

Appendix C13: Model Clauses for Voluntary Access for Canoeing to Inland Waterways in England

Preamble

These clauses have been developed from current practice and evidence of future good practice to guide the development of voluntary access agreements. It is suggested, at the draft stage, that the order of the sections in the agreement is standardised, although the actual clauses used can be selected according to the circumstances, with variations and additions as necessary. The principal sources of information are listed at the end of the document.

In setting out the clauses, italics are used for a general description of the clause and what should or might be inserted. Illustrations are then given in normal text. Boxed examples of actual clauses are given at the end of the document.

In brief, the main headings of an agreement could include:

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| 1. Title | 10. Emergency Procedures |
| 2. Objects of Agreement | 11. Code of Conduct |
| 3. Names of Parties to the Agreement | 12. Consideration |
| 4. Date of Commencement and Duration of the Agreement | 13. Arrangements for Compensation |
| 5. Description of the Resource | 14. Discipline and Enforcement |
| 6. Record of the Agreement | 15. Dispute Resolution Procedure |
| 7. Management of the Agreement | 16. Information |
| 8. Rights and obligations of the Parties to the Agreement | 17. Termination of Agreement |
| 9. Principal Covenants | 18. Monitoring and Reporting |
| | 19. Signatories |

Clearly, the smaller and less formal the agreement, the fewer of these headings may be necessary and the fewer clauses will be required under each heading. However, for larger agreements, especially where capital investment is involved, all the headings should be addressed. It is the intention of this guidance note that all the main clauses are set out below, with those brokering an agreement being able to select from the list as appropriate.

1. Title

Agreement for Canoeing on the River

2. Objects of Agreement

This should reflect the nature of the agreement and the underlying wish of the riparian and fisheries owners to protect their interests (and the value of their rights). Any wording can be used, with the example below taken from the Sports Council for Wales Model Clauses.

The riparian and fishery owners, while concerned to protect and exercise their rights, are nevertheless anxious to meet, as far as practicable, the needs of canoeists. In this endeavour the following agreement has been reached.

In addition, there is much concern among fisheries interests that not all canoeists will 'sign up' to the agreement. An additional clause might therefore be:

All parties agree to work together to ensure that the full terms of the agreement are complied with and that all lawful users are able to exercise their rights to the full.

A further object of the agreement might be to develop and implement good environmental practice amongst users to ensure that the river is managed in an environmentally friendly and sustainable way.

3. Names of Parties to the Agreement

This should be a full account of who is party to the agreement. It should certainly contain a full list of riparian owners, and should list all those with identifiable legal interests in the water. Where there are many such owners, it is advisable (and may even be possible) to have a representative or agent. Consideration should also be given to the identity of the users. Most existing agreements are with canoe clubs, but can include their guests. However, this is not suitable if there is to be non-club access. In this case, users may be represented by a local authority, a government agency, or a separate legal body, such as an Industrial and Provident Society. In addition, in some agreements other parties may be involved, such as the Environment Agency, English Nature or Sport England. In all cases, contact names, addresses and telephone numbers should be included for all parties, as an appendix to the agreement.

- Riparian owners
- Fisheries owners
- Agricultural and other tenants (including sporting) with land adjacent to the water
- Owners of other interests in the water and banksides
- The agent representing owners
- Canoe Clubs and/or individual canoeists
- Local Authorities/Government Agencies, etc (representing users)
- A trust or Industrial and Provident Society (IPS) (representing users)

- Other interests (including grant awarding bodies)

[Note: Appendix 1: Contact details for all parties to the agreement]

4. Date of Commencement and Duration of the Agreement

It is clearly important for all parties to know when the agreement starts, how long it is for and how it is reviewed and terminated. Most agreements will be for a fixed term of years (three years is felt to be a suitable term), although it is possible to negotiate annual agreements. In the more complex cases, particularly where an IPS or other trust has been established, longer terms are desirable. These can have break or review clauses, and can also make provision for renewal or extension of the agreement subject to certain conditions being met. All agreements should have express terms for termination. This could be by effluxion of time, or it could involve the owners serving notice on the users. In addition, the owners should reserve the right to terminate if the principal terms of the agreement are broken.

Example:

This agreement commences on 1st January 2004 for a term of three years. Unless extended, the agreement will terminate without notice on the last day of December 2007. Should the parties wish, the agreement can be extended for subsequent periods of three years upon written confirmation from all parties at least three months prior to the termination date. Formal reviews of the agreement will take place at the end of the first 6 and 12 months, and annually thereafter.

All parties reserve the right to terminate the agreement upon appropriate written notice on the following grounds:

- Failure of the dispute resolution procedure, once invoked, to secure a suitable basis for continuing the agreement (see clause 17 below);
- Direction of a government agency or other body, due to environmental or other impacts;

5. Description of the Resource

The section of river to which the agreement applies should be described fully in writing, with an accompanying annotated map. If the stretch of river covered by an agreement joins a public right of navigation, this should be highlighted, especially if the physical boundaries are unclear or uncertain. The description should also include details of all access and egress points, together with any restrictions applying to them. Parking facilities should be identified, as should suitable changing areas or facilities.

Particular attention should be given to highlighting the arrangements for access to specific locations. These would include portage around weirs and other obstructions,

areas suitable for instructing beginners, areas suitable for white water paddling and areas of bankside available for resting, picnics and camping.

All nature conservation and other environmental information should be included in the description, particularly where there is potential for it to be affected by canoe activity. It is possible that some areas of the river and its surroundings will be out of bounds for canoeing at some or all times of the year (spawning and nesting grounds at the relevant times of year, for example).

Example:

This agreement covers the River X, from the XX Bridge downstream to the tidal limit (see attached map, Appendix 2). Normally, canoeists will have access to the entire length of river covered by this agreement, subject to the following restrictions:

- No canoeing above Bridge Y during the spawning and nesting seasons (precise dates to be advised by the River Warden and posted locally);
- No canoeing on any part of the river when the water level is below x metres or above y metres on the marker at XX Bridge;
- Under no circumstances should canoeists use fish races or other structures designed exclusively for fish management;

Except in the case of genuine emergencies, canoeists are only permitted access to and egress from the river at the specific locations identified on the map. In addition, canoeists may land at the other locations set out on the map solely for the purposes identified. These may include rest, picnicking or camping. In all cases, canoeists must remain within the designated areas. Parking and limited changing facilities have been provided at the access and egress points. Under no circumstances should canoeists leave their vehicles other than in these designated or other public car parks, nor should they change anywhere other than in the facilities provided, or completely out of sight of the public.

6. Record of the Agreement

It should be agreed by all parties that the agreement is in writing and is signed by all of them. A note should be made of where the principal copy is kept, who can inspect it and on what basis. A process should also be agreed for amending the agreement.

7. Management of the Agreement

All the parties agree to appoint a management committee to oversee the operation of the agreement. The legal constitution of this committee depends upon the type of agreement reached, but should normally comprise a chair, secretary and treasurer, as well as other members. Depending upon the circumstances, the committee may appoint a manager to oversee the use of the river, and may also appoint existing

owners and tenants and their agents and bailiffs to the role of wardens or canoe bailiffs. It is the duty of the committee and its appointees to ensure that the agreement is adhered to by all parties and to order off any canoeists who do not comply.

It is also the duty of the committee to ensure that periodic risk assessments are undertaken and their findings addressed in full. The nature of the assessments and their frequency should be determined in association with the third party insurers of the land and riparian rights holders. The committee should ensure that adequate insurance cover is purchased to cover the liabilities of all the parties to the agreement. In addition, provision should be made with the insurers for uninsured users to take out appropriate cover at a premium in addition to their registration and access payments.

8. Rights and obligations of the Parties to the Agreement

- All parties to the agreement acknowledge that there is no public right of navigation on the river (unless otherwise stated in the description above) and that use of the river for canoeing cannot invoke such a right;
- All riparian and fisheries owners and tenants and their agents agree that they will allow canoeists unfettered passage along the river, subject to their compliance with this agreement and code of conduct;
- All riparian and fisheries owners and tenants and their agents agree that they will not knowingly obstruct the course of the river;
- All canoeists acknowledge that they go upon the river by leave of the riparian or fisheries owners and no such use of the river will be used for the assertion of any legal right;
- All parties agree to be bound by the agreement for the duration of its term;
- All parties agree that the consideration paid for canoeing the river constitutes a licence payment that terminates when the canoe is removed from the water;
- All canoes shall be subject to a registration fee (daily, weekly, monthly, annual), and shall display clearly their allotted registration number (note: this relates to canoes, not canoeists). A valid certificate of third party insurance will be required to effect registration. Where this is not available, canoeists should have the opportunity to buy appropriate insurance for a premium in addition to their registration fee;
- Entry onto land adjacent to the river will be considered a trespass unless there is a genuine emergency, or unless express authorisation has been granted (and is shown on the map in Appendix 2);
- Individual canoeists will be responsible for any damage caused to the property of the river owners or the owners of adjoining land;
- All canoeists agree to abide fully with this agreement, including paying the agreed consideration and abiding by the code of conduct set out below. Failure to do so may result in them being ordered off the river by the river warden(s), any of the riparian or fishery owners or their authorised agents;
- All riparian and fisheries owners and tenants must hold appropriate public liability insurance and must take reasonable precautions to mark with warning signs any obstructions or hazards on their land or land under their control, as identified by a risk assessment. A failure to discharge this responsibility will amount to negligence;

- All canoeists must have read and agreed to the following condition:
 1. Canoeing is an assumed risk activity. The degree of risk may be related to factors such as water conditions, the paddler's experience and ability, and to unrecognised hazards in the river channel.
 2. The granting of permission to paddle on this river does not imply that the river is safe nor that the possessor of the permit is competent; each paddler must make their own assessment of the river's dangers before accessing the water.
 3. None of the parties to this agreement, nor their officers, nor any other land or riparian owners can be held responsible for any accident or incident that may result from the granting of permission to canoe under the terms of this access agreement. Permission to canoe is dependent upon the acceptance of this condition.

- All canoeists must be covered by appropriate third party insurance against liability for damage, death or injury.

- Where agreed by the parties, capital investments made to the river to improve canoe access and passage can be subject to compensation payments derived from registration and user fees;

9. Principal Covenants

These covenants set out the conditions under which canoeing can take place. Rather than the legal position set out above, this set of conditions relate to the actual use and management of the river. For example, the agreement may be limited to specific clubs or associations and their guests. Equally, in some cases or circumstances it may be that canoeing and angling at the same time are incompatible. In the former case there will need to be a mechanism for establishing paddlers' rights to be on the river, while in the latter there will need to be provision for sharing the river, by date, time or location. These covenants could form the basis for new bylaws. The provisions might include:

- This agreement applies to any person wishing to canoe the river, provided that they comply in full with this agreement. OR This agreement applies to members of the British Canoe Union (BCU) and its affiliated organisations;

- All canoes on the river should display a registration number identifying their permission to be there;

- Canoeists will not be allowed on the river unless they are wearing the necessary safety gear and display a suitable permit (for example a tag from their helmet denoting that they have paid the relevant fee);

- Canoeists using the water in accordance with the agreement will use their best endeavours to identify any other canoeists who are not, and are under a duty to

notify the appropriate authority (the agreement management committee, BCU, water bailiff, etc), giving the name, address and any other identifying features/characteristics of these users;

- Canoeing will be allowed on the river under the following conditions:
 1. At any time unless specific restrictions apply (such as fishing competitions or fishing-only days);
 2. During the fishing close season (actual dates should be included in the agreement);
 3. When the river is running brown in spate and is unsuitable for fishing (in such cases details should be given of where the spate level is to be measured and how level information can be obtained);
 4. During the fishing season when the fishing is poor (must set out the definition for 'poor fishing' and how this information can be obtained);
 5. On selected days during the fishing season when both canoeing and angling can take place (for example, between 10am and 4pm on the first and third Saturdays of the month);
 6. On specific days during the fishing season (the days should be listed);
 7. Special arrangements for both fishing and canoeing competitions – setting out an agreed number of events per year, their impact and the notice required before holding an event (for example, there will be two open canoe competitions each year, with anglers to be off the river by 10am on the days in question. One months' notice in writing will be given prior to each event).

- There should be a maximum of craft in each group on the water and, on days when angling is taking place, a maximum of groups per hour;

- Consideration must at all times be given to the other users of the river (covering angling and farming interests along the river and canoeists using the river), and the code of conduct must be observed;

10. Emergency Procedures

A procedure for dealing with emergencies should be written into the agreement.

11. Code of Conduct

There are several codes of conduct that could be cited in the agreement. The most common of these are the Sports Council for Wales' Code of Conduct, the BCU's Earning a Welcome code, the Country Code (currently under review), British Waterways' Water Code and the CCPR's National Water Sports Code. A combined and amended version of the BCU and Sports Council for Wales codes is given below:

Before Entering and After Leaving the Water

- Be friendly and polite to local residents;
- Drive slowly with care and consideration;

- Park sensibly without causing any obstruction;
- Be as quiet as possible;
- Unload kit tidily and take all litter home;
- Get changed out of public view;
- Do not go onto private property; if in doubt, ask;
- Avoid wildlife disturbance and environmental damage;
- Be considerate to others;
- Leave no trace of your visit;
- Follow the Country Code

On the Water

- All paddlers must canoe in a safe fashion;
- Think of other people;
- Think of the environment;
- Remain quiet whilst approaching and passing anyone on the river;
- Normally pass behind a wading angler or as directed by the angler;
- Normally pass on the far side of the river from someone fishing from the bank, or as directed by that person;
- During the salmon fishing season, no attempt should be made by canoeists to do anything other than pass straight down the river. They should not attempt to paddle back upstream, especially in fast running waters. If and when it is necessary to stop or to land in an emergency or at one of the approved landing places, keep reasonably still and quiet and in a small area;
- Refuse must not be deposited in the river or on the bank of the river;
- Individual canoeists within a group must keep as close together as possible when passing someone fishing so as to cause that person the minimum interference;
- If in any doubt about where to pass or on any other point, canoe group leaders should make their presence known to those fishing and ask for guidance;
- All river users should do their best to avoid arguments;

12. Consideration

It should be a condition of all formal agreements that a fee is paid to register all canoes for use on the river. This can be for varying lengths of time, to allow for different intensities of use. There could also be variations between the fee paid for rental canoes and for those that are privately owned. Canoe clubs, local authorities and water sports centres (for example) could make block registrations covering their members, clients or users.

In addition to the canoe registration fee, a daily user fee should be levied. Again, provision could be made for season and annual tickets, or for block memberships through clubs, etc. If there are specific sites, for white water canoeing, play boating or slalom for example, an additional fee could be charged, either covering unlimited use, or relating to a time limit.

The level of registration and users fees should be subject to agreement by the management committee and should reflect:

- *the cost of developing and running the agreement in a sustainable manner;*
- *any loss in the value of riparian, land and other rights;*
- *an economic return on any physical or financial capital invested in the scheme.*

It would be good practice to agree a formal review mechanism for adjusting the charges in the light of experience.

In some cases it may be acceptable to substitute the all or part of the fee by the provision of voluntary wardening on an agreed number of days per year to help ensure compliance with the agreement. This type of arrangement might be suitable for a canoe club, or for a local authority with an existing warden service.

13. Arrangements for Compensation

In addition to the fee element relating to any loss of property or other values, there should be provision for one-off compensation payments where land or capital is made available to the scheme, or where, as a result of the scheme, there is a permanent loss in the residual value of those assets.

14. Discipline and Enforcement

A disciplinary code should be agreed, such that any person(s) persistently breaking the agreement could be banned from future participation. This could be by being expelled from the relevant fishing or canoeing club, or by being barred from obtaining a day or other pass to use the river. This is particularly the case where users who are not complying with the agreement have been identified and the relevant authority notified. Failure to notify the relevant authority should also be a disciplinary offence.

In cases where local authorities are party to the agreement, consideration should be given for using bylaws to enforce the agreement. This is particularly relevant in cases where canoeing will predominantly be by day ticket rather than club membership.

15. Dispute Resolution Procedure

The agreement should make reference to a procedure for resolving disputes between parties to the agreement. There are plenty of examples of this, such as the ACAS dispute resolution procedure for small businesses. However, in all cases dispute procedures should include provision for submitting notices to parties who are failing to comply with the agreement. Failure to comply with the notice should trigger the dispute resolution procedure, with a caveat that if the dispute cannot be resolved, the agreement may be terminated (see below).

16. Information

A duty needs to be assigned to the management committee, its officers, or other parties to the agreement to ensure that adequate information about the agreement is made available to all parties. This should include:

- the provision of copies of the agreement and code of conduct to all parties using the river;
- appropriate information about how to gain access to the river, available in print and electronic forms (for distribution through representative bodies, local authorities and tourist information centres and via the internet);
- suitable telephone contacts for different situations, including registration, safety, emergency, regulatory and disciplinary matters;
- the provision and maintenance of suitable signs on the water, both to notify the boundaries of the agreement ('private fishing and canoeing; contact x for information') and to warn of hazards.

In addition, the management committee or other designated party should have the responsibility for maintaining communication with government agencies (especially the Environment Agency and English Nature) and local authorities, to ensure that the potential impacts on the river of new developments or emerging policies are understood and appropriate action taken (including informing other parties to the agreement).

The management committee or other designated party should be responsible for informing users of specific environmental or nature conservation issues, such as temporary restrictions on usage. There should also be provision for more general information, such as the presence of particular species and the actions appropriate to safeguard their environment.

17. Termination of Agreement

There should be specific clauses relating to the procedure for terminating the agreement prior to its contractual conclusion. The termination procedure should be set in motion by the failure of the dispute resolution procedure (see above). Termination should be in writing to all parties and should include an agreed notice period for information to be circulated, etc.

18. Monitoring and Reporting

Provision should be made in the agreement for monitoring key performance indicators, relating to the actual use of the river and the relative success of the agreement in providing improved access for canoeing. These results should be reported annually to the Countryside Agency, which will use the information to develop a databank of good practice in establishing and operating access agreements.

19. Signatories