

Environment and Sustainability Committee

Meeting Venue:
Committee Room 3 – Senedd

Meeting date:
29 March 2012

Meeting time:
09:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

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Agenda

1. Introductions, apologies and substitutions

2. Inquiry into energy policy and planning in Wales – Evidence on Nuclear energy (09.30 – 10.30) (Pages 1 – 21)

09.30 – 10.00

E&S(4)–13–12 paper 1 – Horizon Nuclear Power
Charlie Tasker, Director of Project Development

10.00 – 10.30

E&S(4)–13–12 paper 2 – Nuclear Free Local Authorities
Councillor Stephen Churchman, Chair NFLA Welsh Forum

BREAK 10.30 – 10.40

3. Inquiry into energy policy and planning in Wales – Evidence on unconventional gas (10.40 – 11.40) (Pages 22 – 32)

E&S(4)–13–12 paper 3 – The Tyndall Centre

Prof Kevin Anderson, Deputy Director, The Tyndall Centre
Dr John Broderick, Research Fellow, The Tyndall Centre

E&S(4)–13–12 paper 4 – Environment Agency Wales

John Harrison, Environment Manager, Environment Agency Wales
Dave Jones, Technical Officer – Groundwater and Contaminated Land,
Environment Agency Wales

4. Consent Motion for the British Waterways Board (Transfer of Functions) Order (11.40 – 11.50)

E&S(4)-13-12 paper 6

5. Papers to note (Pages 33 – 34)

Minutes of the meeting held on 15 March

E&S(4)-12-12 minutes

5a. Inquiry into energy policy and planning in Wales – Paper from the Petitions Committee on TAN 8 rapporteur visit (Pages 35 – 38)

E&S(4)-13-12 paper 5

6. Motion under Standing Order 17.42(vi) to resolve to exclude the public from the meeting for item 7 (11.50)

7. Inquiry into the Business Case for the Single – Draft letter to the Minister for Environment and Sustainable Development (11.50 – 12.05)

Environment and Sustainability Committee

E&S(4)-13-12 paper 1

Inquiry into energy policy and planning in Wales – Evidence from Horizon Nuclear Power

General / Role for Nuclear

- The need for secure supplies of reliable and sustainable low-carbon energy remains pressing. New nuclear can play a vital role in delivering a clean and secure energy future for the UK. Nuclear power is the only proven technology capable of delivering large capacities of low carbon energy with very high levels of availability. It has full lifecycle CO₂ emissions comparable to wind power (source: Parliamentary Office of Science and Technology).
- Nuclear power is the lowest cost, large scale method of generating very low carbon electricity [based on the cost per unit of power generated over the lifetime of the plant (the levelised cost). A number of recent studies support this analysis including a study commissioned in 2010 by the Department for Energy and Climate Change and carried out by Mott MacDonald. Nuclear power is one of the most stably priced generating methods – giving price certainty to customers.
- The UK (and Wales) needs a balanced energy mix in order to deliver secure, affordable and sustainable energy, this means nuclear working in partnership with all other low-carbon options.

Project / Impact on local economy

- Our project could provide a peak at least 5,000 jobs during construction with 800 permanent operational jobs, rising to around 1,800 during periods of maintenance.
- Our projects at Wylfa and Oldbury could represent a combined investment of around £15bn.
- We believe that our project can be extremely beneficial for the local economy, with significant opportunities for the local supply chain and workforce. We are working closely with local bodies – such as the Energy Island Programme, Coleg Menai and the North Wales Apprentice Agency – to help ensure that Welsh workers, and Welsh firms are well positioned to take advantage of the opportunities that arise.

- We look forward to providing more information about our supply chain engagement activities, once we have embedded our chosen delivery team following our vendor-selection announcement.

Waste

- We are fully committed to the safe and responsible management of our waste. The UK government has been clear that they will develop a repository (Geological Disposal Facility, or GDF) for the disposal of intermediate level waste (ILW) and spent fuel, and that new build developers will pay their full share of the costs of disposing of new-build waste in the GDF. We would welcome further progress on the development of this repository.
- There are a number of options for the interim storage of nuclear waste. We are currently assessing these options and will continue to update the community around our site. What is clear, is that all waste products will always be managed safely, and this is overseen by the tightest of regulatory regimes.

Planning / Permissions

- The planning system for Nationally Significant Infrastructure Projects (NSIP) is relatively new and in Wales is more complex due to the need to seek other planning permissions for infrastructure related to the project but not part of the NSIP. We would welcome ongoing discussions with relevant parties including the WG and local authorities on practical approaches to these issues, in order to ensure we can continue to reduce uncertainty and potential for delays on major infrastructure projects.

Single Environment Body for Wales

- We have noted with interest the recent consultations on the creation of a single Environment Body for Wales, and look forward to responding in due course. Without wishing to pre-empt our submission, we believe that there could be significant merit in the proposals, but would seek reassurance that transitional arrangements will be put in place, including appropriate levels of relevant resource, to ensure that major infrastructure projects are not delayed whilst changes are implemented.

Environment and Sustainability Committee

E&S(4)-13-12 paper 2

Inquiry into Energy Policy and Planning in Wales – Nuclear Free Local Authorities Secretariat

Nuclear Free Local Authorities Secretariat

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UK and Ireland Chair: Bailie George Regan Secretary: Sean Morris
NFLA Welsh Forum Chair: Councillor Stephen Churchman



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Chair to the Committee
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Emailed to: E&S.comm@wales.gov.uk

19th September 2011

Dear Mr Thomas,

NFLA WELSH FORUM SUBMISSION TO THE WELSH ASSEMBLY ENVIRONMENT & SUSTAINABILITY COMMITTEE ENERGY INQUIRY

I am writing to provide you with the official submission of the Nuclear Free Local Authorities (NFLA) Welsh Forum to the Welsh Assembly Environment and Sustainability Committee's inquiry into future energy policy in Wales. This submission refers to an analysis of the development and future direction of Welsh energy policy which has been prepared for its members. Its main points are of relevance to the questions asked by the Committee. Additional comments have also been added in as an appendix about some of the dramatic examples of promoting renewable energy, microgeneration and energy efficiency by a number of English Councils, so as to outline some potentially new exciting and imaginative ways local government can be involved in Welsh energy policy, which the Welsh Government should consider and encourage for Welsh Councils.

If you require any further information on the content of this submission please contact the NFLA Secretary Sean Morris using the details at the top of this letter or the email address s.morris4@manchester.gov.uk. The NFLA Welsh Forum would be happy to attend oral sessions of the Committee if members wish to seek further elaboration on this submission.

Yours sincerely,



Sean Morris
Secretary of UK and Republic of Ireland Nuclear Free Local Authorities
On behalf of the NFLA Welsh Forum

NFLA Welsh Forum submission to the Welsh Government's Energy Policy - our view on developing an alternative energy revolution without recourse to new nuclear build

1. Existing Welsh Government Energy Policy and the lack of devolved powers

The Nuclear Free Local Authorities notes that, unlike with the legislative powers provided to the devolved Scottish Government, energy policy for Wales predominantly remains a reserved matter for the UK Government. The Welsh Government only has the right to comment on all energy policy consultations and has some latitude to promote a low carbon approach to energy provision in the principality. (1)

The Welsh Government works currently to an official energy policy statement published in 2010 (2). This statement - 'A Low Carbon Energy Revolution: Wales Energy Policy Statement' seeks to move Wales from policy development to promoting support for practical examples of low carbon production.

The NFLA notes that the Welsh Government policy has three main strands:

- to maximise energy savings and energy efficiency to make producing the majority of the energy that Wales needs from low carbon sources more feasible and less costly;
- Welsh future energy needs must be predominantly met from low carbon sources which should be produced via secure, indigenous renewables, on both a centralised and a localised basis;
- the transition to low carbon energy will seek to maximise the economic benefits of developing local jobs and skill base, strengthen and engage further with the research and development sectors in Wales, promote personal and community engagement and helps to tackle fuel poverty and the quality of life.

The NFLA fully supports these aims and this submission will reflect on these themes and how to difficult it will be to bring them to fruition within the restrictions of limited powers over energy policy.

The Welsh Assembly Committee may be interested to note that the NFLA Welsh Forum has also arranged an October 17th meeting with the Welsh Environment Minister John Griffiths to specifically discuss Welsh energy matters. Other groups that will be attending this meeting include Friends of the Earth Wales, the Nuclear Consulting Group and the pressure group 'People Against Wylfa B'.

2. Fuel poverty and Wales

Statistics published by the UK Department of Energy and Climate Change show 700,000 more UK families fell into fuel poverty in 2009, bringing the total to 5.5 million, or one in five of all households. According to Consumer Focus the recent energy price increases announced in July 2011 for domestic consumers are likely to push this figure up to 6.4 million. (3) The Welsh Assembly Government estimated in 2009 that around 332,000 households were estimated as fuel poor, which was a 15% increase since 2004. It predicted a rise to 550,000 Welsh households in fuel poverty by 2012 if energy prices continue to rise, as they have. (4)

The devolved assemblies, including the Welsh Government, have a statutory duty under the Warm Homes and Conservation Act 2000 to eradicate fuel poverty, as far as is reasonably practical, by 2016. There is also an interim target to eliminate fuel poverty among vulnerable low income households (pensioners, disabled people and families with children) by 2010. The NFLA notes that all the devolved assemblies and the UK Government have failed to meet this target, yet it still remains the policy of all these bodies to seek to meet the 2016 target. The NFLA believes it will be difficult for the

Welsh Government to achieve these targets without full control of Welsh energy policy and will have to rely on the UK Government to a considerable degree for assistance.

At the same time under the Climate Change Act 2008, Wales is a component part of the UK's policy commitment to reduce its emissions of targeted greenhouse gases by **at least 80%** by 2050, relative to 1990 levels. The UK Committee on Climate Change (CCC) highlighted in its fourth carbon budget report that the near-total decarbonisation of the power sector by 2030 would play a key role in enabling the UK to meet this target. (5) This transformation is also important because it will allow the electrification of a substantial part of the transport and heating sectors without increasing carbon emissions.

More than 20 large coal, oil and nuclear plants are due to close in the UK over the next decade which means the electricity industry needs to invest around £200bn across the UK in new generating capacity. (6) As a result it is widely agreed that energy prices will have to increase over the next 20 years whichever energy path Wales and the wider UK follows. (7) Ofgem has predicted that, in the worst-case scenario, household energy bills could double to £2,000 a year within a decade (8) adding perhaps another million households to those in fuel poverty. (9) This means that Wales and the wider UK face two urgent and over-riding challenges which are sometimes seen as being in conflict with each other – to rapidly decarbonise the electricity sector using sustainable technologies, at the same time as eliminating fuel poverty.

In the NFLA's view, the Welsh Government can seek to meet both its climate change and fuel poverty objectives by concentrating on developing an ambitious target-led energy efficiency and micro-generation programme, coupled with the promotion of a wide mix of renewable energy projects. A climate change focus that reinforces the solutions to fuel poverty means a greater emphasis on capital investment in the energy efficiency of our housing stock. (10) As WWF-UK pointed out in evidence to the House of Commons Energy and Climate Change Committee:

“Not only can energy demand reduction allow great cost savings for consumers and enhance the UK's energy security, but it also fundamentally reduces the size of the decarbonisation challenge. This can be done by setting clear energy demand reduction targets and a robust policy framework for reaching these targets, which would need to involve ambitious nationwide energy efficiency and demand reduction measures in the residential, transport and business sectors.” (11)

UK households are responsible for around 27% of greenhouse gas emissions. Most of the properties standing today will still be around by 2050 (25 million out of 25.8 million), so if the UK Government and the Welsh Government are to meet their carbon reductions targets, they will need to implement a set of policies which can cut emissions from the domestic sector in any case. To do this every house will need excellent insulation and some form of Low and Zero Carbon Technology – microgeneration or a connection to a community heating scheme. This means carrying out refurbishment of virtually all the UK's dwellings over the next 40 years or 625,000 dwellings every year between now and 2050. This is an extremely ambitious target and the NFLA remains concerned that the Welsh Government will not be able to achieve its part of this target unless it has full and complete control of its energy policy (12).

The rest of this submission focuses on the role that the Welsh Government and Welsh Local Authorities can, and are, playing in trying to implement such a programme.

3. **The UK Government's Response**

The Energy Bill which is currently going through the UK Parliament (and which would be implemented for England and Wales) includes provision for a “Green Deal” and associated measures which are supposed to be the key to improving household energy

efficiency and tackling fuel poverty. (13) But research by E3G suggests the Green Deal will struggle to achieve the UK Government's limited ambitions on energy efficiency because householders are likely to reject the scheme as a result of its high cost, (14) and a survey by the Federation of Master Builders (FMB) found builders expect the response to the Green Deal to be "*underwhelming*". (15) The Bill proposes a new Energy Company Obligation (ECO) which will target help towards low income and vulnerable consumers from 2013 onwards. But, according to Consumer Focus, much more extensive resources will be required to eradicate fuel poverty. (16) The trouble is that it is the fuel poor, particularly in this case in Wales, who tend to live in older properties with solid walls or off the gas grid which require more expensive measures, such as solid wall insulation and new heating systems. (17)

The UK Government is also attempting to facilitate the investment required to build the equivalent of up to 20 large new nuclear power stations in England and Wales by reforming the electricity market and has recently published a White Paper on its plans, but this is overwhelmingly focussed on incentivising new electricity supply rather than demand reduction. (18) The UK Parliament has also just passed a National Policy Statement on Nuclear Power Generation that endorses the building of such facilities. WWF-UK argues that these reforms should aim to deliver decarbonisation of the power sector by 2030 in the most environmentally sustainable way (without relying on environmentally hazardous new nuclear power stations) and provide best value for consumers and most benefit to the UK economy. (19) In the NFLA's view, ambitious energy demand reduction targets and a clear framework to deliver these targets would have been one of the best ways for 'Electricity Market Reform' to achieve these objectives, but these are absent from the White Paper.

The UK Government claims that "*even with major improvements in overall energy efficiency ... demand for electricity is likely to increase*". The Government's 'Revised Overarching National Policy Statement on Energy' foresees a need for a doubling or even tripling of total installed electricity generating capacity in the UK by 2050. (20) Yet Germany, which is planning an entirely non-nuclear route, even with the same 2050 objective of an 80% reduction in greenhouse gases, expects electricity demand to be 25% below present levels by implementing an energy efficiency programme. (21) The UK Government relies on something called the 'Pathways Analysis' to reach its conclusion, but this consists of various scenarios for 2050 none of which assume penetration of basic energy-saving measures like solid wall insulation into more than 1 in 3 homes. Similarly, it is assumed that the commercial sector can only improve its energy efficiency by just 20% over the next 40 years - so far below what has been achieved historically as to be inexplicable. (22)

Germany has put in place new incentives to support the renovation of buildings and is using the auction revenue from the European Emissions Trading Scheme for renovation programmes. It has also put in place special tax reductions for the renovation of buildings. Together 3.4 billion euros will go towards a lower energy consuming, modernized building sector in Germany. (23)

Professor of Energy Policy at Exeter University, Catherine Mitchell, says what Electricity Market Reform should have included is a new type of energy system with regulated obligations which would have stimulated a refurbishment programme on the level required - on the scale of the transition from town gas to natural gas. Tendering for street-by-street or area-by-area contracts to make homes energy efficient would have been a much more cost effective way of moving towards a sustainable low carbon economy. (24)

"The opportunity should exist for companies not to generate low-carbon electricity but instead to reduce the demand for energy through efficiency measures, so-called 'negawatts'. In electricity markets in the US, for example, 10% total demand is routinely

removed at lower costs than supply. Moreover, the institutional framework for how the complex interaction of all the mechanisms will work is also missing.” (25)

4. **The Welsh Government Response**

Without the powers of the Scottish Government to more directly determine its own energy policy, Wales is in many ways beholden to the UK Government in determining its future energy needs. However, the Welsh Government’s own ambitious carbon reduction and renewable energy policies, and its considerably lower penetration to the proposed new nuclear power programme, does provide it with some latitude in developing a largely, if not completely, non-nuclear way forward with its energy policy.

The only new nuclear power station proposed for Wales is at Wylfa in Anglesey and it has been at the centre of a passionate debate in Welsh politics over whether it is required or not. The Welsh Government has no specific policy tool to oppose the development of a new nuclear power plant at Wylfa, but it can comment on all new nuclear policy matters, and the previous Welsh Environment Minister Jayne Davidson was the only one of the devolved assemblies who expressly called for a public inquiry into the radioactive waste management issues in developing new nuclear power stations (26). The NFLA were pleased Mrs Davidson took this action and we encourage the Welsh Government to use this advice duty more pro-actively in the future.

In 2009 the Welsh Government officially set a series of highly ambitious targets for its domestic energy production and energy efficiency programmes including:

- to produce more electricity from renewables than the nation consumes within 20 years;
- to increase recycling rates from 36% today to over 70% by 2025;
- to send just 5% of Welsh waste to landfill sites by 2025;
- to phase out free plastic bags (like the Republic of Ireland);
- to develop new marine and biomass energy plants;
- to make annual 3% cuts in greenhouse gas emissions from 2011;
- to spend £623 million over the next three years on improving energy efficiency in Welsh homes, with South Wales becoming a ‘low carbon region’ and up to 40,000 social housing homes equipped with solar, wind and heat-saving equipment.

The plan committed Wales to becoming possibly the only “one planet” country in the world – a nation whose use of resources could be sustained for the entire global population (27). The NFLA welcomed the ambition of this document, which mirrored the similar energy vision being driven by the Scottish Government.

As the Welsh Low Carbon Energy Revolution document also notes, Welsh Ministers do have significant powers relevant to deliver wider aspects of a low carbon economy such as responsibilities for transport, economic development, skills and education, housing, regeneration and local government. This allows it to set some reasonably impressive targets for microgeneration, where it has direct powers, such as:

- developing 20,000 micro-heating projects by 2012, increasing to 100,000 by 2020;
- developing 10,000 micro-electricity projects by 2012, increasing to 200,000 by 2020;
- constructing 50 combined heat and power and / or district heating systems in place by 2020 (28)

Sections 5 – 9 below will outline some of these projects, within its powers and in co-operation with the UK Government, on how the Welsh Government is seeking to put its bold words on renewable energy, microgeneration and energy efficiency into action, and, in the NFLA’s view, whether they are succeeding.

The Welsh Government’s position on nuclear power generation being part of a future energy mix for Wales remains a sensitive issue to it. The Welsh Government’s official approach to nuclear power is set out as follows:

- “We remain of the view that the high level of interest in exploiting the huge potential for renewable energy reduces the need for other, more hazardous, forms of low carbon energy and obviates the need for new nuclear power stations.
- We have a way to go in justifying to the public what must done in dealing with future nuclear waste. We therefore support the call for a public inquiry on dealing with the waste arising from new nuclear build on the grounds of concern over the safety and security of its management. This carries with it the implication that any proposed new nuclear power station must contain credible plans for nuclear waste management.
- Maximise energy savings from energy efficiency and low-carbon energy production from renewables in Wales”. (29)

They also comment that, if the UK Government and the Infrastructure Planning Committee (IPC) allows new nuclear build at Wylfa to go ahead, they “will engage with stakeholders to ensure the maximum local and regional benefit from the building and operation of the new station, including the provision of skills, and supply chain opportunities.”

The NFLA believe that it is in the interest of Wales for it to be granted the same powers over developing large energy projects as Scotland has, which would allow it to take a more consistent view on the development of new nuclear power stations and not be subject to the prevailing view of the UK Government. The upcoming inquiry into Welsh energy policy by the Welsh Assembly Environment and Sustainability Committee provides a further opportunity for all the parties in the Assembly to seek to support a campaign to grant these powers over energy policy from Westminster.

Notwithstanding this, the NFLA believes the Welsh Government should take a more definitive policy line with potential new nuclear power stations and vociferously oppose them for the reasons of health, safety, waste management and the diversion of funds from other energy projects, as it has outlined in its 2010 Energy Policy Statement.

4. Energy by numbers

The UK Government’s Overarching National Policy Statement on Energy gives the following numbers for future energy production required by 2025:

Total Current Generating Capacity	85 Gigawatts (GW)
Large combustion plant directive - coal station closures by 2015	12GW
Nuclear closures over next 20 years	10GW
Generating Capacity required in 2025	113GW
Of which new generating capacity	59GW
Of which renewable	33GW
For industry to determine	26GW
Non-nuclear already under construction	8GW
Proposals for new reactors already proposed	16GW

Note: Figures taken from DECC’s EN-1 document. (30)

However, as the NFLA have already noted, if instead of planning for a doubling or tripling of electricity demand by 2050, the UK Government was planning for a reduction

of 25%, as in Germany, then it would be expected that the capacity required by 2025 would fall by around 15%, removing the need for new reactors.

5. A sustainable energy plan for Wales – building a renewable energy manufacturing base.

Several well respected reports such as the European Climate Foundation's Roadmap 2050 report (31) and the Offshore Valuation Report have made it clear that it is technically feasible for the UK (and, Wales as a constituent part of the UK) and the EU to receive the overwhelming majority of their electricity from renewable sources without endangering the reliability of the electricity system (and at costs not substantially higher than other ways of decarbonising the power sector), as long as the UK significantly improved its interconnection infrastructure with other European grids. In particular the Offshore Valuation Report highlights that by using 29% of the UK's practical offshore resource, the offshore renewables industry could enable the UK to install 169GW of offshore renewable capacity, thus allowing the country to become a net exporter of electricity by 2050. The development of such a European energy 'smart-grid' is one of the key components of the Centre for Alternative Technology's (based in Powys) 'Zero Carbon Britain 2030' and the NFLA supports such a development (32). The NFLA recommends this imaginative plan is considered in detail by the Welsh Assembly Environment and Sustainability Committee – it has been outlined at a number of NFLA Welsh Forum meetings.

The UK Government also says the UK needs 59GW of new generating capacity by 2025. Of this, 33GW needs to be renewable capacity to meet our obligation to European Union targets. Government and industry have been planning to meet this requirement for 33GW of new renewable capacity mostly with offshore wind.

In the NFLA's view, if Wales is to make the most of this new industry and play a central role in providing new generating capacity it needs an industrial strategy to help build a renewable energy manufacturing base. This is acknowledged in the Welsh Government's 2010 Energy Policy Statement. A few examples of recent developments are listed below.

6. Welsh offshore wind

With a 1200 kilometre (746miles) coastline Wales and some of the highest wind-speeds in Western Europe, the NFLA believes Wales has considerable latitude to take advantage of offshore wind. The Welsh Government has set a target of delivering 6GW of capacity from offshore wind by 2015/16 (34).

The NFLA notes that Wales was the host for the UK's first major renewable energy project. Commencing operation in 2003, North Hoyle Offshore Wind Farm, located 7.5 kilometres off the coast of Rhyl and Prestatyn in Denbighshire, was constructed with 30 turbines and producing 60 MW of electricity a year in a project developed by RWE Npower Renewables. It produces electricity for around 50,000 homes a year. Its success partially led to a second development at Rhyl Sands, 8 kilometres off the coast at Abergele with an additional 25 larger turbines, producing 90 MWs of electricity. (35)

This will be dwarfed by the Gwynt y Mor development 17 miles off the North Wales coast at Colwyn Bay / Llandudno which was granted planning permission in 2010 and which is currently under construction, planned to be completed by 2014. This will lead to the creation of around 1000 construction jobs and is currently the largest offshore wind project in Europe with 160 turbines under construction. When fully operational it will generate 576MW and it is estimated with produce enough electricity to power around 400,000 homes and prevent the release of 1.7 million tonnes of carbon dioxide.

In announcing the decision, Welsh Secretary Cheryl Gillan commented: "Surrounded by wind, wave and tidal resources, we are in a prime position to be able to benefit from

investment in the green economy whilst making a significant contribution to the (UK) government's carbon reduction targets through safe, clean renewable means." (36)

This work is being undertaken by 3 German firms – RWE Innogy, Stadtwerke Munich and Siemens and local critics of the development have suggested that, apart from it being in their view unsightly, it will not create a huge level of local jobs. The Gwynt y Mor wind farm though is a prominent example of the great potential of offshore wind power and enables the North Wales coast to be seen as one of the potential powerhouses of the alternative renewable energy revolution that could be developed across the British and Irish Isles. The NFLA encourages further development of offshore wind in Wales wherever practical and is relatively pleased with progress in this area of energy policy, though notes sensitivity should still be made to consult with the local population of these coastal communities.

7. **Welsh onshore wind**

Like elsewhere in the UK, Welsh onshore wind projects have developed in scope and size, but have been beset with some high profile sensitive political campaigns, particularly over the last 12 months. The Welsh Government has set a target of onshore wind production of 800 MW by 2010 and up to 2500 MW by 2025. (37)

Following the 2011 Welsh Parliamentary elections the First Minister of the Welsh Government, Carwyn Jones, announced that he had taken over personal responsibility for energy policy in Wales. The NFLA is pleased Mr Jones wishes to take ultimate responsibility for this area of policy. At a May 2011 Welsh renewable energy policy conference he advocated that the next 10 years should be ‘Wales’s energy decade’. At the same conference the UK Government’s Welsh Office Minister Cheryl Gillan said businesses and politicians should not ride roughshod over local public opinion. This followed a major demonstration of over 1,500 people protesting against large on-shore wind projects in mid Wales. In Powys concern has grown over the large amount of pylons, electricity cable and a substation that would connect around 10 wind farms proposed for the north of the county and a site near Shrewsbury in Shropshire (38).

Both politicians agree with the need to sensitively agree such proposals with local communities while disagreeing over which body should have the powers to develop bigger renewable schemes of 50 – 100 MW. In the run-up to the 2011 Welsh election the Conservatives also argued that the dependence with onshore and offshore wind to drive Welsh energy policy should be reduced in favour of biomass, hydro, wave, tidal, solar, biogas, heat pumps and microgeneration.

In June 2011 the Welsh Government announced a plan to restrict further wind energy projects in the Strategic Search Areas (SSAs) of mid and west Wales. As Renewable Energy Cymru (part of Renewable UK) has pointed out this may imply the construction of as many as 40 new wind farms of 25 MW (which is approximately 12 turbines each) being built in sites outside the SSAs in other parts of Wales. They warn this could put into question the Welsh Government’s 2025 offshore wind target and also put into jeopardy investment in what could be thousands of new jobs. Renewable UK note that the leading industry analysts Garrad Hassan have demonstrated that, if all the wind farms were built in the SSAs, as much as £1 billion in investment could be put into the local mid Wales economy. (39)

Renewable UK also notes that the Welsh Government is running 79% behind schedule for onshore wind projects. They remain concerned that Council planning processes and wider political considerations may exacerbate these delays and that the planning process ‘Technical Advice Note (TAN) 8’ (40).

The NFLA urges clarification of the Welsh policy on onshore wind farm development and encourages it and the relevant Welsh Councils to meet with Renewable UK Cymru and

local concerned community groups to ensure that this potential logjam is resolved as quickly and sensitively as possible. The NFLA will be raising these concerns with its Welsh members and with the Welsh Environment Minister at upcoming meetings in October. It is clear that real concerns remain over the speed of development in this area compared with offshore wind. The NFLA does not wish to see any policy drift in this area and encourages the Environment and Sustainability Committee to consider how this area of energy policy can be resolved as amicably as is practical, with the co-operation of local communities, and as cost effectively as possible. Otherwise, Wales will fall behind in achieving this critical target of its energy policy.

8. **Tidal and wave energy**

Tidal and wave energy developments in Wales were severely curtailed by the decision of the UK Energy Minister Chris Huhne in October 2010 to cancel any public investment in a 10 mile long Severn tidal barrage scheme, after concerns were raised from a feasibility study that it could cost in excess of £30 billion. (41)

The 10 mile long barrage scheme had been due to run from Cardiff to Weston-super-Mare in Somerset. It had been severely criticised by the RSPB and Friends of the Earth over its potential damage to the local marine environment. Its supporters had suggested it could provide as much as 5% of UK energy needs. The UK Government did state that it may look at this project again at a later date when market conditions are more preferable.

A number of smaller tidal and wave projects are taking place in Wales which may provide the increasing evidence of the great potential of this energy source, whilst not affecting the local marine environment. In March 2011 the UK Government gave approval for the company Tidal Energy Ltd's 'Deltastream' device which is being constructed at Ramsey Sound off the Pembrokeshire coast. In its initial 12 month test period it will produce 1.2 MW and, if tests prove to be successful, will then be scaled up from 2014 onwards. Similar projects are being considered for Swansea Bay and Liverpool Bay in North Wales. Tidal current turbines could also produce potentially large amounts of electricity with the Welsh coastline ideally placed for it. (44)

The Welsh Government has great hopes for the deployment of tidal and wave devices off the Welsh coast, claiming it could produce 4GW of clean, predictable and reliable energy by 2025 (44) The UK Government has also set a target of 4% of UK electricity coming from such sources (45); though independent studies have suggested it could, with sufficient investment produce as much as 20% of the UK's electricity. (45)

The NFLA believe tidal and wave energy needs greater policy certainty from both the UK and Welsh Governments. Following the decision not to go ahead with the Severn Tidal Barrage, the NFLA urgently encourages the increased development of more environmentally sensitive tidal and wave projects which could take advantage of Wales's coastal geography and tidal flows.

9. **Other low carbon energy**

There were few mentions in the UK Government's Overarching National Policy Statement for Energy of contributions from other types of renewable or low carbon energy.

Of the 26GW of new capacity required which has been left for industry to determine, 8GW of new non-renewable capacity is already under construction, so that leaves a further 18GW of new capacity for which the type of generating plant is still to be determined. The UK Government says it wants new nuclear power to contribute as much as possible to meeting this need for new non-renewable capacity. (46) But the Appraisal of Sustainability (AoS) for the National Policy Statement on Nuclear Power (47) only looks at a scenario in which new reactors are replaced by gas-fired generating stations. It

does not evaluate, for example, an alternative strategy based on a high level of Government support for decentralised energy and combined heat and power.

The UK's current centralised system of electricity generation is highly inefficient with two thirds of the energy generated wasted before it even reaches the consumer. It relies on a small number of huge power stations which generate electricity miles away from the point of consumption, and which throw away two thirds of the energy in the form of hot water. This is hugely inefficient. A more decentralised system could use proven technologies, such as Combined Heat and Power (CHP), to produce energy far more efficiently by capturing the heat usually lost in electricity generation, and piping it to nearby industry or houses via a district heating scheme. CHP schemes can achieve an efficiency of around 85% for the combined production of electricity and heat.

The NFLA notes a study by Pöyry Energy Consulting, for example, looking at the potential for industrial Combined Heat and Power, and found that across the UK it could generate as much electricity as 10 nuclear power stations (16GW of new electricity generating capacity) and halve gas imports using a combination of new and extended CHP plants. One of the plants outlined in this scheme is in Pembrokeshire. (48)

In Germany district heating produced by renewable or low-carbon energy sources will eventually play a significant role. In the interim period new highly efficient and flexible gas power plants will probably be built as back-up power. (49)

In Wales the first CHP District Heating Schemes was built in Llanwddyn in 2006 in partnership with Powys County Council. (50) In the NFLA's view, this is an area of energy policy that needs stronger support from the Welsh Government in full co-operation with Welsh Councils. In this vein, the NFLA is particularly supportive of the 'Project Green' initiative. This is an innovative coalition of five Welsh Councils - Cardiff, Vale of Glamorgan, Caerphilly and Monmouthshire - which is seeking to build a CHP plant from waste left over after recycling at municipal landfill sites. The final contract for this major facility is likely to be signed off later in 2011 (51).

10. Local Economic Development

There is a huge potential for local economic development through the use of sustainable energy. Energy efficiency installation, advice, local small-scale generation and renewables are all labour intensive businesses rooted in the areas they serve. (52)

Although the UK Government says it would like to see decentralised and community energy systems such as micro-generation making a contribution to targets, it says it does not believe decentralised and community energy systems are likely to lead to significant replacement of large scale infrastructure. (53) Others disagree. In the NFLA's view, a groundswell of actions by individual communities led by local authorities can inspire others to follow suit and achieve much higher penetration levels for small-scale renewables and micro-generation than currently envisaged.

The NFLA welcomes the Welsh Government's encouragement of decentralised and community energy systems through the Wales Strategic Energy Investment Programme - a £350 million investment into the energy performance of Welsh homes - and its support of an initial £15 million EU funding of 22 community energy projects across Wales in co-operation with Welsh Councils. The prominent support of a roll-out of an extensive smart-metre installation programme is also very much welcomed. (54)

The Chief Executive of National Grid, Steve Holliday, says that 15% of the country's electricity production could come from so called "embedded generation" in homes and offices by 2020 as micro-generation becomes increasingly viable after the £9 billion rollout of "smart meters" for every home in Britain. (55) Currently the UK Government is expecting only 2% of electricity to be supplied by small-scale renewable by 2020, (56)

and it has excluded solar energy from its Renewable Energy Roadmap. (57) (The Welsh target is for 1 GW out of a total national renewable energy target of 22.5 GW by 2020/25). Yet research by the Energy Saving Trust shows that micro-generation could provide around 30–40% by 2050, (58) so in the NFA's view; it ought to be expected to provide a much larger contribution by 2020. In Europe the European Photovoltaic Industry Association expects solar energy to be providing 12% of all electricity by 2020. (59) The difference between this 12% and the Government's 2% would be enough to obviate the need to build new reactors.

While the costs of new nuclear reactors are rising, those of solar photovoltaics are falling rapidly. (60) One report says costs are falling so fast that by 2013 solar panels will be half of what they cost in 2009. (61) The technology is advancing too. Soon it could be possible to print solar panels onto paper (62) or even paint them onto walls. (63) This technology could be appearing on computer keyboards to power computers when on stand-by by Christmas this year. Ernst & Young's recent report on the Outlook for the UK solar PV industry points to costs for solar electricity falling so that by 2020 the technology will be economic in the UK without any subsidy. (64)

It will happen well before that in Germany as a direct consequence of the far-sighted decisions the German Government took a number of years ago. Germany plans to generate 50% of its day-time electricity from solar by 2020 – with installed capacity of 52 GW. Despite the fact that solar PV has the potential to meet more than 30% of the UK's day-time electricity by 2040, the UK Government target for 2020 is just 2.7 GW – not much more than the 2 GW that Germany installed in one month in June 2010. (65)

It is still not too late for Wales and the wider UK. There is a growing realisation that solar energy could be the next big thing after the internet. (66) Lots of local authorities and social housing providers are beginning to make the connections between energy-efficiency and micro-generation, tackling fuel poverty and reducing carbon emissions. With feed-in tariffs of up to 43.3p/kWh (plus 3.1p/kWh for each unit of electricity exported to the grid), it is hardly surprising that each week brings news of new projects and plans by a number of local authorities to generate their own electricity. (67)

11. Some examples of Welsh Local Authorities leading the local energy revolution

Here are just a few examples of the growing local energy revolution led by Welsh Councils, which we hope the Welsh Government can foster and encourage further:

- a) ***Gwynedd County Council*** approved a detailed Carbon Reduction Management Plan in association with the Carbon Trust and it was launched in 2011. It involves the Council reducing its carbon emissions by 60% by 2021, with the first step a 30% reduction by 2014/15. This involves an investment of £7 million on carbon management projects to create annual savings of £900,000. The Council is also committed to provide leadership in the county with local businesses, schools and householders. (68)
- b) ***Cardiff City Council*** agreed in 2010 a 'Carbon Lite Cardiff Action Plan' in partnership with major employers and organisations in the city. In parallel it has signed up to the EU Covenant of Mayors to deliver a 20% reduction in carbon emissions by 2020. Within this policy area an Affordable Warmth Strategy for Cardiff has seen a 14.45% reduction in energy use and 12.51% reduction in carbon dioxide emissions from Cardiff's housing stock between 2006 and 2010 (based on 1997 levels). The city was announced as Wales first Sustainable Travel City by the Welsh Government in 2009. 81 renewable energy systems have been installed in the Cardiff Partnering Scheme housing stock including solar hot water panels, photovoltaic panels, ground source heat pumps and grey water recycling units. (69)
- c) ***Caerphilly County Borough Council*** has an innovative Local Authority Energy Financing Scheme as part of its own Carbon Reduction Plan. This has invested over £663k since 2004 and resulted in £837k being saved on energy bills across the

authority. 160 individual projects have been developed in this scheme, including 107 projects at Caerphilly schools. Caerphilly is also working with renewable energy companies to develop on-shore wind programmes, which are being developed with the aim of community consent. (70)

- d) ***The Head of the Valley's Low Carbon Zone in South Wales*** is a joint Welsh Government / South Wales Councils partnership to rapidly improve energy efficiency and promote renewable energy and microgeneration in deprived former coal-mining areas of the valley communities of South Wales. A key aim of the programme is to tackle fuel poverty and stimulate local industry with the creation of thousands of new 'green' jobs. (71)
- e) ***Bridgend County Borough Council*** has just received the highest level possible in the 'Green Dragon' environmental standard for its efforts to reduce the amount of energy the authority uses. In its February 2011 Renewable Energy Assessment it also outlines the amount of renewable energy projects in its area, and notes this is considerably higher than the Welsh or the UK average. (72)
- f) ***Pembrokeshire County Council*** has been particularly effective in developing a whole raft of renewable energy projects as a part of the Pembrokeshire Local Action network for Enterprise and Development (PLANED). A large number of sustainable communities have been developed and a Community Energy Network has been established across the county. The Council is a leader in bio-energy with biomass being installed in a large number of schools and at the Pembrokeshire Science and Technology Park. Hydro-electric projects are being considered to the local rivers in the county and tidal energy projects are being developed on the coast at Ramsey Sound as noted in section 8 above. (73)

12. Conclusions

- The UK Government and the Welsh Government have twin objectives of reducing greenhouse gas emissions by 80% by 2050 and eliminating fuel poverty by 2016. But the UK Government's proposed electricity market reforms focus almost exclusively on facilitating the construction of new low carbon electricity supply, which is likely to worsen fuel poverty, rather than demand management schemes which place a greater emphasis on capital investment in the energy efficiency of our housing stock. Such measures would tackle fuel poverty and reduce greenhouse gas emissions at the same time. The NFLA believe the Welsh Government must concentrate more of its policy on such demand management measures.
- It would very much benefit the Welsh Government to have the same level of devolved control over its energy policy as is given to Scotland. It is unable to completely develop its wide ambitions and impressive targets to develop a low carbon economy in the same manner that is occurring in Scotland. The NFLA encourages the Welsh Government to continue to lobby for increased devolved powers on energy policy, which has widespread cross-party support in Wales for it.
- The UK Government says there is a need for 59GW of new generating capacity by 2025, of which 33GW needs to be renewable. This leaves industry to decide what type of generating capacity should supply the remaining 26GW, but the UK Government says as much as possible of this should be nuclear. For Wales this would mean the development of a new nuclear reactor at Wylfa over which its devolved Government has no direct decision-making role. The NFLA is opposed to new nuclear build being part of Wales's future energy mix.
- If instead of planning for a doubling or tripling of electricity demand by 2050 the UK Government was planning for a reduction of 25%, as is the case in Germany, this could remove the need for new nuclear reactors in England and Wales.
- The Welsh Government has developed ambitious energy plans for significant increases in a variety of renewable energy technologies, microgeneration and energy

efficiency. There have been some excellent successes, some of which have been outlined in this report. However, in some areas of energy policy the reality does not always mirror the aspiration and the NFLA encourages a more concentrated and determined political will from the new Welsh Government to achieve its high targets. Potential policy drift, particularly in the areas of onshore wind and tidal energy, needs to be addressed as a matter of real urgency.

- Welsh Councils and Welsh Regional Bodies need an industrial strategy to make sure they make the most out of the rapid growth in the offshore wind industry and other forms of renewable energy.
- Wave, tidal and hydro-electric energy could provide up to 20% of the UK's electricity consumption with a practically extractable resource of 36GW, with over 2GW by 2020, and Wales could provide a significant part of this new and exciting form of energy.
- Industrial Combined Heat and Power (CHP) has the potential to generate as much electricity as 10 nuclear power stations (16GW of new electricity generating capacity) and halve gas imports using a combination of new and extended CHP plants. The Welsh Government and Welsh Councils should be strongly encouraged to support such developments, which are increasing popular in England and Scotland.
- According to National Grid, 15% of the UK's electricity production could come from "micro-generation" in homes and offices by 2020.
- The European Photovoltaic Industry Association expects solar energy to be providing 12% of Europe's electricity by 2020. The difference between this 12% and the 2% the Government expects to be provided by all micro-generation would be enough to obviate the need to build new nuclear reactors in England and Wales.
- The UK's target for solar PV in 2020 is only a little more than was installed in Germany during the month of June 2010. The Welsh Government and Welsh Councils should seek to develop this form of renewable energy and take advantage of feed-in tariffs before they are significantly reduced by the UK Government.
- A number of Welsh local authorities are leading the way in energy efficiency and micro-generation programmes. From fuel poverty busting solar panel installations on council housing to energy efficient street lighting schemes, to wood fuel biomass boiler installations in schools, councils are demonstrating how sustainable energy schemes can be used to tackle climate change and fuel poverty at the same time as raising much needed revenue. This needs to be encouraged by the Welsh Government particularly at a time when all Welsh Councils are enduring a programme of serious and painful financial economies.
- The Welsh Government and Welsh local authorities can learn from the examples provided in similar NFLA reports produced on English, Scottish and Irish energy policy of best practice in developing dynamic renewable energy, microgeneration and energy efficiency programmes. A short list of English projects is attached as Appendix 1 and these three reports can be found on the NFLA website - <http://www.nuclearpolicy.info>

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Some examples of English Local Authorities promoting innovative energy policies

- a) Manchester City Council has teamed up with Northwards Housing and contractors Wates Living Space to install solar panels for elderly residents in north Manchester on the side of their housing block. Tenants moving into the 91 flats in the newly refurbished block will use renewable power generated by the panels for their lighting and electrical use in the block's communal areas. The block will be connected to an existing district heating scheme which already serves the neighbouring tower blocks. The solar panels, which are visible on the outside of the block, will contribute towards Manchester reaching its target of a 41% reduction in carbon emissions by 2020, as set out in the city's climate change action plan, entitled 'Manchester: A Certain Future'. (1)
- b) Birmingham City Council has announced that the City has exceeded its target for cuts in carbon emissions for the year 2010/11. The figures submitted by 33 organisations from across the public, private and voluntary sectors, and verified by the Energy Savings Trust, show that Birmingham is firmly on schedule to meet its commitment to achieve a 60% reduction in emissions by 2026, when compared to 1990 benchmark levels. (2) Examples of projects that have helped contribute to Birmingham's success include: installation of energy efficient lighting by Cadbury UK, the National Exhibition Centre Group, Birmingham Children's Hospital, and the offices and park and ride sites of Centro, the public transport operator. Birmingham's Highways Service has commenced a large Street Lighting scheme which includes switching from sodium to LED lamps. Bournville Village Trust has installed solar thermal panels at 67 of their properties, and the Children's Hospital has installed a Combined Heat and Power Plant. (3)
- c) Birmingham City Council also has plans to install solar panels on up to 10,000 council-owned homes – jointly funded by the Council energy suppliers and commercial banks. This follows two successful pilot schemes conducted in the City. Under the scheme consumers will pay a levy on their energy bills to repay the loans but should still be paying lower bills after the retrofit. A second phase will involve using the proceeds from the first 10,000 retrofits for a refinancing of the scheme that will deliver funding of £2bn, enough to refurbish 200,000 homes. (4)
- (4) Leeds City Council have teamed up with contractors to facilitate 10,000 major energy efficiency measures and referred 3,000 clients for free assistance. This has reduced carbon emissions by 1 tonne per dwelling supported. A whole raft of similar measures can be found in its detailed 'Climate Change Action Plan'. (5)
- (5) Oxford City Council has installed cavity wall and loft insulation to nearly all of its 8,000 Council properties, and will complete all of them shortly. It has also installed a 22kWp solar Photovoltaic roof tile installation at one of its sheltered housing blocks estimated to generate 17,000kWh of electricity per year. Oxford City Council has just become the first UK local authority to be awarded the new BSI Kitemark for Energy Reduction Verification (ERV). This independent verification scheme builds on an organisation's good energy and carbon management practices and independently verifies the output of that good practice. (6)
- f) Rotherham Metropolitan Borough Council is developing the 'Dearne Valley Eco-Vision' as a pioneer project in the Sheffield City Region. This is an exciting and ambitious multi-partner project which aims to enable the economic, social and environmental development of a low carbon community in the Dearne Valley. It will firstly provide foundation education, then develop community infra-structure and finally improve the natural environment of the Dearne Valley and marshal its natural assets for economic and environmental benefit. (7)

- g) Torbay Council is hoping to generate money by harvesting solar energy. The plan is to install solar panels on public buildings throughout the town to help generate more than £4 million over the next 25 years. The project would see the authority invest up to £1.8 million to install photovoltaic and solar panels on all public buildings and schools. (8)
- h) The biggest roof-mounted, solar power scheme in the country is being installed as part of Peterborough City Council's wider scheme which will see panels installed on the roofs of both the Town Hall and the Regional Pool. The full proposed scheme of 1.5 megawatts will cost about £5.7 million to set up and has been funded by council borrowing, which will be paid back over 25 years. Energy generated from the panels will be sold to power local homes and businesses, and this is expected to result in about £300,000 profit a year after the set-up cost has been repaid. This will allow the council to reduce its own energy costs and provides the opportunity to set up a limited company to trade energy to domestic and business users. (9)
- i) Hampshire County Council is considering installing Solar Photovoltaic panels on up to 31,000m² of the County Council's roof space (non-school buildings). This is the equivalent to four UK Premiership football pitches. (10)
- j) Eastbourne Borough Council will install solar panels across the town. The council has allocated up to £13 million in capital funding for the installation of solar panels on between 700 to 1,500 council owned houses and non-domestic buildings, generating free electricity for those tenants living in them. The council will provide the investment to fund solar installations and retains all of the feed-in tariff income that follows. (11)
- k) Dozens of public buildings in Brighton and Hove will have solar panels on the roof under plans approved by the Council. The £2.6 million scheme aims to repay the borrowing costs by earning money from the national grid feed-in tariff. In a good year, sunny weather could reap revenues of up to £160,000 for the council. Even a bad year could leave the council £40,000 better off. A school, a swimming pool and a car park are among the sites on a first list of 40 properties to be solarised. Council houses and blocks of flats could also be used if the scheme is extended. (12)
- l) Shropshire County Council plans to invest £5.2 million installing 400 solar panels on council buildings in Shropshire in an effort to raise £700,000 a year. (13)
- m) Staffordshire County Council is planning to power itself with green energy, including greater use of solar panels, solar thermal energy, micro-hydro, and biomass-based power generation and heating. The Council has established Staffordshire Wood Fuels to supply wood chippings from sustainable forestry for use as a biomass energy source. (14)
- n) Over the next 25 years, Calderdale Council could save £3.5 million by generating solar power. To start the ball rolling, the cabinet has agreed to look at installing photovoltaic panels on as many as 100 public buildings. (15)
- o) Stoke-on-Trent City Council is having almost 200 solar panels installed on the roof of the city's civic offices. The installation, which is costing £134,500, is being funded through the council's existing climate change budget. The panels have an anticipated lifespan of 25 years, and could pay for themselves in around 14 years at current electricity prices. (16)
- p) Hull City Council is one of 14 English Councils who have developed 'Warm Zone' partnerships. In the last three years, 35,000 homes have been visited and many of these have benefited from free or discounted central heating systems, cavity wall and loft insulation, low energy light bulbs and fridge freezers. (17)

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Shale Gas and Annex 1 Energy Policy in the Context of Cumulative Emissions Budgets

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Overview

We have argued in our recent report (Broderick et al 2011) that in an energy-hungry world and in the absence of a stringent global emissions cap, large-scale extraction and combustion of shale gas cannot be reconciled with the climate change commitments enshrined in the Copenhagen Accord (2009). This conclusion is principally due to the very short time frames remaining in which to take action to reduce emissions to levels, described in the text of the Accord as, “consistent with the science”, and which would “hold the increase in global temperature below 2 degrees Celsius”. Given the Accord also stipulates mitigation efforts need to be on the “basis of equity”, the constraints of the Accord are particularly germane to industrialised (Annex 1) nations.

Cumulative Emissions Budgets

Our argument is based on a framework of cumulative emissions budgeting that provides a scientifically credible way of approaching climate policy questions. Carbon dioxide, the most significant anthropogenic GHG, is considered to be a 'stock pollutant' and atmospheric science indicates that the cumulative quantity of emissions released over time is the best indicator of the final extent of global temperature change (Allen et al, 2009).

Cumulative emissions budgeting starts by identifying an appropriate warming limit or goal. An increase in global mean surface temperature of 2 degrees above pre-industrial times has frequently been taken as the distinction between 'dangerous' and 'acceptable' climate change. However, given the uneven distribution of climate change effects geographically, temporally, amongst and within societies, this limit is clearly contestable. At the Copenhagen COP-15 summit a number of developing countries, notably the Association of Small Island States (AOSIS), pressed for the long term limit of 1.5 degrees to be adopted.

Given a particular temperature target, the next step is to estimate the quantities of carbon dioxide that are likely to cause that particular increase. Climate models with different starting parameters suggest that 1 to 1.5 trillion tonnes of carbon dioxide emitted over the period 2000 to 2050 yields a 50% probability of exceeding 2 degrees (Meinshausen et al, 2009). Work by Anderson and Bows (2011) at Tyndall Manchester has drawn on a range of such estimates. Latest carbon dioxide emissions data describes a rapid increase since 2000 and by deducting emissions to the present day from the total budget, the remaining 'safe atmospheric space' can be deduced. This can then be allocated between nations, industries or consumers and related to rates of change of energy systems.

Scenarios of future emissions constructed by Anderson and Bows (2011) indicate that carbon dioxide emissions from fossil fuel combustion must tend to zero before 2050, even if global emissions peak in 2020. This is because greenhouse gas emissions as a whole may not be able to fall entirely to zero; food production involves the release of substantial quantities of GHGs through fertilisers and land conversion that are unlikely to be entirely eliminated. If one takes the position that industrialised economies like the UK must take the lead, given they have both the

greatest resources available and the most historical responsibility, then they would have to decarbonise their economies much sooner.

Continued delays in agreeing substantial emissions reductions have left us in a precarious situation. Although the UK has adopted national cumulative emissions budgeting as a principle, through the Climate Change Act (2008), the levels set in current budgets will likely give rise to warming greater than 2 degrees. ‘Orthodox’ climate policy, with emissions reductions of 1-3% per annum, implies a reasonable chance of reaching 4 degrees warming with substantial anticipated consequences. Effective climate change mitigation is a matter of urgent and extensive decarbonisation of industrialized economies by 2030 or sooner (Anderson and Bows, 2011).

Shale Gas Resources in Relation to Cumulative Budgets

While much discussion has focused on emissions associated with the extraction of shale gas, Broderick et al (2011) examined the potential impact that the use of shale gas may have in terms of combustion emissions at both UK and global levels. In order to explore this issue two sets of scenarios have been developed; it should be noted that these scenarios are not a *prediction* of what might happen, rather they explore the outcomes if particular amounts of shale gas were to be exploited. Full details of the assumptions, production trajectories and data sources are given in the report.

Assuming that all gas recovered is used domestically, it is then possible to explore the potential implication of shale gas exploitation on UK emissions budgets (Table 1 below). Emissions are calculated as CO₂ from combustion only and do not include any estimate of other associated sources such as fugitive methane emissions from well completions, refracturing, processing or distribution. This is a conservative assumption on the basis of a well regulated industry with full deployment of best practice.

Table 1 Outcomes of UK scenarios				
	Cumulative amount of shale gas produced (bcm)		Cumulative CO ₂ emissions from shale gas, (MtCO ₂)	% of UK Domestic Action budget ¹
	2030	2050	2010-2050	2010-2050
DECC 150bcm	21	132	264	1.9%
EIA 566bcm	79	499	1,015	7.3%
Cuadrilla 1,132bcm	157	997	2,029	14.5%

In these scenarios the majority of shale gas is extracted before 2050 (88%). Over the 2010-2050 time period, using this gas would result in between 264–2029 MtCO₂ being emitted by 2050, which equates to between 1.9% and 14.5% of the total UK greenhouse gas budget.

Assuming that the UK carbon budgets are adhered to then additional emissions associated with shale gas would need to be offset by emissions reductions elsewhere. This could be through shale gas substituting for coal, which, given the lower emissions associated with gas fired power

¹ The 2010-2050 budget was calculated based on figures from the Committee on Climate Change (2010), p.135.

generation would enable more electricity to be produced for equivalent emissions. It could be the case that shale gas substituted for imported gas resulting in no additional UK gas use and hence, no additional emissions, or emissions benefits, associated with that use². However, in a market led system it is also possible that a drop in the price of gas, potentially triggered by increasing UK and global reserves of shale gas, could leave gas-fired power stations substituting for renewable generation.

If shale gas resulted in no additional emissions in the UK, (e.g. it substituted for imported gas, or was combusted within EU ETS regulated facilities rather than domestic heating), in an energy-hungry world any gas not imported to the UK will likely be available at a lower cost to be used elsewhere, with an associated increase in global emissions. World demand for fossil fuels remains high and is projected to increase further in the absence of binding international agreements to limit greenhouse gas emissions (IEA, 2009; EIA, 2011). Based on these projections any new sources of fossil fuel, even if relatively low carbon per unit of useful energy, are likely to be combusted and consequently add to the global emissions burden. See, for instance, EIA projections for US shale gas and coal consumption to 2035, Figure 2.11.

As with the UK, the potential shale gas that could be exploited globally is highly uncertain. The most recent estimate of technically recoverable resource has been made by the US EIA at 187,535bcm (EIA, 2011b) which is a similar order of magnitude to estimates presented in the IEA Golden Age of Gas publication (2011), 204,000bcm. In calculating this figure, the EIA generally used a recovery rate of between 20-30%. In order to provide three global scenarios here, it is assumed that the EIA figure is based on a recovery rate of 20%, with two additional scenarios of 30% and 10% recovery rates also considered³.

For each of the scenarios it is assumed that 50% of the total recoverable resource is extracted by 2050, with 100% of the recoverable resource extracted by 2100. In the absence of any substantive and effective policies to significantly reduce global emissions, and with continuing growth in demand for energy, it is entirely possible that any resources would be exploited on a much shorter timescale, hence this is likely to be a conservative estimate of emissions. Again, emissions are calculated as CO₂ from combustion only. This is a conservative assumption on the basis of a well regulated extraction industry with full deployment of best practice internationally.

Given continuing growth in global energy demand it is likely that any additional fossil fuel resources that are exploited will be used in addition to existing resources. Without significant pressure to reduce GHG emissions, it is difficult to envisage that gas would substitute for coal rather than being used alongside it. Looking at these three global extraction scenarios, this additional fossil fuel use would result in additional cumulative emissions over the time period 2010-2050 of 95-286 GtCO₂, equating to an additional atmospheric concentration of CO₂ of 5-16ppmv. The CO₂ emissions from burning shale gas may potentially occupy over a quarter, of a budget associated with a better than 50:50 chance of avoiding 2°C warming (Anderson and Bows 2011). Clearly this only represents half the resource being exploited and these figures would double for the period up to 2100 if all the recoverable resource were to be exploited.

² Under the Cuadrilla scenario in the peak year of production over half of current UK gas demand could be supplied by shale gas.

³ It should be stressed that Russia and Central Asia, Middle East, South East Asia, and Central Africa are not considered in the EIA report primarily because "...there was either significant quantities of conventional natural gas reserves noted to be in place (i.e., Russia and the Middle East), or because of a general lack of information to carry out even an initial assessment." (EIA, 2011b, p.6). Reserve estimates and their implications for GHG emissions may therefore be under estimated.

Table 2: Outcomes of the global scenarios

	Resource recovery rate	Amount of shale gas exploited by 2050 (bcm)	Cumulative emissions associated with shale gas (GtCO ₂) (2010-2050)	% of global emissions budget with >50% chance of ≤2°C warming ⁴	Additional ppmv CO ₂ associated with shale gas emissions (2010-2050) ⁵
EIA global estimate low recovery	10%	46,884	95	9.5%	5
EIA global estimate	20%	93,768	190	19.0%	11
EIA global estimate high recovery	30%	140,651	286	28.6%	16

The Role of Shale Gas in the UK Energy System

There is little to suggest that shale gas will play a key role as a transition fuel in the UK's move to a low carbon economy. Whilst much attention is taken by the relative emissions intensity electricity generated from shale gas, conventional natural gas and coal, it is the *absolute* quantity of emissions within a time period that is important, i.e. the size and shape of the cumulative emissions budget. The UK Government's Committee on Climate Change (CCC) has advised "that any path to an 80% reduction by 2050 requires that electricity generation is almost entirely decarbonised by 2030". Decarbonisation of the electrical supply is an effective way of rapidly reducing emissions; renewable supply technologies with very low associated emissions are available now that are compatible with existing infrastructure. There is also the possibility of increasing the efficiency of transport and heating through the deployment of new electric vehicle and heat pump technologies respectively. The timescale outlined by the CCC is that transition to a very low carbon grid, with an intensity of the order of 50g CO₂/kWh, would take place by 2030, on the way to a zero carbon grid soon after⁶.

In principle, it may be argued that shale gas could be burned safely in the short term, however in practice this is not the case. Given that shale gas is yet to be exploited commercially outside the US, limitations on the availability of equipment and expertise mean that it is very unlikely it could provide other than a marginal contribution to UK supply by 2020. Gas fired power stations produce emissions of approximately 440gCO₂/kWh of electricity and typically have a lifespan of over 25 years. Therefore, unless allied with carbon capture and storage (CCS) technologies, as yet unproven at a large scale, all new powerstations intended to burn shale gas would need to cease

⁴ A series of emissions pathways with a cumulative twenty-first century CO₂ budget of 1,321GtCO₂ have previously been assessed using the PRIMAP tool (Meinshausen et al.) and are estimated to have an approximately 36 per cent probability of exceeding 2°C (Anderson and Bows 2011). If emissions to 2009 are subtracted, including those from deforestation aviation and shipping, then this leaves approximately 1,000Gt of 'safe' emissions space for the remainder of the century.

⁵ Assumes an airborne fraction of emissions of 45%, see for example Le Quere et al (2009), and that 1ppmv CO₂ = 2.13Gt carbon.

⁶ It is worth noting that the CCC acknowledges a low probability of keeping below 2C of warming on the basis of their budgets.

generating within five to fifteen years of construction, and at the latest be decommissioned by 2030. Green Alliance scenarios (2011) indicate that if there is a second “dash for gas”, emissions from the grid could still be 302gCO₂/kWh in 2030 necessitating 95% deployment of CCS to meet our fourth period emissions budgets (2023-2027). Even CCS is problematic when such low carbon electricity is required. At commercial scale CCS will not be 100% effective at capturing carbon dioxide and will always add costs to electricity production by reducing the efficiency of the power station and requiring additional energy input in transportation and injection of the captured carbon dioxide. CCS therefore increases the net quantity of upstream emissions of gas or coal production and transport; reduced efficiency means that greater quantities of fuel must be used for equal electricity output, increasing emissions over and above those from the fuel combustion. For unconventional gas production these have the potential to be significant if mitigation is not in place; Broderick et al (2011) estimate up to an additional 15gCO₂e/MJ.

Therefore, if investments in shale gas were to be sanctioned and new gas powerstations constructed in the near future, there would be substantial stranded assets⁷ or conversely incentives for government to surrender its 2°C obligations and remain “locked in” to a fossil fuel energy supply. The House of Commons Energy and Climate Change Committee (2011) concluded “that if a significant amount of shale gas enters the UK market (whether from domestic sources, imported from another European country, or from the global market via LNG) it will probably discourage investment in more-expensive—but lower carbon—renewables.” We estimate that, considering the capital costs only, 8GW of gas powerstation capacity with CCS, plus shale gas well infrastructure, could displace 21GW of onshore wind capacity, assuming a Treasury Green Book discount rate of 3.5% for the gas well infrastructure. The same investment could also provide nearly 12GW of capacity offshore. Either would be expected to generate approximately equivalent quantities of electricity as the gas option, even given the lower load factor of wind turbines, and be available to produce electricity across their full operating life.

With regards to using shale gas for heating purposes, the CCC (2008) note that as the grid decarbonises it is “more carbon efficient to provide hot water and space heating with electricity than with gas burned in a condensing boiler”. Non-energy uses accounted for less than 1% of total UK demand for natural gas in 2010 (DUKES 2010). It is therefore reasonable to assume that new gas production in the UK will be combusted and, in the absence of carbon capture and storage, released to the atmosphere.

Conclusion

Given the cumulative emissions constraints outlined shale gas cannot contribute meaningfully to any UK energy future beyond 2030; whether in terms of electricity or heating. In the short term it is likely only to displace investment in low carbon electricity supply and energy demand reduction measures, contributing to the problem of “lock-in” to fossil fuel infrastructure. We conclude that exploitation of UK shale gas reserves is incompatible with avoiding dangerous climate change greater than 2°C, and the UK’s commitments under the Copenhagen Accord.

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Environment and Sustainability Committee

E&S(4)-13-12 paper 4

Inquiry into energy policy and planning in Wales - Evidence from Environment Agency Wales on Unconventional Gas (including Shale Gas and Coal Bed Methane)

1.0 Summary

Unconventional Gas

- 1.1 UK companies are exploring the potential for extracting unconventional gas from shale rock, coal bed or coal seams. This can involve using the following processes.
- Shale gas extraction
 - Coal bed methane extraction
 - Underground coal gasification and extraction
- 1.2 “Unconventional” refers to the source for gas extraction: shale or coal bed. These have not traditionally been exploited for gas production.

Our Role

- 1.3 Our key role in onshore drilling is to protect the environment specifically aquifers and rivers from pollution. We make sure that any work to explore or extract gas does not pose a threat to local rivers, groundwater or public water supplies.
- 1.4 We are a statutory consultee in the planning process and provide advice to Local Planning Authorities on individual unconventional gas sites when they receive a planning application.
- 1.5 If planning permission is granted for exploration or exploitation, a company would need to discuss with us whether they need an environmental permit and apply if appropriate. This is covered in more detail later.
- 1.6 We believe the current regulatory framework gives us the tools we need to protect the environment. We are continuing to keep this under review.

The Role of Others

- 1.7 If a company wants to carry out any unconventional gas activities in England or Wales it must first obtain a Petroleum Exploration and Development Licence from Department for Energy and Climate Change (DECC). This licence gives an

operator exclusive rights to prospect for all petroleum types (conventional and unconventional oil and gas) in a licensed area.

- 1.8 To extract coal bed methane or undertake underground coal gasification, extraction consent is also required from the Coal Authority. The Coal Authority is part of DECC.
- 1.9 A company needs land use planning approval from the relevant Local Planning Authority.
- 1.10 The Health and Safety Executive (HSE) regulate the safety aspects of drilling work. The HSE are responsible for ensuring the appropriate design and construction of a well casing for any unconventional gas borehole. The HSE also contribute to mitigating potential environmental risks, for example regulating fugitive methane emissions to protect human health.

2.0 Shale Gas & Coal Bed Methane

- 2.1 Shale gas involves the extraction of natural gas held in fractures, pore spaces and absorbed on to the organic material of shale.
- 2.2 Coal bed methane extraction works by releasing pressure in coal seams to allow natural gas adsorbed to the surface of the coal to be captured.
- 2.3 Both require the drilling of boreholes, usually to considerable depth and in some cases horizontally.
- 2.4 Where there is insufficient natural permeability in the rock, this can be enhanced by hydraulic fracturing or “fracking”. This is where fluid (water, sand and other substances) are pumped into the well at pressure to create and increase fractures in the rock.
- 2.5 Fluid that returns to the surface is captured, treated and disposed of. Gas that flows to the surface is captured and used for electricity generation or is put into the mains supply.
- 2.6 The first fracking activity linked to shale rock occurred in April and May 2011 at the Preese Hall site in Lancashire. This activity is currently suspended. There is currently no permission to fracture shale rock at any other site in England and Wales.
- 2.7 There are proposals for shale gas exploration at a number of locations in England and Wales. Exploration does not involve “fracking”. As of 16 March 2012 no environmental permits have been issued for shale gas exploration in England and Wales.
- 2.9 The British Geological Survey are producing new estimates of shale gas resource for DECC using more recent data.

Our Role

Planning Process

- 2.10 We are a statutory consultee in the planning process. We undertake a desk top appraisal and provide environmental protection advice to Local Planning Authorities on individual shale gas sites when they receive a planning application for exploration, extraction or decommissioning.
- 2.11 The Local Planning Authority may impose conditions to meet our advice and concerns. For example, we may advise on conditions to protect habitats, prevent pollution of the water environment or to monitor drilling fluid on site.

Environmental Permitting

- 2.12 If a Local Planning Authority grants planning permission, a company would need to discuss with us whether they need an environmental permit and apply if appropriate.
- 2.13 An environmental permit is needed if fluids containing pollutants are injected in to rock formations that contain groundwater. The operators must disclose all chemicals that will be used. We can also require the disclosure of substances even if an environmental permit is not required. This information is available to the public.
- 2.14 We will only issue a permit if we believe that the activity does not pose an unacceptable risk to the environment. Where a permit is granted, officers will inspect the site to check that permit conditions are being met.

Protection of Water Resources and Water Quality

- 2.15 We must be notified when a company wishes to sink a borehole so that we can ensure that the borehole design affords proper protection of any groundwater present.
- 2.16 Works at the surface may require areas to store fuel, chemicals and waste water from drilling or hydraulic fracturing. Operators must follow our pollution prevention guidelines to prevent any leaks into the environment.

Abstraction Licences

- 2.17 We regulate water abstraction linked to any extraction process if the operator wanted to take water directly from a river or from

groundwater. We will not licence water abstractions that are unsustainable.

Disposal Permissions

- 2.18 An environmental permit will be required to dispose of any fluids in to the environment, to ground or to watercourse. An environmental permit is also required to dispose of fluids that contain naturally occurring radioactive material in excess of certain limits.

3.0 Underground Coal Gasification (UCG)

- 3.1 UCG involves the gasification of the coal in-situ by drilling boreholes into the seam, injecting water and oxygen mixtures down one pipe, igniting and partially combusting the coal and extracting the gasification products (known as syngas) through the other pipe.

Our Role

Planning Process

- 3.2 We are a statutory consultee in the planning process. We undertake a desk top appraisal and provide environmental protection advice to Local Planning Authorities on individual sites when they receive a planning application for exploration, extraction or decommissioning.
- 3.3 The Local Planning Authority may impose conditions to meet our advice and concerns. For example, we may advise on conditions to protect habitats, prevent pollution of the water environment or to monitor drilling fluid on site.

Environmental Permitting

- 3.4 Coal gasification is a listed activity in under the Environmental Permitting Regulations 2010. An activity will require a permit whether it is carried out onshore, offshore, above ground or underground. The Environmental Permitting Regulations apply out as far as the seaward boundary of the territorial sea (12 miles).
- 3.5 If proposals include generating more than 20 megawatts of electricity on site then it will also require an EU Emissions Trading permit issued by us.

Protection of Water Resources and Water Quality

- 3.6 We must be notified when a company wishes to sink a borehole so that we can ensure that its design affords proper protection of any groundwater present.
- 3.7 The operator must produce a site condition report to demonstrate that the land and groundwater have been protected during the lifetime of the operation.

Control of Major Accident Hazards

- 3.8 UCG operations that store large quantities of oxygen, carbon monoxide and hydrogen will be subject to the Control of Major Accident Hazards (COMAH) regulations. We are the joint regulator with the HSE.

4.0 What we are doing

- 4.1 Our view at present is that we have the necessary regulatory powers to manage the potential environmental risks of unconventional gas through the Environmental Permitting Regulations 2010 and the Water Resources Act 1991. As our experience of these activities increases we will further develop our technical guidance.
- 4.2 We are proposing to undertake an Environmental Risk Assessment for shale gas, similar to that produced for carbon capture and storage. This will be used to produce a set of recommendations showing where improvements to shale gas processes could be implemented. This will be completed in April 2013.
- 4.3 We have commissioned work to look at the sources and pathways of fugitive methane emissions from unconventional gas operations, and the possibilities for monitoring and control. This will help further inform the UK's approach.
- 4.4 Current unconventional gas operations in the UK are being carefully monitored by us, HSE and DECC. We are also in regular contact with other regulatory bodies to exchange information and ensure effective coordination.
- 4.5 We are undertaking a project to better understand how the environmental impacts of shale gas production are managed in other European countries and America.

Date: 16 March 2012

Environment and Sustainability Committee

E&S(4)-13-12 paper 6

The British Waterways Board (Transfer of Functions) Order 2012

Purpose

1. This paper draws the committee's attention to The British Waterways Board (Transfer of Functions) Order 2012 ('the Order'). The paper provides background information to the reasons for the Order and the approach to scrutiny suggested by the Business Committee.

Background

2. The British Waterways Board (Transfer of Functions) Order 2012 is to be made under the *Public Bodies Act 2011*. It is a type of Order that amends primary legislation that is within the legislative competence of the National Assembly for Wales ('the Assembly'). A key feature of the arrangements for these Orders, contained in the 2011 Act is that the consent of the Assembly is required before they can be made.
3. The Assembly's Standing Orders do not yet set out specific arrangements for the scrutiny of these Orders, so the Business Committee has agreed an interim procedure (attached at Annex 1).
4. Under the procedure, each Order is referred automatically to the Constitutional and Legislative Affairs Committee ('the CLA Committee') for consideration. The CLA Committee may, if it considers it necessary, invite other Committees to consider an Order and Committees may report to the Assembly. Following this, a motion seeking the Assembly's consent to the Order will be debated in Plenary. To allow Committees sufficient time to consider each Order, a period of 35 days has been given from the date an Order is laid (excluding recess periods) to report to the Assembly.
5. The British Waterways Board (Transfer of Functions) Order 2012 (attached at Annex 2) was laid by the Welsh Government on 1 March 2012. In accordance with the procedure outlined at Annex 1, the Welsh Government also laid a Legislative Consent Memorandum (attached at Annex 3) and an explanatory document prepared by Defra (attached at Annex 4).
6. On 3 March, the CLA Committee agreed to ask the Environment and Sustainability and the Enterprise and Business Committees to consider the Order from a policy perspective. The CLA Committee itself will consider and report on any legal issues of a technical nature or of wider legal principle.
7. The Welsh Government has scheduled a Plenary debate for 8 May 2012 to consider whether consent should be given to the Order. Committees have been asked to report by 25 April.
8. The Enterprise and Business Committee had an informal briefing on the Order on 22 March. It agreed that it was unclear about what it had been asked to scrutinise and does not intend to report.

9. The areas of competence that fall within the remit of the Environment and Sustainability Committee are more clearly identified (in paragraphs 13 and 14 of the Legislative Consent Memorandum) than the matters that the Enterprise and Business Committee were asked to consider.

Policy considerations for the Environment and Sustainability Committee

10. The Environment and Sustainability Committee has been asked to look at those policy areas that fall within its remit. It is not required to look at those areas that do not, for example matters such as tourism and the Welsh language.

11. The Research Service has provided a briefing paper on the policy background. This is attached at Annex 5.

Recommendation

12. Take no action as no substantive concerns have been raised in relation to policy areas falling within the remit of the Environment and Sustainability Committee.

Action

13. Members are invited to indicate:

- whether they agree with the recommendation at paragraph 11;
- or, whether they wish to pursue another option.

Procedure for Orders made under the Public Bodies Act 2011 as agreed by the Business Committee, 7 February 2011

1. The Government will lay draft Orders at the earliest possible point.
2. Along with the draft Order, the Government will lay any supporting material (such as Explanatory Memorandums, Regulatory Impact Assessments etc) prepared by UK Ministers and will at the same time table a motion seeking the Assembly's consent to the Order.
3. The Welsh Government will at the same time lay a Legislative Consent Memorandum addressing the issues set out in Standing Order 29.3 (i-iii).
4. Each Order will be referred automatically to Constitutional and Legislative Affairs Committee (CLA) Committee for consideration. CLA Committee may, if it considers it necessary, invite other Committees to consider an Order.
5. CLA, and any other Committee it asks to do so, may report to the Assembly following which the motion seeking the Assembly's consent to the Order will be debated in Plenary.
6. To allow CLA and other Committees sufficient time to consider each Order, the expectation is that they should be given 35 days from the date an Order is laid (excluding recess periods) to report to the Assembly. More time may be given at the Welsh Government's discretion or if requested by Committees.
7. The consent motion would not be considered in Plenary until 40 days after an Order is laid. Although direct comparisons may be somewhat misleading, this is broadly in line with the time provided to Committees of the Scottish and UK Parliaments to consider Orders of this type.

Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2012 No.

CANALS AND INLAND WATERWAYS

PUBLIC BODIES

TRANSPORT

**The British Waterways Board (Transfer of Functions) Order
2012**

Made - - - -

Coming into force in accordance with article 1

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The Secretary of State, in exercise of the powers conferred by sections 5(1), 6(1) to (3) and 35(2) of the Public Bodies Act 2011(a) (“the Act”), makes the following Order.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1) of the Act;
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The Treasury have consented to the making of this Order in so far as their consent is required by section 6(4) of the Act.

The Scottish Parliament has consented to the making of this Order in so far as its consent is required by section 9(1) of the Act.

The National Assembly for Wales has consented to the making of this Order in so far as its consent is required by section 9(6) of the Act.

Canal & River Trust has consented to the transfer of functions made by this Order in so far as its consent is required by section 21(1) of the Act.

The Secretary of State has carried out consultation in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(b) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(c).

A draft of this Order and an explanatory document containing the information required in section 11(2) of the Act have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3).

In accordance with section 11(4) of the Act, the draft of this Order has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the British Waterways Board (Transfer of Functions) Order 2012.

(2) This Order comes into force on the day after the day on which it is made.

(3) The amendments, repeals and revocations made by article 7 and Schedules 2 and 3 have the same extent as the provisions to which they relate.

(4) In this Order—

- (a) “the 1962 Act” means the Transport Act 1962(d);

(a) 2011 c. 24.

(b) 1998 c. 46.

(c) 2006 c. 32.

(d) 1962 c. 46.

- (b) “the 1968 Act” means the Transport Act 1968(a);
- (c) “the transfer date” means the day this Order comes into force.

Transfer of statutory functions

- 2.—(1) On the transfer date, the functions exercisable by the British Waterways Board—
- (a) under or by virtue of the enactments listed in Schedule 1 (enactments conferring functions transferred by article 2), and
 - (b) under or by virtue of any local Act(b),
- are transferred, so far as exercisable in relation to England and Wales, to Canal & River Trust(c).
- (2) Schedule 2 (which makes consequential provision to the 1962 Act and the 1968 Act) has effect.
- (3) Schedule 3 (which makes consequential provision to public general Acts, Acts of the Scottish Parliament and subordinate legislation) has effect.
- (4) Paragraphs (5) and (6) apply so far as is necessary for the purposes of, or in consequence of, paragraph (1).
- (5) Any reference in an enactment which, by virtue of section 32 of, or Schedule 2 or 6 to, the 1962 Act(d), is to be read as a reference to the British Waterways Board is to be read in relation to England and Wales as a reference to Canal & River Trust.
- (6) Subject to paragraph (5), any reference to (and any reference which is to be read as a reference to) the British Waterways Board—
- (a) in any subordinate legislation made under or by virtue of any Act listed in Schedule 1 (other than subordinate legislation made under or by virtue of any section of the 1962 Act or the 1968 Act listed as an exception in that Schedule), or
 - (b) in any local Act or any subordinate legislation made under or by virtue of any such Act,
- is to be read in relation to England and Wales as a reference to Canal & River Trust.

Transfer of functions of harbour authority, navigation authority and statutory undertaker

- 3.—(1) Where immediately before the transfer date—
- (a) the functions of the British Waterways Board include, by virtue of any enactment, any functions of a harbour authority, navigation authority or statutory undertaker, and
 - (b) those functions are not otherwise transferred by this Order,
- those functions become functions of Canal & River Trust in relation to England and Wales on that date.
- (2) But paragraph (1) does not apply in relation to functions of a statutory undertaker under Part 10 of the Local Government, Planning and Land Act 1980(e).

(a) 1968 c. 73.

(b) Local Acts with particular relevance to the British Waterways Board include the British Waterways Acts 1963 to 1995 (1963 c. xii, 1965 c. xxiii, 1966 c. xiii, 1971 c. xviii, 1974 c. xxiii, 1975 c. xxiii, 1983 c. ii, 1987 c. xxviii, 1988 c. xxv and 1995 c. i). A number of local Acts contain provision for the protection of the British Waterways Board.

(c) Canal & River Trust is a company limited by guarantee formed and registered under the Companies Act 2006 (c. 46), company number 07807276.

(d) References to the British Transport Commission in certain enactments specified in Part 1 and 3 of Schedule 2 to the Transport Act 1962 were substituted by references to the British Waterways Board. Those substituted references include references to any wholly-owned subsidiary of that Board by virtue of paragraph 7(1) of Schedule 16 to the Transport Act 1968. Paragraph 2 of Schedule 6 of the Transport Act 1962 makes additional provision for statutory provisions referring to the British Transport Commission to be read as references to the Board.

(e) 1980 c. 65. Paragraph 18 of Schedule 16 was amended by the Gas Act 1986 (c. 44), section 67(4) and Schedule 9, Part 1, the Electricity Act 1989 (c. 29), section 112(4) and Schedule 18, and the Water Act 1989 (c. 15), section 190 and Schedule 25, paragraph 61.

(3) In this article, “harbour authority”, “navigation authority” and “statutory undertaker” have, in relation to any function of the British Waterways Board exercisable by virtue of an enactment, the same meaning as in that enactment.

Supplementary provision

4.—(1) Nothing in this Order affects the validity of anything done (or having effect as if done) by or in relation to the British Waterways Board before the transfer date; and anything (including legal proceedings) which on that date is in the process of being done by or in relation to the British Waterways Board, so far as it relates to any of the transferred functions, may be continued by or in relation to Canal & River Trust.

(2) Anything done (or having effect as if done) by or in relation to the British Waterways Board, so far as it relates to any of the transferred functions, has effect, so far as is necessary for continuing its effect after the transfer date, as if done by or in relation to Canal & River Trust.

(3) In this article, “transferred functions” means the functions transferred by virtue of articles 2 and 3.

Transitional provisions

5.—(1) Schedule 4 (transitional provisions) has effect.

(2) Nothing in article 2 affects the application of section 44(a) of the 1968 Act (account by Minister of receipt and disposal of certain sums) so far as relating to—

- (a) the period commencing on 1st April 2011 and ending on 31st March 2012, and
- (b) the period commencing on 1st April 2012 and ending on the day before the transfer date.

Savings

6.—(1) Nothing in this Order affects the validity of the appointment of any person to the British Waterways Board made by the Scottish Ministers under section 1(2A)(b) of the 1962 Act as it had effect immediately before the transfer date.

(2) Nothing in this Order affects any order made under section 74 of, or Part 4 of Schedule 7 to, the 1962 Act and in force immediately before the transfer date.

Revocation

7. The Regulatory Reform (British Waterways Board) Order 2003(b) is revoked.

Date *Name*
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

We consent

Name
Name
Two of the Lords Commissioners of Her Majesty’s Treasury
Date

(a) Section 44 was amended by S.I. 1973/338, the Transport Act 1980 (c. 34), S.I. 1991/510 and S.S.I. 2002/263.
(b) S.I. 2003/1545.

Enactments conferring functions transferred by article 2

Public general Acts

Transport Act 1962(a), except sections 1, 10 to 14, 16 to 21A, 24, 25, 27(1) to (5) and (7) to (8C), 36, 73 to 75, 81, 89 (except so far as it relates to section 27(6)), Schedule 1 and Part 4 of Schedule 7.

Harbours Act 1964(b).

Transport Act 1968(c), except sections 41, 46, 48 to 52, 107, 109, 134, 135 and 137.

Salmon and Freshwater Fisheries Act 1975(d).

Ancient Monuments and Archaeological Areas Act 1979(e).

Highways Act 1980(f).

Transport Act 1981(g).

Agricultural Holdings Act 1986(h).

Pilotage Act 1987(i).

Town and Country Planning Act 1990(j).

Water Resources Act 1991(k).

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- (a) 1962 c. 46. Relevant amendments were made by the Harbours Act 1964; the Transport Act 1968 (c. 73); the Statute Law (Repeals) Act 1974 (c. 22); the Acquisition of Land Act 1981 (c. 67); the Transport Act 2000 (c. 38); the Railways Act 2005 (c. 14); S.I. 2000/3251 and 2003/1545. Section 72 ceased to have effect in relation to the British Waterways Board by virtue of section 137(8) of the Transport Act 1968. The Transport Act 1962 provided for the distribution of the functions and property of the British Transport Commission (the BTC) amongst four boards. Under section 31, the British Waterways Board (the Board) became the successor to the property, rights and liabilities comprised in the part of the BTC's undertaking constituted by their inland waterways (with an exception) and certain harbours. Functions of the BTC under a number of public and local Acts (including under the Coast Protection Act 1949 (c. 74) and several British Transport Commission Acts) were transferred to the Board under section 32(1) and Schedule 2. Functions of the BTC under statutory provisions so far as relating to an undertaking, or part of an undertaking, or property transferred to the Board by Part 2 of the Transport Act 1962 were transferred to the Board by section 32(3). Functions of the BTC under statutory provisions authorising the carrying out of works designed to be used in connection with an undertaking or part of an undertaking transferred to the Board, or the acquisition of land for the purpose of carrying out such works, were transferred to the Board by section 32(4). The functions transferred included functions of the BTC under or by virtue of the Transport Act 1947 (c. 49), S.R. & O 1947/2797, various British Transport Commission Acts and other legislation. Functions under certain statutory provisions authorising the BTC to appoint, nominate, or concur in or approve the appointment or nomination of, a member of certain bodies were transferred from the BTC to the Board by virtue of the British Transport Commission (Transfer of Functions) (Appointments and Nominations) Order 1963 (S.I. 1963/2023) (made under section 32(5)).
- (b) 1964 c. 40. Relevant amendments were made to sections 30 and 36 by the Transport Act 1968, Schedule 16. Section 42 was substituted by the Transport Act 1981 (c. 56), Schedule 6, paragraph 10 (and there are other amendments to that section that are not relevant to this Order). There are amendments to the definition of "the Boards" in section 57(1) that are not relevant to this Order.
- (c) 1968 c. 73.
- (d) 1975 c. 51.
- (e) 1979 c. 46.
- (f) 1980 c. 66.
- (g) 1981 c. 56.
- (h) 1986 c. 5.
- (i) 1987 c. 21.
- (j) 1990 c. 8.
- (k) 1991 c. 57.

Transport and Works Act 1992(a).

Welsh Language Act 1993(b).

Channel Tunnel Rail Link Act 1996(c).

Licensing Act 2003(d).

Planning and Compulsory Purchase Act 2004(e).

Gambling Act 2005(f).

Natural Environment and Rural Communities Act 2006(g).

Crossrail Act 2008(h).

Planning Act 2008(i).

Flood and Water Management Act 2010(j).

Subordinate legislation

The Utilities Contracts Regulations 2006(k).

The Community Drivers' Hours and Recording Equipment Regulations 2007(l).

SCHEDULE 2

Article 2(2)

Amendments to Transport Act 1962 and Transport Act 1968

Transport Act 1962

1. The Transport Act 1962(m) is amended as follows.
- 2.—(1) Section 1(n) (the four Boards) is amended as follows.
 - (2) In subsection (2)—
 - (a) for “each Board”, where first occurring, substitute “the Docks Board”;
 - (b) omit “of each Board”, where second occurring.
 - (3) For subsection (2A) substitute—

(a) 1992 c. 42.

(b) 1993 c. 38. Part 2 of that Act is repealed, as from a date to be appointed, by the Welsh Language (Wales) Measure 2011 (nawm 1), section 145(2)(a).

(c) 1996 c. 61.

(d) 2003 c. 17.

(e) 2004 c. 5.

(f) 2005 c. 19.

(g) 2006 c. 16.

(h) 2008 c. 18.

(i) 2008 c. 29.

(j) 2010 c. 29.

(k) S.I. 2006/6.

(l) S.I. 2007/1819.

(m) 1962 c. 46.

(n) Section 1 was amended by the Transport (London) Act 1969 (c. 35), Schedules 6 and 12; the Transport Act 1981 (c. 56), Schedule 12, Part 1; the Transport Act 2000 (c. 38), Schedule 31, Part 4, and S.I. 2000/3251.

“(2A) The chairman of the British Waterways Board shall be appointed by the Scottish Ministers and the other members (including any vice chairman) shall be appointed by the Scottish Ministers after consultation with the chairman.”.

(4) In subsection (6)—

- (a) for “not more than nine nor less than four” substitute “between one and four”;
- (b) omit “the Minister or, as the case may be,”;
- (c) omit “him or”.

(5) Omit subsection (6A).

(6) Until the coming into force of the repeal (by the Transport Act 2000^(a)) of the words “the British Railways Board (in this Act referred to as the “Railways Board”)” in subsection (1) of section 1 of the Transport Act 1962 the amendment of subsection (2) of that section made by subparagraph (2)(a) is to have effect as if the reference to “the Docks Board” were a reference to “the Railways Board and of the Docks Board”.

3. In section 10(3)(b) (duty and powers of the British Waterways Board)—

- (a) omit paragraph (dd);
- (b) in paragraph (g)(i), for “Great Britain” substitute “Scotland”.

4. In section 11(c) (development of land), for subsection (5) substitute—

“(5) In the application of this section to the British Waterways Board —

- (a) the references to the Minister are to be read as references to the Scottish Ministers;
- (b) the power in subsection (4) is limited to the acquisition of adjoining land in Scotland.”.

5. For section 12(3A)(d) (pipe-lines), substitute—

“(3A) In the application of this section to the British Waterways Board—

- (a) references to Great Britain are to be read as references to Scotland,
- (b) references to the Minister are to be read as references to the Scottish Ministers, and
- (c) the power in subsection (2) is limited to the acquisition of land in Scotland.”.

6.—(1) Section 14(e) (supplemental provision relating to the Boards’ powers) is amended as follows.

(2) After subsection (1), insert—

“(1A) In the application of this section to the British Waterways Board, the power in subsection (1)(c) is limited to land in Scotland.”.

(3) In subsection (4B)—

- (a) after “shall have the power” insert “with the consent of the Scottish Ministers, and for the purposes of the Board’s business,”;
- (b) omit paragraphs (a) and (b).

(4) In subsection (4C)—

- (a) after “shall have the power” insert “with the consent of the Scottish Ministers, and for the purposes of the Board’s business,”;
- (b) omit paragraphs (a) and (b).

(5) Omit subsection (4D).

(a) 2000 c. 38.

(b) Section 10 was amended by the Transport Act 1968, Schedule 18, Part 1 and S.I. 2003/1545.

(c) Section 11 was amended by the Transport Act 1968, Schedule 18, Part 1 and S.I. 2000/3251.

(d) Subsection (3A) was inserted by S.I. 2000/3251. There are other amendments to section 12 that are not relevant to this Order.

(e) Relevant amendments to section 14 were made by S.I. 2000/3251.

7. After subsection (2) of section 15(a) (compulsory purchase of land), insert—
- “(2A) The Minister may authorise Canal & River Trust to purchase compulsorily any land in England or Wales which it requires for the purposes of any of its functions under an enactment and the Acquisition of Land Act 1981(b) shall apply as if Canal & River Trust were a local authority within the meaning of that Act.”.
- 8.—(1) Section 15A(c) (compulsory purchase of land: British Waterways Board in Scotland) is amended as follows.
- (2) In the heading, omit “in Scotland”.
- (3) In subsection (1), omit “in Scotland”.
- (4) In subsection (4), for “section 12(3A)(b)” substitute “section 12(3)”.
9. After subsection (1) of section 17(d) (power to promote and oppose Bills), insert—
- “(1ZA) In the application of subsection (1) to the British Waterways Board, the reference to the Minister is to be read as a reference to the Scottish Ministers.”.
10. After subsection (5) of section 18(e) (financial duty of Boards), insert—
- “(5A) In the application of subsections (4) and (5) to the British Waterways Board—
- (a) references to the Minister are to be read as references to the Scottish Ministers, and
- (b) references to the approval of the Treasury are omitted.”.
- 11.—(1) Section 19(f) (borrowing powers of Boards) is amended as follows.
- (2) For subsection (3), substitute—
- “(3) In any financial year the net amount of sums borrowed by the British Waterways Board under this section for discharging their functions under this Act or for meeting their obligations in connection with the discharge of their functions shall not exceed the amount specified for that year for the purposes of this subsection in a Budget Act.”.
- (3) For subsection (3A), substitute—
- “(3A) In subsection (3)—
- (a) “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that year or any other year, and
- (b) “Budget Act” has the same meaning as in the Public Finance and Accountability (Scotland) Act 2000(g).”.
- (4) In subsection (7)—
- (a) omit “in connection with the exercise of their functions in Scotland”;
- (b) in paragraph (b) after “the Minister” insert “and the Secretary of State”;
- (c) omit paragraph (c).
12. In section 20(7)(h) (Exchequer loans), omit “in connection with the exercise of their functions in Scotland”.

-
- (a) Section 15 was amended by the Acquisition of Land Act 1981 (c. 67), Schedules 4 and 6.
- (b) 1981 c. 67.
- (c) Section 15A was inserted by S.I. 2000/3251.
- (d) Section 17 was amended by S.I. 2000/3251.
- (e) Section 18 was amended by the Transport Act 1968, Schedule 18, Part 1. There is a further amendment not relevant to this Order.
- (f) Subsection (7) was inserted by S.I. 2000/3251. Section 19 was also amended by the Transport Act 1968, Schedule 18, Part 1; the Transport (London) Act 1969, Schedule 6; the Statutory Corporations (Financial Provisions) Act 1974 (c. 8), section 4 and Schedule 2; the Transport (Financial Provisions) Act 1977 (c. 20), section 3(2)(a); the Transport Act 1981, Schedule 12, Part 1; the Water Act 1981 (c. 12), section 1(1) and (2); the Transport Act 2000, Schedule 31, Part 4, and S.I. 2011/1043, article 4(1).
- (g) 2000 asp 1.
- (h) Subsection (7) was inserted by S.I. 2000/3251.

13. In section 21(1)(a) (Treasury guarantees), after “a Board” insert “other than the British Waterways Board”.

14. In section 21A(1)(b) (British Waterways Board: guarantees by the Scottish Ministers), omit “, in connection with the exercise of their functions in Scotland,”.

15.—(1) Section 24(c) (accounts) is amended as follows.

(2) In subsection (1)—

- (a) after “Each Board” insert “, other than the British Waterways Board,”,
- (b) omit the words from “and, in the case of” to the end.

(3) In subsection (2)—

- (a) after “each Board”, insert “, other than the British Waterways Board,”,
- (b) omit the words “after, in the case of the British Waterways Board, consultation with the Scottish Ministers”.

(4) In subsection (3), omit “and, in the case of the British Waterways Board, to the Scottish Ministers” and “and in the report which is, under this Act, to be laid by the Scottish Ministers annually before the Scottish Parliament”.

(5) After subsection (3), insert—

“(3A) The British Waterways Board—

- (a) must cause proper accounts and other records in relation to those accounts to be kept, and
- (b) must prepare an annual statement of accounts in such form and containing such particulars, compiled in such manner, as the Scottish Ministers may from time to time direct.

(3B) The British Waterways Board must send the statement of accounts to the Auditor General for Scotland for auditing.

(3C) As soon as the accounts have been audited under subsection (3B), the British Waterways Board must send to the Scottish Ministers a copy of the statement of accounts together with a copy of the report made by the Auditor General for Scotland on that statement.

(3D) A copy of the statement of accounts and the report referred to in subsection (3C) must be included in the report which is under this Act to be laid by the Scottish Ministers annually before the Scottish Parliament.”.

16. For section 25(2A)(d) (the Board’s subsidiaries), substitute—

“(2A) In the application of this section to the British Waterways Board, references to the Minister are to be read as references to the Scottish Ministers.”

17.—(1) Section 27(e) (power of Ministers in relation to Boards) is amended as follows.

(2) After subsection (5), insert—

“(5A) In the application of subsections (1) to (5) to the British Waterways Board, references to the Minister are to be read as references to the Scottish Ministers.”.

(3) In subsection (6), after “Board”, in each place occurring, insert “or Canal & River Trust”.

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- (a) Section 21 was amended by the Statutory Corporations (Financial Provisions) Act 1974, section 4 and Schedule 2 and the Miscellaneous Financial Provisions Act 1983 (c. 29), section 4 and Schedule 2.
 - (b) Section 21A was inserted by S.I. 2000/3251. Another section 21A (grants to the Railways Board) was inserted by the Railways Act 1993 (c. 43), section 109 and repealed, as from a date yet to be appointed, by the Transport Act 2000, Schedule 31, Part 4.
 - (c) Section 24 was amended by S.I. 1991/1997, 2000/3251 and 2008/948.
 - (d) Subsection (2A) was inserted by S.I. 2000/3251. Section 25 was also amended by the Transport Act 1968, Schedule 18, Part 1.
 - (e) Section 27 was amended by the Transport Act 1968, sections 46(5) and 51(3), the Railways Act 1974 (c. 48), section 4(6); the Transport Act 2000, Schedule 31, Part 4 and S.I. 2000/3251. There are further amendments not relevant to this Order.

(4) In subsection (7), for the words from “Each Board” to “shall” substitute “The Docks Board shall”.

(5) In subsection (8), for the words from “each Board” to “shall” substitute “the Docks Board shall”.

(6) Omit subsection (8A).

(7) In subsection (8B), omit “in or as regards Scotland” in both places occurring.

(8) In subsection (8C), omit “in Scotland”.

18. In section 28(2), (3) and (4)(a) (powers exercisable subject to Minister’s consent), after “Board”, in each place occurring, insert “or Canal & River Trust”.

19.—(1) Section 43(b) (charges and facilities: general provisions) is amended as follows.

(2) In subsections (1) and (2), after “British Waterways Board”, in each place occurring, insert “or Canal & River Trust”.

(3) In subsection (3)—

(a) after “British Waterways Board”, insert “and Canal & River Trust”,

(b) after “shall”, insert “each”.

(4) In subsection (4), after “British Waterways Board”, insert “and Canal & River Trust”.

(5) In subsection (5), after “the Boards”, insert “or Canal & River Trust”.

(6) In subsections (6) and (8), after “British Waterways Board”, in each place occurring, insert “and Canal & River Trust”.

20.—(1) Section 50(c) (port charges and conditions at harbours) is amended as follows.

(2) In subsection (1), after “the Boards” insert “and Canal & River Trust”.

(3) In subsection (2), after “the Boards”, in each place occurring, insert “or Canal & River Trust”.

21. In section 52(4)(d) (independent railway companies and inland waterway undertakings), in the definition of “independent inland waterway undertaking”, after “of the Boards”, insert “or Canal & River Trust”.

22.—(1) Section 62 (local enactments relating to the supply of water for canals) is amended as follows.

(2) In subsection (1)—

(a) after “the British Waterways Board”, where first occurring, insert “or Canal & River Trust”;

(b) after “the British Waterways Board”, in each other place occurring, insert “or, as the case may be, Canal & River Trust”.

(3) In subsection (2)—

(a) after “the British Waterways Board”, insert “or, as the case may be, Canal & River Trust”;

(b) after “the Board’s obligations”, insert “or, as the case may be, Canal & River Trust’s obligations”.

(a) Section 28 was amended by S.I. 2000/3251.

(b) Section 43 was amended by the Transport Act 2000, Schedule 27; the Railways Act 2005 (c. 14), Schedule 12. There are further amendments not relevant to this Order.

(c) Section 50 was amended by the Harbours Act 1964 (c. 40), Schedule 6.

(d) There are amendments and modifications to section 52 that are not relevant to this Order.

23. Section 63(a) (abstraction of water by British Waterways Board), to the extent that it continues in force, is repealed.

24. In section 73 (the powers of the Boards and the Holding Company as regards pensions and pension schemes), after subsection (2) insert—

“(3) In the application of this section to the British Waterways Board, the reference to the Minister is to be read as a reference to the Scottish Ministers.”.

25. In section 74(b) (Minister’s power to make orders about pensions), before subsection (1) insert—

“(A1) In this section, references to the Boards do not include the British Waterways Board.”.

26. In section 86(4) and (5)(c) (application of Town and Country Planning Acts), omit “in respect of any development in Scotland” in each place occurring.

27.—(1) Schedule 1(d) (the Boards and the holding company) is amended as follows.

(2) In paragraph 6—

(a) in sub-paragraph (2), for “Any member appointed by the Minister” substitute “A member of any Board other than the British Waterways Board”;

(b) for sub-paragraph (3) substitute—

“(3) Any member of the British Waterways Board may at any time by notice in writing to the Scottish Ministers resign that member’s office.”.

(3) In paragraph 7(1A), omit “made by the Scottish Ministers”.

(4) In paragraph 8(1A), omit “appointed by the Scottish Ministers”.

28.—(1) Schedule 6 (distribution of Commission’s undertaking) is amended as follows.

(2) In paragraph 1(1)—

(a) after “duty of the Boards”, insert “and Canal & River Trust”;

(b) in paragraph (a) after “the other Boards”, insert “or, as the case may be, Canal & River Trust”;

(c) after paragraph (a), insert—

“(aa) afford to Canal & River Trust as against the Boards such rights and safeguards as they may require for the proper discharge of their functions, and”;

(d) in paragraph (b) after “functions of the Boards”, insert “or, as the case may be, Canal & River Trust”.

(3) In paragraph 4(1)—

(a) in paragraph (b) after “the Boards’ functions”, insert “or Canal & River Trust’s functions”;

(b) after “Board or Boards”, insert “or, as the case may be, Canal & River Trust”.

(4) In paragraph 4(2), after “between the Boards”, insert “, or between a Board and Canal & River Trust,”.

(a) Section 63 was repealed, in relation to England and Wales, by the Water Resources Act 1963 (c. 38), Schedule 14, Part 2. Modifications extending to Scotland were made by the Water Industry (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/1822).

(b) There are amendments to section 74 that are not relevant to this Order.

(c) Relevant amendments to section 86 were made by S.I. 1970/1681 and 2000/3251.

(d) Relevant amendments to Schedule 1 were made by the Transport Act 1968, section 52(4); the Transport Act 2000, Schedule 31, Part 4 and S.I. 2000/3251.

29. In Schedule 9(a) (port charges), in paragraph 5(1), after “the Boards”, insert “or Canal & River Trust”.

Transport Act 1968

30. The Transport Act 1968(b) is amended as follows.

31.—(1) Section 43(c) (additional financial provisions as to Waterways Board) is amended as follows.

(2) Omit subsections (2) and (5).

(3) In subsection (6), for “Where an excess under subsection (5) of this section arises in relation to the activities of the Board in Scotland,” substitute “If in any accounting year of the Board there is an excess of the revenue of the Board over the total sums properly chargeable by them to revenue.”.

32. After section 43, insert—

“Grants to Canal & River Trust

43A. The Minister or any other Minister of the Crown may, with the approval of the Treasury, from time to time make grants to Canal & River Trust.”.

33. In section 44(1)(b)(d) (account by Minister of receipt and disposal of certain sums), omit “or the Waterways Board” and “or 43(5)”.

34. In section 46(2)(a)(e) (duty of Boards and new authorities to promote research and development), omit “in respect of their functions in Scotland,”.

35. In section 48(1A)(f) (manufacture, repair and supply)—

(a) omit “in connection with any activity in Scotland”;

(b) after “in subsection (6)”, insert “the reference to section 27(8) shall be construed as a reference to section 27(8C) and”.

36. In section 49(g) (powers with respect to land), for subsection (4A) substitute—

“(4A) In the application of this section to the Waterways Board —

(a) the references to the Minister are to be read as references to the Scottish Ministers;

(b) the powers in subsections (3) and (4) are limited to the acquisition of adjoining land in Scotland.”.

37.—(1) Section 50(h) (miscellaneous provisions as to powers) is amended as follows.

(2) In subsection (1)—

(a) omit “the Minister or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland,”;

(b) after “other premises” insert “in Scotland”.

(a) Schedule 9 was amended by the Harbours Act 1964, sections 28 and 39(3) and Schedule 6, and the Transport Act 1981, Schedule 12, Part 1.

(b) 1968 c. 73.

(c) Section 43 was amended by S.I. 2000/3251. There are other amendments not relevant to this Order.

(d) Relevant amendments to section 44 were made by the Transport Act 1980 (c. 34), Schedule 9; S.I. 1973/338 and 1991/510 and S.S.I. 2002/263. Section 44(1) was also amended, as from a date to be appointed, by the Transport Act 2000, Schedule 31, Part 4.

(e) Section 46 was amended by S.I. 2000/3251.

(f) Relevant amendments to section 48 were made by S.I. 2000/3251 and S.S.I. 2002/263.

(g) Subsection (4A) was inserted by S.I. 2000/3251. Other relevant amendments to section 49 were made by the British Waterways Act 1995 (c. i), section 23.

(h) Section 50 was amended by the Transport Act 2000, Schedule 31, Part 4, and S.I. 2000/3251. Other amendments were made that are not relevant to this Order.

(3) In subsection (5), omit “the Minister or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland,”.

(4) Omit subsection (8A).

(5) In subsection (9), omit “in connection with the exercise of their functions in Scotland,”.

(6) Until the coming into force of the repeals of words in section 50(1) of the Transport Act 1968 made by the Transport Act 2000—

(a) sub-paragraph (2)(a) is to have effect as if it omitted “in connection with the exercise of their functions in Scotland,”;

(b) sub-paragraph (2)(b) is to have effect as if it inserted “(in the case of the Waterways Board, in Scotland)”.

38.—(1) Section 104(a) (classification of the Board’s waterways) is amended as follows.

(2) In the heading, omit “the Board’s”.

(3) In subsection (1)—

(a) for “undertaking” substitute “undertakings”,

(b) after “Board” insert “and Canal & River Trust”.

(4) In subsection (3), after “Board” insert “or Canal & River Trust”.

(5) After subsection (3) insert—

“(3A) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).

(3B) In deciding whether to make an order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.”.

39.—(1) Section 105(b) (maintenance of the Board’s waterways) is amended as follows.

(2) In the heading, omit “the Board’s”.

(3) In subsection (1), after “Board” insert “and of Canal & River Trust, in relation to the waterways comprised in their respective undertakings”.

(4) In subsection (2), after “the Board” insert “or Canal & River Trust”.

(5) In subsection (3)—

(a) after “or any part thereof,”, insert “or to any other reason the Minister considers relevant to the duty under subsection (1),”;

(b) for “the Board”, in each place occurring, substitute “Canal & River Trust”.

(6) After subsection (3) insert—

“(3ZA) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).

(3ZB) In deciding whether to make any order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.”.

(7) For subsection (3A), substitute—

“(3A) If it appears to the Scottish Ministers that, having regard to any change in the size, design or type of vessel customarily using any commercial waterway or cruising waterway, or any part of such waterway, it is desirable to exercise their powers under this subsection, they may (after consultation with the Board) by order substitute for the duty imposed on the Board by subsection (1) in respect of that waterway (or part) such duty in respect of the maintenance of such waterway (or part) as they consider appropriate having regard to that change, and may by that order make such incidental or transitional provision as they think necessary or expedient in connection therewith.”.

(a) Section 104 was amended by S.I. 2000/3251.

(b) Section 105 was amended by S.I. 2000/3251 and modified by S.I. 1993/119.

- (8) In subsection (4)—
- (a) after “(3)” insert “or (3A)”;
 - (b) after “such order” insert “made by the Minister under subsection (3)”;
 - (c) after “Parliament” insert “, and an order made by the Scottish Ministers under subsection (3A) is subject to the negative procedure”.
- (9) In subsection (6), after “the Board” insert “or Canal & River Trust”.
- (10) In subsections (7) and (8), after “Board”, in each place occurring, insert “or, as the case may be, Canal & River Trust”.

40. For section 106(a) (enforcement of maintenance duty), substitute—

“Enforcement of maintenance duty – the Waterways Board

106.—(1) If, on an application by any person under this section to the Court of Session, the court determines that there has been, in respect of any waterway, a serious and persistent failure by the Waterways Board to discharge the duty imposed on them by—

- (a) section 105(1), or
- (b) an order made under section 105(3A),

the court may, subject to the provisions of this section, require the Board to remedy that failure; but, save as aforesaid, neither subsection (1) of section 105 nor any order under subsection (3A) of that section shall be construed as imposing any duty or liability enforceable by proceedings before any court to which the Board would not otherwise be subject.

(2) The fact that proceedings on an application under subsection (1) (referred to in this section as “enforcement proceedings”) are in progress in respect of any waterway or any part of a waterway, or that the court has in any such proceedings imposed any requirement on the Board, shall not prevent the Scottish Ministers from making an order in respect of that waterway or part under section 104(3) or 105(3A); but—

- (a) except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of the Board as it stood when the proceedings were instituted; and
- (b) the making of such an order shall in no case absolve the Board from complying with any requirement which is imposed by the court in any enforcement proceedings.

(3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on the Board in the proceedings, the Scottish Ministers notify the Board that they are considering the making of a relevant order and give the court such a certificate as is mentioned in subsection (4)—

- (a) the court shall not, so long as the order is pending, impose any requirement on the Board in those proceedings; and
- (b) if the order is made, the court shall, in determining in those proceedings whether there has been a failure by the Board to discharge their duty, have regard only to the duty (if any) to which the Board are subject in consequence of the making of the order.

(4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Scottish Ministers that the imposition of any requirement on the Board on the basis of their existing duty would result in their incurring substantial expense and that, having regard to their financial position and their duty under section 18 of the Act of 1962

(a) Section 106 was amended by S.I. 2000/3251.

and section 41 of this Act, it would be unreasonable for them to bear that expense without a grant or further grant under section 43 of this Act.

(5) In subsection (3) “relevant order” means, in relation to any enforcement proceedings, an order under section 104(3) or 105(3A) of this Act in relation to the waterway or part of a waterway which is the subject of the proceedings; and for the purposes of that subsection an order is pending during the period of three months beginning with the day on which the Scottish Ministers notify the Board that they are considering the making of the order and, if before the expiration of that period notice of the proposed order is published under Schedule 13 to this Act, during any further period until the order is made or the Scottish Ministers notify the Board that it will not be made.

(6) As soon as may be after giving the Board any such notification as is mentioned in subsection (5), the Scottish Ministers shall give notice of that notification in the Edinburgh Gazette.

(7) For the purposes of this section enforcement proceedings shall be treated as instituted at the time when the summons beginning the proceedings is served on the Board.

Enforcement of maintenance duty – Canal & River Trust

106A.—(1) If, on an application by any person under this section to the High Court, the court determines that there has been, in respect of any waterway, a serious and persistent failure by Canal & River Trust to discharge the duty imposed on it by—

- (a) section 105(1), or
- (b) an order made under section 105(3),

the court may, subject to the provisions of this section, require Canal & River Trust to remedy that failure; but, save as aforesaid, neither subsection (1) of section 105 nor any order under subsection (3) of that section shall be construed as imposing any duty or liability enforceable by proceedings before any court to which Canal & River Trust would not otherwise be subject.

(2) The fact that proceedings on an application under subsection (1) (referred to in this section as “enforcement proceedings”) are in progress in respect of any waterway or any part of a waterway, or that the court has in any such proceedings imposed any requirement on Canal & River Trust, shall not prevent the Minister from making an order in respect of that waterway or part under section 104(3) or 105(3); but—

- (a) except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of Canal & River Trust as it stood when the proceedings were instituted; and
- (b) the making of such an order shall in no case absolve Canal & River Trust from complying with any requirement which is imposed by the court in any enforcement proceedings.

(3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on Canal & River Trust in the proceedings, the Minister notifies Canal & River Trust that the Minister is considering the making of a relevant order and gives the court such a certificate as is mentioned in subsection (4)—

- (a) the court shall not, so long as the order is pending, impose any requirement on Canal & River Trust in those proceedings; and
- (b) if the order is made, the court shall, in determining in those proceedings whether there has been a failure by Canal & River Trust to discharge its duty, have regard only to the duty (if any) to which Canal & River Trust is subject in consequence of the making of the order.

(4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Minister that the imposition of any requirement on Canal & River Trust on

the basis of its existing duty would result in its incurring substantial expense and that, having regard to its financial position, it would be unreasonable for it to bear that expense without a grant or further grant under section 43A of this Act.

(5) In subsection (3) “relevant order” means, in relation to any enforcement proceedings, an order under section 104(3) or 105(3) of this Act in relation to the waterway or part of a waterway which is the subject of the proceedings; and for the purposes of that subsection an order is pending during the period of three months beginning with the day on which the Minister notifies Canal & River Trust that the Minister is considering the making of the order and, if before the expiration of that period notice of the proposed order is published under Schedule 13 to this Act, during any further period until the order is made or the Minister notifies Canal & River Trust that it will not be made.

(6) As soon as may be after giving Canal & River Trust any such notification as is mentioned in subsection (5), the Minister shall give notice of the notification in the London Gazette.

(7) For the purposes of this section enforcement proceedings shall be treated as instituted at the time when the claim form beginning the proceedings is served on Canal & River Trust.”.

41. In section 108(1)(a) (prevention of nuisance as respects certain waterways), for “the Waterways Board” substitute “Canal & River Trust”.

42.—(1) Section 109(b) (power of certain bodies to maintain or take over waterways and connected works) is amended as follows.

(2) In the heading, after “connected works” insert “in Scotland”.

(3) In subsection (2)—

- (a) omit paragraph (b) so far as having effect in relation to England and Wales;
- (b) omit paragraphs (c) and (h);
- (c) omit paragraph (j) so far as having effect in relation to England and Wales;
- (d) omit paragraph (k);
- (e) for the words from “the Minister” to “as the case may be,” substitute “the Scottish Ministers as a body appearing to”.

(4) In subsection (3)—

- (a) for the words from paragraph (b) to the end of the subsection substitute—

“(b) Scottish Water unless the Scottish Ministers have consented to the agreement or transfer;

and the powers under this section of Scottish Water shall be exercisable only for the purposes of their water undertaking and with the consent of the Scottish Ministers.”.

(5) For subsection (5) substitute—

“(5) The Board may make an agreement for maintenance or transfer under this section with two or more bodies jointly on such terms as to the sharing of expenses between those bodies and otherwise as those bodies may agree; and, notwithstanding subsection (3)(a)(i) of this section (but without prejudice to subsection (3)(a)(ii) of this section), a local authority may be a party to such an agreement if part of what is to be maintained or transferred is situated in their area and the remainder in the area or areas of one or more other authorities (whether or not local authorities) who are also parties to the agreement.”.

(a) Section 108 was amended by the Planning (Consequential Provisions) Act 1990 (c. 11), Schedule 2, paragraph 22(2); the Environmental Protection Act 1990, Schedule 15, paragraph 10(3); the Planning (Consequential Provisions) (Scotland) Act 1997 (c. 11), Schedule 2, paragraph 17(1), and the Public Health etc (Scotland) Act 2008 (asp 5), schedule 3, Part 1.

(b) Section 109 was amended by the Gas Act 1986, Schedule 7, paragraph 9; the Electricity Act 1989 (c. 29), Schedule 16, paragraph 14; the Water Act 1989, Schedules 25 and 27; the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), Schedule 1, and S.I. 1996/593, 2000/3251 and 2004/1822. It was modified by the Gas Act 1995, Schedule 4, paragraph 2(2)(d) and the Utilities Act 2000 (c. 27), sections 31(1) and 76(7).

43. In section 111 (access agreements and orders as respects canals other than commercial waterways and cruising waterways), for “the Waterways Board” substitute “Canal & River Trust”.

44.—(1) Section 112(a) (power to extinguish statutory rights and obligations in respect of canals not comprised in undertaking of Board) is amended as follows.

(2) In the heading, after “Board” insert “or Canal & River Trust”.

(3) In subsection (1)—

- (a) after “Waterways Board” insert “or Canal & River Trust”;
- (b) after “the Minister” insert “, or, in the case of a canal in Scotland, the Scottish Ministers,”.

(4) In subsection (3)—

- (a) in paragraph (a), for “the Minister” substitute “the authority making the order”;
- (b) in paragraph (d), for “the Minister” substitute “the authority making the order”.

(5) In subsection (5)—

- (a) after “order shall” insert “, in the case of an order made by the Minister,”;
- (b) after “Parliament” insert “, and in the case of an order made by the Scottish Ministers, is subject to the negative procedure”.

(6) Omit subsection (6A).

45. In subsection (5) of section 113(b) (byelaws in respect of waterways owned or managed by certain bodies), in the definition of “qualified body” omit the words “(except paragraph (c) thereof)”.

46.—(1) Section 116(c) (transfer of responsibility for maintenance etc) is amended as follows.

(2) In the heading, for “Boards” substitute “certain”.

(3) After subsection (11), insert—

“(12) Subsection (13) applies if Canal & River Trust is, or but for this section would be, responsible for maintaining—

- (a) a highway carried by a new bridge over an inland waterway comprised in its undertaking or over any other installation or land used by Canal & River Trust in connection with such an inland waterway, or
- (b) that highway together with an access highway.

(13) Where—

- (a) the highway at each end of the bridge; or
- (b) if Canal & River Trust is also responsible for maintaining any access highway, the highway at each end of the bridge and any access highway,

is a highway maintainable at the public expense, the highway carried by the bridge, together with any access highway, shall be a highway maintainable at the public expense.

(14) In this section—

- (a) “access highway”, in relation to a bridge, means a highway giving access to the bridge; and
- (b) “new bridge” means a bridge constructed after the coming into force of the British Waterways Board (Transfer of Functions) Order 2012.

(a) Section 112 was amended by the Water Act 1989, Schedule 25, paragraph 38; the Planning (Consequential Provisions) Act 1990, Schedule 2; the Planning (Consequential Provisions) (Scotland) Act 1997, Schedule 2, paragraph 17(2); the Public Health etc (Scotland) Act 2008 (asp 5), schedule 3, Part 1, and S.I. 1996/593, 2000/3251 and 2004/1822.

(b) Section 113 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46; the Water Act 1989, Schedule 25, paragraph 38, and S.I. 2004/1822.

(c) Section 116 was amended by the Local Government Act 1972 (c. 70), Schedule 30 and S.I. 1996/420 and 2003/1615.

(15) Subsections (6) and (7) of this section shall have effect in relation to Canal & River Trust and any such bridge of Canal & River Trust as is mentioned in subsection (12) above as they have effect in relation to a Board.”.

47.—(1) Section 117(a) (duty of Boards as respect bridges carrying highways) is amended as follows.

(2) In the heading, omit “of Boards”.

(3) After subsection (1B) insert—

“(1C) This section also applies to a bridge (whenever constructed) which —

(a) carries a highway over an inland waterway of Canal & River Trust or any other installation or land used by Canal & River Trust in connection with an inland waterway, and

(b) belongs to Canal & River Trust,

and in relation to any such bridge references in this section to each of the Boards or a Board are, subject to subsection (1D), to be read as references to Canal & River Trust.

(1D) Subsection (7) applies in relation to a bridge constructed by or belonging to—

(a) Canal & River Trust and one or more of the Boards mentioned in subsection (1) of this section;

(b) Canal & River Trust and a network owner; or

(c) Canal & River Trust, one or more of the Boards mentioned in subsection (1) of this section and a network owner,

as it applies in relation to a bridge constructed by or belonging to any two or more Boards.”.

48.—(1) Section 118(b) (duty of highway authorities, etc, as respects bridges over Boards’ railways or inland waterways) is amended as follows.

(2) In the heading, for “Boards” substitute “certain”.

(3) After subsection (1A) insert—

“(1B) This section also applies to any bridge (whenever constructed) which —

(a) carries a highway over an inland waterway of Canal & River Trust, but

(b) does not belong to Canal & River Trust,

and in relation to any such bridge references in this section to any of the said Boards or a Board are to be read as references to Canal & River Trust.”.

49.—(1) Section 119(c) (ending of liability of Boards to make payments on being relieved of responsibility for bridges carrying trunk or special roads) is amended as follows.

(2) In the heading, omit “of Boards”.

(3) In subsection (1)—

(a) for “or the Waterways Board” substitute “, the Waterways Board or Canal & River Trust”;

(b) after “the Board”, in each place occurring, insert “or, as the case may be, Canal & River Trust”.

(4) In subsection (2), after “of this section” insert “or Canal & River Trust”.

(a) Section 117 was amended by S.I. 1996/420 and 2000/3251. There are other amendments and modifications that are not relevant to this Order.

(b) Section 118 was amended by S.I. 1996/420 and 2003/1615.

(c) Section 119 was amended by the Highways Act 1980, Schedule 24, paragraph 18 and S.I. 1996/420 and 2003/1615.

50.—(1) Section 121(a) (application of foregoing sections to undertakers other than Railways Board, London Board and Waterways Board) is amended as follows.

(2) In the heading, for the words from “undertakers” to the end substitute “other undertakers”.

(3) In subsection (1)—

(a) after “any reference to” insert “Canal & River Trust,”;

(b) for “that Board” substitute “that body”.

(4) In subsection (2), for “Boards”, in each place occurring, substitute “bodies”.

51.—(1) Section 137(b) (machinery for negotiation and consultation with staff) is amended as follows.

(2) In subsection (3)—

(a) in paragraph (a), after “in the case of” insert “the Waterways Board or”;

(b) after paragraph (a), insert—

“(aa) in the case of the Waterways Board, to the Scottish Ministers,”.

(3) In subsection (4)—

(a) in paragraph (a), after “in the case of” insert “the Waterways Board or”, and omit the “or” at the end of that paragraph;

(b) after paragraph (a), insert—

“(aa) in the case of the Waterways Board, the Scottish Ministers, or”;

(c) after “as the case may be, to” insert “the Scottish Ministers or”.

(4) In subsection (7), omit “the British Waterways Board or”.

52. In section 144(3)(c) (transfer and disposal of historical records and relics), after “other than the Railways Board,” insert “Canal & River Trust,”.

53.—(1) Schedule 13(d) (orders relating to inland waterways) is amended as follows.

(2) In paragraph 1, for sub-paragraph (2) substitute—

“(2) Before making an order under section 104(3), 105(3A) or 112 the Scottish Ministers shall comply with the requirements of this Schedule applicable to that order and may then make the order as originally proposed or with such modifications as they think fit and in the case of such an order any reference in this Schedule (however expressed) to the Minister is to be construed as a reference to the Scottish Ministers.”.

(3) In paragraph 2—

(a) in sub-paragraph (1) after “shall consult” insert “with Canal & River Trust, where the waterway in respect of which the order is to be made is in England or Wales, and”;

(b) for sub-paragraph (2) substitute—

“(2) In the case of a proposed order under section 104(3) adding to or reducing the waterways in England or Wales in Part 2 of that Schedule, the Minister shall consult with Canal & River Trust.”.

(4) After paragraph 3 insert—

(a) Section 121 was amended by the Highways Act 1980, Schedule 24, paragraph 18; the Transport Act 1980, Schedule 9, Part 3 and the Transport and Works Act 1992, Schedule 4, Part 1. There are further amendments and modifications that are not relevant to this Order.

(b) Section 137 was amended by S.I. 1997/2971 and 2002/2626. There are other amendments not relevant to this Order.

(c) Section 144 was amended by S.I. 1994/2032 and 1997/1744. There are other amendments not relevant to this Order.

(d) Schedule 13 was amended by the Water Act 1989, Schedule 25, paragraph 38; the Natural Environment and Rural Communities Act 2006, Schedule 11, Part 2 and S.I. 1996/593, 2000/3251, 2004/1822 and 2012/[0000]. It was modified by S.I. 1993/1119.

“**3A.** In the case of a proposed order under section 105(3A) in respect of a commercial waterway or any part of such a waterway the Scottish Ministers shall consult with any organisation appearing to them to represent persons operating commercial freight-carrying vessels on that waterway or part.”.

(5) In paragraph 5—

- (a) in sub-paragraph (1), after “105(3)” insert “or (3A)”;
- (b) in sub-paragraph (2)(a)—
 - (i) after “105(3)” insert “or (3A)”,
 - (ii) after “(and is not withdrawn) by” insert “Canal & River Trust, where the waterway in respect of which the order is to be made is in England or Wales,”;
- (c) in sub-paragraph (3), after “105(3)” insert “or (3A)”.

SCHEDULE 3

Article 2(3)

Amendments

PART 1

Public general Acts

Public Health Acts Amendment Act 1907

1. In section 94(8) of the Public Health Acts Amendment Act 1907(**a**) (power to license pleasure boats), for “the British Waterways Board” substitute “Canal & River Trust”.

Harbours Act 1964

2.—(1) The Harbours Act 1964(**b**) is amended as follows.

(2) In section 26(5)(a) (repeal of provisions limiting discretion of certain harbour authorities as to ships, passenger and goods dues charged by them), after “the Boards” insert “or Canal & River Trust”.

(3) In section 30(**c**) (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges)—

- (a) in subsection (1)—
 - (i) omit the “or” at the end of paragraph (a);
 - (ii) after paragraph (b) insert an “or” and then—

“(c) by virtue of section 43 of the Transport Act 1962 by Canal & River Trust at a harbour specified in Schedule 9 to that Act;”.
- (b) in subsection (3)—
 - (i) for “(a) or (b)”, substitute “(a), (b) or (c)”;
 - (ii) after “concerned”, insert “or by Canal & River Trust”;
 - (iii) after “Board”, in the second place it occurs, insert “or Canal & River Trust”;
- (c) in subsection (6), after “Board”, insert “or by Canal & River Trust”.

(a) 1907 c. 53. Section 94(8) was substituted by S.I. 1997/1187, article 2.

(b) 1964 c. 40.

(c) Section 30 was amended by virtue of the Decimal Currency Act 1969 (c. 19) and by the Transport Act 1968, Schedules 16 and 18; the Transport Act 1981 (c. 56), Schedules 5, 6 and 12; the Merchant Shipping Act 1995 (c. 21), Schedule 12; the Transport Act 2000 (c. 38), Schedule 31, Part 4, and S.I. 1978/272, Schedule 5.

(4) In section 36(a)(a) (sections 31 and 32 not to apply to charges at certain harbours), after “the British Waterways Board”, insert “or Canal & River Trust”.

(5) In section 42(11)(a)(b) (accounts and reports relating to harbour activities and associated activities), after “the Boards”, insert “or Canal & River Trust”.

(6) In section 57 (interpretation), after subsection (5) insert—

“(6) Any reference in this Act to Canal & River Trust shall be construed as including a reference to any company that is a subsidiary (within the meaning of the Companies Act 2006) of Canal & River Trust.”.

Countryside Act 1968

3. In section 16(6)(c) of the Countryside Act 1968(c) (access to open country: canals and woodlands), for “the British Waterways Board” substitute “Canal & River Trust”.

Salmon and Freshwater Fisheries Act 1975

4.—(1) The Salmon and Freshwater Fisheries Act 1975(d) is amended as follows.

(2) In section 40 (River Severn)—

(a) for “the British Waterways Board” substitute “Canal & River Trust”;

(b) for “the Board’s” substitute “Canal & River Trust’s”.

Local Government, Planning and Land Act 1980

5.—(1) The Local Government, Planning and Land Act 1980(e) is amended as follows.

(2) In section 185(2)(a)(f) (restriction on power of certain authorities to make pleasure boat byelaws), for “the British Waterways Board” substitute “Canal & River Trust”.

(3) In Schedule 16(g) (bodies to whom Part 10 applies), in paragraph 18, after “Statutory undertakers” insert “other than Canal & River Trust”.

Highways Act 1980

6.—(1) The Highways Act 1980(h) is amended as follows.

(2) In section 111(1) (interpretation of Part 6), for “the British Waterways Board” substitute “Canal & River Trust”.

(3) In section 169(6) (controls on scaffolding in section 169 not to apply to certain structures), for “the British Waterways Board” substitute “Canal & River Trust”.

(4) In section 219(4)(i)(i) (provisions relating to payment for street works not to apply in certain cases), for “the British Waterways Board” substitute “Canal & River Trust”.

(5) In section 329(4) (interpretation), for “the British Waterways Board” substitute “Canal & River Trust”.

(6) In Schedule 11 (provisions as to orders under section 93), in paragraph 4(c)—

(a) Section 36 was amended by the Transport Act 1968, Schedule 16; the Transport Act 1981, Schedule 12, Parts 1 and 2; the Transport Act 2000, Schedule 31, Part 4, and S.I. 1999/1820, Schedule 2, Part 1, paragraph 34.

(b) Section 42 was substituted by the Transport Act 1981, Schedule 6, paragraph 10. There are other amendments not relevant to this Order.

(c) 1968 c. 41. Section 16(6)(c) was amended by the Transport Act 1968, section 111.

(d) 1975 c. 51. Section 40 was amended by the Environment Act 1995 (c. 25), Schedule 15, paragraph 2.

(e) 1980 c. 65.

(f) There are amendments to section 185 that are not relevant to this Order.

(g) See article 3(2) of this Order. Paragraph 18 of Schedule 16 was amended by the Gas Act 1986 (c. 44), section 67(4) and Schedule 9, Part 1, the Electricity Act 1989 (c. 29), section 112(4) and Schedule 18, and the Water Act 1989 (c. 15), section 190 and Schedule 25, paragraph 61.

(h) 1980 c. 66. There are amendments to the listed provisions that are not relevant to this Order.

- (a) for “the British Waterways Board” in the first place it occurs substitute “Canal & River Trust”;
- (b) for “that Board” substitute “Canal & River Trust”;
- (c) omit “(the predecessors of the British Waterways Board)”.

Transport Act 1981

7. In Schedule 3 to the Transport Act 1981(a) (powers of Associated British Ports), in paragraph 31(4), after “the British Waterways Board” insert “, Canal & River Trust”.

Agricultural Holdings Act 1986

8. In Schedule 12 to the Agricultural Holdings Act 1986(b) (modifications applicable to old tenancies and other similar cases), after paragraph 4(5) insert—

“(5A) Where by a scheme under section 24 of the Public Bodies Act 2011 relevant land has been transferred by the British Waterways Board to Canal & River Trust or any subsidiary of Canal & River Trust, sub-paragraph (2) shall (so far as relates to relevant land so transferred) have effect in relation to Canal & River Trust or, as the case may be, that subsidiary as it had effect in relation to the British Waterways Board immediately before that land was transferred under that scheme.

(5B) In sub-paragraph (5A)—

- (a) “relevant land” means land falling within paragraph (a) or (b) of sub-paragraph (2) and transferred to the British Waterways Board as there mentioned;
- (b) “subsidiary” means a company which is a subsidiary within the meaning of the Companies Act 2006.”.

Town and Country Planning Act 1990

9. In section 264(4)(a) (operational land) of the Town and Country Planning Act 1990(c), after “the Water Industry Act 1991”(d), insert “or, in the case of land held by Canal & River Trust, the Public Bodies Act 2011”.

Ports Act 1991

10. In section 1(4) of the Ports Act 1991(e) (meaning of relevant port authority), after paragraph (c), insert—

“(ca) Canal & River Trust;”.

Water Resources Act 1991

11.—(1) The Water Resources Act 1991(f) is amended as follows.

(2) In the heading to section 66 (inland waterways owned or managed by British Waterways Board), for “British Waterways Board” substitute “Canal & River Trust”.

(3) In section 66(g)—

(a) 1981 c. 56. There are amendments to paragraph 31 of Schedule 3 that are not relevant to this Order.
 (b) 1986 c. 5. There are amendments to paragraph 4 of Schedule 12 that are not relevant to this Order.
 (c) 1990 c. 8. Relevant amendments to section 264 were made by the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), section 2, Schedule 1, paragraph 54; the Planning and Compulsory Purchase Act 2004, section 40(2)(k).
 (d) 1991 c. 56.
 (e) 1991 c. 52. There is an amendment to section 1 that is not relevant to this Order.
 (f) 1991 c. 57.
 (g) Section 66 was amended by the Water Act 2003 (c. 37), sections 14(3)(d) and 101; Schedule 7, Part 1, paragraphs 1 and 7, and Schedule 9, Part 3, and by the Environment Act 1995, Schedule 22, paragraph 128.

- (a) in subsection (1), for “the British Waterways Board (“the Board”)”, substitute “Canal & River Trust”;
- (b) in subsections (2)(b) and (c) and (3), for “the Board” in each place occurring, substitute “Canal & River Trust”.

(4) In the heading to section 130 (charges in respect of abstraction from waters of British Waterways Board), for “British Waterways Board” substitute “Canal & River Trust”.

(5) In section 130(a), in subsections (1) and (2), for “the British Waterways Board” and “the Board” in each place occurring, substitute “Canal & River Trust”.

Transport and Works Act 1992

12.—(1) The Transport and Works Act 1992(b) is amended as follows.

(2) In section 5(7) (subject matter of orders under sections 1 and 3), for “the British Waterways Board’s” substitute “Canal & River Trust’s”.

(3) In section 20 (power to apply for, or object to, orders), omit subsection (3).

Environment Act 1995

13. In section 41(8) (power to make schemes imposing charges) of the Environment Act 1995(c), for “the British Waterways Board” substitute “Canal & River Trust”.

Channel Tunnel Rail Link Act 1996

14.—(1) Schedule 15 (protective provisions) to the Channel Tunnel Rail Link Act 1996(d) is amended as follows.

(2) In the heading to Part 6 (protection of British Waterways Board), for “British Waterways Board”, substitute “Canal & River Trust”.

(3) In Part 6(e)—

- (a) in paragraph 1(2), omit the definition of “the Board”;
- (b) for “the Board”, in each place occurring, substitute “Canal & River Trust”.

Freedom of Information Act 2000

15.—(1) The Freedom of Information Act 2000(f) is amended as follows.

(2) In Part 6 of Schedule 1 (other public bodies and offices: general)—

- (a) omit the entry relating to the British Waterways Board;
- (b) at the appropriate place insert—

“Canal & River Trust, in respect of information held by it relating to functions exercisable by it by virtue of the British Waterways Board (Transfer of Functions) Order 2012.”.

Licensing Act 2003

16.—(1) The Licensing Act 2003(g) is amended as follows.

(2) In section 13(4)(a) (vessels: responsible authorities), in paragraph (h)(iii), for “the British Waterways Board” substitute “Canal & River Trust”.

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- (a) Section 130 was amended by the Environment Act 1995, Schedule 22, paragraph 128.
 - (b) 1992 c. 42.
 - (c) 1995 c. 25. There are amendments to section 48 that are not relevant to this Order.
 - (d) 1996 c. 61.
 - (e) Paragraph 11 of Part 6 was amended by S.I. 1997/2971, Schedule, paragraph 37.
 - (f) 2000 c. 36.
 - (g) 2003 c. 17.

(3) In section 69(4)(b) (vessels: responsible authorities), in paragraph (h)(iii), for “the British Waterways Board” substitute “Canal & River Trust”.

Gambling Act 2005

17.—(1) The Gambling Act 2005(c) is amended as follows.

(2) In section 211(4) (vehicles and vessels: premises licences), for paragraph (c) substitute—

“(c) the British Waterways Board, if the place where the vessel is or is likely to be while activities are carried on in the vessel in reliance on a premises licence is in Scotland,

(ca) Canal & River Trust, if the place where the vessel is or is likely to be while activities are carried on in the vessel in reliance on a premises licence is in England or Wales, and”.

(3) In section 231(3) (vehicles and vessels: temporary use of premises), for paragraph (c) substitute—

“(c) the British Waterways Board, if the place where the vessel is moored or is likely to be moored, or the place in the United Kingdom nearest to the place at which the vessel is or is likely to be, while activities are carried on in the vessel in reliance on a temporary use notice is in Scotland,

(ca) Canal & River Trust, if the place where the vessel is moored or is likely to be moored, or the place in the United Kingdom nearest to the place at which the vessel is or is likely to be, while activities are carried on in the vessel in reliance on a temporary use notice is in England or Wales, and”.

Natural Environment and Rural Communities Act 2006

18. In Schedule 7 to the Natural Environment and Rural Communities Act 2006(d) (designated bodies), in paragraph 7, for “The British Waterways Board” substitute “Canal & River Trust”.

Crossrail Act 2008

19.—(1) Schedule 17 to the Crossrail Act 2008(e) (protective provisions) is amended as follows.

(2) In the heading to Part 5 (protection of British Waterways Board), for “British Waterways Board”, substitute “Canal & River Trust”.

(3) In Part 5—

(a) in paragraph 1(2), omit the definition of “the Board”,

(b) for “the Board”, in each place occurring, substitute “Canal & River Trust”.

Flood and Water Management Act 2010

20. In Schedule 3 to the Flood and Water Management Act 2010(f) (sustainable drainage), in paragraph 11(3)(d), for “British Waterways” substitute “Canal & River Trust”.

(a) There are amendments to section 13 that are not relevant to this Order.
(b) There are amendments to section 69 that are not relevant to this Order.
(c) 2005 c. 19.
(d) 2006 c. 16.
(e) 2008 c. 18.
(f) 2010 c. 29.

Crime and Security Act 2010

21. In section 55(2)(a) (power to restrict sale and supply of alcohol) of the Crime and Security Act 2010(b), in the inserted section 172B(5)(i)(iii) of the Licensing Act 2003 (vessel: responsible authorities), for “the British Waterways Board” substitute “Canal & River Trust”.

Police Reform and Social Responsibility Act 2011

22. In section 119(3)(c) (early morning alcohol restriction orders) of the Police Reform and Social Responsibility Act 2011(d), in the substituted section 172B(4)(j)(iii) of the Licensing Act 2003 (vessel: responsible authorities), for “the British Waterways Board” substitute “Canal & River Trust”.

PART 2

Acts of the Scottish Parliament

Ethical Standards in Public Life etc. (Scotland) Act 2000

23. In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000(e) (devolved public bodies), at the appropriate place insert “The British Waterways Board.”.

Scottish Public Services Ombudsman Act 2002

24. In schedule 2 to the Scottish Public Services Ombudsman Act 2002(f) (listed authorities), in Part 2 (entries amendable by Order in Council) before paragraph 21 insert the following—

“**20B** The British Waterways Board.”.

Freedom of Information (Scotland) Act 2002

25. In schedule 1 to the Freedom of Information (Scotland) Act 2002(g) (Scottish public authorities), in Part 7 (others) before paragraph 62 insert the following—

“**61B** The British Waterways Board.”.

Public Services Reform (Scotland) Act 2010

26.—(1) The Public Services Reform (Scotland) Act 2010(h) is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), in the list headed “Scottish public authorities with mixed functions or no reserved functions”, at the appropriate place insert “British Waterways Board”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), at the appropriate place insert “British Waterways Board”.

(a) Section 55 comes into force on a date to be appointed, but has been prospectively repealed by section 119(4) of the Police Reform and Social Responsibility Act 2011 (c. 13), which comes into force on a date to be appointed.

(b) 2010 c. 17.

(c) Section 119 comes into force on a date to be appointed. When in force, section 119(4) will repeal section 55 of the Crime and Security Act 2010.

(d) 2011 c. 13.

(e) 2000 asp 7.

(f) 2002 asp 11. Paragraph 20A (Bòrd na Gàidhlig) was inserted by the Gaelic Language (Scotland) Act 2005 (asp 7), schedule 2, paragraph 2. There are other amendments that are not relevant to this Order.

(g) 2002 asp 13. Paragraph 61A (Bòrd na Gàidhlig) was inserted by the Gaelic Language (Scotland) Act 2005 (asp 7), schedule 2, paragraph 3. There are other amendments that are not relevant to this Order.

(h) 2010 asp 8.

(4) The amendment made by sub-paragraph (3) does not require the British Waterways Board to publish any information under section 31(1) or (3) or 32(1) of the Public Services Reform (Scotland) Act 2010 in respect of expenditure incurred, payments made or steps taken prior to the transfer date.

Public Records (Scotland) Act 2011

27. In the schedule to the Public Records (Scotland) Act 2011(a) (authorities to which Part 1 applies), in the list headed “Others”, at the appropriate place insert “British Waterways Board.”.

PART 3

Subordinate legislation

The Drainage Rates (Appeals) Regulations 1970

28. In regulation 5(2)(c) (hereditaments occupied for purposes of extensive undertakings) of the Drainage Rates (Appeals) Regulations 1970(b), for “and the British Waterways Board” substitute “, or Canal & River Trust”.

The Secretary of State for Transport (Harbour Authorities) Charging Scheme 1982

29. In the Schedule (contributing authorities) to the Secretary of State for Transport (Harbour Authorities) Charging Scheme 1982(c), at the appropriate place insert “Canal & River Trust”.

The Local Government Reorganisation (Preservation of Right to Buy) Order 1986

30. In Schedule 1 (modifications as applied to preserved right to buy) to the Local Government Reorganisation (Preservation of Right to Buy) Order 1986(d), in sub-paragraph (4) of paragraph 7 of Schedule 4 to the Housing Act 1985(e) inserted by paragraph 42(a) of Part 1, at the appropriate place insert “Canal & River Trust”.

The Housing (Right to Buy) (Prescribed Persons) Order 1992

31. In the Schedule (prescribed persons) to the Housing (Right to Buy) (Prescribed Persons) Order 1992(f), at the appropriate place insert “Canal & River Trust”.

The Transport and Works Applications (Inland Waterways Procedure) Regulations 1993

32.—(1) The Transport and Works Applications (Inland Waterways Procedure) Regulations 1993(g) are amended as follows.

(2) In regulation 3(1) (application of regulations), for “the British Waterways Board’s” substitute “Canal & River Trust’s”.

(3) In Schedule 1 (modifications of the Transport Act 1968)—

- (a) omit paragraph 1;
- (b) in paragraph 3(3)—

(a) 2011 asp 12.

(b) S.I. 1970/1152, to which there are amendments not relevant to this Order.

(c) S.I. 1982/9.

(d) S.I. 1986/2092.

(e) 1985 c. 68.

(f) S.I. 1992/1703.

(g) S.I. 1993/1119 as amended by the Inland Waterways Advisory Council (Abolition) Order 2012 (S.I. 2012/[0000]).

- (i) after “shall consult”, insert “with Canal & River Trust, where the waterway in respect of which the order is to be made is in England or Wales, and”;
 - (ii) after “of this Schedule,”, insert “to Canal & River Trust and”;
 - (c) in paragraph 3(4), after “of this Schedule, to”, insert “Canal & River Trust”;
 - (d) in paragraph 3(5), in the text of the modified paragraph 3—
 - (i) in sub-paragraph (a), before paragraph (i), insert—
 - “(ai) to Canal & River Trust”;
 - (ii) in sub-paragraph (b), after “copy thereof to”, insert “Canal & River Trust”.
- (4) In paragraph 2(2) of Schedule 2 (modifications of the Transport and Works Act 1992) in the text of the modified section 11(4)(c)—
- (a) for “the British Waterways Board’s” substitute “Canal & River Trust’s”;
 - (b) after “with that paragraph” insert “, Canal & River Trust”.

The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999

33. In the Schedule to the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(a), omit the entry relating to the British Waterways Board.

The Utilities Contracts Regulations 2006

34. In Schedule 1 (utilities) to the Utilities Contracts Regulations 2006, in Part P, for “British Waterways Board” substitute “Canal & River Trust”.

The Merchant Shipping (Inland Waterways and Limited Coastal Operations) (Boatmasters’ Qualifications and Hours of Work) Regulations 2006

35. In Part 1 of Schedule 2 to the Merchant Shipping (Inland Waterways and Limited Coastal Operations) (Boatmasters’ Qualifications and Hours of Work) Regulations 2006(b), after “British Waterways Boatmanship Licence” add “or equivalent licence issued by Canal & River Trust”.

The Community Drivers’ Hours and Recording Equipment Regulations 2007

36. In Part 1 of the Schedule (exempted vehicles) to the Community Drivers’ Hours and Recording Equipment Regulations 2007(c), in paragraph 1(2)(f), after “the British Waterways Board” insert “or Canal & River Trust”.

SCHEDULE 4

Article 5(1)

Transitional provisions

Interpretation

1. In this Schedule, “the relevant period” means the period commencing on 1st April 2011 and ending on 31st March 2012.

(a) S.I. 1999/1319. There are amendments to the Schedule that are not relevant to this Order.
 (b) S.I. 2006/3223.
 (c) S.I. 2007/1819.

Accounts and report for the period 1st April 2011 to 31st March 2012

2.—(1) Subsections (1)(b) to (4) of section 24 of the 1962 Act shall continue in force as they had effect immediately before the transfer date in relation to the accounts of the British Waterways Board for the relevant period.

(2) Subsections (8) and (8C) of section 27 of the 1962 Act shall continue in force as they had effect immediately before the transfer date in so far as they relate to the making of reports by the British Waterways Board on the exercise or performance of their functions, and on their policy and programme, in the relevant period.

Transitional arrangements for the period 1st April 2012-31st March 2013

3.—(1) Before making any direction under section 24(3A) of the 1962 Act(a) relating to the preparation of the annual statement of accounts for the period ending on 31st March 2013, the Scottish Ministers must consult the Secretary of State.

(2) The British Waterways Board must, at or around the same time as they send the relevant statement and report to the Scottish Ministers under section 24(3C) of the 1962 Act, send a copy of the relevant statement and report to the Secretary of State.

(3) The Secretary of State must lay before Parliament a copy of the relevant statement and report sent to the Secretary of State under sub-paragraph (2).

(4) In this paragraph, “the relevant statement and report” means the statement of accounts prepared by the British Waterways Board under section 24(3A) of the 1962 Act for the period ending on 31st March 2013 and the report made by the Auditor General for Scotland on that statement.

Obligations on Canal & River Trust

4.—(1) Canal & River Trust must provide the Secretary of State with such returns, accounts and other information with respect to the property and activities of the British Waterways Board during the relevant period and for the period commencing on 1st April 2012 and ending on the day before the transfer date, and the property and activities of any company which was the subsidiary of the Board during any such period, as the Secretary of State may from time to time require.

(2) Canal & River Trust must provide such assistance as the British Waterways Board may reasonably require for the purpose of enabling the Board to comply with the requirements of paragraph 2 or 3 or of section 24(3A) of the 1962 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This instrument transfers statutory functions, so far as exercisable in relation to England and Wales, from the British Waterways Board (the Board) to Canal & River Trust. It also makes consequential amendments to provide for the Board to continue to exist as a statutory corporation exercising statutory functions in relation to Scotland.

Article 2(1) and Schedule 1 provide for the transfer of certain statutory functions exercisable by the Board in relation to England and Wales to Canal & River Trust. The statutory functions are those exercisable by the Board under or by virtue of the enactments listed in Schedule 1 (and so include functions in subordinate legislation made under those enactments), and functions under or by virtue of any local Act. The statutory functions include functions which were transferred to the Board from the British Transport Commission under the Transport Act 1962 (c. 46). A number of functions under that Act and the Transport Act 1968 are not transferred.

Article 2(2) and Schedule 2 makes amendments to the Transport Act 1962 and the Transport Act 1968. The amendments made by Schedule 2 include amendments to the Transport Act 1968 to

(a) Subsections (3A)-(3D) are inserted by paragraph 15(5) of Schedule 2 to this Order.

give Canal & River Trust a right to apply to the minister for the making of an Order under section 104(3) of that Act (for the reclassification of inland waterways), and to require the Minister to have regard to the financial position of Canal & River Trust in deciding whether to make any such Order. There are further related amendments to sections 105 and 106 and to Schedule 13. Article 2(3) and Schedule 3 make amendments to primary and secondary legislation (and Acts of the Scottish Parliament). The amendments made by Schedule 3 include an amendment to the Local Government and Planning Act 1980 (c. 65) to provide that Canal & River Trust is not a statutory undertaker for the purposes of Part 10 of that Act.

Article 2(5) and (6) provide for certain statutory references to the Board to be changed to references to Canal & River Trust, in relation to England and Wales.

Article 3 provides for the transfer of functions exercisable by the Board as a harbour authority, navigation authority or statutory undertaker in relation to England and Wales to Canal & River Trust.

Article 4 contains provision for the continued validity or effect of things done by or in relation to the Board following the transfer of functions.

Article 5 and Schedule 4 contain transitional provisions relating to reporting and accounting obligations in relation to the Board with respect both to the last financial year for which the Board operated as a statutory corporation in Great Britain and for the period between the end of that year and the coming into force of this instrument.

Article 6 contains savings in relation to the continued validity of appointments to the Board made by Scottish Ministers before the coming into force of this instrument and in relation to orders made under section 74 of the Transport Act 1962 (which deals with matters concerning pensions).

Article 7 contains a revocation.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on the Defra website at www.defra.gov.uk, and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

CONSENT MEMORANDUM

The British Waterways Board (Transfer of Functions) Order 2012

Consent Motion

1. "To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make The British Waterways Board (Transfer of Functions) Order 2012 in accordance with the draft laid in Table Office on 1 March 2012"

Background

2. This memorandum has been laid by John Griffiths AM, Minister for Environment and Sustainable Development, in accordance with the arrangements agreed by Business Committee on 7th February.
3. The above Motion is tabled to seek the agreement of the National Assembly, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the British Waterways Board (Transfer of Functions) Order 2012. Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly for an order under sections 1 to 5 of that Act that makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly.
4. A copy of The British Waterways Board (Transfer of Functions) Order 2012 was laid in Table Office on 1 March.

Summary of the Order and its Policy Objectives

5. The Order transfers the functions of British Waterways to the Canal & Rivers Trust (CRT) or Glandwr Cymru in Wales.
6. British Waterways is a public corporation with a statutory responsibility for operating and maintaining the waterways for which they are the navigation authority.
7. In October 2010 the Government announced that British Waterways will move from a Public Corporation and that the assets and statutory functions of British Waterways in England and Wales should be transferred to CRT.
8. The intention of moving functions and assets of British Waterways in England and Wales to civil society through the creation of a new national charity for the waterways is to liberate their potential to provide benefits to the public as well as offering waterways users the opportunity to play a

role in their governance. It will enable local communities to have a greater say in how their local canal or river is run.

9. The waterways will be placed on a more financially sustainable basis as the charity will be able to access new commercial and private income streams. There will be greater opportunity to recruit volunteers to support heritage, environmental and amenity waterways assets while reducing the long term public funding.

Competence Issues

10. The British Waterways Board was specified as a public body for the purposes of Part 2 of the Welsh Language Act 1993 by article 2 of, and the Schedule to, the Welsh Language Schemes (Public bodies) Order 1996 (S.I. 1996/1898). As a public body under the Welsh Language Act 1993, the British Waterways Board adopted a Welsh Language Scheme.
11. Article 2 of the order has the effect of transferring the British Waterways Board's functions under the Welsh Language Act 1993 to the Canal & Rivers Trust. Article 2 also has the effect of requiring references in subordinate legislation made under, or by virtue of, the Welsh Language Act 1993 to the British Waterways Board to be read in relation to England and Wales as references to the Canal & Rivers Trust.
12. In the view of the Welsh Government, article 2 includes provision about the Welsh language. Because the National Assembly for Wales has legislative competence in relation to the Welsh language, it is the view of the Welsh Government that article 2, as it relates to the Welsh Language Act 1993, makes provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly.
13. Article 3 of the order has the effect of transferring a number of functions from the British Waterways Board, to the Canal & River Trust. The transferred functions do not include the functions of a statutory undertaker under Part 10 of the Local Government, Planning and Land Act 1980. As the law currently stands, the British Waterways Board is a statutory undertaker for these purposes. So, the controls over land held by it, which are set out in Part 10 apply. When the Order comes into force, the effect of the provision is that those controls will not apply to land that will be held by the CRT.
14. In the view of the Welsh Government this particular provision is about the regulation of land held by a public body. Because the National Assembly for Wales Assembly has competence in relation countryside and open spaces including the designation and regulation of national parks and areas of outstanding national beauty, (field 7 of Schedule 7 to the Government of Wales Act 2006), urban development (field 18), and competence in relation to the reclamation of derelict land and improvement of the environment (field 4), it is the view of the Welsh Government that

this particular provision relates to the Assembly's competence in a number of areas.

Advantages of utilising this Order

15. It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so the functions of British Waterways are transferred to the Canal & Rivers Trust at the earliest opportunity.

Financial Implications

16. There are no financial implications for Wales associated with this Order.

John Griffiths AM
Minister for Environment and Sustainable Development

EXPLANATORY DOCUMENT TO
THE BRITISH WATERWAYS BOARD (TRANSFER OF FUNCTIONS) ORDER

2012 No. [XXXX]¹

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument transfers functions exercisable by the British Waterways Board under certain enactments to Canal & River Trust (a company limited by guarantee), in relation to England and Wales. The British Waterways Board will continue to operate in Scotland, and this instrument additionally makes consequential changes to the constitution and functions of that Board in Scotland.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The British Waterways Board was established by section 1 of the Transport Act 1962, and became the statutory successor to certain functions and property of the British Transport Commission. By virtue of the Transport Act 1962 and a number of other public and local enactments, the British Waterways Board exercises a range of functions. The Board operates as a navigation authority, a statutory undertaker and a harbour authority under a wide range of enactments.

4.2 The Public Bodies Act 2011 confers powers on Ministers in relation to certain public bodies and offices. Section 5 to that Act enables Ministers by order to modify the functions of a body specified in Schedule 5, or transfer a function of such a person to an eligible person. The British Waterways Board is listed in Schedule 5.

4.3 This instrument is being made to transfer statutory functions exercisable by the British Waterways Board in England and Wales to Canal & River Trust. Canal & River Trust is a company limited by guarantee (and an eligible person within the meaning of section 1(3) of the Public Bodies Act 2011), and is in the process of

¹ For reasons of length, some Annexes are not attached to all versions of this Explanatory Document, as follows:

- Annexes A-C are attached to all versions.
- Annex D is a stand alone document sent to the House of Commons EFRA Select Committee, the House of Lords Merits Committee, the Joint Committee on Statutory Instruments (JCSI), the Vote Office and the Printed Paper Office.
- Annexes E-H are stand alone documents sent to the House of Commons EFRA Select Committee and the House of Lords Merits Committee only.
- Annexes I-K are stand alone documents to follow to the House of Commons EFRA Select Committee and the House of Lords Merits Committee only.

seeking charitable status. The British Waterways Board will continue to exist and carry out functions in relation to Scotland.

4.4 As required by section 9(1) and (6) of the Public Bodies Act 2011, the UK Government is seeking the consent of the Scottish Parliament and the National Assembly for Wales. The UK Government is also seeking the consent of Canal & River Trust to the transfer of functions, as required by section 21(1) of that Act. The consent of the Treasury is also required under section 6(4) of that Act. The Scottish Ministers and the Welsh Ministers have been consulted on the proposal in accordance with section 88(2) of the Scotland Act 1998 and section 63(1) of the Government of Wales Act 2006 respectively. The order will not be made without obtaining the necessary consents. As required under section 6(2) of the Public Bodies Act HM Treasury consent has been already been obtained for the modified funding arrangements which will apply to CRT.

4.5 The order makes consequential amendments, including provision to enable the British Waterways Board to continue to operate as a body in relation to Scotland. The order also contains an amendment to Schedule 5 to the Public Bodies Act 2011.

4.6 A transfer scheme will be made by the Minister using the powers under section 23

(1)(a) of the Public Bodies Act 2011 at the same time as the order is made. This will transfer certain property, rights and liabilities of the British Waterways Board. The Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to this transfer. The transfer scheme will be laid in Parliament once the order has been made.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom.

6. European Convention on Human Rights

Richard Benyon, Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

“In my view the provisions of the British Waterways Board (Transfer of Functions) Order 2012 are compatible with the Convention rights.”

7. Policy background

- What is being done and why

7.1 The British Waterways Board (‘British Waterways’) is a public corporation with a statutory responsibility for operating and maintaining those waterways, docks and harbours in Great Britain that were transferred to it in 1963 as one of the successors to the British Transport Commission under the Transport Act 1962 together with waterways and docks acquired or restored since then. British

Waterways is required by statute to maintain the majority of the waterways in a suitable condition for the craft which use them. British Waterways' 2,200-mile network of historic canals, rivers and docks is visited by 13 million people a year and delivers an annual £500m in benefits to the nation, from amenity, flood relief and employment to green infrastructure, neighbourhood renewal and wildlife corridors.

7.2 The Government has policy responsibility for inland waterways in England and in Wales. Responsibility for inland waterways in Scotland is devolved to Scottish Ministers. British Waterways operates across Great Britain and was specified as a cross-border public authority for the purposes of the Scotland Act 1998. As a result of the Scotland Act 1998 (Cross-Border Public Authorities) (Adaption of Functions etc) (No. 2) Order 2000, Scottish Ministers hold largely the same functions with regard to British Waterways in Scotland as those held by the Government for British Waterways in England and Wales.

7.3 The Government's policy intention is that the Canal & River Trust (CRT) should replace British Waterways in England and Wales, and that the assets and statutory functions of British Waterways in England and Wales should be transferred to CRT. CRT is currently applying for charitable status. The Scottish Government has decided to retain the Scottish waterways in the public sector. Statutory functions of British Waterways will be transferred in England and Wales to CRT by means of this instrument; assets and liabilities of British Waterways will be transferred to CRT by a separate transfer scheme made under the Public Bodies Act.

7.4 This instrument which is being laid before Parliament is made using powers in the Public Bodies Act 2011, and transfers certain functions exercisable by British Waterways in relation to England and Wales to CRT. Certain functions required by British Waterways to operate as a statutory corporation are not needed for a company with its own powers to operate, and so such functions have not been transferred by this order. The order also contains consequential provision, including the amendment of other legislation. A detailed summary of the provisions of the instrument is included as Annex A to this document. Because British Waterways will continue to operate in Scotland, this instrument additionally makes consequential changes to the constitution and functions of British Waterways in Scotland, which have been developed in conjunction with the Scottish Government. As this order makes provision which would be within the legislative competence of the Scottish Parliament and the National Assembly for Wales, the consent of that Parliament and that Assembly is being sought.

7.5 BW staff in England and Wales will transfer into the Canal & River Trust under TUPE arrangements with no direct loss of jobs. It will be for the charity to decide after that whether further changes including efficiencies are needed.

Accompanying documents submitted with the Transfer Order, and their purpose

7.6 In order to enact this policy, several different documents have had to be drawn up alongside this instrument which is being laid before Parliament. **The following paragraphs detail what these additional documents are, the respective roles that they play in the setting up of CRT, and how they relate to one another.**

7.7 **The Transfer Scheme** is made under section 23 of the Public Bodies Act 2011. It transfers the property, assets rights and liabilities of British Waterways in England and Wales to CRT (as distinct from the Transfer Order which transfers the statutory functions). We will let the Committees have a draft at the earliest possible moment. The property and assets being transferred to CRT include not just the infrastructure of the waterways, but also a substantial portfolio of investment property which originated from the development of surplus operational land but which has been substantially grown by British Waterways by the re-investment of capital development returns over recent decades. This commercial property portfolio, worth around £460m and used by British Waterways to fund repair, maintenance and operation of the network infrastructure, will be transferred to CRT for the same purposes, along with the rest of the network.

7.8 Defra and CRT have agreed on a series of measures to shape the management of this property endowment. Working with CRT, the Government will define a clear memorandum of its purposes in transferring the investment property to CRT. CRT and Defra will jointly appoint a ‘protector’ to help the CRT develop a statement of investment principles that will seek to interpret and apply the Government’s memorandum of purposes. The ‘protector’ will monitor and report to CRT and Defra on the implementation of the statement of investment principles, noting any significant deviations from the agreed principles. These measures will guide the CRT in its investment behaviour and offer continued assurance to Government that the CRT is abiding by the purposes for which the commercial property is being transferred. The Trust Settlement (see below) and entrenched provisions in the CRT’s articles of association will make provision to transfer the commercial endowment in the unlikely eventuality that the CRT were to be removed as trustee of the waterways infrastructure.

7.9 A very important role of CRT will be to safeguard the infrastructure of the waterways in perpetuity for the nation. We want the canals, towpaths, locks and other parts of the waterways to be looked after for the benefit of future generations. The document which will ensure this is the **Trust Settlement**. A draft of this document is at Annex I. The Trust Settlement places the waterways infrastructure in a Trust (called the ‘Waterways Infrastructure Trust’), which the Secretary of State will settle on CRT as first trustee. The Trust Settlement ensures that all of the waterways infrastructure (as defined in the Trust) is held as permanent functional endowment. This means that the CRT will not be able to sell any part of the waterways infrastructure without gaining the Secretary of State’s and in some cases the Charity Commission’s prior consent. Before granting such consent, the Secretary of State will hold a public consultation; for land held in Wales, the Secretary of State will also consult the Welsh Ministers before reaching a decision. The Trust Settlement also requires the CRT to grant free pedestrian access to the towpath (except in certain very tightly defined circumstances and again with the prior consent of the Secretary of State, following public consultation and, in the case of towpath in Wales, after consulting the Welsh Ministers).

7.10 CRT is a new charitable company which has been set up especially for the purpose of receiving the undertaking of British Waterways in England & Wales. Substantial discussions are taking place with the Charity Commission in connection with CRT’s proposed registration as a charity. Those discussions include

consideration of the proposed Charitable Objects of CRT. These **Charitable Objects** (essentially its purposes, which are subject to the approval of the Charity Commission), are set out in Annex J. Briefly, these objects are: to hold in trust or own, and to manage, inland navigations for the public benefit together with associated charitable objects to protect and enhance the environmental, heritage and landscape value of waterway corridors. CRT will have power to extend its activities beyond former state owned waterways. Indeed it is planned that the waterways and museums of The Waterways Trust in England and Wales will transfer to it when that organisation merges with CRT later in the year.

7.11 An **Impact Assessment** has been undertaken (attached at Annex D), which sets out the anticipated costs and benefits of the creation of CRT. The Government believes that moving the functions and assets of British Waterways in England and Wales to civil society through the creation of CRT will further liberate the potential of the waterways to provide benefits for the public. It should also offer waterways users the opportunity to play a role in their governance and bring their passion and expertise to the waterways. It will enable local communities to have a greater say in how their local canal or river is run. It will enable the waterways to be placed on a more financially sustainable long term footing through CRT being able to access new commercial and private income streams (including legacies, donations, borrowing and other fund-raising activities), as well as providing greater opportunity to recruit volunteers to support heritage, environmental and amenity waterways assets. There will also be some savings from efficiencies and other benefits flowing from charitable status, as identified in the Impact Assessment. Overall there will be a reducing of the long-term Exchequer commitment.

7.12 Under a **funding agreement (Heads of Terms)** between the Government and CRT, attached at Annex K, CRT will receive grant funding of around £800m over the 15 year term of the funding agreement until 2026/27. This represents good value for the taxpayer when compared with levels of public funding for the waterways in previous spending review periods. A summary of all the aspects of the funding agreement can be found at Annex B. A Grant Agreement is being prepared which will set out the terms of the funding agreement in more detail.

7.13 In addition, a **Memorandum of Understanding (MoU)** is being drawn up to set out how the relationship between Defra and CRT will work. It will include matters concerning finances and risk, in order to safeguard public monies and satisfy Defra's legitimate interest in CRT. It will also deal with certain issues related to the governance and monitoring of expenditure of grant funding not considered appropriate for the legally binding funding agreement. It is being drawn up by Defra and CRT, and does not convey any legal powers or responsibilities.

Section 8 of Public Bodies Act

Section 8(1)

7.14 Section 8(1) of the Public Bodies Act 2011 provides that a Minister can make an order under section 5 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.

7.15 The Minister considers that the transfer of the functions of British Waterways in England and Wales will lead to greater efficiency, effectiveness and economy, and that accountability will be maintained.

7.16 Exercise of public functions will improve because waterways' users and the communities which live alongside waterways will have greater involvement in how the waterways are managed. The transfer of functions and property of British Waterways in England and Wales to civil society will achieve this by giving key stakeholders a role in the governance of the waterways and allowing them to bring their expertise and passion to the organisation.

7.17 Greater local community engagement is particularly important as this will help communities recognise what the waterways have to offer in achieving their objectives such as public health, well being and 'green travel' to work, as well as opening up opportunities for regeneration in both inner city and rural areas. It will enable the waterways in England and Wales to be placed on a more financially sustainable long term footing through CRT being able to access new commercial and private income streams (including legacies, donations, borrowing and other fund-raising activities), as well as providing greater opportunity to recruit volunteers to support heritage, environmental and amenity waterways assets. Full detail is set out in the Impact Assessment which accompanies this instrument.

7.18 As set out in paragraph 7.11 savings in the public funding of the waterways in England and Wales will result from the long term funding agreement between Government and CRT.

7.19 Further savings are expected as CRT develops new income sources. Potential sources of new revenue include fundraising activities, donations, charitable grants and legacies, an ability to borrow against the body's property assets and facilitation of wider commercial opportunities. Charitable status would also facilitate a step change in volunteering, enhanced local partnership working and a range of cost efficiencies. This will reduce the need for Government support over time. There should be some savings from efficiencies and other benefits flowing from charitable status. Savings have been identified in the Impact Assessment which accompanies this Order.

7.20 Accountability is maintained in a number of areas. CRT's new governance structures are specifically designed to ensure accountability to the wide community of interested parties, not just waterways users but also to environmental and heritage groups local communities etc. The charity will also be accountable to Defra, through its funding agreement, for the Government's long-term funding of the waterways. It will also be accountable under the terms of a Trust Settlement under which the waterways transferred to it will be held in trust in perpetuity on behalf of the nation. It will also be accountable through the 'protector' arrangements to be put in place for the commercial property portfolio under which the stewardship of that portfolio will be monitored by an investment professional reporting to Defra.

7.21 It is quite common for private companies who own specific infrastructure to have statutory powers conferred upon them. For example, the utility companies such as energy, water, rail companies all have special statutory powers which they need in order to run such an operation. A significant number of the powers which British

Waterways currently exercise can be traced back to private Acts of Parliament which conferred authority on the private companies who originally built the canals. So many of the powers were originally conferred on private companies in the first place, long before the canals were nationalised in the 1940s. Perhaps because of that, they tend to contain safeguards. For example, in many cases there are rights of compensation and appeal.

7.22 British Waterway's powers to make byelaws are transferred to the CRT by virtue of this order. These powers to make byelaws will remain subject to confirmation by Ministers. So no byelaw could come into force without the agreement of a Minister who is accountable to Parliament. The CRT would not be the only non public sector body to have power to make byelaws. For example water companies can make byelaws, and indeed within the charitable field, the National Trust has the power to make byelaws.

Section 8(2)

7.23 Section 8(2) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that the order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

7.24 The Minister considers that conditions in section 8(2) are met. The transfer of British Waterways' functions to the CRT will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The powers currently exercised by British Waterways in England and Wales which transfer to the CRT will not change and have limitations and safeguards relevant to them. These include notice requirements; rights of appeal to special bodies or the courts; and requirements for ministerial approval.

For example:

- the power to enter land (under the British Waterways Act 1995) requires prior notice which can be challenged in the magistrates court and any entry is subject to payment of compensation; the order will transfer powers of entry to CRT, which they will need for operational purposes, but with existing safeguards;
- under the British Transport Commission Act 1954, section 16, byelaws have to be publicised in draft and are subject to ministerial scrutiny and confirmation before they can come into force; the order will transfer to CRT the power to make byelaws, and that Ministerial confirmation role will remain;
- under the Transport Act 1962, section 15, British Waterways has a power to compulsorily purchase land. This power will be transferred to the CRT and the Minister will retain the current duty to give consent first. Under the British Waterways Act 1983, section 10, the Minister may make orders to transfer new navigations to the Board. The Government intends to allow CRT to be the recipient of new navigations, but it will still be the Minister who makes the orders.

- under the British Waterways Act 1995 the making of Boat Safety Standards is subject to prior public consultation and scrutiny by user panels and their application can be appealed to a statutory standards appeal panel;
- removal of unsafe, unlicensed or abandoned vessels by British Waterways is subject to prior notice and rights of return (on payment of the removal costs).

7.25 The Public Bodies Act allows for transferred functions to be modified. Hence, if it were decided that the powers require additional safeguards, the Order could be used to add those safeguards on transfer. The Government has actively scrutinised all powers that are to be transferred to check whether additional safeguards ought to be added but has decided this is not necessary.

7.26 At present British Waterways is subject to a broad range of legal duties set out in a large body of legislation, much of it quite historic. These include legal obligations to maintain the waterways in their care; to manage navigation on those waterways; and general commitments to deliver wider environmental objectives in line with, for example, EU legislation. It also has a range of legal powers needed for the proper running of the waterways. These are extremely wide-ranging in nature and include powers such as those to remove vessels that are not lawfully present on the waterways. Other powers include:

- power to make byelaws (subject to the approval of Ministers) for regulating use of inland navigations or for control of shipping in harbours and docks;
- a statutory power enabling entry onto land for the purpose of carrying out works to inland waterways for repair, maintenance, alteration, renewal or protection;
- powers to charge for the licensing or registration of vessels;
- powers to require standards for the construction and equipment of vessels; and
- powers to require insurance of vessels in respect of third party liabilities.

7.27 One of the main purposes of the draft Transfer Order is to provide for the transfer to CRT of those statutory powers and duties that are now held by BW in England and Wales and are necessary for the CRT to be an effective manager and guardian of the waterways being transferred to it. This includes some consequential modification of existing statute law.

7.28 Statute law concerning the waterways falls into two broad categories:

- legislation relating to specific waterways passed before their nationalisation in 1948; and
- legislation following nationalisation and relating to waterways generally.

The improvement of rivers to enable navigation and the construction of canals were originally authorised by a large number of Acts of Parliament (well over 300 in the case of British Waterways). Most were passed in the late 18th and early 19th centuries, and nearly all are to some extent still relevant today. For example, it is these Acts that continue to authorise the taking of water and in many respects regulate the relationship between the waterway and its neighbours.

7.29 Parliament passed these Acts waterway by waterway, and most waterways have several such Acts relevant to them. On nationalisation, British Waterways (and its predecessor, the British Transport Commission) were made successor to the original canal proprietors' powers and duties under these enabling Acts. In a similar manner, with responsibility in England and Wales passing from British Waterways to the CRT, the draft Transfer Order will make the CRT a successor to the powers and duties provided by these enabling Acts. (Like British Waterways, the CRT will exercise these powers and duties as a 'statutory undertaker'.) The powers and duties will pass 'as they are now'; there will be no enhancement of them – the CRT will be in the same position as British Waterways currently is with regard to the enabling Acts.

7.30 After nationalisation in 1948, most of the waterway-related laws enacted by Parliament were of general effect (although some exceptions dealt with specific waterways). These laws divide into two broad categories: those concerning the management of waterways, and those concerning the governance of British Waterways itself and its status as a public authority.

7.31 The general scheme of the draft order is to provide for the transfer to the CRT of the waterway management duties and powers for England and Wales provided for by these statutes, but not to apply those provisions relating to the governance of British Waterways in England and Wales and its status as a public authority. Full provision for the governance of CRT will be made through its company constitution and status as a registered charity in England and Wales.

7.32 The key post-nationalisation statutes containing important waterway management powers and duties are the Transport Acts 1962 and 1968 and the British Waterways Acts 1971, 1983 and 1995. Some minor provisions are contained in other Acts. The draft Transfer Order makes provision for these waterway-management powers and duties to pass to the CRT, while the provisions concerning the governance of British Waterways in England and Wales and the powers needed for a statutory corporation to operate will not be transferred in relation to England and Wales, as the CRT, being a charitable company rather than a creature of statute, will have its own powers in this respect. These provisions, adapted as necessary, will continue to apply to British Waterways as regards its continuing operations in Scotland.

7.33 Mostly the CRT will succeed to these duties and powers on exactly the same basis as British Waterways in England and Wales now holds them. In some respects adaptation is necessary to take account of the different status of the CRT as a charity outside the public sector, but the net effect is intended to be the same. In particular it should be noted that there will be no enhancement of, or addition to, the existing enforcement powers of British Waterways in England and Wales when those powers pass to the CRT. Existing safeguards for the use of those powers will also remain.

7.34 In addition to waterway specific statutes there is a body of legislation that affects British Waterways by reason of its general status as a navigation authority, harbour authority and statutory undertaker in the same way as other such bodies are so affected. Such statutes will continue to apply to CRT in the same way as they do to British Waterways now.

7.35 British Waterways is currently subject to a range of statutory environmental duties under both domestic legislation (such as section 22 of the British Waterways Act 1995) and legislation originating from the EU such as the Habitats Directive and Water Framework Directive. CRT will succeed to the environmental statutory duties currently applicable to British Waterways in England and Wales and there will be no derogation from those statutory standards in the way CRT will have to operate.

Parliamentary activity during the passage of the Public Bodies Bill

7.36 An amendment to remove British Waterways from Schedule 5 was tabled during the passage of the Act in the House of Lords. Concerns were raised about apparent comparisons with the National Trust, noting the financial difficulties that the National Trust was experiencing. Concerns were raised in particular because BW carried out a range of important public functions, including freight transport. Information was requested about the relationship between the new charity and the Welsh Government and the Scottish Government and whether any practical issues been identified. The need for a consultation was queried given the Government had made a decision to create a new charity. Suggestions were made that the Government should provide some sort of guarantee that the body be protected from financial failure. A question was also raised as to whether the proposed arrangements were consistent with charity law legal requirements. In response the Government confirmed that the charity would be set up only in England and Wales. The Government said that there were a number of issues addressed in the consultation and that it included questions on governance. The Government also confirmed that there would be a further consultation on the provisions of the Order. It also confirmed that the proposal were consistent with charity law but the Minister offered to write in further detail if that was not sufficient assurance. The amendment was withdrawn.

7.37 The Government tabled an amendment to clause 21 of the Bill. This was because Clause 21 provided that certain functions (essentially those of a regulatory enforcement nature) could not transfer to a body which did not otherwise already exercise public functions (defined as functions conferred by statute or Royal Charter). The new charity would not otherwise have public functions at the time at which transfer occurred, and so will not be able to be the recipient of any of the functions in clause 21. The amendment was accepted which ensures that the limited regulatory enforcement and other powers currently held by British Waterways can be transferred to the charity, so that the effective and safe operation of the transferred waterways can continue.

- Consolidation

7.38 Not applicable.

8. Consultation outcome

8.1 The Government has carried out consultation in accordance with section 10 of the Public Bodies Act. The requirement of section 11(3) of the Act has also been met.

8.2 In March 2011, Defra launched a consultation on the UK Government's proposals to place those waterways in England and Wales which are owned by the state in trust for the nation through the establishment of a civil society organisation, a new waterways charity. It stated the Government's proposal for those waterways

owned and/or managed by British Waterways to be transferred to the new charity in April 2012, with the Environment Agency navigations being subsequently transferred in 2015/16, subject to affordability at that time and the agreement of the charity's Trustees. The consultation closed on 30 June. A copy is at Annex E and is also available at <http://www.defra.gov.uk/consult/files/A-New-Era-for-the-Waterways-FINAL.pdf>

8.2 The consultation document made clear that the Scottish Government had decided that its canals, including British Waterways in Scotland, would remain in the public sector. It explained that the decision to establish the charity and to transfer into it British Waterways' waterways in England and Wales would require consequential changes to the legislation affecting British Waterways' operations in Scotland.

8.3 The consultation invited views from 99 organisations on the new charity's objectives and purpose, governance model and operation and how we can best secure the financial sustainability of the waterways. A list of consultees is at Annex C. There were 350 responses. The majority of respondents were supportive of the move to charitable status.

8.4 On governance, the consultation sought views on proposals to create Local Waterways Partnerships and membership of the charity's proposed council. In response to the comments received the Government agreed with the CRT trustees that because of the large size of the areas covered by the Local Partnerships they should be re-named Waterways Partnerships. It was also agreed that in order to recognise the specific identity of waterways in Wales there should be an All-Wales Waterways partnership in addition to the Waterways Partnership based on the management unit which includes Wales. In response to comments on the need to encourage localism the Government and CRT trustees agreed that each Waterways Partnership should draw up a localism strategy. In response to comments on the council the Government and CRT trustees agreed to increase the number of council members directly elected and to move to 50% of members being directly elected over time. The CRT trustees decided not to have a membership for fundraising purposes. They decided it was better to seek voluntary giving through a variety of channels but a formal membership will not be one of them. This would not preclude growth of the supporters' constituency to provide for more elected seats on the Council and the CRT trustees decided that this was an issue which can be reviewed when all the Council's constituencies are reviewed in three years time.

8.5 The consultation sought views on the proposed approach for Trust Obligations under which the Government would control in perpetuity the uses to which the operational infrastructure can be put after transfer. A very wide range of suggestions for improvement were made, many of which included questions from respondents seeking assurance that certain obligations would be picked up elsewhere if not through the Trust Obligations. The most common suggestions for improvement were: include the obligation to maintain the canals for navigation; explain 'free access to the towpaths'; commit to the charity cooperating with other, local interest groups and communities; and looking ahead to the inclusion of the Environment Agency navigations, how related obligations could be captured here. Following the consultation the Government and CRT trustees confirmed the overall approach, explaining what obligations were considered appropriate for Trust Obligation. In

addition the Government and CRT trustees decided to protect free pedestrian access by means of an explicit safeguard in the Trust Obligations. This protects the status quo, i.e. the right of free pedestrian access on existing towpaths, subject to certain pragmatic qualifications (i.e. for operational/maintenance purposes and control of access at some tourist sites). As the majority of towpaths are not currently public rights of way and access is permitted at British Waterways' discretion, this is a significant new protection. It was agreed that CRT would publish policies on free access for pedestrians and cyclists.

8.6 The consultation document suggested a list of areas which Government felt should be included in the Charitable Purposes which will define and control the activities that the charity can carry out. The majority of respondents were positive about these suggestions, with many offering suggestions about additional areas to be covered. The most popular areas to include reference to, in addition to those suggested in the consultation document, were: commercial freight, residential boaters, and rural regeneration (as much as urban). The most common suggestions for improvement were either to emphasise social purpose/engagement, navigation, partnership working or the importance of maintaining the network as a whole. In the light of comments received the Government and CRT trustees amended the charity's proposed Charitable Purposes to make some specific changes for example to make explicit reference to navigation and use of vessels (including legitimate residential use), and freight was addressed by a reference to commerce and industry.

8.7 The consultation sought views on the need for the charity to have a mission statement and beliefs. Many respondents questioned the need for a mission statement, belief and vision, asking if one statement would suffice. Most interest was centred around the mission statement. The most common suggestions for improvement were to reference navigation, local communities living on and around the waterways, or current users and uses of the waterways to make it more 'alive' and relevant. A range of suggestions were made in order to improve the 'belief' statement, the most popular being a greater emphasis on: the 'national', not just the 'local'; people and communities; and navigation. There was more general support for the 'vision' statement, but again most common suggestions for improvement were more reference to/emphasis on navigation and local communities. In summary, for each of these statements, navigation and communities/people emerged as the two key areas where respondents felt there should be greater emphasis. Other suggestions for all of the above included greater emphasis on: natural environment, access, freight, transport, and to reflect the charitable purposes. The Government agreed that it would be for the CRT trustees to work further on these statements.

8.8 The consultation sought views on what activities should be undertaken by the charity's proposed Community Interest Company. Many respondents felt that the Government's proposals were sensible for the CIC. However, the most popular suggestions for further activities to be included were: freight, utilities, property, the development of hydro-electric power schemes and merchandising. Some respondents queried why a CIC was needed, and suggested that alternative trading routes should be considered. Others said the charity should be careful not to become too focussed on its commercial profit. Several commented that remunerated positions should be kept to a minimum. In response the Government said that this was a matter for the Trustees to decide upon. The Trustees agreed that the charity must not be dominated

by its commercial dealings but at the same time were conscious that the majority of its income will come from these activities and should therefore be closely overseen by the Trustees.

8.9 In the context of creating a sustainable future for the waterways the consultation sought views on proposals for management of commercial waterways, the Government funding agreement with the charity and developing income and efficiencies. On commercial freight the Government proposed options to change the way commercial freight waterways were managed in order to reduce the financial burden on CRT. The majority of respondents agreed that the current position was not tenable, and that change was needed. The most popular option favoured was the Government's preferred option whereby there would be no changes to current classification or BW's maintenance duties for commercial waterways, but that an amendment would be made to the Transport Act 1968 in relation to the Secretary of State's power of determination, to include additional obligations on the Secretary of State to take into account the charity's representations on affordability. In the light of the consultation responses the Government decided to proceed with its preferred option. The Government said that it would expect that any application for a change would be supported by a comprehensive cost benefit analysis from the charity. Linked to this change the Government decided that it would consult further on a proposal to amend sections 104 and 105 of the Transport Act 1968 to give CRT an enhanced 'statutory proposer' role in relation to ministerial orders on classification and maintenance of its waterways. This issue was covered in the supplementary consultation exercise (see paragraph 8.16 below).

8.10 On the proposed funding agreement the consultation sought views on the monitoring of the charity's performance. Most suggestions for measuring the charity's use of public funds revolved around measuring progress against the charity's core activities and a majority of these suggested performance indicators included in the existing BW Stewardship Score. A number of respondents explicitly supported the use of the Stewardship Score; several stating that it would be useful to have some continuity with the way in which BW's performance was measured. The most commonly suggested indicators were: asset condition, customer satisfaction and enjoyment, navigation, access and the environment. On the environment, many respondents suggested that specific indicators on, for example, litter or water quality should be included as well as SSSI condition. A few suggestions were made as alternatives to, or running in parallel with, the Stewardship score indicators. These included: an independent audit; membership numbers and/or volunteer numbers; the charity's success in raising additional funds; comparing the charity's performance with other charities using a standard performance mechanism where one existed. Many made the general point that there should be clear and transparent scrutiny of the use of public funds by Government. In response Government confirmed its commitment to ensure that the new charity was accountable for the range of public benefits it delivered with public funds. This would be addressed in the funding agreement and the Government undertook that clear methods of measuring public benefits delivered – such as the Stewardship Score – would form a part of the planned negotiations.

8.11 On income and efficiencies a wide range of suggestions were made about how the new charity could increase its income. In terms of commercial income, the most

popular suggestions were through membership schemes, and more effective development/use of tourist opportunities: including heritage properties, retail and catering, holiday accommodation and leasing pleasure boat sites. The development of renewable energy schemes was another common suggestion, primarily hydro-electric generation.

8.12 Many respondents suggested that more non-paying users of the waterways could be encouraged to donate time and money through effective publicity and information campaigns. Another suggestion was to encourage corporate sponsorship of stretches of canal. Also, several respondents felt that Local Authorities could contribute more to the waterways, for example the maintenance of footpaths. Several respondents felt that the prediction of charitable income overall was too optimistic; others requested that safeguards be put in place to ensure any rises in license fees were not excessive. On efficiencies, the most common suggestions were to review remuneration of senior staff, make more effective use of volunteers, prioritise preventative maintenance, and minimise re-branding costs. In response Government considers that it will be for the Trustees to work with the executive of the charity to grow its income from all available sources and to make efficiencies in line with the normal business practices already pursued by British Waterways. However, one of the benefits of moving out of the public sector will be that it should enable and encourage more innovation and diversity in the way the new charity grows its income.

8.13 The Government sought views on a name for the new charity. The most popular name of those suggested in the consultation document was 'National Waterways Trust', with the support of a third of respondents. The next two most popular from the suggested list were 'Waterways Trust' and 'Waterways Trust for England and Wales'. In response the Government and Trustees recognise that the name of the charity must accurately represent its scope. Furthermore, in addition to the word 'waterways' (well understood by enthusiasts), consideration also needs to be given to words more familiar to the wider public (including 'canal' and 'river') if the name is to have the widest possible appeal. It was recognised that the Welsh name for the charity needed to be one that resonates in that language and is not necessarily a straightforward translation of the English name. The Trustees subsequently named the charity Canal & River Trust - Glandwr Cymru in Wales.

8.14 Finally, the consultation specifically asked whether or not the new charity should enjoy the same powers and be subject to similar duties to maintain the waterways as British Waterways. Most respondents agreed that the new charity should have the same powers and similar legal duties to maintain the waterways as British Waterways. Some respondents asked for further detail about the duties concerned.

8.15 The Government published its response to the consultation on setting up the new charity on 12 September 2011. This set out the key areas where representations had been received and the Government's proposed way forward in the light of those representations. The response is attached at Annex F. It is also available at <http://www.defra.gov.uk/consult/files/110912-waterways-summary-responses.pdf>

8.16 Because some respondents had asked for further detail about the duties being transferred the Government decided there should be further consultation on these

issues. On 12 September a further six week supplementary consultation was issued to 99 organisations setting out in more details proposals to transfer British Waterways' functions in England and Wales to CRT and consequential changes for Scotland. The Government decided that a limited consultation period was appropriate because (a) a full, twelve-week consultation had already taken place on the principles of the transfer; (b) the scope of the consultation was limited; and (c) the timetable for preparing the necessary Transfer Order was tight. The list of consultees was the same as the list for the previous consultation (Annex C). There were 61 responses.

8.17 The supplementary consultation sought views on proposed changes to the functions of British Waterways being transferred to CRT. A copy is at Annex G and is also available at <http://www.defra.gov.uk/consult/files/110912-waterways-condoc.pdf>

Removal of the Ministerial power to direct disposal of property under the Local Government, Planning and Land Act 1980

8.18 The Government proposed that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets would no longer be needed when the assets of British Waterways transfer to the CRT. Of those who responded, nearly two thirds agreed with the Government's proposal to remove the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets. Those who disagreed with the proposal expressed concerns that removing the accountability to Parliament could result in CRT selling off valuable national assets and that additional safeguards were needed. Some respondents raised more general concerns while not addressing the question, such as the Government should have a role in checking over any proposals to sell land of historic interest or that any income derived from land sales should be invested back into the property portfolio. In response the Government confirmed it would amend the definition of 'statutory undertaker' in Schedule 16 to the Local Government, Planning and Land Act 1980 to provide that it does not cover the CRT within its terms.

Provisions in the Transport Acts 1962 and 1968 on Employment

8.19 The Government proposed not to extend certain provisions to CRT on the basis that they have largely been replaced by more recent employment legislation. A majority of respondents agreed that the provisions specified would not be needed by the Canal & River Trust. In response to this question several respondents expressed a view that the pension liabilities should not be transferred to the CRT but should be retained by Government. Some others thought the pension liabilities should only be transferred to the CRT if sufficient Government funding was provided to account for this liability. In response the Government said it would proceed as proposed. In addition the Trustees stated that the maintenance of good employee relations was very important to the success of CRT. Good, regular communication and liaison at all levels contribute to that and the Trustees committed to continuation of the existing Representation and Procedure Agreement with the unions on the same terms as BW. They confirmed that in accordance with employment law all employees of BW in England and Wales will transfer to CRT on the same terms and conditions they currently have.

Classification and maintenance of waterways – Sections 104 and 105 of the Transport Act 1968

8.20 Government proposed that the CRT should have an enhanced statutory proposer role in relation to ministerial orders on classification and maintenance of its waterways to give it an explicit power to seek adjustment of its statutory duties in the interests of financial sustainability. That required amendment of sections 104 and 105 of the Transport Act 1968. There was an even split between those supporting and those opposing the proposal for the charity to have an enhanced statutory proposer power. Concerns were raised, primarily from a small number of live-aboard boaters that there should be no changes on re-classification which might lead to a down-grading of waterways or restrictions on particular users and which in particular could impact to the detriment of certain live-aboard boaters. A number of respondents raised concerns about the need to ensure commercial freight operations continue. Concerns were also raised that there should be no change which would impact on the duty of the charity Trustees to get the best possible value from the funds at their disposal. Any additional burdens on the charity would need to be matched by additional Government grant. One respondent was concerned that the proposal might impact on reclassification of cruiseway waterways, which appeared contrary to the position set out in the first consultation and would be robustly opposed. In response the Government confirmed its intention for the charity to have an enhanced statutory proposer power. In doing so the Government noted that a significant number of the responses opposing the proposal were not focused on the proposal itself. Nearly half of respondents objecting to the proposal had raised concerns about how reclassification and maintenance changes might impact on some live-aboard boaters. These points were ones which stakeholders had already raised in comments on the previous consultation on the creation of the charity and did not specifically address the question posed in the supplementary consultation. Comments were also made that the charity should look at a range of efficiency measures before looking to re-classify waterways, again points which were more relevant to, and were raised in response to, the previous consultation. The Government decided that providing the charity with an enhanced statutory proposer role would not have any impact on decisions on re-classification or maintenance as applications would still be subject to a cost benefit analysis, consultation and determination by Ministers. That would ensure a transparent process.

Ministers' Powers of Direction under the Transport Act 1962

8.21 The Government proposed that the power of Ministers to direct the CRT under the Transport Act 1962 should be restricted to circumstances in the interests of national defence (under section 27(6) of the Act) since they are not in general appropriate for Ministers to hold in relation to the business and other related activities of an independent charity. The majority of respondents agreed with the proposal. Nearly all of the responses opposing the proposal were from live-aboard boaters who wanted powers of direction to remain to provide accountability and to provide constraints on the charity's actions towards live-aboard boaters such as evictions. In response the Government decided to proceed with amending section 27 of the Transport Act 1962 to retain, as against the CRT, only the power of direction in relation to national defence in section 27(6). In doing so, the Government noted the concerns of some live-aboard boaters but that there were a number of legal mechanisms already in place to provide protections for users of the waterways where enforcement action had been taken. The Government decided that there was no reason for the concerns of some live-aboard boaters to be specifically addressed by a continuing general power of direction.

Freedom of Information and the Environmental Information Regulations

8.22 The Government sought views on application of the Freedom of Information Act (FOIA) and Environmental Information Regulations (EIRs) to the CRT.

The Government offered three options in the consultation:

- Option 1 – do not apply FOIA or EIRs to CRT (noting that the Courts might still decide that the EIRs did apply to CRT);
- Option 2 – apply FOIA to CRT only in respect of information relating to its exercise of public functions; the Courts would ultimately decide if the EIRs applied; and
- Option 3 – List CRT as a public authority in schedule 1 of the FOIA; this would have the immediate effect of applying the EIRs to CRT.

8.23 Respondents had mixed views. Roughly one-third of individuals and one-third of organisations that responded to the consultation chose not to answer this question at all. Of those who did, those wanting FOIA and the EIRs to apply wholly to the CRT formed the biggest grouping (roughly one-third of all those organisations who responded to the consultation and two-fifths of individual respondents to the consultation). Typical reasons given included the public functions to be carried out by the CRT and the CRT's public funding; the importance of accountability and transparency. A smaller group of organisations (roughly one-fifth of all such respondents to the survey) and individuals (roughly one-eighth of all such respondents to the survey) said that the FOIA should not apply to the CRT. Typical arguments included the need for the CRT to be treated like other charities, and to avoid imposing administrative burdens on the new charity. The small group of organisations and individuals who supported partial application of the FOIA to the CRT tended to argue in favour of a balance between the CRT's charitable activities and those where it was performing a public function. The majority of those who answered this question thus wanted the FOIA and EIRs to apply to the charity at least in part.

8.24 In response the Government decided that the FOIA should apply to the CRT proportionately, recognising the need both to treat the CRT as something different from BW, and to establish a level playing-field with other navigation authorities in the voluntary and private sectors. The Government therefore decided, subject to parliamentary approval, to apply the FOIA to the CRT, in respect of all those statutory functions that CRT will inherit from BW through the draft Transfer Order. This limited application of the FOIA will have the effect of excluding from the provisions of the Act those broader charitable functions carried out by CRT. It will also exclude bodies that merge with CRT, unless the FOIA already applies or is made to apply to them at the point of merger. The Environmental Information Regulations (EIRs) may be considered to apply to CRT to the extent that CRT is carrying out 'functions of public administration'. The Government noted that ultimately, this will be a question for the courts to decide. In addition the Government undertook to consult, under s.5 of the FOIA, with the other navigation authorities on the application of the Act to their statutory functions and duties, within the next two years. If the Government subsequently decided not to apply FOIA to navigation authorities, it undertook to review the continued listing of CRT under schedule 1 of the FOIA.

House of Commons Disqualification Act 1975; Scottish Parliament (Disqualification) Order 2010; National Assembly for Wales (Disqualification) Order 2010

8.25 The Government proposed that the disqualifications applying to members of the BW Board through this legislation should not apply to the Trustees of the CRT because this would not be appropriate for Trustees of a charitable body. The majority of respondents were in favour of not imposing the same disqualifications on the CRT Trustees as applies to members of the BW Board. In response the Government confirmed it did not intend for these disqualifications (nor the Northern Ireland Assembly Disqualification Act 1975, to which the same principles apply) to be applied to the CRT Trustees. This approach was agreed with the Scottish Government, the Welsh Government and the Northern Ireland Executive.

Consequential provision for Scotland

8.26 The consultation also sought views on behalf of the Scottish Government on consequential provisions for Scotland. The decision to establish the Canal & River Trust and to transfer BW waterways in England and Wales into it require consequential changes to legislation to allow the BW Board to operate effectively in Scotland in future without involvement from UK Government Ministers. Only 13 responses were received to the Scottish component of the consultation which the Scottish Government took to mean there was general contentment with the proposals.

8.27 The consultation sought views on the Scottish Government's proposal that the British Waterways Board, operational solely in Scotland, should consist of a chair, a vice chair, and between one and four other members. A majority of respondents either agreed with the proposals or did not comment. In response the Scottish Government confirmed its intention for the British Waterways Board, operational solely in Scotland, to consist of a chair, vice chair and between one and four other members, and that it would not revise the existing quorum of three. Scottish Ministers believe that a large Board would represent poor value to the Scottish purse, and would be excessive for the size of organisation.

8.28 The consultation sought views on the Scottish Government's proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of The Freedom of Information (Scotland) Act 2002, The Environmental Information (Scotland) Regulations 2004, the Scottish Public Services Ombudsman Act 2002 and the Ethical Standards in Public Life etc. (Scotland) Act 2000. Respondents were supportive of the proposals. In response the Scottish Government confirmed its intention that the British Waterways Board operating solely in Scotland should come under the scope of relevant Scottish legislation. In addition to the ones listed the consultation it was confirmed that it would also include the Public Services Reform (Act) 2010 and the Public Records (Scotland) Act 2011.

8.29 Finally, the consultation sought views on whether the water abstraction legislation now in place in Scotland were sufficient such that the requirement for Ministerial consent in the Transport Act 1962 could be repealed. There was no opposition to this proposal and the Scottish Government confirmed its intention to repeal the requirement for Ministerial consent.

8.30 The Government published its response to the supplementary consultation on 20 December 2011. This set out in detail the areas where representations had been

made and the Government's proposed way forward in the light of those representations. The response is attached at Annex H. A copy is also available at <http://www.defra.gov.uk/consult/files/201212-waterways-summary-responses.pdf>

8.31 In addition to formal written consultations the Government has engaged frequently with stakeholders via meetings, workshops and focus groups which have targeted regular users of the waterways, as well as those who do not currently visit the waterways, to help prepare for charitable status. British Waterways have been engaged in on-going consultation on proposals for taking its waterways out of the public sector since May 2009 when they published '2020 – A vision for the future of our canals and rivers'. They have continued to discuss the proposed changes with users, staff and their trades unions.

8.32 As mentioned in paragraph 4.4 the Scottish Government and Welsh Government have been consulted.

8.33 As required under Section 6(2) of the Public Bodies Act HM Treasury has been consulted and consent has been obtained for the modified funding arrangements which will apply to CRT.

9. Guidance

9.1 This instrument transfers most of British Waterways' statutory functions and makes amendments to enable CRT to succeed to those powers and duties. Guidance for stakeholders or enforcement agencies is therefore not required.

10. Impact

10.1 The impact on business is minimal as the creation of CRT is not expected to impose or reduce costs on business in any material way. Creating the new charity is not expected to have any material impacts on competition. Apart from the planned merger of the Waterways Trust in England and Wales with CRT (which is not part of this order) there is no financial or other impact on charities or voluntary bodies. Creation of the charity is not expected to re-direct resources or donations from other charities, although there is a risk that it might do so. Equally, CRT may become an exemplar and so encourage wider voluntary and charitable activity. This issues can be considered in the planned review.

10.2 There is no impact on the public sector apart from the abolition of the Inland Waterways Advisory Council (IWAC) as a consequence of creating CRT. Details of the abolition of IWAC are set out in the Explanatory Document which accompanies the order to abolish IWAC.

10.3 An Impact Assessment is attached to this Explanatory Document and will be published alongside the Explanatory Document on www.legislation.gov.uk. This takes account of comments received following public consultation and reflects the outcome of negotiations between the Government and the CRT on the agreed level of long-term funding under the Grant Agreement which was announced on 31 January 2012.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Government expects policies to be evaluated after implementation because such evaluation can yield invaluable insights, in terms of what works, what could be improved, and how others can learn from the approaches used. The Grant Agreement recognises the importance of realising benefits by making a portion of grant funding conditional on the satisfactory completion of performance standards.

2021 Review

12.2 The Grant Agreement recognises that the charity's challenge is a long-term one and that it will take time to develop new sources of income and finance. As part of the Grant Agreement, a review will take place in 2021/22 examining the case for Government funding beyond 2026/2027. This will involve an evidence-based assessment of the extent to which Defra's investment objectives have been realised.

12.3 Key evaluation questions (as set out by the Government's Magenta Book) that are particularly relevant are:

- To what extent have the success criteria been met?
- To what extent have there been unintended consequences?
- What are the costs and benefits, in hindsight and going forward?
- Is government intervention still required? Or has the market changed as a result of the policy?

Specifically, the review would include:

- evaluate the success of CRT in generating additional income,
- delivery of civil society benefits , including increased community engagement and volunteer support
- assessment and interpretation of key performance data and trends.

Local case studies of increased engagement would also be valuable, as would further research on valuing the benefits of waterways, for instance through a new primary valuation study of the nature and magnitude of the benefits of the waterways.

In assessing various trends and indicators, it is important to note that the baseline is not static, which is a major reason for the policy itself. It will be difficult to attribute changes in visitor numbers or asset condition solely to the change in status, given the significance of a declining baseline trend in grant income, and other extraneous variables affecting the charity's income (such as the property market) and visitor numbers.

Review of options for moving the EA navigations to CRT

12.4 In line with its commitment to move the EA navigations into CRT following the next spending review – subject to affordability and the consent of CRT Trustees at that time, the Government will review the options for this transfer.

13. Contact

John Kittmer at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5320 or email: john.kittmer@defra.gsi.gov.uk can answer any queries regarding the instrument.

Summary of the British Waterways Board (Transfer of Functions) Order 2012*Article 1 – Citation, commencement, extent and interpretation*

1. This article provides for the order to come into force on the day after that on which it is signed (on the day on which it comes into force, the transfer of functions occurs).
2. Amendments to the various pieces of legislation described have the same extent as the provision amended. This is because some of the legislation only extends to England and Wales, some only to Scotland and others to GB or UK. Subject to this the order extends to the whole of the UK. Certain functions of the British Waterways Board transferred away in relation to England and Wales form part of Scottish law as well as English law.

Article 2 - Transfer of statutory functions

3. Paragraph (1) provides for the transfer of functions exercisable by the British Waterways Board under or by virtue of the enactments listed in Schedule 1 so far as exercisable in relation to England and Wales to the CRT. The reference to ‘under or by virtue of’ includes functions exercisable by virtue of secondary legislation made under the primary legislation listed. It also covers functions exercisable by British Waterways as a result of succession under the Transport Act 1962 from the British Transport Commission exercised (who in turn had succeeded to those functions from someone else in some cases).
4. Unlike the approach taken by the Transport Act 1962 which dealt with the transfer of property, asset and liabilities from the British Transport Commission to the British Waterways Board on the face of the Act, and transferred some functions on the basis of the link to the property transferred, this order does not provide for the transfer of property, assets or liabilities. This will be done under a separate transfer scheme made under section 23 of the Public Bodies Act 2011. The order transfers any function (subject to exceptions) exercisable by the British Waterways Board in England and Wales under or by virtue of the 1962 Act (amongst others), so functions exercisable in relation to property in England and Wales are transferred by virtue of this.
5. Paragraph (1) also provides for the generic transfer of functions under or by virtue of any local Act. These include the British Waterways Acts 1963-1995.

Article 3 - Transfer of functions of harbour authority, navigation authority and statutory undertaker

6. The British Waterways Board falls within various statutory definitions of statutory undertaker, harbour authority or navigation authority, and as such exercises functions placed on these bodies in a wide range of legislation. This article transfers those functions, so far as exercisable in relation to England and Wales, to CRT (with one exception in the case of statutory undertakers under the Local Government, Planning and Land Act 1980, which is addressed later in this annex). None of these powers and duties involves the British Waterways Board being named – it exercises the functions because it fits the statutory definition (usually through carrying on a canal undertaking). CRT will continue to fit those same definitions when it succeeds to property transferring from the British Waterways Board.

Article 4 – Supplementary provision

7. Generally, transfer of function orders contain provisions transferring not only functions but property, assets and liabilities. As commented on above the order does not address the transfer of property, assets or liabilities. The article includes two provisions relating to continuity.
8. Paragraph (1) allows CRT to carry on doing things that were being done by the British Waterways Board in England and Wales at the time of the transfer, so far as relating to transferred functions. Paragraph (2) provides that anything done by the British Waterways Board in England and Wales, so far as it relates to any of the transferred functions, has effect as if made or done by CRT (so far as is necessary).

Article 5 - Transitional provisions

9. Article 5 gives effect to detailed transitional provisions in Schedule 4 relating to the Transport Act 1962. In addition it provides for the continuation of obligations of the Minister, under section 44 of the Transport Act 1968 to account for the receipt and disposal of any sums issued to the Minister by HM Treasury out of the National Loans Fund so far as it relates to the British Waterways Board for the financial year 2011-12 and for the period from April 2011 to the transfer date. The Minister and the Secretary of State then have to send the accounts to the Comptroller and Auditor-General not later than the end of November following the year to which the account relates; and the Comptroller and Auditor-General then has to examine and lay the report before Parliament. Article 5 therefore provides for the fact that that the necessary report to HM Treasury may not have been made under section 44 of the Transport Act 1968 before the transfer date.
10. Outstanding NLF loans to the British Waterways Board will be repaid before the end of the financial year 2011/12 to HM Treasury as part of the funding agreement with CRT.

Article 6 – Savings

11. This article contains two savings provisions. The first preserves the validity of appointments made under the Transport Act 1962 by the Scottish Ministers to the British Waterways Board before the order comes into force (the order effects a number of constitutional changes to the British Waterways Board). The second saving provision relates to orders made under section 74 of, and Part 4 of Schedule 7 to, the Transport Act 1962. Whilst these provisions and order making powers should not apply to CRT there is a need to ensure no change to the effect of these provisions in relation to any employee of CRT with respect to past service accrued whilst serving with the British Waterways Board. Section 74 and Part 4 of Schedule 7 are excluded from the transfer, and section 74 is effectively repealed in relation to the British Waterways Board (in Scotland as well as in England and Wales). The saving provides that nothing in the order affects any order made and in force at the time of the transfer date.

Article 7 – Revocation

12. This is the only legislation revoked or repealed in its entirety and therefore it has been given its own provision.

Schedule 1

13. Schedule 1 contains a list of legislation under or by virtue of which the British Waterways Board exercise functions in England and Wales. Key Acts are the Transport Act 1962 and the Transport Act 1968 (see below in relation to amendments made under Schedule 2), relating to the operation and maintenance of inland waterways. Examples of other functions in public Acts are set out below. Specific amendments to these Acts are set out in Schedule 3.

Transport Act 1962

Many of the British Waterways Board's powers and duties exist under or by virtue of this Act. Certain functions relating to the power of the Board to operate as a statutory corporation are excepted from the transfer, as are some functions relating to employment matters (which are covered by more modern employment legislation).

Harbours Act 1964

A number of the provisions of this Act apply to the British Waterways Board, or provide an exemption for the Board or in relation to certain harbours of the Board (see, e.g. sections 28, 30(1)(b), 36 and 42(11)).

Transport Act 1968

This Act provides a number of the British Waterways Board's functions, including financial provisions. Part 7 of this Act provides important powers and duties relating to the maintenance and classification of the waterways, which are being transferred to CRT (but with the modifications specified in Schedule 2 to this Order, including the requirement for the Minister to have regard to the financial position of CRT when considering making an order re-classifying a waterway – this is explained further below). A number of functions under this Act are not being transferred to CRT, where they are considered to be no longer necessary for a company with its own powers to operate or no longer or inappropriate to impose on an independent charitable company (such as the duty under section 46 to promote research).

Salmon and Freshwater Fisheries Act 1975

Section 40 applies to the dams constructed by the Severn Commissioners under the Severn Navigation Act 1842 and the Severn Navigation Act 1853 and vested in the British Waterways Board, and to all fish passes in those dams. It imposes a duty on the British Waterways Board to maintain those passes in an efficient state.

Highways Act 1980

Provisions on such matters as control of scaffolding on highways (section 169), payments to be made by owners of new buildings in respect of street works (section 219(4)(i)) (disapplying the section to buildings to be erected on land belonging to or in the possession of named bodies); Schedule 11 (provisions as to orders under section 93 - power to make orders as to reconstruction, improvement, etc. of privately maintainable bridges).

Transport Act 1981

Schedule 3 deals with powers of the Associated British Ports (ABP). Paragraph 31 allows ABP to enter into agreements with a 'public transport authorities' (or subsidiaries) – including the British Waterways Board - for the management, working and use by one party of works, land or other property belonging to the other party, and

with respect to the rendering of services and pooling of receipts or expenses. The order transfers the functions of the British Waterways Board to CRT in this respect.

Agricultural Holdings Act 1986

Schedule 12 contains modifications relating to old tenancies and similar cases. Paragraph 4(2) contains provision relating to the application of section 25 of the 1986 Act (which deals with length of notices to quit) to pre-March 1947 agreements, including in relation to notices given by the British Waterways Board in respect of land acquired them for the purposes of their undertaking.

Pilotage Act 1987

This Act contains the enabling legislation for the Yorkshire Ouse (Pilotage) Powers Order.

Town and Country Planning Act 1990

Some subordinate legislation made under this Act contains provisions relevant to the British Waterways Board, some of a protective nature e.g. Schedule 13 to the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297).

Water Resources Act 1991

Section 66 provides that only the British Waterways Board may apply for an abstraction licence in respect of an abstraction from inland waters that it owns or manages (unless they are specified in an order). Section 130 provides that where section 66 applies then licence charges should be reduced to the extent agreed between the British Waterways Board and the Environment Agency or if not agreed to the extent determined by the Secretary of State.

Transport and Works Act 1992

A number of pieces of secondary legislation made under this Act contain protective provisions for the benefit of the British Waterways Board or give the Board functions.

Welsh Language Act 1993

Requirements for public bodies providing services in Wales to prepare a scheme setting out how they will provide those services in Welsh.

Channel Tunnel Rail Link Act 1996

There are protective provisions for the British Waterways Board in Schedule 15 part 6 relating to matter such as the purchase of land, consultation with the British Waterways Board, provision of protective works.

Licensing Act 2003

Provisions regarding licensing of premises. In sections 13 and 69, “responsible authorities” are defined as including, in relation to vessels, the British Waterways Board and navigation authorities.

Planning and Compulsory Purchase Act 2004

Section 54(4) imposes a duty on prescribed consultees to give a substantive response in relation to certain consultation. The British Waterways Board is a prescribed consultee for these purposes in relation to certain proposed development: see S.I. 2010/2184.

Gambling Act 2005

Provisions regarding licensing of premises. In sections 211 and 231, “responsible authorities” are defined as including, in relation to vessels, the British Waterways Board and navigation authorities.

Natural Environment and Rural Communities Act 2006

The British Waterways Board is a ‘designated body’ in Schedule 7 to that Act, for the purposes of allowing the Secretary of State to enter into agreements in relation to the performance of functions.

Crossrail Act 2008

Protective provisions for the British Waterways Board in Schedule 17 part 5 relating to matter such as the purchase of land, consultation with the British Waterways Board, provision of protective works.

Planning Act 2008

The British Waterways Board is an interested party for the purposes of Chapter 4 of that Act (and so has functions) by virtue of section 102(1)(b) and (3) of that Act and S.I. 2010/102. There are other subordinate instruments made under that Act that are relevant to the Board.

Flood and Water Management Act 2010

The British Waterways is a statutory consultee in relation to certain applications for construction work which has drainage implications.

14. Schedule 1 also lists two pieces of subordinate legislation made under the European Communities Act 1972 – the Utilities Contracts Regulations 2006 and the Community Hours Driving Hours and Equipment Regulations 2007. These Regulations contain functions exercisable by the British Waterways Board.

Schedule 2

15. Schedule 2 contains specific amendments to the Transport Act 1962 and the Transport Acts 1968. Most of the British Waterways Board’s powers and duties exist under or by virtue of these Acts. For example, the 1962 Act contains the duty of the British Waterways Board to provide, to such extent as it considers “expedient”, services and facilities on the commercial and cruising waterways (and harbours) owned or managed by it having “due regard to efficiency, economy and safety of operation’. The 1968 Act contains duties on the British Waterways Board to maintain its waterways to defined maintenance standards in accordance with a classification system.
16. The changes are effective in England in Wales and in Scotland where relevant. Some amendments include a qualification (e.g. ‘in Scotland’), particularly where the powers of Scottish Ministers are concerned. In other cases there is already in implicit inbuilt

territorial limitation based on references to the ‘undertaking’ of the British Waterways Board.

17. Key amendments to the Transport Acts include:

Provisions on employment

Both Transport Acts contain certain provisions regarding the employment of staff by the British Waterways Board and their pensions (sections 73 to 75 of the 1962 Act and section 137 of the 1968 Act). The provisions on pensions are essentially spent as they were intended to enable the consolidation of the many pre-nationalisation pension schemes. That process was completed by the British Waterways Board many years ago. There are also generic powers for the Minister to make orders reorganising or restructuring pension schemes of the nationalised transport bodies. These powers will not be extended to the CRT. The powers in the 1962 and 1968 Acts pre-date modern pensions legislation and are now largely redundant or inappropriate in the light of that more modern legislation. The transfer process (separate from this Order) will provide for CRT to take over from the British Waterways Board the role of principal employer under the existing British Waterways Board pension schemes and employee pension rights will not be affected on account of the transfer.

The other employment provision that it is not proposed to apply to CRT is section 137 of the Transport Act 1968. This relates to machinery for consultation etc with employees and again has largely been rendered redundant by modern employment law. The Trustees have committed to continuation of the existing Representation and Procedure Agreement with Unite and Unison on the same terms. In accordance with employment law all employees of the British Waterways Board in England and Wales will transfer to CRT on the same terms and conditions they currently have.

Ministers’ Powers of Direction under the Transport Act 1962, section 27

Section 27 of the Act provides for Ministers to give directions to the British Waterways Board in certain circumstances. The effect of this Order is that the power of Ministers to direct the CRT under the Transport Act 1962 is restricted to taking action in the interests of national defence (section 27(6)). This is because wider powers of direction are not in general appropriate for Ministers to hold in relation to the conduct of business and other related activities of an independent charity. While charity law requires charities to be independent from Government the Government has decided that there should continue to be a power to direct in relation to national defence to enable it to effectively deal with exceptional security circumstances. The power of Direction will also be retained for the British Waterways Board in Scotland in relation to national defence as that is a reserved matter.

Classification and maintenance of waterways, sections 104 and 105 of the Transport Act 1968

Section 104 of the Transport Act 1968 divides the British Waterways Board’s undertaking into ‘commercial waterways’, ‘cruising waterways’ and the ‘remainder’ (the first two classifications being specified in Schedule 12). Subsection (3) enables a Minister by order to re-classify waterways. Section 105(3) enables a Minister by order to change the duties on the British Waterways Board under that section to maintain waterways having regard to the size, design or type of vessel customarily using any commercial or cruising waterway.

Sections 104 and 105 are amended to introduce a new obligation for the Secretary of State to take into account the financial circumstances of the new charity when considering an application for any proposed changes to the classification or maintenance of its waterways. These sections are also amended to introduce an enhanced statutory proposer power for the CRT. The need for the financial position of the CRT to be taken into account and the enhanced statutory proposer power is a consequence of the fact that the overall risks and liabilities for the network will be transferring to the new charity and the new Trustees will be responsible for ensuring its financial sustainability. In the event that the CRT seeks to reclassify a waterway, any application for an order under the Act would be subject to a full cost benefit analysis and wide consultation with those likely to be affected as required by the Transport Act. It will remain obligatory for the Secretary of State to hold a public enquiry in certain circumstances, including if an objection is made and not withdrawn by an organisation representing a substantial number of persons using the waterway in question. In addition, there would likely be consultation by the CRT Trustees with the charity's Council and the relevant local Waterways Partnership before embarking on such a significant course of action which would impact on a large number of its users. These mechanisms will help ensure a robust and transparent process on a re-classification of any of the charity's waterways.

Enforcement of maintenance duties – Section 106 of the Transport Act 1968

The Act is amended so that there are two new sections (106 and 106A) containing the provisions relevant to the Waterways Board in Scotland and the CRT in England and Wales respectively.

Schedule 3

18. Schedule 3 deals with bespoke changes to other legislation listed in Schedule 1. Some changes relate simply to consequential changes of name; others are material. Significant material adaptations of existing statute law are:

Local Government, Planning and Land Act 1980

Under this Act, the Secretary of State and, in relation to Wales, the Welsh Ministers have certain powers of direction as against statutory undertakers (and others). By virtue of Part 10 and Schedule 16 of the Act, this power is operable against the British Waterways Board and, unless changed, would cover the CRT. Under sections 95, 97 and 98 of the Act, the Secretary of State may require the British Waterways Board to provide specific information about land owned by the British Waterways Board if the Secretary of State thinks that that land is not being sufficiently used for the purposes of the British Waterways Board's functions or undertaking; the Secretary of State may give a direction requiring the British Waterways Board to dispose of its interest in that land, subject to certain conditions and requirements. The Government does not consider that it would be appropriate for the Secretary of State to exercise the powers under Part 10 of the Act in relation to the CRT. The Act is therefore amended to remove the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets when the assets of the British Waterways Board in England and Wales transfer to the CRT. The operational heritage infrastructure will be preserved in a trust in perpetuity, for the benefit of the nation. The Trust Settlement will detail which land will be functional permanent endowment.

Freedom of Information Act 2000

The British Waterways Board is listed under Schedule 1 to the Freedom of Information Act 2000 as a public authority for the purposes of that Act: this also extends to the British Waterways Board in Scotland. This means that the British Waterways Board is subject to the provisions of the FOIA in the same way as are, e.g., Government departments. The British Waterways Board is thus obliged both to operate an approved publication scheme (a means of providing access to information which an authority proactively publishes or intends to publish) and to respond to individual information requests made under the Act. By virtue of its inclusion in Schedule 1 to the FOIA, BWB is also a public authority for the purposes of the Environmental Information Regulations 2004. These Regulations give the public access rights to environmental information held by a public authority in response to requests, and require public authorities to disseminate information by electronic means and to organise information relevant to its functions. It is possible to charge for making environmental information available in many cases, provided that the charge is reasonable.

There needs to be a balanced approach such that the FOIA applies to the CRT proportionately, recognising the need both to treat the CRT as something different from BW, and to establish a level playing-field with other navigation authorities in the voluntary and private sectors.

Therefore under the Order, the CRT will have a partial listing in schedule 1 of the FOIA: the listing explicitly includes information relating to all those functions that the CRT will inherit from BW through the Transfer Order; it implicitly excludes all other functions, such as the activities of bodies merging with the CRT, charitable fund-raising etc. This is a simple and straightforward provision that will give stakeholders confidence that they will have access to the same sorts of information as they have now.

The Government will consult, under s.5 of the FOIA, with the other navigation authorities on the application of the Act to their statutory functions and duties, within the next two years. If the Government subsequently decides not to apply FOIA to navigation authorities, it will review the continued listing of CRT under schedule 1 of the FOIA.

In law, the application of the EIRs to the CRT will be a question for the courts ultimately to decide. It is possible that a court may decide that the EIRs apply to the CRT to the extent that it is carrying out the 'functions of public administration'. In the meantime, the CRT Trustees have made a public commitment to adopt a transparency policy that mirrors the provisions of the EIRs. This will be covered in the memorandum of Understanding between Defra and CRT.

19. Schedule 3 also contains specific amendments to Acts of the Scottish Parliament, as well as changes to secondary legislation. The changes to secondary legislation are mainly consequential changes or additions of name or result from other changes made by this Order.

Schedule 4

20. The Schedule sets out transitional arrangements to deal with the drawing up and laying in the respective Parliaments of British Waterways' final Annual Report and Accounts for the period 2011/12 (when it was a GB-wide body), after the CRT has been set up in England and Wales. It provides for the continuation of accounting and reporting obligations under sections 24 and 27 of the Transport Act 1962 in relation to that financial year. It also sets out the arrangements for 2012/13, given that British Waterways will continue to be a GB-wide body for the period from 1 April 2012 until the transfer date.

The intention is to ensure that the principle of direct accountability of the public corporation to Parliament is maintained in relation to the final period of its operation as a GB-wide organisation.

Accounts/final Annual Report for the year 1 April 2011-31 March 2012

The obligations in section 24 Transport Act 1962 (as un-amended by the Transfer Order) will continue to apply in relation to the 2011-12 financial year. These are:

- (a) British Waterways prepare a statement of accounts
- (b) those accounts are to be audited
- (c) British Waterways send the statement of accounts and the required report by external accountants' report to the Secretary of State and Scottish Ministers
- (d) the Secretary of State and Scottish Ministers include that statement in the Annual Report laid before the UK Parliament and the Scottish Parliament.

Although, following the transfer date, the British Waterways Board will be re-constituted and will operate as a Scotland-only body, it will legally remain the same entity as that created under section 1 of the 1962 Act. Some of the obligations on the Board under section 24 with respect to the 2011-12 financial year may have been completed at the time of the transfer date, but to the extent that they have not, the continuation in force of relevant provisions of sections 24 and 27 of the 1962 Act will mean that the re-constituted Scottish Board will carry out those obligations in relation to the 2011-12 financial year.

Accounts for the period 1 April 2012 to transfer date

Prior to the transfer date, the British Waterways Board (in its GB-wide form) and CRT will work together to produce completion accounts (which cover the transfer of assets from the GB Board to CRT) for this period. The completion accounts will then be included as a Note to the Accounts of the Scottish Board's annual statement at the end of the 2012/13 year. The accounts will then laid before the UK Parliament as well as the Scottish Parliament. Accounts of the BWB from 2013/14 onwards will concern Scottish operations only and will not be laid before the UK Parliament.

Paragraph 3 places the necessary obligations on the Board (which at this stage will be in its Scottish form) to enable the accounts for 2012/13 to include the completion accounts of the Board in its GB-wide form for the period from 1 April 2012 to the transfer date. This will be achieved under GAAP and standard accounting rules. The Auditor General for Scotland will audit and sign off the accounts of the Board for 2012/13 and will take account of information provided by auditors of the Board in its GB-wide form who will audit the completion accounts. This paragraph includes a

requirement for laying that year's accounts before the UK Parliament as well as the Scottish Parliament.

Paragraph 3(1) provides for Scottish Ministers to consult the Secretary of State on any accounts direction made under s 24 of the Transport Act 1962 (as amended by this Transfer Order going forward from the transfer date), but only for the period ending 31 March 2013 which will be the last year in which the Board would function on a GB-wide basis as a cross border body.

Paragraph 4 sets out obligations on CRT, in particular to reasonably assist the Board (in effect in its Scottish form) given they will hold the necessary information relating to the Board on a GB-wide basis which will need to be included in the 2012/13 annual report and accounts.

SUMMARY OF FUNDING AGREEMENT

The grant element of the agreement on funding is made up of two elements, **Core Grant** and **Conditional Grant** which is tied to required standards. The other key element of the agreement relates to dealing with CRT pension liabilities inherited from British Waterways.

In summary the funding agreement comprises:

Core Grant

Core grant of **£39m p.a.**

- Payable to CRT in quarterly instalments for **15 years** from 2012/13.
- **Index linked to the GDP deflator** from 2015/16 onwards based upon the last GDP forecast in 2014/15 and set for three years. To be refreshed at the end of each three-year period.
- A review will take place in 2021/22 examining the public benefit case for Government funding beyond 2026/27.
- For years 2013/14 and 2014/15 £3m of the core annual funding will be treated as a conditional grant, subject to the conditions explained below.

Conditional grant – including performance measures

A Conditional grant of **£10m p.a.**, tied to the three required standards

- From 2015/16 to 2021/22, **not index linked**.
- The overall value of funding paid by Defra for the final 5 years of the contract will be capped at the level of the 2021/22 payment (core + conditional). As the core grant continues to be inflated in each of the last five years, the conditional grant will be reduced by the same amount in each year, such that the total amount of funding (core + conditional) is always the same as the 2021/22 payment (as inflated according to the formula set out above).
- In the event that inflation causes the core grant to be increased to a level at which the conditional grant would be lower than £4m (based upon the method of calculation above), an element of core grant will be treated as conditional grant, such that the amount of money subject to the performance measures is never less than £4m.
- A review will take place in 2021/22 examining the case for Government funding beyond 2026/2027.

In the event that the conditional grant reaches zero,² the core grant will cease to be inflated, such that the total amount of funding is never greater than the amount paid in 2021/22.

- The Conditional grant is dependent upon the satisfactory completion of the following standards (based on previous year’s performance):

Standards	Applicable Measurement	Warning Threshold	Breach Threshold
(i) Safe Waterways:	Asset management to be in accordance with PAS-55. Percentage of assets in Class D and Class E shall not rise to or above the relevant thresholds.	23% in Classes D & E	25% in Classes D & E
(ii) Towpath condition:	Percentage of towpath at condition A, B or C shall not fall to or below the relevant thresholds.	60% in condition A-C	50% in condition A-C
(iii) Flood management:	Percentage of principal culverts and embankments in class D and E, breach of which would cause more than £2m in damages, shall not rise to or above the relevant thresholds.	4% in Classes D & E	7% in Classes D & E

- In relation to (i), (ii) and (iii) above, there will be two different performance levels indicated in the Grant Agreement, one which acts as an “amber light” indicator (“**Warning Threshold**”), and one which indicates a clear breach (“**Breach Threshold**”).

If the warning threshold is triggered, CRT will have to provide an action plan to remedy the problems and agree it with Defra. If CRT fails to provide a plan in a form that Defra can agree, and if it fails to implement the plan within the required timescale, Defra will be able to withhold some or all of the conditional grant.

- If the breach threshold is triggered, Defra will be able to withhold some or all of the conditional grant.

National Loan Fund repayment

² Calculations show that the level of inflation projected by the GDP deflator required for this to occur is 4% for each of the last five years.

DEFRA will make a one-off payment on or before the end of the 2011/12 financial year to the British Waterways Board, to enable it to repay its National Loan Fund debts to HM Treasury, of around **£6.2m**, including penalties for early repayment. NLF loans cannot be held by bodies outside the public sector.

Pensions

At the date of the March 2010 actuarial valuation of the British Waterways Pension Fund (BWPF), the pension deficit was £65.6m. No formal valuation has been prepared since March 2010, although estimated updates have been prepared by the Scheme Actuary for the pension fund Trustees.

Defra and CRT have agreed a deal on the pension's deficit which will enable CRT to meet their business plan and protect historic public sector pensions.

One-off payment

A one off grant payment of **£25m** spread across 2011/12 and the early months of 2012/13.

Due to the manner in which the pension's deficit is calculated, current low gilt yields will increase the rate of deficit repayment required by the pension's trustees. The one-off payment will help CRT manage the ensuing cash-flow challenges.

Pension guarantee

A 'last resort' wrap around guarantee

- This is capped at **£125m** for a **19 year** period at the end of which CRT plan to have repaid the pensions deficit in its entirety.
- This covers the historic public sector pension liabilities within the pension scheme.
- This would only pay out once all of CRTs assets had been exhausted (i.e. the charity has become insolvent).

Public Reporting Requirements

Under the funding agreement CRT is required to publish information on its activities to ensure public and stakeholder accountability. This includes:

- the Network Stewardship Score
- Data on SSSIs based on published EN data, the percentage area of SSSIs under CRT management in good or recovering condition.
- Data on heritage showing the percentage of heritage assets assessed on completion of work as good or adequate, with double weighting given to good assessments;
- Data on housing forecast figures.
- Data on volunteer participation as the number of volunteer days contributed to CRT.
- Data relating to safety as follows:

- the number of reported incidents involving customers relating to infrastructure failure;
 - the number of reported incidents involving employees related to infrastructure failure; and
 - the data underpinning the standards identified above;
- Data relating to towpaths as follows:
 - the number of towpath visitors (based on annual survey data);
 - the number and duration of unplanned closures; and
 - the data underpinning the standards identified above

Public Access to Information

CRT will maintain an information regime that mirrors the Environmental Information Regulations. Subject to Parliamentary consent CRT will be subject to legal obligations under the Freedom of Information Act relating to its statutory functions.

Other performance requirements

Under the terms of a Memorandum of Understanding CRT will have obligations to draw up certain policies.

Localism Strategies

CRT will ensure that its Waterways Partnerships put in place localism strategies which will commit the Partnerships to facilitating local engagement, working with a range of locally based partners throughout the area covered by the Partnership.

Free Public Access

The right to free access to towpaths for pedestrians will be enshrined in the Trust Settlement. In addition, CRT will publish a policy on access and leisure on the waterways and their towpaths. The policy will in particular set out how CRT will as a general rule ensure pedestrian access free of charge and the extent of necessary qualifications from the general rule for operational/maintenance purposes and control of access at some tourist sites. It will also deal with the promotion of cycling and partnerships to improve the cycling environment.

Performance monitoring

A Memorandum of Understanding will set out the relationship between Defra and CRT. This will be similar in some respects to the Framework Agreement which currently applies to British Waterways but takes full account of the fact that CRT is a charity independent of Government.

List of Consultees

Angling Trust
Ashby Canal Project
Associated British Ports
Association of Inland Navigation Authorities
Association of National Park Authorities
Association of Pleasure Craft Operators
Association of Waterway Cruising Clubs
Barge Association
Basingstoke Canal Authority
Boat Museum Society
Boating Association
Bristol Harbour Authority
British Canoe Union
British Marine Federation
British Ports Association
British Rowing
British Waterways
British Waterways Advisory Forum
Broads Authority
Business Link
Campaign to Protect Rural England
Canal Boat Builders' Association
Canoe England
Cardiff Harbour Authority
Central Council of Physical Recreation
Chesterfield Canal Partnership
Commercial Boat Operators Association
Conservators of the River Cam
Country Land and Business Association
Countryside Council for Wales
Cyclists Touring Clubs
Driffield Navigation Ltd
Droitwich Canals Trust Ltd
Electric Boat Association
English Heritage
Environment Agency
Environment Trust for Richmond-upon-Thames
Essex Waterways Ltd
Fieldfare Trust
FTA Freight by Water
Forestry Commission
Grand Western Canal Country Park

Great Ouse Boating Association
Hereford and Gloucestershire Canal Trust
Heritage Alliance
Heritage Lottery Fund
Historic Narrow Boat Owners' Club
Homes and Communities Agency
Horse Boating Society
Hutchison Ports
Inland Waterways Association
Inland Waterways Advisory Council
International Mountain Bike Association
Local Access Forums
Local authorities in England and Wales
Local Government Association
Manchester Ship Canal Company
Medway Ports
Mersey Partnership
Middle Level Commissioners
National Association of Boat Owners
National Community Boats Association
National Farmers Union
National Offender Management Service
National Trust
National Trust Wales
Natural England
Norfolk and Suffolk Boating Association
Northern Canals Association
Peel Ports (Liverpool Port and Medway Port)
Port of London Authority
Ramblers Association
Residential Boat Owners Association
River Thames Society
Royal Society for the Protection of Birds
Royal Yachting Association
Save Our Waterways
Sleaford Navigation Trust
Southern Canals Association
Sport England
Steam Boat Association of Great Britain
Stroudwater Navigation
Sustrans
Thames User Group
Town and Country Planning Association
Towpath Action Group
United Kingdom Major Ports Group
Upper Avon Navigation Trust

Waterways Trust
Welsh Local Government Association
Wey and Arun Canal Trust
Wey Navigations
Wildlife Trusts
Wildfowl and Wetlands Trust
Wiltshire and Berkshire Canal Trust
Yacht Harbour Association

Impact Assessment

[This is attached as a separate document]

Consultation document – A New Era for the Waterways

[This is attached as a separate document]

Summary of responses to the consultation A New Era for the Waterways

[This is attached as a separate document]

Consultation document - A New Era for the Waterways supplementary consultation

[This is attached as a separate document]

Summary of responses to the supplementary consultation

[This is attached as a separate document]

Trust Settlement

[This document to follow]

Charitable Objects

[This document to follow]

Funding Agreement (Heads of Terms)

[This document to follow]

The British Waterways Board (Transfer of Functions) Order 2012: Background Briefing Prepared by the Research Service

Introduction

The British Waterways Board (Transfer of Function) Order 2012 relates to the UK Government's decision to transfer the functions of the public corporation, British Waterways to a charitable trust known as the Canal and River Trust.¹

In broad terms the Order seeks to transfer to the Canal and River Trust some of the statutory duties that currently apply to the British Waterways Board and to amend other duties of the Board to reflect the fact that the Trust will be operating as a charity as opposed to a public body.

Assembly Members are being asked to consider whether the Assembly should provide consent to allow the UK Government to legislate in relation to two specific areas of the Order that fall within its legislative competence. They are the provisions in relation to Welsh language and the provisions in relation to the controls over the disposal of public land.

- Article 2 of the Order has the effect of transferring to the Trust the public duties of the British Waterways Board under the *Welsh Language Act 1993*.²
- Article 3 of the Order transfers a number of the functions of the British Waterways Board as a statutory undertaker to the Trust. The provision under the *Local Government, Planning and Land Act 1980* which gives the UK Government and Welsh Ministers powers over the disposal of land by the Board are not being transferred to the Trust.³ Members are being asked to consider this provision as the Welsh Government deems that it falls within the National Assembly's competence in relation to countryside and open spaces, urban development, reclamation of derelict land and improvement of the environment. Under Part 10 of the Local Government, Planning and Land Act 1980, the Welsh Ministers (in relation to Wales) may require the British Waterways Board to provide specific information about land owned by them; and if the Welsh Ministers think that the land is not being sufficiently used, the Welsh Ministers may also direct British Waterways Board to dispose of their interest in the land, subject to certain conditions and requirements.

Background

British Waterways is a public corporation that is charged with the maintenance of 2,200 miles of canals and river waterways in Wales, England and Scotland. As a corporation it received an annual grant from the UK Department of Environment, Food and Rural Affairs (Defra) to carry out its functions.⁴ In 2009 the British Waterways Board published a

¹ [The British Waterways Board \(Transfer of Functions\) Order 2012](#) (Consent Motion), [accessed 16 March 2012]

² [Welsh Language Act 1993](#), Chapter 38, [accessed 16 March 2012]

³ [Local Government, Planning and Land Act 1980](#), Chapter 65, [accessed 16 March 2012]

⁴ [British Waterways](#). (Website), [accessed 19 March 2012]

corporate strategy which called for the corporation to be transformed into a charitable body. The Board argued that this would enable the corporation to access new sources of funding to help close the funding gap they faced and would give stakeholders greater involvement in the running of the waterways network.

Following the publication of this Strategy, the UK Government announced in October 2010 that the corporation would become a charitable body in receipt of a long term funding contract from the Government for the maintenance of the waterways.⁵ In November 2010, the Scottish Government announced that it wanted British Waterways Scotland to remain a public body and so would be seeking the separation of the organisation into a Scotland only and an England and Wales body.⁶

A three month consultation on the future on the change of status of the body in England and Wales was therefore launched by Defra in March 2011 with the Department's response to the consultation published in September 2011.⁷ A further consultation on the legal framework for the transfer of functions from the British Waterways Board to the new organisation was launched in September 2011 with Defra reporting on the conclusions of this consultation in December 2011.⁸

In October 2011, the UK Government announced that the new organisation would be called the Canal and River Trust and Glandwr Cymru in Wales. In January 2012, the UK Government concluded its negotiations with the British Waterways Board over the provisions of the long term funding contract for the new Trust. They were as follows:

- £39 million a year core grant for the next fifteen years (index linked to inflation from 2015/16).
- £10 million additional funding in 2015/16 for the delivery of three performance measures with this amount gradually decreasing over the last five years of the contract. The performance indicators are:
 - condition of the assets;
 - condition of the towpaths and public footpaths; and
 - flood risk management works.
- £25 million one off grant distributed over coming months in relation to public sector pension liabilities.

⁵⁵ Waterscape, [Canal and River Trust Timeline](#), (Website), [accessed 19 March 2012]

⁶ *ibid.*

⁷ Department for Environment, Food and Rural Affairs, [Summary of responses to the consultation 'A New Era for Waterways', 30 March 2011-30 June 2011](#), September 2011, [accessed 19 March 2012]

⁸ Department for Environment, Food and Rural Affairs, [Summary of responses to the consultation on the Transfer Order 'A New Era for the Waterways' 12 September 2011- 24 October 2011](#), December 2011, [accessed 19 March 2012]

- £460 million in commercial property endowment used by British Waterways to fund the infrastructure network will be transferred to the Canal and River Trust for the same purposes.⁹

Issues raised in relation to provisions under consideration

No issues were raised in either consultation carried out by Defra in relation to the transfer of Welsh Language duties from British Waterways to the Canal and River Trust. In relation to the disposal of land provisions under the *Local Government Planning and Land Act 1980* the consultation summary states that two thirds of respondents who answered the question about the provisions of this Act agreed that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets should be removed.¹⁰

Some stakeholders expressed concern that removing this provision could result in the Trust selling off valuable national assets. In their response to these concerns Defra stated:

The operational heritage infrastructure will be preserved in a trust in perpetuity, for the benefit of the nation. The Trust Obligations will detail which land will be inalienable.¹¹

The Welsh Government in the Consent Memorandum relating to the Order states:

It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so the functions of British Waterways are transferred to the Canal and River Trust at the earliest opportunity.¹²

⁹ Department for Environment, Food and Rural Affairs Press Release, [Over £1 Billion investment secures future of new waterways charity](#), 31 January 2012 [accessed 19 March 2012]

¹⁰ Department for Environment, Food and Rural Affairs, [Summary of responses to the consultation on the Transfer Order 'A New Era for Waterways' 12 September 2011-24 October 2011](#), December 2011, [accessed 19 March 2012]

¹¹ *ibid*

¹² [The British Waterways Board \(Transfer of Functions\) Order 2012](#), Consent Memorandum, Laid 1 March 2012

Environment and Sustainability Committee

Meeting Venue: **Committee Room 3 – Senedd**

Meeting date: **Thursday, 15 March 2012**

Meeting time: **09:30 – 13:10**

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_400003_15_03_2012&t=0&l=en

Concise Minutes:

Assembly Members:

Dafydd Elis-Thomas (Chair)
Mick Antoniw
Rebecca Evans
Russell George
Vaughan Gething
Llyr Huws Gruffydd
Julie James
William Powell
David Rees
Antoinette Sandbach

Witnesses:

Carwyn Jones, First Minister
John Griffiths, Minister for Environment and Sustainable Development
Edwina Hart, Minister for Business, Enterprise, Technology and Science, Minister for Business, Enterprise, Technology and Science
Carl Sargeant, Minister for Local Government and Communities
Russell Bennett, Welsh Government
Gareth Jones, Welsh Government
Ron Loveland, Welsh Government
Gwenllian Roberts, Welsh Government
Rosemary Thomas, Welsh Government

Committee Staff:

Alun Davidson (Clerk)
Catherine Hunt (Deputy Clerk)
Graham Winter (Researcher)

1. Introductions, apologies and substitutions

1.1 There were no apologies or substitutions.

2. Inquiry into energy policy and planning in Wales – Evidence from Welsh Ministers

2a. Inquiry into energy policy and planning in Wales – Evidence from the First Minister

2.1 The First Minister and officials responded to questions from members of the Committee on energy policy and planning in Wales.

2b. Inquiry into energy policy and planning in Wales – Evidence from the Minister for Local Government and Communities

2.2 The Minister for Local Government and Communities and officials responded to questions from members of the Committee on energy policy and planning in Wales.

2.3 The Minister agreed to provide written information for the Committee on the capacity within local authorities to handle large scale planning applications.

2c. Inquiry into energy policy and planning in Wales – Evidence from the Minister for Business, Enterprise, Technology and Science

2.4 The Minister for Business, Enterprise, Technology and Science and officials responded to questions from members of the Committee on energy policy and planning in Wales.

2d. Inquiry into energy policy and planning in Wales – Evidence from the Minister for Environment and Sustainable Development

2.5 The Minister for Environment and Sustainable Development and officials responded to questions from members of the Committee on energy policy and planning in Wales.

3. Papers to note

3.1 The Committee noted the minutes of the meetings held on 1 March.

TRANSCRIPT

View the [meeting transcript](#).

Environment and Sustainability Committee

E&S(4)-13-12 paper 5

Inquiry into energy policy and planning in Wales – Note from the Petitions Committee on its rapporteur visit on TAN 8

Note of meeting on TAN 8

27 February 2012, Mason's Arms, Gwyddgrug

In attendance:

Mr Stephen Dubé, petitioner and Chair of Grwp Blaengwen

Mrs Janet Dubé, petitioner and member of Grwp Blaengwen

William Powell AM, Chair of the Petitions Committee and member of the Environment and Sustainability Committee

Russell George AM, Member of the Petitions and the Environment and Sustainability Committees

Joyce Watson AM, Member of the Petitions Committee

Also present

Abigail Phillips, Clerk to the Petitions Committee

William Powell AM explained that the meeting was being held as part of the Petitions Committee visit to Carmarthenshire to consider a petition on the noise from wind turbines, but that a note of the meeting would be submitted to the Environment and Sustainability Committee's Inquiry on energy policy and planning in Wales.

Mr and Mrs Dubé expressed their concerns that they had been unable to speak directly to the full Environment and Sustainability Committee.

Mr and Mrs Dubé explained to the Members that Grwp Blaengwen was formed after proposals for a wind farm in Alltwalis were made. The group has nearly 60 members who live in the Gwyddgrug area and its purpose is to monitor and study the effects of wind turbines on the local area. The group previously made a written submission to the Environment and Sustainability Committee's Inquiry into energy policy and planning in Wales.

Mr and Mrs Dubé felt that TAN 8 should have been updated before LDPs were commenced in 2011. They reported that Neville Thomas QC made the same point to the Environment and Sustainability Committee. In 2010, Jane Davidson, the then Minister for Sustainability, reiterated the commitment in TAN 8 to review the policy. Mr and Mrs Dubé shared letters with Members that show the commitment of the Welsh Government to consult on TAN 8.

However, such a review has not taken place and Mr and Mrs Dubé feel that it is this broken promise that has brought about the biggest demonstrations at the Senedd. They suggest that all applications for further installations should be halted until a review of TAN 8, including a full public consultation, has been carried out.

Grwp Blaengwen felt that more decisions relating to wind turbines could have been made in Wales if wind turbines generating less than 50MW were encouraged by the Welsh Government.

In 2010, a 'refresh' of TAN 8 was carried out, but as members of the public were not informed of, and were unable to respond to, a consultation, the group feel that the commitment to review the policy has not been met and the lack of action brings the Assembly into disrepute. It is not clear if the refresh exercise in 2010 considered raising the targets for energy. Russell George AM told Mr and Mrs Dubé that he would endeavour to include in the Environment and Sustainability Committee report a timeline of the letters in Grwp Blaengwen's possession that show a commitment to consult on TAN 8.

Grwp Blaengwen also felt that there was a failure earlier in the process as there was no consultation to which the general public could respond on the document from ARUP which shaped TAN 8.

Grwp Blaengwen feel that the control of wind turbines should be with local people so that they are able to turn off turbines when noise is a problem.

Members were told that the indicative targets contained within TAN 8 are seen as a big issue. Mr and Mrs Dubé told Members that the 90MW target for the Strategic Search area, which included Gwyddgrug, under TAN 8, was already exceeded by the Alltwalis wind farm.

Grwp Blaengwen shared their concerns that the money provided for community benefit as a consequence of the wind farm was not benefiting those most affected by the turbines. They felt that it was wrong that the Community Council could not be in receipt of the money and that a group set up by Statkraft, the owners of Alltwalis wind farm, decided how the money should be spent. That group, the Community Benefit Committee, is based on the county council ward and includes a community that cannot see the turbines and are not affected by the noise. No-one from Gwyddgrug was a member of the Community Benefit Committee at first as they did not want to be involved but some have since joined as they felt they had to. The group also stated that no carbon reduction measures are being delivered by the community fund. The group feel that as payments to this fund are voluntary, no mention of them should be made in TAN 8. However, the

group feel that the payments should in fact be obligatory, especially the carbon reduction aspect of the benefit.

The group also felt that the community fund was something of a bribe to communities and planners. Although TAN 8 says that planning authorities can be aware of the community benefits but not swayed by it, the wind farm company's newsletter always includes a section on local benefits, so the group feel that this must influence the decision makers in the local authority. They stated that local football clubs and pre-school groups outside Gwyddgrug were benefitting from the fund but that those most affected by the turbines – the residents of Gwyddgrug – had gained very little from the fund.

The group also felt that there should be compensation for those whose lives are affected by wind turbines. They do not feel that community benefits are compensation for those whose health has suffered because of the noise. Mr and Mrs Dubé described the case of the Davies family in Lancashire who took four years to settle their case for compensation and only then after moving out of their home to escape the noise.

The group strongly advocate a review of TAN 8 and the ETSU-R-97 guidelines as they feel these documents are out of date and that local people have no confidence in them. They stated that the quality of people's lives must be balanced against the benefits of a wind farm and that World Health Organization guidelines should be used instead, as these offer a more 'reasonable' upper limit on acceptable noise levels.

The group stated that although many people felt that their objections were rooted in a dislike of the appearance of wind turbines, this is not the case. They feel that this demeans their objections, as people dismiss their experiences of noise nuisance and blame their objections on a dislike of the view.

Joyce Watson asked if the group felt that the topography of the area caused specific noise issues but although some studies had been made by the group, they were unaware of any other detailed studies.

The group was concerned that landowners who speak out against wind farms are being silenced under the threat of legal action.

Mr and Mrs Dubé explained that the formally constituted group was formed after Statkraft were given planning permission for the Alltwalis site. Some

members had been pro-wind farms or neutral before the turbines had been installed, and others had been against.

The Members thanked Mr and Mrs Dubé for their time.

**Committee Service
March 2012**