



# Brexit Issues for Cruisers Updated

## Regulations and Technical Services Group



22 January 2022

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*“At best Brexit increases the need for bureaucratic compliance; at worst it represents an existential threat to the cruising sailor’s lifestyle.”*

26 October 2019



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## Agenda

- Introduction Robin Baron
- People Issues Mike Eastman
- Vessel issues Roger Bickerstaff
- CA VAT Campaign Robin Baron
- RCD/RCR Issues Nick Bullen
- Other Issues Robin Baron
- Q and A Simon Hampton-Matthews/All

## RATS

- Regulations and Technical Services
- Until 2000 the CA Cruising Committee
- Working on behalf of cruising sailors to represent their interests and address issues of concern on regulatory and technical aspects of small boat cruising
- All volunteers

## Brexit Rules

### 5 December 2020

- Clouded by uncertainty
- Some rules not yet drafted
- Check on changes before acting
- Take professional advice

### 22 January 2022

- Still some uncertainty
- Most rules now drafted
- Check on changes before acting
- Take professional advice

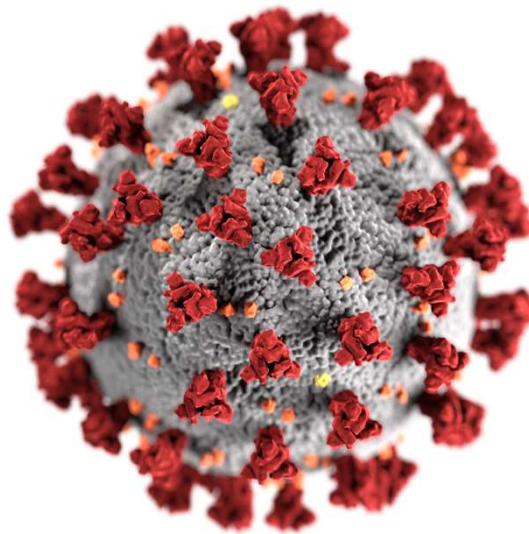
## Disclaimer

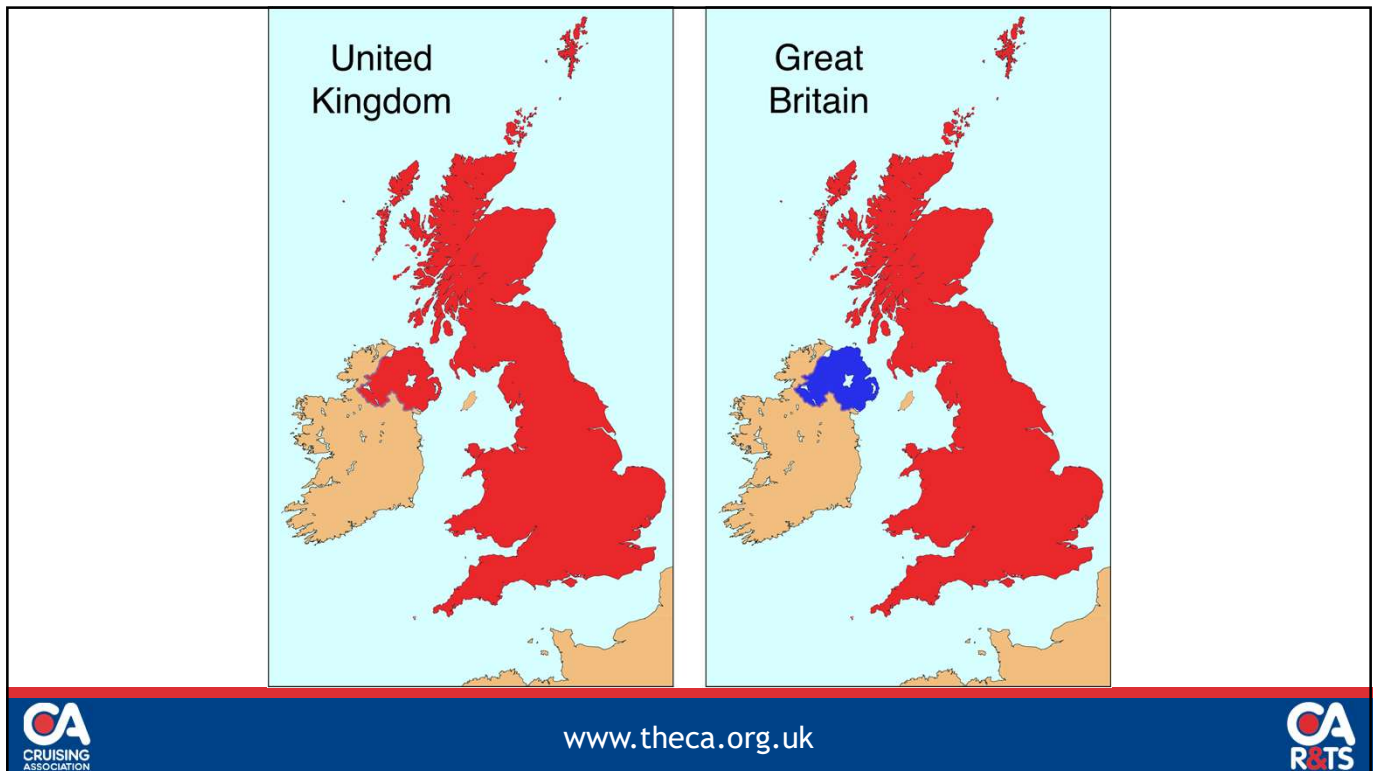
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## Brexit Timeline

23 June 2016	Referendum
29 March 2017	Article 50 withdrawal notice
31 January 2020	UK left EU
<b>31 December 2020</b>	Transition Period ended
<b>31 December 2022</b>	Last date for securing UKCA without assessment

**BUT**





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## What happened before 1 January 2021?

- Background - free movement of people within Europe - leading to
- The Schengen agreement
- How this has worked
- Who has been affected by the agreement and how

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## What has changed since 1 January 2021?

- How have things changed for UK citizens?
- What happens at Schengen borders?
- UK government advice
- Current problems

## What will we have to do in the future?

There will be new controls

- To improve security and allow monitoring of entry and exit movements
- Will affect all Visa-free entry to the area
- Pre-entry application for visiting Schengen Area
- By using the European Travel Information and Authorisation System - ETIAS

## So how can we now go sailing in Europe?

- Some places not following Schengen rules yet
- Schengen time calculator at:  
<https://ec.europa.eu/assets/home/visa-calculator/calculator.htm?lang=en>
- No problem if wish to spend no more than 90 days in 180 days

## But what if we want to stay longer?

- No interest from UK government or the EU
- But Schengen treaty allows each country to make its own arrangements
- Take up some type of residency
- EU citizen 'close family members' exception



## Short term Visitor's Visa

- Different interest groups seeking this
- Two countries [France and Sweden] currently offering a short-term visa
- Others at various stages of considering this, mainly as their economies need tourist income

## Schengen shuffle

- Move out of the Schengen Zone when your time is up
- EU countries not in Schengen
  - Bulgaria, Croatia, Cyprus, Ireland and Romania
- European countries not in Schengen or EU (with a coastline!)
  - Albania, Bosnia-Herzegovina, Montenegro, Russia, Turkey and UK

## CA 90/180 Days project

- To be able to advise members what is available
- To detail how to obtain visas
- To raise awareness of the problem in target countries
- Objective - to have all countries offering a means to stay for 180 days (or more!)
  
- Please drop us an email with your experiences!

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## UPDATE ON VAT - ISSUES TO COVER

- General VAT rules applicable to movement of yachts
- UK approach to VAT-status
  - Calculation of amount of VAT (if payable)
- EU approach to VAT status
  - 18 month Temporary Admission
- Practicalities - creating a portfolio of VAT evidence

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## Update on VAT - general

- VAT status of boats post-Brexit depends generally on their location at the end of Transition Period (31 December 2020)
  - Boats in GB - UK VAT-paid status ("domestic goods")
  - Boats in EU - EU VAT-paid status ("Union goods")
- VAT-paid status automatically lost when a yacht leaves the relevant VAT territory
  - Can be recovered in certain circumstances - Returned Goods Relief (RGR)
- Import into EU or UK triggers VAT liability - unless a relief or exemption is available

## VAT on boats - UK approach

- UK-owned boats in EU on 31/12/20 did not obtain UK VAT-paid status
- UK-owned boats that have previously been located in the UK: UK VAT-paid status can be obtained through Returned Goods Relief (RGR) on return to UK if yacht:
  - will be used for non-commercial purposes,
  - returned by same owner
  - is substantially unmodified during its absence
- AND yacht returned to UK within one of following time periods:
  - prior to 30 June 2022 (the extended "grace period")
  - within 3 years of leaving UK; or
  - for absences of more than 3 years from UK: a waiver application must be made to HMRC - HMT has said waiver will be granted if yacht used for "personal use of a UK resident"

## VAT on boats - UK approach (cont)

- UK-owned boats in EU on 31 December 2020 never previously located in the UK:
  - RGR is not available: UK VAT-paid status can be obtained through paying VAT following import of yacht into UK
- UK-owned boats never previously located in the UK that had been exported out of EU prior to 31 December 2020:
  - RGR available - as per yachts previously located in UK

## VAT on boats - UK approach: payment of VAT

- VAT payable on the current market value of the yacht as at the date of import of the yacht
- HMRC has been shown to be amenable to the application of considerable deductions - e.g. excluding the VAT element in the purchase price, annual depreciation, and any VAT paid on equipment on board the yacht
- Agreement of the valuation is at HMRC's discretion
- VAT is payable within 30 days of import of yacht

## VAT on boats: EU approach

- Boats in **GB** on 31 December 2020 lost EU VAT paid status
  - Includes Channel Islands and Isle of Man
- UK-owned boats in EU on 31 December 2020 retained EU VAT paid status
- Boats without EU VAT-paid "Union" status are liable to pay VAT on entry into the EU unless they can claim relief:
  - 18 month Temporary Admission
  - Returned Goods Relief

## Temporary admission - UK based boats visiting EU

- Non-EU VAT paid boat can be TEMPORARILY IMPORTED into the EU for up to 18 months after which VAT becomes due - only available:
  - For non-EU residents (relates to use)
  - Boats used for private purposes
- Available for boats:
  - Located in UK on 31 December 2020
  - Bought by UK residents in the UK after 31 December 2020
- The 18 month TA "clock" can be reset by showing that the vessel has left EU waters
  - No minimum period outside the EU

## Practicalities

Create a portfolio of VAT status information:

- VAT payment on original construction and sale - original invoice and purchase receipt should be retained showing evidence of VAT payment
  - Note: yachts built before 1 January 1985 - evidence of location of vessel in EU on 31 December 1992
- Vessel location at 23:00 UTC on 31 December 2020: e.g. confirmatory letters from marinas, mooring invoices and receipts, time stamped photos and AIS track records, maintenance invoices and email trails relating to maintenance activities
- Subsequent locations of the yacht with VAT significance, such as movements of the yacht from the UK and EU and vice versa
  - Copies of C1331 Form as submitted to the UK Border Force
  - Notes of HMRC Yachtline conversations & any emails received

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## The CA VAT Campaign

- Started March 2021 involving RATS, President and CA members
- Legal Opinion
- FOIA requests
- Letters from members to their MPs
- Approaches to various MPs
- Letter to Jesse Norman at HM Treasury
- May 2021: meeting with HMRC leading to production of case studies by RATS
- 13 December 2021: meeting with HM Treasury and HMRC
- Correspondence over wording of changes and pressing of case over boats that have never been in the UK under current ownership

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## Recreational Craft Directive/Regulations (RCD/RCR) - Introduction

- All boats must have CE certification when sold in the EU for the first time
- This applies to new boats and also used boats from outside of the EU
- Many UK boats lost their CE status when the UK left the EU
- The UK are introducing similar legislation to replace CE certification
- This presentation focuses on used boats
- The situation regarding NI boats is still to be clarified

## RCD/RCR - The EU position

- Since 1998 boats new to the EU market have required CE certification
- Certification is achieved by compliance with the Recreational Craft Directive (RCD)
- Generally this is managed by yacht manufacturers
- New and second hand boats imported into the EU require CE certification and have a Post Construction Assessment (PCA) if not assessed during manufacture
- Since 1 January 2021, UK boats imported to the EU may require a PCA subject to status
- This is the case even where a boat already has CE certification

## RCD/RCR - The UK position

- A new UK Conformity Assessed (UKCA) system is being introduced to replace CE
- Recreational Craft Regulations (RCR) are being introduced in the UK to replace the RCD
- UKCA mandatory from 1 January 2023 for boats new to the UK market
- Prior to this date CE marked boats will be accepted
- Boats imported to GB from 1 January 2023 will potentially require a PCA

## RCD/RCR - British Marine (BM) / RYA et al

Scenario	Situation in 2021	Situation in 2023
1 Boat in GB at end of TP CE Marked Sold in GB Remains in GB	Re-certification NOT required	Re-certification NOT required
2 Boat in GB at end of TP CE Marked Import to EU27	Re-certification REQUIRED	Re-certification REQUIRED
3 Boat in EU27 at end of TP CE Marked Sold in EU27 Remains in EU27	Re-certification NOT required	Re-certification NOT required
4 Boat in EU27 at end of TP CE Marked Imported to GB	Re-certification NOT required	Re-certification REQUIRED
5 First sale in EU27 (not GB market) CE marked EU citizen, registered and used in the EU 2 <sup>nd</sup> sale to GB before January 2021 Subsequent sale back to EU	Re-certification NOT required (but proof required by national authorities)	Re-certification NOT required (but proof required by national authorities)

## RCD/RCR - BM/RYA Overview

- Scenarios 1 to 4 focus on the location of boats at end of the transition period
  - 2300hrs UTC on 31 December 2021
- In these Scenarios:
  - A boat that was in GB at that time will have lost its CE certification in the EU but will have retained its CE certification in GB
  - A boat that was in the EU at that time will have retained its CE status in the EU but will lose it in GB unless sold in the GB prior to 1st January 2023

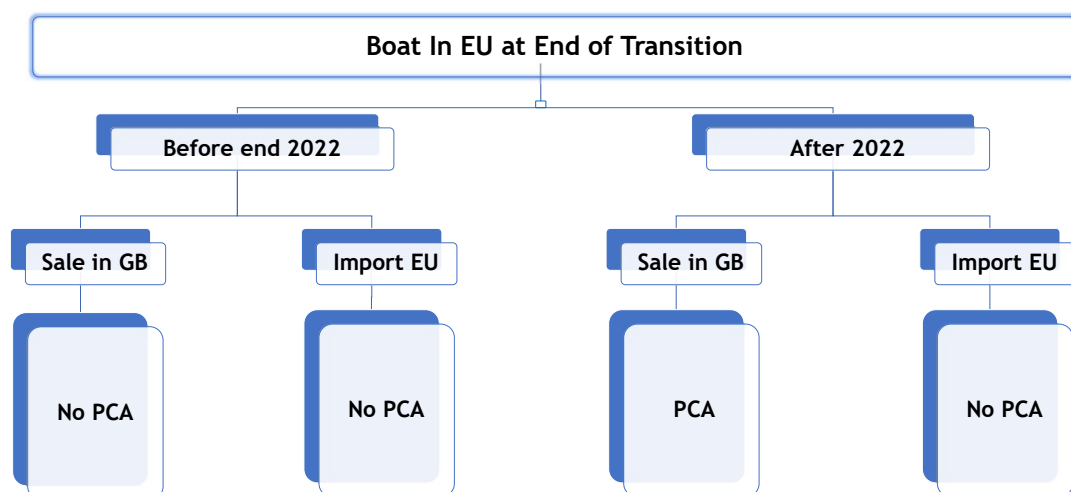
## RCD/RCR - BM/RYA Overview (Cont)

- Scenario 5 focuses on a boat's sales history and not location at the end of the Transition Period
- In this Scenario:
  - A boat that was initially sold and used in the EU 27 and subsequently re sold on the GB market before the end of the Transition Period will retain its CE status in the EU and GB
  - A reciprocal arrangement **may** also exist where a boat initially sold in the GB and then resold in the EU27 **could** retain its CE status in GB and the EU. But this is not stated
  - This is about sales history not nationality of owner or flag of vessel

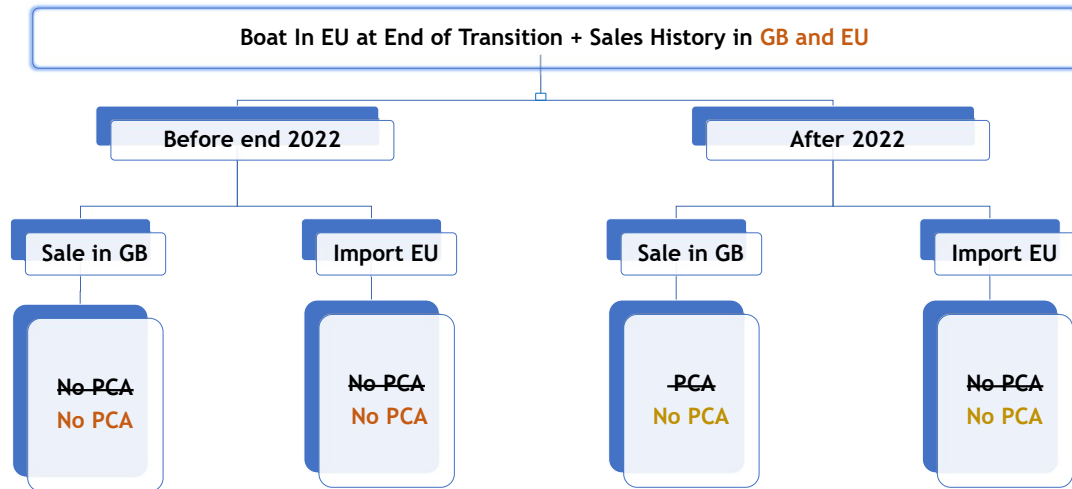
## RCD/RCR - Extrapolation

- At present these scenarios are the only guidance agreed with the Department for Business Energy and Industrial Strategy (BEIS) and the EU Commission
- However:
  - Not all situations are covered
  - There is no mention of pre 1998 boats
  - There is a potential for contradiction in the outcome between Scenarios 1 to 4 and Scenario 5
- RATS have extrapolated Scenarios using the BM/RYA Scenarios 1 to 5 as a basis
- We have assumed
  - Pre 1998 boats will be treated as though they had CE certification at the end of TP
  - Scenario 5 can be inverted
- The deviations from the BM/RYA strategies shown with an \* below need ratification

## RCD/RCR - Scenario Flow Chart - Location at TP



## RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History

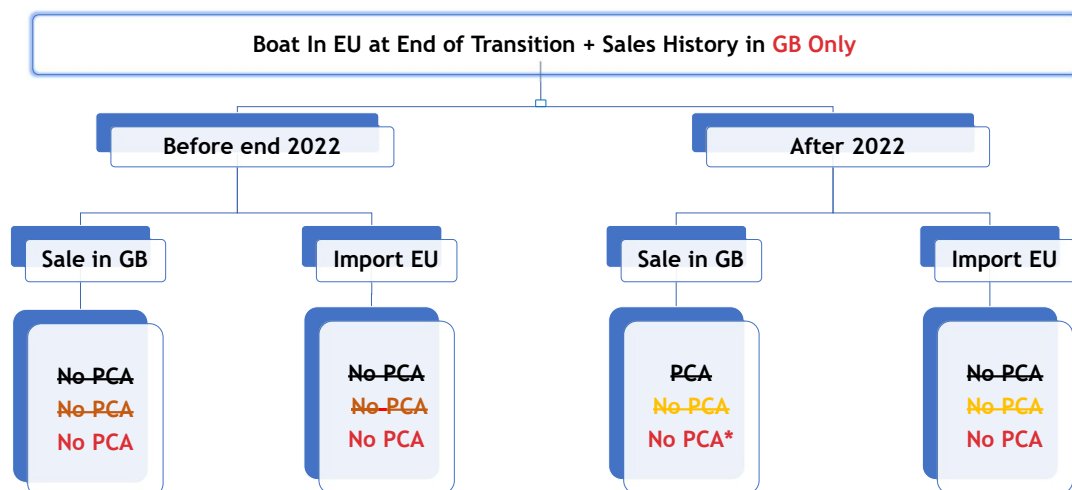


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## RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History

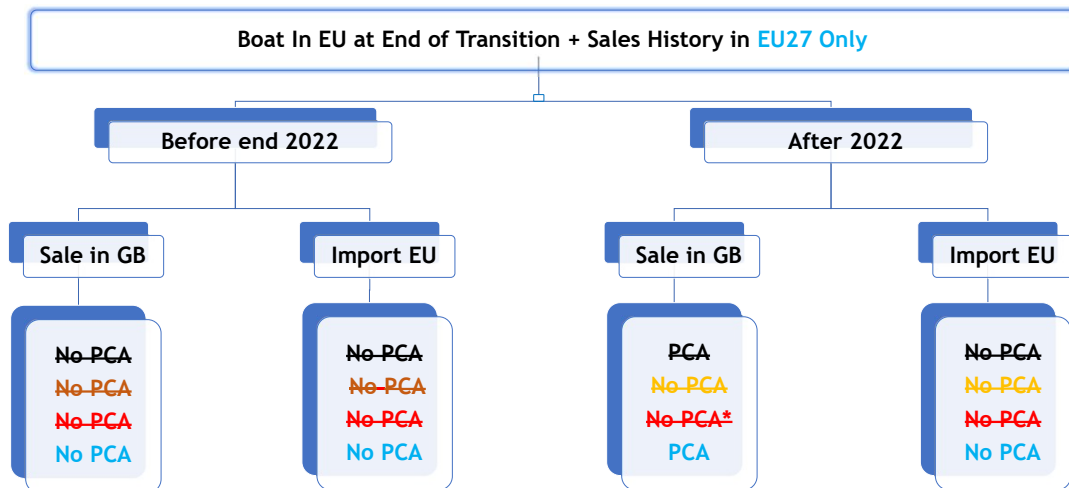


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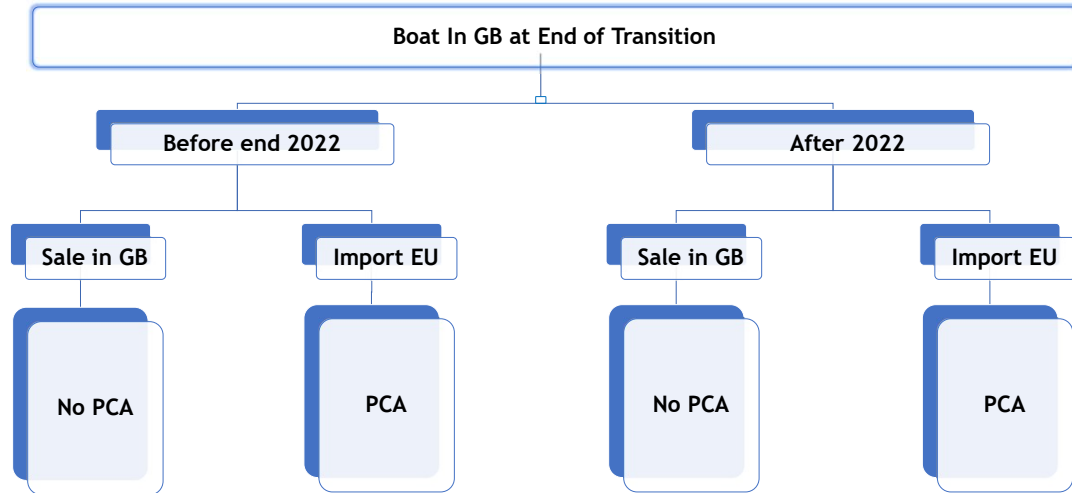
## RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History



## RCD/RCR - Case Study 1

- A boat originally bought in the UK and only ever subsequently sold in the UK was in the Mediterranean at the end of the Transition Period
- The owners sail the boat back to GB in 2023 and decide to sell the boat in GB on their return
- If sales history is taken into account as we expect\* then a PCA will not be required
- If only location at Transition is applicable then a PCA will be required. Under these circumstances it would have been beneficial to sell the boat in the EU or prior to 1 January 2023 in the GB

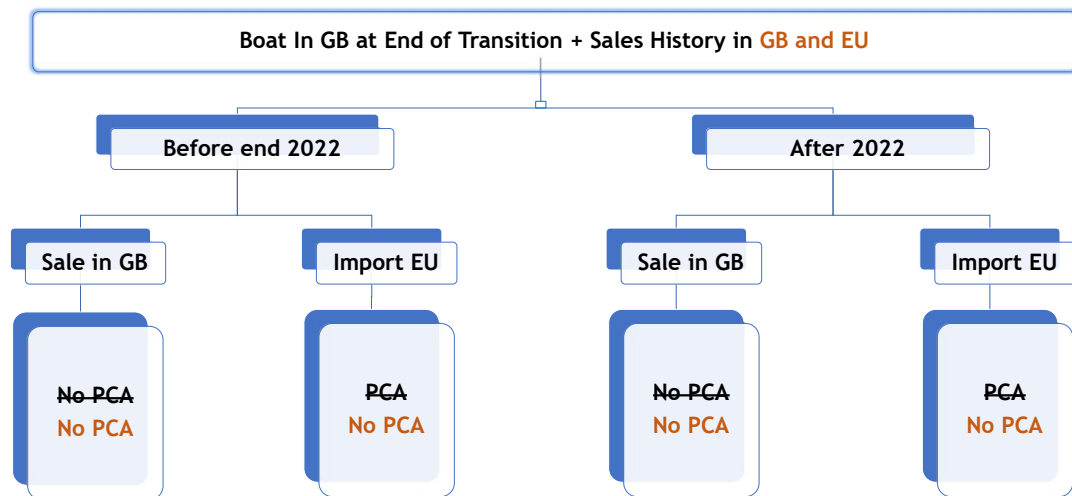
### RCD/RCR - Scenario Flow Chart - Location at TP



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### RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History

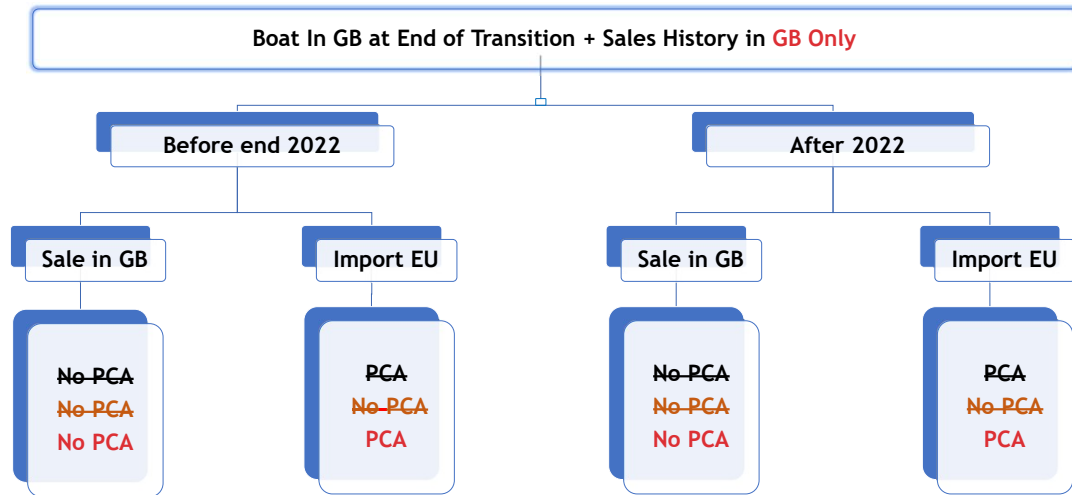


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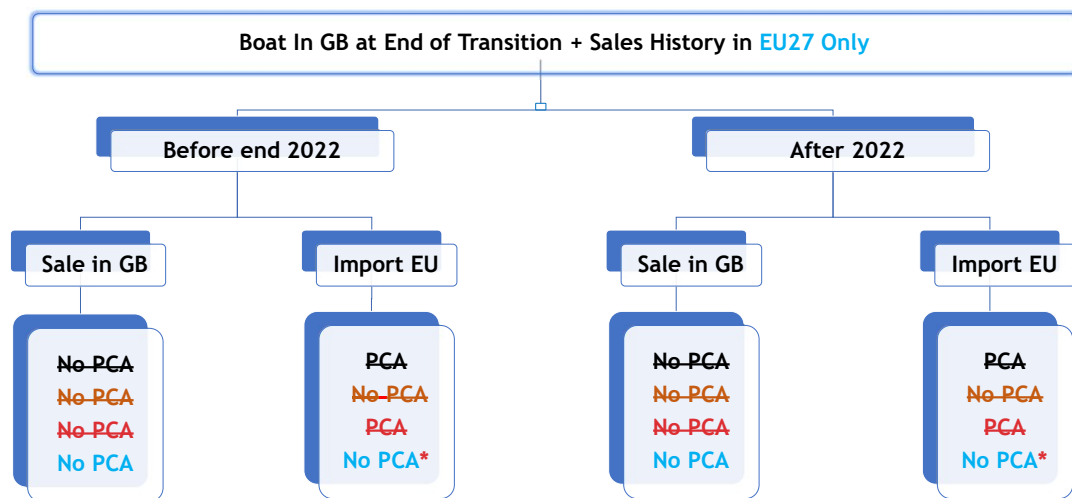
## RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History



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## RCD/RCR - Scenario Flow Chart - Location at TP plus Sales History



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## RCD/RCR - Case Study 2

- A boat originally bought in the EU and only ever subsequently sold in the EU was in the Portsmouth at the end of the Transition Period
- The owners subsequently sell their boat in Holland
- If taking sales history is taken into account as we expect\* then a PCA will not be required
- If only location at Transition is applicable then a PCA will be required. Under these circumstances it would have been beneficial to sell the boat in GB

## RCD/RCR - Potential Costs

- Reported costs for a PCA are between £500 and £8,000
- A 49ft yacht owner was recently charged £3,700
- Assessment is against the current RCD/RCR
- Potential significant costs in making modifications to comply
- Requirements include documentation, safety standards, sanitary systems, engine emissions

## RCD/RCR - The small print

- The RCD/RCR applies to boats between 2.5m and 25m
- Pre 1950 boats are exempt
- Private importers need to have CE/UKCA status before the boat can be “put into service”
  - This allows for the sale to complete and be delivered to the relevant territory prior to testing and any necessary modifications
- Right of Free passage
  - PCA requirement should only trigger when a boat changes ownership
  - Normal cruising in different territories should not be impacted
  - 18 month Temporary Admittance
- Untested
  - The rules are not new for yachts imported from other territories
  - The extensive EU/GB second hand market is likely to raise many different scenarios

## RCD/RCR - What next?

- RATS are continuing to seek clarity and trying to get official agreement to the extrapolated scenarios presented here
- An RCD WEB page will soon be available with this information and will be updated as we learn more
- The web page will include members’ questions together with RATS’ responses suitably anonymised

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## Other issues to consider

- Health insurance
- General travel
- Pets

*“At best Brexit increases the need for bureaucratic compliance; at worst it represents an existential threat to the cruising sailor’s lifestyle.”*

RATS Chair, Robin Baron

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## How you can help

- The CA has considerable strength as a membership organisation if we draw on the real life experiences of our members
- Custom and practice continue to be in short supply
- We need your eyes and ears to tell us what is going on
- Reports please by email or post onto Brexit forum