



Fair, shared, sustainable open access for ALL!

Menediad agored cynnaladwy i BAWB!

[admin@watersofwales.org](mailto:admin@watersofwales.org)

Thursday, April 25, 2019

Waters of Wales – WoW thanks the Petitions Committee for this opportunity to reply to the Minister's Statement dated 04/04/19. We regret that the statement fails to address our petition.

We welcome the positives: acknowledgement of the importance of outdoor recreation, and intention to remove access restrictions for some forms of land-based recreation. We also welcome the acknowledgement of the importance of access to natural resources close to home, and intention to provide information to show people what is available on their doorstep. However, information will be of limited usefulness for the majority with no uncontested 'doorstep' access to inland water.

The report raises more questions than it answers: Welsh Government recognises that the vast majority of people accessing the countryside are responsible users; why then is the strategy not based on a presumption in favour of access? Why is lifting restrictions on access to man-made bodies of water not even to be considered? How will the representativeness and independence of the 'Access Reform Group' be established and protected? Why are verbal commitments, reportedly made in meetings around the country, not formally included in the report, to enable measurement of progress against them?

Most disappointing and worrying of all; the Minister's statement does nothing to move access to inland water out of the cycle, repeated every three years to date, from Welsh Government's first involvement with the WCA's petition in 2007<sup>i</sup>. In summary:

**2007** CRoW Act not working for Wales. Campaigning to Welsh Assembly (WA) for access to and along inland water. Welsh Government 'allegedly' tells one user group that open access legislation is likely<sup>ii</sup>; and public funds are used to persuade this group to seek an alternative<sup>ii</sup>. A petition calls on Welsh Assembly to legislate for open access<sup>i</sup>. A Short Inquiry<sup>iii</sup> acknowledges the shortcomings of the approach to date, highlighting the need for legislation. WA carries out another Inquiry<sup>iv</sup>.

**2010** Faced with a strong lobby opposed to public access, Welsh Government retreats and once again puts public money into facilitating negotiation for 'voluntary agreements'. 2011 – 2012: A series of 'Round-Table Discussions' and projects funded by 'SPLASH', at a cost to the taxpayer of approx. £3m, but with no appreciable increase, and in some cases a reduction, in public access<sup>v</sup>.

**2013 July** - Welsh Government launches a review of access and outdoor recreation. **October** – Acknowledges that voluntary agreements are not working, and the need for legislation<sup>vi</sup>. **December** – another retreat: *"On water, there is a need to see an increase in the number of voluntary access agreements providing for a range of recreational activities"...* *"We do not plan to pursue primary legislation in this assembly term."* Green Paper consultation. Results repeatedly delayed, until ultimately they are "left on the table to inform the next government".

**2016** A petition for legislation delivered by Waters of Wales, was discussed briefly at the Petitions Committee on 15<sup>th</sup> November 2016, where it was decided to hold the petition pending a promised Welsh Government announcement. 2017 - Public consultation. 2018 – Minister's response to consultation fails to address the petition. 2018 – Public consultation 'Brexit and Our Land'; opportunity for constructive action on access to water missed completely<sup>vii</sup>.

**Waters of Wales (WoW) is a community of independent campaigners for legislation enshrining public rights of fair, shared, sustainable open access to inland water in Wales.**

**Mae DC (Dyfroedd Cymru) yn gymuned o ymgyrchwyr annibynnol ar gyfer deddfwriaeth sy'n corffori hawliau cyhoeddus i fynediad agored cynnaladwy i ddyfrffyrdd mewndirol yng Nghymru.**



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**2019 The Minister writes (*bold italics*):**

*“Access to inland waters has long been a contentious issue, with increasing reports of tension and in some cases, open hostility between various users”.*

**WoW response:** This is because NO attempt has been made to address the disputed public rights which are the underlying cause of the polarised views and conflict.

*“There currently isn’t legislation and little common law around this type of access.”*

**WoW response:** This comment fails to acknowledge statutory navigations such as the Wye, and the evidence for a Common-Law public right of navigation (prn). WoW tried in 2015 to petition the Welsh Assembly to obtain a definitive legal position, but WA refused to accept the petition. While continuing to assert that “the law is unclear” Welsh Government persists in predicating its strategy on one interpretation. To be consistent and equitable in the absence of a definitive legal position, Welsh Government needs to give equal weight to both interpretations. That way, where discussions between user-groups are appropriate, all parties can participate on an equal footing.

**The Common Law Public Right of Navigation<sup>viii</sup> - summary**

- Under Roman Law (Institutes of Justinian – see page 19, Book II, 1-4) all rivers were considered res publica and open to reasonable use, including navigation, by all. The Romans considered this a natural law which applied to all permanently flowing rivers irrespective of time or place.
- This public right of navigation was defended by Clause 33 of Magna Carta which stood witness to the existence of navigation rights in all rivers throughout the realm.
- The intent of Magna Carta was elaborated and confirmed by the 1472 Act for Weirs and Fishgarthes.
- Many Medieval commissions were appointed by the Kings to preserve and protect public navigation rights on a very wide variety of rivers, thereby confirming the existence of the public’s navigation rights in all rivers where navigation was then practical.
- The Laws in Wales Acts (1536 - 27 Henry VIII c. 26 and 1542 - 34 & 35 Henry VIII c. 26) specifically extended to Wales the full benefit of the law in England. This applied to all laws then in force in England. All future laws enacted by Parliament in Westminster applied equally to the joint administration of England and Wales. Evidence from England, where the evidence of historic navigation rights is better documented, can therefore be used to demonstrate the existence of public navigation rights in Wales.

*“Since 2009, the Welsh Government has advocated voluntary access agreements (VAAs) and supported the use of access agreements and other opportunities on inland waters through the Splash funding scheme”.*

**WoW response:** THIS STATEMENT IS INCORRECT. In 2013 WG wrote:

*“The report of the National Assembly for Wales’ Sustainability Committee on their Inquiry into Access to Inland Waters in Wales (2010) advocated that in the short term effort should focus on establishing voluntary agreements, but should the Assembly secure legislative competence in this area that introducing legislation to address areas where conflict persists would also be desirable. Three years on there continues to be conflict between different user groups and voluntary access agreements do not appear to be working Wales wide. The Minister now believes that it is necessary to explore ways of seeking to bring clarity and certainty for all on where they can go and what activities they can do, whilst ensuring proper safeguards for both nature conservation and the interests of owners. The Committee’s findings are informing this current review.”*

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*“However, there continues to be friction between different user groups, and few VAAs are in place.”*

WoW response: This repeats what WG said in 2013 – and for the same reason! A wealth of evidence<sup>ix,x,xi</sup> shows why VAA (or by any other name) cannot provide a sustainable solution.

*“Our proposals on access to water within the SMNR consultation were aimed at resolving the stalemate and conflict. The consultation attracted the highly polarised views which have hindered all efforts to reduce the conflict between users to date. It is extremely disappointing that parties continue to offer no compromise on their respective positions”.*

WoW response: Welsh Government continues to ignore the underlying cause of the polarised views and conflict; and research, much of which is government commissioned, which demonstrates that failure is inevitable.<sup>ix,x,xi</sup> By trying to treat an issue of public rights as a dispute between two discrete groups, and to then consistently favour one group, a sustainable and just solution cannot be achieved.

*“It has therefore become apparent that presenting proposals for access to water in isolation will not resolve the current situation. It is now time for us to broaden the debate and ask what Wales wants from its inland waters and the role that access rights have in delivering this.”*

WoW response: This has already happened! For the answer to this question, one has only to consider the report of the Public Inquiry<sup>iii</sup>, and the success achieved in Scotland, Europe and much of the rest of the World. Welsh Government has ignored opportunities to “broaden the debate” and contrary to the above comment, it is proposing to ‘present access to water in isolation’ by excluding it (with the possible exception of removing arbitrary restrictions to water on access land) from the commitments in the most recent statement.

*“I will also be asking the National Access Forum to give particular priority in 2019 to laying the ground work for the greater dialogue on inland waters issues that is needed. I strongly encourage stakeholders to find a practical joint solution. I have not ruled out future legislation on access, particularly should I not be satisfied of reasonable progression within 18 months.”*

WoW response: That takes us back to the start of Welsh Government involvement in 2007! The extract from a letter from Wye Usk Foundation in response to complaint from anglers about access negotiations, posted in an online forum<sup>ii</sup>, suggests that in 2007 Welsh Government had already anticipated the need for legislation to resolve the issue, and that it was prepared to help one user-group, opposed to public access, to resist this by fully-funding ‘voluntary’ negotiations in which that same user-group is assumed to have the right to present the terms, and of veto.

*“Passing such a bill has already happened in Scotland and ‘in the pipeline’ there is a Welsh act that could allow it to be passed on our rivers. You may also be aware of the strong lobbying by WCA for this to happen.*

*For our part we lobbied to continue with agreed access as the way forward and the Assembly gave us a 100% grant to re establish the canoeing arrangements on the Wye and Usk, against a clear signal that the alternative would likely be open and free access all year. I should stress that no other funding is being used for this purpose.”*

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It is not credible for Welsh Government to expect to achieve success by persistently repeating the same actions, which by its own acknowledgement have failed.

The solution is set out in the Minister's own report: take a wholistic view of the issue of access, to both land and water. However, while setting out the solution, Welsh Government bizarrely chooses to do the opposite; ignore decades of experience, work and research, and embark once again on a repeat of the failed actions of more than half a century, while the people of Scotland are enjoying the health, wellbeing and environmental benefits achieved by its government, at the first opportunity following devolution, through legislation for open access rights with responsibilities.

The legislation called for in our petition will end the conflict by recognising and protecting the rights of ALL – access user, land owner, or worker on the land. Wales' waters are the fiercely-guarded last bastion of exclusive privilege, and while opponents to shared access cite fears about damage to the environment and fish stocks, Environment Agency recognised in 2000 that the issue is not about environmental damage or declining fish-stocks, but exclusivity<sup>xii</sup>.

Ignoring the question of public rights by representing the problem as a dispute between discrete user-groups; failing to understand that unequal 'voluntary agreements' are a contradiction in terms; failing to acknowledging that the vast majority of those who seek access to the countryside, including water and waterside are not represented by a 'National Governing Body' – other than Welsh Government itself, is an abdication of responsibility. Welsh Government took ownership of this problem more than a decade ago. It is time for our government to step up and enable ALL its citizens to enjoy the considerable benefits of fair, shared, sustainable open access to our waters, as well as the land.

Signed

Pam Bell, Bob Mackay, Andy Quick  
For Waters of Wales - WoW

<sup>i</sup> WCA Petition [http://www.assembly.wales/en/bus-home/bus-third-assembly/3-committees/3-other-committees/3-pc/pet3\\_listofinquiries/canoeing\\_inquiry/Pages/canoeing\\_inquiry.aspx](http://www.assembly.wales/en/bus-home/bus-third-assembly/3-committees/3-other-committees/3-pc/pet3_listofinquiries/canoeing_inquiry/Pages/canoeing_inquiry.aspx)

<sup>ii</sup> Extract from a letter from Wye Usk Foundation <https://1drv.ms/u/s!AvvhfAJqO9K8gp5lrlrRGIq36zLA>

<sup>iii</sup> Petitions Committee Inquiry Report [https://1drv.ms/b/s!AvvhfAJqO9K8gp5e\\_g1RAPp7OAO\\_Gg](https://1drv.ms/b/s!AvvhfAJqO9K8gp5e_g1RAPp7OAO_Gg)

<sup>iv</sup> Sustainability Committee Inquiry <https://1drv.ms/b/s!AvvhfAJqO9K8g8h7bfU6CD6COI2A>

<sup>v</sup> SPLASH Projects Years 1-5 <https://1drv.ms/b/s!AvvhfAJqO9K8gdDjYwvOckVaf11ww>

<sup>vi</sup> *The report of the National Assembly for Wales' Sustainability Committee on their Inquiry into Access to Inland Waters in Wales (2010) advocated that in the short term effort should focus on establishing voluntary agreements, but should the Assembly secure legislative competence in this area that introducing legislation to address areas where conflict persists would also be desirable. Three years on there continues to be conflict between different user groups and voluntary access agreements do not appear to be working Wales wide. The Minister now believes that it is necessary to explore ways of seeking to bring clarity and certainty for all on where they can go and what activities they can do, whilst ensuring proper safeguards for both nature conservation and the interests of owners. The Committee's findings are informing this current review.*

<sup>vii</sup> WoW response to 'Brexit and our land' consultation. [https://1drv.ms/b/s!AvvhfAJqO9K8gpESf0gx7Tr-STY8\\_g](https://1drv.ms/b/s!AvvhfAJqO9K8gpESf0gx7Tr-STY8_g)

<sup>viii</sup> 'The Common Law Right of Public Navigation' <https://1drv.ms/b/s!AvvhfAJqO9K8gpTqH0ooHdaZFwKA>

<sup>ix</sup> Negotiating recreational access under asymmetrical power relations <http://eprints.brighton.ac.uk/1692/1/UT-SNR-1755.pdf>

<sup>x</sup> Failure to secure public access to the countryside, including inland water, by voluntary agreement, and the need to legislate. [https://1drv.ms/b/s!AvvhfAJqO9K8gp5k7w4KvdNKTk\\_WiQ](https://1drv.ms/b/s!AvvhfAJqO9K8gp5k7w4KvdNKTk_WiQ)

<sup>xi</sup> Failed attempts to negotiate sustainable access agreements in Wales <https://1drv.ms/b/s!AvvhfAJqO9K8gp5o-DbzP3-M7gtug>

<sup>xii</sup> EA Technical Report W266: The Effect of Canoeing on Fish Stocks and Angling. <https://1drv.ms/b/s!AvvhfAJqO9K8gdhSxNy89P-7sc7vJA>

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