

Access to Water

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Why is there a River Access Campaign?

In England and Wales, unlike elsewhere in the world, the public cannot assume there is an automatic right to have access to rivers. People are incredulous when they are made aware of this situation. The campaign is to secure this right as a matter of public interest. In the UK, Scotland already enjoys that right.

Access to rivers is a concern for us all; even wading in a river that has no access could mean that you are committing trespass. The purpose of the Rivers Access Campaign is not only to raise awareness of the access issue on inland waterways in England and Wales but to bring about a change. The campaign is being undertaken by the British Canoe Union (BCU) on behalf all members of the public.

- Only 2% of rivers in England and Wales have Public access
- The public do not have access along 65, 000 kms of rivers in England and Wales
- Whoever owns the land along the river (the riparian owner) also owns the property rights to the river bed. They don't own the water itself, only the land it passes over.
- If a river doesn't have a public right of navigation and you haven't got consent from the riparian owner, you're committing trespass by paddling or even wading in it.
- Nearly all the most beautiful inland rivers are not accessible to the public.
- Canoeing is an increasingly popular recreation, and is not socially exclusive
- Canoeing is an affordable means of getting "on the water" for everyone, especially young people, families and the retired.

Providing greater access to the rivers will enable a healthier and fitter nation as canoeing and other water sports are very much about participation.

Who is the campaign for?

The campaign is not just for canoeists. It is for all members of the public who share the view that a legal right for access to and along water would provide enormous recreational, educational and economic opportunities.

A right of access will provide certainty for the future of water related sport and recreation. The campaign has gained support from many interest groups and organisations who seek more access to enjoy the natural water environment - swimmers, anglers, walkers etc.

Why is there no access we have the Right to Roam?

Many of us now get out and about and enjoy our natural heritage as a result of the CRoW Act (Countryside Rights of Way Act) With some £69 million being spent on the implementation of the Act the Govt has stated their disappointment with the take up of the new rights and the relatively low visitor numbers.

But has CRoW helped everyone? In the case of canoeists, swimmers, non-powered watersports the answer is a definite NO!! Even if you want to watch wildlife from a boat/canoe, put your hot feet in the water after a walk, or allow you children to wade in a river on a hot summer's day you could be committing trespass if there is no access to or along that waterway. Despite extensive lobbying water was taken out of the CRoW Act at the eleventh hour and still there is no access to and along 98% of the rivers in England and Wales.

Access in England & Wales

In the England and Wales the canoeist does not have an automatic right to launch on to any river. The legal situation is different from all other countries in the world, where canoeists are generally able to paddle large and small non-tidal rivers without seeking permission, as the beds of these rivers are not privately owned and not vested in riparian owners.

The Government commissioned report "Water-Based Sport and Recreation – the facts" published in December 2001 established:

- There are 4,540 kilometres of canal and rivers with navigation rights.
- There are in excess of 65,000 kilometres of rivers with NO ACCESS

Successive governments have encouraged canoeists to seek to negotiate access agreements. These have only achieved 812 kilometres of highly restricted access.

Canoeing is a clean physical activity enjoyed by over two million people each year causing no damage and minimal disturbance. Canoeing is also a sport, which delivers Olympic and international medals. Canoeing is a sport and recreational activity for all regardless of age or ability.

Canoe England notes the WCA's (Welsh Canoe Association's) decision not to recognise voluntary access agreements. Their revised approach is best suited to their political structure because Wales has a different central and local government ethos to that found in England. Previously Wales have recognised access agreements, but they are now disregarding them in favour of historical precedent.

Trespass (under civil law)

If you are canoeing privately owned water without permission, then you might be trespassing. Simple trespass is a civil offence, not a criminal offence. Damages can be awarded against the trespasser (i.e. a fine), or an injunction can be issued to prevent repetition of trespass or to restrain threatened trespass. It is not a police matter unless a criminal offence is committed; this would only be if wilful or malicious damage was done, there was a conspiracy to commit trespass, there was behaviour likely to cause a breach of the peace or it was a case of aggravated trespass.

If you are challenged whilst paddling, please be courteous and polite whatever the situation. Avoid anything that could be interpreted as a breach of the peace or conspiracy to trespass (i.e. criminal offences). If you are challenged by an authorised official you could be obliged to give your name and address. If you are accused of trespass and genuinely believe you are exercising a public right of navigation or are paddling within the terms of an access agreement, you should say so and refuse to admit trespass. There is no case if you can prove that you are within your rights or have permission. Where you have a legal right the law requires you to exercise the right reasonably with due consideration for others.

Aggravated Trespass (under criminal Law)

The Criminal Justice Act 1994 introduced the new criminal offence of aggravated trespass. This should not be confused with ordinary trespass, which is a civil offence. To commit aggravated trespass you must first be trespassing; whilst trespassing you must also have the intention of obstructing or disrupting a lawful activity (such as hunting, shooting or fishing) or intimidating those engaged in such lawful activities. Canoeists should not fall foul of this new law if they canoe in a peaceful and considerate manner. We have no indication as to how the Police the Crown Prosecution Service and the Courts will interpret the act where paddlers in pursuit of their sport, a lawful activity, might be involved.

Access in Scotland

Canoeists in Scotland have traditionally enjoyed a freedom of access to Scotland's rivers and lochs. From spring 2005 the Land Reform (Scotland) Act 2003 provides a statutory right of access to most land and inland water. Scotland now has a framework for access which is amongst the best in Europe. For more information on canoeing in Scotland visit the Scottish Canoe Association website at www.scot-canoe.org and for more information concerning the Scottish Outdoor Access Code go to www.outdooraccess-scotland.com

The Right of Navigation on Non-Tidal Rivers and the Common Law

A major new piece of work has been researched and published by the Rev'd Douglas Caffyn. Doug, a former Chairman of the Access Management Committee, has produced the paper based on a thesis submitted to the University of Kent for the degree of Master of Laws.

This is a summary of the report:-

The preface to an Act of 1472 stated, "Whereas, by the laudable Statute of Magna Carta, among other things ... was made for the great Wealth of all this Land, in avoiding the Straitness of all Rivers, so that Ships and Boats might have in them their large and free Passage."

The paper reviews the evidence that prior to 1830 there was a generally acted public right of navigation on all rivers which were physically navigable. The wording of River Navigation Acts are examined and are shown not to be inconsistent with this interpretation of the law.

In 1830 H.W. Woolwrych claimed that all non-tidal rivers are private unless a public right of navigation has been established by statute, long use or dedication. The errors in his text are examined and it is argued that subsequent commentators have followed his misconceptions. Four leading cases from the 19th and 20th centuries are then considered.

In the paper it is shown that the public right has not been lost but that there always has been, and there continues to be, a public right of navigation on all non-tidal rivers which are naturally physically navigable by small boats.

The BCU intend to use the paper as part of the case for greater access and are seeking further legal advice. The paper has already been given to DEFRA and the Environment Agency who are currently reviewing the paper with great interest.

Early Day Motion 1331 - River Access For Non-Powered Craft – John Grogan

That this House urges the Government to extend legislation on access to the countryside in England and Wales to allow canoeists and users of non-powered craft similar access rights to water as walkers have to the land; notes that in Scotland such access, accompanied by a code of rights and responsibilities for all concerned, has been successfully implemented; and believes that increased access to waterways would lead to greater participation in canoeing, resulting both in obvious health benefits to the nation and in increased chances of future Olympic success.

Access in the rest of Europe and the World

This statement is based on an exercise carried out by the BCU in 1980/81 to find out from member federations of the International Canoe Federation what is the position in their respective countries.

ARGENTINA - Sportive navigation on rivers, lakes and other waters is free.

AUSTRALIA - All waterways, rivers etc are used by canoeists and are completely free and accessible and open to all users without restriction.

BULGARIA - The inner rivers of our country are common property and every Bulgarian can boat freely by his own route by his own wish.

CANADA - For the most part, there are no restrictions with respect to canoes. Authorisation of Minister required for a limited number of specified lakes, reservoirs and other waters.

CHINA - For Chinese citizens there is no restriction on sailing in inland water in canoes.

FINLAND - Everybody has the right, when avoiding causing unnecessary disturbance, to pass through the waters wherever they are open (if not closed by on the basis of legal rights). In practice this means that paddlers may move freely in Finland.

FRANCE - (BCU research 1991) There is a right of passage on all waterways classified as 'state domain', comprising those formerly used commercially by boats or for floating or rafting logs. Other rivers are private, but 'the Administration' by virtue of a law of 1964 has a role to protect the generality of usage and has introduced common sense rules so that owners, anglers and navigators can live together.

GERMANY - (BCU research 1991) There are lists of 'permitted' waterways, which in fact include practically all streams that lend themselves to canoeing; on these waters riparian property owners are 'required to tolerate' use by the public of unpowered craft.

HUNGARY - Prohibitions only for extremely special cases. Sports boats are allowed to run on every other surface without restriction.

IVORY COAST (West Africa) - Use of the waters of the Ivory Coast for canoeing and kayaking does not present any problem to participants. Certain safety regulations apply.

LUXEMBOURG - Waters are in the public domain; private waters do not exist.

NEW ZEALAND - Apart from natural hazards eg waterfalls and man made hazards eg dams canoeists have free use throughout the country of a large variety of waterways.

NORWAY - There are no restrictions on the use of canoes anywhere.

POLAND - Difficulties in moving about on the waters inside Poland do not exist.

SPAIN - (BCU research 1991) In parts of Spain there are restrictions to canoeing. Salmon rivers flowing into the Atlantic are subject to restrictions March to July/August only. Time restrictions on other rivers May to August and prohibition November and December.

SWEDEN - There are no laws of navigation forbidding the use of Swedish waters.

SWITZERLAND - (BCU research 1991) Varies in different Cantons; some prohibitions and some licensing.

UNITED STATES - (BCU research 1991) Public use widely established