

Summary of Regulatory Impact Analysis (RIA)	
Department: D/Transport, Tourism & Sport	Working Title: Harbours (Amendment) Bill
Stage: Consultation	Date: August 2013
Related Publications: National Ports Policy 2013 Ports Policy Review Consultation Document Submissions Received	
Available to view or download at: www.dttas.ie	
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<p>What policy options have been considered?</p> <p>1. <u>Do nothing / no policy change</u> Not an option as ‘do nothing/no policy change’ would mean a failure to implement stated Government policy as set out in National Ports Policy.</p> <p>2. <u>Primary Legislation:</u></p> <p>To provide for the transfer of control of the five Ports of Regional Significance to local authority control by amending the existing Harbours Acts 1996 – 2009 as required to allow for-</p> <ul style="list-style-type: none"> a) The creation of separate legal entities (with or without share capital) under the control of local government; b) The continuation of existing legal entities with share capital owned by local rather than central government; c) The operation of a port as an administrative unit of local government; d) The potential for private investment. <p>and also to provide for such other matters as identified during consultation.</p> <p>Preferred Option: Option 2. This RIA is intended to aid consultations and therefore the costs/benefits/impacts of all four sub-options are considered (Options 2a, 2b, 2c and 2d). The exact future operational arrangements will be decided in consultation with the local authority and relevant port company.</p> <p>Option 1 was ruled out as on 7 March 2013, Government approved the adoption as Government policy of a new National Ports Policy which <i>inter alia</i> recommended policy Option 2 in respect of the five current State commercial port companies in Drogheda, Dún Laoghaire, Galway, New Ross and Wicklow.</p>	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
2a	<ul style="list-style-type: none"> - Administrative costs through establishing new company etc. - On-going administrative cost to local authorities in new corporate governance oversight role. 	<ul style="list-style-type: none"> - Provides local authorities the freedom to establish new corporate structures reflective of the particular port's role and function. - Operation as a commercial entity retains the commercial flexibility of current structures. - Potentially reduces some HR type issues as involves transferring employees of a commercial company into another commercial company. - Allows for retention of separate 'identity' of the port. 	<ul style="list-style-type: none"> - Legislative change required. - Potential issues re share capital of current companies?
2b	<ul style="list-style-type: none"> - Opportunity cost in not focusing those ports which have a limited future in commercial port activities on other areas for future development. - On-going administrative cost to local authorities in new corporate governance oversight role. 	<ul style="list-style-type: none"> - Preserves existing structures and existing commercial focus. - Minimal HR issues as 'transfer' primarily involves just a change of shareholder. - Continuation of corporate 'identity'. - Minimal potential for customer uncertainty as regards future arrangements. 	<ul style="list-style-type: none"> - Legislative change required. - Potentially restricts the ability of local authority to introduce organisational changes. - On-going application of Harbours Acts requirements to the transferred ports and their new shareholders?
2c	<ul style="list-style-type: none"> - Potential cost to Exchequer (whilst noting revenue generating capability of ports). - On-going administrative cost to local authorities. 	<ul style="list-style-type: none"> - Offers potential for maximising use of shared integrated services. - Potential cost reductions arising from corporate re-structuring. - Builds upon existing precedent and experience (in some local authorities) of managing transferred commercial harbour authorities. - Reduces current administrative burden on smaller ports. - Local authority gains ownership of assets. 	<ul style="list-style-type: none"> - Minor legislative change required (relative to others). - Potential loss of commercial focus at those ports which retain principally commercial freight facilitation functions. - Potential HR issues through merging commercial employees with associated terms and conditions of employment with local authority terms and conditions. - Reduces commercial flexibility to respond to changing demands and opportunities.
2d	<ul style="list-style-type: none"> - Minor initial administrative costs through preparing for sale etc. - Minor on-going administrative costs if concession/landlord type arrangements entered into. 	<ul style="list-style-type: none"> - The public sector 'authority' role and private sector 'delivery' role is well established in both ports and generally within other local authority functional spheres. - May incentivise regional and local economic activity. - Retains commercial focus. 	<ul style="list-style-type: none"> - A 'sale' of companies or assets may result in public amenity values being overlooked or undermined. - HR issues – transfer of staff /current pension arrangements etc. - Potential competition fears in those ports with multiple users where one becomes the new 'owner' or primary operator. - Undermines the potential, afforded by transfer to local authority control, of regional towns and their ports/waterfront areas developing in a mutually beneficial and integrated manner.

1. Description of Policy Context and Objectives

1.1 Policy Context

1.1.2 In March 2013 Government approved the publication by the Minister for Transport, Tourism and Sport of a new [National Ports Policy](#). The publication of the new policy concludes a review of ports policy which commenced in September 2010 (see section 1.2).

1.1.3 [National Ports Policy's](#) core objective is to facilitate a competitive and effective market for maritime transport services. The policy contains a number of legislative and non-legislative measures designed to address not just the issues facing the sector today but also equip all of the current State commercial port companies with governance structures most appropriate to their particular circumstances, role and function.

1.1.4 [National Ports Policy](#) categorises the commercial ports sector into:

- Ports of National Significance (Tier 1)
Dublin Port Company, Port of Cork Company and Shannon Foynes Port Company.
- Ports of National Significance (Tier 2)
Port of Waterford Company and Rosslare Europort.
- Ports of Regional Significance
Drogheda Port Company, Dún Laoghaire Harbour Company, Galway Harbour Company, New Ross Port Company, Wicklow Port Company and all other ports that handle commercial freight.

1.1.5 The primary legislative measures to be introduced on foot of the new policy relate to the categorisation of five current State commercial port companies as Ports of Regional Significance. [National Ports Policy](#) recommends that control of these regionally important ports should be transferred from central to local government structures under the control of a relevant local authority or local authorities.

1.1.6 The proposed Bill will provide a legislative basis to the recommendations adopted by Government in March 2013 and allow for the transfer of control of the Ports of Regional Significance to local authority led control. It will also address some other relatively minor additional matters such as revising the current statutory consultation process in respect of board appointments to strengthen accessibility, transparency and accountability.

1.2 Ports Policy Review

1.2.1 In September 2010 a review of the 2005 Ports Policy Statement was announced. A consultation period elicited submissions from a total of 24 different organisations and individuals. Copies of these submissions are available [here](#).

1.2.2 While the submissions received represented some diverse positions they were broadly centred upon four key themes:

- Organisational structure;
- Corporate Governance;
- Ports policy and the planning and development system; and
- Environmental and foreshore issues.

1.2.3 Consideration of the issues arising was additionally informed by the development and conclusions of the Report of the Review Group on State Assets, the emergent priorities of the Government as outlined in the Programme for Government and on-going developments within the sector itself.

1.3 Policy Objectives

1.3.1 The core objective of [National Ports Policy](#) is to facilitate a competitive and effective market for maritime transport services. As part of this policy objective, [National Ports Policy](#) recommended the realignment of national policy focus and governance along the Ports of National Significance and a transfer of control of the Ports of Regional Significance to local authority led structures.

1.3.2 The immediate objectives of the proposed Bill will be to:

- Amend the Harbours Acts 1996 – 2009 to allow for the transfer of control of the five Ports of Regional Significance to local authority led structures;
- Amend section 30 of the Harbours Act 1996 [Employee, local authority and other directors] to provide for a statutory open and public nomination process to allow for expressions of interest from interested parties to serve on port company boards;
- Provide for other issues as may arise during further consultations;
- Provide for other minor amendments to existing legislation as have been identified.

1.4 Current statutory position of the five Ports of Regional Significance

1.4.1 The five Ports of Regional Significance are State commercial port companies established and operating pursuant to the Harbours Acts 1996 – 2009. The five companies are private companies whose shareholders are the Minister for Transport, Tourism and Sport and the Minister for Public Expenditure and Reform (technically this one share is held by the Minister for Finance).

1.4.2 The Harbours Acts do not currently allow for the general sale or transfer of Ministerial shareholding in the companies. Sections 19 – 21 of the Harbours Act 1996 are the most relevant provisions of the Acts in relation to shareholding.

1.4.3 All State commercial port companies have a board of directors consisting of a maximum of eight members, including the Company CEO as *ex officio*. The directors (other than the CEO) are appointed by the Minister with the consent of the Minister for Public Expenditure and Reform. The CEO is appointed (and can be removed) by the board of directors after consultation with the Minister. All companies are obliged to employ a harbourmaster. All companies have statutory harbour limits as detailed in the Third Schedule to the Act which delineates the geographic limit of their functional area. In addition, three of the affected companies (Drogheda, Galway and New Ross) also have statutory pilotage limits detailed in the Third Schedule to the Act and those companies are therefore also responsible for the organisation and provision of pilotage services.

1.4.4 Some key elements of each of the five ports' trading and financial position are provided at Appendix A. The annual accounts of each of the companies are generally available on company websites or through the company concerned.

1.5 Previous transfer process in respect of harbour authorities

1.5.1 Section 88 of the Harbours Act 1996 provides for the transfer of control of a number of harbour authorities to the control of local authorities. These harbours operated under the Harbours Act 1946 but were not commercial State companies. There were a total of fourteen such harbour authorities listed in the Table within section 87 of the Harbours Act 1996 (Arklow was inserted by virtue of the Harbours (Amendment) Act 2009) and thirteen of these harbour authorities have now transferred to the control of a local authority. Discussions are currently underway as regards the remaining harbour authority – Bantry Bay Harbour Commissioners – and its future governance arrangements.

1.5.2 The transfer process used in respect of these smaller harbours was a relatively straightforward transfer of all property, rights, liabilities and staff of the harbour authority to the local authority, the dissolution of the harbour authority as a legal body and the

repeal of the previously applicable Harbours Act 1946 in respect of the harbour. A number of these transferred harbour authorities continue to handle commercial traffic and act as important ports for their local economy while others have more marine leisure and tourism related functions.

1.6 Overarching issues for consideration

1.6.1 There are a number of overarching issues for consideration as part of the proposed transfer process. These may be summarised as:

- The optimal governance arrangements for each particular port considering issues such as its role and function, sources of revenue, areas for future growth etc.
- The relevance of the Harbours Acts and whether consideration should be given to their repeal in respect of the transferred ports.
- Human resource type issues which could arise from the transfer of employees of commercial companies into local authorities and which may arise generally from any change in current arrangements irrespective of the exact form of the new structures. However, it is recognised that similar issues have arisen and been satisfactorily addressed across the broader public sector, including with the transfer of harbour authorities to local authority control.

Q1. Are there other overarching issues to be considered as part of the transfer process? If so please detail.

2. Identification and Description of Options

2.1 [National Ports Policy](#) states that control of Drogheda Port Company, Dún Laoghaire Harbour Company, Galway Harbour Company, New Ross Port Company and Wicklow Port Company will transfer to local authority control.

2.2 The primary purpose of this RIA is to outline some preliminary thoughts on the proposed transfer process generally and allow for consultation on the best method of transfer for each particular port. One of the key themes that emerged from the review of ports policy was the very diverse nature of the Irish commercial ports sector. This diversity is equally apparent within the role and function of the five proposed transferee ports and it is likely the case that the best method of future operation for one port may not suit another.

Potential options for consideration

2.3 At this stage, it is not intended that the legislation will prescribe a particular method of transfer in respect of individual ports but will instead establish a legislative framework that will allow for one of the following by subsequent Ministerial Order:

- a) The creation of separate legal entities (with or without share capital) under the control of local government;

This option envisages the establishment of a new local authority subsidiary company to manage and oversee port operations. This option would result in the dissolution of the existing corporate entity and the transfer of all assets, liabilities and staff to the new company. The structural arrangements of the new company would be a matter for the local authority and future operational structures would be at the discretion of the local authority in consultation with the current port company. This option would allow for consideration of the repeal of the existing Harbours Acts in respect of the port concerned.

- b) The continuation of existing legal entities with share capital owned by local rather than central government;

This option envisages a transfer of the current shareholding from the Minister for Transport, Tourism and Sport and Minister for Public Expenditure and Reform to the relevant local authority. The current corporate entity and structure would remain in place. Whether this option would restrict future operational arrangements through continued application of the Harbours Acts is a matter for further consideration and consultation.

- c) The operation of a port as an administrative unit of local government;

This option most closely resembles the transfer process that has occurred in respect of the thirteen smaller harbour authorities which have transferred to the control of local authorities in recent years. It would provide for the dissolution of the existing corporate entity and complete integration within existing local authority structures. This option would allow for consideration of the repeal of the existing Harbours Acts in respect of the port concerned.

- d) The potential for private investment.

Legislative amendments to the Harbours Acts to facilitate private sector investment in Ports of Regional Significance would only be required if the Acts continue to apply to those ports and likely only if the existing corporate

entity was the body transferring. Otherwise the future potential for private investment in any local authority established and governed body would be a matter for the relevant local authority.

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

2.4 In addition [National Ports Policy](#) proposes amending existing legislative provisions regarding the board nomination process to provide a statutory requirement that a public consultation process or call for expressions of interest be followed in respect of all board appointments in the remaining State commercial port companies (Dublin, Cork, Shannon Foynes and Waterford). This would be similar to the existing non-statutory process which is advertised through the Departmental website and allows for members of the public to register their interest and willingness to sit on State boards.

2.5 There are also some minor amendments to the existing legislation which will be included in the Bill. These amendments relate to drafting and/or practical issues which have arisen/been identified since the last substantive changes to the legislation introduced in 2009.

2.6 This RIA is primarily intended to aid consultation and inform discussions in relation to the proposed transfer of the Ports of Regional Significance; however, general observations on other potential issues for consideration are also welcome.

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

3. Analysis of Costs, Benefits and Impacts

3.1 Costs

3.1.1 Option 2a – Creation of separate legal entities (with or without share capital) under the control of local government.

- *Administrative costs through establishing new company etc.*
- *On-going administrative cost to local authorities in new corporate governance oversight role.*

3.1.2 Option 2b – Continuation of existing legal entities with share capital owned by local rather than central government.

- *Opportunity cost in not focusing those ports which have a limited future in commercial ports activities on other areas for future development.*
- *On-going administrative cost to local authorities in new corporate governance oversight role.*

3.1.3 Option 2c – Operation of the port as an administrative unit of local government

- *Potential cost to Exchequer (whilst noting revenue generating capability of ports).*
- *On-going administrative cost to local authorities (whilst noting revenue generating capability of ports).*

3.1.4 Option 2d – Potential for private investment

- *Minor initial administrative costs through preparing for sale etc.*
- *Minor on-going administrative costs if concession/landlord type arrangements entered into.*

Q4. Are there other potential costs under any of the options which require consideration? If so, please detail.

3.2 Benefits

3.2.1 Option 2a – Creation of separate legal entities (with or without share capital) under the control of local government.

- *Provides local authorities the freedom to establish new corporate structures reflective of the particular port's role and function.*
- *Operation as a commercial entity retains the commercial flexibility of current structures.*
- *Potentially reduces some HR type issues as involves transferring employees of a commercial company into another commercial company.*
- *Allows for retention of separate 'identity' of the port.*
- *Transfer of assets to local authority control.*

3.2.2 Option 2b – Continuation of existing legal entities with share capital owned by local rather than central government.

- *Preserves existing structures and existing commercial focus.*
- *Minimal HR issues as ‘transfer’ primarily involves just a change of shareholder.*
- *Continuation of corporate ‘identity’.*
- *Minimal potential for customer uncertainty as regards future arrangements.*

3.2.3 Option 2c – Operation of the port as an administrative unit of local government

- *Offers potential for maximising use of shared integrated services.*
- *Potential cost reductions arising from corporate re-structuring.*
- *Builds upon existing precedent and experience (in some local authorities) of managing transferred commercial harbour authorities.*
- *Transfer of assets to local authority control.*

3.2.4 Option 2d – Potential for private investment

- *The public sector ‘authority’ role and private sector ‘delivery’ role is well established in both ports and generally within other local authority functional spheres.*
- *May incentivise regional and local economic activity.*
- *Retains commercial focus.*

Q5. Are there other potential benefits under any of the options which require consideration? If so, please detail.

3.3 Impacts

3.3.1 Option 2a – Creation of separate legal entities (with or without share capital) under the control of local government.

- *Legislative change required.*
- *Potential issues re share capital of current companies?*

3.3.2 Option 2b – Continuation of existing legal entities with share capital owned by local rather than central government.

- *Legislative change required.*

- *Potentially restricts the ability of local authority to introduce organisational changes.*
- *On-going application of Harbours Acts requirements to the transferred ports and their new shareholders?*

3.3.3 Option 2c – Operation of the port as an administrative unit of local government

- *Minor legislative change required (relative to others).*
- *Potential loss of commercial focus at those ports which retain principally commercial freight facilitation functions.*
- *May lead to HR related difficulties through merging commercial employees with associated terms and conditions of employment with local authority terms and conditions.*
- *Reduces commercial flexibility to respond to changing demands and opportunities.*

3.3.4 Option 2d – Potential for private investment

- *A ‘sale’ of companies or assets may result in public amenity values being overlooked or undermined.*
- *HR issues – transfer of staff /current pension arrangements etc.*
- *Potential competition fears in those ports with multiple users where one becomes the new ‘owner’ or primary operator.*
- *Undermines the potential, afforded by transfer to local authority control, of regional towns and their ports/waterfront areas developing in a mutually beneficial and integrated manner.*

Q6. Are there other potential impacts under any of the options which require consideration? If so, please detail.

4. Consultation

4.1 As stated in section 1.2, a review of ports policy was announced in September 2010 and a public consultation period was held in September and October 2010. The submissions received during that consultation period are listed in *Table 1* below and submissions are available to view on the [Department’s website](#).

Table 1

D/Agriculture, Fisheries & Food	D/Culture, Tourism & sport
Chartered Inst. of Logistics & Transport	Mr Dave Doolin
Bremore Ireland Port Ltd.	Mr Warren Whitney
Birdwatch Ireland	Tralee & Fenit Harbour Commissioners
Association of Maritime Pilots of Ireland	Shannon Foynes Port Company
An Taisce	Rosslare Europort
Finnstown Input Group	Raymond Burke Consulting
Mr Enda Connellan	Mr Raj Maitra
Dublin Port Company	Port of Cork Company
D/Transport – Marine Survey Office	Limerick ICSA
Irish Ports Association	Irish Exporters Association
Independent Light Dues Forum	Forfás / Enterprise Ireland / IDA

4.2 The submissions received during this public consultation period fed into and informed the development of the new [National Ports Policy](#). A Memorandum to Government seeking approval of the new policy's adoption was also subject to the normal inter-Departmental consultative process, including consultations with the Competition Authority who are undertaking a market study of competition within the ports sector generally.

4.3 In addition in June 2013 the Department requested certain organisations to consider any general legislative changes which might be considered for inclusion in any proposed Bill. These bodies are listed below:

Table 2

Irish Ports Association	Irish Exporters Association
Association of Maritime Pilots of Ireland	Irish Congress of Trade Unions
Drogheda Port Company*	

**Drogheda Port Company is not a member of the Irish Ports Association hence the separate request issued to it.*

4.4 The purpose of this RIA is to further aid the consultative process and also to act as a discussion document as the Department engages with local authorities and the five Ports of Regional Significance. The RIA will also be published on the Departmental website and notification of publication circulated to the bodies listed in Table 3 below in order to allow a broad based consultation process take place on the proposed transfer process and any other issues which might warrant consideration as part of the drafting of the Bill.

Table 3

Irish Ports Association	Drogheda Port Company
Irish Exporters Association	Dún Laoghaire Harbour Company
Irish Chamber of Shipping	Galway Harbour Company
Irish Ship Agents' Association	New Ross Port Company
Irish Port Employers' Association	Wicklow Port Company
ICTU	Louth County Council
Association of Maritime Pilots of Ireland	Meath County Council
Galway City Council	Dún Laoghaire Rathdown County Council
Galway County Council	Wexford County Council
Commissioners of Irish Lights	Wicklow County Council
Irish Harbour Masters' Committee	D/TTAS – Marine Survey Office

5. Enforcement and Compliance

The Department does not consider that the provisions of any proposed Bill will give rise to any significant enforcement and compliance issues.

6. Review

This RIA will be reviewed and updated as required throughout the consultative process.

7. Publication

As referred to section 4, this RIA will be published on the Departmental website and publication notified to a number of specific bodies.

Maritime Transport Division
D/Transport, Tourism and Sport
August 2013

Appendix A – Ports of Regional Significance Trading & Financial Performance
All figures taken from relevant annual accounts

Drogheda Port Company

	Tonnage	Vessel Calls	Turnover	Net profit	Employees
2012	959,000	274	€2,286,000	€265,000	10
2011	489,000	184	€1,799,000	€521,000	10
2010	499,000	209	€1,998,000	€161,000	13

Dún Laoghaire Harbour Company

	Tonnage	Vessel Calls	Turnover	Net profit	Employees
2012	1,000	172	€4,700,000	€-1,872,000	23
2011	12,000	182	€6,835,000	€-829,000	28
2010	2,000	389	€10,676,000	€302,000	40

Galway Harbour Company

	Tonnage	Vessel Calls	Turnover	Net profit	Employees
2012	501,000	142	€3,275,000	€-130,000	14
2011	554,000	158	€3,537,000	€1,472,000	14
2010	671,000	187	€3,841,000	€312,000	16

New Ross Port Company

	Tonnage	Vessel Calls	Turnover	Net profit	Employees
2012	268,000	102	€572,000	€-199,000	5
2011	357,000	131	€784,000	€-42,000	5
2010	444,000	174	€911,000	€-45,000	5

Wicklow Port Company

	Tonnage	Vessel Calls	Turnover	Net profit	Employees
2012	74,000	42	€190,000	€-97,000	3
2011	99,000	56	€222,000	€-26,000	3
2010	89,000	53	€217,000	€-266,000	3