EXPLANATORY MEMORANDUM TO

THE BRITISH WATERWAYS BOARD (TAX CONSEQUENCES) ORDER

2012 No. 1709

1. This explanatory memorandum has been prepared by Her Majesty's Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order deals with corporation tax, stamp duty and stamp duty land tax consequences that would otherwise arise on the statutory transfer of property, rights and liabilities from the British Waterways Board (BWB) to the Canal & River Trust (CRT) or the Canal & River Trading CIC (CRT CIC) under the British Waterways Transfer Scheme 2012 ("the Scheme").

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 It is with regret that the Order is laid in breach of the "21 day rule" which requires the laying of an instrument 21 days before its provisions take effect.

3.2 The timing of the Order was dependent on the making of the Scheme which takes effect on 2 July 2012. The making of the Scheme was itself dependent on the approval of the British Waterways Board (Transfer of Functions) Order 2012 (the Functions Order) by both Houses of Parliament. The Functions Order was debated in the House of Lords on 25 June 2012 and the House of Commons on 26 June 2012 and approved on 27 June 2012. To assist, a draft of the Order was provided to both Houses in advance of the Order being made and laid.

3.3 The Order has to take effect on 2 July 2012 to ensure that the relevant tax treatment is applied on the same day that the relevant transfers are made under the Scheme. The Order therefore has to be made and laid between the time of approval of the Functions Order by Parliament and 2 July 2012. Accordingly, it is not possible to allow 21 days to elapse between the laying of the Order and its coming into force.

3.4 The Order only affects BWB, CRT and CRT CIC and they are aware of the contents and effect. The Order has no impact on other taxpayers.

3.5 The breach of the 21 day rule enables the Order, in so far as it is said to take effect and come into force, to be more accessible as it does not have to deal with the contingency of the Functions Order not being approved in time.

4. Legislative Context

4.1 The Order is being made under powers conferred by section 25 of the Public Bodies Act 2011 (the Act). The Order is the first order made in exercise of those powers.

4.2 Section 25 of the Act provides that an order may make provision to vary the way in which a relevant tax would have effect in relation to a transfer scheme, such as the Scheme, made under section 23 of the Act. The Order is made so as to prevent certain tax consequences resulting from the transfers made under the Scheme and to provide continuity for certain corporation tax purposes.

5. Territorial Extent and Application

5.1 The Order applies to all of the United Kingdom.

6. European Convention on Human Rights

As the Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Without further provision the statutory transfer of property, rights and liabilities from BWB to CRT or CRT CIC could trigger tax charges or reliefs that would arise solely because of the transfer made under the Scheme. The Order therefore makes provision to prevent certain tax consequences resulting from the statutory transfer and to provide continuity for certain corporation tax purposes.

- Consolidation

7.2 Not applicable.

8. Consultation outcome

8.1 Not applicable.

9. Guidance

9.1 Not applicable.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering the Order will be published on the HMRC website at http://www.hmrc.gov.uk/the library/tiins.htm.

11. Regulating small business

11.1 The Order does not apply to small business.

12. Monitoring & review

12.1 HMRC has no plans to monitor the provisions of the Order since they merely deal with certain tax consequences of the Scheme.

13. Contact

Mark Anderson at HM Revenue & Customs (tel: 020 7147 2621 or email: mark.anderson@hmrc.gsi.gov.uk) can answer any queries regarding the Order.