Scottish Responses to A New Era For The Waterways Consultation
September 2011

Part A – Individuals

Response 1
From: Individual on Crinan Canal
Date: Mon, 17 Oct 2011 11:13:43

Coverage: Scottish Questions

Dear Sirs,

I write as a long-term berth holder in the Crinan Canal and as one who uses the towpaths etc extensively for cycling etc. I have transited the Crinan Canal in yachts more than 60 times, the Caledonian 16 times and have cycled the length of the F&C/Union Canals.

Do you agree with the Scottish Government’s proposal that the British Waterways Board, operational solely in Scotland, should consist of a chair, a vice chair and between one and four other members?

Yes, but prefer three or four other members to allow a range of interests to be represented. I believe that the governance should be set up to ensure adequate representation for the prime users of the canals, i.e. transiting boat owners, separate from others, including houseboat owners and other leisure and commercial interests who may wish to seek their own representation.

Re the other formal questions in Part 4 of the consultation I have no opinion.

Re the overall future of the Scottish canals I have strong views but am not sure how or when to express them. Please advise if there is a formal method in place at this time.

Response 2
From: Individual from Glasgow
Sent: 16 September 2011 15:21

Coverage: Section 4 Scottish Questions

Question 1
I agree with basic Board Composition but suggest that all board members should be Scottish residents unless there is a need for specific expertise not available in Scotland.
I further suggest that a quorum should be 4 members.

Question 2
I agree with proposal regarding BWB Scotland only being subject to the four relevant pieces of Scottish legislation mentioned in question.

Question 3
I agree that ministerial consent can be repealed for Water Abstraction.

I have one other observation about this move of BWB into Scotland........I think that BWB should be within the Ministry of Tourism and Enterprise who would be motivated to increase usage of the canals whereas being in the Ministry of Transport and Roads mean that it is in a bit of a backwater!!
Response 3  
From: Individual - Scotland  
Sent: 19 September 2011 10:16  

Coverage: Scotland Questions  

Thank you for inviting views in respect of the above. My comments are that given the economic realities of both the country and the Scottish canals I would suggest that the Board is composed of an adequate but minimal number of members who are rewarded for their efforts by a realistic but not excessive remuneration. This surely is an opportunity to demonstrate that Scotland recognises our economic environment and is prepare to reflect this in practice.

Response 4  
From: Individual From England & Wales  
Date: 20 September 2011  

Coverage: England and Wales plus Scotland  

Introductory statement  

In order to protect boat dwellers from homelessness, BW should not be transferred to charity status unless and until the following conditions are met:

1. Section 43 (3) of the 1962 Transport Act should be declared incompatible with the European Convention on Human Rights;

2. Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed;

3. Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed;

4. The New Waterways Charity should not have the power to bring injunctions banning boat owners from its waterways for life;

5. The Mooring Guidance for Continuous Cruisers and plans for Local Mooring Strategies should be abandoned;

6. The February 2010 Revised Draft Byelaws should be abandoned;

7. The amendment to Schedule 5 of the Public Bodies Bill secured by BW, exempting the functions of the British Waterways Board from the provisions of Clause 22 falling within section 22(3)(b) to (e) should be abandoned, and

8. The powers of BW or the New Waterways Charity to make "subordinate legislation" should be restricted to the existing Byelaw making powers under the 1954 British Transport Commission Act.

In place of these powers, which are inappropriate for a 21st century charitable body, the following powers and duties should be established:
1. Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.

2. Statutory protection of boat dwellers from harassment and unlawful or summary eviction, of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.

3. Clarification that the test for compliance with s.17(3)(c)(ii) of the 1995 British Waterways Act is as intended by Parliament, namely, whether the boat has remained in one place for longer than 14 days without good reason.

4. Explicit recognition that boat dwellers without permanent moorings are classed as travellers for the purposes of s.225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the EU requirement placed on the UK to draw up a national plan in 2011 to ensure that every homeless traveller has access to suitable accommodation.

5. Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.

6. Statutory protection from increases in boat licence fees and mooring fees on a par with that enjoyed by the tenants of social housing in respect of rent increases.

7. The New Waterways Charity specifically classified as a housing authority.

Response to consultation questions

Questions in section 3 – the transfer in England and Wales

Do you agree that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets will no longer be needed when the assets of BW in England and Wales transfer to the NWC? If not, what are the circumstances in which you envisage such directions would be needed?

No. This question avoids the most important issues. Transferring BW and the EA into one huge monopoly is a step in the wrong direction. The NWC will be responsible for the housing of thousands of families, regardless of whether this consultation chooses to address this fact. Families who rent houses on land do not face eviction from every house in the country at the whim of a landlord who owns all of the freeholds in the country. The competition commission would not look favourably on this.

Neither BW nor its successor can be trusted to properly manage the waterways and associated property without public scrutiny and accountability through Parliament. This would contradict section 1 of the 1962 Transport Act that defines BW as a public authority with responsibilities for the management of the waterways, responsibilities to users and to the public.

An absolute and additional safeguard is needed - not to direct disposal of property, but to protect property that is held in trust for the nation, in other words public property, from being disposed of. Too much property belonging to the public and important to the functioning of the waterways has been sold off by BW already. Disposal or sale of such property (such as lock keepers’ homes, wharves, warehouses, operational land etc) would be detrimental to the operation and maintenance of the waterways. Such an absolute safeguard can only be achieved by statute. Additional statutory protection against disposal of property by the NWC is needed.
Do you agree that the provisions in ss.73 to 75 of the 1962 Act and s.137 of the 1968 Transport Act are not needed by the NWC? If not, please explain your reasoning.

I support the position of Unite and the other Trade Unions within BW on this issue with regard to all staff whose annual wage is less than around £40,000. However, the transfer to the NWC should take the opportunity to reduce the pay, bonuses and pensions of the BW Directors and senior management staff to an acceptable and financially viable level so that funds can be re-directed to the maintenance of the waterways.

Do you agree that the NWC should have an enhanced statutory proposer role in relation to ministerial orders on classification and maintenance of its waterways? If not please explain your reasons.

No. The maintenance of the waterways should be an absolute duty of the NWC and should be the top priority for expenditure. Commercial and cruising waterways should not be downgraded. Instead, the NWC and the Government should seek to increase the number of commercial waterways and should seek to improve financial viability by expanding freight. Maintenance of the waterways should not be a hostage to financial circumstances. The NWC's budget should be examined as a whole to identify areas where unnecessary, ill thought out spending can be cut. Examples are Directors' salaries, bonuses and pensions; loss-making joint venture property schemes; local mooring strategies; useless bollards; cycle speed bumps that obstruct wheelchair users, and glossy promotions.

Currently, BW’s managerial priorities are detrimental to its customers and the opportunity should be taken to reduce the powers of the NWC and increase its accountability in order to protect the homes and livelihoods of boat dwellers. At present BW’s status as a public body means that there is at least a minimal level of accountability to Parliament, boaters and the public.

Do you agree that the power of Ministers to direct the NWC under the Transport Act 1962 should be restricted to circumstances in the interests of national security? If not, what powers of direction, if any, should continue to apply to the NWC?

If the waterways need to be controlled in the interests of national defence or security, then BW should remain a public body. The specific powers under Section 27 of the 1962 Transport Act should be retained in order to maintain effective public scrutiny and accountability in order to safeguard the already minimal rights of boat dwellers which will otherwise be lost if BW becomes a charity. This is important because BW has a track record of harassment, threats of homelessness and actual evictions directed at the estimated 15,000 or adults and children who live on boats on its waterways, especially those without moorings, which is clearly not in the national interest.

You are invited to indicate and explain your preferred option in relation to the proposed FOI, EIR and transparency regime. Are there any improvements that you would like to see to the NWC’s proposed transparency statement?

I favour Option 3: Include NWC as a public authority in Schedule 1 of the Freedom of Information Act. If a task is traceable back to a public purpose, especially if it is publicly funded, it will still be subject to the Freedom of Information Act and the Environmental Information Regulations. [See the review of complaint SO 42/8/4 from Intelligent Addressing regarding Ordnance Survey, adjudicated by the Advisory Panel for Public Sector Information, 30 April 2007]. The NWC will have a public purpose, will be carrying out public functions and will continue to be publicly funded. Therefore its public functions will be subject to the Freedom of Information Act and the Environmental Information Regulations.
Information Regulations. To exclude the public functions from the Freedom of Information Act would lay the NWC open to legal challenge.

It will be detrimental to transparency to have different functions of the NWC subject to different regimes for the release of information. This would further reduce the trust and confidence of BW’s customers, especially residential boaters, in the NWC. It would encourage the NWC to continue the obfuscation, deception, bullying and harassment experienced by liveaboard boaters that BW has practiced for decades. BW currently uses a variety of underhand tactics to avoid the release of information following legitimate Freedom of Information requests. This organisational culture should not be allowed to continue; instead, a transition to charity status should be taken as an opportunity to change this culture permanently and establish a culture of transparency.

The Freedom of Information Act is a vital safeguard against the abuse by BW of the already minimal rights of boat dwellers both with and without home moorings. Without the access to information made possible by this provision, boat dwellers’ ability to exercise their rights and to challenge unlawful actions, including summary eviction, by BW or the NWC will be further reduced. This will leave many without any real protection against homelessness in a context where they can be evicted from the vast majority (2,200 miles) of the UK’s inland waterways in an eviction process which includes being banned for life by way of injunction from these waterways. Compared to the eviction process that applies to the tenants of houses, this is already vastly disproportionate. When the tenant of a house is evicted they are not prevented for the rest of their life from renting 80% of the other houses in the country.

There is no mechanism for enforcing the transparency statement set out in the consultation document and therefore it will be ineffective in ensuring that Freedom of Information is achieved. The NWC should follow the example of more enlightened organisations and adopt a policy of publication of all information apart from the small proportion that is genuinely confidential. In addition, the NWC in England and Wales should be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the disqualifications applying to members of the BW Board through the House of Commons Disqualification Act 1975, Scottish Parliament (Disqualification) Order 2010, and National Assembly for Wales (Disqualification) Order 2010 should not be applied to the trustees of the NWC? If not, please explain your reasoning.

No. Office holders or Trustees of the NWC should resign before seeking election as MPs, MEPs, MSPs or AMs. To allow them to stand without resigning would be to create a conflict of interest and in the use of their time which would be detrimental to the NWC.

Questions in section 4 – Scottish provisions

Do you agree with the Scottish Government’s proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?

No. There should be a chair, vice-chair and 7 other members, to avoid the concentration of power in the hands of too few people and to act as a safeguard against the abuse of power.

Do you agree with the Scottish Government’s proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Yes. In addition, the NWC in England and Wales should be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

Yes

Response 5
From: Individual From England & Wales
Sent: 20 September 2011 18:41

Coverage: England and Wales plus Scotland

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**Response to consultation questions.**

**Questions in section 3 – the transfer in England and Wales**

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Currently, BW’s managerial priorities are detrimental to its customers and the opportunity should be taken to reduce the powers of the NWC and increase its accountability in order to protect the homes and livelihoods of boat dwellers. At present BW’s status as a public body means that there is at least a minimal level of accountability to Parliament, boaters and the public.

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Do you agree that the disqualifications applying to members of the BW Board through the House of Commons Disqualification Act 1975, Scottish Parliament (Disqualification) Order 2010, and National Assembly for Wales (Disqualification) Order 2010 should not be applied to the trustees of the NWC? If not, please explain your reasoning.

No. Office holders or Trustees of the NWC should resign before seeking election as MPs, MEPs, MSPs or AMs. To allow them to stand without resigning would be to create a conflict of interest and of the use of their time which would be detrimental to the NWC.
If disqualification is not suitable for a charity, then neither is eviction or ss.8 or s.13 where enforcement of draconian legislation denies access to work, education and social security benefits. BW and the nwc need to make guarantees to liveaboard boaters that we have security in our own homes, jobs, education and livelihoods

**Questions in section 4 – Scottish provisions**

**Do you agree with the Scottish Government's proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?**

No. There should be a chair, vice-chair and 7 other members, to avoid the concentration of power in the hands of too few people and to act as a safeguard against the abuse of power.

**Do you agree with the Scottish Government's proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:**
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Yes. In addition, the NWC in England and Wales should be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

**Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?**

Yes.

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**Part B –Organisations**

**Response 6**

*From:* RALSA  
*Sent:* 20 October 2011 15:55

**Coverage: Scottish Questions**

The River and Lakes Swimming Association would like to make the following comments:

Para 43 Freedom of Information Act - We suggest that Option 3 be adopted, so that the new body should come within the scope of FOIA and its operations and policy becomes transparent.

Para 56. We would assume, in addition, that the Land Reform Act (Scotland) 2003 will apply to waterways in Scotland (making it legal for people to swim in Scotland's canals).

Jean Perraton  
President, RALSA
A New Era for the Waterways
The Commissioner’s View

Scottish Information Commissioner’s response to the Scottish issues in the Defra consultation.

I welcome this opportunity to submit my views to the Waterways Consultation Team on the Scottish issues in the Defra consultation A New Era for the Waterways.

As the team will be aware, I have the statutory duty to ensure compliance by Scottish public authorities with the provisions of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs).

I note the Scottish Government’s intention that Scottish canals will remain in public ownership.

I welcome the Government’s intention to bring the operating organisation within the scope of the FOISA. This will safeguard public rights to information about the canals. The canals will be subject to the EIRs by virtue of designation under FOISA, thus at a stroke removing the possibility of any doubt about whether environmental information can be requested. I endorse that approach.

Kevin Dunion
Scottish Information Commissioner
October 2011
A New Era for the Waterways - A supplementary consultation

The Commercial Boat Operators Association (CBOA) is the trade organisation for the inland waterways freight industry. We have nearly 100 members, including associates. Our members operate craft with carrying capacity between 2,700 tonnes and 25 tonnes on the tidal estuaries and the canals and rivers linked to them.

The AIMS of the Association are:
   The furtherance and development of freight traffic on the Inland Waterway system of the United Kingdom

Cargoes carried include aggregates, oil products, grain, steel industry materials and products, construction materials, containers, residual domestic waste, abnormal indivisible loads and bagged domestic coal and other fuels

The CBOA welcomes the support given by the Scottish Government to waterborne freight as shown by the recent developments transporting timber on the Caledonian Canal.

Question 1. Do you agree with the Scottish Government’s proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?

Response: Agree

Question 2. Do you agree with the Scottish Government’s proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Response: Agree.

Question 3. Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

Response: Agree.

Peter Hugman  Chairman CBOA
Tel 07880 792065
Historic Scotland responds in the following manner to the above consultation, “A New Era for the Waterways”.

Our comments concern Section 4 only.

Do you agree with the Scottish Government’s proposal that the British Waterways Board, operational solely in Scotland, should consist of a chair, a vice chair and between one and four other members?

Historic Scotland has no comment on this issue.

Do you agree with the Scottish Government’s proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Historic Scotland has no comment on this issue.

Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

Historic Scotland has no comment on this issue.

Although not covered by the consultation, Historic Scotland would wish to highlight that the BWB has a specific citation in secondary legislation, in Class III of the Schedule to the Ancient Monuments (Class Consents) (Scotland) Order 1996, which gives BW deemed consent for works of repair and maintenance to scheduled canal structures provided these do not constitute material alterations or reconstruction. We believe the same ground is covered by a separate Order for England.

The fact that BW continues in public ownership in Scotland and continues to discharge the same functions means that this provision will continue to apply.

Rory McDonald
On behalf of Historic Scotland.

Rory McDonald | Senior Heritage Management Officer, Ancient Monuments (East)
27th September 2011

Waterways Consultation
Freight and Inland Waterways Branch
Scottish Government
Area 2GN
Victoria Quay
Leith
EH6 6QO

Dear Sir / Madam

A New Era for the Waterways consultation

Thank you for giving VisitScotland the opportunity to respond to the above consultation. As the National Tourism Organisation for Scotland, VisitScotland has limited our response to those matters concerning the “consequential provision in Scotland” highlighted in the consultation document (Section 4). Our comments are as follows:

- Regarding the composition of the board of a British Waterways operational solely in Scotland, it is VisitScotland’s view that a board consisting of fewer than two additional members could negatively impact on governance efficiency. VisitScotland believes the British Waterways board should consist of a chair, a vice chair, and between 2 and 4 other members.

- VisitScotland agrees with the Scottish Government’s proposal that the above proposed Scottish-only board should come within the scope of the following Scottish legislation:
  (a) the Freedom of Information (Scotland) Act 2002;
  (b) the Environmental Information (Scotland) Regulations 2004;
  (c) the Scottish Public Services Ombudsman Act 2002; and
  (d) the Ethical Standards in Public Life etc (Scotland) Act 2000

- It is not within VisitScotland’s remit to comment on the current water abstraction legislation.

We hope the above is useful. VisitScotland is happy to comment in further detail should this be required.

Yours sincerely,

Iain McDonald
Corporate Affairs Executive
VisitScotland
30 September 2011

Mr Alastair Wilson
Director - Aviation, Maritime, Freight and Canals
Transport Scotland
Victoria Quay,
Edinburgh
EH6 6QQ

Dear Mr Wilson

Thank you for your letter of 12 September about complaint arrangements for British Waterways in Scotland from April 2012. I showed your letter to the Committee currently overseeing the work of the Ombudsman scheme at their meeting earlier this week. They agreed with my view: that your proposal that responsibility should be given to the Scottish Public Services Ombudsman is the ideal one. Assuming this plan is adopted I shall liaise directly with that Ombudsman about transitional arrangements.

Best wishes

Hilary Bainbridge
Waterways Ombudsman

PO BOX 35, York, YO60 6WW. Tel: 01347 879075
Dear Sir

Supplementary consultation on certain aspects of the proposed Transfer Order for transferring the functions of British Waterways in England and Wales to a New Waterways Charity and for making consequential provision in Scotland

We refer to DEFRA's consultation in relation to the above and we welcome this opportunity to comment on the proposals set out in the Consultation Paper.

The RYA is the national body for all forms of recreational and competitive boating. It represents dinghy and yacht racing, motor and sail cruising, RIBs and sportsboats, powerboat racing, windsurfing, 'inland cruising and personal watercraft. The RYA manages the British sailing team and Great Britain was the top sailing nation at the 2000, 2004 and 2008 Olympic Games.

The RYA is recognised by Government as being the primary consultative body for the activities it represents. The RYA currently has over 100,000 personal members, the majority of whom choose to go afloat for purely recreational non-competitive pleasure on coastal and inland waters. There are an estimated further 500,000 boat owners nationally who are members of over 1,500 RYA affiliated clubs and class associations.

The RYA also sets and maintains an international standard for recreational boat training through a network of over 2,200 RYA Recognised Training Centres in 20 countries. On average, approximately 160,000 people per year complete RYA training courses. RYA training courses form the basis for the small craft training of lifeboat crews, police officers and the Royal Navy and are also adopted as a template for training in many other countries throughout the world.

Specific Questions
1. Do you agree that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets will no longer be needed when the assets of BW in
England and Wales transfer to the NWC? If not, what are the circumstances in which you envisage such directions would be needed?

We agree.

2. Do you agree that the provisions in ss.73 to 75 of the 1962 Act and s.137 of the 1968 Transport Act are not needed by the NWC? If not, please explain your reasoning.

We agree.

3. Do you agree that the NWC should have an enhanced statutory proposer role in relation to ministerial orders on classification and maintenance of its waterways? If not please explain your reasons.

We agree.

4. Do you agree that the power of Ministers to direct the NWC under the Transport Act 1962 should be restricted to circumstances in the interests of national security? If not, what powers of direction, if any, should continue to apply to the NWC?

We accept that Ministers should have the power to direct the NWC under the Transport Act 1962 in the interests of "national defence", as provided in Section 27(6) of that Act, but we do not agree that the concept should be widened to one of "national security".

In addition, we believe that Ministers should also retain the power to direct the NWC in more general matters that may affect the national interest, such as by specifying the standard to which particular classifications of waterways should be maintained, and we therefore consider that Section 27(1) of the 1962 Act should be retained.

5. You are invited to indicate and explain your preferred option in relation to the proposed FOI, EIR and transparency regime. Are there any improvements that you would like to see to the NWC's proposed transparency statement?

The RYA accepts that, where an organisation is in receipt of public funding, it should be fully accountable for this. However, if the funder is itself subject to FOI we see no reason to include the funded organisation within the scope of the Act purely as a consequence of it receiving public funding, as all relevant information is available from the funder.

Notwithstanding the above, given that the NWC will be discharging statutory functions we consider that the NWC should fall within the scope of FOI in respect of its discharge of such statutory functions only, provided that this does not prejudice the ability of the NWC to be registered as a charity with the Charity Commissioners.

6. Do you agree that the disqualifications applying to members of the BW Board through the House of Commons Disqualification Act 1975, Scottish Parliament (Disqualification) Order 2010, and National Assembly for Wales (Disqualification) Order 2010 should not be applied to the trustees of the NWC? If not, please explain your reasoning.

We agree.

7. Do you agree with the Scottish Government's proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?

We consider that the British Waterways Board, operational solely in Scotland, should have at least four members in addition to the chairman and vice chairman.
In addition, given that the British Waterways Board will operate solely in Scotland, we consider that its name should be changed to “Scottish Waterways” in order to avoid any confusion between BWB and the NWC and in recognition of the fact that BWB will no longer be British in outlook but will be focussed exclusively on Scotland.

8. Do you agree with the Scottish Government's proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
   a. the Freedom of Information (Scotland) Act 2002;
   b. the Environmental Information (Scotland) Regulations 2004;
   c. the Scottish Public Services Ombudsman Act 2002; and
   d. the Ethical Standards in Public Life etc. (Scotland) Act 2000?

   We agree.

9. Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

   We agree.

Please do not hesitate to contact me if you have any questions or queries arising from our response. On behalf of the RYA, I would be pleased to be involved in any future consultations or discussions.

Yours faithfully,

\[Signature\]

Gus Lewis
Legal & Government Affairs Manager
Response 13

NATIONAL BARGEE TRAVELLERS ASSOCIATION

Coverage: England and Wales plus Scotland

INTRODUCTION

In order to protect boat dwellers from homelessness, BW should not be transferred to charity status unless and until the following conditions are met:

- Section 43 (3) of the 1962 Transport Act should be declared incompatible with the European Convention on Human Rights;
- Sections 13 (2) (3) and (4) of the 1971 British Waterways Act should be repealed;
- Sections 8 (1) (2) (3) and (4) of the 1983 British Waterways Act should be repealed;
- The Canal and River Trust/ Glandwr Cymru should not have the power to bring injunctions banning boat owners from its waterways for life;
- The Guidance for Boaters Without a Home Mooring and plans for Local Mooring Strategies should be abandoned;
- The February 2010 Revised Draft Byelaws should be abandoned;
- The amendment to Schedule 5 of the Public Bodies Bill secured by BW, exempting the functions of the British Waterways Board from the provisions of Clause 22 falling within section 22(3)(b) to (e) should be abandoned, and
- The powers of BW or the Canal and River Trust/ Glandwr Cymru to make "subordinate legislation" should be restricted to the existing Byelaw making powers under the 1954 British Transport Commission Act.

In place of these powers, which are inappropriate for a 21st century charitable body, the following powers and duties should be established:

- Legal recognition of the homes of boat dwellers on a par with that enjoyed by house dwellers.
- Statutory protection of boat dwellers from harassment and unlawful or summary eviction, of the same magnitude as the protection enjoyed by house dwellers, applicable to all boat dwellers on inland and coastal waters, whether or not they have a permanent mooring.
- Clarification that the test for compliance with s.17(3)(c)(ii) of the 1995 British Waterways Act is as intended by Parliament, namely, whether the boat has remained in one place for longer than 14 days without good reason.
- Explicit recognition that boat dwellers without permanent moorings are classed as travellers for the purposes of s.225 of the 2004 Housing Act; the 2010 Equality Act; the Human Rights Act and the EU requirement for the UK to draw up a national plan in 2011 to ensure that every homeless traveller has access to suitable accommodation.
- Security of tenure for mooring holders on a par with that enjoyed by the tenants of houses.
- Statutory protection from increases in boat licence fees and mooring fees on a par with that enjoyed by the tenants of social housing in respect of rent increases.
- The Canal and River Trust/ Glandwr Cymru specifically classified as a housing authority.

CONSULTATION TIME LIMIT

Page 5 of the consultation document states "This consultation complies with HM Government’s Code of Practice on Consultation". This is not the case. The Government’s Code of Practice on Consultation issued by the Better Regulation Executive in the Department for Business, Enterprise and Regulatory Reform states in Section 2.1 of this Code of Practice that “Under normal circumstances, consultations should last for a minimum of 12 weeks”.

Defra’s reason for limiting the consultation to 6 weeks does not comply with the guidance set out in the Government’s Code of Practice. This states that when timing is tight, "for example when dealing with emergency measures, or international, legally-binding deadlines, or when the
consultation needs to fit into fixed timetables such as the Budget cycle, consideration should be given to whether a formal, written, public consultation is the best way of seeking views. Where a formal consultation exercise is considered appropriate and there are good reasons for it to last for a shorter period (e.g. to seek views to inform the UK’s negotiating position on EU proposals soon to be discussed in the Council of Ministers), the consultation document should be clear as to the reasons for the shortened consultation period and ministerial clearance (or equivalent, eg in non Ministerial departments) for the shorter timeframe should be sought. In such circumstances it is important to consider the provision of additional means through which people can express their views.

Defra has not stated that there is an international or legally binding deadline for transferring BW to charitable status. Nor has it stated that this is an emergency measure, or that the timetable needs to be tied in with a fixed timetable such as the Budget cycle. Although the Government proposes that BW should become a charity on 1 April 2012 this is not a fixed timetable and is dependent on the time taken for the Public Bodies Bill to complete the Parliamentary process. In addition, Defra has not provided additional means through which people can express their views.

Notwithstanding the previous consultation that has taken place, the issues that are the subject of this shortened consultation are new issues which the public has not had the opportunity to consider in the previous, 12-week consultation.

For consultation to be proper, the following principles laid down in R v Brent LBC ex parte Gunning [1986] 84 LGR 168 must be followed:

- The consultation must be at a time when proposals are still at a formative stage;
- The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response;
- Adequate time must be given for consideration and response, and
- The product of consultation must be conscientiously taken into account in finalising any statutory proposals.

Six weeks is not an adequate period of time to allow the dissemination and consideration of, and response to this consultation, given that those who will be most directly and adversely affected by the proposals, that is, boat dwellers without home moorings, do not have regular internet access nor regular access to a postal address. This consultation does not comply with these requirements and therefore the outcome will be open to legal challenge.

**RESPONSE TO CONSULTATION QUESTIONS**

**Questions in section 3 – the transfer in England and Wales**

**Do you agree that the power for the Secretary of State and the Welsh Ministers to give directions on the sale of land assets will no longer be needed when the assets of BW in England and Wales transfer to the NWC? If not, what are the circumstances in which you envisage such directions would be needed?**

No. This question avoids the most important issues. Transferring BW and the EA into one huge monopoly is a step in the wrong direction. The Canal and River Trust/ Glandwr Cymru will be responsible for the housing of thousands of families, regardless of whether this consultation chooses to address this fact. Families who rent houses on land do not face eviction from every house in the country at the whim of a landlord who owns all of the freeholds in the country. The competition commission would not look favourably on this.

Neither BW nor its successor can be trusted to properly manage the waterways and associated property without public scrutiny and accountability through Parliament. This would contradict
section 1 of the 1962 Transport Act that defines BW as a public authority with responsibilities for the management of the waterways; to users and to the public.

An absolute and additional safeguard is needed - not to direct disposal of property, but to protect property that is held in trust for the nation, in other words public property, from being disposed of. Too much property belonging to the public and important to the functioning of the waterways has been sold off by BW already. Disposal or sale of such property (such as lock keepers’ homes, wharves, warehouses, operational land, canalside land etc) would be detrimental to the operation and maintenance of the waterways. Such an absolute safeguard can only be achieved by statute. Additional statutory protection against disposal of property by the Canal and River Trust/ Glandwr Cymru is needed.

Do you agree that the provisions in ss.73 to 75 of the 1962 Act and ss. 137 of the 1968 Transport Act are not needed by the NWC? If not, please explain your reasoning.

The NBTA supports the position of Unite and the other Trade Unions within BW on this issue with regard to all staff whose annual wage is less than around £40,000. However, the transfer to the Canal and River Trust/ Glandwr Cymru should take the opportunity to reduce the pay, bonuses and pensions of the BW Directors and senior management staff to an acceptable and financially viable level so that funds can be re-directed to the maintenance of the waterways.

Do you agree that the NWC should have an enhanced statutory proposer role in relation to ministerial orders on classification and maintenance of its waterways? If not please explain your reasons.

No. The maintenance of the waterways should be an absolute duty of the Canal and River Trust/ Glandwr Cymru and should be the top priority for expenditure. Commercial and cruising waterways should not be downgraded. Instead, the Canal and River Trust/ Glandwr Cymru and the Government should seek to increase the number of commercial waterways and should seek to improve financial viability by expanding freight. Maintenance of the waterways should not depend on financial circumstances.

Currently, BW’s managerial priorities are detrimental to its customers and the opportunity should be taken to reduce the powers of the Canal and River Trust/Glandwr Cymru and increase its accountability in order to protect the homes and livelihoods of boat dwellers. At present BW’s status as a public body means that there is at least a minimal level of accountability to Parliament, boat licence holders and the public.

Do you agree that the power of Ministers to direct the NWC under the Transport Act 1962 should be restricted to circumstances in the interests of national security? If not, what powers of direction, if any, should continue to apply to the NWC?

If the waterways need to be controlled in the interests of national defence or security, then BW should remain a public body. The specific powers under Section 27 of the 1962 Transport Act should be retained in order to maintain effective public scrutiny and accountability in order to safeguard the minimal rights that boat dwellers currently enjoy from further erosion by the loss of public body status. This is important because BW has a track record of harassment, threats of homelessness and actual evictions directed at the estimated 15,000 or adults and children who live on boats on its waterways, especially those without moorings, which is clearly not in the national interest.

You are invited to indicate and explain your preferred option in relation to the proposed FOI, EIR and transparency regime. Are there any improvements that you would like to see to the NWC’s proposed transparency statement?

Option 3: Include Canal and River Trust/ Glandwr Cymru as a public authority in Schedule 1 of the Freedom of Information Act. If a task is traceable back to a public purpose, especially if it is publicly
funded, it will still be subject to the Freedom of Information Act and the Environmental Information Regulations. [See the review of complaint SO 42/8/4 from Intelligent Addressing regarding Ordnance Survey, adjudicated by the Advisory Panel for Public Sector Information, 30 April 2007]. The Canal and River Trust/ Glandwr Cymru will have a public purpose, will be carrying out public functions and will continue to be publicly funded. Therefore its public functions will be subject to the Freedom of Information Act and the Environmental Information Regulations.

To exclude the public functions from the Freedom of Information Act would lay the Canal and River Trust/ Glandwr Cymru open to legal challenge. To put the charity in a position where every information request would have to be decided in Court would be to lay the Charity open to unnecessary and wasteful expenditure on legal costs, which would potentially fall foul of the Charity Commission in assessing the financial soundness of the proposed charity on application for charitable status.

It will be detrimental to both transparency and administrative efficiency to have different functions of the Canal and River Trust/ Glandwr Cymru subject to different regimes for the release of information. It would further reduce the trust and confidence of BW's customers, especially boat dwellers without moorings, in the new charity. It would encourage the charity to continue the obfuscation, deception, bullying and harassment experienced by boat dwellers that BW has practiced for decades. BW routinely withholds information pursuant to legitimate Freedom of Information requests. This organisational culture should not be allowed to continue; instead, a transition to charity status should be taken as an opportunity to change this culture permanently and establish a culture of transparency. There is no mechanism for enforcing the transparency statement set out in the consultation document and therefore it will be ineffective in ensuring that Freedom of Information is achieved.

The administration of the new charity will be far more efficient if it adopts a policy of publishing all information apart from the small proportion that is genuinely confidential. This would save money and time for both the charity and its customers in making and responding to requests for information.

The Freedom of Information Act is a vital safeguard against the abuse by BW of the already minimal rights of boat dwellers both with and without home moorings. Without the access to information made possible by this provision, boat dwellers' ability to exercise their rights and to challenge unlawful actions, including summary eviction, by the Canal and River Trust/ Glandwr Cymru will be further reduced. This will leave many without any real protection against homelessness in a context where they can be evicted from the vast majority (2,200 miles) of the UK's inland waterways in an eviction process which includes being banned for life by way of injunction from these waterways. Compared to the eviction process that applies to the tenants of houses, this is already vastly disproportionate. When the tenant of a house is evicted they are not prevented for the rest of their life from renting 80% of the other houses in the country.

The Canal and River Trust/ Glandwr Cymru in England and Wales should in addition be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the disqualifications applying to members of the BW Board through the House of Commons Disqualification Act 1975, Scottish Parliament (Disqualification) Order 2010, and National Assembly for Wales (Disqualification) Order 2010 should not be applied to the trustees of the NWC? If not, please explain your reasoning.

No. Office holders and Trustees of the Canal and River Trust/ Glandwr Cymru should resign before seeking election as MPs, MEPs, MSPs or AMs. To allow them to stand without resigning would be to create a conflict of interest and in the use of their time which would be detrimental to the Canal and River Trust/ Glandwr Cymru.

Questions in section 4 – Scottish provisions
Do you agree with the Scottish Government’s proposal that the British Waterways Board, operational solely in Scotland, should consist of a chairman, a vice chairman and between one and four other members?

No. There should be a chair, vice-chair and 7 other members, to avoid the concentration of power in the hands of too few people and to act as a safeguard against the abuse of power.

Do you agree with the Scottish Government’s proposal that the British Waterways Board operating solely in Scotland should, in future, come within the scope of the following relevant Scottish legislation:
(a) the Freedom of Information (Scotland) Act 2002;
(b) the Environmental Information (Scotland) Regulations 2004;
(c) the Scottish Public Services Ombudsman Act 2002; and
(d) the Ethical Standards in Public Life etc. (Scotland) Act 2000?

Yes. In addition, the Canal and River Trust/ Glandwr Cymru in England and Wales should be required to adhere to standards identical to those laid down in the Ethical Standards in Public Life etc (Scotland) Act 2000.

Do you agree that the water abstraction legislation now in place in Scotland is sufficient such that the requirement for Ministerial consent in the Transport Act 1962 can now be repealed?

Yes.

NATIONAL BARGEE TRAVELLERS ASSOCIATION
23 October 2011