

COMMENTARY 3.0 WAMA Office

INTERPRETATION OF MOORING REGULATIONS 1998 Regulation 16 'Transfer of mooring licence'

NOTE: Mooring Regulations 1998 EXPLANATORY MEMORANDUM 22nd Dec 1998
(Signed off by A. Director General of Transport and noted to Minister for Transport.) p.6

"Substitution of licensed vessel (Regulation 25)

This Regulation provides ... A period of 6 months is allowed for the substitution to ensure that the owner is allowed a reasonable period to comply with the boat ownership provisions of Regulation 12."

The operative principle is that mooring owner must 'comply with the boat ownership provisions of Regulation 12.'

Regulation 16 (3) 'Transfer of mooring licence' states explicitly that:

"(3) Regulations 11 and 12 apply to the transfer of a mooring licence under these regulations as if the person to whom the licence is proposed to be transferred were the applicant for the mooring licence.

The operative principle here is that when a mooring site licence is transferred then the new mooring owner must 'comply with the boat ownership provisions of Regulation 12.'

Mooring Regulations 1998 Regulation 12:

12. Mooring licence and registration of mooring site

- (1) If —
 - (a) the Minister is notified of acceptance of an offer;
 - (b) the applicant nominates a suitable vessel as the licensed vessel;**
 - (c) the annual mooring licence fee specified in Schedule 2 is paid;
 - (d) if there is a mooring on the mooring site, the Minister has received evidence satisfactory to the Minister that the applicant has acquired the mooring or that the applicant does not intend to acquire the mooring; and
 - (e) if the applicant has acquired the mooring, the applicant has notified the Minister in the approved form that the mooring is safe for its intended purpose,
the Minister is to grant the mooring licence.
- (2) If the Minister grants a mooring licence, the Director General is to register the mooring site for which the licence is granted.
- (3) A vessel is a suitable vessel for the purposes of subregulation (1)(b) if —**

- (a) the applicant is named on the certificate of registration of the vessel as the owner of that vessel, or produces evidence of ownership satisfactory to the Minister;
 - (b) the overall length of the vessel does not exceed the length specified in the application; and
 - (c) the vessel is not the licensed vessel for any other registered mooring site.
- (4) A mooring licence may be granted on conditions as to —
- (a) the location of any mooring to be installed on the mooring site;
 - (b) the form and maintenance of any mooring to be installed on the mooring site;
 - (c) the size, shape and colour of any mooring float used on the mooring site;
 - (d) the display of a mooring number or other identification data on any mooring to be installed on the mooring site;
 - (e) the inspection of any mooring to be installed on the mooring site; and
 - (f) such other matters as the Minister thinks fit."

The operative requirement here is that when a mooring site licence is transferred then the proposed new mooring owner being 'the applicant' must 'nominate a suitable vessel as the licensed vessel' and the applicant must be 'the owner of that vessel.'

(The new mooring licensee nominates a vessel that will become the new licensed vessel.)

(Note: Regulation 12 is definitive in that once the requirements have been met "the Minister is to grant the mooring licence." There is no flexibility here as whether the Minister may or may not grant the mooring licence. The mooring licence must be granted.)

Mooring Regulations 1998 EXPLANATORY MEMORANDUM 22nd Dec 1998 (Signed off by A. Director General of Transport and noted to Minister for Transport.) p.4

"Mooring licence and registration of mooring site (Regulation 12)

This Regulation provides another important procedural element for the overall framework. It also requires that a licence can only be issued if the applicant is the owner of a vessel which will use that mooring. ..."

State Counsel is quite clear that 'the applicant' or the proposed mooring owner 'is the owner of a vessel which will use that mooring'

THIS CANNOT BE CONSTRUED TO MEAN THAT THE NEW APPLICANT MUST BE THE OWNER OF THE VESSEL THAT HISTORICALLY USED THAT MOORING.

Further quote:

Assistant Parliamentary Counsel 16 October 1998 in a circular with the Citation: Mooring Regulations 1998 p.2:

8. The Minister cannot grant a mooring licence unless that applicant nominates a vessel owned by the applicant as the licensed vessel. It is that vessel that is entered in the register as the licensed vessel.

Once again the applicant 'nominates a vessel owned by the applicant as the licensed vessel' and further 'it is that vessel that is entered in the register as the licensed vessel.'

The intention of the Mooring Regulations 1998 as explained in the explanatory memorandum and the notes from the Parliamentary Counsel in respect to the transfer of mooring sites is clearly obvious. The proposed mooring owner will propose a vessel owned by the proposed mooring owner and that vessel will become the new licensed vessel for the particular mooring site.

Current Interpretation by the Mooring Office.

The Department currently enforces the interpretation that the mooring applicant subject to a transfer of mooring site application 'must be the owner of the vessel that is already or currently registered as the licensed vessel for the mooring site.' This is a highly questionable interpretation and is in total conflict with the intent of the Mooring Regulations 1998.

Unfortunately, since Dec 2010, the Department has adopted the latter as the interpretation of regulations within the Mooring Regulations 1998 (esp. r.16) that deal with the transfer of mooring sites.

This situation may be very well in total breach of the meaning of the essence of the Mooring Regulations 1998. Enforcement of this latter interpretation may be without proper regulatory authority and may very well be successfully challenged as a situation where public officers are acting 'ultra vires.'

The correct interpretation of the Mooring Regulations 1998 in relation to the transfer of mooring sites must be immediately re-instated by the Department.

WAMA Office June 2015