

NATIONAL BARGEE TRAVELLERS ASSOCIATION



11th October 2021

By email only to [harbourorders@marinemanagement.org.uk](mailto:harbourorders@marinemanagement.org.uk)

Your reference HRO/2020/00005

Dear Sir or Madam,

**Response to the Marine Management Organisation (MMO) consultation on draft Port of London Authority (PLA) Harbour Revision Order (HRO) Reference HRO/2020/00005**

Please find enclosed a response to the above consultation.

Thank you. I look forward to your reply.

Yours faithfully,

Pamela Smith  
Chair  
National Bargee Travellers Association

## **NATIONAL BARGEE TRAVELLERS ASSOCIATION**

### **RESPONSE TO THE MARINE MANAGEMENT ORGANISATION (MMO) CONSULTATION ON DRAFT PORT OF LONDON AUTHORITY (PLA) HARBOUR REVISION ORDER (HRO): REFERENCE HRO/2020/00005**

#### **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.

#### **Objections**

The NBTA makes Objections to the Draft PLA HRO on the grounds set out below.

#### **General**

Paragraph 3.2 of the MMO Statement in Support states that "..... the shape of trade and traffic on the river is constantly changing and has done so considerably since 1968". However the consultation proposals have failed to recognise the use of boats as homes and fail to consider that there are people living on boats both with and without a permanent mooring on Port of London Authority waterways. Use of the waterways for the primary purpose of living on board a boat is neither commercial nor recreational navigation. The proposals fail to explain how the rights of boat dwellers to respect for their homes under Article 8 of the European Convention on Human Rights (ECHR) and /or the Human Rights Act 1998 will be upheld by these proposals. The proposals also fail to explain how the rights of boat dwellers to moor their homes under the right to moor inherent in the Public Right of Navigation (PRN) on tidal waters will be upheld.

The Common Law Public Right of Navigation has existed since Time Immemorial and was first codified in the Magna Carta of 1215. Halsbury's Laws of England, 5th edition, paragraph 691, states:

"The public right of navigation includes the right ... to remain for a convenient time, to load and unload, to moor and fix temporary moorings in the waterway"

The length of time that can be considered "convenient" cannot be determined in advance. According to Moore v British Waterways [2013] EWCA Civ 73, paragraph 63, a reasonable right of stopping:

"....must depend upon circumstances. You cannot lay down à priori what is reasonable".

The proposals appear to specifically target boat owners with informal moorings, many of whom live permanently aboard their boats. The proposed need for permission to moor to be more explicit; the proposed limits on temporary mooring; the proposed limits to structures not approved by the PLA for mooring; and proposed limits to the mooring of single vessels unrelated to river works, all add up to a concerted attack on boat dwellers. Given that residential use of waterways is one of the fastest growth areas for all navigation authorities, this is a vindictive and blinkered act of social cleansing on the part of the PLA.

If implemented, the proposals will make life extremely difficult if not impossible for some existing long term boat dwellers. All such people should have been consulted individually, with local authorities also consulted regarding those that risk being made statutorily homeless. It is likely that some boat dwellers who have lived on the Thames Tideway for long periods of time will be elderly and vulnerable, and the PLA has a particular duty of care to them. These boat dwellers have rights under Articles 6 and 8 ECHR and under the Equality Act 2010 that will otherwise be violated.

Some of the proposed powers are inappropriate for a body such as the PLA that has limited public accountability, and should not be added to primary legislation without the direct scrutiny of Parliament. We recommend that the PLA makes a formal, public Undertaking not to move, seize, remove or destroy any boat until proper enquiries have been carried out to ascertain whether the vessel is someone's home; until adequate welfare enquiries are carried out; until every effort has been made to provide an alternative mooring; and that no vessel used as a home will be seized without first taking the matter to the County Court and obtaining a declaration from the court that the removal is lawful.

### **Housing and Planning Act 2016**

Section 124 of the Housing and Planning Act 2016 places a duty upon local authorities to "consider the needs of people residing in or resorting to their district with respect to the provision of ... (b)places on inland waterways where houseboats can be moored". This means that Bargee Travellers and boat dwellers must now be included in the accommodation needs assessments that local authorities have a duty to carry out. In March 2016 the DCLG published *Draft guidance to local housing authorities on the periodical review of housing needs: Caravans and Houseboats*. Obviously navigation authorities such as the PLA have a key role in facilitating the provision of both temporary and permanent moorings, especially in the light of the proposed new PLA system to replace River Works Licences. We draw the PLA's attention to the NBTA publication *Best Practice Guide for Boat Dweller Accommodation Needs Assessments under Section 124 of the Housing and Planning Act 2016*, available here <https://www.bargee-traveller.org.uk/best-practice-guide/>

### **Equality Impact Assessment**

No Equality Impact Assessment has been carried out to assess the impact of these proposals on people with Protected Characteristics under the Equality Act 2010. The failure to carry out such an assessment contravenes the Public Sector Equality Duty contained in Section 149 of the Equality Act, which requires statutory bodies such as the PLA to have due regard to equality considerations when exercising their functions.

### **Comments on specific proposals**

#### **Section 4(2)(k)**

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 and socially cleanse the Thames Tideway of boats that do not have a permanent mooring and are used both as a home and for navigation.

### ***Section 4(2)(u)***

We object to any definition of 'pleasure vessel' that includes boats that are used as a person's only or main home. We propose a separate, additional definition that recognises that a boat used primarily as a person's only or main home is neither a 'pleasure vessel' nor a commercial vessel, and which includes both boats used for navigation and boats that are static.

### ***Section 13 - Charges regulations***

The proposed amendment to Section 22 of the 1968 Act enabling information to be demanded about the masters and occupiers of boats using an approved mooring if the PLA thinks charges are unpaid would be a violation of the Article 8 ECHR rights of boat dwellers, especially their right to privacy.

### ***Section 19 - Recovery and enforcement of charges and consideration***

The proposed amendments to Section 39 of the 1968 Act enabling works and associated vessels to be seized where charges are unpaid would violate the Article 6 and 8 ECHR rights of boat dwellers, especially their right to due process and their right to respect for their home.

### ***Section 28 – Removal of Private Moorings***

We object to Section 28 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 ECHR and, if they live on their boats, their Article 8 rights under the 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 the Article 1 Protocol 1 ECHR 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 ECHR rights and, if they live on their boats, their Article 8 ECHR rights.

This amounts to a land grab by the PLA, contrary to Article 1 Protocol 1 and, if they live on their boats, the Article 8 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 Article 1 Protocol 1 and Article 8 rights.

The proposals also fail to recognise that there may be other long-established moorings with different forms of ancient rights, with moorings and other works which have not been covered by River Works Licences in living memory. These traditional moorings could then become unavailable to boat users.

***Section 30 – Permitting of Works and Section 31 - Permitting of mooring, Permission applications, Determination of permission applications & Public register of permissions***

We object to the proposed amendments to Sections 66 and 66A of the Port of London Act 1968. 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. The same applies to boats moored on moorings and other works which have not been covered by River Works Licences or 'ancient mooring chains' in living memory but which have other forms of ancient rights.

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.

If implemented these provisions 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 rights of boat owners. 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.

***Section 34 - Works, mooring or dredging without permission and Section 52 - Special directions to vessels in the Thames***

We object to the proposed amendments to Section 70 and Section 112 of the 1968 Act. 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 the PLA 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 proposed enforcement powers in this section would violate the Articles 6 and 8 ECHR rights of boat dwellers. The timescales are too short to enable proper enquiries to be made regarding whether the vessel is used as a home and to undertake the necessary welfare enquiries. The NBT has received requests for help from boat dwellers whose homes have

been seized by the PLA with the minimum of notice such as 48 hours or 7 days. This is completely unacceptable and subverts their Article 6 ECHR right to due process. Even 90 days' notice to claim a vessel before disposal may not be sufficient, for example for a boat dweller who is seriously ill in hospital.

In any event 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 46 - Entry on land to survey, etc.***

The proposed amendments to Section 90 of the 1968 Act as they apply to entry to river works and vessels would violate the Article 6 and 8 rights of boat dwellers, in particular their rights to privacy and respect for their home under Article 8. This is an extremely draconian method of investigating compliance with terms and conditions.

### ***Section 51 - Overcrowding of vessels***

No definition of "overcrowding" as it relates to either boats used both as homes and for navigation, or static houseboats, is provided in the proposed amendment to Section 110 of the 1968 Act. Therefore arbitrary and variable definitions of overcrowding could be used to carry out enforcement unfairly against specific boat dwellers whom the PLA chooses to target.

### ***Section 54 - Power to raise and remove vessels sunk, etc. and Section 55 - Power to deal with unserviceable vessels & Sale or disposal of vessels***

The power to remove, destroy or sell vessels, and the power to deal with unserviceable vessels contained in the proposed amendments to Section 120 of the 1968 Act would potentially breach the Article 8 ECHR rights of the boater if the vessel is used as a home. The PLA must not violate Article 6 and 8 ECHR rights of boat dwellers and must follow due process by issuing a claim form in the County Court. In addition there is no definition of what constitutes a vessel that is not 'river worthy' and whether this is the same as or in addition to 'unserviceable', an omission that could lead to arbitrary and inconsistent enforcement action and seizures of boats in violation of Articles 6 and 8 ECHR.

### ***Section 65 - Powers of inspection of works and vessels and Section 66 - Identity of master and owner or occupier***

The inclusion in the amendment to Section 137 of the 1968 Act 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. Although these proposed powers to inspect without permission or notice do not include the interior of houseboats, the majority of boats used as homes do not fall into the proposed new definition of "houseboat" in Section 4 of the proposed HRO. Therefore boat dwellers could be subjected to inspection of the interior of their homes without permission or notice. No other form of habitation is subject to such powers to inspect. If these powers were to be granted to the PLA this would violate boat dwellers' rights to privacy and respect for their home and its immediate environs under Article 8 ECHR. The powers of inspection are unnecessary and offensive to the expected rights of privacy.

The proposed amendment to Section 138 of the 1968 Act would similarly violate the Article 8 rights of boat dwellers, in particular their right to privacy under Article 8. Boat dwellers should not be required to have their personal details disclosed and as there is no equivalent power affecting any other form of habitation this would discriminate against people who live on boats.

***Section 76 - Rights of way over permitted works and land of Port Authority & Adverse possession claims in relation to the Thames***

We object to the proposed Sections 175A and 175B on the grounds firstly that these provisions seek to restrict the rights of public access to embark and disembark between the water and the land, and secondly that it is not appropriate for the PLA to seek to obtain the same rights as the Crown. If implemented these provisions would set unreasonable and draconian limits on the long-standing rights of the public. In relation to the proposed Section 175A we propose that public access to the banks of the Thames along its entire length is facilitated by an amendment to the Countryside and Rights of Way Act 2000.

***Section 89 - Warrant authorising use of force to enter land, work or vessel***

The amendments to Section 198 of the 1968 Act proposing powers of entry by force to a vessel, which would include a vessel used as a home, would be a violation of the Article 6 and 8 ECHR rights of boat dwellers, including their rights to due process, privacy and respect for their homes. It would be a draconian power in the extreme and could result in boat dwellers on the Thames Tideway living in fear given the multiplicity of other powers to remove boats, moorings and river works that the PLA is seeking by means of this draft HRO.

***Section 96 - Description of port limits***

We object to the proposed amendment to Schedule 1 of the 1968 Act extending PLA powers to the tidal River Brent and Chelsea Creek. The tidal River Brent between Thames Lock and the Gauging Locks is already under the jurisdiction of Canal & River Trust (CRT) and it is excessive and onerous to introduce a second regulatory body.

**National Barge Travellers Association  
11th October 2021**