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STATUTORY INSTRUMENTS

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**2012 No. 1659**

**CANALS AND INLAND WATERWAYS  
PUBLIC BODIES  
TRANSPORT**

The British Waterways Board  
(Transfer of Functions) Order 2012

*Made - - - - 1st July 2012*

*Coming into force in accordance with article 1*

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

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

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

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

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

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

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

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

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998<sup>(2)</sup> and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006<sup>(3)</sup>.

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(1) 2011 c. 24.  
(2) 1998 c. 46.  
(3) 2006 c. 32.

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

In accordance with section 11(7) of the Act, the draft of this Order has been approved by resolution of each House of Parliament after the expiry of the 60-day period referred to in that provision.

### **Citation, commencement, extent and interpretation**

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

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

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

(4) In this Order—

(a) “the 1962 Act” means the Transport Act 1962(4);

(b) “the 1968 Act” means the Transport Act 1968(5);

(c) “the transfer date” means the day this Order comes into force.

### **Transfer of statutory functions**

2.—(1) On the transfer date, the functions exercisable by the British Waterways Board—

(a) under or by virtue of the enactments listed in Schedule 1 (enactments conferring functions transferred by article 2), and

(b) under or by virtue of any local Act(6),

are transferred, so far as exercisable in relation to England and Wales, to Canal & River Trust(7).

(2) Schedule 2 (which makes consequential provision to the 1962 Act and the 1968 Act) has effect.

(3) Schedule 3 (which makes consequential provision to public general Acts, Acts of the Scottish Parliament and subordinate legislation) has effect.

(4) Paragraphs (5) and (6) apply so far as is necessary for the purposes of, or in consequence of, paragraph (1).

(5) Any reference in an enactment which, by virtue of section 32 of, or Schedule 2 or 6 to, the 1962 Act(8), is to be read as a reference to the British Waterways Board is to be read in relation to England and Wales as a reference to Canal & River Trust.

(4) 1962 c. 46.

(5) 1968 c. 73.

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

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

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

(6) Subject to paragraph (5), any reference to (and any reference which is to be read as a reference to) the British Waterways Board—

(a) in any subordinate legislation made under or by virtue of any Act listed in Schedule 1 (other than subordinate legislation made under or by virtue of any section of the 1962 Act or the 1968 Act listed as an exception in that Schedule), or

(b) in any local Act or any subordinate legislation made under or by virtue of any such Act, is to be read in relation to England and Wales as a reference to Canal & River Trust.

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

3.—(1) Where immediately before the transfer date—

(a) the functions of the British Waterways Board include, by virtue of any enactment, any functions of a harbour authority, navigation authority or statutory undertaker, and

(b) those functions are not otherwise transferred by this Order,

those functions become functions of Canal & River Trust in relation to England and Wales on that date.

(2) But paragraph (1) does not apply in relation to functions of a statutory undertaker under Part 10 of the Local Government, Planning and Land Act 1980(9).

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

### **Supplementary provision**

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

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

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

### **Transitional provisions**

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

(2) Nothing in article 2 affects the application of section 44(10) of the 1968 Act (account by Minister of receipt and disposal of certain sums) so far as relating to—

(a) the period commencing on 1st April 2011 and ending on 31st March 2012, and

(b) the period commencing on 1st April 2012 and ending on the day before the transfer date.

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

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

### **Savings**

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

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

### **Revocation**

7. The Regulatory Reform (British Waterways Board) Order 2003<sup>(11)</sup> is revoked.

*Richard Benyon*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

1st July 2012

We consent

*Michael Fabricant*  
*James Duddridge*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

28th June 2012

## SCHEDULE 1

Article 2

### Enactments conferring functions transferred by article 2

#### Public general Acts

Transport Act 1962(12), except sections 1, 10 to 14, 16 to 21A, 24, 25, 27(1) to (5) and (7) to (8C), 36, 73 to 75, 81, 89 (except so far as it relates to section 27(6)), Schedule 1 and Part 4 of Schedule 7.

Harbours Act 1964(13).

Transport Act 1968(14), except sections 41, 46, 48 to 52, 107, 109, 134, 135 and 137.

Salmon and Freshwater Fisheries Act 1975(15).

Ancient Monuments and Archaeological Areas Act 1979(16).

Highways Act 1980(17).

Transport Act 1981(18).

Agricultural Holdings Act 1986(19).

Pilotage Act 1987(20).

Town and Country Planning Act 1990(21).

Water Resources Act 1991(22)

Transport and Works Act 1992(23).

Welsh Language Act 1993(24).

Channel Tunnel Rail Link Act 1996(25).

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- (12) 1962 c. 46. Relevant amendments were made by the Harbours Act 1964; the Transport Act 1968 (c. 73); the Statute Law (Repeals) Act 1974 (c. 22); the Acquisition of Land Act 1981 (c. 67); the Transport Act 2000 (c. 38); the Railways Act 2005 (c. 14); S.I. 2000/3251 and 2003/1545. Section 72 ceased to have effect in relation to the British Waterways Board by virtue of section 137(8) of the Transport Act 1968. The Transport Act 1962 provided for the distribution of the functions and property of the British Transport Commission (the BTC) amongst four boards. Under section 31, the British Waterways Board (the Board) became the successor to the property, rights and liabilities comprised in the part of the BTC's undertaking constituted by their inland waterways (with an exception) and certain harbours. Functions of the BTC under a number of public and local Acts (including under the Coast Protection Act 1949 (c. 74) and several British Transport Commission Acts) were transferred to the Board under section 32(1) and Schedule 2. Functions of the BTC under statutory provisions so far as relating to an undertaking, or part of an undertaking, or property transferred to the Board by Part 2 of the Transport Act 1962 were transferred to the Board by section 32(3). Functions of the BTC under statutory provisions authorising the carrying out of works designed to be used in connection with an undertaking or part of an undertaking transferred to the Board, or the acquisition of land for the purpose of carrying out such works, were transferred to the Board by section 32(4). The functions transferred included functions of the BTC under or by virtue of the Transport Act 1947 (c. 49), S.R. & O 1947/2797, various British Transport Commission Acts and other legislation. Functions under certain statutory provisions authorising the BTC to appoint, nominate, or concur in or approve the appointment or nomination of, a member of certain bodies were transferred from the BTC to the Board by virtue of the British Transport Commission (Transfer of Functions) (Appointments and Nominations) Order 1963 (S.I. 1963/2023) (made under section 32(5)).
- (13) 1964 c. 40. Relevant amendments were made to sections 30 and 36 by the Transport Act 1968, Schedule 16. Section 42 was substituted by the Transport Act 1981 (c. 56), Schedule 6, paragraph 10 (and there are other amendments to that section that are not relevant to this Order). There are amendments to the definition of "the Boards" in section 57(1) that are not relevant to this Order.
- (14) 1968 c. 73.
- (15) 1975 c. 51.
- (16) 1979 c. 46.
- (17) 1980 c. 66.
- (18) 1981 c. 56.
- (19) 1986 c. 5.
- (20) 1987 c. 21.
- (21) 1990 c. 8.
- (22) 1991 c. 57.
- (23) 1992 c. 42.
- (24) 1993 c. 38. Part 2 of that Act is repealed, as from a date to be appointed, by the Welsh Language (Wales) Measure 2011 (nawm 1), section 145(2)(a).
- (25) 1996 c. 61.

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Licensing Act 2003(26).  
Planning and Compulsory Purchase Act 2004(27).  
Gambling Act 2005(28).  
Natural Environment and Rural Communities Act 2006(29).  
Crossrail Act 2008(30).  
Planning Act 2008(31).  
Flood and Water Management Act 2010(32).

**Subordinate legislation**

The Utilities Contracts Regulations 2006(33).  
The Community Drivers' Hours and Recording Equipment Regulations 2007(34).

SCHEDULE 2

Article 2(2)

Amendments to Transport Act 1962 and Transport Act 1968

**Transport Act 1962**

1. The Transport Act 1962(35) is amended as follows.
- 2.—(1) Section 1(36) (the four Boards) is amended as follows.
  - (2) In subsection (2)—
    - (a) for “each Board”, where first occurring, substitute “the Docks Board”;
    - (b) omit “of each Board”, where second occurring.
  - (3) For subsection (2A) substitute—

“(2A) The chairman of the British Waterways Board shall be appointed by the Scottish Ministers and the other members (including any vice chairman) shall be appointed by the Scottish Ministers after consultation with the chairman.”.
  - (4) In subsection (6)—
    - (a) for “not more than nine nor less than four” substitute “between one and four”;
    - (b) omit “the Minister or, as the case may be,”;
    - (c) omit “him or”.
  - (5) Omit subsection (6A).

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(26) 2003 c. 17.

(27) 2004 c. 5.

(28) 2005 c. 19.

(29) 2006 c. 16.

(30) 2008 c. 18.

(31) 2008 c. 29.

(32) 2010 c. 29.

(33) S.I. 2006/6.

(34) S.I. 2007/1819.

(35) 1962 c. 46.

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

(6) Until the coming into force of the repeal (by the Transport Act 2000<sup>(37)</sup>) of the words “the British Railways Board (in this Act referred to as the “Railways Board”)” in subsection (1) of section 1 of the Transport Act 1962 the amendment of subsection (2) of that section made by subparagraph (2)(a) is to have effect as if the reference to “the Docks Board” were a reference to “the Railways Board and of the Docks Board”.

3. In section 10(3)<sup>(38)</sup> (duty and powers of the British Waterways Board)—

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

4. In section 11<sup>(39)</sup> (development of land), for subsection (5) substitute—

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

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

5. For section 12(3A)<sup>(40)</sup> (pipe-lines), substitute—

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

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

6.—(1) Section 14<sup>(41)</sup> (supplemental provision relating to the Boards’ powers) is amended as follows.

(2) After subsection (1), insert—

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

(3) In subsection (4B)—

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

(4) In subsection (4C)—

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

(5) Omit subsection (4D).

7. After subsection (2) of section 15<sup>(42)</sup> (compulsory purchase of land), insert—

“(2A) The Minister may authorise Canal & River Trust to purchase compulsorily any land in England or Wales which it requires for the purposes of any of its functions under an

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<sup>(37)</sup> 2000 c. 38.

<sup>(38)</sup> Section 10 was amended by the Transport Act 1968, Schedule 18, Part 1 and [S.I. 2003/1545](#).

<sup>(39)</sup> Section 11 was amended by the Transport Act 1968, Schedule 18, Part 1 and [S.I. 2000/3251](#).

<sup>(40)</sup> Subsection (3A) was inserted by [S.I. 2000/3251](#). There are other amendments to section 12 that are not relevant to this Order.

<sup>(41)</sup> Relevant amendments to section 14 were made by [S.I. 2000/3251](#).

<sup>(42)</sup> Section 15 was amended by the Acquisition of Land Act [1981 \(c. 67\)](#), Schedules 4 and 6.

*Status: This is the original version (as it was originally made).*

enactment and the Acquisition of Land Act 1981(43) shall apply as if Canal & River Trust were a local authority within the meaning of that Act.”.

**8.—(1)** Section 15A(44) (compulsory purchase of land: British Waterways Board in Scotland) is amended as follows.

- (2) In the heading, omit “in Scotland”.
- (3) In subsection (1), omit “in Scotland”.
- (4) In subsection (4), for “section 12(3A)(b)” substitute “section 12(3)”.

**9.** After subsection (1) of section 17(45) (power to promote and oppose Bills), insert—

“(1ZA) In the application of subsection (1) to the British Waterways Board, the reference to the Minister is to be read as a reference to the Scottish Ministers.”.

**10.** After subsection (5) of section 18(46) (financial duty of Boards), insert—

- “(5A) In the application of subsections (4) and (5) to the British Waterways Board—
  - (a) references to the Minister are to be read as references to the Scottish Ministers, and
  - (b) references to the approval of the Treasury are omitted.”.

**11.—(1)** Section 19(47) (borrowing powers of Boards) is amended as follows.

(2) For subsection (3), substitute—

“(3) In any financial year the net amount of sums borrowed by the British Waterways Board under this section for discharging their functions under this Act or for meeting their obligations in connection with the discharge of their functions shall not exceed the amount specified for that year for the purposes of this subsection in a Budget Act.”.

(3) For subsection (3A), substitute—

- “(3A) In subsection (3)—
  - (a) “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that year or any other year, and
  - (b) “Budget Act” has the same meaning as in the Public Finance and Accountability (Scotland) Act 2000(48).”.

(4) In subsection (7)—

- (a) omit “in connection with the exercise of their functions in Scotland”;
- (b) in paragraph (b) after “the Minister” insert “and the Secretary of State”;
- (c) omit paragraph (c).

**12.** In section 20(7)(49) (Exchequer loans), omit “in connection with the exercise of their functions in Scotland”.

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(43) 1981 c. 67.

(44) Section 15A was inserted by S.I. 2000/3251.

(45) Section 17 was amended by S.I. 2000/3251.

(46) Section 18 was amended by the Transport Act 1968, Schedule 18, Part 1. There is a further amendment not relevant to this Order.

(47) Subsection (7) was inserted by S.I. 2000/3251. Section 19 was also amended by the Transport Act 1968, Schedule 18, Part 1; the Transport (London) Act 1969, Schedule 6; the Statutory Corporations (Financial Provisions) Act 1974 (c. 8), section 4 and Schedule 2; the Transport (Financial Provisions) Act 1977 (c. 20), section 3(2)(a); the Transport Act 1981, Schedule 12, Part 1; the Water Act 1981 (c. 12), section 1(1) and (2); the Transport Act 2000, Schedule 31, Part 4, and S.I. 2011/1043, article 4(1).

(48) 2000 asp 1.

(49) Subsection (7) was inserted by S.I. 2000/3251.



**13.** In section 21(1)(**50**) (Treasury guarantees), after “a Board” insert “other than the British Waterways Board”.

**14.** In section 21A(1)(**51**) (British Waterways Board: guarantees by the Scottish Ministers), omit “, in connection with the exercise of their functions in Scotland.”.

**15.—**(1) Section 24(**52**) (accounts) is amended as follows.

(2) In subsection (1)—

(a) after “Each Board” insert “, other than the British Waterways Board,”,

(b) omit the words from “and, in the case of” to the end.

(3) In subsection (2)—

(a) after “each Board”, insert “, other than the British Waterways Board,”,

(b) omit the words “after, in the case of the British Waterways Board, consultation with the Scottish Ministers”.

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

(5) After subsection (3), insert—

“(3A) The British Waterways Board—

(a) must cause proper accounts and other records in relation to those accounts to be kept, and

(b) must prepare an annual statement of accounts in such form and containing such particulars, compiled in such manner, as the Scottish Ministers may from time to time direct.

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

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

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

**16.** For section 25(2A)(**53**) (the Board’s subsidiaries), substitute—

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

**17.—**(1) Section 27(**54**) (power of Ministers in relation to Boards) is amended as follows.

(2) After subsection (5), insert—

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(50) Section 21 was amended by the Statutory Corporations (Financial Provisions) Act 1974, section 4 and Schedule 2 and the Miscellaneous Financial Provisions Act 1983 (c. 29), section 4 and Schedule 2.

(51) Section 21A was inserted by S.I. 2000/3251. Another section 21A (grants to the Railways Board) was inserted by the Railways Act 1993 (c. 43), section 109 and repealed, as from a date yet to be appointed, by the Transport Act 2000, Schedule 31, Part 4.

(52) Section 24 was amended by S.I. 1991/1997, 2000/3251 and 2008/948.

(53) Subsection (2A) was inserted by S.I. 2000/3251. Section 25 was also amended by the Transport Act 1968, Schedule 18, Part 1.

(54) Section 27 was amended by the Transport Act 1968, sections 46(5) and 51(3), the Railways Act 1974 (c. 48), section 4(6); the Transport Act 2000, Schedule 31, Part 4 and S.I. 2000/3251. There are further amendments not relevant to this Order.

*Status: This is the original version (as it was originally made).*

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

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

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

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

(6) Omit subsection (8A).

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

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

**18.** In section 28(2), (3) and (4)(**55**) (powers exercisable subject to Minister’s consent), after “Board”, in each place occurring, insert “or Canal & River Trust”.

**19.**—(1) Section 43(**56**) (charges and facilities: general provisions) is amended as follows.

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

(3) In subsection (3)—

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

(b) after “shall”, insert “each”.

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

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

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

**20.**—(1) Section 50(**57**) (port charges and conditions at harbours) is amended as follows.

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

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

**21.** In section 52(4)(**58**) (independent railway companies and inland waterway undertakings), in the definition of “independent inland waterway undertaking”, after “of the Boards”, insert “or Canal & River Trust”.

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

(2) In subsection (1)—

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

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

(3) In subsection (2)—

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

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(55) Section 28 was amended by [S.I. 2000/3251](#).

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

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

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

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

**23.** Section 63(**59**) (abstraction of water by British Waterways Board), to the extent that it continues in force, is repealed.

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

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

**25.** In section 74(**60**) (Minister’s power to make orders about pensions), before subsection (1) insert—

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

**26.** In section 86(4) and (5)(**61**) (application of Town and Country Planning Acts), omit “in respect of any development in Scotland” in each place occurring.

**27.**—(1) Schedule 1(**62**) (the Boards and the holding company) is amended as follows.

(2) In paragraph 6—

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

(b) for sub-paragraph (3) substitute—

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

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

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

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

(2) In paragraph 1(1)—

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

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

(c) after paragraph (a), insert—

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

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

(3) In paragraph 4(1)—

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

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

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

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

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

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

*Status: This is the original version (as it was originally made).*

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

29. In Schedule 9(63) (port charges), in paragraph 5(1), after “the Boards”, insert “or Canal & River Trust”.

### **Transport Act 1968**

30. The Transport Act 1968(64) is amended as follows.

31.—(1) Section 43(65) (additional financial provisions as to Waterways Board) is amended as follows.

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

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

32. After section 43, insert—

#### **“Grants to Canal & River Trust**

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

33. In section 44(1)(b)(66) (account by Minister of receipt and disposal of certain sums), omit “or the Waterways Board” and “or 43(5)”.

34. In section 46(2)(a)(67) (duty of Boards and new authorities to promote research and development), omit “in respect of their functions in Scotland,”.

35. In section 48(1A)(68) (manufacture, repair and supply)—

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

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

36. In section 49(69) (powers with respect to land), for subsection (4A) substitute—

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

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

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

37.—(1) Section 50(70) (miscellaneous provisions as to powers) is amended as follows.

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

(64) 1968 c. 73.

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

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

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

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

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

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

- (2) In subsection (1)—
  - (a) omit “the Minister or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland,”;
  - (b) after “other premises” insert “in Scotland”.
- (3) In subsection (5), omit “the Minister or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland,”.
- (4) Omit subsection (8A).
- (5) In subsection (9), omit “in connection with the exercise of their functions in Scotland,”.
- (6) Until the coming into force of the repeals of words in section 50(1) of the Transport Act 1968 made by the Transport Act 2000—
  - (a) sub-paragraph (2)(a) is to have effect as if it omitted “in connection with the exercise of their functions in Scotland,”;
  - (b) sub-paragraph (2)(b) is to have effect as if it inserted “(in the case of the Waterways Board, in Scotland)”.

**38.**—(1) Section 104(71) (classification of the Board’s waterways) is amended as follows.

- (2) In the heading, omit “the Board’s”.
- (3) In subsection (1)—
  - (a) for “undertaking” substitute “undertakings”,
  - (b) after “Board” insert “and Canal & River Trust”.
- (4) In subsection (3), after “Board” insert “or Canal & River Trust”.
- (5) After subsection (3) insert—
  - “(3A) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).
  - (3B) In deciding whether to make an order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.”.

**39.**—(1) Section 105(72) (maintenance of the Board’s waterways) is amended as follows.

- (2) In the heading, omit “the Board’s”.
- (3) In subsection (1), after “Board” insert “and of Canal & River Trust, in relation to the waterways comprised in their respective undertakings”.
- (4) In subsection (2), after “the Board” insert “or Canal & River Trust”.
- (5) In subsection (3)—
  - (a) after “or any part thereof,”, insert “or to any other reason the Minister considers relevant to the duty under subsection (1),”;
  - (b) for “the Board”, in each place occurring, substitute “Canal & River Trust”.
- (6) After subsection (3) insert—
  - “(3ZA) Canal & River Trust may apply to the Minister for the making of an order under subsection (3).
  - (3ZB) In deciding whether to make any order under subsection (3), the Minister must have regard to the financial position of Canal & River Trust.”.

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(71) Section 104 was amended by [S.I. 2000/3251](#).

(72) Section 105 was amended by [S.I. 2000/3251](#) and modified by [S.I. 1993/119](#).

(7) For subsection (3A), substitute—

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

(8) In subsection (4)—

- (a) after “(3)” insert “or (3A)”;
- (b) after “such order” insert “made by the Minister under subsection (3)”;
- (c) after “Parliament” insert “, and an order made by the Scottish Ministers under subsection (3A) is subject to the negative procedure”.

(9) In subsection (6), after “the Board” insert “or Canal & River Trust”.

(10) In subsections (7) and (8), after “Board”, in each place occurring, insert “or, as the case may be, Canal & River Trust”.

**40.** For section 106(73) (enforcement of maintenance duty), substitute—

**“Enforcement of maintenance duty – the Waterways Board**

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

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

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

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

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

(3) If a relevant order is pending at the time when enforcement proceedings are instituted, or if, at any time after enforcement proceedings have been instituted and before the court has imposed any requirement on the Board in the proceedings, the Scottish Ministers notify

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(73) Section 106 was amended by [S.I. 2000/3251](#).

the Board that they are considering the making of a relevant order and give the court such a certificate as is mentioned in subsection (4)—

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

(4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Scottish Ministers that the imposition of any requirement on the Board on the basis of their existing duty would result in their incurring substantial expense and that, having regard to their financial position and their duty under section 18 of the Act of 1962 and section 41 of this Act, it would be unreasonable for them to bear that expense without a grant or further grant under section 43 of this Act.

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

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

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

### **Enforcement of maintenance duty – Canal & River Trust**

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

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

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

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

- (a) except as provided in subsection (3) of this section, where such an order is made while enforcement proceedings are in progress, the court shall nevertheless determine those proceedings on the basis of the duty of Canal & River Trust as it stood when the proceedings were instituted; and

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(b) the making of such an order shall in no case absolve Canal & River Trust from complying with any requirement which is imposed by the court in any enforcement proceedings.

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

(a) the court shall not, so long as the order is pending, impose any requirement on Canal & River Trust in those proceedings; and

(b) if the order is made, the court shall, in determining in those proceedings whether there has been a failure by Canal & River Trust to discharge its duty, have regard only to the duty (if any) to which Canal & River Trust is subject in consequence of the making of the order.

(4) The certificate referred to in subsection (3) is a certificate in writing to the effect that it appears to the Minister that the imposition of any requirement on Canal & River Trust on the basis of its existing duty would result in its incurring substantial expense and that, having regard to its financial position, it would be unreasonable for it to bear that expense without a grant or further grant under section 43A of this Act.

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

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

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

**41.** In section 108(1)(74) (prevention of nuisance as respects certain waterways), for “the Waterways Board” substitute “Canal & River Trust”.

**42.—(1)** Section 109(75) (power of certain bodies to maintain or take over waterways and connected works) is amended as follows.

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

(3) In subsection (2)—

(a) omit paragraph (b) so far as having effect in relation to England and Wales;

(b) omit paragraphs (c) and (h);

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

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



- (c) omit paragraph (j) so far as having effect in relation to England and Wales;
  - (d) omit paragraph (k);
  - (e) for the words from “the Minister” to “as the case may be,” substitute “the Scottish Ministers as a body appearing to”.
- (4) In subsection (3)—

- (a) for the words from paragraph (b) to the end of the subsection substitute—
  - “(b) Scottish Water unless the Scottish Ministers have consented to the agreement or transfer;and the powers under this section of Scottish Water shall be exercisable only for the purposes of their water undertaking and with the consent of the Scottish Ministers.”.

- (5) For subsection (5) substitute—

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

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

**44.—**(1) Section 112(76) (power to extinguish statutory rights and obligations in respect of canals not comprised in undertaking of Board) is amended as follows.

- (2) In the heading, after “Board” insert “or Canal & River Trust”.
- (3) In subsection (1)—
  - (a) after “Waterways Board” insert “or Canal & River Trust”;
  - (b) after “the Minister” insert “, or, in the case of a canal in Scotland, the Scottish Ministers,”.
- (4) In subsection (3)—
  - (a) in paragraph (a), for “the Minister” substitute “the authority making the order”;
  - (b) in paragraph (d), for “the Minister” substitute “the authority making the order”.
- (5) In subsection (5)—
  - (a) after “order shall” insert “, in the case of an order made by the Minister,”;
  - (b) after “Parliament” insert “, and in the case of an order made by the Scottish Ministers, is subject to the negative procedure”.
- (6) Omit subsection (6A).

**45.** In subsection (5) of section 113(77) (byelaws in respect of waterways owned or managed by certain bodies), in the definition of “qualified body” omit the words “(except paragraph (c) thereof)”.

**46.—**(1) Section 116(78) (transfer of responsibility for maintenance etc) is amended as follows.

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

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

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

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- (2) In the heading, for “Boards” substitute “certain”.
- (3) After subsection (11), insert—
- “(12) Subsection (13) applies if Canal & River Trust is, or but for this section would be, responsible for maintaining—
- (a) a highway carried by a new bridge over an inland waterway comprised in its undertaking or over any other installation or land used by Canal & River Trust in connection with such an inland waterway, or
  - (b) that highway together with an access highway.
- (13) Where—
- (a) the highway at each end of the bridge; or
  - (b) if Canal & River Trust is also responsible for maintaining any access highway, the highway at each end of the bridge and any access highway,
- is a highway maintainable at the public expense, the highway carried by the bridge, together with any access highway, shall be a highway maintainable at the public expense.
- (14) In this section—
- (a) “access highway”, in relation to a bridge, means a highway giving access to the bridge; and
  - (b) “new bridge” means a bridge constructed after the coming into force of the British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659).
- (15) Subsections (6) and (7) of this section shall have effect in relation to Canal & River Trust and any such bridge of Canal & River Trust as is mentioned in subsection (12) above as they have effect in relation to a Board.”.

**47.—**(1) Section 117(79) (duty of Boards as respect bridges carrying highways) is amended as follows.

- (2) In the heading, omit “of Boards”.
- (3) After subsection (1B) insert—
- “(1C) This section also applies to a bridge (whenever constructed) which —
- (a) carries a highway over an inland waterway of Canal & River Trust or any other installation or land used by Canal & River Trust in connection with an inland waterway, and
  - (b) belongs to Canal & River Trust,
- and in relation to any such bridge references in this section to each of the Boards or a Board are, subject to subsection (1D), to be read as references to Canal & River Trust.
- (1D) Subsection (7) applies in relation to a bridge constructed by or belonging to—
- (a) Canal & River Trust and one or more of the Boards mentioned in subsection (1) of this section;
  - (b) Canal & River Trust and a network owner; or
  - (c) Canal & River Trust, one or more of the Boards mentioned in subsection (1) of this section and a network owner,
- as it applies in relation to a bridge constructed by or belonging to any two or more Boards.

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

**48.**—(1) Section 118(**80**) (duty of highway authorities, etc, as respects bridges over Boards' railways or inland waterways) is amended as follows.

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

(3) After subsection (1A) insert—

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

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

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

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

**49.**—(1) Section 119(**81**) (ending of liability of Boards to make payments on being relieved of responsibility for bridges carrying trunk or special roads) is amended as follows.

(2) In the heading, omit “of Boards”.

(3) In subsection (1)—

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

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

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

**50.**—(1) Section 121(**82**) (application of foregoing sections to undertakers other than Railways Board, London Board and Waterways Board) is amended as follows.

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

(3) In subsection (1)—

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

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

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

**51.**—(1) Section 137(**83**) (machinery for negotiation and consultation with staff) is amended as follows.

(2) In subsection (3)—

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

(b) after paragraph (a), insert—

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

(3) In subsection (4)—

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

(b) after paragraph (a), insert—

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

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

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**(80)** Section 118 was amended by [S.I. 1996/420](#) and [2003/1615](#).

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

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

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

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

**52.** In section 144(3)(**84**) (transfer and disposal of historical records and relics), after “other than the Railways Board,” insert “Canal & River Trust.”

**53.**—(1) Schedule 13(**85**) (orders relating to inland waterways) is amended as follows.

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

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

(3) In paragraph 2—

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

(b) for sub-paragraph (2) substitute—

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

(4) After paragraph 3 insert—

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

(5) In paragraph 5—

(a) in sub-paragraph (1), after “105(3)” insert “or (3A)”;

(b) in sub-paragraph (2)(a)—

(i) after “105(3)” insert “or (3A)”;

(ii) after “(and is not withdrawn) by” insert “Canal & River Trust, where the waterway in respect of which the order is to be made is in England or Wales,”;

(c) in sub-paragraph (3), after “105(3)” insert “or (3A)”.

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

**(85)** Schedule 13 was amended by the Water Act 1989, Schedule 25, paragraph 38; the Natural Environment and Rural Communities Act 2006, Schedule 11, Part 2 and [S.I. 1996/593](#), [2000/3251](#), [2004/1822](#) and [2012/1658](#). It was modified by [S.I. 1993/1119](#).

## SCHEDULE 3

Article 2(3)

### Amendments

## PART 1

### Public general Acts

#### Public Health Acts Amendment Act 1907

1. In section 94(8) of the Public Health Acts Amendment Act 1907<sup>(86)</sup> (power to license pleasure boats), for “the British Waterways Board” substitute “Canal & River Trust”.

#### Harbours Act 1964

2.—(1) The Harbours Act 1964<sup>(87)</sup> is amended as follows.

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

(3) In section 30<sup>(88)</sup> (duty of harbour and local lighthouse authorities to make available for inspection, and to keep for sale, copies of lists of certain charges)—

(a) in subsection (1)—

(i) omit the “or” at the end of paragraph (a);

(ii) after paragraph (b) insert an “or” and then—

“(c) by virtue of section 43 of the Transport Act 1962 by Canal & River Trust at a harbour specified in Schedule 9 to that Act;”.

(b) in subsection (3)—

(i) for “(a) or (b)”, substitute “(a), (b) or (c)”;

(ii) after “concerned”, insert “or by Canal & River Trust”;

(iii) after “Board”, in the second place it occurs, insert “or Canal & River Trust”;

(c) in subsection (6), after “Board”, insert “or by Canal & River Trust,”.

(4) In section 36(a)<sup>(89)</sup> (sections 31 and 32 not to apply to charges at certain harbours), after “the British Waterways Board”, insert “or Canal & River Trust”.

(5) In section 42(11)(a)<sup>(90)</sup> (accounts and reports relating to harbour activities and associated activities), after “the Boards”, insert “or Canal & River Trust”.

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

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

<sup>(86)</sup> 1907 c. 53. Section 94(8) was substituted by S.I. 1997/1187, article 2.

<sup>(87)</sup> 1964 c. 40.

<sup>(88)</sup> Section 30 was amended by virtue of the Decimal Currency Act 1969 (c. 19) and by the Transport Act 1968, Schedules 16 and 18; the Transport Act 1981 (c. 56), Schedules 5, 6 and 12; the Merchant Shipping Act 1995 (c. 21), Schedule 12; the Transport Act 2000 (c. 38), Schedule 31, Part 4, and S.I. 1978/272, Schedule 5.

<sup>(89)</sup> Section 36 was amended by the Transport Act 1968, Schedule 16; the Transport Act 1981, Schedule 12, Parts 1 and 2; the Transport Act 2000, Schedule 31, Part 4, and S.I. 1999/1820, Schedule 2, Part 1, paragraph 34.

<sup>(90)</sup> Section 42 was substituted by the Transport Act 1981, Schedule 6, paragraph 10. There are other amendments not relevant to this Order.

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### **Countryside Act 1968**

3. In section 16(6)(c) of the Countryside Act 1968(91) (access to open country: canals and woodlands), for “the British Waterways Board” substitute “Canal & River Trust”.

### **Salmon and Freshwater Fisheries Act 1975**

4.—(1) The Salmon and Freshwater Fisheries Act 1975(92) is amended as follows.

(2) In section 40 (River Severn)—

- (a) for “the British Waterways Board” substitute “Canal & River Trust”;
- (b) for “the Board’s” substitute “Canal & River Trust’s”.

### **Local Government, Planning and Land Act 1980**

5.—(1) The Local Government, Planning and Land Act 1980(93) is amended as follows.

(2) In section 185(2)(a)(94) (restriction on power of certain authorities to make pleasure boat byelaws), for “the British Waterways Board” substitute “Canal & River Trust”.

(3) In Schedule 16(95) (bodies to whom Part 10 applies), in paragraph 18, after “Statutory undertakers” insert “other than Canal & River Trust”.

### **Highways Act 1980**

6.—(1) The Highways Act 1980(96) is amended as follows.

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

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

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

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

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

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

### **Transport Act 1981**

7. In Schedule 3 to the Transport Act 1981(97) (powers of Associated British Ports), in paragraph 31(4), after “the British Waterways Board” insert “, Canal & River Trust”.

(91) 1968 c. 41. Section 16(6)(c) was amended by the Transport Act 1968, section 111.

(92) 1975 c. 51. Section 40 was amended by the Environment Act 1995 (c. 25), Schedule 15, paragraph 2.

(93) 1980 c. 65.

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

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

(96) 1980 c. 66. There are amendments to the listed provisions that are not relevant to this Order.

(97) 1981 c. 56. There are amendments to paragraph 31 of Schedule 3 that are not relevant to this Order.

## **Agricultural Holdings Act 1986**

**8.** In Schedule 12 to the Agricultural Holdings Act 1986(**98**) (modifications applicable to old tenancies and other similar cases), after paragraph 4(5) insert—

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

(5B) In sub-paragraph (5A)—

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

## **Town and Country Planning Act 1990**

**9.** In section 264(4)(a) (operational land) of the Town and Country Planning Act 1990(**99**), after “the Water Industry Act 1991”(100), insert “or, in the case of land held by Canal & River Trust, the Public Bodies Act 2011”.

## **Ports Act 1991**

**10.** In section 1(4) of the Ports Act 1991(**101**) (meaning of relevant port authority), after paragraph (c), insert—

“(ca) Canal & River Trust;”.

## **Water Resources Act 1991**

**11.**—(1) The Water Resources Act 1991(**102**) is amended as follows.

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

(3) In section 66(**103**)—

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

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

(5) In section 130(**104**), in subsections (1) and (2), for “the British Waterways Board” and “the Board” in each place occurring, substitute “Canal & River Trust”.

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(98) 1986 c. 5. There are amendments to paragraph 4 of Schedule 12 that are not relevant to this Order.

(99) 1990 c. 8. Relevant amendments to section 264 were made by the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), section 2, Schedule 1, paragraph 54; the Planning and Compulsory Purchase Act 2004, section 40(2)(k).

(100) 1991 c. 56.

(101) 1991 c. 52. There is an amendment to section 1 that is not relevant to this Order.

(102) 1991 c. 57.

(103) Section 66 was amended by the Water Act 2003 (c. 37), sections 14(3)(d) and 101; Schedule 7, Part 1, paragraphs 1 and 7, and Schedule 9, Part 3, and by the Environment Act 1995, Schedule 22, paragraph 128.

(104) Section 130 was amended by the Environment Act 1995, Schedule 22, paragraph 128.

### **Transport and Works Act 1992**

**12.**—(1) The Transport and Works Act 1992(**105**) is amended as follows.

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

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

### **Environment Act 1995**

**13.** In section 41(8) (power to make schemes imposing charges) of the Environment Act 1995(**106**), for “the British Waterways Board” substitute “Canal & River Trust”.

### **Channel Tunnel Rail Link Act 1996**

**14.**—(1) Schedule 15 (protective provisions) to the Channel Tunnel Rail Link Act 1996(**107**) is amended as follows.

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

(3) In Part 6(**108**)—

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

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

### **Freedom of Information Act 2000**

**15.**—(1) The Freedom of Information Act 2000(**109**) is amended as follows.

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

(a) omit the entry relating to the British Waterways Board;

(b) at the appropriate place insert—

“Canal & River Trust, in respect of information held by it relating to functions exercisable by it by virtue of the British Waterways Board (Transfer of Functions) Order 2012 ([S.I. 2012/1659](#)).”.

### **Licensing Act 2003**

**16.**—(1) The Licensing Act 2003(**110**) is amended as follows.

(2) In section 13(4)(**111**) (vessels: responsible authorities), in paragraph (h)(iii), for “the British Waterways Board” substitute “Canal & River Trust”.

(3) In section 69(4)(**112**) (vessels: responsible authorities), in paragraph (h)(iii), for “the British Waterways Board” substitute “Canal & River Trust”.

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(**105**) 1992 c. 42.

(**106**) 1995 c. 25. There are amendments to section 48 that are not relevant to this Order.

(**107**) 1996 c. 61.

(**108**) Paragraph 11 of Part 6 was amended by [S.I. 1997/2971](#), Schedule, paragraph 37.

(**109**) 2000 c. 36.

(**110**) 2003 c. 17.

(**111**) There are amendments to section 13 that are not relevant to this Order.

(**112**) There are amendments to section 69 that are not relevant to this Order.



### **Gambling Act 2005**

17.—(1) The Gambling Act 2005(**113**) is amended as follows.

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

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

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

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

### **Natural Environment and Rural Communities Act 2006**

18. In Schedule 7 to the Natural Environment and Rural Communities Act 2006(**114**) (designated bodies), in paragraph 7, for “The British Waterways Board” substitute “Canal & River Trust”.

### **Crossrail Act 2008**

19.—(1) Schedule 17 to the Crossrail Act 2008(**115**) (protective provisions) is amended as follows.

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

(3) In Part 5—

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

### **Flood and Water Management Act 2010**

20. In Schedule 3 to the Flood and Water Management Act 2010(**116**) (sustainable drainage), in paragraph 11(3)(d), for “British Waterways” substitute “Canal & River Trust”.

### **Crime and Security Act 2010**

21. In section 55(2)(**117**) (power to restrict sale and supply of alcohol) of the Crime and Security Act 2010(**118**), in the inserted section 172B(5)(i)(iii) of the Licensing Act 2003 (vessel: responsible authorities), for “the British Waterways Board” substitute “Canal & River Trust”.

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(113)2005 c. 19.

(114)2006 c. 16.

(115)2008 c. 18.

(116)2010 c. 29.

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

(118)2010 c. 17.

### **Police Reform and Social Responsibility Act 2011**

**22.** In section 119(3)(**119**) (early morning alcohol restriction orders) of the Police Reform and Social Responsibility Act 2011(**120**), in the substituted section 172B(4)(j)(iii) of the Licensing Act 2003 (vessel: responsible authorities), for “the British Waterways Board” substitute “Canal & River Trust”.

## **PART 2**

### **Acts of the Scottish Parliament**

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

**23.** In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000(**121**) (devolved public bodies), at the appropriate place insert “The British Waterways Board.”.

#### **Scottish Public Services Ombudsman Act 2002**

**24.** In schedule 2 to the Scottish Public Services Ombudsman Act 2002(**122**) (listed authorities), in Part 2 (entries amendable by Order in Council) before paragraph 21 insert the following—

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

#### **Freedom of Information (Scotland) Act 2002**

**25.** In schedule 1 to the Freedom of Information (Scotland) Act 2002(**123**) (Scottish public authorities), in Part 7 (others) before paragraph 62 insert the following—

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

#### **Public Services Reform (Scotland) Act 2010**

**26.**—(1) The Public Services Reform (Scotland) Act 2010(**124**) is amended as follows.

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

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

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

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

(**120**) 2011 c. 13.

(**121**) 2000 asp 7.

(**122**) 2002 asp 11. Paragraph 20A (Bòrd na Gàidhlig) was inserted by the Gaelic Language (Scotland) Act 2005 (asp 7), schedule 2, paragraph 2. There are other amendments that are not relevant to this Order.

(**123**) 2002 asp 13. Paragraph 61A (Bòrd na Gàidhlig) was inserted by the Gaelic Language (Scotland) Act 2005 (asp 7), schedule 2, paragraph 3. There are other amendments that are not relevant to this Order.

(**124**) 2010 asp 8.

## **Public Records (Scotland) Act 2011**

27. In the schedule to the Public Records (Scotland) Act 2011(125) (authorities to which Part 1 applies), in the list headed “Others”, at the appropriate place insert “British Waterways Board.”.

## **PART 3**

### **Subordinate legislation**

#### **The Drainage Rates (Appeals) Regulations 1970**

28. In regulation 5(2)(c) (hereditaments occupied for purposes of extensive undertakings) of the Drainage Rates (Appeals) Regulations 1970(126), for “and the British Waterways Board” substitute “, or Canal & River Trust”.

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

29. In the Schedule (contributing authorities) to the Secretary of State for Transport (Harbour Authorities) Charging Scheme 1982(127), at the appropriate place insert “Canal & River Trust”.

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

30. In Schedule 1 (modifications as applied to preserved right to buy) to the Local Government Reorganisation (Preservation of Right to Buy) Order 1986(128), in sub-paragraph (4) of paragraph 7 of Schedule 4 to the Housing Act 1985(129) inserted by paragraph 42(a) of Part 1, at the appropriate place insert “Canal & River Trust”.

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

31. In the Schedule (prescribed persons) to the Housing (Right to Buy) (Prescribed Persons) Order 1992(130), at the appropriate place insert “Canal & River Trust”.

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

32.—(1) The Transport and Works Applications (Inland Waterways Procedure) Regulations 1993(131) are amended as follows.

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

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

(a) omit paragraph 1;

(b) in paragraph 3(3)—

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

(ii) after “of this Schedule,”, insert “to Canal & River Trust and”;

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(125)2011 asp 12.

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

(127)S.I. 1982/9.

(128)S.I. 1986/2092.

(129)1985 c. 68.

(130)S.I. 1992/1703.

(131)S.I. 1993/1119 as amended by the Inland Waterways Advisory Council (Abolition) Order 2012 (S.I. 2012/1658).

*Status: This is the original version (as it was originally made).*

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

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

**33.** In the Schedule to the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(**132**), omit the entry relating to the British Waterways Board.

#### **The Utilities Contracts Regulations 2006**

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

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

**35.** In Part 1 of Schedule 2 to the Merchant Shipping (Inland Waterways and Limited Coastal Operations) (Boatmasters’ Qualifications and Hours of Work) Regulations 2006(**133**), after “British Waterways Boatmanship Licence” add “or equivalent licence issued by Canal & River Trust”.

#### **The Community Drivers’ Hours and Recording Equipment Regulations 2007**

**36.** In Part 1 of the Schedule (exempted vehicles) to the Community Drivers’ Hours and Recording Equipment Regulations 2007(**134**), in paragraph 1(2)(f), after “the British Waterways Board” insert “or Canal & River Trust”.

### SCHEDULE 4

Article 5(1)

#### Transitional provisions

#### **Interpretation**

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

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(132) S.I. 1999/1319. There are amendments to the Schedule that are not relevant to this Order.

(133) S.I. 2006/3223.

(134) S.I. 2007/1819.

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

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

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

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

3.—(1) Before making any direction under section 24(3A) of the 1962 Act(135) relating to the preparation of the annual statement of accounts for the period ending on 31st March 2013, the Scottish Ministers must consult the Secretary of State.

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

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

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

### **Obligations on Canal & River Trust**

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

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

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## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

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

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

*Status: This is the original version (as it was originally made).*

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

Article 2(2) and Schedule 2 makes amendments to the Transport Act 1962 and the Transport Act 1968. The amendments made by Schedule 2 include amendments to the Transport Act 1968 to give Canal & River Trust a right to apply to the minister for the making of an Order under section 104(3) of that Act (for the reclassification of inland waterways), and to require the Minister to have regard to the financial position of Canal & River Trust in deciding whether to make any such Order. There are further related amendments to sections 105 and 106 and to Schedule 13. Article 2(3) and Schedule 3 make amendments to primary and secondary legislation (and Acts of the Scottish Parliament). The amendments made by Schedule 3 include an amendment to the Local Government and Planning Act 1980 (c. 65) to provide that Canal & River Trust is not a statutory undertaker for the purposes of Part 10 of that Act.

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

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

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

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

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

Article 7 contains a revocation.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available on the Defra website at [www.defra.gov.uk](http://www.defra.gov.uk), and is published with the Explanatory Document alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).