



HOUSE OF LORDS

Revised transcript of evidence taken before

**The Merits of Statutory Instruments Committee (now Secondary
Legislation Scrutiny Committee)**

Inquiry on

**DRAFT BRITISH WATERWAYS BOARD (TRANSFER OF
FUNCTIONS) ORDER 2012
AND
DRAFT INLAND WATERWAYS ADVISORY COUNCIL
(ABOLITION) ORDER 2012**

Evidence Session No. 1.

Heard in Public.

Questions 1 - 46

TUESDAY 24 APRIL 2012

3.45 pm

Witnesses: Richard Benyon MP, Robin Evans, Nigel Johnson and John Kittmer

Members present

Lord Goodlad (Chairman)
Baroness Butler-Sloss
Lord Eames
Baroness Eaton
Lord Hart of Chilton
Lord Methuen
Lord Norton of Louth
Baroness Morris of Yardley
Lord Plant of Highfield
Lord Scott of Foscote

Examination of Witnesses

Richard Benyon MP, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs; **Robin Evans**, Chief Executive of British Waterways and Chief Executive Designate of Canal & River Trust; **Nigel Johnson**, Legal Director and Corporate Services Director of British Waterways and Company Secretary to Canal & River Trust; and **John Kittmer**, Deputy Director for Inland Waterways, Department for Environment, Food and Rural Affairs.

Q1 The Chairman: My Lords, I welcome the Minister and his team. Before we start we should declare our interests. Does anyone have any interests to declare?

Lord Methuen: I am a sometime narrow-boat owner, have partaken of narrow-boat holidays since 1952 and regularly walk along the canal locally.

Lord Eames: I am a member of the Royal Yachting Association.

Baroness Butler-Sloss: Apart from walking down as many towpaths as I get the chance to, I do not think that I have an interest to declare.

Baroness Eaton: I have taken boating holidays but have no financial interest.

Lord Scott of Foscote: I declare an interest in that from time to time I ride horses down towpaths. I think we ought to continue doing that.

The Chairman: My Lords, thank you. Minister, welcome, and thank you very much indeed for coming. We are being recorded but not televised. Therefore, for the record, will you please introduce the members of your team, to whom we are extremely grateful for their attendance?

Richard Benyon MP: Certainly, Lord Goodlad. On my left is Robin Evans, the chief executive of British Waterways and Nigel Johnson, the legal director, both of whom have been instrumental in steering us along the path to transition to the Canal & River Trust. John Kittmer is the deputy director for inland waterways at Defra. For the record, I am the Minister for the natural environment and fisheries.

Q2 The Chairman: Thank you very much indeed, Minister. We are here to discuss the two draft waterways public bodies orders. We have, subject to your convenience, about 45 minutes to an hour to do so. Can I start off by asking the Minister what he thinks are the main benefits of the changes proposed in these draft orders for the users of our waterways?

Richard Benyon MP: One of the many reasons why we are excited about the dénouement that we are about to reach, with your assistance, although there are other hurdles we have yet to cross, is that we think we can provide waterways users with a long-term solution to many of the concerns that they have rightly held over many years. We can give them assurance of funding as much as any Government ever have or could. We can unlock the potential of a charitable body to manage its assets in a particular way and seek new sources of income. All that is tied in with various security locks—that is a bad pun—to ensure that, if at some point in the future the charity is not run properly, the current benefits and rights that waterways users and canal users have can be secured through the governance arrangements, but most of all, that those who use and love our waterways can be part of the management of them in the future. That will be of great benefit to the waterways in the future, not just to those who use them for boating but for other activities as well. These are

linear national parks, if you like, and have huge biodiversity potential. They also have huge leisure potential in terms of what goes on on and beside the water.

Q3 Lord Scott of Foscote: I wish to pursue that a little, Minister. Section 8(1) of the 2011 Public Bodies Act requires that a Minister can make an order under the relevant sections only if it is considered that the order “serves the purpose of improving the exercise of public functions”. That is broken down into efficiency, effectiveness, economy and securing appropriate accountability. Which of those do you rely on?

Richard Benyon MP: Working backwards, I think that the new body is certainly more accountable.

Q4 Lord Scott of Foscote: Accountable to whom?

Richard Benyon MP: The new body that will be managing the waterways will be accountable to its members in a way that is not currently the case.

Q5 Lord Scott of Foscote: Accountability is generally taken to be accountability to Ministers because they have the relevant power. The existing organisation is accountable to Ministers, but will the charity be accountable to Ministers?

Richard Benyon MP: Ministers will have the final say on, for example, compulsory purchase and other powers, but the new body will be much more accountable to those who use the waterways, who currently have to rely on the good offices of seeking to bend the ears of British Waterways, and occasionally of Ministers, on issues such as funding and other governance. They will be locked into a governance structure that we believe is absolutely in their interests and will mean that the board of Trustees of the Canal & River Trust will be accountable to them.

Q6 Lord Scott of Foscote: I certainly would not question your motive, but what I am finding difficult to understand is how the actual governance will be significantly different from

the present governance in the respects that are required for the purposes of Section 8(1) of the Act.

Richard Benyon MP: Can I ask the legal officer about this?

Nigel Johnson: One key area where I think there is going to be legal accountability to the Minister concerns the waterways being placed into what we are calling the infrastructure trust. Therefore, the charity will be a corporate trustee of the infrastructure trust, of which Government is the settlor. Under the terms of that trust settlement, the charity will remain answerable to Ministers as the settlor for the proper stewardship of the inland waterways.

Q7 Lord Scott of Foscote: But the charity will be answerable to the Charity Commission, will it not?

Nigel Johnson: Yes, as a generic regulator, but under the trust settlement the obligations will be particularly tailored to the role of the charity as the steward and guardian, if I can put it like that, of the waterways in perpetuity.

Q8 Lord Scott of Foscote: In the discussions that I am sure you have had with the Charity Commission, has it been explained to the commission that the Minister will have an overseeing role in regard to the affairs of the charity?

Nigel Johnson: Yes, the legal framework has been discussed in considerable detail with the Charity Commission.

Q9 Lord Scott of Foscote: Has that particular aspect of it been discussed?

Nigel Johnson: Yes, it has.

Q10 Lord Scott of Foscote: And is the Charity Commission content that the Minister should have an overriding control over the functions of the charity?

Nigel Johnson: It is a question of balance. There are high-level duties under the trust instrument. That applies to the duties of any trustee. They are answerable to the settlor of the trust but their duties are relatively high level. It is a question of balance between

providing appropriate accountability to Ministers as against still exercising your charitable independence.

Richard Benyon MP: I should just add that the charity will be accountable to the Minister for the money it spends because Government will still be funding it, and the Minister is accountable to Parliament, so there is quite a lot of accountability there.

Q11 Lord Scott of Foscote: The money that the Government provide to the charity comprises considerable sums each year, as we know. Once it is with the charity, the charity will have the obligation to deal with it properly. It will be part of the charity's funds and it will be accountable to the Charity Commission, as all charities are. As I am sure you know, Section 1A of the Charities Act 1993 provides that in the exercise of its functions the Charity Commission cannot be "subject to the direction or control of any Minister".

Richard Benyon MP: The fact is that this charity, unlike most charities, will still receive many millions of pounds of public money in terms of grant. There is a level of accountability there whether people want it or not. That is quite right, as this is public money.

Q12 Lord Scott of Foscote: I do not understand that, because the obligation to provide these funds is going to be enshrined in these regulations, is it not? That will be a legal obligation.

Richard Benyon MP: It is a funding agreement.

Lord Scott of Foscote: We are looking at 15 years at the moment. What happens after that will be for our successors to consider.

Nigel Johnson: The Charity Commission has issued guidance to charities because nowadays many charities exercise public functions. The Charity Commission explored this issue with us in considerable detail and has published guidance on it. Indeed, we referred to its guidance when going through the various tests of charitable independence. The Charity Commission accepts that you receive grant moneys subject to appropriate conditions with regard to how

they can be spent. As you would expect, any proper use of public funds must be subject to conditions. The Charity Commission accepts that appropriate conditions can be put in place which do not intrude on the independence of the charity.

Lord Scott of Foscote: I find this very difficult. The charity, as a charity, will have to provide accounts each year for the Charity Commission, as all charities do. The Charity Commission is supposed to look at those and see that the administration of its affairs by the charity concerned corresponds with what is required of the charity.

Nigel Johnson: But the funding agreements go beyond simply proper spending; they seek to achieve certain outcomes. With grant funding agreements it is acceptable for funders to seek specific outcomes in respect of their funding and the head of terms of the grant agreement does have within it—

Q13 Lord Scott of Foscote: What are the specific outcomes that you have in mind?

Nigel Johnson: They are the primary functions of ensuring a certain level of infrastructure integrity. They are also to do with ensuring that various flood prevention functions are maintained and that public access to towpaths, which is not a legal right at the moment, is maintained. Each of those has certain standards under them.

Q14 Lord Scott of Foscote: And how is this different from the obligations and powers that at the moment are exercised and owed by British Waterways?

Nigel Johnson: For example, there is no public right of access to all the towpaths at the moment. Only certain towpaths are public highways dedicated under a highways Act. That will be an extension of public benefit. The public have been excluded from some towpaths within living memory, but it will be an obligation under the trust settlement, and indeed the funding agreement, that such access be maintained to certain standards.

Q15 Lord Scott of Foscote: I had always supposed—you can tell me if I am wrong—that the public had public rights of access on towpaths because they have used them for a sufficient length of time for the public right to be a matter of presumption.

Nigel Johnson: Only a minority of towpaths are designated as official public rights of way, even though the practice nowadays is open public access. These arrangements secure that for the future.

Q16 Lord Scott of Foscote: Pursuing that point, who do the towpaths actually belong to? Who has the legal estate?

Nigel Johnson: British Waterways at the moment.

Lord Scott of Foscote: British Waterways has the legal estate?

Nigel Johnson: Yes. Generally, British Waterways will own the canal corridor between the boundary on what we call the offside, including the navigation channel, and the towpath up to the hedge or boundary feature on the far side of the towpath.

Richard Benyon MP: Lord Scott, can I understand your line of questioning? Are you concerned about charitable donations being sought from an individual who may want to give money to a particular canal or a reach of a canal because he or she particularly minds about that, and that therefore that would be a restricted fund in the typical way in which a charitable donation can be made but it has to be registered as a restricted area of donations in the usual way?

Lord Scott of Foscote: A donation can be made to a charity—that is probably a better way of describing it than calling it a charitable donation—subject to whatever conditions the donor seeks to impose and the charity is willing to accept. There are no limits on that.

Richard Benyon MP: I hope that we have answered your question.

Q17 Lord Scott of Foscote: I am still puzzled as to what the difference is between what the charity is going to be doing and what British Waterways has been doing. The relevance

of that worry is that the satisfaction of the efficiency, effectiveness, economy and securing appropriate accountability requirements of the Act becomes a little difficult to follow.

Richard Benyon MP: It is important that the Committee understands this issue, and if we have to back it up with written explanation, we will do so. The important thing is that we think the new vehicle—the charity—will unlock many beneficial things. We have striven in this building to ensure that it has cross-party support and that it is developed with the enthusiasm of those who use the waterways. We are pleased with the enthusiasm that has been shown for the structure that we have developed through the new governance arrangements. We think that it is beneficial. The Charity Commission would not have registered the charity on 4 April, as it did, if it did not believe that it fulfilled all the requirements in terms of charity law, and that the requirements that we are putting in place in terms of the Government's future relationship with this charity were not absolutely in accordance with any relevant legislation. I hope that that gives the Committee the assurance that it requires. If not, I and my colleagues are willing to develop the matter further.

Q18 Lord Plant of Highfield: I suppose that my question follows on from Lord Scott's question. Will the complexity of the purpose and function of this new charity possibly lead to a loss of focus? After all, the charity will establish a community interest company that will trade, it will be in receipt of donations from the general public and it will have quite extensive legal powers to enter buildings and property, to inspect vessels, to make by-laws and to undertake compulsory purchase programmes. I just wonder how compatible all those aims are, in management terms and in terms of developing the strategy of the charity. Further to Lord Scott's question, can you think of any other charity that has this sort of range of powers, so that we could say, "Yes, it is likely to work because it is a bit like such-and-such a charity, which works well with similar kinds of powers"? I think that we are

slightly nervous about the complexity of what is being done and whether there are compelling precedents for it.

Richard Benyon MP: There are other charities that have powers that are covered by some of the examples that you have given—the National Trust, for example. We should remember that British Waterways was a nationalised entity that was created out of privately owned canals, that it has secured its existence by statute and that this is perfectly in keeping with processes that have been used in other circumstances where a charity has taken on those functions, as have some private bodies.

John Kittmer: It may be helpful if I mention that, although we are also transferring a whole series of powers that were consolidated after nationalisation, the origin of many of the powers such as compulsory purchase powers was in the original canal Acts in the 18th century. We would not have a canal network if the joint stock companies had not approached Parliament, as they were required to do as a condition of forming joint stock companies, to ask for the powers to make compulsory purchase orders. At the time, in the 18th and 19th centuries, Parliament granted the joint stock companies those powers subject to various controls of the sort that we have in the modern legislation. For example, compulsory purchase will ultimately be decided by Ministers after the usual land acquisition procedure set out in statute. The sorts of safeguards that existed when the joint stock companies were creating the canals in the first place have continued over time, although they have been refined and modernised, and we are returning them to a charity that—just like the joint stock companies previously—will be a company guaranteed and we think is a suitable vehicle to hold these powers.

Q19 Lord Plant of Highfield: If we follow through that analogy with the National Trust, would the legal relation with Government be much the same, in that Ministers would have oversight of compulsory purchases in the same way as they would with the National Trust?

John Kittmer: There are already a number of canals that are held by charities or private companies. The National Trust and the Inland Waterways Association run canals, which also have, reflecting their history, the same plethora of statutory powers and back-up. There are also private companies such as Peel Holdings, which runs the Manchester ship canal and the Bridgewater canal, which again have a similar plethora of statutory powers. The department keeps an eye on those and sometimes has to bring forward orders for those companies, as it will do for the Canal & River Trust. None of this is new stuff; on the contrary, in some ways, we are returning to the historical situation in which the canals were created in the first place.

Q20 Baroness Morris of Yardley: I apologise for continuing on this line of debate, but I think that I should be relatively quick given that a lot has already been explained. This relationship between the freedom of the charity—I understand that one thrust of the Government's policies is to free people up to take charge of themselves to design their own future—and what the Minister quite rightly says about the necessity to be accountable for the expenditure of public funds is a crucial point. However, part of me wonders whether this is worth doing, because it is so complicated. Given that the tendency in other areas of government activity is for the Government to use the funding agreement to determine a direction of travel, this is one issue on which I would not mind having a little bit of clarification. To take another example, the non-statutory national museums are governed in a similar way through a funding agreement, but the trend within DCMS is to loosen the requirement for detailed targets and, holding back from that, to put the money out in a different way. Perhaps the crux of my question is: given that the funding agreement will be your major hold—in the nicest sense of the term—over the organisation, what is your direction of travel? I see that you need certain powers, as you have outlined, but what is your thinking about the direction of travel for that relationship between safeguarding the

public funds through the funding agreement and the Government's political direction, which is to free up volunteers so that they can take control? Can you say where you are now and where you hope to be in five years' time? What will that relationship look like?

Richard Benyon MP: I hope that the relationship will be better and more appreciated by those who want to be involved, who are the people who have a particular interest. A key guiding point for finance has been the condition of the assets, on which there has undoubtedly been concern in recent years. For us in Defra, the key measure has been the condition of the class D and E assets, whose continuing funding has been a problem in recent years—over the years we have had endless debates on these issues in Westminster Hall, in which I also participated as a back-bencher—and that is why the financial agreement that we have reached has been described as tough but fair, which I think is a good description. The trustees would not have signed up to that if they in any way felt that they would be unable to manage those key assets through into the future. What we have managed to predict is that there will be a continuing problem for a few years, but the situation will then improve at a point in time not many years off—is that in 2020, Robin?

Robin Evans: The condition of the assets deteriorates a bit and then levels off but is stable.

Richard Benyon MP: Those key stakeholders will be able to say, “Right, this is something that we can buy into, because we will now be able to take a long-term view”—as long-term a view as you can with public money—“that we can get this on to the right footing.” In addition, I think that we have been quite pessimistic in our predictions about what the charity will be able to lever in through charitable donations, because we pitched this right at the zenith of the banking crisis. Given that we are looking at an uplift of 3% in the property portfolio and with the charitable donations as well, I think that we have taken a really pretty pessimistic view, but we have been able to give that financial projection going forward so I think that we are in a place that we can be confident about.

Robin Evans: You ask whether it is worth it. As the chief executive who runs British Waterways and as the person who will be the chief executive who runs the Trust, I absolutely think that it is worth it. For me, there are two fundamental reasons for changing. First, as a public corporation we are funded by Government. Government is great, in that it has lots and lots of money that it can give in a crisis, but it is relatively difficult to get money out of Government for long-term maintenance. We are a national treasure, with 2,000 miles of canals including wonderful 200-year old aqueducts and thousands of bridges and locks, which need constant maintenance. Trying to get regular funding for maintenance work from Government is difficult, as it fluctuates enormously. Trying to put a sustainable secure funding arrangement into the business was critical, and the 15-years funding agreement is really good. Those 15 years of funding, along with the more than £100 million of commercial income that we already have as part of the dowry that the Government has given us, will enable the charity to start planning its finances on a medium-term basis and putting its repairs and maintenance on a strategic level.

Baroness Morris of Yardley: So the predictability of the funding is crucial.

Robin Evans: Yes, and we will build up the other funding from charitable grants to enhance that funding. That will give us many more options. As a public corporation, we have some freedom but we do not have the freedom to trade and to go out and to generate income as we will as a charity. Our whole funding base will be much more secure.

Another great benefit—the Minister has referred to this—is that currently, as a public corporation, we are a pretty remote organisation, although we try very hard to engage. The Minister appoints the board, and the board appoints the executive and we get on with the business. The new arrangement for the charitable trust involves 150 people in its governance up and down the country, locally and nationally. It will be a much more engaged organisation that will reflect the will of the people. Some 98% of the people in this country consider the

canals and waterway to be a treasured national asset, and we are putting that much more in their hands. We will become a much more responsive organisation. That is a huge benefit, too. It will make us run the waterways in a much more beneficial way.

Q21 Lord Methuen: Who are those 150 people?

Robin Evans: There are: 10 trustees, who are responsible to the Charity Commission for the proper running of the Trust; some 35 members of the council, which is the body that appoints the trustees, who are the actual members of the company who are representative of—

Q22 Lord Methuen: Who are the council? How were they selected? How did they get there?

Robin Evans: The department put together a transitional appointments committee made up of four people, who looked at who should represent the waterways. It looked at users and all the different representatives, including people who are interested in the environment, in heritage, in boating and in business. There are a whole range of interests representing the stakeholders of the waterways.

Q23 Lord Methuen: Did that include people from the continuous boating group and the bargee group?

Robin Evans: The 35,000 licensed boaters on the waterways elected four representatives on to council. Everyone who was a licence-holder had the ability to elect someone on to the council.

Q24 Lord Scott of Foscote: Are the licence-holders people who have mooring rights, or are they just the people who actually travel?

Robin Evans: Everyone who floats a boat on our waterway needs a licence and a home mooring. If they continually cruise, they do not need a mooring.

Lord Scott of Foscote: But they can be moored for up to 14 days.

Robin Evans: Yes. Everyone on our waterway who has a licence—those 35,000 licence-holders—elected people to council. The remainder comes from the fact that we have 13 waterway partnerships based at a local or regional level, each of which will have 10 people on it to reflect local interests, local stakeholders and local representations. Again, local boat owners and people in the local vicinity have the ability to apply to be on those waterway partnerships.

Richard Benyon MP: We tweaked the local partnerships following the consultation. We got a very clear steer that people wanted them to be structured in a way that reflects the locality in a more coherent way as far as the waterway is concerned, so we responded to that. Throughout, I feel that we have been über-consulters, if you like, because at every stage we have gone out to consultation and we have changed our proposals accordingly. Rather than the Government just saying, “This is how it is going to be”, we have tried to reflect what people have asked for.

Q25 Baroness Morris of Yardley: Can I just ask one follow-up question to my original question? Further to the Minister’s comments, I can absolutely see the advantage of having 15 years of pledged funding, but—I go back to the analogy of the museums, because I know a little bit more about them than I do about the British Waterways Board—is the new arrangement going to be protected from the Treasury’s power to withdraw that funding during those 15 years and from Ministers saying, “Well, you are still going to get that money next year, but I have now decided that there is a bit of a crisis in this bit of your world, and I want you to do this”? If the charity has that freedom, that is quite different from the freedom that other cultural organisations currently have.

Richard Benyon MP: I quite understand your concern. The trustees would not have signed up to this unless it was a legally binding agreement. As far as the water users are concerned, they will know that—to take one example—the £450 million of property assets that we are

transferring have been salivated over by successive Chancellors of all parties, who would dearly have loved to get their hands on them, but those assets are going to be transferred in perpetuity, with an £800 million finance package running alongside, which is part of a legally binding agreement. That is an assurance—

Baroness Morris of Yardley: So if the charity does not spend all its money in one year, you cannot claw it back as a departmental underspend.

Richard Benyon MP: No, we cannot.

Robin Evans: Even more exciting is that, when we do something really efficient and when we find new income streams, we keep them. The department will not be able to say, “Ah, I see that you have a bit more money, so you will need less from us.” That is a real incentive for the charity to go out and bust a gut in getting lots more resource in for the charity, which the charity will be able to retain. That is very exciting.

Q26 Lord Scott of Foscote: Minister, I am just thinking about what you said about community involvement. For the canal with which I am most familiar, because it is near where I live, which is the Grand Union canal that runs the length of the country—I do not know where it stops, but it probably does not go as far as Scotland although perhaps not far short of that—am I to understand that there will be community controllers in different areas, so there might be one in Northamptonshire and another in Warwickshire and so on, or will it all be subject to the same central control?

Richard Benyon MP: We are deliberately intending not to have a centralised Government bureaucracy decreeing what will happen. In the same way as British Waterways has areas and canal system managers, there will be canal system managers under the charity, but they will work very closely with the local partnership chairman and board, to which they will to some degree be accountable. On the issue of the Grand Union canal, which is a very long

canal that goes across many different municipal boundaries, perhaps Robin Evans can explain the arrangements that will cover that.

Robin Evans: The Grand Union canal, which starts in London and ends in Birmingham, will go through three areas. The trust will not be run on a federal basis; it is a national network, run as a national network, with a national strategic view. It has regional advisory partnerships—

Lord Scott of Foscote: So they are advisory partnerships.

Robin Evans: So you will not suddenly find that everything is painted differently as you cross a border or that there are different charges or anything like that. It is run as a national network, but the waterway partnerships, which are based at local-ish level, will provide much more information to us about local needs, ambitions and aspirations and help us to communicate and engage with local authorities, which is something that a big national central organisation finds great difficulty doing.

Q27 Lord Scott of Foscote: Was that something that British Waterways would have liked to have done but did not do?

Robin Evans: We have been through a number of iterations in the way that we manage our waterways. The most efficient way, we have found, is to be quite central with quite small teams looking after central functions, so we have a small engineering team that gets our best people to cover a wide area and a central property team. There is always a balance to be overseen, when you bring that good expertise to the centre, that you create some remoteness. This is redressing the balance between getting that efficiency by running things as a network and having that check by having local involvement.

Lord Scott of Foscote: In summary, there will be central control, but that central control will be fed information coming from the various different areas.

Robin Evans: They will provide strong advice—

Lord Scott of Foscote: And you will then do with that whatever you think is right to do.

Nigel Johnson: The partnerships are based around the management units, because they are what determine the local spending priorities subject to the central strategy. Because the partnerships are matched with the management areas, they will be able to exercise influence over those spending priorities.

Lord Scott of Foscote: So the partnerships are determining spending priorities, but it is not their money. The money is still subject to central control.

Nigel Johnson: Exactly. The money is still subject to the control of the charity.

Robin Evans: A complicated but rather elegant part of the governance framework is that all the chairs of the local partnerships sit on council. Although they will advise as a local chair they are part of the 35-strong council, so their influence is at two levels. They advise from their local waterway, but when they sit on council they are quite a large body of people who are involved in overseeing what is happening day to day.

Q28 Lord Scott of Foscote: Are they what are referred to in some of the literature as stakeholders, or is that something else?

Robin Evans: By stakeholders, we really refer to everyone who has a genuine interest in the well-being of the canals, which is generally everybody.

Baroness Morris of Yardley: Society at large.

Richard Benyon MP: So when you use your bicycle or ride your horse down the towpath, you are a stakeholder.

Q29 The Chairman: Minister, can I now move to the community interest company and its activities as a subsidiary? *[Interruption.]* Oh, do you have to vote?

Richard Benyon MP: I think it is a 10-minute rule bill and I suspect that I will be invited not to vote by certain unnamed spirits.

The Chairman: How do you envisage the future activities of the community interest company as a subsidiary of the charity?

Richard Benyon MP: Of the charity as a whole?

The Chairman: I am asking about the trading activities of the community interest company.

Robin Evans: Charities are not allowed to trade. British Waterways has a very large property portfolio, most of which it just owns and for which it receives rents but does not trade. It trades some of the portfolio when it seeks planning permission and sells it. Sometimes it develops the portfolio itself through joint venture companies and sells the buildings, so that is a form of trading. We will place some of our property in a community interest company to allow it to continue to do that. We also have a subsidiary called British Waterways Marinas Limited, which acquires and runs marinas—big, large, inland waterway marinas. That, too, will be in the community interest company. All the assets of the community interest company or the company itself are wholly owned by the charity and all its surpluses and profits can come only to the charity, so it is a way of allowing commercial activity and making sure that we do not lose any of those opportunities to create resource and wealth for the waterways through having a trading arm, as almost every charity does in one way or another.

Q30 The Chairman: And you envisage no problems about the way forward?

Robin Evans: None that we can see so far, sir. It is a legitimate vehicle to use. Charities use it to run shops and all sorts of activities which are not charitable to enable them to grow their income for charitable purposes.

Q31 Lord Methuen: I think that we have largely covered this business of additional income and how you see it coming through volunteers and so on. One point I noticed in going through the papers was that you seem to have what are presumably wayleave

contracts with a number of communications companies. This is mentioned in the transfer to Scotland. Can you confirm that that is so because substantial sums of money are involved?

Robin Evans: Yes, it is a very big bit of our business. We earn about £20 million a year from utilities through gas pipes, water pipes and electricity cables going across our land, under it, over it or along the towpath. We require every utility organisation or company to pay us a wayleave for the right to do that. That will continue. We have a fibre optic network which we put into the towpath as a joint venture some time ago with Marconi. Fortunately, we sold out of that before that company disappeared. We get a very handsome annual income from that, so that is a really good way in which the waterways have sought to use their estate to grow their income, and that will continue.

Richard Benyon MP: I should say, Lord Goodlad, that we envisage that this new arrangement will enhance the business opportunities of British Waterways and that it will be able to manage its property portfolio in a much more free-market way. It will be able to gear up against it and trade it. One of the great benefits, particularly in urban areas, is the ability of canals to be the focus of regeneration. We think that this is a way of unlocking much more investment potential. There is that business side of it but also the point touched on by Lord Methuen about income coming through volunteers, possible legacy income and a variety of other different charitable methods of raising funds. We think this has great potential.

Q32 Baroness Butler-Sloss: This is obviously a very exciting project and you are all very enthusiastic about it, which is lovely to hear. However, it is necessary to go on asking a number of perhaps rather dreary questions about the financial side. I was interested to hear Mr Evans talk about £100 million of commercial income. As regards voluntary income, you are expecting to get into what I gather is called “civil society”, which I assume means the charity—a slightly odd phrase, if I may say so—as you are going to have additional voluntary

activity, but what are your estimates based on and how reliable are they? Is there a danger that your early-years expenditure may be greater than the donations you receive or other voluntary payments that you get?

Robin Evans: When we worked out our projection for fundraising we took a lot of advice. The chairman of British Waterways and I have spoken to more than 100 third-sector charity civil society organisations to gather their views about how fundraising would go. We also employed Think Consultants, who are lead consultants advising many of the largest charities such as the Red Cross and the RNLI on how to raise funds. Therefore, we have had the best advice on our fundraising projections that is available to charities. We have employed our own fundraiser, who has come from Christian Aid and was voted fundraiser of the year three years ago. Our consultants, with our own fundraiser, have come up with projections for fundraising which they see as reasonably achievable. We have then reduced those by 75% in all our projections just to make sure that they are sensible—sorry, I should have said by 25%.

Baroness Butler-Sloss: I hope so.

Robin Evans: Sorry, by 25%, so we believe that our projections are sensible and reasonable. In the early years we will probably spend more money than we receive, but that is the nature of fundraising because you are building up a membership, not a voting membership but a band of supporters—a band of friends. Their first year's subscription often matches the cost of recruiting them, but it is their second and third year subscriptions that are important. The key thing about fundraising is what is called the attrition rate—how quickly, or how slowly, you lose supporters. We are confident in this regard. This is all about service because people will continue to support you if you welcome them, appreciate them, and give them the benefits that they want, which is more information and opportunities to participate. Recently, as part of our move to charitable status we have begun to open up

some of our works. When we repaired locks this winter, we opened them up for public viewing. Some 7,000 people queued to see the works going on at Bingley Five Rise Locks in Yorkshire. In the future our friends will have privileged access to that. If you promise to pay me £5 a month, I will ensure that you do not have to queue when you get down there. It is through introducing such initiatives that we will keep these supporters and friends and grow them. Therefore, I am incredibly confident in that regard.

Q33 Baroness Butler-Sloss: The waterways are part of the Royal Academy, are they not, and so are your friends?

Robin Evans: I think that this is a wonderful thing. I think that people are dying to find out more about the canals and rivers and be part of this body. Our changed state constitutes a change of culture for us and acts as a catalyst for us to become different people as we encourage others to enjoy the canals and rivers in many different ways.

Q34 Baroness Butler-Sloss: Minister, could I take you back to government funding? According to your impact assessment, the charity is likely to be dependent on government funding after 2026-27. Are there any circumstances in which you think that will not be the case? Rather more importantly, what will the role of Government be after 2026-27? I am thinking of if you have a situation where there is again a problem. You will have given your first 15 years to what is now a charity and you then decide that you do not have the money. You are committed for 15 years. What will happen at the end of it? Those are two slightly different questions.

Richard Benyon MP: First of all, there will be a clear review process, for which we have given dates, so we will be able to judge the progress of our funding projections and match it with the performance of the charity. At the moment, British Waterways receives 30% of its income from Government. It gets the rest through licences and other commercial activities. There may be, somewhere out there, a popular misconception that this is Government just

pulling out of fully funding its responsibilities but, first, Government provides only less than a third. We will continue to play our part and have set out a generous arrangement—“tough but fair” is the description—and I think Government will have to continue to support it. This is a national treasure, as Robin Evans called it, but it is a national responsibility. This network has so many public benefits, some of which we can clearly measure—unlocking regeneration, as I have said—but some that are rather more intangible but which we are getting better at valuing, for example, the health benefits of exercise and these kinds of things. The Government are bringing forward our natural environment White Paper, and we see this as totally consistent with that. The important point is that we will review how the charity is performing and Governments in the future will be able to make an assessment, I think quite far in advance of the end dates that we have proposed here.

John Kittmer: If I could just add, we have agreed that we will do a review of funding in 2021-22. It is in the funding agreement and is a legally binding commitment. During the negotiations that we had with the trustees over the Government grant, one of the points of discussion was what happens when the Government funding ends. The charity asked us for sufficient certainty to develop a reasonably timed business plan. It asked for 15 years. At the end of the negotiations, it got 15 years. Five years before the end of that was thought to be a reasonable period to allow the charity to adjust to whatever level of funding—which will be between zero and some sensible level of funding for public benefit, as the Minister said—there is at the end of the contract. It is clear that the government case for funding the charity is based on public benefit, and that case is very strong.

Richard Benyon MP: Can I add one quick point? The decision not to proceed at this point with including the Environment Agency navigations was because we wanted the charity to walk before it ran. We recognise that the Environment Agency’s navigations are pretty much a liability rather than an income source from day one. We think there is a potential for it,

and we think it can grow and can fit very well into this structure, but that is another issue that the Government will review in 2014 with a view to possibly bringing in these navigations in 2015/16. That fits well into the timeline that John was just describing to Lady Butler-Sloss. That point five years before the end of this programme would allow all that to be assessed if we have included the navigations.

Q35 Baroness Eaton: I think that I should declare yet another interest as I live just round the corner from Bingley Five Rise Locks that were mentioned earlier. I have to ask the “glass half empty” question. What would the Government do, if anything, during the 15 years of funding if the charity was struggling financially?

Richard Benyon MP: We have clear responsibilities as Government in effect to take back control of the waterways if it looks as if the charity is becoming insolvent. That is absolutely clear. There is also a provision whereby the Government create a so-called protector—I will ask my colleagues to develop that—so that the taxpayer’s interest and the nation’s interest in ensuring that the property endowment is being managed in a proper way is secured in the governance structure. I am very happy to pick up that point.

Q36 Lord Scott of Foscote: What, if anything, will the charity be doing over the 15 years in question that the Waterways Board could not have done under appropriate direction and financing?

Richard Benyon MP: There are a number of methods of running the business that it cannot undertake under the current structure, but it will be able to—

Q37 Lord Scott of Foscote: That is what I am not following. You are moving from one organisation, British Waterways, to another organisation, the charity. The charity is subject to all the laws and so on that apply to charities, but I cannot understand what it will actually be doing that the British Waterways Board could not have done.

Richard Benyon MP: First, it will be doing things in a way that is governed by the users rather than those things being done from my desk in Whitehall or from a national body's desk without the necessary involvement of people who use the waterways. They are going to be part of the governance and they are going to own the business. That is key. The management and the trustees will ultimately be responsible to the people who are using the waterways. I think that is a better way of proceeding.

Q38 Lord Scott of Foscote: And could you not have constructed British Waterways on that footing?

Richard Benyon MP: No, it is a public body. We could not have done that and it would not be able to trade.

Robin Evans: Personally, sir, I think that there is a completely different feel to an organisation that runs a national heritage treasure as a charitable trust as opposed to a public department. Our fundraising would not deliver on that basis. People would not give us money if we were a public department.

Q39 Lord Scott of Foscote: Is that what it is?

Robin Evans: No, it is not only that, sir. It is a question of volunteering. Since we announced that we were becoming a trust, the number of volunteer days has increased to 39,000 this year and we will end up with 100,000 or more volunteer days because people feel that they are helping a trust to maintain our national heritage as opposed to giving up their time for the benefit of a government department. It may not be pleasant to hear that, but it is what these people feel. This is a new way of engaging people to help maintain what they really want to maintain.

Q40 Lord Scott of Foscote: I am sorry, you have lost me. What do the volunteers do?

Robin Evans: They do almost anything, sir. It is quite a revelation. We have volunteer engineers, volunteer lock keepers and people who paint bridges for us. We have banks that

send their staff out once a day to clear litter, remove graffiti and tend vegetation. We have volunteers doing almost every aspect of our work and more and more people want to volunteer because they want to give something back to society. We are very fortunate in that 50% of the population live within five miles of one of our waterways, so we are very accessible, and it is very pleasant to be on our waterways.

Richard Benyon MP: Would it be possible for John Kittmer to fill Lady Eaton's glass from half empty to half full?

John Kittmer: To pick up what the Minister was saying, we have made very detailed provisions in case the charity fails, as you would expect us to do, because we were very clear from the outset of this project that the aim was for the network of waterways to be held in perpetuity for the benefit of the nation. Therefore, we have created a special trust in which the core waterways network is held. The first trustee of that trust, the Waterways Infrastructure Trust, will be the Canal & River Trust—I am afraid that there are too many trusts in this for it to be easily graspable at the first go. Clearly, we want the Canal & River Trust to be a success and to be the trustee of the Waterways Infrastructure Trust in perpetuity. If the Canal & River Trust were to fail, as settlor of the Waterways Infrastructure Trust the Secretary of State will be able to settle the Trust on another charity. It will have to be a charity because this is a move into the charitable sector for all time—it is a perpetuity arrangement. Equally, through the articles of association of the Canal & River Trust, we have made certain provisions that will enable us to protect the £460 million of commercial assets in the event that we had to resettle the Waterways Infrastructure Trust on another charity. Therefore, we would be able to move whatever remained of the commercial assets to follow the waterways infrastructure as well because it is a package, as we have already made clear.

I shall now give the hard line on behalf of my colleagues in the Treasury. There is, of course, an intermediate situation between the charity being the success that we want it to be and being a failure. If the charity were to find that it did not get income in as it hopes—

Baroness Eaton: Or meet its liabilities.

John Kittmer: Or meet its liabilities as it hopes, frankly, we would expect it to cut its cloth accordingly and to realise efficiencies. This is one of the benefits of 15-year contracts. The charity can now plan its efficiencies in a way that it simply has not been able to do, even on medium-term budgeting—the Government's traditional approach to budgeting. That is the hard line but also the realistic one because we want the charity to be successful at raising money and engaging with local communities and national donors and therefore we will expect the cutting of cloth, if necessary, or, better still, more effective efforts at raising the money.

Baroness Eaton: So you would not bail it out with extra money.

John Kittmer: No, and that has been made clear in the funding agreement.

Nigel Johnson: I should add that the protector arrangements, whereby you have professional oversight of the performance of the investment assets, constitute very much a monitoring role so that there are no surprises. Within the overall settlement there is an escalation process so that you do not wait until things are going really badly before any steps are taken. There is an escalation process to enable remedial action to be taken at a relatively early stage.

Q41 Lord Hart of Chilton: I am interested in the position of those who might be described as members of the community of the floating population on the canals. My general question is whether you are satisfied that you have identified and evaluated all the material considerations for people who are resident on boats without permanent moorings? Because the charity will take on some significant enforcement and legislation-making powers, what

assurance can you give us that the rights of individuals will be preserved under the new arrangements? In particular, we have had letters from people who have expressed worries about their ability to influence through any proper democratic process or to have public scrutiny of the enforcement powers and about how they can influence a change or a review of unacceptable practices, as they see them, carried from the old British Waterways Board to the new body.

Richard Benyon MP: Nigel Johnson is the expert, and I will ask him to come in on this in a minute, if you will allow me. We recognise that important rights are held by people who live on and use our inland waterways. We do not believe that these changes will endanger their human rights, and we have looked at this very carefully. Ultimately, it is a matter for the courts to determine whether there is full compliance with the Human Rights Act 1998 in relation to any activities undertaken by the new trustees, if it gets as far as going to court. We are not creating any new powers. We are only carrying on the existing powers held by British Waterways and transferring them to the new charity. These powers are similar to those held by Network Rail, the utility companies and the National Trust. I think the powers to remove a vessel are the basis of some of the complaints that the Committee has heard, whether the vessels is blocking the waterway or is an unsightly vessel that a local waterways manager wants to remove. Those powers are currently very clearly defined and have been transferred to the new charity.

Nigel Johnson: In terms of the accusation that it will become less democratic, I think that the reverse will be the case. The management of the charity will be subject to the influence and advice not only of the national council, to which the trustees are ultimately accountable, but at the local level. In terms of the views of the local community and local voters, they will get engaged with the waterway partnerships. There will be a much more direct engagement rather than, as Robin Evans described it, the rather remote engagement that there is at the

moment as a government public body. There will be greater opportunity for influence and for making your voice heard than is the case at present.

As the Minister has said, there is no change to the actual statutory powers. They will continue as they are. They are essentially the management powers of any operator of public-use infrastructure. For example, as we mentioned before, the National Trust, under its 1964 by-laws, has the power to remove boats unlawfully present on its waterways, just as British Waterways has at the moment and the Canal & River Trust will in future.

In terms of any change in human rights, it is a very complicated area. Indeed a Joint Committee of Parliament looked at the meaning of a “public authority” under the Human Rights Act back in 2004. Certainly, the Canal & River Trust has no intention of overriding people’s human rights. In particular, it looks to one of the conclusions in that report. Although there is some jurisprudential argument over all this, nevertheless, it concluded that: “a body is a functional public authority performing a public function ... where it exercises a function that has its origin in governmental responsibilities ... in such a way as to compel individuals to rely on that body for realisation of their Convention human rights”.

Our view is that, where we are exercising these statutory powers—arguably, coercive powers—given to us by statute, we will have to honour and pay proper regard to our users’ human rights. From all those aspects, we firmly believe that there is no change. There are areas of contention in terms of detailed interpretation of the existing legislation, which are subject to litigation at the moment. That is ongoing, and will be seen through in its normal event, and we await the outcome. To date, in all the enforcement cases that have gone to court, it has been found that our procedures and processes are in compliance with the Human Rights Act.

Q42 Lord Hart of Chilton: If the floating community is dissatisfied with a policy that is being pursued or the powers being exercised, what rights does it have to remove those people who have made those decisions?

Nigel Johnson: Ultimately, the trustees are answerable to the council. Although the trustees are, in effect, the board of directors, in charity law they are called trustees, and they are answerable to the council. Indeed, they have to stand for election. There will be the usual rotation so that every year, one-third of the trustees will have to stand for election. The 35-member council is designed to represent a broad range of all the various stakeholder interests in the waterways. The trustees are answerable to it, so the council has the power to remove any of the trustees: it can either refuse to re-elect them or, as in ordinary company law, it can, by ordinary resolution, remove any trustee of the board.

Q43 Lord Hart of Chilton: Could it be that the floating community feels distanced by an overarching body that is made up of so many different interests that its interest might almost be of no account?

Robin Evans: I think that you have to put it into perspective. Thirteen million people visit the waterways every year; there are 35,000 boaters. Boaters are a crucial part of our life, and they bring colour, vibrancy and the economy to the waterways. We could not run without them, but they are not the only users of the waterways, so it is right that the charity reflects all the different people who enjoy and benefit from the waterways. Boaters have four people directly elected on to the council. They have lots of influence in the local waterway partnerships. Almost half the people currently elected or appointed to them have a boating interest. Their inroad into the governance, policy-making and strategy-making of the organisation is really high. As a charity, we will survive only if our reputation is good. People will support us, volunteer for us or give us money only if we act in a responsible way and fulfil our charitable objectives. I think that is a huge responsibility on us and will very

much dictate the way we deal with those people who want lots of our services and who are licence payers or who hold moorings from us. There is a constitutional way, but there is also a reputational and moral side that will probably be hugely more influential than currently.

Richard Benyon MP: I cannot guarantee that every member of the floating community will always agree with everything that the Trust does. There are strong views.

Q44 Lord Hart of Chilton: Are you happy that you have done a good job in explaining to them the new future that lies ahead? Have you gone in among them and explained?

Richard Benyon MP: We have really worked very closely. Waterway users, particularly in recent months, have been the most regular visitors to my department. I have made it my business to go out and talk to as many as possible. I am involved. I am a former vice-president of the Kennet & Avon Canal Trust and had to resign that role to do this job.

I know these people's concerns, and I think that their main concern has been around funding. I have done my best to assure them that the trustees would not have made the agreement they made unless they felt that the funding was secure. I think they will be more heard under this new arrangement and more involved than they are at the moment and that that message has got out.

The Chairman: Time is passing. The penultimate question comes from Lord Eames.

Q45 Lord Eames: Minister, it is refreshing to hear the enthusiasm in your presentation. Therefore, the answer to my question may seem fairly obvious. Nevertheless, we have to face the fact that money will raise its head. According to the IA, the impact over the 15-year period that we are talking about will be something like £14 million to £17 million. My question is simply this: are you satisfied that the changes you will make are worth that? In listening to you, I see that this will be a moving thing. As you go along, you will discover other ways that the local community can benefit from this. I come from the perspective of the open sea, not the canals. Over the years, I have seen how perceptions change. I share

your excitement but I just ask a fundamental question: have you worked out, and can you justify, the £14 million to £17 million as being worth all the changes that will come?

Richard Benyon MP: I do think it is worth it, Lord Eames. We have to face the fact that, as Robin Evans pointed out earlier, people respond differently when they feel that they own something. If people who enjoy going to look around heritage property, as members of the National Trust do, felt that it was just something run by DCMS as an arm's-length body, you would not get the enthusiasm that they generate. In the same way, the volunteer element and enthusiasm will engender huge benefits. The key point in answer to your question is to do with the level of pessimism that we have applied to the projections. Even with those pessimistic views, we are still satisfied. If we look back in 10 years' time, I think we will see this as the most enormous success.

Robin Evans: With due respect to the economists, they can translate only so much into money. There is a vast amount of innovation, enthusiasm, excitement and participation that you cannot monetise, which will come about though this precise status.

Lord Eames: That is exactly what I meant by saying that, as time goes on, you will discover things that you have not thought of.

Richard Benyon MP: Absolutely right, and it is impossible to take a net present-value view that far ahead, although economists would disagree.

Lord Eames: Do not worry about them.

Q46 The Chairman: Thank you very much, Minister. I have just a final procedural point. Defra has now laid three public bodies orders that do not include the words "Public Bodies" in their titles, contrary to Cabinet Office guidance. The titles of the draft orders matter, as they are recorded in the business documents of the Houses of Parliament and thereby enhance Parliament's ability to track and scrutinise orders laid under the Public Bodies Act.

May I ask that future Defra orders laid under the Act have the words “Public Bodies” in their titles?

John Kittmer: We can give that commitment. Our first three orders were laid in the same week. We have of course read carefully your reports that have started to come out—those that are a little in advance of this one. We will in future follow the Cabinet Office’s guidance. We were under the apprehension that its guidance was voluntary on this, but we have absolutely taken your point and will follow it for all future orders that we lay in draft.

The Chairman: Minister, I thank you and your deputy very much for joining us today, and for the evidence that you have given.