

## SCHEDULE 2

### BRITISH WATERWAYS BOARD

#### PART II

#### MODIFICATIONS

##### **Modification of the 1962 Act**

- 2.—(1) The 1962 Act is modified as follows.
- (2) After section 1(2) there is inserted—
- “(2A) In the case of the British Waterways Board—
- (a) before appointing the chairman the Minister shall consult the Scottish Ministers; and
  - (b) two of the members shall be appointed by the Scottish Ministers after consultation with the Minister and the chairman.”.

(3) In section 1(6)—

    - (a) after “the Minister” where it first occurs, there is inserted “or, as the case may be, the Scottish Ministers”;
    - (b) after “to him” there is inserted “or them”; and
    - (c) the words from “and the Minister” to the end of the subsection are omitted.

(4) After section 1(6) there is inserted—

“(6A) In appointing persons to the British Waterways Board—

    - (a) the Minister shall have regard to the desirability of having members who are familiar with the special requirements and circumstances of particular regions and areas served by the Board in England and Wales; and
    - (b) the Scottish Ministers shall have regard to the desirability of having members who appear to them to have special knowledge of Scotland.”.

(5) In section 11, at the end there is inserted—

“(5) In the application of this section to the British Waterways Board, in relation to land situated in Scotland the references to the Minister are to be read as references to the Scottish Ministers.”.

(6) After section 12(3) there is inserted—

“(3A) The British Waterways Board shall not without the consent of—

      - (a) in the case of a proposed pipe-line in England and Wales, the Minister; or
      - (b) in the case of a proposed pipe-line in Scotland, the Scottish Ministers,

construct any pipe-line unless the pipe-line is required for the purposes of the business of the Board other than the operation of pipe-lines.”.

(7) After section 14(4) there is inserted—

“(4A) Subsections (3) and (4) above do not apply to the British Waterways Board.

(4B) The British Waterways Board shall have the power—

      - (a) for the purposes of the Board’s business in England and Wales, with the consent of the Minister; and

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- (b) for the purposes of the Board’s business in Scotland, with the consent of the Scottish Ministers,

to lend money to, or give a guarantee for the benefit of, any person for the purposes of an undertaking carried on by that person, or, where that person is a body corporate, any undertaking carried on by a subsidiary of that body corporate.

- (4C) The British Waterways Board shall have the power–

- (a) for the purposes of the Board’s business in England and Wales, with the consent of the Minister; and
- (b) for the purposes of the Board’s business in Scotland, with the consent of the Scottish Ministers,

to subscribe for or acquire any securities of a body corporate.

(4D) The Minister shall consult the Scottish Ministers before giving consent under paragraph (a) of subsection (4B) or (4C) above and the Scottish Ministers shall consult the Minister before giving consent under paragraph (b) of either of those subsections.”.

- (8) In section 14(5), for “and (4)” there is substituted “, (4), (4B) and (4C).”.

- (9) After section 15 there is inserted–

#### **“Compulsory purchase of land: British Waterways Board in Scotland**

**15A.**—(1) Section 15 of this Act does not apply to the compulsory purchase of land in Scotland by the British Waterways Board.

(2) The Scottish Ministers may authorise the British Waterways Board (in this section “the Board”) to purchase compulsorily any land in Scotland which the Board require for the purposes of their business there, and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply as if the Board were a local authority within the meaning of that Act.

(3) Subsection (2) does not authorise the Board to purchase compulsorily land which they have power to acquire by agreement under section 11(4) of this Act.

(4) The Scottish Ministers shall not under this section authorise the Board to purchase land for the purpose of constructing a pipe-line if the construction of the pipe-line requires their consent under section 12(3A)(b) of this Act.

(5) The power of purchasing land compulsorily in this section includes power to acquire a servitude or other right over land by the creation of a new right; but this subsection does not apply to a servitude or other right over any land which would, for the purposes of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 form part of a common or open space.”.

- (10) After section 17(1) there is inserted–

“(1A) The British Waterways Board may, with the consent of the Scottish Ministers, promote Bills in the Scottish Parliament and may oppose any Bill in the Scottish Parliament”.

- (11) In section 19, at the end there is inserted–

“(7) This section applies to the British Waterways Board in connection with the exercise of their functions in Scotland subject to the following modifications–

- (a) in subsection (1), references to the Minister are to be read as references to the Scottish Ministers;
- (b) in subsection (2), the references to the Minister are to be read as references to the Scottish Ministers, and the approval of the Treasury is not required in connection

with the borrowing of any sums for any purpose mentioned in paragraphs (a) to (h); and

(c) for subsections (3) and (3A) there is substituted—

“(3) In any financial year the net amount of sums borrowed by the British Waterways Board under this section for discharging their functions under this Act within Scotland or for meeting their obligations in connection with the discharge of their functions there shall not exceed the amount specified for that year for the purposes of this subsection in a Budget Act.

(3A) In subsection (3) above—

- (a) “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that year or any other year, and
- (b) “Budget Act” has the same meaning as in the Public Finance and Accountability (Scotland) Act 2000(1).”

(12) In section 20 at the end there is inserted—

“(7) This section applies to the British Waterways Board in connection with the exercise of their functions in Scotland subject to the following modifications—

- (a) references to the Minister are to be read as references to the Scottish Ministers;
- (b) references to the approval of the Treasury are omitted;
- (c) in subsection (1) at the end there is inserted “as modified by subsection (7) of that section”; and
- (d) subsections (3) and (5) are omitted.”

(13) After section 21 there is inserted—

**“British Waterways Board: guarantees by the Scottish Ministers**

**21A.—**(1) The Scottish Ministers may guarantee, in such manner and on such conditions as they may think fit—

- (a) the repayment of the principal of;
- (b) the payment of interest on; and
- (c) the discharge of any other financial obligation in connection with,

any sums which the British Waterways Board, in connection with the exercise of their functions in Scotland, borrow from a person other than the Scottish Ministers in exercise of their powers under section 19 of this Act.

(2) As soon as possible after any guarantee is given under this section by the Scottish Ministers, the Scottish Ministers shall lay a statement of the guarantee before the Scottish Parliament, and where any sum is issued for fulfilling such a guarantee the Scottish Ministers shall, as soon as possible after the end of each financial year, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before the Scottish Parliament a statement relating to that sum.

(3) Any sums required by the Scottish Ministers for fulfilling any guarantee under this section shall be charged on the Scottish Consolidated Fund.

(4) If any sums are issued in fulfilment of any guarantee given under this section by the Scottish Ministers in favour of the British Waterways Board, that Board shall make to the

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Scottish Ministers, at such times and in such manner as the Scottish Ministers may from time to time direct, payments of such amounts as the Scottish Ministers may so direct in or towards repayment of the sums so issued, and payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Scottish Ministers may so direct.”.

(14) In section 24(1)(b), after “Treasury” there is inserted “and, in the case of the British Waterways Board, the Scottish Ministers”.

(15) In section 24(2), after “Minister” there is inserted “after, in the case of the British Waterways Board, consultation with the Scottish Ministers”.

(16) In section 24(3)–

- (a) after “the Minister” (where those words first appear) there is inserted “and, in the case of the British Waterways Board, to the Scottish Ministers”; and
- (b) at the end there is inserted “and in the report which is, under this Act, to be laid by the Scottish Ministers annually before the Scottish Parliament”.

(17) After section 25(2) there is inserted–

“(2A) In the application of this section to the exercise by the British Waterways Board of their functions in Scotland–

- (a) in paragraphs (a) and (b) of subsection (1) and in subsection (2) any reference to the Minister includes a reference to the Scottish Ministers; and
- (b) where the purpose of the borrowing or raising of money relates wholly or partially to the exercise of the Board’s functions in Scotland, any reference in paragraph (c) and (d) of subsection (1) above to the Minister is to be read as a reference to the Scottish Ministers.”.

(18) After section 27(8) there is inserted–

“(8A) The functions conferred on the Minister by subsections (1) to (5) above:–

- (a) so far as relating to the exercise or performance by the British Waterways Board of their functions and activities in Scotland, shall be exercisable by the Scottish Ministers instead of by the Minister, but only after consultation with the Minister; and
- (b) otherwise, shall be exercisable by the Minister only after consultation with the Scottish Ministers.

(8B) The British Waterways Board shall furnish the Scottish Ministers with such returns, accounts and other information with respect to their property and activities in or as regards Scotland, and the property and activities in or as regards Scotland of any company which is their subsidiary, as the Scottish Ministers may from time to time require.

(8C) Without prejudice to the provisions of subsection (8B) above, the British Waterways Board shall, as soon as possible after the end of each accounting year, make to the Scottish Ministers a report on the exercise and performance by them of their functions in Scotland during that year and on their policy and programme, and the Scottish Ministers shall lay a copy of every such report before the Scottish Parliament.”.

(19) In section 28(1) after “the Minister is” there is inserted “or, as the case may be, the Scottish Ministers are”.

(20) In section 28(2) after “the Minister” (in each case where those words appear) there is inserted “or, as the case may be, the Scottish Ministers,”.

(21) At the end of section 28(4) there is inserted–

“(5) If it appears to the Scottish Ministers that the British Waterways Board propose to do anything, or have done anything, without their consent which, in their opinion, requires

their consent under this Act, they shall, after consultation with that Board, give to the Board such directions as appear to the Scottish Ministers to be appropriate.

(6) The directions which may be given under subsection (5) in a case where the Board have already done anything without the consent of the Scottish Ministers may in particular require the Board to discontinue any activity or to dispose of any assets, and directions may be so given notwithstanding that they make it necessary for the Board to dispose of assets at a loss.”.

(22) In section 86(4)–

(a) after “to the Minister” there is inserted “or, in the case of the British Waterways Board in respect of any development in Scotland, the Scottish Ministers”; and

(b) after “by the Minister” there is inserted “or, as the case may be, by the Scottish Ministers”.

(23) In section 86(5) after “the Minister” (in each case where those words appear) there is inserted “or, in the case of the British Waterways Board in respect of any development in Scotland, to the Scottish Ministers”.

(24) After section 86(6A) there is inserted–

“(6B) Subsection (6A) above does not apply to the British Waterways Board.”

(25) In section 89(1) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(26) In section 89(2) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(27) In section 90(1)–

(a) after “The Minister” there is inserted “or, the Scottish Ministers”; and

(b) after “his” there is inserted “or, as the case may be, their”.

(28) In section 90(2)–

(a) after “the Minister” (in each case where those words appear) there is inserted “or, as the case may be, the Scottish Ministers”; and

(b) after “he” there is inserted “or, as the case may be, they”.

(29) In section 90(7), for paragraph (b), there shall be substituted–

“(b) for subsection (3) there is substituted–

“(3) In relation to any inquiry held under this section in Scotland by the Minister, he shall have the like power to award expenses as if he were an arbiter under a submission and the parties to the inquiry were parties to the submission; and any award of expenses by the Minister under this subsection may be recorded for execution in the Books of Council and Session, and shall be enforceable accordingly.

(3A) In relation to any inquiry held under this section in Scotland by the Scottish Ministers, they shall have the like power to award expenses as if they were an arbiter under a submission and the parties to the inquiry were parties to the submission; and any award of expenses by the Scottish Ministers under this subsection may be recorded for execution in the Books of Council and Session, and shall be enforceable accordingly.”.

(30) In section 91(1)–

(a) after “The Minister” there is inserted “or, in the case of the British Waterways Board in respect of any local enactment in Scotland, the Scottish Ministers”; and

(b) after “his” there is inserted “or, as the case may be, their”.

(31) In section 91(2)–

(a) after “annulment” there is inserted “in the case of an order made by the Minister,”; and

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(b) at the end there is inserted “and in the case of an order made by the Scottish Ministers, in pursuance of a resolution of the Scottish Parliament.”.

(32) In the First Schedule—

(a) for paragraph 6(2) there shall be substituted—

“(2) Any member appointed by the Minister may at any time by notice in writing to the Minister resign that member’s office.

(3) In the case of the British Waterways Board any member appointed by the Scottish Ministers may by notice in writing to them resign that member’s office.”;

(b) after paragraph 7(1) there is inserted—

“(1A) Sub-paragraph (1) above applies to any appointment made by the Scottish Ministers of a member of the British Waterways Board as if any reference (however expressed) to the Minister is read as a reference to the Scottish Ministers.”;

(c) in paragraph 8(1)—

(i) for paragraph 8(1)(b) there shall be substituted—

“(b) the references to the approval of the Treasury (which, by virtue of Articles 2(1)(c) and 3(2) of the Minister for the Civil Service Order 1968(2) are to have effect as if they were references to the Minister for the Civil Service) are omitted.”; and

(ii) at the end there is inserted—

“(1A) Sub-paragraph (1) above applies to any member of the British Waterways Board appointed by the Scottish Ministers as if—

(a) any reference (however expressed) to the Minister is read as a reference to the Scottish Ministers; and

(b) the references to the approval of the Treasury are omitted.”

(d) in paragraph 8(2) after “the first appointment” there is inserted “by the Minister”;

(e) after paragraph 8(2) there is inserted—

“(2A) The Scottish Ministers shall, as soon as possible after the first appointment by the Scottish Ministers of any person as a member of the British Waterways Board, lay before the Scottish Parliament a statement of the salary or fees and of the allowances that are or will be payable under this paragraph; and, if any subsequent determination by them under this paragraph involves a departure from the terms of that statement, or if a determination by them under this paragraph relates to the payment of, or of payment towards the provision of, a pension to or in respect of, a member of the British Waterways Board, the Scottish Ministers shall, as soon as possible after the determination, lay a statement thereof before the Scottish Parliament.”; and

(f) in paragraph 8(3) after “Treasury” (which, by virtue of Articles 2(1)(c) and 3(2) of the Minister for the Civil Service Order 1968 is to have effect as if it were a reference to the Minister for the Civil Service) there is inserted “or, in a case where sub-paragraph (1) above is applied by sub-paragraph (1A), by the Scottish Ministers,”.

### **Modification of the 1968 Act**

3.—(1) The 1968 Act is modified as follows.

(2) After section 43(2) there is inserted—

“(2A) The Scottish Ministers may from time to time make grants to the Board.”.

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(2) [S.I. 1968/1656](#).

(3) In section 43(5) there is inserted at the beginning of that subsection “Subject to subsection (6) below,”.

(4) After section 43(5) there is inserted—

“(6) Where an excess under subsection (5) of this section arises in relation to the activities of the Board in Scotland, the Scottish Ministers may require that excess, so far as it appears to them, after consultation with the Board, to be surplus to the requirements of the Board, to be paid over to the Scottish Ministers.”.

(5) In section 46(2)(a) after “the Minister” there is inserted “or, in the case of the Waterways Board, in respect of their functions in Scotland, the Scottish Ministers”.

(6) After section 48(1) there is inserted—

“(1A) In the application of this section to the Waterways Board in connection with any activity in Scotland, any reference to the Minister shall be construed as a reference to the Scottish Ministers and, in subsection (6) the words “and with the approval of the Treasury” shall be omitted.”.

(7) After section 49(4) there is inserted—

“(4A) In the application of this section to the development of their land in Scotland by the Waterways Board, any reference to the Minister shall be construed as a reference to the Scottish Ministers.”.

(8) In section 50(1) after “the Minister” there is inserted “or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland, the Scottish Ministers”.

(9) In section 50(5) after “the Minister” there is inserted “or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland, the Scottish Ministers”.

(10) In section 50(9) after “the Minister” there is inserted “or, in the case of the Waterways Board, in connection with the exercise of their functions in Scotland, the Scottish Ministers”.

(11) In section 51(6)(a) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(12) In section 51(6)(b) after “has” there is inserted “or, as the case may be, the Scottish Ministers have”.

(13) In section 51(6)(c) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(14) In section 51(6)(d) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(15) In section 51(6) after paragraph (d)—

(a) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”; and

(b) after “to him” there is inserted “or, as the case may be, to them”.

(16) After section 57 there is inserted—

**“Grants for research or development in connection with transport services by inland waterways in Scotland**

**57A.** Without prejudice to the Minister’s power to make grants for research or development in connection with transport services by inland waterways in Scotland under section 57, the Scottish Ministers may make grants upon such terms and conditions as they think fit to any person towards expenditure incurred or to be incurred by that person—

(a) in carrying out research in connection with the provision or improvement of transport services by inland waterway in Scotland; or

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(b) in developing for the purposes of the provision or improvement of such services or facilities the results of any research carried out by, or any invention or idea of, that or any other person.”.

(17) In section 104(2) after “the Minister” there is inserted “or, in the case of a waterway in Scotland, the Scottish Ministers”.

(18) In section 104(3) after “The Minister” there is inserted “or, in the case of a waterway in Scotland, the Scottish Ministers”.

(19) In section 104(4)–

(a) after “annulment” there is inserted “in the case of an order made by the Minister.”; and

(b) at the end there is inserted “in the case of an order made by the Scottish Ministers, in pursuance of a resolution of the Scottish Parliament.”.

(20) After section 105(3) there is inserted–

“(3A) In the case of a waterway or any part of a waterway in Scotland, the power of the Minister under subsection (3) above shall be exercisable, instead, by the Scottish Ministers; and where the Scottish Ministers exercise that power, the reference in subsection (4) below to either House of Parliament shall be construed as a reference to the Scottish Parliament.”.

(21) In section 106(2) after “the Minister” there is inserted “or, in relation to any waterway or any part of a waterway in Scotland, the Scottish Ministers”.

(22) In section 106(3)–

(a) after “the Minister” there is inserted “or, in relation to any waterway or part of a waterway in Scotland, the Scottish Ministers”; and

(b) after “he is” there is inserted “or, as the case may be, they are”.

(23) In section 106(4) after “the Minister” there is inserted “or, as the case may be, the Scottish Ministers”.

(24) In section 106(5)–

(a) after “the Minister notifies” (in each case where those words appear) there is inserted “or, as the case may be, the Scottish Ministers notify”; and

(b) after “he is” there is inserted “or, as the case may be, they are”.

(25) In section 106(6) for the words from “if the waterway” to “in Scotland” there is substituted “the Scottish Ministers shall give such notice in.”.

(26) After section 106(7) there is inserted–

“(8) References in this section to an order made under section 105(3) of this Act include references to such an order made by the Scottish Ministers by virtue of section 105(3A) of this Act.”.

(27) In section 109(2)–

(a) after “the Minister” there is inserted “or, where the particular agreement or transfer relates to a waterway or part of a waterway in Scotland, the Scottish Ministers”; and

(b) after “him” there is inserted “or, as the case may be, them”.

(28) After section 112(6) there is inserted–

“(6A) In the case of an order made under this section in respect of any canal in Scotland which is not comprised in the undertaking of the Waterways Board, any reference in this section (however expressed) to the Minister is to be construed as a reference to the Scottish Ministers.”

(29) In section 117(8)–



(a) after “the Minister,” there is inserted “,as respects bridges in Scotland, the Scottish Ministers”; and

(b) “Scotland or” is omitted.

(30) In Schedule 13, the existing words of paragraph 1 shall be sub-paragraph (1) of that paragraph and there is inserted after sub-paragraph (1)–

“(2) In the case of an order made under a provision of this Act mentioned in sub-paragraph (1), any reference in this Schedule (however expressed) to the Minister is to be construed as a reference to the Scottish Ministers.”.

### **Modification of the 1975 Act**

4.—(1) The 1975 Act is modified as follows.

In section 9(1)(3) for “the Secretary of State for Scotland” there shall be substituted “the Scottish Ministers”.

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(3) Section 9(1) of the 1975 Act modifies section 16 of the [British Transport Commission Act 1975 \(c.1v\)](#) which enables the Commission (now the British Waterways Board by virtue of sections 31 and 32 of the 1962 Act) to make canal byelaws. Section 9(1) applies section 16 to Scotland and (as originally enacted) for the purposes of its application to the British Waterways Board substitutes for references to the Minister and the London Gazette, respectively, references to the Secretary of State for Scotland and the Edinburgh Gazette. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c. 46\)](#).