

'As your request does not involve recorded information held by Defra, however, it is being answered as normal correspondence rather than an FOI request and I have been asked to reply.

'As you have indicated, Government policy continues to be that access to unregulated non-tidal inland rivers should be arranged through voluntary agreements between riparian landowners, canoeists and those wishing to use the water for recreational purposes.

'Since Defra does not hold the information you have requested, and furthermore as we are unable to provide legal advice, we would suggest that you may wish to take your own independent legal advice on the question set out in your email.'

There are several points here.

Although they say they do not have the information now it does not say they never had it. Having written water users out of the CROW Act of 2000 and done little else in living memory to clarify the situation for boaters it would be surprising for Defra and predecessors not even to have checked on the legal status of river access while spending huge sums on preparing maps of access land for those on foot. Having done so, if they had found any legislation taking away navigation rights it would seem likely that they would have shouted it from the rooftops, given Defra's attitude to boating. If they had checked what the laws says, it would be remiss if they had not kept a record of that information. Did they never hold it, in which case why do the Environment Agency repeatedly say that there is no general right of navigation and what law stops it? Did they formerly hold it but do not now, in which case why?

The bottom line in the response given states clearly that **Defra do not have any evidence of legislation taking away the right of navigation on rivers in England and Wales**, regardless of the policy they pursue, behaving as if they do know of such legislation

The EA's 40 page guide to riparian owners, *Living on the Edge*, includes the word 'boat' just once, in connection with licences. It says categorically 'there is no public right of navigation on most non-tidal watercourses'. Does that sound like a body which has no knowledge of what the law says about navigation on rivers? This is something the EA claim time after time without ever producing any evidence.

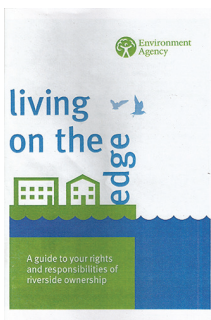
Douglas Caffyn, who has received higher law degrees from two universities for his research on river access legislation, comments 'There is firm evidence that in the period 1200-1600 over 170 rivers were used for transport of goods and people with no evidence of anyone being sued for trespass. There is no evidence during this time of any river being considered private except where a river had been improved for the use of boats.

'Thus it appears that all rivers could be used by the public during that time.

'This right has not been extinguished.

'Thus it still exists.'

The Welsh Government were due to publish a Green Paper on river access in 2014. It is clear that they do not intend to do so.



## Natural England's position

In 1987 the Countryside Commission launched their Recreation 2000 policy headed 'Access to land and water'. Our report (Nov 87, p9) brought an angry response from Director Adrian Phillips (Feb 88, p24).

By 2000 there was virtually no change but Richard Wakeford, Chief Executive of what had become the Countryside Agency, responded to our invitation to give an update (Apr 2000, p10). He placed the ball with Sport England, the EA to provide the water.

Two decades later, with no sign of improvement or attempted improvement, we invited Tony Jupiter, who chairs Natural England, as they now are, to comment. Dave Slater, the Interim Operations Director of NE replied 'Natural England has some specific but limited responsibilities to access on rivers. We advise on the impacts of recreational access to protected sites, for example. I have attached some informal guidance [opposite] we prepared on this matter explaining the extent of our role.

'Your wider query about securing greater public access to inland water is best answered by our Defra colleagues as it is essentially a policy question...

'I believe the Environment Agency also has some statutory responsibilities in relation to access on water. Emma [Reed in Defra's Floods & Water Team] will be able to tell you more about how that split of responsibility works.' She did not do so.

Natural England's guidance seems to be primarily for the use of staff. Clause 5 talks of conferring 'a right of access/navigation'. It is usual in English law for a right to exist to do anything until legislation removes that right, eg smoking cannabis, phoning while driving, flying drones near airfields, smoking in restaurants or any other activity. There is no law permitting us to walk along most roads but there is a law preventing us from walking along motorways. What is meant by 'the riparian owner(s) may withhold permission for canoeists to use a river under the normal laws of trespass'? What requires permission to be needed? What laws of trespass, mentioned generically in Clause 5, remove the right to travel along our rivers in canoes?

We have been unable to find any such legislation although it is not usually possible to prove something does not exist, only that it does exist by naming it.

It is stated, correctly, that we must obey the law. However, we (and the police) need to know what law it is that we need to obey, what law stops us using our rivers, the Act and date. What are 'the normal laws of trespass' relating to navigation to which Clause 5 refers? Staff need to know this as much as we do. We have asked NE to tell us what laws of trespass are meant by Clause 5 but they have yet to respond. We find total refusal within Defra to state what legislation is the central pillar of Government policy in relation to use of rivers by canoes. Perhaps we shall get some replies once normal working is resumed.

In Scotland, subject to certain issues of reasonable behaviour on all sides, all rivers are open to canoeing at all times, as is usual in most other countries.

There was a time when the British Waterways Board strongly opposed canal restoration for recreational use although those days are long gone. Surely the day must come, hopefully in our lifetimes, when Defra staff begin to support the interests of those in boats.

## Agriculture Bill to improve access?

The Agriculture Bill is to replace the Common Agriculture Policy in the aftermath of Brexit. Direct payments based on the size of farms will be phased out. Instead, payments will be for such activities as protecting land, water and air and improving public access. It is a safe bet that it will be on dry land only, not water.

## Fabricant to push for access

Michael Fabricant (Con, Lichfield) has been appointed to chair the All-Party Parliamentary Group on Waterways, which, this year, will promote waterways heritage, waterway restoration and access to waterways for sport and leisure. The IWA, who have previously given him their Parliamentarian of the Year award, have wholeheartedly welcomed his appointment.

## Covid-19 risk in rivers

Covid-19 can survive passing through the human body but it is unclear how long it can survive in sewage. The suspicion is that the length of time taken for it to pass through a sewage works is too long for it to survive and be infectious. Doubtless some sewage does

manage to evade treatment but the current feeling is that paddling on rivers receiving treated sewage carries little risk. The World Health Organization say there has been no evidence of this happening, with or without treatment.

## Grand Union speed camera recovered

Milton Keynes Canoe Club members joined some 100 volunteers to clear the Grand Union Canal around Milton Keynes of rubbish in October. Others taking part included the IWA, Network Rail and Thames Valley police cadets, who might have been interested in the speed camera and motorbike which were recovered with plenty of other items.

## Edinburgh canoeing discouraged

Boroughmuir High School's new buildings in Edinburgh face onto the Union Canal. A proposal to moor a line of five hotel boats on the canal in front of the school was refused but has now been approved by planners. These hotels will prevent the school's canoe club from reaching the water. The planning judgement

## CRT to tackle poor mooring

The CRT are to clamp down on boats moored in improper places. These include where boat facilities need to be reached, in winding holes, at blind spots on bends and junctions and at canoe landing places. Sanctions will increase from initial advisory letters to suspension of licences for persistent offenders. Even when no rules are being broken it can be difficult to take out where an unbroken line of moored boats block access to the bank.