

IWA Comments on February 2016 MLC Order and Byelaws Consultation

IWA was involved in extensive consultations with MLC on the previous draft Order, culminating in a May 2005 copy, which was approved at the time by IWA's letter of 24 May 2005. The latest February 2016 draft Order and Byelaws have been compared with those earlier documents. Differences are noted below, with comments indicating IWA's understanding of MLC's position on the changes.

MLC Order

Arrangement of Articles

Arrangement of Articles- there is no '4. Charges' in the Feb 16 version, compared with IWA's May 2005 copy. This has been left out by mistake and will appear in the final version.

Arrangement of Articles- 9. Cutting Trees etc obstructing a Navigation Waterway & 10. Repairs to Buildings are both missing from the Order, and appear in the Byelaws (29 & 30), albeit in a simplified form. We understand MLC have been advised this is more appropriate.

Arrangement of Articles Part III is numbered to follow the exclusion of the May 2005 articles 9 & 10.

Part I

In here and several other locations, Article 13 Byelaws has been renumbered as Article 11.

Part II

4(3) Charges- 'for the duration of the emergency' is added to qualify 'no charges payable'. This seems reasonable.

4(5) Charges- 'Waterway' has been replaced by 'Navigation Waterways'

5. Arrangements with other Authorities- 'in respect of vessels of the same class or description' has been qualified by addition of 'materially' after 'vessels of'. This seems a reasonable qualification.

9. Stranded Grounded and Sunken Vessels and Vehicles- this section has been renumbered from 11 in May 2005. Substantial rewriting of paragraphs 3,4,5 & 6 has been carried out, with notice from the Commissioners reduced from 3 months to 14 days, and paragraphs 6 & 7 have become 7 & 8 in this version.

We understand that the rewrite is intended to achieve several practical objectives arising from experience since the 2005 draft:

- Sunk stranded or abandoned vehicles or vessels can require rapid response, and the shortening of notice is intended to facilitate this when necessary.
- Sunken vehicles or vessels often create a hazard for navigation, and as MLC's existing byelaws allow rapid intervention it is intended to retain these.
- Stranded or abandoned vehicles or vessels can normally be addressed by giving notice to the owner unless exceptional circumstances apply, allowing owners to recover their property.

IWA considers these proposed changes measured and appropriate.

11. Byelaws- renumbered from Article 13 in May 2005. 11(4) 'or obstruct the use of a Navigation Waterway.' has been added to this paragraph. This seems a reasonable addition.

Part III Miscellaneous

This section starts at (12) after renumbering compared with the May 2005 version.

Paragraph 14 Penalty was Paragraph 16 Penalty and Defence in the May 2005 version. It now refers to a 'Level 3 fine on the Standard Scale'. This seems reasonable, as an appeal could be exercised through Byelaw 41 Determination of Disputes, and failing that a court would decide whether a defence was reasonable.

The First Schedule

The abbreviation for 'kilometres' should be km, rather than Km. MLC have also agreed to consider inserting provision here and elsewhere for future increases to the waterways over which the public may be permitted to exercise rights of navigation. This is very welcome.

The Second Schedule Repeals- Article 17

Middle Level Act 1844- Section 225 has now been repealed entirely. We understand that the communication process included will be replaced by websites and/ or similar technology, as was discussed in 2004 for inclusion covering announcements for various issues in the 'Handbook' or MoU. This seems both more efficient and effective for MLC and navigation users.

Middle Level Act 1862- in section 37 the words from '1st' to 2nd' have also been repealed, as has section 110 entirely rather than partially as in the May 2005 version. This we are advised addresses changes to the content of the Act, and the reference to keep a separate 'Navigation Account' will be covered in a new provision in the final Order.

Appendix 1

A map of the navigations was included on page 16 of the May 2005 version as Appendix 1, but is not present in the current version or in the byelaws. This does not seem to be a material change.

Byelaws for the Regulation, Management and Improvement of the Navigable Waterways of the Middle Level and of the Navigation thereof, for the Regulation and Licensing of Vessels thereon and for other purposes

Contents

Two new byelaws have been inserted, from the Order. No. 29 Cutting Trees etc obstructing a Navigation Waterway, and No. 30 Repairs to Buildings. Subsequent byelaws were numbered 2 higher.

After the last byelaw (39 in May 2005, 41 in Feb 16) the May 2005 version contained two appendices, 1 Map of Navigation Waterways (as in the Order) and 2 Schedule of Navigation Waterways.

1. Citation and Commencement (i)- commencement has changed from '1st April next' to '28 days after the date on which they are confirmed'. This seems more sensible.

1. Citation and Commencement (ii) in May 2005 stated that byelaws 14 and 32 should come into operation not earlier than 3 years from the date on which they were confirmed; in the Feb 16 version this has reduced to 'not earlier than 2 years...'. This seems more sensible.

'Navigation Waterways' were defined in May 2005 by reference to an appendix, in Feb 16 they are defined by reference to the First Schedule in the Order' which is the same document.

The first paragraph after 'Definitions' refers in Feb 16 to 'in these Byelaws'. In May 2005 this said 'in and the Appendices to these byelaws'. This change appears to recognise the removal of the Appendices.

9. Appeals now states '...on the grounds that the vessel does not comply with the requirements of Byelaw 7 shall, on the application in writing to the Commissioners within 28 days of such refusal revocation cancellation or suspension by the owner of the vessel, be referred for determination to an arbitrator to be agreed by the applicant and the Commissioners' This wording has been newly qualified by the addition of 'within 28 days of such refusal...'. This seems to ensure the safety issue will be addressed quickly, which is important for other navigation users.

11. Overloading- There appears to be a typo in this paragraph. It states 'Provided that not more than one' and it seems likely that the second 'that' should say 'than'.

16. Speed limits- a table is included here, which in the Feb 16 version has several extra waterways added to the '4 nautical miles per hour' as follows:

e) Old River Nene between Whittlesey Road Bridge (NGR TL342907) and Halfpenny Toll (NGR TL330912)

f) New Dyke between Charterhouse Farm (NGR TL223871) and Holme Winding Hole (NGR TL199871)

g) Yaxley Lode between Yaxley Lode Railway crossing (NGR TL194915) and Yaxley overspill footbridge (NGR TL189920)

IWA has no objections to the extension of these restrictions on these waterways.

21. Short Stay Moorings- in the Feb 16 version the allowable overstay in an emergency is qualified by 'and only for the duration of the emergency' which seems reasonable.

24. Notice of Incidents- the timescale required to notify Commissioners has been reduced in the Feb 16 version from 24 hours to 12 hours. This seems reasonable given modern communications.

26. Swimming, Diving and Washing in Navigation Waterways – (b) 'in such a manner' in the May 2005 version has been replaced by 'so' which seems a useful shortening.

29. Cutting Trees etc obstructing a Navigation Waterway is a new byelaw transferred from the May 2005 Order. The new byelaw seems reasonable given riparian owner responsibility.

30. Repairs to Buildings 'causing or is in imminent danger of causing an obstruction to the passage of vessels...' is a new byelaw transferred from the May 2005 Order. The new byelaw seems reasonable given riparian owner responsibility.

41. Determination of Disputes- a new first paragraph has been added here which provides for an appeal against the Commissioners directions or byelaw requirement, by counter- notice within 21 days. This process can then lead to arbitration. This seems a useful check and balance against unreasonable or arbitrary deployment of the Commissioners' powers.

The Inland Waterways

Association 29 June 2016