



Canoe England: Position Statement

Access Arrangements for the shared use of non-tidal waters by manually powered craft

1 Access to Water

Canoe England fundamentally believes in the principle for access to and along unregulated (1) non-tidal waters and does not subscribe to the present assumption by some for these waters to be deemed private. Recently published research contests this assumption (2).

Canoe England also takes a pragmatic view and believes that where Access Arrangements (3) are a means for shared use, they shall be on a joint local management basis that helps to protect the environment and respect the rights of other user interests.

The legal situation in England and environmental use of the waterways is detailed in the Canoe England Waterways and Environment Charter (4) and document “You, your canoe and the environment” (5).

From this position Canoe England will endeavour to:

- 1.1 Work constructively with partners, agencies, the local community, interest groups and the “Big Society” concept to support and develop the shared use of physically usable waters when environmental conditions (especially water levels) are suitable.
- 1.2 Develop acceptable management measures with partners to protect the environment and enable the wider use of waterways at all times as per the benchmark set by the Government access feasibility studies (2004): River Waveney - agreed minimum water levels, and no permit requirements; R Mersey – based on Dedication (6) for using waters.
- 1.3 Dispense with formal signed documentation, and for Access Arrangements’s (AA’s) to be based on statements/memorandums of understanding and/or Dedication.
- 1.4 Make these arrangements publicly available to all canoeists for self regulation.
- 1.5 Encourage canoeists to follow the guidelines of such arrangements.
- 1.6 Promote best environmental practice and responsible use and consideration for others on all waters.

Canoe England cannot regulate or police AA’s or grant access to any waters with or without an AA, and will advise canoeists to only canoe when conditions are suitable (5). The decision whether or not to canoe is the responsibility of the individual canoeist(s).

Canoe England acknowledges the different opinions on the legal position where public rights are not recognised. An AA shall be without prejudice to the views of the legal position of either Canoe England or the riparian owners and other interests. An AA shall neither confirm nor reject any party’s views or interpretation of the legal situation.

2 Public Rights

An AA shall not invalidate public rights to non-tidal waters physically usable by manually powered craft, to include canoes, should it be subsequently established:

- 2.1 Such rights have not been extinguished.

2.2 The historic use of usable waters is recognised to provide that right.

References

1 Use of non-tidal waters

The position of public rights and the use of non-tidal waters in England are not straightforward:

Where there is an active Navigation Authority or where historic rights are recognised, rights are defined.

Where there is not an active Navigation Authority, waters are classified as unregulated and include abandoned navigations and other waterways on which there is a public right of navigation.

There is an assumption by some that many unregulated waters are private and use is resisted or shall be by way of a structured AA.

There is an overall lack of clarity for the shared use of non-tidal waters.

2 River Transport 1189-1600, February 2011; The Rev'd Dr Douglas Caffyn, www.caffynonrivers.co.uk

3 In the absence of a recognised public right to a waterway, the previous and present Government's policy in England are for Voluntary Access Agreements (VAA's). These can have conditions of use independently set by third parties, rather than being mutually agreed. Canoe England uses the terminology Access Arrangements (AA's) rather than agreement.

Historically VAA's are without rights, insecure, being subject to termination at short notice. When arranged, the periods of use imposed can be limited to a few days or weeks per annum and make some provision for those requiring a greater certainty of access at particular times. VAA's are few in number due to the difficulties as highlighted by the Government sponsored demonstration access feasibility projects (2004). The project schemes on the Rivers Teme and Wear were unsuccessful.

The policy for VAA's has been shown to have failed to meet an unmet demand when Canoe England has a remit to promote canoeing on all suitable waters in England. They may work well for some individuals or small organisations, however they cannot be used for securing public access.

4 Canoe England Waterways & Environment Charter – <http://www.canoe-england.org.uk/waterways-and-environment/policies/>

The Charter takes into account the recently published research (2) that has established a strength of evidence for a historic public right of navigation to exist on all non-tidal waters that are physically usable. Canoe England believes the lack of certainty for public rights and the law has created tensions between user groups that can be resolved by a presumption in favour of a right of access; supported by appropriate local management measures.

5 You, your canoe and the environment - www.canoe-england.org.uk/waterways-and-environment/environment

6 Dedication – leads to a public right of access. The Countryside & Rights of Way Act 2000 has provisions for Dedication by landowners and relaxing specific restrictions in the Act.