

NATIONAL BARGEE TRAVELLERS ASSOCIATION

Response to DEFRA Supplementary consultation on certain aspects of the proposed Transfer Order for transferring the functions of British Waterways in England and Wales to a New Waterways Charity and for making consequential provision in Scotland.

INTRODUCTION

In order to protect boat dwellers from homelessness, BW should not be transferred to charity status unless and until the following conditions are met:

- Section 43 (3) of the 1962 Transport Act should be declared incompatible with the European Convention on Human Rights;
- Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed;
- Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed;
- The Canal and River Trust/ Glandwr Cymru should not have the power to bring injunctions banning boat owners from its waterways for life;
- The Guidance for Boaters Without a Home Mooring and plans for Local Mooring Strategies should be abandoned;
- The February 2010 Revised Draft Byelaws should be abandoned;
- The amendment to Schedule 5 of the Public Bodies Bill secured by BW, exempting the functions of the British Waterways Board from the provisions of Clause 22 falling within section 22(3)(b) to (e) should be abandoned, and
- The powers of BW or the Canal and River Trust/ Glandwr Cymru to make "subordinate legislation" should be restricted to the existing Byelaw making powers under the 1954 British Transport Commission Act.

In place of these powers, which are inappropriate for a 21st century charitable body, the following powers and duties should be established:

- Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.
- Statutory protection of boat dwellers from harassment and unlawful or summary eviction, of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.
- Clarification that the test for compliance with s.17(3)(c)(ii) of the 1995 British Waterways Act is as intended by Parliament, namely, whether the

boat has remained in one place for longer than 14 days without good reason.

- Explicit recognition that boat dwellers without permanent moorings are classed as travellers for the purposes of s.225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the EU requirement for the UK to draw up a national plan in 2011 to ensure that every homeless traveller has access to suitable accommodation.
- Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.
- Statutory protection from increases in boat licence fees and mooring fees on a par with that enjoyed by the tenants of social housing in respect of rent increases.
- The Canal and River Trust/ Glandwr Cymru specifically classified as a housing authority.

CONSULTATION TIME LIMIT

Page 5 of the consultation document states "This consultation complies with HM Government's Code of Practice on Consultation". This is not the case. The Government's Code of Practice on Consultation issued by the Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform states in Section 2.1 of this Code of Practice that "Under normal circumstances, consultations should last for a minimum of 12 weeks".

Defra's reason for limiting the consultation to 6 weeks does not comply with the guidance set out in the Government's Code of Practice. This states that when timing is tight, "for example when dealing with emergency measures, or international, legally-binding deadlines, or when the consultation needs to fit into fixed timetables such as the Budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons for it to last for a shorter period (e.g. to seek views to inform the UK's negotiating position on EU proposals soon to be discussed in the Council of Ministers), the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, eg in non Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views."

Defra has not stated that there is an international or legally binding deadline for transferring BW to charitable status. Nor has it stated that this is an emergency measure, or that the timetable needs to be tied in with a fixed timetable such as the Budget cycle. Although the Government proposes that BW should become a charity on 1 April 2012 this is not a fixed timetable and is dependent on the time taken for the Public Bodies Bill to complete the Parliamentary process. In addition, Defra has not provided additional means through which people can express their views.

Notwithstanding the previous consultation that has taken place, the issues that are the subject of this shortened consultation are new issues which the public has not had the opportunity to consider in the previous, 12-week consultation.

For consultation to be proper, the following principles laid down in *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168 must be followed:

- The consultation must be at a time when proposals are still at a formative stage;
- The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
- Adequate time must be given for consideration and response, and
- The product of consultation must be conscientiously taken into account in finalising any statutory proposals.

Six weeks is not an adequate period of time to allow the dissemination and consideration of, and response to this consultation, given that those who will be most directly and adversely affected by the proposals, that is, boat dwellers without home moorings, do not have regular internet access nor regular access to a postal address. This consultation does not comply with these requirements and therefore the outcome will be open to legal challenge.

RESPONSE TO CONSULTATION QUESTIONS

Questions in section 3 - the transfer in England and Wales

Do you agree that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets will no longer be needed when the assets of BW in England and Wales transfer to the NWC? If not, what are the circumstances in which you envisage such directions would be needed?

No. This question avoids the most important issues. Transferring BW and the EA into one huge monopoly is a step in the wrong direction. The Canal and River Trust/ Glandwr Cymru will be responsible for the housing of thousands of families, regardless of whether this consultation chooses to address this fact. Families who rent houses on land do not face eviction from every house in the country at the whim of a landlord who owns all of the freeholds in the country. The competition commission would not look favourably on this.

Neither BW nor its successor can be trusted to properly manage the waterways and associated property without public scrutiny and accountability through Parliament. This would contradict section 1 of the 1962 Transport Act that defines BW as a public authority with responsibilities for the management of the waterways; to users and to the public.

An absolute and additional safeguard is needed - not to direct disposal of property, but to protect property that is held in trust for the nation, in other words public property, from being disposed of. Too much property belonging to the public and important to the functioning of the waterways has been sold off by BW already. Disposal or sale of such property (such as lock keepers' homes,

wharves, warehouses, operational land, canalside land etc) would be detrimental to the operation and maintenance of the waterways. Such an absolute safeguard can only be achieved by statute. Additional statutory protection against disposal of property by the Canal and River Trust/ Glandwr Cymru is needed.

Do you agree that the provisions in ss.73 to 75 of the 1962 Act and s. 137 of the 1968 Transport Act are not needed by the NWC? If not, please explain your reasoning.

The NBTA supports the position of Unite and the other Trade Unions within BW on this issue with regard to all staff whose annual wage is less than around £40,000. However, the transfer to the Canal and River Trust/ Glandwr Cymru should take the opportunity to reduce the pay, bonuses and pensions of the BW Directors and senior management staff to an acceptable and financially viable level so that funds can be re-directed to the maintenance of the waterways.

Do you agree that the NWC should have an enhanced statutory proposer role in relation to ministerial orders on classification and maintenance of its waterways? If not please explain your reasons.

No. The maintenance of the waterways should be an absolute duty of the Canal and River Trust/ Glandwr Cymru and should be the top priority for expenditure. Commercial and cruising waterways should not be downgraded. Instead, the Canal and River Trust/ Glandwr Cymru and the Government should seek to increase the number of commercial waterways and should seek to improve financial viability by expanding freight. Maintenance of the waterways should not depend on financial circumstances.

Currently, BW's managerial priorities are detrimental to its customers and the opportunity should be taken to reduce the powers of the Canal and River Trust/ Glandwr Cymru and increase its accountability in order to protect the homes and livelihoods of boat dwellers. At present BW's status as a public body means that there is at least a minimal level of accountability to Parliament, boat licence holders and the public.

Do you agree that the power of Ministers to direct the NWC under the Transport Act 1962 should be restricted to circumstances in the interests of national security? If not, what powers of direction, if any, should continue to apply to the NWC?

If the waterways need to be controlled in the interests of national defence or security, then BW should remain a public body. The specific powers under Section 27 of the 1962 Transport Act should be retained in order to maintain effective public scrutiny and accountability in order to safeguard the minimal rights that boat dwellers currently enjoy from further erosion by the loss of public body status. This is important because BW has a track record of harassment, threats of homelessness and actual evictions directed at the estimated 15,000 or adults and children who live on boats on its waterways, especially those without moorings, which is clearly not in the national interest.

You are invited to indicate and explain your preferred option in

relation to the proposed FOI, EIR and transparency regime. Are there any improvements that you would like to see to the NWC's proposed transparency statement?

Option 3: Include Canal and River Trust/ Glandwr Cymru as a public authority in Schedule 1 of the Freedom of Information Act. If a task is traceable back to a public purpose, especially if it is publicly funded, it will still be subject to the Freedom of Information Act and the Environmental Information Regulations. [See the review of complaint SO 42/8/4 from Intelligent Addressing regarding Ordnance Survey, adjudicated by the Advisory Panel for Public Sector Information, 30 April 2007]. The Canal and River Trust/ Glandwr Cymru will have a public purpose, will be carrying out public functions and will continue to be publicly funded. Therefore its public functions will be subject to the Freedom of Information Act and the Environmental Information Regulations.

To exclude the public functions from the Freedom of Information Act would lay the Canal and River Trust/ Glandwr Cymru open to legal challenge. To put the charity in a position where every information request would have to be decided in Court would be to lay the Charity open to unnecessary and wasteful expenditure on legal costs, which would potentially fall foul of the Charity Commission in assessing the financial soundness of the proposed charity on application for charitable status.

It will be detrimental to both transparency and administrative efficiency to have different functions of the Canal and River Trust/ Glandwr Cymru subject to different regimes for the release of information. It would further reduce the trust and confidence of BW's customers, especially boat dwellers without moorings, in the new charity. It would encourage the charity to continue the obfuscation, deception, bullying and harassment experienced by boat dwellers that BW has practiced for decades. BW routinely withholds information pursuant to legitimate Freedom of Information requests. This organisational culture should not be allowed to continue; instead, a transition to charity status should be taken as an opportunity to change this culture permanently and establish a culture of transparency. There is no mechanism for enforcing the transparency statement set out in the consultation document and therefore it will be ineffective in ensuring that Freedom of Information is achieved.

The administration of the new charity will be far more efficient if it adopts a policy of publishing all information apart from the small proportion that is genuinely confidential. This would save money and time for both the charity and its customers in making and responding to requests for information.

The Freedom of Information Act is a vital safeguard against the abuse by BW of the already minimal rights of boat dwellers both with and without home moorings. Without the access to information made possible by this provision, boat dwellers' ability to exercise their rights and to challenge unlawful actions, including summary eviction, by the Canal and River Trust/ Glandwr Cymru will be further reduced. This will leave many without any real protection against homelessness in a context where they can be evicted from the vast majority (2,200 miles) of the UK's inland waterways in an eviction process which includes being banned for life by way of injunction from these waterways. Compared to the eviction process that applies to the tenants of houses, this is

already vastly disproportionate. When the tenant of a house is evicted they are not prevented for the rest of their life from renting 80% of the other houses in the country.

The Canal and River Trust/ Glandwr Cymru in England and Wales should in addition be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the disqualifications applying to members of the BW Board through the House of Commons Disqualification Act 1975, Scottish Parliament (Disqualification) Order 2010, and National Assembly for Wales (Disqualification) Order 2010 should not be applied to the trustees of the NWC? If not, please explain your reasoning.

No. Office holders and Trustees of the Canal and River Trust/ Glandwr Cymru should resign before seeking election as MPs, MEPs, MSPs or AMs. To allow them to stand without resigning would be to create a conflict of interest and in the use of their time which would be detrimental to the Canal and River Trust/ Glandwr Cymru.

Questions in section 4 - Scottish provisions

Do you agree with the Scottish Government's proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?

No. There should be a chair, vice-chair and 7 other members, to avoid the concentration of power in the hands of too few people and to act as a safeguard against the abuse of power.

Do you agree with the Scottish Government's proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Yes. In addition, the Canal and River Trust/ Glandwr Cymru in England and Wales should be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

Yes.

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