

Covering note

Dear stakeholder

We want to hear your views.

We are pleased to be able to share with you the draft proposed procedure for removal of unregistered vessels on Environment Agency waterways.

The procedure relates to our power to remove unregistered vessels under Article 16 of The Environment Agency (Inland Waterways) Order 2010 (“the Order”).

During the draft Order’s public consultation, the Environment Agency received a challenge about the proposed power to remove from the waterways a vessel, which might be in use as somebody’s home.

In response, the Environment Agency agreed that it would not remove an unregistered residential vessel without consulting on appropriate procedures to safeguard the rights of those affected.

Article 16 of the Order as passed into law does not make any distinction between vessels used for any particular purpose and covers the removal of any unregistered vessel. This consultation document relates to procedures to remove these vessels if they are unregistered. It does not relate to the power to remove them, which is already set in law.

Consultation with our stakeholder groups, user representatives and other relevant interested parties will inform any final procedure for the removal of vessels, including those used for residential purposes.

The proposed procedure for removal of unregistered vessels on Environment Agency waterways below should be read alongside the consultation form which can be found at this link:

<https://forms.microsoft.com/e/bEgmgm1PQw>

or by scanning the QR code below:





Proposed procedure for removal of unregistered vessels on Environment Agency waterways

DRAFT

Date: July 2023

Version: 1

We are the Environment Agency. We protect and improve the environment.

We help people and wildlife adapt to climate change and reduce its impacts, including flooding, drought, sea level rise and coastal erosion.

We improve the quality of our water, land and air by tackling pollution. We work with businesses to help them comply with environmental regulations. A healthy and diverse environment enhances people's lives and contributes to economic growth.

We can't do this alone. We work as part of the Defra group (Department for Environment, Food & Rural Affairs), with the rest of government, local councils, businesses, civil society groups and local communities to create a better place for people and wildlife.

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Proposed procedure for removal of unregistered vessels on Environment Agency waterways

1.0 Background

Unfortunately, we are seeing an increase in persistent offenders who fail to register their vessels, as required under Article 4 of the Environment Agency (Inland Waterways) Order 2010. In some cases, these vessels also may not comply with our requirements of registration – compliance with our Construction and Equipment standards (in most cases needing a valid Boat Safety Scheme Certification) and a third party insurance policy.

The Environment Agency sees vessel removal as a ‘last resort’ when dealing with unregistered vessels. Wherever possible, we will try to work with the owners of vessels to bring them into compliance; ensuring they meet the requirements of registration and therefore our safety requirements, to help protect all those who are using our waterways. Boat registration income is also essential to maintain the navigation services we provide.

1.1 Legislation

The Environment Agency (‘the Agency’) is the Navigation Authority for 1010km of waterways across England including the Anglian Waterways, non-tidal River Thames, the River Wye and Upper Medway Navigation, as well as the harbours of Rye and Lydney.

Our legislation provides the Agency with powers to remove vessels from our waterways, under:

- The Environment Agency (Inland Waterways) Order 2010: Article 16*
*‘The Agency may relocate on or remove from the waterways any vessel which is not registered under this Order if –
(a) the Agency has given notice under this paragraph; and
(b) the requirements of paragraph (5)** do not apply’.*

* See Appendix 3 for Article 16 in full

** Paragraph 5 refers to the ‘Duty to register’

- The Anglian Water Authority Act 1977 (‘the AWAA’): Section 21
‘Whenever any vessel is sunk, stranded or abandoned in any recreational waterway, or without lawful authority left or moored therein, the Authority may after giving (except in an emergency) not less than three months’ notice to the owner of the vessel, unless it is not practicable after reasonable inquiry to ascertain the name and address of the owner, raise and remove the vessel’.

- Thames Conservancy Act 1950 ('the TCA'): Section 16
'Whenever any vessel or any part of a vessel is sunk stranded or abandoned in any part of the Thames the Conservators may if they think fit cause the vessel or such part to be raised removed blown up or destroyed'.
- Upper Medway Navigation and Conservancy Act 1911 ('the UMNCA'): Section 70
'Whenever any vessel is sunk or stranded in the Upper Medway the Conservators shall cause such vessel to be raised or in case of sunken vessels which it is not reasonably practicable to remove to be blown up or otherwise destroyed so as to clear the Upper Medway ...'

This document only relates to the proposed procedure for the removal of unregistered vessels under the Order and not the removal of sunk, stranded or abandoned vessels or wrecks which fall under the AWAA, TCA, UMNCA; or within the Harbour of Rye or the Harbour of Lydney, which fall under different legislation.

1.2 Review

We will keep the procedure and supporting documents under regular review.

2.0 Proposed unregistered vessel removal procedure

2.1 Factors to consider before removing an unregistered vessel

Factors that need to be taken into consideration when determining whether or not the powers in Article 16 should be exercised in a specific case include:

- History of compliance with registration requirements and compliance with requests to remediate breaches of the same.
- Compliance with statutory standards of construction and equipment and compliance with requests to remediate breaches.
- History of failure to comply with requests to supply evidence of insurance.

It is proposed that Article 16 only be considered as a possible enforcement option where at least one of the following two conditions are met:

- The vessel owner has been prosecuted at least two times for non-registration, in two separate boating seasons. As a vessel cannot be registered without meeting the appropriate construction and equipment standards and insurance

requirements, if these are also not in place, this provides additional evidence for the case to remove.

AND/OR

- The vessel has not had a valid registration (and therefore potentially is not meeting our construction and equipment standards and insurance requirements) for at least two consecutive boating seasons. The vessel needs to have been in the same ownership for that period of time. If no prosecutions have occurred in this two-year period, supporting documentation will be required to show the vessel owner has been informed of the requirement to register every year for those two years and we have evidence the vessel was on our waterways for those two years.

Additional factors that may be considered when deciding whether to exercise Article 16 powers:

- No valid Boat Safety Scheme Certification (BSSC), or equivalent, is in place for the vessel, including evidence that the construction and equipment standards have not been met even after informing the vessel owner of the requirements.
- We have not received proof from the vessel owner that there is valid insurance in place for the vessel, even after informing the vessel owner of the requirements.
- Evidence that the vessel owner is failing to comply with other requirements under our legislation or evidence of consistent breaches of relevant navigation byelaws.

Under the Non-financial Scheme of Delegation, the decision to remove an unregistered vessel from the waterway also needs approval to be obtained from the appropriate Waterway Manager and Legal Services.

2.2 European Convention on Human Rights Act ('the ECHR'): Article 8 – Right to respect for private and family life & the Equality Act 2010

The removal of a residential vessel needs to be treated with particular sensitivity. We believe, and it is a position inferred by recent case law, that Article 8 of the ECHR may be engaged by the removal of a residential vessel under Article 16 of the IWO.

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The following steps therefore, are proposed to ensure that consideration is given to the extensive case law relating to Article 8 rights and the similar situation of the traveller community, where Article 8 rights apply.

2.3 Steps to be taken to remove an unregistered vessel

The following steps should only be taken once approval to continue has been obtained from the relevant Authorised Officer(s) under the Environment Agency's Non-Financial Scheme of Delegation.

2.3.1 Step 1: Issue Notification of Proposed Action Letter – 14 days to comply

In the first instance, the Agency will issue an Notification of Proposed Action Letter on the vessel. The letter will include the following information:

- A sentence explaining this is an Notification of Proposed Action Letter and an Article 16 Removal Notice ('A16 Notice') will be issued if valid registration documentation is not supplied.
- An explanation on the requirements to register and why the Agency requires payment of registration charges.
- A brief list of the non-adherence carried out by the vessel owner.
- Alternative waterways not controlled by the Agency to which the owner can move the vessel.
- *If the vessel is used for residential purposes* - A suggestion that the vessel owner seeks independent legal advice and advice from the Local Authority about alternative accommodation and whether the Local Authority may pay housing benefits to the vessel owner which may cover the cost of the registration charge.

2.3.2 Step 2: Issue A16 Notice and Draft Undertakings – 28 days to comply

If the Notification of Proposed Action Letter is not complied with, an A16 Notice will be served.

In addition, the Agency will simultaneously issue the following, if relevant/required, with the A16 Notice:

- Required in all cases - A covering letter repeating the points in the Notification of Proposed Action Letter.
- Serving of an accompanying draft undertaking, in lieu of an injunction, to be made by the vessel owner agreeing not to moor, navigate or secure the vessel on Agency waterways.
- Serving of possession proceedings under Civil Procedure Rules, if the vessel is moored to an Agency riverbank/structure or it is floating above/moored to a buoy/stake on Agency-owned riverbed.

Under the Order the Agency must serve a copy of the Notice(s) fixed on the vessel, or in a conspicuous place in the vicinity of the vessel, AND on the owner of the vessel.

2.3.3 ***In addition; if the vessel is used for residential purposes (if not go to Step 4)***

Step 3: Seek court approvals

If the A16 Notice is not complied with, the following proceedings, if relevant to the specific case, will be sought:

- An application for a declaration from the County Court that the Agency may, pursuant to Article 16 of the Order, remove the vessel from its location and/or relocate the vessel outside the waterways for which the Agency is the Navigation Authority; such declaration to include, if appropriate, an injunction to prevent the vessel's return to an Agency waterway unless it is registered.

Relevant Public Interest factors should be considered in the application(s) to court.

2.3.4 Step 4: Removal of vessel

If a valid vessel registration still has not been received and/or the vessel has not been removed from the Agency's waterways, and for the purpose of a residential vessel, the grant of declaration from the court in support of the Agency's proposed Article 16 removal has been received, the Agency proposes either:

- a) removal of the vessel completely from the Agency's waterway or
- b) with the agreement of any other relevant Navigation Authority, the relocation of the vessel to a waterway outside of the Agency's jurisdiction.

Processes will be in place, either internally or through external contractors, for vessel removal on Agency Waterways.

However, the following points must be considered when dealing with the removal of the vessel:

- Will the use of specialist security/bailiff support for the removal, specifically relating to dealing with the vessel owner and the inventory of items on-board the vessel, be required?
- Has a survey been carried out, by a competent person, on the condition of the vessel to ensure it is safe to remove, to record the condition of the vessel and, if not using specialist security/bailiff support, to carry out an inventory?
- Have the Police/Local Authority been informed of the removal? Will their attendance be required?

2.3.5 Step 5: Return, sale or disposal of vessel

a. Return

If a claim is made on ownership, proved to the satisfaction of the Agency, within 24 months of the date of the A16 Notice being issued, and if the vessel has not been sold before the owner comes forward, then the vessel and property seized must be returned to the owner.

If an injunction has been issued against the owner, restraining the vessel owner from mooring, navigating or securing their vessel on any waterways for which the Agency is the Navigation Authority, then the vessel cannot be kept or used upon any Agency waterway.

If an injunction has not been issued against the owner, then the owner must enter into an agreement with the Agency to register the vessel prior to it being kept or used on any Agency waterway.

The return of the vessel will only be after any expenses reasonably incurred have been paid by the owner.

b. Sale

The vessel 'vests' with the Agency 3 months after the date of the issue of the A16 Notice. Providing the owner has not come forward to claim the vessel, the vessel can be sold.

If the owner comes forward after the vessel has been sold, which can be up to 24 months after the issuing of the A16 Notice, the owner is entitled to the proceeds of the sale, less any expenses reasonably incurred by the Agency and less any costs involved in selling the vessel. If the proceeds from sales are less than the expenses incurred, then the deficiency may be recovered from the owner.

Income from the sale of the vessel can only be used by the Environment Agency in the carrying out of its navigation functions.

c. Disposal

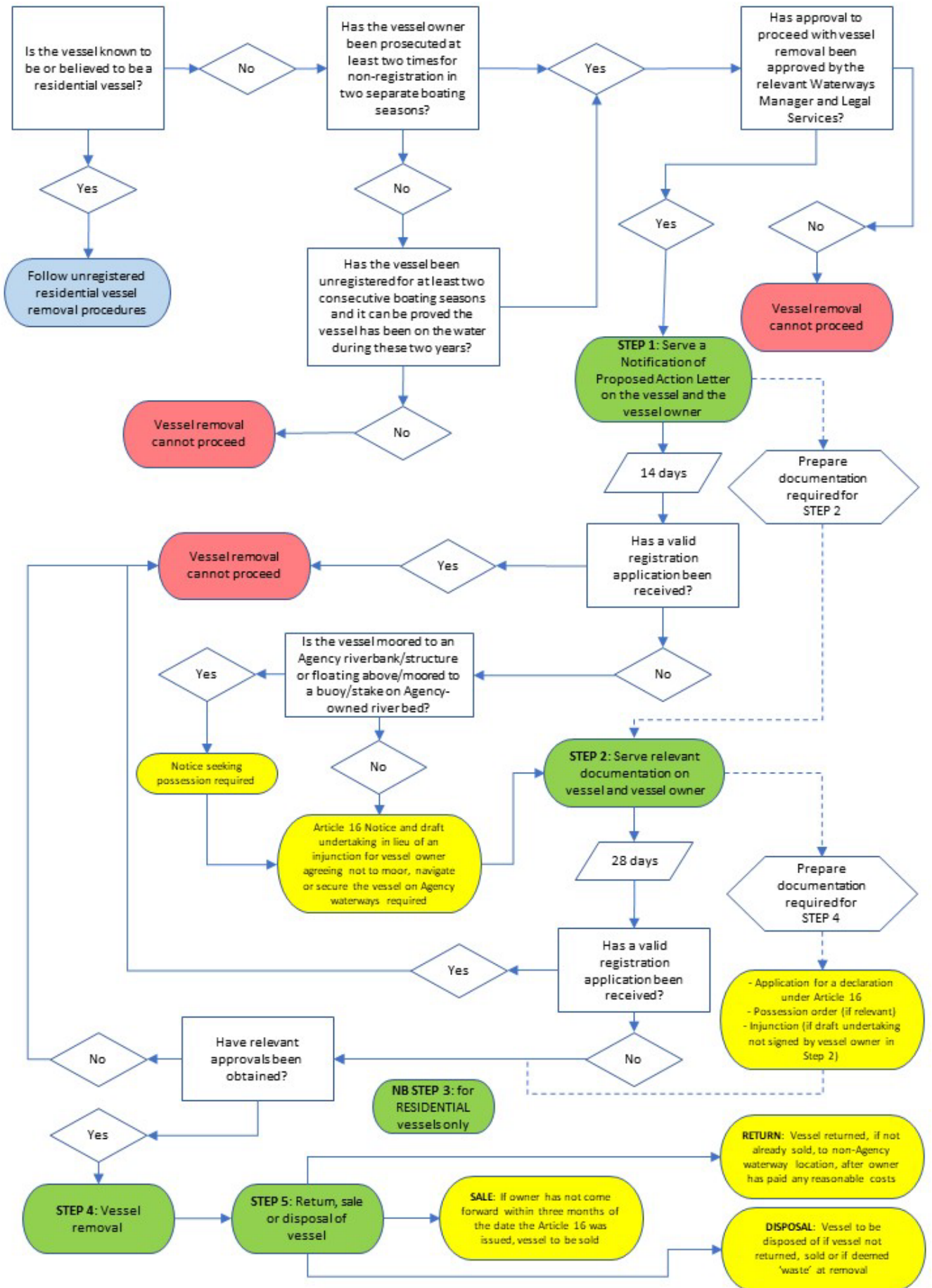
If the vessel is deemed unsuitable for sale then the vessel can be disposed of 3 months after the date the A16 Notice was issued. (Note: disposal may be immediate upon removal, depending on the state of the vessel at the time of removal).

If the vessel is disposed of then this is treated as waste and as such all relevant waste legislation must be adhered to including (but not limited to) Waste duty of care: code of practice, Environmental Protection Act 1990, The Hazardous Waste (England & Wales) Regulations 2005, The Environmental Permitting (England and Wales) Regulations 2016.

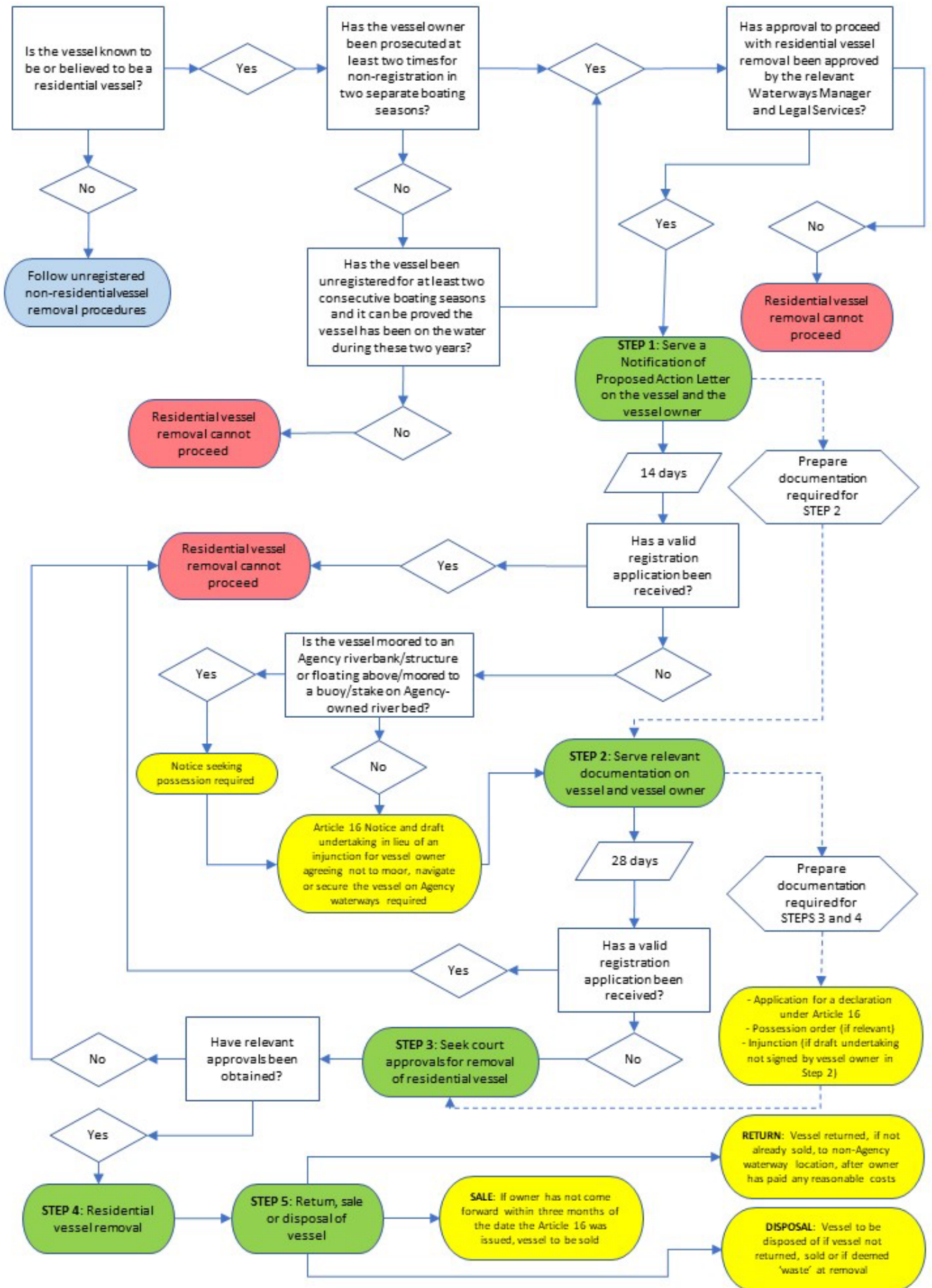
Records of the costs involved need to be kept for at least 24 months after the disposal of the vessel, in case the owner comes forward, as the owner could be liable for these costs.

Flowcharts cover the above processes for the removal of unregistered vessels and these can be found in Appendix 1 and 2.

APPENDIX 1: Proposed unregistered non-residential vessel removal procedure under Article 16 flow chart



APPENDIX 2: Proposed unregistered residential vessel removal procedure under Article 16 flow chart



Appendix 3: Article 16 Environment Agency (Inland Waterways Order) 2010

Removal of unregistered vessels

16.—(1) The Agency may relocate on or remove from the waterways any vessel which is not registered under this Order if—

- (a) the Agency has given notice under this paragraph; and
- (b) the requirements of paragraph (5) do not apply.

(2) A notice under paragraph (1)(a) must—

- (a) identify the vessel in respect of which the notice is served and its approximate location;
- (b) state that if the owner fails either to apply for the registration of the vessel or to remove the vessel before the expiry of a period specified in the notice and being not less than 28 days from the date when the notice is first given under paragraph (3)(a), the Agency may relocate or remove the vessel and recover all expenses reasonably incurred in doing so from the owner; and
- (c) state that the vessel and its contents, once relocated or removed by the Agency, are liable to vest in and be disposed of by the Agency

(3) A notice under paragraph (1)(a) must be given—

- (a) by fixing a copy of the notice on the vessel or in a conspicuous place in the vicinity of the vessel; and
- (b) unless the Agency has made such enquiries as it may determine are reasonable to ascertain the name and address of the owner of the vessel but has been unable to do so, by serving a copy of the notice on the owner of the vessel.

(4) Section 123(1) to (4) of the Environment Act 1995(1) (service of documents) applies to the service of a notice under paragraph (3)(b) as it applies to the service of notice under that Act.

(5) The Agency must not relocate or remove a vessel under this article if, within the period specified in the notice given for the purposes of paragraph (2)(b) in respect of the vessel, the owner of the vessel—

- (a) applies for the registration of the vessel; or
- (b) enters into an agreement with the Agency on such terms as the Agency may see fit for the removal of the vessel from the waterways.

(6) The Agency may recover from the owner of any vessel relocated or removed under this article all expenses reasonably incurred by the Agency in respect of the relocation or removal and storage of the vessel or in relocating, removing or storing anything attached to or carried in or on the vessel.

(7) A vessel relocated or removed by the Agency under this article (together with anything attached to or carried in or on the vessel) vests in the Agency 3 months after the date the notice was first given by the Agency under paragraph (3)(a) in respect of the vessel.

(8) If within 24 months of the date the notice was first given under paragraph (3)(a) in respect of a vessel a claim is made to the vessel or to anything attached to or carried in or on the vessel by a person who subsequently proves to the satisfaction of the Agency that the person is its owner, then the Agency must—

- (a) if the property is unsold and upon payment of the expenses referred to in paragraph (6), permit that person to retake it and, in the case of a vessel, together with anything attached to or carried in or on the vessel which has not been proved to the Agency's satisfaction to belong to another; or
- (b) if it has been sold, pay to that person the amount of the proceeds of such sale after deducting the expenses referred to in paragraph (6) and the costs incurred in selling (including where appropriate valuing) the vessel and, if those proceeds are insufficient to reimburse the Agency those expenses, the deficiency may be recovered from that person by the Agency.

(9) Subject to paragraph (8)(b), the proceeds of the sale of any vessel vested in the Agency under paragraph (7) must be spent by the Agency only in the carrying out of its navigation functions.

(10) In this article "vessel" includes any part of the vessel.

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