

22 June 2011

Mooring Guidance for Continuous Cruisers

Revision to 2004 version for discussion with representatives of national boating organisations
This version marked up by National Bargee Traveller Association
(NOTE NOT ENDORSED BY BW – FOR DISCUSSION PURPOSES ONLY)

If a boat is licensed on a “continuous cruising” basis it must move on a regular basis. This Guidance^[1] seeks to explain in day to day terms the nature of the compulsory movement that must take place. This Guidance is explanatory but is not legally binding.

There are four key legal^[2] requirements:-

- the boat must genuinely be used for navigation on average, predominantly throughout the period of the licence.
- it is the responsibility of the boater to satisfy BW that the above requirements are met in order for a licence <renewal> to be granted
- first licence grant is “taken on trust” and the licence will be granted provided that the vessel insurance and the boat safety certificate are both in force and valid and the <correct> fee is paid
- subsequent licence grants include a consideration of the boater’s track record in continuously cruising.

1 “Bona Fide Navigation”

The law^[2] requires that the boat “will be used bona fide for navigation throughout the period of [the licence]”. The definition of this phrase is specific to the 1995 British Waterways Act (“95 Act”) and definitions from other sources are not appropriate.

“Bona fide” is Latin for “with good faith” and is used by lawyers to mean “sincerely” or “genuinely”. The test in 95 Act for whether a boat is being genuinely used for navigation is whether or not the boat has remained in the same Place for more than 14 continuous days.

“Navigation” in this context means a transit on water with the assumption that the master of the vessel is on responsibility for its safety. No further interpretation is derived (or is necessary) from the 95 Act.

The time limit of 14 continuous days specified in the 95 Act is used as an indicator, (rather than a hard-and-fast threshold). To moor in one location for longer than 14 continuous days can suggest to British Waterways that the bona fides of the navigation are questionable. To moor in one location for more than 28 continuous days would very clearly be not bona fide.

Therefore, subject to stops of permitted duration, those using a boat licensed for continuous cruising must genuinely be moving, and not stopping in any one Place for more than 14 continuous days. The length of each journey and the direction of travel are not relevant.

Short trips involving “bridge hopping” and shuttling backwards and forwards along a smaller part of the network meet the legal requirement for navigation throughout the period of the licence provided that the journey takes the boater to a different “Place” each time 14 continuous days elapses.^[2]

There are some places on the network where time limits are specified for mooring (“Visitor moorings” and other particularly popular locations). It is important to note that these designations are advisory and all boaters (not just Continuous Cruisers) are asked to respect these designations

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to assist in sharing fairly the use of these types of moorings.

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2 “Place”

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

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What constitutes a “Place” will vary from area to area. A “Place” is not simply a particular mooring site but is a town, village or hamlet, a suburb or district within a town or city or a specific uninhabited area that is geographically distinct from another uninhabited area. A sensible and pragmatic judgement needs to be made.

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The 95 Act does not require any specific distance to be travelled to reach a new “Place” provided that the journey is to a different “Place”. Exact precision is not required - or expected.

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To remain in the same “place” for more than 14 continuous days is not permitted. However all that is required is passage from one “Place” to another after 14 continuous days.

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3 Stays of Longer than 14 Continuous Days

The law says that a boater may stay in a “Place” for a period longer than 14 continuous days if it is reasonable to do so. There are two circumstances in which a boater may do so as follows:

3.1 Extended Stay by Preference

The length of continuous stay is averaged in retrospect over the licence period. If this average shows that the length of stay is 14 days or less then the boat is being used bona fide for navigation. This includes stays of longer than 14 days provided only that the licence period average remains 14 days or less.

However the longer the stay the more likely it will be that the boater is identified as not using the boat bona fide for navigation. If a stay lasts 28 continuous days this means that the navigation may be interpreted as no longer bona fide.

3.2 Extended Stay by Extenuating Circumstances

It is reasonable to stay in one “Place” for longer than 14 continuous days are where further movement is prevented by causes outside the reasonable control of the boater or are otherwise extenuating.

Examples include (but are not limited to)

- mechanical breakdown preventing cruising until repairs are complete
- navigation stoppage
- being iced in
- not being iced in but the navigation otherwise iced
- other weather conditions
- navigation conditions
- family emergency
- illness
- other medical condition or circumstance
- fuel scarcity or emissions control

“Mechanical breakdown” must be such that the Master of the boat considers it unwise to navigate. For example if the propeller is damaged the master may consider it unsafe to navigate.

“Navigation Stoppage” refers to BW or third-party engineering works. For example if a lock gate needs out-of schedule replacement it is reasonable to remain in the same “Place” until the stoppage is complete.

“Ice-breaking” refers to navigating when the canal is iced but passage can be achieved. Where other boats are moored ice-breaking is strongly discouraged as it endangers the hulls of the moored boats.

“Weather Conditions” refers to adverse weather conditions such that navigation (including operating locks), in the opinion of the Master, would be dangerous. For example if it is sub-zero and the locks are iced, it would be dangerous to attempt to navigate unless the Master was experienced in such navigation.

“Navigation Conditions” refers for example to water flow on a canalised river. For example if a canalised river is in flood navigation is strongly discouraged and may invalidate the vessels insurance (although this has not been tested in court) unless the Master has competence to do so.

“Family emergency” involves some type of family crisis. For example having to take a child to hospital.

“Illness” involves any medical condition (affecting the master of the boat or an operational crew member if the Master is not willing to single-hand in the circumstances) in which the Master

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¶ 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.

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believes that navigation would be unsafe in the circumstances. For example if it is sub zero and the Master or an essential member of crew has pneumonia it would be life-threatening to navigate.

“Other Medical Condition or Circumstance” refers to any medical or physical condition in which navigation would be reckless. For example someone who has just suffered a stroke should not be navigating; equally nor should someone with a broken limb.

“Fuel Scarcity or Emissions Control” refers to the fuel consequences of navigation. For example if fuel is being rationed then navigation may not be practical or may indeed be prohibited. There are also climate-change related reasons to curb emissions (particularly in relation to transport) that imply reduced patterns of navigation.

All of these circumstances must be evaluated by the Master of the vessel and it is the Master’s sole judgement that decides the outcome. The Master is on responsibility for safety of the crew and himself, other masters and crew, members of the public, the vessel, and other vessels (in that order). The Master’s judgement is final (although it can obviously be challenged before a tribunal) and in particular must be respected by BW personnel.

Extenuating circumstances should be made known as soon as is practicable to local BW staff with a statement of intention of a longer stay at a specific location. If for navigational reasons and the circumstances of the extenuating circumstance permit, it may be appropriate for BW to request a move to a safer location. The circumstances will be reviewed regularly by BW. The Master of the vessel will be expected to take reasonable steps (where possible and appropriate) to remedy the cause of the longer stay.

Where difficulties persist and the boater is unable to continue navigating, BW reserves the right to require the boat to be moved away from popular temporary or visitor moorings until the navigation can recommence.

4 Boater’s Responsibility

The law requires the boater to satisfy BW that the continuous cruising requirements are met and not the other way around.

This is best done by keeping a cruising log, though this is not a compulsory requirement. If however, BW 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^[3] but only after fair warning and the engagement by the boater of the Complaints Procedure^[4].

5 Examples

To clarify the requirements we have created some illustrative examples of what is and what is not permitted. These examples assume a 1-year licence.

<u>Example</u>	<u>Scenario</u>	<u>Acceptable?</u>
<u>A</u>	<u>Boater stays in place A for 14 days. After 14 days moves to place B, a trip of 1 hour. After a further 14 days moves back to place A. Repeats this for the year</u>	<u>Yes. Although the trips are short, the navigation is bona fide because the mooring is obviously within the benchmark time</u>
<u>B</u>	<u>Boater stays in place A for 14 days. After 14 days moves to place B, a trip of 1 hour. After a further 14 days moves back to place A. Repeats this on and off throughout the year; but on 3 occasions stays for 28 days instead of 14</u>	<u>No. Although illustration A is ok, staying for longer periods is not ok because this continues throughout the year</u>
<u>C</u>	<u>Boater stays in place A for 14 days.</u>	<u>Yes. Although illustration B is not</u>

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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)^[6]. ¶
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	After 14 days moves to place B, a trip of 1 hour. After a further 14 days moves back to place A. Repeats this on and off for 6 months; but on 3 occasions stays for 16 days instead of 14; after 6 months makes a journey around the canal system for 6 months	ok, when averaged over the year it is obvious that the predominant time has been spent navigating.
D	Boater stays in place A for 14 days. After 14 days moves to place C, a trip of 14 days obviously stopping overnight on the way. After a further 14 days moves to another location again travelling for 14 days stopping on the way; repeats this for 11 months. After 11 months goes to a quiet (uncongested) spot where the children can play in the adjacent fields and stays for three weeks.	Yes. Although staying for a longer stay exceeds the benchmark time, when averaged over the year it is obvious that the predominant time has been spent navigating. It is important to note that the prolonged stay must not cause difficulty to other boaters.
E	Boater stays in place A for 14 days. After 14 days moves 2 bridges away, a trip of 5 minutes. After a further 14 days moves back to place A. Repeats this for the year	No. A 5 minute trip cannot reasonably be a different place even in an urban area
F	Boater stays in place A (a rural village) for 14 days. After 14 days moves a short distance to the neighbouring village, a trip of 30 minutes. After a further 14 days moves back to place A. Repeats this for the year	Yes. Although the trip is short, the duration of the trip is not relevant. The boater has moved to the next village: a different place

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However please note that these examples are not exhaustive and each case must be considered on its own facts.

Summary

- Continuous cruisers must on average over the period of the licence be engaged in bona fide navigation.
- The test for bona fide navigation is whether or not the boat stays at one "Place" for no longer than 14 continuous days or longer period if it is reasonable to do so.
- Reasonable reasons for staying longer than 14 continuous days at any one "Place" include (a) because the average time spent navigating allows for it (up to 28 continuous days) or (b) because of extenuating circumstances
- "Place" is undefined but relates to the geography of the location – it is for the boater to use their own judgement in determining what is one "place" and what is the next "place".
- It is the boater's responsibility to satisfy BW that they keep to the rules.

Notes

[1] 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 and the Will of Parliament in the preparation of the Act. As the Act is a "Private Act" paragraph 1497 of Halsbury's Rules for Judges applies. These Guidelines have been updated and refined in the light of evolving legal analysis.

[2] 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."

[3] Enforcement of the legal requirements will be based on observations by BW. 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 thereafter to keep adequate evidence of future movements. Failure then to meet the movement requirements, or to provide evidence of sufficient movement when requested by BW, can be treated as a failure to comply with s.17 of the 1995 Act. Once legal process has been concluded, the boat licence may then be terminated (or renewal refused) using "section 8" powers. Unlicensed boats must be removed from BW waters, failing which BW has power to remove them at the owners cost.

[4] Any boater has the right to make complaint to BW about any action (or any other issue) using the Complaints Procedure. BW has an obligation to provide information about the Complaints Procedure, provide access to the Procedure and provide transparency of its operation. A complaint should be made in writing to BW specifying that it is a "Level 1 complaint and to reviewed by the BW Complaints Procedure". On the completion of Level 1, if the boater remains aggrieved then they should request escalation to Level 2 of the Complaints Procedure for review by a director. Continued dissatisfaction on the conclusion of Level 2 is addressed by the boater making complaint to the Waterways Ombudsman. BW is obliged to provide details to the boater of how to do this, in the response to a Level 2 complaint. If a boater pursues a complaint to the Waterways Ombudsman, BW can only take action under "section 8" once the Waterways Ombudsman has adjudicated the complaint in favour of BW. If the vessel is the boater's home then BW must make a claim through the court in order to use "section 8" powers. The boater is obviously then provided with an opportunity to state their case and defend themselves in particular, by relying on Art 8 ECHR (right to respect for home).

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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

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i.e. movement, passage or transit and to “travel” is to “make a journey, esp. of some length”.^[3]

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in passage or in transit throughout the period of the licence on a journey of some length

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within the same area,

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A “cruise” is a journey or series of journeys “making for no particular place or calling at a series of places” and “continuous cruising” is used in this guidance as a shorter way to refer to “navigation throughout the period of the licence”.

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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.

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^[4] 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 was NOT use of the vessel bona fide for navigation.

^[5] 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).