Act.

(2) This Scheme may be cited at the Tees and Hartlepool Port Authority Scheme 1991.

(3) In this Scheme, unless the context otherwise requires—

“the 1991 Act” means the Ports Act 1991;

“the Authority” means the Tees and Hartlepool 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 the Tees and Hartlepool Port Authority Acts and Orders 1966 to 1982 or any other local statutory provisions.

#### **Specification of Successor Company**

3. Tees and Hartlepool Port Authority Limited, a company formed in pursuance of section 1 of the 1991 Act and registered under the Companies Act 1985<sup>(1)</sup> with the number 2636007 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.

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(1) 1985 c. 6.

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### **Final accounts of Authority up to transfer date**

4.—(1) Where the financial year dealt with in the last statement of accounts prepared by the Authority before the transfer date does not end immediately before that date, the statutory accounts prepared by the directors of the Successor Company in respect of a period which includes or consists of the whole or any part of the residual accounting period as falls within that period as well as, and as one with, the affairs of the Successor Company.

(2) If, in a case where sub-paragraph (1) above applies, the day with which the residual accounting period begins falls before the date of incorporation of the Successor Company, section 224(4) of the Companies Act 1985<sup>(2)</sup> (which defines a company's first accounting reference period) shall have effect in relation to the Successor Company as if for the reference to the date of incorporation of the Company there were substituted a reference to the day with which the residual accounting period begins; and references in the Companies Act 1985 to the first accounting reference period shall be construed accordingly.

(3) In this paragraph —

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

“statutory accounts” means—

- (a) in relation to the Authority, any statement of accounts prepared by the Authority under section 42 of the Harbours Act 1964<sup>(3)</sup>; and
- (b) 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;

and references in this paragraph to a residual accounting period of the Authority are references to any period falling after the end of the financial year of the Authority dealt with in the last statement of accounts prepared by the Authority under section 42 of the Harbours Act 1964 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 a member of, or is a Scottish firm in which all the partners are members of, one or more of the following bodies of accountants—

- (a) The Institute of Chartered Accountants in England and Wales;
- (b) The Institute of Chartered Accountants of Scotland;
- (c) The Chartered Association of Certified Accountants; and
- (d) The Institute of Chartered Accountants in Ireland.

<sup>(2)</sup> Section 224 was inserted by section 3 of the Companies Act 1989 (c. 40).

<sup>(3)</sup> 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, Schedule 10, paragraph 26.

(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 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 assigned to that asset or liability for the purposes of the last 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(4) (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.

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

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(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<sup>(5)</sup> 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;
- (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 has 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 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 has 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 before the transfer date; and
- “financial year”, in relation to the Authority, has the meaning given by paragraph 4 above.

### **Constitution of the Authority**

**8.—**(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 sections 5 and 8 of, and Schedule 3 to, the Tees and Hartlepoons Port Authority Act 1966<sup>(6)</sup> and of the Tees and Hartlepool Port Authority (Constitution) Revision Order 1978<sup>(7)</sup> (which make provision as respects the constitution of the Authority) shall have no effect in relation to the Successor Company.

(2) For the purposes of the provisions of that Order, a full-time employee of the Successor Company shall, at any time after the transfer date, be taken to be a full-time officer of the Authority; and, accordingly, any person who, immediately before the transfer date, is a full-time officer of the Authority and (in that capacity) a member of the Authority and who on that date becomes a full-time employee of the Successor Company shall not thereby cease to be a member of the Authority.

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<sup>(5)</sup> Part VII consists of sections 221 to 262A, which were inserted by the Companies Act 1989

<sup>(6)</sup> 1966 c.xxv.

<sup>(7)</sup> S.I.1978/941.

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(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 Tees and Hartlepool Port Authority (Constitution) Revision Order 1978:

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) A person appointed in pursuance of sub-paragraph (3) above shall (if he would not otherwise be) be deemed for the purposes of section 8(2) and (3) of the Tees and Hartlepool Port Authority Act 1966(8) to be an appointed member.

(5) A person appointed in pursuance of sub-paragraph (3) above shall come into office on such date and, subject to the provisions of section 8(2) and (3) of, and paragraph 6 of Schedule 3 to, the Tees and Hartlepool Port Authority Act 1966, shall continue in office for such period as the Secretary of State may specify when he makes the appointment.

(6) For the purposes of paragraphs (7) and (11) of article 3 of the Tees and Hartlepool Port Authority (Constitution) Revision Order 1978, a member appointed in pursuance of this paragraph shall be deemed to have been appointed under paragraph (1)(a) of that article.

## Repeals

9.—(1) On the transfer date the enactments specified in Part I of the Schedule to this Scheme shall, subject to sub-paragraph (3) below, 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.

(3) The repeal by sub-paragraph (1) above of provisions contained in Part VI of the Tees and Hartlepool Port Authority Act 1966 (including Schedule 7) shall not apply in relation to—

- (a) any stock created pursuant to section 49 of that Act,
- (b) any mortgages deemed to have been granted by the Authority by virtue of section 32 of that Act or referred to in section 51 of that Act, or
- (c) any stock or mortgages issued or granted by the Authority before the transfer date.

IN WITNESS whereof the Tees and Hartlepool Port Authority have caused their Common Seal to be hereunto affixed the Ninth day of August 1991.

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(8) Section 8(3) was amended by article 6 of the Tees and Hartlepool Port Authority (Constitution) Revision Order 1978.