

## **GUIDANCE FOR BOATERS WITHOUT A HOME MOORING**

If a boat is licensed without a home mooring<sup>1</sup> it must move on a regular basis. This Guidance<sup>2</sup> seeks to explain in day to day terms the nature of the movement that must take place.

There are three key legal<sup>3</sup> requirements:-

the boat must genuinely be used for navigation throughout the period of the licence.

unless a shorter time is specified by notice the boat must not stay in the same place for more than 14 days (or such longer period as is reasonable in the circumstances); and

it is the responsibility of the boater to satisfy the Trust that the above requirements are and will continue to be met.

### **“Navigation”**

The law requires that the boat “will be bona fide used for navigation throughout the period of [the licence]”.

‘Bona fide’ is Latin for “with good faith” and is used by lawyers to mean ‘sincerely’ or ‘genuinely’.

‘Navigation’ in this context means travelling on water involving movement in passage or transit.<sup>4</sup>

Therefore, subject to stops of permitted duration, those using a boat licensed for continuous cruising must genuinely be moving, in passage or in transit throughout the period of the licence.

Importantly, short trips within the same neighbourhood, and shuttling backwards and forwards along a small part of the network do NOT meet the legal requirement for navigation throughout the period of the licence.<sup>5</sup>

The terms ‘cruise’ and ‘cruising’ are used in this guidance to mean using a boat bona fide for navigation.

### **“Place”**

The law requires that stops during such cruising should not be “in any one place for more than 14 days”.

“Place” in this context means a neighbourhood or locality, NOT simply a particular mooring site or position<sup>6</sup>.

Therefore to remain in the same neighbourhood for more than 14 days is not permitted. The necessary movement from one neighbourhood to another can be done in one step or by short gradual steps. What the law requires is that, if 14 days ago the boat was in neighbourhood A, by day 15 it must be in neighbourhood B or further afield. Thereafter, the next movement must be at least to neighbourhood C, and not back to neighbourhood A (with obvious exceptions such as reaching the end of a terminal waterway or reversing the direction of travel in the course of a genuine cruise).

What constitutes a ‘neighbourhood’ will vary from area to area – on a rural waterway a village or hamlet may be a neighbourhood and on an urban waterway a suburb or district within a town or city may be a neighbourhood. A sensible and pragmatic judgement needs to be made.

It is not possible (nor appropriate) to specify distances that need to be travelled, since in densely populated areas different neighbourhoods will adjoin each other and in sparsely populated areas they

may be far apart (in which case uninhabited areas between neighbourhoods will in themselves usually be a locality and also a “place”).

Exact precision is not required or expected – what is required is that the boat is used for a genuine cruise.

#### **“14 days or such longer period as is reasonable in the circumstances”**

Circumstances where it is reasonable to stay in one neighbourhood or locality for longer than 14 days are where further movement is prevented by causes outside the reasonable control of the boater.

Examples include temporary mechanical breakdown preventing cruising until repairs are complete, emergency navigation stoppage, impassable ice or serious illness (for which medical evidence may be required).

Such reasons should be made known immediately to local Trust enforcement staff with a request to authorise a longer stay at the mooring site or nearby. The circumstances will be reviewed regularly and reasonable steps (where possible) must be taken to remedy the cause of the longer stay – eg repairs put in hand where breakdown is the cause.

Where difficulties persist and the boater is unable to continue the cruise, the Trust reserves the right to charge mooring fees and to require the boat to be moved away from popular temporary or visitor moorings until the cruise can recommence.

Unacceptable reasons for staying longer than 14 days in a neighbourhood or locality are a need to stay within commuting distance of a place of work or of study (e.g. a school or college).

#### **Boater’s Responsibility**

The law requires the boater to satisfy the Trust that the bona fide navigation requirement is and will be met. It is not for the Trust to prove that the requirement has not been met. This is best done by keeping a cruising log, though this is not a compulsory requirement. If however, the Trust has a clear impression that there has been limited movement insufficient to meet the legal requirements, it can ask for more information to be satisfied in accordance with the law. Failure or inability to provide that information may result in further action being taken, but only after fair warning<sup>7</sup>.

#### **Summary of Guidance for Boats without a home mooring**

- **Boats without a home mooring must be engaged in genuine navigation throughout the period of the licence.**
- **They must not stay moored in the same neighbourhood or locality for more than 14 days.**
- **It is the boater’s responsibility to satisfy the Trust that they meet these requirements.**

#### **NOTES**

<sup>1</sup> ‘Home Mooring’ is “a place where the vessel can reasonably be kept and may lawfully be left”.

<sup>2</sup> This Guidance does not have the force of law but seeks to interpret the law as set out in s.17 British Waterways Act 1995. The language of the Act is generic and, as with all statutes, requires interpretation. The Guidance is based on professional legal advice, including from Leading Counsel, and is believed by the Trust to reflect the correct legal interpretation of the Statute. The Guidelines issued in 2008 were considered by the court in the case of British Waterways v Davies in the Bristol County Court. The Judge expressly found that Mr Davies’ movement of his vessel every 14 days (whilst remaining on the same approximate 10 mile stretch of canal between Bath and Bradford on Avon) was not bona fide use of the vessel for navigation. These Guidelines have been updated and refined in the light of that Judgment.

<sup>3</sup> Section 17(3)(c) British Waterways Act 1995 states that BW may refuse a licence (“relevant consent”) unless (i) BW is satisfied the relevant vessel has a home mooring or: “(ii) the applicant for the relevant consent satisfies the Board that the vessel to which the application relates will be used bona fide for navigation throughout the period

for which the consent is valid without remaining continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances.”

<sup>4</sup> British Waterways places reliance on the meaning given to the word “navigation” in the case of Crown Estate Commissioners v Fairlie Yacht Slip Limited. Whilst a decision of the Scottish courts, the English courts can, and have, taken the views of the Scottish Judge into account. In that case the basic concept and essential notion of the word “navigation” was said to be “passage or transit”, the underlying concept being one of movement.

<sup>5</sup> The Judge in the case of British Waterways v Davies referred to in Note 1 above expressly confirmed that moving a vessel every 14 days on a 10 mile stretch of canal between Bath and Bradford on Avon was NOT use of the vessel bona fide for navigation.

<sup>6</sup> The Shorter Oxford Dictionary gives some 8 separate principal meanings for the noun ‘place’. Therefore the rules of legal interpretation require the meaning that most appropriately fits the context to be used. Since ‘navigation’ means travelling by water and ‘travel’ means a journey of some distance, the word ‘place’ in this context is used by the Act to mean an “area inhabited or frequented by people, as a city, town, a village etc” (meaning 4b in the Shorter Oxford Dictionary).

<sup>7</sup> Enforcement of the legal requirements will be based on observations by the Trust. If initial observations indicate insufficient movement to meet the legal requirements, the boater(s) will be advised why the observed movement is considered insufficient and be asked to keep adequate evidence of future movements. Failure then to meet the movement requirements, or to provide evidence of sufficient movement when requested by the Trust, can be treated as a failure to comply with s.17 of the 1995 Act. After fair warning the boat licence may then be terminated (or renewal refused). Unlicensed boats must be removed from Trust waters, failing which the Trust has power to remove them at the owners cost.