

Houseboat definition and Houseboat Mooring Permit Terms and Conditions

1. Fundamental principles

In principle there should be comprehensive written terms and conditions for Houseboat mooring permits, and it is to BW's shame that it is more than 10 years since its customers first complained that there were none. However, the introduction of comprehensive written terms and conditions should not be made conditional on the proposal to bring in what is effectively a two-tier system which will divide the holders of Houseboat Certificates into two classes.

2. Houseboat Definition

The definition of Houseboat for the purposes of boat licensing is laid out in Section 3 (1) of the 1971 British Waterways Act ("the 1971 Act") and additional interpretation is set out in the 1995 British Waterways Act (the "1995 Act") . This is the definition that should be used, unless a review is carried out and a common definition is found that encompasses other definitions of "Houseboat" that are used for other purposes such as VAT and Council Tax. However, this would require new primary legislation. BW/ CRT does not have the legal power to change the definition of Houseboat for any purpose when the definition for licensing purposes is laid out in primary legislation. Only new primary legislation can change the definition of Houseboat.

To change the definition of Houseboat for purposes other than licensing would be unreasonable given that the right to obtain a Houseboat Certificate, and thus the benefits that derive from the Terms and Conditions of the Houseboat Mooring Permit, stem from the definition of Houseboat for licensing purposes.

Any change in the definition of Houseboat will have a knock-on effect on the definition of Pleasure Boat which is also laid out in section 3 (1) of the 1971 Act. In addition to not having the legal power to change these definitions without new primary legislation, for BW/ CRT to change the definition of Houseboat for any purpose would create, at the very least, ambiguity and confusion. The resulting ambiguity could and almost certainly would be used by CRT to attempt to terminate the licences of boats licensed under section 17 (3) (c) (ii) of the 1995 Act by claiming that these boats are Houseboats under a widened definition of Houseboat and are therefore incorrectly licensed. The resulting increase in the threats and fear of loss of their home and principal asset amongst the residents or owners of boats licensed under Section 17 (3) (c) (ii) would be unthinkable and unjust. This would not be an appropriate way for a charity to conduct itself. The legislation governing British Waterways/ the Canal & River Trust is already ambiguous and confusing enough. To create more ambiguity would be wholly unreasonable.

Schedule I Part III Sections 15 (1) and (2) of the 1995 Act clearly states that a Houseboat may be moved without purchasing a separate or additional licence and in such circumstances should be treated as though it is licensed as a Pleasure Boat. Therefore any new or additional definition of Houseboat other than what is laid out in the 1971 and 1995 Acts is not necessary.

3. The advantages of having a Houseboat Certificate

The statement "The reason why some people prefer to have a Houseboat Certificate is because it carries some ability to assign the mooring permit upon sale of the boat" in the consultation document is disingenuous. The main advantage of having a Houseboat Certificate is that it confers

security of tenure, as laid out in Schedule I Part II Section 4(3) and (4) of the 1995 Act, in that if the mooring for a boat licensed as a Houseboat is removed or closed temporarily or permanently, BW/ CRT has to provide an alternative mooring at their own expense. Another advantage is that Section 33 of the 1995 Act also means that the holders of Houseboat Certificates wishing to take legal action to defend their homes can usually start their case in the local County Court and not the High Court. Neither of these advantages have been noted in the consultation document.

4. The cost of Houseboat Certificates

The cost of the Houseboat Certificate should remain the same as the cost of a Pleasure Boat licence. If it is really true as stated in the consultation document that there is no difference in practical terms between the Houseboat Certificate and the Pleasure Boat licence, then there should be no difference in cost. The differential in mooring prices for residential moorings means that CRT already receives a lot more money from boaters with residential moorings and to increase the licence fee for the Houseboat Certificate as well would be unjust.

5. Right to assign mooring permit

Schedule I Part II Section 5 of the 1995 Act confers the right to assign the Houseboat Certificate without any qualification regarding the duration or renewal of the certificate once it has been assigned. Therefore the right to assign the mooring permit should be in exact parallel with the right to assign the Houseboat Certificate.

To remove the right to renew the mooring permit for some customers while allowing others to keep it would create a two-tier system. This would be unlawful because the 1995 Act makes no provision for different types of Houseboat Certificate. There should be a common scheme. If the seller of a boat with a Houseboat Certificate can assign the Houseboat Certificate but the buyer cannot renew the mooring permit, this makes the right to assign effectively worthless, which nullifies the intention of Schedule I Part II Section 5 of the 1995 Act, and is therefore unlawful.

6. Transfer or assignment of mooring permit on death of holder

In any event, on the death of a holder of a Houseboat Certificate there should be an automatic right to assign or transfer the mooring permit of the Houseboat for an indefinite period to any person (such as a spouse, co-habiting partner, civil partner, child or other co-resident or dependent) who was resident with the deceased holder, in line with Article 8 of the European Convention on Human Rights, so that the surviving resident(s) of the Houseboat do not lose their home. This should apply regardless of whether the surviving resident(s) are named as the beneficiaries and regardless of whether or not the holder died intestate.

7. Other exclusions to assignment

Schedule I Part II Section 5 of the 1995 Act confers the right to assign the Houseboat Certificate to a person aged 18 or over "approved by the Board whose approval shall not be unreasonably withheld" but without any further restrictions as to the assignee. The right to assign the mooring permit should be in exact parallel to the right to assign the Houseboat Certificate, and therefore there should be no other exclusions to assignment apart from those in the 1995 Act.

Sections 2.31 (a) to (d) and (e) (i) to (e) (v) discriminate against people who are in receipt of Housing Benefit to cover the cost of the Houseboat Certificate and Mooring Permit. This could be construed as indirect discrimination on the basis of age, disability or gender contrary to the Equality Act 2010.

8. Termination

Section 2.35 discriminates against people who are or have been in receipt of Housing Benefit to cover the cost of the Houseboat Certificate and Mooring Permit, many of whom have found themselves in arrears of payment due to delays in the payment of their benefit. This could also be construed as indirect discrimination on the basis of age, disability or gender contrary to the Equality Act 2010.

Section 2.37.2 is both unreasonable and in breach of Article 6 of the European Convention on Human Rights.

9. General

The provision in Section 2.13: "You must not keep, hang or place anything on BW property at the Mooring Site unless we have previously agreed to it or where the site rules allow otherwise" is excessive and unreasonable, especially since many moorings do not have explicit site rules. If introduced it could lead to a regime of (more) bullying and harassment of boaters by CRT for activities that other citizens are not prevented from doing in their homes, such as parking a bicycle or putting down an outside doormat. It would also lead to the mooring manager being burdened by minor requests for permission, which would be time-consuming for the manager and humiliating for the boat owner.

10. Exceptional mooring sites in London

The right to assign at these mooring sites should remain the same and the existing terms and conditions, or current practice, should be honoured, without the addition of any of the conditions laid out in Section 2.31. To do otherwise would be unjust, given that the moorers accepted the Terms and Conditions that existed at the time and did not give their consent to any other Terms and Conditions.