

FUTURE OF BOAT LICENSING REVIEW – TERMS OF REFERENCE

1. Purpose

- 1.1 The purpose of the Review is to consider options for potential changes to the Trust's approach to boat licensing, to identify and evaluate alternative models for how to regulate the use of the canal network for boating that reflects the changes to its use over the past 30 years and the likely range of future uses.
- 1.2 These Terms of Reference set out the scope and principles of the Review to be carried out by an independently led Commission to be convened by the Trust.

2. Context

- 2.1 The Trust's statutory navigation, boat licensing and enforcement functions are currently contained in a patchwork of legislation, inherited from British Waterways in 2012, including provisions from original canal enabling legislation going back hundreds of years, overlaid with a number of 20th century private and local acts of Parliament.
- 2.2 The use of the Trust's waters has changed considerably in the last 30 years or so since the last Act obtained by British Waterways (in the form of the British Waterways Act 1995), which first introduced the current 2 categories of boat licence based on home mooring or continuous cruising, the latter intended to cover a small group of truly nomadic boaters who navigated continuously around the network, typically carrying and delivering goods as their predecessors had done for over 100 years, and successfully petitioned Parliament in the bill state of the 1995 Act to remove their need to obtain a home mooring.
- 2.3 The biggest change of use over this period has been the steadily increasing numbers of boaters licensed as continuous cruisers and use of vessels for full time residential purposes. In reality, a significant and growing number of those boats licensed as a continuous cruiser cannot reasonably be said to be genuinely navigating throughout their licence period and, instead, remain in one relatively small part of the network for most if not all of the time, to live and work in that area without obtaining a home mooring.

- 2.3 These vessels tend to be concentrated in areas of high demand (driven largely by the cost of home moorings or alternative accommodation in those areas and the economic opportunities available) which has created challenges for the Trust both from an operational, financial and reputational perspective,
- 2.4 These trends have resulted in high levels of non-compliance and consequent enforcement action which can result in the Trust removing residential boats from its waters, sometimes in difficult circumstances, creating tension between the Trust and boaters subject to enforcement action and other boaters and local stakeholders who expect the Trust to actively manage non-compliance and congestion by continuing to uphold the full requirements of the current legislation.
- 2.4 The current legislation predates the Human Rights Act 1998 and the Equality Act 2010 which both have significant implications for the Trust's boat licensing and enforcement approach, particularly in relation to continuous cruisers and residential vessels.
- 2.5 The current legislation does not take account of the Trust's status as a charity with a prescribed range of charitable objects and finite resources, independent from Government - with declining Government funding.
- 2.6 In court proceedings, judges have commented on the complexity and lack of coherence and clarity in the legislation and have urged the Trust to seek reform and consolidation.
- 2.6 The Trust's boat licensing legal framework is, therefore, considered to be in need of review and reform in order to enable the Trust to adapt to the present and likely future use of its waters.

3. Principles

- 3.1. The Review will look at the issues created by the current framework and consider what improvements and outcomes should be sought by the Trust as well as options for reform of boat licensing and enforcement which could be taken forward within existing legislation or by seeking new legislation by the Trust in accordance with the following principles:
 - 3.1.1. Clarity - clear and understandable for the Trust, boaters and other stakeholders.
 - 3.1.2. Fairness – secure a balanced approach to different boater uses and navigation patterns, with boaters collectively and individually making a fair

contribution to the cost of navigation operation and maintenance taking account of the varying utility and intensity of use of the Trust's network

- 3.1.3. Sustainability – reflect and cater for the long-term changes in boater use and demand, in the context of impacts on navigation, the wider local community and the environment and taking account of the Trust's long-term financial position.
- 3.1.4. Effectiveness. – enable the Trust to better manage its inland waterways to respond to changes in use and take proportionate and timely enforcement action more effectively and efficiently based on a broad consensus of views around the Trust's management of its inland waterway network.

4. Approach

4.1. The Review will:

- 4.1.1. Approach the issues from objective and neutral perspective, bringing a fresh perspective, seeking to build and learn from experiences of other areas of regulation and reform.
- 4.1.2. Benefit from internal and external input from customer service, operational, legal and other expertise
- 4.1.3. Be informed by evidence and data on boat licence and enforcement figures and evidence of wider socio-economic, operational and environmental factors, which drive a number of the current challenges and will inform the choices open to the Trust for reform.
- 4.1.4. Seek the views of boaters and other stakeholders through consultation and other forms of deliberative engagement.
- 4.1.5. Consider the appropriate legislative vehicle for reform and the Trust's approach in meeting any procedural requirements such as consultation and publicity.

5. Governance

- 5.1 The Review will be carried out by a Commission, led by an independent chair appointed and funded by the Trust, with one appointed boater representative, likely to be an existing Council member, and one appointed Trustee, supported by a dedicated secretariat comprised of legal and boating team colleagues and others as required.

- 5.2 The Review will be overseen by the Board Boating Committee and the Commission will provide regular updates to this Committee.
- 5.3 The Review will produce a report, with a series of recommendations endorsed by the Commission, supported by technical information produced by the Trust.
- 5.4 Upon completion, the Board of Trustees will receive the conclusions and recommendations from the Review and will respond to its findings, setting out any proposed legislative reforms to be sought by the Trust and any other changes that are accepted.
- 5.5 The Review will be carried out in an open and transparent manner subject to the need to preserve a space so as not to inhibit internal discussions and the need to preserve legal privilege in respect of any legal advice provided to the Review

6 Timing

- 6.1 The Commission will be convened by January 2025 and will seek to report to the Board of Trustees by September 2025
- 6.2 The Trust will seek to implement any reforms, including any required legislative changes as soon as possible after the conclusion of the Review.

November 2024