



NORFOLK & SUFFOLK BOATING ASSOCIATION

President: J.M. Evans Chairman: M. Wells
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Ms Sandra Duncan
Shipping Policy Branch 4
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Dear Ms Duncan

Merchant Shipping: Public Consultation on the Merchant Shipping (Watercraft) Order 200X

Response of the Norfolk and Suffolk Boating Association

Introduction

The Norfolk and Suffolk Boating Association (NSBA) exists to serve, protect and promote the interests of private users of pleasure craft on the Norfolk and Suffolk Broads. It has over 1,100 individual members and 47 affiliated clubs and associations, altogether representing the majority of those who use private craft on the Norfolk and Suffolk Broads. The Broads are an extensive inland waterway system of 190 km of navigable, lock-free rivers and permanently open broads. Navigation is subject to the Broads Authority, a statutory authority with regulatory powers.

Answers to the questions posed in the consultation paper

Question 1: Do you agree there is a need for legislation as proposed?

No.

There may be a need for legislation in respect of safety matters as proposed on those waters where there is currently no legislative regime to deal with the unsafe navigation, or the unsafe condition, of vessels not currently covered by the legislation referred to in the consultation document. However, the navigation area of the Norfolk and Suffolk Broads is already subject to an adequate safety regime by way of subordinate legislation in respect of such vessels (see our answers to questions 5 and 6 below). There is no need for further legislation relating to safety as far as the Norfolk and Suffolk Broads are concerned. To introduce it would lead to unnecessary duplication with the risk of inconsistency between the two regimes. No doubt similar comments can be made of other waters where there are legislative regimes in place.

We consider that the proposed extensions are in reality a sledgehammer to crack a nut (jet-skis and other personal watercraft misuse). Inherent in such use of sledgehammers is that they can also produce unnecessary consequences.

Question 2: Are the personal watercraft ownership and accident figures quoted an accurate representation? NB: If you provide alternative figures, please quote the source and include evidence of their reliability

We do not know. Byelaw 23 of the Vessel Registration Byelaws 1997 made by the Broads Authority prohibits the operation of a jet-ski, powerboard, water-bike or aqua scooter, or any similar type of personal watercraft, within the navigation area. The Broads Authority has power to designate an area in which such craft may be used but has not done so.

It follows that such craft are not operated in the navigation area of the Norfolk and Suffolk Broads.

Question 3: Do you welcome the proposed amendment to the ship registration proposal to include all watercraft?

No.

The proposed amendment to the ship registration system under the Merchant Shipping Act 1995, ss 8-10 would extend it to the following watercraft (*not all of them relevant to the Norfolk and Suffolk Broads*):

personal watercraft (including jet-skis, powerboards, water-bikes and aqua scooters)

body boards (small surfboards)

boogie boards

canoes

kite surfing boards

sail boards

skim boards

speedboats

wind surfing boards

rowing dinghies

rowing eights, fours etc

sailing dinghies

(This is not necessarily an exhaustive list: see our answer to question 4 below.)

We appreciate that under the proposal registration would be optional but we are not aware of any demand for such craft to be registered in a national register. The issue has never been raised by any of our members or affiliated clubs. What, for example, would be the attraction to the purchaser of a canoe that he could, in consequence of registration, use as security for a marine mortgage (with all the red tape involved)? There do not appear to be problems of proving title to those of the types of craft listed above whose use is permitted on the Broads. We are not aware that those who have taken abroad craft of the types described have experienced any problems making registration desirable.

Question 4: Although, as stated, the list of type of craft that might be considered as being included within any definition of watercraft is not exhaustive, do you have any observations that the Department might need to consider?

The watercraft to which the draft Order would apply are defined by the proposed regulations in similar terms to the vessels to which the Broads Authority's Navigation Byelaws apply ('every description of watercraft, including a non-displacement vessel, used or capable of being used for transportation on water': byelaw 6). It would appear capable of covering hovercraft – which are not 'ships' (Hovercraft Act 1968, s 4) – and sea planes (neither of which are used on the Norfolk and Suffolk Broads, as opposed to some other navigable areas; indeed the Vessels Registration Byelaws 1997, byelaw 28 proscribes the use of hovercraft), and waterskis and wakeboards. It all depends on the meaning of the word 'watercraft', a term not defined in case law or legislation but defined in the Oxford English Dictionary as 'a vessel that plies on water', since otherwise the definition in the draft Regulation is satisfied. Hovercraft and seaplanes are subject to their own separate legislative regimes. It would be unfortunate and unnecessary to subject them to two regimes.

Question 5: Do you agree that all watercraft, including fishing vessels whether seagoing or not, should be brought within section 58 as proposed?

No, not in relation to the navigation area of the Norfolk and Suffolk Broads. Such an extension is unnecessary. Adequate legislation is already in force in respect of that area. The Navigation Byelaws 1995 made by the Broads Authority are in force throughout the navigation area and are the principal code of navigational conduct in the Broads. They are based closely on the International Rules for Preventing Collisions at Sea, but with certain amendments which reflect the special conditions of the Broads navigation. The byelaws go further than is proposed in the draft Regulations because they also contain other measures relating to, for example, public moorings, obstructions, navigation by minors, conduct following an incident, navigating under the influence of drink or drugs, weapons in the navigation area, and speed and navigating with care. Breach of the byelaws is a criminal offence; so is breach of the associated Speed Limit Byelaws 1992 which also apply throughout the Broads navigation area.

Question 6: Do you welcome the proposal to ensure that the liability requirement for unsafe operation apply to all owners of watercraft?

The extension of the Merchant Shipping Act 1995 s 85 is unnecessary in respect of the Norfolk and Suffolk Broads. The Broads Authority's Boat Safety Standards Byelaws 2006 contain a set of essential safety requirements and include safety criteria for boat systems.

We are not aware of any problem on the Norfolk and Suffolk Broads in terms of owners of vessels failing to take all reasonable steps to ensure that the vessel is operated in a safe manner by those to whom the vessel is lent or hired. We take the view that the penal provision under the Merchant Shipping Act 1995, s 100 should not be extended to the Norfolk and Suffolk Broads. The imposition of the criminal sanction is so serious that it must be justified up to the hilt: it has not been so justified in the consultation paper.

Question 7: What do you think of the components of the draft Order?

We have commented already on the components of the draft Order, besides the last, the extension of Part 4 of the Railways and Transport Safety Act 2003.

While we appreciate the dangers to others of 'drink/driving' with an alcohol content above the statutory limit in the context of the use of various types of personal watercraft and speedboats, we are unconvinced of such dangers in respect of canoes, sailing dinghies,

rowing dinghies and similar craft. There is already an offence under the Broads Authority's Navigation Regulations 1995 of navigating a vessel whilst under the influence of drink or drugs to such an extent as to be incapable of taking proper control of the vessel (byelaw 83). This, in our opinion, is sufficient to deal with drink and drugs in the context of craft permitted to be used on the Norfolk and Suffolk Broads other than speedboats. To extend the 'over the alcohol limit' offence under Part 4 of the Railways and Transport Safety Act 2003 to these craft is unduly draconian and unnecessary; to extend the 'drunk/drugged and impaired capacity' offence under Part 4 of the Railways and Transport Safety Act 2003 would duplicate the existing offence under the Byelaws on the Norfolk and Suffolk Broads and is therefore unnecessary there.

Question 8: Are there any additional impacts on other regulatory powers that need to be considered in relation to applying the Merchant Shipping legislation to watercraft?

The impact of the extension made in the draft Order on other regulatory powers in the Norfolk and Suffolk Broads area has been referred to throughout our response. Doubtless similar comments would apply to other waters which are governed by byelaws or private Acts of Parliament.

Question 9: Do you have any comments on the potential impact on your business?

Not applicable. The NSBA is not a business.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Wells', with a horizontal line underneath.

Mark Wells
Chairman
NSBA