

CONSENT MEMORANDUM

The British Waterways Board (Transfer of Functions) Order 2012

Consent Motion

1. “To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make The British Waterways Board (Transfer of Functions) Order 2012 in accordance with the draft laid in Table Office on 1 March 2012”

Background

2. This memorandum has been laid by John Griffiths AM, Minister for Environment and Sustainable Development, in accordance with the arrangements agreed by Business Committee on 7th February.
3. The above Motion is tabled to seek the agreement of the National Assembly, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the British Waterways Board (Transfer of Functions) Order 2012. Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly for an order under sections 1 to 5 of that Act that makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly.
4. A copy of The British Waterways Board (Transfer of Functions) Order 2012 was laid in Table Office on 1 March.

Summary of the Order and its Policy Objectives

5. The Order transfers the functions of British Waterways to the Canal & Rivers Trust (CRT) or Glandwr Cymru in Wales.
6. British Waterways is a public corporation with a statutory responsibility for operating and maintaining the waterways for which they are the navigation authority.
7. In October 2010 the Government announced that British Waterways will move from a Public Corporation and that the assets and statutory functions of British Waterways in England and Wales should be transferred to CRT.
8. The intention of moving functions and assets of British Waterways in England and Wales to civil society through the creation of a new

national charity for the waterways is to liberate their potential to provide benefits to the public as well as offering waterways users the opportunity to play a role in their governance. It will enable local communities to have a greater say in how their local canal or river is run.

9. The waterways will be placed on a more financially sustainable basis as the charity will be able to access new commercial and private income streams. There will be greater opportunity to recruit volunteers to support heritage, environmental and amenity waterways assets while reducing the long term public funding.

Competence Issues

10. The British Waterways Board was specified as a public body for the purposes of Part 2 of the Welsh Language Act 1993 by article 2 of, and the Schedule to, the Welsh Language Schemes (Public bodies) Order 1996 (S.I. 1996/1898). As a public body under the Welsh Language Act 1993, the British Waterways Board adopted a Welsh Language Scheme.
11. Article 2 of the order has the effect of transferring the British Waterways Board's functions under the Welsh Language Act 1993 to the Canal & Rivers Trust. Article 2 also has the effect of requiring references in subordinate legislation made under, or by virtue of, the Welsh Language Act 1993 to the British Waterways Board to be read in relation to England and Wales as references to the Canal & Rivers Trust.
12. In the view of the Welsh Government, article 2 includes provision about the Welsh language. Because the National Assembly for Wales has legislative competence in relation to the Welsh language, it is the view of the Welsh Government that article 2, as it relates to the Welsh Language Act 1993, makes provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly.
13. Article 3 of the order has the effect of transferring a number of functions from the British Waterways Board, to the Canal & River Trust. The transferred functions do not include the functions of a statutory undertaker under Part 10 of the Local Government, Planning and Land Act 1980. As the law currently stands, the British Waterways Board is a statutory undertaker for these purposes. So, the controls over land held by it, which are set out in Part 10 apply. When the Order comes into force, the effect of the provision is that those controls will not apply to land that will be held by the CRT.
14. In the view of the Welsh Government this particular provision is about the regulation of land held by a public body. Because the

National Assembly for Wales Assembly has competence in relation countryside and open spaces including the designation and regulation of national parks and areas of outstanding national beauty, (field 7 of Schedule 7 to the Government of Wales Act 2006), urban development (field 18), and competence in relation to the reclamation of derelict land and improvement of the environment (field 4), it is the view of the Welsh Government that this particular provision relates to the Assembly's competence in a number of areas.

Advantages of utilising this Order

15. It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so the functions of British Waterways are transferred to the Canal & Rivers Trust at the earliest opportunity.

Financial Implications

16. There are no financial implications for Wales associated with this Order.

John Griffiths AM
Minister for Environment and Sustainable Development