



PUBLIC CONSULTATION ON MOORINGS POLICY 2009

RESPONSE QUESTIONNAIRE

Please use this form to submit your response and email it to consultation@britishwaterways.co.uk before **31st January 2010**.

Paper copies should be posted to:

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If you have any questions about the consultation, please contact us:

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Your name and contact details

Please provide email or postal address, depending on how you would prefer to be contacted. Note, we will not be able to acknowledge individual contributions, but will contact you with a copy of the final report when available. Exceptionally, we may contact you if we need to clarify any aspect of your feedback. Unless you specify otherwise, we may quote, but not attribute, your views

In what capacity are you responding to this consultation? (please delete those that don't apply)

- As a representative of a company, organisation or local authority (please state which and include your position within the organisation) _____
- Residential boater
- Current boat owner (using boat mainly for leisure)
- Continuous cruiser
- Owner or employee of an inland marine business
- Owner or employee of a business serving boaters
- Angler
- Resident living close to a waterway frequented by boats
- Parish or District Councillor
- Other (please indicate) _____

Which part(s) of the waterway network do you have most experience of? _____

It helps us to analyse your comments if you use the headings and prompts listed on the next page

Please use the question number when documenting your comments

Moorings along the line of the waterway

Balancing demand with capacity (page 5-6)

- 1. Do you share our view that developing better policies and management of moorings along the line of the waterway is a pressing challenge resulting from continued growth in boating on BW waters?**

No. BW has not presented any evidence, either quantitative or qualitative, to demonstrate that there is a problem. It is not pleasant cruising and mooring in isolated parts of the canal system where there are no other boats. The quality of the boating experience is much greater when there is a community of boats to share it with. Moored boats create security and safety for boaters and recreational users of the towpath. They deter crime and provide assistance and community. Stretches of towpath in urban

areas without moored, occupied boats are the most dangerous parts of the canal system for lone boats, walkers, cyclists and joggers, and people avoid them because of the high incidence of crime and anti-social behaviour or the fear of it. If BW wishes to increase visitor numbers it must ensure the safety of those visitors and the best and cheapest way to do this is to encourage the mooring of occupied boats.

The legal powers BW already has, Section 17 of the 1995 British Waterways Act, are perfectly adequate to regulate mooring, but for some reason BW does not regularly enforce the 14-day rule – perhaps because there is no money in it? BW should use the powers it already has, that is, the 1995 British Waterways Act. It should enforce the 14-day rule fairly and consistently. Section 17 (3) of the 1995 British Waterways Act provides for all that BW wish to achieve. This legislation took 7 years to debate and become law. To ask for more draconian powers because BW is unwilling to enforce this legislation (perhaps because there is no money in doing so) could only emerge from a corporate mindset which disregards its legal responsibilities. If BW concentrated on enforcing those powers it does have, which are extensive, then it would gain much more widespread support, especially from those groups of boaters on whom it is currently trying to impose unworkable solutions. Without the support of these boaters these proposals are doomed to failure and if implemented in spite of these objections will cause much larger problems than they are intended to solve.

BW should carry out proper dredging, bank maintenance, vegetation management and control of reed growth to increase the mooring space available. This would increase the amount of available mooring space on the canal system by at least 50%.

As long as a boat is licensed, boaters do not need to have a long-term mooring - this is a statutory right under the 1995 British Waterways Act which enshrines the principle of a universal licence for unlimited private navigation regardless of whether or not a boat has a long-term mooring. BW have a duty to make sure that there is enough 14-day mooring space through dredging, vegetation control and bank maintenance so that people can continue to exercise those rights. The proposals will reduce the total amount of 14-day mooring space and thus make any problems of mooring scarcity worse.

Legal framework (Page 6 and Appendix 2)

2. How familiar were you with BW's legal framework before reading this document? Did you find the explanations helpful?

Very familiar. The explanations are misleading and incomplete, seeking to present BW's interpretation of the law as if it was the law and implying that County Court decisions constitute case law when they do not.

To impose the fines and restrictions proposed in this document BW intends to use a piece of law that is 47 years old, the 1962 Transport Act, that empowers them to charge for 'services and facilities' which any reasonable person would read as wharfage, towage, crange and other services and facilities one would expect a navigation authority to supply. BW expects boaters to believe that Parliament simply forgot to add 'fines, excess charges and restrictions' to Section 43 of the Act and that all the subsequent legislation, including the 1995 British Waterways Act, simply did not happen.

It is a very serious breach of power by a Public Corporation to seek to use primary legislation in a way that was obviously not intended to achieve a goal that was not considered when the original legislation was debated. It is unlawful of BW to behave in this way. BW has up until now been wary of court challenges to its abuse of powers and has always dropped or lost cases where there has been a robust defence. The few cases it cites as supporting its view were either undefended or inadequately defended, and do not constitute case law as they were not heard in a court of record.

The new rules are widely challenged as to their legality whereas the 1995 Act is primary legislation about which there is little dissension. There already exist a set of laws, the 1995 Act Section 17 (3), that provide for all that BW wish to achieve. These laws took 7 years to debate and become law. To ask for more draconian powers because BW is incapable of enforcing the rules arising from this legislation could only emerge from a corporate mindset out of touch with its legal responsibilities.

BW omits to state that the actions of public bodies such as BW is have to be compatible with the Human Rights Act

3. Do you have any suggestions for an objectively measurable threshold for congestion which could form part of our assessments of new marina applications?

To reduce congestion there should be maximum limits on both the number of hire boat companies and the number of hire boats in any one area.

Supplementary routes to achieving fairness in use of scarce mooring space (page 7)

4. Do you support our aspiration that all boaters should share the job of protecting the amenity of the waterways?

BW consider the amenity of the waterways to be stretches of canal without moored boats and without a community of boaters. I am happy to share in protecting the amenity of the waterways if it includes the ability to moor boats and the preservation of the boating community, including both residential and non-residential boaters. I do not support protecting an amenity which consists of waterways without moored boats.

5. Do you agree that offsetting permit fees for overstaying at popular short term moorings, subject to reasonable arrangements and detail, is a fair way of rationing scarce space?

No. I do not agree with the assertion that mooring space is scarce. BW has not presented any evidence to show that this is the case.

The boat licence covers the use of all waterways and any waterway. There should not be places where boats are not allowed to moor without paying. The concept of rationing by price discriminates against the less well-off and is contrary to BW's aims of social inclusion. It is contrary to BW's Strategic Aim of providing social inclusion. It is contrary to BW's aims of attracting greater participation and involvement in the waterways by people who may feel excluded from them, such as boaters on low incomes. It is contrary to BW's aim of promoting the waterways as safe, accessible and enjoyable environments for all sectors of society, since this should include boaters on low incomes.

Imposing fee-paying visitor moorings will not generate income for BW. Boats will simply avoid mooring on fee-paying sections.

Statement of principles underlying BW's boating policies (page 7)

6. Do you disagree with any of these principles? Why? What principles would you add?

Yes, for the following reasons. The principles are loaded towards business and BW is not a business. It is not up to BW to determine breathing spaces between groups of moored boats, it is up to the boaters. Parish councils and local authorities should not have a say about the movements and mooring of boats. I would add the principles that the canals and boating should be for all, regardless of the ability to pay; that the community of liveaboard and non-residential boaters is a valuable amenity that should be protected; that the boating community provides significant benefits to local communities; that the 1995 British Waterways Act enshrines the principle of a universal licence for unlimited private navigation regardless of whether or not a boat has a long-term mooring; that there is nothing in law that prevents people living on boats and that the Human Rights Act means that BW is obliged to respect the homes and family life of liveaboard boaters and not to discriminate against them.

Local moorings strategies (page 8-9)

7. Do you agree that this is (a) the most sensible and (b) a feasible approach to achieving a fair balance between competing demands on scarce mooring space? If not what approach would you propose?

a) It is not the most sensible approach. It will cause conflict between BW and its paying customers, could result in loss of income for BW, and will cause conflict between boaters and people who have no knowledge or experience of boating, who are not customers of BW or licence payers. As users of moorings, boaters have the best knowledge of the situation and the greatest expertise. There is a clear agenda against liveaboard boaters in all these proposals. Where boats moor is not the business

of parish councils or canalside residents. Only boaters and BW licence payers should have a say on the issue of moorings. BW has not provided any evidence to show that there is not enough mooring space for all the users of the canals and that the use of existing mooring space by those who need to use it is a problem that requires solution. A busy canal constitutes a successful canal, not a problem. BW should study the reasons why some canals are busy and apply these conditions to the rest of the canal network to increase the success of all parts of it. The idea has been adopted by BW in response to aggressive and effective lobbying by the leisure industry and by a small but vociferous number of wealthy and powerful canalside villagers reacting to use of the canals by a group of people they instinctively fear and dislike.

There are within the proposal for local mooring strategy groups conditions that are intended to explicitly exclude from the process those people affected by the proposed restrictions or people with local expertise of the use of the canal. The only canal users, as opposed to towpath users, that will be included in the proposed local mooring strategy groups are those with declared vested interest, the leisure industry. The proposed steering group make-up is not representative of canal users, it is weighted to non-paying users (not stakeholders in BW terminology) such as nearby residents and parish councils.

Including parish councils and canalside residents will give a platform to prejudice and discrimination such as that demonstrated by the resident of Bathampton or Claverton who expressed a wish to stop boaters' children from attending local schools (notes of Question and Answer session on canal walk at Bathampton, 17 August 2009) and by the Bathampton resident who made a complaint to BW about "Boaters use of local school preventing tax payers children using it" (Complaint no 4, February 2008 received by BW SW). This will lead to further demonisation, harassment and attacks on boat dwellers such as the arson attack on a boat at Bathampton on 6 June 2009 where the lives of a 2-year old child and his parents were put in danger and the family lost their home.

b) It is not a feasible approach. No group apart from boaters has the knowledge and practical experience to make decisions about the mooring of boats. Any such strategy should be drawn up by boaters only. Local mooring strategies will result in decisions based on ignorance, lack of experience of the canal and of boating, prejudice against travelling boaters, vested interests and hearsay, by people who know very little about the day to day situation on the canals and who have no expertise or direct experience of the canals. There is evidence of this in the minutes of the meetings and canal walk held between BW and Bathampton Parish Council on 15 June 2009; 10, 17 and 28 August 2009, and 10 September 2009.

Decisions made under these circumstances will be unworkable and will not have the support of boaters. The use of unpaid, unfunded volunteers will exploit the prejudice, self-interest and also the goodwill of those on the steering group. The proposed local mooring strategies include a set of rules that are far wider in their scope than the existing 1995 British Waterways Act which BW chooses not to enforce. Local mooring strategies will be unworkable and unenforceable.

The use of volunteers to draw up mooring restrictions will lead to a situation where members of the public will have to stand up in court and subject themselves to rigorous examination of their motivations and reasons for undertaking these roles. Their accountability will be suspect and no process of appeal is proposed. There is no attempt to establish standards of behaviour or probity. This is not fair on either the volunteers or the boaters.

The proposed membership of local mooring strategy groups means that the people who will be directly affected by its decisions will be outnumbered by those who are not. This is undemocratic and unjust. Agreement with the legal framework BW wishes to promote as a condition of being on a steering group prevents proper representation and is unworkable. How could this be policed? How would BW prove that a member does not agree? It is also discriminatory, and in practice excludes the boaters which the proposals are targeted at and who would be affected the most. It would contravene Articles 8, 10 and 14 of the Human Rights Act, which BW as a public body is bound by. The legal framework set out in this document is beyond the legal powers BW has to enforce. To insist on agreement with it means that BW will be asking all members of a steering group to condone an unlawful act.

The people most likely to want to join the steering groups are those who dislike boaters and feel that the canal should not have so many boats. Non-boaters who feel positively about the presence of the boats are unlikely to join.

The involvement of canalside residents will mean that biased decisions will be made according to vested interests such as that demonstrated in the minutes of the meeting between BW and residents of Bathampton on 28 August 2009 (my italics):

“Permanent mooring zone – (currently permanent).

Damian said that this section currently contained 12 permanently licenced boats v. a capacity of 18 boats. BW would not increase this number beyond 12 and – after consultation with boat owners and other interested parties – intend to reduce the length of this permanent mooring stretch by approximately one third at the Kennet Side house end. This section would be converted to 72 hours. Damian thought this would take at least 6 months. *The exception might be the permanent mooring adjacent to Kennet Side house, which could remain in position even if the 72 hour section is extended.*”

What other approach would you propose?

BW should use the powers it already has, that is Section 17 of the 1995 British Waterways Act, which is perfectly adequate to regulate mooring and provides for all that BW wishes to achieve. However, for some reason BW does not regularly enforce the 14-day rule. This legislation took 7 years to debate and become law. To ask for more draconian powers because BW is unwilling to enforce this legislation (perhaps because there is no money in doing so) could only emerge from a corporate mindset which disregards its legal responsibilities. If BW concentrated on enforcing those powers it does have, which are extensive, then it would gain much more widespread support, especially from those groups of boaters on whom it is currently trying to impose unworkable solutions. Without the support of these boaters these proposals are doomed to failure and if implemented in spite of these objections will cause much larger problems than they are intended to solve.

Firstly, BW should enforce the 14-day rule consistently and fairly. Secondly, BW should carry out proper dredging, bank maintenance and vegetation control to increase the space available for mooring; this would increase the amount of available mooring space on the canal system by at least 50%, far more than these proposals would. I and most other boaters I know have had far more problems finding places to moor due to lack of dredging, dredging to a shallower profile than the original design, reed growth, bank collapse, low water depth and overgrown vegetation than because of overcrowding.

As long as a boat is licensed, boaters do not need to have a long-term mooring - this is a statutory right under the 1995 British Waterways Act which enshrines the principle of a universal licence for unlimited private navigation regardless of whether or not a boat has a long-term mooring. BW have a duty to make sure that there is enough 14-day mooring space through dredging, vegetation control and bank maintenance so that people can continue to exercise those rights.

8. Do you have suggestions for improving the proposed approach to creating local strategies?

Drop the idea for creating local moorings strategies and apply the existing law fairly and consistently.

9. What criteria would you suggest for determining whether a particular area of the waterways should have a local mooring strategy?

There should not be any local moorings strategies. A busy canal means a successful canal, and BW should study the reasons for the success of certain canals and apply these conditions to the rest of the network to increase the success of the less busy canals.

10. Do you have any comments on BW's standard for moorings suitable for boaters with mobility difficulties?

All disabled moorings should have road access to within 50 metres of the mooring.

Zoning short term moorings in areas of high demand (pages 10-11)

11. First, leaving aside the detail in this section, do you accept this *in general* as a valid approach to managing use of scarce mooring space?

No. BW has not provided any evidence to show that there is not enough mooring space for all the users of the canals and that the use of existing mooring space by those who need to use it is a problem that requires solution. These proposals have been drawn up by BW in response to aggressive and effective lobbying by the leisure industry and by a small but vociferous number of wealthy and powerful canalside villagers reacting to use of the canals by a group of people they instinctively fear and dislike. The proposals will reduce the total amount of 14-day mooring space and thus make any problems of mooring scarcity worse. There are already enough visitor moorings, and most of those that already exist were not subject to consultation with interested parties before being imposed.

All current visitor and time limited moorings and 'no return within' restrictions that have been imposed over the last 10 years that were not subject to consultation before being changed from 14-day moorings should be opened to consultation before any other changes in mooring are proposed. This should also include designation of winter moorings and changes to leisure and residential moorings which were not subject to consultation.

Far more problems of mooring scarcity are caused by lack of dredging, dredging to a shallower profile than the original design, reed growth, bank collapse, low water depth and overgrown vegetation than by overcrowding.

Trading boats should be able to trade in locations that are best for their business and should not be restricted to designated areas. All boat based businesses are different and they have different requirements for mooring location. As long as trading boats obey section 17 (3) of the 1995 British Waterways Act they should be able to trade anywhere. Making them moor in specific places could seriously affect their income.

12. What comments do you have on the principles listed?

They are unworkable, confusing and overly complex. I do not understand them and I doubt that many other boaters will. They are so confusing that boaters will incur charges without intending to because they do not understand the complicated rules about how long a boat can moor in a particular location before incurring charges. Perhaps this is deliberate on the part of BW.

13. How would you improve on the proposed compliance arrangements?

BW already has powers under the 1995 British Waterways Act and systems in place to regulate mooring. BW should use the powers it has and apply the 14-day rule consistently and fairly.

14. What is your view of the suggested level of daily charge?

We already pay the boat licence fee which entitles us to use all of the waterways. There should not be any extra charge for mooring in particular places. The 1971 British Waterways Act allows for subdivisions of the pleasure boat licence but does not give BW powers to charge more for any such subdivision. The proposed charges are against the law.

15. How important do you think it is that permits should be displayable (even if it costs more)?

Controlling expansion and reducing online moorings (page 12)

16. Are you comfortable with this policy? If not, why not?

No. The survey conducted by BW and the RBOA showed that most boaters preferred online moorings. Marina moorings are too expensive. Online moorings are more affordable and pleasanter.

General comments on moorings along the line of the waterway

- 17. If you do not agree with much of the thrust of our proposals, but you accept that there are problems to be solved, what alternative approach would you recommend? Please try to confine your suggestions to policies that are practical and legal!**

The legal powers BW already has, Section 17 of the 1995 British Waterways Act, are perfectly adequate to regulate mooring, but for some reason BW does not regularly enforce the 14-day rule – perhaps because it does not generate any income. These proposals are a thinly-disguised attempt to obtain more money from boaters and are not backed up with law. Firstly, BW should enforce the 14-day rule consistently and fairly. Secondly, BW should carry out proper dredging, bank maintenance and vegetation control to increase the space available for mooring; this would result in much more additional mooring space than BW's current proposals would. I and most other boaters I know have had far more problems finding places to moor due to lack of dredging, dredging to a shallower profile than the original design, reed growth, bank collapse, low water depth and overgrown vegetation than because of overcrowding.

Residential Moorings Policy

Context (page 13)

- 18. Do you support our position about boating on our network (paras R1.1 to R1.3)?**
- 19. Do you agree with the context that we describe in paras R1.4 to R1.10 and R1.11 to R1.17? If not, give your own observations of the issues.**
- 20. What are your views on unauthorised residency i.e. people living on their boat at a long-term leisure mooring without planning permission. Refer to R1.17. Please explain your views rather than simply answer 'support / object'.**

BW should differentiate between living on the boat and living at the mooring. There is nothing to stop people whose boat is their main residence taking a leisure mooring as long as they do not use the **leisure mooring** as their main residence. Living on one's boat does not prevent one from complying with all the terms and conditions of the leisure mooring agreement. BW should not prevent people who live on their boat from taking a leisure mooring.

Policy (page 15)

- 21. Do you support our general position in R2.1?**
- 22. Do you agree with the four factors for assessing residential mooring proposals in R2.2? Should we consider other factors?**
- 23. Do you agree with points R2.4 to R2.7 and have other comments?**
- 24. Given the statement in para R2.8, do you agree with our position in relation to unauthorised residential use of long-term leisure moorings in paras R2.8 to R2.10?**
- 25. Do you have any comments or suggestions on communicating to customers in para R2.10?**

Implementation (page 16)

- 26. This section sets out how we will turn the policy (the previous section) into action. Please comment on any point and add further comments about what you think we should be do**