



Information Commissioner's Office

## **Response by the Information Commissioner to the Department for Environment Food and Rural Affairs Consultation 'A New Era for the Waterways'**

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 and the Freedom of Information Act 2000. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this consultation.

Our response takes account of the current position of British Waterways Board with regard to Freedom of Information and the Environmental Information Regulations and the proposed options for the New Waterways Charity as set out in paragraphs 35 – 43 of the document.

Specifically, in response to the 3 options identified, the Information Commissioner recommends that Option 3 should be adopted. Option 3 provides for the New Waterways Charity to be included as a public authority in Schedule 1 of the Freedom of Information Act which will bring it within the scope of the Act and also the Environmental Information Regulations.

We have considered all three options and have the following comments in respect of each:

### **Option 1**

We note the commitment by New Waterways Charity to high standards of transparency 'within the spirit of the FOIA and EIRs.' We do have concerns that whilst this would seem sufficient where information is disclosed in response to a request, where however a requestor is refused specific information there is no route for resolving that dispute.

### **Option 2**

We note that paragraph 38 of the consultation states that the New Waterways Charity 'will have substantial duties as a statutory undertaker'. In our view

limiting the circumstances under which the organisation would fall within the scope of the Freedom of Information Act could potentially lead to disputes over exactly when the New Waterways Charity is exercising a function of a public nature and what information relates to such functions. Such disputes would have to be resolved via appeal processes which are costly to the public purse and inevitably lead to delays in disclosing information whilst the legal issues are revolved. It would seem counter to the Government's commitment to widening the scope of freedom of information to adopt an option that may lead to costly and time consuming appeals to cover a short period of time.

### **Option 3**

Our preferred approach is for the New Waterways Charity to be included as a public authority in Schedule 1 of the Freedom of Information Act so bringing the organisation within the scope of both that legislation and also the Environmental Information Regulations.

The Information Commissioner recommends that option 3 is followed for the following reasons:

- it demonstrates the Government's general commitment to extend the application of the Freedom of Information Act to new bodies and also those previously not covered by the legislation.
- crucially, it is the only option not to narrow the scope of the information that applicants are able to access under the Act.
- It is the most straightforward means to ensuring the New Waterways Charity's stated commitment to transparency and openness.

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