

Petition: P-05-717 Establish statutory public rights of access to land and water for recreational and other purposes

Y Pwyllgor Deisebau | 15 Tachwedd 2016
Petitions Committee | 15 November 2016

Research Briefing:

Petition number: P-05-717

Petition title: **Establish statutory public rights of access to land and water for recreational and other purposes**

Petition text:

We call on the National Assembly for Wales to urge the Welsh Government to implement a Bill to establish statutory public rights of access to land and water for recreational and other purposes. The bill should enshrine access rights and responsibilities for the public in the same way that the 2003 Land Reform (Scotland) Act encourages co-operative use of the outdoors for healthy, low impact recreation. This Bill must enshrine public rights of navigation for inland water, and permit access to and along water. It must remove the lack of legal clarity and restrictions which act as a barrier to sport and recreation and the promotion of Wales as a welcoming place for healthy recreation, tourism and adventurous activity at all levels of participation and enjoyment.

Background

Access to land in Wales

Access rights to land in Wales consist principally of public rights of way, open access and permissive access. Access rights in England are very similar to those in Wales, whereas in Scotland they are comparatively less restrictive, and in Northern Ireland comparatively more restrictive.

Rights of way

Public rights of way are highways that allow the public a legal right of passage. There are around 33,000 km of public rights of way in Wales. Rights of way include:

- footpaths – right of way is on foot only;
- bridleways – for pedestrians, horse riders and cyclists (who must give way to people on foot or horseback);
- byways open to all traffic (BOATs) – open to walkers, cyclists, horse-riders, horse-drawn vehicles and motor vehicles; and
- restricted byways – can have rights for all traffic except motorised vehicles.

Open access

Certain areas of land can be accessed without having to use paths. This land is known as “access land”. Access land includes open country (mountain, moor, heath and down), registered common land and areas of dedicated public forests (where owners such as the Natural Resources Wales (NRW) allow free access). One fifth of Wales is mapped as access land. This includes 360,000 hectares of open country and common land plus 100,000 hectares of NRW land.

There are some activities that cannot, in most circumstances, be undertaken on access land. These are known as “general restrictions”. They include horse riding, cycling, fishing, camping, taking animals other than dogs onto the land, driving a vehicle and water sports.

Permissive access

Some landowners may allow the public access to their land for walking, cycling or riding. This is known as “permissive access”. Access may be restricted at specific times of the year, for example to protect ground-nesting birds. Landowners have a duty of care for those using permissive access across their land.

Some landowners may enter into an agreement with a public authority to allow the public to gain access to their land. In these instances the terms and agreements of any contract signed would apply. An example of this is the Welsh Government’s [Glastir agri-environment scheme](#) which gives land owners the opportunity to provide permissive access to otherwise inaccessible land in return for payment.

Legislation

There are many pieces of legislation governing access in Wales (and England), however the *Countryside and Rights of Way Act 2000* (CRoW Act) is the most significant.

The CRoW Act makes local highway authorities responsible for protecting and maintaining rights of way, publishing Rights of Way Improvement Plans and mapping rights of way on Definitive Maps and Statements. It also provides for a statutory right to apply to permanently extinguish or divert certain public rights of way.

The CRoW Act also introduced a general right of public access on foot to certain land, i.e. access land. The Act does not cover permissive access.

Access to water in Wales

Access rights set out in the CRoW Act do not include to access to inland water.

Access to inland water in Wales has proved to be a highly divisive issue in the past with strongly held views on both sides of the debate. Recreational water-users such as canoeists are in favour of legislation to provide people with a right to navigate these waters. Anglers and fishing organisations are generally opposed to the introduction of a general right of access for recreational water users.

In broad terms recreational users argue that there is a high demand for recreational activities on inland waters in Wales and that increased access could lead to higher levels of tourism and economic benefits. Angling and fishing groups argue that recreational water use can cause environmental damage to fisheries and particularly fish spawning grounds for species such as salmon. Anglers currently pay a rod licence and other fees to fish in rivers and argue that recreational users pay no fees towards the cost of maintaining and enhancing rivers.

A summary of the debate around the issues can be found in the Third Assembly's Sustainability Committee report on its [Inquiry into Access to Inland Water in Wales \(2010\) \(PDF 706KB\)](#). The Inquiry is discussed in further detail later in this briefing.

Some have argued that there are historical navigational rights that provide a general right of access to non-tidal rivers and lakes for recreational users. The consensus view however, is that there is no general common law right for people to navigate non-tidal waters or inland lakes in England and Wales. In its inquiry report, the Sustainability Committee concluded that while it had considered the views about historical rights:

There is however, no modern judicial precedent which supports this, and whilst we have considered the views of these witnesses with interest, we cannot, for the purpose of our inquiry, base our recommendations on a view of the law which is at odds with the one that is generally accepted.

The Welsh Government, in developing its policy on the issue, adopts the same legal position.

There are some rivers in Wales where access for recreational use is already permitted either for historical reasons or because voluntary access agreements have been agreed.

Land Reform (Scotland) Act 2003

The *Land Reform (Scotland) Act 2003* (LRS Act) and the accompanying [Scottish Outdoor Access Code](#) is the principal legislation relating to outdoor access in Scotland. The associated statutory right of access came into effect in 2005.

Part 1 of the LRS Act establishes statutory public rights of access to land and inland water for recreational, educational and other activities. The rights specifically exclude any kind of motorised activity (unless for disabled access), hunting, shooting and fishing.

The rights apply over all of Scotland including urban areas, hills, farmland, forests, beaches, canals, lochs and rivers. However, the rights of access do not apply within buildings, structures or their immediate surroundings, to houses and gardens, and to crop land (grass is not deemed to be a crop unless it is grown for hay/silage), though access to field margins is allowed.

The emphasis of Part 1 of the LRS Act is on the management of access at a local level providing local authorities and National Park authorities (access authorities) with powers to manage access in their area. The LRS Act requires local authorities to establish Local Access Forums. The LRS Act provides that access authorities can temporarily exempt a particular area of land and/or inland water from access rights by way of a “Section 11 Order”.

The LRS Act lays out a duty for the local authority to draw up a plan for a system of paths (“core paths”) sufficient for the purpose of giving the public reasonable access throughout their area.

Further information on access in each of the countries of the UK can be found in the Research Service publication: [Countryside access in the UK: a review of associated legislation and policy \(2014\) \(PDF 449KB\)](#).

Welsh Government action

Previous Welsh Governments have voiced general support for increasing access for recreational users to inland water and they have in the past [supported a voluntary \(PDF 160KB\)](#) rather than a statutory approach. The Welsh Government Splash Fund ran from 2009 to 2014 and provided funding to support the development of voluntary access agreements and enhanced facilities for recreational water users, such as enhanced access points to rivers at appropriate locations.

The previous Welsh Government reviewed the legislative framework surrounding access and outdoor recreation [and concluded that](#):

- On land, there is a need to improve our rights of way network and make the associated legislative framework on access more effective; and
- On water, there is a need to see an increase in the number of voluntary access agreements providing for a range of recreational activities.

In 2015, the Welsh Government consulted on a Green Paper entitled [Improving Opportunities to Access the Outdoors for Responsible Recreation](#). Key proposals in the Green Paper included:

- Removing restrictions around recording public rights of way, maintaining routes, and creating diverting and extinguishing. The proposals include removing some of the restrictions on the range of activities that can take place on rights of way and on access land;

- A more permissive approach to access including extending the definition of access land to include other areas such as woodland, lakes and coastal cliffs; and
- Improving access to water through more opportunities for responsible access for recreation to inland waters, the coast and maritime environment.

The consultation attracted 5,796 responses. The [summary of consultation responses \(PDF 123KB\)](#), published in March 2016, noted that the Welsh Government had not at that time made a decision on whether any changes would be implemented.

Lesley Griffiths, the Cabinet Secretary for Environment and Rural Affairs, wrote to the Petitions Committee on 19 October 2016. Her letter states that most respondents to the consultation “were of the view that the current system is too complex and burdensome”.

The Cabinet Secretary also said that she is keen to increase opportunities for outdoor access and intends to develop proposals to this effect, the scope and timetable for which will be set out “early next year”.

National Assembly for Wales action

Third Assembly Petitions Committee 2009

In 2008 a petition was submitted to the Petitions Committee that called on the Welsh Government to introduce legislation to increase **access to inland water** based on the model adopted in Scotland through the LRS Act. The Petitions Committee agreed to undertake a short inquiry into the issue and reported in March 2009.

The [Committee found \(PDF 227KB\)](#) that the situation in Wales was “untenable and unworkable” and that there was much “complexity and confusion” over the many and varied rights to inland water. It concluded that new legislation on access to inland water was needed and that the LRS Act provided a model upon which a “unique Welsh model” could be adopted.

The Petitions Committee recommended that a scrutiny committee of the Assembly should undertake a full inquiry into the need for a new legislation on this basis.

Third Assembly Sustainability Committee 2010

In response to the Petitions Committee’s recommendation the Sustainability Committee undertook a 12-month inquiry into the issue. Its [report \(PDF 706KB\)](#), published in June 2010, made 13 recommendations. While it agreed with the Petitions Committee that the situation was untenable and that that a new legislative framework was needed, it did not support the Petition Committee’s view that the LRS Act was a suitable model for Wales.

The Sustainability Committee recommended that legislation should be adopted that would appoint a “lead body” in Wales to be responsible for facilitating voluntary agreements between stakeholders. It stated that this “lead body” should also be empowered to adopt a compulsory approach where no voluntary agreement had been possible. The Welsh

Government [accepted this recommendation in principle \(PDF 160KB\)](#), saying it wished to evaluate the success of the voluntary approach before deciding whether a mandatory approach was necessary. At the time of publishing the report the Assembly did not have the legislative competence it needed to introduce such legislation, but gained this competence following the 2011 referendum.

In relation to the LRS Act, the Committee concluded that the difference in the laws of trespass in England and Wales as compared to Scotland would make it difficult for Wales to adopt a similar model to Scotland.

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.