



The Inland Waterways Association of Ireland

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***A submission by
The Inland Waterways Association of Ireland
to
Dáil Éireann
On Stage 2
of the
Heritage Bill 2016
Part 2: Canals***

May 2017

**Summary table of sections of concern with references included to the Heritage Bill 2016
Part 2 Canals as passed by Seanad Éireann**

Section of Concern	Subsection of Heritage Bill	Location in Bill
Potential for restricted navigation of craft	4. 5. (1)(b) 5. 7. (1)(c) 5. 7. (1)(d)	Page 4 lines 16-18 Page 4 line 35 Page 4 line 36-37 (we propose deletion of these lines)
Bye-laws and enforcement – type of vessels and dimensions	5. 7. (1)(b)	Page 4 lines 33-34
Bye-laws and enforcement – permits and licences	5. 7. (1)(e) 5. 7. (1)(f)	Page 5 lines 1-2 Page 5 lines 3-5 (we propose deletion of these lines)
Bye-laws and enforcement – alteration of water levels	5. 7. (1)(h)	Page 5 line 8
Bye-laws and enforcement – moorings	5. 7. (1)(k)	Page 5 lines 14-15
Bye-laws and enforcement – fixing of tolls and charges	5. 7. (1)(p)	Page 5 lines 25-27
Bye-laws and enforcement – Fixed payment notice	5. 7. (1)(s)	Page 5 lines 32-33
Bye-laws and enforcement – communication of proposal to make bye-laws	5. 7. (2)(a)	Page 5 lines 34-40 (we propose additional text)
Bye-laws and enforcement – access to bye-laws	5. 7. (2)(f)	Page 6 lines 22-30 (we propose additional text)
Bye-laws and enforcement - fines	5. 7. (6)	Page 7 lines 3-6
Fixed payment notice	5. 7A. (1) 5. 7A. (2) 5. 7A. (3)	Page 7 lines 27-42 Page 8 lines 1-12 Page 8 lines 13-15
Powers of Authorised Officers	5. 7B. (5)(a) 5. 7B. (5)(c)(i) 5. 7B. (5)(c)(ii) 5. 7B. (5)(c)(v)(l) 5. 7B. (6) 5. 7B. (7) 5. 7B. (8) 5. 7B. (9) 5. 7B. (10)	Page 8 lines 40-41 Page 9 lines 6-8 Page 9 lines 9-12 (we also propose an insertion - 5. 7B. (5)(c)(iii) - after these lines) Page 9 lines 24-25 Page 9 lines 28-30 Page 9 lines 31-32 Page 9 line 33 (we propose additional text) Page 10 lines 1-3 Page 10 line 5

IWAI suggested amendments and rationale for same on sections of concern in the Heritage Bill 2016 Part 2 Canals

For ease of reading we have noted the section of the bill as worded with a white background, underneath that added IWAI observations highlighted with a green background and underneath that indicated suggested amendment wording in red italics with a yellow highlighted background.

“General duty of Waterways Ireland and of Board

4. 5. (1) Subject to subsection (2)—

(a) it is the duty of Waterways Ireland to undertake the care, management and maintenance of the canals and other canal property as a public amenity for use by the public for—

(i) navigation in such parts of the canals as are open to navigation from time to time, or

(ii) fishing or otherwise for the enjoyment and recreation of the public, and

(b) Waterways Ireland may designate particular parts of the canals and other canal property for particular purposes including purposes incidental to such purposes as aforesaid.

IWAI Viewpoint:

(1) The canals were built for navigation and have been open for over 200 years, the introduction of the terms “from time to time” would legislate for not maintaining the canals open as is current practice.

(b) above as worded would leave areas of the canal navigation system open to be designated for something else at the exclusion of navigation.

Suggested Amended Wording:

4. 5. (1) Subject to subsection (2)—

(a) it is the duty of Waterways Ireland to undertake the care, management and maintenance of the canals and other canal property as a public amenity for use by the public for—

(i) navigation in such parts of the canals as are open to navigation or

b) Waterways Ireland may designate particular parts of the canals and other canal property for particular purposes including purposes incidental to such purposes as aforesaid. ***These designations should be made without unnecessarily impeding navigation.***

Bye-laws and enforcement - canals

5. The following sections are substituted for sections 7 and 7A (inserted by section 56 of the Maritime Safety Act 2005) of the Act of 1986:

“Power of Waterways Ireland to make bye-laws for canals

7. (1) Waterways Ireland may in accordance with this section make bye-laws for the care, management, maintenance and control and the regulation of the use of the canals and other canal property *in relation to any one or more of the following matters:*

(b) the regulation of the type or class of boat (including its dimensions) which may be used on the canals;

IWAI Viewpoint:

Existing dimensions have been in place since the canal was built over 200 years ago, the bill should acknowledge and protect our floating heritage and the existing dimensions and thus the existing fleet of traditional heritage boats the canals for built for.

Suggested Amended Wording:

b) the regulation of the type or class of boat (including its dimensions) which may be used on the canals ***subject to existing maximum dimensional criteria that enable our canal heritage vessels to continue to use the system they were designed and built for.***

(c) the closing to navigation of any part of the canals;

IWAI Viewpoint

The canals have been open since built and only closed to navigation when facilitating specific events, maintenance works or in the event of an emergency. This should be reflected in the legislation. The agreed procedures could take in the practice of issuing a Marine Notice in advance of any closure, unless the closure is an emergency.

Suggested Amended Wording:

(c) the closing to navigation of any part of the canals *within agreed procedures on a temporary basis due to an emergency or to facilitate a planned event.*

(d) the restriction or prohibition of navigation on the canals or any part of the canals at any time by any boat or type or class of boat;

IWAI Viewpoint:

This clause appears to address the same matter as (c) above and as such should be omitted. If this is not the case then the Minister should explain why she believes this clause is necessary.

Suggested Amended Wording:

Omit.

(e) the issue of permits or licences to authorise and regulate the use of boats on the canals or other canal property;

IWAI Viewpoint:

The long standing practice on the canals in relation to mooring and passage has been the issuing of permits, a simple postcard size permit based on completing a small application form. In 2012 Waterways Ireland introduced a new permit called an Extended Mooring Permit (EMP); however in order for a boat owner to obtain an EMP they must sign an elaborate Contractual Licence Agreement with Waterways Ireland that comprises 11 pages.

There is a significant difference between a permit and a licence, and the introduction of licence agreement by calling it an Extended Mooring Permit is hugely questionable. A licence is a contractual agreement, an offer and an acceptance that creates equal expectation of a relationship. A permit is not viewed as a relationship between the authority and a user. To have to complete and submit a large licence agreement to receive what is equivalent to a road tax disc for boats is totally disproportionate. While licence agreements for houseboat moorings may become necessary, the permit system for boat mooring and passage should be maintained as a simple permit.

Suggested Amended Wording:

(e) the issue of *uncomplicated* permits, *including annual permits*, for mooring and passage *and* licences *for houseboats*, to authorise and regulate the use of *boats on* the canals or other canal property *by all users.*

(f) the prohibition of a boat using the canals which does not have a permit or licence issued in respect of it as required by canal byelaws;

IWAI Viewpoint:

It is already stated in the (e) above that Waterways Ireland have the power to make bye-laws to issue permits and licences. It stands to reason boats without the required permit or licence will be prohibited from using the canals. Does this need to be stated here?

Suggested Amended Wording:

Omit

(h) the alteration of water levels of the canals;

IWAI Viewpoint:

This should be legislated to protect customers that this is done only in emergencies with due diligence to the safety of boats that may be on that stretch of the canal. There have been cases where water levels have been dropped and large number of boats placed at risk of damage and heaving over due to insufficient water to remain afloat, others have been stranded on the canal in the middle of their journey.

(h) the alteration of water levels of the canals, *Within agreed procedures on a temporary basis, taking into account with due diligence the safety of boats that may be on that stretch of the canal that could be affected by the alteration of water levels, that may need to complete the journey underway, or continue to have safe mooring and notifying owners of same.*

(k) the regulation of berths and moorings and the placing of buoys on the canals or other canal property;

IWAI Viewpoint:

Many mooring places designed during the last byelaws period were in unsuitable areas with regard to safety, security, access by the emergency services etc. It should be legislated in the interest of customer and property safety that these be optimised in each area.

Suggested Amended Wording:

the regulation of berths and moorings and the placing of buoys on the canals or other canal property, ***taking into account and optimising in each area with regard to safety, security and access by the emergency services.***

(p) the charging and fixing of fees, tolls and charges in respect of the use by boats of the canals (including the use of locks on the canals and mooring on the canals) and the taking of water from the canals;

IWAI Viewpoint:

In agreement, but should not just be restricted to only one set of canal users. This is highlighted by a reference to ‘taking water from the canals’, an action which does not apply to boats.

Suggested Amended Wording:

(p) the charging and fixing of fees, tolls and charges in respect of the ***users by-boats*** of the canals (including the use of locks on the canals and mooring on the canals) and the taking of water from the canals;

(s) the specification of the form of a fixed payment notice and such amount as may be specified for the purpose of section 7A(1)(b).

IWAI Viewpoint:

A fining system should reflect the seriousness of the offence, There should be a system of provisional notice without fines. This is a leisure amenity and management of same should be one of encouragement not overly penal.

Suggested Amended Wording:

s) the specification of the form of a fixed payment notice and such amount as may be specified for the purpose of section 7A(1)(b) ***and only issued where there is failure to comply with warning notices as defined within the bye-laws.***

(2) (a) If Waterways Ireland proposes to make bye-laws under subsection (1), it shall -

(i) publish a notice of the proposal on its website, and in one or more newspapers circulating in the vicinity of the canal or other canal property to which the proposal relates, and

(ii) communicate the proposal in writing to each local authority whose functional area is affected by the proposal.

IWAI Viewpoint:

There should be a list of interested parties including IWAI, Community groups, user groups etc. established that represents those who are involved in the Canals, and it should be legislated that this list must be notified 30 days in advance of draft bye-laws being published. – In the interest of openness transparency and good democracy

Suggested Amended Wording:

2) (a) If Waterways Ireland proposes to make bye-laws under subsection (1), it shall -

(i) publish a notice of the proposal on its website, and in one or more newspapers circulating in the vicinity of the canal or other canal property to which the proposal relates, and

(ii) communicate the proposal in writing to each local authority whose functional area is affected by the proposal ***30 days in advance of the publication date for proposed bye-laws.***

(iii) communicate the proposal in writing to all recognised stakeholders 30 days in advance of the publication date for proposed bye-laws.

(f) Waterways Ireland shall—

(i) make available to the public copies of canal bye-laws for the time being in force relating to a canal or other canal property—

(I) for inspection at the public offices of Waterways Ireland, during ordinary office hours, and

(II) for purchase for such fee (if any) as may be determined by it, and

(ii) publish canal bye-laws on its website.

IWAI Viewpoint:

Authorised Officers should be required to carry a hard copy of the bye-laws to allow members of the public to reference same in the event of a bye-law issue being raised by the Authorised Officer.

Suggested Amended Wording:

Waterways Ireland shall—

(i) make available to the public copies of canal bye-laws for the time being in force relating to a canal or other canal property—

(I) for inspection at the public offices of Waterways Ireland, during ordinary office hours, and

(II) for purchase for such fee (if any) as may be determined by it, And

(ii) publish canal bye-laws on its website.

(iii) ***provide to Authorised Officers for presentation on request for reference purposes access to a copy of the bye-laws (electronic or hard copy) in the event of a bye-law issue being raised by the Authorised Officer.***

(6) A person who contravenes or fails to comply with a provision of a byelaw made under subsection (1) which is stated in canal bye-laws to be a penal provision commits an offence and is liable on summary conviction to a class D fine.

IWAI Viewpoint:

This is a €1,000 fine, a fining system should reflect the seriousness of the offence, if permitted this means someone not displaying their permit correctly is open to the same fine as say a discharge of slurry into the canal from an adjoining farm. There should be a system of provisional notice without fines.

This is a leisure amenity and management of same should be one of encouragement not overly penal.

Suggested Amended Wording:

A person who contravenes or fails to comply with a provision of a byelaw made under subsection (1) which is stated in canal bye-laws to be a penal provision commits an offence and is liable on summary conviction ***to warning notices and a class D fines as defined within the bye-laws.***

Fixed payment notice

7A. (1) Where an authorised officer of Waterways Ireland has reasonable grounds for believing that a person is committing or has committed an offence under section 7, he or she may serve the person with a notice, in the form specified by Waterways Ireland in canal bye-laws stating that—

(a) the person is alleged to have committed the offence specified in the notice,

(b) the person may, during the period of 21 days beginning on the date of the notice, make to Waterways Ireland, at the address specified in the notice, *a payment of the specified amount*, accompanied by the notice,

duly completed, and (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if a payment specified in the notice, accompanied by the notice, duly completed, is made during that period, no prosecution in respect of that alleged offence will be instituted.

IWAI Viewpoint:

What is meant by reasonable grounds? What about burden of proof? What is an authorised officer? Why no appeals process without going to the court? What will be specified amount be? Waterways Ireland must be seen as allies in canal conservation, not as police. Consideration should be given to adopting the approach taken just last month by the Canal and Rivers Trust in the UK where the 'enforcement' teams have been rebranded as 'customer support' teams.

Suggested Amended Wording:

Fixed payment notice

7A. (1) Where an authorised officer of Waterways Ireland has reasonable grounds for believing that a person is committing or has committed an offence under section 7 ***and can produce proof of same***, he or she may serve the person with a notice, in the form specified by Waterways Ireland in canal bye-laws stating that—(a) the person is alleged to have committed the offence specified in the notice,

(b) details of reason for grounds for believing that an offence has been committed and details of proof of this offence

(c) the person may, during the period of ~~21~~ **30** days beginning on the date of the notice, make to Waterways Ireland, at the address specified in the notice, *a payment of the specified amount*, accompanied by the notice, duly completed, and

(d) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if a payment specified in the notice, accompanied by the notice, duly completed, is made during that period, no prosecution in respect of that alleged offence will be instituted.

- (2) Where notice is given under subsection (1)—
- (a) a person to whom the notice applies may, during the period specified in the notice, make to Waterways Ireland at the address specified in the notice, the payment specified in the notice, accompanied by the notice, duly completed,
 - (b) Waterways Ireland may receive the payment, issue a receipt for it and retain the money paid, and any payment received shall not be recoverable in any circumstances by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment specified in the notice is made, accompanied by the notice, duly completed, during that period, no prosecution in respect of the alleged offence shall be instituted.

IWAI Viewpoint:

It is improper to demand payment of a fine where it is alleged that an offence is committed. Waterways Ireland should be obliged to provide reasonable proof that an offence is alleged to have been committed. It is essential that an appeals process should be provisioned for under this bill and that this process should be clearly defined in the bye-laws.

Suggested Amended Wording:

- 2) Where notice **determining reasonable proof** is given under subsection (1)-
- (a) a person to whom the notice applies may, during the period specified in the notice, make to Waterways Ireland at the address specified in the notice, the payment specified in the notice, accompanied by the notice, duly completed,
 - (b) Waterways Ireland may receive the payment, issue a receipt for it and retain the money paid, and any payment received shall not be recoverable in any circumstances by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment specified in the notice is made, accompanied by the notice, duly completed, during that period, no prosecution in respect of the alleged offence shall be instituted.
 - (d) Where a person wishes to contest the notice served, the matter should be referred to an independent appeals board who will adjudicate on the matter as determined in the bye-laws.**

- (3) The specified amount for the purposes of subsection (1)(b) is €150 or such lesser amount as may be specified in canal bye-laws for a contravention of a provision of canal bye-laws.

IWAI Viewpoint:

Before recourse to any fines, a warning notice should be issued to the user. Any fines subsequently imposed for repeated breaches of the bye-laws should be appropriate and clearly outlined in the bye-laws. It needs to be clarified whether there is a period of time attached to an offence.

Suggested Amended Wording:

- (3) The specified amount for the purposes of subsection (1)(b) is €150 or such lesser amount as may be specified in canal bye-laws for a contravention of a provision of canal bye-laws. **The fine payable shall be clearly outlined in the byelaws & shall attach to the offence for a specific period of time as determined in the byelaws.**

Authorised officers

7B.

- (5) An authorised officer may for the purposes of—
- (a) enforcing the conditions under which boats may be used in the canals in compliance with canal bye-laws,
 - (b) ensuring that a boat on the canals is authorised in accordance with canal bye-laws to use the canals, or
 - (c) ensuring that persons on the canals or other canal property are complying with canal bye-laws, do all or any of the following:
 - (i) board and inspect a boat (other than such part of it as constitutes a dwelling) on the canals or other canal property and may, for the purpose of boarding it, stop a boat that is under way;
 - (ii) request any person in charge of the boat to give to him or her for inspection any permit or licence issued under canal bye-laws or evidence of insurance required under canal bye-laws, relating to the boat;
 - (iii) request a person on the canals (whether or not in a boat) or other canal property to give to him or her such information within the knowledge of the person as the officer may reasonably require for the purposes of ensuring compliance with canal bye-laws;

(iv) give to a person on the canals (whether or not in a boat) or other canal property such directions, orally or in writing, as he or she considers reasonable for the purpose of ensuring compliance with canal bye-laws or the safety of persons or the care, management and maintenance of property on the canals or other canal property;

(v) direct a person whom he or she believes to be contravening or failing to comply with canal bye-laws to—

(I) give to the officer his or her name and address and (if the officer considers it necessary) evidence of his or her identity, or (II) leave the canals or other canal property, or both.

IWAI Viewpoint:

The powers set out in this section are aimed disproportionately at boat users and no other users and this goes against Waterways Ireland's general duties as outlined in this Bill. The powers are excessive & prohibitive. Users risk exposure to impersonation of an officer, robbery etc. This particularly applies to vulnerable users. What form of identity will users be required to give as evidence? There is no National Identity Scheme in Ireland and no requirement for citizens to carry identification. Users are not compelled to provide evidence of identity even to An Garda Síochána, only their name and address may be requested. Enforcement of this power will result in a breach of a person's Constitutional Rights. The master of a vessel is responsible for the safety of passengers and crew in their care. Giving an authorised officer these powers will also transfer all responsibility and liability to ensure safety to that officer.

Suggested Amended Wording:

(5) An authorised officer may for the purposes of—

(a) enforcing the conditions under which ~~boats may use the canals in the canals and canal property may be used in~~ compliance with canal bye-laws,

(b) ensuring that a boat on the canals is authorised in accordance with canal bye-laws to use the canals, or

(c) ensuring that persons on the canals or other canal property are complying with canal bye-laws, do all or any of the following:

(i) board and inspect a boat (other than such part of it as constitutes a dwelling) on the canals or other canal property and may, for the purpose of boarding it, ~~stop a boat that is underway direct a boat to stop when it is safe to do so.~~

(ii) request any person in charge of the boat to give to him or her for inspection **evidence of** any permit or licence issued under canal bye-laws or evidence of insurance required under canal bye-laws, relating to the boat;

(iii) If this evidence is not available then an individual should be able to produce said evidence within a reasonable period of time as determined in the bye-laws.

(iv) request a person on the canals (whether or not in a boat) or other canal property to give to him or her such information within the knowledge of the person as the officer may reasonably require for the purposes of ensuring compliance with canal bye-laws;

(v) give to a person on the canals (whether or not in a boat) or other canal property such directions, orally or in writing, as he or she considers reasonable for the purpose of ensuring compliance with canal bye-laws or the safety of persons or the care, management and maintenance of property on the canals or other canal property;

(v) direct a person whom he or she believes to be contravening or failing to comply with canal bye-laws to—

(I) give to the officer his or her name and address **and** (if the officer considers it necessary) ~~evidence of his or her identity~~, or (II) leave the canals or other canal property, or both.

(6) An authorised officer may give to the owner of a boat such directions, orally or in writing, as he or she considers reasonable for the purpose of his or her functions under this Act or canal bye-laws.

The master of a vessel is responsible for the safety of passengers and crew in their care. Giving an authorised officer these powers will also transfer all responsibility and liability to ensure safety to that officer. These powers also extend to all users of canal property & the legislation should reflect this. What if a person was breaking a byelaw but did not own a boat, how are they to be dealt with under the byelaws?

Suggested Amended Wording:

(6) An authorised officer may give to ~~the owner of a boat persons on canal property~~ such directions, orally or in writing, as he or she considers reasonable for the purpose of his or her functions under this Act or canal bye-laws.

(7) A person to whom a direction is given, or a request is made, under this section shall comply with the direction or request.

IWAI Viewpoint:

The master of a vessel is responsible for the safety of passengers and crew in their care. Giving an authorised officer these powers will also transfer all responsibility and liability to ensure safety to that officer. A master should not be compelled to follow such directions.

Suggested Amended Wording:

(7) ***Where there is an identified risk to safety***, a person to whom a direction is given, or a request is made by a ***suitably qualified*** authorised officer, under this section shall comply with the direction or request.

(8) A person shall not—

(a) obstruct, impede or otherwise interfere with an authorised officer in the performance of his or her functions under this Act or canal byelaws, or

(b) give to an authorised officer, when requested by the officer, information that is to the knowledge of the person false or misleading or a false name or address.

IWAI Viewpoint:

This should only apply in cases where there is a clear and identifiable risk to the safety of users.

Suggested Amended Wording:

(8) ***Where there is an identified risk to safety*** a person shall not—

(a) obstruct, impede or otherwise interfere with an authorised officer in the performance of his or her functions under this Act or canal byelaws, or

(b) give to an authorised officer, when requested by the officer, information that is to the knowledge of the person false or misleading or a false name or address.

(9) A person who contravenes or fails to comply with subsection (7) or (8) commits an offence and is liable on summary conviction to a class D fine.

IWAI Viewpoint:

Where does the burden of proof lie?

Suggested Amended Wording:

(9) A person who is proven to have contravened or has failed to comply with subsection (7) or (8) commits an offence and is liable on summary conviction to ***a class D fine fines as outlined in the bye-laws.***

(10) An authorised officer shall not board, except with the consent of the occupier, that part of a boat that constitutes a private dwelling unless he or she has obtained a search warrant under section 7 C.

IWAI Viewpoint:

There are no known circumstances for the use of these powers. IWAI recommends that pre organised inspections at the time of obtaining a permit or licence should suffice. If boarding is determined necessary then access should be restricted to those areas of the boat concerned with mechanical propulsion. This could be further specified in the bye-laws. In many cases an entire boat can be considered a dwelling.

Suggested Amended Wording:

(10) An authorised officer shall not board, except with the consent of the occupier, ***that any*** part of a boat that constitutes a private dwelling unless he or she has obtained a search warrant under section 7 C.