

Submission of evidence by the Outdoor Swimming Society to the National Assembly for Wales' Sustainability Committee inquiry into access to inland water in Wales

1. The Outdoor Swimming Society (OSS) is a not-for-profit organisation whose objectives are to promote and facilitate outdoor swimming in the United Kingdom. The OSS has over 5,500 members, resident across the UK and overseas.
2. The OSS strongly supports the recommendation of the Petitions Committee to implement a new statute that would ensure that everyone has access to inland water in Wales, on an equal footing, to be supported by enforceable codes of conduct to ensure that the interests of all water users can be properly respected.

Why do we need legislation in this area?

3. The legal position concerning access to inland water under the laws of England and Wales is fundamentally in need of reform. The laws governing rights of access to (and restrictions on the use of) inland water are immensely complex and piecemeal, being derived from a combination of very old case law, miscellaneous statutory provisions and local byelaws. Perhaps more importantly, there is a great deal of uncertainty about what the law actually permits, even where legal advice is obtained.¹ Much of the case law is contradictory and unclear as to its scope. There is uncertainty as to whether laws relating to commercial uses apply to recreational uses, and whether laws relating to certain types of access to inland water (for example, rights of navigation) extend to other types of access (for example, swimming).

¹ The uncertainty and confusion in relation to the current legal position is excellently illustrated by Revd Douglas Caffyn in his publication *The Right of Navigation on Non-tidal Rivers and the Common Law* (October 2004).

4. In short, the current legal position in Wales is uncertain, inaccessible and confused. It is near impossible for members of the public to know whether or not they have a legal right to swim in many of our rivers and lakes.

5. The National Assembly for Wales now has an opportunity to introduce a clear and coherent legal basis for access to inland water which reduces the scope for conflict and which allows for the interests of all water users to be properly respected.

6. The National Assembly for Wales has the benefit of learning from the equivalent steps taken in Scotland, via the implementation of the Land Reform (Scotland) Act 2003 and its application to inland waters. We note that evidence has already been taken on the position in Scotland and in particular on how this change has revolutionised access to inland water in Scotland. OSS members have strongly welcomed the increased clarity of access to inland water that now exists and have embraced the opportunities to use Scottish inland waters for recreational purposes.

Benefits for Wales and the Welsh

7. Outdoor swimming has always been a popular recreational activity but in the last few years it has witnessed a renaissance as individuals rediscover the joys of swimming in the rivers, lakes and lochs of the UK.

8. This new interest in outdoor swimming is reflected in a range of media, from the publication of high-profile books on outdoor swimming,² newspaper articles, television programmes,³ radio programmes and podcasts.⁴ The OSS itself has attracted 5,500 members since it was formed just three years ago. The recent introduction to the Olympics of the open water 10k swim, and the success of British athletes in the event, has attracted great publicity and interest in outdoor swimming. Similarly the rapid rise in popularity of

² See, in particular, *Wild Swim* by OSS founder Kate Rew (Guardian Books, 2008 & 2009) and *Wild Swimming* by Daniel Start (Punk Publishing, 2008).

³ For example the recent BBC series *Rivers* presented by Griff Rhys Jones.

⁴ The Guardian has recently filmed and released a series of video podcasts on outdoor swimming through its website.

triathlon over recent years has further boosted interest in outdoor swimming. Numerous mass-participation outdoor swims are now held on an annual basis, such as the Great North Swim (a one-mile swim at Lake Windermere, which attracted over 5,000 swimmers this year). Dedicated holiday companies now exist for individuals who wish to take part in outdoor swimming in the UK and overseas, whose swimming holidays are frequently fully booked months in advance.⁵

9. Implementing these proposals would bring a range of benefits for Wales and the Welsh.

10. The health benefits of swimming are very well documented. Encouraging greater use of inland waters for swimming will help to keep the Welsh fit and healthy. Participating in swimming outdoors also results in strong feelings of wellbeing and vitality.

11. Clarifying and simplifying access rights will also bring financial benefits to Wales. Given the huge popularity of outdoor swimming and the wealth of beautiful inland waters in Wales, greater numbers of swimmers from elsewhere in the UK will wish to travel to Wales to swim in its inland waters. The benefits to the tourism industry in Wales will be clear and significant.

Negotiated rights of access

12. The OSS does not agree with the alternative suggestion that negotiated rights of access to water would be sufficient to avoid having to clarify the laws relating to rights of access to inland waters.

13. The nature of outdoor swimming is such that it is not feasible to negotiate rights of access at each location that individuals wish to swim. While this may be a form of solution for a small number of permanent outdoor swimming clubs, the vast majority of swimmers engage in outdoor swimming on a more ad hoc basis. As a result, if it were necessary to negotiate individual rights of access with a series of property owners before swimming could take

⁵ See www.swimtrek.com. Swimming holidays include the Lake District, the Thames, the River Wye in Herefordshire, the Norfolk Broads and the Isles of Scilly.

place, then people would simply choose not to travel to Wales to participate in swimming. This is not a workable solution to the current problem.

Summary

14. In conclusion, the OSS strongly supports the proposals to clarify and simplify rights of access to inland waters in Wales, supported by an enforceable code of conduct to ensure that everyone's interests are properly respected. We consider that the Land Reform (Scotland) Act 2003 provides a useful blueprint, to be modified as appropriate in Wales. This will bring significant benefits to Wales in:

- bringing tangible health benefits to Welsh swimmers, as well as feelings of wellbeing and vitality;
- reducing conflict between different water users resulting from the current complex and uncertain legal position; and
- increasing the numbers of visitors to Wales, thereby supporting the Welsh economy.

We therefore strongly encourage the National Assembly for Wales to implement the proposal.

The Outdoor Swimming Society

17 September 2009