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HARBOURS (AMENDMENT) ACT, 2000

ARRANGEMENT OF SECTIONS

Section

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[No. 21.] *Harbours (Amendment) Act, 2000.* [2000.]

Acts Referred to

Companies Act, 1963

1963, No. 33

Harbours Act, 1996

1996, No. 11



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HARBOURS (AMENDMENT) ACT, 2000

AN ACT TO AMEND THE HARBOURS ACT, 1996, AND TO
PROVIDE FOR CONNECTED MATTERS. [5th July, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Harbours Act, 1996, is amended by the substitution of the following for section 43:

Transfer of
functions from one
company to another
company, etc.

“43.—(1) Where the Minister is of the opinion that—

- (a) the functions conferred on a company or companies by or under this Act in respect of a harbour or harbours could in a more cost-effective and efficient manner be performed by another company being a company established pursuant to section 7, or
- (b) the functions conferred on more than one company by or under this Act in respect of a harbour or harbours could in a more cost-effective and efficient manner be performed by amalgamating the functions of the companies concerned and the formation and registration of a new company under the Companies Acts (in this Act referred to as a ‘new company’),

he or she may, in respect of the said functions of the company or companies as the case may be (which or each of which is referred to in this section as a ‘transferor company’) by order—

- (i) in the case of paragraph (a), transfer those functions to that other company, or
- (ii) in the case of paragraph (b), transfer those functions to the new company,

and a company to which paragraph (i) or (ii) relates is in this section referred to as the ‘transferee company’.

- (2) (a) Where in respect of a transferee company to which subsection (1)(b) relates the Minister is of the opinion that the efficient and effective implementation of the amalgamation of the functions of the transferor companies so requires, he or she may by order provide that, during a period not exceeding 2 years (in this subsection referred to as the ‘specified

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period') from the date (in this subsection referred to as the 'transfer date') that the functions of the transferor companies were transferred to the transferee company, the number of directors including the chairperson shall be a specified number not exceeding 5.

- (b) (i) The directors, including the chairperson, of a transferee company to which paragraph (a) relates shall be appointed by the Minister with the consent of the Minister for Finance and be appointed for the specified period.
- (ii) The Minister may, with the consent of the Minister for Finance, fill any vacancies on a board of directors to which this paragraph relates including, where the number of directors provided for is less than 5, any subsequent increase in the number of directors in accordance with this subsection.
- (iii) Sections 30 and 36 shall not apply in respect of appointments to which this paragraph relates.
- (iv) Section 17(5) shall not apply in respect of meetings of directors who were appointed under this paragraph.
- (c) (i) Each person who on the transfer date was a director of a transferor company shall, if willing, be a member of an advisory board (in this subsection referred to as an 'advisory board') to the transferee company, and where any such person is not so willing there shall be deemed to be a vacancy which may be filled in accordance with subparagraph (v).
- (ii) There may be an advisory board in respect of a transferor company.
- (iii) An advisory board shall, if appointed, meet at the direction of the transferee company and stand appointed until the end of the specified period (including any extension of the period under paragraph (d)).
- (iv) Section 17(5) shall apply to an advisory board as if references to the directors were references to the members of the advisory board concerned.
- (v) The Minister may fill vacancies on an advisory board in the same manner as he or she would have been able to fill vacancies on the board of the transferor company concerned had not an order been made under paragraph (a) in respect of that company.
- (vi) The remuneration of members of an advisory board shall be determined by the Minister with the consent of the Minister for Finance.

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(d) The Minister may, for the purposes of paragraphs (a) S.1 and (c)(iii), by order extend the specified period referred to in either or both of those paragraphs but no such extension shall extend that period beyond 2 years from the transfer date.

(e) In respect of any period after the specified period, the directors of the transferee company shall be appointed in accordance with the articles of association of the transferee company and to which section 17 relates. A person who was appointed a director by virtue of paragraph (b) shall be eligible for reappointment.

(3) An order under this section shall provide for such of the following matters as the circumstances require:

(a) where the proposed transferee company is to be a new company—

(i) the formation and registration of a private company under the Companies Acts which conforms with the conditions laid down in this Act,

(ii) the name, headquarters location and capital formation of the new company,

(iii) the area of the harbour of the new company,

(b) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company,

(d) the transfer into the employment of the transferee company of members of the staff of any transferor company and the scales of pay and conditions of service to apply to such staff,

(e) an alteration in the name of the transferee company,

(f) the dissolution, without winding-up, of any transferor company and the disposal for the benefit of the Exchequer of any of its property which is surplus to the requirements of the transferee company,

(g) the functions of advisory boards, their relationship with the transferee company concerned and the holding of joint meetings between a transferee company and one or more of its advisory boards,

(h) such incidental, consequential and supplementary matters as are necessary to secure that the transfer of functions shall be fully and effectively carried out.

(4) (a) As respects a member of the staff of a transferor company transferred into the employment of a transferee company by an order under this section, the provisions of sections 39, 40 and 41 shall, subject to paragraphs (b) and (c) and to the extent that they applied

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to that member before such transfer, continue to apply to him or her after such transfer and while he or she remains in the employment of the transferee company and for this purpose references in the said provisions to a company shall be construed as references to the transferee company and the said provisions shall otherwise be construed so as to have effect in relation to the said person while he or she remains in such employment.

- (b) In the application of sections 39, 40 and 41 by virtue of this subsection, references (however expressed) to a person transferred to a company under section 38 shall be construed as including such a person who is subsequently transferred to a new company.
- (c) Where the chief executive or the harbour master of a transferor company transfers into the employment of the transferee company, then nothing in paragraph (a) or in the provisions applied by that section shall be construed as requiring their appointment as chief executive or harbour master, respectively, of the transferee company but this paragraph shall not otherwise be construed as affecting the scales of pay, conditions of service and terms of office of the persons concerned.

(5) References, however expressed, in this Act to a company's harbour shall, where the context so admits, be construed as including the harbour of a new company.

(6) Nothing in subsection (1)(b) or (4)(a) shall be construed so as to prevent the Minister from causing a company to be formed and registered under the Companies Acts for the purposes of this section before the making of an order under this section.”.

Amendment of section 2 (interpretation) of Harbours Act, 1996.

2.—Section 2 of the Harbours Act, 1996, is amended—

(a) in subsection (1)—

- (i) by the substitution of the following for the interpretations given to “company” and “company's harbour”:

“ ‘company’ means a company referred to in section 7 and, where the context so admits, a new company;

‘company's harbour’ shall be construed in accordance with sections 7(3) and 43(5);”,

and

- (ii) by the insertion of the following after the definition of “the Minister”:

“ ‘new company’ means a transferee company (within the meaning of section 43) to which an order under section 43(3)(a) relates;”,

and

- (b) in subsection (3), by the insertion in paragraph (a) of “, subject to section 19(4),” after “relevant vesting day

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shall” and the said paragraph as so amended is set out in S.2 the Table to this section.

TABLE

(a) A reference in this Act to a relevant vesting day shall, subject to section 19(4), be construed as a reference to the day appointed under section 7(2) in relation to the particular company to which the provision or provisions of this Act containing that reference falls or fall to be supplied (whether or not any such provision falls to be applied to any other company or companies).

3.—Section 3(3) of the Harbours Act, 1996, shall not apply to any order made under section 43 of that Act (as amended by *section 1* of this Act) for the purposes of—

Restriction of section 3(3) (laying of orders) of Harbours Act, 1996.

(a) any amalgamation of the functions of the Foynes Port Company and the Shannon Estuary Ports Company and the formation and registration of a new company, and

(b) the new company referred to in *paragraph (a)* of this section, where such order is made within two years from the date that the functions of the companies referred to in that paragraph were transferred to the new company.

4.—Section 8 of the Harbours Act, 1996, is amended by the substitution of the following for subsection (2):

Amendment of section 8 (name and capital formation of a company) of Harbours Act, 1996.

“(2) Section 6(1)(b) of the Companies Act, 1963, shall not apply to a company.”.

5.—Section 19 of the Harbours Act, 1996, is amended by the insertion of the following after subsection (3):

Amendment of section 19 (issue of shares to Minister and Minister for Finance, etc.) of Harbours Act, 1996.

“(4) This section shall apply to a new company to which an order under section 43(3)(a) relates as if the reference in subsection (1) to the relevant vesting day were a reference to the day when the relevant order under section 43 comes into operation.”.

6.—Section 25 of the Harbours Act, 1996, is amended in subsection (1)—

Amendment of section 25 (financing of capital works) of Harbours Act, 1996.

(a) by the insertion of “or for other purposes” after “capital works”, and

(b) by the substitution of “£60 million” for “£50 million”,

and the said subsection (1) as so amended is set out in the Table to this section.

TABLE

(1) The Minister for Finance, after consultation with the Minister, may make available to a company moneys to finance capital works or for other purposes. The aggregate amount of money that may be made available to a company or companies under this section shall not exceed £60 million.

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Amendment of section 35 (chief executive) of Harbours Act, 1996.

7.—Section 35 of the Harbours Act, 1996, is amended—

(a) in paragraph (a) of subsection (2) by the insertion of “or a new company” after “Dún Laoghaire Harbour Company”,

(b) by the substitution of the following for subsection (3):

“(3) The first chief executive of a new company and each subsequent chief executive of a company or new company shall be appointed and may be removed from office by the other directors of the company concerned after consultation with the Minister.”,

and

(c) in subsection (5) by the insertion of “or a new company” after “Dún Laoghaire Harbour Company”,

and the said paragraph (a) and the said subsection (5), as so amended, are set out in the Table to this section.

TABLE

(a) The first chief executive of a company (other than Dún Laoghaire Harbour Company or a new company) shall be—

(i) if functions in relation to the company’s harbour stood vested before the relevant vesting day in a harbour authority specified in Part I of the First Schedule to the Act of 1946, the person who was on the day prior to the said day the General Manager of that harbour authority, or

(ii) if functions in relation to the company’s harbour stood vested before the relevant vesting day in a harbour authority specified in Part II of the said Schedule, the person who was on the day prior to the said day the secretary of that harbour authority.

(5) Save in the case of the first chief executive of a company (other than Dún Laoghaire Harbour Company or a new company), the chief executive of a 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 company with the consent of the Minister given with the approval of the Minister for Finance.

Amendment of section 42 (harbour bye-laws) of Harbours Act, 1996.

8.—Section 42 of the Harbours Act, 1996, is amended by the insertion of the following after subsection (3):

“(4) In respect of a company whose functions are transferred, a bye-law (being a bye-law of the company’s harbour)—

(a) to which subsection (1) or (3) relates, and

(b) that is in force immediately before the transfer of the company’s functions to a transferee company (within the meaning of section 43),

shall continue in force in relation to such harbour as if made under this section and may be amended or revoked accordingly by the transferee company.”.

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9.—Section 56 of the Harbours Act, 1996, is amended by the insertion of the following after subsection (1):

Amendment of section 56 (organisation of pilotage) of Harbours Act, 1996.

“(1A) Nothing in subsection (1) shall be construed so as to restrict the making of an order under paragraph (a) or (b) of section 43(1) where either or both the transferee company (within the meaning of that section) and the transferor company (within that meaning) are companies referred to in subsection (1).”.

10.—Section 71 of the Harbours Act, 1996, is amended by the insertion of the following after subsection (7):

Amendment of section 71 (pilotage bye-laws) of Harbours Act, 1996.

“(7A) In respect of a company whose functions are transferred—

- (a) a bye-law to which subsection (1) relates, or
- (b) a bye-law (being a bye-law of a former pilotage authority for a company’s pilotage district) to which subsection (7) relates,

shall, to the extent that it is in force immediately before the transfer of the company’s functions to a transferee company (within the meaning of section 43), continue in force as if made under this section and may be amended or revoked accordingly by the transferee company.”.

11.—(1) This Act may be cited as the Harbours (Amendment) Act, 2000.

Short title, collective citation and construction.

(2) The Harbours Act, 1996, and this Act may be cited together as the Harbours Acts, 1996 and 2000, and shall be construed together as one.