

Eitem	Teitl	Tudalen
1	Ymateb oddi wrth Cymdeithas Genedlaethol Pysgotwyr yr Alban	2
2	Ymateb oddi wrth Cymdeithas Canŵio'r Alban	4
3	Ymateb oddi wrth Scottish Federation of Coarse Anglers	8
4	Ymateb oddi wrth Llywodraeth yr Alban	9
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**PRESENTATION – PETITIONS COMMITTEE**  
**COMMITTEE ROOM 2 THE SCOTTISH PARLIAMENT**  
**0930-1230, MONDAY, 2<sup>ND</sup> MARCH, 2009**

Scottish Anglers National Association Ltd., representing 340 Angling Clubs and 150 Individual Members, about 31,500 members in total, is recognised as the Governing Body for Game Angling in Scotland.

In undertaking this enquiry the Welsh Assembly has the golden opportunity to avoid creating the discriminatory situation caused in Scotland by the Land Reform (Scotland) Act, 2003, which has disadvantaged salmon and trout anglers, devalued proprietor's property and is currently destroying jobs and much needed business in angling and other country sports.

Part 1 of the Act gives everyone statutory access rights to most land and inland water. People (**supposedly**) only have these rights if they exercise them responsibly by respecting people's privacy, safety and livelihoods, and Scotland's environment.

SANA is surprised and concerned regarding the proposal to review the Scottish Outdoor Access Code, especially since so few of the anglers concerns, stated in initial meetings of the Scottish National Access Forum, have in fact been addressed in the interval. Initially SANA was a full member, but now only enjoys "Correspondence Representation". We are especially concerned about the apparent suggestion to progress to motorised access to inland freshwaters.

Scottish anglers are losing benefits of angling beats, for which they have paid handsomely, to others, who pay nothing to use the entire inland freshwaters of Scotland. Most migratory anglers pay for their annual rental and thereafter pay their share of the District Salmon Fishery Board levy on the assessed rateable value of their beat/fishings.

Angling opportunity is adversely affected by any disturbance viz.

- canoeing and rafting – **the effect of a single canoe can be mitigated by the canoeist liaising with an angler and quietly proceeding when directed, but large numbers of canoes and "Eskimo Rolls" etc. create major problems, and rafts, especially the commercial type, on the upper River Tay have basically wiped out the salmon fishing since no salmon now lie in the river and catches have fallen away to nothing. (Fishing and Canoeing and Rafting are poles apart. You cannot play two games on the same pitch.)**
- paddling and swimming
- throwing stones into the water
- allowing dogs to swim in the water
- Simply walking along the bank of a river – **all fish react immediately to any disturbance of the waters around them. They will run for cover, become uncatchable and even, when possible, leave the area altogether. It is a criminal offence to disturb spawning redds and that may be done merely by wading about in the shallows, around them or even being on the river bank near them.**

However ramblers insist on an unrestricted right to roam in unlimited numbers along the immediate waters-edge and do not accept the necessary presence and restriction of fenced paths or buffer-zones adjacent to the riverbank.

Scotland has in the past proved an attractive tourist venue for anglers, particularly Migratory fish, who annually bring in £75/78 Million (**2003 figure of estimated sustainable annual income**) to the Scottish economy. Apparently the penny has not yet dropped that a great deal of that big money now goes instead to Norway, Iceland or Russia or even Patagonia, which are all now within easy air travel, and where common sense and less Disturbance prevails. **Money, which Scotland can ill afford to lose!**

One proprietor on the lower River Tay has recently paid off 2 Ghillies and ceased business, because he regularly had to refund clients due the fishing being ruined by other river users. Anglers and proprietors needless to say have no redress for their lost angling opportunity or business under the present system, which raises a compelling argument for realistic charges being laid on all water based sports--- not only angling-- - and consequently why limit it just to water based sports.

Therefore it would appear that, in Scotland, responsible access includes the destruction of angler's sport and proprietor's livelihoods. The disturbance of habitat by canoeists and rafters, especially in the close season when fish are spawning certainly merits serious consideration. In the opinion of the angling fraternity, the apparent weakness of local Access Forums and local Councils in administering this ill thought out legislation is a contributory factor.

Recently we have seen the damage caused to our banking system by self interest, imprudent, misguided and reckless management and, in the future, I strongly suspect we will see our inland freshwaters in a similar state due to the not dissimilar manner of their regulation.

In conclusion, I would respectfully suggest that, prior to completing your deliberations; you also seek the opinions of the Association of Salmon Fishery Boards, Scottish Gamekeepers Association, Scottish Association of Country Sports, and the Scottish Branch of the British Association of Shooting and Conservation on this matter.

James R. Picken,  
President, SANA Ltd.

## **Welsh Assembly Petitions Committee Visit to Scotland**

### **Canoe Access**

#### **Written submission from the Scottish Canoe Association**

This paper sets out the views of the Scottish Canoe Association (SCA) on the introduction of statutory access rights in Scotland, the consequential benefits to all parties, and how we believe similar legislation could be successfully introduced in Wales.

The Land Reform (Scotland) Act 2003 has created a legal presumption in favour of access to land and inland water in Scotland. We believe this has led to many positive benefits, the most obvious being that there is now an overwhelming emphasis on education rather than campaigning for a right.

Organisations like the SCA, who spent a great deal of time over many years campaigning for statutory rights of access in Scotland are now working on far more productive initiatives to educate paddlers, and work with land managers to produce site based information and generally enable canoeing and kayaking to take place alongside other forms of water based recreation and land management activities on all of Scotland's waters. Unlike in the days before the Land Reform Act, the emphasis these days is very much on the different parties attempting to control any rogue elements within their respective constituencies.

When it comes to the really serious issues that we now face, like working to keep the salmon parasite *Gyrodactylus salaris* (Gs) out of Scotland, the SCA is now at the table working with Government and the angling bodies. That is because we have a right to be on the rivers, and both the SCA and the anglers recognise the importance of preventing Gs, and other biological threats, from reaching our shores. It is of concern to those of us in Scotland that canoeing and angling bodies throughout the rest of the UK are not working together on this kind of issue, because the legal problems over access are preventing the two sides from working cooperatively on disease control measures. It is entirely possible that Gs could get into the UK as a result of the lack of communication between the various interest groups in the rest of the UK and that is something that concerns canoeists and anglers in Scotland.

In terms of the implementation of the new Act on the ground, the SCA does recognise that there are still access problems in Scotland, and part of our work is concerned with monitoring those problems and working with local and national park authorities, as well as angling and land managing bodies, to resolve them. Our view is that compared to just prior to the implementation of the Land Reform Act when there were problems on rivers all over Scotland, the problems that exist

now tend to be on a small handful of rivers, and our priority for this year is to work with the authorities to try to resolve, or at least reduce, the problems in those areas.

Although the Act has had a welcome impact on river canoeing, the biggest impact has been on some of our inland lochs where previous byelaws made it illegal to paddle because the loch was a water supply reservoir. An example of this is Loch Katrine where a steam ship was allowed on the loch, but canoes were not. The Land Reform Act contains a clause that any access restrictive byelaws had to be reviewed within the first two years of the Act being in place. These byelaws are now gone and some fantastic lochs have been opened up to canoeists for the first time in over a hundred years.

As a result of the Act there is more emphasis now on developing and managing facilities for canoeists. We are working with land managers to develop car parks and changing blocks, as well as artificial playwaves that have the potential to be popular facilities for canoeists, and in some cases a means of reducing problems elsewhere by drawing paddlers away from popular fishing areas in times of low water.

An important aspect of the Land Reform Act that is worth mentioning is the power for access authorities to exempt access rights to a particular area of land or water for a short period using Section 11 orders. For example, Scotland is hosting the World Fly Fishing Championships this year and some of the locations being used for this competition may be subject to a Section 11 order so as to enable such a high profile, one-off event to proceed with exclusive use of the water. If any of the owners on these rivers applies for a Section 11 order the SCA is likely to be supportive of the application as long as it is for the minimal time and area necessary for the competition.

Whilst access rights to water tend to be associated with grassroots canoeing, there is the argument that Scotland's modern access rights are more likely in the future to contribute to Olympic success in that young canoeists are more likely to find suitable water to paddle on close to their homes and progress more quickly through the ranks of competitive disciplines. This should have positive benefits throughout every level of the sport including at the very highest levels in World Championships and Olympics. We believe our new statutory rights of access will one day play their part in enabling Scottish paddlers that have grown up with statutory access rights to win Olympic medals.

In terms of our commitment to educating paddlers, whether those based in Scotland or those who visit from beyond our border, the SCA has produced a Paddlers' Access Code, which is available on our website and as a leaflet. This Code provides our basic advice on access rights and is intended to distil the relevant details from the Land Reform Act and Scottish Outdoor Access Code that paddlers need to know about. In addition to the Paddlers' Access Code

there is a wide range of other access and environment related material on our website, and we are adding to this information all the time.

<http://www.canoescotland.com/Default.aspx?tabid=76>

Despite all the good work that is being done to implement our access arrangements there are those who still criticise Scotland's new access rights, but we believe that the new system is far better than what went before. Our new access system provides the public with a level of certainty that they did not have when accessing our countryside in the past, and they also provide land managers with more certainty, as well as people to help them with access management issues. We are still in the early days of a long term commitment to re-connect the people of Scotland with the land. Whilst there will be problems along the way the political decision has been taken to trust people with more rights, and in return expect far greater responsibility from access takers and land managers. So far the system has only had four years to settle in. There is far more we can and will be doing in terms of education and site based information to enable that system to work increasingly well over the years to come.

During the run up to the development of Scotland's legislation Scottish Natural Heritage brought over a couple of speakers from Norway to appear at meetings and conferences on access rights. All these years later the comments from those two speakers are worth remembering. At that time Norway's Allemansrätten law had been in place for nearly fifty years. One of those speakers said that fifty years in nobody would change the legislation, because it works for everyone. He said they still have their problems, but whenever that happens they all get together, work within the law and resolve whatever issue they might have at the time. So, rather than criticising Scotland's legislation after four years, as some are doing, the priority of the vast majority in Scotland is to do what the Norwegians have always done, which is to work hard to ensure the law works, and becomes an integral part of Scottish life.

The contrast between paddling in Scotland and paddling in Wales could not be more obvious. The rivers in Scotland are available for paddlers and the SCA is at the centre of efforts to spread the educational messages about responsibility, whereas the rivers in Wales have highly restrictive access arrangements and our counterparts in the Welsh Canoeing Association are frustrated by having to spend their time campaigning rather than working on educational projects and site management issues. Welsh rivers are highly regarded by paddlers from across the whole of the UK and we would like to see Scottish style access legislation in Wales. We believe that it would be popular and could be made to work. The SCA therefore supports the WCA's efforts and we hope we can provide your committee with information that will persuade you to support the aims of this petition.

Eddie Palmer, SCA Board Member (Access) and Mike Dales, SCA Access and Environment Officer  
18 February 2009

**Brief pen picture of Eddie Palmer, appearing for the SCA at the Scottish Parliament before the Welsh Assembly Petitions Committee, March 2<sup>nd</sup> 2009**

Eddie Palmer has been a canoeist for 50 years, starting paddling when living in the West Midlands, during which time he grew to know many Welsh rivers. Upon moving to North East England in 1969, he fairly soon commenced voluntary river access work, becoming BCU northern region Access Officer. He was also on the Rivers Advisory Committee of the National Rivers Authority , N.E., (forerunner of the Environment Agency) representing recreation users. He has experience of canoeing in all of Europe, parts of Africa and North America, and was a competitive paddler up until 1992. Eddie moved to Scotland in 1995, joining the Board of the SCA in 2004, taking up his current role in 2005. He has written two canoe touring books for Pesda Press; 'Scottish Canoe Touring' and 'Scottish Canoe Classics'. He is currently working on 'Irish Canoe Classics'.

Alun,

Once again my apologies for failing to get back to you sooner. Yes, you're right in assuming we won't be able to attend on 2nd March.

It's important to stress that SFCA represents coarse anglers in Scotland, and that we do not necessarily share a common perspective on every issue with our game angling counterparts. I'm sure Ronnie will elaborate on the SANA viewpoint, which I gather is critical of the access legislation, but please be aware that (despite the name) SANA only speaks for the game angling community.

In reality the access legislation has had next to no impact on coarse angling in Scotland. There's no evidence that it has brought any improvement in resolving conflicts with other users where they exist; but equally no real indication that conflicts have increased. For sure we have our little frictions - eg with cyclists on canal towpaths (which, however, were always public rights of way), and there are probably a few more "social campers" leaving empty beer cans around some of the larger open lochs where pike anglers tend to go; but by and large we are unaware of any significant impact one way or the other. In point of fact, some coarse anglers feel that the access legislation missed a valuable trick by failing to extend to providing a right to cross private land for the purpose of reaching waterways and lochs for (properly authorised) angling, but that - mainly at the insistence of the game fishing proprietors' lobby - was specifically excluded from the legislation.

kind regards

Ron Woods



**Welsh Assembly Petitions Committee.**

**Welsh Canoeing Association. P-03-118.**

**Committee Room 2. Scottish Parliament. Monday 2 March 2009.**

1. Thank you for inviting me to attend the National Assembly for Wales Petitions Committee and giving me the opportunity to provide some background regarding the Land Reform (Scotland) Act 2003 and how it is being implemented on the ground and on our inland waterways. Colleagues from other bodies in Scotland who have a direct interest in the taking of responsible access are also represented here today and they will also give further evidence to the Committee later this morning.

2. Part 1 of the Land Reform (Scotland) Act 2003 came into force in Scotland on 9 February 2005 and established the right of responsible non motorised access to most land and inland water throughout the country, with some exceptions. It is the duty of the access authorities (i.e. the 32 local authorities and 2 National Park Authorities - Cairngorm N.P.A and Loch Lomond and the Trossachs N.P.A) to ensure that these access rights are upheld.

3. Pre the Land Reform Act, rights of access existed allowing people the opportunity to enjoy the countryside but, these rights were reinforced formally by this legislation. Rob Garner, from Scottish Natural Heritage, will advise the Committee of what existed previously in Scotland. Rob will provide you also with a detailed account of the extensive consultations and discussions held which led us to the position we are at today. The Land Reform Act did not merely provide new duties and powers for local authorities and National Park authorities to uphold access rights but, required them to plan a comprehensive Core Paths Plan system and to set up local access forums.

4. As I have said, access in the countryside has always been widely enjoyed by the public for passive recreation and active pursuits throughout Scotland for many years and indeed I understand that approximately 200 million visits are made annually to Rural Scotland alone, by Scottish residents alone so, you will appreciate just how much our Scottish tourism industry benefits and our economy gains.

5. These access rights extend to recreational activities, educational activities and some commercial activities. The Act specifies that commercial activities come within access rights if they are for 'an activity which the person exercising the right could carry on otherwise than commercially or for profit' Hunting, shooting and fishing are therefore excluded from access rights.

6. Access rights similarly do not apply to land on which there is a house, tent or other place affording a person privacy or shelter, and sufficient land to enable those living there to have reasonable measures of privacy and to ensure their enjoyment of that house or place is not disturbed unreasonably

7. It is important to recognise the emphasis on the Land Reform Act is on the local management of access. Access authorities have a duty to plan for Core Paths, which will be a major element in enabling all members of the public to exercise their right of access and in managing access. These Core Paths must be sufficient for giving the public reasonable access throughout the access authority area and where appropriate, should link up with other path networks to improve access generally. The Core Paths network should, as far as possible, provide for all the needs of all types of user including, walking, cycling, horse riding, and of course, water usage.

8. Access authorities have a duty also to create Local Access Forums, with a membership of recreational and land management interests, which provide advice to access authorities in the discharge of their new duties and powers. The exercise of access rights does not increase the duty of care of landowners towards those exercising access rights.

9. The Scottish Outdoor Access Code, about which Rob Garner again will speak shortly, was approved by the Scottish Parliament in 2004 and this Code sets out the rights and responsibilities of land managers and those exercising access rights under the Land Reform Act. Scottish Natural Heritage and the access authorities have a duty to publicise the Code and Scottish Natural Heritage to promote understanding of it. This they do very well.

10. A Scottish National Access Forum, consisting of a voluntary association of interested organisations, convened by Scottish Natural Heritage, has been formed to keep the Scottish Outdoor Access Code under review and to encourage responsible management of land and water in relation to access.

11. The National Access Forum brings together all relevant interests and has a broad advisory role which helps Scottish Natural Heritage to keep the Code under review and promoted. It advises on a wide range of matters relating to the legislation. The National Forum also supports local access forums which have an important role to play in resolving any local difficulties which may arise.

12. Most recently for example, in December of last year, the National Access Forum discussed the specific issue of access on inland water. The paper was brought to the Forum by the Scottish Canoe Association (Eddie Palmer) who is with us today and he will give his evidence shortly so, I will not go into any

detail, other than to say that we are looking forward to seeing the final version of the web based *Guidance on the Management of Access on Inland Water* which is being developed jointly by a number of bodies, including the Scottish Canoe Association and the Scottish Rural Property and Business Association. Again, Anne Gray from SRPBA is present today and she will provide the Committee with an update as to when exactly the Guidance will go live.

13. The local access forums also bring together different interests to agree how to develop, manage and promote access locally. The Forums include representatives from various public agencies, land managers, users and community groups. Their broad function is to advise on access rights, rights of way and the development of Core Paths plans and to offer assistance to resolve disputes. We issued Guidance to all access authorities in February 2005. (*Guidance for Local authorities and National Park Authorities*)

14. Not everything that happens in Scotland is perfect of course and there have been a number of hot spots which have required careful handling. I can highlight for the example conflict which existed on the River Tay where local disputes between rafting and fishing interest were causing concern. A voluntary Framework Agreement was negotiated between the Aberfeldy Commercial Rafting Operators and the Upper Tay Riparian Owners Association where both parties recognised that there is a statutory right of responsible access as defined by the Land Reform Act and the Scottish Outdoor Access Code. Agreement was reached in the interests of peaceful co-existence and the sharing of the mutual resource. Although not everything is necessarily perfect, the Codes of Practice are laid down in writing and there are opportunities for the interested parties to meet twice a year to programme their own activities and to engage in joint actions to promote mutual understanding. Surely a positive initiative.

15. Although there are few instances of irresponsible or illegal activity involving the taking of access, any serious form of anti-social behaviour can be dealt with by either the local authority's anti-social behaviour team direct or by the local police. Such instances should not be attributed directly to the Land Reform Act legislation.

16. Access authorities themselves have considerable statutory powers to ensure that responsible access is available to all members of the public throughout Scotland. When exercising access rights people must respect other people's privacy and peace of mind. That applies equally on water as it does on land. Respecting people's access rights means not putting in place obstacles to prevent or deter people from taking responsible access. Access authorities, under section 14 of the Act, can issue written notice requiring remedial action to

be taken. If a solution cannot be found or agreed then it will be for a Sheriff to determine where access rights apply and whether behaviour is responsible.

17. You should understand that access and recreation facilities require careful planning, construction and management in order to avoid environmental damage that can, for example, result from erosion. It remains the case that work is needed to facilitate public access through clearly marked and well maintained paths, tracks, waterways and other facilities. Land managers have an important role in the development and management of paths and water ways for access, and in the enhancement of public enjoyment and understanding of the countryside.

18. It is recognised, and accepted by the majority of people in Scotland, including elected members of the Scottish Parliament, that the Land Reform (Scotland) Act 2003 is one of the most advanced pieces of access legislation in the whole of Europe and is working well. It is clear however that access takers, especially those who take access on our rivers and lochs, do so responsibly and in the spirit of co existence. There is no one simple solution to a number of the problems that may present themselves from time to time but, the mechanisms and processes that I have mentioned, go a long way to providing clarity and understanding.

19. Thank you for your attention.

PHILIP J. SMITH  
Scottish Government  
Rural Directorate  
Landscapes & Habitats Division  
2 March 2009.

## National Assembly for Wales - Petitions Committee

### Petition from Welsh Canoeing Association

Scottish Parliament, 2 March 2009 – evidence from Rob Garner, SNH.

1. Thank you for inviting me to speak at your meeting today. I work in the Policy and Advice Directorate within Scottish Natural Heritage (SNH), dealing with access and recreation issues, as part of SNH's remit of helping the public to enjoy the outdoors. I have had several years involvement in the Scottish access legislation, from its main parliamentary Bill stages, through the preparation of the Scottish Outdoor Access Code, work on its implementation provisions from within the Scottish Government, and then in wide-ranging advisory work throughout the recent years of its implementation across Scotland, since 2005.

**2. Early developments and basic principles** - Through the period 1997-1999, SNH was asked by the Scottish Executive to review the legal arrangements for access to the outdoors, and prepare the recommendations for legislation, which would later become Part One of the Land Reform (Scotland) Act 2003 (the Act). SNH did this work with the help of the early National Access Forum, leading to the report in 1999. Please refer to the relevant extracts that I have put into Annex One.

3. Over those years of discussions, the key conclusion about access to water was that, in essence, most of the issues, objectives and approaches for access on inland water were very similar to those affecting access on land. For instance, lack of clarity over rights of navigation were very akin to the difficulties and shortcomings over rights of way on land. The evident lack of communication, lack of coherent management, and consequences in public uncertainty and missed opportunities, were all very similar. Equally, the package of measures proposed to improve outdoor access – statutory rights and responsibilities, local authority powers and duties, local access forums for dialogue, core paths, education, investment, etc. - was considered just as applicable to inland water as to land. Consequently, the Act as passed applies in all its provisions to “land and inland water”. In the Interpretation definitions for the Act, the term “land” used throughout the Act simply includes ‘inland water’, and ‘canals’.

**4. The draft Bill** was published in 2001, following a major public consultation. On the subject of access on inland water, the Draft Bill states:

“ 3.6 A number of landowners and many individuals with a commercial interest in angling opposed the proposal to extend the right of access to inland water. They cited conservation grounds, such as the need to protect fish stocks, and sensitive habitats, as reasons for opposing access to inland water. It was also recognised that access to water raised a number of different legal issues from access to land.

Outcome: The draft Bill provides for a right of access to inland water. Ministers believe that the concerns raised about the difficulties of creating a right of access to inland water have been overstated. In addition, the legal difficulties have proved to be not as great as originally thought and Ministers recognise the arguments in favour of including access to inland water within the new rights. “

This position was maintained throughout the passage of the Bill.

**5. The Scottish Outdoor Access Code** is integral to the Act, and provides the detailed guidance on the responsibilities of those exercising access rights and of those managing land and water. It provides a practical guide, and a starting point for short promotional codes and other advice. Again, there was a separate major national consultation process in developing SOAC, in advance of the Code being approved by the Scottish Parliament.

The SOAC principles and guidance all applies, without any distinction, to both land and to inland water, in line with the Act. Thus for instance, in giving examples of the types of land operations that access takers may have look out for, it lists 'routine water discharges from reservoirs and canals', and 'dredging in rivers, canals and lochs' equally alongside 'ploughing and harvesting', or 'tree planting'. Section 5 of SOAC provides the greater detail on common situations, and several pages there provide specific practical advice on inland water circumstances. Please refer to Annex 2 to see these principal specific items of SOAC guidance.

**6. Anticipated problem areas** – During the development of the Act and the Code, it was always anticipated that there would be two key areas of potential difficulty in relation to access rights on water. One of these was in relation to **angling**; the other was in relation to rivers and lochs designated or promoted for their **nature conservation value**. This anticipation was of course partly based on the existing level of problems that regularly arose, prior to the Act. The experience has been that, to a surprising degree, these problems have really not arisen, in general circumstances. In the handful of pressure points where problems persisted, or arose for some reason, the package of measures within the Act have enabled joint approaches to be taken towards reaching management solutions.

**7 Angling - the Tay and Spey** – these two rivers have historically been the prime pressure points between canoeists & rafters and anglers, and both have seen the development of concordats to regulate matters. You will hear more detail on this later no doubt. I would just draw attention to what is to me the key difference since the Act came into force. This shows up in the opening clauses of the Upper Tay Framework Agreement, where it says –

“2. Both sides recognise the rights of each other to operate their business.  
3. Both sides recognise that there is a statutory right of access ...and that this agreement is entered into voluntarily...”

Both these rivers had – or were thought to have – rights of navigation, but the Act has effectively clarified and equalised the statutory rights behind the two sets of interests, and that clear balance of rights inherently moves matters onto a more productive footing. The parties are enabled to leave behind cul-de-sac positions, concerning who has which legal rights on their side, and can move onto practical management measures, for joint working arrangements, monitoring, etc. This balance of statutory legal rights creates the basic pre-disposition to dialogue, from where other elements of the 'package' within or supporting the Act (like the local access officer, the local access forum, the National Access Forum) can then help in providing opportunities for dialogue as required.

**8. Nature Conservation** - this is of course an aspect which was a very direct concern for SNH, as the government agency responsible for the natural heritage. There was real concern in relation to rivers and lochs, about access by canoeists,

windsurfers, etc onto lochs with key bird populations, with established bird hides in some cases, with sensitive habitats and with high level conservation designations in some cases. SNH has conducted specific research and monitoring of access at sensitive natural heritage sites, to gain evidence on effects and management approaches. Again, the overall experience has been that problems have either not materialised, or have been manageable. There have inevitably been occasional instances of inappropriate use or disturbance, usually just through ignorance, but the educational messages on responsible behaviour are working as a general rule. Partly of course this reflects the national availability of legitimate recreational access onto water, which hugely increases the available resource, acting to 'spread the load' and so reducing any incentive to use special water bodies inappropriately.

One examples is the Loch Maree Islands National Nature Reserve where the islands and scenery have particular recreational appeal, but local SNH staff have established and publicised information and contact links so that potential conflicts have not arisen.

Loch Leven NNR is probably the ultimate 'potential problem' water body, being convenient to motorways and cities, whilst accommodating huge populations of up to 35,000 waterfowl, both migratory and breeding. The top-level Natura designations (SAC, RAMSAR) place SNH under statutory duties to show that there is no adverse impact on the integrity of this site. SNH has run a consultation and involvement process with many interests and organisations, leading to a tailored system of guidance, and an advisory zoning arrangement for use of the loch, as shown on the attached leaflet, <http://www.snh.org.uk/pdfs/scottish/taysclack/LochLeven.pdf> . Monitoring is in place, and shows that these arrangements for water users are working satisfactorily, even at this most challenging of sites.

**9. Core Paths** - It is interesting to note that most Core Paths Plans - which are moving to their finalised stages across Scotland - include water access provision. Core path status is established or proposed on stretches of many rivers and canals, together with core path access paths and launch-points on many loch shores, and river and canal banks.

**10. Benefits** - Scotland's statutory access rights and responsibilities are now becoming well known, and this is bringing key benefits. As yet there is little hard statistical evidence available, but anecdotal evidence indicates that - in parallel with other key outdoor activities like mountain biking – the Scottish water-sports access resource is gaining international attention and pulling power. This seems to be reflected in increasing active participation levels, both locally and from further afield. There is for instance greater scope for competitions and events, and for participants and spectators at those events to stay on and participate elsewhere across Scotland, with the wider associated economic opportunities that consequently arise.

Rob Garner.

## Annex One

### Extracts from “Access to the Countryside for Open-air Recreation – Scottish Natural Heritage’s Advice to Government “ (1999)

<http://www.snh.org.uk/strategy/access/sr-acc00.asp>

In 1997, SNH was invited by the Government to review outdoor access arrangements in Scotland and to make recommendations to the Scottish Parliament. SNH was assisted in this task by the National Access Forum. To assist with consultation and debate on the land and water aspects, the NAF had established an ‘Inland Water’ sub-group for part of the work. SNH reported its findings and recommendations in this 1999 report.

Extracts –

**1. Key Proposal - The Forum’s key proposal is that the Scottish Parliament should introduce a right of access to land and water, exercised responsibly, for informal recreation and passage. This right should be one part of a balanced package which includes codes of behaviour, a major programme of education, obligations on local authorities and land managers, better mechanisms for facilitating and managing access, and a co-operative approach in which the needs of all interests are respected.**

*3.2.7 Current position:* On inland water, a public right of navigation can be asserted on rivers and lochs that are physically navigable and where there is evidence of 40 years of use (at some point in time as the right does not lapse with time). Navigation is to be taken to be passage through water or the making of a journey from one place to another and it can only be exercised in a vessel that could be reasonably understood to be a boat. Where it exists, the right takes precedence over non-navigational activities, such as angling, though it must be undertaken in a reasonable manner having regard to the interests of other users. People navigating have a right to stop and camp on land for reasons of safety. To exercise the right of navigation, a person must have a legal means of access to the water. The public also have a right of recreation on the foreshore.

*3.2.18 Conclusion on current position:* In reality, therefore, there is an uneasy balance between the public not having very many clear legal rights and the landowner or occupier having few workable remedies against trespass or irresponsible behaviour. This uneasy balance favours the confident user – for most people the countryside remains a place where they are uncertain as to where they can go – and the landowner or occupier not wanting to encourage access. The existing law therefore does not provide a sensible or workable foundation for providing people with greater freedoms to enjoy the countryside.

*3.3.4 Current opportunities:* Very few rights of navigation have been legally asserted, with the only known cases being the River Spey, River Leven, Loch Lomond and the lochs along the Caledonian Canal. The right is also thought to exist on the Tay and on Loch Earn. The recreational use of many rivers over the last 40 years or so may well have created a right but the lack of a specific duty on local authorities means that few such rights have been asserted.



*Sources* - Rights of navigation - This information is derived from the Brodies WS study of 1991. Rights of navigation have been asserted on very few rivers or lochs, though the right is thought to exist (accepted as such) on the River Tay, Loch Tay and Loch Earn.

**Membership of the Access Forum (Inland Water) –  
(meetings in 1996 - 1998)**

Chairman

Association of District Salmon Fisheries Boards

Convention of Scottish Local Authorities

National Farmers' Union of Scotland

Royal Yachting Association Scotland

Scottish Anglers' National Association

Scottish Canoe Association

Scottish Landowners' Federation (now SRPBA)

Scottish Natural Heritage

Scottish Sports Council

Scottish Tourist Board

Water Authorities (East of Scotland Water Authority)

## **Petition Wording:**

‘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.’

## **SRPBA Responses:**

In considering the petition being put to the Welsh Assembly by the Welsh Canoe Association (now Canoe Wales), the Scottish Rural Property and Business Association would wish to specifically comment on:-

- The legal clarity sought through the implementation of the proposed Bill; and
- the extent to which the Land Reform (Scotland) Act 2003 (the Act) has resolved conflicts between riparian owners/managers and water users and between different recreational water users with potentially competing interests.

### **1. Legal clarity**

Prior to the introduction of Part 1 of the Act, access had been taken on most land and inland water in Scotland on the basis of tolerance by the landowner or after permission had been obtained or by utilizing common law rights of way or navigation rights. For many access-takers, that situation probably did not cause undue concern. However, in situations where access was challenged or where the access-taker wished to be on land not frequented by others, it is possible to see that they would have felt unsure of their legal position. How this compares with the situation in Wales is not known.

The legal position has obviously now fundamentally altered in Scotland. However, the legislation in Scotland has not created a nationally prescriptive set of rules that are instantly easy to follow, but rather offers scope for the local pragmatic management of access. The right relies heavily on the reasonable behaviour of individuals and the ability of access-users to recognize and react appropriately to various land management and environmental situations. SRPBA in general support the approach taken by the legislation in so far as it provides a flexible approach, however interpretation of reasonable and responsible behaviour varies a great deal, as does the knowledge of access-takers about their surroundings. We would have to say that as a result there is still dispute over some of the circumstances where access rights might apply.

## 2. Conflict Resolution

The petition to the Welsh Assembly uses the term “low-impact recreation” in relation to the Scottish Act. In the Scottish context much of the activity undertaken utilising access rights is indeed low impact and by its very nature this activity when conducted responsibly poses few problems to land and riparian owners. However, the Act in Scotland covers being on land or inland water for recreational or educational activity and commercial use where the activity could be carried on non-commercially; it draws no distinction between what might be termed low impact or high impact recreation, nor does it in fact define recreational activity.

While we wouldn't wish to overstate the incidence of these activities, there are a few places in Scotland where recreational activities occur fairly intensively. In these places there can be an impact on existing land use or between competing recreational activities. Specifically in terms of inland water the issue that tends to be reported is conflict situations between anglers and paddlesports enthusiasts, including commercial rafting activity.

These clashes occurred prior to the introduction of the Act and it could not be said that the Act itself has resolved these conflicts; some riparian owners would argue the situation has become more difficult for them to manage as a result. The Act has however put in place an infrastructure to assist with finding the local pragmatic management solutions the approach advocates. It has placed a statutory duty on local authorities to “uphold access rights” and to create an advisory body, a local access forum, which can assist in dispute resolution. It also requires Scottish Natural Heritage to publish and promote the Scottish Outdoor Access Code to provide guidance on what constitute responsible behaviour for both access-takers and land managers. As well as this, membership organizations such as SRPBA, the Scottish Canoe Association, Ramblers Scotland and so on have been funded to produce their own guidance leaflets and have worked collaboratively to produce joint guidance. SRPBA, the Scottish Canoe Association, Scottish Natural Heritage and the Paths for All Partnership are currently working on a collaborative guidance document “Using Inland Water Responsibly: Guidance for All Users”. Further, the Scottish Rural Development Programme includes funding measures to assist land managers with managing access on their landholding. These support mechanisms are essential to the Scottish approach and we feel it would be inadvisable to bring in access legislation of the Scottish type which did not also include a similar level of publicly-funded support.

As an example of the “management” rather than “prescription” approach, the aim of the joint guidance document currently being developed is to raise awareness of the needs of all waters users, to highlight the sort of actions every water user should take to ensure they are behaving in a way that could be considered responsible and to offer some suggested strategies for sharing intensively used stretches of water. Strategies highlighted in the document include:-

- Fostering a culture of mutual respect,

- Pro-active communication such as regularly arranged formal and informal meetings,
- Sharing facilities such as car parking,
- Use of local voluntary agreements,
- Setting up users' groups.

For these strategies to work there needs to be a willingness on both sides to make them work. This can be the case and these strategies can work where a willingness exists. It would be fair to say that for some owners managing fishing interests on stretches of rivers where intensive recreational use is common, and where they do not encounter this willingness, they are left feeling somewhat powerless.

The Act does give local authorities the power to regulate activities by byelaws. In practice local authorities have been reluctant to go down this route and in fact where common law navigation rights exist byelaws cannot supersede them anyway. Regulatory powers in general though become difficult to implement because identification of an access-user who is felt to be behaving irresponsibly is difficult so the local authority cannot take follow-up action and there is no body which can assert control over any particular class of access-user.

As above, we wouldn't want to overstate the occurrence of problematic incidents, but we could not say that the Act has in itself resolved conflict situations.