



18th September 2018

Dear Petitions Committee Members

We welcome the opportunity to respond to the letter from Hannah Blythyn AM, Minister for Environment, dated 24 August 2018, in which the Minister states: **“Rural areas and interests are facing significant changes and uncertainty as a result of the UK’s decision to withdraw from the European Union. I do not intend to add further uncertainty and complexity to what may be a difficult transition for all concerned which is why I have said now is not the right time for substantive access reform.”**

This is strangely discordant with the statement made earlier this year by Carwyn Jones AM and Lesley Griffiths AM: **“Leaving the EU presents significant challenges, but we have a unique opportunity to put in place bespoke Welsh policy which delivers for our economy, society and natural environment. We must take it.”**ⁱ

By failing to recognise the part that legislation to open up access to the countryside has to play in the bigger picture of the relationship between agriculture, wider society and government as we approach Brexit, Welsh Government is in danger of missing a generational opportunity to comprehensively and sustainably meet the needs of the public, the environment and land managers. Far from adding complexity and uncertainty, the legislation called for in our petition will remove the complexity and uncertainty which has, to date, prevented progress in addressing the needs of society, and hampered land managers in their work.

Comprehensive, future-proof, access legislation, will complement the aspirations expressed by Carwyn Jones AM and Lesley Griffiths: **“There is an overwhelming case for supporting land managers and this paper puts forward our proposals for ambitious reform”**¹.

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Waters of Wales (WoW) is a community of independent campaigners for legislation enshrining public rights of responsible access to inland water in Wales.

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The potential contribution of the legislation called for in our petition goes beyond supporting land managers, in terms of “delivering Wales’ unique legislative framework in the Well-being of Future Generations (Wales) Act 2015ⁱⁱ and the Environment (Wales) Act 2016ⁱⁱⁱ”. The ‘Bluespace Antidote’ to the stresses and pressures of modern life is well documented. Almost everyone enjoys and derives benefit from being in, on or near water. The potential economic importance of outdoor/activity/adventure tourism is equally well documented. The appendix to this letter summarises the potential of access reform to enhance and strengthen current and future initiatives towards compliance with Wales’ Future Generations and Environment legislation.

Finally, the Minister’s letter goes on to say: ***“The consultation has been an extremely valuable exercise to inform the direction I want to take with regard to access, both through legislation and other means. I will provide further detail on the reform and the approach I believe is necessary when I formally respond to the consultation later this year.”***

In response to this element, we can only re-iterate that the Minister’s written statement dated 19 June 2018, totally fails to take on board the needs of the petition, or to address any aspect of access to and along inland water. Furthermore, there is nothing in the Minister’s June statement or subsequently, which gives any cause for confidence that access to inland water will be addressed in the foreseeable future.

It is our view that the petition has yet to be addressed in any meaningful way.

Yours sincerely

Pam Bell, Bob Mackay, Andy Quick
for Waters of Wales – WoW.

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Appendix – The relationship between access legislation and Brexit legislation

Recognising that “It may not be possible for every farm business to be economically resilient in every post-Brexit trade scenario”¹, Welsh Government are proposing the creation of a new income stream through the **Public Goods Scheme**.

Welsh Government says it will consider supporting six public goods, one of which is ‘Heritage and Recreation’. The consultation document also illustrates the high proportion of GVA generated in Wales by tourism¹, and the role of physical activities in generating employment and reducing long-term health costs¹. Surprisingly, the consultation document has little to say on Heritage and Recreation, compared to the other five public goods.

Public access, *per se*, is a public good. Furthermore the health and well-being benefits of recreation near, on and along water are acknowledged and well documented.

Addressing the need for public access to water and waterside **equally** alongside other public goods will:

- Enable the public equitably to enjoy the health and well-being benefits of recreation in, on or beside water;
- Maximise the potential for recreational access to drive public engagement in the protection and preservation of our natural environment;
- Empower Welsh Government to create, enhance and increase opportunity for rural business to develop new income-streams, based on provision of public goods such as are associated with access to water;
 - Increased opportunities for diversification, enabling landowners and/or tenants to benefit directly from initiatives to provide facilities for recreational access users e.g. parking or camping.
 - Considerable potential for opportunities arising from public access, including accommodation, food provision, boost to local retailers and development of facilities and amenities which can be enjoyed by local residents as well as tourists.
 - Creation of opportunities for production of public goods, in terms of health, well-being and environmental benefits of public recreation, ownership and stewardship of land and water.

Progress to date has been hampered by conflict, challenges and ‘red tape’ arising from the complexity, constraints, and lack of clarity in the law relating to access to inland water. For optimum provision of public goods relating to outdoor recreation, Welsh Government needs to address the uncertainty, lack of clarity, and resultant potential for conflict.

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Waters of Wales – WoW formally asked Welsh Government, in 2015, to obtain a definitive statement of the legal position, and they replied that they are unable to do so^{iv}. While continuing to state that the law is unclear, Welsh Government predicates its strategy on one interpretation; namely, that there is no general public right of navigation on inland water, while ignoring the alternative view, based on a wealth of historical evidence, that there is, at common law, a public right of navigation on all rivers which are physically capable of navigation^v.

The stalemate makes a fair and equitable solution impossible to achieve.

The Welsh Assembly Petitions Committee acknowledged in 2009^{vi} that comprehensive legislation for open access, could provide a solution for Wales. Given that so much time has been lost already, within the timescale of the Brexit legislation, Welsh Government could now take the following interim steps to redress the inequality and maximise the ‘Public Goods’ attached to open access.

- (i) make an unequivocal policy statement that Wales’ waters need to be shared on an open and equal basis;
and
- (ii) require that all publicly-funded arrangements relating to access to water are made on the assumption of a general public right of navigation.

The above would empower Welsh Government to make available ‘Public Goods’ funding to land managers who facilitate access to/egress from the water.

“Land managers can adapt but it is government’s role to support change”

WG Consultation: Brexit and our land: Securing the future of Welsh farming

ⁱ Welsh Government 2018 consultation document ‘Brexit and our land: Securing the future of Welsh farming.

ⁱⁱ <https://futuregenerations.wales/about-us/future-generations-act>

ⁱⁱⁱ <http://www.legislation.gov.uk/anaw/2016/3/contents/enacted>

^{iv} A petition urging the Welsh Assembly Government to obtain a definitive legal declaration in relation to the existence of the Public’s Rights to Navigate the inland waters of Wales, was submitted but not accepted.

^v The Common Law Public Right of Navigation: <https://1drv.ms/b/s!AvvhfAJqO9K8go5dUpYVQGxLVn-4cA>

^{vi} Access Along Inland Water. https://1drv.ms/b/s!AvvhfAJqO9K8gdNGVhyWxU6_ppkwcg

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