

**EXPLANATORY DOCUMENT TO**  
**THE BRITISH WATERWAYS BOARD (TRANSFER OF FUNCTIONS) ORDER 2012**

**2012 No. 1659**

**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 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. An application for its registration as a charity was submitted to the Charity Commission on [date]. This application sets out among other things the intended objectives of CRT. These draft objectives of CRT, called **Charitable Objects** (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](http://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 an 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 be 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 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,<sup>1</sup> 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):

<b>Standards</b>	<b>Applicable Measurement</b>	<b>Warning Threshold</b>	<b>Breach Threshold</b>
(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.	<b>23%</b> in Classes D & E	<b>25%</b> 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.	<b>60%</b> in condition A-C	<b>50%</b> 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.	<b>4%</b> in Classes D & E	<b>7%</b> 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.

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<sup>1</sup> 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.

### **National Loan Fund repayment**

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 CRT's 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]