

CHANGES TO BW CONTRACT TERMS RELEVANT TO HOUSEBOATS AND TO BOATS MOORED ON CERTAIN BW MOORING SITES IN LONDON

SUMMARY:

- The definition of a houseboat for the purposes of boat licensing (only) has been widened to cover *potentially* any boat whose *primary* purpose is *not* for navigation. This follows a review by our Legal Team in response to a complaint from a customer.
- This means that anyone with a BW mooring permit at a site authorised for residential use may, if they wish, switch to a Houseboat Certificate instead of a Pleasure Boat Licence.
- Currently the price of Houseboat Certificate and Pleasure Boat Licences is the same, but that might not always be the case.
- The reason why some people prefer to have a Houseboat Certificate is because it carries some ability to assign the mooring permit upon sale of the boat.
- The waterways statutes limit this ability to cover only the unexpired portion of the permit at the point of the boat being sold, but until July 2010, it was BW's practice to allow permanent assignment. This has resulted in the accrual of premiums on boat sales because buyers are prepared to pay more for a boat with a guaranteed mooring.
- British Waterways wishes to revert to the provisions of the statute so that in future, only the unexpired portion of the current permit is assignable. This consultation explains the changes to the mooring agreement for houseboat certificate holders, which result from the decision to accept the wider definition of a Houseboat contained within the waterways legislation. In developing the new mooring agreement we have been careful to ensure that those who have already purchased a boat for a price which includes a premium relating to the mooring do not lose out.

ASSOCIATED DOCUMENTS:

- Draft mooring agreement for boats with Houseboat Certificates
 - The standard mooring permit which the above will replace for holders of Houseboat Certificates is published at <http://www.waterscape.com/media/documents/1861.pdf> . Copy available on request from Customer Services.
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1. Background: definition of 'Houseboat'

In late 2009, a boat owner lodged a complaint against BW concerning houseboat certificates. The complainant believed that the definition of a Houseboat in our current licence terms and conditions was incorrect. This read as follows:

"1.4 Houseboat means a boat which is not used for navigation and is kept on a British Waterways long term mooring with planning consent for residential use".

The complainant's reasoning was that the restriction of houseboat certificates to boats which are not used for navigation is not consistent with relevant statutes (British Waterways Acts 1971 and 1995).

The case was resolved with the help of the Waterways Ombudsman, and BW agreed to change the definition to:

“1.4 Houseboat means a boat whose predominant use is for a purpose other than navigation and which, if required for the purpose, has planning permission, for the site where it is moored. A houseboat may be used for navigation from time to time provided it does not become its predominant use.”

We included this amendment within the consultation on boat licence changes published in November 2010. Two respondents were uncomfortable with the change, but their alternative proposals were not consistent with the relevant statutory obligations. The revised definition was therefore included in licence terms and conditions applicable to all licences issued from 1st August 2011.

2. Implications relating to the boat licence application

The significance of the houseboat definition is that an owner whose boat fits the new definition may opt to purchase a Houseboat Certificate (HBC) instead of a standard Pleasure Boat Licence (PBL). In almost all practical respects, the terms and conditions of these two types of licence are the same. The annual cost of the licences is currently the same, but this could be reviewed in future to make the Houseboat Certificate more expensive. The difference between the two licences is that the BW Act 1995 enables the HBC holder to assign the unexpired portion of the certificate to the new owner of the boat when it is sold, subject to BW's consent (not to be unreasonably withheld).

HBCs are only issued for boats with BW long term mooring agreements, and the HBC and mooring permit must run concurrently with the same expiry dates.

It has been our practice to allow assignment of the HBC and associated mooring permit not only until the expiry of the certificate, but also beyond this date. This is more generous than the provisions contained in the statute.

The revised definition of a Houseboat does not explicitly state that the boat will be used for residential purposes. Note however that residential use may require local authority planning consent.

3. Implications for associated BW mooring agreement terms

It has been BW's practice to allow mooring customers with houseboat certificates to assign the associated mooring agreement upon sale of the boat. To date, we have not published or applied specific conditions to this assignment.

A consequence of the current arrangements has been that moorings occupied by boats with houseboat certificates almost never become vacant because they are always assigned to the new owner when the boat on the mooring is sold. Boats sold on the mooring generally command a significant premium over and above the asset value of the boat because of the perceived value of the mooring. Mooring permit holders, in paying their annual fee, are not buying a stake in the long term value of the mooring; the size of the premium is an indication of the extent to which the annual mooring fee understates the fair market value. Because vacancies rarely arise at mooring sites occupied by houseboat certificate holders, the opportunity does not arise to test the market through the auction system. This means that our periodic reviews of mooring permit prices have to take place with insufficient evidence of the fair market value.

BW's firm position is that mooring agreements are for use of the mooring site during the period of the agreement. Premiums which have built up over the years have financially benefitted successive generations of boat owners because of the scarcity value of the location which has not been fully reflected in the mooring fee. We appreciate that it's not possible to unravel history, but in future, we must remove the risk of new premiums accruing when boaters choose to exercise their right to purchase a houseboat certificate.

4. Changes to mooring agreements associated with HBCs

The changes to the agreement will have differing impacts on customers, depending on whether or not their boat had a houseboat certificate on 31 July 2010. We are avoiding changes that would result in

financial hardship to those whose boat has already 'acquired' an uplifted valuation because of the occurrence of a mooring premium.

Key points of difference between the new draft agreement and the current standard mooring agreement are as follows: (numbers refer to clauses in the appended draft agreement)

- Definitions (Boat) We are expanding the current definition to read "**Boat/Houseboat** means the **Boat/Houseboat** or vessel named in the application or renewal form or one that is substituted for it with **our** prior written consent (which will be subject to the suitability of the **Mooring** and payment of an additional mooring fee, where applicable). The substitute boat must possess the recognisable attributes of a boat typical to **BW's** network." The final sentences are added to reduce BW's long term risks arising from abandoned structures on the waterway and to help to protect and enhance the waterways heritage by requiring replacement boats to be of an appearance that reflects the boating history and traditions of the waterway on which they're moored.
- 2.29 Replaces the standard mooring agreement clause 3 which precludes assignment of the permit by the customer. By specifying that the boat at the mooring site must have been covered by a HBC on 31 July 2010, we are differentiating terms for established HBC boats/owners, protecting their continued ability to assign the permit beyond the first expiry date after the sale of the boat. See comment below on clause 2.30 for newer HBC customers.
- 2.30 Customers who purchased a HBC after 31/7/2010 for the first time for a boat which didn't have a HBC for the same mooring site immediately prior to their purchase of it will be entitled to assign only up to the expiry of the current licence. In other words, from 31/7/2010 if you choose to purchase a HBC without having taken over a boat on a mooring that already has a HBC, when you come to sell the boat, you will only be able to assign the associated mooring permit up until its next expiry date. At that point, you must vacate the mooring and we will offer it for auction. The new owner may of course take part in the auction if they wish to secure a mooring at the same location.
- 2.31 Lists the conditions for our consent to the assignment.
- (a) If the boat has no licence, the mooring agreement is invalid. It would be wrong to allow assignment by the customer in this circumstance.
 - (b), (c), (d) It would be unfair to extend the ability to assign to a customer who either owes money to BW in respect of the boat's licence or mooring fees etc., or in the past has repeatedly breached our rules.
 - (e) The sub clauses listed are designed to minimise the risks of BW being required to contract with a customer who has a proven track record of default, or with one likely to have difficulty fulfilling payment obligations. The final sub clause reflects the change to Boat definition – see above.
 - (f) These clauses meet BW's need for transparency about any mooring site value that is reflected in the sale of the boat. Because the mooring belongs to BW and is an asset that should contribute to the funding of waterway maintenance, we believe that if the boat is to be passed on to someone else, it is right that the existence of a mooring premium should be clear.

2.32 This gives the same rights to assign to a customer's beneficiary in the event of death. Sight of the death certificate will be required.

5. Exceptional mooring sites in London

During the 1990s, BW took over management of some central London mooring sites previously run by Turner Marinas. At the time, BW committed to honour the term within the Turner mooring agreement that permitted assignment of the mooring upon sale of the boat. These sites are at Blomfield Road, Maida Avenue, Lisson Grove and Cumberland Basin.

In addition, it appears that the previous British Waterways London management permitted customers at Benbow Way to assign their permits. And at Ice Wharf, customers have supplementary conditions to their standard mooring agreement that include consent to assignment of the agreement, subject to certain conditions.

Sale premiums have built up at all of these sites and BW has consulted boaters on the subject both before and since the BW's management restructure of 2009.

We are now proposing to regularise the assignment arrangements for all of these mooring sites, and subject to the feedback from this consultation, to offer a mooring agreement that is equivalent to that which we are proposing for holders of houseboat certificates.

The differences between the agreement for the houseboat certificate mooring and the 'exceptional London sites' agreement would be:

2.29 Removal of the first sentence. i.e. it would read "**You** may assign this Agreement with **our** consent to a new owner of the **Boat** and **we** will offer to renew the Mooring Agreement on the same terms upon expiry. Our consent will be given on the basis that you comply with Condition 2.31"

2.30 This would be deleted as irrelevant because assignability does not depend on the customer holding a Houseboat Certificate.

By this means, we are confirming the established right to assign, but applying what we feel are reasonable precautions to minimise risk of future customer defaults.

6. Consultation process

This subject will be of interest to boaters on BW's residential mooring sites and we are writing to them all individually with a copy of this paper and the new agreement.

We are also advertising the consultation through our main boater communication channel, www.waterscape.com/boatersupdate and inviting national boating organisations to reference it in their member communications.

This document is downloadable from our website at <http://www.britishwaterways.co.uk/listening-to-you/consultations-and-reviews/current-consultations> and we will consider all feedback addressed to consultations@britishwaterways.co.uk before 30th September 2012. Those without an email facility may obtain a copy of the consultation material by telephoning British Waterways Customer Service team on 01923 201120, and feedback should be posted to Boating Consultations and Communications Manager, The Dock Office, Commercial Road, Gloucester, GL1 2EB, again to reach us by 30th September 2012.

Sally Ash
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