



Fair, shared, sustainable open access for ALL!

Mynediad agored cynnaladwy i BAWB!

admin@watersofwales.org

Wednesday, June 19, 2019

Dear Petitions Committee Members

Thank you for the opportunity to reply to the Minister's written statement dated 12 June 2019.

We are surprised and disappointed that the Minister persists in presenting the issue in terms of a polarised conflict between two distinct user-groups. 'Waters of Wales – Dyfroedd Cymru' exists to represent the interests of the diverse public for whom considerable health and wellbeing benefits can be obtained through sustainable recreation in, on or beside water.

The needs of the wider public cannot be met by continuing to treat this aspect of the public interest as a polarised issue between two user-groups. Nor can the interests of the wider public be addressed by two single-interest parties seeking resolution by voluntary 'negotiation' where one has the automatic right to present the terms and of veto, another tries to 'negotiate' from a position of inequality, and the wider public is not even given a seat at the table.

Waters of Wales – Dyfroedd Cymru's petition reflects the diverse needs of the public, as does the Land Reform (Scotland) Act which we, and a former Welsh Assembly Petitions Committee Inquiry, advocate as a model for Wales.

We welcome the Minister's comment: *"I believe that access to water now needs to be considered as part of a wider approach, not in isolation. We need to broaden the debate and ask what Wales wants from its inland waters, and the role that access rights have in delivering this."* which is in accord with our values, but is strangely at variance with the Minister's stated intentions. The 'stalemate' to which the Minister refers, is of Welsh Government's own making; the result of repeating the same actions, which by its own admission, have consistently failed in the past.

In direct response to the Minister's comments on our letter dated 25 April:

Q. *"Why is the strategy not based on a presumption in favour of access?"*

A. *"Welsh land has the potential to deliver significant benefits for all the people of Wales. In developing a strategy, I am mindful that we must seek to maintain the right balance between different stakeholders."*

Every other devolved administration has acted to clarify the public right. Most recently, Scotland did so at the first opportunity on attaining the necessary powers. Achieving and maintaining the right balance between stakeholders has been shown to work by starting

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with a presumption in favour of access then, IF problems arise, addressing exceptions to open access an evidence-basis using the least restrictive option.

Q. *“Why is lifting restrictions on access to man-made bodies of water not even to be considered?”*

A. *“Following careful consideration of all the consultation responses, I believe that there are particular safety concerns with allowing water-based recreation on man-made bodies of water.”*

Every activity and environment has its own particular safety concerns. Banning an activity does not prevent tragic occurrences, rather it prevents measures to improve safety and public awareness of risk.

Scotland addresses the issue by their ‘Outdoor Access Code’, underpinned by the principle of ‘volenti non fit injuria’ and a programme of public educationⁱ. USEFUL, TRUTHFUL, signage where needed is more effective than a blanket ban, and numerous examples of good practice exist in Scotland, England AND Wales.ⁱⁱ ⁱⁱⁱ.

Q. *“How will the representativeness and independence of the ‘Access Reform Group’ be established and protected?”*

A. *“The Access Reform Group will be comprised of experts in the field and will as part of its remit, be speaking to a number of important stakeholders. Members of the Group will be challenged to work together constructively to achieve progress. They will be expected to sign up to a Terms of Reference, which will require members to take on board others’ perspectives and find ways to overcome differences. Following a period of investigation of approximately 18 months, the group will report back to me. Details regarding membership of the Access Reform Group are still being finalised.”*

Our response to this Q/A is covered in appendix 1.

In conclusion, our reply to the Ministers’ previous statement to this committee outlined the 4-year cycle which this issue has repeated since 2007. The Minister’s most recent letter demonstrates how the cycle will be repeated (see appendix 1 attached).

Mindful that cost of the previous government-sponsored attempt to increase public access to water, which resulted in no net gain, cost the taxpayer about the same as the legislative cost of the Land Reform (Scotland) bill, and in view of the circular nature of the process to date, we would like to ask two more questions:

- Can Welsh Government demonstrate how the expenditure of public money on ‘voluntary’ arrangements between discrete parties has benefited the wider public?
- Given that the proposed 18-month process and review will take us, once again, up to an election, is it reasonable for the present government to expect to achieve an outcome from their proposed approach?

Yours sincerely

Pam Bell

For Waters of Wales – Dyfroedd Cymru

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Appendix 1.

Patterns in the cycle of this process.

1 – The Minister acknowledges that legislation is the answer, but tries to bring pressure to bear on the negotiation process as a way of avoiding legislation:

In 2007 the (then) Chair of ACA and CEO of WyeUsk Foundation wrote:

“Passing such a bill has already happened in Scotland and ‘in the pipeline’ there is a Welsh act that could allow it to be passed on our rivers. You may also be aware of the strong lobbying by WCA for this to happen. For our part we lobbied to continue with agreed access as the way forward and the Assembly gave us a 100% grant to re-establish the canoeing arrangements on the Wye and Usk, against a clear signal that the alternative would likely be open and free access all year. I should stress that no other funding is being used for this purpose.”

In June 2019 the Minister wrote:

“... However, I recognise that options may be limited given that we have tried to promote VAAs (Voluntary Access Agreements) before, with little take-up. I strongly feel that the long-term answer needs to come from stakeholders and have encouraged them, through my Written Statement, to find a practical joint solution... Should I not be satisfied of reasonable progress within 18 months, I plan to consider future legislation on access to water...”

2 – The issue is pushed down the line by repeated consultation until there is no time for government to act:

In 2015-16, the consultation findings were repeatedly delayed until they were finally “Left on the table to inform the next government.”

The Minister has now written: “Should I not be satisfied of reasonable progress within 18 months, I plan to consider future legislation on access to water.”

This will take us close to another election. Will the results of the review once again be “left on the table to inform the next government” as happened in 2016?

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References

ⁱ Scottish Water 2016: Encouraging Responsible Use of Scottish Water Assets. www.scottishwater.co.uk/-/media/ScottishWater/Document-Hub/Key-Publications/Freedom-of-Information/190718PublicAccessToLandAndWaterDec16.pdf

ⁱⁱ RoSPA 2018: Managing Safety at Inland Waters.
<https://1drv.ms/b/s!AvvhfAJqO9K8gqQLPajn5txE3rzACA>

ⁱⁱⁱ https://www.outdoorswimmingsociety.com/wp-content/uploads/2018/11/Guide-To-Inland-Bathing-Areas-2018_small.pdf?fbclid=IwAR2xhEJWJOAfLht3_4XequmKI9GhZfjNTdpCID176wJFvRIO-GWn9kXq3YA

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