

NATIONAL BARGEE TRAVELLERS ASSOCIATION

SUPPLEMENTARY EVIDENCE SUBMITTED TO MERITS OF STATUTORY INSTRUMENTS COMMITTEE

DRAFT BRITISH WATERWAYS (TRANSFER OF FUNCTIONS) ORDER 2012

1. The National Barge Travellers Association is submitting this supplementary evidence to the Merits of Statutory Instruments Committee in response to the statements made on 24 April 2012 by Robin Evans, Chief Executive, British Waterways; Nigel Johnson, Legal Director and Director of Corporate Services, British Waterways and Richard Benyon MP, Minister for the Natural Environment and Fisheries.

2. Mr Evans and Mr Benyon asserted that there was adequate representation of 'continuous cruisers' (boat dwellers without a permanent mooring) and the National Barge Travellers Association on the 150-member Council of the Canal and River Trust. This is not the case. Two boat dwellers without permanent moorings, Frank Kelly and Tony Smetham, stood for election as representatives of this group, but were not elected. Three of the four Council members elected by boat licence holders are office holders in the Inland Waterways Association, a body that has stated its hostility to the interests of boat dwellers without permanent moorings. The fourth has not stated any concern regarding this issue. The Council's term of office is three years; this will be a crucial period for the Canal and River Trust in which many policies and practices will be established. In addition, the 2011 DEFRA consultation, *A New Era for the Waterways*, confirmed that the Council "will not formally determine policy or strategy". In other words, the Council's role is advisory only. It is vital that itinerant boat dwellers have a voice in order to protect ourselves from policies and practice that result in homelessness and consequent violation of our Article 8 rights, and yet we have none.

3. Mr Johnson asserted that the courts have fully endorsed British Waterways' interpretation of the law [regarding s.17 (3)(c)(ii) of the 1995 British Waterways Act] and the use of its powers under s.8 of the 1983 British Waterways Act [to remove boats]. This is not true. In the case of *British Waterways Board v Davies*, Bristol County Court did not endorse British Waterways' interpretation of s.17 (3)(c)(ii); His Honour Judge O'Malley stated in his judgement in March 2011:

"I think it right to say however that my decision is not to be taken as fully endorsing the board's guidance. It is possible to envisage use of a vessel which fell short of the Board's concept of continuous cruising but which still qualified the vessel for a licence under section 17(3)(c)(ii)".

British Waterways was obliged as a result of this judgement to re-write its interpretation of s.17(3)(c)(ii) which it published in October 2011 as *Guidance for Boaters Without a Home Mooring*.

In the case of *Moore v British Waterways Board* [2012] EWHC 182 (Ch), Mr Justice Hildyard stated in paragraphs 191, 213 and ix:

191 "As previously noted, BWB has long accepted that the powers afforded by section 8 to remove vessels are draconian and to be exercised as a last resort."

213 "My provisional view is that the purported use of the draconian power conferred by section 8, without prior warning and in the absence of any identified and real threat or obstruction to safe navigation, with the effect of depriving the Claimant of his home, is not proportionate."

ix "‘Gilgie’, being presently the Claimant’s home, my provisional view is that his Article 8 rights have been infringed."

4. We would like the Committee to note that Mr Evans and Mr Johnson are incentivised to achieve a successful transfer of British Waterways to the Third Sector. *British Waterways Director Targets 2010/2011* states that both Mr Evans and Mr Johnson are tasked to "Achieve Westminster government’s approval for British Waterways to become a third sector organisation and with government making firm commitment after public consultation" measured by "Board assessment on level of achievement" with the reward of "up to 10 points" towards their bonus payment. The other British Waterways Directors are similarly incentivised.

5. Mr Benyon asserted that British Waterways has powers to remove "unsightly" boats. This is not the case. There is no requirement for boats to comply with visual standards. The fact that Mr Benyon believes the British Waterways can remove "unsightly" boats is an indication of a prejudiced attitude towards itinerant boat dwellers, some of whom are on modest incomes and do not have smart boats. In contrast, it would be very unusual to find anyone who believed that local authorities have powers to demolish a house (rendering the occupants homeless) simply because it is "unsightly". British Waterways' powers to remove boats under s.8 of the 1983 British Waterways Act are restricted to "sunk, stranded or abandoned" boats and boats moored "without lawful authority". We have already submitted evidence regarding the termination of the licences of boats which do not comply with British Waterways *ultra vires* interpretation of s.17 (3) (c) (ii) of the 1995 British Waterways Act, rendering them "moored without lawful authority" and thus subject to removal, rendering the occupants homeless.

6. Mr Johnson stated to the Committee that British Waterways was not seeking any extra powers through the transfer. However, in paragraphs 2.3 and 2.5 of our evidence dated 18 March 2012 we drew the Committee's attention to evidence that contradicts this assertion. In addition, as long ago as 2006 British Waterways stated its intention to seek additional powers. *Nigel Johnson Targets 2006/7* states the target to "Achieve formal Government approval (ie it will form part of their legislative programme) to an Inland Waterways RRO that provides, among other things, 'wider powers' to BW". This is in the context of *Simon Salem Targets 2005/6* which states "First prosecutions complete on continuous cruising" by December 2005 (Mr Salem is British Waterways Marketing Director). This evidence demonstrates that over a long period British Waterways has had a declared intention to remove itinerant boat dwellers from its waterways.

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