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Waters of Wales – WoW response to letter to Petitions Committee from the Welsh Government Minister for Environment and Rural Affairs dated 7 March 2017

We refer to the Minister's welcome acknowledgement in a statement on 13th February, that Wales needs a better and fairer approach to public access for outdoor recreation; that the current system is too complex and burdensome; that the law needs to reflect current recreational needs and be more flexible to changes in demand and participation; and the need to establish clarity.

We acknowledge that public rights of access to the countryside have been the subject of injustice and conflict for centuries. However, following devolution, the issue has been successfully addressed within Great Britain, and given that Welsh Government took ownership of this issue in 2009, following an earlier petition, it is disappointing that in Wales we are no further forward.

We consider that the Minister's letter does not address the petition, for the reasons outlined below.

Minister Comment: *"It is my intention to develop proposals on access to the outdoors for recreation which are best suited to the cultural and physical landscape of Wales."*

WoW Response: The solution has already been identified.

The petitions committee stated in its recommendations in 2009:

"A new statute would ensure everyone has access to inland water in Wales and on an equal footing; it would provide clarity, certainty and permanence and we believe that the Land Reform (Scotland) Act 2003 provides a basis from which a unique model may be developed."ⁱ

The Welsh Assembly sustainability committee made an unexplained departure, at a very late stage in their 2009 Inquiry, from the recommendations of the petitions committee. Welsh Government launched an alternative process based on Government-sponsored negotiations for voluntary agreement, despite evidence from previous Welsh Government sponsored pilot projects that this approach had consistently failed to deliver sustainable public accessⁱⁱ. The new project cost the taxpayer approximately £3m over 5 years for water-based activity alone, before Welsh Government acknowledged that the process had not delivered. Welsh Government later launched a green paper consultation which was delayed several times before the findings were uploaded to the Welsh Government website shortly before the Welsh Assembly election in May 2016 and left "to inform the next Government".

Minister Comment: *"I believe it is necessary to acknowledge Wales already has some established rights of public access to areas of open country and paths."*

WoW Response: Identified as an 'Issue of Equity and Social Justice' by the Petitions Committee of 2009, public rights have yet to be properly addressed.

It is important to highlight that previous legislation in this area, starting in 1884 with the first presentation of the 'Freedom to Roam' Billⁱⁱⁱ, catalysed by the Kinder Trespass of 1932, and (nearly 70 years later) leading to CRoW, was directed to restoring the 'right to roam' taken from the people by the Inclosure Acts.

While the ramblers had the law against them, the Inclosure Acts did not affect the existing public right of navigation, and the record shows that people have freely enjoyed the waters of Wales for activities such as swimming, boating and skating. Challenges to people enjoying the water came later, and have never been tested in the courts. The problem was exacerbated by 'governing bodies' entering into negotiations for 'permission' without first establishing that permission was needed, in the hope of avoiding conflict and to secure sites for organised activity based on limited ranges of user groups that matched the needs of the governing bodies as opposed to those of the public at large.

When Welsh Government was formally requested to obtain a definitive statement of the legal situation it stated that it was unable to do so^{iv} and has yet to divulge the legal advice it received about the status of the existing public right of navigation.

Environment Agency Wales (as was) stated in 2005: ***"Of course it is open to individuals or organisations to assert a right they believe they have, and were any such rights to be challenged to seek their confirmation via a legal process."***

Given that the cost of a court case would be prohibitive to members of the public, this advice is unhelpful, and the potential for conflict is obvious. We are surprised that this course of action is highlighted as a form of resolution. The history of conflict on the River Dee alone was outlined in a previous submission from WoW to this Petitions Committee. It is significant that the River Dee is among those on which large amounts of taxpayers' money have recently been spent on Welsh Government sponsored 'voluntary agreements'^v.

Minister Comment: *"It is from this position I intend to develop proposals to enhance the type and variety of land and water for a wider range of outdoor recreation activities and to reduce the administrative burden."*

WoW Response:

History, spanning three centuries, and taking us into 2017, has shown that trying to secure access piecemeal, whether in terms of location, activity of user-group, cannot deliver the access needed by the public; now, or sustainably for the future.

Following the Kinder Trespass, recognised as the catalyst for land reform legislation, it took nearly 25 years to open the first national trail and nearly 70 years for CRoW to be enacted.

We are still discussing this today because CRoW was rendered unfit for its intended purpose by stripping the original draft of many of its intended public benefits. The mapping exercise alone for CRoW cost nearly £8m, to address the needs of the small percentage of the public who want to access upland areas, and even this seeks to exclude rather than enable many existing forms of sustainable recreation on 'access' land.

In Wales, we have seen the difficulty and expense of achieving the Wales Coastal Path; and many 'coastal' or 'river' walking routes have sections distant from the water due to the difficulty of negotiating access by voluntary agreement.

The evidence submitted for the 2008 petition, and in the paper '[Failure to secure public access to the countryside, including inland water, by voluntary agreement, and the need to legislate](#)' which was submitted to the committee previously, demonstrates that previous Welsh Government exemplar projects for inland water have failed to increase, and in some cases led to less public access.

Other countries have succeeded where Wales and England have failed by starting with a presumption in favour of public access for sustainable, non-motorised, recreation and applying exclusions or management arrangements only where the need for such is demonstrated.

Minister Comment: *"Work is underway to develop the proposals but there is currently no formal timetable for consultation."*

WoW Response: The issue has already been subject to consultation.

We recognise the desire to consult widely, but it must also be recognised that since Welsh Government took ownership of the issue in 2009^{vi} this matter has already been the subject of two inquiries and a green paper consultation, the results of which were "left on the table to inform the next government" (i.e. the present one).

We question why a further consultation is proposed, without any indication of content of timetable. In the public interest, the need for consultation must be balanced against the need to swiftly resolve the long-standing uncertainty and conflict whilst delivering value for money for the public purse.

Whilst there are numerous vested interests ranging from land and riparian owners, limited interest groups and national governing bodies, we feel that it is important that Welsh Government takes positive action for the public to future-proof access to the countryside of Wales.

We understand and sympathise with the reluctance of Welsh Government to take progressive action to establish public rights in the face of the powerful and influential lobby against public access. However, the experience of other countries, most recently Scotland, shows us that the short-term pain of doing so leads to the long-term gain of equity, public well-being, and an end to the conflict which can mar everyone's peaceful enjoyment of the countryside.

ⁱ Petitions Committee Report [Access along Inland Water](#) April 2009

ⁱⁱ Exemplar Projects review in Canoe Wales evidence to Petitions Committee 2009 and 'Splash' funded projects.

ⁱⁱⁱ Land Reform Timeline, attached.

^{iv} Email trail between WoW and Petitions Service 19-20 Feb 2015

^v In 2012/2013 Splash funding (£10,312) was awarded to the Welsh Dee Partnership to establish access arrangements on an 8 mile stretch of the River Dee between Glyndyfrdwy Bridge and Llangollen town weir for participants of paddle sport. In 2013/2014 a further application for Splash funding (£23,000) was awarded to support stakeholder engagement, infrastructure improvements, and match funding in support of a River Liaison Officer.

^{vi} Welsh Government 'Splash' funded projects.