

PRIVATE MOORINGS – The legal position

One of the issues that arose at Studland was the legality or otherwise of the 50 or so moorings that have been laid there over the years.

Studland is an open sea site, and does not come under the control of any Harbour Authority, so locals just went out and laid their moorings, as many people do in open estuaries and creeks particularly in the North West of the UK. It seemed that nobody was bothered about this, so right across the country, the assumption has been that it is 'OK' to just go and lay a mooring off a beach or in a creek. Nearly all these locations are actually owned by Crown Estates, but although their permission should have been sought, they were never bothered with these places – usually too out of the way to matter.

Had anyone bothered to ask them, they would have been told that they had also to apply for a licence from DEFRA under the 1986 FEPA regulations.

The legislation was only ever used if private moorings needed to be removed for development or navigation purposes.

However, the MCAA2009 firmed up the rules, and moved responsibility for site licences to the MMO.

But surely there is a public right to lay a mooring in open water?

This is the general view, but is not in fact so: BORG checked this out with Gus Lewis, head of Legal Affairs at the RYA. Gus confirmed to us that this had been tested through the courts some years ago, and it is established that there is no legal right for anyone to lay a mooring in open waters, unless they have the landowners permission, and the installation has been approved and licensed by DEFRA, or since 2010, the MMO.

I own a private mooring – what do I need to do?

Firstly is your mooring within the jurisdiction of a Harbour Authority? If so, the responsibility lies with the appointed Harbour Master, and Harbour Board. Note that moorings controlled by a local Committee, Sailing Club or under the control of a local Landowner do NOT fall in this category: The site must be under the control of a 'Competent Harbour Authority', recognised as such by the MMO and DEFRA for it to be exempt from the MCAA2009 regulations.

For the time being, MMO say they have 'higher priorities' than looking at private Mooring sites, but eventually as the overall 'Marine Plan' unfolds they will get round to insisting that all such moorings are properly licensed.

What will be involved in a licence application?

As it stands the licensing process is fairly complex and involved, and is the same if you were BP wanting to moor a new oil rig, but BORG has asked MMO to develop a simpler 'fast track' process for private moorings. They have a simplified process now in place for us, and expect to develop it to make it less expensive and easier for private individuals.

UPDATE 10/7

We have just heard that after we raised it RYA also took this up with MMO: MMO has agreed to a much simplified streamlined licensing procedure. The final details have yet to be worked out, but it would seem that moorings will now need a one off licence which at present would cost about £158.00 RYA is hopeful that further savings on this may be possible, and are still in negotiation

with MMO . Also being negotiated is a further concession for the laying of temporary mooring – which would include such activities as the laying of racing marks, as well as someone laying a temporary mooring for a trailer sailor while on holiday.

The Landowners consent will still be required.

Do I need to do anything now?

Legally speaking, to secure your mooring rights, yes, In practice, MMO say they have more urgent priorities than looking at and chasing up private moorings. However it would be worthwhile to secure your mooring by applying for a licence once the procedure has been agreed, as this will give you a much better security of tenure.

What is without doubt certain is that the days of tying a chain round an old engine block, or railway wheel and chucking it in to a convenient corner of the local estuary to leave your boat on, are now past, and bureaucracy has caught up with this particular freedom for those few of us who are still able to enjoy it.

My sailing club administers our moorings. Will they be able to continue to do so?

Only if the mooring area comes directly under a Harbour Authority. Otherwise they will have to make arrangements with the MMO to licence the moorings. We do not know yet whether there may be some sort of 'block' arrangements for a club to licence a set of moorings.

My family has owned a mooring in our local river for many years, will I have to apply for a licence?

The only private moorings exempted from the regulations are those laid before the FEPA 1986 regulations came in to force. However you would almost certainly be required to provide evidence that the mooring was there before regulation, and it might be simpler to obtain a licence. RYA will no doubt advise on this one when agreement is reached.

Do these rules apply in non tidal waters?

No. The Regional or Local water Authority have the responsibility for this.