

## **National Bargee Travellers Association**

### **Response to Department for Transport consultation on strengthening enforcement against the dangerous use of recreational and personal watercraft**

#### **Introduction**

This consultation response is from the National Bargee Travellers Association (NBTA). The NBTA is a volunteer organisation formed in 2009 that campaigns and provides advice and support 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 1,500 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 Bargee 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.

#### **Question 1: Is new legislation necessary in this area?**

We believe that considerable further investigation is required before any such new legislation is finalised. This is because as the proposals stand, if implemented they would lead to a number of unforeseen, unintended consequences that do not appear to have been considered by the Department for Transport (DfT).

i) Conflicting opinions exist regarding whether the proposals in this consultation are applicable to the UK's inland waterways. Canal & River Trust (CRT) maintains that these proposals do not apply to inland waterways. The Department for Transport maintains that these proposals do apply to inland waterways. In the first instance we require clarity on this fundamental issue of law.

ii) The NBTA requested information from the Marine and Coastguard Agency (MCA) regarding whether the Merchant Shipping Act 1995 (MSA 1995) applies to the UK's inland waterways. The MCA response was that there is no reason why MSA 1995 should not apply to the UK's inland waterways but also stated that this question had not, to their knowledge, ever arisen before. This view was confirmed by Professor David Cowan, Barrister.

iii) In general, the inland navigation authorities in the UK do not appear to recognise the application of the MSA 1995 to their waterways.

iv) We require clarity on whether the MSA 1995 applies to the UK's inland waterways.

v) The DfT appears not to have considered the existence of residential boats or that boats are used as permanent homes. As they stand the proposals fail to draw a distinction between vessels that are used as homes and vessels used for recreation. The use of boats as permanent homes on the UK's inland and coastal waterways is not differentiated by DfT from the use of boats for 'pleasure navigation' or for 'recreation'. The use of the term 'houseboat' in inland waterway legislation only captures a very small minority of boats used as homes. In law, there is no distinction between a 'pleasure boat' or 'recreational boat' and a boat that is used both as a permanent home that is also, out of both necessity

and out of choice, is also used for navigation. The definition of 'watercraft' captures the majority of boats that are used as homes on the inland waterways and this will create unintended consequences.

vi) We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of 'recreational' craft or 'other watercraft'; that DfT should not define boats that are homes as 'pleasure boats/ pleasure craft' or navigation by residential boats as 'pleasure navigation'; and that boats used as homes should be placed in new categories of 'residential boats/ residential craft' and 'residential navigation'.

vii) The proposals would create conflict and ambiguity in jurisdiction regarding prosecutions because inland navigation authorities such as CRT, Environment Agency (EA) and Middle Level Commissioners (MLC) have powers of prosecution under byelaws, secondary legislation and in some cases under primary legislation. The proposals would create two competing jurisdictions.

viii) The proposals would create conflict, ambiguity and incompatibility of jurisdictions regarding construction and safety standards. On inland waterways vessels have to comply with the Recreational Craft Directive (RCD) and the Boat safety Scheme (BSS). The implications of the juxtaposition of RCD/ BSS and the requirements of the MSA 1995, and the potential loopholes this may create, have not been considered in drawing up these proposals.

ix) In devising these proposals, no consideration of the rights of boat dwellers under Articles 6 and 8 of the European Convention on Human Rights (ECHR) has been carried out; no Human Rights Act compatibility assessment has been carried out, and no Equality Impact Assessment has been carried out. As the proposals stand, the enforcement powers imply that summary seizure and /or detention of a boat that is used as a home could be carried out, rendering the occupants homeless and violating their rights under Articles 6 and 8 ECHR to have the proportionality of removing their home assessed by an independent court with the opportunity to defend themselves. Absent a Human Rights Act compliance review and an Equality Impact Assessment, the proposed legislation would violate the ECHR and Equality Act rights of boat dwellers and the UK would end up in the European Court of Human Rights. The DfT has a duty to address these issues. For example, in the passage through Parliament of the EA Inland Waterways Order 2010, the EA gave an Undertaking that because of the Article 6 and 8 ECHR rights of boat dwellers, it would not summarily seize a liveaboard boat under the 2010 Order but would submit to a court of competent jurisdiction.

x) A liveaboard boat has a dual function of being a home and being used for navigation, but it is not a recreational boat. The proposals have not considered the Article 8 ECHR rights of respect for one's home and the right to privacy. As they stand, the proposals are discriminatory in that a boat dweller could be prosecuted for being at home under the influence of alcohol when the boat is tied up for the night, whereas a house dweller cannot be prosecuted for being drunk whilst at home.

xi) By bringing 'watercraft' into the scope of MSA 1995 the proposals would bring the skipper of an inland waterway boat into the scope of Section 98 *et seq* of MSA 1995 including the skipper having powers of arrest. That is in direct opposition to the claimed power of (for example) CRT under its Boat Licence Terms and Conditions to have its personnel board a boat, because Section 104 of MSA 1995 states that the only personnel

exempt from prosecution for boarding a vessel under Section 104 MSA 1995 are officials of the Royal Navy, the MCA, HM Revenue and Customs, and Police Constables. CRT and EA staff do not fall into these categories.

**Question 2: Are the personal watercraft ownership and accident figures quoted above an accurate representation? NB: If you provide alternative figures, please quote the source and include evidence of their reliability.**

N/A

**Question 3: Does the proposed definition of “watercraft” meets the intended aim of bringing all PWCs, recreational and other watercraft back within scope of safety and misuse requirements? Are the intended exclusions appropriate?**

We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of ‘recreational’ craft, ‘watercraft’ or ‘other watercraft’; that DfT should not define boats that are homes as ‘pleasure boats/ pleasure craft’ or navigation by residential boats as ‘pleasure navigation’; and that boats used as homes should be placed in new categories of ‘residential boats/ residential craft’ and ‘residential navigation’.

**Question 4: Should the UK Ship Register should be open on a voluntary basis to watercraft owners?**

Yes.

**Question 5: Should the provisions of section 58 of the MSA 1995 be applied to watercraft and, if so, which ones?**

We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of ‘recreational’ craft, ‘watercraft’ or ‘other watercraft’; that DfT should not define boats that are homes as ‘pleasure boats/ pleasure craft’ or navigation by residential boats as ‘pleasure navigation’; and that boats used as homes should be placed in new categories of ‘residential boats/ residential craft’ and ‘residential navigation’.

**Question 6: Should the power of detention be available to enforcement officials to ensure dangerously unsafe watercraft are not used on the water?**

In devising these proposals, no consideration of the rights of boat dwellers under Articles 6 and 8 of the European Convention on Human Rights (ECHR) has been carried out; no Human Rights Act compatibility assessment has been carried out, and no Equality Impact Assessment has been carried out. As the proposals stand, the enforcement powers imply that summary seizure and /or detention of a boat that is used as a home could be carried out under MSA 1995 if a vessel is deemed unsafe, rendering the occupants homeless and violating their rights under Articles 6 and 8 ECHR to have the proportionality of removing their home assessed by an independent court with the opportunity to defend themselves. Absent a Human Rights Act compliance review and an Equality Impact Assessment, the proposed legislation would violate the ECHR and Equality Act rights of boat dwellers and the UK would end up in the European Court of Human Rights. The DfT has a duty to address these issues.

The proposals would create conflict, ambiguity and incompatibility of jurisdictions regarding construction and safety standards. On inland waterways vessels have to comply with the Recreational Craft Directive (RCD) and the Boat safety Scheme (BSS). The implications of the juxtaposition of RCD/ BSS and the requirements of the MSA 1995, and the potential loopholes this may create, have not been considered in drawing up these proposals.

**Question 7: Should the provisions of section 100 of the MSA 1995 be applied to the owners of watercraft and, if so, which ones?**

We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of 'recreational' craft, 'watercraft' or 'other watercraft', regardless of whether the boat is owned by the person or persons who occupy it as their permanent home, or whether it is owned by a third party.

**Question 8: Should the provisions of sections 85 and 86 of the MSA 1995 be applied to watercraft and, if so, which ones?**

We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of 'recreational' craft, 'watercraft' or 'other watercraft'; that DfT should not define boats that are homes as 'pleasure boats/ pleasure craft' or navigation by residential boats as 'pleasure navigation'; and that boats used as homes should be placed in new categories of 'residential boats/ residential craft' and 'residential navigation'.

**Question 9: Should the same definition of "watercraft" be used for the purposes of the Harbours Act 1964?**

We recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of 'recreational' craft, 'watercraft' or 'other watercraft'; that DfT should not define boats that are homes as 'pleasure boats/ pleasure craft' or navigation by residential boats as 'pleasure navigation'; and that boats used as homes should be placed in new categories of 'residential boats/ residential craft' and 'residential navigation'.

**Question 10: Should these consequential amendments to incorporate watercraft within related merchant shipping legislation be made?**

The proposals would create conflict, ambiguity and incompatibility of jurisdictions regarding construction and safety standards. On inland waterways vessels have to comply with the Recreational Craft Directive (RCD) and the Boat safety Scheme (BSS). The implications of the juxtaposition of RCD/ BSS and the requirements of the MSA 1995, and the potential loopholes this may create, have not been considered in drawing up these proposals.

**Question 11: Are there any significant new costs or administrative burdens which might be created as a result of the introduction of this legislation? What is your assessment of these?**

In order to avoid the duplication of jurisdiction and compliance requirements, which would place an onerous burden on the owners and/or occupiers of boats used as homes, we recommend that any new legislation should be worded in such a way as to avoid the unintended consequences of boats that are used as homes falling into the definition of

'recreational' craft, 'watercraft' or 'other watercraft'; that DfT should not define boats that are homes as 'pleasure boats/ pleasure craft' or navigation by residential boats as 'pleasure navigation'; and that boats used as homes should be placed in new categories of 'residential boats/ residential craft' and 'residential navigation'.

**Question 12: What, if any, documentary evidence are you able to supply that alcohol or drug use among recreational mariners is leading to safety concerns or an increased number of accidents or incidents? Are you aware of any recent prosecutions for related offences?**

There are and have been since at least 2013 some very significant problems regarding hire boats being driven recklessly and under the influence of alcohol on the inland waterways. Many hire boat companies specifically advertise boat hire to stag and hen party weekends. For example, Oxfordshire Narrowboats:

<https://www.oxfordshire-narrowboats.co.uk/holidays-and-short-breaks/single-sex-parties.html>

<https://www.oxfordshire-narrowboats.co.uk/holidays-and-short-breaks/weekend-breaks.html>

"Stag and Hen Breaks. We are the UK's largest provider of big boats for stag and hen parties. Our 8-12 and 10-12 berth boats are ideal for a weekend stag or hen bash afloat! We make special efforts to ensure that your party can enjoy a fantastic cruise through great scenery toward the City of Oxford with its many attractions such as karting, ice skating, premium shopping or simply enjoying the culture and nightlife this fantastic city has to offer. Thorough training is provided: but do please note that for each boat booked two of your party **must remain sober whilst boating** [our emphasis]".

Stag parties and large all-male groups are regularly observed loading large crates of beer onto boats after they have taken them over for their holiday. These stag party crews routinely drive boats while drunk; drive boats at excessive speed which causes damage to waterway banks and loosens or detaches the pins of moored boats; crash into both moored and moving private boats both deliberately and due to being drunk; cause damage to private boats; engage in races between hire boats; deliberately crash into other hire boats; act in verbally abusive and sexually threatening ways to private boaters; verbally abuse liveboard boaters using pejorative, racist, anti-Traveller language, and commit offences of indecent exposure such as urinating into the canal while under way. The populations of liveboard boaters on the inland waterways including NBTA members have been intimidated and have suffered financial loss due to damage to their homes. A historic wooden boat was sunk on the Kennet and Avon Canal in 2018 by a speeding hire boat.

This behaviour is not being kept in check by hire boat companies. Indeed, anecdotal evidence suggests that hire boat companies are omitting to provide the required instruction and show videos on boat handling before hirers board the boat. It is believed that in the 2021 season they are allowing boats to go out without tuition in the expectation that lack of tuition will cause the forfeiture of the damage deposit so that the hire company can recoup financial losses resulting from the Covid-19 pandemic.

This is a particular problem on CRT waterways which are narrow and busy. However CRT is failing to enforce its byelaws regarding safe boat handling and boating under the influence of alcohol. There is a significant conflict of interest because CRT receives

considerable income from hire boat companies in the form of business boat licence fees and premises or moorings rental. CRT works closely with hire boat companies and encourages their development. In some cases hires have been terminated by the hire boat companies and the Police have been called to enforce Anti-Social Behaviour legislation.

In 2015 over 100 boaters and local canal-side residents signed a letter calling on the police in BaNES and Wiltshire to take action to stop the frequent incidents of wilful damage to boats, drunken behaviour, verbal abuse and other anti-social behaviour by hire boat stag parties on the Kennet and Avon Canal.

In 2016 the NBTA helped to organise a meeting between hire boat companies, liveaboard boaters, the Police and CRT to try to address anti-social behaviour by drunken stag party crews. The Police made it clear that if CRT was not prepared to enforce its byelaws then the Police would take action under Anti-Social Behaviour legislation.

The outcome of contact between the Police, CRT, NBTA, liveaboard boaters and hire boat companies has been some improvement in the behaviour of hire boat crews, but this is still a recurring problem that needs to be properly addressed.

To our knowledge there have been two prosecutions on CRT waterways under the Railway and Transport Safety Act 2003 for being drunk in charge of a boat. Both people prosecuted were private boaters. These prosecutions occurred in 2010 and 2021.

We attach the following documentary evidence:

Articles from Kennet and Avon Boating Community web site:

- CRT meets with hire companies after speeding hire boat complaints, July 2013.
- Hire company recalls stag party boats, April 2014.
- ASBO officer wants videos of stag party behaviour, July 2015.
- Progress on hire boat stag parties, including letter to Police signed by 100+ people, October 2015.
- Boaters meet with hire companies over ASB stag parties, April 2016.
- Stag party crew sinks liveaboard – community meeting this Wed 26th September, September 2018.

Article from The Butty:

- What to do with the drunken sailor? Spring 2010.

**National Bargee Travellers Association**  
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