

Broads Authority Bill 2007 (“the Bill”) Agreement with BMF and RYA

The aim of the Broads Authority’s Bill (“the Bill”) is to improve safety for the public on its navigation and modernise its constitution as set out in the Norfolk and Suffolk Broads Act 1988 (“the 1988 Act”).

The Broads Authority (“the Authority”) recognises that users of its navigation and the Authority’s Navigation Committee have knowledge and expertise that are a valuable resource to the Authority in particular when considering the detailed application and implementation of the provisions in the Bill.

This Agreement sets out the Broads Authority’s specific intentions in respect of certain clauses in the Bill and provides a new framework for the role and operation of the Navigation Committee.

Clause numbers in this Agreement relate to the clauses in the Bill deposited in Parliament on 27 November 2006.

Signed by:

..... Chief Executive, Broads Authority

..... Chief Executive, British Marine Federation

..... Chief Executive, Royal Yachting Association

DATE

In consideration of the British Marine Federation (BMF) and the Royal Yachting Association (RYA) refraining from opposition to the Bill, the Authority hereby undertakes as follows:

A. The Authority will propose amendments to the Bill at the Committee stage in the House of Commons to give full effect to the following changes:

1. Leave out clause 40 (as to Water Resources Act 1991, etc.)
2. Amend Clause 16 to refer specifically to the requirement to notify the Master/ owner of the right to receive a full report and, in relation to clause 16(9), to amend this clause to provide that any person who intentionally obstructs an authorized officer with reasonable excuse is not guilty of the specified offence.
3. Amend Clauses 17 and 18 so as to require the Authority to reimburse the owners of vessels for damage or loss of the vessel, its fixtures and contents caused by the exercise of those powers if it is shown that the vessel was not unsafe, with an exclusion to the extent that the damage or loss is caused by the wilful act or negligence of the owner.
4. Amend Clause 21(3) to refer to 28 days, not 21.
5. The introduction of a qualifier in clause 22(2) limiting the requirement to production of information available to the recipient.
6. Amend Clause 23(1) to give a minimum notice period of at least 28 days.
7. The introduction of a qualifier in clause 23(3) limiting the requirement to production of information available to the recipient
8. Amend Clause 25 to ensure that any vessel, including club rescue boats, may come to the aid of any other person or vessel in distress

B. Except as may otherwise be agreed in writing with the BMF and the RYA, the following provisions shall apply:

Generally, when implementing the provisions in the Bill, the prime vehicle for consultation will be the Navigation Committee with consultation with the BMF and the RYA as appropriate, or as specified below.

1. General Directions (Clause 4)

- (a) Before deciding to give any general direction, the Authority will, except in an emergency, consult over a six week period, with the RYA and BMF and such other national and local bodies which appear to it to represent boating interests as it considers appropriate. These will include the national and local boating organisations.
- (b) Except in an emergency the Authority will then adopt the following process if at any stage in the process it is wished to continue with the making of the general direction:-

- (i) Following the consultation referred to in paragraph (a) above, the matter will be referred to the Authority's Navigation Committee. If the Navigation Committee does not support the making of a general direction or there are unresolved objections from any of the national and local boating organisations consulted under paragraph (a), the matter will be referred to the Inland Waterways Advisory Council (IWAC).
 - (ii) IWAC will then give both the Authority and the objector(s) the opportunity to make written representations to them. After considering those representations IWAC will then send its report to the Authority and the objectors together with its opinion on whether the direction should be given.
 - (iii) The Broads Authority will then consider the objections and the formal opinion of IWAC before making a decision on whether to give the direction.
- (c) The general direction referred to in Clause 4(3)(e) will not be given for the purpose of prohibiting the movement of pleasure craft as defined in the 1988 Act.
 - (d) The general direction referred to in Clause 4(3)(f) will not be given for the purpose of prohibiting or regulating the movement of pleasure craft (as so defined).
 - (e) The general direction referred to in Clause 4(3)(g), insofar as it relates to the qualifications of the master, will only be given in relation to pleasure craft (as so defined) if and to the extent that it becomes a national requirement for masters to be qualified.

2. Enforcement of Special Directions (Clause 8)

In determining what is a "reasonable time" for the purposes of Clause 8(1) the Navigation Officer will take into account the following considerations:-

- (a) The seriousness of the situation which the special direction is intended to avoid.
- (b) The time it would ordinarily take a competent helmsman to comply with the direction.
- (c) Any special personal circumstances of the person to whom the direction is given.

3. Byelaws for Registration of Vessels (Clause 11)

- (a) The Authority will not require the registration of rafts or pontoons that are permanently fixed and kept in adjacent waters or are

permanently fixed within the navigation area. Similarly, tolls will not be charged in respect of such structures.

- (b) Ordinarily, the Authority will, when seeking evidence, at the time of the application for registration of a vessel or when the annual toll becomes due, accept that a valid third party insurance is in force in respect of the vessel under Clause 14 on a declaration in writing by the applicant/toll payer rather than require the production of the insurance certificate or a copy thereof. The Authority will only seek the production of the insurance certificate itself or a copy of it where it has reason to suspect that valid third party insurance is not in place or when investigating an incident.
- (c) Except for the applicant's date of birth and a vessel's 'Craft Identification Number' (where available and known to the applicant) and to the extent that information is currently requested on Form 5T0206 'Application for Registration and Payment of Toll' currently in force at the date of this Agreement and as attached in Appendix Four the Authority shall not request any additional information under Clause 11(6) without first consulting with the RYA, BMF and the Navigation Committee on the nature and type of such information and why it is necessary to request it.

4. Construction and Equipment Standards (Clause 12)

The Authority will continue to advocate the Boat Safety Scheme ("the BSS") (a safety initiative based on the vehicle MoT system managed jointly by the Environment Agency and British Waterways) and supported by the Association of Inland Navigation Authorities ("AINA") so long as it is in place and is effective. The recent revision of the BSS's requirements allows, where appropriate, for the use of a number of compliance options. By the use of these options, traditional vessels should be able to meet the minimum safety standards.

- (a) Without prejudice to any duty imposed on the Authority to consult on the standards and so long as the National Boat Safety Scheme is in force, the Authority intends to use these provisions only to implement that Scheme.
- (b) The Authority therefore intends to impose minimum standards for construction and maintenance of privately owned boats, but more onerous standards currently apply to hire vessels, in particular to secure a level of safety for customers using such vessels.
- (c) The Authority will continue to work with AINA and stakeholders via the BSS office and its committees in the development of the BSS.
- (d) The Authority confirms that non-owning masters of vessels will not be liable unless they are aware that the BSS Standards are not being met.

- (e) The Navigation Committee will be consulted on the introduction and amendment of these Standards except to the extent that they are already in place as a result of the Authority's Boat Safety Byelaws. They will not be implemented until such consultation has taken place.
- (f) The Authority will apply the exemptions set out in Appendix 1. Changes will only be made with the agreement of the Navigation Committee.

5. Compulsory Third Party Insurance (Clause 14)

- (a) The existence of valid insurance will normally be checked at the point of payment of the annual toll (in the same way that valid insurance cover is checked at the point of issue of a road fund licence). A declaration in writing by the toll payer in a form prescribed by the Authority will be accepted as evidence of valid insurance. Where the Authority has reason to suspect that valid insurance is not in place or when investigating an incident physical proof of insurance will be required to be presented in person at the Authority's main office or provided by post to the same. Photocopy proof will be acceptable in the first instance.
- (b) The Authority will require all powered vessels to carry insurance cover in accordance with the requirement specified in Schedule 2.
- (c) The Authority will also require all un-powered craft that are owned by organisations or clubs (whether incorporated or unincorporated bodies) or those participating in any organised event in the Navigation Area and adjacent waters or that are let for hire to be similarly covered.
- (d) In principle the Authority agrees that 'entry-level' craft of the type used by young people and for learning to sail should not be required to carry insurance. The owners of vessels not required to carry insurance cover will nevertheless be advised and encouraged to obtain third party insurance cover, and this will be advised to them at the time of registration.
 - (i) Consequently the Authority, on the recommendation of the Navigation Committee, will exempt from the requirement to have third party insurance all non-powered craft with a block area of less than 6 square metres.
 - (ii) The above exemption shall be kept under review by the Navigation Committee, and changes will only be made with the agreement of the Navigation Committee.
- (e) The Authority confirms that non-owning masters of vessels will not be liable unless they are aware that the compulsory insurance requirement is not being met.

6. Inspection of Vessels (Clause 16)

- (a) The Authority will ensure that, subject to emergency situations, a reasonable approach to requiring inspections is adopted by Broads Authority staff, which is mindful of the cost, inconvenience and delay, which can be caused by inspection to the user. The Navigation Committee will be consulted on the development of this process and the powers will not be implemented until this consultation has taken place except as provided for under the existing Act and byelaws
- (b) The Authority agrees that generally they will not require the inspection of parts of a vessel not covered by the boat standards imposed under Clause 12. However, there may be circumstances when this is appropriate, e.g. hull inspection may be required if the vessel is clearly listing or down in the water, to ascertain whether there is a breach which could result in sinking etc.
- (c) Authorised persons will be required to produce their I.D., as evidence of their authority, if so requested.
- (d) The Authority shall ensure that in all cases where a vessel is boarded or inspected then the Inspecting Officer will in writing inform the Master at the time of the boarding or inspection and the owner (if different) as soon as reasonably practicable afterwards, that they may request a full report of the findings referred to in Clause 16(6). There shall be no charge for providing the report.

7. Unsafe Vessels (Clauses 17 and 18)

Decisions as to whether a vessel is unsafe or fails to comply with the Boat Safety Standards will be taken by an officer of the Authority, with advice from a BSS examiner or a BSS Quality Control Assessor, where appropriate.

8. Removal of Vessels (Clause 19)

The powers under Clause 19 shall only apply to an unoccupied vessel or to a vessel where a clause 18 request has not been complied with. The Authority will develop a set of procedures for dealing with the removal of vessels under the powers contained in the Bill. These procedures will provide working definitions for what might constitute “reasonable enquiries” and will define the format of the official notices. Guidance will also be given for recording the condition of the vessel and, generally, how these powers will be exercised. The Navigation Committee will be consulted on the development of these procedures and the powers will not be implemented until this consultation has taken place.

9. Request for Information as to vessels (Clause 21)

The Authority will develop a process for the use of these powers, to include the preparation of a formal notice containing information which cannot be produced on demand. The Authority recognises that not all documentation need be carried on the vessel. The Navigation Committee will be consulted on the development of this process and the powers will not be implemented until this consultation has taken place.

10. Notices requiring information from landowners etc as to vessels (Clause 23)

- (a) The Authority will not apply these provisions in respect of any vessel that is ashore.

The Authority will consult with the Navigation Committee and will develop procedures with the Navigation Committee before applying this provision in respect of visiting craft.

11 Entry on Land (Clause 24)

The Authority will not enter land to gain access to any vessel that is ashore.

Except where there is a grave and imminent danger to the safety of any person or property the Authority will not enter land belonging to, or under the control for the time being of, a commercial boatyard or a bona fide sailing or boating club, in order to board or inspect any vessel afloat where there is access to the vessel by water, except with the consent of an officer of the club concerned or the proprietor of the boatyard concerned. Where such consent is refused, the Authority may proceed in accordance with Clause 24(3).

12 Licensing of Rescue Boats (Clause 25)

The Authority will consult with the Navigation Committee before exercising these powers and on the conditions to be attached to licences. Licensing will not be introduced until this consultation has taken place.

13. Provision of Information (Clause 39)

- (a) The Authority will provide information to any person who can show reasonable cause and to a “responsible authority” as defined in the Bill in accordance with the Bill’s provisions.
- (b) No public register will be held.

- (c) The Authority will develop a process for deciding what constitutes a “reasonable cause” for the purposes of this provision, taking account of any advice received from the Information Commissioner.

14. Licensing of Hire Boats (Clause 42)

The Authority will consult with the hire boat industry and the Navigation Committee on the exercise of these powers and on the conditions to be attached to licences. Licensing will not be introduced until this consultation has taken place, except for day boats covered by the pilot scheme being introduced by North Norfolk District Council on 1 January 2007. It is expected that the MCA Scheme will be applied as licence conditions once agreed and similarly the MCA Small Passenger Boat Code for trip boats which are not already MCA licensed.

15. Discontinuance of Navigation Account (Schedule 6)

- (a) The report required by the new section 17(5) of the 1988 Act will be in the form in Appendix 2. The Authority will not change this format or the apportionments referred to in it without the agreement of the Navigation Committee, so long as this agreement is not unreasonably withheld or delayed. Any changes will take account of (a) the need to reflect modern accounting practice and any external requirements; (b) the need for transparency; and (c) the need to facilitate the scrutiny role of the Navigation Committee in Appendix 3.
- (b) Interest received will be shared between General and Navigation Expenditure on a pro rata basis according to the level of investment.
- (c) Monies held in the navigation revenue account immediately before the appointed day fixed for the purposes of paragraph 8 of Schedule 6 to the Bill (together with any interest properly attributable to those monies) shall as from that day only be applied as navigation expenditure.
- (d) Any end of year underspend of navigation income (as defined in paragraph 8 of Schedule 6 of the Bill) will be carried forward (with any associated interest) to the next financial year and applied only towards navigation expenditure. Any end of year overspend on navigation expenditure will (unless otherwise agreed by the Authority) be met either from any reserves ringfenced for navigation purposes or from future navigation income

16. Name of the Authority (Schedule 6)

The Authority will only exercise the power in section 74 of the Local Government Act 1972 to change its name with the agreement of the BMF and RYA.

17. Navigation Committee (Schedule 6)

The understanding reached between the Authority and the BMF and RYA in respect of the proposed amendments contained in the Bill in relation to the Navigation Committee is set out in Appendix Three.

18 Closure of the Navigation (Schedule 6 para 12(2))

The Authority will not exercise these extended powers to temporarily close any waterway to facilitate the holding of any function in connection with the recreational use of a waterway without prior consultation with the Chairman of the Navigation Committee, who may consult with such local boating interests as the Chairman considers appropriate.

Further, the Authority will develop a policy for the exercise of these powers on which it will consult the Navigation Committee. The Authority will not exercise these powers until that consultation has taken place.

The Authority will not exercise its powers in such a way as to deny to any vessel reasonable passage through the waterway and the Authority will keep the duration and effect of such closures to an absolute minimum and will adopt and implement all reasonable measures to mitigate the effect on all recreational boating and navigation.

Appendix 1

All Premises

The requirements under the Bill, and specifically for a vessel to register, pay a toll, have a Boat Safety Certificate or provide proof of insurance, shall not apply when a vessel is ashore.

Boatyards

The requirement for a vessel to register, pay a toll, have a Boat Safety Certificate or provide proof of insurance shall not apply when:

- (i) a vessel is afloat in the area of a commercial premises (including but not limited to a commercial boatyard); and
- (ii) is under the control of a commercial entity; and
- (iii) is there for service repair or storage, or for sale by or through a commercial entity.

If a vessel has a permanent mooring within the area of a commercial premises and is in use for recreation or residential purposes then the exemptions referred to above shall not apply.

Appendix 2 Format for Consolidated Management Statement

Appendix 3: Statement agreed with the BMF and RYA in relation to the Navigation Committee

1. Introduction

- 1.1 This Appendix records the understanding reached between the Authority and the BMF and RYA in respect of the proposed amendments contained in the Bill in relation to the Navigation Committee and which have been agreed between them.
- 1.2 The Broads Authority recognises the important part that the Navigation Committee, required by the 1988 Norfolk and Suffolk Broads Act (the 1988 Act), plays in supporting the Authority in the delivery of its statutory purposes. The formulation of the Broads Authority Bill has provided an opportunity to clarify and strengthen the role of the Committee.
- 1.3 Whilst the Authority is itself the body responsible for navigation, the Navigation Committee has under the 1988 Act:
 - (a) a scrutiny and advisory role in relation to this function of the Authority; and
 - (b) may have functions delegated to it by the Authority although there is not requirement for the Authority to do so.
- 1.4 As such, it needs to be consulted in advance on all significant matters affecting the navigation. Where the Authority resolves not to adopt any recommendation made to it by the Navigation Committee, the reasoning for this needs to be fully explained. Past experience has shown that the Authority normally accepts the Committee's advice on matters concerning the navigation and this pattern is likely to continue.
- 1.5 In recognition of this and having regard to the Authority's desire to modify the 1988 Act to allow delegation of navigation functions to officers and not simply delegation to or through the Navigation Committee, which the BMF and RYA have acceded to, it has agreed to expand the category of matters that the Navigation Committee must be consulted upon and to provide expressly for the giving of reasons where the Authority finds itself unable to accept Navigation Committee recommendations. A consequential amendment has also been agreed to be made in relation to consultation on works licences.
- 1.6 The effect is to clarify and strengthen the role of the Navigation Committee by allowing it to continue, to act as a scrutiny and advisory committee in relation to the navigation, consulted in advance on all matters of significance to navigation and with the facility to have delegated to it navigation functions but with no obligation for this to happen.
- 1.7 This leaves the Authority and, so far as functions are delegated to them, its officers with the full executive function but with improved accountability, recognising that the Navigation Committee has an important role in advising upon, facilitating and scrutinising the activities of the Authority in relation to its role as a navigation authority.

2. Summary of constitution and role of Navigation Committee

- 2.1 Existing membership is to be retained with 13 members of whom 5 are members of the Authority and 8 are appointed after consultation with boating interests.
- 2.2 The Navigation Committee will continue to operate as a separate committee, meeting 6 times a year with the ability to require additional meetings, in exceptional circumstances, (after discussions between the Chairman of the Authority, the Chairman of the Navigation Committee and the Chief Executive) or at the request of the full Authority. The number of meetings per year may be reduced from time to time with the agreement of the Navigation Committee.
- 2.3 The Navigation Committee will continue to appoint its own chairman and to determine its own procedure: see the 1988 Act Sch 4, para.4(2)&(3).
- 2.4 Minutes of meetings of the Navigation Committee to be prepared in accord with the Authority's normal practice. This will give the Chairman the opportunity to comment on the draft, and where appropriate to suggest amendments before they are finalised and circulated for adoption at the next meeting.
- 2.5 The role of the Navigation Committee to be:
 - (a) scrutiny and advisory; and
 - (b) with the ability, as now, to exercise delegated functions on behalf of the Authority but with no requirement on the Authority to delegate to it.
- 2.6 In relation to its scrutiny and advisory role, the Committee to be consulted in advance on all matters materially affecting the navigation. Past experience has shown that the Authority normally accepts the Committee's advice on matters concerning the navigation and this pattern is likely to continue.
- 2.7 The Authority to be able to delegate navigation functions to others as well as the Navigation Committee i.e. repeal s.9(8) of the 1988 Act.
- 2.8 The Navigation Committee to be consulted by the Authority amongst other things specifically on the following:
 - (a) proposals to vary the navigation area: see the 1988 Act s.8(4);
 - (b) delegation of navigation functions to any person: see the 1988 Act s.9(6)(a)(i);
 - (c) appointments to the Navigation Committee: see the 1988 Act s.9(6)(a)(ii);
 - (d) before proposing, determining or bringing into force any new policy, strategy or procedure or any change to an existing policy, strategy or procedure which may significantly affect the use or enjoyment of the whole or any part of the navigation area: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(a)(iii);
 - (e) before determining any planning application which may specifically affect the use or enjoyment of the whole or any part of the navigation area and which materially conflicts with any policy, plan, strategy or procedure of

the Authority: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(a)(iv);

- (f) the preparation of the annual budget: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(a)(v);
 - (g) except in an emergency, before incurring expenditure which may have a significant effect on the use or enjoyment of the whole or part of the navigation area and which has not been specifically provided for in the annual budget approved by the Authority: See the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(a)(vi);
 - (h) before applying for any amendment of or alteration to the Navigation Committee's constitution as set out in section 9 of the 1988 Act or the Authority's constitution as set out in section 1 of the 1988 Act or any change to the functions of the Authority in relation to the navigation area as set out in Part II of and Schedule 5 of the 1988 Act and under Parts 2 and 3 of the 2007 Act: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(a)(vii);
 - (i) byelaw applications: see the 1988 Act s.10(17)(a);
 - (j) appointment of the navigation officer: see the 1988 Act s.10(17)(b);
 - (k) before determining an application for a works licence the granting of which would significantly affect the use or enjoyment of the whole or any part of the navigation area : see the 1988 Act as proposed to be amended by Broads Authority Bill s.11(13);
 - (l) determining navigation charges: see the 1988 Act s.13(3);
 - (m) except in cases of urgency, exercising Schedule 5 Part I (general navigation functions) or paragraph 23 (new rights) powers: see the 1988 Act Sch.5, para. 16;
- 2.9 The Authority will further report to each meeting of the Navigation Committee upon the exercise of powers in relation to navigation by the Authority or any officer of the Authority since the last meeting of the Committee: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(6)(b).
- 2.10 Where the Authority resolves not to adopt any recommendation made to it by the Navigation Committee, it should provide full reasons for doing so: see the 1988 Act as proposed to be amended by Broads Authority Bill s.9(9).

Appendix Four: Form 5T0206 'Application for Registration and Payment of Toll'