

CIVIC GOVERNMENT (SCOTLAND) ACT 1982**BOAT HIRE LICENCES**

1. EXECUTIVE SUMMARY

- 1.1 The Marine Accident Investigation Branch Report (the Report) on the investigation of the foundering of the passenger ferry “Vixen” at Ardlui Marina, Loch Lomond, on 19 September 2012 was published on 20 June 2013. The Report is available at;
www.maib.gov.uk/publicaitons/investigation_reports/2013/vixen.cfm
- 1.2 The Report made two recommendations in relation to Argyll and Bute Council to prevent similar accidents occurring in the future. These recommendations are that Argyll and Bute Council:-
- (a) adopt the Inland Waters Small Passenger Boat Code as the standard applied for small passenger boats carrying fewer than 12 passengers on categorised waters; and
 - (b) require such boats to be regularly surveyed by a competent person employed by a Certifying Authority or similar organisation as may be recommended by the Maritime and Coastguard Agency.

2. RECOMMENDATIONS

- 2.1 That Argyll and Bute Council’s Standard Conditions for Boat Hire Licences will be amended to:
- (a) adopt the Inland Waters Small Passenger Boat Code as the standard to be applied for small passenger boats carrying fewer than 12 passengers on categorised waters
 - (b) adopt the Code for Design, Construction and Operation of Hire Boats let for hire on inland waterways
 - (c) require boats which are the subject of the Boat Hire Licensing regime to be regularly surveyed by a competent person, as approved by the Maritime and Coastguard Agency.

It should be noted by Members that amended conditions will apply to boat hire operators across the whole of the Argyll and Bute Council area.

- 2.2 Argyll and Bute Council will continue to liaise with West Dunbartonshire and Stirling Councils to promote safe boating, by assisting those local authorities where requested, with establishing effective boat hire licensing schemes in their areas of Loch Lomond.
- 2.3 Argyll and Bute Council, together with West Dunbartonshire and Stirling Councils will consolidate the joint working already undertaken with the Marine and Coastguard Agency (MCA) in the application of relevant legislation to improve the safety of small commercial passenger boats on Loch Lomond.

3. BACKGROUND

- 3.1 The Civic Government (Scotland) Act 1982 (the Act) provides at section 38 for boat hire licensing as an optional activity. On 1st July 1997, Argyll and Bute Council resolved that boat hire would be a licensable activity within the authority area. The effect of this is that a licence issued by the authority is required *'for the use of a vessel, in the course of a trade or business carried on in or from any place within the area of the authority, for the purpose of letting it on hire or carrying for reward 12 or fewer passengers.'* However, Stirling and West Dunbartonshire Councils, which control the remaining parts of Loch Lomond, do not currently require this activity to be licenced.
- 3.2 Members will be aware that the enforcement of the licensing provisions of the Act is a function exercised by Police Scotland and not by council officers or any other external agency.
- 3.3 The passenger ferry "Vixen" foundered at Ardlui Marina, Loch Lomond on 19th September 2012. At that time, she was carrying 6 passengers from Ardluish to her home marina at Ardlui. The "Vixen" was not licenced with Argyll and Bute Council in terms of the Civic Government (Scotland) Act 1982. Argyll and Bute Council would have been the appropriate authority for the owners to have sought a license for the vessel.
- 3.4 The Report identifies a number of safety issues which directly contributed to the accident at Ardlui Marina:
 - 1) The weed hatch cover at the stern of the "Vixen" was in poor condition and would have done little to prevent water ingress. It was almost certainly the source of the flooding;
 - 2) "Vixen's" effective freeboard around the weed hatch was reduced by the fact that, since all of the passengers sitting at the stern, the weight of water accumulated in the bilge and the dynamic trim while the boat was underway. This factor was considered to be sufficient to submerge the defective weed hatch, causing "Vixen" to flood;
 - 3) The Inland Waters Code does not have statutory effect but it is the most relevant safety standard for small passenger vessels

operating in Loch Lomond. “Vixen” did not meet the Code’s requirements and, because it had insufficient freeboard, was effectively overloaded when carrying six passengers and their rucksacks;

- 4) With no regulatory oversight to enforce a minimum standard, the owners maintained “Vixen” to their own requirements. This accident demonstrated that these standards were insufficient for the safe operation of a commercial ferry; and
- 5) “Vixen’s” owners had not ensured that the safety critical systems on board were understood and correctly operated by the vessel’s skippers; that the systems were maintained effectively, or when appropriate; that details of known equipment defects were circulated to the duty skipper.

3.5 The Report notes other safety issues identified during the investigation which have also been included as recommendations. Of particular note to Argyll and Bute Council are:-

- 1) “Vixen” was not licensed with Argyll and Bute Council.
- 2) While local government authorities have the legislative ability to operate a boat hire licensing scheme and access to a standard (the Inland Waters Code) which can be applied, a number of such authorities have yet to allocate the appropriate resources necessary to survey such vessels and monitor compliance;
- 3) The National Park Authority’s aims for promoting safe boating (by ensuring that vessels carrying members of the public are operated safely), would best be achieved by supporting the local government authorities bordering Loch Lomond to establish effective boat hire licensing schemes; and
- 4) The Maritime and Coastguard Agency and the local government authorities should work together to apply their different legislation and encourage the support of the Certifying Authorities to improve the safety of small commercial passenger boats on Loch Lomond. This initiative should be supported by the Park Authority enforcing the requirements of its existing byelaws.

4. IMPLEMENTATION OF REPORT RECOMMENDATIONS

4.1 Following the publication of the Report in June 2013 officers have proactively participated in joint working with West Dunbartonshire and Stirling Councils, the National Park Authority and the Maritime and Coastguard Agency.

4.2 The aim of this joint approach was to ensure that all of the recommendations in the Report would be implemented and that all

participants would work to achieve consistent licensing regimes for boat hire on Loch Lomond.

- 4.3 A critical objective of the project is that all three licensing schemes will be subject to comply with consistent standard and levels of scrutiny; so that an operator will not be motivated to apply for a licence with a local authority with a lower level of scrutiny i.e. the same licence conditions will be applicable to all boat hirers operating on Loch Lomond.
- 4.4 Officers of Argyll and Bute Council's Governance and Law service have been involved in numerous meetings with representatives of West Dunbartonshire and Stirling Councils focussed on assisting those councils in the design and implementation of their boat hire licensing regimes. This has been a constructive but challenging project and although significant progress has been made, neither West Dunbartonshire nor Stirling Councils have as yet introduced their own licensing scheme. Despite these circumstances, and acknowledging the public safety issues raised by the Report, it is proposed that Argyll and Bute Council should introduce enhanced licence conditions for boat hire, rather than defer this action any further.
- 4.5 Once implemented the schemes administered by West Dunbartonshire and Stirling Councils will ensure that boat hire is regulated in their areas to the same extent as in the Argyll and Bute area.
- 4.6 Argyll and Bute Council will apply the safety recommendations from the MAIB to all boat hire operations within the council area. Following the amendment of the standard conditions for boat hire in Argyll and Bute, council officers will continue to work in conjunction with their peers in West Dunbartonshire and Stirling Councils, as well as those in the National Park Authority and the MCA, to ensure the continuing development, consistency and effectiveness of the licensing regimes in the Loch Lomond area.

5. CONCLUSIONS

- 5.1 Introducing the proposed amendments to Argyll and Bute's boat hire licensing regime will aid this and other local authorities in ensuring that there is effective oversight of commercially operated passenger vessels on Loch Lomond and in other waters within the licensing authority area.
- 5.2 Adopting Codes noted in this report as standards to be applied for relevant vessels will assist in ensuring that those vessels are equipped and maintained to a suitable safety standard on waters in this area.
- 5.3 The introduction of a requirement that regular surveys of relevant vessels be carried out by a competent person employed by a certifying Authority, or similar organisation as may be recommended by the MCA, will assist in ensuring that relevant vessels in the area meet the standards required by the Codes proposed to be adopted. It is expected that the MCA will

recommend organisations similar to Certifying Authorities which can provide suitable surveying for vessels located in the licensing authority area.

6. IMPLICATIONS

- 6.1 Policy - Argyll and Bute Council has resolved that boat hire is a licensable activity within the authority area. The amendment of the current licence conditions is consistent with that resolution.
- 6.2 Financial – there is no proposal at this time to alter Argyll and Bute Council's licence fee for boat hire although it may in the future, be desirable to align licence fees charged by Argyll and Bute, West Dunbartonshire and Stirling Councils to provide a consistent approach.
- 6.3 Legal – the revised licence conditions will meet the terms of the existing Council resolution and the requirements of the Civic Government (Scotland) Act 1982.
- 6.4 HR – limited staff resources will be required to continue joint working.
- 6.5 Equalities – it is not envisaged that implantation of any of the proposed actions would result in a breach of the council's Equality duties.
- 6.6 Risk – the MAIB have an expectation that Argyll and Bute Council will implement the recommendations of its report in order to reduce the risks associated with the incident involving the Vixen. Although the Council has attempted to address the recommendations using a joint approach it is suggested that those recommendations which apply specifically to Argyll and Bute should be implemented without further delay in order to reduce potential risk for the Council.
- 6.7 Customer Service – implementation of the recommendations will help to improve public safety and services by imposing higher levels of compliance and will offer clearer guidance to relevant businesses.

Executive Director of Customer Services

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