

The British Waterways Board Transfer Scheme 2012

CONTENTS

1.	Citation and commencement	2
2.	Interpretation	2
3.	Transfer of property, rights and liabilities to Canal & River Trust	2
4.	Property, rights and liabilities not transferred	2
5.	Property, rights and liabilities transferred to Canal & River Trading	2
6.	Property to be held on charitable trust	2
7.	Registration of land	2
8.	Documents and records	3
9.	Consequential and supplementary provisions	3
10.	Modification of Scheme	4

SCHEDULES

SCHEDULE 1	— Property, rights and liabilities not transferred (relating to British Waterways Board's operation in Scotland)	5
PART 1	— Property	5
PART 2	— Rights and liabilities	5
SCHEDULE 2	— Property, rights and liabilities transferred to Canal & River Trading	9
SCHEDULE 3	— Property to be held on charitable trust	10

Whereas:

The Secretary of State for Environment Food and Rural Affairs has decided to transfer the undertaking of British Waterways Board in England and Wales to a charity, Canal & River Trust.

As a result of this Scheme, Canal & River Trust is to hold certain waterways infrastructure property as the trustee of the Waterways Infrastructure Trust, a charitable trust which the Secretary of State has established for that purpose. The Secretary of State and Canal & River Trust have agreed that Canal & River Trust must use the other property transferred to it under this Scheme (which it does not hold as trustee) in pursuit of certain specified purposes which have been agreed and formally recorded by the Secretary of State and Canal & River Trust.

The Secretary of State, in exercise of the powers conferred by section 23 of the Public Bodies Act 2011(a), makes the following Scheme.

The Secretary of State has made the British Waterways Board (Transfer of Functions) Order 2012(b), an order under section 5 of the Public Bodies Act 2011 transferring functions from the British Waterways Board to Canal & River Trust. This Transfer Scheme is made in connection with that Order.

Canal & River Trust, a registered charity, has consented to this Scheme.

(a) 2011 c. 24.
(b) S.I. 2012/1659

Citation and commencement

1.—(1) This Scheme may be cited as the British Waterways Board Transfer Scheme 2012.

(2) It comes into force at the same time as the British Waterways Board (Transfer of Functions) Order 2012.

Interpretation

2. In this Scheme—

“Canal & River Trust” means Canal & River Trust, a company limited by guarantee with company number 07807276 and registered charity number 1146792;

“Canal & River Trading” means Canal & River Trading CIC, a community interest company with registration number 08069602, a wholly owned subsidiary of Canal & River Trust;

“land” includes any interest in land;

“the transfer date” means the day this Scheme comes into force.

Transfer of property, rights and liabilities to Canal & River Trust

3. Subject to the following provisions of this Scheme, all property, rights and liabilities of the British Waterways Board transfer to Canal & River Trust on the transfer date.

Property, rights and liabilities not transferred

4. The property, rights and liabilities listed in Schedule 1 (which relate to the British Waterways Board’s operation in Scotland) do not transfer.

Transfer of property, rights and liabilities to Canal & River Trading

5. On the transfer date, the property, rights and liabilities of the British Waterways Board listed in Schedule 2 transfer to Canal & River Trading.

Property to be held on charitable trust

6.—(1) On the transfer date, the property of the British Waterways Board listed in Schedule 3 transfers to Canal & River Trust to hold as trustee.

(2) That property transfers to Canal & River Trust to hold in its capacity as trustee of the charitable trust named the Waterways Infrastructure Trust, settled by the Secretary of State for Environment, Food and Rural Affairs, and established by the Trust Settlement made by the Secretary of State on 28 June 2012 (“the Trust Settlement”).

(3) A copy of the Trust Settlement is held in the library of the Department for Environment, Food and Rural Affairs.

Registration of land

7.—(1) Within three years of the transfer date, Canal & River Trust must, at its own expense, and in accordance with paragraphs (2) and (3), register with the Land Registry the vesting of any land in Canal & River Trust (whether or not to hold in its capacity as trustee), which is given effect by this Scheme.

(2) The vesting (pursuant to article 6) of land in Canal & River Trust to hold in its capacity as trustee must be registered with a restriction on title which has the effect of preventing it from making a freehold or leasehold disposal of such land without—

- (a) in the case of a relevant disposal, the prior written consent of the Secretary of State; or
- (b) in all other cases, either—

- (i) Canal & River Trust certifying to the Secretary of State in writing that the disposal will not restrict generally available public access within the meaning of paragraph 2.4.1(b) of the Trust Settlement; or
 - (ii) the prior written consent of the Secretary of State.
- (3) Before carrying out the registration required by this article, Canal & River Trust must obtain the agreement of the Secretary of State as to the land to which paragraph (2) applies.
- (4) In this article, “relevant disposal” means a disposal of—
- (a) a freehold interest in land; or
 - (b) a leasehold interest in land which, at the time of the disposal was for a term in excess of 60 years or contains an option to renew or extend the exercise of which would create a total tenure in excess of 60 years from the time of disposal.

Documents and records

8. Where Canal & River Trust holds documents, files and other records which have transferred to it under this Scheme which are directly relevant to activities in Scotland after the transfer date (“relevant records”), Canal & River Trust must—

- (a) if requested to do so by the British Waterways Board, provide information and assistance to the Board in relation to any relevant records; and
- (b) allow the British Waterways Board or any person authorised by it the opportunity to examine relevant records and to take copies.

Consequential and supplementary provisions

9.—(1) Transfers under this Scheme have effect—

- (a) irrespective of whether or not they could be transferred otherwise than by this Scheme; and
- (b) irrespective of whether consent of a third party or any other procedure would be required if the transfer were effected otherwise than by this Scheme.

(2) This Scheme does not affect the validity of anything done (or having effect as if done) by or in relation to the British Waterways Board before the transfer date.

(3) Anything (including legal proceedings) which, on the transfer date, is in the process of being done by or in relation to the British Waterways Board may be continued by or in relation to—

- (a) Canal & River Trust so far as it relates to anything transferred to Canal & River Trust under this Scheme; or
- (b) Canal & River Trading, so far as it relates to anything transferred to Canal & River Trading under this Scheme.

(4) Anything done (or having effect as if done) by or in relation to the British Waterways Board in connection with anything transferred under this Scheme has effect, so far as is necessary for continuing its effect after the transfer date, as if done by or in relation to—

- (a) Canal & River Trust so far as it relates to anything transferred to Canal & River Trust; or
- (b) Canal & River Trading, so far as it relates to anything transferred to Canal & River Trading.

(5) Any reference to the British Waterways Board or any reference which is to be treated as a reference to the British Waterways Board in an instrument or other document in respect of anything transferred under this Scheme or any function transferred under the British Waterways Board (Transfer of Functions) Order 2012 is to be treated as a reference to—

- (a) Canal & River Trust, so far as it relates to anything transferred to Canal & River Trust under this Scheme, or to a function transferred under or by virtue of the British Waterways Board (Transfer of Functions) Order 2012; or

(b) Canal & River Trading so far as it relates to anything transferred to Canal & River Trading under this Scheme.

(6) In this article, any reference to things transferred to Canal & River Trust include things transferred to it to hold in its capacity as trustee.

Modification of Scheme

10.—(1) This scheme may be modified by the written agreement of the Secretary of State and of—

(a) Canal & River Trust, so far as the modification relates to anything transferred to it; or

(b) Canal & River Trading, so far as the modification relates to anything transferred to it.

(2) A modification may have effect from the date on which this Scheme comes into effect.

Date

Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULES

SCHEDULE 1

Property, rights and liabilities not transferred (relating to British Waterways Board's operation in Scotland)

PART 1

Property

Property

1. All land in Scotland.
2. All other tangible assets located in Scotland immediately before the transfer date.
3. All shares held in the following companies—
 - (a) Edinburgh Quay Limited(**a**); and
 - (b) Timber Basin Limited(**b**).
4. Any documents, files and other records located in Scotland.
5. The following intangible assets—
 - (a) trademark numbers 2288381, 2334071, 2334074, 2350974 and 2350975;
 - (b) software licences relating to software installed on computers or hardware located in Scotland immediately before the transfer date;
6. The following bank accounts—
 - (a) National Westminster Bank, sort code 60-00-01, account number 39379442
 - (b) Royal Bank of Scotland, sort code 83-22-29, account number 00104775;
 - (c) Royal Bank of Scotland, sort code 83-22-29, account number 00104759;
 - (d) Royal Bank of Scotland, sort code 83-22-29, account number 00104757;

PART 2

Rights and liabilities

General

7. All rights and liabilities relating to property which does not transfer under this Scheme.
8. All rights and liabilities relating to staff who do not transfer to Canal & River Trust under the Transfer of Undertakings (Protection of Employment) Regulations 2006(**c**), excluding any

(a) Company number SC190454
(b) Company number SC243294.
(c) S.I. 2006/246.

liabilities of the British Waterways Board to contribute towards a pension scheme so far as such contributions relate to any service prior to the transfer date.

9. All rights and liabilities under the following contracts—

- (a) Time Charge Orders and Package Orders relating solely to work performed in Scotland made under the Omnibus Construction Contract with May Gurney Limited dated 1 April 2009;
- (b) Work Orders relating solely to work performed in Scotland made under the National Dredging Contract with Land & Water Services Limited dated 1 December 2010;
- (c) Work Orders relating solely to work performed in Scotland made under the Hydrodynamic Dredging Contract with Land & Water Services Limited dated 1 April 2011; and
- (d) contracts or leases relating solely to equipment located in Scotland made under the Agreement for supply of equipment and services with Canon (UK) Limited dated 11 March 2009.

10. All rights and liabilities under—

- (a) the Edinburgh Quay joint venture agreement; and
- (b) the Timber Basin joint venture agreement.

Cross-border contracts

BSkyB Agreement

11.—(1) The rights and liabilities of the British Waterways Board under the BSKYB Agreement are allocated between the British Waterways Board and Canal & River Trust to create—

- (a) an agreement between the British Waterways Board, BSKYB Telecommunications Services Limited and Telent Limited in relation to Scotland; and
- (b) an agreement between Canal & River Trust, BSKYB Telecommunications Services Limited and Telent Limited in relation to England and Wales.

(2) The agreement referred to in paragraph 11(1)(a) is on the same terms as the BSKYB Agreement except that—

- (a) the following definitions apply in lieu of those contained in that Agreement—

“**Annual Payment**” the fixed annual payment of £825,000 (EIGHT HUNDRED AND TWENTY-FIVE THOUSAND POUNDS)

“**Waterways Network**” the towing path and lands adjoining the inland waterways network in Scotland:

- (a) which is at the date of this Agreement; and/or
- (b) which may be at any time in the future,

within the legal and beneficial ownership of BWB in fee simple or for a term of years;” and

- (b) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

(3) The agreement referred to in paragraph 11(1)(b) is on the same terms as the BSKYB Agreement except that—

- (a) all references to the British Waterways Board are to be read as references to Canal & River Trust; and
- (b) the following definitions apply in lieu of those contained in the BSKYB Agreement—

- “**Annual Payment**” the fixed annual payment of £5,675,000 (FIVE MILLION SIX HUNDRED AND SEVENTY-FIVE THOUSAND POUNDS)
- “**Waterways Network**” the towing path and lands adjoining the inland waterways network in England and Wales:
- (a) which is at the date of this Agreement; and/or
 - (b) which may be at any time in the future, within the legal and beneficial ownership of Canal & River Trust in fee simple or for a term of years”; and
 - (c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

BT Agreement

12.—(1) The rights and liabilities of the British Waterways Board under the BT Agreement are allocated between the British Waterways Board and Canal & River Trust to create—

- (a) an agreement between British Waterways Board and British Telecommunications PLC in relation to Scotland; and
- (b) an agreement between Canal & River Trust and British Telecommunications PLC in relation to England and Wales.

(2) The agreement referred to in paragraph 12(1)(a) will be on the same terms as the BT Agreement except that—

- (a) the annual payment payable by British Telecommunications PLC to the British Waterways Board from the transfer date is an amount calculated in accordance with the review provisions of the agreement, based on an Annual Payment of £37,720 for the year starting on 1 May 2011 and ending on 30 April 2012;
- (b) the agreement relates to land, property and airspace owned and/or managed by the British Waterways Board within Scotland only; and
- (c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

(3) The agreement referred to in section 12(1)(b) will be on the same terms as the BT Agreement except that—

- (a) all references to the British Waterways Board are to be read as a reference to Canal & River Trust;
- (b) the Annual Payment payable by British Telecommunications PLC to Canal & River Trust from the transfer date is an amount calculated in accordance with the review provisions of the agreement, based on an Annual Payment of £686,267 for the year starting on 1 May 2011 and ending on 30 April 2012;
- (c) the agreement relates to land, property and airspace owned and/or managed by Canal & River Trust within England and Wales only; and
- (d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement.

Easynet Agreement

13.—(1) The rights and liabilities of the British Waterways Board under the Easynet Agreement are allocated between the British Waterways Board and Canal & River Trust to create—

- (a) an agreement between the British Waterways Board and Easynet Telecommunications Limited in relation to services supplied in Scotland; and
- (b) an agreement between Canal & River Trust and Easynet Telecommunications Limited in relation to services supplied in England and Wales.

(2) The agreement referred to in paragraph 13(1)(a) is on the same terms as the Easynet Agreement except that—

- (a) the charges payable by the British Waterways Board from the date of the transfer is the proportion of charges attributable to Services provided in Scotland;
- (b) the agreement relates to Services supplied by Easynet Telecommunications Limited in Scotland only; and
- (c) any other consequential amendments required to give effect to this Scheme are deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to networks and sites within Scotland.

(3) The agreement referred to in paragraph 13(1)(b) will be on the same terms as the Easynet Agreement except that—

- (a) all references to the British Waterways Board are to be read as a reference to Canal & River Trust;
- (b) the charges payable by Canal & River Trust from the date of the transfer is the proportion of charges attributable to Services provided in England and Wales;
- (c) the agreement relates to Services supplied by Easynet Telecommunications Limited in England and Wales only; and
- (d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to networks and sites in England and Wales.

NextiraOne Agreement

14.—(1) The rights and liabilities of the British Waterways Board under the NextiraOne Agreement are allocated between the British Waterways Board and Canal & River Trust to create—

- (a) an agreement between the British Waterways Board and NextiraOne UK Limited in relation to equipment and services supplied in Scotland; and
- (b) an agreement between Canal & River Trust and NextiraOne UK Limited in relation to equipment and services supplied in England and Wales.

(2) The agreement referred to in paragraph 14(1)(a) will be on the same terms as the NextiraOne Agreement except that—

- (a) the charges payable by the British Waterways Board from the transfer date will be the proportion of charges attributable to equipment and services supplied in Scotland;
- (b) the agreement relates to Services supplied by NextiraOne UK Limited in Scotland only; and
- (c) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to lines and sites in Scotland.

(3) The agreement referred to in paragraph 14(1)(b) will be on the same terms as the NextiraOne Agreement except that—

- (a) all references to the British Waterways Board are to be read as a reference to Canal & River Trust;
- (b) the charges payable by Canal & River Trust from the date of the transfer is the proportion of charges attributable to Services provided in England and Wales;
- (c) the agreement relates to equipment and services supplied by NextiraOne UK Limited in England and Wales only; and
- (d) any other consequential amendments required to give effect to this Scheme will be deemed incorporated into the agreement, including changes to the Annexures and Schedules to refer only to lines and sites within England and Wales.

15. In this Schedule—

“BSkyB Agreement” means the agreement between British Waterways Board, Fibreway Limited company number 67307 (which has changed its name to BSKYB Telecommunications Services Limited) and Marconi Corporation PLC company number 67307 (which has changed its name to Telent Limited) relating to underground telecommunications equipment dated 9 May 2006;

“BT Agreement” means the agreement between British Waterways Board and British Telecommunications relating to telecommunications equipment dated 21 July 1995, as amended by a supplementary agreement dated 22 December 2000;

“Easynet Agreement” means the Ethernet anywhere solution service agreement between British Waterways Board and Easynet Telecommunications Limited company number 2883980 (which has changed its name to BSKYB Telecommunications Services Limited) dated 24 February 2005;

“NextiraOne Agreement” means the Framework Agreement for telecommunications equipment and services between British Waterways Board and NextiraOne UK Limited company number 4036009 dated 26 May 2005, as varied by a letter of agreement dated 4 March 2010.

SCHEDULE 2

Property, rights and liabilities transferred Canal & River Trading

Property

1. Land with the following land registry title numbers—

- (a) BM302035;
- (b) BK313735;
- (c) GM944106;
- (d) CH555409;
- (e) HD510726;
- (f) LL113568;
- (g) ON292027;
- (h) SYK138785;
- (i) SYK138786;
- (j) SYK138789;
- (k) SYK222548;
- (l) SYK533624;
- (m) HD507395.

2. All shares and memberships held in the following companies and partnerships—

- (a) Small Hydro Company Ltd;
- (b) ISIS Waterside Regeneration Limited Partnership;
- (c) ISIS Waterside Regeneration (General Partner) Ltd;
- (d) Paddington Basin Business Barges Ltd;
- (e) H2O Urban Ltd;
- (f) H2O Urban (No.2) LLP;
- (g) City Road Basin Ltd;
- (h) Waterside Pub Partnership LLP.

Rights and liabilities

3. All rights and liabilities relating to property which transfers to Canal & River Trading.
4. All rights and liabilities arising under any chose in action relating to the companies and partnerships listed in paragraph 2.
5. All rights to receive payment arising in connection with dealings concerning land with the following land registry title numbers—
 - (a) GR319490;
 - (b) CH533790;
 - (c) CH539842;
 - (d) CH127355;
 - (e) CH260918;
 - (f) HD436830;
 - (g) HW103170.

SCHEDULE 3

Property to be held on charitable trust

1. All land and infrastructure which is necessary to—
 - (a) inland navigation on a waterway; or
 - (b) public access to, and use of, a towpath.
2. Paragraph 1 includes, in particular—
 - (a) the navigation channel of a waterway extending to the rear of the towpath waterway wall and the rear of the offside waterway wall, where one exists.
 - (b) towpath (including any bridge over which it passes) extending to either—
 - (i) the rear of the boundary hedge or other boundary structure; or
 - (ii) in the absence of a defined boundary, to a width of three metres measured from the edge of the navigation channel;
 - (c) locks including side ponds, by-weirs, spillways and adjoining land required to ensure safe operation of the lock;
 - (d) reservoir feeders to the rear of the feeder wall on both sides;
 - (e) reservoirs to the maximum high water mark, head banks, dams and spillways;
 - (f) other structures, equipment or features necessary to the operation of the waterway including, in particular—
 - (i) weirs,
 - (ii) sluices,
 - (iii) culverts,
 - (iv) drainage channels,
 - (v) winding holes,
 - (vi) pumping stations,
 - (vii) boat lifts; and
 - (viii) land or structures supporting any such structures, equipment or features.
 - (g) access roads and paths including rights of access and similar easements;
 - (h) land and structures necessary for the support or protection of the navigation channel or towpath including in particular—

- (i) embankments,
- (ii) cuttings,
- (iii) retaining walls,
- (iv) tunnels, and
- (v) aqueducts.

3. Land or infrastructure is not excluded from paragraph 1 by reason of it being derelict or disused, if there is a realistic prospect of its restoration in the long term.

EXPLANATORY NOTE

(This note is not part of the Scheme)

This Transfer Scheme transfers the property, rights and liabilities of the British Waterways Board in England and Wales to a charity, Canal & River Trust. It is made in connection with the British Waterways Board (Transfer of Functions) Order which transfers statutory functions from the British Waterways Board to Canal & River Trust in England and Wales.

Article 3 is a default provision which provides that, except where provided for elsewhere in the Scheme, all property rights and liabilities of the British Waterways Board transfer to Canal & River Trust.

Article 4 introduces Schedule 1, which lists the property, rights and liabilities which remain with the British Waterways Board, which relate to the Board's operation in Scotland.

Article 5 introduces Schedule 2, which lists the property, rights and liabilities which transfer to Canal & River Trust's subsidiary community interest company, Canal & River Trading CIC.

Article 6 introduces Schedule 3, which lists property which Canal & River Trust is to hold as trustee, under a separately created charitable trust settled by the Secretary of State for Environment, Food and Rural Affairs. A separate arrangement is in place to require Canal & River Trust to manage the other property which is transferred to it to hold in its own right under this Scheme consistently with a list of specified purposes.

Article 7 imposes obligations on Canal & River Trust to register the land transferred to it under this Scheme with the Land Registry. Registration will need to distinguish between the land which Canal & River Trust holds in its own right, and the land which it holds on the charitable trust.