



Number 61 of 2015

Harbours Act 2015



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Number 61 of 2015

HARBOURS ACT 2015

An Act to allow for the transfer of shareholdings in certain port companies to local authorities, for the transfer of certain port companies to local authority control and for the dissolution of certain port companies, to amend and extend the Harbours Acts 1996 to 2015, to repeal the Harbours Acts 1946 and 1947 and to amend the Merchant Shipping Act 1992 and the Fishery Harbour Centres Act 1968 and to provide for connected matters. [25th December, 2015]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and collective citation

1. (1) This Act may be cited as the Harbours Act 2015.
- (2) The collective citation “the Harbours Acts 1996 to 2015” includes this Act, other than *Part 6*.
- (3) The Merchant Shipping Acts 1894 to 2014 and *section 51* may be cited together as the Merchant Shipping Acts 1894 to 2015.
- (4) The collective citation “the Fishery Harbour Centres Acts 1968 to 2015” includes *section 52*.

Definitions

2. In this Act—

“Act of 1996” means Harbours Act 1996;

“chief executive” means a chief executive of a transferred company;

“company” means a company formed under section 7 of the Act of 1996;

“company transfer and dissolution day” shall be construed in accordance with *section 28*;

“company transfer day” shall be construed in accordance with *section 8*;

“dissolved company” means a company or companies specified in an order made under *section 28*;

“elected council” shall be construed in accordance with section 2 of the Local Government Act 2001;

“harbour” shall be construed in accordance with section 2 of the Act of 1996 (as amended by *section 37*);

“harbour master” shall be construed in accordance with section 37(1) of the Act of 1996;

“local authority” means a local authority within the meaning of section 2 of the Local Government Act 2001 (as amended by Part 1 of Schedule 1 to the Local Government Reform Act 2014);

“local authority chief executive”, in relation to a transferred company, means the chief executive (within the meaning of section 144 (inserted by section 54 of the Local Government Reform Act 2014) of the Local Government Act 2001) of the local authority in which shares in the company have been vested by an order made under *section 8*;

“Minister” means Minister for Transport, Tourism and Sport;

“subsidiary” has the meaning assigned to it by section 2 (as amended by *section 37*) of the Act of 1996;

“transferred company” means a company or companies specified in an order made under *section 8*.

Expenses

3. The expenses incurred by the Minister in the administration of the Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Orders

4. Every order (other than an order made under *section 8* or *28*) made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order is annulled, but without prejudice to the validity of anything previously done under it.

Repeals and revocations

5. (1) The following are repealed:
 - (a) the Harbours Act 1946;
 - (b) the Harbours Act 1947.
- (2) The Port Companies (Appointment of Local Authority Directors) Regulations 2002 (S.I. No. 34 of 2002) are revoked.

Temporary appointment of additional directors

6. (1) Notwithstanding section 30(1) of the Act of 1996 (as amended by *section 39*) and the memorandum and articles of association of a company, the Minister may, in respect of a company referred to in *Schedule 1*, appoint 2 additional directors to the board of a company for a period specified under *subsection (4)*.
- (2) In respect of an appointment under *subsection (1)*, the Minister may consult with the chief executive of the local authority in which shares in a company are proposed to be vested under *section 8* or to which a company's harbour is proposed to be transferred under *section 28* and the chief executive of that local authority may, following such consultation, recommend to the Minister that a particular person be appointed under *subsection (1)* and the Minister shall consider such a recommendation.
- (3) Subsections (4), (5), (7), (9), (11) and (12) of section 30 (as amended by *section 39*) and section 34 (as amended by *section 42*) of the Act of 1996 apply to a person appointed under *subsection (1)*.
- (4) A director appointed under *subsection (1)* shall be appointed for a period specified by the Minister which period shall expire on—
- (a) 31 July 2018, or
 - (b) such earlier date as the Minister may specify in the appointment.
- (5) In this section “chief executive” means the chief executive within the meaning of section 144 (inserted by section 54 of the Local Government Reform Act 2014) of the Local Government Act 2001 of the local authority concerned.

Stamp duty not chargeable on transfer of shares or property under Act

7. The Stamp Duties Consolidation Act 1999 is amended by inserting after section 99B (inserted by section 28 of the Sport Ireland Act 2015) the following:

“Harbours Act 2015

99C. Stamp duty shall not be chargeable on any instrument under which ownership of—

- (a) any shares stand vested in a local authority under *section 8* of the *Harbours Act 2015*, or
- (b) any land, easement, way-leave, water right or any other right over or in respect of land or water is transferred under *sections 28, 32, 34 and 35* of the *Harbours Act 2015*.”.

PART 2

TRANSFER OF SHAREHOLDING OF COMPANIES TO LOCAL AUTHORITIES

CHAPTER 1

*Transfer of shareholdings to local authorities***Transfer of shareholding of company**

8. (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform and the Minister for the Environment, Community and Local Government, in respect of a company referred to in *Schedule 1*, by order provide that, without the need for any instrument of transfer or other form of assignment, ownership of all shares in the share capital of the company concerned—
- (a) held by the Minister and the Minister for Public Expenditure and Reform, and
 - (b) held in trust for the Minister,
- shall vest in a local authority specified in the order on such day as is specified in the order (in this Act referred to as a “company transfer day”).
- (2) No consideration shall be payable by the local authority specified in an order made under this section in respect of the shares vested in that local authority under this section.

Future disposal or issue of shares

9. (1) (a) Subject to *paragraphs (b) and (c)*, a local authority chief executive may, at such time or times as appear to him or her appropriate, sell, transfer, exchange, surrender or otherwise dispose of any shares vested in the local authority of which he or she is the chief executive by order made under *section 8*.
- (b) The number of shares the subject of a sale, transfer or other disposal under *paragraph (a)* (or the aggregate number of shares the subject of sales, transfers or other disposals under that paragraph) shall not exceed 49 per cent of the issued share capital, at the time of the sale, transfer or other disposal, of the transferred company concerned.
 - (c) A local authority chief executive shall not dispose of any shares or acquire new shares in a transferred company without—
 - (i) the consent by resolution of the elected council concerned, and
 - (ii) the approval of the Minister, given after consultation with the Minister for the Environment, Community and Local Government and the Minister for Public Expenditure and Reform.
- (2) Subject to *subsection (1)*, a transferred company may in accordance with the Companies Act 2014—
- (a) issue new shares, and

- (b) divide and sub-divide shares into one or more than one class and attach thereto respectively any preferential, deferred, qualified or special rights or conditions.
- (3) (a) Subject to *subsection (1)*, the local authority chief executive concerned may enter into one or more than one agreement in connection with the sale or issue of shares in a transferred company or enter into one or more than one agreement in connection with both the sale and issue of shares in a transferred company, and any such agreement may include—
 - (i) representations, warranties and indemnities and provisions relating thereto,
 - (ii) provisions customarily contained in a shareholders' agreement or an underwriting agreement, and
 - (iii) such other matters as the local authority chief executive may agree to.
- (b) Without prejudice to the generality of the foregoing an agreement referred to in *paragraph (a)* may include provisions relating to—
 - (i) amendments to the memorandum of association or articles of association of the transferred company,
 - (ii) directors,
 - (iii) shareholders,
 - (iv) voting rights,
 - (v) dividend policy,
 - (vi) investments, and
 - (vii) restrictions on alienability of shares.
- (4) Section 82 of the Companies Act 2014 shall not apply to—
 - (a) any representation made or warranty or indemnity given by a transferred company or any subsidiary of a transferred company in connection with the sale or transfer by the local authority chief executive concerned, or the issue by a transferred company of any shares in the transferred company, or
 - (b) any financial obligations undertaken by a transferred company or any subsidiary of a transferred company in connection with the sale or transfer by the local authority chief executive concerned of any shares in the transferred company or the issue by a transferred company of any shares in the transferred company,for the purposes of an agreement entered into by that local authority chief executive under *subsection (3)*.

General Ministerial powers of direction

- 10.** (1) The Minister may, after consultation with the Minister for the Environment, Community and Local Government and the local authority chief executive concerned, give a direction in writing to a transferred company, requiring it to comply with—
- (a) policy decisions of a general kind made by the Minister in relation to—

- (i) the development of harbours,
 - (ii) navigational safety, and
 - (iii) security and operations generally in harbours,
- and
- (b) such policies of Government as may be specified in the direction.
- (2) A transferred company shall comply with a direction given to it under this section.
- (3) *Subsection (1)* shall not be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by a transferred company of a function conferred on it by or under this Act, the Act of 1996 or any other Act.

CHAPTER 2

Matters relating to administration of transferred companies

Non-application of certain provisions of Act of 1996 to transferred company

11. Sections 10, 12A, 15, 17, 18, 22, 23, 27, 28, 29, 30, 32, 35, 36, 40, 41, 44 of, and the Fifth Schedule to, the Act of 1996 shall not apply to a transferred company on and from the company transfer day.

Consequential amendments to Act of 1996

12. The Act of 1996 is amended as provided for in *Schedule 2*.

Form of memorandum and articles of association of transferred company

13. (1) (a) The memorandum and articles of association of a transferred company on and from the company transfer day shall be in such form consistent with this Act and the Act of 1996 as may be approved by the local authority chief executive concerned.
- (b) Subject to *section 14*, a transferred company shall, as soon as practicable after the company transfer day, make such amendments, if any, to its memorandum and articles of association as it considers necessary or expedient in consequence of the vesting of shares by virtue of an order under *section 8*.
- (2) The articles of association of a transferred company shall provide that—
- (a) the transferred company shall consult with any recognised trade union or staff association concerned for the purposes of negotiations in relation to pay and conditions of service of members of its staff,
 - (b) the transferred company shall not establish or acquire a subsidiary without the approval of the local authority chief executive,

- (c) the aggregate amount standing invested (whether by the purchase of shares or the provision of loans or guarantees of loans) by the transferred company in undertakings (other than subsidiaries) shall not exceed €1,250,000 without the approval of the local authority chief executive.
- (3) (a) Subject to *paragraph (b)*, a harbour master may attend formal meetings of directors of the transferred company by whom he or she is employed and may, if the directors, in their discretion, permit him or her to do so, take part in the deliberations by those directors of any matter arising at such a meeting.
- (b) The directors of a transferred company may, where they are of the opinion that the attendance by the harbour master at a particular meeting aforesaid or at a part of such a meeting would not be in the best interests of the proper and orderly conduct by them of business at that meeting or the administration of the transferred company's affairs generally, require the harbour master not to exercise his or her right to attend that meeting or a specified part of that meeting and the harbour master shall comply with such a requirement.
- (c) Nothing in this subsection shall be construed as conferring on a harbour master a right to cast a vote in respect of any matter arising at a meeting aforesaid.

Restriction on alteration of memorandum or articles of association of transferred company

14. Notwithstanding anything contained in the Companies Act 2014, no alteration made on or from the company transfer day in the memorandum and articles of association of a transferred company or of any subsidiary shall be valid or effectual unless made with the prior approval of the local authority chief executive concerned.

Commercial activities outside harbour limits by transferred company

15. (1) Subject to *subsection (2)*, where it appears to a transferred company to be requisite, advantageous or incidental to the performance by it of its other functions under this Act or the Act of 1996 in respect of its harbour, the transferred company may on and from the company transfer day invest in or engage in commercial activities outside the limits of its harbour.
- (2) A transferred company shall not engage in a commercial activity to which *subsection (1)* relates unless it has received the prior approval for such activity from the local authority chief executive concerned.

Provisions with respect to sale, leasing and acquisition of land by transferred company

16. (1) (a) A decision by a transferred company to acquire any land or to dispose of any of its land (whether by sale or the grant of a lease) shall only be made by the directors of the transferred company.
- (b) Section 183 of the Local Government Act 2001 does not apply to any decision by the directors of a transferred company made under *paragraph (a)*.

- (2) Subject to *subsection (4)(a)*, the consideration for which any land is sold by a transferred company shall, in so far as is practicable, not be less than its open market value.
- (3) The rent to be reserved under a lease of land granted by the transferred company shall be of an amount not less than the open market rent obtainable for that land save that a rent of below such an amount may be reserved under such a lease if—
- (a) in case any business or trade is to be carried on at the land, the transferred company considers that, having regard to—
- (i) the amount of business or trade that is likely to be transacted at the land, or
- (ii) the effect the granting of the lease is otherwise likely to have on the amount of business or trade transacted in its harbour,
- it is appropriate to reserve a rent at below such an amount, or
- (b) in any other case, the local authority chief executive concerned consents to the reservation of a rent at below such an amount.
- (4) (a) In making any decision as to—
- (i) the acquisition of land or the consideration to be paid for such acquisition, or
- (ii) the disposal of any land or the consideration to be accepted,
- the directors of a transferred company shall have regard to any Government policy or guidelines in relation to the acquisition of land or the disposal of land, as appropriate, by State enterprises which is or are for the time being extant.
- (b) Without prejudice to *paragraph (a)*, where a transferred company proposes to acquire land it shall cause a valuation of the land to be made by an appropriately qualified independent person.
- (c) In this subsection “State enterprise” means a company (within the meaning of the Companies Act 2014) one or more shares in the shareholding of which is held by a Minister of the Government, or a transferred company, and the principal objects of which (as stated in its memorandum of association) are prescribed in whole or part by statute.

Payment of dividends by transferred company

17. (1) All amounts representing dividends or other moneys received by a local authority in respect of shares held by it in the share capital of a transferred company shall be disposed of for the benefit of the local authority in such manner as the elected council may by resolution decide.
- (2) This section is without prejudice to any provision of an agreement entered into under *section 9*.

Power to borrow by transferred company

- 18.** (1) A transferred company or a subsidiary may, with the approval of the local authority chief executive concerned, raise or borrow money (including money in a currency other than the currency of the State) including, by means of the issue of debentures (or other debt security) or otherwise.
- (2) A transferred company or a subsidiary may borrow money (including money in a currency other than the currency of the State) temporarily but the aggregate standing unrepaid at any time of such borrowings by a transferred company and a subsidiary or either of them shall not exceed such amount as may stand approved for the time being by the local authority chief executive.
- (3) The aggregate at any one time of moneys standing borrowed by a transferred company and a subsidiary or either of them under this section shall not exceed the higher of—
- (a) such amount, not exceeding €200,000,000, as the Minister for the Environment, Community and Local Government, with the consent of the Minister for Public Expenditure and Reform and the Minister for Finance, after consultation with the Minister, approves with respect to a particular transferred company or subsidiary, or
 - (b) 50 per cent of the value of so much of the transferred company's or subsidiary's assets, as the case may be, as are treated as fixed assets for the purposes of its accounts.
- (4) In respect of borrowings under this section by a transferred company or a subsidiary and for the purposes of *paragraph (b) of subsection (3)*, the Minister for the Environment, Community and Local Government may, with the consent of the Minister for Public Expenditure and Reform and the Minister for Finance, after consultation with the Minister, by order provide for a percentage, other than 50 per cent, to apply, having regard to—
- (a) the needs of the transferred company or subsidiary,
 - (b) the purpose of the borrowing and the ability of the transferred company or subsidiary to make repayments, and
 - (c) the financial stability generally of the transferred company or subsidiary.

Accounts and audits of transferred company

- 19.** (1) A transferred company shall keep all proper and usual accounts in accordance with the requirements of the Companies Act 2014.
- (2) Accounts kept in pursuance of *subsection (1)* shall be submitted annually by a transferred company to an auditor for audit and, immediately after such audit, copies of the profit and loss account, the cash flow statement, the balance sheet, such other (if any) of the accounts kept by a transferred company as the local authority chief executive concerned may direct, the auditor's report on the accounts and the report to the shareholders for the accounting year in question, shall be presented by the

transferred company to the local authority chief executive who shall as soon as may be furnish a copy to each member of the elected council.

- (3) A transferred company shall, if so required by the local authority chief executive concerned, furnish to the local authority chief executive, in such form and in respect of such period, as may be approved of by the local authority chief executive, such information as he or she may require in respect of any balance sheet or other account or any report on its accounts of the transferred company or any of its subsidiaries or in relation to the policy and operations (other than day-to-day operations) of the transferred company or any of its subsidiaries.

Chairperson's report

20. (1) The chairperson of a transferred company shall, not later than 4 months after the end of each accounting year, make a report to the local authority chief executive concerned of the transferred company's activities and those of any subsidiaries during that year.
- (2) A report under this section shall include—
- (a) (i) a statement of all significant developments involving the transferred company which occurred in that year (including the acquisition of shares or establishment of subsidiaries by the transferred company), and
 - (ii) in so far as such a description is not included in a statement referred to in *subparagraph (i)*, a description of any acquisitions or disposals of land made by the transferred company during that year,
 - (b) a statement of the transferred company's borrowings,
 - (c) a description of each of the following things the chairperson anticipates will occur in the accounting year next following that year, namely—
 - (i) acquisitions of land by the transferred company,
 - (ii) disposals by the transferred company of any of its land (whether by sale or the grant of a lease), and
 - (iii) such other matters in the accounting year next following that year (or, where the chairperson considers it appropriate in any particular case, any subsequent accounting year) which may affect the transferred company to any significant extent,
 - (d) a statement, to the best of the chairperson's knowledge or belief, with regard to the transferred company, as to whether—
 - (i) each of the following has been complied with or adhered to, that is to say—
 - (I) the requirements of this Act and the Act of 1996 or any other enactment in relation to the accounts of a transferred company and statements as to the financial affairs of a transferred company,
 - (II) *section 24*,

- (III) directions under *section 10(1)* or *27(1)*,
- (IV) the requirements of any enactment or instrument made under an enactment, in relation to the entering by a public authority into a contract with any person for the provision of goods or services by that person to such authority, and
- (V) any code of conduct for the directors and members of staff of State enterprises issued by the Government or the Minister for Public Expenditure and Reform,

and

- (ii) regard has been had to guidelines issued by the Government or the Minister for Public Expenditure and Reform—
 - (I) in relation to the entering by a public authority into a contract with any person for the provision of goods or services by that person to such authority,
 - (II) in relation to the accounts of State enterprises or statements in respect of their financial affairs, and
 - (III) in relation to the remuneration to be paid by State enterprises to their chief executives,
 - (e) where anything referred to in *paragraph (d)(i)* is stated not to have been complied with or adhered to, an explanation as to why there was a failure to comply with it or adhere to it,
 - (f) where anything referred to in *paragraph (d)(ii)* is stated that regard has not been given to, an explanation as to why there was a failure to have regard to it, and
 - (g) a statement—
 - (i) of the average number of employees that are expected to be employed under contracts of service during the accounting year following that to which the accounts relate, or
 - (ii) that more than 30 of its current full time employees are likely to continue to be so employed full time under contracts of service during the accounting year following that to which the accounts relate,
- as determined in accordance with *section 22(10)(a)(ii)*.

(3) In this section—

“public authority” means—

- (a) a Minister of the Government,
- (b) a local authority,
- (c) a body established—

- (i) by or under any enactment (other than the Companies Act 2014 (or the prior Companies Acts within the meaning of that Act)) or charter, or
- (ii) by any scheme administered by the Government,
- (d) a company formed under the Companies Act 2014 (or the prior Companies Acts within the meaning of that Act), in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or by subscription for shares held by or on behalf of a Minister of the Government,
- (e) a company (within the meaning of the Companies Act 2014) a majority of the shares in which are held by or on behalf of a Minister of the Government, or
- (f) a transferred company;

“State enterprises” has the same meaning as it has in *section 16(4)*.

Performance review of transferred company

21. (1) A local authority chief executive—

- (a) shall at the end of the period of 3 years beginning on the company transfer day of a company to the local authority of which he or she is its chief executive, and
- (b) may at the end of each subsequent period of 5 years beginning on the expiration of the last previous period,

appoint a suitably qualified person to carry out an examination as to the efficiency and cost-effectiveness of the performance by the transferred company of its functions and to report in writing to the local authority chief executive of the results of the examination.

- (2) Any examination and report referred to in *subsection (1)* shall be completed by the person appointed under that subsection within the period of 4 months from the date of his or her appointment.
- (3) A local authority chief executive shall submit a copy of a report under *subsection (1)* to the transferred company to which the report relates.
- (4) A local authority chief executive shall report to the elected council on the findings of a report under *subsection (1)*.

Chairperson and directors of transferred company

22. (1) The board of a transferred company shall consist of not more than 8 directors, one of whom shall be its chairperson.

- (2) (a) The directors of a transferred company (including a chairperson), other than the chief executive, shall be appointed by the local authority chief executive.

- (b) The directors of a transferred company (including a chairperson), other than the chief executive, shall be appointed for a period not exceeding 5 years and, subject to *subsection (6)*, shall be eligible for reappointment.
- (3) (a) Prior to a person's appointment as chairperson under *subsection (2)*, the elected council concerned may by resolution require the person to attend before the council.
- (b) *Paragraph (a)* shall not apply if the period under *paragraph (b)* of *subsection (2)* is one year or less.
- (c) The Minister may issue guidelines to a local authority for the purposes of this subsection. Such guidelines may include procedures to be followed in respect of the manner and nature of the attendance of the person to be appointed as chairperson before the elected council. A local authority shall comply with any such guidelines.
- (4) There shall be paid to the directors of a transferred company such remuneration (if any) and such allowances for expenses (if any) incurred by them as the local authority chief executive concerned, with the consent of the Minister for Public Expenditure and Reform, may from time to time determine.
- (5) Each director of a transferred company shall hold office on such terms (other than the payment of remuneration and allowances for expenses) as the local authority chief executive concerned determines at the time of the director's appointment.
- (6) A person shall not serve as a director of a transferred company for a period that is longer than 10 years in total.
- (7) (a) In appointing the directors of a transferred company under *subsection (2)*, the local authority chief executive concerned shall ensure that—
- (i) at least one director is a person who has wide experience and competence in relation to maritime transport services,
 - (ii) at least one director is a person who has wide experience and competence in relation to financial matters,
 - (iii) at least one director is a person who has wide experience and competence in relation to legal matters, and
 - (iv) at least one director is a person who has wide experience and competence in relation to trade and commerce.
- (b) In considering whether to appoint a person to be a director of a transferred company (not being a director to whom the requirements of *paragraph (a)* apply), the local authority chief executive concerned shall have regard to the desirability of there being appointed persons with wide experience and competence in areas such as—
- (i) infrastructure planning and development,
 - (ii) environmental management and sustainability,

- (iii) project finance,
 - (iv) commercial property management,
 - (v) public administration, and
 - (vi) local government.
- (c) In appointing a director of a transferred company under *subsection (2)*, the local authority chief executive concerned shall, in so far as practicable and having regard to the relevant experience and competence detailed in *paragraphs (a) and (b)*, ensure an equitable balance between men and women in the composition of the board of a transferred company.
- (8) In selecting one or more persons to be appointed as a director of a transferred company (not being the chief executive or a director to whom *subsection (10)(b) or (c)* applies), a local authority chief executive shall have regard to Government or nationally agreed guidelines which are for the time being extant, or to Government policy, concerning appointments to State boards.
- (9) (a) In this subsection “commercial service” means a commercial service to a transferred company (including any subsidiary) or to the port or ports of such a transferred company or to any person in connection with the use of the port or ports of the transferred company.
- (b) A person shall not be appointed under *subsection (2)* as a director of a transferred company if such person—
- (i) is a person on whom a charge was imposed by that transferred company under section 13 of the Act of 1996,
 - (ii) was an employee of a person on whom such a charge was so imposed,
 - (iii) had, in the opinion of the local authority chief executive concerned, provided a significant commercial service, or
 - (iv) was an employee of a person who had provided such a service,
- at any time during the 3 years immediately preceding the date when the appointment would take effect.
- (10) (a) (i) An election under *Schedule 3*, as referred to in *paragraph (b)*, of an employee to be a director of a transferred company shall only be held where, in the opinion of the directors of the transferred company, the average number of its employees is expected to exceed 30 in the accounting year of the transferred company (in this subsection referred to as the “relevant accounting year”) that immediately follows the accounting year in which the election is, subject to this subparagraph, due to be held.
- (ii) For the purposes of this paragraph the average number of persons to be employed by a transferred company in the relevant accounting year shall be estimated—

- (I) by dividing the relevant annual number by the projected number of weeks in that year, where the relevant annual number is ascertained by estimating, for each week of the accounting year of the transferred company following the election, the number of persons expected to be employed under contracts of service by the transferred company in that week (whether throughout the week or not) and adding together all the weekly numbers, or
 - (II) by establishing that more than 30 of its current full time employees are likely to continue to be so employed full time under contracts of service.
- (iii) There shall be included in the accounts for each accounting year of a transferred company—
- (I) a statement of the average number of employees that are expected to be employed under contracts of service during the accounting year following that to which the accounts relate, or
 - (II) a statement that more than 30 of its current full time employees are likely to continue to be so employed full time under contracts of service during the accounting year following that to which the accounts relate.
- (b) Subject to *paragraph (a)*, a local authority chief executive shall appoint the employee of the transferred company who is elected in accordance with *Schedule 3* to be a director of the transferred company.
- (c) A local authority chief executive shall appoint to be a director of a transferred company (other than a transferred company to which *paragraph (a)* applies) a person who, in the opinion of that chief executive, is representative of the interests of the employees of the transferred company.
- (d) Before making any appointment under *paragraph (c)* a local authority chief executive shall consult with any recognised trade union or staff association concerned which, following such consultation, may recommend to the local authority chief executive concerned that a particular person be appointed under that paragraph and the local authority chief executive shall consider such a recommendation.
- (e) Without prejudice to the provisions of this Act or the Act of 1996 as respects the term of office of directors of a transferred company and their removal or disqualification from office, the term of office of a director of a transferred company who is appointed under *paragraph (b)* or *(c)* and who is an employee of the transferred company shall terminate on his or her resigning or retiring from employment with the transferred company or on his or her being dismissed from such employment.
- (f) A local authority chief executive shall, if the person is willing to act as such a director, appoint an employee of a transferred company selected in accordance with *paragraph 8 of Schedule 3* to fill a casual vacancy arising in the office of a director of the transferred company appointed under *paragraph (b)* for the remainder of the term of office for which that director had been appointed.

- (g) A director of a transferred company appointed under *paragraph (b) or (c)* shall, subject to this section, be eligible for nomination as a candidate, and for election, at an election under *Schedule 3*.
- (11) A director of a transferred company may at any time resign his or her directorship by letter addressed to the local authority chief executive concerned and the resignation shall take effect from the date specified therein or upon receipt of the letter by the local authority chief executive, whichever is the later.
- (12) A director of a transferred company may at any time for stated reasons be removed from office by the local authority chief executive concerned, if, in the local authority chief executive's opinion, the director has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the local authority chief executive to be necessary for the effective performance by the board of a transferred company of the functions of that transferred company.
- (13) Nothing in this section shall affect the balance of the term of office of a director of a transferred company appointed before the company transfer day of the transferred company concerned.
- (14) In this section a reference to a director of a transferred company includes a reference to its chairperson.

Accountability of chairperson and chief executive to local authority

23. (1) The elected council of a local authority specified in an order under *section 8* may by resolution require the chairperson, or the chief executive, or both, of the transferred company to which the order relates, to attend before that council to give account for the administration of the transferred company.
- (2) Neither the chairperson nor the chief executive of a transferred company referred to in *subsection (1)* shall be required to attend before the elected council if a resolution referred to in that subsection was made within a period of 6 months of the making of the last such resolution.
- (3) Any account given under *subsection (1)* shall relate to the functions of the transferred company under this Act and the Act of 1996 but that subsection shall not require there to be disclosed any information that is determined by the transferred company to be of a commercially sensitive nature.

Disclosure by directors of transferred companies of certain interests

24. (1) Where at a meeting of the directors of a transferred company or a subsidiary any of the following matters arises, namely—
- (a) an arrangement to which the transferred company or any subsidiary is a party or a proposed such arrangement,
- (b) a contract or other agreement with the transferred company or any subsidiary or a proposed such contract or other agreement,

- (c) the giving, grant or renewal by the transferred company or any subsidiary of a certificate, licence, authorisation or instrument of approval, or
- (d) the revocation, cancellation, withdrawal, suspension or endorsement by the transferred company or any subsidiary of a certificate, licence, authorisation or instrument of approval,

then any director of the transferred company or the first-mentioned subsidiary present at the meeting who otherwise than in his or her capacity as such a director has a material interest in the matter shall—

- (i) at the meeting disclose to the transferred company or the first-mentioned subsidiary the fact of such interest and the nature thereof,
 - (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
 - (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
 - (iv) take no part in any deliberations of the directors relating to the matter, and
 - (v) not vote on a decision relating to the matter.
- (2) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.
- (3) Where at a meeting of the directors of a transferred company or a subsidiary a question arises as to whether or not a course of conduct, if pursued by a director of the transferred company or the subsidiary, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may, subject to *subsection (4)*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
- (4) Where, at a meeting of a transferred company or a subsidiary the chairperson of the meeting is the director in respect of whom a question to which *subsection (3)* applies falls to be determined, then the other directors of a transferred company or a subsidiary attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.
- (5) Where a local authority chief executive is satisfied that a director has contravened *subsection (1)*, that local authority chief executive may, if he or she thinks fit, remove that director from office, and, where a person is removed from office pursuant to this subsection, he or she shall henceforth be disqualified from being a director of the transferred company concerned or a subsidiary.
- (6) Section 231 of the Companies Act 2014 does not apply to a director of a transferred company or a subsidiary.

- (7) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a transferred company from having any interest in contracts with the transferred company.

Chief executive of transferred company

- 25.** (1) There shall be a chief executive of a transferred company.
- (2) The chief executive of a transferred company shall be *ex officio* a director of the transferred company.
- (3) On and from a company transfer day the chief executive of the transferred company—
- (a) subject to *subsection (6)*, stands appointed, and
 - (b) may be removed from office,
- by the other directors of a transferred company after consultation with the local authority chief executive concerned.
- (4) The functions of the chief executive of a transferred company shall be to carry on, manage and control generally the administration of the transferred company, subject to the lawful directions of the directors of the transferred company.
- (5) The chief executive of a transferred company shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the directors of the transferred company with the consent of the local authority chief executive concerned given with the approval of the Minister for Public Expenditure and Reform.
- (6) Notwithstanding *subsections (3) and (5)*, the person who, immediately before a company transfer day, was the chief executive appointed under section 35 of the Act of 1996 of the company specified in the order concerned under *section 8*, shall continue as such chief executive of that transferred company for the remainder of the term of office for which he or she was appointed, unless he or she sooner dies, resigns from office or otherwise ceases to hold office and shall stand appointed on the same terms and conditions on which the person was previously retained.

Superannuation schemes of transferred company

- 26.** (1) Subject to *subsection (7)*, a transferred company may prepare and submit to the local authority chief executive concerned a scheme or schemes for the granting of superannuation benefits to or in respect of such members of staff (including a chief executive) as it decides.
- (2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.
- (3) Every such scheme may be amended or revoked by a subsequent scheme prepared, submitted and approved under this section.

- (4) A scheme submitted to the local authority chief executive concerned under this section shall, if approved of by the local authority chief executive, with the consent of the Minister for Public Expenditure and Reform, be carried out by the transferred company concerned in accordance with its terms.
- (5) (a) A scheme made under this section shall make provision for appeals.
- (b) A person who, on a company transfer day, is a member of a scheme referred to in *paragraph (a) of subsection (7)*, may, if any dispute arises as to the claim of such a person to, or to the amount of, any superannuation benefit payable in pursuance of a scheme referred to in *paragraph (a) of subsection (7)*, submit the dispute to the Minister who shall refer it to the Minister for Public Expenditure and Reform, whose decision shall be final.
- (6) Subject to *subsection (7)*, superannuation benefits shall not be granted by a transferred company nor shall any other arrangements be entered into by a transferred company for the provision of such benefit to a member of the staff of a transferred company, otherwise than in accordance with a scheme under this section, or otherwise as may be approved of by the local authority chief executive concerned, with the consent of the Minister for Public Expenditure and Reform.
- (7) (a) A superannuation scheme made by a transferred company under section 40 of the Act of 1996 and which is in place immediately before a company transfer day, or continued in force under section 41 of the Act of 1996, shall continue in force and apply to each person to whom it applied immediately before a company transfer day.
- (b) Should a transferred company have such a scheme referred to in *paragraph (a)* in operation immediately before the company transfer day, that scheme may be provided for the benefit of such members of staff (including a chief executive), other than members of staff referred to in *paragraph (a)*, of a transferred company as the transferred company concerned decides.
- (c) In relation to a scheme referred to in *paragraph (a)*, a transferred company may, or, if directed by the local authority chief executive concerned shall, in the manner specified in the direction, amend or revoke, the scheme as if it were a scheme made under this section, but, save in accordance with a collective agreement negotiated with a recognised trade union or staff association, no amendment shall be made to the scheme that would result in superannuation benefits that may be granted by the scheme or the terms or conditions in relation thereto being less favourable to the members of the transferred company's staff and other persons concerned than those to which they were entitled under the scheme before the making of the amendment.
- (d) Superannuation benefits granted under schemes referred to in *paragraph (a)* to persons who, immediately before the transferred company's relevant vesting day for the purposes of the Act of 1996, were members of the staff of a harbour authority within the meaning of the Harbours Act 1946 or the Department of the Marine, as the case may be, and the terms and conditions relating to those

benefits shall not be less favourable to those persons than those to which they were entitled immediately before that day.

- (e) In the case of members of staff of Dún Laoghaire Harbour Company disbursement of superannuation benefits which may be granted to or in respect of such of those members who, immediately before the relevant vesting day for the purposes of the Act of 1996, were members of the staff of the Department of the Marine, shall be on conditions no less favourable to such members than those that would apply if those benefits had continued to be paid out of moneys provided by the Oireachtas.
- (8) Where the Minister is satisfied, after consultation with the relevant transferred company, local authority chief executive and the trustees of the superannuation scheme concerned, that—
- (a) a fund established, or continued in existence, by a transferred company pursuant to sections 40 or 41 of the Act of 1996 does not comprise sufficient moneys as will enable the payment from that fund of superannuation benefits under the scheme or schemes concerned as and when those benefits fall due for payment, and
- (b) the said company does not have resources from which there could be paid the said benefits as and when they fall due for payment,

then the Minister may, with the consent of the Minister for Finance, pay to the trustees concerned such amount in respect of liabilities of the said scheme or schemes that have arisen prior to the relevant vesting day for the purposes of the Act of 1996 as he or she may determine.

- (9) All moneys from time to time required by the Minister or the Minister for Public Expenditure and Reform to meet sums which are, or may become, payable by him or her under *subsection (8)* shall, with the approval of the Minister for Public Expenditure and Reform, be advanced by the Minister for Finance out of the Central Fund or the growing produce thereof.

General policy power of direction in relation to transferred company

27. (1) A local authority chief executive may, after consultation with a transferred company, give a direction in writing to the transferred company, requiring it to comply with policy decisions of a general kind in relation to—
- (a) such policies of the local authority concerned as are specified in the direction, or
- (b) matters affecting the functions of the transferred company.
- (2) A transferred company shall comply with a direction given to it under this section.
- (3) A local authority chief executive may stipulate, in consultation with a transferred company, financial or other targets to be achieved by a transferred company. In stipulating such targets the local authority chief executive shall have due regard to any direction it has given to the transferred company concerned under *subsection (1)*.

- (4) *Subsections (1) and (3)* shall not be construed as enabling a local authority or a local authority chief executive to exercise any power or control in relation to the performance in particular circumstances by a transferred company of a function conferred on it by or under this Act or the Act of 1996.

PART 3

TRANSFER AND DISSOLUTION OF COMPANIES

Transfer and dissolution of company

- 28.** (1) In respect of a company referred to in *Schedule 1*, the Minister may, with the consent of the Minister for Public Expenditure and Reform and the Minister for the Environment, Community and Local Government, by order provide for—
- (a) the dissolution without winding up of the company, and
 - (b) the transfer of the company's harbour to the local authority specified in the order, on such day as the Minister appoints in the order (in this Act referred to as a company transfer and dissolution day).
- (2) Without prejudice to section 89 of the Act of 1996, all bye-laws of a dissolved company made under section 42 or section 71 of the Act of 1996, which are subsisting on a company transfer and dissolution day shall continue in force and may be amended or revoked by the local authority—
- (a) in like manner as they could have been revoked by a dissolved company before that day, or
 - (b) under section 89 of the Act of 1996 as if they had been made under that section.

Continuance of harbour and pilotage limits of dissolved company

- 29.** (1) The limits of the harbour of a dissolved company continues to be those as provided for by section 9 of, and Part I of the Third Schedule to, the Act of 1996.
- (2) (a) Where applicable, the limits of the pilotage district of the harbour of a dissolved company continues to be those as provided for in section 57 of, and Part II of the Third Schedule to, the Act of 1996.
- (b) The Act of 1996 in so far as it relates to pilotage services applies on and after the company transfer and dissolution day to the pilotage district referred to in *paragraph (a)* by substituting “local authority” for “company” in each place where it occurs.

Provisions with respect to staff of dissolved company

- 30.** (1) A local authority specified in an order made under *section 28* shall, on the company transfer and dissolution day, accept into its employment each person who immediately before that day was a member of staff of the dissolved company concerned.

- (2) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association by the local authority, and approved by the Minister after consultation with the Minister for the Environment, Community and Local Government and with the consent of the Minister for Public Expenditure and Reform, a person referred to in *subsection (1)* shall be subject to such terms and conditions of service, including terms and conditions relating to remuneration, as are not less favourable than the terms and conditions of service, including terms and conditions relating to remuneration, to which the person was subject immediately before the coming into operation of this section.
- (3) In relation to persons transferred to the staff of a local authority under *subsection (1)*, previous service with a dissolved company shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the following enactments:
- (a) the Adoptive Leave Acts 1995 and 2005;
 - (b) the Carer's Leave Act 2001;
 - (c) the Maternity Protection Acts 1994 and 2004;
 - (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
 - (e) the Organisation of Working Time Act 1997;
 - (f) the Parental Leave Acts 1998 and 2006;
 - (g) the Protection of Employees (Fixed-Term Work) Act 2003;
 - (h) the Protection of Employees (Part-Time Work) Act 2001;
 - (i) the Redundancy Payments Acts 1967 to 2014;
 - (j) the Terms of Employment (Information) Acts 1994 to 2012;
 - (k) the Unfair Dismissals Acts 1977 to 2007.

Superannuation with respect to staff of dissolved company

- 31.** (1) (a) Save in accordance with a collective agreement negotiated with a recognised trade union or staff association by the local authority, and approved by the Minister after consultation with the Minister for the Environment, Community and Local Government and with the consent of the Minister for Public Expenditure and Reform, a person accepted into the employment of a local authority under *section 30* who, immediately before the company transfer and dissolution day was a member of a staff superannuation scheme, shall, on and after the company transfer and dissolution day, continue to be a member of such a scheme in accordance with its terms and conditions in force from time to time.
- (b) The scheme shall continue in force as if made by the local authority concerned who shall have like powers and functions in relation to every such scheme or arrangement as a dissolved company had immediately prior to its dissolution.
- (c) A person who on the company transfer and dissolution day is a member of a superannuation scheme referred to in *paragraph (a)*, which is continued in force

may submit a dispute in relation to superannuation benefit payable under that scheme in accordance with section 41(11) of the Act of 1996.

- (2) A person referred to in *subsection (1)* shall not on a company transfer and dissolution day become a scheme member within the meaning of section 10 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

Transfer of property, rights and liabilities of dissolved company

32. (1) With effect from a company transfer and dissolution day, there is transferred from a dissolved company to a local authority specified in an order made under *section 28*, all property (real and personal) and rights held or enjoyed immediately before that day by a dissolved company and all liabilities incurred before that day by it that had not been discharged before that day and, accordingly, without any further conveyance, transfer or assignment—
- (a) the property so held or enjoyed, both real and personal, vests on the company transfer and dissolution day in the local authority, for all the estate, term or interest for which, immediately before that day, it was vested in the dissolved company, but subject to all trusts and equities affecting the property and capable of being performed,
 - (b) the rights so held or enjoyed, are as on and from the company transfer and dissolution day, held and enjoyed by the local authority, and
 - (c) the liabilities so incurred are, as on and from the transfer and dissolution day, the liabilities of the local authority.
- (2) All moneys, stocks, shares and securities transferred to the local authority by this section that, immediately before the company transfer and dissolution day, are in the name of the dissolved company, shall, at the request of the local authority, be transferred into that local authority's name.
- (3) Every right and liability transferred to the local authority by this section may, on and after the company transfer and dissolution day, be sued on, recovered or enforced by or against the local authority in its own name and it shall not be necessary for it to give notice of the transfer to the person whose right or liability is transferred by this section.
- (4) Every bond, guarantee or other security of a continuing nature, and contract or agreement, made or given by or on behalf of the dissolved company to any person or given by any person to and accepted by or on behalf of the dissolved company—
- (a) continues in force on and after the company transfer and dissolution day,
 - (b) shall be read and have effect as if the name of the local authority were substituted in the contract or agreement for that of the dissolved company or, as the case may be, any trustee or agent acting on their behalf, and
 - (c) is enforceable against the local authority.
- (5) If, immediately before a company transfer and dissolution day, any legal proceedings to which the dissolved company is a party are pending, the local authority's name

shall be substituted in the proceedings for the name of the dissolved company, and the proceedings shall not abate because of the substitution.

- (6) In this section, “local authority”, in relation to a dissolved company, means the local authority specified in an order under *section 28* providing for the dissolution of that company.

Final accounts of dissolved company

33. (1) As soon as may be after a company transfer and dissolution day, but not later than 6 months thereafter, the local authority concerned shall cause to be prepared final accounts of a dissolved company in respect of the period specified under *subsection (3)*.
- (2) Accounts prepared under this section shall be submitted as soon as may be by a local authority for audit and a copy of the accounts as audited together with a copy of the auditor’s report on the accounts shall be presented to the Minister for the Environment, Community and Local Government who shall cause copies of those audited accounts and that report to be laid before each House of the Oireachtas.
- (3) For the purposes of *subsection (1)*, a local authority may specify a period that is longer or shorter than a financial year of the dissolved company.
- (4) In this section “local authority” has the meaning assigned to it in *section 32(6)*.

PART 4

BANTRY BAY HARBOUR AND DUNDALK HARBOUR

Future transfer of Bantry Bay Harbour

34. (1) The Minister may, with the consent of the Minister for the Environment, Community and Local Government and after consultation with the Port of Cork Company, by order provide for the transfer of Bantry Bay Harbour to Cork County Council on such day as the Minister appoints in the order (in this section referred to as the “transfer day”).
- (2) Without prejudice to section 89 of the Act of 1996, all bye-laws of the Port of Cork Company made under section 42 or 71 of the Act of 1996 in respect of Bantry Bay Harbour, which are subsisting on the transfer day shall continue in force and may be amended or revoked by Cork County Council—
- (a) in like manner as they could have been revoked by the company before that day,
or
- (b) under section 89 of the Act of 1996 as if they had been made under that section.
- (3) With effect from the transfer day, there is transferred to Cork County Council from the Port of Cork Company all property (real and personal) and rights held or enjoyed immediately before that day by the Port of Cork Company in respect of Bantry Bay Harbour and all liabilities incurred in respect of that harbour before that day by it that

had not been discharged before that day and, accordingly, without any further conveyance, transfer or assignment—

- (a) the property so held or enjoyed, both real and personal, vests on the transfer day in Cork County Council, for all the estate, term or interest for which, immediately before that day, it was vested in the Port of Cork Company in respect of Bantry Bay Harbour, but subject to all trusts and equities affecting the property and capable of being performed,
 - (b) the rights so held or enjoyed, are as on and from the transfer day, held and enjoyed by Cork County Council, and
 - (c) the liabilities so incurred are, as on and from the transfer day, the liabilities of Cork County Council.
- (4) All moneys, stocks, shares and securities transferred to Cork County Council by this section that, immediately before the transfer day, are in the name of the Port of Cork Company in respect of Bantry Bay Harbour, shall, at the request of Cork County Council, be transferred into Cork County Council's name.
- (5) Every right and liability transferred to Cork County Council by this section may, on and after the transfer day, be sued on, recovered or enforced by or against Cork County Council in its own name and it shall not be necessary for it to give notice of the transfer to the person whose right or liability is transferred by this section.
- (6) Every—
- (a) bond, guarantee or other security of a continuing nature, and
 - (b) contract or agreement,
- made or given by or on behalf of the Port of Cork Company in respect of Bantry Bay Harbour to any person or given by any person to and accepted by or on behalf of the Port of Cork Company in respect of Bantry Bay Harbour—
- (i) continues in force on and after the transfer day,
 - (ii) shall be read and have effect, on or after that day, as if the name of Cork County Council was substituted in the contract or agreement for that of the Port of Cork Company in respect of Bantry Bay Harbour or, as the case may be, any trustee or agent acting on its behalf, and
 - (iii) is enforceable against Cork County Council.
- (7) If, immediately before the transfer day, any legal proceedings are pending to which the Port of Cork Company in respect of Bantry Bay Harbour is a party, Cork County Council's name shall be substituted in the proceedings for the name of the Port of Cork Company or any trustee or agent acting on its behalf, and the proceedings shall not abate because of the substitution.
- (8) The harbour limits of Bantry Bay shall, from the transfer day, be the waters within the area, including all tidal inlets, bounded by a straight line drawn from Sheep's Head to Crow Head both in the county of Cork and the line of high water, which area is known as Bantry Bay excluding the limits of Castletownbere Fishery Harbour Centre as

provided for by section 2 (as amended by Schedule 2 to the Harbours (Amendment) Act 2009) of the Fishery Harbour Centres (Amendment) Act 1992).

- (9) On the transfer day the Harbours Act 1996 (Limits of Harbour of Port of Cork Company) (Alteration) Order 2013 (S.I. No. 487 of 2013) is revoked.
- (10) The Minister may in an order under *subsection (1)*—
- (a) specify that the Harbours Act 1996 (Establishment of the Pilotage District of Bantry Bay Harbour) Order 2013 (S.I. No. 486 of 2013) is amended, with effect from the transfer day, by substituting in article 5 of that Order “Cork County Council” for “the Port of Cork Company”, or
 - (b) revoke that Order with effect from the transfer day.

Future transfer of Dundalk Harbour

- 35.** (1) The Minister may, with the consent of the Minister for the Environment, Community and Local Government and after consultation with Dublin Port Company, by order provide for the transfer of Dundalk Harbour to Louth County Council on such day as the Minister appoints in the order (in this section referred to as the “transfer day”).
- (2) Without prejudice to section 89 of the Act of 1996, all bye-laws of Dundalk Port Company or of Dublin Port Company made under section 42 or 71 of the Act of 1996 in respect of Dundalk Harbour, which are subsisting on the transfer day shall continue in force and may be amended or revoked by Louth County Council—
- (a) in like manner as they could have been revoked by the company before that day, or
 - (b) under section 89 of the Act of 1996 as if they had been made under that section.
- (3) With effect from the transfer day, there is transferred to Louth County Council from Dublin Port Company all property (real and personal) and rights held or enjoyed immediately before that day by Dublin Port Company in respect of Dundalk Harbour and, accordingly, without any further conveyance, transfer or assignment—
- (a) the property so held or enjoyed, both real and personal, vests on the transfer day in Louth County Council, for all the estate, term or interest for which, immediately before that day, it was vested in Dublin Port Company in respect of Dundalk Harbour, but subject to all trusts and equities affecting the property and capable of being performed,
 - (b) the rights so held or enjoyed, are as on and from the transfer day, held and enjoyed by Louth County Council.
- (4) Any liabilities of Dublin Port Company incurred by it in respect of Dundalk Harbour before the transfer day shall remain vested in Dublin Port Company.
- (5) All moneys, stocks, shares and securities transferred to Louth County Council by this section that, immediately before the transfer day, are in the name of Dublin Port Company in respect of Dundalk Harbour, shall, at the request of Louth County Council, be transferred into Louth County Council’s name.

- (6) Every right transferred to Louth County Council by this section may, on and after the transfer day, be sued on, recovered or enforced by or against Louth County Council in its own name and it shall not be necessary for it to give notice of the transfer to the person whose right is transferred by this section.
- (7) Every—
- (a) bond, guarantee or other security of a continuing nature, and
 - (b) contract or agreement,
- made or given by or on behalf of Dublin Port Company in respect of Dundalk Harbour to any person or given by any person to and accepted by or on behalf of Dublin Port Company in respect of Dundalk Harbour—
- (i) continues in force on and after the transfer day,
 - (ii) shall be read and have effect, on or after that day, as if the name of Louth County Council was substituted in the contract or agreement for that of Dublin Port Company in respect of Dundalk Harbour or, as the case may be, any trustee or agent acting on its behalf, and
 - (iii) is enforceable against Louth County Council.
- (8) If, immediately before the transfer day, any legal proceedings are pending to which Dublin Port Company in respect of Dundalk Harbour is a party, Louth County Council's name shall be substituted in the proceedings for the name Dublin Port Company or any trustee or agent acting on its behalf, and the proceedings shall not abate because of the substitution.
- (9) On the transfer day the limits of Dundalk Harbour shall be as set out in section 9 of, and Part 1 of the Third Schedule to, the Act of 1996.
- (10) (a) On the transfer day there is conferred on Louth County Council the function of organising and ensuring the provision of pilotage services in the pilotage district of Dundalk Harbour by one of the means specified in section 56(1) of the Act of 1996.
- (b) On the transfer day the Act of 1996 in so far as it relates to pilotage services applies to the pilotage district referred to in this subsection with the substitution for references to “company”, in each place where it occurs, of references to “local authority”.
- (11) On the transfer day the Harbours Acts 1996 to 2009 (Transfer of Functions of Dundalk Port Company) Order 2011 (S.I. No. 361 of 2011) is revoked.

Pilotage district of Dundalk Harbour

- 36.** (1) A pilotage district, the limits of which are specified in *subsection (2)* and which shall be known as, and is in this section referred to as, the pilotage district of Dundalk Harbour, is established.
- (2) The limits of the pilotage district of Dundalk Harbour shall be as set out in section 57 of, and paragraph 16 of Part II of the Third Schedule to, the Act of 1996.

- (3) Subject to an order made under *section 35*, there is hereby conferred on Dublin Port Company the function of organising and ensuring the provision of pilotage services in the pilotage district of Dundalk Harbour by one of the means specified in *section 56(1)* of the Act of 1996.
- (4) In Article 5 of the Harbours Acts 1996 to 2009 (Transfer of Functions of Dundalk Port Company) Order 2011 (S.I. No. 361 of 2011) paragraph (1) is deleted.

PART 5

AMENDMENT OF HARBOURS ACT 1996

Amendment of section 2 of Act of 1996 (interpretation)

37. (1) Section 2(1) of the Act of 1996 is amended by substituting for the definition of “company” the following:

“ ‘company’ means—

- (a) in sections 10, 12A, 15, 17, 18, 22, 23, 27, 28, 29, 30, 32, 35, 36, 40, 41, 44 and the Fifth Schedule, a company referred to in *section 7*, other than a transferred company,
- (b) in any other provision, a company referred to in *section 7*, and
- (c) where the context so admits, a new company;”.

- (2) Section 2(1) of the Act of 1996 is amended by substituting for the definition of “harbour” the following:

“ ‘harbour’ (other than in sections 86 to 89 and *section 91*) means a harbour, functions in respect of which are conferred on a company by or under this Act;”.

- (3) Section 2(1) of the Act of 1996 is amended by inserting after the definition of “local authority” the following:

“ ‘local authority chief executive’ in relation to a transferred company, means the chief executive (within the meaning of *section 144* (inserted by *section 54* of the Local Government Reform Act 2014) of the Local Government Act 2001) of the local authority in which shares in a company have been vested by an order made under *section 8* of the *Harbours Act 2015*;”.

- (4) Section 2(1) of the Act of 1996 is amended by substituting for the definition of “subsidiary” the following:

“ ‘subsidiary’ means a subsidiary (within the meaning of *section 7* of the Companies Act 2014) of the particular company to which the provision or provisions of this Act, or of the *Harbours Act 2015*, containing that expression falls or fall to be applied (whether or not any such provision falls to be applied to any other company or companies);”.

- (5) Section 2(1) of the Act of 1996 is amended by inserting after the definition of “superannuation benefit” the following:

“ ‘transferred company’ means a company specified in an order made under *section 8* of the *Harbours Act 2015*.”.

Amendment of section 17 of Act of 1996 (articles of association)

- 38.** The following is substituted for section 17 of the Act of 1996:

“**17.** (1) The articles of association of a company shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Public Expenditure and Reform.

(2) The articles of association of a company shall provide that—

(a) the company shall consult with any recognised trade union or staff association concerned for the purposes of negotiations in relation to pay and conditions of service of members of its staff,

(b) the company shall not establish or acquire a subsidiary without the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform,

(c) the aggregate amount standing invested (whether by the purchase of shares or the provision of loans or guarantees of loans) by the company in undertakings (other than subsidiaries) shall not exceed €1,250,000, without the approval of the Minister given with the consent of the Minister for Finance.

(3) (a) Subject to paragraph (b), a harbour master may attend formal meetings of directors of the company by whom he or she is employed and may, if the directors, in their discretion, permit him or her to do so, take part in the deliberations by those directors of any matter arising at such a meeting.

(b) The directors of a company may, where they are of the opinion that the attendance by the harbour master at a particular meeting aforesaid or at a part of such a meeting would not be in the best interests of the proper and orderly conduct by them of business at that meeting or the administration of the company’s affairs generally, require the harbour master not to exercise his or her right to attend that meeting or a specified part of that meeting and the harbour master shall comply with such a requirement.

(c) Nothing in this subsection shall be construed as conferring on a harbour master a right to cast a vote in respect of any matter arising at a meeting aforesaid.”.

Amendment of section 30 of Act of 1996 (employee, local authority and other directors)

- 39.** (1) The following is substituted for section 30 of the Act of 1996:

“Chairperson and directors of company

- 30.** (1) The board of a company shall consist of not more than 8 directors, one of whom shall be its chairperson.
- (2) (a) The directors of a company (including a chairperson), other than the chief executive and the employee director appointed pursuant to subsection (10)(b), shall be appointed by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (b) The directors of a company, other than the chief executive, shall be appointed for a period not exceeding 5 years and, subject to subsection (6), shall be eligible for reappointment.
- (3) (a) Prior to a person’s appointment as chairperson under subsection (1), that person shall, at the request of a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas or a subcommittee of such a committee, attend before it and the Committee shall inform the Minister in writing that such an attendance has occurred.
- (b) Paragraph (a) shall not apply if the period under paragraph (b) of subsection (2) is one year or less.
- (4) There shall be paid to the directors of a company such remuneration (if any) and such allowances for expenses (if any) incurred by them as the Minister, with the consent of the Minister for Public Expenditure and Reform, may from time to time determine.
- (5) Each director of a company shall hold office on such terms (other than terms relating to the payment of remuneration and allowances for expenses) as the Minister determines at the time of his or her appointment.
- (6) A person shall not serve as a director of a company for a period that is longer than 10 years in total.
- (7) (a) In appointing the directors of a company under subsection (2), the Minister shall ensure that—
- (i) at least one director is a person who has wide experience and competence in relation to maritime transport services,
 - (ii) at least one director is a person who has wide experience and competence in relation to financial matters,
 - (iii) at least one director is a person who has wide experience and competence in relation to legal matters, and
 - (iv) at least one director is a person who has wide experience and competence in relation to trade and commerce.
- (b) In considering whether to appoint a person to be a director of a company (not being a director to whom the requirements of

paragraph (a) apply), the Minister shall have regard to the desirability of there being appointed persons with wide experience and competence in areas such as—

- (i) infrastructure planning and development,
 - (ii) environmental management and sustainability,
 - (iii) project finance,
 - (iv) commercial property management,
 - (v) public administration.
- (c) In appointing a director of a company under subsection (2), the Minister shall, in so far as practicable and having regard to the relevant experience and competence detailed in paragraphs (a) and (b), ensure an equitable balance between men and women in the composition of the board of a company.
- (8) In selecting one or more persons to be appointed as a director or directors of a company (not being a director to whom subsection (10) (b) or (c) or section 36 applies), the Minister shall have regard to Government or nationally agreed guidelines which are for the time being extant, or to Government policy, concerning appointments to State boards.
- (9) (a) In this subsection ‘commercial service’ means a commercial service to a company (including any subsidiary) or to the port or ports of such company or to any person in connection with the use of the port or ports of the company.
- (b) A person shall not be appointed under subsection (2) as a director of a company if such person—
- (i) is a person on whom a charge was imposed by that company under section 13,
 - (ii) was an employee of a person on whom such a charge was so imposed,
 - (iii) had, in the opinion of the Minister, provided a significant commercial service, or
 - (iv) was an employee of a person who had provided such a service, at any time during the 3 years immediately preceding the date when the appointment would take effect.
- (10) (a) (i) An election of an employee director shall only be held by a company under the Fifth Schedule where, in the opinion of the directors of the company, the average number of its employees is expected to exceed 30 in the accounting year of the company

that immediately follows the accounting year in which the election is, subject to this subparagraph, due to be held.

- (ii) For the purposes of this paragraph the average number of persons to be employed by a company in its accounting year following the election shall be estimated—
 - (I) by dividing the relevant annual number by the projected number of weeks in that year, where the relevant annual number is ascertained by estimating, for each week of the accounting year of the company following the election, the number of persons expected to be employed under contracts of service by the company in that week (whether throughout the week or not) and adding together all the weekly numbers, or
 - (II) by establishing that more than 30 of its current full time employees are likely to continue to be so employed full time under contracts of service.
- (iii) There shall be included in the accounts for each accounting year of a company—
 - (I) a statement of the average number of employees that are expected to be employed under contracts of service during the accounting year following that to which the accounts relate, or
 - (II) a statement that more than 30 of its current full time employees are likely to continue to be so employed full time under contracts of service during the accounting year following that to which the accounts relate.
- (b) Subject to paragraph (a), the Minister shall as respects a company appoint the employee of the company who is elected in accordance with the Fifth Schedule to be a director of the company.
- (c) The Minister shall, as respects a company (other than a company to which paragraph (b) relates), appoint a person who, in the opinion of the Minister, is representative of the interests of the employees of the company to be a director of the company.
- (d) Before making any appointment under paragraph (c) the Minister shall consult with any recognised trade union or staff association concerned which, following such consultation, may recommend to the Minister that a particular person be appointed under the said paragraph and the Minister shall consider such a recommendation.
- (e) Without prejudice to the provisions of this Act as respects the term of office of directors of a company and their removal or disqualification from office, the term of office of a director of a company who is appointed under paragraph (b) or (c) and who is an

employee of the company shall terminate on his or her resigning or retiring from employment with the company or on his or her being dismissed from such employment.

- (f) The Minister shall, if the person is willing to act as such a director, appoint an employee of a company selected in accordance with paragraph 8 of the Fifth Schedule to fill a casual vacancy arising in the office of a director of the company appointed under paragraph (b) for the remainder of the term of office for which that director had been appointed.
 - (g) A director of a company appointed under paragraph (b) or (c) shall, subject to this section, be eligible for nomination as a candidate, and for election, at an election under the Fifth Schedule.
 - (h) An election under the Fifth Schedule shall be held within 12 months after the relevant vesting day or such longer period as may be agreed between the company and any recognised trade union or staff association concerned and in each fifth year thereafter.
 - (11) A director of a company may at any time resign his or her directorship by letter addressed to the Minister and the resignation shall take effect from the date specified therein or upon receipt of the letter by the Minister, whichever is the later.
 - (12) A director of a company may at any time for stated reasons be removed from office by the Minister, with the consent of the Minister for Public Expenditure and Reform, if, in the Minister's opinion, the director has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the board of a company of the functions of that company.
 - (13) In this section a reference to a director of a company includes a reference to its chairperson.”.
- (2) The Fifth Schedule to the Act of 1996 is amended—
- (a) in paragraph 1(1), by substituting “paragraph (a) of section 30(10)” for “paragraph (a) or (b) of section 30(1)”,
 - (b) in paragraph 4(2), by substituting “section 30(10)(b)” for “section 30(1)(b)”, and
 - (c) in paragraph 8, by substituting “section 30(10)(f)” for “section 30(3)”.
- (3) Nothing in this section shall affect the balance of the term of office of a director of a company appointed before the passing of this Act.

Accountability to Oireachtas committees

40. The following is inserted after section 30 of the Act of 1996:

- “**30A.**(1) In this section ‘Committee’ means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a committee.
- (2) The chairperson, or the chief executive, or both, of a company shall at the request in writing of a Committee attend before it to give account for the administration of the company.
- (3) Any account given under subsection (2) shall relate to the functions of the company but that subsection shall not require there to be disclosed any information that is determined by the company to be of a commercially sensitive nature.”.

Amendment of section 32 of Act of 1996 (disclosure by directors of certain interests)

41. The following is substituted for section 32 of the Act of 1996:

- “**32.** (1) Where at a meeting of the directors of a company or a subsidiary any of the following matters arises, namely—
- (a) an arrangement to which the company or any subsidiary is a party or a proposed such arrangement,
 - (b) a contract or other agreement with the company or any subsidiary or a proposed such contract or other agreement,
 - (c) the giving, grant or renewal by the company or any subsidiary of a certificate, licence, authorisation or instrument of approval, or
 - (d) the revocation, cancellation, withdrawal, suspension or endorsement by the company or any subsidiary of a certificate, licence, authorisation or instrument of approval,
- then any director of the company or the first-mentioned subsidiary present at the meeting who otherwise than in his or her capacity as such a director has a material interest in the matter shall—
- (i) at the meeting disclose to the company or the first-mentioned subsidiary the fact of such interest and the nature thereof,
 - (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
 - (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
 - (iv) take no part in any deliberations of the directors relating to the matter, and
 - (v) not vote on a decision relating to the matter.

- (2) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.
- (3) Where at a meeting of the directors of a company or a subsidiary a question arises as to whether or not a course of conduct, if pursued by a director of the company or the subsidiary, would constitute a failure by him or her to comply with the requirements of subsection (1), the question may, subject to subsection (4), be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
- (4) Where, at a meeting of a company or a subsidiary the chairperson of the meeting is the director in respect of whom a question to which subsection (3) applies falls to be determined, then the other directors of the company or a subsidiary attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.
- (5) Where the Minister is satisfied that a director has contravened subsection (1), the Minister may, if he or she thinks fit, and with the consent of the Minister for Public Expenditure and Reform, remove that director from office, and, where a person is removed from office pursuant to this subsection, he or she shall henceforth be disqualified from being a director of the company concerned or a subsidiary.
- (6) Section 231 of the Companies Act 2014 does not apply to a director of a company or a subsidiary.
- (7) Nothing in this section shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with the company.”.

Amendment of section 34 of Act of 1996 (membership of either House of Oireachtas, European Parliament or local authority)

42. (1) The following is substituted for section 34 of the Act of 1996:

- “**34.** (1) Where a director of a company is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having being elected to the European Parliament, or

(d) elected or co-opted as a member of a local authority,
he or she shall thereupon cease to be a director of the company.

(2) Where a person employed by a company is—

- (a) nominated as a member of Seanad Éireann, or
- (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament,

he or she shall thereupon stand seconded from employment by the company and shall not be paid by, or be entitled to receive from, the company any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is for the time being—

- (a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (b) a member of the European Parliament, or
- (c) entitled under the Standing Orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under paragraph (a) or (c) or is such a member under paragraph (b), be disqualified from becoming a director of a company and with regard to paragraph (a) and (b) shall be disqualified from employment in any capacity by a company.

(4) Without prejudice to the generality of subsection (2), that subsection shall be construed as prohibiting the reckoning of a period therein mentioned as service with a company for the purpose of any superannuation benefits.”.

(2) Nothing in the amendment effected by this section shall affect the balance of the term of office of a director of a company appointed before the passing of this Act.

Amendment of section 41 of Act of 1996 (existing superannuation schemes, establishment of pension funds, arrangements for pilots)

43. Section 41 of the Act of 1996 is amended by substituting for subsection (1) the following:

- “41. (1) A superannuation scheme—
- (a) made under—

- (i) section 151 of the Act of 1946, or
 - (ii) any other enactment (other than one referred to in subsection (6)),
- or
- (b) registered under section 60 of the Pensions Act 1990,
- by the former harbour authority of a company's harbour and which is in force immediately before the relevant vesting day shall (notwithstanding the repeal by, or, as the case may be, any cesser effected by, subsection (5) of section 151 of the Act of 1946 or other enactment aforesaid) continue in force and to apply to each person to whom it applied immediately before that day.”.

Amendment of section 43 of Act of 1996 (transfer of functions from one company to another company)

44. Section 43 of the Act of 1996 is amended by inserting after subsection (1) the following:

“(1A) Where a company is the subject of an order made under *section 8* of the *Harbours Act 2015*, the Minister may only make an order under subsection (1) with the consent of the Minister for Environment, Community and Local Government after consultation with the local authority chief executive concerned.”.

Amendment of section 44 of Act of 1996 (general Ministerial powers)

45. Section 44 of the Act of 1996 is amended by substituting for paragraph (b) of subsection (1) the following:

“(b) navigational safety,
(ba) security and operations generally in harbours,”.

Amendment of section 72 of Act of 1996 (pilotage exemption certificates)

46. Section 72 of the Act of 1996 is amended by substituting for paragraphs (b) and (c) of subsection (1) the following:

“(b) the person is—

- (i) the holder of a subsisting certificate of competency, issued pursuant to regulations made under section 3 of the Merchant Shipping (Certification of Seamen) Act 1979, in any of the following capacities:
 - (I) master;
 - (II) chief mate; or
 - (III) officer in charge of a navigational watch,

or

- (ii) the holder of a subsisting document issued by another Member State or the Kingdom of Norway or the Republic of Iceland, certifying a level of competency which corresponds to a certificate of competency to which subparagraph (i) relates,

or

- (c) the person is the holder of a subsisting certificate of competency which—
 - (i) is a certificate to which regulation I/2 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, done at London on 7 July 1978, relates, and
 - (ii) was issued to a master or deck officer by or under the authority of the government of any other state where such certificate is recognised by the State for the purposes of regulation I/10 of that Convention by virtue of an order made under section 7 (as amended by section 28 of the Merchant Shipping Act 1992) of the Merchant Shipping Act 1947,

or”.

Amendment of section 79 of Act of 1996 (power of Minister to re-organise provision of pilotage services)

47. The following is substituted for section 79 of the Act of 1996:

“79. (1) The Minister may by order—

- (a) establish one or more additional pilotage districts (that is to say, districts in which pilotage shall be regulated in the like manner to that provided by this Part in relation to a pilotage district mentioned in section 56) and define the limits of such a district or of such districts,
- (b) specify the circumstances in which pilotage shall be compulsory in a pilotage district established under paragraph (a),
- (c) abolish a pilotage district (being a pilotage district mentioned in section 56 or established under paragraph (a)),
- (d) alter the limits of a pilotage district to which paragraph (a), (e) or this paragraph relates, or
- (e) subject to section 57(2), provide for the limits of a pilotage district referred to in Part II of the Third Schedule in lieu of the limits set out in that Part,

and nothing in section 56 shall be construed as restricting or limiting the exercise by the Minister of his or her powers under this section in relation to a pilotage district mentioned in that section.

- (2) (a) An order under paragraph (a) of subsection (1) shall confer on a specified person the function of organising and ensuring the provision of pilotage services in the pilotage district to which the order relates. That person shall perform that function by one of the means specified in section 56(1). This Act in so far as it relates to pilotage services otherwise applies to the pilotage district concerned with the substitution for references to ‘company’, in each place where it occurs (other than in this subsection), of references to that person and any other necessary modifications.
- (b) An order under subsection (1) may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient.
- (c) In this subsection ‘specified person’ includes a company, a local authority and, in the case of a fishery harbour centre (within the meaning of the Fishery Harbour Centres Act 1968), the Minister for Agriculture, Food and the Marine.
- (3) In deciding whether or not to make an order under this section the Minister shall have regard to the following:
- (a) any existing or proposed harbour limits to which the pilotage district or proposed pilotage district relates or would relate; and
- (b) navigational safety.
- (4) The powers of the Minister under this section are in addition to his or her powers under section 43.”.

Amendment of section 83 of Act of 1996 (adaption of references in enactments to harbour authorities and pilotage authorities)

48. The following is substituted for section 83 of the Act of 1996:

- “83. (1) References in any enactment or instrument made thereunder to a harbour authority shall, unless the context otherwise requires, be construed as including references to—
- (a) a company established under section 7 in respect of the harbour of a harbour authority,
- (b) a local authority to which the harbour of a harbour authority is transferred by an order under subsection (2) of section 88 or under subsection (4) or (5) of that section, or
- (c) a local authority to which the harbour of a company is transferred by an order under *section 28* of the *Harbours Act 2015*,
- and references in any enactment or instrument made thereunder to a particular harbour authority shall, unless the context otherwise requires, be construed as references to the particular company (if any)

so established or, as the case may be, to the particular local authority (if any) to which a transfer as aforesaid is made.

- (2) References in any enactment or instrument made thereunder to a pilotage authority shall, unless the context otherwise requires, be construed as including references to a company or a local authority on which the function of organising and ensuring the provision of pilotage services in the pilotage district of a pilotage authority is conferred by section 56 or *section 29, 34 or 35* of the *Harbours Act 2015* and references in any enactment or instrument made thereunder to a particular pilotage authority shall, unless the context otherwise requires, be construed as references to the particular company (if any) on which the aforesaid function in relation to the pilotage district of that pilotage authority is so conferred.
- (3) References in any enactment or instrument made thereunder to the Minister for the Marine shall, in so far as the references relate to a matter to which a function of Dún Laoghaire Harbour Company relates and unless the context otherwise requires, be construed as references to that company or the local authority to which the harbour of the company is transferred by an order under *section 28* of the *Harbours Act 2015*.”.

Amendment of section 91 of Act of 1996 (limits of harbours under the control or management of local authorities)

49. Section 91 of the Act of 1996 is amended by inserting after subsection (2) the following:

- “(3) In deciding whether or not to make an order under this section the Minister shall have regard to—
- (a) the present capacity of the harbour and expected capacity needed having regard to the nature of shipping using or estimated will be using the harbour,
 - (b) navigational safety, and
 - (c) such and so many of the following as are, in the opinion of the Minister, relevant to his or her decision:
 - (i) leases made under section 2, licences granted under section 3, approvals under section 10 or consents given under section 13 of the Foreshore Act 1933 and any application duly made for such a lease, licence, approval or consent;
 - (ii) applications for permission, or permissions granted, under the Planning and Development Acts 2000 to 2014 in respect of the development of any land;
 - (iii) environmental impact assessments made under the Planning and Development Acts 2000 to 2014;

- (iv) any development plan made by a planning authority under sections 9 and 12 of the Planning and Development Act 2000, and any local area plan under section 18 of that Act.”.

**Amendment of Third Schedule to Act of 1996 (limits of harbours and pilotage districts)
Dublin Port Company**

50. (1) The Third Schedule to the Act of 1996 is amended by substituting for paragraph 4 the following:

“Dublin Port Company

4. Limits consisting of and including—

- (a) the River Liffey and the quays and walls bounding the same,
- (b) the walls called the North Wall, the South Wall and the East Wall, respectively,
- (c) the piers, jetties, tidal basins and other works constructed by or belonging to the Dublin Port and Docks Board before the relevant vesting day, and
- (d) the Harbour of Dublin and the strands, bays, creeks and harbours thereof and all waters inside that area,

commencing from but excluding the Matt Talbot Memorial Bridge in the City of Dublin, and extending to an imaginary straight line drawn from the Baily Lighthouse on the north in the County of Dublin and extending through the North Burford Bank Buoy and thence through the South Burford Bank Buoy and thence to Sorrento Point on the south including the harbours of Bulloch and Sandycove, but excepting the limits of the harbour of Dún Laoghaire Harbour Company and excepting also the harbours of Coliemore and Sutton.”.

- (2) Section 88 of the Act of 1996 is amended by deleting subsection (6).

PART 6

AMENDMENT OF MERCHANT SHIPPING ACT 1992 AND FISHERY HARBOUR CENTRES ACT 1968

Amendment of Merchant Shipping Act 1992

51. The Merchant Shipping Act 1992 is amended—

- (a) in section 2(1), in the definition of “authorised officer”, by substituting for paragraph (d) the following:

“(d) as respects the harbour of which he or she is the harbour master or is in charge of, a person appointed to be such by one of the following, that is to say:

- (i) a company within the meaning of the Harbours Act 1996;
 - (ii) the Minister for Agriculture, Food and the Marine, in respect of a fishery harbour centre (within the meaning of the Fishery Harbour Centres Act 1968);
 - (iii) a local authority (within the meaning of section 2 (as amended by Part 1 of Schedule 1 to the Local Government Reform Act 2014) of the Local Government Act 2001);
 - (iv) Iarnród Éireann - Irish Rail, in respect of Rosslare Harbour;”
- (b) in section 18 (inserted by section 47 of the Maritime Safety Act 2005) by substituting for subsection (5) the following:
- “(5) If in respect of a vessel there is a contravention of a regulation under this section—
- (a) (other than in respect of a matter referred to in subsection (2)(d)), the owner and (if the vessel is in use) the master of the vessel each commits an offence and each is liable on summary conviction to a class A fine, or
 - (b) in respect of a matter referred to in subsection (2)(d), the owner of the vessel (or, if the vessel is on hire, the person to whom it is on hire) and the master of the vessel each commits an offence and each is liable—
 - (i) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or
 - (ii) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 2 years, or to both.”
- (c) in section 19 (inserted by the said section 47) by substituting for subsection (5) the following:
- “(5) If in respect of a fishing vessel there is a contravention of a regulation under this section—
- (a) (other than in respect of a matter referred to in subsection (2)(f)), the owner and (if the vessel is in use) the master of the vessel each commits an offence and each is liable on summary conviction to a class A fine, or
 - (b) in respect of a matter referred to in subsection (2)(f)—
 - (i) the owner and (if the vessel is in use) the master of the vessel, and
 - (ii) where the person contravening the regulation is not the owner or master of the vessel, that person,

each commits an offence and each is liable on summary conviction to a class A fine.”,

- (d) in section 20 (inserted by the said section 47) by substituting for subsection (5) the following:

“(5) If in respect of a pleasure craft there is a contravention of a regulation under this section—

- (a) the owner and (if the craft is in use) the master of the craft, and
 (b) where the person contravening the regulation is not the owner or master of the craft, that person,

each commits an offence and each is liable on summary conviction to a class A fine.”,

and

- (e) in section 27 (inserted by the said section 47)—

- (i) by substituting for subsection (1) the following:

“(1) The Minister may prescribe that this section applies to a contravention or a contravention in particular circumstances of a regulation made under section 18 (other than in respect of a matter referred to in subsection (2)(d)), 19 or 20.”,

and

- (ii) in subsection (2), by substituting “section 18(5)(a), 19(5) or 20(5) in relation to a contravention or a contravention in particular circumstances of a regulation made under section 18, 19 or 20” for “section 18, 19 or 20 in relation to a contravention of regulations made under section 18, 19 or 20”.

Amendment of Fishery Harbour Centres Act 1968

52. Section 4 of the Fishery Harbour Centres Act 1968 is amended—

- (a) in subsection (2), by inserting after paragraph (aa) (inserted by section 35(a) of the Vehicle Clamping Act 2015) the following:

“(ab) make bye-laws to provide for matters relating to the use of tugboats in fishery harbour centres, including minimum requirements in relation to equipment on board and the qualifications and training required of the crew of tugboats,”,

- (b) in subsection (2), by substituting for paragraph (d) the following:

“(d) appoint, to manage, control, operate and develop the centre, such number of officers and servants (by whatever names or titles (including harbour master) they are called) as he or she deems necessary for the purpose and provide for their powers, functions and duties and, with the consent of the Minister for Public Expenditure and Reform, for their terms and conditions of service

(including, if, and in such cases as, he or she thinks fit, superannuation benefits),”

and

- (c) in subsection (10), (inserted by section 54(b) of the Maritime Safety Act 2005)—
- (i) in paragraph (a)(ii), by substituting “accompanied by the notice, duly completed,” for “accompanied by the notice,”,
 - (ii) in paragraph (b)(i), by substituting “accompanied by the notice, duly completed,” for “accompanied by the notice,”, and
 - (iii) in paragraph (b)(iii), by inserting “, accompanied by the notice, duly completed,” after “during that period”.

SCHEDULE 1

Sections 8 and 28

COMPANIES TO WHICH AN ORDER UNDER *SECTION 8* OR *28* MAY REFER

Drogheda Port Company
Dún Laoghaire Harbour Company
Galway Harbour Company
New Ross Port Company
Wicklow Port Company

SCHEDULE 2

Section 12

CONSEQUENTIAL AMENDMENTS TO THE ACT OF 1996 IN RESPECT OF A TRANSFERRED COMPANY

Item	Provision affected	Amendment
1	Section 6	In subsection (5), paragraph (b) by inserting “, or, in the case of a transferred company, the local authority chief executive” after “the Minister”.
2	Section 24	In subsection (1)— (a) by inserting “or by a transferred company under <i>section 18</i> of the <i>Harbours Act 2015</i> ,” after “ <i>section 23</i> ”, and (b) by inserting “or, in the case of a transferred company, after consultation with the Minister and the Minister for the Environment, Community and Local Government,” after “, after consultation with the Minister.”.
3	Section 25	(a) In subsection (1), by inserting “, or, in the case of a transferred company, after consultation with the Minister and the Minister for the Environment, Community and Local Government,” after “, after consultation with the Minister.”. (b) In subsection (2)(b), by inserting “or, in the case of a transferred company, the local authority” after “the Minister”.
4	Section 37	In subsection (2), by inserting “, or in the case of a transferred company, the local authority chief executive,” after “the Minister”.
5	Section 92	(a) In subsection (3), by inserting “, or, in the case of a transferred company, the local authority chief executive concerned,” after “the Minister” in each place it occurs, (b) In subsection (6), by inserting “, or, in the case of a transferred company, the local authority chief executive concerned,” after “the Minister”.

SCHEDULE 3

Section 22

ELECTION OF EMPLOYEE DIRECTOR OF TRANSFERRED COMPANY

1. (1) The secretary of a transferred company (or a person selected by him or her after consultation with representatives of the employees) shall be the returning officer for an election of a person or persons for the purposes of *paragraph (a) of section 22(10)* (hereafter in this Schedule referred to as “the election”).
 - (2) The returning officer shall not be entitled to be nominated as, or to nominate, act as agent for or promote the interests of, a candidate at the election.
 - (3) The returning officer may delegate to a person such of his or her functions under this Schedule as he or she specifies and functions so delegated to a person shall be performable by that person. *Subparagraph (2)* shall apply to such a person.
2. (1) A poll shall be conducted for the purposes of the election where the number of candidates standing nominated in accordance with this Schedule exceeds one.
 - (2) Voting at the election shall be by secret ballot and on the basis of proportional representation by means of a single transferable vote.
 - (3) The election shall be held in accordance with such procedures (if any) as may be decided by the local authority chief executive concerned. Any such procedures shall be published on the website of the local authority concerned or made available at the offices of that local authority.
 - (4) The returning officer shall appoint such number of persons as he or she thinks appropriate to perform the functions of presiding officers and polling clerks at the poll conducted for the purposes of the election.
3. (1) The returning officer shall fix the nomination day for candidates at the election and give notice of the election not later than 10 weeks before that day.
 - (2) The day to be fixed under *subparagraph (1)* shall be not earlier than 6 weeks after the day on which eligibility of voters and candidates at the election is determined in accordance with *paragraphs 10 and 11*, respectively.
4. The returning officer shall, where only one person stands nominated as a candidate in accordance with this Schedule for election to the office of director referred to in *section 22(10)(b)*, declare that person to be elected to that office.
5. If the nomination of candidates or the poll conducted for the purposes of the election is interrupted or cannot be proceeded with the returning officer may adjourn the nomination or poll for such period as he or she considers appropriate to enable him or her, on its expiration, to proceed with or complete the nomination or poll.
6. On receipt of a notification from the returning officer of the name of the candidate elected, or declared to be elected under *paragraph 4*, the local authority chief executive concerned shall, in accordance with *section 22*, appoint the candidate to be a director of the transferred company.

7. The returning officer shall for the purposes of *paragraph 8* prepare a list of the names of the other candidates at the election placed in order of the votes credited to each of them at the last count in which he or she was involved.
8. In choosing a person to fill a casual vacancy referred to in *section 22(10)(f)* the local authority chief executive concerned shall select the candidate, if any, placed highest on the voting list under *paragraph 7* who is an employee of the transferred company at the time the vacancy comes to be filled. Where 2 or more such candidates are credited with an equal number of votes on that list the local authority chief executive concerned shall select one of them by lot.
9. A transferred company shall bear the costs of holding the election other than any costs incurred by candidates expressly on their own behalf.
10. Every employee of the transferred company who, on the day specified by the returning officer and on the day on which the poll is taken—
 - (a) is not less than 18 years of age, and
 - (b) has been an employee of the transferred company for—
 - (i) a continuous period of not less than 1 year, or
 - (ii) a continuous period of not less than 13 weeks and is normally expected to work not less than 8 hours a week for the transferred company,shall be entitled to vote at the election.
11. (1) Every employee of the transferred company who, on the day specified by the returning officer under *paragraph 10*—
 - (a) is not less than 18 years of age, and
 - (b) has been an employee of the transferred company for—
 - (i) a continuous period of not less than 1 year, or
 - (ii) a continuous period of not less than 13 weeks and is normally expected to work not less than 8 hours a week for the transferred company,shall be eligible to be nominated as a candidate at the election.
 - (2) Nominations shall be made in the manner specified by the returning officer.
 - (3) A candidate may be nominated by a recognised trade union or staff association or jointly by 2 or more such bodies but no such body shall be entitled both to nominate a candidate of its own accord and to nominate a candidate jointly with another such body or bodies.
 - (4) The returning officer shall rule on the validity of nominations. The decision of the returning officer shall be final.
12. The returning officer shall prepare and maintain a list of eligible voters and candidates for the purposes of this Schedule.

13. The returning officer shall prepare and maintain a list of recognised trade unions and staff associations for the purposes of this Schedule.