

STOP PRESS

Included in this edition of 'The Boater' is the second part of an article on the British Waterways Bill. As the Bill is likely to have its second reading in Parliament before the next issue of "The Boater" comes out, we would like to take this opportunity to urge all of our members to write to their MPs stating their objections to the Bill. If it is to be changed in any way we must get our objections known to as many MPs as possible. Most of them will probably not have any strong opinion on the Bill, which is politically fairly unimportant. We must make them aware of our strength of feeling, the effect it is likely to have on boat owners, and the consequent effect our votes might have at the General Election!

If you want information about the earlier part of the Bill which was covered in the first issue of "The Boater", but do not have one, copies can be obtained from:-

Jon Darlington,

111 Maas Road, Northfield, Birmingham, B31 2PP.

In order to cover our costs could you please enclose a cheque or postal order for 75p. Made payable to The National Association of Boat Owners.

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We are also enclosing in this issue of the Boater application forms which we hope you will give to other boat owners who have not yet joined us.

**NATIONAL ASSOCIATION of
BOAT OWNERS**

**TRANSPORT AND WORKS BILL EMERGENCY NEWSLETTER
SUPPLEMENT 5TH DECEMBER 1991**

Dear Member,

The second reading of the Bill went through unopposed last Monday 2nd December with hardly a mention of the Inland Waterways. The Bill now goes to a Standing Committee. The names were published today and are included below. The Standing Committee will be meeting on Tuesday 10th* December. It is likely that they will meet for more than one day. IT MAY NOT BE TOO LATE TO PUT YOUR VIEWS TO THE STANDING COMMITTEE BUT PLEASE WRITE NOW! *THEY ARE EXPECTED TO MEET ON TUESDAYS AND THURSDAYS FOR AT LEAST 2 WEEKS

WHAT TO DO

1. Write to as many of the MPs listed below as you are able to. If one of them is your MP make sure you write to him or her.
3. Letters can be addressed to HOUSE OF COMMONS, LONDON SW1A 0AA
2. MPs do not like circulars, so it is better not to just copy objections. It looks better if they are in your own words.
3. Despite not wanting all letters to be the same, there are particular arguments about the manner in which this Bill has been dealt with which we feel are very strong, and are well included. These are
 - a) To include Inland Waterways in the powers given to enable the building of rapid guided transport systems is quite incompatible. The waterways are used by the public in their own boats unlike the other transport systems where the public have no personal property interests.
 - b) There has been no consultation with user groups.
 - c) This Bill takes away all the normal rights and protections which people have had to object to abuses of power. (i.e. the Private Bill procedure).
4. Ask that all references to Inland waterways be removed from this Bill

SECOND READING

There were a few good general points put by MPs. A few of them are included here and could be used as arguments in your letters.

Bob Cryer: (in stating that the statutory instruments in the Bill (see note on SIs on other sheet) did not require an affirmative resolution) said "The Bill therefore provides Ministers with a great deal of power that will be subject to no scrutiny. It is going from one extreme to the other"

Mr A. Bennett: "Although we are now debating a piece of works legislation it represents a major reform of parliamentary procedure."

STANDING COMMITTEE MPs APPOINTED

Michael Latham (Chairman)

Harry Barnes

Henry Bellingham

Andrew Bennett

Michael Carttiss

Bob Cryer

Don Dixon

Bob Dunn

David Evennett

Ronnie Fearne

Barry Field

Neil Hamilton

Gwilym Jones

Patrick McLoughlin

Roger Moate

Sir Michael Neubert

Peter Snape

Nigel Steering

Neil Thorne

Joan Walley

NATIONAL ASSOCIATION OF BOAT OWNERS
TRANSPORT AND WORKS BILL
3RD DECEMBER 1991

The Transport and Works Bill, a Government sponsored Bill with all party support, was first published and introduced to the House of Commons on the 11th November 1991. The Bill contains some far reaching powers which, if left unamended, could have extremely serious repercussions for boat owners and the canal network as a whole. No white paper was produced and there was no consultation with user groups nor IWAAC as far as we know. Indeed no waterway user group was even aware of its contents till the middle of last week. The Bill received its second reading yesterday and is expected to go to its committee stage within 10 days where a Committee of MPs will consider details and suggest amendments. There is the possibility that we could influence the committee by writing to them with our objections. If you object to the Bill PLEASE WRITE. THE FUTURE OF THE CANAL SYSTEM MAY DEPEND ON YOUR RESPONSE TO THIS SITUATION.

Outline of the Bill

"A Bill to Provide for the making of orders relating to, or to matters ancillary to, the construction, operation or use of railways, tramways, trolley vehicle systems, other guided transport systems and inland waterways and orders relating to, or to matters ancillary to, works interfering with rights of navigation...."

Part 1 provides for a system of Ministerial orders in England and Wales (exercisable by statutory instrument) for authorising railway tramway and other guided transport schemes; canal works; and other works which would interfere with navigation. This provides a means of avoiding the need for special enactments for these purposes.

Parts 2 and 3 do not relate to Inland Waterways.

Objections to the Bill

These objections are as a result of an initial study of the Bill. They may not be the full extent of the implications.

1. The scope of the Bill is far too wide. The powers are not specifically limited to new works or new constructions, but include any constructions or any use of any inland waterway.
2. Protections that exist in the Transport Act 1968 can be nullified, as can any other protection in any other Act.
3. This Bill would allow for the removal not only of remainder waterways but of any waterway, and any rights of navigation which exist now could be terminated at a stroke. Furthermore any mooring agreements or leases of land for business or other use could cease.
4. Whatever is done as a result of an order could be done without any liability on the part of the navigation authority doing it.
5. The powers of BW could be altered in any way without any suitable means of objection by user groups.
6. The Secretary of State (SofS) will have the power to remove the rules under which his powers are made operational. Also the SofS will decide on objections to his orders. Such decisions should be by an independent person, or persons.
7. There are no provisions for individual objectors to call for a public inquiry. The only remedy available is to appear before a person appointed by the SofS. Appointments should be made independently of the SofS. There is no requirement that the SofS be bound by the findings of an inquiry or the person appointed to hear objections.
8. No period of notice for an order is specified.
9. An order under this Act cannot be challenged on its legality other than in a very limited specified way.

NATIONAL ASSOCIATION OF BOAT OWNERS
EMERGENCY NEWSLETTER
TRANSPORT AND WORKS BILL

DECEMBER 1991

Introduction: Note on Statutory Instruments (SIs)

The Bill, if passed, will enable the Secty of State to make orders on the passing of SIs which will give detail to the principles contained in the Bill. Enabling Acts implemented by Statutory Instrument are an increasingly common form of legislation allowing Parliamentary time to be spent on principles rather than detail, which speeds up the law making process. SIs have to be approved by Parliament but in many instances they only have to be laid before Parliament with no actual procedure for them to be discussed, and shall become law unless a resolution is passed to annul it within a few days. A debate is only guaranteed for the minority of SIs which have to be passed by an affirmative resolution. But even then the SI can only be accepted or rejected; it cannot be amended. A major problem is just being aware of the existence of an SI in time to be able to do anything about it.

It seems that the SIs DO NOT require affirmative resolutions, nor is any notice period specified.

Second Reading.

The Bill passed its second reading on the 2nd December unopposed. Our Committee member Vic Brown attended the House of Commons and reported that there were only 17 MPs in the Chamber (compared with 100 or so in the public gallery) and that only passing mention was made to the waterways. The other 600 odd MPs are presumably unaware of anything contraversial in the Bill.

Action by NABO

1. We have approached the Dept. of Transport (whose Bill it is) and are trying to arrange a meeting with them for next week.
2. We are planning to lobby the Standing Committee when it is appointed.
3. We are writing to MPs.
4. We are setting up a scanning procedure for Bills and SIs so that we get early warning of their existence.

Action by NABO members

1. Write to your MP and object to:
 - a) the manner in which this Bill has been dealt with.
 - b) the contents of the Bill.
2. Write to the members of the Standing Committee with the objections above. The names of the Committee appointments should be publicised either on 5th or 12th December.

The following NABO Committee members may be contacted if you want further information.

Vic Brown: phone: 0384 231432
Jon and Melanie Darlington 111 Maas Road, Northfield,
Birmingham, B31 2PP Phone: 021 475 6273
Dave and Jane Green: St Annes, Poundfield Road, Crowborough,
East Sussex TN6 2BG. Phone 0892 654763
Peter Sterrey: phone: 0332 671250

Details of and objections to the Bill

General

Section 3 empowers the Secretary of State (SofS) to make orders about canal works and other works which would interfere with navigation.

"The SofS may make an order relating to a) the construction or use of an inland waterway, B) the carrying out of works which interfere with rights of navigation..."

Objection: The scope is far too wide. The powers are not specifically limited to new works or new constructions, but include any constructions or any use of any inland waterway.

Section 5 introduces schedule 1, which exemplifies those matters which may be included in orders and provides for the modification by order of previous Acts of Parliament which refer to such matters.

s5(3) "An order under s1 or s3 may apply modify or exclude any provision of an act of Parliament...which relates to any matter to which an order could be made under these sections, and make such amendments repeals and revocations as appear to the SS to be necessary or expedient....to the order."

Objection: This clause means protections in the Transport Act of 1968 can be nullified, or indeed any other protection in any other Act. Objections to specific points in schedule 1 are detailed below.

SCHEDULE 1

1. The construction, alteration, repair, maintenance, demolition and removal of waterways, watercourses, buildings and other structures. Objection: this would allow for the removal not only of remainder waterways but of any waterway. It is clear that this is nothing to do with the creation of new waterways.

4. The creation or extinguishment of rights over land (including rights of navigation over water) whether compulsorily or by agreement. Objection: Any rights which exist now could be terminated at a stroke.

5. The termination and modification of agreements relating to land. Objection: any mooring agreements or leases of land for business or other use could cease.

8. The imposition and exclusion of obligations or of liability in respect of any acts or omissions. Objection: Whatever is done could be done without any liability on the part of a navigation authority.

9. The making of agreements to secure the provision of police services.

12. The charging of tolls, fares (inc penalty fares) and other charges, and the creation of summary offences in connection with non payment (or in connection with a person's failure to

give his name and address in accordance with provisions relating to penalty fares).

18. The alteration of the powers of any body established by or under an act of Parliament. Objection: This means that the powers of BW could be altered in any way without any suitable means of objection by user groups.

Section 21 empowers statutory bodies (the bill specifies BWB) which have powers to promote or oppose private bills to apply for or oppose orders under clauses 1 and 3 without the consent of the SofS in some cases.

General Rules and procedures for objections

Section 5 Empowers the SofS to make rules for the procedure which applicants for orders must follow, including rules about fees which are to accompany applications.

s6(4) "Rules under this section...may include provision authorising the SofS to dispense with compliance with rules that would otherwise apply...in any case where he considers it appropriate to do so." Objection: It is unreasonable that the SofS should have the power to remove the rules under which his powers are made operational.

Section 7 makes provision for the SofS to make orders on his own motion either for defence purposes or to ensure the safety of transport works which have been neglected or abandoned. Objection: It is unreasonable that without reference to anyone the SofS could make any order relating to any inland waterway which is neglected or abandoned.

Section 10 enables the SofS to make rules for the making of objections to orders and for the submission of written representation. It also covers the handling of objections. s10(2)"...the SofS shall not make an order without first taking into consideration the grounds of any objection in respect of which rules under this section have been complied with."

s10(3) "If an objection is withdrawn or appears to the SofS a) to be frivolous or trivial, or b) to relate to matters which fall to be determined by a tribunal concerned with the assessment of compensation, he may make...(an order)...without further consideration of the objection."

Objection: It is unreasonable that the SofS should decide on objections to his orders. Such decisions should be by an independent person or persons.

Clause 11 Empowers the SofS to cause a public inquiry to be held about an application for an order and applies subsections (2) to (5) of section 250 of the Local Government Act 1972 (Procedure and costs at inquiries) and provides for a hearing of objections as an alternative to a public inquiry.

s11(1) "The SofS may cause a public local inquiry to be held for the purposes of an application under s.6...."

s11(2) "The SS may give to a person who makes an objection in accordance with rules under s10 an opportunity of appearing before and being heard by a person appointed by the SS for the purpose"

s11(3) "Where an objection is made by a person within s11(4) who informs the SS in writing that he wishes the objection to be referred to an inquiry or dealt with in accordance with s11(2), then unless s10(3) applies the SS shall either cause an enquiry to be held or if he so determines cause the objection to be dealt with in accordance with s11(2)."

s11(4) "Persons within this subsection are a) any local authority in the area of the proposed order, and b) where the proposals include the compulsory acquisition of land any person who would be entitled to a notice under s12 of the Acquisition of Land Act 1981. Objection: There are no provisions for individual objectors to call for a public inquiry. The only remedy available is to appear before a person appointed by the SofS. Appointments should be made independently of the SofS. There is no requirement that the SofS be bound by the findings of an inquiry or the person appointed to hear objections.

Section 13 determines the way in which the SofS is to make or refuse orders. ie he can make an order with or without modification, or not make an order. Where a modification will in his opinion make a substantial change, he shall notify any person who appears to him to be likely to be affected by the modification, and shall give that person the opportunity to make representations to him. Objection: Why should the SofS only notify people likely to be affected by a modification to an order but not be required to notify people likely to be affected by the order itself?

Section 14 sets out the publicity to be given to the making or refusing of orders after determination under s13. Objection: No period of notice is specified.

Sections removing normal protection of property and environment.

Section 16 enables the SofS to direct that planning permission be deemed to be granted for any development approved by an order (subject to such conditions as may be specified in the direction).

Section 17 provides that any listed building consent required as a consequence of proposals in an order shall be referred to the SS instead of the local planning authority.

Section 18 amends section 12 of the Planning (Hazardous Substances) Acts 1990 so that the SS may provide for hazardous substances consent to be deemed to be given if a proposal in an order requires it.

Section 23 limits the grounds on which the validity of an order may be challenged in any court action and provides procedures.

s23(1) "If a person aggrieved by an order under s1 or s3 desires to question the validity of it, or of any provision contained in it on the grounds that a) it is not within the powers of this Act, or b) that any requirement imposed by or under this Act or the Tribunals and Inquiries Act 1971 has not been complied with, a person may apply within 42 days of the notice to the High Court.

s23(3) Subject to 23(1&2), an order under s1 or 3 shall not either before or after it has been made be questioned in any legal proceedings whatever. Objection It is unreasonable that an order under this Act cannot be challenged on its legality other than in the very limited way described.