

**THE SECRETARY OF STATE FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS
AND
CANAL & RIVER TRUST**

MEMORANDUM OF UNDERSTANDING

CONTENTS

1.PARTIES.....	1
2.INTRODUCTION.....	1
3.SCOPE AND PURPOSE OF THIS MoU.....	2
4.TERM, REVIEW AND AMENDMENT OF THIS MoU.....	2
5.UNDERSTANDING THE PARTIES' RELATIONSHIP.....	3
6.INFORMATION REGIME.....	6
7.CRT'S RISK MANAGEMENT.....	7
8.CRT'S FINANCE AND CONTROL SYSTEMS.....	7
9.CRT BUSINESS PLAN AND ANNUAL REPORT.....	8
10.PUBLICITY.....	8
11.DEFRA OBJECTIVES FOR FUNDING UNDER THE GRANT AGREEMENT.....	9
12.MISCELLANEOUS MATTERS.....	9
13.FURTHER CRT POLICIES AND MATTERS.....	11
ANNEX 1: CRT BUSINESS PLAN AND ANNUAL REPORT.....	13
ANNEX 2: TIMETABLE FOR INTERACTION AND INFORMATION EXCHANGE.....	14
ANNEX 3: ENVIRONMENT AGENCY NAVIGATIONS.....	16
ANNEX 4: WATER ABSTRACTION – NEW AUTHORISATIONS AND CRT.....	17
ANNEX 5: FISH PASSES FOR CRT.....	19
ANNEX 6: PROCESS FOR LAYING THE ANNUAL REPORT AND ACCOUNTS OF THE BWB.....	21
ANNEX 7:THE PROCESS FOR CONSULTATION ON WATERWAY RE- CLASSIFICATION AND MAINTENANCE DIMENSION ORDERS UNDER THE TRANSPORT ACT 1968.....	24
ANNEX 8: DEFRA OBJECTIVES FOR FUNDING UNDER THE GRANT AGREEMENT.....	28

1 PARTIES

Canal & River Trust (company number 07807276 and charity number 1146792) (“**CRT**”).

The Secretary of State for Environment, Food and Rural Affairs (“**Defra**”).

2 INTRODUCTION

Background

- 2.1 CRT is successor to certain statutory functions of the British Waterways Board (BW) in England and Wales under the terms of the British Waterways Board (Transfer of Functions) Order 2012 and to property, assets and liabilities of BW in England and Wales under the terms of the British Waterways Board Transfer Scheme 2012.
- 2.2 Defra formerly sponsored BW as a public body and is the settlor of a Trust Settlement relating to the waterways formerly owned or managed by BW and of which CRT is the sole corporate trustee.
- 2.3 To assist CRT in the execution of its duties as trustee of the Trust Settlement dated on or around the date of this MoU, Defra and CRT have entered into a Grant Agreement dated on or around the date of this MoU that provides for the payment of grant by Defra to CRT until 31 March 2027.
- 2.4 Defra and CRT each have enforceable rights and obligations under the Trust Settlement and the Grant Agreement but consider it to their mutual advantage to develop a constructive relationship of engagement and dialogue outside and beyond the requirements of the Trust Settlement and Grant Agreement.
- 2.5 For the avoidance of doubt, this Memorandum of Understanding (MoU) does not address matters for which provision is made in legislation, the Trust Settlement and/or the Grant Agreement.

Not Legally Binding

- 2.6 This MoU does not, and is not intended to, create any enforceable rights or obligations.
- 2.7 Each party recognises the overarching obligations applicable to the other including (in the case of CRT) always to act in furtherance of its charitable purpose and (in the case of Defra) always to act in accordance with its public duties and obligations to Parliament.
- 2.8 Subject to the above, the parties acknowledge that observance of this MoU is a matter of honour and good faith and intend to act within the spirit of it.

3 SCOPE AND PURPOSE OF THIS MoU

3.1 This MoU:

3.1.1 records how the parties intend their relationship to work and develop to their mutual advantage, including how they intend to facilitate and manage communication and dialogue; and

3.1.2 records the parameters they intend to apply to the exercise of any available discretion in the performance, management and enforcement of their respective rights or obligations arising under the Trust Settlement or Grant Agreement.

4 TERM, REVIEW AND AMENDMENT OF THIS MoU

Term

- 4.1 This MoU is intended to apply to the relationship between CRT and Defra for so long as either the Trust Settlement or Grant Agreement (or any replacement or adaptation of them) remain in force.

Review and amendments

- 4.2 Defra and CRT will review this MoU after its first year of operation and as necessary thereafter and in particular when the possibility of grant funding for

CRT beyond 31 March 2027 is reviewed in 2022 as provided for in clause 9.3 of the Grant Agreement. Amendments may be proposed for mutual consideration whenever either party considers this necessary but shall not apply unless accepted by both parties in writing.

5 UNDERSTANDING THE PARTIES' RELATIONSHIP

Overview

- 5.1 The parties recognise that Defra has an interest in the following aspects of CRT's activities:
- 5.1.1 CRT's exercise of its statutory functions relating to its management and stewardship of waterways in England and Wales; and
 - 5.1.2 CRT's corporate financial resources, including management of financial and business risk.
- 5.2 The parties recognise that CRT has an interest in Defra's development of Government policies for inland waterways including wider other Government policies which may have a direct or indirect impact on waterways.

Working Together

- 5.3 Defra and CRT agree that they should conduct their mutual relationship through trust-based dialogue in a professional and efficient manner reflecting the following:

Trust-Based: open dialogue based on a shared commitment to ensure adherence to the terms of the Trust Settlement and Grant Agreement.

Professional: competent people with the relevant experience to be able to engage in informed dialogue with mutual commitments to timely effective outcomes.

Efficient: both parties ensuring a joined up approach amongst their constituent parts with single statements setting out their policies, views requirements etc. For this purpose Defra acknowledge the Grant Agreement is made between CRT and the Secretary of State: i.e. Defra as a whole, and not just the Inland

Waterways section of Defra. Additionally neither party will be unreasonable in its requests for information both in respect of content and time requirements.

Liaison in the development of Government policy

5.4 Insofar as is possible within the context of its overarching obligations, Defra will liaise with CRT on the development of Government policy within Defra and other Government Departments which has the potential to impact on CRT's charitable purposes and its ability to further them. This will in particular extend to:

5.5.1 development by Defra of its policy for inland waterways;

5.5.2 development by Defra of other policy that has a direct or indirect impact on the waterways – e.g. in respect of water resources or the broader environmental sphere; and

5.5.3 broader Government policy having an impact on the operation of inland waterways, docks and harbours.

5.5 Such liaison will wherever possible extend to timely notification of proposals such that CRT in appropriate cases (by reference to the potential scale of impact on CRT) is afforded an opportunity to influence the development of policy or otherwise have its voice heard in advance of wider publication.

5.6 Defra intends, as far as it is able, to assist CRT to contact and have a dialogue with other government departments that Government Departments as CRT consider necessary for the effective conduct of its business.

Liaison in the development of CRT policy

5.7 In so far as is possible within the context of its overarching obligations, CRT will provide Defra with advance warning of evolving issues in or expected to enter the public domain (whether or not by public announcement) that may be of interest to Defra as being relevant to its public functions with regard to inland waterways generally or its relationship with CRT in particular. Such liaison shall particularly be directed to issues that may give rise to material public debate or controversy.

Timetable for interaction and information exchange

- 5.8 The parties intend to follow the timetable for regular interaction and information exchange set out in Annex 2 (*Timetable for Interaction and Information Exchange*).

Parliamentary & Other Accountabilities

- 5.9 Notwithstanding their respective overarching obligations, Defra and CRT recognise the value of supporting and assisting each other in fulfilling and responding to their respective accountabilities. In that context they intend to support each other as follows.

- 5.10 Defra acknowledges the independence of the governance and management of CRT from Government and therefore will respond to Parliamentary Questions and other Ministerial correspondence about activities for which CRT is solely responsible by inviting Members of Parliament and Peers to approach CRT direct. The relevant activities include:

- Financial
- Operational
- Employees and personnel
- Governance.

- 5.11 Intra-governmental questions and requests for information received by Defra will be passed to CRT for direct answer.

- 5.12 CRT acknowledges the accountability of Defra Ministers to Parliament for the proper application of monies voted by it for CRT. Under the terms of the Grant Agreement CRT is accountable to Defra Ministers for the proper use of the funds that it receives. Issues on which Ministers will therefore respond to Parliamentary Questions and other Ministerial correspondence relating to such accountability will include:

- The Grant Agreement

- The Trust Settlement
- Ministerial functions
- General Government policies related to inland waterways.

5.13 To assist Defra in responding to Parliamentary Questions and other Ministerial correspondence relating to such accountability, CRT will on a timely basis provide information reasonably accessible to CRT but not otherwise available to Defra.

5.14 Defra acknowledges the accountability of the Board of Trustees of CRT to the Council of CRT and the value to CRT of effective engagement with its wider stakeholders. To assist CRT in responding to questions concerning its relationship with Defra as funder and as settlor of the Trust Settlement and questions about Government policy generally with regard to inland waterways Defra will provide to CRT on a timely basis reasonably accessible information about such matters not otherwise available to CRT.

Annual Report and Accounts: England and Wales and Scotland 2011/12 and 2012/13

5.15 CRT and Defra will cooperate and assist BW to the fullest reasonable extent necessary to enable BW to prepare and complete the BW Annual Report and Accounts for 2011/12 and 2012/13 so that they are able to be laid in the UK and Scottish Parliaments in line with the agreed procedure set out at Annex 6 (*Process for the laying of the Annual Report and Accounts of BW*).

6 INFORMATION REGIME

6.1 CRT confirms its intention to operate an information regime that mirrors the Environmental Information Regulations, subject to the further development of relevant jurisprudence.

7 CRT'S RISK MANAGEMENT

Risk Management Framework

- 7.1 CRT acknowledges the benefits of maintaining a robust and effective risk management framework which shall be a key responsibility of CRT's Board of Trustees, supported by the work of its Audit Committee. CRT recognises that key elements of a risk management framework should include:
- 7.1.2 a culture which supports well thought out risk taking and promotes learning from experience of managing risk;
 - 7.1.3 a corporate risk policy that sets out the overall approach to risk management;
 - 7.1.4 effective processes for identifying, assessing, addressing and reviewing and reporting risks; and
 - 7.1.5 clear allocation of ownership of risks and delegation of authority for taking risks.
- 7.2 There will be open discussion of risk issues with Defra at the meetings required under the Grant Agreement and at any other meetings between the parties to discuss matters concerning them. CRT will communicate its principal risks to Defra as part of the exchange of information within the monitoring and reporting framework set out in the Grant Agreement and this MoU.

8 CRT'S FINANCE AND CONTROL SYSTEMS

Financial Controls

- 8.1 In respect of the grant paid by Defra under the Grant Agreement, CRT confirms its intention, in addition to any requirements of the Grant Agreement:
- 8.1.1 to maintain an appropriate system of financial management;

8.1.2 to maintain adequate records, covering the last five financial years, of payments and receipts made against the grant to meet National Audit Office external audit needs; and

8.1.3 to ensure that the grant is accounted for and managed separately from any other funds managed by CRT.

9 CRT BUSINESS PLAN AND ANNUAL REPORT

9.1 CRT confirms its intention to provide Defra with copies of its Business Plan and Annual Report in advance of publication on the basis set out in Annex 1 (*CRT Business Plan and Annual Report*)

10 PUBLICITY

10.1 CRT and Defra recognise the benefits of agreeing a publicity protocol from time to time. The intention of the protocol is to recognise in appropriate materials the respective accountabilities of the parties for properly accounting for the funding under the Grant Agreement. Under the protocol, CRT will confirm its intention to acknowledge the support of Defra in certain materials that refer to the Activities covered by the Grant Agreement. This will normally apply to CRT's Annual Report, the publication of data required under the Grant Agreement and in any written or spoken public presentations to members of the UK Parliament about the Activities covered by the Grant Agreement. CRT confirms its intention that for such acknowledgements (where appropriate or as requested by Defra) it will include Defra's name and logo (or any future name or logo adopted by Defra) using the templates provided by Defra from time to time.

10.2 In using Defra's name and logo, CRT confirms its intention to comply with all branding guidelines issued by Defra. In using CRT's name and logo Defra confirms its intention to comply with CRT branding requirements.

10.3 CRT confirms its intention to participate in and co-operate with promotional activities relating to the Activities that may be instigated and/or organised by Defra.

10.4 Defra confirms its intention to work closely with CRT at the drafting stage when it plans to exploit for publicity purposes its funding of CRT's Activities under the Grant Agreement.

10.5 CRT confirms its intention to comply with any request from Defra to refrain from naming Defra in any media or using its logo in connection with the Activities.

11 DEFRA OBJECTIVES FOR FUNDING UNDER THE GRANT AGREEMENT

11.1 CRT acknowledges that Defra has five objectives which underpin funding under the Grant Agreement. These are set out in Annex 8 (*Defra objectives for funding under the Grant Agreement*).

12 MISCELLANEOUS MATTERS

Environment Agency Navigations

12.1 CRT and Defra confirm their intention to work together in relation to the proposed transfer of the Environment Agency ("EA") navigations on the basis set out Annex 3 (*Environment Agency Navigations*).

Water abstraction

12.2 CRT and Defra confirm their understanding in relation to new water abstraction licences in Annex 4 (*Water Abstractions – New Authorisations and CRT*).

Fish passes

- 12.3 CRT and Defra confirm their intention to cooperate in relation to fish passes for CRT on the basis set out Annex 5 (*Fish Passes for CRT*).

CRT's priorities for maintaining navigability of the waterways

- 12.4 CRT is successor to statutory duties under the Transport Act 1968 to maintain certain of the waterways in its care (those classified as either commercial or cruising waterways under the provisions of that Act) to specified statutory dimensions. BW (as its predecessor in respect of those statutory duties) had been subject to a long standing ministerial direction that in its management of such waterways it should maintain to such dimensions as reflected their use and prospects of use. It was further understood between BW and Government that, in the event of enforcement of the statutory dimensions in circumstances that did not reflect use and prospects of use, Government would exercise its powers under the Transport Act 1968 to revise those dimensions so that they reflected actual use and prospects of use.
- 12.5 Defra confirms to CRT its intention that the maintenance of statutory dimensions of the classified waterways should continue to reflect actual use and prospects of use.
- 12.6 In order to avoid inappropriately frequent proposals from CRT to Defra under the amended provisions of the Transport Act 1968 for a change to the statutory maintenance dimensions, Defra confirms and acknowledges that in assessing the extent of compliance by CRT with its statutory duties for the purposes of enforcement of the Trust Settlement obligations and the requirements of the Grant Agreement, Defra will take into account the mutually understood intention that CRT will operate and maintain the classified waterways in its care to standards that reflect their use and the prospects of their use.

The process for consultation on waterway re-classification and maintenance dimension orders

- 12.7 CRT and Defra confirm their understanding in relation to the process for consultation on waterway re-classification and maintenance dimension orders under the Transport Act 1968 on the basis set out in Annex 7 (*The process for consultation on waterway re-classification and maintenance dimension orders under the Transport Act 1968*).

13 FURTHER CRT POLICIES AND MATTERS

Localism Strategies

- 13.1 CRT confirms its commitment to localism. It further confirms its intention that its Waterways Partnerships will put in place localism strategies to facilitate genuinely local engagement, working with a range of locally based partners throughout the area covered by the Partnership.

Access

- 13.2 CRT confirms its intention to publish, within the first 12 months of its operation of the waterways, a policy on access and leisure on the waterways and their towpaths. The policy will in particular set out how CRT will as a general rule ensure pedestrian access free of charge (notwithstanding the necessary qualifications from the general rule for operational/maintenance purposes and control of access at some tourist sites). It will also deal with the promotion of cycling and partnerships to improve the cycling environment.

Signed on behalf of **The Secretary of State for
Environment, Food and Rural Affairs**

Robin Mortimer

Date: 2012

Signed on behalf of **Canal & River Trust**

Robin Evans

Date: 2012

ANNEX 1: CRT Business Plan and Annual Report

Business Plan

1. CRT intends to prepare a detailed annual business plan (the “**Business Plan**”). As described in the Grant Agreement, CRT will send Defra a copy of the Business Plan annually by way of information, and will, at Defra’s request, discuss it further with Defra, to ensure that both parties understand it.

Grant Agreement Monitoring

2. To allow CRT to focus on strategic issues, the measuring and monitoring of operational performance under the Grant Agreement will be distinct and separate from discussion of the Business Plan referred to above.

Annual Report

3. CRT will provide to Defra a copy of its draft Annual Report (for information only) as soon as possible in advance of publication.

ANNEX 2: Timetable for Interaction and Information Exchange

1. In the Grant Agreement, the parties have agreed a timetable for review meetings for the sharing of information between them. An indicative timetable of meetings is set out below. For the avoidance of doubt, the parties acknowledge that the provisions relating to review meetings set out in the Grant Agreement prevail over the terms of this MoU.

Meeting number	Financial quarter in which the meeting takes place	Timing	Reporting
1	Second	July - September	<ul style="list-style-type: none"> • Draft audited accounts (including CRT's achievements against the requirements under the Grant Agreement including the requirements of Part B Conditional Grant as detailed in the Grant Agreement) • Interim Financial Information
2	Third	October - December	<ul style="list-style-type: none"> • Interim Financial Information
3	Fourth	January - March	<ul style="list-style-type: none"> • Draft Business Plan • Interim Financial Information

2. The parties recognise that, again subject to the terms of the Grant Agreement, the timetable and the contents of review meetings may be varied in light of experience. The parties further recognise that there may be differences in the level of detail and overall emphasis/balance of the content.
3. In relation to review meeting considerations CRT shall, with reasonable notice, permit and facilitate any person authorised by Defra to visit CRT to monitor the delivery of the Activities listed in Schedule 2 of the Grant Agreement. Where in

its opinion Defra considers that additional visits are necessary, CRT shall, subject to reasonable notice, permit and facilitate such visits and monitoring by any person authorised by Defra to make such visits on its behalf.

ANNEX 3: Environment Agency Navigations

Transfer of Environment Agency navigations

1. Ministers have decided to transfer the EA navigations to CRT from 2015/16, subject to affordability (as established in the next spending review) and the consent of the CRT Trustees at the appropriate point in time.
2. CRT and Defra confirm their intention to work constructively together, including securing from EA necessary relevant information, to review the options for transferring the navigations.
3. The precise timing of the necessary analytical work of the review will depend on the emerging timings of the next spending review. The working assumption is that the options review will commence in 2013/14. CRT and Defra will seek to agree by February 2014 at the latest the terms of the options review and how it will be conducted. It is intended that agreement will be reached on Terms of Reference for the project including:
 - 2.1 Objective
 - 2.2 Scope and exclusions
 - 2.3 Activities, stages, constraints and dependencies
 - 2.4 Governance, including membership of a Project Board
 - 2.5 Staff resources and the need for external advice
4. CRT will separately assess its own capability to receive the transfer of the navigations, and will feed the results of its analysis into the options review.

ANNEX 4: Water Abstraction – New Authorisations and CRT

Policy approach to the introduction of abstraction licensing for navigations in England

1. Defra and the Welsh Government anticipate commencing the provisions of the Water Act 2003 to end exemptions from abstraction licensing in October 2012. The requirement to end exemptions is driven by the requirements of the Water Framework Directive (“**WFD**”). The policy approach to implementation is set against the requirements of various legislation, but in particular WFD and the Habitats Directive (“**HD**”). The policy intent is to issue as many licences as can be issued within the confines of the law. EA has shared with BW information in a spreadsheet with colour coding showing the risk to abstractions for canals. Defra and the Welsh Government expect those abstractions coloured green (likely to grant in accordance with enabling Acts but may contain conditions replicating the enabling act) to be issued with a licence. Defra and the Welsh Government understand that abstractions coloured amber (likely to be granted in accordance with enabling Acts but may require some additional conditions to formalise memorandums of understanding to address any local concerns) indicate some potential adverse impact on the environment. EA has been working with BW to identify mitigations that would enable the licences to be issued with conditions acceptable to both parties. Approximately 20 abstraction sites remain under discussion and BW should work with EA to agree operating conditions that will enable these licences to be granted with conditions acceptable to both parties.
2. In granting licences and conditions for ‘amber’ abstractions, Defra and EA will pay due regard to the historic abstraction rights previously granted statutorily to BW by Parliament. Defra will observe a policy of non-discrimination between the BWB (as a previously exempt body engaged in lawful abstractions) and existing licence-holders. The fact that BW (or its successor, CRT) will be a relative latecomer to the licensing regime does not mean that it will be used as

the 'balancing item' in the overall management of abstractions within the water catchments.

3. Defra understands that the 'red' (difficult to grant on current basis or subject to severe constraint) site at the Lancaster canal is believed to be caused by a fish migration problem. If this problem were resolved, Defra would expect EA to grant the licence with operating conditions acceptable to EA and BW and subsequently CRT.
4. Once licensed, all abstractions will be managed in accordance with Catchment Abstraction Management Strategies ("**CAMS**") and River Basin Management Plans ("**RBMPs**") under the WFD. All licences are required by law (Water Resources Act) to be time limited. CRT may apply for long duration licences if they meet the (published) qualifying criteria. At the end of a time limit a new application must be made which will be considered against CAMS and RBMPs. CRT should continue to work with EA on operating agreements that ensure their abstractions will remain sustainable over the long term.
5. While BW and subsequently CRT would not qualify for compensation under the transitional arrangements, should it be necessary to modify or revoke licences before the end of a time limit BW and subsequently CRT would be covered by the compensation provisions in the Water Resources Act 1991.
6. The Monmouthshire and Brecon canal abstraction from the River Usk falls within the devolved responsibilities of the Welsh Government and sits outside of the approach described in this MoU. CRT should liaise with the Welsh Government as required.
7. This policy note has been agreed jointly by Defra and EA.

ANNEX 5: Fish Passes for CRT¹

1. Taking into account Water Framework Directive objectives in river basin management plans, CRT has made provision in its business planning for fish pass installation on the basis of what it considers affordable. For expenditure above this level, CRT will engage with EA to explore whether lower objectives (subject to review every six years) can be set in accordance with the criteria in the WFD relating to disproportionate cost and technical feasibility. EA and Defra acknowledge that due regard must be paid to the cumulative costs of installing fish passes over an annual period, in determining the affordability of installing fish passes. CRT and EA will then prioritise installation based upon environmental factors (including WFD objectives). It is expected that EA and CRT will work closely and constructively on this issue. The guidelines which Defra and EA must follow when deciding on disproportionate cost are outlined in domestic and EU guidance which includes:

“Something should be considered to be disproportionate where the negative consequences (compliance costs, impacts on non-water outcomes, distributional issues) outweigh the positive consequences (benefits of water status improvements).”²

Disproportionate cost is not just about the overall balance between costs and benefits, but also about the distribution of those costs and benefits (who pays and who benefits – the winners and losers). The Agency should note that negative distributional consequences may only be transitory – for example losses of business and jobs may be compensated by increases in the activity of other firms within or outside the area being looked at. However some distributional impacts may be long term, particularly if they affect areas,

¹ This understanding has been reached on the basis of existing BW structures/obstructions, as identified in current river basin management plans.

² <http://archive.DEFRA.gov.uk/environment/quality/water/wfd/documents/riverbasinguidance-Vol2.pdf>

sectors or groups without the capacity to adapt without further government intervention.”³

2. CRT and EA recognise that CRT is a unique organisation managing a significant number of structures which may require fish passes. CRT’s capacity to pass costs onto consumers is currently limited and will remain so in the medium term.

³ <http://archive.Defra.gov.uk/environment/quality/water/wfd/documents/riverbasinguidance-Vol2.pdf>

ANNEX 6: Process for the laying of the Annual Report and Accounts of BW

PROCESS FOR 2011/12

JUNE 2012	ACTION
1.	<p>British Waterways Watford prepare Group accounts for the year ended 31 March 2012 in accordance with the Transport Act 1962 and country accounts in consultation with British Waterways Scotland.</p> <p>External auditors clear Group accounts and prepare statement for inclusion in the Annual Report and Accounts.</p> <p>British Waterways Watford prepare the text of the Annual Report and Accounts in consultation with British Waterways Scotland</p>
2.	Draft Annual Report and Accounts submitted to Defra and Scottish Government for comment according to agreed timetable
3.	British Waterways Audit Committee review the finalised Annual Report and Accounts for approval by its Board.
4.	Chair and Chief Executive jointly sign the Accounts. Board Secretary signs the Board Report
5.	Post Audit process for 2011/12 Accounts: external auditors regulatory reports are submitted to Defra and Scottish Government.
6.	Post audit process for 2011/12 accounts: external auditors management letter and key issues memorandum are submitted to Defra, Scottish Government, CRT and British Waterways Scotland.
JULY/ AUGUST/ SEPTEMBER 2012	
8.	Annual Report and Accounts laid in both Westminster and Scottish Parliaments in advance of the Westminster summer recess.
9.	CRT finance team prepare a schedule of disposal of England and Wales assets and liabilities from BW together with balances being transferred to CRT and of the residual BW balance sheet post transfer- effectively the Scottish Canals (i.e. British Waterways Scotland) opening balance sheet. Sufficient disclosure of transactions from 1 st April 2012 until vesting date for inclusion in the 2012/13 accounts will be included in these schedules. Scottish

	Canals and CRT finance teams jointly verify this. Transaction and balances checked by external auditors
OCTOBER 2012	
10.	CRT Audit Committee review schedule and external audit confirmation for assurance on integrity of balances transferred from BW to CRT.
11.	Scottish Canals Audit Committee review schedule and external audit confirmation for assurance on integrity of balances remaining in residual BW. CRT external auditors provide access and assurances to Audit Scotland. This will constitute the Completion and Separation Accounts.
12.	Financial statement showing the transfer submitted to both Governments and Scottish Canals.
13.	CRT Chair and Chief Executive sign and send representation letters (with detailed and sufficient assurances to satisfy Scottish Canals) to Scottish Canals covering the period from 1 April 2012 to the transfer date following the audit committee meetings to approve the Completion and Separation accounts.

PROCESS FOR 2012/13

MARCH 2013	ACTION
1.	Scottish Canals prepare a twelve month set of accounts which incorporates the British Waterways Group Completion and Separation accounts (showing transactions from 1 April to Transfer day) together with Scottish Canals transactions from Transfer day to 31 March 2013. It will contain a Note to the Accounts describing the audited financial effect of the Transfer (see also note 9 above). CRT to provide reasonable access to original records to Audit Scotland on request.
JUNE 2013	
2.	Draft Annual Report and Accounts submitted to Scottish Government and Defra for comment and consultation internally according to agreed timetable.
3.	Scottish Canals Audit Committee to review the finalised Annual Report and Accounts for approval by Scottish Canals Board.
4.	Scottish Canals Board consider and endorse the Annual Report and Accounts. Chair and Chief Executive jointly sign accounts. Board

	Secretary signs Board Report.
5.	Annual Report and Accounts laid in Scottish and Westminster Parliaments in advance of the Westminster recess (if possible)
OCTOBER 2013	
7.	Auditor's statutory reports, management letter and key issues memorandum to Scottish Government for the annual post-audit meeting for the 2012/13 Accounts copied to Defra who will consult with Canal & River Trust in respect of any references to England and Wales.

ANNEX 7: The process for consultation on waterway re-classification and maintenance dimension orders under the Transport Act 1968

Background

1. The British Waterways Board (Transfer of Functions) Order 2012 (the “Transfer Order”) contains a consequential provision amending the Transport Act 1968 to introduce some elaborations to the process for making orders under sections 104 and 105 of that Act (changes to the classification of a waterway or to the prescribed dimensions for navigation to which a waterway must be maintained).
2. The first set of changes to be made by the Transfer Order is that CRT will have an explicit right to be consulted in the case of any proposed orders under section 104 or 105 in respect of its waterways. Furthermore it will have an enhanced ‘statutory proposer’ role in relation to such orders concerning classification and maintenance dimensions of its waterways.
3. The second change is that the Secretary of State will be placed under an obligation to have regard to the financial position of CRT in deciding whether to make any order under section 104 or 105 concerning its waterways.
4. Although the order making process can be initiated by the Secretary of State (whether or not in response to representations from any other party) the most likely circumstance is that the process will be begun by CRT using its ‘statutory proposer’ powers. If so, the Government would expect that any proposal for an order from CRT would be supported by a full analysis of the rationale for the change including details of the costs to be incurred or saved, and of the benefits or detriment to users of the waterway in question.
5. The Government believes that providing CRT with an enhanced statutory proposer role will not have any impact on decisions on classification or maintenance dimensions as applications will still be subject to consultation and determination by Ministers. This will ensure a transparent process.

6. Concerns have been raised by boating representatives that Government has failed to provide for non-commercial users to be statutory consultees with regard to re-classification and changes to maintenance requirements of waterways when Inland Waterways Advisory Council is abolished. However, it is noted that the Transport Act 1968 has never made specific provision for consultation of recreational users in the same way that it does for commercial users.
7. There remains wide scope for recreational users and their organisations to make representations and to formally object under the provisions of the Transport Act 1968 if an application is made by CRT to the Secretary of State for the re-classification of a waterway or to change a waterway's maintenance dimensions. CRT through its governance framework can be expected to widely debate the issue before any application is made within CRT's Council and relevant Waterway Partnership and more widely. Specific consultation requirements on the Secretary of State are set out in Schedule 13 to the Transport Act 1968 to enable those with an interest to object to a proposed navigation order. Therefore if Government proposes a change to statutory classification or maintenance requirements Government would undertake a full consultation on its proposal to ensure boaters and other interested parties have the opportunity to comment. It is anticipated that the proposal would be aired and debated within CRT's governance structures as part of CRT's consultation procedure to ensure all those with an interest are able to comment.
8. Queries have also been raised from boating representatives as to why the Transfer Order amends the Transport Act 1968 to require the Secretary of State to consult CRT if an order is being proposed to re-classify or change the maintenance dimensions on its waterways. This amendment has been made because people or bodies other than CRT can make representations for an order to be made. In addition the Secretary of State can seek on his or her own initiative to re-classify or change the maintenance requirements of a waterway, including those owned by CRT. Proposals to change the classification or maintenance dimensions for a waterway have the potential to

increase CRT's liabilities and it is therefore right that they are a statutory consultee.

Consultation procedure

CRT

9. If any change to statutory classification or maintenance dimensions is to be proposed by CRT using its 'statutory proposer' powers then it is anticipated that the proposal will be fully debated and aired within the governance structures of CRT (both locally and nationally) in advance of any formal application. It is also anticipated that CRT would (save in the case of very minor or inconsequential changes) seek views from outside CRT through its relevant advisory bodies (local and national – including both its proposed navigation advisory group and national stakeholder forum).

Defra

10. Before making any order under section 104(3) or 105(3) of the Transport Act 1968 (whether the initial proposal came from CRT, the Secretary of State or another person or body) the Secretary of State is required to undertake the public consultation as laid down in Schedule 13 to the Transport Act 1968.
11. The procedure under Schedule 13 will be as follows:
 - The Minister is required to consult with CRT and any organisation operating/desiring to operate commercial freight carrying vessels on the waterway in question.
 - Notices of the application for a navigation order must be published in the London Gazette, a national newspaper, one or more local newspapers and advertised by notices displayed on the relevant waterway.
 - The period within which objections may be made must last at least 28 days. For any change which Defra judges likely to be contentious, a period of 13 weeks will be allowed for representations in line with modern standards for consultation. Any interested party may write to the Secretary of State if they object.

- The Secretary of State must consider any objections to the proposed order which are not withdrawn before deciding whether to consent to the order.
- The Secretary of State is required to hold a public inquiry in certain circumstances, including where the order relates to a commercial or cruising waterway and an objection has been made (and not withdrawn) by CRT (or a local authority or the Environment Agency) or, where that waterway has been used to a significant extent for the purpose of navigation, by a body representing a substantial number of people using the waterway.

Annex 8: Defra objectives for funding under the Grant Agreement

1. **To reduce dependence on Government Grant** and to foster increasing self-sufficiency, by providing access to new charitable income streams and stimulating new efficiencies. Over time, to increase overall funding available for the waterways. A prerequisite for this is to support the viability of CRT – especially in its early days - and so minimise the risk that Government has to intervene to take responsibility for the waterways from CRT.
2. **To move the long term cost** of maintaining the inland waterways and the associated heritage infrastructure (estimated at around £4 billion in nominal net present value terms) from the public sector to civil society.
3. **To support localism** and give waterways users and communities greater involvement in the management and long term sustainability of the waterways.
4. **To safeguard:**
 - **the canals** and associated heritage infrastructure through the Trust Settlement, in perpetuity, for the benefit of the nation; and
 - **free pedestrian access** to the towpaths.
5. To ensure that the waterways continue to **deliver and increase public benefits** across the areas of:
 - a) public safety
 - b) public access, recreation, amenity and health
 - c) environment
 - d) urban and rural regeneration
 - e) heritage.