

Secretary of State's Guidance Note concerning procedure for sale of trust ports

SECRETARY OF STATE FOR TRANSPORT'S GUIDANCE NOTE CONCERNING PROCEDURE FOR THE SALE OF TRUST PORTS

Introduction

1. The National Infrastructure Plan (October 2010) stated the Government would encourage trust ports to bring forward proposals for modernisation and privatisation. A Statement by the Secretary of State for Transport on 03 August 2011, reproduced at Annex A, set out the revised policy which the Government expects to follow when considering an application under the Ports Act 1991 ("the Act") for the sale of a major trust port in England or Wales.
2. The Secretary of State has, under the Act, powers of consent and direction in relation to a trust port authority's sale of its 'successor company'. This guidance note, which replaces an earlier version issued in January 2010, sets out the Secretary of State's views on how such sales should be carried out and the considerations which should apply.
3. On 16 May 2011¹, the Secretary of State confirmed that the Government has no current plans to use its powers under the Act to force through the sale of a port. That remains the position. The policy criteria now explicitly apply to both voluntary and compulsory sales because the Government felt that it would be useful to make clear that the same policy considerations would be relevant in the event of there being a compulsory sale. However, this guidance note remains directly relevant to voluntary sales only.
4. This note focuses particularly on the circumstances where authorities propose to sell their undertakings by means of a sale to a single or consortium buyer, which may include a company set up to effect a management and employee buyout. Other methods of voluntary sale are not precluded but any authority which proposes to use some other method of sale, such as a public flotation, should in the first instance consult the Department for Transport. An authority may wish to appoint a special committee to oversee the sale, and must do so in the event that any members of the authority are part of a management and employee buy-out team. Such members may not serve on the sale sub-committee.

Liaison with the Department

5. Each port authority which comes forward with sale proposals will be expected to explain to the Department how it proposes to follow the guidance set out below. Authorities should therefore consult the Department at an early stage. They should agree with the Department what key pieces of information will be shared with the Department at each stage of the process and then provide them in a timely

¹ In the consultation letter regarding proposals to change Government policy on Ports Act applications

manner. In particular they should liaise with the Department during their consideration of bids to ensure that any likely differences of view are recognised and as far as possible reconciled before their final recommendations are put to the Secretary of State, whose confirmation will be required for the sale to go ahead.

Scheme of Transfer

6. The first statutory stage for a port authority seeking to use the voluntary process under the Act is to form a successor company using powers in section 1 of the Act, and the second is to prepare a transfer scheme which must be published and submitted, with the associated company documents, to the Secretary of State, under section 9 of the Act.
7. The detail, and some of the matters that need to be dealt with, will vary from one port to another. An illustrative outline model transfer scheme is at **Annex B**. Authorities are advised to consult the Department on the scheme and associated company documents while the documents are at the drafting stage.
8. The authority should make the transfer scheme by resolving at a meeting of the authority that it can be made in the terms of a document considered at the meeting and that the authority's seal be affixed to it. The scheme as so made should then be submitted to the Secretary of State, together with the associated company documents, pursuant to section 9(1) and (2) of the Act. The scheme, although made by the authority, will be of no effect unless or until brought into force by a Confirmation Order made by the Secretary of State², and may be brought into force with modifications.
9. When submitting a scheme the authority must comply with the requirements of section 9(3) and (4) of the Act with regard to advertising and serving copies of the advertised notice on individuals. The authority should inform the Department that this has been done and should provide a copy (being the whole page in the Gazette and other newspapers in which the advertisement appeared, and not being a photo-copy). It should be noted that to comply with section 20 of the Act, the advertisement in a local paper must appear in two successive weeks. It is advisable to check the text of the proposed advertisement with the Department in advance.
10. There is a 42 day consultation period which takes effect from the date of the first local advertisement (section 9(4)(c) of the Act) during which people can make representations about the proposed scheme to the Secretary of State. After that period, and after considering any representations, the Secretary of State will decide whether or not he is minded to confirm the transfer scheme, as submitted or with amendments, and whether any amendments are required to the associated company documents. Then the Secretary of State will inform the authority, and any people who have made representations, of what he is minded to do. If he is minded to confirm the scheme it is not the usual practice actually to make the Confirmation Order until shortly before the completion of the sale, although it may be appropriate to make it earlier in some circumstances.

² In practice, the functions of the Secretary of State connected with determining individual applications are likely to be exercised by a separate Minister for reasons of propriety.

11. When the Secretary of State confirms he is minded to make the Order, the Department will seek to agree a timetable for the sales process with the port authority. At this point it is advisable to share with the Department information on any project management arrangements. The “minded to” letter may also cover certain matters which the Secretary of State wants further assurance or action before making the Order and confirming the sale. The project management arrangements should demonstrate clearly how the port authority plans to deal with those matters as part of the sales process.

Publicising of Sale

12. The advertisement of the transfer scheme will not be sufficient to ensure that potential purchasers are aware of the proposed sale. The Secretary of State will wish to be satisfied that the authority has, at the appropriate stage, taken reasonable steps to publicise that the port is for sale, including for example by public advertisement and direct approaches to those thought likely to have an interest in bidding. The authority should liaise with the Department and its advisers on proposed procedures to help ensure a competitive and transparent market. At the start of the sales process the authority should provide the Department with a list of prospective purchasers to be approached. During the process it should provide the Department with regular updates on expressions of interest received

Access to Information and Arrangements for Inviting and Considering Bids

13. The port authority should at this stage make available to prospective purchasers a statement of objectives for the sale of the port to which the authority will have regard in assessing the merits of competing offers. In framing its draft objectives the authority should have regard to the desirability of prospective purchasers encouraging an element of employee ownership of the equity share capital of the successor company, having regard to the duty on the Secretary of State in section 5(3) of the Act. The objectives should include: the achievement of value for money, having regard not only to Exchequer proceeds and market conditions, but also to other benefits including those to the community and the wider economy; community participation that includes the ability to influence the port’s long term development and a possible share in the port’s profits and increase in its value; an ownership model with the capability and access to capital to meet future investment needs; as well as taking account of any other objectives that might be agreed for the particular sale. In order to give assurance to prospective purchasers that sales objectives have been agreed, the authority must agree the statement of objectives with the Department before issue and should not publish it in draft.
14. The authority should seek expert advice by appointing appropriate professional advisers on the sale process at the earliest opportunity. These should be selected on the basis of the lowest rates compatible with obtaining the necessary degree of competence and expertise.

15. It is essential that potential purchasers have equal access to information about the successor company. Port authorities will need to make available to prospective purchasers expressing interest in the sale some preliminary information about the port, well in advance of the sale. This will take the form of a summary information document, confined to basic information and excluding any commercially confidential material. The port authority should ensure that the Department is consulted at an early stage on the draft summary information document.
16. All potential purchasers will need to be made aware of the final date for registering their interest in making a bid. It is suggested that port authorities might allow three weeks for this after the issue of the summary information document. The final date set for registering an interest in making a bid should also allow sufficient time to ensure that the marketing effort has reached all potential purchasers.
17. Potential purchasers should be asked to sign a confidentiality agreement to gain access to a more detailed information memorandum, which may include commercially confidential material. The authority may reserve the right to provide this memorandum only to principals and not to agents; or to refuse to provide it to persons whose request is believed to be frivolous or not intended to lead to the consideration of a bona fide offer.
18. It is considered essential that this detailed information memorandum is made available to shortlisted prospective purchasers because neither the port authority nor its board members will be in a position to offer warranties or indemnities; their inability to do so should be made clear to prospective purchasers by means of a disclaimer placed prominently in the memorandum. The detailed information memorandum should be prepared in parallel with the summary information document to ensure consistency and transparency of information.
19. The port authority should consult the Department on the detailed information memorandum before issue, should make it available to all prospective purchasers in a timely manner, and should ask for indicative bids to be submitted to the authority by a specified, date, which should be not earlier than three weeks following the issue of the detailed information memorandum.
20. Between receiving the detailed information memorandum and the closing date for indicative bids, prospective purchasers must be allowed to ask reasonable questions to clarify the information provided in the memorandum. The port authority should use its judgement to meet requests for commercially sensitive information in a constructive manner, but in a manner which is also compatible with the objectives of the sale. It is anticipated that the sales information memorandum will contain sufficient information on which to base a view as to an indicative bid.
21. In providing information to prospective purchasers the port authority should act under the following principles:
 - i) Information given to one prospective purchaser must, on request, be given equally and promptly to another prospective purchaser. The authority should use its judgement to meet requests for commercially sensitive information in a constructive manner, compatible with the objectives of sale. The person making a request for information should specify the questions to which he requires answers. He is not entitled,

by asking in general terms, to receive all the information supplied to a competitor;

- ii) Such information should include any generated by the management of the successor company acting in that capacity, but there will be no obligation to make available to other prospective purchasers information generated by the management of a successor company acting as part of a management and employee team bidding for the port. Where a management and employee team is bidding for the port, it must, on request, promptly provide the authority or its advisers with all information which the team has supplied to external sources or potential sources of finance (whether equity or debt) for the bid.

The latter provision will only apply if the transfer scheme has been brought into force.

22. In inviting indicative bids the port authority should ask prospective purchasers to provide the following further information in non-legally binding terms:
 - i. the indicative offer (including the amount of the offer, an indication of how the offer will be financed, including reliance on bank debt, evidence that the finance is available, and other information as appropriate); and
 - ii. future intentions with regard to the successor company (to include the main features of the business plan and any other matters detailed by the port).
23. The authority should also explain its intention to proceed to detailed negotiations only with parties whose indicative offers are consistent with the objectives of sale and considered to provide a sufficient basis for a formal offer which could have a realistic chance of success.
24. After receipt of the indicative bids, and the assessment of these, there should follow a phase to permit potential formal bidders to gain access to further information and to hold negotiations with the authority. The Department will expect to be informed of the shortlist of bidders. During this phase the port authority must provide all those invited to make formal bids with the opportunity to visit the port's premises, hold discussions with management and employees and conduct all reasonable due diligence enquiries having regard to the likelihood that no warranties or indemnities will be given by the vendor to the purchaser. It is anticipated that the authority will set up an electronic data room to facilitate this process.
25. All those invited to make a formal bid must be told of the principal contract terms and the final date for receipt of formal bids. The port authority must provide sufficient time for the proper conduct of due diligence enquiries. Subject to that, the date set for the receipt of final bids must be no earlier than four weeks after the date on which those selected for the shortlist are so notified. The authority's financial advisers should provide an independent benchmark valuation of the undertaking prior to the receipt of final bids.
26. The advisers will also be asked to make an independent assessment of the bids received. This assessment should include advice as to whether the bids properly

reflect the value of the port undertaking. The port authority should assess the bids received, and in the light of all matters, including the benchmark valuation and the objectives of sale, it should decide which offer it wishes to accept, or none.

27. Consideration should be given to an additional phase in which negotiations are entered into with one or more parties who have made formal bids, to elicit revised bids with improved pricing. The authority should then put its proposals to the Secretary of State for his agreement. The name and details of the preferred bidder must not be made public until the Secretary of State's confirmation has been given.

Conflicts of Interest

28. No member of the port authority who has an interest, or who expects to have an interest, in an offer to acquire the successor company may play any part in the assessment of any of the offers or in the authority's decision concerning the recommendations as to purchase to be submitted to the Secretary of State. In cases where this may leave the authority's Board without an adequate quorum for these purposes, arrangements must be made (whether through the scheme of transfer or otherwise) to provide for additional members to be appointed to the Board by the Secretary of State.
29. The port authority must not take advice from any parties who have an interest, or who expect to have an interest, in an offer to acquire the successor company as to competing offers or the conduct of the sale. It will probably be appropriate in many cases for a port authority to establish a separate sale committee with delegated powers to act on behalf of the authority on certain matters. The sale committee must inform the Department immediately if any decision is taken by the authority in relation to the sale which is contrary to the advice of the committee.

Limitation on issue of shares to employees at reduced cost

30. A prospective purchaser may wish to issue shares to employees at a nil or reduced cost. It must be made clear that no price preference is available in these circumstances and that the bid will be assessed without any financial account being taken of the proposal.

Costs of Sale

31. The port authority and prospective purchasers must each bear their own costs of sale. The authority must discuss and agree with the Department estimates of total sale costs, including the level of financial assistance which an authority proposes to provide to any management and employee bid. Monitoring measures will be put in place to provide periodic cost information, with the aim of ensuring adherence to the cost estimates.
32. The authority should provide the Department with copies of all draft instructions issued to consultants working on the sale. All instructions to consultants employed

in respect of the sale should require them to copy to the Department estimates for that work and submit regular profiles of expenditure against their estimate.

Community participation

33. The port authority and prospective purchasers should note that Government policy is not to approve an application for the sale of a trust port under the Act unless the sale is considered likely to deliver an enduring and significant level of community participation in the port. Such participation could take a variety of forms, but must include the ability to influence the port's long term development and may include the right to receive a share in the profits of the port, or the future increase in its value. It does not necessarily require a community role in the operation of the port. It is important that the form of the future community participation in the port is settled before the sale process begins (i.e. at the point at which the Secretary of State confirms that he is minded to make the Order confirming the transfer scheme). Accordingly, the port authority should ensure that full details of its community participation proposals are set out in its application.

Assessment of Levies

34. Under section 13 of the Act a levy is chargeable on the disposal by the port authority of shares in the successor company. The levy is charged at the rate of 50% on the net consideration given for the securities (that is, on the consideration after the deduction of allowable expenditure), unless the Secretary of State by order substitutes another percentage.
35. For the purpose of preparing a notice of assessment of levy, the Department will require the authority to provide copies of the sale contract, statement of allowable expenditure, and supporting documentation. After considering the information supplied and consulting the authority, the Department will issue a notice of assessment of the amount of the levy. The amount assessed must be paid within 30 days (or within three months of the disposal of the securities if that period ends later).
36. If the authority wishes to dispute the amount of levy which has been assessed, it may ask the Secretary of State to reconsider the issue under section 15A of the Act. However the authority must pay the undisputed parts of the levy within the original 30 day (or three month) deadline described above.
37. Further levies may be payable under section 17 of the Act as supplemented by the Ports Act 1991 (Levy on Disposal of Land etc) Order 1992, or any order made by the Secretary of State in substitution. These provisions are for levies to be payable upon certain chargeable disposals of land or relevant interests in land during the ten year period after the successor company is sold.

Department for Transport

[July 2011]

For inquiries please contact: ports@dft.gsi.gov.uk or telephone 020 7944 5162

FROM STATEMENT ON THE SALE OF TRUST PORTS: 03 August 2011

Sale of Trust Ports

The targeted consultation on the criteria that the Government considers particularly relevant to the consideration of the appropriateness of sale of a major trust port in England or Wales under the Ports Act 1991, that I announced on 16 May 2011 [Hansard Column 4WS], has now closed and I have considered the responses received.

The following paragraphs set out the revised policy which the Secretary of State expects to follow when considering an application under the Ports Act 1991 for the sale of a major trust port in England or Wales. This covers the consideration of any proposal for a transfer scheme submitted under section 9 or 10 of the 1991 Act, together with the exercise of the Secretary of State's functions in respect of the subsequent sale of the port to which the scheme relates. The Secretary of State also intends to have particular regard to the policy considerations set out below before making a transfer scheme himself under section 12 of the 1991 Act or subsequently approving the sale of a port to which such a scheme relates.

1. Essential Criteria

Community participation

The Secretary of State will not approve an application for the sale of a trust port under the 1991 Act unless the sale is considered likely to deliver an enduring and significant level of community participation in the port. Such participation could take a variety of forms, but must include the ability to influence the port's long term development and may include the right to receive a share in the profits of the port, or the future increase in its value. It does not necessarily require a community role in the operation of the port.

Future investment in, and development of, the port

The Secretary of State will not approve an application unless the sale is considered likely to deliver an ownership model with the capability and access to capital to meet future investment needs and to exploit development potential of the port.

Fair price

The Secretary of State will not approve an application unless the sale is considered likely to represent good value for money, having regard not only to Exchequer proceeds and market conditions, but also to other benefits including those to the community and the wider economy.

Fair competition

The Secretary of State will not approve an application that is likely to deliver an ownership model which results in unsatisfactory levels of competition in the relevant sector.

2. Highly Desirable criteria

Transport networks

It is highly desirable for an application to be likely to deliver an ownership model which will cause the port to be operated so as to contribute to reliable, resilient and efficient transport networks.

Sale process

It is highly desirable that the sale should be conducted in such a way as to give all bona fide prospective purchasers a fair and equitable opportunity to participate.

3. Desirable criteria

Employee involvement

It is desirable for an application to be likely to deliver port employee participation in the ownership of the port, such as the right to receive equity shares or a share in its future success³.

³ This is without prejudice to the Ports Act 1991 section 5(3) requirement to have particular regard to the desirability of encouraging the disposal of the whole or a substantial part of the equity share capital of the successor company to managers or other persons employed by the port company etc.

ANNEX B

THE AUTHORITY SCHEME 201[x]

The Authority is a relevant port authority within the meaning of section 1(3) of the Ports Act 1991, and makes this Scheme under Part 1 of that Act.

Commencement, citation and interpretation

1.

(1) This Scheme shall come into effect on the date specified in the Order confirming this Scheme made by the Secretary of State under section 9(7) of the 1991 Act.

(2) This scheme may be cited as the Authority Scheme 201[x]

(3) In this Scheme, unless the context otherwise requires –

“the Authority” means the....Authority;

“the dissolution date” means the date on which the Authority are dissolved by an order made under section 7 of the 1991 Act;

“local statutory provision” means –

(a)

a provision contained in, or in a document made or issued under, any local Act (including an Act confirming a provisional order); or

(b)

a provision of any other instrument which is in the nature of a local enactment;

“the Successor Company” means the company specified in paragraph 3;

“the transfer date” means the date upon which this Scheme takes effect.

Purpose of Scheme

2. This Scheme is made with a view to securing the transfer to the Successor Company under section 2 of the 1991 Act of –

(a) all property, rights and liabilities of the Authority other than –

(i) the securities of the Successor Company held by the Authority;

(ii) any rights or liabilities of the Authority in respect of such securities

held by a nominee of the Authority; and

(iii) any liability of the Authority incurred by virtue of section 19 of the 1991 Act in connection with any proposal for maximising participation by employees of the Successor Company in ownership of its equity share capital; and

(b) all functions conferred or imposed on the Authority by any provision contained in [specify the local Act(s) and/or Order(s) which presently confer or impose functions on the Authority].

Specification of Successor Company

3.Limited, a company formed in pursuance of section 1 of the 1991 Act and registered in [England and Wales/Scotland] under the Companies Act 2006, with the numberand which is a wholly-owned subsidiary of the Authority, is specified to be the Authority's successor company for the purposes of Part 1 of the 1991 Act.

Accounts of Authority from 1 January 201[x] to transfer date

4. -(1) The statutory accounts prepared by the directors of the Successor Company in respect of a period which consists of or includes the whole or any part of the residual accounting period of the Authority shall deal with the affairs of the Authority during so much of the residual accounting period as falls within that period as well as, and as one with, the affairs of the Successor Company.

(2) In this paragraph –

(a) “statutory accounts” means, in relation to the Successor Company, -

(i) any accounts prepared by that company for the purposes of any provision of the Companies Act 2006 including group accounts; and

(ii) any statement of accounts prepared by that company under section 42 of the Harbours Act 1964;

(b) references to the “residual accounting period” of the Authority are references to the period beginning on 1 January 201[x] and ending immediately before the transfer date.

Accounts of Authority after transfer date

5.-(1) The Authority must –

(a) keep proper accounts in respect of the period beginning on the transfer date and ending immediately before the dissolution date and proper records in relation to the accounts; and

(b) prepare in respect of each new accounting period a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the Authority.

(2) A statement of accounts of the Authority prepared under sub-paragraph (1)(b) must be audited by auditors appointed by the Authority.

(3) A person is not qualified to be so appointed under sub-paragraph (2) who is not eligible for appointment as a company auditor under part 42 of the Companies Act 2006.

(4) The Authority must send to the Secretary of State a copy of the statement of accounts prepared under sub-paragraph (1)(b) together with a copy of the auditor's report on it.

(5) In this paragraph “new accounting period” means –

- (a) a period of twelve months beginning on the transfer date or on an anniversary of that date; and
- (b) any period of less than twelve months which begins with the transfer date or an anniversary of that date and ends immediately before the dissolution date.

Transitional provisions with respect to reserves, etc

6.-(1) For the purposes of any statutory accounts of the Successor Company, the value of any asset and the amount of any liability transferred to the Successor Company under section 2 or 7 of the 1991 Act is to be taken as the pre-transfer value of that asset or (as the case may be) the pre-transfer amount of that liability.

(2) An amount equal to the accumulated realised profits of the Authority at the start of the transfer date is to be treated as accumulated realised profits of the Successor Company.

(3) Subject to sub-paragraphs (1) and (2), for the purposes of any statutory accounts of the Successor Company the amounts to be included in respect of any item shall be determined as if anything done by the Authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Successor Company.

(4) For the purposes of sub-paragraph (1) the pre-transfer value of an asset or (as the case may be) the pre-transfer amount of a liability is –

- (a) in the case of an asset or liability transferred under section 2 of the 1991 Act, the value of that asset or (as the case may be) the amount which would have been assigned to that asset or liability for the purposes of the last statement of accounts prepared by the authority under section 42 of the Harbours Act 1964 before the transfer date if the accounting year of the Authority dealt with in that statement of accounts had ended immediately before the transfer date; and
- (b) in the case of an asset or liability transferred under section 7 of the 1991 Act, the value of that asset or (as the case may be) the amount assigned to that asset or liability for the purposes of the last statement of accounts prepared by the authority under paragraph 5.

Dividend by Successor Company before laying or delivery of accounts

7.-(1) Where it is proposed to declare a distribution during the accounting reference period of the Successor Company which includes the transfer date, or before any accounts are laid or delivered to the registrar of companies in respect of that period, sections 836 to 840 of the Companies Act 2006 (relevant accounts for determining whether a distribution is lawful) shall apply in relation to the distribution as if-

- (a) the accounts as are mentioned in sub-paragraph (2) were accounts relevant under section 836; and
- (b) references in section 839 to initial accounts included references to the accounts mentioned in sub-paragraph (2).

(2) The accounts referred to in sub-paragraph (1)(a) are such accounts as, on the assumption stated in sub-paragraph (3), would have been prepared under Part 15 of the Companies Act 2006 in respect of the relevant year.

(3) Those assumptions are –

- (a) that the relevant year was a financial year of the Successor Company;
- (b) that the transfer effected by section 2(2) of the 1991 Act was a vesting of all the property, rights, liabilities and functions to which the Authority were entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liability of the Authority transferred to the Successor Company by virtue of section 2(2) of the 1991 Act was the value of that asset or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by the Authority in respect of its financial year immediately preceding the relevant year;
- (d) that any securities of the Successor Company issued or allotted on any Terms before the declaration of the distribution had been issued or allotted on those terms before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the Successor Company to be necessary or expedient for the purposes of this paragraph.

(4) For the purposes of the accounts as are mentioned in sub-paragraph (2), the amount to be included in respect of any item must be determined as if anything done by the Authority (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the Successor Company.

(5) Accordingly (but without prejudice to the generality of paragraph 6) the amount to be included in any reserves of the Successor Company as representing its accumulated realised profits shall be determined as if any profits realised and retained by the Authority had been realised and retained by the Successor Company.

(6) The accounts referred to in this paragraph are not statutory accounts for the purposes of paragraph 4 or 6.

(7) In this paragraph –

“the relevant year” means the last financial year of the Authority ending before the transfer date; and

“financial year”, in relation to the Authority, means any period of twelve months ending on 31 December.

Pensions etc

8. - (1) The transfer to the Successor Company under section 2(2) of the 1991 Act does not affect any entitlement to benefits or other rights under any deed or other document constituting

a scheme established by the Authority for the payment of pensions, lump sums, gratuities or other like benefits to or in respect of employees or former employees of the Authority.

(2) Accordingly, for the purposes of any such deed or other document (as it has effect by virtue of section 2(2) of, and paragraphs 1 and 2 of Schedule 1 to the 1991 Act in relation to employment with the Successor Company)-

(a) any period of employment with the Authority counts as employment with the Successor Company; and (b) any decision taken, or other thing done, before the transfer date by the Authority is to be treated as having been taken or done by the Successor Company.

Constitution of the Authority

9. - (1) Notwithstanding section 2(2) of the 1991 Act and paragraphs 1 and 2 of Schedule 1 to that Act, the provisions of ... [specify provisions of the local Act(s) and/or Order(s) which make provision as respects the Authority's constitution] which make provision as respects the constitution of the Authority] shall have no effect in relation to the Successor Company.

(2) [include, if desired, provision for executive members of the Authority to continue to be members of the Authority after they have been transferred to the employment of the Successor Company].

(3) On or at any time after the transfer date the Secretary of State may appoint one or more persons to be members of the Authority in addition to the members appointed in pursuance of the [... specify the local Act or Order which provides for the appointment of members of the Authority]. Not more than four persons appointed under this sub-paragraph may hold office at the same time.

(4) [include provision applying or, as appropriate, not applying to a person appointed under paragraph (3) provisions of the local Act or Order providing for members of the Authority]

(5) The appointment of a person under sub-paragraph (3) takes effect on such date and, subject to the provisions of [... specify the provision(s) of the local Act or Order which provide for such matters as the vacation of office by a member of the Authority or the disqualification of a member], continues in effect for such period as the Secretary of State may specify on making the appointment.

Repeals and Revocations

10. -(1) On the transfer date the enactments specified in Part 1 of the Schedule to this Scheme are repealed or revoked to the extent specified in the third column of that Schedule.

(2) [Include provision that the repeal by sub-paragraph (1) of specified provisions of the local Act(s) and/or Oder(s) providing for stock, mortgages, debentures or other securities created, issued or granted by the Authority or their predecessors is not to apply in relation to stock etc created etc before the transfer date].

IN WITNESS whereof theAuthority have caused their Common seal to be hereunto affixed the 201[x] .

SCHEDULE

REPEALS AND REVOCATIONS

[To be drafted as appropriate]