



Report No: **61/2009** Public Agenda Item: **Yes**

Title: **Consultation on the Exception from Alcohol Limits for Non-Professional Mariners**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee** On: **23 March 2009**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

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1. What we are trying to achieve and the impact on our customers

- 1.1 The Government has launched a consultation on draft Regulations that will govern which recreational vessels will come under the scope of the offence of being 'over the limit' when it comes to consuming alcohol afloat. Following an extensive consultation, the Government announced in 2007 that it would introduce similar alcohol restrictions for recreational boaters to those in place for professional mariners.
- 1.2 This report seeks to raise the debate with the Harbour Committee and to agree a means of responding to the Government's latest consultation.
- 1.3 Tor Bay Harbour is widely used by both professional and non-professional mariners (leisure/recreational boaters). Given the large number of leisure and recreational boaters that use the Bay it is important that the Harbour Authority sends a response to this consultation.

2. Recommendation(s) for decision

- 2.1 **That, the Executive Head of Harbour and Marine Services, in consultation with the Chairman of the Harbour Committee, respond to the Government's consultation on Draft Regulations for an Exception from Alcohol Limits for Non-professional mariners.**

3. Key points and reasons for recommendations

- 3.1 The Railways and Transport Safety Act (the Act) received Royal Assent on 10 July 2003. Part 4 of the Act contains alcohol and drug legislation in respect of shipping. In particular it sets out prescribed alcohol limits and established a testing regime for alcohol and drugs that can be applied to mariners who are either professionals or non-professionals.
- 3.2 In March 2004, the Act was commenced for professional mariners. Section 80 of the Act provides for offences by non-professionals (leisure/recreational boaters), and allows regulations to make exceptions from the offence of exceeding the prescribed alcohol limit in specified circumstances (for example, by reference to the power of a ship's motor, the size of a ship or its location). However, the substantive provisions of section 80 relating to non-professional mariners, were not brought into force at the time, pending further consideration and public consultation on the scope and format of any possible exceptions.
- 3.3 The Government's purpose for the exception is to ensure that those persons on ships deemed to present a higher risk due to their larger size and/or higher possible speeds are subject to the alcohol limits when the legislation is brought into force. In doing so, the Government is attempting to recognise the need to balance any regulation with the threat to safety. The accidents which the Government are aware have occurred, and in which alcohol has been a causal factor, have generally shown to be on those ships which are faster and larger and therefore more dangerous.
- 3.4 On 11th February 2009 the Government launched its latest consultation on Draft Regulations for an Exception from Alcohol Limits for Non-professional mariners, prior to bringing Section 80 into force. This exemption, if accepted, will exempt non-professional mariners on ships which are less than 7 metres in length and which have a maximum design speed of 7 knots or less.
- 3.5 There are a number of important issues arising from the Government's proposals and these are highlighted in A1.20 below. Tor Bay Harbour Authority should respond to this consultation exercise and highlight any concerns that it sees are forthcoming from the proposed exceptions under Section 80 of the Railways and Transport Safety Act 2003.
- 3.6 Applying alcohol limits to non-professional mariners will help contribute towards the shared objective of 'making people feel safe', contained within the Community Plan, Torbay Council's Corporate Plan and the Tor Bay Harbour Business Plan.

For more detailed information on this proposal please refer to the supporting information attached.

**Captain Kevin Mowat
Executive Head of Harbour and Marine Services
Tor Bay Harbour Master**

Supporting information to Report 61/2009

A1. Introduction and history

- A1.1 Following the collision on the Thames between the Marchioness and the dredger, the Bowbelle in 1989, Lord Justice Clarke made a recommendation that legislation be enacted to prevent alcohol abuse on **all** water borne transport in line with the legislation applying to road and rail transport. Implementation of the recommendations arising from the Formal Inquiry on the Marchioness was then made a manifesto commitment by the Government.
- A1.2 The Railways and Transport Safety Act received Royal Assent on 10 July 2003. Part 4 of the Act contains alcohol and drug legislation in respect of shipping. In particular it sets out prescribed alcohol limits and established a testing regime for alcohol and drugs that can be applied to mariners who are either professionals or non-professionals.
- A1.3 In March 2004, the Act was commenced for professional mariners. Section 80 of the Act provides for offences by non-professionals (leisure/recreational boaters), and allows regulations to make exceptions from the offence of exceeding the prescribed alcohol limit in specified circumstances (for example, by reference to the power of a ship's motor, the size of a ship or its location). However, the substantive provisions of section 80 relating to non-professional mariners, have not yet been brought into force, pending further consideration and public consultation on the scope and format of any possible exceptions.
- A1.4 The Government launched a consultation in March 2004 on what exceptions, if any, there should be from the prescribed alcohol limits, how these should be framed, and which classes of persons should be designated as 'marine officials'. The consultation received over 200 responses and most respondents were broadly in favour of an exception for some non-professional mariners.
- A1.5 Ministers announced on 13 June 2007 their intention to bring into force the section 80 in Part 4 of the Railways and Transport Safety Act and to create an exception for those persons involved in the navigation of a vessel which is less than 7 metres and is not capable of a maximum speed of more than 7 knots. The exception would only apply to the offence of exceeding the prescribed alcohol limits and not from the offence of being impaired through drink or drugs in the ability to exercise a function in connection with navigation.
- A1.6 Ministers decided with the advice of officials and representations from members of the public, to bring the legislation into force because the existing legislation has proved to be ineffective and difficult to enforce. The Government believe that the measure will also simplify existing legislation by having one national law obviating the need for separate local byelaws. The Government aims to ensure that those involved in the navigation of ships with the potential to cause injury or death, should be in a fit state to operate them safely, just as they should be in aeroplanes and cars. It is the Government's view that the provisions in section 80, once brought into force, will complete a suite of measures that they agreed to implement from recommendations following the Marchioness disaster in 1989.

- A1.7 The MAIB report into the *CARRIE KATE/KETS* accident which alcohol was found to be a causal factor also recommended that the Department for Transport work with the RYA, MCA and others on the urgent introduction of national regulations to establish limits on the amount of alcohol that may be consumed by operators of leisure ships. The report into another incident involving the leisure vessel the *SEA SNAKE* reinforced this recommendation. The Department for Transport agreed as a result of the MAIB recommendation to review the introduction of alcohol limits for non-professional mariners.
- A1.8 Although there are currently bye laws in place in ports and harbours, these are seen as being ineffective and difficult to enforce and it can be difficult to carry out successful prosecutions. This is because the police do not currently have the authority to conduct a blood test or a breathalyser test on a non-professional mariner and as such it is difficult to obtain evidence. The provisions in section 80, Part 4 of the Railways and Transport Safety Act once brought into force will give the police those powers.
- A1.9 The proposed exception will not affect the offence in section 80 (2) in which a non-professional mariner commits an offence if his or her ability to exercise, purport or attempt to exercise a function in connection with the navigation of a ship is impaired through either drugs or alcohol.
- A1.10 The Government considers that the Regulations in section 80, of the Railways and Transport Act 2003 require modification to ensure that the prescribed alcohol limits when brought into force will apply to those non-professional mariners on ships or vessels which pose greater risks because of size and capability of speed. In setting the parameters for the exception, the Government aims to ensure that the regime is both enforceable and workable.
- A1.11 The Government's objectives are to ensure that those non-professional mariners who pose the most risk in the water are subject to the offences in section 80, Part 4 of the Railways and Transport Safety Act 2003. The intended effects are to ensure that the provisions in section 80 can be enforced more effectively and to improve safety on the water, while also representing a balance between the need to regulate and the threat to safety. In doing so, the Government proposes to introduce a regime which is proportionate to the safety risks.
- A1.12 The options considered by Government for setting the parameters for the exception are as follows:-
- 1) Total ban - i.e. no exceptions for non-professional mariners whatever vessel they are on
 - 2) Exceptions based just on maximum speed of the vessel
 - 3) Exceptions based just on size of the vessel
 - 4) Exceptions based on a combination of size and maximum speed of the vessel
- A1.13 Option 1 - Total ban - i.e. no exceptions for non-professional mariners whatever ship they are on. This option would mean that the prescribed alcohol limits would apply to all non-professional mariners navigating a vessel regardless of the type of vessel. During the passage of the Road Transport Safety Bill the Government said it was minded to exempt rowing and paddle boats and sailing dinghies from the application of prescribed limits and associated tests. Option 1

was seen as over regulating and may result in non-professional mariners ignoring the legislation. It may also increase the pressure on enforcement authorities who would enforce the ban.

A1.14 Option 2 - Exceptions based just on the size of the ship. The Government considered that this option was not a practical choice. Unless a speed parameter was included for the exception as well as size, smaller but higher powered vessels, which pose a greater risk in the water, would not be subject to the alcohol limits. Any attempt to deal with them on a basis of size alone would mean setting the size at such a low limit that it would effectively result in almost a total ban.

A1.15 Option 3 - Exceptions based just on the speed of the ship. Although Government felt that this option could capture the vessels which have been involved in highly publicised accidents, this option was ruled out because it would also exempt from the alcohol limits those larger vessels which, although slow, are potentially capable of causing death or serious injury.

A1.16 Option 4 - Option based on a combination of size and maximum speed of the ship. This option was seen as Government to be the most attractive. It would also meet the aim of the Government in ensuring that those non-professional mariners who are on larger or higher powered ships that pose the most risk are subject to the prescribed alcohol limits. This option had the most support within the consultation, with 72% in favour.

A1.17 The offences of exceeding the prescribed alcohol limits, and being impaired through alcohol or drugs while navigating a ship underway, were designed to reduce the risk of accidents involving non-professional mariners on leisure ships. The introduction of an exception to the prescribed alcohol limits is specifically provided for in the Act and so envisaged by Parliament, but it will increase the risk of accidents, compared to a situation with no exception. This increased risk represents a cost resulting from the current proposal. There is little evidence available to quantify the scale of this risk. However, the exception applies to slower and smaller ships, capable of less damage than those ships which travel at speed or which are of a larger size. Furthermore, all non-professional mariners regardless of the size or speed of vessel will continue to be subject to laws requiring their ability to navigate a ship to be unimpaired. This means alcohol consumption that impairs their ability to navigate safely remains illegal. The risk of accident resulting from the potentially greater alcohol consumption allowed by the current proposals is therefore likely to be small, since laws remain in place to prohibit navigation when "unfit".

A1.18 Enforcement will be the responsibility of the police, assisted by marine officials including harbour masters, coastguards (MCA) and officers who can detain a ship under the Merchant Shipping Act 1995 (s.284) and other officials who will be designated by the Secretary of State. The marine official may detain a ship, if they suspect an alcohol or drug offence and summons the police. As with other offences, the decision on when to act will then rest with the police who will be responsible for breathalysing suspected offenders.

A1.19 The exception will not significantly affect enforcement agencies, but the Government believe that the proposed exception will enable the offence to be enforced more efficiently by ensuring that only those non-professional mariners who pose the most risk are subject to the application of alcohol limits. There will be no random testing of non-professional mariners. On conviction a person found guilty of an offence under Section 80 of the Act will be liable to imprisonment for a term not exceeding two years and/or a fine or both, not exceeding the statutory maximum.

A1.20 The proposed exemptions are, without further clarification, likely to cause problems in determining precisely which craft are exempt and which are not. A definition of "design speed" is not provided in the draft Regulations and the definition of "length overall" is not very helpful when vessels are fully rigged.

A1.21 The idea of providing any kind of exemption sends a mixed message because the proposed exception will not affect the offence in section 80 (2) of the Act in which a non-professional mariner commits an offence if his or her ability to exercise, purport or attempt to exercise a function in connection with the navigation of a ship is impaired through either drugs or alcohol (see A1.5 & A1.9 above).

A1.22 It is the general view of the ports and Harbour Masters who benchmark with Tor Bay Harbour, including the British Ports Association, that there should be no exceptions. Indeed there are no exceptions for aeroplanes or cars.

A1.23 The inference in A1.6 above is that existing local Byelaws which cover the issue of being under the influence of alcohol or drugs will no longer apply and this is not the case.

A1.24 The Government's reasoning for dismissing Option 1 (A1.13 above) is open to question.

A1.25 Option 4 (A1.16 above) received support from 72% of those consulted but this would have included non-professional mariners and boat owners.

A1.26 The enforcement issue highlighted in A1.19 maybe overstated. It could easily be qualified by making a comparison between the ratio of vehicles to road traffic police officers and boats to marine officials.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.2 There are no direct risks associated with responding to a Government consultation exercise.

A2.3 There is a small risk to the Councils reputation as a Harbour Authority if a significant leisure harbour like Tor Bay Harbour is not seen to respond to this important piece of legislation.

A2.4 It is assumed by Government that the decreased risk of incidents on larger and faster UK vessels outweighs the increased risk on smaller and slower vessels. This is based upon anecdotal evidence of accidents occurring predominantly on larger and faster vessels. The Government's message appears to be mixed and confused; it could easily be interpreted by some to mean that drinking and driving on smaller and slower craft is acceptable.

A2.5 Remaining risks

A2.6 There are no remaining risks.

A3. Other Options

A3.1 Not to respond to the Government's consultation exercise.

A4. Summary of resource implications

A4.1 A modest amount of Officer time will be required to compose a suitable response.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 Tor Bay Harbour does not have a significant or obvious problem with recreational boaters being "over the limit" due to alcohol. However, the introduction of alcohol limits for non-professional mariners can only have a positive impact on navigational safety as well as crime and disorder. These measures will therefore help to promote community safety in Torbay. It is expected that in general terms the provision of alcohol limits for leisure boaters will be well received by the community.

A6. Consultation and Customer Focus

A6.1 The sectors and groups directly affected by this proposal are non-professional mariners and leisure mariners, including the membership of associated lobby groups such as the Royal Yachting Association and the British Marine Federation.

A6.2 Both the Torquay/Paignton Harbour Liaison Forum and the Brixham Harbour Liaison Forum have been consulted on this subject to gauge their respective views.

A7. Are there any implications for other Business Units?

A7.1 No other Business Units will be affected by the recommendation contained in this report.

Appendices

None

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Impact Assessment of Exception for Alcohol Limits – Department for Transport (March 2008)

Consultation on the Exception from Alcohol Limits for Non-Professional Mariners.
Consultation on the Railways and Transport Safety Bill 2003