EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (WATERWAYS) (ENGLAND) REGULATIONS 2012

2012 No. 1291

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Non-Domestic Rating (Waterways) (England) Regulations 2012 ("the Waterways Regulations"), provide that the waterway hereditaments in England occupied, or if unoccupied, owned by Canal & River Trust (CRT) are to be treated as a single hereditament occupied by (CRT) and situated, for rating purposes, in the area of Birmingham City Council.

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

3.1 None.

4. Legislative Context

4.1 Most non-domestic hereditaments[1] in England appear on the local rating list for the local authority area in which they are situated and rates are paid to that local authority. Without specific legislation, separate hereditaments occupied by the same person are listed and assessed individually on local rating lists. Liability for rates for properties on local lists may attract reliefs, including charitable rate relief.

4.2 Some hereditaments appear on a central rating list and, in England, rates are paid to the Secretary of State for Communities and Local Government. The Central Rating List (England) Regulations 2005, which are made under section 53 of the Act, stipulate those hereditaments which are to appear on the central list for England rather than any local list and designate the person who is in occupation of them for the purposes of rating. These hereditaments include certain waterway hereditaments of the British Waterways Board. These hereditaments are to be transferred to (CRT). There are no reliefs available in relation to properties on a central list.

4.3 Under section 64(3)(b) of the Local Government Finance Act 1988 ("the Act") the Secretary of State may make regulations providing that in prescribed cases anything which would (apart from the regulations) be more than one hereditament shall be treated as one hereditament. Under section 65(4) of the Act such regulations may include rules for ascertaining who shall be treated as the owner or occupier of the hereditament.

[1] A hereditament is the unit of property which is the subject of rating. The statutory definition can be found in section 64 of the Local Government Finance Act 1988.

4.4 Once the hereditaments are transferred from the British Waterways Board to CRT they will no longer be on the central list and will, instead, fall to be assessed on local rating lists. The Waterways Regulations provide that certain hereditaments occupied by CRT, which would otherwise comprise more than one hereditament, are to be treated as one hereditament occupied by CRT and situated in the area of Birmingham City Council.

5. Territorial Extent and Application

This instrument applies in England. Powers under section 64 and 65 of the Act, in so far as they are excisable in relation to Wales, are vested in the Welsh Ministers.

6. European Convention on Human Rights

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

7. Policy background

7.1 The British Waterways Board is a public corporation with statutory responsibility for operating and maintaining certain waterways, docks and harbours in Great Britain. It is the Governments intention to transfer its functions and assets in England and Wales to a new charitable company, CRT, using powers in the Public Bodies Act 2011. The Scottish Government has decided to retain the Scottish waterways in the public sector.

7.2 A draft order, the British Waterways Board (Transfer of Functions) Order 2012, has been laid before Parliament. At the same time as that order is made, a transfer scheme will be made under section 23(1)(a) of the Public Bodies Act 2011, transferring certain property, rights and liabilities of the British Waterways Board to CRT. The transfer order is available at

www.legislation.gov.uk/ukdsi/2012/9780111521045/contents.

7.3 The British Waterways Board canal and river network in England is currently assessed for business rates as a single hereditament on the central rating list. Once their assets are transferred to CRT then, without these regulations, those hereditaments would fall to be assessed individually on local rating lists. This would give rise to many new hereditaments in different rating lists. The nature of the network makes this undesirable.

7.4 CRT have not asked to join the central rating list, as there is no charitable rate relief available on properties on the Central List . Therefore, to retain a single rating assessment for the operational land of CRT, the Waterways Regulations create a new single local list hereditament deemed to be located in the area of Birmingham City Council, so that it will appear on the Birmingham Rating List. The description of hereditaments falling within the single hereditament is identical to that in regulation 16 of the Central Rating List (England) Regulations 2005 that designated the hereditaments of the British Waterways Board.

8. Consultation outcome

8.1 Details of the consultations carried out on the transfer of the functions and assets of British Waterways Board to CRT is set out in detail in the Explanatory Document to the draft British Waterways Board (Transfer of Functions) Order 2012 available at

www.legislation.gov.uk/ukdsi/2012/9780111521045/memorandum/contents

8.2 The Department for the Environment, Food and Rural Affairs issued a consultation paper in March 2011 "A New Era for the Waterways" on the Government's proposal for moving inlands waterways into a new charity in England and Wales. Because some respondents had asked for further detail about the duties being transferred the Government decided there should be further consultation on these issues. On 12 September 2011 a further six week supplementary consultation was therefore issued. There was no general consultation on these rating amendments as the changes relate only to CRT. Consultation did take place with representatives of CRT.

9. Guidance

9.1 No guidance is required as the creation of this single hereditament does not alter the rating system.

10. Impact

10.1 An Impact Assessment for moving the inland waterways network in England and Wales into a new charity has been published in February 2012 by the Department for the Environment, Food and Rural Affairs, and is available at

www.legislation.gov.uk/ukdsi/2012/9780111521045/impacts

10.2 A separate Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 There are no plans to monitor or review the treatment of CRT in business rates.

13. Contact

Nick Cooper at the Department for Communities and Local Government Tel: 0303 44 43610 or email: nick.cooper@communities.gsi.gov.uk can answer any queries regarding the instrument.