

MOORINGS POLICY FOR BW'S NETWORK IN ENGLAND & WALES: PUBLIC CONSULTATION Nov '09 – Jan '10

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Simon Salem
Director for Boating Business
29th October 2009

ABOUT THE CONSULTATION AND HOW TO RESPOND

The aims of this consultation are to

- improve understanding of the complex issues associated with management of moorings on BW's 2,000 mile historic waterway network in England and Wales
- invite feedback on new policy proposals which we have developed with help from national boating organisations.

We expect the consultation to be of interest to:

- boat owners, particularly those who live aboard their boat (or are considering doing so)
- the boating trade, particularly operators of commercial boats for hire, passenger boats or moorings
- anglers
- other frequent waterway users
- people living close to waterways, particularly in residential areas
- waterside businesses
- parish councillors
- local authority planning, environment and housing departments
- statutory and third sector organisations concerned with civic amenity, housing, heritage, environment and of course, inland waterways.

Pre-consultation

We have developed the ideas in this paper with the help of many representatives of boating and boating trade organisations. The subject was debated with a sub group of the British Waterways Advisory Forum in summer 2008. We subsequently tabled an early pre-consultation draft at the meeting of our national 'waterway users special interest group' in April 2009, and then held meetings with leading representatives to work through many points of detail. We are particularly grateful to the Residential Boat Owners Association for their help in developing part two of the paper including joint consumer research into residential mooring demand and preferences that provided important data to underpin our proposals. We have continued to consider comments received on an ad hoc basis since these meetings.

Responding to the consultation

Comments are invited by 31st January 2010. When responding, please indicate your particular interest in the waterways. If applicable, please also tell us which parts of the network you have most experience of which have influenced your comments.

A response form is appended. It includes prompts and questions on each substantive theme within the paper. Using this will help us with the important job of collating and analysing feedback. An electronic copy of the form is downloadable in word format from www.britishwaterways.co.uk/mooringconsultation09

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We are conducting this consultation, to the best of our ability, following the Cabinet Office Better Regulation Executive's Code of Practice on Consultation. This can be viewed at www.berr.gov.uk/bre/consultation-guidance/page44420.html.

Message from Robin Evans, Chief Executive

This paper is about how BW, boaters and canalside communities could together best address some of the challenges arising from recent years' exceptional growth in boating on BW's waterways.

As custodians of the waterways, BW warmly welcome this growth in boating activity: as well as generating economic benefits to local communities, it demonstrates the strength of public commitment to navigable canals and rivers, underpins millions of pounds of private investment in boats, moorings and related services and of course, provides a vital financial contribution to the costs of maintaining the network.

Growth on the scale that we have seen over the past ten years does not come without challenges. How do we best manage the limited space along the line of the canals to protect the qualities that make them so special, not only to boaters but to the public at large? What rules do we need to promote harmony and protection of the waterway environment as intensity of use increases? And how can such rules be efficiently applied? Should the whole task be shouldered just by British Waterways or do boaters themselves have a role to play?

A particular challenge is that our waterways have become increasingly attractive to people seeking to make their home on the waterways. For many, the purpose is to keep moving and enjoy exploring different parts of the country. Others however are less footloose and want to stay in the same area.

We are determined that our waterways should thrive as working navigations, for this is at the root of their heritage. We want waterways that are vibrant with boat movement, rather than extended linear boat parks.

Much work has gone into developing the ideas underlying the policy proposals in this consultation: the issues are not simple, and we are most grateful to the many representatives of national boating organisations for the time and expertise they have given us over the past 12 months. We have modified our thinking considerably as a result of their input and hope very much that the resulting fresh proposals will meet with general support.

Robin Evans
October 2009

Summary

This consultation is about three related areas of moorings policy for BW waterways:

- where, and for how long, boats should be permitted to moor in areas of particularly high usage
- encouragement of long term mooring off the main line of the waterway
- moorings for residential boats

We have tackled the subject in two distinct parts:

1. Moorings along the line of the waterway

With a virtually fixed capacity of waterways but steadily (and recently, very rapid) growth in demand, problems of space-sharing are inevitable. Boating user groups, the boating trade, individual boaters and (increasingly) local residents air their concerns during regular meetings with BW, through the waterways press, in complaints and feedback and on internet forums.

Through this consultation, we are looking forward to genuine, constructive debate on the right policy framework for achieving a fair balance between competing demands on towpath space for short term mooring. We'd like to shift attitudes so that all boaters exercising their right to keep a boat on the waterway without a home mooring recognise the associated responsibility of complying with rules designed to protect the quality of the waterway environment.

To launch this debate, we are proposing new approaches to capacity management that depend upon much greater public engagement in decisions concerning use of scarce mooring space. Stakeholder-led strategies would determine where, and for how long, boats should be permitted to moor in areas of particularly high usage. Daily charges should apply for overstaying boats at particularly congested short term moorings

We confirm our policies of encouraging creation of new offline mooring sites, of controlling expansion of online long term moorings and of reducing online moorings in the ratio of one to every ten new berths created.

2. Moorings for residential boats

Growth in residential boating appears to account for a substantial proportion of the recent increase in boat numbers. We welcome residential boats on our waterways, either on suitably located and well-managed mooring sites, or as genuine continuous cruisers. We recognise the serious shortage of residential moorings and the new policies set out in this paper aim to address this. These set out the criteria that we believe residential moorings and boats should satisfy; we commit to encouraging investment in the supply of residential moorings; to develop guidance for mooring developers and an application process to streamline the BW consent process. We will also seek better consideration of residential moorings within national and local government policy.

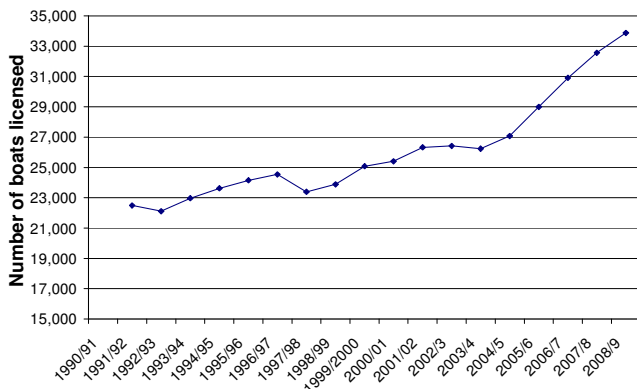
MOORINGS ALONG THE LINE OF THE WATERWAY -

1. Context

Growing demand for boats on BW waters

- 1.1. Since the turn of the century, nearly 1,000 boats a year have been added to BW's database of long term licences, bringing the total in 2009 to some 34,000. Just over half of these are normally kept in offline mooring sites, leaving about 15,000 normally moored along the line of the canal with a strong tendency to be clustered in urban, semi-urban and other popular spots around the network.
- 1.2. Just under 90% of long term licensed boats have a home mooring – somewhere where the owner has permission to leave the boat when it is not being used for cruising. The remaining 3,500 or so boats are recorded on BW's boat licensing system as being 'continuous cruisers'.

Growth in sales of long term boat licences



- 1.3. Given the current state of the national economy, this trend is unlikely to continue with its recent strength and some reduction in demand for licences is possible in the near future. The experience of previous recessions is that this reduction comes with a lag of a couple of years or so and is relatively muted. However, because much of the recent growth in boat ownership on BW waters is – we believe – for residential purposes, demand may be more robust than in previous recessions. Indeed, since boats are often seen as a cheap alternative to bricks and mortar, it might even continue to increase.
- 1.4. In our 2008 survey of boat owners, nearly one in five said they lived aboard their boat, with 12% of all owners saying that it was their primary residence.

Challenges of balancing demand with capacity

- 1.5. Given that the capacity of the network is largely fixed (no significant lengths of navigation are likely to be added during the next few years), it is not surprising that some areas of the canals are beginning to show signs of congestion.
- 1.6. Congestion is typically referred to in the context of navigation, particularly the occurrence of queues at locks at certain times. While this is a concern, we do not believe it to be as pressing a challenge as that of ensuring that space for the mooring of boats along the line of the canal is planned and used fairly.

Mooring provision

- 1.7. Mooring provision throughout the BW network should reflect customer requirements but it should not prejudice the overall amenity of the waterways. There is a fixed amount of towpath-side mooring space, and we believe that most waterway users recognise the need to see appropriate limits to the development of linear moorings, particularly by boats that rarely move. In the face of continuing growth in licensed boats, this means that some form of rationing is inevitable. This is the reason why legislators in the early 1990's specified that people who were not continuously navigating

should be required to find a home mooring – somewhere where the boat could lawfully be kept when not being used for cruising.

- 1.8. Boaters of course need moorings for different purposes. The glossary in Appendix 1 lists definitions for different types of long and short term moorings.
- 1.9. Long term moorings which are off the line of the waterway, in a marina, basin or similar are ideal for boat 'parking'. Since the publication of our online mooring policy briefing in 2006, we have seen significant success from our marina development initiative to stimulate investment in offline mooring provision. As a result nearly 4,000 new berths have been created. In September '09 there were a further 5 marinas (395 berths) under construction; some 2,300 proposed new berths have planning permission and despite the economic recession, new expressions of interest are still being received at the rate of about one per week (since 2006 about one third of expressions of interest have resulted in marinas being built).
- 1.10. We apply screening processes to check that there is sufficient water resource in the area to support the proposed number of additional berths and to ensure that navigational safety is not prejudiced. The local statutory planning process considers other relevant criteria and we support applicants with information and advice to the best of our ability. Details of the process are published on a special BW website at www.britishwaterways.co.uk/marinadevelopment. In the absence of specific local moorings strategies, we currently market this opportunity generically, not locally: it is for private investors to identify suitable sites and assess local market potential.
- 1.11. Concern about congestion at locks (mentioned by 22% of respondents in our 2008 survey of boat owners) suggests that in addition to the criteria for determining approval for a new offline marina, the navigation capacity of the surrounding waterways should be assessed as part of the process. We would welcome specific suggestions for the definition of a robust and objective threshold measure of congestion for use in this assessment. BW's telemetry systems record lock fills at some 150 locks around the network which provides a measure of boat movements. We also have survey data from three medium sized marinas which showed maximum weekly movements in or out of a marina of 0.62 per boat moored in the marina (this was over the late May bank holiday weekend). We need boaters' views on the maximum acceptable frequency of lock queues of different durations to inform the development of a fair and consistent congestion assessment tool for marina applications.

Legal framework

- 1.12. British Waterways is a government appointed public corporation entrusted with the operation and stewardship of the waterways it owns or manages. Use of these waterways (including much of the associated towpath and land) is subject to BW's permission. The main statutes defining our powers are the Transport Acts 1962 and 1968 and the British Waterways Acts of 1971, 1983 and 1995. Section 43 of the Transport 1962 Act empowers BW to charge for the services and facilities it provides and to determine the terms and conditions of their use. The section explicitly applies to the use of the waterways by "any ship or boat". Section 17 of the British Waterways Act 1995 gives additional provisions concerning BW's boat licensing powers. Activities on BW land and waterways are also subject to byelaws. Appendix 2 contains more detail.
- 1.13. BW's responsibilities concern the operation, maintenance and development of the waterway network. There is no public duty requiring us to provide places for people to live, regardless of how needy they may be.
- 1.14. The legislative framework above gives powers to BW to deal with breaches of mooring and licensing conditions. We take great care when taking legal action to ensure that it is fair and reasonable, and we are proud of our record in securing the support of the courts when we need to call upon them. Not all boaters agree with this positive verdict on our track record: some because they do not accept the controls on mooring that we believe are necessary, while another - probably larger - number disagree because they think we don't take sufficient cases to court to provide an effective deterrent to 'rule-breakers'. Some people call for stronger legislation – a call which we have

considered but ruled out for the pragmatic reasons that more draconian powers are neither necessary nor likely to be granted and in any event would be very costly and controversial and would take a very long time to try to acquire.

Supplementary routes to achieving fairness

- 1.15. Use of the law is obviously an important management tool for BW, but it cannot be the only means of achieving fair rationing of scarce water space. By promoting wider understanding of the fragile nature of public enjoyment – its dependence on people being thoughtful and considerate to others in their mooring decisions – we hope that the challenges we discuss throughout this paper might be mitigated to some extent by behavioural changes. This would certainly enable BW to spend a larger proportion of its limited resources on maintaining the physical fabric of the precious and historic waterway network.
- 1.16. We of course need to create shared understanding of what, in a particular area of the network, constitutes a fair distribution between competing demands on water space. This is discussed in section 3.
- 1.17. Whilst not universally popular amongst boaters, the use of pricing to signal scarcity is generally seen as a fair means of distributing resources elsewhere in the economy, and we continue to see a role for this in tackling the challenge of managing the use of some stretches of towpath for mooring.

Statement of principles underlying BW's boating policies

- 1.18. Boating is at the core of BW's business. We want it to thrive into the future.
- 1.19. Waterways are primarily for navigation. We must have sufficient places for people to tie up during a cruise and enough 'breathing spaces' between groups of moored boats.
- 1.20. Boaters contribute to local business prosperity. We want to foster a spirit of shared responsibility for the development of the waterways within local communities as well as amongst boaters.
- 1.21. Continued growth must not be at the expense of the waterway environment. Sustainable boating means conserving water supply when cruising, reducing waste, being kind to the environment, minimising disturbance and being considerate to other waterway users.
- 1.22. There should be a varied mix of moorings and facilities to meet demand from different segments of the boating market, and where there is competition between these groups for bank side space, we must have policies to encourage a fair and appropriate mix.
- 1.23. Healthy competition between providers of moorings and facilities encourages appropriate levels of provision and good choice for customers.
- 1.24. Fees paid by boaters account for less than one in every 5 pounds spent by BW on repairing and maintaining the waterways, but their contribution is vital.

2. Policies for moorings along the line of the waterway

- 2.1. We will develop a method and programme for preparing **local mooring strategies** where they are needed. Our vision for these is set out in the next section. They will define different types of mooring zone with associated time restrictions and terms for use. Their purpose is to promote a fair balance in the use of scarce mooring space and protect the appeal of the waterway to a broad spectrum of users.
- 2.2. Where mooring restrictions are required, they will be clearly signed, and may include daily charges as a means of rationing use.
- 2.3. We will continue to limit expansion of online long term moorings, reduce them in the vicinity of new offline marinas and encourage investment in offline moorings. The purpose of this policy is to gradually encourage more boaters to keep their boat in an offline mooring site and thereby reduce pressure on online space and maintain amenity.

3. Strategy and implementation

Local mooring strategies (policy 2.1)

- 3.1. The need for a local mooring strategy will be limited to those areas of the network where pressure on space along the waterway is most acute and problems of conflict are obvious. No fixed size is proposed for the strategy area as this will depend on local factors. It is BW's intention that the great majority of the network will remain available for free casual mooring as at present.
- 3.2. Strategies should be developed by a steering group of local stakeholders representing the broad spectrum of different interests in the waterway alongside one or two BW employees. As a minimum, representatives of private boat owners, boating businesses, anglers and parish and local authority councillors should be included within the steering group. We believe that anyone serving on the steering group must accept BW's legal framework as explained in this paper – it would serve no useful purpose for the group to become diverted by arguments over BW's legal powers to enforce reasonable mooring rules.
- 3.3. Ideally the steering group will be chaired by a stakeholder with relevant professional experience and/or qualifications for the task. They must demonstrate ability to take an independent view, not that of predominantly one single interest.
- 3.4. The function of the group will be to examine evidence on the current patterns of mooring, the extent and nature of any problems or issues etc, to canvass views from appropriate interest groups, to develop and assess different options and formulate balanced proposals for public consultation. We would expect members of the group to take an active role in communicating the strategy proposals during the consultation period, to participate in the assessment of feedback and formulation of the final version.
- 3.5. Technical support will be provided by BW in the form of planning advice, statistics and information, mapping, research etc. expertise, but we aim for a substantial proportion of the work to be contributed by volunteers, consistent with BW's volunteering provisions.
- 3.6. The resulting strategy must meet BW's requirements: it must be practical to implement, consistent with BW's statutory powers and duties and published policies and with relevant statutory requirements for protected structures, sites and wildlife. It must also reflect relevant local authority policies where applicable (e.g. in respect of suitability of sites for new offline or residential moorings). The process by which BW formally adopts the strategy will be developed during the pilot projects.
- 3.7. The strategy must represent the best possible compromise between the competing demands of different interest groups, informed by objective assessment of evidence and options, and fairly conducted local public consultation.

3.8. A local mooring strategy will identify zones using the following classifications:

1. free casual mooring for up to 14 days – the unsigned default
2. free, time-limited mooring (signed)
3. short-term charged mooring (signed)
4. long term mooring (leisure / residential / trade) (signed)
5. no mooring (signed)

See [Glossary](#) for definitions of these mooring types

It may also identify areas potentially suitable for offline marina development, and BW leisure mooring sites which may be suitable for a change of use to residential.

3.9. The strategy could designate stretches closest to particularly popular access points for priority use by boaters with mobility difficulties. Such designation would require proper assessment of its suitability, using the following suggested standard:

Access from arrival/departure point to individual mooring along the towpath or through mooring site :

Path slope no steeper than 1 in 10; path width no less than 1 metre; no steps or barriers; intact compact surface with only slight irregularities, neat edges, drains immediately.

Access to and from the boat itself : Sound well maintained bank protection or natural bank; good line and level, with only minor erosion, deterioration, corrosion of piles or cracking; no significant potholes; no more than 0.5 metres of freeboard.

3.10. It could also designate stretches for boats covered by certain trading agreements in order to facilitate the operation of commercial retail or cafés at visitor destinations for example.

3.11. A good local mooring strategy effectively implemented should result in the following:

- a clear set of designated areas and associated conditions of use which the majority of boat owners, boating holiday-makers, anglers, local businesses and communities accept as reasonable. They should feel that the use of water space along the towpath and canal offside is designated and distributed fairly, providing the right mix of long term moorings, short term moorings and an appropriate amount of empty space between moored boats for general landscape amenity and/or use by anglers, according to local agreements.
- The conditions of use (mooring rules) should be feasible and practical to enforce. There must be reasonable prospects of enforcement costs being covered by revenue from local short term mooring fees so that BW's core resources for waterway maintenance are not called upon.

3.12. Clearly it will take time from the completion of the strategy to achievement of these objectives. The strategy document should include a simple monitoring process and practical, time-specific, measurable targets.

3.13. We have appointed a dedicated project officer for a period of 12 months from November 2009 to coordinate the development of two or three local mooring strategies in order to test and develop the appropriate methods, processes and communications. Some obvious candidate areas have presented themselves: the western end of the Kennet & Avon Canal is the subject of concern amongst local councillors and boat operators who find the number of residential boaters basing themselves on casual or visitor moorings along the towpath to be unacceptable; there are similar concerns along the Lee Valley; along the Shropshire Union canal, the challenges are slightly different: steady 'creep' offside mooring on BW water against private land without proper agreement and objection by one parish council to our decisions to reduce the number of long term towpath moorings. There will be other examples, but we cannot tackle more than three during the coming year.

We will shortly issue a separate six week consultation with specific proposals for the establishment of a local mooring strategy steering group for the western section of the Kennet & Avon Canal. This will cover the appointment and terms of reference for the group, including arrangements for

representation of different stakeholder interests. It will be published on www.britishwaterways.co.uk/mooringconsultation09 during November 2009.

Proposed zoning arrangements for short term moorings (policy 2.2)

- 3.14. Compliance with short term mooring rules is currently unsatisfactory in many areas. There are probably several reasons for this. Many boaters don't understand the rules; signing may be inconsistent; people may believe that BW's enforcement teams are stretched and that sanctions may not be applied, or if they are, only after a long period. It goes without saying therefore that for the approach outlined above to be effective, these shortcomings need to be addressed.
- 3.15. Credibility of the enforcement process is essential. We outline the proposed approach below, but detailed planning and testing will be an important part of the strategy pilots mentioned above. But as noted earlier, we need to strengthen other incentives to boaters to comply with the rules, and thereby reduce dependence on the resource-hungry enforcement 'stick'. We believe that stakeholder-led strategies that determine the rules should make them more acceptable to boaters and therefore more likely to be respected. We need to plan for effective communication of new designations as they are confirmed, and by this means, promote the development of peer pressure for compliance. The great majority of boaters are reasonable people who understand the value of being considerate to other waterway users¹.
- 3.16. Where controls are required for short term mooring, we propose that the following principles should be used:
- (a) Controlled stretches will usually have a *core* zone, where the shortest time limit applies (eg 4 hours, 24 hours, 48 hours depending on local circumstances), and an *outer* zone where a longer time limit will apply. Some places might have core, middle and outer zones. Boundaries between the zones must be clearly signed and explained.
 - (b) These time limits will normally describe the period of free mooring. The more popular the site, the shorter the free mooring period.
 - (c) If people wish to stay longer at the site, they may move to the outer zone where they may continue to moor for free up to the maximum free period for that zone.
 - (d) A collection of immediately adjacent zones make up the definition of a particular mooring site or location. The maximum period set for the most generous time zone will be the total amount of time that a boat may spend anywhere at the location on a single visit free of charge. So, for example if a stretch of towpath comprises a length of 48 hour moorings next to a length of 72 hour moorings, the maximum stay time in the stretch would be 72 hours.
 - (e) Visits to the mooring site must be separated by a minimum number of days which will be set in the mooring strategy, determined by local factors. For example, we would not want to prevent leisure boaters with nearby long term moorings from visiting a popular site for a couple of days each week. On the other hand, we need to deter regular return visits by boaters seeking to make use of the facility instead of securing a long term mooring.
 - (f) Any stay beyond the maximum free period will be subject to payment of a daily charge. The local mooring strategy may set a limit on the total number of days over the maximum free period that a boater may be permitted to stay on a fee-paying basis. In the absence of such a limit, providing that the boater keeps up to date with daily payments and complies with BW's other requirements, no enforcement action would be necessary.
 - (g) Daily charges will be set at a rate high enough so that the option of remaining on short term sites using a 'pay as you go' approach is not a cheaper alternative to finding a long term mooring. Charges will be collected through the sale of day permits, priced per boat, not according to length.

¹ BW commends the independent website www.considerateboater.com. It is an excellent guide to the etiquette of considerate boating.

- (h) The daily fee for the great majority of locations is proposed at £10. This is roughly equivalent to a long term annual mooring fee of around £210 per metre for a 57' boat. Depending on the monitoring arrangements (see below), a price incentive might need to be built into the charges to discourage boaters from taking a chance on their boat not being spotted at the mooring.
- (i) Boats overstaying on moorings without their owner or lawful keeper paying the daily charge would be subject to removal away from the mooring site (but not from the waterway itself) by BW. Costs of this would be recoverable from the boater or licence holder.

Achieving compliance with zoning arrangements (policy 2.2)

- 3.17. For the above arrangements to be credible, daily monitoring of boats at each location will be needed. As part of the pilot strategy process, BW will research and test options for arranging this. At present we believe that the most cost effective arrangement would be to appoint local agents based close to the site. This would be more efficient than using our own staff who have wider duties spread over a larger area.
- 3.18. Appointed agents would record boat sightings in much the same way as our full time enforcement teams. They might sell daily permits to boaters, and, subject to appropriate qualification, may also be responsible for applying patrol notices (on instruction from the BW enforcement officer) when payments are not forthcoming.
- 3.19. Alternatively, permits might be electronic and not necessarily feature a displayable ticket. Charges could accrue on the boater's account and be settled through BW's normal payment methods and/or made via mobile phone. We recognise the value of having a ticket displayed in giving confidence to waterway users that the system functions correctly, but the costs of achieving this could be significantly higher than an electronic one (such as increasingly used for car parking). We will investigate this within the pilot strategies project.
- 3.20. Overdue daily fees would be added to the boater's account. The resulting debt would need to be cleared before the customer could re-license the boat.
- 3.21. The aim in designing the charging structure is that permit sales should just cover the cost of running the scheme. It is not possible at this stage to forecast income: the overall objective is to eliminate overstaying, and if the charges represented a completely effective deterrent to every boater, no revenue would result, and the administration of the scheme would become a call on BW's core funds. Conversely, if charges were paid readily by sufficient boaters, a surplus could result. This would be used for improvements to waterway maintenance.
- 3.22. The above arrangements will only apply in areas where particular problems of conflict occur relating to use of short term moorings. Elsewhere, any zoning and signage would be advisory, with boaters generally reminded to be considerate to others in their use of towpath moorings.
- 3.23. Samples of possible wording for signs are included as Appendix 3.

Long term moorings: controlling expansion and reducing online moorings (policy 2.3)

(This is a summary of our existing policy published at www.britishwaterways.co.uk/onlinemooringpol)

- 3.24. BW consent is required for all long term mooring along the line of the canals. A minority of mooring sites are unauthorised and we are committed to resolving all outstanding disputes with relevant site operators.
- 3.25. There is a general presumption against new, online, long term moorings, particularly on the towpath side of the waterway. Well-designed lay-by mooring² developments on the off-side are regarded as off-line sites for the purposes of this policy and approved through our standard procedures detailed on www.britishwaterways.co.uk/marinadevelopment

² A widening or extension to the waterway where boats are not moored within the main navigation channel.

- 3.26. We apply standard criteria to determine the suitability of proposals for new online moorings. The same criteria apply, whether the proposed site is owned by BW or a third party.
- 3.27. We reduce online moorings as new offline capacity comes onto the market. This is done in a ratio of 1:10 – i.e. we cut one on-line berth for every ten new berths created off line. Reductions are made within the geographical market supplied by the new offline marina within 12 months of the opening date of the new site. For the purpose of clarity, we aim to make the reductions within a 30 mile radius of the new marina berths. Our target is for 10,000 new offline berths to trigger a 1,000 reduction in online berths by 2015. So far, to September 2009 we have closed some 350 online berths. We will publish details of the reductions made in respect of each new marina by 30th November 2009 and then maintain this information on our website.

RESIDENTIAL MOORINGS

R1. Context

The future shape of boating on our waterway network

- R1.1 Our aim is to ensure that our waterways thrive as working navigations, vibrant with boat movement, thus preserving the very essence of their character. We must provide a network that supports different types of boating activity and respond sensibly to the demands and challenges of the different patterns of waterway use.
- R1.2 In recent years we have seen strong growth in boating including a significant increase in people living on their boats. If local concentrations of residential boats become very high, the character, feel and appeal of the waterway to others could be altered.
- R1.3 We must plan and manage the water-space to ensure an appropriate and healthy mix of uses and do our best to meet the aspirations of the broad range of waterway and towpath users.

Provision of berths for residential use

- R1.4 The canals have always had a resident population, dating back to the first boatmen and their families living and working on the waterways. Clearly the context has changed over the years, but residential boating is a continuing feature of the waterway environment.
- R1.5 Whilst there are many different patterns and degrees of living afloat, this policy relates to long-term moorings where the moored boat is used as someone's sole or primary residence, i.e. residential moorings. The change of use of the Canal to a full time residential mooring may be a material change of use requiring planning permission.
- R1.6 There is very strong demand, which is growing, from people wanting to live afloat, and is particularly high in a number of locations close to population concentrations. Different levels of facilities appeal to different customers, for economic, lifestyle and social reasons. Whilst sites with full facilities appeal to some customers, there is also demand for 'low-impact living' at sites with fewer facilities.
- R1.7 The supply of long-term mooring sites where residency is permitted (i.e. sites where planning permission has been granted for residential use by the Local Planning Authority (LPA)) is very limited (for example around 40 out of BW's 400 long-term mooring sites are designated for residential use). They vary in the range of facilities provided and the location. Urban sites with good facilities are more common, although there are some sites in rural areas, and some have few facilities on site.
- R1.8 Waterways have a certain capacity for boating and different types of moorings (casual, long-term leisure and residential, plus trade). Some sections are nearing, or have reached, acceptable limits of mooring concentrations. However there are other areas that could comfortably accommodate more moorings. There is a need to achieve an appropriate level and mix of moorings on our network.
- R1.9 Despite significant differences between residential moorings and built development, there is no specific national planning policy or procedural guidance. Residential moorings are therefore treated by LPAs as residential development and subject to the relevant national and local planning policy. Much of our network is in areas where 'bricks and mortar' residential development is constrained or excluded.
- R1.10 BW does not have a responsibility to provide housing or affordable moorings. It provides residential moorings, for which it must charge market rates, as part of its commercial moorings business. Fees at residential sites tend to be higher than for leisure moorings, which reflect demand for a mooring where a boat can legitimately be used as a person's main residence, and sometimes higher operational costs.

Unauthorised residency at long-term leisure moorings

Note that non-compliance with continuous cruising requirements and casual mooring terms are not included in this policy, which focuses on the use of long-term moorings³.

- R1.11 As explained above, a mooring for a boat used as someone's sole or primary residence may require planning permission. Therefore a boat occupied as a primary residence at a long-term leisure mooring would normally constitute (a) a breach of planning control and therefore (b) a breach of BW's mooring agreement⁴ or lease with an operator.
- R1.12 A broad estimate of how many boats on BW's directly managed mooring sites may be in use as a primary residence without planning permission is around 1 in 4, giving a total in the order of 1,000. In London and the South East, we believe it may be significantly higher. We have not attempted to estimate the levels at sites operated by others.
- R1.13 Where there is a breach of planning control, the Local Planning Authority (LPA) is not necessarily compelled to take action. They usually act if they believe it's expedient to do so (e.g. the breach represents unacceptable development that cannot be properly controlled by conditions, is contrary to policy etc.) In other words they would have refused consent if a planning application had been submitted.
- R1.14 If BW knows there is unauthorised residential use (e.g. we receive housing benefit as payment for mooring fees) it does not mean we are committing an offence by permitting the use to continue, but it does mean we are vulnerable to enforcement action. LPA's expect BW, as navigation authority and land-owner of the waterway, to control and regulate activity at mooring sites and they consider us to have an interest in privately-operated as well as our own directly-managed sites when they consider planning enforcement action.
- R1.15 There are relatively few cases of enforcement taken by local planning authorities on BW's network – we have seen some 20 enquiries/cases in the last few years, most of which did not progress beyond initial enquiries or resulted in improvements to the site in question, although some required other forms of resolution.
- R1.16 Some boaters know they risk enforcement action by living on their boat when it's not permitted; others aren't necessarily aware of all the relevant regulations.
- R1.17 Views (e.g. from neighbours, boating customers, other users and our staff) are divided on the issue:
- The opinion of some is that it's breaking the rules, avoiding council tax and is unfair. Others, however, believe that if the site is tidy and there's no harm being done, it's not a problem and can provide a useful presence.
 - BW's apparent inaction could damage our reputation for enforcing the rules and risks our relationship with LPA's since we are expected to control activity at moorings. However it would be extremely difficult for BW to establish residency and, arguably, it's primarily a matter for the LPA first to confirm a breach of planning and whether enforcement should proceed.
 - Enforcement (by BW or the LPA) brings with it a significant risk of simply moving the unauthorised residential use elsewhere on the waterway, or possibly causing homelessness.

³ A long-term mooring is the usual base or 'parking space' where a boat is normally kept when it is not cruising.

⁴ Condition 8. You must comply with the conditions of any planning permission for the Mooring Site and comply with relevant laws, byelaws, Site Rules and special conditions, including any concerning your private use of land at the Mooring Site.

R2. Policy for residential moorings

- R2.1 BW welcomes residential boats on its waterways at suitably located and well-managed long-term mooring sites. Residential boating adds life and vibrancy to the waterway scene, can provide a human presence and sense of security for all users and generates an important contribution to waterway upkeep and local economies.
- R2.2 Proposals for new residential moorings should be assessed in respect of the following four criteria:
- a. Online moorings: Our Online Mooring Policy (OLMP)⁵ generally restricts the establishment of new moorings along the line of the canal in order to prevent unacceptably high concentrations of moorings and encourage development of offline moorings. The policy lists exemption criteria, which online residential mooring proposals must be able to satisfy.
 - b. Alongside the towpath: new residential moorings will not normally be acceptable alongside the towpath, unless there is an exceptional case for consideration (for example where there is a suitable alternative pedestrian route or where there is a need to retain an existing leisure mooring site along the towpath which has established residential use and no alternative can be found).
 - c. When they are in place, local mooring strategies will provide further context for judging whether a residential mooring is acceptable.
 - d. All proposals for residential moorings will be subject to a range of assessments to highlight any water resource, environment, heritage, operational, safety and other issues. These appraisals may determine that a site is unsuitable, or may identify restrictions or mitigation to address sensitivities.
- R2.3 Any proposals for new residential moorings would also be subject to planning permission being obtained from the Local Planning Authority (LPA) and possibly consents from other agencies, depending on the location and type of proposal.
- R2.4 Boats at new residential moorings should possess the recognisable attributes of a boat typical to BW's network and be capable of navigation – static floating structures will not be acceptable. The only exception is well-designed and constructed static floating structures (or similar) that may be suitable in large scale, urban, modern, offline settings and BW will consider their suitability on a case-by-case basis; we may request a phased salvage bond where it is reasonable to do so. (A salvage bond would fund the disposal of the boat if this became necessary, eg if it became unsafe and abandoned by the owner.) All residential boats (and static floating structures where permitted) must have a suitable sewage-holding facility.
- R2.5 We encourage the creation of residential moorings by BW and others that are satisfactory in respect of the four factors above. In order to meet the diverse demand, there should be a broad range of supply, from simple low-impact sites to fully-serviced moorings.
- R2.6 We seek more appropriate recognition of residential moorings in national and local government policy and guidance, particularly within the planning and housing sectors, and encourage more informed consideration by local authorities. The differences between residential moorings and built development should be recognised and treated more appropriately.
- R2.7 The operation, maintenance and repair of our network must always take precedence over residential boaters and other users. However when we are undertaking works, and during our normal operations, we will consider and endeavour to respect the reasonable needs of boaters at residential moorings.
- R2.8 We acknowledge that unauthorised full time residential use at long-term leisure moorings may be contrary to planning control and potentially a breach of BW's mooring agreement or lease. However, it is very difficult to establish conclusively. Planning control is primarily a matter for a

⁵ See paras 1.7 -1.12, 2.3 and 3.25-3.28 and www.britishwaterways.co.uk/onlinemooringpol

Local Planning Authority. It is for that authority to establish that a mooring is being used as a primary residence, and whether planning enforcement is necessary. When approached by a Local Planning Authority in respect of a particular site or boat, British Waterways will :

- a. assess the site to see if it satisfies the four criteria for a suitable residential mooring;
 - b. if it is suitable, we may seek to regularise the residential use with the LPA;
 - c. if it is unsuitable (e.g. contrary to local mooring strategy, environmental impact, safety grounds) or it fails the regularisation of residential use, we will explore options for ceasing the residential use at the site with the LPA and the boaters concerned.
- R2.9 Subject to the provisions of any adopted local mooring strategy, we will also conduct steps a, b and c above at any of our long-term leisure mooring sites where there are indications of unauthorised residency and concerns about a site's suitability for residential use.
- R2.10 Boating customers should be fully aware of all relevant issues and regulations relating to living on their boat. They should understand that by living on their boat at a long-term leisure mooring, they risk enforcement action by the LPA and by BW. Issues relating to the boat, use of the mooring site and residency should be clearly defined in the mooring agreement between the site operator and customer.

R3. Implementation 2010 - 2013

- R3.1 We will encourage and facilitate the creation of residential moorings and the regularisation of residential use at existing leisure moorings in accordance with the above policy.
- R3.2 We will raise the need for clearer planning policy advice relating to residential moorings in the review of Waterways for Tomorrow, and through engagement with DEFRA, DCLG and other government departments.
- R3.3 We will encourage local authorities to include residential moorings in their Housing Needs Assessments, and Local Development Frameworks, in consultation with BW and within the context of our four suitability criteria (in point R2.2 of the Policy).
- R3.4 We will endorse the AINA advisory document "Residential Use of Waterways" (expected to be published before the end of 2009) which aims to inform local planning authorities, navigation authorities, mooring providers and residential boaters about relevant matters relating to residential use of waterways.
- R3.5 We will develop local mooring strategies in areas of highest demand and boating concentration to include residential and other types of moorings, along with acceptable limits to mooring density, in partnership with LPA's and local stake-holders.
- R3.6 We are developing "British Waterways residential mooring guidelines" for local authorities, developers and moorings operators, to include considerations for facility provision, site management and other issues. It will include information from our research with the Residential Boat Owners' Association (RBOA) into demand and preferences for mooring locations and facilities, along with details of existing residential mooring sites.
- R3.7 We will provide a clear assessment procedure and a simple application process for BW's permission for new residential mooring sites.
- R3.8 We will provide clear information to customers about living on their boat, including the licence and mooring terms and conditions, rules and planning regulations. We encourage the RBOA and other boating organisations to continue their activity in this respect. We will require all new customers taking up a BW leisure mooring to confirm their understanding that if they use a leisure mooring as their primary residence they put themselves at risk of enforcement action.
- R3.9 Where necessary and affordable, we will make improvements to the maintenance, management and control of BW's long-term leisure and residential mooring sites. We will also review our long-term

leisure mooring sites with indications of unauthorised residency where there are concerns about a site's suitability for residential use, for example if it is in an environmentally sensitive location.

- R3.10 We will provide guidance to BW staff, particularly our planners, to ensure that there is well-informed dialogue between BW and LPA's relating to residential boating, when the LPA is considering planning enforcement against unauthorised residential use.

APPENDIX 1

GLOSSARY OF MOORING DEFINITIONS

Casual mooring	This is the term used in BW's statements of intent etc. made during the passage of the BW Act 1995 through parliament. It conveniently embraces both designated visitor moorings and towpaths generally where mooring is permitted for up to 14 days, unless otherwise indicated.
Visitor mooring	A length of bank that has been <i>designated</i> for temporary use for short periods only. Examples: designated visitor moorings, trip boat stop, moorings for use of sanitary station... Restrictions on use, including time limits should be clearly signed
Short-term mooring	A casual or a visitor mooring
Long-term mooring	Also called a ' home mooring ' in BW boat licence terms and conditions, where a boat is lawfully kept when not being used for cruising. It is the boat's usual base or 'parking space'. Examples: residential moorings, leisure moorings, trade moorings for commercial boats.... Provided by private operators or BW Sometimes referred to as ' permanent mooring ' Usually let for periods of one year or more, and usually for a fee.
Residential mooring	A long-term mooring which has planning permission and BW permission for the moored boat to be used as the occupant's sole or primary residence. The residential mooring may or may not have facilities and services.
Leisure mooring	A long-term mooring where the boat is used for leisure / recreational purposes.
Trade mooring	Moorings assigned to specially licensed operators of commercial boats. They may be for short periods or long term, depending on the nature of the agreement. Their purpose is to provide a service to waterway visitors, adding life and value to the local waterway environment.

APPENDIX 2

Legal framework – overview of main points relating to BW’s powers to control of use of towpaths for mooring.

British Waterways is a government appointed public corporation entrusted with the operation and stewardship of the waterways it owns or manages. Use of these waterways (including much of the associated towpath and land) is subject to BW’s permission. The main statutes defining our powers are the Transport Acts 1962 and 1968 and the British Waterways Acts of 1971, 1983 and 1995. Section 43 of the Transport 1962 Act empowers BW to charge for the services and facilities it provides and to determine the terms and conditions of their use. The section explicitly applies to the use of the waterways by “any ship or boat”. Section 17 of the British Waterways Act 1995 gives additional provisions concerning BW’s boat licensing powers. Activities on BW land and waterways are also subject to byelaws.

The feasibility of policies proposed in this paper depends upon BW’s powers to regulate the use of towpaths for moorings and to levy charges for services. This appendix explains these powers in more detail.

General discretionary power to determine terms and conditions

Section 43 of the Transport Act 1962 (as amended) gives BW a broad discretionary power to determine the terms and conditions under which any ship or boat may use any of the inland waterways owned or managed by it.

Section 43(3)the British Waterways Board shall have power to demand, take and recover or waive such charges for their services and facilities, and to make those services and facilities subject to such terms and conditions, as they think fit.

Section 43(8) The services and facilities referred to in sub-section (3) of this section include, in the case of the British Waterways Board, the use of any inland waterway owned or managed by them by any ship or boat.

The words “use of a waterway” are sufficiently broad to cover matters of both navigation and mooring. There are some constraints on this broad discretionary power – both those in general consumer law and some specific provisions such as the British Waterways Act 1995. The default position is however a broad discretionary power on the part of BW to determine “such terms and conditions” for the use of its waterways by boats “as they think fit”.

British Waterways Act 1995

The provisions of Part III of the British Waterways Act 1995 apply certain requirements in respect of the regulation and management of waterways to both BW and boat owners but do not amount to a comprehensive statutory code. To the extent that issues relating to the use of inland waterways owned or managed by British Waterways are not addressed by these or other specific provisions, the default broad discretionary power given by section 43 of the Transport Act 1962 applies.

The requirement for a long term, home mooring and definition of ‘continuous cruising’

Section 17(3)(c) of the 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.”

‘14 day rule’ for continuous cruisers

Section 17(3)(c)(ii) applies a 14 day rule to ‘continuous cruisers’. The provision needs interpretation for the purposes of its practical application and enforcement. If available, any interpretation of a statutory provision given by a court of record is authoritative. In the absence of any such authoritative interpretation from case law, it is the duty of any citizen or corporate body subject to a statutory provision to interpret that provision in a manner that the person or body believes in good faith will result in proper compliance with it.

This is what BW has done in publishing its [Mooring Guidance for Continuous Cruisers](#). This is based on professional legal advice and is believed to reflect the interpretation a court would apply. Pending the availability of any authoritative interpretation (which will only come once their application is challenged in a court of law) BW has to apply an interpretation that it believes in good faith is correct and proper. The Guidelines were drawn up in consultation with representatives of interested user groups in 2003/4.

'14 day rule' for general casual mooring

The British Waterways Act 1995 imposes a 14 day rule on continuous cruisers but is otherwise silent in respect of other users. Accordingly BW, using the broad discretionary power given by the Transport Act 1962, applies a 14 day rule for casual mooring through its General Terms and Conditions for Boat Licences. This 14 day rule is well established and has broad acceptance. The limitation is lawfully applied using terms and conditions issued in accordance with the powers given to BW under s.43 of the Transport Act 1962.

Power to move boats overstaying on a visitor mooring

S.8(5) of the British Waterways Act 1983 allows BW to move boats which are causing an obstruction. The overstaying by a boat on a visitor mooring effectively denies its use to others and has been held to be an 'obstruction' for the purposes of s.8(5) by a County Court. Note the section refers simply to an 'obstruction' and not an 'obstruction to navigation'.

APPENDIX 3

EXAMPLES OF POSSIBLE WORDING FOR SIGNS AT VISITOR MOORINGS

This is illustrative work in progress and will be refined during the mooring strategy pilots

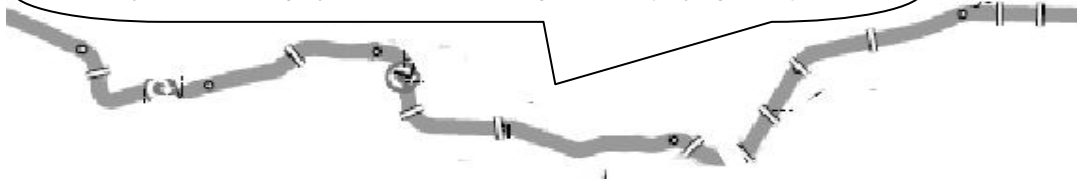
Example of a zoned mooring location sign. Signs to be positioned at both ends of the site.



Badgerstown West moorings

Orientation map: 'you are here', bridge nos., core and outer zones colour coded to posts on towpath, limits to the zoned location.

Universal colour coding, eg. brown = 24 hours, green = 7 days; blue = no mooring (space reserved for anglers); yellow = priority for boaters with mobility difficulties; grey = authorised trading boats displaying valid permit.



Please respect the mooring zones between bridges 35 to 40. They are designed to ensure mooring space is shared fairly between all boaters wishing to stop in this area.

Brown zone: Stays are free for up to 24 hours. If you wish to stay longer, you must move to the green zone.

Green zone Stays are free for up to 7 days (including any time spent in the brown zone)

If you wish to stay longer, you may do so in the green zone by purchasing a permit for each day or part of a day that you remain. Our agent visits the site daily and records your boat index number. The permit fee is added to your account with BW if you are unable to display a correctly dated, pre-paid permit.

Pre-paid daily permits are available from the Dog & Duck PH at br.37, from XYZ boats at Br.39 or by post from British Waterways customer services on 0845 They cost £10 each. The cost if you do not purchase in advance and have the amount charged to your account with BW is £15.

Permit terms are published on our website at www.britishwaterways.co.uk/xxx or you can telephone us for a paper copy.

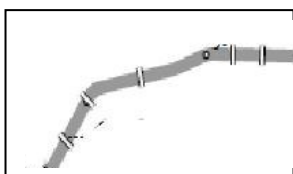
Simple sign for visitor moorings which have not been zoned with charging.



Welcome to Foxworth visitor moorings

Moorings here are for short stay visitors, not long term use.

To allow passing boats to stop for services, mooring between the two posts with red markers is limited to 48 hours per visit. You must leave the site for at least five days before returning.



Map to show immediate orientation, direction to town, 'you are here', bridge numbers, picture and location of marker posts

Please be considerate to other boaters and respect these time limits. Persistent breach of this request will result in enforcement action.



PUBLIC CONSULTATION ON MOORINGS POLICY 2009 RESPONSE QUESTIONNAIRE

Please use this form to submit your response before **31st January 2010**. To do this electronically, please download the form which is available at www.britishwaterways.co.uk/mooringconsultation09 and email it to consultation@britishwaterways.co.uk.

Paper copies should be posted to:

The Consultation Team, British Waterways, 64 Clarendon Road, Watford WD17 1DA

If you have any questions about the consultation, please contact us:

E: consultation@britishwaterways.co.uk

T: 01923 201120

F: 01923 201300

Your name and contact details

Please provide email or postal address, depending on how you would prefer to be contacted. Note, we will not be able to acknowledge individual contributions, but will contact you with a copy of the final report when available. Exceptionally, we may contact you if we need to clarify any aspect of your feedback. Unless you specify otherwise, we may quote, but not attribute, your views

In what capacity are you responding to this consultation? (please tick all that apply)

- As a representative of a company, organisation or local authority (please state which and include your position within the organisation) _____
- Residential boater
- Current boat owner (using boat mainly for leisure)
- Continuous cruiser
- Owner or employee of an inland marine business
- Owner or employee of a business serving boaters
- Angler
- Resident living close to a waterway frequented by boats
- Parish or District Councillor
- Other (please indicate) _____

Which part(s) of the waterway network do you have most experience of? _____

It helps us to analyse your comments if you use the headings and prompts listed on the next page

Please use the question number when documenting your comments

Moorings along the line of the waterway – feedback prompts and questions

Balancing demand with capacity (page 5-6)

1. Do you share our view that developing better policies and management of moorings along the line of the waterway is a pressing challenge resulting from continued growth in boating on BW waters?
2. Do you have any suggestions for an objectively measurable threshold for congestion which could form part of our assessments of new marina applications?

Legal framework (Page 6 and Appendix 2)

3. How familiar were you with BW's legal framework before reading this document? Did you find the explanations helpful?

Supplementary routes to achieving fairness in use of scarce mooring space (page 7)

4. Do you support our aspiration that all boaters should share the job of protecting the amenity of the waterways?
5. Do you agree that offsetting permit fees for overstaying at popular short term moorings, subject to reasonable arrangements and detail, is a fair way of rationing scarce space?

Statement of principles underlying BW's boating policies (page 7)

6. Do you disagree with any of these principles? Why? What principles would you add?

Local moorings strategies (page 8-9)

7. Do you agree that this is (a) the most sensible and (b) a feasible approach to achieving a fair balance between competing demands on scarce mooring space? If not what approach would you propose?

8. Do you have suggestions for improving the proposed approach to creating local strategies?
9. What criteria would you suggest for determining whether a particular area of the waterways should have a local mooring strategy?
10. Do you have any comments on BW's standard for moorings suitable for boaters with mobility difficulties?

Zoning short term moorings in areas of high demand (pages 10-11)

11. First, leaving aside the detail in this section, do you accept this *in general* as a valid approach to managing use of scarce mooring space?
12. What comments do you have on the principles listed?
13. What is your view of the suggested level of daily charge?
14. How important do you think it is that permits should be displayable (even if it costs more)?
15. How would you improve on the proposed compliance arrangements?

Controlling expansion and reducing online moorings (page 12)

16. Are you comfortable with this policy? If not, why not?

General comments on moorings along the line of the waterway

If you do not agree with much of the thrust of our proposals, but you accept that there are problems to be solved, what alternative approach would you recommend? Please try to confine your suggestions to policies that are practical and legal!

Residential Moorings– feedback prompts and questions

Context (page 13)

17. Do you support our position about boating on our network (paras R1.1 to R1.3)?
18. Do you agree with the context that we describe in paras R1.4 to R1.10 and R1.11 to R1.17? If not, give your own observations of the issues.
19. What are your views on unauthorised residency i.e. people living on their boat at a long-term leisure mooring without planning permission. Refer to R1.17. Please explain your views rather than simply answer 'support / object'.

Policy (page 15)

20. Do you support our general position in R2.1?
21. Do you agree with the four factors for assessing residential mooring proposals in R2.2? Should we consider other factors?

22. Do you agree with points R2.4 to R2.7 and have other comments?
23. Given the statement in para R2.8, do you agree with our position in relation to unauthorised residential use of long-term leisure moorings in paras R2.8 to R2.10?
24. Do you have any comments or suggestions on communicating to customers in para R2.10?

Implementation (page 16)

This section sets out how we will turn the policy (the previous section) into action. Please comment on any point and add further comments about what you think we should be do