

# **NATIONAL BARGEE TRAVELLERS ASSOCIATION**

## **Response to consultation on Port of London Harbour Revision Order**

### **Introduction**

This consultation response is from the National Barge Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice for itinerant boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has members on all the major navigation authorities' waterways and beyond. The NBTA deals with approximately 200 individual cases each year. The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Barge Travellers. There are as yet no accurate statistics for the number of people living on boats either with or without a permanent mooring in the UK.

### **Response to specific proposals**

#### **Section 2(1)**

We object to the definition of "houseboat". To state that "houseboat" "means any vessel (other than a ship registered under the Merchant Shipping Act 1995 or any vessel usually used for navigation) which is used primarily as a place of habitation" fails to recognise that there are many boats on our waterways that are used both for habitation and for navigation. There is a danger that the definition as it stands could be used to exclude boats that do not have a permanent mooring and are used both as a home and for navigation.

#### **Section 63**

We object to Section 63 as it places entirely unreasonable demands on the owners of ancient mooring chains and puts them at risk of losing their moorings, in breach of their Article 1 Protocol 1 and, if they live on their boats, their Article 8 rights under the European Convention on Human Rights (ECHR). The provision that they will lose their entitlement to their moorings if they do not claim within three years is especially unreasonable.

There may be hundreds of mooring owners who do not know they have 'ancient moorings' and therefore would not be in a position to know that they have to claim. Alternatively they may not be in possession of concrete evidence that their mooring chain existed prior to 29th September 1857 and to expect them to provide such precise evidence from two centuries ago is unreasonable.

The requirement to prove uninterrupted use over the 20 years is also unreasonable due to the nature of boating and navigation: a mooring chain is laid in order for a vessel to have a safe mooring to return to, not necessarily for a vessel to be moored on that chain continuously and never navigate away from it. Proving uninterrupted use will be impossible in those circumstances, meaning that the odds of retaining such ancient mooring chains are deliberately stacked in favour of the PLA obtaining ownership of them. This is a breach of their Article 1 Protocol 1 and, if they live on their boats, the Article 8 ECHR rights of the owners of ancient mooring chains.

If this is implemented, many owners who have rights to these ancient mooring chains will lose them due to an inability to prove on the balance of probabilities their rights to use the land, date of construction and uninterrupted use. This would breach their Article 1 Protocol 1 and, if they live on their boats, their Article 8 ECHR rights.

Subsection (10) amounts to a land grab by the PLA, contrary to the Article 1 Protocol 1 and, if they live on their boats, the Article 8 ECHR rights of the owners of ancient mooring chains.

The unintended consequence of this provision will be that the owners of ancient mooring chains will incur considerable costs in legal fees proving their right to use their moorings. If this provision is implemented the PLA should provide compensation. Some owners of moorings will be prohibited from exercising their rights due to an inability to afford such legal fees. This amounts to a breach of their A1P1 and Art 8 rights.

### **Sections 66 and 66A**

We object to Sections 66 and 66A. For boaters who live on their boats, the effect of these proposed provisions are likely to breach their Article 8 ECHR rights. We have many concerns about the effect of these proposals. Boats on an existing River Works Licence will now have to obtain an additional mooring permission. There is a considerable risk that boats could have their permission to moor removed despite retaining their River Works Licence.

We object to Sections 66 (3)(d), 66A(2) and 66A(4). Removing permission to moor because a permission holder does not hold such interest in or rights over or under, or right to use land as is necessary to enjoy the benefit of the permission or to comply with any conditions imposed by the permission is unreasonable and excessive. Permission to moor should not be dependent upon being able to prove an interest in the land or rights to use land. This does not reflect the reality of mooring agreements between a land or mooring owner and a boat owner. Permission to moor should be independent of such requirements.

We object to Section 66A (7). If implemented this provision would enable the PLA to arbitrarily terminate mooring permissions without evidence. It is an open door to bullying and harassment, whereby the PLA could simply terminate the mooring permission of boat or mooring owners it does not like or who are in dispute with it. Independent evidence of the abandonment of a vessel should be obtained before terminating mooring permission. If implemented this has the potential to breach the Article 1 Protocol 1 and, if they live on their boats, the Article 8 ECHR rights of boat owners.

### **Section 70 (1) A (a) and Section 112A**

We object to the proposed limit on mooring without permission to 7 days in any 3 months and to the proposed power to override any mooring permission. This subverts the Public Right of Navigation (PRN). A common law Public Right of Navigation (PRN) has existed on all navigable natural and canalised rivers since Time Immemorial, which was first codified in Article 29 of the Magna Carta of 1215. This obviously includes the River Thames.

The PRN includes the right to moor and fix temporary moorings in the waterway, or on the foreshore or to ground for undefined temporary periods on the river banks, including on

private land; riparian land owners do not have an automatic right to demand payment (see Halsbury's Laws of England, 5th edition, paragraph 691). The rights of the owner of the soil are subject to the precedent general rights of the public to exercise the PRN (see Edmund Whelan, Marine Law: Public Rights of Navigation, page 77).

The judgement in Crown Estate Commissioners v Fairlie Yacht Slip Ltd [1978] Scot CS CSIH 3 confirms that while a PRN does not extend to the right to lay permanent mooring structures, where a PRN exists, it includes the right to moor for temporary periods using equipment that is intended to be, and can conveniently be, taken onto and carried on board the vessel in the ordinary course of use. The Court made no ruling on what length of time constitutes "temporary". Further authority is given in Tate and Lyle Industries Ltd v Greater London Council [1983] 2 AC 509 545, Moore v British Waterways [2009] EWHC 812 (Ch) and others.

Public quays exist throughout the Thames. On all land that the public has acquired the right of mooring or unloading, by whatever means, vessels may stay as long as they like, provided this right is exercised reasonably (J B Phear Esq: A Treatise on Rights of Water, Stevens and Norton 1859).

Therefore, boats may only be prevented from mooring if they remain for longer than a reasonable time. There is no definition in law of what is a reasonable time in this context. The reasonableness of the length of stay depends on factors such as the circumstances of each boat and on river and weather conditions. "Reasonable" is dependent upon the facts and cannot be laid down in advance, and consequently cannot be codified in a Harbour Revision Order (see Moore v British Waterways [2013] EWCA Civ 73 [63]).

In seeking to curtail mooring for a reasonable period of time within the jurisdiction of LBH the draft Harbour Revision Order seeks to rescind the PRN and thus seeks to rescind Article 29 of the Magna Carta of 1215 and set aside authorities from Courts of Record. A Harbour Revision Order is secondary legislation and the Port of London Act 1968 is a Local act of Parliament and therefore the PRN takes precedence.

The PLA already has sufficient powers to regulate mooring including byelaw 15 of the Port of London Thames Byelaws 2012. Therefore there is already legislation that addresses the mischief that this section seeks to remedy.

### **Section 120A**

The proposed power to deal with unserviceable vessels would potentially breach the Article 8 ECHR rights of the boater if the vessel is used as a home. The PLA must not violate Art 6 and 8 ECHR rights of boat dwellers and must follow due process by issuing a claim form in the County Court.

### **Section 137**

The inclusion of powers to board works and vessels is a potential breach of Article 8 ECHR rights of boat dwellers if the vessel or the vessel plus the river works are used as a home. Case law has established that Article 8 rights extend to the immediate environs of one's home, such as a jetty, wall, towpath or embankment in the case of a boat dweller.

### **Section 175B**

We object to Section 175B on the grounds firstly that it is not appropriate for the PLA to seek to obtain the same rights as the Crown and secondly, that if implemented it would be unreasonable and draconian to limit the long-standing rights of the public in this way.

**NATIONAL BARGEE TRAVELLERS ASSOCIATION**  
**December 2019**

secretariat@bargee-traveller.org.uk  
0118 321 4128  
[www.bargee-traveller.org.uk](http://www.bargee-traveller.org.uk)