
STATUTORY INSTRUMENTS

1994 No. 2809 (N.I. 16)

The Ports (Northern Ireland) Order 1994 ^{F1}

- - - - - 2nd November 1994

Annotations:

F1 functions transf. SR 1999/481

Introductory

Title and commencement.

1.—(1) This Order may be cited as the Ports (Northern Ireland) Order 1994.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954^{F2} shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“accounting year”, in relation to a relevant port authority, means any period in respect of which the authority is required under section 30 of the Harbours Act (Northern Ireland) 1970^{F3} to prepare an annual statement of accounts;

“the 1992 Act” means the Taxation of Chargeable Gains Act 1992^{F4};

“the Department” means the Department of the Environment or, if the harbour in relation to which a relevant port authority is or immediately before a transfer under Article 4 was the harbour authority is a fishery harbour, the Department of Agriculture;

“body” means a body corporate;

“equity share capital” has the meaning given by [^{F5}section 548 of the Companies Act 2006];

“fishery harbour” has the meaning given in Article 1(2) of the Ministries (Transfer of Functions) Order (Northern Ireland) 1973^{F6} (which transferred responsibility for fishery harbours to the Department of Agriculture);

“harbour” and “harbour authority” have the same meanings as in the Harbours Act (Northern Ireland) 1970;

“liability” includes an obligation;

“local statutory provision” includes—

- (a) a provision contained in a document made or issued under any local statutory provision (including a statutory provision confirming a provisional order); and
 - (b) a provision of any other instrument which is in the nature of a local statutory provision;
- “relevant port authority” has the meaning given in Article 3(3), and references to a former relevant port authority are references to any body which immediately before a transfer under Article 4 was a relevant port authority;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“statutory provision” has the meaning given in section 38(1) of the Harbours Act (Northern Ireland) 1970;

“subsidiary” and “wholly-owned subsidiary” have the meanings given by [^{F7}section 1159 of the Companies Act 2006].

(3) References in this Order to—

- (a) the scheme;
- (b) the successor company; and
- (c) the authority,

are explained in Article 4(4).

(4) For the purposes of this Order the time when a disposal of securities or of rights to require the issue of securities of a company is made shall be determined as it would fall to be determined in accordance with section 28 of the 1992 Act for the purposes of tax on chargeable gains.

(5) In this Order—

- (a) references, in relation to a notice under Article 11(4)(a) or Article 14(3) affecting a harbour, to publication of the notice by local advertisement are references to publication in each of two successive weeks in one or more local newspapers circulating in the locality where the harbour is situated; and
- (b) references, in relation to such a notice, to the date of the first local advertisement are references to the date of the first publication of the notice in a local newspaper circulating in the locality where the harbour is situated.

(6) For the purposes of paragraph (5) a notice under Article 11(4)(a) or Article 14(3) relating to a scheme for the purposes of a proposed transfer under Article 4 of property, rights and liabilities and functions of a relevant port authority is to be regarded as affecting any harbour for which that authority is the harbour authority.

(7) For the purposes of any provision to which this paragraph applies a person employed by a company which is a wholly-owned subsidiary of any company or other body mentioned in that provision shall be regarded as employed by the company or other body so mentioned.

(8) Paragraph (7) applies to the following provisions of this Order (all of which are concerned with participation by employees of a company in ownership of its equity share capital or related matters)—

- (a) Article 4(3)(c);
- (b) Article 7(3);
- (c) Article 15(3)(b);
- (d) Article 21;
- (e) Article 22(3)(b) and (6).

(9) References in this Order, in relation to any company, to maximising participation of employees of the company in ownership of its equity share capital shall be construed in accordance with Article 21.

Annotations:

- F2** 1954 c. 33 (NI)
- F3** 1970 c. 1 (NI)
- F4** 1992 c. 12
- F5** Art. 2(2): words in the definition of "equity share capital" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 150(2)(a)** (with art. 10)
- F6** S.R. & O. (N.I.) 1973 No. 128
- F7** Art. 2(2): words in the definition of "subsidiary" and "wholly-owned subsidiary" substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 150(2)(b)** (with art. 10)

Transfer of statutory port undertakings

Formation of companies for purposes of transfer of certain statutory port undertakings

3.—(1) Any relevant port authority may form a company whose objects include the acquisition of property, rights and liabilities and the assumption of functions of the authority by virtue of a transfer under Article 4.

(2) Any company formed under paragraph (1) shall be a company limited by shares and registered under [^{F8}the Companies Act 2006].

(3) In this Order “relevant port authority” means any body which is a harbour authority, other than a company having a share capital or a district council.

Annotations:

- F8** Words in art. 3(2) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 150(3)** (with art. 10)

Transfer of undertakings

4.—(1) This Article applies where a scheme is made under this Order in relation to a relevant port authority which—

- (a) specifies a company formed in pursuance of Article 3 which is a wholly-owned subsidiary of the authority to be the authority's successor company for the purposes of this Order; and
- (b) makes the necessary supplementary provision for the purposes of the transfer provided for under this Article.

(2) Subject to paragraph (3), on the date on which the scheme takes effect—

- (a) all property, rights and liabilities of the authority; and
- (b) all functions conferred or imposed on the authority by any local statutory provision,

are transferred to and by virtue of this Article become property, rights and liabilities or (as the case may be) functions of the successor company.

(3) The transfer under paragraph (2)(a) does not apply—

- (a) to the securities of the successor company held by the authority;

- (b) to any rights or liabilities of the authority in respect of such securities held by a nominee of the authority; or
 - (c) to any liability of the authority incurred by virtue of Article 22 in connection with any proposal for maximising participation by employees of the successor company in ownership of its equity share capital.
- (4) In this Order, in relation to any transfer under this Article of property, rights, liabilities and functions of a relevant port authority—
- (a) references to the scheme are references to the scheme made for the purposes of the transfer;
 - (b) references to the successor company are references to the company specified in the scheme as that authority's successor company; and
 - (c) references to the authority are references to the body whose property, rights, liabilities and functions are the subject of the transfer.
- (5) Part I of the Schedule (supplementary provisions of general application) has effect in relation to a transfer under this Article.
- (6) In relation to any such transfer, the reference in paragraph (1)(b) to the necessary supplementary provision for the purposes of the transfer is a reference to provision of any one or more of the descriptions mentioned in Part II of the Schedule (supplementary provisions which may be included in schemes).

Disposal of ownership of the successor company

Initial issue of securities of the successor company

- 5.—**(1) Following the transfer to the successor company under Article 4 of property, rights, liabilities and functions of the authority, the successor company shall issue such securities of the company as the authority may direct—
- (a) to the authority; or
 - (b) to any person entitled to require the issue of the securities following their initial allotment to the authority.
- (2) The authority shall not give a direction under paragraph (1) at a time when the successor company has ceased to be a wholly-owned subsidiary of the authority.
- (3) Securities required to be issued in pursuance of this Article shall be issued or allotted at such times and on such terms (as to allotment) as the authority may direct.
- (4) Shares issued in pursuance of this Article—
- (a) shall be of such nominal value as the authority may direct; and
 - (b) shall be issued as fully paid and treated for the purposes of [^{F9}the Companies Acts (as defined in section 2(1) of the Companies Act 2006)] as if they had been paid up by virtue of the payment to the successor company of their nominal value in cash.

Annotations:

- F9** Words in art. 5(4)(b) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 150(4)** (with art. 10)

Disposal by the authority of its holding in the successor company

6.—(1) The authority shall exercise its powers under Article 5 in such manner as appears to it to be calculated to facilitate the disposal in accordance with this Article of the whole of the authority's holding in the successor company.

(2) For the purposes of this Article, that holding is to be regarded as consisting of—

- (a) the shares subscribed for by the authority or by any nominee of the authority on the formation of the successor company; and
- (b) all securities of the successor company issued or rights to require the issue of such securities initially allotted to the authority in pursuance of that Article.

(3) The authority shall provide for the disposal of all securities or rights comprised in that holding in such manner, at such times and on such terms as the authority thinks fit.

(4) Where any such securities or rights are disposed of in pursuance of any provision made under paragraph (3) a sum equal to 32.5 per cent. of the consideration given for the securities or rights shall be payable by the authority to the successor company within the period of 60 days beginning with the day on which the disposal is made.

Control by the Department over exercise of authority's functions under Articles 5 and 6

7.—(1) The authority shall not—

- (a) exercise any power conferred on it by Article 5; or
- (b) make any provision for the disposal of any securities or rights in pursuance of the authority's duty under Article 6(3),

without the consent of the Department.

(2) The Department may give the authority directions requiring the authority—

- (a) to exercise any such power in a specified manner; or
- (b) to make in pursuance of that duty provision of any specified description.

(3) The Department shall in exercising its powers under paragraph (2) have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital of the successor company to—

- (a) managers or other persons employed by the company; or
- (b) another company the whole or a substantial part of whose equity share capital is owned by managers or other persons so employed.

(4) In this Article “specified” means specified in directions given by the Department under this Article.

Supplementary provisions as to authority's functions

8.—(1) The authority may do anything which it considers necessary or desirable for the purpose of carrying out any of its functions under Articles 5 and 6.

(2) The successor company shall—

- (a) so far as it is reasonably able to do so, make available for the use of the authority such premises and other facilities as the authority may require for the purpose of carrying out its functions under this Order; and
- (b) if so directed by the authority, meet on behalf of the authority any expenses incurred by the authority in carrying out its functions under this Order, or such part of any such expenses as the authority may direct.