



GUIDANCE NOTE ON ABANDONED BOATS AND TRAILERS

This guidance note looks at the position of a club in relation to abandoned or unauthorised boats and/or trailers, for example boats and/or trailers that are: abandoned; in a state of disrepair; or parked in the wrong place. It also includes boats and/or trailers that remain uncollected by the owner on expiry of the storage term (e.g. if the owner does not renew their membership or is expelled from the club) and boats and/or trailers that have changed ownership where the new owner is not a member of the club.

This note addresses boats and/or trailers situated within the club's premises (e.g. the boat park).

Where an issue arises with boats on club moorings and pontoons or on public land or crown land (e.g. beach or river bank) specific advice should be sought from the RYA legal department as the legal position can vary significantly from one situation to the next.

ENGLAND, NORTHERN IRELAND AND WALES

An overview

A club does not have an automatic right of "self-help" when dealing with abandoned boats and/or trailers and any of the following activities:

- moving a boat and/or trailer;
- using a boat and/or trailer (even if subsequently returned unharmed);
- selling a boat and/or trailer;
- disposing of a boat and/or trailer;

might, if not authorised by the owner or carried out in accordance with the correct process, amount to the torts of trespass and/or conversion of property (also known as wrongful interference with goods). A tort is a civil wrong that may give rise to a claim for

compensation etc.

In addition, in some situations such activities might put a club in breach of its duty of care as bailee of the boat and/or trailer.

Accordingly the RYA recommend that clubs either:

- ensure that provisions consistent with the Torts (interference with Goods) Act 1977¹ (as outlined below) are included within the main club or boat park rules setting out the terms under which boats and/or trailers are held in the boat park, including the ability to move the boat and/or trailer within the boat park and the consequences on non payment of boat park fees, and adhere to these provisions when selling or disposing of a boat and/or trailer;

or

- follow the procedure set out in the Torts (interference with Goods) Act 1977 (as outlined below) before selling or disposing of a boat and/or trailer.

Recommended Boat Park Rules

Clubs who have adopted the RYA Model Constitution (and who have kept this amended in line with the amendments made to the RYA Model Constitution from time to time) will already have provisions within their Constitution that can be brought into play to deal with abandoned boats and/or trailers and associated liens (i.e. the right for a club to retain possession of a boat and/or trailer until a debt is paid). The current version of the RYA Model Constitution is available on the RYA website.

Many clubs may have already established a system of boat park stickers which are issued annually and a system for allocating spaces each year dependant on compliance with the boat park rules in the previous year. In this case the powers to move or sell abandoned boats and/or trailers may usefully be included within the Registration and Boat Park Application Form (or equivalent) along with a description of the process for allocating spaces. In this way the boat owner will, upon signing and submitting the form each year, become contractually bound by any terms and conditions set

¹ This statute does not apply in Scotland.

out within the form and the rights conferred on the club may continue in effect even after the owner ceases to be a member of the club.

If a club member sells their boat and/or trailer to a non-member then the provisions of the club rules or any Registration and Boat Park Application Form will not automatically apply to the new owner and, if the new owner does not join the club or complete a Registration and Boat Park Application Form, the club would need to follow the procedure set out in the Torts (interference with Goods) Act 1977 (as outlined below) in order to sell or dispose of the boat and/or trailer.

The example given in the box below is for dinghies but could be amended to cover spaces for bigger vessels and/or trailers.

Specimen rules for inclusion in a Boat Registration and Dinghy Park Application form:

Eligibility for space in the dinghy park

Spaces in the dinghy park are allocated on an annual basis. Spaces will be allocated on the basis of application forms received by [date]. All members requiring berths should submit this form regardless of whether they were allocated a space in the previous season.

[Priority in the allocation of spaces will be given to:]

Power to remove, sell or dispose of boats and/or trailers

In the case of an abandoned or unauthorised boat and/or trailer (as defined below) the Committee may:-

- (a) move the boat and/or trailer to any part of the club premises without being liable for any loss or damage to the boat and/or trailer howsoever caused;*
- (b) upon giving 1 months' notice require the member or former member to collect the boat and/or trailer;*
- (c) upon giving three months' notice in writing by registered post to the member or former member at his/her last known address shown in the register of members sell the boat and/or trailer and deduct any monies due to the Club (whether arrears of subscription or facility fees or dinghy park fees or otherwise);*
- (d) if the boat and/or trailer is unsaleable (in the reasonable opinion of the Committee), after giving notice in writing as aforesaid,*

dispose of the boat and/or trailer in any manner the Committee may think fit and deem the cost of doing and any arrears as aforesaid to be a debt owing to the club by the member or former member.

(e) the club reserves the right to charge storage for the boat and/or trailer until such time as the owner collects the boat and/or trailer or until notice has been served under clause (b) and (c) above.

PROVIDED THAT in each case that proper evidence is available to show that all reasonable steps have been taken by the Committee to trace a member or former member and that when and if the boat and/or trailer is sold the proceeds of sale (where these exceed the amount of any indebtedness by the member or former member to the club) shall be placed in a bank deposit account and retained against the eventuality of a claim by the owner (whether he be the said member or former member) for a period of six years.

The Committee shall be entitled to treat any of the following as an abandoned or unauthorised boat and/or trailer:

- (a) a boat and/or trailer located in the dinghy park and not displaying a current dinghy park sticker;*
- (b) a boat and/or trailer located otherwise than in its properly allocated space;*
- (c) a boat and/or trailer that remains in the dinghy park for more than one month after any date advised by the Committee by which boats and/or trailers must be removed to allow for maintenance works of the dinghy park or the end of the season date (where applicable);*
- (d) a boat and/or trailer which is the property of a member or former member which remains on club premises after any fees payable to the club by any member or former member (whether by way of arrears of subscription or facilities fees, dinghy park fees or otherwise) are more than one month in arrears.*

Lien on boats and/or trailers

In addition to the powers set out above to move, sell or dispose of boats and/or trailers the club shall have a lien over members' or former members' boats and/or trailers parked on the club's premises in respect of all monies due to the club, whether in respect of arrears of facilities fees or subscriptions or otherwise and

shall be entitled to retain possession of the boat and/or trailer until such time as all monies due to the club have been paid in full.

A lien is essentially a right for a creditor in possession of a debtor's moveable property to use that property as security for an unpaid debt, such as where monies are owed to a club for storage/mooring of a boat/unpaid membership fees. A person with a lien does **not** have an automatic right to sell the goods. If a lien is contractual and has been expressly agreed between the parties it shall allow the creditor to sell the goods retained and offset from the proceeds of the sale the sums owed. If there is no express provision within the contract then marinas and clubs shall only have an implied right to detain such boats until the outstanding sum is paid, and cannot dispose of them by sale.

Procedure to deal with abandoned and unauthorised boats and/or trailers under the Torts (Interference with Goods) Act 1977

The Act gives a bailee of goods (e.g. the club) a right to impose an obligation to collect goods and a further right to sell the goods, even where the bailee has been unable to trace the owner of the goods, and recover some or all of the outstanding debt provided that the procedure in the Act is followed.

The Act applies in the case of boats and/or trailers left in a boat park after the period for which the boat park fees have been paid or boats and/or trailers left in the boat park after the member ceases to be a member.

Before selling the boat and/or trailer, the club must be reasonably satisfied that the owner does actually own the boat and/or trailer (see advice below on tracing owners). If it subsequently transpires that the owner was not the owner, the true owner may be able to recover the boat and/or trailer from the purchaser, who in turn may have a claim against the club. Checks should be made against all relevant registers and other corroborating sources.

The procedure in the Act is as follows:

1. The Club must first send the owner of the goods written notice:

- advising of the terms under which the boat park arrangements terminated (if this is clear from club documents), or advise that the boat park arrangements will be terminated in 28 days of the date of the notice and hence their obligation to collect the boat and/or trailer;
- details of the boat and/or trailer to be collected and state where the boat and/or trailer is situated;
- the name and address of the club;
- details of any sum of money owing in respect of the boat and/or trailer at the time the notice is sent (e.g. membership and berthing fees due up to the date of the notice)

This notice may be delivered direct to the owner, left at his proper address or posted to it. The 'proper address' in the case of an individual is his/her last known address of the owner (e.g. the one shown on his membership or berthing application).

This first notice is often referred to as a Notice to Remove (or a Part I Notice).

2. If the notice does not result in collection of the boat and/or trailer the club must send the owner a further notice setting out:

- the same information as in the notice above, plus
- notice of the clubs intention to sell the boat and/or trailer if it remains uncollected, and the date of the intended sale.

This notice must be delivered by recorded delivery post or registered letter.

This second notice is often referred to as a Notice of Intention to Sell (or a Part II Notice).

It is permissible to combine the first and second notices. An example of a combined notice is set out in the appendix to this guidance note.

The period between the issue of the notice of intention to sell and the date of intended sale must be reasonably sufficient for the owner to reclaim the boat and/or trailer. If any money is owed to the club this period must be **at least three months**.

If the owner still does not collect the boat and/or trailer by the date stated in the Notice of Intention to Sell, the club can then sell the boat and/or trailer. The club must give the proceeds of the sale to the owner of the boat and/or (if he/she subsequently claims them) but is entitled to make deductions as described later in this note.

Reasonable steps to trace an owner

If the owner of the boat and/or trailer is not at the last known address, the club can still go ahead with a sale if the club has taken reasonable steps to trace him/her and those steps have been unsuccessful.

The RYA recommends that the reasonable steps to trace an owner should include:

- sending each notice by recorded/registered post to the last known address of the person they believe to own the boat and/or trailer, which may be found on the club's register of members;
- attaching each notice to the boat and/or trailer in a weather-tight envelope in a prominent position;
- posting a notice on the club board soliciting information from the members as to the whereabouts of the owner;
- approaching any relevant class association and asking for their assistance;
- following up any leads or information that may be forthcoming;
- placing an advertisement in the local newspaper.

The sale itself must be fairly conducted and the club is under an obligation to adopt the best method of sale reasonably available in the circumstances. Ideally, the club should obtain and retain a written valuation prior to sale. The cost of the valuation is, arguably, one of the costs of the sale and may be recouped from the sale proceeds. It is advisable that the sale is advertised reasonably widely, and a record of all advertising and details of the sale should be kept for six years, in case in the owner subsequently attempts to dispute the sale price.

From the sale proceeds the club is entitled to, after the deduction of legal costs:-

- a) The costs of the sale (for example broker's commission, cleaning costs, valuation costs, facility fees etc).

b) The sum owed before the date on which notice was given.

All costs attributable to the boat and/or trailer in question should be calculated and minuted by the club.

A club cannot normally make any charge for the boat park charges for the period between giving notice and sale.

The balance of the sale proceeds (if any) must be held for the owner. The proceeds of the sale should be deposited in a bank account and retained against the eventuality of a claim by the owner within a period of six years for the net proceeds together with any accrued interest. Where the sale is by Court Order the proceeds are usually paid into Court.

If the club is in any doubt as to whether it is entitled to sell the boat and/or trailer, it can apply to the Court for an Order authorising the sale (and to approve the method of sale proposed) and/or to determine the amount that is due. If this happens, the Court will retain the balance of the purchase price after the deductions have been made. This course of action is recommended for boats and/or trailers of significant value in order to minimise the risk of any future disputes.

It should be noted that a club may not use the process under the 1977 Act where the owner is in dispute with the club over fees or any other issue.

Whether the club is relying on its constitution, a Registration and Boat Park Application Form (or equivalent) or the provisions of the Act when selling a boat and/or trailer, these contractual or statutory powers are potentially quite onerous from the boat owner's perspective and the counter-balance is that the Courts are likely to give the boat owner the benefit of the doubt and interpret any procedural irregularity in favour of the owner.

A copy of the act can be found here:

http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1977/cukpga_19770032_en_1

There are a number of special cases which may require specific legal advice, including:

- A boat and/or trailer believed to belong to a minor:
The Courts apply special rules to contracts made by minors, with the effect that the club may not be able to rely on its strict contractual rights as regards a minor.
- A boat and/or trailer believed to be subject to a hire purchase agreement:
If the boat and/or trailer is subject to a hire-purchase arrangement then the actual owner of the boat and/or trailer may be the hire-purchase company, which may have a right of action against the club should the club sell the boat and/or trailer without its consent.
- A boat and/or trailer abandoned by a person who has never been a member of the club:
The provision of the Act would enable the club to sell the boat and/or trailer but the club might be expected to demonstrate that it had taken all reasonable steps to identify the owner.
- A registered boat:
If the boat in question is registered on Part 1 of the Central Register of British Ships then the purchaser is likely to want a Bill of Sale and the club will need to take great care to ensure that it does not give any misleading warranties or declarations about title or encumbrances etc.
- A high value boat:
If the boat in question is of a high value and the sale proceeds are likely to exceed by a large margin the outstanding debt owed to the club, the club might better protect its interests by seeking to recover the debt by arresting the boat through the Admiralty Court and asking the Court to dispose of it.

SCOTLAND

In Scotland the relevant law is the Civic Government (Scotland) Act 1982, which states that goods which are abandoned shall vest in the Crown. Persons in possession of abandoned property therefore do not have the right to keep it or to sell it. Such a person is required to take reasonable care of the property and must without delay contact either:

- the police;
- the owner;
- someone who has authority to act on behalf of the owner; or

- someone who has right of possession or if the property is found on land, the owner of the land,

and provide them with a description of the property and details of where it was found.

If there is a doubt as to who the owner is, the Act provides that a person in possession of abandoned property must deliver the property or report the matter to the police. If a person fails to report the matter to the police, they may be guilty of an offence and liable to a fine not exceeding £50.

When the goods are reported to the police, the police may:-

- identify the owner and then tell the owner to uplift the goods;
- take the goods into their care for a period of two months. In the event that the property cannot be stored for that period the property may be disposed of;
- identify who the owner is and compel you to deliver the goods to the owner.

The police may keep the goods in their possession for a period of two months, after which, if the property has not been claimed, they may at their discretion offer it to the finder or sell the property. In the event that the goods are offered to the finder, the finder is required to keep the property for a period of 1 year before disposing of it, because the owner has 1 year to claim back the property. If the police decide that they cannot sell the goods or it is inappropriate to offer the goods to the finder, they may make arrangements to dispose of the property.

The Act does not confer private rights of disposal upon individuals and the existence of abandoned boats on club premises does not confer rights of ownership upon them. It is therefore advisable to incorporate a specific clause within the relevant documentation allowing the club to sell boats if members fail to pay their membership/mooring/storage fees. In the absence of such a clause the only other option available to them is to immediately notify the police of the presence of such boats within their premises, as failure to do so may result in a summary fine.

For more information kindly contact the RYA Legal Team on 0844 5569519 or legal@rya.org.uk

Disclaimer:

The RYA Legal Team provides generic legal advice for its members, affiliated clubs and RTCs. This leaflet represents the RYA's interpretation of the law. It takes all reasonable care to ensure that the information contained in this leaflet is accurate. The RYA cannot accept responsibility for any errors or omissions contained in this leaflet, or for any loss caused or sustained by any person relying on it. Before taking any specific action based on the advice in this leaflet, members are advised to check the up to date position and take appropriate professional advice.

APPENDIX – Example Notice

[TO BE PRINTED ON CLUB HEADED PAPER]

**NOTICE OF OBLIGATION TO COLLECT GOODS
AND
NOTICE OF INTENTION TO SELL GOODS**

To:		[Owner's name]
Of:		[Owner's last known address]

The following vessel and other property (the "Property") belonging to you was bailed to the [insert name of club or centre] ("the Club")

	[Property's description –e.g. name and type of vessel, plus details of trailer etc]
--	---

And situated :-

	[club address]
	[Location within boat park]

The sum of £..... is due and owing to the Club in respect of the Property. Reminders were sent to you on [date] and [date]. Accordingly your entitlement to occupy a space in the boat park has terminated. You are therefore obliged to collect the Property and remove it from the Club's premises. The outstanding sum specified above is payable by you on collection of the Property.

If you do not collect the Property and remove it from the Club's premises and pay the above sum within 3 months of the date of this Notice, i.e. no later than

	[Sale Date]
--	-------------

the Club will sell the Property, and account to you for the proceeds of sale less the costs of the sale and the sum payable by you as set out above.

Under section 12 of the Torts (Interference with Goods) Act 1977 you are now obliged to pay the sum due and take delivery of the Property. If you do not do so before the date specified above, the Club will sell the Property.

Signed on behalf of [insert name of Club] by:

[insert name and position of signatory]

[insert name and position of signatory]