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Waterways: Power Surge

In the rush to hive off British Waterways (BW), the government is planning for the first time to hand over state powers, including rights of forcible entry, search and seizure, to a charity.

An amendment slipped into the public bodies bill while it was passing through the Lords will grant the charity looking after hundreds of miles of canals powers of forcible entry, search and seizure; powers to compel the giving of evidence and “powers whose existence will necessarily affect the liberty of an individual”. The charity will also be able to make bye-laws. The change stuck, despite protests from the Lords’ delegated powers and regulatory reform committee that, “especially in the absence of a convincing explanation, it is not appropriate for an existing power to make subordinate legislation to be transferable to another, unidentified body”.

BW’s web content editor Odette Williamson chirpily explained the plans in her blog last month. “It doesn’t sound very pleasant, but in reality we need to be able to remove boats from the water if they have been abandoned, or remove a boat if the owner refuses to pay their licence”.

And the power to compel evidence? “This may sound quite severe, although in reality it means that we are allowed to find out who landowners are. An essential power as [the NWC] will need to know who to talk to if there’s a problem with a certain stretch of canal!”

There are 266 powers allowing public bodies to forcibly enter private property - ranging from firefighters tackling fires to inspectors checking for foreign bees. A handful have been delegated to private contractors, such as CAPITA-employed TV licensing officers who can enter property on behalf of OFCOM - but these powers require a warrant.

BW’s powers under the 1995 waterways act allow emergency forcible access to property without a warrant and with no need to inform the owner for up to seven days afterwards - all very sensible to allow officials to deal with a locked houseboat causing a hazard, but perhaps that’s why handling such incidents is a state responsibility.

If powers are transferring to the new charity, there’s no sign that their legal obligations for transparency or complying with freedom of information requests will. Lord Hunt of Kings Heath raised the question in debate: “what will happen to the accountability, reporting and FOI requirements?”

The government responded later in a letter: “We do not currently intend to extend the FOI Act to other bodies, including private companies and charities, performing public functions. It will be for ministers and departments to ensure that such bodies are appropriately accountable for the public functions they fulfil.” This means that if the government or the new charity want to cover up any problematic fallout from the transferred powers, they will be able to.