

SUBMISSION FROM THE CHARTERED INSTITUTE OF LOGISTICS AND TRANSPORT IN IRELAND TO THE DEPARTMENT OF TRANSPORT TOURISM AND SPORT'S PUBLIC CONSULTATION IN RESPECT OF THE HARBOURS (AMENDMENT) BILL

Introduction

The Chartered Institute of Logistics and Transport in Ireland (“the Institute”) is the independent professional body for people engaged in logistics and all modes of transport. The Institute is part of an international body with 30,000 members worldwide. As a professional body, the Institute does not lobby on behalf of any sectoral interest, but seeks to take an independent, objective and considered view on matters of public policy.

The Institute welcomes the opportunity to respond to the public consultation in respect of the Regulatory Impact Analysis for the Harbours (Amendment) Bill. Our submission begins by responding to the specific questions in the consultation document and ends with some general remarks regarding the corporate governance of ports arising from the recently published National Ports Policy.

Response to Questions in the Consultation Document

Policy Objectives and Context

Q1. Are there any other overarching issues to be considered as part of the transfer process?

The ports of regional significance (Drogheda, Dun Laoghaire, Galway, New Ross and Wicklow) are proposed to be transferred to local authority control. Consideration should be given to the full implications before deciding to legislate for it. This approach clearly made sense for the smaller ports already transferred to local authority control, but the new proposals affect larger ports with more substantial commercial trade and some regional significance. There are financial issues and governance issues which warrant particular consideration as part of the Regulatory Impact Assessment (RIA).

The consultation document does mention “sources of revenue” as a consideration. However the RIA should widen its scope to consider the financial circumstances of both the port companies to be transferred and the local authorities to whom they are to be transferred. Will the ports be a financial burden on the local authorities? Have the local authorities the capacity to provide, or generate from other sources, any investment finance that might be required for the future development of these ports? This is particularly important since it is Government policy not to provide funding to

commercial ports and because the ports to be transferred may not be in sufficiently robust financial health to generate the necessary investment finance from internal resources alone. It is noteworthy from Appendix A of the consultation paper that four of the five ports to be transferred incurred net losses in recent years.

The RIA should also consider the implications of the port companies potentially ceasing to be commercial State bodies if they are transferred to local authority ownership. This may, of course, depend on the ownership model chosen. They could potentially be subject to controls on staff numbers, pay, terms and conditions of employment and finance similar to those applicable to local government generally. This would place constraints on them which did not apply when they were commercial State companies and could have an adverse impact on their ability to compete with other companies who have greater commercial freedom.

Identification and Description of Options

Q2. Are there other specific issues to be taken into consideration in the context of the proposed transfer of ports?

The National Ports Policy does not respond adequately to the proposals in the report of the Review Group on State Assets and Liabilities suggesting the development of multi-port companies. This should be considered as an option in the RIA and, if it is being rejected, clear reasons should be set out for that decision. For example, consideration could be given to whether Dun Laoghaire should form part of the Dublin Port group along with Dundalk. On the one hand this might be seen as further strengthening the dominant position of Dublin Port. On the other it might be seen as ensuring greater coherence in the development of port facilities in Dublin Bay and strengthening the capacity to invest in Dun Laoghaire, given the financial strength of Dublin Port. Alternatively there may be merit in transferring the port to Dun Laoghaire Rathdown County Council because it would facilitate a more integrated approach to the future role of the port in a wider land use planning and urban development context.

The National Ports Policy also does not adequately respond to the recommendation in the Review Group's report that privatisation of ports be considered, ideally after any restructuring. This may be worth considering for some of the regional ports, particularly as a way of leveraging investment. The list of options being addressed in the RIA includes "potential for private investment". This does not appear to encompass full privatisation and in any events the two potential forms of private participation could have quite different policy implications and legislative requirements.

Any proposals to amend the Harbours Acts should not be finalised until the Competition Authority's report on competition in the ports sector has been published and any potential legislative requirements arising from it have been fully considered.

We would wish to have an opportunity to make a further submission if any further legislative issues arise from the Competition Authority's report.

Q3. Are there other issues which warrant consideration for inclusion within the new Bill?

See the general remarks later in this submission.

Q4. Are there other potential costs which require consideration?

Would the cost of funds for investment be higher under some of the options?

It is not immediately clear why Option 2c (operation of the port as an administrative unit of local government) could give rise to potential Exchequer costs.

Q5. Are there other potential benefits under any of the options which require consideration?

In our view Option 2a (separate legal entity under local authority control) certainly reduces, if not minimises, customer uncertainty in that provides for a large measure of continuity from the existing situation.

Q6. Are there other potential impacts under any of the options which require consideration?

As mentioned earlier, consideration should be given to the financial impacts for the ports themselves and the receiving local authorities and to the impact of local authority ownership and control on the commercial freedom of the transferred ports. These potential impacts arise for consideration, to a greater or lesser extent, under all four options identified in the consultation paper.

It is not clear what the consultation paper means when it refers to "potential issues re share capital of current companies" as a possible impact under Option 2a.

General Remarks on the Corporate Governance of Ports arising from the National Ports Policy

The policy proposals in the National Ports Policy (NPP) document in relation to strengthened corporate governance arrangements for the port companies are most welcome. The Institute's key concern is to ensure that this new governance policy is fully and effectively implemented, thereby putting the relationship between Government, as owner and shareholder, and the port companies on a much sounder commercial basis. In our view the following measures warrant particular support and we wish to take this opportunity to comment *in italics* on particular aspects:

- The introduction of a robust performance measurement system with a focus on the measurement of outcomes and benchmarking of performance against

a range of ports internationally: *Financial performance indicators are the first priority but efficiency performance measures should also be developed. The Department should aim to have at least the financial performance measures in place well before the 2016 deadline mentioned in the NPP.*

- The provision to the board of each company of a clear written mandate, in the form of a service level agreement or framework agreement, outlining the Government's expectations and the holding of regular meetings between the Minister/senior officials and the board to review implementation of the mandate and address any issues arising: *It is important that there is regular dialogue directly with the board and that communication with the chairperson and chief executive is not seen as a substitute for this.*
- The limiting of the size of the boards to a maximum of eight members, including the chief executive, and the staggering of appointments to the board: *Boards should contain a range of skills appropriate to a large commercial company and consideration should be given to specifying the requisite mix of skills in the new legislation. In line with good corporate practice, the chairperson should review the performance of directors from time to time and report to the Minister on this and on any skills requirements or gaps which need to be addressed in future appointments. This is in addition to the regular review by the board of its own performance as required by the Code of Practice for the Governance of State Bodies. Currently there is provision for one worker director on each board and consideration might be given to whether this continues to be the best and most appropriate way of representing the interests of employees. The existing provision in the Harbours Act 2009 precluding port users from serving on boards should be reviewed as it may have the effect of excluding persons who could bring relevant and valuable expertise to the board. The purported reason for the exclusion of these persons is to ensure that conflicts of interest do not arise. However a number of counter points can be made. "Port user" is a very broad term and could exclude many people who, though port users in some small way, do not have a material conflict of interest. The key test should be the materiality of that conflict. It is also important to note that other conflicts of interest could arise and indeed have arisen in the past in respect of directors of other State companies. A particularly pertinent example would be directors from the financial services or property sectors. There is a reference in the NPP to the exclusion of local authority members from port boards except in exceptional circumstances. It is not clear what these exceptional circumstances might be and it is recommended that local elected representatives be precluded from membership of the boards of Tier 1 and 2 ports.*
- The implementation of a clear dividend policy: *We support the proposed criteria to be used in determining dividend policy and would stress the particular importance of taking appropriate account of current and future*

investment needs in deciding that policy. It is also critically important that proper account is taken of the impact of port costs on national competitiveness and that an aggressive dividend policy is not pursued which might result in increased charges for port users, particularly where a port faces little real competition for geographical, specialisation or other reasons. The dividend policy should be specific to the individual port company, taking account of its particular circumstances, including its investment requirements. We would be concerned that the 30% guideline figure mentioned in the NPP could become the default norm.