

## **Welsh Assembly Government Written Response to the Sustainability Committee Report on its Inquiry into Access to Inland Water.**

**August 2010**

The Assembly Government's approach to water related recreation and associated access is based on improving access for all, rather than for any one particular user group.

Evidence from recreation research and surveys of water related recreation in Wales shows that the majority of participation occurs infrequently, and that users are rarely part of an organised group. The Assembly Government is committed to addressing the widest possible range of people in the actions that it supports.

The recommendations of the report are focused primarily on those participants in water-based activities who are the more experienced, committed users, and are members of clubs or national governing bodies such as anglers or canoeists. Whilst we accept a number of the recommendations we do not intend to restrict our activities on this issue to ones that meet the needs of only a minority of participants.

The Welsh Assembly Government sets out below its responses to the Report's individual recommendations:

### **Access**

**Recommendation 1. That the Minister for Environment, Sustainability and Housing strongly encourages and promotes the setting up of voluntary access agreements by landowners, through the existing 'Round Table' group of water pursuits interests and actively encourages land owners such as public bodies (e.g. the Forestry Commission, local authorities) and large charities (e.g. the National Trust) to pilot the type of access agreements outlined in this report.**

#### **Response: Accept**

The Welsh Assembly Government accepts the main elements of this recommendation.

The Welsh Assembly Government has been keen to secure more opportunities for the public and visitors to Wales to enjoy Wales' extensive water resources on a responsible, safe and sustainable basis. This is wholly in line with the commitment in the One Wales agenda to foster a stronger sense of public ownership in the Welsh countryside, coast, and urban green spaces.

We recognised that there can be conflicting interests in relation to water access so the original intention of the Round Table was to build consensus between the angling and canoeing interests, encouraging them to work jointly at the local level to secure more voluntary river access agreements.

We intend to build on the success of the Round Table, and will review its terms of reference and membership to align it to the implementation of the Water Related Recreation Strategy, and ensure it is representative of the Strategy's stakeholders.

However, we don't believe that further pilots of access agreements are necessary. Sufficient lessons have already been learned and documented to allow for progress to be made. The Assembly Government has supported reviews and pilots as part of informing the current policy position, and so believes that there are now ample access negotiation frameworks and model agreements in the public domain. It is the Assembly Government's intention to promote their use to secure meaningful new access, rather than add to the access agreement literature through further pilots.

**Financial Implications:** No new implications. The Round table is supported under existing divisional budgets.

**Recommendation 2. That the Minister for Environment, Sustainability and Housing targets Splash funding at these pilot projects. The effects of the pilot projects should be closely monitored and the outcomes widely disseminated.**

**Response: Accept**

The Welsh Assembly Government accepts the need for continued financial support to enable the development of new access agreements and are working to secure a continuation of the Splash funding, insofar as is possible given current budget constraints.

Splash funding has been used successfully to support access agreements, but has also been used for providing wider opportunities to participate in water related recreation. In accepting this recommendation, we do not intend to refocus Splash entirely onto supporting voluntary access agreements, but to retain its valuable contribution to supporting our approach of promoting access for all.

We don't believe that further pilots are necessary, as outlined in the response to recommendation 1.

**Financial Implications:** No immediate implications. The Splash Fund is currently funded through existing divisional budgets.

**Recommendation 3. That access agreements be sought under the Glastir scheme where appropriate for ingress and egress points, any associated facilities such as car parking and changing facilities and access across land to any body of inland water over or on which access rights have been granted.**

**Response: Reject**

The Welsh Assembly Government rejects this recommendation.

Glastir is the new integrated land management scheme for farmers in Wales that will become operational on 1 January 2012. The scheme's primary objectives are to support farm-based activities that contribute directly to meeting the challenges of climate change, carbon, water, soil and habitat management, bio-diversity and energy efficiency.

Glastir will be provided under axis 2 of the Wales Rural Development Plan, relating to improving the environment and the countryside, and, as such, the scheme has to be fully compatible with the enabling EU legislation, principally Council Regulation 1698/2005.

Support provided through Glastir is made under Article 36a (i-vi) and 36b (i-vii); Article 38; Article 39 and Article 41 of Commission Regulation 1698/2005. Under these articles support for non-remunerative investments that are necessary to achieve scheme commitments or that enhance the on-farm public amenity value of Natura 2000 areas and other areas of high natural value are permissible. The intention here is to support access to bring people on-farm to appreciate the relationship between farming and the managed environment.

The recommendation refers to access across a farm and the potential for providing car parking and changing facilities for essentially recreational purposes associated with canoeing. All fall outside the EU legislation that applies to the Glastir scheme.

In the meantime, the Assembly Government's Splash fund is already helping to support new access and associated facilities.

**Financial Implications:** None.

### **Environmental Quality**

**Recommendation 4. That all access agreements should be subject to the monitoring and assessment of the environmental quality of the water covered by the agreement at regular intervals.**

## **Response: Accept in Part**

The Welsh Government partially accepts this recommendation.

We agree with the intention of this statement, which we read to mean that new access should not result in negative environmental impacts, and that effective monitoring should be utilised as part of the management of access. We further interpret this recommendation as referring to the monitoring and assessment of the overall environmental quality of the inland waters and waterside, including the water itself, associated river features, habitats and species.

The Committee received evidence that most rivers and lakes are not especially sensitive to recreational impacts, but that safeguards would be required to protect the currently small minority of sites that are sensitive and/or experience high recreational pressure. Therefore the monitoring of environmental quality should be targeted on areas that are vulnerable to impacts based on the sensitivity of features or the volume of use. It is the Assembly Government's view that the voluntary access agreement approach allows for the nature and intensity of the activity and the type of habitat and particular local circumstances to be taken into account. The decision to monitor the environmental quality should be decided locally on a risk based approach, rather than as a standard requirement for all new access.

**Financial Implications:** None.

## **New Legislation**

**Recommendation 5. Legislation should be introduced to identify a lead authority for the identification of particular areas of inland water where access agreements are appropriate and for the negotiation of voluntary access agreements for non motorised recreational purposes in those areas. That body will be placed under a positive duty to facilitate more voluntary access agreements, including a power to finance associated works.**

**Recommendation 6. The legislation referred to in recommendation 5 should also place power on a lead authority to designate such bodies of water as ones to which access rights would attach compulsorily if no voluntary agreement could be reached.**

## **Response: Accept in Principle**

Both of these recommendations are closely related, so a single response is appropriate.

We accept that creating statutory powers and duties of the type described could potentially be useful in securing more opportunities for water related

recreation. We also accept the Committee's suggestion that these recommendations are not actions that should be pursued immediately, and should be considered in the medium or long term. This is consistent with our current approach, where we have been clear that we have no intention to bring forward proposals for legislation at present, and that we would wish to evaluate the success of the current approach in delivering voluntary access before deciding whether a mandatory approach to access is necessary.

Our intention is that the evaluation of the current approach will consider how successful it has been in delivering sufficient extent, quality, security, and clarity of access. We believe that they are appropriate tests in determining whether we have been able to secure the necessary supply to meet current demand, and provided the foundation for realising the range of benefits that water related recreation can provide. The success or otherwise of the current actions to put in place more voluntary access agreements on main rivers and other waters in Wales should be a factor in determining if legislation would be beneficial.

Because these recommendations are not suggested for immediate introduction, the consideration of the need for, and priority to be accorded to, any potential legislation will be a matter for the next Assembly Government after May 2011. Whilst it would not be appropriate for current Ministers to try to commit a future Government to introduce particular legislation in this area, we believe that the tests of sufficient extent, quality, security, and clarity of access should be the basis for evaluating different statutory proposals. We would wish to see that the recommendations of the Committee be considered as one of the options in consulting on any proposed legislation.

**Financial implications:** These would need to be assessed as part of the development of any new legislative measures in this area.

**Recommendation 7. In order to guarantee compliance with the European Convention on Human Rights there would need to be a right to object to a designation and for the objection to be considered in detail (e.g. at an inquiry) and there would need to be provision for compensation for compulsory interference with property (including fishing rights) where that interference could be shown to have caused loss.**

**Response: Accept in Part (in principle)**

The Welsh Assembly Government accepts that legislation of the type described in recommendation 6 could potentially engage rights under the European Convention on Human Rights. The designation of bodies of inland water as ones to which rights of public access attach could directly affect the property rights of certain persons and it would therefore be necessary to ensure that the designation process set out in the legislation complied with the requirements of Article 6(1) of the Convention.

The Assembly Government believes, however, that such legislation would not necessarily need to make provision for compensation for compulsory interference with a person's enjoyment of their property in order to guarantee compliance with the European Convention on Human Rights. Article 1 of the First Protocol permits the state to impose such compulsory controls on the use of property as it deems necessary in the general interest. In doing so, the state must strike a fair balance between the rights of the individual and the general interest but it is not normally necessary to pay compensation in order to strike that balance where the interference takes the form of a control on the person's use of his property, rather than a deprivation of that property.

However, these are general observations, and would need to be more fully considered as part of the development of legislation in this area.

**Financial implications:** These would need to be assessed as part of the development of any new legislative measures in this area.

**Recommendation 8. We recognise that neither the Welsh Ministers nor the Assembly currently have legislative competence to implement recommendations 5-7 and recommend that such legislative competence is sought as soon as possible**

**Response: Accept in Principle**

We agree that the National Assembly for Wales does not have legislative competence at present to take forward recommendations 5 and 6, and would therefore need to secure a Legislative Competence Order to insert appropriate Matters into Schedule 5 to the Government of Wales Act 2006, or alternatively secure the insertion of such Matters by means of a Parliamentary Act.

We consider that the earliest suitable opportunity to pursue securing competence, or to reflect on new areas of competence, is after the result of a referendum on additional powers for the National Assembly is known. If a majority of the voters in a referendum vote in favour of bringing the provisions in Part 4 of the Government of Wales Act 2006 into force, the Assembly will be able to make provision in Assembly Acts which relates to one or more of the subjects listed under the headings in Part 1 of Schedule 7. This could allow us to address some of the points raised by the Committee. However, we would need to give careful consideration as to how the current exceptions to Schedule 7 relating to "navigational rights and freedoms" could impact on legislative proposals in this area.

**Financial implications:** These would need to be assessed as part of the development of any new legislative measures in this area.

### **Policing and Enforcing**

**Recommendation 9. Those organisations who make a profit out of water related recreation should pay a fee to be licensed and that their craft should be registered and clearly marked.**

**Response: Accept in Part**

The Welsh Assembly Government partially accepts this recommendation.

We agree that it is acceptable for access provisions to differentiate between informal recreational use by the public and profit based recreational activity. However, we believe that the licensing, fees, and registration should be considered as part of local arrangements, and we have no intention of introducing a national system at this time. The initial set-up costs and administration of a formal national approach are likely to be considerable, and not a proportionate response to the issue it could potentially address.

**Financial Implications:** None.

**Recommendation 10. That a licensing system for those using unpowered craft on inland water should be introduced.**

**Response: Reject**

The Welsh Assembly Government rejects this recommendation.

A parallel with angling has been drawn to provide a rationale for this recommendation. The Assembly Government accepts that revenue raised through the management of angling activity contributes to the management, protection and improvement of inland waterways and fisheries. But fishing is heavily regulated and legislated for with regard to the extraction of wild fish from rivers and associated enforcement. That enforcement is partly paid for by the fishing licence fee. The licence itself does not relate directly to, or allow for, access to rivers and lakes.

Also, considerable additional funding from various sources is spent on the management of fisheries and the improvement of access infrastructure for anglers. Examples include the Assembly Government funded Sustainable Fisheries Programme and Environment Agency Wales' Wild Fishing Wales, and so we would consider licensing to be a management tool rather than a means of generating a single revenue source for improving access and facilities.

In this respect, we do not believe that a national licensing system is a feasible option for water related recreation. The majority of participation is informal and occasional, which would make licensing inappropriate, a possible deterrent to participation and difficult to operate and police, especially if it required licenses to be issued via a National Governing Body, which informal, occasional users would not be members of.

In addition to licensing not being a suitable management tool for the kinds of activities in question, the initial set-up costs (or modification of existing systems) and administration could be considerable.

We support existing local arrangements, for example: British Waterways and Environment Agency's permit systems for use of their managed canal network and navigations respectively, or where other club based facilities are subject to membership or obtaining permits. This is consistent with the Assembly Government's approach of seeking suitable local arrangements rather than dictating new national approaches, and is considered to be a more efficient and effective response to this issue.

**Financial Implications:** None.

### **Information and Guidance**

**Recommendation 11. That the Minister for Environment, Sustainability and Housing commence the drafting and consultation process on a national code of conduct for using the water to be used in those areas where access is granted.**

**Recommendation 12. That any code of conduct should make explicit the rights and responsibilities of users and access owners and should be promoted and advertised by all organisations involved in giving or using access to inland water as well as national organisations such as the Welsh Government, CCW, Environment Agency Wales, Visit Wales and the Sports Council for Wales.**

**Response: Accept**

The Welsh Assembly Government accepts both of these recommendations.

Codes of conduct can be an effective, and cost effective, means of influencing the behaviour of water users, and we agree that this could benefit from a co-ordinated approach in Wales. This is a role that CCW fulfilled with regard to the revised Countryside Code, and they have a standing Codes Working Group tasked with exploring and advising on the best methods of creating codes of conduct across a number of activities. This working group has membership from Environment Agency Wales, Visit Wales, Forestry Commission Wales, Wales Environment Link and Wales Sports Association. We intend to task CCW, with this working group, to take forward these recommendations.

**Financial Implications:** No new implications. Whilst the development and promotion of a new code will require financial support, this is an existing area of responsibility for the agencies, and can be taken forward under their existing sponsorship arrangements.

**Recommendation 13. That a national website should be set up, containing details of all the stretches of water in Wales where access has been agreed and containing up to date information on current and predicted water levels, events taking place which may restrict access and any other information which would help users to access the water safely and legally.**

**Response: Accept**

The Welsh Assembly Government accepts this recommendation.

Web-based information about the availability of water related recreation opportunities in Wales would be a valuable resource. This is an existing commitment in the Water Related Recreation Action Plan, and Environment Agency Wales and CCW are already charged with delivering this resource this year.

**Financial Implications:** No new implications. Information is already held, and an existing website will be utilised