
STATUTORY INSTRUMENTS

1992 No. 304

HARBOURS, DOCKS, PIERS AND FERRIES

**The Clyde Port Authority Scheme
1991 Confirmation Order 1992**

Made - - - - *18th February 1992*

Coming into force - - *1st March 1992*

Whereas the Secretary of State for Transport is for the purposes of Part I of the Ports Act 1991(1) the appropriate Minister in relation to the Clyde Port Authority;

And whereas the Secretary of State has in pursuance of subsection(6) of section 9 of that Act considered the representations duly made to him before the end of the period allowed pursuant to subsection (4)(c)of that section and not withdrawn:

Now, therefore, the Secretary of State, after consulting the said Authority in pursuance of paragraph (a) of the said subsection (6), in exercise of the powers conferred on him by subsections (6) and (7) of the said section 9 and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Clyde Port Authority Scheme 1991 Confirmation Order 1992 and shall come into force on 1st March 1992.

Confirmation of Scheme

- 2.—(1) The Clyde Port Authority Scheme 1991 is hereby confirmed with modifications.
(2) The text of the said Scheme as so confirmed is set out in the Schedule hereto.

(1) 1991 c. 52; for the definition of “the appropriate Minister”, see section 20(1) and (2).

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Signed by authority of the Secretary of State for Transport

18th February 1992

Patrick McLoughlin
Parliamentary Under Secretary of State,
Department of Transport

SCHEDULE

Article 2

THE CLYDE PORT AUTHORITY SCHEME 1991

The Clyde 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 Clyde Port Authority Scheme 1991.
- (2) In this Scheme, unless the context otherwise requires—
 - “the 1991 Act” means the Ports Act 1991;
 - “the Authority” means the Clyde 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 Clyde Navigation Acts 1858 to 1965, the Greenock Port and Harbours Acts 1913 to 1957, the Clyde Port Authority Orders 1965 to 1977 or any other local statutory provision.

Specification of Successor Company

3. Clydeport Limited, a company formed in pursuance of section 1 of the 1991 Act and registered under the Companies Act 1985(2) with the number 134759 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.

(2) 1985 c. 6.

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Constitution of Authority

4.—(1) On the transfer date the provisions of this paragraph shall have effect with respect to the constitution of the Authority and, accordingly, the Clyde Port Authority Order 1974(3) (in this paragraph referred to as “the 1974 Order”) shall cease to have effect.

(2) The Authority shall consist of a chairman appointed by the Secretary of State and not less than eight or more than fifteen other members of whom—

- (a) not less than six or more than twelve shall be appointed by the Secretary of State; and
- (b) not less than two or more than three shall be full-time employees of the Successor Company appointed by the Authority.

(3) The persons who immediately before the transfer date are the chairman and other members of the Authority appointed by the Secretary of State under article 3(1)(a) of the 1974 Order shall remain respectively the chairman and other members of the Authority and, subject to the provisions of sub-paragraphs (10) to (12) below, shall continue in office until 31st December 1994 (or, if earlier, until the Authority are dissolved by an order made under section 7 of the 1991 Act).

(b) A full-time employee of the Successor Company who is a member of the Authority by virtue of paragraph (a) above, or who is on or after the transfer date appointed by the Authority to serve as a member of the Authority, shall hold and vacate his office as a member at the discretion of the Authority but may at any time resign his membership by notice in writing given to the chairman of the Authority.

(c) If such a member as is referred to in paragraph (b) above ceases to be a full-time employee of the Successor Company he shall thereupon cease to be a member of the Authority.

- (a) (5) (a) The person who, immediately before the transfer date, is the deputy chairman of the Authority shall remain the deputy chairman of the Authority according to the terms of his appointment under paragraph 3 of the Schedule to the 1974 Order.

(b) Subject to paragraph (a) above, the Authority shall from time to time on the occurrence of any vacancy in that office appoint one of their number to be the deputy chairman of the Authority.

(6) In the event of a casual vacancy occurring in the office of chairman of the Authority, the Authority shall, as soon as they conveniently can after the occurrence of the vacancy, appoint some other member of the Authority to fill the vacancy and the member so chosen shall hold that office until such time as a chairman appointed by the Secretary of State (whether by the appointment of that member or of any other member or person) assumes that office.

(7) The Secretary of State may appoint a person—

- (a) to be a member of the Authority—
 - (i) on the going out of office immediately after 31st December 1994 of members of the Authority referred to in sub-paragraph (3) above; or
 - (ii) to fill any other vacancy arising whether before or after 1st January 1995; or
- (b) whether on or before or after 1st January 1995, to be an additional member of the Authority: Provided that the Secretary of State shall not make an appointment which causes the number of members of the Authority (including the chairman) appointed by him, whether under the provisions of the 1974 Order or of this paragraph, to exceed at any time thirteen.

(8) If the number of members of the Authority appointed by the Secretary of State (including the chairman) is at any time less than seven, the Secretary of State shall as soon as he conveniently can appoint one or more persons to be members of the Authority so that the number of members of the Authority appointed by him (including the chairman) is at least seven.

(3) S.I. 1974/1142.

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(9) A member of the Authority appointed by the Secretary of State under the provisions of this paragraph shall come into office on such date as the Secretary of State may specify when he makes the appointment and, subject to the provisions of sub-paragraphs (10) to (12) below, shall continue in office until such date, not being later than three years after the date of his coming into office, as the Secretary of State may specify when he makes the appointment.

(10) A member of the Authority appointed by the Secretary of State (whether under the provisions of the 1974 Order or of this paragraph) may resign his office by notice in writing given to the Secretary of State and to the chairman of the Authority.

(11) If the Secretary of State is satisfied that, in the case of a member of the Authority appointed by him (whether under the provisions of the 1974 Order or of this paragraph)—

- (a) he has been absent from meetings of the Authority for three consecutive months or more without the permission of the Authority; or
- (b) he has been adjudged bankrupt, his estate has been sequestrated or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
- (c) he is, or may be, suffering from mental disorder and either—
 - (i) he is admitted to hospital in pursuance of an application for admission under the Mental Health (Scotland) Act 1984⁽⁴⁾ or an application for admission for treatment under the Mental Health Act 1983⁽⁵⁾; or
 - (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- (d) he is otherwise unable or unfit to discharge the functions of a member; the Secretary of State may, by notice in writing given to the member concerned and to the chairman of the Authority, declare the office of that member to be vacant, and thereupon his office shall be vacant.

(12) A member of the Authority shall retire from office on reaching the age of seventy.

(13) Subject to the provisions of Schedule 1 to the Clyde Port Authority Order 1965⁽⁶⁾, the Authority shall have power to regulate their own procedure and the quorum and procedure of any of their committees.

Accounts of Authority up to 31st December 1991

5.—(1) Where the financial year dealt with in the last statement of accounts prepared by the Authority under section 42 of the Harbours Act 1964⁽⁷⁾ before the transfer date does not end on 31st December 1991, it shall be the duty of the Successor Company to prepare a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Authority in respect of the financial year ending on 31st December 1991.

(2) The statement of accounts prepared under sub-paragraph (1) above shall be audited by auditors appointed by the Authority (or, if no such appointment has been made before the dissolution date, by the Successor Company), 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;

(4) 1984 c. 36.

(5) 1983 c. 20.

(6) 1965 c.xlv.

(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.

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

(3) Subsections (2) to (9) of section 42 of the Harbours Act 1964 (accounts and reports relating to harbour activities and associated activities), and any regulations made under subsection (7) or (9) of that section, shall apply in relation to the preparation under sub-paragraph (1) above of the statement of accounts by the Successor Company in respect of the financial year ending on 31st December 1991 and to the statement of accounts so prepared as they apply in relation to the preparation under that section of a statement of accounts by a statutory harbour undertaker in respect of that period and to the statement of accounts so prepared.

Accounts of Authority from 1st January 1992 to transfer date

6.—(1) Where the transfer date falls after 31st December 1991, 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;
- (b) references to the residual accounting period of the Authority are references to the period beginning with 1st January 1992 and ending with the date before the transfer date.

Accounts of Authority after transfer date

7.—(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.

(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

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- (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

8.—(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 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 7 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

9.—(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. ⁽⁹⁾ in respect of the relevant year.
- (3) Those assumptions are—

⁽⁸⁾ 1964 c. 40.

⁽⁹⁾ Sections 271, 272, 273 and 276 were amended by the Companies Act 1989, Schedule 10, paragraphs 4, 5, 6 and 7.

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- (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 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 6 or 8 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.

Power to purchase irredeemable stock

10.—(1) At any time on or after the transfer date the Successor Company, as transferee (by virtue of section 2(2) of the 1991 Act) of the property, rights, liabilities and functions of the Authority in respect of relevant stock, may purchase any such stock on such terms and conditions as may be agreed between the company and the holder of the stock.

(2) The Successor Company on purchasing any such stock shall forthwith pass a resolution directing the stock so purchased to be cancelled and the stock register to be amended accordingly, and that stock and any interest thereon which has not already become payable shall thereupon be extinguished.

(3) In this section “relevant stock” means Clyde Port Authority irredeemable stock created by virtue of section 48 of the Clyde Port Authority Order 1965 and issued in pursuance of section 49 of that Order.

Retirement Benefits Scheme

11. 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 consent given, or other thing done, before the transfer date by the Authority shall be treated as having been given or done by the Successor Company.

Supplementary

12.—(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 6 and 9 of, and Schedule 1 to, the Clyde Port Authority Order 1965 (which make provision as respects the constitution of the Authority) shall have no effect in relation to the Successor Company.

(2) On the transfer date the enactments specified in Part I of the Schedule to this Scheme shall, subject to sub-paragraph (4) below, be repealed to the extent specified in the third column of that Schedule.

(3) 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.

(4) The repeal by sub-paragraph (2) above of provisions contained in Part VI of the Clyde Port Authority Order 1965 (including Schedule 4) shall not apply in relation to—

- (a) any Clyde Port Authority irredeemable stock created by virtue of section 48 of that Order and issued in pursuance of section 49 of that Order;
- (b) any Clyde Port Authority bonds referred to in section 52 of that Order; or
- (c) any bonds or stock granted or issued by the Authority before the transfer date. IN WITNESS whereof the Clyde Port Authority have caused their Common Seal to be hereunto affixed the Twenty ninth day of October 1991.

SCHEDULE

REPEALS

PART I

repeals taking effect on the transfer date

| <i>Chapter or Number (1)</i> | <i>Short Title (2)</i> | <i>Extent of Repeal (3)</i> |
|----------------------------------|---|---|
| 1965 c.xlv. | Clyde Port Authority Order Confirmation Act 1965. | Sections 50 to 57 and 59 to 66 of, and Schedules 4 and 5 to, the Clyde Port Authority Order 1965. |

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| <i>Chapter or Number (1)</i> | <i>Short Title (2)</i> | <i>Extent of Repeal (3)</i> |
|----------------------------------|--|---------------------------------|
| S.I.1974/1142. | Clyde Port Authority Order 1974. | The whole Order. |
| S.I.1977/1354. | Clyde Port Authority (Borrowing Powers) Revision Order 1977. | The whole Order. |

PART II

repeals taking effect on the dissolution date

| <i>Chapter or Number (1)</i> | <i>Short Title (2)</i> | <i>Extent of Repeal (3)</i> |
|----------------------------------|---|--|
| 1965 c.xlv. | Clyde Port Authority Order Confirmation Act 1965. | Sections 6, 9, 12 and 38 of, and Schedule 1 to, the Clyde Port Authority Order 1965. |

R. W. S. Easton
Chairman G. P. Johnston
Secretary

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confirms the Clyde Port Authority Scheme 1991, as modified by the Secretary of State for Transport.

The Scheme was made by the Clyde Port Authority under section 9 of the Ports Act 1991. By virtue of that section the Scheme takes effect on the date on which the Order comes into force. On that date all property, rights and liabilities of the Authority and all functions conferred or imposed on the Authority by any local statutory provision are transferred to and by virtue of section 2 of the Act become property, rights and liabilities or (as the case may be) functions of the successor company specified by paragraph 3 of the Scheme.