



The Scottish Parliament
Pàrlamaid na h-Alba

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

AGENDA

8th Meeting, 2012 (Session 4)

Wednesday 18 April 2012

The Committee will meet at 10.00 am in Committee Room 1.

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 and any future discussion on the outcomes of its work on the Rail Franchise 2014, in private.
2. **Rail 2014: Renewal of Scottish Passenger Rail Franchise:** The Committee will take evidence from—
 - David Simpson, Route Managing Director Scotland, Network Rail;
 - Malcolm Brown, Chief Executive Officer, Angel Trains;
 - Keith Howard, Commercial Director, Porterbrook.
3. **Public Bodies Consent:** The Committee will consider two Scottish Government memoranda relating to the British Waterways (BW) (PBCM(S4)3.1); and the Inland Waterways Advisory Council (IWAC) (PBCM(S4)4.1).
4. **Rail 2014: Renewal of Scottish Passenger Rail Franchise:** The Committee will consider the evidence heard at previous meetings.

Steve Farrell
Clerk to the Infrastructure and Capital Investment Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

PRIVATE PAPER

ICI/S4/12/8/1 (P)

Written evidence

ICI/S4/12/8/2

[Transport Scotland: Rail 2014 - Public Consultation](#)

Agenda item 3

Paper by the Clerk

ICI/S4/12/8/3

[Draft British Waterways Board \(Transfer of Functions\) Order 2012](#)

[Draft Inland Waterways Advisory Council \(Abolition\) Order 2012](#)

Agenda item 4

PRIVATE PAPER

ICI/S4/12/8/4 (P)

Infrastructure and Capital Investment Committee**8th Meeting, 2012 (Session 4), Wednesday, 18 April 2012****Written evidence from Angel Trains Ltd****Introduction**

Angel Trains welcomes the opportunity to give evidence to the Infrastructure and Capital Investment Committee's inquiry into the next rail passenger franchise (Rail 2014). This is a brief document detailing some background on Angel Trains and our role as a Rolling Stock Operating Company (ROSCO).

About Angel Trains

Angel Trains own, lease and maintain trains for Train Operating Companies (TOCs) throughout the UK. Since 1994 we have invested over £3 billion in the UK economy through the purchase of rolling stock, and the refurbishment of existing trains. We are the largest ROSCO in the UK: owning over 4,500 trains and carriages. That amounts to 37% of the trains currently leased for operation on the UK rail network, including ScotRail.

We are an asset manager, the conduit between investors and the operational railway. Angel Trains shoulder the burdens associated with raising the necessary capital, negotiating with manufacturers, and managing the fleet as franchises change hands.

Maintenance of our assets is particularly important to us. Through our team of expert engineers based at our offices in London and Derby, we manage and maintain vehicles for TOCs.

Maintenance in these terms means regular engineering checks, upgrading equipment such as mechanical parts and electronic system checks. (It does not generally extend to aspects such as upholstery and carpeting which remains the responsibility of the train operator.)

Angel Trains was established in 1994 as one of the first firms set up in response to the privatisation of British Rail. We have a focused approach, concentrating only on the British market and rail industry asset management.

Attracting private sector investment to the UK Rail industry

The single biggest investments made by Angel Trains include £977 million on new tilting trains for Virgin Railways West Coast Mainline route connecting Glasgow to Birmingham, Manchester and London. We have also invested £700 million in new passenger trains for the South West Train route into London run by Perth based, Stagecoach Group.

We have also recently awarded a £500,000 contract to Wabtec Rail (formerly Brush Barclay) in Kilmarnock. The contract comprises the refurbishment of five Class 180 high speed trains for use on the First Great Western rail line.

Long-term perspective

By virtue of the length of their franchises TOCs are focused on the short to mid-term. Rolling stock, however, has a life-cycle of up to 40 years.

Angel Trains therefore has an interest in the long-term outlook for the rail sector, given our significant investments. As such we like to talk to a wide range of stakeholders including Transport Scotland, DfT, ATOC, and politicians in Edinburgh, Westminster, and Cardiff.

Improving value for money

It would be more efficient, and would drive down the cost of delivery, if the UK could move towards greater commonality of rolling stock, reducing the variety of trains from the current 56 to something closer up to 6.

At a time of spending cuts, it is particularly important that the sector should seek to minimise the burden to taxpayers, and we are keen to use our expertise to assist in that process.

The McNulty Review made a number of recommendations for improving efficiency in the rail network and set out a blueprint for the sector over the coming decades. The Report is broadly regarded by the industry as having made sensible and helpful points.

Angel Trains supports its findings, and is working with the DfT, Rail Delivery Group, ATOC and Train Operators to establish what strategic partnership between the DfT and ROSCOs, as recommended by Sir Roy, might involve.

Scotland's rail passenger franchise

As an informed buyer and asset manager of rolling stock, we see a number of opportunities for Transport Scotland to reduce costs associated to rolling stock using all or some of the following approaches.

Developing continued service operation options for existing fleets

We believe that it is possible to provide lower cost rolling stock solutions through continued service operation of existing fleets. This will require some additional investment to ensure compliance with accessibility legislation. We think this approach will provide a real benefit in reducing costs, particularly for those routes that demand a higher level of subsidy. We note that continued service operation of existing fleets was a key recommendation in the recent McNulty Review.

Adopting fleet standardisation for future fleets

We fully recognise that each and every train operator wishes to customise their rolling stock to reflect local operating and marketing requirements. However, a move towards adopting standard European and UK designs could reduce costs for the railway throughout Scotland, England and Wales. By taking this approach, Transport Scotland will avoid customisation costs associated with developing a bespoke product. In addition to the potential savings in capital costs, procuring common platform trains can also bring about a range of benefits relating to the reliability and operating cost of the train. For example, maintenance of the Siemens Desiro fleet by the manufacturer has led to efficiency savings (achieved through areas such as optimised spares pools, supply chain management and cross fleet maintenance optimisation) being realised whilst maintaining and enhancing reliability.

Developing a rolling stock procurement strategy to provide a clear and steady order pipeline

We agree with the recommendations set out in McNulty Review that a procurement approach that provides suppliers with better visibility on forward requirements and less volatile production flows should help reduce costs. Through a more consistent order flow, the start-up costs that are incurred with a stopstart approach to procurement should be avoided providing a lowering in capital costs. We believe that we, as a ROSCO, can help achieve this by identifying and bringing together various TOCs' requirements and consolidate orders.

In addition, a steady order flow should continue to allow the core suppliers to the UK market the opportunity to continually develop and improve their products reducing maintenance and reliability costs, as demonstrated by the Siemens Desiro and Bombardier Electrostar designs.

Procuring rolling stock on a whole life cost basis

We have, for a period of time now, considered whole life costs in our rolling stock procurement and upgrades and hence we continue to support industry efforts to procure rolling stock on a whole life cost basis. In taking such an approach, items such as maintenance, energy, & staff operating costs need to be considered, in addition to infrastructure costs such as variable track access costs.

Improving the environmental case for rail

Environmental sustainability is important to everyone working in the UK rail industry. We are proud that our Pendolino trains have reduced the number of people flying between London and Manchester. We invest in our trains to make them last longer, rather than scrapping and procuring new vehicles. We are helping to make existing diesel trains more fuel efficient, have developed improvements in regenerative braking, introduced driver advisory systems, and invested in new energy metering systems.

We also assess our suppliers on their environmental policies and how they manage environmental issues.

Infrastructure and Capital Investment Committee

8th Meeting, 2012 (Session 4), Wednesday, 18 April 2012

Public Body Consent Memoranda

Introduction

1. The Committee is invited to consider the following Orders—
 - British Waterways Board (Transfer of Functions) Order 2012
 - Inland Waterways Advisory Council (Abolition) Order 2012
2. The Orders, which are summarised below, are UK Government instruments that the Scottish Parliament has been asked to consent to under the Public Bodies Act 2011 (“the 2011 Act”). The Parliament’s consent is required because the public bodies in question operate in both reserved and devolved areas.
3. The Scottish Government has provided the Scottish Parliament with a Public Body Consent Memorandum (PBCM) for each Order, which are attached at the Annexes.
4. The Subordinate Legislation Committee considered both PBCMs and determined that it did not need to draw either to the attention of the Parliament on any ground within its remit.

Background

5. The 2011 Act provides UK Ministers with the power to make orders to improve the exercise of public functions, having regard to efficiency, effectiveness, economy and securing accountability to Ministers. The consent of the Scottish Parliament is required to any order that would be within its legislative competence.
6. At its meeting on 20 December 2011, the Parliamentary Bureau agreed an interim arrangement for the parliamentary scrutiny of such orders, with a view to the Standards, Procedures and Public Appointments Committee considering the procedure to apply in the longer term.
7. Under the interim arrangements, the Committee is invited to consider whether it agrees to the motions set out at paragraph 27 on page 4. The Committee will then report to the Parliament on its findings, following which the view of the Parliament will be sought by way of a motion in the Chamber.

British Waterways Board (Transfer of Functions) Order 2012

8. The Scottish Government PBCM in relation to this Order is attached at **Annexe A**. The Order itself, together with the accompanying documents, is

available on the Parliament's website¹, and copies are available from the Clerk on request.

Purpose

9. The British Waterways Board was established by the Transport Act 1962. It holds a variety of statutory functions relating to the operation and maintenance of certain inland waterways within the UK. Responsibility for inland waterways in Scotland is a devolved matter and so the operation of the Board's statutory functions in Scotland is largely a matter for the Scottish Ministers. UK Ministers exercise similar functions in respect of the Board's activities in England and Wales.

10. The Order seeks both to transfer the functions of the British Waterways Board in relation to England and Wales to a new waterways charity, and to ensure that the Board continues in existence as a Scottish public body. It is understood that in Scotland whilst legally the Board will continue to be called the "British Waterways Board", it will operate under the name "Scottish Canals" for most purposes.

11. The Order also makes a number of consequential amendments relating to the future operation of the Board. These include: reducing the size of the board to take account of the smaller size of the organisation; providing for audit of the Board's accounts to be carried out by the Auditor General for Scotland; and various transitional arrangements.

UK Government proposal [in relation to England and Wales]

12. The UK Government considers that the functions of the British Waterways Board in England and Wales would be better exercised by a third sector body. This role will be carried out by the Canal & River Trust (CRT).

13. The UK Government believes that moving the functions and assets of British Waterways in England and Wales to civil society through the creation of CRT will "further liberate the potential of the waterways to provide benefits for the public"². The Explanatory Document to the Order states that the proposal should—

- offer waterways users the opportunity to play a role in their governance;
- will enable local communities to have a greater say in how their local canal or river is run;
- will enable the waterways to be placed on a more financially sustainable long term footing through CRT being able to access new commercial and private income streams; and

¹ PBCM on the British Waterways Board (Transfer of Functions) Order 2012: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/48498.aspx>

² Explanatory Document to the British Waterways Board (Transfer of Functions) Order, paragraph 7.11

- will result in some savings from efficiencies and other benefits flowing from CRT's charitable status.

Scottish Government position

14. The Scottish Ministers considered a similar transfer as regards the Board's Scottish functions, but concluded that the management of the inland waterways in Scotland should remain the responsibility of a public body.

15. In the PBCM, the Scottish Government gives a number of reasons for its decision—

“In Scotland the canals operate in a very different context which meant that the optimal solution for England and Wales did not also represent the optimal solution for Scotland. Key differences including funding sustainability, the nature and usage of the canals, partnership working, the contribution sought from the canals and stakeholder views.”³

16. In relation to the consequential amendments proposed by the Order, the PBCM states that, in the view of the Scottish Government, these “are necessary to allow the Board to continue to operate satisfactorily in Scotland, but on a self-standing basis as a Scottish public body with Scottish Ministers having relevant powers in relation to the body”.⁴

17. The PBCM also states that Scottish Ministers have reached agreement with the UK Government about which property, rights and liabilities will remain with the Board operating in Scotland.⁵

Financial implications

18. The PBCM states that the additional running costs associated with the transfer of services to Scotland will be met by the Board. It is understood that at the time of separation, British Waterways Scotland will have a balance sheet with a net worth of £30m.⁶

Inland Waterways Advisory Council (Abolition) Order 2012

19. The Scottish Government PBCM in relation to this Order is attached at **Annexe B**. The Order itself together with the accompanying documents is available on the Parliament's website⁷, and copies are available from the Clerk on request.

Purpose

20. The Inland Waterways Advisory Council is an independent, non-departmental public body, established by the Transport Act 1968. The main function of the Advisory Council is to provide advice to the UK and Scottish

³ PBCM on the British Waterways Board (Transfer of Functions) Order 2012, paragraph 11

⁴ PBCM on the British Waterways Board (Transfer of Functions) Order 2012, paragraph 32

⁵ PBCM on the British Waterways Board (Transfer of Functions) Order 2012, paragraph 16

⁶ PBCM on the British Waterways Board (Transfer of Functions) Order 2012, paragraphs 30-31

⁷ PBCM on the Inland Waterways Advisory Council (Abolition) Order 2012:

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/48500.aspx>

Governments on the framing and implementation of policies and decisions affecting inland waterways. As responsibility for inland waterways in Scotland is a devolved matter, the Advisory Council currently operates as a cross-border public authority.

21. The Order seeks to abolish the Advisory Council across the UK, and to make a number of associated consequential amendments, repeals and revocations.

UK Government proposal [in relation to England and Wales]

22. The UK Government considers that, given the transfer of the functions of the British Waterways Board in England and Wales by virtue of the British Waterways Board (Transfer of Functions) Order 2012 (as detailed above), “there will no longer be a need for a statutory body to provide it with advice for policy development”⁸.

Scottish Government position

23. The Scottish Government considers that the functions of the Inland Waterways Advisory Council should also be abolished insofar as they relate to Scotland. The PBCM states that, in the view of the Scottish Government, this decision reflects the fact that the Advisory Council’s activities in recent times have been almost wholly focused on work which was very relevant to England and Wales, but not for Scotland.

24. The Scottish Government believes, therefore, that with the transfer of canals to charitable status in England and Wales whilst Scotland’s canals remain in the public sector, means that “the value of a cross-border advisory body would continue to diminish”.⁹

25. The Scottish Ministers are of the view that there is a strong network of advisory groups well placed to provide advice on inland waterways and that there is consequently no need to retain the Inland Waterways Advisory Council.

Financial implications

26. The PBCM states that the Scottish Government previously contributed £33,000 towards the annual running costs of the Advisory Council. No provision has been made in the Scottish Spending Review (2012-2015) for future funding of the Advisory Council.¹⁰

Recommendation

27. The Committee is invited to consider whether it agrees to recommend to the Parliament that the following draft motions should be approved—

⁸ Explanatory Document to the Inland Waterways Advisory Council (Abolition) Order, paragraph 7.4

⁹ PBCM on the Inland Waterways Advisory Council (Abolition) Order 2012, paragraph 10

¹⁰ PBCM on the Inland Waterways Advisory Council (Abolition) Order 2012, paragraph 19

British Waterways Board (Transfer of Functions) Order 2012

That the Parliament consents to the making of the British Waterways Board (Transfer of Functions) Order 2012, a draft of which was laid before the United Kingdom Parliament on 29 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament.

Inland Waterways Advisory Council (Abolition) Order 2012

That the Parliament consents to the making of the Inland Waterways Advisory Council (Abolition) Order 2012, a draft of which was laid before the United Kingdom Parliament on 29 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained within an Act of that Parliament.

Steve Farrell
Clerk to the Committee
April 2012

PUBLIC BODY CONSENT MEMORANDUM

**DRAFT BRITISH WATERWAYS BOARD (TRANSFER OF FUNCTIONS)
ORDER 2012**

Draft Public Body Consent Motion

1. The draft motion, which will be lodged by the Minister for Housing and Transport, is:

“That the Parliament consents to the making of the British Waterways Board (Transfer of Functions) Order 2012, a draft of which was laid before the United Kingdom Parliament on 29 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament”.

2. This memorandum has been lodged by Keith Brown, Minister for Housing and Transport, in accordance with interim arrangements agreed by the Parliamentary Bureau at its meeting on 20 December 2011.

Background

Public Bodies Act 2011

3. The UK Public Bodies Act 2011 (“the 2011 Act”) gives UK Ministers the authority (via order making powers) to abolish, merge or transfer the functions of public bodies listed in its schedules, and some of those bodies operate in both the reserved and devolved areas. Section 9 of the 2011 Act acknowledges the scope for incursion into devolved interests by requiring orders that include provision falling within devolved competence to be consented to by Holyrood.

4. On 20 December 2011 the Parliamentary Bureau approved interim arrangements for handling requests for consent to orders triggering section 9 of the 2011 Act.

British Waterways

5. The British Waterways Board (“BW”) is a public corporation with a statutory responsibility for operating and maintaining certain GB waterways. Inland waterways in Scotland is a devolved matter.

6. BW operates on a GB basis and was specified a cross-border public authority under the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999. A further Order, the Scotland Act 1998 (Cross-Border Public Authorities) (Adaption of Functions etc.) (No. 2) Order 2000, resulted in Scottish Ministers holding largely the same functions with regard to BW in Scotland as those held by UK Ministers with regard to BW in England & Wales.

7. In Scotland there is a 137 mile canal network comprising the Caledonian, Crinan, Forth & Clyde, Union and Monkland canals (the latter is largely non-navigable). Whilst BW is a single legal entity, it has around 200 staff in Scotland which form a distinct operational unit, headed by a Director Scotland. It has a Scottish headquarters in Glasgow, together with local offices along the canals, and it operates informally under the name British Waterways Scotland (BWS). BW receives grant-in-aid funding from the Scottish Government in relation to its statutory functions in Scotland, and from Defra for those in England & Wales.

8. Following devolution, the Scottish Government set out a long-term policy framework for BWS's activities, designed to encourage the full and sustainable development of our canals for the benefit of the widest possible range of people. This policy continues to guide BWS's activities.

9. In addition to its core maintenance function, BWS also makes a strong cross-cutting contribution to the economic, environmental and social fabric of Scotland, and contributes to most of the Scottish Government's strategic objectives. BWS is an active player in the regeneration of both urban and rural canal-side communities, working in close partnership with local authorities. The canals are tourist attractions (e.g. the Falkirk Wheel), whilst the Caledonian Canal serves in particular Northern European yachts travelling to Scotland's west coast sailing waters. The canals and their towpaths offer opportunities to their local communities for healthy activities such as walking, cycling, jogging, canoeing and rowing. They also provide a "green corridor" through our cities and protect and enhance the biodiversity of aquatic and wildlife habitat.

UK Government reform proposal

10. In recent years there has been debate in England & Wales on the future of their canals, with concerns about their long-term financial security. There was a groundswell of support for change from stakeholders. Exploratory work on a possible move to the third sector commenced under the previous UK Administration. The proposal was seen by the current coalition government as a fit with their "Big Society" and "localism" agendas. As a result, the UK Government is proposing to transfer BW's functions in England & Wales to Canal & River Trust (CRT), a new waterways charity.

Scottish Government position

11. Following the UK Government's decision in 2010, it was suggested that BW's assets and functions in Scotland might also transfer to the new waterways charity. Scottish Ministers considered whether the participation of the canals in a cross-border waterways charity might lead to benefits over current arrangements, but were not persuaded that it would be in Scotland's best interests. In Scotland the canals operate in a very different context which meant that the optimal solution for England & Wales did not also represent the optimal solution for Scotland. Key differences including funding sustainability, the nature and usage of the canals, partnership working, the contribution

sought from the canals and stakeholder views. Accordingly, Ministers decided to make no change to the status of the canals in Scotland.

12. BW will therefore continue to exist, exercising functions in respect of Scotland only, and as a Scottish public body. Whilst legally it will continue to be called the “British Waterways Board”, it will operate under the name “Scottish Canals” for most purposes.

13. As a result of the joint sponsorship function, there has been regular dialogue between the Scottish Government and Defra officials at all stages. Confirmation of the UK Government’s decision about BW in England & Wales was therefore not unexpected, and Scottish Ministers had received regular updates from their officials about the UK Government’s developing thinking.

14. Since the decision was confirmed, there has been close partnership working between officials over the transitional work, with a joint working party established between Defra, Scottish Government, BW in Scotland and BW in England & Wales to address common issues such as the separation of assets and liabilities, pensions, the cost of change, and legislation. There has also been ministerial correspondence at key stages during the transition process.

The Waterways Trust

15. The Waterways Trust (TWT) is a cross-border charity whose vision is to see the waterway network supported, valued and enjoyed by everyone. It identifies need, builds partnerships, raises funds and delivers benefits for people in five core areas of work: environment and heritage, improved health, stronger communities, improved learning and regeneration. It is supported by a funding contract with BW. TWT is very successful in Scotland, and now raises over £1m annually. It is planned that TWT’s operations in England & Wales will merge with the CRT, leaving TWT to continue to develop its valuable work in Scotland, as a Scottish-registered charity.

Transfer scheme

16. Scottish Ministers have reached agreement with the UK Government about which property, rights and liabilities will remain with BW operating in Scotland. There will be a separate transfer scheme under section 23 of the Act transferring BW’s property, rights and liabilities in England & Wales to CRT. There is no parliamentary procedure attached to the scheme - it will be made by the UK Minister and it will come into force any time thereafter. It will be laid before the Westminster Parliament after being made, but it is not debated and Parliament cannot reject it. The scheme does not require the consent of the Scottish Parliament.

The British Waterways Board (Transfer of Functions) Order 2012

17. The UK Government is using powers under the 2011 Act to promote an order in respect of BW. The BW Order and its Explanatory Memorandum are annexed to this Memorandum (see Annexes 1 and 2 respectively *[NB. see*

footnote 1; copies are available from the Clerk). The BW Order effects the transfer of BW's functions in England & Wales to CRT. Whilst Scottish Ministers have not effected any change to BW's functions in Scotland, the removal of England & Wales operations, and of UK Ministers' powers in relation to the organisation, require the Transfer Order to include a number of consequential amendments applicable to Scotland. These changes are necessary to allow BW to continue to operate in Scotland on a self-standing basis.

18. This is one of the first Orders under the Act to come before the Parliament. It requires the consent of the Parliament because it makes provision which would be within the legislative competence of the Parliament if contained in an Act of that Parliament (see section 9(1)(a) of the Act).

19. Consequential amendments relating to the future operation of BW in Scotland involve the making of provision within the Parliament's legislative competence. Most such amendments in the BW Order do not involve substantive change to the law, but the following are worthy of note:-

a) The board

20. Currently the board of BW consists of a Chair, a Vice-chair and between four and nine other members. Defra Ministers appoint the chair. Scottish Ministers appoint two of the members, with Defra Ministers appointing the balance. Appointments were regulated by the Commissioner for Public Appointments, but this requirement has recently been removed. The quorum for BW meetings is three.

21. The BW Order establishes a smaller board (chair, vice chair and between one and four other members), reflecting the much smaller size of the organisation following the transfer out of BW in England & Wales. It provides for Scottish Ministers to make all appointments to the board. The two current board members appointed by Scottish Ministers will continue on the Scottish-only board until their terms are complete. The quorum will remain unchanged.

b) Adherence to Scottish legislation

22. Currently, as a public corporation operating across Great Britain, BW is generally subject to UK legislation concerning public bodies. The Transfer Order will make provision to bring the newly constituted BW, operating as a Scottish public body, within scope of the following Scottish legislation:

- The Freedom of Information (Scotland) Act 2002;
- The Environmental Information (Scotland) Regulations 2004;
- The Ethical Standards in Public Life etc. (Scotland) Act 2000;
- The Public Services Reform (Scotland) Act 2010;
- The Public Records (Scotland) Act 2011;
- The Scottish Public Services Ombudsman Act 2002.

23. In addition, the Order provides for audit of BW's accounts to be carried out by the Auditor General for Scotland.

c) Sale of Water

24. Section 63 of the Transport Act 1962 requires BW to obtain Ministerial consent for the sale of water from an inland waterway. This provision was repealed by the Water Resources Act 1963 in relation to England & Wales, but has not to date been repealed for Scotland. In Scotland, the Water Environment and Water Services (Scotland) Act 2003 and the Water Environment (Controlled Activities) (Scotland) Regulations 2011 have since come into effect. BW in Scotland now holds a water abstraction licence granted by SEPA. The Transfer Order will therefore repeal section 63 of the Transport Act 1962.

25. The Transfer Order also sets out, in Schedule 4, transitional arrangements to deal with the drawing up and laying in the respective Parliaments of Annual Report and Accounts for 2011-12 and for 2012-13. The arrangements are to ensure that the principle of direct accountability of the public corporation to the respective parliaments is maintained for the final period of BW's operation as a GB-wide organisation. These transitional arrangements have been discussed and agreed between all those involved.

26. Schedule 4 provides for the continuation of accounting and reporting obligations under sections 24 and 27 of the Transport Act 1962 for the 2011-12 financial year. At the time of transfer, not all of the steps in the process are likely to have been completed, and it will therefore fall to the reconstituted Scottish board to carry out the remaining obligations.

27. The arrangements for 2012-13 reflect the fact that the period from 1 April 2012 until transfer date will relate to GB-wide activity whereas the remainder of the period will cover only activity in Scotland. The Transfer Order provides for Scottish Ministers to consult the Defra Secretary of State on the accounts direction made for 2012-13. Prior to the transfer date, the BW Board (in its GB form) and CRT will work together to produce completion accounts (covering the transfer of assets to the CRT) which will then be included as a Note to the Accounts of the BW(Scotland) Board's annual statement at the end of 2012-13. The Auditor General for Scotland will audit and sign off the accounts for 2012-13, taking account of information provided by the BW(GB) auditors who will audit the completion accounts. These accounts are to be laid before the UK Parliament as well as the Scottish Parliament. The order sets out obligations on CRT to reasonably assist the Scottish board in the process, since they will hold the necessary information relating to the GB-wide board for the period until transfer date.

Reasons for seeking a Public Body Consent Motion

28. Most of the bodies listed in the schedules to the Act operate wholly in the reserved area. However, the public body landscape across the UK includes bodies operating in both the reserved and devolved areas. Section 9

of the 2011 Act requires orders under section 1 to 6 of the Act which make provision affecting these public bodies which would be within the legislative competence of the Scottish Parliament to be consented to by the Scottish Parliament.

Consultation

29. Section 10 of the 2011 Act requires the UK Minister proposing a Transfer Order to consult over its terms. Defra undertook the consultation required under the Act about the proposed content of the Transfer Order. With the agreement of Scottish Ministers, the public consultation about the BW Order also covered the proposed consequential changes for Scotland. The Scottish Government and BWS worked together to ensure that the consultation was drawn to the attention of all relevant stakeholders. Responses from stakeholders in Scotland were supportive of the proposals. Defra published a response to the consultation responses on 20 December.

Financial Implications

30. The BW Scotland balance sheet at separation will have a net worth of £30m. In addition, BW in Scotland will be relieved of any responsibility for the past service pensions deficit for the organisation valued at the point of separation. The UK Government have borne the £1.5m cost of unavoidable additional work resulting from their decision to transfer functions in England & Wales – this relates primarily to securing and implementing replacement ICT systems for BW in Scotland.

31. The main additional running costs relate to the fees for the additional members recruited for the Scotland only board. These costs are not significant and will be met by BW from its existing budget.

Conclusion

32. The view of the Scottish Government is that the consequential amendments applicable to Scotland which are included in the Transfer Order are necessary to allow BW to continue to operate satisfactorily in Scotland, but on a self-standing basis as a Scottish public body with Scottish Ministers having relevant powers in relation to the body.

33. Accordingly, the Scottish Government invites the Parliament to consent to the making of the British Waterways Board (Transfer of Functions) Order 2012, a draft of which was laid before the UK Parliament on 29 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament.

Scottish Government
March 2012

PUBLIC BODY CONSENT MEMORANDUM

INLAND WATERWAYS ADVISORY COUNCIL (ABOLITION) ORDER 2012

Draft Public Body Consent Motion

1. The draft motion, which will be lodged by the Minister for Housing and Transport, is:

“That the Parliament consents to the making of the Inland Waterways Advisory Council (Abolition) Order 2012, a draft of which was laid before the United Kingdom Parliament on 29 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained within an Act of that Parliament.”

2. This memorandum has been lodged by Keith Brown, Minister for Housing and Transport, in accordance with interim arrangements agreed by the Parliamentary Bureau at its meeting on 20 December 2011.

Background

Public Bodies Act 2011

3. The UK Public Bodies Act 2011 (“the 2011 Act”) gives UK Ministers the authority (via order making powers) to abolish, merge or transfer the functions of public bodies listed in its schedules, and some of those bodies operate in both the reserved and devolved areas. Section 9 of the 2011 Act acknowledges the scope for incursion into devolved interests by requiring orders that include provision falling within devolved competence to be consented to by Holyrood.

4. On 20 December 2011 the Parliamentary Bureau approved interim arrangements for handling requests for consent to orders triggering section 9 of the 2011 Act.

Inland Waterways Advisory Council

5. The Inland Waterways Advisory Council (IWAC) is an independent, advisory non-departmental public body. It was established when the Inland Waterways Amenity Advisory Council was reconstituted in April 2007. Inland waterways in Scotland are a devolved matter and IWAC therefore operates as a cross-border public authority.

6. IWAC’s remit is to:

- advise the UK Government and relevant navigation authorities on the framing and implementation of policies and decisions affecting the inland waterways in England and Wales;

- advise the Scottish Government on the framing and implementation of policies and decisions affecting inland waterways in Scotland that are owned or managed by, or which receive technical advice or assistance from British Waterways ('BW');
- provide advice to navigation authorities and other bodies involved, or otherwise interested, in the waterways about waterway matters of a strategic nature (this includes promoting best practice in the context of wider policy from both the UK and Scottish Governments);
- provide a conduit by which waterway users and other bodies interested in the waterways can make their views on strategic issues known to the UK and Scottish Governments and to navigation authorities;
- perform its role as a statutory consultee under the Transport Act 1968 and other legislation.
- contribute to the development of Scottish canals through attendance at the Scottish Canals Development Group and other appropriate bodies.

7. Scottish Ministers appoint two members to the Council, which consists of a Chair and at least 12 members.

UK Government reform proposal

8. The proposal to abolish IWAC in England & Wales was announced by the UK Government on 22 July 2010. With the proposed transfer of BW's functions in England and Wales to the new Canal & River Trust (CRT), the UK Government considers that there is no need for an intermediate organisation to inform it of stakeholders' views or for policy development, and so it intends to abolish IWAC in England and Wales.

9. Following the announcement, IWAC's funding and activities were wound down and effectively ceased at the end of 2010. Council Members continue to hold appointments and have since, in terms of meeting their responsibilities as a statutory consultee, responded to the UK Government's recent public consultations on inland waterways matters.

Scottish Government position

10. In light of the UK Government's decision, the Scottish Government reviewed the position and concluded that IWAC's functions in Scotland should also be abolished. This decision reflected the growing divergence of the position north and south of the border and the fact that IWAC's activities in recent times had been almost wholly focused on work which was very relevant for England and Wales, but not for Scotland. The transfer of canals in England and Wales to charitable status, whilst Scotland's canals remain in the

public sector, means that the value of a cross-border advisory body would continue to diminish.

11. At the time of the 2003 review of the Inland Waterways Amenity Advisory Council, which led to its reconstitution as IWAC, inland waterways had only recently been devolved and so the development of distinctive Scottish advisory groups was at a relatively early stage. Since then, a strong Scottish network of informal advisory groups has developed which is well placed to provide advice specifically tailored to the needs and potential of Scotland's canals, both individually and for the network as a whole, without the need for a statutory advisory body such as IWAC. The Scottish Government considers that this is the best way forward.

12. One of the existing advisory groups, the BW Scotland Group, was asked to review the existing advice structures. It has made recommendations to the Scottish Government and BW in Scotland on appropriate arrangements for the future. A wider consultation about their recommendations is now underway.

13. The Transport Act 1968 requires that, where Scottish Ministers intend to reclassify the status of a canal, they must consult with IWAC. The 1968 Act sets out further requirements for Ministers to publish the proposed order in the Edinburgh Gazette (and other press), and display notices posted along the relevant canal. During the reclassification of the Forth and Clyde and Union canals, whilst IWAC was consulted, additional activity was undertaken as a matter of good practice to ensure widespread knowledge of the proposed order. This demonstrated that modern communication methods and good practice administration processes for consultation are capable of replacing IWAC's function as statutory consultee.

14. Work on abolishing IWAC is being taken forward in conjunction with the changes affecting BW. There has therefore been close partnership working between Defra and Scottish Government officials on both the consultation process and the draft IWAC Order.

The draft Inland Waterways Advisory Council (Abolition) Order 2012

15. Defra are using the powers under the 2011 Act to transfer the functions of BW in England and Wales to CRT and to promote an order to abolish IWAC.

16. This Order (See Annex One and relevant ED at Annex Two *[NB. see footnote 7; copies are available from the Clerk]*) will abolish IWAC in Scotland as well as in England & Wales and so requires the consent of the Scottish Parliament in relation to abolition of its functions in Scotland, as the relevant provision would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament (see Section 9(1)(a) of the Act).

17. IWAC has a statutory role in relation to appeals on boat construction and equipment standards under the British Waterways Act 1995, although this function has never been exercised in relation to Scotland. Article 4 of the Order sets out alternative arrangements for the composition of the appeals panel. Differing arrangements are specified for Scotland and for England & Wales, since another organisation listed in legislation as a member of the panel, the Inland Waterways Association, is not active in Scotland.

Consultation

18. Section 10 of the Act also requires the UK Minister promoting an Order to consult about the proposed changes. With the agreement of Scottish Ministers, the public consultation undertaken by Defra included appropriate material on Scotland, as provided by the Scottish Government. Responses from stakeholders in Scotland were strongly supportive of Scottish Ministers' proposal to abolish IWAC and in agreement that the network of advisory groups in Scotland was now sufficiently developed to take over advisory functions. Defra published a response to the consultation responses on 1 February 2012.

Financial Implications

19. Scottish Government contributed £33,000 of IWAC's annual running costs of around £200,000. IWAC's funding and activities reduced following the UK Government's announcement in July 2010, with IWAC latterly undertaking only residual work funded by Defra. There was no provision made in the Scottish Spending Review for future funding of IWAC.

Conclusion

20. The Scottish Government invites the Parliament to consent to the making of the Inland Waterways Advisory Council (Abolition) Order 2012, a draft of which was laid before the UK Parliament on 29 February 2012.

Scottish Government
March 2012