

SCHEDULE 2

Article 2(2)

Amendments to Transport Act 1962 and Transport Act 1968

Transport Act 1962

1. The Transport Act 1962⁽¹⁾ is amended as follows.
- 2.—(1) Section 1⁽²⁾ (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).
 - (6) Until the coming into force of the repeal (by the Transport Act 2000⁽³⁾) 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⁽⁴⁾(4) (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⁽⁵⁾ (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⁽⁶⁾(3A)(6) (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

(1) 1962 c. 46.

(2) 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.

(3) 2000 c. 38.

(4) Section 10 was amended by the Transport Act 1968, Schedule 18, Part 1 and S.I. 2003/1545.

(5) Section 11 was amended by the Transport Act 1968, Schedule 18, Part 1 and S.I. 2000/3251.

(6) Subsection (3A) was inserted by S.I. 2000/3251. There are other amendments to section 12 that are not relevant to this Order.

(c) the power in subsection (2) is limited to the acquisition of land in Scotland.”.

6.—(1) Section 14(7) (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(8) (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 enactment and the Acquisition of Land Act 1981(9) shall apply as if Canal & River Trust were a local authority within the meaning of that Act.”.

8.—(1) Section 15A(10) (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(11) (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(12) (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(13) (borrowing powers of Boards) is amended as follows.

(7) Relevant amendments to section 14 were made by [S.I. 2000/3251](#).

(8) Section 15 was amended by the Acquisition of Land Act 1981 ([c. 67](#)), Schedules 4 and 6.

(9) [1981 c. 67](#).

(10) Section 15A was inserted by [S.I. 2000/3251](#).

(11) Section 17 was amended by [S.I. 2000/3251](#).

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

(13) 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

(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(14).”.

(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)(15) (Exchequer loans), omit “in connection with the exercise of their functions in Scotland”.

13. In section 21(1)(16) (Treasury guarantees), after “a Board” insert “other than the British Waterways Board”.

14. In section 21A(1)(17) (British Waterways Board: guarantees by the Scottish Ministers), omit “, in connection with the exercise of their functions in Scotland,”.

15.—(1) Section 24(18) (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—

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).

(14) 2000 asp 1.

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

(16) 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.

(17) 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.

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

- (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)(**19**) (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(**20**) (power of Ministers in relation to Boards) is amended as follows.

(2) After subsection (5), insert—

“(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)(**21**) (powers exercisable subject to Minister’s consent), after “Board”, in each place occurring, insert “or Canal & River Trust”.

19.—(1) Section 43(**22**) (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”.

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

(20) 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.

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

(22) 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.

- (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(**23**) (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)(**24**) (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”;
- (b) after “the Board’s obligations”, insert “or, as the case may be, Canal & River Trust’s obligations”.
- 23.** Section 63(**25**) (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(**26**) (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)(**27**) (application of Town and Country Planning Acts), omit “in respect of any development in Scotland” in each place occurring.
- 27.**—(1) Schedule 1(**28**) (the Boards and the holding company) is amended as follows.
- (2) In paragraph 6—

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

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

(25) 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).

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

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

(28) 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.

- (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”.
 - (4) In paragraph 4(2), after “between the Boards”, insert “, or between a Board and Canal & River Trust,”.
- 29.** In Schedule 9(29) (port charges), in paragraph 5(1), after “the Boards”, insert “or Canal & River Trust”.

Transport Act 1968

- 30.** The Transport Act 1968(30) is amended as follows.
- 31.**—(1) Section 43(31) (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.”.

(29) 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.

(30) 1968 c. 73.

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

33. In section 44(1)(b)(**32**) (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)(**33**) (duty of Boards and new authorities to promote research and development), omit “in respect of their functions in Scotland”.

35. In section 48(1A)(**34**) (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(**35**) (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(**36**) (miscellaneous provisions as to powers) is amended as follows.

(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(**37**) (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”.

(32) 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.

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

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

(35) 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.

(36) 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.

(37) Section 104 was amended by S.I. 2000/3251.

- (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(**38**) (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.”.
- (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(**39**) (enforcement of maintenance duty), substitute—

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

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

“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 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
- (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)(**40**) (prevention of nuisance as respects certain waterways), for “the Waterways Board” substitute “Canal & River Trust”.

42.—(1) Section 109(**41**) (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);

(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”.

(40) 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.

(41) 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).

44.—(1) Section 112(**42**) (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(**43**) (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(**44**) (transfer of responsibility for maintenance etc) is amended as follows.

- (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.

(42) 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](#).

(43) 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](#).

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

(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(**45**) (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.

48.—(1) Section 118(**46**) (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(**47**) (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”.

(45) 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.

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

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

50.—(1) Section 121(**48**) (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(**49**) (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”.
- (4) In subsection (7), omit “the British Waterways Board or”.

52. In section 144(3)(**50**) (transfer and disposal of historical records and relics), after “other than the Railways Board,” insert “Canal & River Trust,”.

53.—(1) Schedule 13(**51**) (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.”.

(48) 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.

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

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

(51) 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/[0000]. It was modified by [S.I. 1993/1119](#).

(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)”.