

## Enforcement of Posol Berthing Regulations

POSOL has more than 300 berths that are designated for private use by POSOL shareholders. They are not available for public use, although some of them may be licensed (sub-let).

All boats that are kept on a POSOL berth for more than 21 days must be registered. In registering the boat Posol must be informed of the boat's name, the boat's overall length and beam, the boat owner(s) name(s), and written confirmation of insurance. Furthermore, a berth may only be occupied by a boat of appropriate size for that berth.

For information regarding appropriate size of boats please refer to POSOL document: *"What size boat can I put on my POSOL berth"*.

The vast majority of shareholders recognise that these registration requirements are not onerous and are necessary to facilitate efficient management of the berths. It should also be noted that they are in accordance with the lease agreement signed by the shareholder when purchasing the lease on the berth.

On rare occasions people try to berth boats that do not meet the registration requirements, for example: the boat has no insurance, the boat is too large, or it is owned by someone not authorised to use these private berths. In such instances POSOL will attempt to resolve problems as amicably as possible but where the berth lessee refuses to comply then POSOL will be forced to take legal action. The type of action we will take is set out below.

1. Posol will serve notice under section 146(1) of the Law of Property Act 1925 for forfeiture of the lease on the basis of non-compliance with the covenants embodied in the lease.
2. If the lessee fails to comply with the section 146 notice within the time specified then Posol will apply to the County Court seeking forfeiture of the berth.
3. The lessee may be advised to challenge POSOL's application by seeking relief under section 146(2) of the Law of Property Act 1925. Given that the lease is for the extensive term of 150 years less 3 days from January 1988 a Court will almost certainly grant relief against forfeiture, but on terms. There is substantial precedent that the Court can be expected to grant relief but will require the lessee to comply with the terms of the lease.

4. To summarise the situation up to this point: the lessee now has to comply with POSOL's original requirements but has incurred considerable legal costs without making any change to the situation.
5. It should be noted that the lessee not only has to pay their own legal costs but also has to pay any costs incurred by POSOL.
6. If the lessee continues to flout the covenants then this now becomes Contempt of Court with consequences that may include:
  - 6.1 The Court may appoint bailiffs who will remove the boat.
  - 6.2 The shareholder will cease to own the lease on the berth, which then reverts to POSOL.
  - 6.3 In the case of a remote berth POSOL will offer this for sale and the proceeds (Currently around £30k) will be payable to Posol and not to the shareholder.
  - 6.4 In the case of an adjacent berth accessible only through the house to which it is attached POSOL will not be able to sell the berth until such time as the house itself is sold. However as POSOL will be unable to lease this berth to anyone else in the meantime it will apply to the court for *mesne rent* which means that the ex-lease holder has to pay POSOL for loss of rent on the berth at the prevailing rate in the marina, perhaps £5,000 pa for an 11 metre berth. When the berth is eventually sold to a new owner of the house the proceeds of sale of the berth lease (Currently around £30k) will be payable to POSOL and not to the shareholder.

It should be noted that POSOL has no wish to exercise such draconian legal action. This action is only explained above in the hope that it persuades non-compliant leaseholders to respond reasonable requests without POSOL having to activate this procedure.

Approved by the Board 18 October 2019