

**CORRECTED**

House of Lords  
MINUTES OF EVIDENCE  
taken before the  
OPPOSED BILL COMMITTEE  
on the

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Middle Level Bill

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Thursday 12 July 2018

Before:

Lord Thomas of Cwmgiedd (Chairman)  
Baroness Bakewell of Hardington Mandeville  
Lord Brabazon of Tara  
Lord Hunt of Kings Heath  
Lord Trees

NICHOLAS EVANS, Bircham Dyson Bell, Parliamentary Agent for the Bill  
NEIL CAMERON QC, Counsel for the Promoter

There also appeared:

Witness:

DAVID THOMAS, Chief Executive, Chief Engineer and Clerk to the Middle Level  
Commissioners

Petitioners:

NIGEL MOORE, National Bargee Travellers Association  
DEREK PAICE  
DARREN LUMB

(10.04 am)

1. **THE CHAIRMAN:** Good morning. I was going to say welcome back. I hope it is slightly cooler and more pleasant in this room than it was in terms of temperature on the last occasion. We are very grateful to the promoters for having submitted their amendments, which we have had time to consider. We

have also seen the observations and suggested amendments by the petitioners and it seems to us that we will need to have a little explanation. We gather, Mr Cameron, you may be in a position to assist us in relation to your views on what the petition is.

2. What we thought we would do is, first, make it clear there is no more evidence, and second, that we have not considered the detail of any of these points and we will do so only after hearing from you. The best way to proceed at the moment is for us to hear from you, Mr Cameron, on your amendments. We have one or two questions about them and then we will hear from the petitioners.

3. **NEIL CAMERON:** Thank you, my Lord. As I understand it, the Committee would like to hear from me on our amendments and some response to the proposals put forward by the petitioners.

4. **THE CHAIRMAN:** For example, the one that we would have wanted to ask a question about is the amendment that relates to the mediation and arbitration procedures, which does not apply to certain of the functions of the navigation committee, which is raised by the petitioners' suggested amendment. Therefore, can you go through dealing with them bit by bit, rather than go right through yours and then right through the petitioners'?

5. **NEIL CAMERON:** Yes, my Lord. Your Lordships and my Lady should have our paper of consolidated amendments. If I can start with Clause 3, in Clause 3, we are proposing additions at page 5, line 3. The intention of these changes is to reflect the observations that were made by Lord Thomas on behalf of the Committee on 28 June, paragraph 3 to 7 of the transcript. These proposed amendments or suggested amendments for the Committee to consider would require the Commissioners to make a statement of their reasons for appointing a

person to the committee. It would not—and this reflects the observations made by Lord Thomas—require reasons to be given for not appointing somebody, but reasons for appointing them.

6. The second change would require disclosure in a way that is common with those who sit on public bodies, in particular local authorities. If that disclosure is not made, then that person ceases to be a member of the committee. We hope that that reflects the observations made on behalf of the Committee.

7. **THE CHAIRMAN:** Can I ask you one question? When it is disclosed to the clerk, presumably in accordance with contemporary practice, the interests would be disclosed publically on the website of the Commissioners.

8. **NEIL CAMERON:** That would be the intention. The words “the clerk” are inserted so that a person knows who to disclose it to and then it would become public. The next amendment is page 5, line 10. This is to add a paragraph (d) to subsection (3). This is to ensure that the committee, the navigation advisory committee, are consulted on the protocol. This was to reflect the observations made by the Committee that it should be tied in with the later provisions in the Bill.

9. The next proposed amendment, number 3, is intended to reflect and meet the Committee’s concerns that there should be some independent actor who can resolve differences between the navigation advisory committee and the Commissioners. The intention here was to reflect the observations made by the Chairman of the Committee, by Lord Thomas, and in particular at paragraph 368 of the transcript on 28 June, where Lord Thomas said, “We think that, if there is a disagreement after the provision of reasons, this should be submitted for the opinion of some third party, whether it be mediation, expert determination or

arbitration". That, as the Commissioners understood it, suggested that consideration be given to any of those three options. What is proposed here is a combination of two.

10. If I go on to the second page of our amendments, I am at this stage going to respond to one of the proposals put forward on behalf of the petitioners. At the top of page 2, "If the committee's report relates to the proposals under subsection (3)(a) or (d), then the procedures are invoked". The Commissioners have reflected upon the suggestions made by the petitioners and can see force in the argument that proposals to impose or vary charges should be subject to these provisions. The reason that they did not suggest that initially was because charges for registration are covered by Clause 11, which is subject to the byelaw-making powers. On reflection, it is considered that the amendment at the top of page 2 should refer to subsection (3)(a), (b) or (d), so that the charging proposals would be subject to the mediation and expert determination. We, having reflected on it, accept the force of the petitioners' point on that.

11. The reason that (c) is excluded, or proposed to be excluded, is that that relates to proposals to make navigation byelaws. Those proposals will be subject to the procedure where they have to be submitted to the Secretary of State for confirmation. It appears to us to be overly cumbersome that they might have to go through the mediation, expert determination and then go to the Secretary of State where all the same points can be taken again. That is the reason that we seek to exclude (c).

12. The proposal—and I am still at the top of page 2—is that the committee may refer the matter to mediation and then the next subsection would deal with the method of mediation. Turning to the first subsection on that page, it could be referred to mediation or with the agreement of the

Commissioners to a determination by a person acting as an expert. As the Commissioners understood paragraph 368 of the transcript, mediation, expert determination or arbitration were put forward as alternatives. Under these provisions, mediation, alternative 1, could be engaged by either party but, in addition, if the Commissioners agreed, there could be expert determination. The procedure for expert determination is set out in the last proposed subsection on page 2.

13. I do not intend to say anything else on those proposals. I hope that they are self-explanatory. I will turn on to page 3.

14. **THE CHAIRMAN:** I think you have answered the query we had, which was why it was just (a) and (d). You have explained that now. We have included (b) but not (c). I understand.

15. **NEIL CAMERON:** On page 3, the new clause is to reflect the observations made by the Committee about some clarity as to continuing to exercise navigation functions. We have taken a view that that is better included in the Bill itself rather than changing the preamble, for the reasons that have been canvassed before.

16. On to Clause 4, the intention behind this provision is to reflect some concerns expressed on behalf of the Committee. I do not think I need to turn to the transcript but this is to make plain that Clause 4(2) does not require the Commissioners to raise sufficient charges to meet their costs. This is a point on which the petitioners have a proposal. In response to that, my submission would be that the first step is to consider what it is that is desirable, what it is that is the legislative intention. The Commissioners' view is that the intention of adding an extra provision is to ensure that Clause 4(2) is not interpreted as requiring the Commissioners to ensure that the income raised from charges covers the

costs and, secondly, the commissioners consider that it would be desirable not to prevent them at some stage in the future from raising sufficient income to cover costs. They do not anticipate doing that at present but who knows what may occur in 20, 30, 40 or 50 years' time? If the navigation was being used by a very large number of boats, it might be entirely practical to try and raise sufficient funds to cover the costs. If that was practical and if it did not deter boaters, recalling Mr Hill's evidence that there is a market and if you have a gold licence you can go elsewhere and you can use your gold licence, it appears to the Commissioners that it would be most undesirable to rule out the ability for charges to cover costs, even if there is no intention to do that at the moment, but circumstances change.

17. It is my submission that the promoter's wording achieves both aims: that is to make sure there is not overcharging, charging more than you need to cover the costs, but equally allows, if circumstances permit, charges to cover the costs; whereas the petitioners' wording may be interpreted so as to prevent raising sufficient income to cover the costs. They use the words "shall provide a contribution". There is also a degree of uncertainty as to what is meant by a contribution. One can imagine somebody arguing that you can have a 100% contribution, which I do not think is the intention of the petitioners' amendment. That is in essence the promoter's response: that the promoter's proposed amendment meets, I would submit, the Committee's concern while leaving open the option in the future of raising funds to cover costs, but not exceeding costs.

18. I should perhaps deal with the suggestion made by the petitioners at this stage, as that also relates to Clause 4. They are suggesting that the undertaking to spend at least 25% of the annual income received from charges on providing facilities on the Nene-Ouse navigation link which meet the current

minimum standards for the provision of facilities for boaters published by the Inland Waterways Association should be incorporated in the Bill, rather than being an undertaking. My submission in response to that is that the wording suggested is that not only should they spend that money to provide the facilities but they should be maintained to the same standard thereafter. When one reads it, that appears desirable. That is what the promoters say they are going to do, so one asks rhetorically, "What is wrong with having it in the Bill?"

19. What is wrong with having it in the Bill is that it would require facilities to be maintained, even if they were not needed. One could think of railway acts passed in the 19th century where for no doubt very good reasons at the time there was a requirement, for example, that a train stopped at a particular station. The train still has to stop there but it serves no purpose at all now. The danger with a provision that required one to maintain facilities is that circumstances might change, you might have different faculties, and you still need to maintain them. That, I submit on behalf of the promoter, would be undesirable.

20. The other reason why it would be undesirable is that one of the functions of the navigation advisory committee is to put forward views on the facilities that are appropriate. If you have in the Bill itself that the facilities must be maintained, it would deprive the commissioners of flexibility in providing facilities in response to suggestions made by the navigation advisory committee. The absolute clear intention of the promoter is to spend 25% of the navigation income to provide those facilities in accordance with those standards. My submission is that that is better achieved by an undertaking, which is proposed, because the danger with the petitioners' proposal is you end up having facilities you do not need, money is devoted to providing resources that are not needed

and you deprive the navigation advisory committee of their function in that respect.

21. **THE CHAIRMAN:** Is your undertaking good in perpetuity?

22. **NEIL CAMERON:** It is, but if I can turn to the undertaking, the answer to my Lord's question is, yes, it is good in perpetuity but I need to just turn to what it is. It is to spend at least 25% of the income until the standards are achieved. It is not an undertaking to maintain them in perpetuity. It is to get them up to that standard with every intention to maintain them while they are still needed, but if there is some change in boating practice or there are not any boats or boats have their own facilities for various functions, then they would not have to be maintained. That is the difference.

23. I was still on Clause 4 and the petitioners. I have answered that. I will come on to Clause 9. I am back on page 3 of our proposed amendments, page 9, line 38. This is just a proposal to make an addition to empower the commissioners to move a boat, rather than to remove it. This was in response to one of the points that Mr Moore made, that this provision is to be found elsewhere and it is a less intrusive measure than removing the boat.

24. The next proposal is at Clause 10 and this is page 11, line 25. This is for clarification and is proposed in response to the suggestion made by Lord Thomas on 26 June, 339 of the transcript.

25. I then come on to Clause 11, which is the requirement for registration and proposed amendment 8 is page 12, line 3. This is to insert the words "small unpowered vessels". This would empower the commissioners to exempt small unpowered pleasure vessels. This is in an attempt to reflect one of the concerns expressed by the Committee and a consequential amendment, which is at the top of page 4, amendment 11, which I jumped to, is to define "small unpowered

pleasure vessel". That definition is taken from Section 16(1) of the Broads Authority Act 2009.

26. If I can go back to page 3 at the bottom, to proposed amendments 9 and 10, the Committee will recall that Mr Moore raised the point that the ability to complain to the magistrates' court under Clause 11(10) may be thought to be limited because there is no reference to subsection (5) of Clause 11. The answer given on behalf of the promoter at the time is that imposes a duty, not a discretion, so it follows the precedent. On reflection, the promoters agree with Mr Moore that it would be sensible to include subsection (5) so it is absolutely clear that if registration was revoked there is a power, an ability, a right, to complain to the magistrates' court.

27. Going back to the petitioners' proposals on Clause 11, the petitioners argue that the proposed undertaking in relation to charges for registration of residential boats that do not move out of marinas, should be in the Bill and not in the form of an undertaking. They have adopted what might be described as skilful advocacy in adopting the words of the promoter, given as an undertaking, and saying, "Why can you not have it in the Bill?" Because the undertaking would be in perpetuity, why not put it in the Bill? The promoter's response to that is that the promoter sees force in that argument and the Committee may wish to include such a provision in the Bill. However, if the Committee were to take that view that the provision should be in the Bill, there would have to be some further refinement of the wording. It is wording that is in the promoter's view entirely appropriate for an undertaking but if it goes into the Bill and the words, for example, "the waterways" are used, then they would be the waterways as defined in the Bill. The waterways as defined in the Bill would include marinas.

This is perhaps an example of how, when you start putting things in the Bill, rather than undertakings, you get into greater difficulty.

28. **THE CHAIRMAN:** Drafting such things on one's feet is always very dangerous but that is something that could be accommodated. Can I just raise one other point because it arises on the undertaking? The words "for any year" I assume are meant to govern the annual level of charges for any year for the registration of a vessel that is used as a dwelling and does not govern the word "dwelling".

29. **NEIL CAMERON:** Yes.

30. **THE CHAIRMAN:** This is a nit-picking lawyer's point if you want to put it that way. I think there is a risk that the thing could be read as that it is used as a dwelling for any year. That would mean you had to use it as a dwelling for a whole year and we know, as a matter of practice, people do not use it as a dwelling for the whole year because they are not allowed to. I assume what was meant was that it is the charges for any year rather than the dwelling for any year and you can just move the phrase. Have I understood it correctly?

31. **NEIL CAMERON:** My Lord, yes, you have.

32. **THE CHAIRMAN:** It just means moving the words "for any year", so it is the annual level of charges for any year for the registration of vessels used as a dwelling in which the vessel does not move. We just need to move the words. I raise it now because it is the same wording in the undertaking. I take your point about the definition of "waterways". Are there any other problems apart from the definition of "waterways", which would be circular? As a provision in the Bill it is meaningless because it would be entirely circular.

33. **NEIL CAMERON:** It would be. One could resolve that; rather than using the word the "waterways", you could say "the waterways set out in

Schedule 1", for example, so that would be the navigable waterways excluding the marinas. The other problem with it, as the promoters see it, although they as I have already said accept the force of the point, one of the reasons for defining the waterways widely in the way that they have been is so that if in future waterways that are not navigable at present become navigable—and you will recall the evidence on this—then the provisions of the Bill would apply to them. The initial solution would be to define "waterways" as those set out in schedule 1 but if you did that and then there was some waterway that is not navigable at the moment that became navigable, that is not in schedule 1, so you would end up having an exemption to go up on that marina, go up and down on that new navigable waterway and go back into the marina, if anybody wanted to do that.

34. **THE CHAIRMAN:** Okay. We see the point. Thank you.

35. **NEIL CAMERON:** I then go back to the table of amendments, page 4, Clause 15. This is page 14, line 38. This is a consequential amendment. A proposed amendment is made to the earlier provision to require the navigation advisory committee to be consulted on the protocol and therefore this is a consequential amendment on that change. I am checking I have not left out anything.

36. Clause 17 is just to change the title of this clause at the moment from "audit" to "accounts and audit". Then, page 15, line 16, there is a requirement inserted for a navigation account to be kept. That is defined. Amendment 15, the purpose of this amendment is to extend the definition of those who are entitled to object to accounts to those who are registered as the owner of a vessel which is registered for use in a waterway because, under the Local Audit and Accountability Act 2014, it is local government electors who can object, so it would extend it.

37. Amendment 16 is page 15, line 27. This is to reflect the amendment that is proposed so navigation account is defined in this Bill so it does not have to be taken from the previous legislation. Similarly, when we get to page 17 and Clause 19 the first amendment is because the title should read the Middle Level Acts now rather than just the Middle Level Act 1874. The amendment at 19, indeed the amendment at 18 and 19, is to reflect the fact that this Bill would introduce a requirement for a navigation account and therefore it should replace the earlier requirements for navigation accounts.

38. Turning back to the petitioners, I should have covered this at the time. I have not covered Clause 9, which is the "without lawful authority" point. If I can turn back to Clause 9 on page 9 of the Bill, subsection (9) was added in the House of Commons in response to a suggestion made by Mr Moore that it would be beneficial to define, "without lawful authority", so it was included. The function of that subsection is to define "without lawful authority" for the purposes of the clause and in particular subsection (3): "Whenever a vessel is without lawful authority left or moored".

39. I submit on behalf of the promoter that it would be undesirable to make the amendment sought because it would restrict the ability of the commissioners to move vessels that needed to be moved and that obstructed navigation. The effect of (b), the introduction of (b), would deny the commissioners the power to remove a vessel for 56 days or when the owner had been unable, due to circumstances beyond his or her reasonable control. I say to move, it is to raise and remove under subsection (3).

40. The other change that is requested is to require a court order to be obtained if there is a dispute as to whether proceedings could breach the owner or occupier's rights, in particular under the European Convention on Human

Rights or the Equality Act 2010. What could happen is the occupier raises a point in relation to rights, which are not defined exhaustively. They could be rights in addition to those rights; in particular, those are extensive rights. They just have to raise a dispute. Once a dispute is raised, the commissioners then cannot take action under subsection (3) because they have to wait until they get a court order. That, in my submission, would be an unnecessary and undesirable restriction on the commissioners' power to raise and remove vessels that were causing difficulties for others who are trying to exercise their public right of navigation on the waterway. All you would have to do is raise the issue; there was a dispute; then the commissioners could do nothing. It would neuter the power.

41. Now I respond to the other requests made in the petitioners' paper under the words "and finally".

42. **THE CHAIRMAN:** Have we got any other undertakings you need to go through first or have we covered all of them? We have now moved to the undertakings.

43. **NEIL CAMERON:** We have moved to the undertakings. We have produced now a consolidated list of proposed undertakings. I ought to just go to those. Undertaking 1 I have already referred to, which is the expenditure of the annual income. Undertaking 2, I have already indicated on behalf of the promoter that that undertaking would be given.

44. **THE CHAIRMAN:** Can I follow up? When you say "to include a definition of a small vessel in the first set of byelaws", are you meaning to imply by that that you will provide such an exemption or not?

45. **NEIL CAMERON:** My Lord, I was hesitating on that because the Committee had asked for that definition and of course there is no point just having a definition if you do not do anything with it.

46. **THE CHAIRMAN:** Correct.

47. **NEIL CAMERON:** It comes to the amendments that were sought.

48. **THE CHAIRMAN:** I missed the word.

49. **NEIL CAMERON:** I apologise.

50. **THE CHAIRMAN:** No, do not worry about that.

51. **NEIL CAMERON:** The amendments that were sought to Clause 11, which define a small unpowered vessel, only give a power to exempt under the byelaws, not a requirement to do so. Therefore, I accept that, if it were the Committee's wish that small vessels be exempt, then this undertaking would have to be expanded. The reason we have not done so as yet is, first, a wish to clarify the Committee's wish. Secondly, the extent of any exemption is something that would have to be considered because you heard evidence that the canoes, for example, there is the British Canoeing association—I may have got the title wrong—which on behalf of its members obtains a block registration on other waterways: the Environment Agency waterways and the Canal and River Trust waterways. Those canoes are registered but, if they are a member of the Canoeing Association, they achieve their registration through that membership. Therefore, that appears to the promoters to be the best way of dealing with this issue in the Middle Level and it would make it consistent with provisions elsewhere. If we were just to give an undertaking to define "small vessel" or exempt all small vessels, it would not be consistent with the practice elsewhere, which appears to the promoter to be a desirable practice: you are registered but you pay under the block registration. I fully accept that if we are

going to have undertaking 2, to make any sense of it, we have to do something with it.

52. **THE CHAIRMAN:** Okay. We will consider that.

53. **NEIL CAMERON:** Thank you, My Lord. 3, advertising byelaws. This is in response to a suggestion made on behalf of the Committee, even though it was required. I think this is 25 June 2018, paragraph 439. Adoption of boat safety scheme standards. There is some debate about this. The commissioners would not wish to make a commitment to it being the boat safety scheme for all time because, if the scheme changes, the commissioners would wish to have the ability to change to impose standards that are similar to those imposed on other waterways. That is why we have drafted it in this way. 5 I think we have covered and we are grateful to your Lordship for the suggestion of how that could be better drafted. 6 is to deal with a point raised by the Committee on 28 June to annex to the byelaws the protocol for removal of vessels, so it does not get lost.

54. I now turn to residential mooring strategy but I will have to respond to the petitioners. These proposed undertakings are to meet the concern that it will be desirable for the commissioners to take steps to try to identify potential mooring sites. I have already explained, or sought to explain, that undertaking to the Committee in the earlier hearing sessions. One of the reasons why the commissioners do not wish to agree to provide particular mooring sites is because they or somebody else would have to seek a planning permission and they cannot agree to do something that they may not be able to do. They may not be able to get planning permission. At 8(a), when it states, "The strategy will include details of the steps that the commissioners will take to identify potential residential mooring sites", it uses slightly curious words "to be put to the local planning authority". What is envisaged by that is that, when a local planning

authority is drawing up its local plan, sites could be put forward at that stage and they could be considered or they could be put forward at some other stage if the local planning authority was going through some other process. The most likely process for that is, when they are drawing up their local plan and are allocating sites for housing, employment and other uses, they can also consider identifying potential residential mooring sites. They do so then at a stage when they are looking at housing needs within their area and the other provisions to facilitate applications for planning permission for residential moorings. The strategy would go as far as providing residential moorings, subject to obtaining funding and planning permission, and to do all that in consultation with the navigation advisory committee.

55. Turning to the petitioners' proposals, petitioners seek to extend this somewhat by seeking an undertaking to actually provide residential transit moorings for stay durations of 28 to 56 days. This causes two particular difficulties. One, it is not entirely clear to the promoter what is meant by a residential transit mooring. It would be a residential mooring, so you would overcome what would come with it as the same difficulties in obtaining planning permission, being a material change of use. Therefore, it is the promoter's submission that by seeking this strategy, by seeking to identify potential residential mooring sites, it would encompass transit mooring. Therefore, it is unnecessary to have this additional requirement. Indeed, if you have this requirement what would be the effect of the existing undertaking if there was some other category instead of permanent residential mooring and transit mooring? One could think there might be some other category of residential mooring. Therefore, it is better just to have the undertaking to have residential moorings at large. Looking at the detail of it, if one looks at (f) in the suggestion,

to use the words, "where this is required", that would cause uncertainty when asked the question, required by whom, and what is the necessary exercise that is to be undertaken to ascertain that requirement? Therefore, again, the promoter's suggestion is, in my submission, to be preferred. That is all I say in response to that.

56. I go back to the promoter's list. We get to 11 and the rationale behind agreeing to a transitional period of not less than 12 months before any requirement to meet construction or equipment standards comes into force is so as to allow those who have boats that do not meet those standards at present time to adjust their boats. That undertaking was given in the House of Commons and we accept—I accept on behalf of the commissioners—that, when the new standards first come in, there may be a particular demand for the services of those who repair boats. It will take a bit of time. That is why we offer the 12-month period. In effect, there will be a longer period because the byelaws will have to be subject to confirmation so there will be some notice of the changes that are required, but this is 12 months before any requirement comes into force.

57. **THE CHAIRMAN:** Realistically, Mr Cameron, bearing in mind the time of year we are now at, it will take a little time, if we were to agree to everything, and one was to realistically assume that things would take their ordinary course, one is looking at a period pretty much of 18 months to two years from today.

58. **NEIL CAMERON:** Absolutely, My Lord, because byelaws would have to be drawn up. There would have to be consultation. Once all that consultation had taken place, it would have to be submitted for confirmation and objections might be made. When one has got through all that process, then there is another 12 months.

59. Going back to the last of the petitioners' points, they ask that the undertakings be made and annexed to the Act when it is published. The undertakings are of course given by a promoter. They therefore are distinct from the Act itself. It is up to Parliament what it publishes with an Act of Parliament. That is not really a matter for the promoter but it would be unusual to publish the undertakings with the Act as an annexe. We have only had this since last night but we are not aware of that having been done in the past, not that that is a reason not to do it in the future. Taken as an example, even if you have a works Bill that refers to plans in the Bill itself, those plans are not published with the Bill. It would be a very cumbersome Bill, in some ways, if they were sometimes, but they are not. They are kept in the parliamentary archive so that anybody can examine them. To require undertakings to be published as an annexe would, in my submission, be unnecessary. The register of undertakings would be in the parliamentary archive and could be if the House authorities so agree on the parliamentary website and would be on the website in relation to this particular Bill and Bill proceedings.

60. What the commissioners would propose is that they agree to publish those undertakings on their website so that anybody who is interested in the Middle Level can see the undertakings on the website of the commissioners, and not only to publish them, but to keep them on the website and maintain them there, and on any subsequent means of public communication when websites have been superseded by something else.

61. My Lords and my Lady, I hope that covers all the points but the Committee may have questions.

62. **BARONESS BAKWELL OF HARDINGTON MANDEVILLE:** Thank you, Mr Chairman. I wanted to go back to the residential mooring strategy and

the arguments you put forward for the amendment that you have there. When local authorities are drawing up their local plans, they do not necessarily look at individual sites. They tend to look at larger sites when they are looking at housing developments. It would generally be those over 20 dwellings up to 500 or 1,000, depending on how large they are. They tend not to look at individual sites in villages or towns, but those do come forward and help with their housing strategy. I do not see that having a small number of residential mooring applications would have to wait for a local authority local plan to come forward, speaking as a local authority councillor.

63. I think that your arguments do not particularly persuade me that you should not have some residential mooring strategy in your overall strategy and on the face of the Bill. It is quite clear that there are a number of people who are using their boats for residential purposes, not necessarily for 12 months of the year, but some of them are using them for 12 months of the year.

64. I want to just touch on the issue of transit moorings. I think that is really important and I am going to link this to local authorities' ability or requirement to supply stopping places for gypsies, travellers and Roma. Many local authorities provide permanent sites, 12 or 20 caravans, some larger, for people who wish to stay residential in the area. Others provide residential sites for those who are passing through. That does mean there are a lot fewer illegal encampments in their area, which is quite often very upsetting to local neighbours and sometimes clog up supermarket car parks. I think it is sensible to have some transit mooring sites for those people, not gypsies, travellers and Roma, but those people who are moving around the waterways but who wish to stop for a slightly longer time in a certain area. Perhaps they have a relative in

that area who happens to be ill and they wish to help to look after them whilst they are in that area. For my point, I think a transit mooring would be useful.

65. **NEIL CAMERON:** May I respond, my Lady?

66. **BARONESS BAKEWELL OF HARDINGTON MANDEVILLE:** Please do.

67. **NEIL CAMERON:** First of all, your Ladyship mentioned something on the face of the Bill.

68. **BARONESS BAKEWELL OF HARDINGTON MANDEVILLE:** Sorry, in the undertakings.

69. **NEIL CAMERON:** Thank you. Both parties are referring to the undertaking, not the face of the Bill.

70. **BARONESS BAKEWELL OF HARDINGTON MANDEVILLE:** My mistake. I used the wrong word.

71. **NEIL CAMERON:** Turning to the substance of the point, when I referred to the ability to put something to the local authority, I hope I made clear it was not exclusively in the plan process but it could be in the plan process. Were a local authority to have a site allocations plan, which is quite common, there would be nothing to stop them using the plan to identify moorings, even for one or two moorings. By putting it to the local authority, it is not exclusively in the plan-making process; it could be at any other time. I fully accept: why should they wait for the plan-making process? They take ages.

72. As far as the point about transit moorings, the promoters are not seeking to resist transit moorings. My point that I sought to make was that, if they undertake when drawing up a strategy to identify potential residential moorings, that would include transit moorings. If you have a specific duty in relation to transit moorings, first of all, why do you need that because it is

encompassed within residential moorings? If you have transit moorings, should there be another duty in relation to permanent moorings? If you have it in relation to transit moorings, should it be necessarily for the specific period put forward by the petitioners?

73. The promoters fully accept that transit moorings are something to consider for the very reasons that your Ladyship has pointed out: you have boats travelling through and the travelling community on boats will be travelling through. Therefore, if it was considered—I have to take instructions—one could have identified potential mooring sites, including transit moorings, if that was considered helpful. I would not want to seek to suddenly define “transit moorings” and then exclude other moorings or for transit moorings to be up to 56 days. It seems to me, on behalf of the promoter, unduly restrictive but I fully accept the point that it is desirable, has to be looked at, and not exclusively in some plan-making process.

74. **LORD HUNT OF KINGS HEATH:** Thank you, Chairman. Can I turn Mr Cameron to the question of charges in Clause 4 and your amendment number 5, which makes it clear that the Commissioners are not required to aim to secure that income from charges meets the cost? I think, in your explanation, you said that, given the infrequency of legislation in relation to the Middle Level, the Commissioners are not in a position as of today to know whether in 30 or 40 years’ time there might not be an explosion of boat travel through the Middle Level and therefore they need flexibility in order that you might reach a situation where it is reasonable that the income from charges meets the whole cost. Is that the argument?

75. **NEIL CAMERON:** It is, my Lord. The amendment that we suggest for Clause 4 is that the wording about not exceeding the annualised cost cannot and

should not be interpreted as meaning they have to go out there and raise sufficient charges to meet the cost, but they wish to have the flexibility, should the time come, to raise enough money to meet the cost, not more than, but just to meet the cost.

76. **LORD HUNT OF KINGS HEATH:** Can I ask Mr Cameron whether the commissioners have considered whether it would be advantageous in one way or another, maybe through an undertaking or through some other form, to set out that philosophy so that there is clarity about what is intended?

77. **NEIL CAMERON:** My Lord, we will consider that and seek to reflect what I have said to the Committee in appropriate words.

78. **LORD BRABAZON OF TARA:** I have one tiny point on the definition of "small unpowered pleasure vessels". When you say "not for the time being in use for commercial purposes", I presume if someone was renting or hiring out canoes or something like that, that would be considered to be a commercial purpose.

79. **NEIL CAMERON:** If they were a business hiring out or hiring some rowing boat that you could take out, then they would have to be registered, but not if you take your own boat out.

80. **LORD BRABAZON OF TARA:** Fair enough.

81. **LORD TREES:** Could I return to small boats? I am sure we are going to deal with that later.

82. **THE CHAIRMAN:** Let us hear what Mr Cameron has to say now.

83. **LORD TREES:** The petitioners have a particular interest particularly in barges, narrowboats and so on but this Act gives huge powers to make charges for the use of waterways that affect lots of people out there who are not specifically represented. I am concerned about that. Under Clause 4, it provides the powers to charge for the use of any waterway—the use of any waterway—by

any vessel. Under the definition of "a vessel" in the first part of the Bill, under Clause 2, it includes "every description of craft, including a personal watercraft with or without means of propulsion" and so on.

84. It seems to me that, to the ordinary man or woman in the street, when they see a Bill like this they need to know who is subject to charges, likely to be subject to charges, and who is not. Under this Clause 4, under subsection (7) there is a specific exemption for vessels belonging to or to related a public authority. There is no other specific exemption, and I would submit there should be clarity at that stage that certain types of vessels, which might be loosely defined in this section, shall be exempt from charges for the use of the waterways. The byelaws later, and the discussion we have had about the definition, pertain under Clause 11 to requirements for registration and so on.

85. I would submit there should be clarity on the face of the Bill under the section that refers to charges that the default position for private use of small unpowered personal craft shall be normally free of charge. I take the point you have made that if a rowing club wanted to have a regatta on the waterway or something it would be quite reasonable maybe to start considering charges for particular things, but it seems to me for the everyday use, if someone goes and has a picnic and puts an inflatable boat on the water, at the minute this Act, as it is worded, allows you to charge them for doing that without any condition.

86. **NEIL CAMERON:** My Lord, the answer I give on behalf of the promoter is that what the Act does is to empower the commissioners to make byelaws for registration and also to make exemptions, and exemptions will be set out in the byelaws. I fully accept the public must have clarity. That clarity will be provided in the byelaws, which will only be made subject to confirmation by the Secretary of State, and in many ways it might be thought that the byelaws are

the best—although I fully accept the argument that they look at the face of the Bill and think, “Help, I cannot put my inflatable on there because some official will come and tell me I have to pay for something or they are going to check whether I have blown it up properly”—if the requirements are set out in the byelaws, the byelaws can be published on the commissioners’ website and then you only have to look at the byelaws to find you are exempt.

87. **LORD TREES:** Under 11(3), the byelaws “may”. There is no reference to, “There shall be a presumption that it is free but except in certain circumstances”. It just says “may exempt certain vessels”.

88. **NEIL CAMERON:** I compete agree, my Lord. It is a power to do it; it is not an obligation to do it. In response to Lord Thomas earlier with the definition of “small vessels”, I fully accept there is no point defining it unless you say you are going to do something about it. If we may, we wish to put forward a suggestion as to how that might be achieved. The other point for members of the public is that Clause 4(5) would require charges to be published. One would anticipate that that would say, “This is the charge for vessels of a certain length, width” and for a small vessel it would say “no charge” if that was the policy adopted by the commissioners.

89. What I would submit on behalf of the promoters is that the best way of achieving this is through the byelaws and through an appropriate undertaking in relation to small vessels. The promoters are fully cognisant of your Lordship’s point that we have heard, because of the nature of these type of proceedings, from people representing particular parties. The vast majority of people just are not here. The Committee will be very mindful of that. What I am reminded by Mr Evans is that British Canoeing were consulted and did not object to these proposals. One imagines that is because they are familiar with the arrangements

on other waterways. Equally, reflecting your Lordship's concerns, that is for the keen canoeists who are members of the canoeing fraternity, not somebody who might just want to go and pootle about. Why should they pay or be inspected?

90. **LORD TREES:** I am just asking for clarity, really. Very upfront, under a section that says "charges", it should be clear who is liable for charges, fairly clear. It may need, of course, further definition to give flexibility under the byelaws. That can be referred in the clause, the relevant clause.

91. **THE CHAIRMAN:** You refer to the definition coming from the Broads Authority Act. Could we have a look at Section 16 of that Act?

92. **NEIL CAMERON:** Yes. We appreciate that it is a slightly more extensive definition in there.

93. **THE CHAIRMAN:** This is in tab 14. "Exemption of certain vessels" is the heading to this section. It says, "Nothing in the Act or in any byelaw made or deemed to be made shall require the registration of any small unpowered vessel on adjacent waters that does not enter into the navigation area; shall entitle the authority to require payment of any toll, due or other similar charge in respect of any small unpowered vessel or any medium size unpowered vessel for the time being on adjacent waters". They have obviously made a statutory provision. Obviously this is dealing with adjacent waters, but what I wanted to check with you is, if the Committee felt it was right, "unpowered vessels not being used for a commercial purpose", what is the objection of putting that on the face of the Bill? I am sorry; it is just for my clarification.

94. **NEIL CAMERON:** I will answer your Lordship's question directly but can I note, and I think it is included in your Lordship's question, that that exemption in the Broads Act, as your Lordship has pointed out, is for adjacent waters, not for the main navigable waterways. There is no intention on behalf of

the commissioners to levy extensive charges on small unpowered vessels. It is seen to be of some benefit that certain vessels should register through the block registration system because they then meet the standards. The reluctance on behalf of the commissioners may be expressed in this way: that it is not known in the future whether there might be some explosion or interest in small, unpowered vessels. If that was to happen, there might be a need for registration or control. At the moment, there is not but who knows what might happen? At the time of the Nene Navigation Act of 1753, nobody thought people would possibly go around in boats for pleasure.

95. **LORD TREES:** It is the question of what is the default situation. I would argue that I quite accept that argument and things like regattas or rowing clubs making regular use but there should be a default position, which is there is not a charge but there is provision for charging even unpowered vessels under certain reasonable circumstances and in agreement with the navigation board et cetera.

96. **LORD HUNT OF KINGS HEATH:** Can I clarify something? You mentioned the word registration. The two are not necessarily the same, are they? There might be a situation in the future where, because of poor behaviour, you might want to have a registration scheme for the boats we are talking about. You would not necessarily charge. I ask that as an open-ended question.

97. **NEIL CAMERON:** My Lord, I on behalf of the promoter accept that, although if you had a registration scheme, you may wish to levy a small charge that reflected the cost of registration or you may not.

98. **THE CHAIRMAN:** Are there any other questions? We are going to hear very briefly I think from one petitioner. All the petitioners are entitled to say something but I hope that one of you is going to speak on every one's behalf.

99. **NIGEL MOORE:** My Lord, that would be me.

100. **THE CHAIRMAN:** What is the position of the other petitioners, if I can just find out? Do you want to say anything?

101. **DEREK PAICE:** I am quite happy for Mr Moore to speak on my behalf and he has been asked to speak for some of the petitioners who are not here.

102. **DARREN LUMB:** As am I, but if there is anything Nigel has not covered—

103. **THE CHAIRMAN:** We are here in respect of your amendments. Mr Moore, are you going to speak on everyone's behalf?

104. **NIGEL MOORE:** Yes, My Lord. The various amendments that I believe you have a copy of were agreed between the petitioners over the last week.

105. **THE CHAIRMAN:** Yes, we have those.

106. **NIGEL MOORE:** These are something that all of the petitioners have agreed between themselves.

107. **THE CHAIRMAN:** We have obviously now been through, with Mr Cameron, these amendments. We are very familiar with them and he has made various points.

108. **NIGEL MOORE:** Yes, obviously I can be fairly short, my Lord and sit here really as a hopeful responder to any questions that you might have.

109. **THE CHAIRMAN:** Of course, yes.

110. **NIGEL MOORE:** I can perhaps make a brief comment, just going through the sheet as presented, which is unfortunately not in order of clause numbers.

111. **THE CHAIRMAN:** It does not matter.

112. **NIGEL MOORE:** In terms of the proposed insertion in Clause 4, you have already heard some discussion of this. The petitioners really wanted to

ensure that this insertion, rather than that provided by the promoters, more accurately reflected what they thought were the Committee's concerns, i.e. that the level of charges should provide a contribution only rather than be required to meet the costs of navigation.

113. If there were a situation such as Mr Cameron has postulated where you have a huge increase in the numbers of boats using the navigation, the position really is that it would inevitably mean there were many more registration charges coming about. It is not because there are so many more victims, shall we say—I am sorry; that was unfair—or so many more boats and, therefore, there should be an increase in charges. But the real fact is that, if there are a lot of extra boats, there will be a lot more income.

114. It could be, even on the face of it, a corollary of the insertion that was proposed by the promoters that, if you had a considerable number of boats, the charges that were already levied could match or even exceed the costs of navigation on a theoretical basis. In which case, under the amendment proposed even by the promoters, there would be a duty in fact to bring the cost down, which would be a good thing. But really what the petitioners were trying to do was, in their view, more accurately reflect what the concerns were.

115. On the duty to provide facilities, obviously this is the promoters' proposed undertaking, which the petitioners really wanted to have put in the Bill. I know you have had various discussions over that. One of the concerns the petitioners had was that the undertaking as drafted is effectively time-limited and limited to the pure transit route between the Nene and the Ouse.

116. There is a problem as far as the maintenance of these is concerned. They cannot see the problem that has been presented to you, because a duty to maintain facilities does not have to be a duty to maintain any specific facilities,

but what is required is that there is a continuing obligation on the part of the commissioners not only to have provided certain facilities but to keep on providing the quid pro quo for the charges that are going to be made year by year. They feel it should not be the case that once the commissioners have fulfilled their quota, as proposed by the IWA, of certain facilities along this certain length the obligation stops. From then on, boaters will be paying charges without anything new being done or anything being continued in regard to the income the boaters are providing.

117. Clause 11 was the undertaking we were asking to be put into the Bill. We understand perfectly well that there is going to need to be some changes in the wording. We are obviously happy that the promoters or counsel could come up with alternative wording. One we thought of on the spot when Mr Cameron came to us was that one could say "a dwelling for any year in which that vessel" and then leave out "does not use any of the waterways in the Middle Level but" and say instead "that vessel remains in a marina classified as adjacent waters under Clause 2(1)", for example. But obviously we, as petitioners, are not the political drafts-people that would be necessary to give strong recommendations on that. We appreciate the movement from the commissioners in this respect and would be open to whatever modifications in the proposed wording were suitable.

118. On Clause 3, we also appreciate the movement by the commissioners to include subsection 3(a)(b). The one comment we would have to make on this clause would be on 3(c), which the promoters are resisting, over the question of the byelaws. This is simply that consultation, such as is part of the standard process in process in producing byelaws, would not have the same sort of force

as proposed in the recommendations of the Navigation Advisory Group. But, as I say, we do appreciate the inclusion of (b).

119. There is a point on Clause 9 and "without lawful authority" on which we have not agreed. The reasons for proposing to delete sub-clauses (b) and (c) were looked at in some detail in the previous hearings. The explanation that has been given here in the petitioners' paper is that fines for obstruction of the navigation are also in the proposed byelaws in terms of a punishment. Mr Cameron's argument was that this would hamper the ability of the commissioners to deal with boats that were presenting an obstruction. The addition of subsection 10, which has already been referred to, where there is a power and an ability for the authority to move boats away from being an obstruction or a source of danger, we believe, does address that point. If there is an obstruction, there is absolutely no problem in the commissioners dealing with that as an obstruction and moving it away from being one. That is a different thing from the whole process of removal from the waterways altogether. There seems no reason to include obstruction in a total removal power. The other point the petitioners are making here is that to give the commissioners powers to remedy trespass on land that is not in their ownership would be ultra vires.

120. The suggestion is inserting a (b) and (c) of the petitioners' own. They are, "(b) a vessel is not left or moored without lawful authority if it has remained in the same position for 56 days or less if the owner has been unable, due to circumstances beyond his or her reasonable control, to move it from that position safely," and, "(c) in the event that a vessel or vehicle owner occupier and the commissioners are not able to resolve any dispute, there should be a court order prior to any such proceedings".

121. The fundamental understanding of that and the basis on which that recommendation was made would be the example of British Waterways and now the Canal and River Trust. When a projected boat-removal process from the waterways was contemplated under a section 8 notice, in order to protect themselves—that is British Waterways and the Canal and River Trust—under the terms of the Human Rights Act, it is automatic for live-aboard cases to go to the county court to get a rubber stamp of approval that the case is not in violation of the Human Rights Act. Due to that precedent of example, the NBTA in particular were looking to have that sort of assurance set out in law rather than a self-protective protocol, as currently exists in the Canal and River Trust.

122. As far as the final parts are concerned, there is the strategy setting out how it intends to exercise the powers. We have been listening with interest, and we take the point. The concern—again, this is in particular for the NBTA—was that there should be these transit moorings made available. There is always a necessity even for non-residential visitor moorings. I would perhaps highlight one particular point on the last page, where it says “provide residential transit moorings for stay durations of 28 to 56 days” (obviously that can be subject to discussion) “for themselves”.

123. The point is that it is felt that the Middle Level Commissioners, because they own so many of the banks themselves, are in a position to identify and promote mooring sites, and they do not have to consult with local councils or private farmers. Additionally, to that review of what is possible and to be encouraged, they could do it themselves with a step removed. They say, “To prepare and publish a strategy setting out how they intend to exercise the powers conferred with the aim of increasing the availability of residential

mornings". There is a suggestion to say "residential moorings, including transmit moorings on the waterway" and so on, with commensurate Clauses.

124. On the final point as to the undertakings published in the Bill, I would say that the greatest concern has always been that these historically have been pretty well hidden away. It is not actually the case, though maybe it ought to be, that these are kept by the parliamentary archives. I have gone searching in the parliamentary archives, for example, for the undertakings in the British Waterways Bill 1990, and the archives here do not have them. But that was one of the great concerns. We have heard what Mr Cameron has suggested. We think that probably addresses our concerns very nicely. Thank you.

125. **THE CHAIRMAN:** Well, thank you very much. I was going to ask whether you want to add anything. Did you want to add anything?

126. **DARREN LUMB:** I would just say that, as petitioners, we are concerned that this will go into secondary legislation and primary legislation would add some permanence to proceedings. We share your concerns about small boats and amateur sportspeople that will not necessarily fit into a professional sports category. That is about it. Thank you.

127. **THE CHAIRMAN:** Thank you.

128. **NIGEL MOORE:** My Lord, can I just add to that comment? I would like to talk about the block registration-type thing that is covered by the British Canoe Union and also by rowing clubs. You have to have a canoe. A canoe is not the only type of small craft. If you have small inflatable boats, dinghies, boards or whatever, you would not really qualify as a canoeist and qualify as a member of the British Canoe Union.

129. **THE CHAIRMAN:** Okay, thank you.

130. **LORD HUNT OF KINGS HEATH:** Could I ask a question, Lord Chairman? On the provision of facilities, taking number 1 in the list of proposed undertakings, which relates to the provision of facilities on the Nene-Ouse navigation link, you have made the point that it is not much good just achieving the standards and then not committing to continue them in the future. Your suggested wording there is to maintain those facilities to the same standards thereafter. Mr Cameron has essentially said that we do not know; in the future, there might be circumstances where this simply is not appropriate. Would you accept that there is some need for discretion in relation to this? I am accepting the point about the need to continue the level of facilities. Equally, given that in terms of the likelihood of primary legislation we might be talking decades, do you not think the commissioners need some discretion here?

131. **NIGEL MOORE:** Yes, I would accept that, My Lord. The wording can be modified perhaps to ensure that there is maintenance of facilities without necessarily saying what particular facilities have to be maintained.

132. **LORD TREES:** Further to that, could I ask you this? Do you not feel, given the greater authority invested now in the navigation body by the amendments here, that the Commissioners do have to take more account of the advice of the navigation board? Given that it is representative of water users, would that satisfactorily answer your concerns about maintaining adequate standards, maintaining facilities, maybe extending facilities, and so on? There is a voice there with considerable statutory support to influence the Commissioners. Do you feel that would be adequate?

133. **NIGEL MOORE:** It is a very good thing. It does not quite address the concern everybody did have – that there is a continuing quid pro quo for what they are asking to contribute to.

134. **THE CHAIRMAN:** Well, thank you very much indeed, Mr Moore. Yes, Mr Cameron.

135. **NEIL CAMERON:** My Lord, in response to those points and to the points raised by the Committee, Mr Evans has drafted a potential wording with an addition to Clause 4 to deal with the point about small unpowered vessels. It would be added after 4(7). It reads, "No charges to be payable for the use of a waterway by a small unpowered pleasure vessel except with the agreement of the navigation advisory committee or in accordance with the determination of a person appointed to act as an expert under section 3", and whatever the subsection becomes.

136. **THE CHAIRMAN:** When we rise, would it be possible for you to write that out so we all have a copy?

137. **NEIL CAMERON:** Certainly, yes. We will do that. That would be in response to that point.

138. Can I take things in the order they were made, without responding to every point? On Clause 4, the duty to maintain, I do not add to my previous submissions. The Commissioners do not want to be placed in a position where they have to maintain facilities that are not needed. It is my submission that the involvement of the navigation advisory committee will ensure that appropriate facilities are provided, and the undertaking will ensure that an appropriate proportion of the money raised, 25%, is spent on providing facilities so they get up to the standard that is desirable.

139. On Clause 11, which is the point about whether it can be better worded to restrict the exemption to those who do not leave marinas, yes, some wording could probably be devised, but it does emphasise that the undertaking

provides a more flexible route. If the Committee wishes, we can consider some wording that would define the area and restrict it to a marina.

140. **THE CHAIRMAN:** Yes.

141. **NEIL CAMERON:** We will do that. I have made my submissions on Clause 9 about "without lawful authority".

142. **THE CHAIRMAN:** You have.

143. **NEIL CAMERON:** I do not repeat them. A suggestion was made by Mr Moore that in the undertaking relating to the strategy the words "including residential transit moorings" be added. I am instructed that is acceptable. I would have to take formal instructions on that, but it may be that it would be acceptable to the Commissioners, address Lady Bakewell's point and respond to Mr Moore's very helpful suggestion.

144. **THE CHAIRMAN:** So what you would do is say in undertaking 8(a) "identify potential residential mooring sites (whether permanent, transit or temporary)". It would be something like that.

145. **NEIL CAMERON:** It would be something like that, my Lord, yes.

146. **THE CHAIRMAN:** Okay, yes.

147. **NEIL CAMERON:** I now have instructions.

148. **THE CHAIRMAN:** It will be along those lines.

149. **NEIL CAMERON:** It will be along those lines.

150. **THE CHAIRMAN:** Okay, right, what is next?

151. **NEIL CAMERON:** Those are the only submissions I make in reply, my Lord, unless there are points the Committee are particularly concerned about.

152. **LORD HUNT OF KINGS HEATH:** Lord Chairman, on the provision of facilities, you still have a problem in terms of the standards that will be achieved. Is there not surely some assurance required to say that you will maintain those

standards until such time as they are no longer appropriate in the circumstances you mentioned?

153. **NEIL CAMERON:** My Lord, yes. It may be “maintained to that standard”—I am thinking without instructions—“unless and until the navigation advisory committee are of the view they are no longer required”, or something along those lines.

154. **LORD HUNT OF KINGS HEATH:** My second point, Lord Chairman, is still in relation to the philosophy of charges, if you like. This may not be appropriate either to the Act, certainly, or maybe not to the undertaking. But it seems, at least to me, that it is a question to put to you. You have stated today that there may be circumstances in which it would be not unreasonable for the Commissioners to seek to raise the whole of the costs of the navigation part of their responsibilities, in the circumstances of there being much greater throughput of traffic. I would seek some explanation of that.

155. **THE CHAIRMAN:** You could frame an undertaking, I assume, in terms to the effect that they would seek only a contribution until circumstances had—“fundamentally” may be the wrong word—materially changed as to the quantum of use, which would tie it down and meet my Lord’s suggestion. I am not trying to draft something off the top of my head, but you could frame an undertaking that would give the assurance that your present view was that you would seek a contribution, but that would only be good until matters had materially changed. “Materially” is probably a safer word than “fundamentally”. Could you think about that?

156. **NEIL CAMERON:** Yes, my Lord.

157. **THE CHAIRMAN:** Because you could give us an undertaking. If there was ever a dispute about it, no doubt the Lord Chairman of Committees could

decide what “materially” meant, but that really is for the future. Now you have added (b) to the clause, you do always have this safeguard of charges going through the navigation advisory committee.

158. **NEIL CAMERON:** We will produce those points in writing and hand it in.

159. **THE CHAIRMAN:** What we shall do is take some time to consider. There are eight points we have to make a decision on. So we do not make a mistake, I am just tempted to run through them with you. On Clause 3, which is the arbitration provision, you are agreed we should add a reference back to sub-section 3(b). We have to consider whether we ought to add (c), but that is not being pushed very hard.

160. The second point really goes to Clause 4. Which of the wordings is appropriate? Should you give an undertaking in relation to the future intention? The third point is whether you put the provision in relation to facilities into the Bill or do we leave it as an undertaking? There is the point on maintenance, which we have to think about.

161. On Clause 11 in terms of houseboat registration—I am sorry; I have gone out of order—do we put that into the Bill or not? On Clause 9, should there be a further provision about lawful authority? That is my fifth point. The sixth point is small boats. You have now put forward a suggestion to an addition to Clause 4(7), and we want to consider whether that is adequate. My seventh point is the residential moorings, and we seem to be getting close to agreement on that. We will put in the words “whether permanent, transient or temporary” or something of that kind. The last thing is the publication. The eighth point I have is whether we have an undertaking that you will publish them on the website. I am sure I shall be told that putting something into a statute that you are

undertaking contravenes no doubt many provisions that are laid down somewhere as to the proper publication of legislation. But I am afraid I only suspect that may be the position.

162. Are those the eight points? It is so much easier for us to know that we have eight points to look at. If one of you thinks there is a ninth point, you could come back and tell us? It is much easier if we do not overlook anything at this stage. That was my summary. Have a think, Mr Cameron. We will start thinking about them. We will go through those, and if you tell us there are another 25 we will do those. I do not think so. But do come back.

163. **NEIL CAMERON:** I might just check.

164. **THE CHAIRMAN:** I would like you to check. Do let one of the clerks know.

165. **NEIL CAMERON:** If I were to do that, of course I would tell the petitioners as well.

166. **THE CHAIRMAN:** Thank you very much indeed. We will take time for our consideration of the matter.

*The Committee went into private session at 11.48 pm*

(12.12 pm)

167. **THE CHAIRMAN:** Mr Cameron, Mr Moore and the other petitioners, I think it would be convenient if we just tell you what we have decided, so that we can then work out the most efficient way for everyone concerned to go forward. I will go through my eight points in the same order.

168. As regards the change to Clause 3, we think the Commissioners have acted with great responsibility by adding in the reference of the matters that can

be referred to mediation or expert determination the matters referred to in sub-section 3(b), and we are content with that. We think the safeguard in relation to (c) is the approval by the Minister.

169. As to Clause 4 and the suggested two wordings in respect of that, we are content with the wording put forward by the promoters but we would very much like to see some form of undertaking of the kind discussed as to the intention for the future.

170. As to point 3, whether the facilities provision was put into the Bill, we think it is best left as an undertaking but we would like some wording in relation to maintenance.

171. On the fourth point, Clause 11 about the registration fees for houseboats, we think this is sufficiently covered by an undertaking.

172. On the fifth point, Clause 9, the Bill was amended in the Commons in relation to the "without lawful authority" issue. The House of Commons went far enough, and we do not think it is right to revisit that point. As to the sixth point on small boats, we do appreciate what the promoters have suggested as a definition. We will look at that but, with a broad intention expressed, we are content with that.

173. As to the undertaking on residential moorings, we feel that this part about residential moorings ought to make it clear that this relates not only to the permanent residential moorings but those of a transitory or temporary nature. We do not think anything further in relation to planning should be required.

174. On the eighth point, we will require of the Commissioners an undertaking that they put the undertakings, including that undertaking, on the website.

175. I hope that deals with all the points on their merits. It is now a question of sorting out the wording.

176. **NEIL CAMERON:** Thank you, my Lord. It is the Committee's intention that the promoters should now and as soon as possible produce a paper with the undertakings on it.

177. **THE CHAIRMAN:** Yes. The position we take is as follows. We will look at this wording. We would hope you are able to produce the other wordings quite rapidly. If so, in fact we can look at it and then I will have to read out how the Bill is to be amended and the undertakings given, and then we could hear Mr Thomas. But we would like you just to take a few minutes and let the Clerk know how long you think you need. Let us see if we can do it all now. That is what we would hope, but take your time. Go and talk to Mr Evans, Mr Cameron.

178. **NEIL CAMERON:** Yes, we will get a message back, but I would hope that we would be able to do it within half an hour. If we returned at quarter to one, I do not know whether that would be convenient for the Committee.

179. **THE CHAIRMAN:** I would have thought we could probably do it then. If you let us have the wordings seriatim, we can look at the text. If we are content with the text, it is a question of my reading it out, and Mr Thomas' evidence will only take a moment or two, I imagine, because it is very formal.

180. **NEIL CAMERON:** It is completely formal.

181. **THE CHAIRMAN:** But we are not allowed to have it in writing.

182. **NEIL CAMERON:** No.

183. **THE CHAIRMAN:** Okay, fine. You carry on drafting. We will look at what you have just given us. If someone is on standby who can go backwards and forwards to the copying machine, we can move at speed.

184. **NEIL CAMERON:** Thank you, my Lord.

*The Committee went into private session at 12.15 pm*

(12.48 pm)

185. **THE CHAIRMAN:** Mr Cameron and petitioners, thank you very much for the drafts that you have sent us. As we understand it, the promoters are now prepared to give further undertakings.

186. **NEIL CAMERON:** They are, my Lord.

187. **THE CHAIRMAN:** It may just be convenient if you were to tell us, as I understand it, that in place of the various undertakings you have given there are some changes and certain additional ones, to which I will refer in a moment. But you are prepared to give all those undertakings.

188. **NEIL CAMERON:** That is right, my Lord. As I understand it, your Lordship is going to read them out.

189. **THE CHAIRMAN:** Yes, I am going to read them out in this way. First of all, the Committee agrees to the Bill and agrees it should proceed with amendments and with undertakings. The promoters have proposed amendments and undertakings that have been submitted to the Committee before today, today and just now. For the purposes of the transcript, we, the Committee, have taken what we have in writing, in typescript, as read. The additional amendments proposed today I am going to read out. Therefore, I will now go through the Bill clause by clause.

190. Clause 1 we agree to without amendment.

191. Clause 2 is agreed to with an amendment, and the amendment to Clause 2 is the following. At page 3, line 47, at the end insert "small unpowered

pleasure vessel' means any vessel having a block area of less than six square metres, which is not for the time being in use for commercial purposes".

192. Clause 3 is agreed to with the amendments that have been submitted in typescript, including a new clause before Clause 4, as proposed by the promoters. We also agree to the additional amendment, and that is as follows. Amendment 3 to Clause 3 on page 3 of the paper of amendments, line 1, after (3)(a) insert ", (b)". The comma was not on the manuscript you had given us.

193. **NEIL CAMERON:** We are grateful for that insertion, my Lord. I do know whether I misheard it as your Lordship read it out. It is page 2 of the paper of amendments rather than page 3.

194. **THE CHAIRMAN:** I am sorry, yes. I do beg your pardon.

195. Now then we turn to Clause 4, which is agreed to with the amendments as proposed by the promoters, including the additional amendment. That is as follows. Clause 4, page 6, line 11, at the end insert in a clause that is to be numbered in due course "no charges to be payable for the use of a waterway by a small unpowered pleasure vessel except with the agreement of the navigation advisory committee or in accordance with the determination of a person appointed to act as an expert under section 3", with a subsection to be numbered.

196. Clauses 5 to 8 are agreed to without amendment.

197. Clause 9 is agreed to with an amendment as proposed by the promoters.

198. Clause 10 is agreed to with an amendment as proposed by the promoters.

199. Clause 11 is agreed to with amendments as proposed by the promoters, including this additional amendment. Amendment 11 to Clause 11, page 13, line 15 is deleted.

200. Clauses 12 to 14 are agreed without amendments.

201. Clause 15 is agreed to with an amendment as proposed by the promoters.

202. Clause 16 is agreed to without amendment.

203. Clause 17 is agreed to with amendments as proposed by the promoters.

204. Clause 18 is agreed to without amendment.

205. Clause 19 is agreed to with an amendment as proposed by the promoters.

206. Clause 20 and Schedules 1 to 3 are agreed without amendment. Schedule 4 is agreed to with an amendment as proposed by the promoters.

207. Those are the matters relating to the Bill. As to the undertaking, the Committee agrees to the promoters' proposed undertakings in respect of the Bill with the following changes: that undertaking 1 be deleted and substituted by the following "To spend at least 25% of the annual income received from charges under section 4 on providing facilities in the Nene-Ouse navigation link which meet the current minimum standards for the provisions of facilities for boaters, as published by the Inland Waterways Association, until the standards are achieved on this route and will maintain those facilities until the navigation advisory committee agrees that they are no longer needed or an expert appointed to determine any dispute following the procedure set out in Clause 3 determines that they are no longer needed".

208. Carrying on with the typed list of undertakings, undertaking 7 is deleted and substituted by the following: "To prepare and publish a strategy setting out how they intend to exercise the powers conferred by section 14 with the aim of increasing the availability of residential moorings, including transit and temporary moorings on the waterways". For the avoidance of doubt in undertaking 8, where there is the reference to "residential moorings" it obviously includes the wording "including transit and temporary moorings".

209. A further undertaking is given, undertaking 12, "To publish and retain these undertakings on their websites".

210. There is an undertaking 13 as follows. "The Commissioners will not set navigation charges at a level that they anticipate is likely to cover the costs of exercising their navigation functions unless the Commissioners consider the level of use of the waterways has changed to such a degree that it would be fair to all users to do so".

211. I hope that now concludes everything that has been included. It is important for me to emphasise, particularly to the petitioners, that the acceptance by us of undertakings is an important matter for the protection of the public in general. Under Standing Order 130, there is a procedure whereby this House can determine whether or not there has been a breach of the undertaking. But we are sure the Commissioners, having given these undertakings with proper consultation and solemnity, will abide by them.

212. That concludes everything we need to do apart from hearing the proof of the preamble to the Bill. We understand you are going to call Mr Thomas to prove the preamble.

213. **NEIL CAMERON:** Thank you, my Lord. Can I call Mr Thomas? I understand he needs to be sworn.

214. **DAVID THOMAS:** I, David Thomas, do solemnly, sincerely and truly declare and affirm that the evidence I shall give before this Committee shall be the truth, the whole truth and nothing but the truth.

215. **NEIL CAMERON:** Are you David Christopher Thomas?

216. **DAVID THOMAS:** I am.

217. **NEIL CAMERON:** Are you the chief executive, chief engineer and clerk to the Middle Level Commissioners?

218. **DAVID THOMAS:** I am.

219. **NEIL CAMERON:** Do you hold responsibility for the promotion of the Bill on behalf of the Middle Level Commissioners who are promoting the Bill?

220. **DAVID THOMAS:** I do.

221. **NEIL CAMERON:** Have you read the preamble to the Bill?

222. **DAVID THOMAS:** I have.

223. **NEIL CAMERON:** Is it true?

224. **DAVID THOMAS:** It is true.

225. **NEIL CAMERON:** Thank you.

226. **THE CHAIRMAN:** Does anyone have any questions? Mr Thomas, we are grateful to you for coming to give that evidence to us.

227. I believe that now concludes the proceedings before this Committee. May I reiterate what I said on the last occasion? We are greatly indebted to the promoters and those advising them, and the executives, both current and former, who have been here to assist us with these matters. We are extremely grateful to the petitioners, who have brought matters to our attention not only in respect of their own individual interests but who have enabled us to consider certain other broader issues they themselves did not directly raise. We would like

to thank you all very much, and we are very pleased that a reasonable degree of consensus has been achieved.

228. Mr Cameron and Mr Evans, we thank you in particular for the speed with which you have drafted everything, which has enabled us to conclude this matter by one o'clock. Thank you very much.

229. **NEIL CAMERON:** Thank you, my Lord.

*The Committee adjourned at 1.01 pm*

## Undertakings given by the Middle Level Commissioners

### MIDDLE LEVEL COMMISSIONERS



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Clerk Chief Engineer & Chief Executive  
David C Thomas B.Eng, M.C.M.I

Your Ref:

Our Ref: 521  
(Please quote this reference on any correspondence)

13<sup>th</sup> July 2018

Dear Lord Thomas

#### Middle Level Bill

This letter records and confirms the undertakings given by the Middle Level Commissioners as promoters of the Bill during the Bill's consideration by the Opposed Bill Committee from 25<sup>th</sup> to 28<sup>th</sup> June and 12<sup>th</sup> July 2018. The section numbers used below relate to those in the Bill as amended by the Committee.

The Middle Level Commissioners undertake as follows:-

#### Provision of Facilities

- (1) to spend at least 25% of the annual income received from charges under section 5 on providing facilities on the Nene-Ouse Navigation Link which meet the current Minimum Standards for the Provision of Facilities for Boaters as published by the Inland Waterways Association, until the standards are achieved on this route; and will maintain those facilities until the Navigation Advisory Committee agrees that they are no longer needed (or an expert appointed to determine any dispute following the procedures set out in section 3 determines that they are no longer needed);

#### Definition of small vessels

- (2) to include a definition of "small vessel" in the first set of byelaws to be made under sections 11 and 12;

#### Advertisement of byelaws

- (3) to advertise any proposed byelaws to be made under section 11 or section 12 in a newspaper or magazine of interest to boaters, and on the Commissioners' website, as well as complying with the publicity requirements of section 236 of the Local Government Act 1972;

#### Adoption of boat safety scheme standards

- (4) when making the first set of byelaws under section 12 which require vessels to be constructed and equipped in accordance with specified safety standards, to specify standards that are equivalent to those set out in the Boat Safety Scheme, or such other similar standards as may be required by neighbouring navigation authorities at the time when the byelaws are made;

#### Level of registration fee for static houseboats

- (5) when making byelaws that set the level of charges for the registration of a vessel, the annual level of charges for the registration of a vessel that is used as a dwelling for any year in which that vessel does not use any of the waterways in the Middle Level but remains in a marina adjacent to one of those waterways shall be limited to the anticipated cost of –
- (a) administering the application for registration
  - (b) checking that the vessel complies with any relevant requirements imposed under any byelaws made under section 12; and
  - (c) enforcing compliance with those requirements;

#### Publication of removal protocol

- (6) when publishing byelaws that are made or revised under section 11, they will annex to the published byelaws to protocol for removal of vessels published under section 16;

#### Residential mooring strategy

- (7) to prepare and publish a strategy setting out how they intend to exercise the powers conferred by section 15 with the aim of increasing the availability of residential moorings (including transit and temporary moorings) on the waterways;
- (8) that the strategy will include details of the steps that the Commissioners will take to –
- (a) identify potential residential mooring sites to be put to the local planning authority
  - (b) facilitate applications for planning permission for residential moorings
  - (c) provide residential moorings themselves, subject to obtaining funding and planning permission;
- (9) in preparing the strategy, to consult the Navigation Advisory Committee under section 3(6)(a), as well as the local planning authorities, and housing authorities;
- (10) to keep the strategy under review, and revise the strategy as necessary;

#### Implementation of byelaws

- (11) that the first set of byelaws made under section 12 will include a transitional period of not less than 12 months before any requirement to meet construction or equipment standards comes into force;

#### Publicity of undertakings

- (12) to publish and retain these Undertakings on their website;

Charging Philosophy

- (13) the Commissioners will not set navigation charges at a level which they anticipate is likely to cover the costs of exercising their navigation functions unless the Commissioners consider that the level of use of the waterways has changed to such a degree that it would be fair to all users to do so.

Yours sincerely

David Thomas  
Chief Executive  
Middle Level Commissioners

Lord Thomas of Cwmgiedd  
Chair of the Middle Level Bill Opposed Bill Committee  
House of Lords  
London  
SW 1A 0PW

# Amendments made to the Bill as agreed by the Opposed Bill Committee

HOUSE OF LORDS

SESSION 2017–2019

## MIDDLE LEVEL BILL

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AMENDMENTS MADE TO THE BILL  
AS AGREED BY THE  
OPPOSED BILL COMMITTEE  
THURSDAY 12 JULY 2018

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### Clause 2

- 1 Page 3, line 47, at end insert –

““small unpowered pleasure vessel” means any unpowered vessel having a block area of less than 6 square metres which is not for the time being in use for commercial purposes;”

### Clause 3

- 2 Page 5, line 3, at end insert –

“(2A) When appointing a person to the Committee, the Commissioners must make a statement of their reasons for appointing that person.

(2B) No person appointed to the Committee may take part in the proceedings of the Committee unless that person has disclosed to the clerk of the Commissioners details of every financial or other direct or indirect interest in any matter with which the Commissioners are concerned.

(2C) A person who fails to make that disclosure within three months of being appointed ceases to be a member of the Committee.”

- 3 Page 5, line 10, at end insert “; and

(d) proposals for a protocol for the removal of vessels under section 15.”

- “(4A) If the Committee reports back to the Commissioners within the time allowed in response to consultation under subsection (3), the Commissioners must –
- (a) adjust the proposals in accordance with the report; or
  - (b) give the Committee reasons in writing for their refusal to do so.
- (4B) If the Committee’s report relates to proposals under subsection (3)(a), (b) or (d) and the Committee reasonably considers that the Commissioners’ reasons do not justify their refusal to amend the proposals, the Committee may refer the matter –
- (a) to mediation, or
  - (b) with the agreement of the Commissioners, to determination by a person acting as an expert.
- (4C) If the matter is referred to mediation –
- (a) the mediator is to be appointed by the agreement of the Commissioners and the Committee or, failing agreement, by the President of the Institute of Civil Engineers;
  - (b) the mediator is to decide the procedure for the mediation; and
  - (c) within seven days of the conclusion of the mediation, the mediator is to provide to the Commissioners and the Committee a report describing the outcome of the mediation.
- (4D) If the matter is referred to determination by a person acting as an expert –
- (a) the person is to be appointed by the agreement of the Commissioners and the Committee or, failing agreement, by the President of the Institute of Civil Engineers;
  - (b) the person is to determine the matter acting as an expert, having regard to the Commissioners’ duties under the navigation Acts and such other matters as may be agreed by the Commissioners and the Committee;
  - (c) the person is to decide the procedure for determining the matter;
  - (d) the person is to determine the matter and notify the Commissioners and Committee of the determination as soon as reasonably practicable after hearing the representations of the Commissioners and the Committee on the matter; and
  - (e) if the person determines that the Commissioners’ proposals should be adjusted, the proposals are deemed to have been adjusted in accordance with the determination.”

Before Clause 4

5 Insert the following new Clause –

*“Continuity of navigation functions*

- (1) The Commissioners are to continue to exercise the functions in relation to navigation conferred by the navigation Acts.
- (2) The Commissioners are to exercise their functions in relation to navigation in accordance with the provisions of this Act.”

Clause 4

6 Page 5, line 32, at end insert –

*“(2A) Subsection (2) does not require the Commissioners to aim to secure that the income from charges under subsection (1) meets those costs.”*

7 Page 6, line 11, at end insert –

*“(8) No charge is to be payable for the use of a waterway by a small unpowered pleasure vessel except with the agreement of the Navigation Advisory Committee, or in accordance with the determination of a person appointed to act as an expert under section 3(4D).”*

Clause 9

8 Page 9, line 38, at end insert –

*“(10) This section does not limit the Commissioners’ ability at any time to move without notice a vessel if it is causing obstruction or is a source of danger, pursuant to any byelaws made under section 10 or under section 51 of the Middle Level Act 1874.”*

Clause 10

9 Page 11, line 25, after *“this section,”* insert *“section 11,”*

#### Clause 11

10 Page 12, line 3, after "of" insert "small unpowered pleasure vessels or other"

11 Page 13, line 4, after "subsection" insert "(5),"

12 Page 13, line 10, after "subsection" insert "(5),"

#### Clause 15

13 Page 14, line 38, leave out ", in consultation with the Navigation Advisory Committee,"

#### Clause 17

14 Page 15, line 16, leave out "Audit" and insert "Accounts and audit"

15 Page 15, line 16, at end, insert –

"(A1) The Commissioners must keep accounting records, to be known as the navigation account, that are sufficient to show and explain –

(a) income received from charges recovered under section 4 or otherwise relating to the Commissioners' functions in respect of navigation under the navigation Acts; and

(b) costs incurred by the Commissioners in exercising their functions in respect of navigation under the navigation Acts."

16 Page 15, line 23, at end insert –

"(1A) For the purposes of the application of Part 5 of the Local Audit and Accountability Act 2014 (conduct of local audit) to the navigation account, the definition of "local government elector" in section 44(1) of that Act has effect as if it included any person who is registered as the owner of a vessel that is registered for use in the waterways under the provision of any navigation byelaws."

- 17 Page 15, line 27, leave out ““navigation account” has the same meaning that it does in the Middle Level Act 1862;”

#### Clause 19

- 18 Page 16, line 26, leave out “Act 1874” and insert “Acts”

- 19 Page 16, line 26, at end insert—

“(A1) The Middle Level Act 1867 is amended as follows.

(B1) In section 46, substitute the words “section 17 of the Middle Level Act 2018” for the words “section 37 of the “Middle Level Act, 1862,”.”

#### Schedule 4

- 20 Page 20, line 32, column 3, leave out “In section 37, the words from “, and shall yearly” to the end of that section” and insert “Section 37”

HOUSE OF LORDS

SESSION 2017-2019

MIDDLE LEVEL BILL

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AMENDMENTS MADE TO THE BILL  
AS AGREED BY THE  
OPPOSED BILL COMMITTEE  
THURSDAY 12 JULY 2018

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BIRCHAM DYSON BELL LLP

Parliamentary Agents

12 July 2018