

IN PARLIAMENT
SESSION 2006-2007

BROADS AUTHORITY PRIVATE BILL
HOUSE OF COMMONS

REPORT
OF
THE SECRETARY OF STATE
FOR
ENVIRONMENT, FOOD AND RURAL AFFAIRS
ON
THE BROADS AUTHORITY BILL

Introduction

The Bill is promoted by the Broads Authority and it provides for the improved safety of those using the Broads, as well as making some detailed changes to the way the Authority operates. Defra supports the aims of the Bill but objects to two clauses and is suggesting potential improvements to others.

The Department is aware that the Authority has entered into a number of agreements with other bodies over the provisions contained in the Bill, including proposals as to how resulting powers will and will not be used. As a matter of general approach, the Department thinks the Authority should consider whether some of that material should instead appear on the face of the Bill, to facilitate greater transparency. In any event, the Committee might wish to consider the side agreements in conjunction with the Bill. The Department has also had sight of a draft of the Filled Bill (latest version dated 31.5.07), but has had to submit this Report before that was finalised.

In what follows we have therefore *italicised* those objections or comments which the side agreements and/or the filled bill would entirely answer, leaving in normal type those objections or comments which would still remain even if the side agreements and the filled Bill amendments were to be implemented in full.

Clause 2(2), page 3, lines 1 - 15 [Interpretation – re “adjacent waters”]
Clause 11(2), page 8, lines 35 – 38 [Byelaws for registration of vessels]
Clause 12(2), page 10, lines 24 – 26 [Construction and equipment standards], and
Clause 14 (2), page 11, lines 19 – 22 [Vessels: Insurance requirements].

Adjacent Waters

Defra understands that the adjacent waters provisions (referred to in the above clauses) will only encompass waters within the statutorily defined “Broads” for which the Broads Authority is the local planning authority. These are waters that are connected to the Authority’s navigation area but outside its navigation jurisdiction. We understand that a relatively small area of water is involved and it is anticipated that only a few hundred boats will be affected.

A precedent for granting powers over adjacent waters already exists for example for the Environment Agency which has powers over some adjacent waters – e.g. on the Medway. In addition, it's currently proposing to extend its powers to waters adjacent to its other navigations in their draft Transport and Works Act Order.

We recognise that these powers are needed to ensure that, regardless of whether vessels are in the Broads navigation area or in the Broads adjacent waters, similar standards will be in operation: without the adjacent waters provisions, bona fide Broads users could still find themselves at risk from uninsured or sub-standard vessels as soon as they crossed out of the navigation area (for example to moor in a neighbouring marina).

The Authority has sought to minimise the risk of vessels being caught by these provisions inappropriately by excluding some areas at Clauses 2(2) (a) to (e). The provisions in the Bill will only allow the Authority to deal with problems that arise on any water which is not subject to the control of any navigation, harbour or conservancy authority. Defra is agreeable to the inclusion of these provisions.

Clause 4(3) (e)-(g), page 4, lines 16 – 28 [General directions to vessels]

The Department notes that the Authority has entered into agreements that suggest that some prohibitions and regulation by way of general direction will not be applied to “pleasure craft” (defined in s.25 of the 1988 Act). The Department has concerns regarding this issue since we consider that the majority of vessels in the area might be “pleasure craft”, and so this seems a curious dilution of the power. The Committee might wish to give particular consideration to whether it is appropriate to exclude some general directions powers from applying to “pleasure craft” and, if so, whether this should be included on the face of the Bill.

Clause 11(2), page 8, lines 35 – 38 [Byelaws for registration of vessels]

The Department notes that the Authority has entered into agreements suggesting it will not, for the foreseeable future, apply registration or toll requirements to pontoons or rafts that are permanently fixed. It is not clear whether the Authority envisages applying any other controls to such fixed structures; if not there may instead be a case for the Committee to omit them from the meaning of “vessel” on the face of the Bill (Clause 2(1)). [The draft Filled Bill now proposes this].

Clauses 12(1) and (2), page 10, lines 18 – 26 [Construction and equipment standards]

These clauses would allow the Authority to impose on vessels in the navigation area or on adjacent waters such standards and specifications relating to construction and equipment as identified by a scheme which is for the time being in force and published by the Authority or another person. We understand that this will in practice mean the Boat Safety Scheme, as adopted by the Authority. They also allow the Authority to impose different standards to different categories of vessels, and in different parts of its area.

Defra is unclear whether the permitted differences would relate to variations which would form part of the adopted Boat Safety Scheme or whether it would allow the Broads Authority to subsequently depart from the adopted scheme in some

circumstances. If it does relate to anything beyond the adopted Boat Safety Scheme (which will have been the subject of widespread consultation) then we consider that it would be appropriate to make provision to ensure those affected would be consulted before any variants are imposed. We note that the draft Filled Bill proposes a new Cl 12(1A) which provides for the consultation of bodies appearing to represent boating interests but the Department would prefer to also see some commitment to consult locally, as would be the case with byelaws, since many individual boat owners may not belong to any organisation.

Clause 13(3) (b), page 11, lines 13 – 15 [Standards appeals panel]

Clause 13(3)(b) provides that in order to refer a question regarding the reasonableness of a standard imposed under Clause 12 to the standards appeal panel, an application must be signed by an additional six vessel owners, as well as the main applicant owner.

The Authority has clarified that the reference in this clause to the six other signatories of vessels to which this section applies does not mean that they have to be owners of similar vessels but simply of any vessel to which any standards apply. The Department thinks that the Committee might wish this to be made clearer, as it could appear as if the additional six must be owners of vessels of the same class or in the same area (i.e. subject to the same standards) and is concerned that, in some cases, there might be so few such owners/vessels that this could prove onerous. The draft Filled Bill we have seen suggests this is being addressed. As regards the additions proposed in that draft, we wonder whether a reference to “(d)” ought to be included in Cl 13(3)(a)? [The draft Filled Bill now includes this].

Clause 16, pages 11 - 12, lines 38 - 37 [Entry on and inspection of vessels]

The Department notes that the Authority has entered into agreements which suggest it will propose altering this Clause so as to ensure masters or owners are notified of their right to request a full copy of the report, and to provide a reasonable excuse defence to the offence of intentional obstruction. The Department would support this change. The draft Filled Bill addresses these points, by proposing a new Cl 16(6A), and an amendment to Cl 16(9)

Clause 16(8), page 12, lines 30 - 33 [Entry on and inspection of vessels]

The Department notes that the Authority has entered into an agreement with the Inland Waterways Association suggesting that it will propose changes, such that “standards” is substituted for “standard”, and “determined by the standards appeals panel” is substituted for “established”. The Department would prefer the Committee to leave the wording unchanged to emphasise that a failure to comply with a single standard could have serious consequences and should be sufficient to justify liability for the cost of the inspection, and because such a determination by the appeals panel would not, it seems, come about “as a result of the exercise of the powers in [this] clause”. The Department notes that the draft Filled Bill proposes the removal of the “as a result of” wording, but does not propose inserting “determined by the standards appeals panel”. We would support this. However, the change from “standard” to “standards” is also proposed as is the removal of “it is established that the vessel”, neither of which we think is helpful.

Clause 17, pages 12 - 13, lines 38 - 2 [Meaning of “unsafe vessel”]
Clause 18, page 13, lines 3 - 20 [Powers as to unsafe vessels, etc]

The Department notes that the Authority has entered into agreements suggesting it will propose changes so as to provide for the reimbursement of owners for any damage or loss of a vessel or its fixtures and contents caused by the exercise of these powers if it is shown that the vessel was not unsafe, with an exclusion to the extent that the damage or loss was caused by the wilful act or negligence of the owner. The Department would welcome such changes.

Clause 17, page 13, line 2 [Meaning of “unsafe vessel”]

The Department wonders if it would not be appropriate for the Committee to add, to the end, “from the vessel”, in order to make it clear that the risk must arise from the (“unsafe”) vessel, and not, for example, from the convicted person generally. [The draft Filled Bill now proposes this].

Clause 19(2), page 13, lines 24 – 25 [Removal of unsafe vessels]

Defra has expressed concern that the clause, as drafted, does not allow for compensation to be paid to the owner if an appeal determines that standards had not in fact been breached, and therefore that a vessel the Authority had relocated or removed had not been “unsafe”. The Authority has agreed to propose an amendment to reflect that compensation will be paid in certain circumstances. The Department notes that the draft Filled Bill proposes an amendment (Cl 19(16)) which would provide for compensation for any damage caused to a vessel, but this does not address loss of use or relocation expenses etc.

Clause 21(3), page 15, line 43 [Request for information as to vessels]

The Department notes that the Authority has entered into agreements suggesting it intends to propose a change from 21 days to 28 days. The Department is content with this proposal.

Clause 22, page 16, lines 21 - 36 [Notices requiring information from masters and owners, etc. as to vessels]

The Department notes that the Authority has entered into agreements suggesting it will propose a change to the effect that the information which may be required is limited to that which is available to the recipient. The Department suggest that this may be an unnecessary change, since it seems likely it would be deemed a “reasonable excuse” (clause 22(5)(a)) for information to be “unavailable” to the recipient.

Clause 23(1), page 17, lines 10 - 15 [Notices requiring information from landowners, etc. as to vessels]

The Department notes that the Authority has entered into agreements suggesting it proposes a change to include a minimum notice period of at least 28 days. The 1976 Act provision, which applies to the Authority, and to which this new power applies, already contains a minimum notice period of 14 days. If it is appropriate to lengthen this for these situations, then we consider that the Committee, as a matter of drafting, might wish to do more than provide for an extended minimum period, and make some

provision to the effect that section 16 of that Act will apply, for these purposes, as if there were substituted a minimum notice period of 28 days. The draft Filled Bill we have received proposes such an approach, with an additional Cl 23(1A).

Clause 23(2), page 17, lines 16 - 19 [Notices requiring information from landowners, etc. as to vessels]

The Department notes that the Authority has entered into agreements suggesting it will not apply this provision in respect of a vessel which is ashore. Given this, there may instead be a case for the Committee to consider changing the provision so that it does not apply to such vessels, assuming that the Committee is satisfied that there is no risk from unregistered vessels used with impunity but always removed from the water at the end of their use. [The draft Filled Bill now proposes this].

Clause 23(3), page 17, lines 20 - 35 [Notices requiring information from landowners, etc. as to vessels]

The Department notes that the Authority has entered into agreements suggesting it proposes to seek a change to the effect that the information to be required to be disclosed is limited to that which is available to the recipient of the notice. This appears more justified here since the related offence is in the 1976 Act provision, and there does not appear to be a "reasonable excuse" defence. The draft Filled Bill the Department has received proposes such an amendment (via Cl 23(1)).

Clause 24, pages 17 – 18 [Entry on land]

The Department notes that the Authority has entered into agreements suggesting it will not use its powers of entry in respect of a vessel which is ashore. Given this, there may instead be a case for the Committee to consider changing the provision so that it does not apply to such vessels.

Clause 25, page 18, lines 15 – 28 [Licensing of rescue boats]

We understand that this is aimed at a specific problem namely the need to improve the standard of service provided by people holding themselves out as rescue boats. However we wonder how far advice and training might achieve that goal, without needing to resort to regulation and licensing.

Clause 27(5), page 19, lines 16 – 21 [Zones for water skiing or wake boarding]

The clause as originally drafted only provides that the Authority will consult the navigation committee and such organisations as appeared to the committee to represent persons affected by their decision to designate areas where, and the times etc. when, water skiing and wake boarding may take place.

Following discussions with Defra, the Authority has agreed that the clause should be amended to provide that they will also consult Natural England and any neighbouring residents (who might not be "represented" by any "organisation") who are likely to be affected, before passing a resolution. The draft Filled Bill the Department has received contains a proposed addition to Cl 27(5) which proposes that the Authority will consult such persons who appear to them "likely to be significantly affected by the resolution". The Department considers that it would be preferable for the wording to read "likely to be affected by the resolution".

Clause 36, page 23, lines 17 – 39 [Breydon Water and Lower Bure]

The Department notes that the Authority is proposing to enter an agreement with the Great Yarmouth Port Authority in which they will undertake not to set the appointed day for Breydon Water and the Lower Bure to form part of the navigation area without their written consent. The Department considers that if the Committee is agreeable to this approach then they should consider amending the Bill to require it. [The draft Filled Bill now proposes this].

Clause 36 (5) and (7), page 23, line 41 [Breydon Water and Lower Bure]

The Department notes that these proposed subsections are now omitted – we did not see the earlier wording so are unable to comment on their proposed deletion.

Clause 40, page 26, lines 8 - 26 [Water Resources Act 1991, etc]

The Department notes that agreements the Authority has entered into with the British Marine Federation, the Royal Yachting Association and the Inland Waterways Association suggest that the Authority will propose omitting this Clause. The Department would be content with this. The Department notes that the draft Filled Bill proposes this; but would suggest that the proposed new section 17(10A) in the 1988 Act, contained in paragraph 8 of Schedule 6 to the Bill needs to be omitted too. [The latest draft Filled Bill proposes this too].

Clause 41(3), page 26, lines 41 – 43 [Removal of vegetation]

The clause allows the Authority to enter onto any land adjoining the navigation (after giving at least 14 days notice) to remove vegetation. The clause does not provide for landowners to be served with a notice detailing exactly what works are required or explicitly stating that landowners have the option of carrying out the works themselves. The Authority has agreed the Bill should be amended to address these issues. The draft Filled Bill makes proposals covering this, but the Department notes that a reference including the further addition (apart) of the proposed new Cl 41(3A) is needed. [The latest draft Filled Bill proposes this]. We think that the wording of (3A) could be improved to make clear the link between (1) and (3A) and make explicit what is to be specified. We suggest inserting “remove the cause of the danger or obstruction, and” before “ensure”.

Clause 42, page 27, lines 7 – 9 [Application of requirements of Public Health Acts Amendment Act 1907]

Clause 42 transfers to the Authority the powers of local authorities under section 94 of the Public Health Amendments Act 1907. However, section 94 of the 1907 Act refers to pleasure boats whilst clause 42 refers to vessels (as newly defined).

Defra has sought elucidation as to what is intended, and thinks it could perhaps be made clearer.

Schedule 6, paragraph 7, page 35, lines 12 - 16 [Amendments to the Norfolk and Suffolk Broads Act 1988]

The numbering of this paragraph needs aligning with the margin.

Schedule 6; paragraph 8 and 8(2) page 35 – 37, lines 28 - 6 [Amendments to the Norfolk and Suffolk Broads Act 1988]

By removing the existing sections 13(1) and (2), paragraph 7(1) would remove the key requirement that navigation expenditure is fully funded by navigation income. The Department thinks it important that this separation is maintained – in particular it does not wish its “National Park Grant” to the Authority to be used for navigation purposes. It suggests this is achieved by amending the proposed new wording of section 17(6), as inserted by paragraph 8(2), to read: “it shall be the duty of the Authority to secure that taking one financial year with another navigation expenditure is equal to [as opposed to “not less than”] navigation income”.

Alongside this, Defra thinks it important to be clear about which work primarily serves the interests of navigation and which primarily serves conservation. We thought it might be helpful if the Bill were to expressly acknowledge the relevance of this distinction, and suggest this might perhaps best be accommodated within the proposed new s17(8) (in para 8 of Sch 6 to the Bill), in the definition of “navigation expenditure”, perhaps by inserting in the full-out at the end of the definition, after “heritage of any area”:

“..., including expenditure on dredging wholly or mainly for conserving these things, ...”

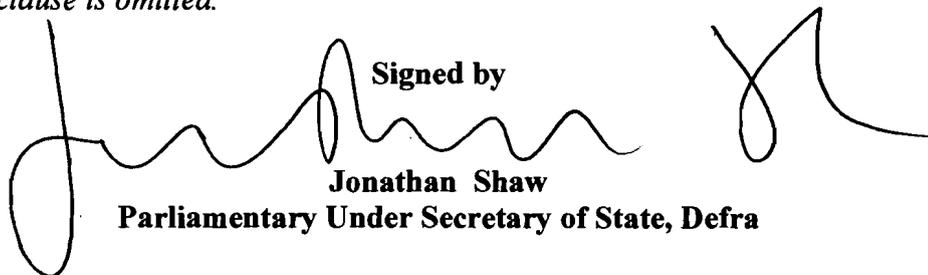
The Department thinks that there may be a case for consistency of language as between the proposed new sections 13(1) and (3), in terms of the one using “tolls” and the other “charges”. Also, the new definition of “toll” proposed in paragraph 9(1) covers the matters in proposed new section 13(3)(b) and (c) but not those in section 13(3)(a).

Schedule 6, paragraph 9(1), page 37, line 16 [Amendments to the Norfolk and Suffolk Broads Act 1988]

The Department notes the manuscript change numbered (3) but consider that it should read “in the discharge” and the reference to Part III should be to Part II.

Schedule 6, paragraph 13, page 38, lines 8 - 12 [extending to the Authority the power under section 74 of the Local Government Act 1972 for certain local authorities to alter their name]

The Department notes that the Authority has proposed an amendment in the draft filled Bill proposing that this clause be omitted. Defra is unaware of any way that this power could be exercised that would be acceptable to the Government, Broads Authority and local interest groups. In light of this the Government thinks it important that this clause is omitted.

Signed by 
Jonathan Shaw
Parliamentary Under Secretary of State, Defra

Date

2007