

BRITISH WATERWAYS (BW) – GENERAL INFORMATION SHEET RELATING TO OFFSIDE (END OF GARDEN) MOORINGS (NON TOWPATH)

1. Canals and canalised parts of rivers that are owned by BW:

The power to charge for “end of garden” moorings arises from the combined effect of common law and the provisions of the Transport Acts 1962 and 1968.

All use of BW’s canals is permissive i.e. by licence of the landowner (British Waterways).

Section 105(5) of the Transport Act 1968 (“the 1968 Act”) provides that any local enactment passed with respect to (BW’s owned or managed) inland waterways, so far as it “confers any public or private right of navigation over the waterway ... shall cease to have effect”.

Section 115 of the 1968 Act provides that “... reference to any right of navigation over a waterway or canal includes references to any right to use or keep any vessel or craft on the waterway or canal: ...” (emphasis added).

These two sections effectively abolished any statutory public rights to use or keep boats on BW’s owned or managed canals and substituted a system of permissive use.

Section 43(3) of the Transport Act 1962 (“the 1962 Act”) provides “... the [British Waterways Board and the Strategic Rail Authority] shall have power to demand, take and recover [or waive] such charges for their services and facilities, and to make the use of those services and facilities subject to such terms and conditions, as they think fit.”

Section 43(8) of the 1962 Act provides “The services and facilities referred to in subsection (3) of this section included, in the case of British Waterways Board, the use of any inland waterway owned or managed by them by any ship or boat”.

BW is the successor in title to the original constructors of the canals it now owns. Unlike rivers (where common law rules of riparian ownership¹ usually apply) canals are artificial structures built on land bought by the companies that built them (usually under powers of compulsory purchase). Therefore, the ownership of the bed of the canal (and towpath) is separate from that of adjoining dry land on either side.

Accordingly, a boat moored in a BW canal is floating over the bed of the canal which is in BW’s ownership and BW has the common law right of a landowner to give or withhold consent for such use of its land and to charge for that use (even though the boat may be adjacent to the end of a garden in other ownership). In the absence of such consent, the boat is trespassing (a BW boat licence does not give the right to moor long term).

The terms and conditions of a BW boat licence do not include a right to moor long term (mooring is only permitted ‘ancillary to cruising’). The majority of holders of BW licences moor their boats off the network, paying private mooring operators for the right to do so. If a boater moors his or her boat on a BW’s canal (i.e. in BW’s waterspace and over BW’s land) without consent (even if at the end of their garden), they do so unlawfully (unless it is a temporary mooring ancillary to cruising).

Those that moor their boats on BW canals with consent pay a market rate for the right to such exclusive use of BW's owned land and waterspace. The mooring charge for offside moorings (where access to the boat is over dry land not in the ownership of BW) is discounted to the normal market rate for an on-line mooring where access to the boat is over dry land in the ownership of BW.

In summary:

- There is no public right to keep or use a boat on BW's canals – such use is permissive only;
- The beds and waterspace of BW's canals are in the ownership of BW and use without consent is trespass at common law;
- A BW boat licence entitles use of a boat on a BW canal for cruising and casual mooring ancillary to cruising, but not long term mooring;
- Long term mooring on a canal requires a separate mooring agreement that grants exclusive use of the BW waterspace at that site; and
- The powers of BW to charge and impose terms for use of its services and facilities are derived from Section 43 of the 1962 Act, as supplemented and enlarged by subsequent legislation.

2. Natural parts of rivers managed by BW but which are not owned by it:

Where BW is navigational authority but does not own the bed of the river, a boater needs a licence from BW to cruise the river. However, the boater does not need to pay BW a mooring fee as well because BW does not own the river bed.

As mentioned earlier common law rules of riparian ownership usually apply¹. Therefore, the owners of the properties on either side of the river bank may ask a boater to pay them a charge for mooring over their land.

3. Rochdale Canal:

The Rochdale Canal Company (RCC) owns the bed of the Rochdale Canal and BW manages this Canal on behalf of RCC. RCC is 100% owned by The Waterways Trust. All public rights of navigation on the Rochdale Canal were abolished by the Rochdale Canal Acts 1952 and 1965.

BW's boat licence conditions apply and BW, as manager of the Rochdale Canal, charges offside mooring fees. Please see point 1. above.

Note:

¹ the owners of the properties on either side of the river bank own the bed up to the middle of the river