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*Number 26 of 2009*

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**HARBOURS (AMENDMENT) ACT 2009**

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Section

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Number 26 of 2009

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**HARBOURS (AMENDMENT) ACT 2009**

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AN ACT TO AMEND AND EXTEND THE HARBOURS ACTS 1996 TO 2006, TO REPEAL THE HARBOURS ACT 1976, TO TRANSFER CERTAIN FUNCTIONS OF THE MINISTER FOR TRANSPORT RELATING TO HARBOURS TO AN BORD PLEANÁLA AND FOR THAT AND OTHER PURPOSES TO AMEND THE PLANNING AND DEVELOPMENT ACT 2000, TO MAKE CERTAIN PROVISIONS RELATING TO THE IRISH MARITIME DEVELOPMENT OFFICE AND TO PROVIDE FOR CONNECTED MATTERS.

[21st July, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

- 1.—In this Act “Principal Act” means Harbours Act 1996. Definition.
- 2.—Section 2 of the Principal Act is amended by substituting the following for the definition of “the Minister”:
- “ ‘Minister’ means Minister for Transport;”.
- Amendment of section 2 (interpretation) of Principal Act.
- 3.—(1) The Principal Act is amended—
- (a) by substituting the following for section 9:
- “Limits of a company’s harbour. 9.—(1) (a) Except and in so far as an order is in force under this section in respect of a company, the limits of a company’s harbour shall be those set out in Part I of the Third Schedule.
- (b) A reference in this Act, or in an order under this section, to a company’s harbour shall be construed as including a reference to any point within the limits of its harbour as aforesaid or, where the company has more than one harbour, of each of its harbours.
- Limits of a company’s harbour, etc.

(2) (a) (i) Subject to the other provisions of this section, the Minister may, after consultation with the company concerned, by order provide for the limits of a harbour of a company in lieu of the limits as set out in Part I of the Third Schedule and, for so long as such an order is in force, that Part, in so far as it relates to the limits of that harbour, does not have effect.

(ii) The reference in subparagraph (i) to an order in force shall, as respects such an order that is amended by an order in force under section 3(4), be construed as a reference to the first-mentioned order as so amended.

(b) An order under this section may be made in respect of a company for any additional area, whether or not—

(i) contiguous to the existing harbour limits of the company concerned, or

(ii) for the purpose of relocating, in whole or in part, a harbour of a company.

(c) Where an area not contiguous to an existing harbour (as provided for by Part I of the Third Schedule or a previous order or orders under this section) is provided for by order under this subsection, then that area shall be in addition to and not in lieu of the area provided for—

(i) in the Third Schedule, or

(ii) otherwise by an order under this subsection,

unless the contrary intention is otherwise provided for by the order concerned.

(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 2009* in respect of the development of any land,
  - (iii) environmental impact assessments made under the *Planning and Development Acts 2000 to 2009*,
  - (iv) any development plan made by a planning authority pursuant to sections 9 and 12 of the Planning and Development Act 2000, and any local area plan under section 18 of that Act.”,

and

(b) in the Third Schedule—

- (i) by substituting the following, with effect from 30 June 2004, for paragraph 3:

“*Drogheda Port Company.*

3. The northern limit commencing at the north east angle of the bridge at Shop Street and running in an easterly direction along the North Quays to the eastern extremity at Donor’s Green, from there along the Baltray Road to the village of Baltray, from there

to Aleria Beacon and along the line of the high water mark bounding the eastern shores of the townland of Baltray to Duff's Farm, thence in a direction of 090 degrees from true north for 5,380 metres, thence in a direction of 180 degrees from true north for 7,271 metres, and thence in a direction of 270 degrees from true north for 5,120 metres to the southern limit of the townland of Bettystown, from there along the high water mark of the eastern shore of the townland of Mornington, from there along the high water mark to the Maiden Tower, from there in a westerly direction along the high water mark to the south east angle of the bridge at Shop Street and running in a northerly direction along the east side of the said bridge to its north east angle.”,

- (ii) by substituting the following, with effect from 4 March 1997, for paragraph 4:

“*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 and including the Rory O'More Bridge at Heuston Station 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) The Harbours Act 1996 (Limits of Harbour of Dublin Port Company) (Alteration) Order 1997 (S.I. No. 98 of 1997) and the Harbours Act 1996 (Limits of Harbour of Drogheda Port Company) (Alteration) Order 2004 (S.I. No. 238 of 2004) are revoked.

Amendment of section 11 (objects of a company) of Principal Act.

4.—(1) Section 11 of the Principal Act is amended by deletion of subsection (4)(d).

(2) Nothing in section 12A (inserted by *section 5*) of the Principal Act affects a contract duly entered into under section 11(4)(d) of that Act before the passing of this Act.

5.—The Principal Act is amended by inserting the following after section 12:

Commercial activities outside harbour limits by a company.

“12A.—(1) Subject to subsection (2), where it appears to a company to be requisite, advantageous or incidental to the performance by it of its other functions under this Act in respect of its harbour, the company may invest in or engage in commercial activities outside the limits of its harbour.

(2) A company shall not engage in a commercial activity to which subsection (1) relates unless it has received the prior approval in writing for such activity from the Minister given with the consent of the Minister for Finance.”.

6.—Section 15 of the Principal Act is amended—

Amendment of section 15 (provisions with respect to sale, leasing and acquisition of land) of Principal Act.

(a) by substituting the following for subsection (2):

“(2) Subject to subsection (4)(a), the consideration for which any land is sold by a company shall, in so far as is practicable, not be less than its open market value.”,

and

(b) in subsection (4) by substituting the following for paragraph (a):

“(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,

a 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.”.

7.—(1) In this section “Act of 2006” means the Planning and Development (Strategic Infrastructure) Act 2006.

Transfer of certain Ministerial functions to Bord Pleanála.

(2) The Planning and Development Act 2000 is amended—

(a) in section 2(1) by substituting the following for paragraph (h) of the definition of “strategic infrastructure development” (inserted by section 6 of the Act of 2006)—

“(h) any compulsory acquisition of land referred to in section 214, 215A, 215B or 215C, being an acquisition related to development specified in any of the preceding paragraphs of this definition;”.

(b) by inserting the following section after section 215B:

“Transfer of  
certain  
Ministerial  
functions  
under  
Harbours Act  
1996.

215C.—(1) The functions of the Minister for Transport under section 16 of, and the Fourth Schedule to, the Harbours Act 1996, as amended, in relation to the compulsory acquisition of land for the purposes set out in that section are transferred to, and vested in, the Board and, subject to *section 7(3) of the Harbours (Amendment) Act 2009*, relevant references in that Act to the Minister for Transport shall be construed as references to the Board and any connected references shall be construed accordingly.

(2) The transfer of the functions of the Minister for Transport in relation to the compulsory acquisition of land in accordance with subsection (1) shall include the transfer of all necessary ancillary powers in relation to substrata of land, easements, rights over land (including wayleaves and public rights of way), rights over land or water or other such functions as may be necessary in order to ensure that the Board can fully carry out its functions in relation to the enactments referred to in subsection (1).”,

(c) in section 217C (inserted by section 38 of the Act of 2006) by substituting in subsection (1) “section 214, 215A, 215B or 215C” for “section 214, 215A or 215B”,

(d) in section 218 (inserted by section 39 of the Act of 2006)—

(i) by substituting in subsection (1) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B”, and

(ii) by substituting in subsection (4) “sections 214 to 215C” for “sections 214 to 215B”,

(e) in section 219 (inserted by section 40 of the Act of 2006)—

(i) by substituting “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B”, and

(ii) by substituting “section 215A, 215B or 215C” for “section 215A or 215B”,

(f) in section 221—

(i) by substituting in subsection (1) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (inserted by section 41 of the Act of 2006),

(ii) by substituting in subsection (2) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (as so inserted),

(iii) by substituting in subsection (5) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (as so inserted), and

- (iv) by substituting in subsection (7) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (as so inserted),

and

- (g) in section 223—

- (i) by substituting in subsection (1) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (inserted by section 42 of the Act of 2006), and

- (ii) by substituting in subsection (2) “section 214, 215, 215A, 215B or 215C” for “section 214, 215, 215A or 215B” (as so inserted).

(3) For each provision of the Fourth Schedule to the Principal Act specified in the *first column* of *Schedule 1* there is substituted for the words set out in the *second column* of that Schedule opposite that provision the words set out in the *third column* of that Schedule opposite the words in the *second column* of that Schedule.

**8.—Section 17 of the Principal Act is amended—**

Amendment of section 17 (articles of association) of Principal Act.

- (a) in subsection (1)—

- (i) by deleting “or the local authority directors” in paragraph (b)(i), and
- (ii) by deleting the definition of “local authority director” in paragraph (d),

and

- (b) in subsection (3) by substituting the following for paragraph (a):

“(a) the number of directors of the company shall be not more than 8;”.

**9.—Section 23 of the Principal Act is amended—**

Amendment of section 23 (power to borrow) of Principal Act.

- (a) in subsection (1) by substituting the following for paragraph (b):

“(b) The aggregate at any one time of borrowings under paragraph (a) by a company and a subsidiary or either of them shall, subject to subsection (2), not exceed the higher of—

- (i) such amount as the Minister, with the consent of the Minister for Finance, approves with respect to a particular company or subsidiary not exceeding €200,000,000, or
- (ii) 50 per cent of the value of so much of the company’s or subsidiary’s assets as are treated as fixed assets for the purposes of its accounts.”,

and

(b) by substituting the following for subsection (2):

“(2) In respect of a named company or a named subsidiary and for the purposes of paragraph (b) of subsection (1), the Minister may, with the consent of the Minister for Finance, by order provide for a percentage to apply, other than 50 per cent, having regard to—

- (a) the needs of the company or subsidiary,
- (b) the purpose of the borrowing and the ability of the company or subsidiary to make repayments, and
- (c) the financial stability generally of the company or subsidiary.”.

Amendment of section 28 (annual reports, chairperson’s report and furnishing of information to Minister) of Principal Act.

**10.**—Section 28 of the Principal Act is amended—

(a) in subsection (1), with effect from 6 months after the passing of this Act, by substituting “not later than 4 months after the end of each accounting year of the company” for “not later than 6 months after the end of each accounting year of the company”, and

(b) in subsection (4)—

(i) with effect from 6 months after the passing of this Act, by substituting “not later than 4 months after the end of each accounting year of the company” for “not later than 6 months after the end of each accounting year of the company”, and

(ii) by substituting “adhered to,” for “adhered to.” in paragraph (e) and by inserting the following after that paragraph:

“(f) a statement—

(i) of the average number of employees that are expected to be employed during the accounting year under contracts of service 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 30(1)(a)(ii).”.

Amendments to Principal Act relating to directors, etc.

**11.**—(1) Section 30 of the Principal Act is amended—

(a) by substituting the following for subsection (1):

- “(1) (a) (i) An election 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 to be a director of the company the employee of the company who is elected in accordance with the Fifth Schedule.
- (c) The Minister shall, as respects a company (other than a company to which paragraph (b) relates), appoint to be a director of the company a person who, in the opinion of the Minister, is representative of the interests of the employees 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.”,
- (b) in subsection (3) by substituting “paragraph (b) of subsection (1)” for “paragraph (a) or (b) of subsection (1)”,
- (c) by deleting subsection (6), and
- (d) by inserting the following after subsection (7):

“(8) (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;

‘recommending person’ means the person making a recommendation of a person for appointment under subsection (7) as a director of a company.

- (b) Except where paragraph (c) applies, a recommending person shall not recommend a person to the Minister for appointment as a director of the company concerned if such person—
- (i) had a charge imposed by that company under section 13,
  - (ii) was an employee of a person who had a charge so imposed,
  - (iii) had, in the opinion of the person making the recommendation, 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 of the recommendation.

- (c) Where paragraph (b) applies but the period of 3 years would expire if the period were the period of 3 years before the date of the appointment (if made) rather than the date of the recommendation, then the person concerned may be recommended for appointment but may only be considered by the Minister for appointment if, subsequent to the recommendation being made, the person meets the selection requirements set out in paragraph (f). Where this paragraph applies to a recommendation, the recommending person shall advise the Minister in writing of the relevant facts no

later than the time that the recommendation is made.

- (d) Where a recommending person is considering to recommend a person under subsection (7) and—
- (i) the person being so considered—
    - (I) had, within the period referred to in paragraph (b), provided a commercial service, or
    - (II) was or is an employee of a person who had provided such a service,
  - and
  - (ii) the recommending person is unable to form an opinion as to whether the service should be regarded as significant commercial service to the company,

then the recommending person may recommend the person concerned to the Minister but only if the recommending person advises the Minister in writing of the relevant facts (including the inability to form an opinion) no later than the time that the recommendation is made.

- (e) Where a recommending person is of the opinion that the person being recommended—
- (i) had, within the period referred to in paragraph (b), provided a commercial service other than a significant commercial service, or
  - (ii) was or is an employee of a person who had provided such a service,

then, the recommending person may advise the Minister in writing of the relevant facts (including that opinion).

- (f) A person shall not be selected for appointment under subsection (7) as a director of the company concerned if such person—
- (i) had a charge imposed by that company under section 13,
  - (ii) was an employee of a person who had a charge 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.”.

(2) The Fifth Schedule to the Principal Act is amended—

(a) by substituting the following for subparagraph (1) of paragraph 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.”,

(b) by deleting subparagraph (1) of paragraph 4,

(c) by substituting the following for paragraph 6:

“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 Minister shall, in accordance with section 30, appoint the candidate to be a director of the company.”,

and

(d) by substituting the following for subparagraph (3) of paragraph 11:

“(3) A candidate may be nominated by a recognised trade union or staff association or jointly by two 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.”.

(3) Subject to *subsections (4) and (5)*, 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.

(4) Where a person was, immediately before the passing of this Act, a director of a company and—

(a) after such passing he or she ceases to be a director before completing his or her term of office as a director, and

(b) that term of office was by virtue of being appointed pursuant to subsection (1) or (3) of section 30 of the Principal Act,

then, no person shall be appointed under that subsection for the remainder of that term of office if, as a consequence, there would be more than one director appointed under either or both of those subsections.

(5) Where, immediately before the passing of this Act, a person was a director of a company and—

(a) after such passing he or she ceases to be a director before completing his or her term of office as a director, and

- (b) that term of office was by virtue of being appointed pursuant to subsection (6) of section 30 of the Principal Act,

then, no person shall be appointed under that subsection for the remainder of that term of office.

(6) The Port Companies (Appointment of Local Authority Directors) Regulations 1996 (S.I. No. 335 of 1996) are revoked.

**12.**—The Principal Act is amended by substituting the following for section 57:

Limits of a company's pilotage district.

“57.—(1) (a) Subject to subsection (2), a company's pilotage district shall be that set out in Part II of the Third Schedule.

(b) A reference in this Act to a company's pilotage district shall be construed as including a reference to any point within the limits of its pilotage district as aforesaid.

(2) (a) Where an order made by virtue of section 79(1)(e) is in force that relates to a harbour of a company and the pilotage district of such harbour is set out in Part II of the Third Schedule, then for so long as the order is in force the limits of that pilotage district shall be those set out in that order in lieu of the limits so set out in the said Part II which relate to the harbour concerned.

(b) The reference in paragraph (a) to an order in force shall, as respects such an order that is amended by an order in force under section 3(4), be construed as a reference to the first-mentioned order as so amended.”.

**13.**—Section 64 of the Principal Act is amended by substituting the following for subsection (3):

Amendment of section 64 (pilotage charges) of Principal Act.

“(3) (a) Different rates of pilotage charges may be imposed by a company in different circumstances.

(b) Without prejudice to the generality of paragraph (a), pilotage charges may be imposed in a similar manner and in the circumstances as provided for under subsection (9) of section 13 in respect of harbour charges and that subsection together with subsection (10) of that section shall also apply to pilotage charges in the same manner as they apply to harbour charges as if references to harbour charges were references to pilotage charges.”.

**14.**—Section 70 of the Principal Act is amended by substituting “€2,500” for “£100” in subsections (1) and (3).

Amendment of section 70 (limitation of liability in respect of pilots) of Principal Act.

Amendment of section 72 (pilotage exemption certificates) of Principal Act.

**15.**—Section 72 of the Principal Act is amended by substituting the following for paragraphs (b) and (c) of subsection (1):

“(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,

(ii) the holder of a subsisting document issued by another Member State of the European Communities 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,

(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.”

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

**16.**—Section 79 of the Principal Act is amended—

(a) by substituting the following for subsection (1)(c):

“(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,

(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,”

(b) in subsection (2)—

(i) by substituting the following for paragraph (a):

“(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.”,

and

(ii) by inserting the following paragraph after paragraph (b):

“(c) In this subsection ‘specified person’ includes a company, a harbour authority to which section 7 of the Harbours Act 1946 relates and a local authority.”,

and

(c) by inserting the following after subsection (2):

“(2A) 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.”.

**17.—The Principal Act is amended—**

- (a) in the Table to section 87 by inserting “Arklow Harbour Commissioners” after “Annagassan Pier Commissioners”, and
- (b) in the First Schedule by deleting “Arklow Harbour” from column (1) and “Arklow Harbour Company” from column (2).

Amendment of Principal Act relating to power to establish companies in respect of harbours not mentioned in First Schedule to that Act.

**18.—(1) The Principal Act is amended by inserting the following section after section 87:**

“87A.—(1) In this section—

‘relevant harbour commissioners’ means—

- (a) in relation to the Port of Cork Company, Bantry Bay Harbour Commissioners, and

Transfer of Bantry Bay Harbour and Tralee and Fenit Pier and Harbour, etc.

- (b) in relation to the Shannon Foynes Port Company, Tralee and Fenit Pier and Harbour Commissioners;

‘relevant port company’ means—

- (a) in relation to Bantry Bay Harbour Commissioners, the Port of Cork Company, and
- (b) in relation to Tralee and Fenit Pier and Harbour Commissioners, the Shannon Foynes Port Company;

‘transfer day’ means the day appointed by the Minister under paragraph (a) or (b) of subsection (2).

- (2) (a) The Minister may, subject to paragraph (c) and after consultation with Bantry Bay Harbour Commissioners, the Port of Cork Company and such other persons (if any) as the Minister considers it appropriate in the circumstances to consult, by order appoint a day as the transfer day for the purposes of this section in respect of Bantry Bay Harbour and, with effect from that day, the Bantry Bay Harbour Commissioners are dissolved.
- (b) The Minister may, subject to paragraph (c) and after consultation with Tralee and Fenit Pier and Harbour Commissioners, the Shannon Foynes Port Company and such other persons (if any) as the Minister considers it appropriate in the circumstances to consult, by order appoint a day as the transfer day for the purposes of this section in respect of Tralee and Fenit Pier and Harbour and, with effect from that day, the Tralee and Fenit Pier and Harbour Commissioners are dissolved.
- (c) An order under paragraph (a) or (b) shall not be made until after a public consultation process has taken place in respect of Bantry Bay Harbour or Tralee and Fenit Pier and Harbour, respectively, and all submissions duly made in accordance with that process have been considered.
- (d) In paragraph (c) ‘public consultation process’ means an invitation by the Minister to the public for submissions, within a specified time limit, on a proposal to make an order under paragraph (a) or (b) of subsection (2) where such invitation is made by means of a notice to that effect published in a newspaper circulating within the State and published on the internet.
- (e) The making of an order under this subsection is in lieu of making an order under section 87(1) or 88(2) in respect of the harbour concerned.
- (3) With effect from the transfer day concerned, there is transferred—
- (a) to the Port of Cork Company from Bantry Bay Harbour Commissioners, or
- (b) to Shannon Foynes Port Company from Tralee and Fenit Pier and Harbour Commissioners,

all property (real and personal) and rights held or enjoyed immediately before that day by the relevant harbour commissioners and all liabilities incurred before that day by them that had not been discharged before that day and, accordingly, without any further conveyance, transfer or assignment—

- (i) the property so held or enjoyed, both real and personal, vests on the transfer day in the Port of Cork Company or Shannon Foynes Port Company, as the case may be, for all the estate, term or interest for which, immediately before that day, it was vested in the relevant harbour commissioners, but subject to all trusts and equities affecting the property and capable of being performed,
- (ii) the rights so held or enjoyed, are as on and from the transfer day, held and enjoyed by the Port of Cork Company or Shannon Foynes Port Company, as the case may be, and
- (iii) the liabilities so incurred are, as on and from the transfer day, the liabilities of the Port of Cork Company or Shannon Foynes Port Company, as the case may be.

(4) All moneys, stocks, shares and securities transferred to the relevant port company by this section that, immediately before the transfer day, are in the name of the relevant harbour commissioners, shall, at the request of the relevant port company, be transferred into that company's name.

(5) Every right and liability transferred to the relevant port company by this section may, on and after the transfer day, be sued on, recovered or enforced by or against the relevant port company 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 relevant commissioners to any person or given by any person to and accepted by or on behalf of the relevant harbour commissioners—

- (i) continues in force on and after the transfer day concerned,
- (ii) shall be read and have effect as if the name of the relevant company were substituted in the contract or agreement for that of the relevant harbour commissioners concerned or, as the case may be, any trustee or agent acting on their behalf, and
- (iii) is enforceable against the relevant company.

(7) If, immediately before the transfer day concerned, any legal proceedings to which the relevant harbour commissioners are a party are pending, the relevant port company's name shall

be substituted in the proceedings for the name of the relevant harbour commissioners, and the proceedings shall not abate because of the substitution.

(8) (a) With effect from the transfer day concerned, the Port of Cork Company in respect of Bantry Bay Harbour and the Shannon Foynes Port Company in respect of Tralee and Fenit Pier and Harbour may make bye-laws under sections 42 and 71.

(b) Without prejudice to the exercise of functions under sections 42 and 71 (by virtue of paragraph (a)) for the purposes of the Sixth Schedule, all bye-laws of, and all other instruments relating to harbour rates of, Bantry Bay Harbour or Tralee and Fenit Pier and Harbour which are subsisting on the transfer day concerned shall continue in force and may be amended or revoked by the relevant port company—

(i) in like manner as they could have been revoked by the relevant harbour commissioners before that day, or

(ii) under section 42 as if they had been made under that section.

(9) (a) As soon as practicable after the transfer day, the relevant port company shall prepare, in such form as may be approved by the Minister, all proper and usual accounts of money received or expended by the relevant harbour commissioners in the accounting year, or the part of an accounting year, of those commissioners ending immediately before the transfer day.

(b) The relevant port company shall submit accounts prepared under this subsection to an auditor for audit under subsection (2) of section 27 as if they were accounts kept for the purposes of that section and the other provisions of the said subsection (2) shall apply to those accounts.

(10) Notwithstanding the repeal of the Harbours Act 1976 under section 19 of the *Harbours (Amendment) Act 2009*, the functions, duties and powers in relation to Castletownbere Fishery Harbour Centre conferred on the Minister for Agriculture, Fisheries and Food by the Fishery Harbour Centres Act 1968 continue to be exercised by that Minister of the Government.”.

(2) The Principal Act is amended—

(a) in section 87, by inserting the following subsection after subsection (2):

“(3) The making of an order under this section is in lieu of making an order under section 87A(2) or 88(2) in respect of the harbour concerned.”,

and

(b) in section 88(2)(a), by substituting “section 87(1) or 87A(2)” for “section 87”.

**19.**—(1) The Harbours Act 1976 is repealed with effect from the transfer date appointed by the Minister under section 87A(2)(a) (inserted by *section 18*) of the Principal Act.

Consequential repeal and miscellaneous amendments relating to harbours.

(2) The provisions referred to in the *first* and *second* columns of *Schedule 2* are amended or deleted as indicated in the *third* column of that Schedule opposite those references—

- (a) in so far as it relates to subsections (1)(a) and (6)(a) of section 134 of the Harbours Act 1946, on the passing of this Act,
- (b) in so far as it relates to Bantry Bay Harbour, with effect from the transfer day appointed by the Minister under section 87A(2)(a) (inserted by *section 18*) of the Principal Act, and
- (c) in so far as it relates to Tralee and Fenit Pier and Harbour, with effect from the transfer day appointed by the Minister under section 87A(2)(b) (as so inserted) of the Principal Act.

**20.**—Section 4A (inserted by section 30 of the Fisheries (Amendment) Act 1999) of the Marine Institute Act 1991 is amended—

Amendment of section 4A (Irish Maritime Development Office) of Marine Institute Act 1991.

(a) in subsection (1)—

(i) by inserting the following after paragraph (d):

“(da) to advise the Minister for Transport on the development and co-ordination of policy and to carry out policy, as may be specified by that Minister, relating to the ports and ports services sector,”

and

(ii) by substituting “Minister for Transport” for “Minister” in paragraphs (c) and (d),

and

(b) in subsection (2) by inserting “sea routes” after “includes”.

**21.**—(1) This Act may be cited as the Harbours (Amendment) Act 2009.

Short title, collective citation and construction.

(2) The Harbours Acts 1996 to 2006 and this Act (other than *subsections (1) and (2) of section 7, section 20 and subsection (3)*) may be cited together as the Harbours Acts 1996 to 2009 and shall be read together as one.

(3) The Planning and Development Acts 2000 to 2007, *subsections (1) and (2) of section 7* and this subsection may be cited together as the Planning and Development Acts 2000 to 2009 and shall be read together as one.

SCHEDULE 1

AMENDMENT OF FOURTH SCHEDULE (PROVISIONS RELATING TO  
COMPULSORY ACQUISITION) TO PRINCIPAL ACT

Provision of Fourth Schedule to Principal Act	Words to be replaced	Words to be inserted
Paragraph 1(1)	the Minister	An Bord Pleanála (hereafter in this Schedule referred to as the “Board”)
Paragraph 1(2)	the Minister	the Board
Paragraph 1(3)	the Minister	the Board
Paragraph 1(4)	(4) The Minister shall consider and determine any objection to the application of the company lodged with him or her within the period referred to in <i>subparagraph (3)</i> and the Minister may, if he or she thinks fit, appoint an adviser to assist him or her in relation thereto.	(4) The Board shall consider and determine any objection to the application of the company lodged with it within the period referred to in <i>subparagraph (3)</i> and the Board may, if it thinks fit, appoint an adviser to assist it in relation thereto.
Paragraph 2	The Minister	The Board
Paragraph 2	lodged with him or her	lodged with it
Paragraph 2	rejected by him or her	rejected by it
Paragraph 2	he or she may determine	it may determine
Paragraph 5(4)	the Minister	the Board
Paragraph 7(1)	the Minister is satisfied	the Board is satisfied
Paragraph 7(1)	then the Minister	then the Board
Paragraph 7(2)	Where the Minister	Where the Board
Paragraph 7(2)	on the death of any person, the Minister	on the death of any person, the Board
Paragraph 7(3)	the Minister	the Board
Paragraph 8(3)	the Minister	the Board
Paragraph 8(3)	he or she shall	it shall

SCHEDULE 2

Section 19.

CONSEQUENTIAL AMENDMENTS ON TRANSFER OF CERTAIN HARBOURS

Short title or citation	Provision affected	Nature of affect						
Harbours Act 1946	Section 134  First Schedule	Delete paragraph (a) of subsection (1) and paragraph (a) of subsection (6).  Delete the following (inserted by section 2 of Harbours Act 1976): “ <table border="1" data-bbox="580 517 1038 698"> <tr> <td data-bbox="580 517 747 698">Bantry Bay Harbour Commissioners.</td> <td data-bbox="752 517 911 698">The council of the county of Cork. The Town Commissioners of the town of Bantry.</td> <td data-bbox="915 517 1038 698">Bantry Chamber of Commerce.</td> </tr> </table> ”.	Bantry Bay Harbour Commissioners.	The council of the county of Cork. The Town Commissioners of the town of Bantry.	Bantry Chamber of Commerce.			
Bantry Bay Harbour Commissioners.	The council of the county of Cork. The Town Commissioners of the town of Bantry.	Bantry Chamber of Commerce.						
Fishery Harbour Centres (Amendment) Act 1992	Subsections (3) and (4) of section 2	Substitute “Port of Cork Company” for “Bantry Bay Harbour Commissioners”.						
Local Government (Audit Fees) Regulations 2003 (S.I. No. 622 of 2003)	Schedule	Delete the references in column 1 to “Bantry Bay Harbour Commissioners” and “Tralee & Fenit Pier & Harbour Commissioners” and delete in Column 2 the audit fee referred to opposite each of those references.						
European Communities (Vessel Traffic Monitoring and Information System) Regulations 2004 (S.I. No. 81 of 2004)	Schedule	Substitute the following for the entry at reference number 2: <table data-bbox="580 1123 1038 1203"> <tr> <td data-bbox="580 1123 747 1203">“2.</td> <td data-bbox="752 1123 911 1203">Bantry</td> <td data-bbox="915 1123 1038 1203">Port of Cork Company”.</td> </tr> </table> Substitute the following for the entry at reference number 12: <table data-bbox="580 1278 1038 1380"> <tr> <td data-bbox="580 1278 747 1380">“12.</td> <td data-bbox="752 1278 911 1380">Tralee and Fenit</td> <td data-bbox="915 1278 1038 1380">Shannon Foynes Port Company”.</td> </tr> </table>	“2.	Bantry	Port of Cork Company”.	“12.	Tralee and Fenit	Shannon Foynes Port Company”.
“2.	Bantry	Port of Cork Company”.						
“12.	Tralee and Fenit	Shannon Foynes Port Company”.						