

NABO GUIDANCE NOTES

THE PUBLIC RIGHT OF NAVIGATION

Introduction

The question of whether or not there is a Public Right of Navigation on a particular waterway is one that often exercises the minds of boat owners and lawyers. The existence of a Right of Navigation will depend on a number of factors including historical usage, common law, statute law and private rights.

The House of Lords, in an appeal hearing, has said that “A right of navigation is simply a right of way and with that right you must not interfere”.

The subject is best tackled by considering two distinct kinds of waterway – canals and rivers.

Public Right of Navigation on Canals

Quite simply, there is no longer a Public Right of Navigation on canals controlled by British Waterways. However, it is understood that the Right still exists on canals controlled or owned by other independent canal companies e.g. the Bridgewater Canal, Manchester Ship Canal and Rochdale Canal.

When canals were first constructed they required an Act of Parliament to authorise them and in exchange for granting the power to acquire land Parliament insisted that the canals should be dedicated to the public (subject to payment of tolls, etc). When railway companies started to acquire canals, and threaten them with closure to restrict competition, Parliament again insisted that they “be at all times kept open and navigable for the use of all persons desirous to use and navigate the same and that without any unnecessary hindrance of interruption or delay”. This wording is incorporated into section 17 of the Regulation of Railways Act 1873. This latter Act applied to the British Transport Commission after nationalisation of the waterways and in 1962 to its successor, the British Waterways Board (BW) up until 1968. Interestingly, there was never a right of navigation in the Act for the now-derelict Derby Canal (believed to be the only such instance).

1968 is a year that will remain infamous for one major reason. The Transport Act 1968 Section 105 removed the statutory Right of Navigation in respect of the canals controlled by BW and imposed a duty of maintenance on BW. The Opposition Spokesman at the time was a certain Mrs Margaret Thatcher who vowed that a Conservative government would restore the right of navigation on canals – but it never happened!

So boat owners have no right to navigate canals. They are simply granted permission in the form of a Licence to use the canals subject to conditions imposed by the owner, BW.

Public Rights of Navigation on Non-Tidal Rivers

The public have no general right to navigate on any river but a right to do so may be acquired by immemorial usage, dedication of a private riparian owner or under statute.

The concept of a navigable river being a public highway often relates back to before the beginning of legal memory. This is termed "Time Immemorial" and is defined as the year 1189, or the beginning of the reign of Richard I. Boat owners benefit directly from the provisions of Magna Carta (1215) which confirmed the law on navigation by ordering the removal of fish weirs and other obstructions to navigation on rivers. A later statute (25 Edward III st 4 c 4 1350) ordered the destruction of all weirs, mills and fixed engines for fishing which had been set up during the reign of Edward I. This ancient right of public navigation is termed the Common Law right of navigation. It does not usually extend to a right to land (or to tow) on the river banks which are usually privately owned, but such a right may exist at a public landing-place or exist by custom or be granted by the owner or by statute. Rivers with a common law right of navigation were traditionally the major arteries of trade and were classed at the "King's Highway". Most major rivers have this common law right, having been used as public navigations since the times of the Viking invasions, or even earlier.

Another public right of navigation is a Statutory Right – one that was conferred by an Act of Parliament. Many rivers were improved or regulated by the construction of weirs and locks, and the public were given the right to use the locks and artificial cuts.

Ownership of the bed of a river normally extends to the centre of the river and riparian owners may be able to establish a private right of way, or a right to boat for pleasure, for themselves and their friends.

Navigable Rivers in England and Wales

The British Waterways Act 1971 empowered BW for the first time to demand payment for registration of boats on rivers for which it is the navigation authority. Prior to this Act it only had the power to charge for the use of locks on the rivers. The Act is carefully worded in order to safeguard the common law and statutory rights of navigation that may exist. In essence, the Act states that it shall not be

lawful to keep or use a pleasure boat on a river waterway (as defined in Schedule I) unless a Pleasure Boat Certificate (or a canal licence) be in force. BW is required to issue such a certificate and register a boat upon application (subject to conditions such as compliance with the Boat Safety Scheme).

The rivers specified in the Schedule (and on which a common law and/or statutory right of navigation exists) are as follows:

The river Avon from the tail of Hanham Lock to the tail of the bottom lock at Bath.

The Fosdyke Navigation

The River Lee Navigation from Hertford to the river Thames at Limehouse and to the tail of Bow Locks.

The river Severn from Stourport to its junction with the Gloucester and Sharpness Canal at Gloucester.

The River Soar Navigation from its junction with the river Trent to Leicester.

The River Stort Navigation

The Trent Navigation from the tail of Meadow Lane Lock, Nottingham, to Gainsborough Bridge.

The River Ure Navigation from Ripon to Swale Nab

The Weaver Navigation from Winsford Bridge to its junction with the Manchester Ship Canal at Marsh Lock and at Delamere Dock.

The Witham Navigation from Lincoln to Boston.

Other river waterways have been subsequently added to the remit of BW as follows:

River Tees

Rivers Ouse and Ure (Ripon to Goole)

The Environment Agency is the navigation authority for the following rivers on which common law and/or statutory rights of navigation exist:

River Thames from Cricklade to Teddington

River Medway

River Great Ouse

River Ancholme

River Glen

River Nene

River Wye

Other navigable rivers under a variety of jurisdictions and having an established common law and/or statutory right of navigation are as follows:

River Wey

River Idle

River Ryton

River Dane

River Ribble

River Severn (upstream of Stourport)

River Avon (Warwickshire)

River Avon (Hampshire)

River Itchen

River Arun

River Rother

Navigation on Tidal Rivers

The right of navigation exists as a right of way in all tidal waters including rivers and at common law the public have the right of passage in boats. There is also an ancillary right to tow, and to anchor, ground or moor in the course of ordinary navigation.

Extinguishment of a Right of Navigation

A public right of navigation in a river or creek may be extinguished by an Act of Parliament or by natural causes such as recession of the sea or accumulation of mud.

Fishing Rights

The right of fishery in non-tidal rivers normally belongs to the riparian owner, who may grant permission for others to fish from his land. In general, the right of navigation takes precedence over the right of fishery, but that right must not be abused.

Obstructions to Navigation

The obstruction of a publicly navigable river is a public nuisance at common law. The erection of a landing stage may amount to a nuisance if it inconveniences navigation. Locks, weirs and bridges erected under statutory authority are lawful.

Further information

Further information and guidance is available from the River Users' Co-ordinator exclusively to NABO members.

Legal Note

Although the greatest care and diligence has been taken in the compilation of these guidance notes the National Association of Boat Owners accepts no responsibility for any errors, omissions, or alterations in this publication, or for any consequences ensuing upon the use of, or reliance upon, any information given. It must be emphasised that these notes give only general advice and that the driver of a vehicle with a trailer must comply with the law of the appropriate country at all times.

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