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From Richard Benyon MP
Minister for Natural Environment and Fisheries

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Dear Richard

Windermere Navigation Byelaws 2008

In my role as Parliamentary Under-Secretary for Natural Environment and Fisheries at the Department for Environment, Food and Rural Affairs I am writing to inform you of my decision, made on behalf of the Secretary of State, regarding the Byelaws relating to Navigation on Lake Windermere, namely the Windermere Navigation Byelaws 2008, made by the Lake District National Park Authority ("the Authority") under section 13 of the Countryside Act 1968.

I have carefully considered the Byelaws for which the Authority is seeking confirmation, along with the responses to the consultation process, and subsequent representations, following the notice placed by the Authority in the 7th June 2012 edition of the Westmoreland Gazette.

The Byelaws

The Windermere Navigation Byelaws 2008 seek to consolidate the current Navigation Byelaws that apply to Lake Windermere, namely the Windermere Navigation Byelaws 1986, the Windermere Navigation (Amendment) (No 1) Byelaws 1992, the Windermere Navigation (Amendment) (No 2) Byelaws 1992 and the Windermere Navigation (Amendment) (No 3) Byelaws 1992. The 1986 Byelaws explain the use of the lake, including speed limits, water skiing and Navigation, 1992 (Amendment) (No 1) prohibits the use of towed inflatables, 1992 (Amendment) (No 2) introduced a 10 miles per hour speed limit in 2005, and 1992 (Amendment) (No 3) adjusts the penalties for breach of the Navigation Byelaws.

While the 2008 Byelaws mainly seek to consolidate the existing Byelaws, there are a number of changes that they would introduce. Byelaw 11 is a new Byelaw relating to the Mooring of Vessels, Byelaw 12.3 specifies the speed limit as being 10 knots, and 12.4 and 12.5 detail exemptions to the speed limit on the lake. Byelaw 28 repeals the 1986 and the three 1992 Byelaws, leaving the 2008 Navigation Byelaws as the sole set of Navigation Byelaws relating to Lake Windermere.

Byelaw 11 in the 1986 Navigation Byelaws introduced a 6 miles per hour speed limit for specified areas of Windermere. Byelaw 3.7 of the 1986 Byelaws states "*the word "mile" means an International Nautical Mile of 1852 metres*". When a 10 miles per hour speed limit was introduced in the 1992 Byelaws (No. 2), Byelaw 11.3 stated "*Save as hereinafter provided, no master of a power-driven vessel shall knowingly cause or permit it to be navigated at a greater speed than 10 miles per hour (16.093 Kilometres per hour) through those waters of the lake which fall outside the areas defined for the purposes of Byelaw 11.1 (a) to (d) inclusive*" (the 6 miles per hour areas). The conversion of 10 miles per hour to 16.093 Kilometres per hour denotes a speed limit of 10 statute miles per hour, which is the speed limit defined in Byelaws affecting other lakes and was the intended speed limit at the time the 1992 Byelaws were drawn up.

However, using '16.093 kilometres per hour' as a conversion of 10 'miles per hour' introduced an inconsistency with the definition of mile provided in Byelaw 3.7 in 1986, which remained in force when the 1992 amendment was made. For consistency, Byelaw 3.7 should have been amended or repealed or alternatively the 10 miles per hour speed limit might have been defined in terms of '18.52 Kilometres per hour' (although this was not the policy intention at the time). This inconsistency was not detected before the Byelaw was confirmed and has therefore existed since the Byelaw was confirmed in 2000. The speed limit did not come into effect until 2005, boat owners and local businesses being given a five year period to adapt to the introduction of the limit.

The Consultation

The Authority followed the correct procedures when the 2008 Byelaws were re-submitted in May 2012, including consulting Natural England (as required under section 13 of the Countryside Act 1968). Natural England have confirmed their support for the Byelaws.

The Authority held an eight week informal public consultation on the proposed re-submission of the Windermere Navigation Byelaws between January and March 2012. The consultation was widely publicised and hosted on the Authorities website. The formal process of advertisement then began. The proposed amended Windermere Navigation Byelaws were advertised for public inspection and comment during the period 7th June to 7th July 2012. This was done in accordance with the applicable statutory procedures.

The consultation responses

The formal consultation on the new Navigation Byelaws resulted in 4 responses, all of which supported the introduction of the amended Byelaws. Among those sending letters of support were the Windermere Lake User Forum, an independent group who represent all lake users, and Windermere Lake Cruises, whose vessels make 1.35 million passenger journeys per year on the lake.

The Authority's case for confirmation

The Authority accepts that the original policy intention was for a speed limit of 10 statutory miles per hour and that the current 10 knots speed limit has resulted from an inconsistency in the drafting of the Byelaw that was undetected at the time it was confirmed on the Secretary of State's behalf. It has always made clear that it would address this issue at the next available opportunity - and the consolidation of the Byelaws provides that opportunity. In doing so, says the Authority, it has a choice whether to

revert to the originally intended speed limit of 10 statute miles per hour or to maintain the speed limit, which has now been in operation for the last 7 years, of 10 nautical miles per hour. The former would provide consistency on an upper speed limit between the lakes but result in different units of measurement for the speed limits on Lake Windermere (one in knots, the other in statute miles per hour). The latter would provide a consistent unit of measurement for the range of speed limits on Lake Windermere but result in Lake Windermere having a marginally higher speed limit than the other lakes. The Authority decided on 10 nautical miles per hour for the reasons detailed below.

The Authority says that all speed limits on Windermere have always been expressed in nautical miles per hour, that the 2008 Byelaw amendments merely clarify what is in effect already the position so as to avoid further confusion and that the speed limit is not increased, but remains the same.

The Authority says that it has brought several successful prosecutions against contravention of this Byelaw and has never taken action against boats travelling at less than 10 nautical miles per hour. It says that the Lake Patrol Team's effectiveness in advising lake users and in enforcing the speed limit has, by common consent, restored the tranquillity of the lake and enabled a wide spectrum of users to enjoy the lake in safety and that the successful implementation of the Byelaw has vindicated "*the Authority's original proposal and the Secretary of State's decision*" (sic).

The Authority says that there is no inference that, in correcting the error in the 1992 Byelaw and in clarifying the situation for the future, the Authority is relaxing existing speed restrictions on Windermere. The Authority has clearly stated and demonstrated its intention and resolve to enforce the existing speed limits, and now has 7 years experience in doing so.

The Authority argues that it is clear from the result of the consultation exercise carried out by the Authority in June and July 2012 that the changes in the Byelaws have widespread support. It says that although the statutory confirmation process for Byelaws requires only that those objecting to bylaws formally register their concerns it is notable that supporters of the Byelaws have chosen to register their approval, while no objections were received.

The Authority notes that the report of the Inspector following the public inquiry into the 1992 Byelaws and the Secretary of State's confirmation letter make it clear that the task of the Authority in balancing the interests of different groups of lake users is not an easy one. The Windermere Lake User forum is an independent group representing all lake users and the support of this group for the changes introduced in the 2008 Byelaws is a clear indication that the Authority has achieved the balance of interests necessary.

As regards the exemptions, the Authority argues that the existing Byelaw 11.4 already allows exemption from the 10 knot speed limit in certain circumstances, but that this provision has been the cause of some uncertainty. It is recognised that there are occasions which give rise to a need to exceed the speed limit on Windermere. It is clear that a police officer, Environment Agency officer or a lake ranger may exceed the speed limit where necessary for the proper execution of their duties and that someone actually engaged in a rescue operation may do so. The situation is, however, much less clear currently in other cases.

One such example is where persons operating lake based activities need to train staff to use a safety boat for rescue operations. In providing training they are not actively taking part in rescue operations, but the concern is that they would not be covered by the current exemption. In order to behave responsibly and seek assurance that they will not risk

prosecution people engaging in this sort of activity have, since 2000, applied for the Authority for 'permission' to exceed the speed limit.

The Authority says it has no specific power at present to grant permission, but that it is arguable that such use may come within the existing exemption, or that, if the Authority authorises use of the lake, users could be 'acting with the authority of the Lake District National Park Authority'. The current ambiguity is not helpful. Another problem the Authority identifies is that if exceeding the speed limit is permitted in such circumstances it cannot easily be regulated. It may be acceptable for a lake user to have a rescue boat training session once a year at a time when the lake is quiet, causing minimal inconvenience to other lake users, but it would be something altogether different if such events were organised every Sunday afternoon during the summer holiday season when the lake is busy. Yet, if someone can successfully argue that they benefit from the existing exemption the Authority has very limited further control.

The Authority considers the proposed change would allow it to consider any proposals for exceeding the speed limit and grant exemptions in accordance with policies debated in public and agreed by the Authority from time to time. It would allow the Authority to consult with interested parties on such policies and take their views into account. It would also enable the Authority to impose conditions on any exemption granted and to take enforcement action in case such conditions were breached.

The Authority says it has considered concerns whether this change could be the 'thin end of the wedge' and would lead to exemptions being granted on a regular basis under a wide range of purposes. The position of the Authority is that any exemptions must accord with specific policies concerning the activity in question. The Authority must be assured and satisfied that lake-user safety and environmental protection considerations have been fully taken into account and addressed. Concerns that safety issues cannot be taken into account when considering the granting of exemptions are not well-founded. The safety of lake users will always be of highest priority. At the discretion of the Authority, time limits could be imposed on exemptions. This would enable monitoring and review of the effect and acceptability of any exempted activity or event. The Authority feels this would prevent exemptions being granted inappropriately or indefinitely.

Consideration

In deciding whether to confirm the Windermere Navigation Byelaws 2008, I need to take into account the responses to the consultation process; the response and experience of the Lake District National Park Authority to date in operating with a *de facto* 10 knot speed limit; and the findings from the considerable expert evidence taken into account at the public inquiry that resulted in the Inspector's 1996 report.

I will turn now to question of whether the Byelaws should be confirmed with a speed limit set at 10 knots. In seeking to address the inconsistent drafting of the Byelaw in relation to the unit of measurement for the 10 miles per hour speed limit, the Authority had a choice of setting the speed limit at 10 statute miles per hour, or at 10 knots.

I note that the Authority accepts that the original policy intention was for a speed limit of 10 statute miles per hour and therefore do not accept that setting the speed limit at 10 knots could be described as a correction; it would be a departure from the originally intended speed limit. Nonetheless, I accept the Authority's basis for its view that it should not be construed as a relaxation of the speed limit. In my view, achieving consistency on an upper speed limit between the lakes or in the units of measurement for the speed limits on Lake Windermere are not key considerations in themselves, what is more important is for the speed limit to be the one that is most appropriate in light of the evidence available.

I accept the Authority has tried to balance the interests of different groups of lake users and recognise that this task is not an easy one. The claim that the changes in the Byelaws have widespread support does appear to be supported by the outcome of the informal and formal public consultations.

I note that no hard evidence of the harmful effects caused by the *de facto* 10 knot speed limit has been put forward. I also note that the suggestion put forward by the Authority, that experience on the ground has demonstrated a 10 knots speed limit is effectively delivering the policy intentions the inspector considered during the inquiry, is supported by hard evidence that has been put forward by the Authority.

Given the considerable expert evidence considered at the inquiry I believe that firm evidence overturning the inquiry's findings or similar substantive reasons would be required to warrant a departure from the inquiry outcome and the decision made in 2000 and it is my view that the Authority have provided a convincing and clear case for doing so.

Byelaws 12.4 and 12.5, which detail exemptions to the speed limit on the lake, have been demonstrated to have widespread support, with 88% of respondents supporting them during the informal consultation, including all businesses and organisations who responded, and no objections being lodged during the formal confirmation. No case has been made for these Byelaws not to be confirmed, while clear evidence of support has been presented by the Authority for their confirmation.

Byelaw 11 is a new Byelaw relating to the Mooring of Vessels. Again, this Byelaw received widespread support (from 88% of respondents) at informal confirmation and no objections during the formal consultation process. No case has been made against this Byelaws being confirmed, while clear evidence of support has been presented by the Authority for its confirmation.

Conclusion

The currently proposed Navigation Byelaws are the outcome of an exercise, by the Authority, to consolidate the existing Byelaws. The Authority argue that, in consolidating the Byelaws, it makes sense to set the speed limit at 10 knots, the current legally effective speed limit, rather than 10 miles per hour, which was the agreed outcome of the inquiry. Having considered the case made by the Authority, the conclusions of the public inquiry and the representations received in response to the consultation on the proposed Byelaws, I believe that a convincing case has been made for departing from the 10 statute miles per hour speed limit that was the outcome of the public inquiry. Given this, and the strong evidence of support demonstrated for the mooring and exemption Byelaws, I have concluded that I should therefore confirm these Navigation Byelaws.

For the reasons given above, I have decided to confirm the Navigation Byelaws in their current form.

Decision

The Windermere Navigation Byelaws 2008 are confirmed.

Yours sincerely



RICHARD BENYON MP