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Sustainability Committee Inquiry into access to inland water in Wales

The CLA welcomes the opportunity to respond to this inquiry. CLA Wales represents the interests of 3900 members owning and managing a significant number of rural businesses of all types ranging from agriculture, forestry, fishing, tourism and a wide range of diversified enterprises at the heart of the rural economy. They are responsible for the provision and maintenance of much of the countryside and the habitats that the wider public cherish and greatly enjoy visiting. Our farmers and land managers also have a long term interest in continuing to maintain and conserve the high quality of water that they manage on their land.

The CLA has already provided papers to the Petitions Committee in response to their earlier consideration of the issue, (which we attach again for your information)

What is your interest in the issue of access to inland waterways?

The CLA represent a significant number of riparian owners, land owners and people running rural business which benefit from the river system of Wales and specifically the opportunities fishing affords businesses such as bed and breakfast. Many of our members also fish. Some of our members manage businesses associated with recreational access to rivers. Accordingly our interest in the issue is to ensure that our member's property, businesses and interests are preserved and furthered.

Are you a member of an organisation related to your use of water?

CLA Wales is a membership organisation for owners of land, property and businesses in rural Wales.

Which Stretch/es of water do you own/use/manage?

The interests of our membership across Wales probably cover every watercourse in some form.

Legal Rights

Are you happy that your legal rights are clear and well defined?

The CLA believe that the legal rights in respect of inland waters are clear and well defined. Those who argue otherwise are, we believe, deliberately trying to mislead the debate by suggestions that they are not clear. The law of trespass is clear. See below.

Can you briefly outline your understanding of your legal rights over the stretch of water/s that you own/use/manage?

Under Common Law in England and Wales all land, including the bed of a river or lake, belongs to someone e.g. private individual, local authority. It is usually necessary to obtain permission for access to such land or water for fishing or canoeing. If this has not been obtained, access constitutes a legal trespass, whether or not the owner actively enforces his rights.

There is no ownership of the flowing water and all may reasonably use it, provided that they have both a right of access to it and a right to use it for their permitted purpose. Where such rights do not exist, the water may be used for angling, canoeing, swimming, and so on, only with the consent of the owner e.g. fishing licence or an access agreement for canoeing.

Would you like to see any change to your legal rights?

No, as this is not necessary.

If yes, what changes would you like to see?

N/A

Are you aware of any legislation that exists in other countries that could be used in Wales?

The evolution of land law in other countries in Europe and beyond is very different from England and Wales and accordingly we do not believe the introduction of legislation suited to another country will sit well with the established law of property in this county. We attach a paper previously submitted to the Petitions Committee outlining the differences between England and Wales and the situation in Scotland and why legislation similar to the Scottish Land Reform Act 2003 would not be appropriate in Wales.

We are very concerned by reports of severe disturbance to some fisheries and loss of business both in terms of income from fishing but also losses to the local area for providers of accommodation etc on major salmon rivers such as the River Tay in Scotland as a direct result of disturbance and use of the river by canoes and other craft on an uncontrolled basis as is now permitted.

Voluntary Agreements

Do you have any experience of voluntary agreements for access to the stretch of water/s you own/use/manage?

Our members have had in place a number of voluntary agreements on rivers across Wales for many years which have generally worked well giving all parties concerned a level of certainty and established practice which has enabled fisherman and canoeists to co-exist on stretches of water suitable for both activities.

If yes, please briefly outline the agreements that exist and your experience of how they operate.

We refer the Committee to other submissions for CLA members such as Mr David Jones Powell and the Wye and Usk Foundation for a more detailed response on individual agreements. Agreements have also existed on the Upper Wye for many years.

It is the CLA's view that voluntary agreements do work and can provide increased access to rivers for canoeists whilst still preserving fish stocks, sporting opportunities and valuable river habitats.

Would you like to see any changes to the voluntary agreements?

No, however they must be properly negotiated with a will on both sides to co-operate and compromise where necessary to achieve a sustainable, practical and workable outcome. We believe there could be scope for a publicly funded system to facilitate such negotiations.

Are you aware of any voluntary arrangements in other countries that could be used in Wales?

The Environment Agency in England undertook a pilot study on voluntary agreements on 4 rivers in 2006/07 which resulted in some very positive outcomes and a toolkit giving advice and information on voluntary access agreements was produced. Model agreements are available on their website together with guidance on negotiations etc. We believe much of this would be appropriate for use in Wales.

Please can you briefly outline what you think are the key issues for recreational access to inland water in Wales and how you would like to see them addressed?

The CLA are firmly of the view that any access to inland water in Wales must be by voluntary agreement, negotiated on terms that reflect the individual circumstances and situation that exists on each stretch of water, taking into account the interests of those wishing to make use of that particular piece of water. A 'one-size fits all' approach to free access to the many different rivers and water bodies in Wales would not be appropriate and could be hugely damaging to the environment and economy.

Inland waterways are owned by individuals or organisations and form part of the capital assets of that owner. In some cases rivers have very substantial capital values in their own right, others form an essential part of an individual's private property. The CLA are wholly against the creeping nationalization of land and private property and the erosion of an owner's right to manage, maintain and use their property as they wish. In addition to the capital value, many rivers are an important revenue producing asset for an owner. This may be through the letting of fishing rights or the running of water based activities such as rafting or canoeing and outward bound type businesses. Again the CLA defend an individual's right to manage their property as they wish. The imposition of a free right of access could dramatically affect values and income streams and we would expect substantial claims for compensation to be forthcoming.

Large sums of money have been spent by individuals, fishing clubs, the Environment Agency and the Welsh Assembly Government in promoting fishing in Wales and the tourism associated with it. The quality of the fishing and the income it generates for the Welsh economy is significant and could be seriously jeopardized by a free right of access that affects that fishing.

As well as money spent on promoting fishing considerable sums have been spent improving and protecting the riverine environment and habitats. Rivers are important conservation areas and many are designated as SSSIs or SACs. Compliance with the Water Framework Directive will require further work and money to reach the necessary standards of good ecological and environmental status. Uncontrolled access to these areas could cause serious damage to the ecology and health of a river system.

If a right of access were introduced who would care or be responsible and in charge of the well-being of the rivers, which activity would take precedent, and who would pay for this? It would be essential that an exclusion and restrictions regime were also introduced (as in place for open access land) together with an appeals mechanism to ensure stretches of water can be excluded from free access, or closed at certain times of year or river levels to prevent damage to spawning beds, disturbance of fish and other wildlife in the river and on the river banks such as otters, nesting birds, insect breeding sites and fragile ecosystems. We believe this would be complicated to administer, costly to run and create

unnecessary bureaucracy. It would also create uncertainty for canoeists and other such river users.

Increase access for canoeists (non motorised craft) needs to be assessed in the light of the competing demands on the watercourse resource. Therefore a strategic approach needs to be taken, where the impact of the competing interests can be assessed and adequate provision made for canoeists based on actual need at a local level.

Any additional access should be undertaken through voluntary agreement. To date there appears to be reluctance on the part of the canoeists to pay for access or contribute to the maintenance of the riverine environment. A well established system of Rod Licenses, administered by the Environment Agency, ensures all fishermen contribute towards the cost of protecting and improving our rivers. In addition fishermen then pay directly for access to a river or reservoir for their fishing. We would propose that a similar licensing system is put in place for all canoeists in the form of a "canoe licence". Stickers with licence numbers can be clearly displayed on a craft ensuring that all know if an individual has not paid. This will also enable the licensing body to provide users with appropriate guidance and codes of behaviour etc together with information on how to identify areas for canoeing. In addition we believe canoeist should be prepared to pay for access to rivers either by way of day tickets or through membership of a club that has an agreement to use a particular river.

The CLA supports the Environment Agency's announcement (3rd Oct 2006) of voluntary access agreements as the way forward for providing access for canoeing. Partnerships between local people, landowners and organizations will achieve the kind of access that everyone wants and needs. A pilot project for voluntary canoe access on the River Mersey, Teme, Waverney and Wear delivered 70km of access, which demonstrated what can be achieved when different interests work together. The results from this pilot study in England show that a blanket approach to access is unnecessary.

We would urge the Committee to conclude that voluntary agreements do work and can deliver the required access. If previous attempts to negotiate agreements have floundered this has often been through a lack of clear processes, resources, strategic support and guidance which could be provided through central funding of a package of measures and assistance. Recent failures to renew access agreements appear to have been part of a deliberate and destructive campaign by the WCA to discredit the system. Riparian owners must have the ability to tailor agreements to their individual requirements and concerns and a local approach is essential.

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