



RETHINKING POST-CONSTRUCTION ASSESSMENT

For inland waterways Marine Surveyors and Brokers

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Ed. 2.0 – First edition working draft

Released 18 January 2024

For the latest version please visit
www.smallcraftservices.com/technical or
www.technicalsupport.ltd.uk/technical

Abstract

The authors present arguments that suggest the inland waterways sector has, since 1998, been led to conflate sailaway narrowboats with own-built boats. The Recreational Craft Regulations 2017 (RCR 2017) confirms there is a difference, and this paper outlines that there are three kinds of vessel that need consideration against the RCR 2017; own-built, manufactured sailaway boats, and manufactured completed boats.

Developing this point, the scope of the RCR 2017 is considered, particularly how this is clearly defined as applying to manufacturers, distributors and importers of boats. An argument follows that the RCR 2017 does not apply to a manufactured boat once in private ownership and that the current understanding of the scope of the legislation requires revisiting. Continuing on from this, if the RCR 2017 does not apply to manufactured boats once in private ownership, then neither can any of the requirements of Post-construction Assessment (PCA). Furthermore, the legislation states PCA applies to a product when 'first placed on the market' or 'first put into service'. The logic of applying this "first" only process (as defined by the legislation itself) a second time to privately sold and owned used vessels is questioned.

Further to this, recent claims that brokers of privately sold used vessels have responsibility for RCR 2017 conformity is dispelled, and the distinction between brokers of privately owned used boats and distributors of manufactured new products is discussed. Subsequently, brokers and marine surveyors involved in the used boat market are cleared of any responsibility to consider RCR 2017 conformity, or whether PCA is required.

What remains is to try and understand how the sector has got to where it is with this legislation.

Rethinking Post-construction Assessment

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Disclosure

The authors wish to assert that neither have a commercial interest relating to the content of this paper. Regardless of whether any changes in process occur as a result of this paper or subsequent debate, neither author stands to benefit financially; there is no vested interest.

Disclaimer

This paper intends to promote constructive responses and general discussion throughout the inland waterways sector. No party should use this paper as a substitute for their own professional legal advice, relevant to their particular situation.

Abbreviations and Acronyms Used

BEIS	Department for Business, Energy & Industrial Strategy
BSS	Boat Safety Scheme
CE (Mark)	EEA product safety and standards conformity declaration
EC	European Commission
EEA	European Economic Area
EU	European Union
MCC	Major Craft Conversion
OPSS	Office for Product Safety and Standards
PCA	Post-construction Assessment
RCD	Recreational Craft Directive being 94/25/EC, 2003/44/EC, 2013/53/EU
RCR	Recreational Craft Regulations (1996, 2004, 2017)
RYA	Royal Yachting Association
UKCA (Mark)	United Kingdom Conformity Assessment

This paper concentrates on matters pertaining to Great Britain as opposed to the UK, due to the unique trading circumstances regarding Northern Ireland and the EU/EEA.

1. Introduction

The Recreational Craft Regulations 2017 (RCR 2017) sets out conformity requirements for new and imported recreational craft, and obligations for manufacturers, their authorised representatives, importers and distributors. HM Govt. RCR guidance (2021, 2023) explains the purpose of the legislation is to ensure safe products are placed on the GB market by requiring manufacturers to show how their products meet the ‘essential requirements’ listed in Schedule 1 of RCR 2017.

The RCR mirrors the EU’s Recreational Craft Directive (RCD) which first became law in 1996 (RCR 1996 / Directive 94/25/EC), being fully implemented in 1998 after a two-year introductory period. The RCR 2017 is essentially the GB version of the latest RCD release (Directive 2013/53/EU).

Within the RCR 2017 is a requirement to complete Post-construction Assessment (PCA) of a boat when certain conditions are met, for example if it is imported into GB. The assessments can only be completed by a specialist notified or approved body and concern is mounting in the sector regarding when and what triggers the PCA process. There is confusion and uncertainty amongst brokers and marine surveyors alike. This paper sets out to provide a wider understanding of their obligations when faced with a potential PCA case. In doing so the wider scope of the RCR 2017 is also discussed.

A recent presentation to brokers contained emotive phrases such as “an armada of non-CE marked boats were plying the inland waterways – the authorities didn’t like it”, yet this concern does not have a referenced source, nor is it matched by real-world experience.

Further worrying is the possibility that the scope of both the RCD and RCR has been exaggerated and misinterpreted since inception, some 25 years. Sailaways and own-built boats appear to have been conflated yet they are now described as different things. This paper outlines what has happened and where this leaves the sector.

2. Understanding the scope of the RCD and RCR

2.1 The early years of RCD / RCR

Since the RCD came into force in 1998 the inland waterways sector took the following general statements to be true:

- A. A new fully fitted boat made by a boatbuilder (a manufacturer) had to meet the essential requirements of the RCD and be CE marked when sold to a customer.

- B. A new sailaway when sold to a customer should meet the essential requirements of the RCD to the point it was completed to. Such a boat fitted out by the owner is considered an own-built boat, built for own use. Should the individual wish to sell the vessel within 5-years of completion they must meet all the essential requirements of the RCD and the vessel must be CE marked when sold on. After 5-years, the boat could be sold freely and without any compliance to RCD / RCR.

The above is the common understanding of the situation across the sector. The notion of Sailaways being exempt from the regulations after a 5 year period is taken from the text of the regulations literally (RCR 1996):

Excluded products

4. The following are not products for the purposes of these Regulations—

- (g) craft built for own use, provided that they are not subsequently placed on the Community market during a period of 5 years

This understanding was supported and reiterated by boating organisations such as the RYA and the BSS, both of which produced guidance for DIY boat fitters.

In RCR 2017, Post-construction Assessment (PCA) and Major Craft Conversion (MCC) became significant factors. UK industry guidance relating to this has so far has been poor and lacks detail. PCA has muddied the waters of both points A and B above, with a belief being formed that in the case of A, if any changes are made to a vessel, then PCA is

required. In terms of B, a belief has formed that any changes to a sailaway automatically invokes a PCA; frustrating, as by its nature a sailaway will be changed as its fit-out continues. Both beliefs have significant implications for boat owners and traders.

These 'new' beliefs as described above are also causing marine surveyors and brokers to question the legality of the sale of an altered boat or sailaway being sold on the private market second hand. That there are 'new' requirements post-2017 is the reason given for the change, and this situation has at first been nervously accepted, and recently disbelieved.

2.2 The scope of the legislation

The RCR 2017 outlines requirements for product conformity when making available, first placing or first putting into service a new manufactured product (in this case a boat), on the GB market.

The RCR defines in the interpretation the following key phrases:

“making available on the market” means any supply for distribution, consumption or use on the market in the course of a commercial activity, whether in return for payment or free of charge

(e.g. boat dealer selling a new product).

“placing on the market” means the first making available of a product on the market

(e.g. a manufacturer of the product first selling it).

“putting into service” means the first use of a product in the market by its end-user

(e.g. the first owner buys it, hire boat first enters use).

2.3 The three prescribed boats

The RCR 2017 primarily defines three kinds of boats:

Completed

Part-completed

Own-built for own use

The RCR 2017 makes clear in the scope at Regulation 3 (1) (a) that a fully fitted or part-fitted boat made by a manufacturer and placed on the market should meet all the essential requirements and be CE or UKCA marked.

Scope

3.—(1) Subject to regulation 4 (exclusions) these Regulations apply to the following products—

(a) recreational craft and partly completed recreational craft;

The legislation differentiates between a fully-fitted and part-fitted boat, further permitting a sailaway boat to be made and sold at Regulation 7 (1) (3):

Making available and putting into service

7.—(1) Nothing in these Regulations prevents a person making available in the United Kingdom

or putting into service in the United Kingdom—

(3) Nothing in these Regulations prevents the making available in the United Kingdom of any partly completed watercraft where the manufacturer or the importer has declared, in accordance with Schedule 3, that the craft complies with the essential requirements at this stage in its construction and that the craft will be completed by others in full compliance with these Regulations.

These directions make clear that a partly completed watercraft (sailaway) is its own entity. This essentially means that a UKCA-marked sailaway must comply fully with all of the RCR when made available (sold) or put into service (used).

An own-boat built for own use is defined in the interpretation as being:

“watercraft built for own use” means any watercraft predominantly built by its future user for that user’s own use;

This definition is a first, with no explanation offered in either the 1996 or 2004 versions of the regulations; perhaps European colleagues did not previously require one. An own-built boat for own use is not a manufactured product and is therefore exempt from meeting the requirements of RCD/RCR as detailed in “Exclusions” at Regulation 4, providing it is not sold within 5 years of completion. However, should an owner wish to sell the vessel within the 5 year period from completion, it is subject to the requirements of PCA as required in Regulation 43 (3), so a legitimate market route exists should it be required.

2.4 Manufacturers and Distributors

The RCR is clearly described as applying to new products from manufacturers at the point the new product (boat) is placed on the market; it states this in the scope, and the associated government guidance document supports this (HM Govt. 2021):

The 2017 Regulations set out the requirements that must be met before products can be placed on the GB market. The purpose of the legislation is to ensure safe products are placed on the GB market by requiring manufacturers to show how their products meet the ‘essential requirements’.

The guidance further makes clear that it is:

relevant to manufacturers, importers (including private importers) and distributors of recreational craft, personal watercraft and certain engines and other specified components.

Considering what a manufacturer is, RCR 2017 clarifies that in the interpretation:

“manufacturer” means a person who—

1. (a) manufactures a product or has such a product designed or manufactured; and
2. (b) markets that product under that person’s name or trademark;

RCR 2017 defines a distributor thus:

“distributor” means a person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;

2.5 Enacting the PCA process

Enactment of the PCA process is detailed in Schedule 5 of RCR 2017 which outlines how an approved or notified body will complete examination of the product and paperwork and guide conformity.

The PCA process enactment is detailed in Regulation 43:

Duty to carry out the post construction assessment

43.—(1) Before putting a product into service a private importer must apply the procedure referred to in regulation 48 (requirements of the post-construction assessment) to that product if the manufacturer of the product has not already carried out the conformity assessment for the product concerned.

(2) Any person must, before placing or putting into service on the market—

(a) a propulsion engine or watercraft which has had a major engine modification or major craft conversion; or

(b) a watercraft which has had a change in its intended purpose so that it falls within scope of these Regulations

apply the procedure referred to in regulation 48 (requirements of the post-construction assessment).

(3) Any person placing on the market a watercraft built for own use before the end of the five-year period beginning on the day on which the watercraft was put into service, must apply the procedure referred to in regulation 48 before placing the watercraft on the market.

2.6 Rethinking PCA applicability

Some in the sector are at present applying the text highlighted in yellow to mean that a used recreational craft in private ownership that has undergone certain changes is subject to the PCA process. Yet this blanket application to all recreational boats of any age seems to be at odds with the key phrase at 43 (2):

(2) Any person must, before **placing or putting into service** on the market

Revisiting the interpretation of the Regulations as outlined in above 2.2, 'placing on the market' was defined as being the "first" making available of the product on the market, and 'putting into service' is defined as being the "first" use of a product in market by the end-user.

Regulation 43 is suggesting then that PCA is something that occurs at this "first" stage of a product life. However, logically when a product has first entered the market, and first been used, it can't be "first placed or first used" again. It follows that RCR 2017 does not extend to used products in private ownership, and this crucial possibility is something the sector has not, as yet, paused to consider. These used products have already had their first market placement and first use.

References to this continue. Schedule 5, which details what a PCA is, begins:

"Conformity based on post-construction assessment is the procedure to assess the equivalent conformity of a product for which the manufacturer has not assumed the responsibility for the product's conformity with this directive, and whereby a natural or legal person referred to in Article 19(2), (3) or (4) who is **placing the product on the market** or **putting it into service** under his own responsibility for the equivalent conformity of the product"

This infers PCA takes place only when the boat is considered first placed or first put into service and is in scope of RCR 2017.

Numerous references to the first placing of the product are made in the legislation. Article 19 in the RCD, referenced above states:

1. The manufacturer shall apply the procedures set out in the modules referred to in Articles 20, 21 and 22 before **placing on the market** products referred to in Article 2(1).
2. The private importer shall apply the procedure referred to in Article 23 before **putting into service** a product referred to in Article 2(1) if the manufacturer has not carried out the conformity assessment for the product concerned.
3. Any person **placing on the market** or **putting into service** a propulsion engine or a watercraft after a major modification or conversion thereof, or any person changing the intended purpose of a watercraft not covered by this Directive in a way that it falls under its scope, shall apply the procedure referred to in Article 23 before placing the product on the market or putting it into service.
4. Any person **placing on the market** a watercraft built for own use before the end of the five-year period referred to in point (vii) of point (a) of Article 2(2) shall apply the procedure referred to in Article 23 before placing the product on the market.

Reading further, in the explanatory note at the end of RCR 2017 it says:

Part 2 sets out the obligations of persons **placing a watercraft on the market**.

These continual, consistent references to “first” activities that are defined in the act itself as “first” occurrences have no logical link to second or third events.

Elsewhere, other non-specific UK Govt. (BEIS, 2022) guidance for the GB market supports this:

An individual, fully manufactured good is **placed on the market** when it is **first** made available for distribution, consumption or use on the GB market (England, Scotland, and Wales) in the course of a commercial activity, whether in return for payment or free of charge. This requires an offer or agreement for the transfer of ownership, possession, or any other property right of an individual good, after the **stage of manufacture** is complete.

The phrases picked out in bold support the interpretation definitions of RCR 2017.

Incidentally, early EC guidance (2004) to the RCD agrees with this, stating:

Since **placing on the market** refers only to the **first instance** of making the product available on the EEA market with a view to distribution or use within the Community, **the directive only covers new products manufactured** in the EEA and new or used products imported from a third country.

The RCD clearly applies to new manufactured products only.

UK Govt. guidance (2020) also supports the view that a commercial activity must be involved for placing on the market to occur.

A product is placed on the market when it is first made available for distribution, consumption or use on the GB market as part of a **commercial activity**. This can be in return for payment or free of charge.

The meaning of 'commercial activity' seems clear to any reader; it concerns an economic operator (e.g. manufacturer, distributor, importer) not a private individual. However, for the avoidance of doubt, perhaps again looking to the EC would be beneficial, after all the RCR 2017 is identical to the RCD and written by EC civil servants. It is therefore useful to look at EC guidance as the legislation originated there. The EC produce a detailed guide, "The 'Blue Guide' on the implementation of EU product rules 2022", which makes the commercial definition simple:

2.2 A product is **made available on the market** when supplied for distribution, consumption or use on the Union market in the course of a **commercial activity**

Commercial activity is understood as providing goods in a business related context

Furthermore, the EC confirm that at 2.1 that:

Union harmonisation legislation applies when the product is placed on the market (or put into service) and to any subsequent making available **until the product reaches the end-user**

And that:

2.1 Once [a product] reaches the **end-user** it is no longer considered a new product and the Union harmonisation legislation no longer applies.

The EC guidance continues and confirms an end-user is not an economic operator:

The **end-user** is not one of the economic operators who bear responsibilities under Union harmonisation legislation.

And further, has no liability in scope of legislation for product conformity:

3.8 **End-user.** The end user is any natural or legal person residing or established in the Union, to whom a product has been made available either as a consumer outside of any trade, business, craft or profession or as a professional end user in the course of its industrial or professional activities (174). Union harmonisation legislation **does not create obligations for the end-users of the products** in their scope.

Reading the above clarifies that the scope of the legislation is such that it applies to commercial activities, in which category a private individual selling a used vessel is clearly not.

It is true that the EC state a used product can be considered as new when modified in a certain way and put on the market (something OPSS also note):

In any case, a modified product sold under the name or trademark of a **natural or legal** person different from the original manufacturer, **should be considered as new** and subject to Union harmonisation legislation.

Modification of products is exactly what major craft conversion refers to, e.g. significant changes to the vessel must be assessed for conformity with the legislation. However, it is here that significant confusion arises, with a mistaken assumption that a natural person (highlighted yellow) is a private individual.

UK Govt. / HMRC guidance (2023), drawn from the Interpretation Act 1978, again references a commercial context:

The following are legal persons

- corporate bodies
- corporations sole
- Scottish partnerships
- European Economic Interest Groupings.
- Natural persons

The following are natural persons

- sole proprietors
- partnerships
- unincorporated associations

A sole proprietor is a natural person and it is the sole proprietor who is the ‘person’.

In the case of partnerships and associations, it is the sum of the members that is the ‘person’.

Throughout the legislation and available associated guidance, there are consistent and repeated references to the legislation relating to commercial activity, which rules out used boats in private ownership from this. Conversely, it is easy to see how a manufacturer buying a used vessel and modifying it, would and should ensure the vessel complies with the legislation, because they are a manufacturer and it is a commercial activity.

2.7 OPSS view

The Office for Product Safety and Standards (OPSS) / Department for Business and Trade were contacted to ask for guidance regarding PCA and in particular used vessels. Dealing with a huge portfolio of product legislation, it was hoped they would be able to answer queries directly, but ultimately they recommended answers might be best sought from a legal specialist.

When the scope of RCR 2017 was discussed they did confirm that it applies to newly manufactured products, but with some caveats, stating:

- They also apply to used and second-hand products imported from a third country when they are placed on the market for the first time, although there are current easements for products which have been legally placed on the market in the EU as set out at www.gov.uk/guidance/placing-manufactured-goods-on-the-market-in-great-britain.
- If significant modification of the boat has taken place it could count as a 'new' boat.
- There are certain duties for private importers as set out in regulations 36 to 38 of the Recreational Craft Regulations.
- There could also be applicable distributor responsibilities as in regulation 2 and Part 2 of the General Product Safety Regulations.

There seems to be a familiar conflict in that OPSS make clear the scope applies to new products only, however there is the ambiguous statement made relating to how a used boat that has been modified "could" be considered "new"; this seems to match the issues experienced in the industry. Furthermore, when considered against the EC Blue Guide, the OPSS must surely mean the same; that a used boat being made available by a 'person' e.g economic operator in scope of RCR 2017 should be considered as new and in scope of RCR 2017. A further interesting point made was that OPSS directed that any requirement for PCA of a used product would be the decision of the owner.

Further enquiries to clarify this particular point were made, in particular to establish that a privately owned used vessel is outside the scope of RCR 2017. While OPSS advised that independent legal advice should be sought to establish any specific case that needed satisfying, they did not disagree or offer alternative arguments.

3. When Post-construction Assessment is required

In RCR 2017 there are four triggers that invoke PCA of a boat:

- A. It has been imported and is not in conformity with RCR 2017. This requirement is listed at Regulation 24 (1) and 43 (1) of the RCR 2017. For example, this could be a private individual bringing a sports boat into the GB from USA.
- B. A vessel previously not in scope of the RCR 2017 has a change in its intended purpose, for example a new boat designed to be a work boat becomes a new recreational vessel instead (Regulation 43 (2) (b)).
- C. A private individual who has built their own boat for own use wishes to sell it within 5 years of first use (Regulation 7 (1), Regulation 43 (3)).
- D. If it has undergone a major craft conversion (MCC). This requirement is listed at Regulation 3 (F) in RCR 2017. A major craft conversion is defined in the interpretation as having happened if it:
 - a. changes the means of propulsion of the watercraft;
“means of propulsion” means the method by which the watercraft is propelled
 - b. involves a major engine modification;
 - i. could potentially cause the engine to exceed the emissions limits set out in Part B of Schedule 1;
 - ii. increases the rated power of the engine by more than 15%;or
 - c. alters the watercraft to such an extent that it may not meet the applicable essential requirements.

The triggers described in point 4, regarding MCC appear to require some further consideration, against the backdrop of the potential that a private boat in private ownership is not in scope of the RCR 2017. The aspect of this that seems to be posing a big issue on the used boat market is alterations at D (c) above.

3.1 Liability for alterations to watercraft

The RCR 2017 references (D (c) above) that a change is only relevant if the vessel may no longer meet the essential requirements and this seems to be subjective and sporadic in uptake.

Take this example where it is not relevant; a gas-free boat is modified and fitted with a LPG system. The system is fitted by a registered gas engineer and is compliant with ISO 10239:2017. The gas engineer issues a gas safety certificate. The relevant essential requirement in RCR 2017 is listed at clause 5.5 in Schedule 1, which covers gas systems on boats. This states that all gas systems must be suitable for use, installed correctly, and tested after installation.

The gas engineer achieves this anyway, and the gas safety certificate provides the proof of legitimacy. A gas system is not a benign change; it's a major system with potentially catastrophic consequences if something goes wrong. However clearly nothing has occurred that contravenes the essential requirements and brokers and marine surveyors are likely to have no issue. Furthermore, there seems to be no value in having the change (a gas system installed by a registered gas engineer) assessed by a 3rd party who is possibly not gas registered themselves.

Another example could be a vessel that has undergone structural amendment, for example a 2018 narrowboat that is stretched (lengthened). Recent claims that PCA is required include one narrowboat being offered for sale at a brokerage, and the vendor being told MCC has occurred because they have stretched the vessel. They receive information that they have to follow the PCA process (presumably because the changes have altered the watercraft to 'such an extent that it may not meet the applicable essential requirements').

This presents a real concern for a broker, who does not want to be pursued by a future owner or Trading Standards for selling a product not in conformity; some brokers (following a presentation by HPIVS (2023) and British Marine guidance (2024)) seem to be worried they are “distributors” and that used boats are “products” in scope of RCR 2017.

Marine surveyors sensibly seem to have caveats that state they do not consider any conformity with RCR, so therefore PCA is not a consideration. However, some are nervous about not mentioning to a buyer that the vessel changes could, by some, be considered a barrier to purchase unless conformity is proven.

There is now an escalating fear growing; if the 2018 stretched boat above was presented at a brokerage who don't care about potential PCA, and a surveyor also doesn't consider it, the second owner is blissfully unaware. They then go to resell but this time a brokerage say to the second owner that a PCA required because of previous MCC. The accusation is that this privately owned used boat has somehow been illegally placed on the market and that the second owner and / or the broker has liability for this. However, this outcome has no logic against the regulations at all for the following reasons:

1. No breach of the regulations has been committed by the second owner.
2. The vessel was first placed on the market and first entered into service in 2018, and is privately owned, so RCR 2017 does not apply to the vessel.
3. The second owner is not an economic operator (not a manufacturer, not a distributor, not an importer, and no commercial activity is being completed).

There is nothing in the regulations that prevents the private boat owner selling the used boat on, in the same way that a car bought from a dealer one week, turned into a rally car the next, can then be sold on the week after. There is therefore no reason preventing a broker marketing the vessel. It is disappointing that this logical, sensible approach is omitted from available industry guidance.

It follows then, that there is also an argument that a sailaway vessel bought from a manufacturer and later modified by a private individual is not in scope of RCR 2017, because a private individual is not a manufacturer and the vessel was first placed on the market when the private individual bought it. RCR 2017 states:

(3) Nothing in these Regulations prevents the making available in the United Kingdom of any partly completed watercraft where the manufacturer or the importer has declared, in accordance with Schedule 3, that the craft complies with the essential requirements at this stage in its construction and that the craft will be **completed by others in full compliance with these Regulations.**

It is true that the regulation requires a partly completed vessel be completed by others in line with the regulations, as highlighted in yellow. The key point is (and this is really crucial) it does not require the vessel to be subject to a further assessment. In fact, the vessel has first entered service (when used), and has been UKCA marked; what happens in private ownership after this is not covered in the legalisation.

Again, early EC guidance (2004) supported this:

A product which is **ready for use at the moment of placing on the market** and which does not have to be assembled, and where distribution or transport would make no difference to the integrity or performance of the product, **is considered to have been put into service as soon as it is placed on the market.**

Irrespective of whether a sailaway is different to an own-built boat, all those sailaway narrowboats bought, used and fitted out since 1998 have both been placed on the market and entered into service. The scope of the legislation has been met.

Unfortunately, current industry advice is unhelpful and misleading. British Marine (2024) in Marinetalk recently published (11/01/2024) some eyebrow-raising guidance that contains some worrying assertions. They state:

Partly completed craft still fall under the directive, but it's recognised that these cannot be fully certified and as such must come with a declaration called an annex III (IIIa under the old directive)

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confirming they meet the directive as far as built. These **vessels must then be fully certified when they are placed onto the market/brought into use.**

Being fully certified is certainly something relevant to manufacturers, but for a sailaway boat in private hands that's already been first placed and first entered into service, it's irrelevant.

British Marine further advise:

a sailaway **should be fully certified when handed over from the boat yard** and correctly marked as such. Then, after fit out, the vessel should then be **recertified via a PCA before being put into service/placed on the market.**

This is clearly contradictory. They are saying (in yellow) that after a vessel has been first placed on the market and potentially first entered into service, even as a privately owned and used vessel, that it must be reassessed, and for a second time (in green) first placed on the market and first entered into service again. The privately owned used product cannot be first placed and first entered into service twice.

In reality, the sailaway they describe falls outside of the legislation once the yellow highlighted activity is complete (as long as in private ownership, were it sold to a boat fitter / manufacturer / retailer / a distributor - it remains in scope).

British Marine guidance continues, placing an unfair burden on the broker, advising that if in doubt, PCA is required. Again, this does not make logical sense. British Marine say:

To limit any risk or liability, brokers should always look for a CE/UKCA mark, CIN/WIN number on the transom, and if these items cannot be found it is highly likely the vessel is not legal and it cannot be certain that the vessel meets the minimum essential safety requirements laid out in the regulations. The only way to reduce the liability risk of these vessels is to get the owner to have a Post Construction Assessment (PCA) carried out by an approved/notified body before the broker takes the vessel on.

This is a frankly bizarre statement because if the vessel is a used boat in private ownership, there is no risk liability to be limited as the vessel is not in scope of the legislation. The presence of or lack of a CE/UKCA mark or CIN/WIN is no evidence of compliance or legality. Put another way, the lack of such things does not make a boat illegal.

The placement of burden on brokers increases:

This means that all brokers, to minimise risk and liability of selling potentially illegal vessels, should be checking for a CE/UKCA mark, WIN number and asking the owner for a declaration that they have not modified the vessel since 2018. If the vessel is missing the CE/UKCA mark, WIN number or the owner declares they have modified the vessel in a way that could alter the original certification of the vessel, the broker should be asking the vessel owner to have a PCA carried out

Again there is a startling lack of appreciation of legislative scope, but worryingly, an implication that the broker has some kind of liability and that to avoid liability issues, they should get a PCA completed at will on any 'suspect' vessel. There seems to be no consideration that the broker might become liable for advising PCA is required when it's not, or when it's not their decision to make anyway.

It is irrelevant if a private boat owner presents a boat for sale without paperwork, with no CE or UKCA mark, without a WIN number, simply because the only time these items matter is when the vessel is first placed on the market and first entered into service. If a boat motors up to the brokerage that has clearly already happened. Besides, as OPSS confirm, it is up to the private individual to decide the status of product conformity, not the broker. One broker (Anon. 2024) contacted during research likened this to buying a toaster; when you open the box you throw away the packaging and paperwork. You sell it on eBay 6 months later and nobody asks for the declaration of conformity, because it is simply not required.

Take another example: a private enthusiast builds his own boat from scratch. After 6 years he sells the boat. The second owner enjoys the boat for 3 years and then decides to sell. They go to a broker who, referring to British Marine guidance, looks for a CE or UKCA

mark or WIN number. The boat does not have one. According to British Marine “the broker should be asking the vessel owner to have a PCA carried out” and “the only way to reduce the liability risk of these vessels is to get the owner to have a Post Construction Assessment (PCA) carried out”. The obvious problem is the vessel was never subject to RCR 2017 in the first place.

Often heard references to Trading Standards enforcement also seem misplaced; they have no jurisdiction regarding the private sale of a privately owned product. Citizen’s Advice (2024) make that abundantly clear:

If you think a business has broken the law or acted unfairly, you can report them to Trading Standards

Trading Standards clearly have no interest in a private individual selling a used vessel. The private used boat market cannot and is not intended to be policed.

One last analogy that came up during research is that of an own built boat being stretched by a future owner. Consider this: a private enthusiast builds their own narrowboat for own use. They sell after 6 years. The new owner takes the vessel to a boatbuilder to be stretched. Major craft conversion has occurred, and yet, as an own-built boat the vessel is exempt from RCR 2017 and no PCA is required. It cannot be right that the own-built boat can be modified and freely sold, yet a 6-year old manufactured CE marked boat in private ownership that is stretched is suddenly required to be reassessed through PCA. There is no logic to that approach; the only logically sound argument is that neither vessel is required to undergo PCA, because the scope of RCR 2017 simply does not apply to any used vessel in private ownership.

3.2 Case examples

Pressing on with rethinking the way PCA should be applied, and thinking on how the scope of the legislation is written, the following examples illustrate that PCA has an important role to play but not necessarily in the way being currently thought and encouraged.

These 14 case examples consider scenarios that a marine surveyor or broker are likely to encounter.

A. Fully-fitted Narrowboat

A fully fitted narrowboat produced by a UK or EU manufacturer and sold on the GB market requires UKCA marking and compliance with RCR at time of placing on the market. In private ownership, the owners are free to modify the vessel with no requirement for PCA or further certification when placing on the second-hand market (note most navigation authorities require that any installations would need to always remain in compliance with the BSS Requirements). The owner is not a manufacturer and RCR 2017 do not apply; the vessel has already been both placed on the market and entered into service.

B. Sailaway Narrowboat 1

A sailaway narrowboat is built in compliance with RCR 2017 to the stage of completion, and UKCA marked when made available on the market. The vessel is sold to a private individual who starts using it immediately. The vessel can be completed or modified with no further need for assessment or PCA, even if sold within 5 years (any installations would need to remain in compliance with the BSS Requirements at all times where required by a Navigation Authority). Any changes should be in conformity with RCR 2017, but there is nothing that says further assessment is required. The product has already been first placed on the market, and has been first put into service.

C. Sailaway Narrowboat 2

A sailaway narrowboat is built in compliance with RCR 2017 to the stage of completion, and UKCA marked when made available on the market. If sold to a narrowboat fitout company the vessel should be compliant with RCR 2017 when the sailaway is first made available on the market. However, the narrowboat fitout company is a manufacturer and need to meet the requirements of RCR 2017

when vessel is placed on the market or put into service. This can be by way of UKCA marking if they are able, perhaps by using a consultant, or if not, PCA through a notified body as required.

D. Own built boat

A vessel constructed by a private individual for own purposes. If this is kept by the individual for 5 years or more following completion before selling “second-hand” then there is no requirement for UKCA marking or certified compliance with RCR 2017.

If the vessel is placed on the market within 5 years of completion, then it would require PCA. This process exists to prevent there being a barrier to market for an individual needing to dispose of the asset, while ensuring conformity with the regulations and ensuring privateers do not have a shortcut to market over bona fide manufacturers.

E. Refurbished Narrowboat 1

A fully manufactured narrowboat is produced by a UK manufacturer and placed on the GB market with UKCA marking and compliance with RCR 2017. The manufacturer purchases the vessel back two years later, refit it and changes the means of propulsion. The vessel has already been first placed on the market and has entered into service, but in this case, OPSS say the used boat should be considered as a new manufactured product and as such requires PCA. However, there does not seem to be any barrier to the manufacturer newly UKCA-marking themselves.

F. Refurbished Narrowboat 2

A fully manufactured narrowboat is produced by a UK manufacturer and placed on the GB market with UKCA marking and compliance with RCR 2017. A second manufacturer purchases the vessel two years later, refit it and changes the

means of propulsion. The vessel has already been first placed on the market and has entered into service, but in the case, OPSS say that it should be considered as a new manufactured product and as such requires PCA. However, there does not seem to be any barrier to the manufacturer newly UKCA-marking themselves, if they are able. If not able, the PCA process exists to enable the manufacturer to make the product available while remaining in conformity with the regulations.

G. Bankrupt Stock Hull

A hull builder builds a sailaway for a private buyer and goes bust before UKCA marking the vessel. The buyer claims the vessel through creditors and fits it out. After 3 years circumstances change and they sell the boat. The vessel was not in compliance with RCR 2017 when made available on the market; PCA is required. As it is not an own built boat, it should therefore be CE marked before first placing on the market. In practice, however, the boat is already in use and been placed on the market, and there is no official body with responsibility to check retrospectively that the craft is UKCA marked.

H. Converted work boat

A 50 year old workboat is bought by a manufacturer. An accommodation space is added and the vessel is fitted out for recreational use. The vessel is newly brought in scope of the RCR, and the manufacturer has a responsibility to ensure compliance with the RCR 2017. The manufacturer can complete UKCA marking themselves, or use the PCA process.

I. Private enthusiast

A private individual buys a 50 year old workboat. An accommodation space is added and the vessel is fitted out for recreational use. The vessel is outside the scope of the RCR 2017 as the private individual is not a manufacturer.

J. Private existing owner

A private individual brings a fully serviceable narrowboat to a brokerage to sell. The hull and engine were supplied as a sailaway in 2004. The first owner fitted it out and put the vessel into service. The boat has changed hands a few times, and there is no CE mark or paperwork, and the vessel has no identification number. This is not a new product entering the market from a manufacturer, so the RCR 2017 do not apply, and besides, RCR 2017 is not retrospective in scope. There is no legislation to prevent the private owner selling the privately owned vessel. There is no legislation to prevent the broker selling the vessel. There is no legislation requiring the vessel to have a CE mark or any paperwork present when sold on.

K. UK Powerboat dealer

A boat dealership / distributor buys in 20 cheap new stock UKCA-marked powerboats, but they don't sell, people say they are looking for something more powerful. The dealer decides to re-engine them to make them more saleable; the dealer is not a manufacturer, but as a distributor, RCR applies. PCA also applies as these new boats have not entered service and MCC has occurred.

L. Boat importer

A boat importer buys in 5 CE-marked new stock powerboats from Italy, but decides to modify the existing engine to make them more powerful for local sea conditions. The change increases the power by 20%, meaning major engine modification has occurred, and therefore major craft conversion. PCA is required.

M. Part-exchange Narrowboat

A company has a brokerage and is also a manufacturer. They take one of their own manufactured 3 year old boats back in a p/x deal; the owner wants to

upgrade to a bigger one. The company modifies the p/x vessel prior to reselling through their brokerage to increase market appeal; they fit a log burner, solar panels, new tech batteries. Because it is a manufacturer, the used product must be considered as “new”, and the boat must be in conformity with RCR when made available. This can be achieved (if any change is necessary) by the manufacturer updating the existing CE or UKCA mark, or PCA can be applied or performed if it is considered that a major craft conversion has taken place that might result in the craft not complying with the essential requirements.

N. Cornish Crabber

A small sailing boat such as a Cornish Crabber is placed on the market, UKCA marked. The sailing boat has the provision for mounting an outboard engine. The purchaser of the boat, thus the private owner, buys a 3HP outboard engine, and continues to operate the craft. There is no requirement for a PCA even though it could be argued the means of propulsion has altered, and a MCC has occurred. Likewise, should the owner then decide to double the engine power and replace the engine with a 6HP outboard, MCC has occurred, but no PCA is required as the vessel remains in private ownership.

While each case would need to be assessed against its individual conditions, the above examples aim to show how the legislation applies to commercial operators, but not a private boat owner.

Industry Comparison

A truck chassis/cab (equivalent in boating terms of a Sailaway) when placed on the market requires UK type approval. The chassis-cab then goes to a truck body builder to be fitted with a tipper body / skip body / box body / refuse body/ recovery truck body etc. Once the vehicle build is completed there is no requirement for further type approval of the completed vehicle other than to pass subsequent MOT tests (equivalent to Boat Safety Scheme Examinations).

4. Rethinking applicability

Moving on from the case examples, it is clear there is a major factor that has been overlooked in industry discussion thus far; how PCA applies to existing already CE marked or UKCA marked vessels.

Commonly repeated beliefs presently claim that a CE-marked diesel-engined boat built 4 years ago would require a PCA if the owner removed the internal combustion engine, and converted the vessel to electric drive, because the vessel has undergone MCC. This paper has shown that the scope of the RCR 2017 does not extend to a privately owned used vessel.

There is no way then, that a privately owned 4-year old modified vessel can be required to undergo a PCA in the circumstance above for two clear reasons:

1. It was first placed and first entered into service on the GB market 4 years ago.
2. It's got nothing to do with a vessel manufacturer, distributor or importer.

If the wider logic of this is considered, there are further factors that support it. The RCR 2017 cannot be simply applied retrospectively to an ever growing fleet of older boats. There have been suggestions heard that the RCR 2017 applies to all vessels previously CE marked to the RCD, however, it is ridiculous that a new set of requirements published in 2017 suddenly apply to a vessel built in compliance with contemporary law from 1998.

HM Govt. (2023) agrees, stating:

The Recreational Craft Regulations 2004 were revoked on 3 August 2017 but continue to apply to relevant products placed on the market or put into service prior to this date.

There is then, no retroactive date in RCR 2017 beyond 3rd August 2017, and the reason for that is simple, in that it applies to new vessels when they enter the GB market. A 1998 boat

did that in 1998. The RCR 2017 is not intended to apply to used boats in private ownership, nor then, does PCA.

The further issue that seems to be dogging progress is the recent assertion that brokers selling a used boat that ‘might’ have had some changes have ‘some’ kind of liability under RCR 2017. It seems that a broker of a privately owned used boat (RCR 2017 does not apply) has become conflated with a distributor of a new product (RCR 2017 does apply).

This paper has shown that the scope of RCR 2017 is intended to apply to new products, or in some commercial cases, a used product that can be considered as new. This paper therefore shows that PCA does not apply to vessels in private ownership. A broker advertising a privately owned used vessel for a fee is not distributing a new product. The broker is not acting in any way in scope of RCR 2017.

In the case of completing due diligence, brokers might find some additions to vendor paperwork useful. For example:

Are you the manufacturer, or distributor or importer of this vessel?	Yes	No
Has the vessel previously been first placed on the UK market?	Yes	No
Has the vessel previously first entered service?	Yes	No

There is of course the question of safety. In discussing this concept and rethinking, the authors do not intend to suggest avoidance of safety, they wish to challenge over-application of conformity processes that are not supported by independent guidance. A boat that is unsafe is a concern for all and must be identified and remedied. The used market already has BSS examinations and pre-purchase surveys as tools for this, and these should be continued to be encouraged at ownership change. However, any modified boat of any age sold in private treaty is liable to be done “unseen”, whether or not someone categorises it as having had a MCC or not; the private market is not policed.

5. Redefining sailaways

A sailaway is by default intended to be completed by others. From a commercial aspect, this is best illustrated by thinking about boat fitters who buy in a shell from a boatbuilder and fit it out and sell on; the boat fitters are manufacturers. A hire company buys a shell from a hull builder and fits it out and hires it out. The hire company is the manufacturer.

Historically many private individuals have bought shells and fitted them out. Should they want to sell the vessel on, they have either had to CE or UKCA mark it themselves as a manufacturer in their own right or buy in that service from a specialist. Alternatively, a private individual building a boat for own use could wait 5 years, because both the RCD and RCR allows them to sell after a 5-year period from first use. This is still the case as detailed in the Exclusions at 4 (1) (g):

4.—(1) The design and construction requirements set out in Part A of Schedule 1 do not apply to the following watercraft:

(g) watercraft built for own use, provided that such watercraft are not subsequently placed on the EU market for a period of five years beginning with the date on which the watercraft was put into service;

Note, the 5-year period is intended to prevent a private individual making an unofficial business out of privately retailing own-built boats, but so as not to put an unfair barrier to them selling for legitimate reasons, the PCA process exists to enable them to legally access the market. This also ensures legitimate manufacturers are not outdone by a privateer loophole.

Historically, the inland waterways sector included sailaways in the category of own-built for own-use.

The RCR now defines this:

“watercraft built for own use” means any watercraft predominantly built by its future user for that user’s own use;

As discussed in section 2.1, sailaways were also commonly considered own-built boats between 1998 and 2017, a period of some 19 years during which 1000s of narrowboats were manufactured by individuals in this way, many waiting the 5 years to sell instead of paying for CE-marking.

Recent RCD compliance guidance for the EU (European Boating Industry, 2022) states:

A member of the general public building his own watercraft (in his garage or garden, for example), from materials bought on the open market is deemed to be “building a watercraft for his own use”

And further:

It should be made clear that a private person who enters into a contractual arrangement with a professional company, yard or individual constructor to build a one off watercraft (be-spoke) [sic] is deemed to have entered into an arrangement where there will be a transfer of ownership. Such a watercraft is deemed to fall under the Directive and will have to comply with the essential requirements of the Directive and applicable conformity assessment procedures. Watercraft built for own use have the concept that a person is building their own watercraft and not having it built by others. The individual actually has to have a hand in the construction of the hull.

This supports the three boat types outlined in 2.3, and separates own built and sailaway boats. Contrary to the longstanding industry position, an individual buying a sailaway and fitting it out can no longer be said to be building their own boat for own use, unless they also help build the hull. Specialists can be used for only some aspects e.g. gas installations. If this is the case, then the inland waterways sector – led and directed by professional groups and organisations – have had this concept wrong all along.

It is true, that for an own boat built for own use, the implication of the legislation is that the private individual does undertake the entire build. However, for the inland waterways this is largely irrelevant; it does not stop them buying a fully compliant CE or UKCA marked sailaway and fitting it out.

Between 1998 and 2017, there is 19 years of precedent of sailaways being fitted out and considered as own boats built for own use. Furthermore, there is no evidence of any legal

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challenge suggesting that a sailaway hull fitted out by a private individual and sold after 5 years is against the law, in those 19 years of it happening prior to the introduction of RCR 2017, nor following its introduction.

Post-RCR 2017, where own-built boats for own use are defined within the legislation, sailaways can still be bought and fitted out. The vessel should be UKCA / CE marked to point of completion. After that, if it is in private ownership and has already first put into service, the requirements of the legislation have been met.

It is possible then that industry guidance was misleading from the start and that CE-marked sailaway narrowboats modified by an owner should never have been considered own-built boats for own use. It's in the past and as RCR 2017 is not retroactive, it's not a contemporary concern. However, some in the industry may be alarmed to think, that instead of being right to prevent privately fitted sailaways being sold for five years, they were in fact denied legitimate market access, and subjected to over-application of a Regulation not intended for them. Unpicking this potential liability could be complex for industry organisations that provided guidance.

6. Proposal

Marine surveyors and brokers should, by rethinking RCR 2017, consider and agree the following statements:

1. [Fully fitted new boats] New, first placed on the market, manufacturer-made, completed boats need to comply with RCR 2017, be UKCA marked, and manufacturers, importers and distributors of these products all have responsibility under RCR 2017.
2. [Sailaways] New, made available on the market, manufacturer-made, part-completed boats are not own boats built for own use, and:
 - A. Should be UKCA or CE marked to the stage of completion that the manufacturer completes it to.
 - B. Should be completed by others in compliance with RCR (but in private ownership require no assessment or PCA).
 - C. Where modifications have been completed by another manufacturer should meet the requirements of RCR 2017 and the vessel should be UKCA or CE marked, or where not possible PCA completed.
3. Boats in private ownership, having been previously first placed on the market and first entered into service are outside of the scope of RCR 2017, and therefore PCA and MCC does not apply and is irrelevant to a privately owned used boat.
4. A broker selling a privately owned used boat is not a distributor of a product that is in scope of RCR 2017, and as such has no responsibility to consider RCR 2017 or PCA or any associated requirements.
5. A broker selling a new boat is a distributor in scope of RCR 2017 and has responsibilities to ensure conformity as outlined in the legislation.

6. A used boat sold by a manufacturer must be in conformity with RCR and where necessary PCA may be required. As such a vessel is considered new in RCR 2017, brokers (in this case distributors) selling such a vessel would also have responsibilities to ensure conformity as outlined in the legislation.
7. Marine Surveyors should focus on the condition and safety of the vessel being surveyed as a whole as presented on the day of survey, and continue to consider local regulatory requirements such as BSS and GSIUR to any age vessel.
8. That an own-boat built for own use is not a manufactured product and is therefore exempt from meeting the requirements of RCD/RCR as detailed in “Exclusions” at Regulation 4, providing it is not sold within 5 years of completion. However, should an owner wish to sell the vessel within the 5 year period from completion, it is subject to the requirements of PCA as required in Regulation 43 (3), so a legitimate market route exists should it be required (or rather, access to market is not denied by the regulations).
9. That notwithstanding any of the proposals above, all industry professionals have both a duty and interest in ensuring all boats being sold or entering service, whether new or used, are safe. The use of qualified professionals must continue to be encouraged for all vessel modifications.

7. Summary

The notions of major craft conversion and post-construction assessment seem like new concepts, and as such there has been confusion as to how and when it is necessary or applies. Brokers and marine surveyors are unclear if they have a responsibility and need guidance and an agreed industry position. There has been too much noise and not enough clarity.

It is entirely within reason that the uncertainty surrounding the RCR and the RCD has historically resulted in unnecessary application of requirements and unnecessary costs to boaters. Furthermore, the sector's understanding of what an own-built boat is has seemingly been misdirected since 1998, and sailaway vessels incorrectly categorised. As a result, over-application of the legislation and allied processes has occurred. It is feasible to conclude that the reason present understanding of this legislation is wrong is that it was predicated on misunderstanding from the start.

A private boat in private ownership is not in the scope of RCR 2017, and as such is free to be modified without regulation as the owner sees fit.

As yet, no UK organisation or group has presented any reliable independent guidance to the sector, leaving the uncertainty as described in this paper that benefits nobody. It is hoped that this paper will encourage others to be constructive, to read the legislation and where necessary seek expert guidance to correct misunderstanding. The authors welcome authoritative, unbiased and informed conversation regarding this hugely important topic and hope to see evidenced responses forthcoming.

Until such time as a credible and definitive guide is produced relevant to the RCR 2017, and in particular PCA / MCC, this evidenced and referenced paper supports the position outlined in the proposal and seeks to get agreement for adoption from marine surveyors and brokers alike.

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Notes to Editors

Tom Keeling and Peter Brookes are inland waterways-based marine surveyors. Both have run independent consultancy businesses in this sector for many years, specialising in the survey of steel hull boats.

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