

EXECUTIVE NOTE

THE BRITISH WATERWAYS BOARD (FORTH AND CLYDE AND UNION CANALS) (RECLASSIFICATION) ORDER 2011

SSI 2011/118

The above instrument was made in exercise of the powers conferred by section 104(3) of the Transport Act 1968. The instrument is subject to negative resolution procedure.

Policy Objectives

The Instrument adds the Union Canal and the Forth & Clyde Canal to Part II of Schedule 12 of the Transport Act 1968 reclassifying them as cruising waterways.

The 1968 Act classified the nationalised inland waterways which were in use at that time in Scotland, England and Wales as either commercial (available for the commercial carriage of freight) or cruising (principally available for cruising, fishing and other recreational purposes). The Caledonian and Crinan canals were both classified as commercial waterways.

Scotland's other canals – the Union, Forth & Clyde and Monkland canals - were not operational in 1968 and were not named in the Act. They fell into a third category described as 'the remainder'. Under the Act British Waterways ("BW") are required to deal with such waterways in the most economical manner possible consistent with the requirements of public health and the preservation of amenity and safety. There is no statutory obligation on BW to keep these waterways in a condition suitable for navigation.

The terms of the Millennium Commission's allocation of £33.8 million to the £84.5 million Millennium Link project to re-open the Union and Forth & Clyde canals specified that the canals should meet navigation parameters which are in line with waterways of cruising status. BW have maintained the canals to this standard since the re-opening of the canals ten years ago. This Instrument will formally safeguard the investment made by government (central and local) and the Millennium Commission by placing a statutory maintenance obligation on BW.

The rebirth of Scotland's Lowland canals started in the 1990s, and was assisted by devolution of canals to Scottish Ministers which enabled the Scottish Ministers to provide sufficient grant-in-aid for the maintenance of the canals and to set a clear and comprehensive policy for the future of Scotland's canals and the contribution sought from them. The Forth & Clyde and Union canals, which closed to navigation in the 1960s, were brought back to life through the Millennium Link project which commenced in 1999 with a contribution of £33.8 million from the Millennium Commission. The three-year construction process made the two centuries-old waterways navigable once more, created the iconic Falkirk Wheel which links the two canals, and provided a catalyst for regeneration across 68 miles of Scotland.

The purpose of reclassification is to secure the important statutory protections given to cruising waterways that are not given to remainder waterways. The principal benefit to the waterway of reclassification from remainder status to cruising status is to place on BW a statutory obligation, under section 105(1)(b) of the Transport Act 1968, to maintain the Canal in a suitable condition for use by cruising craft indefinitely into the future. A serious and persistent

failure by BW to discharge this duty enables any person to make an application to the Court of Session, under section 106, to require BW to remedy that failure.

The statutory requirement for the canals to be maintained is also important to parties involved in regeneration along the canal corridor, as it offers reassurance that the canals will be maintained in their current state in the future, and not allowed to deteriorate again.

Consultation

Paragraph 2(2) of Schedule 13 to the Transport Act 1968 requires that the Inland Waterways Advisory Council (IWAC) is consulted when making a reclassification Order. IWAC have responded in support of the making of this order.

Paragraph 5 of Schedule 13 to the Transport Act 1968 requires that a notice must be placed in the Edinburgh Gazette, a national newspaper, one or more local newspapers and notices placed along the canal for a minimum of 28 days during which an objection to the proposed Order can be made. To meet these statutory consultation requirements notices were placed in the Edinburgh Gazette, Herald, Scotsman, Evening Times, Evening News on Tuesday 16 November 2010 and in the Falkirk Herald on Thursday 18 November 2010. Notices were placed on notice boards along the canal for 56 days commencing on 15 November 2010 and closing on 10 January 2011.

Email notifications were sent to relevant stakeholders including all local authorities adjacent to the canal, waterside businesses, the Lowlands Canals User Group and organisations representing the interests of existing and potential users of the canals. No objections were received.

Equalities Impact Assessment

An Equalities Impact Assessment is not required for this instrument as it has no impact on specific groups or individuals.

Financial Effects

The Minister for Transport and Infrastructure confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. BW have maintained the Forth and Clyde and Union canals to navigation parameters which are in line with waterways of cruising status. It is anticipated that there should be no additional costs

Transport Scotland
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