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

DRAFT STATUTORY INSTRUMENTS

2012 No.

CANALS AND INLAND WATERWAYS
PUBLIC BODIES
TRANSPORT

The British Waterways Board (Transfer of Functions) Order 2012

Made - - - - ***

Coming into force in accordance with article 1

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(**1**) ("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(**2**) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(**3**).

(**1**) 2011 c. 24.
(**2**) 1998 c. 46.

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

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

Citation, commencement, extent and interpretation

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

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

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

(4) In this Order—

(a) "the 1962 Act" means the Transport Act 1962(**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.

(**3**) 2006 c. 32.
(**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.

(**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(**11**) is revoked.

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

Date

We consent

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

Date

(**11**) S.I. 2003/1545.

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**).

(**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.