

**EXPLANATORY MEMORANDUM TO**  
**THE BRITISH WATERWAYS BOARD (KENNET AND AVON CANAL)**  
**(RECLASSIFICATION) ORDER 2011**

**2011 No. 889**

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Order is made under section 104(3) of the Transport Act 1968 to reclassify the main navigable channel of the two “remainder” sections of the Kennet and Avon Canal, so that the entire Canal, from High Bridge, Reading to the tail of the bottom lock at Bath, will be classed as a cruising waterway.

2.2 The effect of the Order is that the entire length of the Kennet and Avon canal will become a cruising waterway and formally require British Waterways to maintain the waterway as a cruising waterway as it is currently already doing on a non-statutory basis i.e. in a suitable condition for cruising craft, that is to say vessels constructed or adapted for the carriage of passengers and driven by mechanical power which are suitable for use on the restored Kennet and Avon canal.

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

3.1 None.

**4. Legislative Context**

4.1 The Order is made following a request made by British Waterways.

**5. Territorial Extent and Application**

5.1 This instrument applies to England.

**6. European Convention on Human Rights**

The Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the British Waterways Board (Kennet and Avon Canal) (Reclassification) Order 2011 are compatible with the Convention rights.

## 7. Policy background

- What is being done and why

7.1 British Waterways requested a Ministerial Order under section 104(3) of the Transport Act 1968 that the parts of the Kennet and Avon Canal which are currently not classified (i.e. are a ‘remainder’ waterway), and are therefore currently not contained in Part II of Schedule 12 to the Act covering cruising waterways, should be added to that part of the Schedule. The effect would therefore be that the entire length of the Kennet and Avon Canal would become a cruising canal and place BW’s responsibility to maintain it as such on a statutory basis. British Waterways is however already maintaining the waterway as a cruising waterway on a non-statutory basis. At present, the stretches in question are, statutorily, “remainder” waterways. BW has only very limited statutory obligations with respect to remainder waterways. Under section 107 of the Transport Act 1968, the duty is limited to a requirement to deal with such waterways in the most economical manner possible (consistent with requirements of public health and the preservation of amenity and safety) whether by retaining and managing it, by developing or eliminating it, or by disposing of it. In other words there is no statutory obligation of BW to keep a remainder waterway in a condition suitable for navigation. The 1968 Act provisions were however supplemented by the British Waterways Act 1995, which imposes a duty on BW to take into account the desirability of protecting remainder waterways with potential for use as cruising waterways so that they could, in fact, be used as cruising waterways in the future. There is therefore a statutory expectation that once waterways are restored to full navigation, they will be appropriately classified.

- Consolidation

7.2 None.

## 8. Consultation outcome

8.1 The Act requires that consultation is undertaken with the Inland Waterways Advisory Council on a proposed Order. In addition information about the Minister’s intention to make an Order must be published by means of formal notices in the London Gazette, a national newspaper and one or more relevant local newspapers. Notices must also be placed in places adjacent to the waterway. Given the limited nature of the Order a 12 week consultation was not required. The Inland Waterways Advisory Council had no objection. 13 bodies expressed support for the Order. Two objections were received from bodies with an interest in the Order. They were concerned about the impact on the River Kennet, which is an SSSI, of boat movements where the canal interacts with the river. They believed that boat movements on the canal have caused siltation and impacted on water and river bed quality, including turbid and enriched water entering the river and damaging the river habitat. They claimed that BW had in the past refused to undertake necessary works such as dredging to mitigate the impact of boat movements.

8.2 In view of the nature of the objections Natural England were consulted. While they had concerns that current boating operations were adversely affecting water quality in the River Kennet SSSI they noted that they were working with BW and the Environment Agency to explore ways to reduce the impact. Importantly, they had no objections to the proposed re-classification on the basis that it would not change the number of boat movements. They said that until ways had been found to reduce the impact on the SSSI there should be no measures designed to increase boat activity. NE's comments and further information from British Waterways on the mitigating measures in hand and their view that the re-classification would not have any impact on the current levels of boat activity was passed to the two objectors asking whether they now wished to withdraw their objections or had any further comments. Neither objection was withdrawn and therefore remained outstanding. As the Act requires, the Secretary of State considered the objections received before deciding to make an Order.

## **9. Guidance**

9.1 None.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 None required.

## **13. Contact**

David Foot at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5796 or email: david.foot@defra.gsi.gov.uk can answer any queries regarding the instrument.