

Sustainability Committee

Scoping paper - access to inland water

This paper provides some background information on the issues surrounding access to inland water in Wales.

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For further information contact Victoria Paris in the Members' Research Service
Telephone ext: 8602
Email: victoria.paris@wales.gsi.gov.uk

1. Background to the Petitions Committee inquiry

The Welsh Canoeing Association (WCA) delivered a petition to the Petitions Committee on 10 April 2008. It was signed by 9,893 petitioners. The petition read as follows¹:

The Welsh Assembly Government is urged to consider and implement a Bill to benefit Wales that would enshrine access rights and responsibilities for the public to and along natural resources in the same way that the Scottish Land Reform Act encourages co-operative use of the outdoors for healthy, low impact recreation.

This bill must provide and permit access to and along non-tidal water in the face of the massive lack of legal clarity and restrictions that exist at present, which act as a barrier to sport and recreation and the promotion of Wales as a place to visit for Adventure Tourism.

A response was received by the Minister dated 5 June 2008:

The existing legal position on access to rivers in particular is complex, with much enshrined in common law. Rather than pursue legal options, therefore, the Welsh Assembly Government is seeking to make progress here via consensus-building and via practical action.

The copy of the Minister's response is attached (page 4).



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The Petition Committee's inquiry consisted of a:

- fact-finding visit to the River Teifi in Carmarthenshire/Ceredigion to establish the key issues involved with utilising water for different uses
- formal meeting at the Scottish Parliament in Edinburgh to take evidence on the effectiveness of the Scottish legislation

In April 2009 the Petitions Committee launched their report which summarised the key findings of the inquiry and made the following recommendations²:

- A new statute would ensure everyone has access to inland water in Wales, and on an equal footing; it would provide clarity, certainty and permanence and we believe that the *Land Reform (Scotland) Act 2003*³ provides a basis from which a unique Welsh model may be developed. **We recommend** that a further more wide ranging inquiry be carried out with a view to bringing forward legislation in this area, which would give all stakeholders the opportunity to submit evidence.

¹ National Assembly for Wales, Petitions Committee, Admissible Petitions, [P-03-118 Welsh Canoeing Association](#), webpage [on 15 June 2009]

² National Assembly for Wales, Petitions Committee, [Inquiry into Access along Inland Waters](#), website [on 15 June 2009]

³ [Land Reform \(Scotland\) Act 2003](#)

- Statutory access will not work, however, without enforceable codes of conduct for inland water so that environmental and other conditions can be built in and common sense can prevail. **We recommend** that a full scrutiny inquiry should also consider introducing a mandatory code to accompany the legislation in order for a new right of access along inland water in Wales to be managed and regulated, including some attempt to develop an identification system for regular water users.

2. Access to water in Wales

2.1 Legislation

The *Countryside and Rights of Way Act 2000*⁴ (the CRoW Act) specifies types of land which are accessible. The CRoW Act provides the power to extend the provisions of the CRoW Act to coastal land; however, no provision in the CRoW Act allows access to inland water. This means that new legislation would need to be introduced to enable access to inland water.

Schedule 5 of the *Government of Wales Act 2006*⁵ (GOWA) provides details of the legislative competence of the Assembly at present and will continue to change as matters are introduced into each field. It does not currently contain matters that would enable the National Assembly to legislate on access to water. A legal note provided to the Petitions Committee by the legal team stated:

Schedule 5 GOWA 2006, matter 16 "Sports and recreational activities", would be the appropriate field as clearly canoeing could be considered to be a sport/recreational activity under which a matter could be added by obtaining an LCO.

Schedule 7 of the GOWA sets out the legislative competence the National Assembly would have following a referendum supporting the commencement of Assembly Act provisions. Schedule 7 does contain matters under which such legislation could be introduced (within Field 6 Environment, Field 16 Sport and recreation, Field 17 Tourism, Field 18 Town and country planning or Field 19 Water and flood defence). Therefore an LCO could be introduced to the Assembly.

Schedule 2 to the CRoW Act states⁶:

Section 2(1) does not entitle a person to be on any land if, in or on that land, he—
(b) uses a vessel or sailboard on any non-tidal water,
(i) bathes in any non-tidal water,

This clause prohibits people from using land otherwise accessible under the provisions of the Act to pursue their sport.

On 24 January 2007 a Private Members' Bill was introduced by Dr Desmond Turner. The aim of the *Access to Inland Waterways Bill*⁷ was to:

⁴ [Countryside and Rights of Way Act 2000](#) (chapter 37)

⁵ [Government of Wales Act 2006](#) (chapter 32)]

⁶ [Countryside and Rights of Way Act 2000](#) (chapter 37)

⁷ Parliament, Parliamentary Business, Bills and Legislation, Previous Bills, Session 2006-07, [Access to Inland Water](#), website [on 16 June 2009]

make provision for access by the public for non-motorised boating purposes to the inland waterways of England and Wales; and for connected purposes.

The First Reading in the Commons also took place on 24 January 2007 and a second reading was scheduled for 23 February 2007⁸. However, this was then postponed and, as yet, has not been re-scheduled.

2.2 *Voluntary Access Agreements*

Any tidal area is generally owned by the Crown, and as such the general public have a presumed right of navigation over it. This means access agreements are not necessary on tidal sections of rivers, estuaries or the sea itself. A river is usually considered to be tidal to the point where it is affected by an ordinary or average tide. Using a river above the 'normal tidal limit' without an access agreement in situ can be considered as trespassing⁹.

Rivers with informal permissive agreements can be used by canoeists under ad hoc arrangements. While there are no formal agreements the arrangements can in some cases be long-standing. In general, access permission is obtained from specific owners or is implied as there are no objections. In some cases this is all year round but in general the access permission is only granted during the closed angling season. By their nature the arrangements on these rivers are not fixed and may vary within a short period of time¹⁰.

Voluntary access agreements might have to be made with the following landowners and their opinions on the agreements may differ¹¹:

- Private Householders - The main issue for individual householders is privacy and potential trespass. Most householders are prepared to allow touring canoeists to pass along their section of river, provided they follow a code of conduct and do not wish to access or egress the river across their land. In contrast, fewer householders are willing to allow intensive play use on their stretch of the river, particularly if there are public liability concerns.
- Farmers - Farmers have particular concerns about the use to which their land is put and are generally reserved about allowing access across their land to reach the water. Their main areas of concern tend to be the disturbance of grazing stock.
- Small Businesses - Often these are run by single persons or a family. Many are unaware of their riparian rights and thus tend to assume that canoeing is an accepted activity on the river.
- Property Developers - Usually property developers are uninterested or unaware of their riparian rights and therefore no objections are forthcoming when the issue of canoeing is raised.

⁸ Parliament, Commons Publications, Commons Hansard, Daily Hansard – debate, Volume 455, Wednesday 24 January 2007, Debates, Column 1422, [Access to Inland Water](#), website [on 16 June 2009]

⁹ Environment Agency, At home & leisure, Outdoor recreation, Canoeing, Getting canoe access, [Do you need an access agreement?](#) website [on 15 June 2009]

¹⁰ Environment Agency, At home & leisure, Outdoor recreation, Canoeing, [Getting canoe access](#), website [on 15 June 2009]

¹¹ Environment Agency, At home & leisure, Outdoor recreation, Canoeing, Getting canoe access, [Do you need an access agreement?](#) website [on 15 June 2009]

- Large businesses - It is often the case that any legal disposal of an interest in land – even the minor licence required for a canoe agreement – requires Board approval. To be successful at this level, it will often be necessary to establish a ‘commercial’ proposition. This could be about positive public relations, or it could be about the potential for income generation through parking and ancillary facilities. Time must therefore be allowed to make the contacts and build the case for canoeing. Even after a positive board decision, additional time must be allowed for the company’s legal and financial team to undertake a process of due diligence, during which the full potential impact of the scheme on the business is assessed. As a result of this process, some businesses may only be willing to deal with clubs that are prepared to indemnify them against any third party claims or losses.
- Sports or Recreational Clubs - Often discussing access with sporting clubs such as football or rugby clubs is relatively easy as they generally also wish to increase sports participation and opportunities. It may well be that some clubs would be willing to share changing facilities or car parks, as well as access or egress points. In other types of clubs – such as golf clubs - the situation is often very different. These types of clubs tend to be concerned about potential trespass, vandalism and third party liabilities, but they are also interested in the potential benefits afforded by additional sporting activity taking place on their property.
- Local Authorities - Often the local authority is the owner of considerable land holdings alongside a river, particularly in urban areas. The main problem with dealing with these types of owner is pinpointing the department that has responsibility for such negotiation and often several departments may be involved. Even where decisions are reached, they often require further ratification, through a process of due diligence similar to that undertaken in large businesses.

In 2007 the Countryside Council for Wales (CCW) undertook research into the managing of recreation on inland water in Wales. As part of this research they examined the effectiveness of voluntary access agreements to water. It concluded that¹²:

Potential strengths–

- Agreements flexible and can be tailored to local circumstances
- Opportunities for local negotiation of agreements
- Long term agreements can deliver certainty and stability

Potential barriers –

- Lack of engagement by some angling interests, landowners and national canoeing body
- Lack of trust between anglers and canoeists
- Lack of enforcement mechanisms
- Short term agreements do not encourage trust

¹² Countryside Council for Wales (2007) *Managing recreation on inland waters in Wales: a review of approaches*. CCW Policy Research Report No. 07/4.

2.3 Current Policy

During Plenary on 13 June 2007, the then Minister for Sustainability and Rural Development made the following comments¹³:

On access to water, the Assembly Government has asked the Environment Agency Wales to develop a new strategic plan identifying potential new opportunities for water access and the way in which those opportunities might be delivered. That should be ready later this year. We have also provided £100,000 in additional funding this year to the Countryside Council for Wales and the Forestry Commission to support a range of exemplar projects on water access.

The additional funding of £100,000 during 2007-08 to the Countryside Council for Wales and Forestry Commission Wales to support pilot water access projects informed the development of the strategic plan for water related recreation. These projects included¹⁴:

- The Wye and Usk River Plan – this plan produced with all the main interests, (anglers, landowners and canoeists) provides canoe access on 55 miles of these major rivers;
- River Mawddach and tributaries – this project examined the scope for improved water-based recreation opportunities in this river catchment in Gwynedd;
- Montgomery Canal - focused on the promotion of water-based recreation and walking and cycling in a 10 mile canal 'corridor' at Berriew;
- River Glaslyn – access improvements and promotion of recreational use of the Glaslyn River and Llyn Dinas;
- Llys y Fran Reservoir - encouraged local people in Pembrokeshire to make more use of this water resource for healthy recreation.

Environment Agency Wales' strategy for water related recreation (*A Better Place to Play in Wales*¹⁵) was published in May 2008. The strategic part of the document with relevance to access is shown below:

Wales is a rural country with most rivers being only accessible by car. We will provide river flow information for many locations so that you will know when the water is suitable for your activity. This will help cut down on wasted car journeys.

We will develop Blue Space Planning Guidance which will help planners and developers make the best of any opportunities for water recreation through the planning system.

¹³ National Assembly for Wales, Plenary meetings, Record of Proceedings, dated 13 June 2007, [The record](#), website [on 15 June 2009]

¹⁴ Welsh Assembly Government, Environment and countryside, Environment – conservation and management, Countryside and coastal access, Coastal access, [Access to water](#), website [on 15 June 2009]

¹⁵ Environment Agency, At home & leisure, Outdoor recreation, Working with partners, [A better place to play in Wales](#), website [on 15 June 2009]

We will help to create new access for recreation to the coast, canals, rivers, lakes and reservoirs. This could be through new facilities, management arrangements or by making better use of existing sites, and water owned by public bodies.

Land owners and managers are often concerned that by allowing people access to their water they are putting themselves at risk. A toolkit will be created outlining the rights and responsibilities of both owners and users of the water.

We will continue to monitor the recreational use of water in Wales. This will help to make sure that it continues to develop in the most appropriate ways.

To support this strategy in July 2008 the Minister for Environment, Sustainability and Housing, Jane Davidson, launched 'Splash - the water recreation challenge fund for Wales'. Funding is available for projects that secure new or improved public access to Wales' coasts and water for recreational activities. For 2008-09 over £400,000 has been made available for water recreation projects¹⁶.

In March 2009 the Welsh government launched the Strategic Policy Position Statement on Water in which it stated the Welsh government is committed to improving access to the environment for all and will promote the recreational use of water in a safe and sustainable manner¹⁷.

3. Main issues

The research undertaken by the Countryside Council for Wales (CCW) in 2007 analysed stakeholders opinions on a statutory right of navigation. Evidence from the CCW report¹⁸ and the Petitions Committee¹⁹ suggest that:

Arguments in favour:

- Avoids having to seek out and ask hundreds of people for permission to use the waterway
- Clarifies the legal position for users utilising the waterway
- Believe a legal right of access to rivers would provide more recreational opportunities and would have knock-on benefits for public health
- Many inland waters are considered to be privately owned and to use them without permission could constitute an act of trespass
- Believe the passage of a canoe does not damage the environment, cause pollution, erosion or harm to flora or fauna
- Believe Voluntary Access Agreements can rarely be made to work

¹⁶ Welsh Assembly Government, Environment and countryside, News archive, dated 21 July 2008, [Water recreation challenge fund for Wales](#), website [on 15 June 2009]

¹⁷ Welsh Assembly Government, Environment – protection and quality, Water and flooding, [Strategic Policy Position Statement on Water](#), website [on 15 June 2009]

¹⁸ Countryside Council for Wales (2007) *Managing recreation on inland waters in Wales: a review of approaches*. CCW Policy Research Report No. 07/4.

¹⁹ National Assembly for Wales, Petitions Committee, [Inquiry into Access along Inland Waters](#), website [on 15 June 2009]

- Potential to renegotiate fishing lease in future to provide wider access
- Might work on a time limited basis e.g. provision of statutory access during closed fishing season
- Could benefit nation's health and economy
- Sharing of natural resources more equitably

Arguments against:

- Uncertainty over conflict this might cause with other interests
- Investments by landowners/fisheries interests are very large and may require compensation
- Many stretches of river are already being used by canoeists
- On some public land exclusive fishing rights have been leased
- Does not provide physical access to water
- Potential damage to spawning areas
- Potential loss of income for riparian owners
- Many Welsh rivers are Sites of Special Scientific Interest or Special Areas of Conservation and it is believed there is potential for the habitats and environmental conditions to be disrupted, possibly destroyed, by the passage of water craft in any numbers, with serious loss to biodiversity
- There is no general right of access to farmland, and farmers are entitled to conduct their operations without disturbance.
- The question of liability for accident or injury to anyone on private land without permission, especially where disturbance to livestock may be concerned
- Concern over decreased value of investment in fisheries