EXPLANATORY DOCUMENT TO

THE INLAND WATERWAYS ADVISORY COUNCIL (ABOLITION) ORDER 2012

2012 No. 1658

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument abolishes the Inland Waterways Advisory Council (IWAC) in England and Wales and in Scotland.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None.

4. Legislative Context

4.1 This instrument is made under the Public Bodies Act. The Public Bodies Act lists public bodies by schedule according to the Government's proposed reform. IWAC has been included in Schedule 1 (bodies which can be abolished by secondary implementing legislation).

5. Territorial Extent and Application

5.1 This instrument applies to England, Wales and Scotland.

6. European Convention on Human Rights

Richard Benyon, Parliamentary Under Secretary of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Inland Waterways Advisory Council (Abolition) Order 2012 are compatible with the Convention rights."

7. Policy background

- What is being done and why

7.1 The Inland Waterways Advisory Council (IWAC) is a cross-border body which provides advice to Government and other interested persons on matters considered appropriate and relevant to Britain's inland waterways. IWAC is an independent, advisory

non-departmental public body established by sections 110-110C of the Transport Act 1968. These sections were inserted by sections 74-77 of the Natural Environment and Rural Communities Act 2006. Section 73 of that Act provided that IWAC's predecessor body, the Inland Waterways Amenity Advisory Council created under the original provisions of the Transport Act 1968 to give advice on the amenity and recreational use of canals and rivers managed by British Waterways, was to become IWAC (and did so from April 2007).

7.2 The Council's remit covers all of the inland waterways in England and Wales. In Scotland its remit only covers those inland waterways that are owned or managed by, or which receive technical advice or assistance from, British Waterways. Appointment of the chairman and Council Members is made by Ministers (Scottish Ministers appoint two Council members and are consulted prior to the appointment of the chairman) in accordance with the Office for the Commissioner for Public Appointments (OCPA) Code of Practice.

7.3 IWAC's statutory functions are set out in Annex A. Its 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 relevant inland waterways in Scotland;
- 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 Government policy);
- provide a conduit by which waterway users and other bodies interested in the waterways can make their views on strategic issues known to Government and navigation authorities;
- perform its role as a statutory consultee under the Transport Act 1968 and other legislation; and
- contribute to the development of Scottish canals through attendance at the Scottish Canals Development Group and other appropriate bodies.

7.4 The proposal to abolish IWAC was announced by the UK Government on 22 July 2010 as part of its Arms Length Body Review. Following public consultation, the Government has decided that IWAC should be abolished as an Arms Length Body because it is no longer needed to help develop policy for the inland waterways as this is a role of Government Departments and Ministers. The proposal to move British Waterways in England and Wales into civil society in 2012 outside Government control and management and to set up a new waterways charity (the Canal & River Trust (CRT)) means that there will no longer be a need for a statutory body to provide advice for policy development.

7.5 The UK Government is clear that policy development is the role of Ministers, who are accountable to Parliament. In carrying out policy development, the Government will

continue to work closely with users, communities, delivery bodies and stakeholder representatives, including such bodies as the Association of Inland Navigation Authorities (AINA). In addition, the Government believes it is more efficient and effective to create ad hoc specialist advisory bodies to deal with specific issues.

7.6 In Scotland, it is not proposed to change the status of British Waterways, which will remain in the public sector as a body operating only in Scotland. When the assets of British Waterways in England and Wales are moved into civil society, British Waterways Scotland will commence operation as a self-standing public organisation. In light of the changes planned in England and Wales, however, the benefits of a cross-border advisory body are eliminated. Scottish Ministers have therefore agreed that IWAC should also be abolished in respect of its Scottish functions, relying instead on advice from within Scotland. 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 to the Scottish Government and so the development of distinctive Scottish advisory groups was at a relatively early stage. Since then, a strong network of advisory groups has grown up 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. The Scottish Government will look towards the existing canal liaison networks in Scotland for advice on issues affecting canals in Scotland. The BW Scotland Group has reviewed the existing advice structures and made recommendations to the Scottish Government and British Waterways Scotland on appropriate arrangements for the future. Consultation on these recommendations is now underway with Scottish stakeholders.

7.7 Abolition of IWAC will yield savings of around £200,000 per year to Government in respect of the costs of research projects, the Chairman's fees and Council members' expenses and the cost of the small secretariat which supports the Council. The Scottish Government contribution to IWAC was £33,000 annually.

7.8 This instrument is made using powers in the Public Bodies Act 2011 to abolish IWAC in England and Wales and in Scotland. A summary of the provisions of the instrument is included as Annex B to this document. This instrument requires the consent of the Scottish Parliament as it makes provision which would be within the legislative competence of the Scottish Parliament. Waterways are not a devolved matter in Wales. However, IWAC constitutes a "relevant cross-border body" for the purposes of section 63(1) of the Government of Wales Act 2006. This instrument therefore includes a recital referring to the fact that Welsh Government Ministers have been consulted under the Act in addition to consultation required under the Public Bodies Act.

Satisfying the requirements of section 8(1) of the Public Bodies Act 2011

7.9 Section 8(1) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to—

(a) efficiency,
(b) effectiveness,
(c) economy, and

(d) securing appropriate accountability to Ministers.

7.10 The Minister considers that abolition of IWAC will lead to greater efficiency, effectiveness and economy. Guidance and advice can be provided by the Association of Inland Navigation Authorities (AINA) which covers the interests of the navigation authorities. AINA is also able to provide advice to Government on a range of matters relating to inland waterways policy, so abolition of IWAC will reduce duplication in this respect. In addition, the Government has decided it is more efficient and effective to create ad hoc specialist advisory bodies to deal with specific issues. For example it set up an independent Advisory Panel on First Appointments and Transition to provide advice to Government on the selection of the charity's Trustees and on the governance structure of the proposed new charity - such as recruitment of Chairs and members of Waterways Partnerships and setting up the charity's Council.

7.11 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 only been exercised once and an appeals panel convened once only. The creation of the new charity in England and Wales will enable its stakeholders and boating experts to influence changes to boat safety requirements before they are made, removing the need for a statutory body. Abolishing IWAC will not only avoid possible duplication of roles but also deliver efficiencies.

7.12 As mentioned in 7.7, abolition of IWAC will yield savings of around £200,000 per year. There are no impacts on staffing. IWAC's Secretariat comprised two Defra staff. Abolition of IWAC will result in the loss of one full time Defra post (the other member of the Secretariat left Defra to take up other employment).

Satisfying the requirements of section 8(2) of the Public Bodies Act 2011

7.13 Section 8(2) of the Public Bodies Act 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that—

(a) the order does not remove any necessary protection, and

(b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

7.14 The Minister considers that the conditions in section 8(2) are met. IWAC's statutory functions as an advisory body have no impact on personal protections, rights or freedoms. It follows that abolition of IWAC's functions will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. IWAC has a statutory consultation role under the Transport Act 1968 on applications from navigation authorities for navigation orders relating to the re-classification of inland waterways. The Act provides for consultation via notices in the London Gazette (for Scotland the Edinburgh Gazette) , the local press and by notices posted alongside the relevant waterway. The abolition of IWAC would have no impact on these consultation procedures which give all those with an interest an opportunity to object to a proposed Order.

Amendments: appeals panels for England and Wales, and for Scotland

7.15 As mentioned in paragraph 7.11 IWAC has a statutory role in relation to appeals on boat construction and equipment standards under the British Waterways Act 1995. Should IWAC be abolished the membership of the appeals panel in England and Wales would continue with five members - two appointed by the Board of CRT and the three remaining members appointed by the Inland Waterways Association (IWA), Royal Yachting Association (RYA) and British Marine Federation (BMF). In Scotland the appeals panel will comprise one person appointed by the BW Board and two other persons of whom one each shall be appointed by RYA and by BMF. The approach maintains the principle that BW/CRT should not outnumber other members that there should be an odd number of members to prevent hung decisions and in Scotland takes account of the smaller size of the BW Board in future and that IWA's purpose relates to England and Wales. Alternative provisions have been made through article 4 of this instrument for the membership of the appeals panel both in England and Wales and in Scotland once IWAC is abolished.

Parliamentary activity during the passage of the Public Bodies Bill

7.16 An amendment to remove IWAC from Schedule 1 was tabled during the passage of the Act in the House of Lords. In the debate, tribute was paid to the work and value of IWAC, with some concerns raised about the timing of its abolition in relation to the creation of the new waterways charity in England and Wales. The Government said timing of IWAC's abolition would be considered following the consultation on British Waterways and creation of the new charity. The amendment was withdrawn. Abolition of IWAC was not raised during the passage of the Act in the House of Commons.

- Consolidation

7.17 None.

8. Consultation outcome

8.1 The Government has carried out consultation in accordance with section 10 of the Public Bodies Act. The requirement of section 11(3) of the Act has also been met in that more than twelve weeks have passed since that consultation was begun.

8.2 Following the announcement in July 2010 on the Government's proposal to abolish IWAC the Parliamentary Under Secretary For Natural Environment and Fisheries met with the Chairman of IWAC to discuss the Government's proposal to abolish IWAC and individual members of the Council were each informed of the proposal by letter from the Minister.

8.3 On 22 August 2011 the Government launched a public consultation. The consultation invited views from 95 organisations, including from IWAC, on the Government's proposal to abolish IWAC in England, Wales and Scotland. A list of those consulted is at Annex C. The consultation also sought views on alternative arrangements, including whether there was a need for an independent advisory body, and also arrangements for a boat safety standards appeals panel in England, Wales and in Scotland

if IWAC was to be abolished. The 12 week consultation closed on 14 November. Only 35 responses were received. A copy of the consultation document is at Annex D and is also available at http://www.defra.gov.uk/consult/files/110822-condoc-iwac.pdf .

8.4 The majority of responses for England and Wales did not support the proposal to abolish IWAC and argued that it should be retained in its current role. Reasons for retaining IWAC included:

- the knowledge, expertise and experience of the members of IWAC and their good quality advice,
- the importance of independent and objective advice to Government, the continued need for advice during the transition period until CRT is fully established
- and that IWAC should be retained until the Environment Agency's navigations are transferred to CRT in 2015/16 subject to affordability and the agreement of the CRT Trustees which the Government has already announced.

8.5 The majority of responses for Scotland agreed that there was no need for IWAC to continue and that it should be abolished. Responses strongly supported the proposal that the Scottish Government should in future look to the existing canal liaison networks in Scotland for advice on issues affecting canals in Scotland. The Scottish Government has therefore confirmed that there is no need for IWAC to continue in respect of its functions in Scotland.

8.6 On the boat safety appeals panel in England and Wales, respondents agreed that should IWAC be abolished it should comprise 5 members, two appointed by the Board of CRT and the three remaining members appointed by the Inland Waterways Association, Royal Yachting Association and British Marine Federation. In Scotland respondents agreed it should comprise 3 members, one from British Waterways Scotland, one from the Royal Yachting Association and one from the British Marine Federation.

8.7 The UK Government has decided that, notwithstanding the responses in relation to IWAC's functions in England and Wales, IWAC should be abolished as a GB body. The Government has decided that the creation of the CRT, subject to Parliamentary consent, means that a statutory advisory body is no longer required to provide advice on inland waterways policy. The charity's constitution and model of operation will take account of its need to seek views from representative stakeholders and other experts. The principal route for this would be via the proposed charity's council and the creation of necessary expert committees which have already been announced by the CRT Trustees. There is no case to retain IWAC until the EA navigations are transferred. The Government intends to undertake a review of the CRT in 2014 prior to the planned transfer and that review will be able to consider how any necessary independent advice should be obtained, for example through the creation of an ad hoc body with the necessary expertise. The Government no longer sees a case for IWAC to continue in its current role, nor does it see any reason to put in place an alternative statutory advisory body. This position is strengthened by the fact that the Scottish Government has confirmed its agreement to abolish IWAC in respect of its Scottish functions, looking instead to the network of informal advisory groups for advice.

8.8 In reaching this decision the Government took into account the very low number of responses to the consultation (35). The high number of responses to the consultation on creating the new waterways charity (over 350) indicates the high level of interest in inland waterways policy matters. The Government believes that the low number of responses to the IWAC consultation suggests that few waterways stakeholders believe that retention of IWAC is sufficiently important to their interests, or broader waterway interests, to express a view.

8.9 The Government published its response to the consultation on 1 February 2012. This set out the key areas where representations had been received and the Government's proposed way forward in the light of those representations. The Government's response is attached at Annex E. A copy is also available at http://www.defra.gov.uk/consult/files/120201-iwac-consult-sum.pdf

8.10 As mentioned in paragraph 7.8 the Scottish Government and Welsh Government have been consulted.

9. Guidance

9.1 This instrument abolishes IWAC. Abolition of IWAC does not require guidance to be provided to stakeholders or enforcement agencies.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector beyond the savings which will accrue from abolition. (see paragraph 7.12)

10.3 The abolition of IWAC will have no regulatory or other cost impact on business or charities. Impacts on public bodies have a threshold of £5m. Therefore an Impact Assessment is not necessary. Abolition of IWAC is however mentioned in the Impact Assessment for setting up the new waterways charity in England and Wales.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring of the abolition of IWAC is not necessary as no further action is required once the Order comes into effect and IWAC's functions cease. However, the Government will keep under review the need for independent advice and creation of ad hoc bodies as the need arises to deal with specific waterways issues.

13. Contact

David Foot at the Department for Environment, Food and Rural Affairs Tel: 020 7238 5796 or email: david.foot@defra.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

INLAND WATERWAYS ADVISORY COUNCIL'S STATUTORY FUNCTIONS

England and Wales

As set out in section 110B of the Transport Act 1968, inserted by section 76 of the Natural Environment and Rural Communities Act 2006

(1) The Council –

(a) shall provide the Secretary of State and navigation authorities with such advice as appears to the Council appropriate about matters relevant to inland waterways in England and Wales, and

(b) may provide any other interested person with such advice.

Inland waterways include:

- canals (those managed by British Waterways, canal companies, local authorities and smaller independent bodies)
- navigable rivers (including those which are the responsibility of the Environment Agency, British Waterways, port authorities and smaller independent bodies)
- the Norfolk and Suffolk Broads, and
- the navigable drains of the Fens.

Scotland

As set out in section 110C of the Transport Act 1968, inserted by section 77 of the Natural Environment and Rural Communities Act 2006

(1) The Council –

(a) shall provide the Scottish Ministers and the Waterways Board with such advice as appears to the Council appropriate about matters relevant to inland waterways in Scotland –

(i) which are owned or managed by the Waterways Board, or

(ii) in respect of which the Waterways Board is providing technical advice or assistance, and

(b) may provide any other interested person with such advice.

GB

Other statutory functions include provision to be consulted on proposed orders:

(a) under section 104 and section 105 of and Schedule 13 to the Transport Act 1968 for changing the status or maintenance of BW waterways;
(b) under section 10 of and Schedule 1 to the British Waterways Act 1983 for additions to BW's undertaking
(c) under the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993 (S.I 1993:1119) and the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I.2006:1466) under the Transport and Works Act 1992 for works affecting BW waterways in England and Wales or any other waterways in England and Wales as required by the Secretary of State;
(d) under section 17 of and Schedule 2 to the British Waterways Act 1995; and
(e) under rules (S.S.I.2007:570) under the Transport and Works (Scotland) Act 2007 for works affecting BW waterways in Scotland or any other waterways in Scotland within the IWAC remit.

Annex B

SUMMARY OF THE INLAND WATERWAYS ADVISORY COUNCIL (ABOLITION) ORDER 2012

Article 1 – Citation and commencement
This article provides for the order to come into force on the day after that on which it is made. This will also be the day the transfer of British Waterways' functions in England and Wales to the Canal & River Trust occurs as it is intended that the order will come into force on the same day as the British Waterways Board (Transfer of Functions) Order.

Article 2 - Extent
Amendments to the various pieces of legislation described have the same extent as the provision amended. This is because some of the legislation only extends to England and Wales, some only to Scotland. Subject to this the order extends to the whole of the UK.

Article 3 – Abolition of the Inland waterways Advisory Council
Abolishes IWAC which was established by section 110 of the Transport Act 1968 in England, Wales and Scotland.

Article 4 – Consequential amendment of the British Waterways Act 1995
Makes the necessary consequential amendments to enable the boat standards appeal panel to function in England and Wales and in Scotland when IWAC is abolished and the functions of the British Waterways Board in England and Wales have transferred to the Canal & River Trust (the draft order to achieve this is being laid and considered alongside this instrument).

Article 5 – Repeals and revocations
Refers to the necessary repeals and revocations in the Schedule to reflect IWAC's abolition.

Schedule
Contains the necessary repeals and revocations to reflect IWAC's abolition.

Annex C

LIST OF CONSULTEES

Angling Trust
Ashby Canal Project
Associated British Ports
Association of Inland Navigation Authorities
Association of National Park Authorities
Association of Pleasure Craft Operators
Association of Waterway Cruising Clubs
Barge Association
Basingstoke Canal Authority
Boat Museum Society
Boating Association
Bristol Harbour Authority
British Canoe Union
British Marine Federation
British Ports Association
British Rowing
British Waterways
British Waterways Advisory Forum
Broads Authority
Business Link
Campaign to Protect Rural England
Canal Boat Builders' Association
Canoe England
Cardiff Harbour Authority
Central Council of Physical Recreation
Chesterfield Canal Partnership
Conservators of the River Cam
Country Land and Business Association
Countryside Council for Wales
Cyclists Touring Clubs
Driffield Navigation Ltd
Droitwich Canals Trust Ltd
Electric Boat Association
English Heritage
Environment Agency
Environment Trust for Richmond-upon-Thames
Essex Waterways Ltd
Fieldfare Trust
FTA Freight by Water

Forestry Commission
Grand Western Canal Country Park
Great Ouse Boating Association
Hereford and Gloucestershire Canal Trust
Heritage Alliance
Heritage Lottery Fund
Historic Narrow Boat Owners' Club
Homes and Communities Agency
Horse Boating Society
Hutchison Ports
Inland Waterways Advisory Council
Inland Waterways Association
International Mountain Bike Association
Local Access Forums
Local authorities in England and Wales
Local Government Association
Manchester Ship Canal Company
Medway Ports
Mersey Partnership
Middle Level Commissioners
National Association of Boat Owners
National Community Boats Association
National Farmers Union
National Offender Management Service
National Trust
National Trust Wales
Natural England
Norfolk and Suffolk Boating Association
Northern Canals Association
Peel Ports (Liverpool Port and Medway Port)
Port of London Authority
Ramblers Association
Residential Boat Owners Association
River Thames Society
Royal Society for the Protection of Birds
Royal Yachting Association
Save Our Waterways
Sleaford Navigation Trust
Southern Canals Association
Sport England
Steam Boat Association of Great Britain
Stroudwater Navigation
Sustrans

Thames User Group
Town and Country Planning Association
Towpath Action Group
United Kingdom Major Ports Group
Upper Avon Navigation Trust
Waterways Trust
Welsh Local Government Association
Wey and Arun Canal Trust
Wey Navigations
Wildlife Trusts
Wildfowl and Wetlands Trust
Wiltshire and Berkshire Canal Trust
Yacht Harbour Association