

2 Background

History

2.1. The canal system of Great Britain was constructed by private companies mainly between 1750 and 1840; at one time the inland waterways comprised some 4,250 miles of navigable rivers and canals, carrying around 30 million tons of goods a year. Strong competition from the railways from 1830 onwards seriously undermined the profitability of canals and many were bought up by railway companies but they remained country-wide freight carriers until the arrival of motorway competition in the early 1960s.

Transport Act 1962

2.2. On 1 January 1948 the majority of canals were nationalized together with ports, railways, road haulage and bus and coach operations. They all came under the ownership and control of the newly constituted British Transport Commission (BTC). For the first time the waterways of the former canal companies were administered as a fully integrated network. The Transport Act 1962 (the 1962 Act) abolished the BTC, and set up successor Boards with responsibility for the different transport activities formerly under its control. BWB, with responsibility for the inland waterways previously under BTC's control, thus came into being on 1 January 1963. Its sponsor Department since 1970 has been the DoE.

2.3. BWB was charged in the Transport Act 1962 (section 10) with the remit to provide, so far as it thought expedient, services and facilities on its inland waterways and port facilities, paying due regard to efficiency, economy and safety of operation of the services and facilities it provided. It was also BWB's duty to review how waterways not required for its services and facilities might be put to the best use, either by developing or converting the waterways, or by leasing or selling them to others. Finance would be provided to BWB by the Government to meet any deficit on BWB's revenue account arising during the five years beginning on the vesting date, 1 January 1963. The financial provisions of this and subsequent relevant Acts are described in Chapter 4.

Transport Act 1968

2.4. The review of waterways required by the 1962 Act was carried out in stages between 1963 and 1968. As a result of this review some amendments to the general duties of BWB were made in the Transport Act 1968 (the 1968 Act). Under this Act, waterways divided into three categories: commercial, cruising and remainder (see Appendix 2.1). Section 107(2) of that Act sets out the duty of the Board:

- (2) It shall be the duty of the Board
 - (a) to secure that each of the inland waterways comprised in their undertaking which is not a commercial waterway or cruising waterway is dealt with in the most economical manner possible (consistent, in the case of a waterway which is retained, with the requirements of public health and the preservation of amenity and safety), whether by retaining and managing the waterway, by developing or eliminating it, or by disposing of it; and
 - (b) to secure that the best possible financial return is obtained from any asset of the Board which is not required in connection with the provision of services and facilities by the Board, whether by exploiting it, by developing it, or by disposing of it.

2.5. Section 43 of the 1968 Act allowed the Minister (with the approval of the Treasury) to continue to make up BWB's deficits on revenue account beyond the original five-year period.

2.6. Schedule 12 of the Act listed those waterways which were to be specified as commercial waterways and those to be specified as cruising waterways (those to be principally available for cruising, fishing and other recreational purposes); waterways not so listed were designated 'remainder'. A copy of Schedule 12 is at Appendix 2.1. BWB's duty to provide services and facilities was limited to commercial and cruising waterways. The Act stated that there should be a body set up, to be known as the Inland Waterways Amenity Advisory Council (IWAAC), to advise BWB and the Minister on such matters as proposals to add to or reduce the cruising waterways and to make recommendations in this area. It also gave local authorities power to assist either financially or by provision of services or facilities, in the maintenance or improvement of waterways in their area.

British Waterways Acts 1971 to 1987

2.7. Between 1968 and 1987 BWB initiated, by agreement with the DoE, a number of private Bills which were enacted and which gave BWB various powers such as that to register pleasure boats and to fill in certain specific waterways no longer regarded as necessary. The British Waterways Act 1983, for instance, was concerned mainly with the regulation and management of vessels and the recovery of charges for various services, but it also reclassified some 85 miles of restored waterway from remainder waterway status to cruising status. Additional lengths of waterway have been restored to navigation in recent years, or are under active restoration. For instance, the Kennet and Avon Canal has been restored to permit limited navigation throughout its 139 km, and in the North the Huddersfield Narrow Canal is in active process of restoration.

The Fraenkel Report

2.8. In 1975 a study known as the Fraenkel Report was commissioned by the DoE. The prime object of the study was to assess the costs of operation and maintenance of all waterways as required to comply with BWB's statutory and other obligations. It gave an overview of BWB's activities and concluded that there were at that time 'many instances where the condition of works and structures fell below that indicated by BWB's obligations' and that it would cost some £60 million to clear the backlog. The study did not include bridges, reservoirs and non-channel structures which also carry significant liabilities.

1982 study

2.9. In 1982, following a study commissioned by the DoE, a report was published on the potential for BWB increasing revenue. BWB then prepared a Corporate Plan which set out three scenarios: one aimed to clear the backlog of maintenance along the lines of the Fraenkel Report (spending some £60 million at 1975 prices); the second to clear the backlog subject to the constraint of Government spending being held constant at 1984/85 levels in real terms; the third was a scaled-down version of the second. After consultation with the DoE the decision was taken to implement the third scenario, but in the event the grant actually received was, in real terms, less than that projected.

Statement of Objectives 1984

2.10. BWB was enjoined by the DoE to develop procedures whereby its objectives and performance were kept under review, the efficiency and effectiveness of its operations monitored, and the results reported to the Secretary of State. In July 1984 the DoE and BWB agreed a Statement of Objectives for British Waterways in line with Government policy for nationalized industries. These objectives (see Appendix 2.2), which covered all the main areas of BWB activities, were published as part of BWB's Report and Accounts for 1984/85. BWB was required, consistent with its statutory obligations and powers, to run its affairs on a commercial basis as far as practicable but the statement also recognized the need for continuing financial support from the Government. In pursuit of the 1984 objectives BWB produced its Corporate Plan covering the years 1985/86 to 1994/95 (see paragraphs 3.25 to 3.30).

1987 MMC report

2.11. In July 1986 the MMC were asked to report on certain questions relating to the efficiency and costs of BWB in relation to the maintenance of its waterways. The report, published in 1987 (the 1987 MMC report), made a number of recommendations for improvements but, although making some serious criticisms of BWB, acknowledged that in many instances BWB was already taking, or planned to take, steps in the right direction. Although serious criticism of BWB was made in that report, in view of the difficult circumstances in which BWB had to operate the MMC did not find that it was pursuing a course of conduct which operated against the public interest.

2.12. BWB has made a number of responses to the 1987 report, indicating the progress which has been made in fulfilling its recommendations. Its most recent response, submitted during the course of this investigation, is set out and commented upon in Chapter 14.

Events since the 1987 MMC report

2.13. A new Chief Executive had just been appointed at the time of our last report. The membership of the BWB Board changed radically following the report although its structure remained the same, that is composed of non-executive directors. A new Chairman, Mr David Ingman, was appointed and the organization was restructured. All but one of the non-executive directors and most of the senior staff have changed since 1987 and staff numbers have been significantly reduced.

2.14. In 1988 BWB withdrew from freight-handling operations (with the exception of Sharpness Docks, which continue in direct operation). The rest of the freight-handling business was transferred as a going concern to the private sector in accordance with the objectives (mentioned in paragraph 2.10) agreed with the Government. Freight, consisting mainly of coal and ballast traffic, continues to be moved on the commercial status waterways by private sector operators.

Integrated Business Strategy

2.15. On 1 November 1988 BWB presented a proposal for its future strategic direction to the then Secretary of State for the Environment. Following further appraisal a preferred strategic option known as the IBS was accepted and is now the basis for detailed corporate and business planning. Appendix 2.3 summarizes the main elements of the IBS, which is considered in more detail in Chapter 3.

Report of the Environment Committee of the House of Commons

2.16. These changes had taken place by the time the Environment Committee of the House of Commons examined the operation and effectiveness of BWB in 1989.¹ The Environment Committee was told that the DoE's objectives for BWB remained as defined in 1984. The Committee's report concluded that the new management structure of BWB appeared sound but that the Board should be given a period of settled membership. It also pointed out:

Given the history of the system, it is unlikely that the Board can ever run its affairs on a wholly commercial basis. Much of the value of the canal network to the community at large lies in its land drainage functions and unquantifiable environmental benefits. It is therefore inevitable that the BWB will continue to rely on public funds for a significant proportion of its annual turnover.

¹Fifth Report of the Environment Committee Session 1988-89, HC 237.

2.17. There were a large number of other recommendations in the Environment Committee report, including some on the scope for increasing freight operations and one that BWB should continue to give a high profile to conservation and enhancement of both the historical heritage and the natural environment, and should be placed under a duty to further conservation. The Government response to the Environment Committee report was published in February 1990. It accepted many of the Committee's recommendations and agreed that BWB should have wider freedom to act on its own account in developing its waterway assets.

National Rivers Authority

2.18. When the Environment Committee reported in July 1989 the National Rivers Authority (NRA) was in the process of being set up as a regulatory body with responsibility for pollution control, water quality, river management, land drainage and flood defence. Some of BWB's responsibilities lie in the same areas as those of the NRA. The Environment Committee stated in its report that it did not consider it to be feasible at that time for a reallocation of functions between the two bodies to be undertaken but recommended that the position should be reviewed by the DoE within three years, with a view to creating a single authority for those navigations currently operated by both BWB and the Water Authorities. The Committee doubted whether BWB could, in any case, absorb the navigational functions of the NRA while itself undergoing a major reorganization.

Centre for Policy Studies Report

2.19. The next published review of BWB's activities was *Pleasure and Profit from Canals* published by the Centre for Policy Studies¹ in 1990. It recommended splitting BWB into three separate bodies, reflecting the different functions it is currently asked to perform. The study suggested:

- (a) a Waterways Trust (on the lines of the National Trust) to maintain the canal system and improve leisure and recreational amenities;
- (b) a public limited company (British Waterways Development plc, in which the Trust would hold 49 per cent of the equity) to develop the commercial potential of BWB's property assets and remaining freight business; and
- (c) transfer of BWB's regulatory functions (eg registration of pleasure boats, abstraction licences, fishing licences) to the NRA.

None of these ideas appears to have been taken any further.

British Waterways and Development Plans

2.20. In 1992 BWB issued a consultative document, *British Waterways and Development Plans*. This document, which was circulated to planning authorities adjacent to waterways requesting their observations by 1 April 1992, was intended to assist BWB in developing the full potential of its waterways, and thus increasing income.

British Waterways Bill

2.21. In 1991 BWB introduced a Private Bill in the House of Lords. The Bill sought to cover three areas in particular: entry on to land in cases of emergency, conditions of houseboat certificates and licences, including control of moorings, and some miscellaneous provisions including extinguishment of certain rights enjoyed by owners of land adjoining the waterways. Parts of this Bill have proved fairly controversial and

¹ *Pleasure and Profit from Canals* by Keith Boyfield: Centre for Policy Studies.

have been mentioned in a number of complaints to us (see Appendix 5.3). At the time of writing our report the Bill was still in Committee in the House of Commons. One of BWB's problems is definition of land boundaries and rights. Many leases and other documents were destroyed by the canal companies at the time of nationalization and some rights rely on very old land surveys and Acts passed in the 18th or 19th centuries.

BWB today

2.22. Today BWB manages and operates some 2,000 miles of canals and river navigations in England, Scotland and Wales, together with their associated vessels, reservoirs, docks, warehouses, repair yards and workshops. A list of inland waterways and harbours vested in BWB is at Appendix 2.4 and a summary of the lengths of canals by region and type is at Appendix 2.5. It owns among other assets 4,763 bridges, 60 tunnels, 1,549 locks, 2,050 listed structures; and 64 SSSIs. A map of the waterways provided by BWB is at Appendix 1.2. There are other waterways which are privately owned such as the Wye Navigation and the Rochdale Canal.

2.23. BWB summarized its core business to us as follows:

(a) Amenity:

- (i) water carriage (drainage, potable and industrial);
- (ii) collaborative developments (including urban regeneration);
- (iii) use of tow paths etc by the public;
- (iv) provision of museums and educational initiatives.

(b) Leisure and tourism:

- (i) paying customers on the waterways;
- (ii) leisure based property.

(c) Commercial:

- (i) conduit for telecommunications, electricity and gas;
- (ii) freight carriage;
- (iii) water supply;
- (iv) estates (wayleaves) management.

(d) Other statutory obligations:

- (i) environmental protection;
- (ii) conservation;
- (iii) maintenance of public road bridges.

Statutory obligations and duties

2.24. A summary of BWB's statutory duties and of those requirements placed on it which carry cost implications is at Appendix 2.6. These include not only those duties arising from the Transport Acts and the British Waterways Acts but from various Enabling Acts which authorized the construction or improvement of inland waterways, a number of obligations under general business legislation, common law duties and obligations arising from rights accorded to others in legislation (such as drainage rights in the Highways Act 1980).

Present reference

2.25. On 8 March 1993 the Department of Trade and Industry sent us the present reference, which is somewhat broader than that of 1986 and is set out in Appendix 1.1.