

Association of
Inland
Navigation
Authorities

Empowered or hindered?

An assessment of the effectiveness of existing legal powers in enabling navigation authorities to achieve their full potential



About AINA

AINA is the industry body in Great Britain for those authorities with statutory or other legal responsibility for the management and operation of navigable inland waterways for navigation and wider uses.

There are 21 AINA members drawn from the public, private and third sectors. They include British Waterways and the Environment Agency which are publicly owned and receive grant-in-aid from government, in addition to the Broads Authority, national park authorities, local government authorities, private canal companies, internal drainage boards, and a variety of public and charitable trusts.

Most AINA members are defined as navigation authorities by their own Acts of Parliament (some of them centuries old) which regulate the operation of their waterways. Others, such as local government authorities, have inherited the status of navigation authority through various statutes.

Between them AINA members have responsibility for over 5,500 km of navigable inland waterways which include canals, river navigations and other large open bodies of fresh water.

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Foreword

At a time when navigation authorities' resources are under severe pressure, there is now a greater need than ever to provide hard evidence of the many social and economic benefits that the waterways can provide and the role that navigation authorities play affecting this. However, this report highlights the fact that many inland navigation authorities in Great Britain are, to a greater or lesser extent significantly hindered in their abilities to unlock the potential of their waterways by their archaic legislation, some of which dates back to the 18th century. The reality is that navigation authorities could achieve much more for the waterways if their enabling legislation was fit for purpose in a modern context and this report highlights the need for navigation authorities to be granted 21st century powers.

Legislative change is vital for public safety, for reducing pollution from boats, for funding and operational powers, for creating and indexing byelaws and for challenging historic and archaic requirements which have become burdens to navigation authorities. However, the use of the various legal processes by navigation authorities to achieve change, for example Private Bills, Transport and Works Act Orders and Harbour Revision Orders has proved to be largely inefficient, and very expensive with unreasonably long timescales. As a result of these legislative challenges, the impact of differing legal advice from government departments and repetitive consultation exercises, a more effective way of delivering legislative change is required.

The public and the waterway network are at risk. The need to be able to require modern-day construction and safety standards for craft, and compulsory third-party insurance for powered boats across all waterways operated by statutory navigation authorities is paramount. The need for navigation authorities to be empowered to generate income or improve on their existing earning capacity is vital especially in the current economic climate. Likewise, a legal framework which enables navigation authorities to create appropriate common byelaws and which allows the Courts to levy fines on an indexed scale for breach of navigation authority byelaws are vital to maintain and improve the general well-being of the waterways network and to maximise the public benefits that derive from them.

The opportunity now exists for Defra to assist in overcoming these difficulties and needs. This can be done in two ways; firstly through positive statements in the current refresh of its policy document for the inland waterways *Waterways for Tomorrow*, and secondly by working with the navigation authorities through AINA by supporting carefully considered initiatives, for example those linked to the practical use of appropriate draft public primary legislation and secondary legislative processes.

Stuart Taylor
AINA Chair

1. Introduction

- 1.1 The government's refreshed policy for inland waterways will present many challenges and will outline many opportunities for Britain's inland navigation authorities to play a major role in helping the waterways achieve their full potential to deliver widespread social, economic and environmental benefits to urban and rural communities across England and Wales. In addition, the on-going Defra-sponsored research programme into identifying and quantifying the benefits of the inland waterways being undertaken by the Inland Waterways Advisory Council (IWAC) will provide greater stimulus for navigation authorities to demonstrate their achievements.
- 1.2 For their part, navigation authorities' ability to make the most of the opportunities that exist will, in some cases, depend upon their enabling legal powers which in many cases are centuries old and are not 'fit for purpose' in a modern context.
- 1.3 The overall intention of this report is to assist government departments, principally through Defra, in understanding the management and operational difficulties encountered by navigation authorities *vis-à-vis* the archaic and inconsistent legislative framework within which they currently operate. In doing this, the report provides insight to some of the barriers which navigation authorities face in fulfilling their role as described above. It is AINA's intention to follow this report with a clear business case for legislative change. Thereafter, Defra will be better placed to consider appropriate ways by which navigation authorities may achieve modernised powers to reflect the contemporary needs of their waterways to meet their potential to deliver wide-ranging social, economic and environmental benefits.
- 1.4 For many years inland navigation authorities in Britain have been operating under the terms of archaic legislation. The last time that any public primary legislation was enacted affecting all the waterways across the country was the promotion and approval of the Transport Act 1968. Since 1968 several private acts have been passed for the benefit of individual waterways but for most navigation authorities their original statutes passed as far back as the 17th Century still, to a greater or lesser extent, apply.
- 1.5 With the rapidly changing world in which navigation authorities now operate, navigation authorities believe it is essential that their legislative framework is easily adaptable. As a consequence of the burgeoning amount of new regulations and guidance, particularly with respect to environmental and safety requirements, most navigation authorities are finding it difficult to enforce new procedures in order to comply with what is required or expected of them. Similarly, their ability to raise the income and funds necessary to operate, maintain and develop their waterways has also been constrained by the archaic legislative framework.
- 1.6 For the largest navigation authorities sponsored by Defra with grant-in-aid, it has become apparent that while considerable public expenditure has been incurred in trying to create, amend or adapt specific pieces of legislation so as to make their waterways 'fit for purpose' in a modern context, there is so far little to show for it – the British Waterways Act 1995 (despite its cost and the difficulties in attaining it) being the only successful outcome to date. With regard to the smaller navigation authorities there have been some legislative enhancements such as the Upper Avon Navigation Act 1972. However, for others a key problem is the fact that legislation has to be changed in order for them to be able to generate the income needed to change that same legislation! Such navigation authorities are therefore in a 'Catch-22' situation.
- 1.7 This report presents and reviews current plans or intentions among the statutory inland navigation authorities in Britain to modernise their governing legislation. It outlines their progress in obtaining legislative change, the reasons that such change is, or has been required and the processes that are being, or have been pursued to bring about amendments to legislation.

2. Background

- 2.1 Navigation authorities are operating in a rapidly changing world but the archaic nature of the legislative framework for Britain's inland waterways is not proving to be readily adaptable. This situation disadvantages not just navigation authorities but also those individuals and groups that rely on the waterways for business, recreation or leisure; and other partners and stakeholders, including government departments that work with navigation authorities to develop and promote the inland waterways to meet their potential to deliver wide-ranging social, economic and environmental benefits.
- 2.2 For this reason, navigation authorities believe that it is in the public interest for navigation authorities to be granted new powers, where appropriate, and have anachronistic ones replaced. It is important to tidy up the mish-mash of archaic pieces of legislation dating back over the last two centuries and more. Most navigation authorities, large and small, are affected in some way. For example, they need to be able to respond to changes in legislative and regulatory requirements with regard to safety to not only demonstrate a 'duty of care' but also deliver it by, for example, implementing the Boat Safety Scheme¹ and other reasonable controls.
- 2.3 Much of the background legislation, especially that which granted operating powers to the navigation authorities, lies with the enabling acts of each authority and dates back to the 17th, 18th and 19th centuries. Over the last 60 years major changes in ownership of the 90% or so of inland waterways which are today owned by British Waterways or the Environment Agency were bought about by:

- the nationalisation of many railway owned canals and some inland navigation companies in 1948 to form the British Transport Commission and the subsequent formation in 1963 of British Waterways
- the creation of the Regional Water Authorities in 1974, followed by the creation of the National Rivers Authority in 1989 and then the Environment Agency in 1996

2.4 However, despite these major legislative and institutional changes little has happened with regard to the development of specific legislation for the benefit of all navigation authorities in Great Britain.

2.5 The impact of the original enabling legislation conferred upon the various navigation authorities has been long lasting. In 1958 the Bowes Report which had been commissioned to review the constitutional basis of the management of the canals by the then British Transport Commission (which in 1963 became British Waterways) reported:

'The British Transport Commission at present operates under a mass of statutes, both public and private. The private Acts were for the most part inherited from the old canal companies, and though many have a common pattern and contain somewhat similar provisions as to navigation, accommodation works and some other matters, they differ widely as to such important matters as to the right of supply of water and the right to take water, and are full of protective clauses creating private rights of many kinds. Looked as a whole, they are both archaic and chaotic.'

Cont'd...

¹ The Boat Safety Scheme was jointly established in 1997 by the Environment Agency and British Waterways to promote safety on the inland waterways in respect of boats, their installations and components. Meeting these safety standards in order to obtain a navigation licence became a requirement for the Environment Agency and British Waterways at the same time. Subsequently, all other navigation authorities, who have the power to do so, also make compliance with the BSS a condition of boat licensing. To date, some 45,000 powered craft nationally have successfully met the requirements of the BSS.

The whole object of our recommendations with regard to the prescribed navigable system is to produce a modern national system of waterways operating under rules suitable to modern conditions. We have recommended that it would not only be very difficult to graft our recommendations on to the existing statutes, but that it would result in even greater chaos and substantially reduce the prospects of securing an efficient system. With regard to those of the British Transport Commission's waterways not included in the prescribed navigable system, we have concluded that the best course is to free them from the legislation to which they are now subject, but to impose upon the Commission certain minimum obligations, coupled with certain rights as to the supply of water, fishing, etc. But having regard to the likelihood of such waterways being the subject of redevelopment schemes at an early date we do not recommend any further attempts at defining or limiting private rights in connection therewith.'

(Bowes Report, British Transport Commission 1958)

- 2.6 Despite the Bowes Report, nothing changed with respect to enabling acts. Resultantly, navigation authorities today find themselves in a more litigious age still labouring under archaic legislation.
- 2.7 Some private legislation has been successfully obtained in the past, such as the Upper Avon Navigation Act 1972 which recreated the powers and rights of navigation for the Upper Avon and the British Waterways Act 1995 which established the application of boat construction standards, third-party insurance, emergency access rights and other powers. Both these pieces of legislation have been effectively used by their promoters in managing their waterways although some requirements of the original proposal had to be dropped or significantly amended as part of the consultative/hearing process. However, in both cases the processes were lengthy and, despite the considerable public benefits derived from them, the financial costs were disproportionately excessive.

- 2.8 Other powers have been obtained under more general items of legislation, such as the Southern Water Authority Acts 1982 and 1988 and the Anglian Water Authority Act 1977, which introduced new charging schemes and other powers for the Medway, Nene and Great Ouse navigations. These powers are now enforced by the Environment Agency as navigation authority, but they need updating and are not harmonised across the Agency's navigations.
- 2.9 In an attempt to overcome the difficulties being experienced by the navigation authorities and to reduce the pressure on parliamentary time the government of the day brought forward a secondary legislation process under the Transport and Works Act 1992. This allowed promoters to bring forward legislative proposals that would previously have required a private bill, but which could be dealt with in a far more expedient manner and granted by Order of the Secretary of State. Specific legislation was developed for the inland waterways industry under the Transport and Works Applications (Inland Waterways Procedure) Regulations 1993.
- 2.10 However, recent experience of the Broads Authority has shown that this process cannot be used where legislation could be achieved by means of a Harbour Revision Order under the application of the Harbours Act 1964. As a number of statutory navigation authorities are also statutory harbour authorities, e.g. Broads Authority, Bristol City Council, Exeter City Council and others, it appears that the Transport & Works Act 1992 is of little or no use to them. Neither can charging powers be achieved as the experience of the Environment Agency has shown in its application for an Order under the 1992 Act.

2/continued

2.11 In summary, three main issues highlight current problems being experienced by navigation authorities with respect to their enabling legislation:

- The need for all navigation authorities to adopt sensible and non-contentious common safety standards. Examples here include a requirement for third-party insurance for all powered craft, the adoption of boat construction and maintenance standards (through the Boat Safety Scheme) and the adoption of the Hire Boat Code² as currently being prepared by the Maritime and Coastguard Agency in partnership with AINA and the British Marine Federation.
- The need for greater consistency in standards of operation between navigation authorities nationally, based on accepted industry-wide good practice. Waterway user groups often claim to be disadvantaged through operational inconsistencies caused by divergent legislation. In the case of the Environment Agency, there has been the need to achieve consistency of standards and to harmonise approaches within the navigation authority, across its Thames, Anglian and Southern regions.
- The need for navigation authorities to generate income. This is essential for navigation authorities to discharge their statutory duties and to unlock the potential of their waterways to deliver widespread public benefits. Part of government policy is to encourage navigation authorities to increase their income from non-government sources. However, due to their archaic and out-dated enabling legislation some navigation authorities do not have the powers to levy reasonable fees and charges for the current use of their waterways.

² Code of Practice for the Design, Construction and Operation of Hire Boats, Part 1 Power Driven Boats. Maritime & Coastguard Agency, 2009.

3. Baseline Information: the navigation authorities and their current key legal powers

- 3.1 The appendices to this report present the baseline data generated from an AINA research project undertaken in 2008/09 on the current legal powers of navigation authorities.
- 3.2 To determine the current ownership, constitutional status and nature of operation of each AINA member – along with other baseline information required to assess the adequacy of their existing legal powers – a questionnaire was issued to each of them. The questionnaire is shown in Appendix 1.
- 3.3 Appendix 2 shows the legal status by which each AINA member performs its role as navigation authority, the total lengths/area of the waterways for which they are responsible and the types of waterways (e.g. river, canal, lake) along with the enabling acts and other key statutes which currently govern their management and operation.
- 3.4 It is evident from Appendix 2 that AINA members adopt the term ‘navigation authority’ by a variety of means – some are defined as ‘statutory navigation authority’ in their enabling and/or subsequent acts while others have acquired or inherited the status through local authority powers. The only reasonably well-established and generally accepted definition of ‘navigation authority’ in terms of national legislation is given in the Water Resources Act 1991 S221 (1) (2) *‘navigation authority’ means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.* This definition is also used in the Coastal Protection Act 1949 and the Environment Act 1990.

It is also evident from Appendix 2 that the legislation used to operate, modify and update navigation powers is archaic and piecemeal. In some cases legislation such as the Countryside Acts and the general powers acts of local authorities is used to manage navigation in the absence of a more appropriate statute.

- 3.5 Based on the information given in Appendix 2 and a deeper examination of the enabling acts and other relevant legislation, Appendix 3 shows, for each navigation authority, their abilities to control vessels on their waterways, along with their legal rights to generate income in relation to those vessels. Appendix 3 also indicates whether or not each navigation authority has powers to implement the requirements for construction standards such as the Boat Safety Scheme and to require third-party insurance for vessels on their waterways. Confusion does exist as to what the terms ‘licensing’ and ‘registration’ mean. This is compounded by uncertainties as to whether there is a public right of navigation on any particular river which can only be determined by reference to the enabling legislation and any subsequent legislation. However, the simple explanation is that where the waterway is artificial and the bed of it is in the ownership of the navigation authority, or where no public right of navigation exists on a river, then a licence is issued. This may be as a power granted by legislation or effectively a licence over land. Registration is the ability as a result of legislation for a navigation authority to register boats on the river(s) that it controls for management purposes only; ie if there is a public right of navigation.

The powers of navigation authorities to levy charges for fees, tolls, moorings etc is very varied and in some cases (such as on the Middle Level Navigations) totally lacking. With less public sector support available, navigation authorities need to be able to raise reasonable and adequate income from users of their waterways. A number of navigation authorities lack the ability to set construction standards thereby reducing risks to safety, and to require a minimum of third party insurance. In such cases, the fact that these controls are not mandatory requirements leaves the navigation authorities and their users in an invidious position in terms of the public demand for safe enjoyment of the waterways and the potential to promote claims for damage, injury and even fatalities.

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- 3.6 The navigation authorities' approach to the use of current byelaws and their ability to make new ones are set out in Appendix 4. As can be seen, a number of navigation authorities do not have powers to enable either the creation of new byelaws or to enable enforcement on their waterways; while a number of others aspire to update their byelaws, or to seek new ones, using a variety of legislation. The enforcement powers sought through byelaws would include requirements for boat construction standards and third party insurance which suggests that an opportunity exists to harmonise these controls which could be easily met if the powers sought by the various navigation authorities were considered and achieved on a unified basis.
- 3.7 The intentions of navigation authorities to modify, or aspire to review, their current legal powers are summarised in Appendix 5 which shows the variety of processes that are, or would, be used.

4. Processes for legislative change - options currently available to navigation authorities

4.1 In theory, a number of processes are open to navigation authorities who wish to modernise their legal powers. These processes range from the development of primary legislation through to the creation of local byelaws. The type of legislation that navigation authorities can use depends upon the nature of existing powers either on a national, or a local basis and upon the extent of the powers sought and whether these lie within the scope of the enabling legislation. In practice however, not all of these processes are available or practical. Exploring these options can be extremely time consuming and expensive. Even the exploration of these options may not be open to many of the smaller navigation authorities who do not have the resources of the larger organisations.

4.2 For any of these processes to work efficiently and effectively, it is crucial that full, up-front effective consultation with stakeholders is undertaken. This is a necessity in order to satisfy the consultative tests imposed by whatever legislative process is used.

4.3 The following options that are available to any navigation authority seeking legislative change are:

(a) **Public legislation** is that which is enacted by the government and submitted to the full parliamentary process before Royal Assent and its activation is permitted. Such legislation would suit the needs of the waterways best through government promotion of a Waterways Bill. This was recommended in the Fourth Report of the Environment, Transport and Regional Affairs Committee (ETRAC) in June 2001, which concluded:

“We agree that a revision of legislation is required and recommend that the Government introduce a Waterways Bill”

The Government, in responding to ETRAC’s recommendation promised to have a review when time permitted.

IWAAC pressed for a review in its 2006 report, *The Inland Waterways: an Undervalued Asset* and reminded Government of its promise when IWAAC published *The Benefits of Sustainable Waterways* in 2003. However, the current thinking is that with many competing pressures for Parliamentary time, it is highly unlikely in anything other than the very long term that any matters pertaining to navigation authorities would be progressed in their own right due to their low legislative (and electoral) importance.

However, if a compelling business case could be made to Defra or any other sponsoring government department such as the Department for Transport, it is conceivable that small legislative changes could be attached to other planned legislation, the focus of which may lie outside the inland waterways. An example of this occurred when legislative change was required to change the Inland Waterways Amenity Advisory Council (IWAAC) to the Inland Waterways Advisory Council (IWAC) and to broaden its scope of activities. This was done by the insertion of five clauses into the Natural Environment and Rural Communities Act 2006.

(b) **A private bill** is a submission to Parliament for a private Act to be granted for the benefit of a promoter/organisation to gain the necessary powers to conduct its business. The bill is submitted to Parliament and goes through a series of processes involving consultation and committee stages before being approved by Parliament to gain Royal Assent. The last major navigation bill to follow this route was the British Waterways General Powers Bill which became the British Waterways Act 1995. Currently, the Broads Authority Bill is nearing the end of the same process.

To reduce the amount of parliamentary time spent in dealing with private bills, a new process was developed by way of the Transport and Works Act 1992 which allowed such proposals to be treated as secondary legislation.

However, the range of powers in this Act was limited and consequently a Private Bill may be the only way forward to include all the necessary changes that a navigation authority would wish to promote.

- (c) **Secondary legislation** is where Parliament grants ministers the ability to make powers, provided that certain consultation procedures have been undertaken. Many items of legislation are dealt with in this way and Ministerial Orders may be approved to cover a great variety of day-to-day matters as well permitting new operations and changes to be authorised. Powers may also be granted within existing legislation to allow changes to be made such as within the Broads Authority Act 1988 which allows changes to the membership of the Authority to be made locally.

4.4 A number of options using secondary legislation are available specifically for use on inland waterways:

- (a) **Harbour Revision Order.** Depending upon the status of the organisation and its antecedent powers, the use of a Harbour Revision Order (HRO) may be used. This is very common for use within ports and estuaries and can be used to create operational areas, the power to make 'Directions' and to introduce standards and control mechanisms such as Vessel Traffic Systems. Currently Exeter City Council is promoting an HRO for the creation of a new management body for the River Exe. However, the application of an HRO is limited in that the appropriate government Minister has to be satisfied that it is in the interests of improving, maintaining or managing the harbour in an efficient and economical manner. In the case of the current Broads Authority Bill, it is estimated that only approximately 10 per cent of the proposed powers could have been delivered purely using an HRO due to the inherent limitations in the scope of this piece of secondary legislation³.

- (b) **Transport and Works Act 1992.** This Act created its own SI 1992 No 2902 Transport and Works Applications (Applications and Objections Procedure) Rules 1992 which permits the development of canals and inland waterways, creates the powers to operate and/or create new waterways or modify bye-laws and other powers.

However, the experience of the Environment Agency during its application process for a Transport and Works Act Order (Case Study 2) has shown that this process does not allow for the creation of charging provisions.

- (c) **Transport Act 1968 Section 113.** Legal advice has previously been given to navigation authorities on the powers contained in Section 113 of the Transport Act 1968 which enables the Minister, on application of any qualified body, (ie a navigation authority) to grant byelaw making powers in relation to a specified waterway for such purposes as may be specified in the Order. However, the legal opinion is divided on this matter as Defra lawyers have insisted on exercising caution by stating that Section 113 Orders cannot confer byelaw-making powers for matters not already explicitly referred to in the primary enabling legislation relevant to the waterways concerned. If this more negative legal opinion continues to prevail in future, Section 113 could become an attractive target for a Legislative Reform Order (see below) which could conceivably make that Section fully 'fit for purpose'

- (d) **Legislative and Regulatory Reform Act 2006.** This Act was introduced to enhance and develop regulatory reform provisions in earlier legislation. This was drawn up with the purpose of promoting the principles of better regulation, removing or reducing burdens resulting from legislation and making provision for the exercise of regulatory functions.

³ House of Lords, Minutes of Evidence taken before the Select Committee on The Broads Authority Bill, Day 7, 11 February 2009

The powers contained within the Act allow for abolishing, conferring or transferring, or for providing the delegation of functions of any description; also for amending or repealing any enactment. In carrying out this process certain principles should be adopted so that it is done in a transparent, accountable, proportionate and consistent manner. The 2006 Act does allow penalties to be increased provided they are within defined limits. It also operates within certain limits so that it strikes a fair balance between public interest and the interests of the person being adversely affected by it, and it does not remove any right or freedom.

Use of this statute has yet to be tested by any navigation authority. However, it is conceivable that this option could be used in conjunction with Section 113 of the Transport Act 1968 whereby a Legislative Reform Order (LRO) under the 2006 Act could modify Section 113 of the Transport Act 1968 such that the Ministerial Order could include powers to create byelaws. If this were to be pursued, a case could be made for the Order to include the levy of reasonable fees and charges for the use of waterways. A case could also be made for such an Order to include revised, more stringent penalties for the contravention of byelaws under Section 113 of the 1968 Act.

- (e) **Section 66 of the Land Drainage Act 1991.** Another means of improving the process is the possible adoption of model byelaws which could then be introduced with much less consultation and subsequent wasteful debate in a manner similar to that used for the application and approval of local land drainage byelaws by Defra under Section 66 of the Land Drainage Act 1991. Within these powers an internal drainage board or local authority may make powers regulating the use and protection of any watercourses, etc vested in them.

Effective and efficient use of such powers by the Middle Level Commissioners in discharging their flood defence function is described in Case Study 5. Within the 1991 Act, protection is automatically given to the operations of a navigation or harbour authority. The converse could equally apply if such a system was introduced for navigation authorities so that the interests of any public body involved with the operation of a watercourse would have a similar degree of protection.

It is conceivable that the byelaw-making powers contained within Section 113 of the Transport Act 1968 could be used for the granting of navigational byelaws.

- 4.5 Appendix 5 indicates that over the past decade or so a number of navigation authorities have embarked on one or more of the above processes for a variety of purposes. The use of any of these legislative processes is very expensive in terms of staff time, the time spent by stakeholders, consultees and especially in legal fees as incurred in using parliamentary agents and other legal professionals.
- 4.6 Table 1 shows, for a number of navigation authorities, the estimated costs incurred by them in pursuit of legislative change over the last decade or so using the various legal processes discussed above. However, it should be noted that these costs do not include staff time and that therefore, the true costs are significantly greater. Where known, their income, directly attributable to navigation is also shown.
- 4.7 The following case study examples expand on the information given in Table 1 to show, in more detail, the experiences of certain navigation authorities to date. In each case they outline the reasons for legislative change, the 'pros and cons' of the various legal processes followed, and the timescales and costs involved.

TABLE 1 - Estimated costs in achieving legislative change

NAVIGATION AUTHORITY	POWERS SOUGHT	LEGISLATIVE PROCESS USED/ INTENDED TO BE USED	ESTIMATED COST	ANNUAL NAVIGATION INCOME (2007/08)
Broads Authority	Construction Standards (Boat Safety Scheme), Third Party insurance, hire boat licensing, registration of craft in adjacent waters and powers to control water skiing	Private Bill	£500,000	£2.6million
Environment Agency	Apply best practice safety principles, provide consistent regulatory framework for the registration of craft and application of conditions, and to harmonise its regulatory approach to other navigation authorities	Transport & Works Act Order	£1.0million	£28.6million
British Waterways	Construction Standards (Boat Safety Scheme), Third Party insurance, entry to third party land, removal of vessels, provision and control of moorings etc	Private Bill		£219.9million
Middle Level Commissioners	Registration of craft, Construction Standards (Boat Safety Scheme), Third Party insurance, control of moorings, income generation, repeal of archaic powers	Transport & Works Act Order/ Model Drainage Byelaws	£50,000	£Nil
Conservators of the River Cam	Public safety of navigation, issuing of licenses for works, permitting closure of the navigation, updating of current byelaws (speed limits) etc	Byelaw revision		£400,000
Bristol City Council	To update and modernise enforcement powers	Harbour Revision Order	£20,000	£2.0million
Exeter City Council	Creation of new Estuary Navigation Authority for the River Exe	Harbour Revision Order	Not known	Not available
Lake District National Park Authority	Extension and application of speed limits	Byelaw revision and public inquiry	£436,000	Not available

Case Study 1: Broads Authority

Objective

In the mid 1990s the Broads Authority decided that in the interests of safety and to discharge its duty of care that it should introduce the application of the Boat Safety Scheme (BSS) to the craft registered within its waters.

Background

The Broads Authority was set up by the Norfolk and Suffolk Broads Act 1988. This Act sets out the duties and powers of the Broads Authority for its three general statutory purposes which are to conserve and enhance the natural beauty of the area, promote public enjoyment and protect the interests of navigation.

It was intended to obtain the powers to enforce the Boat Safety Scheme by making a byelaw under the Norfolk and Suffolk Broads Act 1988. However the Department for Transport (DfT), as the sponsoring department, advised the Authority that it did not have the power under the 1988 Act and that a Harbour Revision Order (HRO) would have to be submitted to the DfT to obtain the powers.

In 1998 a draft HRO was submitted but the DfT then advised that this was not an appropriate process.

In 1999, having reviewed the situation, the Authority suggested that appropriate byelaws could be drafted under the 1988 Act. The DfT eventually replied that some, but not all of the Authority's proposals could be achieved by byelaws. It also suggested in particular that the BSS could be adopted as a matter of Authority policy.

In 2000 the Authority suggested that a Code of Practice could be developed to support the introduction of the proposed byelaws under its own powers but the DfT was of the opinion that byelaws would not be required to enforce the Code of Practice and thus the BSS.

By 2002 the Authority arranged to meet DfT officials to progress matters. The DfT expressed concerns that the BSS would involve the Boat Safety Certificates being issued by a third party rather than by the Authority. This was a new issue.

In 2003 The DfT formally advised the Authority that the byelaw route was not the way forward. Its suggestion was that the 1988 Act should be amended and by means of some very specific byelaws that would have to be drafted, the BSS could be introduced until such time as the amended Act was in existence.

In 2005 the Authority sent an amended draft of the byelaws to the DfT. However, the DfT's view was not very favourable.

In late 2005 a further set of amended byelaws were submitted to the DfT by the Authority.

In 2006 the DfT advised the Authority that it believed that the Secretary of State would not be able to confirm the byelaws and that the BSS conditions were more akin to a Code of Practice!

Case Study 1/continued

Legal process(es)

Following further consideration and discussion with Defra, and also bearing in mind the further need of the Authority to respond to the Port Marine Safety Code, the MAIB⁴ report into the Breakaway V incident and to modernise its legislation, the Authority was advised and agreed to promote a Private Bill. This would allow the Authority to take the powers to introduce the Boat Safety Scheme directly, alongside other powers.

As a result of the initiation of this process the DfT agreed to confirm the BSS byelaws as an interim measure, allowing the Authority to introduce the BSS in 2005, recognising that the Byelaws would be repealed on Royal Assent of the Bill and that future variations could be dealt with under the Bill provisions.

The House of Commons Committee took place 17/18 July 2007 and passed the Bill with some amendments arising from the Defra departmental report which had been considered by the Committee. Changes were also made to give effect to the legal agreements which the Authority had entered into with boating interests.

The third reading in the House of Commons took place 7th May 2008. A second reading in the House of Lords took place 8th October 2008. The House of Lords Committee commenced 19th Jan 2009, and considered the 12 private petitions and 1 organisational petition over a period of 7 days. The Lords Committee passed the Bill, with a few minor drafting changes, and their report gave further advice to the Authority to consider. The Authority is currently awaiting a date for the Third reading debate in the House of Lords, prior to the Bill's return to the House of Commons.

Royal Assent is hoped to be received in the summer of 2009.

Costs and Timescales

Legal Costs for the drafting and making of Boat Safety Standards Byelaws, and the drafting of the Private Bill to date are as follows:

	General Account	Navigation Account
2005/06	£34,301	-
2006/07	£153,056	-
2007/08	£100,000	£46,923
2008/09	£120,000	£60,000
Total	£407,357	£106,923

Total costs to date are £494,280, of which the Authority's Navigation Account has contributed £106,923 (16.8%).

The final bill is likely to be approximately £550,000. However, these costs do not take into account staff time, which over the period of the last 15 years since steps were first taken to seek to introduce the Boat Safety Scheme is likely to exceed a further £200,000.

⁴ Marine Accident Investigation Branch (MAIB) is an executive agency of the Department for Transport. It examines and investigates all types of marine accidents to, or on board, UK ships worldwide, and other ships in UK territorial waters, including boats on inland waterways.

Case Study 1/continued

Results

The requirements of the BSS were eventually introduced in the Broads more than 10 years after the process was initiated. Following the process adopted by the Authority of working with, and consulting users, no objections were received when the byelaws were published for consultation, and the introduction has been managed over a phased three-year period, with 2009/10 being the final year for all craft in the Broads to comply.

The Private Bill process, initiated in 2005, is still underway with Royal Assent expected summer 2009. As well as giving primary legislation for the introduction of Construction Standards, which will allow any future revisions of the Boat Safety Scheme to be updated within the Broads in a speedy manner, the Bill also includes provisions for the making of general and special directions, introduction of third party insurance, hire boat licensing, registration of craft in adjacent waters and powers to control water skiing, alongside provisions to modernise the 1988 Act.

Lessons Learned

The process involved in achieving new powers to introduce provisions which were relatively non-contentious was complicated by the difficulties in achieving consistent advice from the DfT, given changing personnel over the period.

Early consultation and the support of the boating organisations including the Royal Yachting Association, the British Marine Federation and the Inland Waterways Association have been extremely valuable in securing agreements with the majority of toll payers on the Broads.

Any outstanding objections, regardless of the nature of the objections can incur huge cost and delays, and effort should be taken as far as possible to secure agreements without compromising the fundamental objectives of the proposed legislation.

No work should be programmed or published to implement the provisions of any legislation requiring approval by the Secretary of State, or Royal Assent is received, given the high risk of delays and slippages, which can damage the credibility and reputation of the sponsoring body.

Case Study 2: Proposed Environment Agency Transport & Works Act Order

Objective

The Environment Agency needs this Order to:

- to amend its legislation to provide a consistent regulatory framework in relation to the registration of craft and the conditions attached to that registration;
- to harmonise its regulatory approach and consider harmonisation with other navigation authorities without further legislative changes;
- to apply best practice safety principles to all its inland waterways.

Background

The Environment Agency has responsibilities for the river navigations of the Great Ouse, Nene, Welland, Glen, Ancholme and Stour in East Anglia; the Medway in the Kent; the non-tidal Thames; and, the Wye and Lugg in Wales. These waterways are governed by four sets of Regional Statute that provide the Agency with different and inconsistent powers and regulatory controls.

Work commenced on a Transport and Works Act Order in 1992, although the formal Transport and Works Act process only started in October 2004.

Legal Process

An order was sought under the Transport and Works Act Order as it was considered that this instrument could be used to harmonise both the charging schemes and the regulatory regimes within the Environment Agency's control. Legal opinion changed following the submission of an amended draft of the Order in 2006. The proposed charging scheme provisions were considered *ultra-vires* to the Transport and Works Act.

Following a period of legal discussion, the Order was further amended to remove the charging provisions and was resubmitted in September 2008 for determination.

In developing the Order the Environment Agency has been required to carefully consider and demonstrate the impact of the proposed Order, to enable the Government ensure that the regulatory burden is kept to a minimum.

This work fell into two key areas: Impact Assessment (IAs) and Public Consultation.

Impact Assessments provide a structured assessment to promote understanding and knowledge of the impact and consequences of the regulatory proposal. This enables the Government to identify which proposals will achieve their policy objectives, whilst minimising costs and administrative burdens.

Following discussion and amendments, the Impact Assessment for the Environment Agency's proposed Order was signed off by Defra economists in December 2008.

Public consultations are an essential part of the regulation-making process, providing a voice to those who might be affected by new regulations and enabling their views to be considered and accounted for.

As part of the application process for an Order, the applicant is required to publish notice of the application and a period is allowed for objections to be made. This process was duly followed by the Environment Agency in early 2005.

A total of 21 objections were received during the consultation process. The Environment Agency discussed these objections with a forum of user and business representatives that was specifically formed to advise on and assist the development of the Order. A series of amendments and revisions were made that facilitated the withdrawal of all but 4 of the objections.

Case Study 2/continued

The Department decided that whilst the outstanding objections did not require a public inquiry and that the objectors should be invited to make further written representation for consideration by the Secretary of State. The written representation process was completed in June 2006.

In this manner the Environment Agency developed an Order that was acceptable to the majority of its customers and business.

Costs and Timescales

The Environment Agency estimates that the development of the Order has cost around £1million in legal and procedural costs and in time for the Agency and the stakeholders involved. Some 50% of these costs related to the progression of the aborted charging provisions.

The Impact Assessment details the estimated costs and benefits for the proposed Order over 20 years. The future compliance costs for those affected by the Agency's Order total some £460,000, whilst the benefits provided total around £1,450,000. These benefits largely relate to improved safety and insurance provisions and reduced process administration costs.

Had the vires issue not arisen, the Environment Agency estimates that the Order would have been made by the middle of 2007 (2-3 years of formal process). Dealing with the vires issue extended this by two years.

Results

At the time of writing the Environment Agency was awaiting approval from the Defra lawyers that the Order could be put before the Secretary of State for determination.

Lessons Learned

The Environment Agency has encountered a number of issues from which lessons can be learned. These are summarised as follows:

Staff Changes – There have been a number of changes in the staff progressing the Order since 1992 within the Environment Agency and Defra. Full documentation, knowledge and understanding have not always passed in the handovers when staff have changed.

Interpretative Changes – As staff have changed, so has their interpretation on various elements of the Order. The most notable example relates to the inclusion of articles to harmonise the Environment Agency registration charging regime. At the outset of the Order, Environment Agency interpretation was that it required an legislative tool to amend the Thames registration charging scheme and to enable charging for registration of craft on waters adjacent to the Thames. Defra guidance at the time was that a Transport and Works Act Order could be used for this purpose. However changes in Defra legal staff resulted in a change of opinion in October 2006, such that the Order could not be used for this purpose.

Since amending the Order, the need to use a legislative tool to make the required changes to the Thames regimes has been challenged. The Environment Agency considers that the initial interpretation of its officers was not correct. This will be tested once the Order is made.

Procedural Changes - There have been a number of procedural changes that have had to be accounted for during the 16 year development of the Order. The most notable of these is the amendment to the Regulatory Impact Assessment Procedures.

Case Study 3: British Waterways Act 1995

Objective

British Waterways' objective was to update a number of its operational and maintenance powers to improve the way it ran the network, particularly in terms of health and safety. There were a number of inadequacies in the powers BW had as the majority of its powers stem from often outdated and archaic enabling acts which came into force as early as the fifteenth century in the case of the River Lea Navigation. It was well recognised that such powers needed to be updated in line with twentieth century practices. This led in 1990 to the promotion of a Private Bill to achieve the following:

- power to enter third party land to carry out works of maintenance and emergency access for repairs;
- the need for compulsory third party insurance for vessels;
- the removal of vessels to permit works;
- the provision and control of moorings;
- the power to establish undertakings;
- the introduction of construction standards for vessels (the BSS); and
- the elimination of certain enabling act rights benefiting adjacent landowners.

Background

Even before the creation of BW in 1963, the need to deal with outdated enabling act rights had been identified. However even though recommendations had been made in the preparation of the 1968 Transport Act nothing was done to resolve this.

Concern over the lack of access to carry out statutory works was also hindering the refurbishment of the canal network from early 1980's onwards and in an emergency BW had no powers whatsoever to gain access onto land. This was in complete contrast to the powers that the then British Railways had and a number of other statutory undertakers. The need to improve the quality of craft on the system by the introduction of construction standards was long over due. The need for third party insurance was considered essential in this day and age, especially where no skills were required to operate craft. The ability to manage moorings in a sensible manner was also identified as a need if BW's network and land were to be expanded and developed.

Intended legal process

Due to the specific 'private' nature and range of powers required, BW had no option but to use the Private Bill route. A Public Bill could have been used if the powers had been extended across other navigation authorities and were not seen to be contentious. The Works Order process was not in being when the Bill was first promoted and it would not have been useable in any event due to the scope of powers required.

The then Secretary of State authorised the promotion of a clause to extinguish the rights without compensation. This was accepted by the House of Lords Bill Committee but because of publicity, a number of organisations, developers and landowners objected to it for a number of reasons and it had to be withdrawn.

Further concerted action was undertaken by other individuals and organisations regarding the craft and operating clauses and considerable time was spent in negotiating and entering into undertakings to progress the Bill. Several powers were watered down or removed as a consequence.

Case Study 3/continued

Costs and Timescales

The cost was considerable due to the lengthy involvement of Parliamentary Agents, Counsel and advisers. The internal staff cost was extremely great due to the need to enter into negotiations with various organisations to attempt to persuade them to remove their objections. The whole process took at least five years.

Results

A workable Act was achieved in that various operational measures were approved. However the loss of powers relating to the removal of certain enabling act rights was regrettable, but BW has developed methodologies to manage most of the difficulties.

The undertakings that were made regarding continuous cruising etc have proved to be ineffective and as a consequence problems have grown.

The issues that were to address construction standards and third party insurance have proved very worthwhile, but if these had been adopted across UK waterways generally, much subsequent time and effort could have been saved by other organisations.

Lessons learned

The need for a comprehensive approach to the formation of powers by all the navigation authorities would strengthen the case for matters to be dealt with as primary legislation.

The burden of working under antiquated requirements is significant and is a cost, both opportunity and real, to the navigation authorities and support to overcome this must be forthcoming from Government.

Case Study 4: The need for regulatory changes on the River Cam

Objective

In the aftermath of having been subject to legal challenge for the last two years, the Conservators of the River Cam, the independent navigation authority for Cambridge, require a streamlined and cost-effective process for the amendment of existing byelaws and the introduction of new ones.

Background

The Conservators have powers under the 1922 River Cam Conservancy Act to licence obstructions in the river (such as pontoons for the mooring of vessels) and works to the river banks, but these can only be issued to the owner or occupier of the land. In 2006 two separate applications were received by the Conservators from different parties to modify berthing arrangements at the same location. The area concerned was a public quay being used by competing commercial punt hire businesses. The quay, with highway status, attracts large numbers of tourists and is used heavily by commercial punt operators and their touts offering tours of the College Backs.

The first application in 2006 was received from a large and established punt hire company which wished to add a pontoon to make a continuous walkway along the length of the quay under the same terms of its existing licences previously granted by the Conservators. These licences had been re-issued in 2005 for a five-year period and their conditions prohibit other operators from 'plying for trade' from the pontoons.

Over the past decade or so there has been a marked increase in the number of mobile independent commercial punt hire operators competing with the larger, established operators. The intended infill pontoon would have effectively precluded other operators from using one of the few landing sites in the city.

Cambridge City Council objected to the notion of a business monopoly and submitted its own application to the Conservators to firstly, place a pontoon in the same location and subsequently, to modify a half-flight on steps mid-way along the quay to allow for safer landing by members of the public. The punt hire company argued that it had rights of occupancy and that the City Council could not prove ownership of the land. Furthermore, the company submitted a land ownership claim by adverse possession to HM Land Registry to secure its rights to use the site in perpetuity. The City Council followed by also submitting a claim to HM Land Registry.

Consequently, the Conservators had become embroiled in the dispute between the two parties and, under pressure from both applicants to make a decision in their respective favour, the Conservators had to seek legal advice from Counsel and Leading Counsel. The Conservators were concerned that if the wrong decision was made, either of the applicants could carry-out their threats to instigate judicial review proceedings against them. Therefore, the Conservators needed to know if they had sufficient powers to grant or deny licences at this location, or elsewhere, and whether additional powers were required to prevent such costly, and potentially financially ruinous, legal challenges from recurring in the future.

Legal process(es) followed

A long and complex chronology of events from May 2006 to present has involved extensive legal work on behalf of the Conservators by Counsel and Leading Counsel in examining the intricacies of the Conservators' enabling legislation and byelaws in respect of the claims made by the two applicants. In addition, considerable time and costs have been incurred by the Conservators and in addressing these issues, both directly through meetings and 'legwork' and also indirectly, through the engagement of solicitors to assist in determining the applications, proof-check correspondence and perform the role of intermediary between the Conservators and Counsel/Leading Counsel.

Case Study 4/continued

Costs & Timescales

Some of the Conservators' general legal costs are difficult to disentangle from the professional fees listed in the accounts since the same firm of solicitors are used in non-registration prosecution proceedings. However, the direct fees incurred through dealings with Counsel/Leading Counsel are tabulated below.

Financial year	Total income £	Legal costs associated with Quayside and pontoon
2006/07	320,000	7,108
2007/08	370,000	6,800
2008/09	370,000	2,577

It is difficult to estimate the effects of these legal difficulties on the Conservators' staff time and administration budget. The urgency of exchanges between the different parties' solicitors from late 2006 to mid-2007 took up most of the Chairman's and River Manager's time.

Results

Despite, the considerable amount of time and money spent on these issues, the dispute over ownership of the land remains unresolved. The Conservators, as a corporate body, have no remit for ensuring public safety on the navigation. Land ownership takes precedence when granting licences. At present, if an applicant cannot establish that he either owns or lawfully occupies the land immediately adjoining the relevant area, he cannot succeed in his application to complete works or place an obstruction in the river according to the definitions of the 1922 Act.

The applicant must show that he is entitled to possession of the land by virtue of an estate or interest held by him, such as an easement, or by the explicit or implied consent of the owner of the land.

Lessons learnt

The process has identified that the Conservators need to be able to issue licences to third party applicants, but that the powers vested in them through either the 1922 Act or the existing byelaws are defective. Leading Counsel did not believe that there would be any prospect of obtaining fresh powers by new legislation as this would require a private bill, a very expensive step to take requiring specialised Counsel and a parliamentary agent. The Conservators have been advised not to pursue this route as it could be very expensive (minimum estimate £100,000). The Conservators are entirely self-funded and therefore vulnerable to unexpected financial strains. Conservators are unpaid volunteers and the hosting of additional Special Meetings (open to the public) or sub-committee group meetings privately makes additional demands on the committee membership which are not welcomed.

The legal advice received has bolstered confidence in the Conservators' using their byelaw powers to resolve some of these difficulties. The Control Officer⁵ is at rights to issue directives using byelaw 3⁶ to regulate all aspects of navigation. The Conservators however, must be mindful that they have general duties to ensure that no-one interferes with the public's right to enjoy the river or riverbank (byelaw 13.3) or limit the general right of free navigation (byelaw 13.5).

⁵ River Manager

⁶ Byelaw 3 reads 'the master of every vessel shall obey and conform to the directions of the Control Officer relating to the 'use, navigation, anchoring, berthing and mooring of such vessel.'

Case Study 4/continued

Licence fees (some £18,000 annually) are an important source of income to the Conservators. The Conservators acknowledge that the existing licences granted to commercial punt operators may be defective, but they will be allowed to run their course until 31 March 2010 after which there is potential for a considerable loss of licence income for the Conservators if the land ownership issue is not resolved.

The Conservators have also recognised that there are other sections of its enabling legislation and byelaws which require modernising at some future date. For example, the Conservators may suspend (i.e. close) navigation for works using the 1851 Act but this is only for works arranged by themselves, not third parties. Contractors commonly complete works on the navigation on behalf of land owners (e.g. the building of a new cycle bridge at Riverside by Balfour Beatty on behalf of Cambridgeshire County Council) and such licences must be written providing permission to an agent acting on behalf of the landowner.

The byelaw bathing regulations on the upper river are also seen to be rather outmoded, plus the speed limits quoted in the most recent set of byelaws are curiously given in kilometres per hour which are out of the norm for other navigations across the country. Further legal advice is required on the Conservators' powers to revoke or withdraw the rights of an individual to use the navigation when he/she has refused to comply with the byelaws, particularly repeat offenders.

Case Study 5: The experience of the Middle Level Commissioners in obtaining new powers for flood defence and navigation functions

Objectives

The objectives of the Middle Level Commissioners (MLC) in wishing to obtain their proposed new powers were two-fold. In the case of the flood defence function and the land drainage byelaws, the objective was to replace the byelaws previously made by the MLC in 1875 with more modern subsidiary legislation, to reflect the changing needs and requirements of the function since the nineteenth century. In the case of the navigation function, the objective was not only to replace the existing navigation byelaws, also made in 1875 but also to seek an order under the Transport and Works Act 1992 repealing some sections of the legislation governing the Commissioners that dated back to the eighteenth century.

The purpose in each case was therefore to have modern up to date provisions governing each of the MLC's functions, which would more properly reflect the changing needs of the function since the original enactments.

Background

The MLC are a statutory flood defence and navigation authority situated within the fens of Cambridgeshire and Norfolk. The main Middle Level system consists of 120 miles of flood defence channels, of which 100 miles are statutory navigations. The local Acts governing the MLC date back to 1663 but the most significant for present purposes are the Middle Level Acts 1810-74 and the Nene Navigation Act 1753.

The MLC were constituted in their present form in 1862. Their land drainage/ flood defence functions were derived from the Middle Level Acts and their navigation function from the Middle Level Acts of 1862 onwards and the Nene Navigation Act. The Middle Level Acts laid down a suite of powers and some duties for flood defence, including the ability to tax land within the Middle Level area and to make byelaws. While the Act of 1862 constituted the MLC also as the navigation authority for the MLC system, it did not greatly amend the other provisions contained within the Nene Navigation Act and in

particular did not permit non-commercial traffic to be charged for using the navigation. The tolls set for commercial traffic were also specifically set by the legislation, soon became overtaken by inflation and were not able to be changed under the provisions of the legislation.

Although byelaw making powers were conferred under the Middle Level Act 1874 in respect of both of the MLC functions and byelaws under both functions were duly made the following year, the purposes for which the byelaws could be made were restricted by the enabling provisions, sections 47 and 51 of that Act.

By the latter half of the twentieth century, the position in relation to the flood defence function had been affected and, to a large extent, modernised by the enactment of public general Acts covering the land drainage/flood defence function. The present Act, the Land Drainage Act 1991 confers a suite of more modern powers including the ability to raise drainage rates/special levies to cover the cost of the flood defence functions and powers to enter land for the purposes of this function. The MLC have therefore increasingly used these powers in preference to the more archaic powers conferred under their local legislation. The 1991 Act also contains wide byelaw making powers, section 66(1) of that Act being as follows "... an internal drainage board may make such byelaws as they consider necessary for securing the efficient working of the drainage system in their district or area".

No equivalent national legislation relating to the general navigation functions has been enacted and therefore, as regards this function, the MLC's local legislation still governs the position.

In the late 1980's the MLC decided to begin the process of updating their flood defence byelaws and seeking to update both their navigation byelaws and their enabling legislation as a navigation authority. Two very different paths have been trodden in undertaking this process.

Case Study 5/continued

Legal Processes

1. Flood Defence

The Ministry of Agriculture, Fisheries and Food (now Defra) took the decision, following the passing of the 1976 Land Drainage Act to assist flood defence authorities in their byelaw making by drawing up model byelaws which they recommended such authorities to adopt. Where such byelaws were adopted, while the formal advertising procedure prescribed by the legislation would still have to be followed, the byelaws had of course already in principle been approved by MAFF and were considered on that premise. Authorities were still free to propose alternatively worded byelaws but these amendments would have to be justified to MAFF and any objectors in the usual way. The MLC decided for reasons connected with their waterways that amendments to the model form were required when their byelaws were revised in 1987 and discussions with MAFF were therefore required before the statutory processes (then) laid down in the 1976 Land Drainage Act, now Schedule 5 to the Land Drainage Act 1991 were formally begun. Because the Land Drainage Act already conferred powers which were felt to be adequate for the MLC's functions, no further enabling powers were deemed necessary or sought.

2. Navigation

Owing to the constraints and limitations of the Middle Level Acts and particularly the Middle Level Act 1874, it was recognised at an early stage that the revision of the byelaws on its own was not sufficient and further general enabling powers were required. Consideration was initially given to promoting a further private Act but it was decided at an early stage that this was too expensive a course to follow and not justified by the likely benefits.

Following the passing of the Transport and Works Act 1992 and the initial view then expressed that orders made under this Act could and would enable all provisions previously able to be enacted under a private Act to be implemented, it was decided to draft a Transport and Works Act Order which

would contain (inter alia) charging powers and other amendments to the Middle Level and Nene Navigation Acts as well as providing enhanced byelaw making powers. While the provisions of section 113 of the Transport Act 1968 relating to byelaw making powers were noted, it was considered that the use of a Transport and Works Act order was more appropriate and indeed necessary, because of the other enabling powers sought.

In view of the lack of a model Transport and Works Act Order and a model form of byelaws, which could be used as appropriate precedents, these had to be created 'de novo' from a detailed consideration of powers already in force in relation to other authorities' waterways with an original drafting of additional powers for which no precedent among other authorities' provisions could be found.

Costs and Timescales

1. Land Drainage Byelaws

a) Timescales

The revision of the byelaws took place in 1986/87. It was handled exclusively 'in house' and in discussions with the then MAFF, before the formal procedures laid down in what is now Schedule 5 to the Land Drainage Act 1991 were followed. These formal procedures remain substantially unchanged in the present legislation. As explained above, the MLC wished to vary the 'model form' byelaws and additional discussions therefore took place with MAFF officials to seek to justify such variations to the Ministry. Despite this, however, following preparation of the byelaws within the office, in the early months of 1987, they were sealed by the MLC on 7th April 1987. Further formal discussion and formal advertisement then took place, the byelaws being formally confirmed by MAFF on 18th December 1987. The timescale was therefore approximately one year but would have been much shorter had the proposal been to adopt the 'model form' without variation.

Case Study 5/continued

b) Costs

Save for advertisement and related costs, no external costs were incurred. It is estimated that, at 2009 prices, and allowing for the fact that a variant on the model form was applied for, these external costs together with in house costs amounted to £2,000. This is, considered to be approximately double what the cost would have been of adopting the model form unvaried.

2. Navigation

a) Timescales

The process to revise the legislative provisions relating to the MLC's navigation function began in 1992 with an approach to the former Department of the Environment (now Defra) to seek its guidance on the process by which those provisions could be revised.

Thereafter, subsequent discussions and the enactment of the Transport and Works Act 1992 led to the decision to proceed by way of an order under that Act and associated byelaws. Consultation took place with the DoE, users and other stakeholders and agreement was reached locally on all provisions, subject to certain specific issues which were also addressed within the Environment Agency's own proposed order. It was therefore agreed that these issues would be reconsidered in the light of Defra's eventual decision on the Environment Agency's application for a Transport and Works Act Order.

The present position is that an amended Transport and Works Order and associated byelaws were submitted to Defra on 14th August 2008, following information on the decision taken by Defra on the Environment Agency's proposals. They had previously been submitted to Defra on 9th May 2005, at the same time that formal comments on the amended drafts were requested from users. The proposals had also been submitted to the former DETR in August 2000. Although helpful comments were made by Defra/DETR, in

neither 2000 or 2005 were any issues of principle affecting the width of the proposed provisions, made. This order was amended to remove certain provisions which Defra had indicated to the Agency would not be acceptable.

The views of Defra were sought on whether the Order could be proceeded with as it now stood or whether, if further changes were required, a decision would have to be taken on proceeding with the proposed new byelaws alone, probably under the provisions of the Transport Act 1968. This remains the position.

b) Costs

Quite deliberately, no external costs have been incurred, since the main emphasis has always been to save costs by drafting and agreeing provisions 'in house', so far as possible. This has also been governed by the lack of any navigation funding with which to fund external costs. It is therefore not fully possible to give an accurate estimate of costs. As a guide however, the costs of dealing with the present draft Transport and Works Act Order and byelaws themselves amount to approximately £20,000 with a further (say) £25-30,000 also being incurred on associated work. It would not therefore be unfair to estimate a cost of £50,000 to date. So far no legal fees have been incurred for any formal drafting or advertisement or in detailed discussions with Defra.

Results

1. Flood Defence

After due consultation with MAFF and the completion of the formal statutory processes, The Middle Level Commissioners' Byelaws 1987 were duly confirmed by MAFF approximately one year after the process had begun.

The Land Drainage Act 1991 lays down the penalties for breach of byelaws and the way in which breaches of byelaws may be enforced. The byelaws have been used as necessary and without problem, over the last 20 years.

Case Study 5/continued

2. Navigation

Some years after the process first began, a decision by Defra in relation to an application by the Environment Agency relating to the River Wye seemed to indicate that a wide range of powers could be granted under a Transport and Works Act order. The subsequent Defra decision in relation to the Agency's application to harmonise its various navigation provisions, which has restricted the width of Transport and Works Act orders has changed the situation. In consequence, a decision by Defra on how it regards the provisions of the draft Transport and Works Act Order that is now proposed by the MLC is still awaited. Equally, Defra's views on the acceptability of the MLC's proposed byelaws are still awaited. The MLC's draft Transport and Works Act order has had to be amended to remove the proposed charging provision, a key plank of the MLC strategy and, in the MLC's opinion, a provision urgently required to update old legislation.

While it is accepted that some three years of the recent delay were caused by the MLC decision not to submit their proposals to Defra, pending the department's decision on the already submitted and in material respects similar Environment Agency's proposals, it is disappointing that no material progress has really been made, except to learn what Defra now considers that the Transport and Works Act cannot do.

Lessons Learned

1. Flood Defence

While the only increased powers sought related to new byelaws, the availability of the public general act framework itself meant that the enabling powers were already there and did not need to be sought. The decision by the former MAFF, continued by Defra and in consultation with stakeholders, to develop model byelaws and to keep such byelaws up to date was a major and fundamental one, it has considerably benefited and streamlined the byelaw making process by indicating in advance the provisions that the confirming body deem acceptable.

Within the necessary basic framework and safeguards that must exist for the obtaining of statutory powers, the byelaws were made and confirmed with the minimum of delay.

2. Navigation

Whilst it is accepted that new enabling powers were required in addition to byelaws and that these powers included the repeal and alteration of provisions of the Middle Level/Nene Navigation Acts, the MLC have been frustrated and concerned at the difficulties and waste of resources involved in seeking to obtain such powers. The lack of any public general act framework equivalent to the Land Drainage Act has been particularly unhelpful, as has the inconsistent interpretations over the years placed by Defra lawyers on the width of provisions which may be granted under the provisions of the Transport and Works Act 1992. The 1992 Act has proved difficult to interpret as is evidenced by conflicting advice from Defra lawyers in relation to it.

The position regarding byelaws is similarly onerous since, while it is accepted that byelaw making powers do exist within the Transport Act 1968, the lack of a basic model form which could constitute an already agreed framework or baseline has meant that the drafting of byelaws has had to be 'de novo' and involved the consideration of other byelaws, already in force, which may be applicable. This has created a good deal of additional work for the MLC and has tied up resources unnecessarily, which is particularly significant for a small authority. The outcome, especially regarding the proposed Order has been particularly frustrating, since the provisions contained in the proposed MLC order and byelaws were agreed with Users.

The MLC view is that, aside from the making of byelaws, the present framework for the obtaining of navigation powers is defective since it neither provides nor readily enables the obtaining of such powers except possibly at considerable expense, which may not be available to the body seeking such changes.

Case Study 6: Bristol City Council: Byelaws for the City Docks and Floating Harbour

Objective

To achieve updated and modernised enforcement powers for practical use within Bristol City Docks and Floating Harbour.

Background

It had been recognised for at least 25 years that the existing Byelaws for Bristol City Docks, which for the most part dated back to 1876, were in need of a major review and update.

In 1989 model byelaws issued by the Department of Transport were adapted to make them relevant for implementation in the City Docks thus reflecting the enforcement needs that Bristol City Council required as Harbour Authority. However, it took five years and many drafts before it was recognised in 1994 that helpful enabling legislation was probably required.

Legal process(es) followed

Enabling legislation was acquired through Parliament in 1998 as part of the City Docks Harbour revision Order SI 1209 to facilitate the production of the byelaws. The HRO took the opportunity to amend and repeal a raft of Dock legislation to facilitate relevant up-to-date management of the City Docks. This included provisions for (a) Licensing of Works, and (b) Fees and Charges.

The Harbour Manager acting in conjunction with Council Legal Officers undertook extensive discussions with the Department for Transport on the draft byelaws. This also involved consultation with a wide range of users and interested parties. Outstanding matters upon which the Department had concerns either for itself or on behalf of consultees were resolved and agreed in drafting.

Costs and timescales

The whole process, including acquiring enabling legislation took over 20 years and at least 18 drafts before the byelaws were ready for sealing. This was largely due to the fact that the number of government departments needing to input was significant and the Department for Transport was obliged to onerously secure and coordinate the consultation process. Often by the time this was done, policy had changed or personnel had changed or both and the whole process would start again. The process lacked energy and focus.

The HRO cost approximately £20,000 including legal fees between 1994 and 1998 which was considered reasonable as the process was reasonable straightforward at the time. A public inquiry was avoided but would have tripled the costs at least. The byelaws cost in the region of £50,000 in legal fees alone, but would have been considerably more had trainee solicitors not been used in the drafting process.

Results

Once adopted by Full Council in March 2009 and placed on deposit for at least 28 days the byelaws were advertised in the local press. During this time a copy of the byelaws was on deposit in each of the Council's main offices as well as the Harbour Master's office and on the Council's website. Copies were also supplied to anyone upon request.

Officers then sent the byelaws to the Department for Transport for confirmation. If there were any objections during this period the Department required that the Council should include them, with the Council's response at the point of submission.

The byelaws came into force approximately 28 days after confirmation, in April 2009. The previous byelaws were subsequently repealed along with a quantity of similar regulations.

Case Study 6/continued

Lessons learned

- The Council benefited enormously by being a local authority with byelaw-making powers in accordance with Section 236 of the Local Government Act 1972.
- The consultation needed to be convincing and coupled with decent enabling legislation, confidence in the process rather than suspicion was achieved.
- Good Parliamentary agents were essential.
- Good trainee solicitors were essential in order to keep costs to a minimum.

6. Conclusions

- 6.1 It is evident from the information researched during the project and presented in this report that there is a need to change the legislative framework within which Britain's inland waterways are managed. It is equally apparent that some navigation authorities are labouring under the burdens caused by very archaic legislation still being in place. Moreover, the waterway-related legislation which has been created over the last 60 years or so has not been and cannot be updated easily so as to be conducive to modern circumstances and needs.
- 6.2 It is concluded that most navigation authorities are, to a greater or lesser extent, hindered in their ability to achieve the full potential of their waterways by their enabling legislation which in many respects is archaic and out-with the context of modern-day use. If navigation authorities are to build upon their considerable successes of the last decade and more in terms of facilitating the waterways' delivery of widespread public benefits, then the constraints of their legal powers must be recognised and dealt with.
- 6.3 Examples of the ways in which navigation authorities legal powers are deficient are given throughout the report, along with illustrations of the practical difficulties they have experienced in trying to secure updated powers through various primary and secondary legislative processes. Three main themes highlight current problems being experienced by navigation authorities with respect to their enabling legislation. They are:
- The adoption of sensible and non-contentious common safety standards
 - The need for greater consistency in standards of operation across the navigation authorities nationally
 - The need for navigation authorities to generate new sources of income
- 6.4 Each of these themes contains a number of reasons why navigation authorities need updated powers. Some of the reasons relate to issues that are common to all navigation authorities such as the application of common standards for boat construction and maintenance and the need to index penalties for byelaw offences; while others are of a local nature such as the need to develop or confirm rights of navigation and the need to generate income from boating activity. Irrespective of whether the issues are national or local in nature, it is argued that the implications of navigation authorities continuing to operate without the modern powers they need, is seriously hindering their ability to facilitate the wide-ranging social, economic and environmental benefits that their waterways have the potential to deliver. In this respect delivery of government policy itself, as contained in *Waterways for Tomorrow*, is being hindered.
- 6.5 Added to this, there is the vital issue of public safety. With a far higher duty of care for safety matters than ever before, navigation authorities are in a difficult position as they are unable to introduce common safety standards which have been argued for a long time. This protracted progress is damaging to the public, users and the navigation authorities themselves. The need for third-party insurance for licensed or registered powered craft and the application of safety criteria as determined by the Maritime and Coastguard Agency in the Hire Boat Code are good examples of where a national policy could lead to the introduction of simple powers that are consistent across the waterways, with all the necessary consultation having been undertaken beforehand. Certainly there is a basic need for all navigation authorities to regulate powered boats in the interests of safety and legal powers should be granted to allow this to be done where no existing power exists or is suitable. However, it should be understood that the associated administration of documents must be performed on a cost-recovery basis with fees being set accordingly.

6/continued

- 6.6 So what has been done to rectify this unsatisfactory position of out-dated legislation? Some navigation authorities have tried to move forward the implementation of legislative change but often their proposals have been regarded as contentious and a recurring battle has been fought by waterway user groups and organisations over national issues but on a local battlefield. As a consequence, considerable time, effort and significant expense have been incurred by all parties and too often resulting in dissatisfaction and frustration.
- 6.7 There is a lack of clarity about which legal process is the most appropriate to use in different circumstances. This report shows that the wide range of legislation and legislative processes that navigation authorities have used demonstrates that they have tried hard to use the best tools available to bring about change, but that too often, these tools have been ineffective and too expensive. For example, while it was initially envisaged that the Transport and Works Act Order process would assist – indeed, this is what it was created to do – it is clear that the use of this instrument has not had the desired effect. To date, the only use of it by a navigation authority has been the Environment Agency’s application which, as shown in Case Study 2, has proved to be ineffective with regard to charging provisions and inefficient in terms of costs and timescales.
- 6.8 The various case studies also illustrate that too often there has been a divergence of legal opinion both between and within government departments as to the best process to use. This has resulted in conflicting and changing advice over time and has been further exacerbated by changes in personnel in departments’ legal teams leading, on occasions, to retraction and reversal of previous advice which had been given. Both the Broads Authority and the Environment Agency claim that their costs and time have escalated due to repeated inconsistent and conflicting legal advice from lawyers within DfT and Defra respectively. Such conflicting advice has led up too many ‘blind alleys’ over the years during the exploration of the various legal routes.
- 6.9 One process that has been tried and tested is the Harbour Revision Order (HRO) system which, while only limited to the very coastal limits of the inland waterways network (and therefore not applicable to the large majority of AINA members), does appear to have been of some help and has in some cases delivered successful outcomes eventually. However, some HROs are still taking years rather than months to be processed by the Department for Transport, as illustrated in Case Study 6 in relation to Bristol City Docks.
- 6.10 As an alternative process for use across the whole inland waterways network, the use of model navigation byelaws enacted in a similar manner to model drainage byelaws used by Internal Drainage Boards (IDBs) could be developed in conjunction with Defra. Case Study 5 in relation to the Middle Level Commissioners illustrates how cost-effective use of the model drainage byelaws have been in updating the Commissioners’ powers for their flood defence duties as compared to the disadvantage of not having equivalent model byelaws to update their statutory duties with respect to navigation.
- 6.11 As indicated above, in order to promote the use of their waterways for navigation, it is essential that, as a minimum, safety standards across the waterways are harmonised. However, where harmonisation has been attempted such as by the Broads Authority and the Environment Agency through the introduction of the Boat Safety Scheme, it has proved very difficult and expensive to achieve while the attainment of powers to enable the introduction of third-party insurance as a minimum for all powered vessels has been equally difficult. The need to harmonise the use of the International Collision Regulations to ensure commonality of signals, lights and navigation rules remains an outstanding action for the industry, but will undoubtedly prove to be just as difficult and costly unless a pragmatic way forward can be found.

6/continued

6.12 It is apparent that such problems with navigational safety are long-standing, as foreseen by the Bowes Commission in 1958 discussed earlier in paragraph 2.5. The inland waterways industry is not unique in having this problem as similar difficulties have been experienced by harbour authorities in the UK. In late 2008, the Department for Transport commenced the procedural aspects of a draft Marine Navigation Bill and as part of its original consultation document stated:

“Navigational safety in UK harbour waters is the responsibility of statutory harbour authorities, drawing on obligations and powers set out in a mixture of national statutes and local Acts and Orders specific to each port. Some of the legislation is well over a century old and aspects of the local legislation may no longer be suited to the type and size of vessels now in use. Rather than devote substantial time and effort to overhauling this complex legislative inheritance, government has concentrated on providing an up-to-date overarching non-statutory framework to which the whole industry is expected to adhere.”

6.13 AINA believes that a similar approach should be taken with the inland waterways, although this should be stronger than the creation of non-statutory policies, partly because some means of enforcement would be needed to manage a very diverse user base, and partly because a number of existing statutes would need to be repealed or amended.

6.14 The report shows that the complexity and cost of promoting legislation represents a significant barrier to all navigation authorities. In the examples of the Broads Authority and the Environment Agency (Case Studies 1 and 2 respectively) costs have been extremely high (£0.5 m and £1m) and have fallen back upon Defra as the sponsoring department. In other cases, as shown in Case Study 4 with respect to Conservators of the River Cam, navigation authorities have rejected the idea of seeking legislative change because of the costs and complexities involved.

Accordingly, over a period of time their ability to deliver their duties of care and to maintain the fabric of their waterways will disappear with very serious consequences for their local communities and the profile of the waterways nationally. With the government’s presumption that the user pays, it is difficult for many of the smaller navigation authorities to break out of this inward spiral of decline. They need funds to secure the appropriate legal powers, while at the same time they need the appropriate legal powers in order to enable them to generate those same funds. Navigation authorities are statutory bodies undertaking statutory duties and AINA asserts that there is no other industry or sector in the UK which has statutory undertakers discharging their duties without any public subsidy or any legal powers to raise revenue by levying reasonable fees and charges.

6.15 For those navigation authorities with concerns about the absence of adequate byelaw-making powers (and charging provisions within them), the use of a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006, allied to the provisions of Section 113 of the Transport Act 1968 could be of significant benefit. However, this approach is yet to be tested by any navigation authority. This route has the potential to represent the simplest and most cost-efficient route for navigation authorities to achieve updated powers through modern byelaws. It could create a standard or model provision to be replicated by any navigation authority seeking the same (or similar) powers, thereby minimising costs and creating greater consistency of approach across the industry.

6/continued

- 6.16 Given the likely absence in the foreseeable future of an opportunity to 'win' parliamentary time for over-arching public primary legislation for the nation's waterways as a whole, the secondary legislation route under the LRO process appears an attractive and realistic alternative. AINA believes there is a real opportunity using this approach to achieve something along the lines of an 'Inland Waterways Legislative Reform Order' which could not only update Section 113 (and some other Sections) of the Transport Act 1968, but could also update or amend other legislation to provide the modern generic powers that navigation authorities need to manage and operate their waterways in an effective manner in a modern context. Such an Order should not be too ambitious as the powers to amend or reform legislation through 'Orders' are intended only to be used for 'non-contentious' issues. The waterways community (both navigation authorities, waterway users and stakeholders) need to develop a broad consensus on what it wants before making any formal approach to government.
- 6.17 As a precursor to any application for legislative change, whether by means of an LRO as discussed above, or by using any of the various legal instruments discussed throughout this report, a clear business case needs to be made to all stakeholders of the need for such legislative change. The a business case should build upon the information provided in this report to provide hard evidence for policy makers in government to support legal measures to provide navigation authorities, particularly the smaller ones, with uniform powers that are sufficient for their needs in sustaining and developing further the vitality of their waterways for the benefit of the nation.

7. Recommendations

7.1 This report shows that there are a number of national issues that need to be addressed. Navigation authorities need standard provisions, through legislation in order to address the key issues outlined in 5.3 above.

Recommendation 1

It is recommended that all statutory inland navigation authorities should have relevant powers of sufficient modernity to enable them to:

- **Introduce requirements for third-party insurance for at least all powered boat use**
- **Introduce common construction and maintenance standards for boats, such as the application of the Boat Safety Scheme or similar, to secure the safety of persons and property and to prevent pollution**
- **Update, and subsequently index, fines for byelaw offences**
- **Set charges for the licensing or registration of boats, and appropriate fees to recover all costs and to generate a reasonable level of income**

7.2 With very significant costs incurred in promoting changes to legislation, the impact of diminishing income and/or grant-in-aid to navigation authorities and greater public concern about safety, it is essential that legislative change is moved forward in a cost-effective, timely and transparent manner by making full use of the legal processes identified in this report.

7.3 Much could be achieved through secondary legislation; in particular by use of the Legislative and Regulatory Reform Act 2006 in order, for example, to:

- Expand byelaw-making powers along with the option of introducing byelaws (including those with provisions for levying reasonable fees and charges) under Section 113 of the Transport Act 1968
- Update rules of navigation and remove archaic or conflicting rules relating to the introduction of the Collision Regulations such that they are standardised across the waterways
- Update and index navigation authority byelaw fines such that offences are pegged at Level 3 or Level 4 depending on the severity of the offence and the current level of Court hearing as appropriate. This would lift some of the current derisory penalty limits into more meaningful levels of penalty for navigational and safety offences at £1,000 for Level 3 and £2,500 for Level 4

Recommendation 2

A business case should be made to Defra which provides the evidence that the Department needs to adopt a positive approach in its future consideration of applications for Legislative Reform Orders (LROs) from navigation authorities.

7/continued

7.4 Similarly, much could be achieved through public primary legislation by the insertion of clauses during the drafting of relevant Bills in order, for example, to:

- Introduce common construction and maintenance standards, such as the Boat Safety Scheme, in the interests of safety and prevention of pollution. This would consistently apply to all licensed or registered powered craft on all waterways operated by statutory navigation authorities
- Introduce mandatory third-party insurance for licensed or registered powered craft on all waterways managed by statutory navigation authorities
- Introduce an approved set of model inland navigation byelaws which could be readily updated when a navigation authority requires an 'upgrade' of its powers. Within these model byelaws, powers should be created to set charges for the licensing or registration of craft and the charging of appropriate fees by navigation authorities to recover all costs and to generate a reasonable level of income
- Creation of an overarching framework, which takes account of the modern needs and requirements of navigation authorities in discharging their statutory duties alongside their collectively complex legislative inheritance, and to which all statutory navigation authorities would be expected to comply

Recommendation 3

A business case should be made to Defra which provides the evidence that government departments need (when promoting relevant public primary legislation) to adopt a positive approach in response to initiatives taken by navigation authorities to insert clauses as appropriate during the drafting of such legislation.

7.5 At the time of writing, Defra is leading a project to refresh government policy for the inland waterways.

Recommendation 4

As an initial and immediate action, Defra should highlight the findings of this report in its refreshed policy for the inland waterways.

Appendix 1: Questionnaire – AINA Legal Powers (Part A)

Information derived from 2006 AINA Survey

Question	Information given in 2006	Amended or additional information
What is the full name of the navigation authority?		
Name the waterways for which you have jurisdiction and provide lengths in km		
What is the constitutional status of the navigation authority?		
Under your existing legislation, are you empowered to licence craft on your waterways?	YES/NO	YES/NO
If yes, which specific piece of legislation gives you this power?		
If no, do you operate an in-house craft registration scheme instead of licensing?	YES/NO	YES/NO
Does your legislation enable you to charge fees for craft licensing or registration?		
If craft on your waterway are licenced or registered by another authority, please give details.		
Do you have any plans to introduce any licensing or registration requirements on your waterways?		
If yes, which legislation do you anticipate using to effect this?		
Do you issue and enforce bye-laws relating to the use of your waterways?		
If yes, under which legislation do you do this?		
If no, do you plan to prepare any bye-laws or equivalent for use of your waterways? Please give details.		

Appendix 1: Questionnaire – AINA Legal Powers (Part B)

Information derived from 2006 AINA Survey

Question	Answer
Does your organization have existing legal powers relating to:	
The application of the Boat Safety Scheme	YES/NO
Requirement for Third Party Insurance	YES/NO
Does your organization generate revenue by:	
Charging licence fees	YES/NO
Charging tolls for freight carriage	YES/NO
Charging for mooring fees on your own navigation authority's property	YES/NO
Charging fees for contiguous waters	YES/NO
Other powers	YES/NO
Does your organization require other powers? If so, what for?	
Do you plan to revise your existing legal powers?	YES/NO
If yes, which legislation do you plan to use, eg:	
Extension of existing powers	
Transport & Works Act	
Harbour Revision Order	
Private Bill	
Transport Act 1968	
Legislative & Regulatory Reform Act 2006	
Other - please specify	
Do you have aspirations for extending your current powers? If so, for what purpose and how?	

Appendix 2: Navigation authorities - their legal status and relevant governing legislation

Navigation Authority	Constitutional Status	Waterway(s)	Enabling Acts and Others
Basingstoke Canal Authority	Statutory - via local authority powers	Basingstoke Canal (51km)	Basingstoke Canal Act 1777
Bristol City Council	Statutory Navigation Authority - Local authority owned	City Docks and River Avon (downstream of Hanham Lock)	Bristol Docks Act and Orders 1848 & 1998
British Waterways	Statutory Navigation Authority - Public Corporation	3,540 km of waterways nationally. Two-thirds canals, one-third rivers: England – 2,929 km Scotland – 491 km Wales – 120 km	Various Acts, Transport Acts 1962 & 1968
Broads Authority	Statutory Navigation Authority - One of the 'family' of National Parks	Various rivers and Broads (200 km)	Norfolk & Suffolk Broads Act 1988
Cardiff Harbour Authority	Statutory Navigation Authority - Local authority owned	Cardiff Bay (500 acre freshwater lake), plus River Taff (5 km), River Ely (5 km)	Cardiff Bay Barrage Act 1993
Chester City Council	Statutory Navigation Authority -	River Dee (upstream of Chester Weir,	
Chesterfield Canal Partnership	Statutory - via local authority powers	Chesterfield Canal (Staveley to Chesterfield, 8 km)	
Conservators of the River	Statutory Navigation Authority	River Cam (12 km)	River Cam Act 1702, River Cam Act 1851,
Devon County Council	Statutory - via local authority powers	Grand Western Canal (18 km)	Grand Western Country Park bye-laws (revised 1999)
Environment Agency	Statutory Navigation Authority, Non-Departmental Public Body	1,162 km of river navigations across England & Wales Anglian Region (565 km) Southern Region (129 km) Thames Region (217 km) Wales (251 km)	Various

Appendix 2/continued

Navigation Authority	Legal Status	Waterway(s)	Enabling Acts and Others
Essex Waterways Limited	Statutory Navigation Authority - Private Company	Chelmer & Blackwater Navigation (19 km river, 3 km canal)	Chelmer & Blackwater Navigation Act 1793
Exeter City Council	Statutory Navigation Authority - Local authority owned	Exeter Ship Canal (8 km)	Exeter Canal Act 1829
Lake District National Park Authority	Statutory Navigation Authority - National Park Authority	41 km total length of navigable lakes: Coniston (8 km) Derwentwater (5 km) Ullswater (11 km) Windermere (17 km)	National Parks Act 1951 Environment Act 1995
Loch Lomond & The Trossachs National Park Authority	Statutory - National Park Authority powers	Loch Lomond (37 km)	National Parks (Scotland) Act 2000
Manchester Ship Canal Company	Statutory Navigation Authority - Private Company	123 km in total between: Bridgewater Canal (65 km) Manchester Ship Canal (58 km)	Manchester Ship Canal Acts (main one 1885)
Middle Level Commissioners	Statutory Navigation Authority - Public Corporation	150 km of rivers and drainage channels which form the Middle Level Navigations	Nene Navigation Act 1753 Middle Level Acts 1810-74
Company of Proprietors of the Neath Canal Navigation	Statutory Navigation Authority - Private Company	Neath Canal Navigation (21 km)	Neath Canal Acts 1791 and 1795
Port of London Authority	Statutory Navigation Authority - Public Trust	Tidal River Thames (125 km)	Port of London Act 1968 (amended)
Avon Navigation Trust	Statutory Navigation Authority - Charitable Trust	River Avon ('Shakespeare's Avon, 73 km)	Upper Avon Navigation Act 1972
The National Trust (Wey Navigations)	Statutory Navigation Authority - Charitable Trust	River Wey & Godalming Navigations (32 km)	Wey Navigation Enabling Act 1670, Godalming Enabling Act 1760
City of York Council	Statutory Navigation Authority - Local authority owned	River Foss (3 km)	

Appendix 3: Navigation authorities' abilities to control vessels on their waterways, generate income from them, and require minimum safety standards

Navigation Authority	Powers to control vessels	Powers to generate income from vessels					Powers to apply minimum safety standards	
	By Licensing/Registration	Fees	Tolls	Moorings	Contiguous Waters	Other fees	Boat Safety Scheme	Third-Party Insurance
Basingstoke Canal Authority	Licensing	Yes	No	Yes	No	No	Yes	Yes
Bristol City Council	Licensing	Yes	Yes	Yes	No	No	Yes	Yes
British Waterways	Licensing	Yes	Yes	Yes	No	Yes	Yes	Yes
Broads Authority	Registration	Yes	Yes	No	No	No	Yes	No
Cardiff Harbour Authority	Licensing	Yes	No	Yes	n/a	No	No	Yes
Chester City Council	Registration	Yes	No	No	No	No	No	Yes
Chesterfield Canal P'ship	Licensing	Yes	No	Yes	No	Yes	Yes	Yes
Conservators of the River Cam	Registration	Yes	No	Yes	Yes	Yes	Yes	Yes
Devon County Council	Licensing	Yes	No	Yes	n/a	No	Yes	Yes
Environment Agency								
<i>Thames Region</i>	Registration	Yes	Yes	Yes	No	Yes	Yes	No
<i>Anglian Region</i>	Registration	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>River Wye</i>	Registration							
<i>Southern Region</i>	Registration	Yes	Yes	Yes	Yes	Yes	No	No
Essex Waterways	No powers	No	No	Yes	No	Yes	Yes	No
Exeter City Council	Licensing	Yes	Yes	Yes	No	Yes	Yes	Yes
Lake District NPA - Windermere	Registration	Yes	No	No	No	No	No	No
Loch Lomond	Registration	No	No	No	No	No	No	No
Manchester Ship Canal Co								
<i>Manchester Ship Canal</i>	Licensing	Yes	Yes	Yes	No	-	No	No
<i>Bridgewater Canal</i>	Licensing	Yes	Yes	Yes	No	-	No	No
Middle Level Commissioners	No powers	No	No	Yes	No	No	Yes	Yes
Neath Canal Navigations	No powers	No	No	No	No	No	No	No
Port of London Authority	Licensing	Yes	Yes	Yes	Yes	No	No	No
Avon Navigation Trust	Licensing	Yes	No	Yes	No	No	Yes	Yes
The Wey Navigations	Licensing	Yes	Yes	Yes	Yes	Yes	Yes	Yes
City of York Council	No powers	No	No	Yes	No	No	No	No

Appendix 4: Navigation authorities' powers with respect to byelaws

Navigation Authority	Current powers to enable		Aspirations to obtain new byelaws or revise existing ones		Are the aspirations being pursued?	Process identified to create new byelaws or revise existing ones
	Creation of new byelaws	Enforcement on the waterways	For boat licencing or registration	For other enforcement powers		
Basingstoke Canal Authority	Yes	Yes	No	No	No	Current Byelaws S90 National Parks and Countryside Act 1949
Bristol City Council	Yes	Yes	No	No	No	Bristol Docks Act 1998 New Byelaws 2009
British Waterways	Yes	Yes				
Broads Authority	Yes	Yes	Yes	Yes	Yes	Broads Authority Bill
Cardiff Harbour Authority	Yes	Yes	No	No	No	Cardiff Bay Barrage Act 1993
Chester City Council	Yes	Yes	No	No		
Chesterfield Canal Partnership	No	No	No	Yes	Yes	Current Derbyshire County Council powers Chesterfield Canal Act Transport & Works Act Order
Conservators of the River Cam	Yes	Yes	N/A	Yes	No	
Devon County Council	Yes	Yes	N/A	No	No	Countryside Act
Environment Agency						
<i>Thames Region</i>	Yes	Yes	Yes	Yes	Yes	Transport & Works Act Order
<i>Anglian Region</i>	Yes	Yes	Yes	Yes	Yes	Transport & Works Act Order
<i>Southern Region</i>	Yes	Yes	Yes	Yes	Yes	Transport & Works Act Order
<i>River Wye</i>	No	No	Yes	Yes	Yes	Transport & Works Act Order

Appendix 4/continued

	Current powers to enable		Aspirations to obtain new byelaws or revise existing ones		Are the aspirations being pursued?	Processes identified to create new byelaws or revise existing ones
	Creation of new byelaws	Enforcement on the	For boat licensing or registration	For other enforcement		
Navigation Authority						
Essex Waterways Limited	Yes	No	No	No	No	Not needed specifically
Exeter City Council	Yes	Yes	Yes	Yes	Yes	Updating via current Harbour Revision Order
Lake District National Park Authority	Yes	Yes	Yes	Yes	Yes	Section 13 Countryside Act 1968
Loch Lomond & The Trossachs National Park Authority	Yes	Yes	Yes	Yes	Yes	Review of Loch Lomond byelaws 2006 – National Parks (Scotland) Act 2000
Manchester Ship Canal Company						
<i>Manchester Ship Canal</i>	Yes	Yes	No	No	No	
<i>Bridgewater Canal</i>	Yes	Yes	No	No	No	
Middle Level Commissioners	Yes	Yes	Yes	Yes	Yes	Transport & Works Act Order
Company of Proprietors of the Neath Canal Navigation	No	No	Yes	Yes	Yes	Not known
Port of London Authority	Yes	Yes	No	No	No	Revise existing via Harbour Revision Order
Avon Navigation Trust	Yes	Yes	No	Yes	No	Extension of existing powers
The National Trust (Wey Navigations)	Yes	Yes	N/A	No	No	National Trust Acts 1907&1937
City of York Council	No	No	No	No	No	York Corporation Act 1902 & Local Government Act 1972

Appendix 5: Navigation authorities' intentions to modify (or aspirations to review) their current legal powers

Ongoing revisions of legal powers	Promoter	Process identified	
FUNCTION			
Dee Harbour Revision Order	Environment Agency	Harbour Revision Order	
Harmonisation of standards etc	Environment Agency	Harbour Revision Order	
Exe Estuary Harbour Revision Order	Exeter City Council	Harbour Revision Order	
Windermere Byelaws	Lake District National Park Authority	Local	
Broads Authority Bill	Broads Authority	Private Bill	
New byelaws	Bristol City Council	Local	
Review of existing byelaws	Cardiff Harbour Authority	Local	
Navigation Byelaws	Middle Level Commissioners	Transport & Works Act Order	
ASPIRATIONS TO REVIEW CURRENT LEGAL POWERS			
Ability to register boats using Upper Cam	Conservators of the River Cam	Local	Extension of existing powers
Powers to revoke registration	Conservators of the River Cam	National	Extension of existing powers
Powers to licence works or obstructions in the river	Conservators of the River Cam	Local	Private Bill
Recovery of court costs	Conservators of the River Cam	National	Extension of existing powers
Penalty fee to be lifted to Level 3	Conservators of the River Cam	National	Extension of existing powers
Introduction of fixed penalty notices	Environment Agency	National	Legislative & Regulatory Reform Order
Compulsory Purchase Order for land	Chesterfield Canal Partnership	Local	
Requirements for third-party insurance and Boat Safety	Lake District National Park Authority	National	

Association of Inland Navigation Authorities

Fearns Wharf

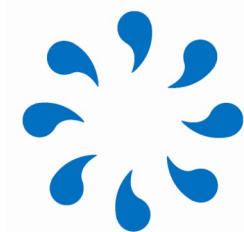
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