



**Local Countryside Access Forum
Wednesday 10 March 2004, 7.00 pm**

AGENDA

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**LOCAL COUNTRYSIDE ACCESS FORUM
7 OCTOBER 2003
(7.00 pm – 8.15 pm)**

Present: Diana Pidgeon (Chairman)
David Bertie
Celia Blay
Michael Dyer
Chris Gardner
Cllr Anne Haydon
Michael Hutson
Councillor Iain McCracken
Mark Osman
Peter Radband
Derek Stickler
Caroline Tomalin
Simon Weeks

Also present: Helen Tranter, Head of Countryside, Open Spaces and Heritage
James Dymond, Countryside Research Assistant
Emma Dearsley, Democratic Services Officer
Andrew Fletcher, Rights of Way Officer, Windsor and Maidenhead
Anthony Hurst, Rights of Way Officer, Windsor and Maidenhead

Apologies for absence were received from:
Stuart Tarrant (Vice-chairman)
Robert Bonnie

10. Welcome

In welcoming all to the second meeting of the Chairman briefly explained the background to the establishment of the Forum and its purpose.

11. Minutes

The minutes of the last meeting of the Local Countryside Access Forum held on 27 March 2003, were approved as a correct record.

Members noted that Sue Cload had retired from the Forum.

12. National Countryside Access Forum (Item 4)

The Forum received details regarding the National Countryside Access Forum, which advised the Countryside Agency on the development of policy and procedures to implement access legislation. It was established in July 1999 and was a useful way of finding consensus and resolving differences between interests.

NCAF wanted to improve links with Local Access Forums and now had a web-site for people to access. The web address was www.countryside.gov.uk/reception/meetingspasaccess.asp.

13. **Access Land Update (Item 5)**

The Forum was informed that the Countryside Agency was preparing maps of all open country and registered common land in England. This was a statutory duty under the Countryside and Rights of Way Act 2000.

The Countryside Agency had divided the country into eight mapping areas and a public consultation had taken place on each of the draft maps. Following the consultation, those with a legal interest in the land had a chance to appeal to the Secretary of State.

Members were presented with a provisional map of Bracknell Forest. The area of open country on the map was believed to be Barossa although it was unclear. It was suggested that officers spoke to the MOD to ask whether this area was not for public access.

14. **Rights of Way Improvement Plans (ROWIP)**

The Forum was reminded that Local Highways Authorities (LHAs) were required to prepare and publish a ROWIP for improving rights of way, in the light of the needs of the public, including disabled people.

The role of ROWIPs was to be the primary framework by which LHAs would identify the changes to be made, through management and improvement, to its local rights of way network in order to meet the Government's aim of better provision for walkers, cyclists, equestrians and people with mobility problems.

The Forum was informed that the Council had begun to look at the format and people to consult. Members were asked to contact Helen Tranter, the Head of Open Spaces, Countryside and Heritage, with any ideas or issues they would like to be included in the plans.

15. **Devil's Highway (Crowthorne RUPP 12) Traffic Regulation Order Review (Item 7)**

At its last meeting, the Forum had received a report relating to the five-year review of the above Traffic Regulation Order (TRO). The TRO had been subjected to public consultation and members received the results.

Councillor McCracken, the Executive Member for Leisure had considered the review report and the result of the public consultation. He had come to the conclusion that no action should be taken to remove or amend the existing TRP on the Devils Highway. He reminded the Forum that retaining the TRO reinforced the council's duty, under Section 122 of the Road Traffic Regulation Act 1984 to secure the expeditious, convenient and safe movement of all traffic, including walkers, cyclists and horse-riders. This would conform to the original reasons for establishing the Order. Furthermore, retaining the TRO would allow the Police to maintain powers to confiscate vehicles if they were driven dangerously. The TRO did, however, exclude the possibility of access to Butter Hill, a site for organised off-road motorcycling, but it was possible that alternative access routes could be created parallel to the Devils Highway.

The Forum discussed the options available to them. In particular, the possibility of allowing a controlled access to the site by means of a permit system or by granting other private rights.

The Forum noted that the existing status of the Devil's Highway as a Road Used as a Public Path (RUPP) would change to a Restricted Byway under the new legislation being introduced as part of the Countryside and Rights of Way Act 2000. The implication of this was that the public would have a right of way on foot, horseback or leading a horse and a right for vehicles other than mechanically propelled vehicles. The TRO prohibited motorised vehicles and so was likely to become redundant, although no action would need to be taken on the matter in the near future.

The Forum commented on the action police could take following complaints of incidences of dangerous driving. Members asked whether the powers of the police in such situations could be clarified. Peter Radband circulated a police notice that was placed by Welsh local authorities in areas where they had experienced problems. The Forum felt that this was a good way to raise awareness amongst the riders and suggested that it be investigated further.

The Forum agreed that comments and suggestions be referred to the Executive Member for Emergency Services and Community Safety, Councillor North.

16. **Quiet Lanes**

Helen Tranter reported on behalf of Robert Bonney, about lanes and minor roads in the Borough which had become increasingly more dangerous since drivers used them as 'rat runs'. Members noted that fatal vehicle crashes occurred more frequently on rural roads and in 2002, 60% of all fatalities had occurred on them.

The Forum discussed what could be done to raise awareness of 'quiet roads'. Robert Bonney had suggested that the Forum contact the Parish Councils with its concerns. Furthermore, the Council should identify 'quiet lane' priorities and organise a clear consultation programme for their implementation. Members agreed that it was difficult to make many changes, and their best option was to make speeding restrictions along certain roads, such as Brazier lane.

It was agreed that members would email James Dymond, the Countryside Research Assistant, with roads they felt required speed restrictions. These would be forwarded to the Highways Department and a report brought back to the next meeting.

17. **Bridleways and Equestrian routes**

Caroline Tomalin reported to the Forum about suitable bridleways in the Borough and possible schemes to use private land for riding.

There had been discussion about linking routes together, in particular, Priory lane to Watersplash Lane. Members suggested that these proposals should be forwarded to Helen Tranter suggested for the Improvement Plans. Another area highlighted was Newell Green and it was agreed that officers would check that adequate signage was in the area indicating a bridleway.

The Forum discussed using private land for riding on a 'pay as you use' basis. However, farmers disliked the idea as there was no insurance for the riders and would cost money to set aside land and 'police' the scheme. A scheme was run for horse riders at the Look Out but the Crown Estate carried its own liability insurance.

18. Items for Next Meeting Agenda

The following matters were identified for inclusion on the agenda in respect of the Forum's next meeting:

- Rights of Way Improvement Plan
- Access Land Update – Feedback from MOD
- Devil's Highway (Crowthorne RUPP 12) – Feedback
- Quiet Lanes – Feedback from Highways Department
- Presentation on Borough Transport Plan; and
- Training / development programmes.

19. Any Other Business

Membership

Members were informed that officers had continued to seek a person with a disability to become a co-opted member of the Forum.

Blackwater Valley Footpath

Simon Weeks reported that he had been approached by users of the Blackwater footpath who were concerned that the footpath, which was not supposed to be used as a bridleway, was still being used as such. It was causing particular problems for people in wheelchairs. The Head of Countryside, Open Spaces and Heritage noted the report and would look into the issue.

20. Date of Next Meeting

The Forum was informed that the next meeting would be held in March 2004. The date and time of the next meeting would be circulated to members shortly.



Rights of Way Improvement Plans

Introduction and Background Information

(Adapted from Rights of Way Improvement Plans - Statutory Guidance)

Introduction

Sections 60 to 62 of the Countryside and Rights of Way Act 2000 (CROW) require local highway authorities to prepare and publish Rights of Way Improvement Plans (ROWIPs) for improving rights of way in their areas, taking into account the needs of the public including disabled people.

These provisions came into effect on 21 November 2002, with the first ROWIPs required to be prepared within five years. Plans must then be assessed and reviewed not more than 10 years after publication and at maximum intervals of 10 years thereafter.

Role

ROWIPs are intended to be the main way in which local highway authorities will identify the changes to be made, through management and improvement, to their local rights of way network in order to meet the Government's aim of better provision for walkers, cyclists, equestrians and people with mobility problems.

The Plan

In producing their ROWIP, authorities must consider:

- The extent to which local rights of way meet the present and likely future needs of the public;
- The opportunities provided by local rights of way for exercise and other forms of open-air recreation and the enjoyment of their area;
- The accessibility of local rights of way to blind or partially sighted persons and others with mobility problems.

A statement of the action proposed for the management and improvement of local rights of way networks should be included.

Arrangements should be established for monitoring, reporting on progress of and implementing ROWIPs.

Further Information

CROW Act 2000:

<http://www.legislation.hmsso.gov.uk/acts/acts2000/20000037.htm>

Rights of Way Improvement Plans - Statutory Guidance: (133kb)

<http://www.defra.gov.uk/wildlife-countryside/cl/rowip/rowip.pdf>

DEFRA Guidance on ROWIPs:

<http://www.defra.gov.uk/wildlife-countryside/cl/publiccrow.htm#rowplans>

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RIGHTS OF WAY IMPROVEMENT PLAN

Project Plan



	Task	Timescale
1.	Preparation	
1.1	Establish organisational links, steering groups, inform LCAF etc	<i>March 2004 onwards</i>
1.2	Establish system for monitoring progress	<i>March 2004 onwards</i>
2.	Information Gathering	
2.1	Research and describe needs of different users / potential users <ul style="list-style-type: none"> • <i>Existing research</i> • <i>Consultation</i> • <i>Assessment</i> 	<i>By late Sept 2004</i>
2.2	Research and describe wider interests relating to ROW <ul style="list-style-type: none"> • <i>Existing policies and strategies</i> • <i>Consultation</i> • <i>Assessment</i> 	
2.3	Research and describe current route provision <ul style="list-style-type: none"> • <i>Existing research & surveys</i> • <i>Analysis using definitive map, GIS system</i> • <i>Consideration of permissive routes & other related networks</i> • <i>Consultation</i> • <i>Assessment</i> 	
2.4	Research and describe local use and demand (& suggestions) <ul style="list-style-type: none"> • <i>Existing research & surveys</i> • <i>Consultation</i> • <i>Assessment</i> 	
3.0	Evaluation	
3.1	Consider adequacy of current network <ul style="list-style-type: none"> • <i>Based on analysis & consultation results</i> 	<i>By March 2005</i>
3.2	Consider suggestions & ideas for new provision <ul style="list-style-type: none"> • <i>Especially where inadequacy highlighted</i> 	
3.3	Consult on results of evaluation & amend if necessary	
4.0	Plan for action	
4.1	Decide on action based on evaluation outcome <ul style="list-style-type: none"> • <i>Proposed actions</i> 	<i>By Sept 2005</i>

4.2	Identify 'quick wins' <ul style="list-style-type: none"> • <i>Estimated costs</i> • <i>Key organisations involved</i> • <i>Timescale</i> 	
4.3	Plan for other actions <ul style="list-style-type: none"> • <i>Estimated costs</i> • <i>Key organisations involved</i> • <i>Timescale</i> 	
5.0	Publication	
5.1	Publicise and publish draft plan	<i>March 2006</i>
5.2	Consult and amend	
5.3	Confirm with LAF and publish final plan	
5.4	Integrate with other planning / delivery documents <ul style="list-style-type: none"> • <i>E.g. Local Transport Plan review</i> 	
6.0	Implementation, monitoring & review <ul style="list-style-type: none"> • <i>E.g. annual ROW report</i> • <i>E.g. Local Access Forum</i> 	<i>March 2006 onwards</i>

Use of mechanically propelled vehicles on Rights of Way

Consultation document

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Further copies of this publication are available from:

Defra Publications
Admail 6000
London
SW1A 2XX
Tel: 08459 556000

This document is also available on the Defra website.

Published by the Department for Environment, Food and Rural Affairs. Printed in the UK, November 2003, on material containing 80% post-consumer waste and 20% Totally Chlorine Free virgin pulp.

Product code PB 8923

Foreword

As Rural Affairs Minister, I have been approached by many individuals and organisations who are deeply concerned about problems caused by the use of mechanically propelled vehicles on rights of way and in the wider countryside. I share these concerns, having seen for myself examples of damage to fragile tracks and other aspects of our natural and cultural heritage in various areas of the country. There is considerable concern about behaviour that causes distress to others seeking quiet enjoyment of the countryside.

Because of this I have resolved to take a fresh look at the whole issue of the use of vehicles on rights of way and in the wider countryside and this paper sets out some proposals for dealing with the problems that can arise from that use. In doing so I am seeking to achieve the right balance between the interests of the various organisations and individuals concerned and the interests of maintaining the tranquillity and conservation value of the countryside.

I am aware that many people are awaiting the implementation of section 34A of the Road Traffic Act 1988, in order to tackle the illegal and irresponsible use of mechanically propelled vehicles. Unfortunately, careful consideration of legal advice leads to the inescapable fact that we cannot implement section 34A, as this paper explains. However, there are already powers to deal with vehicle misuse, which can often be successful if they are used effectively. This paper sets out those existing powers and points to examples of good practice in applying them.

I do not think that it makes sense that historic evidence of use by horse drawn vehicles or dedications for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles. Those who suffer from vehicle misuse find this incomprehensible and in this paper we offer new proposals that are intended address what many have come to view as the inappropriate and unsustainable way in which vehicular rights are acquired and claimed on rights of way.

Our policy aim is to ensure that any historic evidence or use dating from a time when it could not have been envisaged that the way would be used by the sort of mechanically propelled vehicles we have today, should only enable that way to be recorded as a right of way for vehicles that are not mechanically propelled. We believe the new category of “restricted byway” provides this opportunity.

I hope that responsible users of mechanically propelled vehicles will welcome the intention to promote better enforcement against uncaring motorists who tarnish their reputation. I will listen carefully to all viewpoints and report back to consultees on the responses we receive.

A handwritten signature in black ink, reading "Jim Michael". The signature is written in a cursive style with a long, sweeping underline.

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1 Overview

- 1.1 This consultation paper sets out the Government's proposals for tackling problems arising from the use of rights of way by mechanically propelled vehicles. During the passage of the Countryside and Rights of Way Act 2000 ('the 2000 Act') through Parliament, the Government responded to substantial concern within and outside both Houses of Parliament about the unlawful use of motor vehicles on certain rights of way. In particular, there was concern about the use of ways shown in the definitive map as footpaths or bridleways and those that will become restricted byways when the relevant provisions of the 2000 Act are commenced.
- 1.2 In the light of these concerns, the Government strengthened the provisions of section 34 of the Road Traffic Act 1988. It did this by transferring the burden of proof relating to the existence or otherwise of vehicular rights from the prosecution to the defence in certain circumstances and extending the scope of the offence to apply to mechanically propelled vehicles. It also inserted section 34A into the 1988 Act. Section 34A sets out the categories of vehicular users who are able to defend themselves when charged with riding or driving on ways recorded in the definitive map as footpaths, bridleways (and restricted byways). People falling outside these types are not able to offer a defence even where they believe they could prove they have the right to ride or drive on the way.
- 1.3 Since the passage of the 2000 Act, the Government has developed its thinking on the use of vehicles in the countryside. It has encountered difficulties in seeking to implement section 34A, which it believes cannot be overcome. Nevertheless, it appreciates the need for action and that it should bring forward alternative proposals.
- 1.4 This paper describes an alternative, co-ordinated approach, which involves better information about, and the enforcement of, existing legislation to control motor vehicle use. It also describes new proposals that build on the Countryside and Rights of Way Act 2000. These new proposals are designed to clarify what vehicular rights exist over the rights of way network in England and Wales.

2 Background

- 2.1 Section 34(1) of the Road Traffic Act 1988 provides that anyone driving a mechanically propelled vehicle off-road or on a road that is a footpath, bridleway or restricted byway without lawful authority is guilty of an offence. Until 30 January 2001, the burden of proving that vehicular rights did not exist over the way in question rested with the prosecution. This was an onerous burden that often frustrated the enforcement of section 34. However, the Government amended section 34(2) through the Countryside and Rights of Way Act 2000 to create a presumption that a way shown in a definitive map and statement as a footpath, bridleway or restricted byway is a way of the kind shown. This had the effect of putting the burden of proof that vehicular

rights exist on a right of way on the defendant. The 2000 Act also extended section 34 to cover all mechanically propelled vehicles.

- 2.2 Parliament, however, pressed for further change. There was strong support from all parties to make driving, without lawful authority, on a way shown in a definitive map as a footpath, bridleway or restricted byway an offence of strict liability, regardless of whether higher unrecorded rights existed. This would have meant people charged with an offence would not have been able to bring forward evidence to prove that they were exercising public vehicular rights. The Government considered this unacceptable for a number of reasons. For example, it would have particularly prejudiced landowners and occupiers who rely on unrecorded rights to gain vehicular access to their homes or other property.
- 2.3 Instead, the Government introduced a modified version of this offence that, through section 34A of the Road Traffic Act, allowed a defence to be raised in limited circumstances.

3 Section 34A – the ‘irrebuttable presumption’

- 3.1 Section 34A sets out the categories of drivers who are able to put forward a defence that public vehicular rights exist. These categories are; a person with an interest in any land; a lawful visitor to any land and (in either case) that the driving was reasonably necessary for him to obtain access to that land; or where it was reasonably necessary for him to drive the vehicle for the purposes of any business, trade or profession. Section 34A(1)(b) provides for regulations to be made by the Secretary of State prescribing further circumstances in which an individual could put forward a defence.
- 3.2 Where the defendant does not fall within one of these categories (or any others that may be specified in regulations), the presumption that a footpath, bridleway or restricted byway is to be taken to be a way of the kind shown in the definitive map unless the contrary is proved cannot be rebutted i.e. guilt is assumed with no opportunity to produce evidence to prove otherwise. This creates what is termed an ‘irrebuttable presumption’.
- 3.3 We have concluded, however, that section 34A cannot be implemented in its present form as it unfairly penalises users who have a right to use vehicles even though the right is not recorded in the definitive map. This is incompatible with Article 6(2) of the European Convention on Human Rights, which requires the presumption of innocence in criminal trials until guilt is proven.
- 3.4 **After further, careful consideration, the Government has concluded that section 34A is incompatible with Article 6(2) of the European Convention on Human Rights, which requires the presumption of innocence in criminal trials until guilt is proven. The Government intends to bring forward legislation to repeal section 34A.**

4 The way forward

- 4.1 The decision not to implement section 34A in no way undermines the Government's resolve to tackle problems arising from the use of rights of way by mechanically propelled vehicles. We recognise that action is needed. But whilst the focus of sections 34 and 34A is on tackling a certain type of use, it is increasingly evident that this is only one element of a much wider problem of damage to rights of way by vehicles. We have concluded, therefore, that we should take a fresh look at existing powers and possible new options. In doing so we are seeking to achieve the right balance between the interests of the various organisations and individuals concerned, and the interests of maintaining the tranquillity and conservation value of the countryside.
- 4.2 We intend to combine the better enforcement of existing legislation and management of vehicles with new legislation that gives everyone certainty about the public vehicular rights that exist. We also intend to remove the unsuitable and unsustainable approach that results in modern, mechanically propelled vehicles exercising rights, which were established in the days of horse drawn vehicles.

5 Better co-ordination and enforcement

- 5.1 Where there is misuse or illegal use of rights of way, enforcement of existing provisions is key. There must be a clear and consistent message to perpetrators that swift and effective action will be taken.
- 5.2 Stronger co-ordination is needed at a local level. There is a core role for the Crime and Disorder Reduction Partnerships (CDRPs), which are required to produce comprehensive strategies to deal with locally identified crime and disorder problems¹. The police should set local enforcement standards with assistance from local authorities and the countryside agencies and support from local people and rights of way users.
- 5.3 Recent research has shown that many of those involved in enforcement continue to believe that it is difficult to secure a conviction under section 34 because either the prosecution must prove that vehicular rights do not exist on a particular way or certain categories of vehicles (for example quad bikes and "off-road bikes") do not fall within the scope of the provision. They are unaware of the significant strengthening of section 34 effected by the 2000 Act. Nor are they aware of other powers available to the police.

¹ The Crime and Disorder Act 1998 provides for the establishment, by local authorities and the police, of crime reduction partnerships (also known as Community Safety Partnerships) in all local authority areas to coordinate action locally.

Proposal 1

We will develop a strategy to disseminate and better inform the police, local authorities, the courts and others about the extensive powers and penalties already available for dealing with vehicles using rights of way illegally, anti-socially, or, in sensitive areas, harmfully.

As a first step, we will be issuing a Departmental Circular shortly covering the use of the powers in paragraphs 6.1-7.5 below, with particular reference to encouraging the better understanding and appropriate use of traffic regulation orders.

6 The powers available - offences under the Road Traffic Act 1988

6.1 *Carrying more than one passenger on a motorcycle - section 23(1) and (3)*
Not more than one person in addition to the driver may be carried on a motor bicycle.

6.2 *Promoting unauthorised motor vehicle trials on a footpath or bridleway – section 33*
Section 33 requires that authorisation must be obtained from the local authority before taking part in any trial of any description between motor vehicles on a footpath or bridleway. (We intend to extend this provision to include restricted byways through regulations to be made under section 52 of the Countryside and Rights of Way Act.) It is an offence under s33 (3) to promote or take part in such an event without authorisation or to contravene the condition attached to any authorisation.

6.3 *Prohibition of driving mechanically propelled vehicles elsewhere than on roads - section 34*
Section 34(1) provides that anyone driving a mechanically propelled vehicle off-road or on a road that is a footpath, bridleway or restricted byway without lawful authority is guilty of an offence. Section 34(2) provides that where a way is shown in the definitive map as a footpath, bridleway or restricted byway, it is presumed to carry only the rights attached to ways of that kind unless the contrary is proved. The burden of proving that there are public vehicular rights of way rests with the defendant. The prosecution does not have to show that there are no vehicular rights.

6.3.1 The phrase 'mechanically propelled vehicle' has been inserted into section 34 in place of the phrase 'motor vehicle'. Thus those categories of vehicle that fall outside the legal definition of a motor vehicle, such as unregistered or unlicensed scramblers and quad bikes, can be prosecuted under section 34.

6.3.2 Ways shown in the definitive map as roads used as public paths (RUPPs) are not subject to section 34. However, section 34 will apply

to the new category of way - restricted byway – which is replacing RUPPs. Thus around 7940km of the rights of way network will be brought within the scope of section 34.

6.3.3 Offences under section 34 carry a maximum fine of level 3 on the standard scale, which is currently £1000.

6.4 *Driving a motor vehicles otherwise than in accordance with a licence – section 87*

It is an offence for a person to drive on a road (and “road” includes public rights of way) a motor vehicle of any class otherwise than in accordance with a licence authorising that person to drive such a vehicle. It is also an offence to cause or permit another person to drive otherwise than in accordance with a licence.

6.5 *Use of a motor vehicle without third party insurance - section 143*

It is an offence for a person to use a motor vehicle on a road or other public place without third party motor insurance. Similarly it is an offence to cause or permit a person to use a motor vehicle without insurance.

6.6 *Failure to stop a mechanically propelled vehicle when required by a constable - section 163*

A person driving a mechanically propelled vehicle on a road must stop the vehicle on being required to do so by a constable in uniform. A constable in uniform may arrest a person without warrant if he has reasonable cause to suspect that the person has committed an offence under this section.

6.7 *Driver or rider fails to give own and owner's name and address in a public place – section 165(3)*

Section 165(1) requires any of the following persons, on being required by a constable, to give their name and address and the name and address of the owner of the vehicle:

- a person driving a motor vehicle;
- a person whom a constable has cause to believe to have been the driver of a motor vehicle at time when an incident occurred owing to its presence on a road; or
- a person whom a constable has reasonable cause to believe to have committed an offence in relation to the use on a road of a motor vehicle.

7 Other powers available

7.1 *Powers of seizure, disqualification and removal of driving licences*

On 1 January 2003, as a demonstration of the Government's commitment to dealing with antisocial behaviour, the police were given the power to seize vehicles which are being driven in a way which causes or is likely to cause alarm, distress or annoyance. This measure, implemented under sections 59 and 60 of the Police Reform Act 2002, was introduced in response to growing public concern about the anti-social use of vehicles. Where practicable, the police are required to warn the driver before seizing the vehicle, so that he or she has the opportunity to stop the anti-social use.

7.2 Section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 provides courts with a power to disqualify and remove people's driving licences where an offence has been committed and the court considers that this would be an appropriate sanction. The power applies to all offences. The Government's White Paper on anti-social behaviour, *Respect and Responsibility - taking a stand against anti-social behaviour* (March 2003)², made a commitment that the Secretary of State will notify the courts that this power will be available and indicated that this could be a useful sanction for offences under section 34. This power could also be a useful tool in relation to the other offences listed above.

7.3 *Damage within a Site of Special Scientific Interest (SSSI)*

The 2000 Act introduced a third party offence of causing damage to the special features within an area designated as an SSSI. There are 4,112 SSSIs in England and 1,018 in Wales, covering 1,318,274 hectares. English Nature estimate that, in England, around 75% of SSSIs are crossed or abutted by rights of way³. Section 28P(6) of the Wildlife and Countryside Act 1981 provides that any person who, without reasonable excuse, intentionally or recklessly destroys or damages any of the fauna, flora or geological or physiographical features of an SSSI or recklessly disturbs the fauna is liable to a fine up to £20,000 in the magistrates court or an unlimited fine on conviction in a higher court.

7.4 *Traffic Regulation Orders*

Traffic Regulation Orders (TROs) are, generally, made under section 1 of the Road Traffic Regulation Act 1984.⁴ They can restrict or ban all or specified types of users, or restrict use of public rights of way to certain times or certain seasons. TROs can be made for a variety of reasons, including:

- preventing damage to the right of way;
- preventing use by vehicular traffic of a kind that is unsuitable having regard to the character of the way;
- preserving the character of the way in cases in which it is especially suitable for use by people on horse-back or on foot;

² This document can be viewed on the Home Office website at <http://www.official-documents.co.uk/document/cm57/5778/5778.pdf>

³ Based on a quasi-randomised sample of 250 SSSIs.

⁴ Section 14 also provides for the making of temporary orders.

- preserving or improving the amenities of the area through which the way runs; and
- conserving natural beauty, including flora, fauna and geological and physiographical features.

7.5 Whilst TROs have generally been used in respect of rights recorded in the definitive map, we consider that the power in the 1984 Act does not preclude the making of a TRO to regulate vehicular use where vehicular rights are not recorded in the definitive map.

8 Management

8.1 Highway authorities may also use a number of other means to manage the use of mechanically propelled vehicles (and other vehicles and other users) so that they do not cause undue interference with other users and land managers. The Departmental publication *Making the Best of Byways*, published in 1997, provides advice on managing the different sorts of traffic on byways and advocates management measures based on co-operation and agreement. Officials have been working on an updated and revised edition of *Making the Best of Byways* to reflect the latest legislation and developments in management methods. Comments received to this paper and the Government research project looking at the level and impact of legal use of vehicles on byways open to all traffic will both help to inform the final draft.

Proposal 2

We invite views on the revision of the advice and guidance on managing the different sorts of traffic on vehicular rights of way in the publication *Making the Best of Byways* (1997).

We will also publish the results of the research project on the use of byways open to all traffic, which will be used to inform the revision of *Making the Best of Byways*.

8.2 We are aware of a number of authorities that have sought, through different means, to address problems associated with motor vehicles on rights of way and off road. Annex 1 sets out three case studies. Most notably, in the context of the co-ordination and enforcement section of the consultation paper, the first case study describes the impressive work of the Killingbeck Off Road Motorcycle Unit (West Yorkshire Police) which has worked in close partnership with Leeds City Council, maximising the use of existing offences (particularly section 59 of the Police Reform Act 2002).

9 New proposals

- 9.1 A public right of passage may be established at common law by long use; under statute through 20 years' or more continuous use; or through express dedication. Public rights of way have not, generally, been acquired by mechanically propelled vehicles since the Road Traffic Act 1930 made it a criminal offence to drive a motor vehicle on a footpath or bridleway or elsewhere than on a road. A right cannot be acquired through a criminal offence. The Government also considers that, whilst the post-1930 use of a non mechanically propelled vehicle such as a bicycle over a public footpath could be argued to give rise to an inference of dedication for all vehicles, including mechanically propelled vehicles, it is more probable that such use would not give rise to any such inference of dedication, since the law should not countenance the creation of rights where the rights in question would authorise use of a kind prohibited by statute. This is even though the use relied on to establish those rights is not itself prohibited. The law would, however, benefit from clarification on this point.
- 9.2 In practice, while some pre-1930 vehicular rights may have been acquired through motor vehicle use, most will have been acquired through other modes of vehicular transport, most commonly by horse and cart. Similarly, express dedication of rights of way for vehicles will largely have arisen at a time before motor vehicles were in common use.
- 9.3 The new category of right of way – restricted byway – introduced by the 2000 Act carries a right of way on foot; a right of way on horseback or leading a horse; and a right of way for vehicles other than mechanically propelled vehicles. Thus the type of vehicles using these routes will be very similar to those entitled to use routes dedicated for vehicular use before the era of motor vehicles. The Government intends to build on this similarity.
- 9.4 The Government intends to use the category *restricted byway* to enable rights acquired by non-mechanically propelled vehicles to be recorded in the definitive map. It also intends to limit the length of time during which claims for byways open to all traffic can be made based on historic evidence of use by non-mechanically propelled vehicles. After this time, modifications to the definitive map so as to record rights based on evidence of use by non mechanically propelled vehicles will be limited to recording rights which correspond to the nature of that use. As well as reflecting this historical position, these changes will introduce certainty about the rights that can be exercised.

Proposal 3

We propose to introduce legislation to provide that any future use of a footpath or bridleway that would (immediately before the commencement of the relevant new legislation) have given rise to a public right of way for vehicles shall be treated as giving rise to restricted byway rights, but no other public rights of way.

This will prevent any future usage giving rise to claims for public rights of way for mechanically propelled vehicles.

Proposal 4

We propose to introduce legislation, which will make it no longer possible to establish the existence of a byway open to all traffic by reference to historic (pre-commencement) use by, or other evidence relating to, non-mechanically propelled vehicles.

We propose to do this by introducing a cut-off date after which (subject to certain exceptions) any unrecorded rights of way for vehicles shall be recorded as restricted byways in the definitive map and statement.

We propose the cut-off date should be one year from the commencement of the new legislation.

Exceptions

We consider it should be possible to show that the public have a right of way for vehicles where the right arose

(1) by virtue of an express dedication for mechanically propelled vehicles;

(2) by virtue of any enactment authorising use by mechanically propelled vehicles; or

(3) by virtue of any qualifying use by mechanically propelled vehicles⁵.

This means that applications to record byways open to all traffic can continue to be made until the end of 2025 where they are supported by evidence of lawful use by mechanically propelled vehicles.

Proposal 5

We propose that applications for definitive map modification orders (DMMOs) to recognise vehicular rights submitted before the end of the one-year cut off date will be processed to their conclusion. Similarly orders already in progress will be processed to final determination.

We propose to introduce the register of applications⁶ for DMMOs prior to commencing the relevant new legislation.

We do not intend to review or amend the rights attached to ways already shown in the definitive map and statement as byways open to all traffic.

9.5 These proposals do not affect private vehicular rights. But there may be property owners or occupiers who are relying on unrecorded public vehicular

⁵ By 'Qualifying use', we mean any use that would be sufficient to give rise to a right of way for vehicles by prescription at common law or under section 31 of the Highways Act 1980.

⁶ Schedule 5, paragraph 2 of the 2000 Act inserts new section 53B into the Wildlife and Countryside Act 1981, providing for a register of applications made under section 53.

rights to access their property by motor vehicle. Unless these rights are claimed before the one-year cut off date in proposal 4, owners or occupiers would thereafter be prevented from accessing their properties.

Proposal 6

We propose that an easement conferring a private right of way for vehicles for the benefit of an owner or occupier should be recognised where (before the commencement of new legislation) a public right of way has arisen, which would before the one year cut off date have been treated as a right of way for vehicles, and is now being treated as giving rise to restricted byway rights.

- 9.6 Annex 2 sets out an initial regulatory impact assessment on the new proposals.

10 Further options

- 10.1 We expect there to be few applications for definitive map modification orders to show byways open to all traffic after the one year cut off date in proposal 4. The only basis for such applications will be where there is evidence of dedication expressly for or use by mechanically propelled vehicles, which was not an offence under the Road Traffic Act 1988 or its predecessor; and the Highways Act 1980 criteria are met.
- 10.2 We have also considered bringing forward the date from which byways open to all traffic can no longer be recorded in the definitive map (currently 1 January 2026). Given the few rights which are likely to be claimed, we not currently persuaded that there is a case for pursuing this approach. However, the key benefit of an earlier cut off date would be to further bring forward the certainty attached to the definitive map in respect of these rights.

Proposal 7

We invite views on bringing forward the 2026 cut off date under section 56 of the 2000 Act and section 54A of the Wildlife and Countryside Act 1981 for the purposes of recording byways open to all traffic based on evidence of mechanically propelled vehicular use.

Annex 1: Case studies

The case studies below examine the initiatives and practical action being taken in 3 local authority areas to deal with problems associated with motorised use of rights of way and land off road. The studies cover the excellent work of Killingbeck Divisional Off Road Motorcycle Unit (West Yorkshire Police) and Leeds County Council, Derbyshire County Council and Cornwall County Council.

We would welcome any further information from other local and police authorities on initiatives that are planned or in progress to deal with similar motorised use problems, particularly where they involve police enforcement.

1. **Killingbeck Divisional Off Road Motorcycle Unit (West Yorkshire Police) and Leeds County Council**

Killingbeck Off Road Motorcycle Unit was formed in June 2001 to deal with the high volume of complaints about youth nuisance and the illegal use of motorcycles on rights of way and off road, including use in urban alleys and ginnels, sensitive areas such as local nature reserves, and other amenity land. This was causing danger to users, as well as damage to the land.

The Unit consists of two officers dedicated to tackling this problem riding Suzuki DRZ 400 machines which are approved for the role. These machines have been modified and adapted and include video camera recording equipment. The Unit has a comprehensive deployment policy which governs the use of the officers and the machines. They have a multi-agency approach, riding in partnership with Leeds City Council parkwatch officers who provide additional resources when required. The parkwatch officers also continually provide intelligence on offenders seen or stopped by their staff and aid in Police Operations.

Operational procedures of the Unit include:

- High visibility patrol of motorcycle misuse hotspot areas as well as attending calls of abandoned and burnt out vehicles often left in inaccessible locations.
- Use of a mapping system to provide details of hotspot areas for motorcycle misuse, stolen motorcycles and recovered motorcycles. This is updated daily using the internal operations information system, Crime information system, divisional intelligence unit, crime pattern analysis and the reports from members of the public. Patrols can then be targeted in those areas identified.
- Patrolling areas which are inaccessible by normal patrol vehicles, for example, the unit is utilised to provide patrols during divisional operations in urban areas, such as in ginnels.
- Using new police powers under section 59 of Police Reform Act 2002, along with current legislation including section 34 and other offences under the Road Traffic Act 1988.

The results speak for themselves!

- Since the unit was formed over 537 offenders have been dealt with and more than 70 arrests made.
- Since 1st January 2003 over 260 offenders have been warned and seventeen motorcycles seized under section 59.
- Since September 2002 over £40,000 worth of stolen motorcycles have been recovered.
- From a high of 200 complaint calls per month, the average is now around 60.

This unit is a unique approach to the problem and is seen as best practice by other forces as well as other divisions within West Yorkshire Police. It has sought new and innovative ways of tackling illegal motor vehicular use, using many of the wider powers outlined in the enforcement section of this consultation paper. Killingbeck's adoption of a zero tolerance approach, coupled with co-ordinated and proactive use of existing legislation is an exemplar of what can be achieved.

2. Derbyshire County Council

In April 2003 Derbyshire County Council issued the publication, '*Policy For the Management of Motorised Vehicle Use in the Countryside*'. The policy document has been drawn up in an attempt to address conflict regarding the use of motor vehicles in the countryside following extensive consultation with all types of countryside users.

Over recent years walking, cycling and horse riding groups have complained about the increasing use of the Derbyshire countryside by people on motorbikes, quad bikes and 4x4 vehicles. Complaints have centred on the environmental damage and disturbance being caused to the footpaths, vegetation and wildlife by motor vehicles and the consequential loss of amenity and potential threat to public safety.

The aim of the policy statement is to establish a consistent approach to problems by seeking to:

- Ensure routes are correctly identified and maintained for the purpose intended;
- Carry out maintenance work on a priority basis according to available resources;
- Prevent surface damage from motor vehicles through the use of voluntary vehicle restraint agreements or, in more extreme cases, traffic regulation orders which regulate their use; and
- Support and promote responsible driving by recreational motor vehicle groups.

This document demonstrates a strategic approach to dealing with issues at a local level. The Derbyshire Police also recently secured a prosecution under the new section 34 of the Road Traffic Act 1988. Two 4x4 drivers pleaded guilty to driving their vehicles on a bridleway. The amendments made to section 34 of the Road Traffic Act by the Countryside and Rights of Way Act

2000 were partly the result of a high profile case in Derbyshire in the late 1990s, which highlighted the problems of achieving a successful prosecution against illegal use of motorcycles on a bridleway.

3. Cornwall County Council

Following the holding of a Motorcycle Activity Workshop earlier this year, Cornwall County Council's Environment and Heritage Service announced in April that it is to produce a joint venture action plan to help solve the issue of illegal motorcycle use in the countryside.

The aim of the action plan is to consult as many people as possible and to come up with solutions to tackling the illegal use of motorcycles on public rights of way, Mining Heritage Sites, trails and sensitive habitats such as sand dunes.

The venture involves working closely with the police, district and parish councils, landowners, user groups, motorcyclists and trade outlets, businesses, the County Council's Road Safety Unit, Trail Riders Fellowship, youth projects, PANIC (Proper Access Now in Cornwall), English Nature and the National Trust.

The focus is currently on developing and delivering a four-stage action plan as follows:

- 1 Education**
The production, publication and promotion of guidelines, and other associated literature highlighting the legal situation regarding access to the countryside by motorcycles and other motorised vehicles;
- 2 Action**
Identifying enforcement action to deal with unlawful use of off-road vehicles;
- 3 Provision**
Identification and potential provision of appropriate off-road facilities for motorcyclists and other motorised users; and
- 4 Publicity**
Targeted project work in areas of unlawful off-road activity to help educate, inform and involve local people in the management of recreation, access and heritage.

An Awareness Day is being planned for next April involving all the groups mentioned above. Organisers are hoping they will be able to reach a wide range of motorcyclists on their approach and aims.

We shall be following closely the progress of this excellent initiative, particularly the work that is to be taken forward on considering the provision of alternative appropriate areas for off road motorcycle users.

Annex 2: Initial Regulatory Impact Assessment

Summary of conclusions

- 1) It is clear from the Parliamentary debates during the passage of the Countryside and Rights of Way Act 2000, and subsequent occasions when off-road use of mechanically propelled vehicles has been debated, that there is considerable concern about the use of motor vehicles on public rights of way and along routes and over land on which the existence of public vehicular rights is not recorded.
- 2) The Government's consultation paper on the use of mechanically propelled vehicles on rights of way sets out how existing powers to deal with illegal and irresponsible use of such vehicles could be better used. The consultation paper also includes proposals to limit the basis on which new rights of way may be claimed for mechanically propelled vehicles. This regulatory impact assessment is concerned with these proposals.
- 3) Since 1949, public rights of way have been recorded on the definitive map as footpaths, bridleways, roads used as public paths and byways open to all traffic. Rights of way are added to the definitive map as research reveals historic, but as yet unrecorded, rights. Public vehicular rights were usually dedicated for horse-drawn vehicles, as the internal combustion engine had not yet been invented. But all classes of vehicle are entitled to use byways open to all traffic.
- 4) This entitlement is at odds with the historic use of these ways. Under Proposal 4, the key proposal, historic dedications for vehicles and historic evidence of vehicular use would give rise to restricted byways and not byways open to all traffic. Recording of other rights based on historic evidence would remain unchanged, subject to the cut-off provisions set out in sections 53 to 56 of the Countryside and Rights of Way Act 2000. Restricted byways are ways which only vehicles that are not mechanically propelled will be able to use. Thus Proposal 4 provides for ways to be accorded a status on the definitive map that is consistent with their history.
- 5) Proposal 3 will ensure that in future any rights acquired though deemed dedication (i.e. by 20 years use) by vehicles that are not mechanically propelled can give rise only to restricted byways and not byways open to all traffic. Proposal 6 will enable rights of access to property to be preserved where they rely on unrecorded public vehicular rights.
- 6) The benefits of Proposals 3, 4 and 6 are:
 - a) there will be greater certainty about the existence of mechanically propelled vehicle rights, ultimately leading to reduced conflict;
 - b) ways recorded as restricted byways will bear a closer link to their history;
 - c) fewer routes will be used for purposes that may cause undue damage;

- d) there will be cost savings associated with a reduction in the number of applications to record byways open to all traffic on the definitive map (but this would be partially offset by the costs of dealing with applications for restricted byways);
 - e) rights acquired through use by vehicles that are not mechanically propelled will in future be capable of being recorded on the definitive map;
 - f) private rights will be preserved where public rights are not recorded.
- 7) However, there are some costs – albeit for a small minority of users of rights of way. Proposal 4 treats mechanically propelled vehicle users differently from other users of public rights of way. Users of mechanically propelled vehicles will have a year to claim as yet unrecorded historic rights for mechanically propelled vehicles, while other users will have until 2026. Much of this research effort is undertaken by volunteers who then apply to their local authorities for ways to be added to the definitive map. The Countryside Agency’s and Countryside Council for Wales’ Discovering Lost Ways project, which is intended to provide a framework for investigating the existence of unrecorded rights of way before 2026 is not yet underway and so will not be of any help to those interested in researching claims for byways open to all traffic.
- 8) The costs are:
- a) a probable surge of applications before the one-year cut-off date. Local authorities will be under pressure to process applications speedily;
 - b) the possible loss of routes that would have been recorded as byways open to all traffic.

It is also possible that mechanically propelled vehicle users will use, or continue to use, ways illegally. Greater use of existing provisions to manage this use of rights of way may be needed.

Background and definitions

1. Historically, English law recognised only three forms of highway - the footpath, the bridleway (with or without a right to drive animals - a ‘driftway’ or a ‘drove road’) and the carriageway; with only carriageways carrying public vehicular rights. More recently, the law requires that four categories of public rights of way should be shown on the definitive map:

Footpaths over which the right of way is on foot only;

Bridleways over which the right of way is on foot and horseback (although cyclists are also entitled to use these ways subject to certain conditions);

Restricted byways over which the right of way is on foot, horseback, leading a horse and for vehicles that are not mechanically propelled. Restricted byways are replacing roads used as public paths. Rights over roads used as

public paths are uncertain but, in practice, the public is usually able to use them on foot, riding or leading a horse, riding a cycle/motorcycle and driving mechanically propelled and other vehicles;

Byways open to all traffic over which there is a public right of way for mechanically propelled vehicles, but which are mainly used by the public for similar purposes as bridleways and footpaths.

2. The consultation paper is concerned with the last two. There are about 241,500 km of public rights of way in England and Wales, of which 4,470 km are byways open to all traffic and 7,940 km are roads used as public paths (and will be replaced by restricted byways).

Historical background

3. Public right of way status is often established through historical documentary sources but it can also be established on the basis of long use of a route by the public as of right, or under presumed dedication as set out in the Highways Act 1980 section 31.
4. In order to add a byway open to all traffic to the definitive map, there must be evidence of both dedication of a carriageway for use by the public and consideration of the balance of user or the likely balance of use. Byways open to all traffic are very rarely established through user evidence alone because of the possibility, where mechanically propelled vehicles are concerned, of an offence being committed under the Road Traffic Act 1988 section 34. Defra and Planning Inspectorate advice is that byways open to all traffic cannot be added to the definitive map through qualifying use by vehicles that are not mechanically propelled (for example horse-drawn carriages and pedal cycles) although this has not been tested in the courts. This means that there is no mechanism for acquiring byway open to all traffic rights through use by vehicles that are not mechanically propelled.
5. There is currently no mechanism to add restricted byways to the definitive map on the basis of historical evidence or presumed dedication. Restricted byways will be recorded only when ways currently shown as roads used as public paths are reclassified *en bloc* as restricted byways on implementation of section 47 of the Countryside and Rights of Way Act 2000 and when restricted byways are created by local highway authorities under powers to be provided under section 52 of the 2000 Act.

Granting of easements

6. There may be circumstances where vehicular access to property has relied upon the existence of public mechanically propelled vehicle rights along a way that, in the event, are shown to not exist. This could result in some properties becoming inaccessible by mechanically propelled vehicles. The proposals in the consultation paper provide for an easement (that is, a formal private right of access) in certain defined circumstances. An easement operates by granting a right of passage, tied to property, over the property of a third party. Easements are usually recorded in title deeds (or more recently in the Land

Registry) and are expressed in terms of a dominant tenement and a servient tenement. The dominant tenement is the land that benefits from the private right of access and the servient tenement is the land crossed by the private right of access.

Results of the regulatory impact assessment

7. Proposals 1, 2 and 5 do not involve new legislation and so no regulatory impact assessment is needed, as they are not an additional regulatory burden. Nor does the proposal to repeal Road Traffic Act 1988 section 34A. If appropriate, a regulatory impact assessment will be carried out for Proposal 7 when views have been assessed.

Proposal 3

8. Proposal 3 is to introduce legislation *“to provide that any future use of a footpath or bridleway that would (immediately before the commencement of the relevant new legislation) have given rise to a public right of way for vehicles shall be treated as giving rise to restricted byway rights, but no other public rights of way.”*

Problem to be addressed

9. Proposal 3 would allow applications to be made for public rights of way to be recorded as restricted byways on the definitive map where, in the future, evidence of use by vehicles that are not mechanically propelled amounts to deemed dedication on the part of the landowner. As well as allowing new rights to be recorded on the definitive map that would otherwise go unrecorded, this proposal would also remove any ambiguity about whether byway open to all traffic rights can arise through use by vehicles that are not mechanically propelled.

Options

10. An alternative option is to do nothing. This would represent a lost opportunity to record new restricted byway rights.

Risks assessment

11. No risks of injury, of environmental damage, or of perverse effects have been identified.

Business sectors affected

12. Local highway authorities would have to maintain ways appropriate to their restricted byway status that are currently not capable of being recorded on the definitive map. Where there are private mechanically propelled vehicle rights

on a restricted byway, responsibility for maintenance of the route to a standard suitable for mechanically propelled vehicles may rest with those with the private right.

Issues of equity and fairness

13. None.

Costs and benefits

Scale of the issue - unrecorded rights

14. It is not possible to assess the number of restricted byways that might be established through future use of public rights of way by vehicles that are not mechanically propelled. However, the number is likely to be very low.

Benefits

15. Benefits likely to arise from Proposal 3 are the adding of ways to the definitive map that carry rights for users of vehicles that are not mechanically propelled, horse riders and pedestrians. Proposal 3 removes any ambiguity as to whether byway open to all traffic rights can be acquired through use by vehicles that are not mechanically propelled.

Costs

16. Few costs are likely to arise from Proposal 3.

Distributional impacts

17. There are no distributional impacts.

Small firms test and competition assessment

18. No effects on small firms or on competition are expected to arise.

Compliance and enforcement

19. Existing processes for modifying the definitive map can be used, subject to guidance being given to local authorities, Planning Inspectorate and others on what evidence will be required to prove the existence of restricted byway rights.

Monitoring and review

20. The existing monitoring procedure can be used.

Proposal 4

21. Proposal 4 is to introduce legislation to make *“it no longer possible to establish the existence of a byway open to all traffic by reference to historic (pre-commencement) use by, or other evidence relating to, vehicles that are not mechanically propelled.”* This would be done by *“introducing a cut-off date after which (subject to certain exceptions) any unrecorded rights of way for vehicles shall be recorded as restricted byways in the definitive map and statement.”* It is further proposed that the cut-off date will be one year from the commencement of the proposed legislation.
22. Proposal 4 provides for three exceptions. These are to the effect that *“it should be possible to show, in addition to restricted byway rights, the public had a right of way for vehicles where the rights arose:*
 - *by virtue of an express dedication for mechanically propelled vehicles;*
 - *by virtue of any enactment authorising use by mechanically propelled vehicles; or*
 - *by virtue of any qualifying use by mechanically propelled vehicles. This means that applications to record byways open to all traffic can continue to be made until the end of 2025 where they are supported by evidence of lawful use by mechanically-propelled vehicles.”*
23. Qualifying use means any use that would be sufficient to provide evidence of dedication of a right of way for vehicles at common law or under the Highways Act 1980 section 31.
24. Proposal 4 builds on the similarity between types of vehicles entitled to use restricted byways and those using routes dedicated for vehicular use before the age of the internal combustion engine. Other rights – to use these ways on foot or on horseback – are not affected.

Problem to be addressed

25. Evidence contained in historic documents about the existence of public vehicular rights is currently accepted as evidence of dedication for use by all classes of vehicle. Much of this evidence dates from a time before the existence of the internal combustion engine. As a consequence, many public rights of way have been accorded byway open to all traffic status on the basis of user or documentary evidence when, at the time dedication occurred, the kind of mechanically propelled vehicles that would use them today did not exist. Arguably, it is perverse to conclude that express dedication could have been given for a form of vehicular traffic that had not yet been conceived. If so, it is logical to conclude that such dedication must have been only for a public right for horse-drawn vehicles to use the way, rather than the mechanically propelled vehicles that are currently entitled to use them.
26. Currently there is no provision in legislation for recording a “higher than bridleway and lower than mechanically propelled vehicle” right on the definitive map. But proposal 4 will enable them to be recorded as restricted byways.

27. The Discovering Lost Ways project is intended to provide a framework and quality control for research and evidence to accompany definitive map modification order applications, but it is not yet underway. In the meantime, there is no formal framework for researching the existence of unrecorded historic ways. A substantial amount of research is usually needed before an application is made to a local authority for an order to modify the definitive map. Authorities are under a duty to process applications. This research is usually done by volunteers with a particular interest in using the ways discovered. There are more mechanically propelled vehicle users who would research byways open to all traffic than horse drawn carriage drivers or cyclists.
28. Proposal 4 is likely to have two effects as far as applications are concerned. First there will be a rush of applications before the cut-off date. It is possible that some may not be supported by thorough research, but local authorities are under a duty to consider them. Second, some applications for restricted byways, which could be made up until 2026, may not be made because fewer people would have the incentive to undertake the research.
29. Proposal 4 provides for three exceptions. These are where the byway open to all traffic criteria are met and mechanically propelled vehicle rights arose by virtue of:
 - an express dedication of a public right of way for mechanically propelled vehicles; or
 - any enactment authorising use by mechanically propelled vehicles; or
 - any qualifying use by mechanically propelled vehicles.
30. Where these exceptions apply, applications to record byways open to all traffic can continue to be made until 2026. However, ways that were expressly dedicated for use by mechanically propelled vehicles and enactments authorising use by mechanically propelled vehicles (as opposed to vehicles in general) are likely to be rare. Qualifying use by a mechanically propelled vehicle would be use prior to the coming into operation in 1930 of the offence of driving a motor vehicle elsewhere than on a road or a period of use that spans this period where post-1930 use can be taken into account if it lends credence to pre-1930 use. Such instances are also likely to be rare.

Options

31. One option would be to make Proposal 4 have effect on commencement of the legislation. To do so would further foreshorten the time that applications for byways open to all traffic could be made.
32. Another option would be to allow a longer period, of say 5 or 10 years. This, though, would set back the realisation of the benefits associated with Proposal 4. In order to realise these, Proposal 4 should be introduced as soon as reasonably possible.

Risks assessment

Risks of injury

33. An analysis of risks to walkers in the countryside (Asken, 2002) suggested that risks of injury from collision with a vehicle in open countryside are very low. Risks to those on horseback may be more significant: mechanically propelled vehicles can pose a serious risk to horse-riders, although the risk is mainly associated with public roads rather than public rights of way. Nevertheless, the separation of mechanically propelled vehicles from users of vehicles that are not mechanically propelled, horse riders and pedestrians that would result from the introduction of Proposal 4 would tend to reduce rather than increase risks.

Risks of environmental damage

34. The risk of environmental damage is reduced if fewer ways are recorded as byways open to all traffic. Damage may still be inflicted by landowners or others with lawful authority using a route. Evidence emerging from Defra research suggests that such individuals may repair damage that they cause where they benefit from its repair. Volunteers from some formal mechanically propelled vehicle-user groups also repair byways.

Risks of perverse effects

35. The risks of perverse effects are:
- following Royal Assent there might be a surge of spurious or poorly researched byway open to all traffic applications;
 - local authorities may find it difficult to deal with a surge in applications within a reasonable time though their longer-term workload might be reduced;
 - there may be an increase in notices served under Highways Act 1980 section 56 (highways out of repair) but the number of such notices is likely to remain very small.

Business sectors affected

36. The Discovering Lost Ways project will provide for better-researched applications, and should weed out applications that would have little chance of success. At present, local authorities are expecting an increase in applications, supported by research, spread over the next 23 years. They could be affected by Proposal 4 in the short term if a surge in byway open to all traffic applications occurs. However, after the proposed legislation has taken effect, subsequent applications will be for restricted byways, and these are generally likely to be less contentious than byways open to all traffic. The effect is therefore more one of timing and concentration of activity than of additional activity overall and the proposal may well reduce the number of perverse or controversial applications.

Issues of equity and fairness

37. Issues of equity and fairness may be raised:
- mechanically propelled vehicle users may claim that they will be treated differently from other users because the circumstances under which they would be able to make claims to have rights of way recorded would be significantly reduced;
 - applications are mainly made by volunteers who have limited spare time to gather information to support their claims. Volunteers working to record byways open to all traffic, rather than restricted byways, will be constrained by the shorter timescale. On the other hand the proposal seeks to remove a perverse anomaly in the present situation and everyone will benefit from greater clarity. The “year’s grace” offers a cushion to most directly affected.

Costs and benefits

Scale of the issue - unrecorded rights

38. It is difficult to assess the number or length of unrecorded public rights of way for which successful byway open to all traffic claims could be made. Research for the Discovering Lost Ways project (University of Gloucestershire, 2002) suggests that there may be documentary evidence to support claims for around 2,735 km of byway open to all traffic in England and 221 km in Wales. (The Discovering Lost Ways project did not distinguish between ways that, under Proposal 4, would be capable of being recorded as restricted byways rather than byways open to all traffic.) Thus, if there is sufficient evidence, all of the 2,956 km identified by the project could be recorded on the definitive map, but some would be recorded as restricted byway rather than byways open to all traffic.

Scale of the issue - number of mechanically propelled vehicle users

39. It has not been possible to gauge how many recreational off-road drivers there are in England and Wales. The United Kingdom Day Visits Survey 1998 lists activities undertaken by visitors to the countryside, based on a large-scale household survey in Great Britain. As off-road driving is not shown as a separate category, it may be inferred that, in comparison with other activities, it is only undertaken by a very small percentage of the population. One user group representative thought that there are about 15,000 recreational off-road vehicle drivers active in England and Wales, about two-thirds being motorbike riders.

Benefits

40. The key benefit of Proposal 4 is that users, landowners and others will have greater certainty as to mechanically propelled vehicle rights on public rights of way. Other benefits are that:

- a one year cut-off date will mean that the transition process is over quickly;
- the use of ways that are affected by the proposals will be more consistent with their historic use;
- local authorities will know the number of applications to be dealt with and could plan accordingly. At present, many local authorities feel a large measure of uncertainty over the number of and rate at which byway open to all traffic claims will be submitted before the 2026 cut-off date.

Costs

41. Costs of Proposal 4 are:

- that it takes away from mechanically propelled vehicle users the ability to claim rights to use mechanically propelled vehicles based on historic evidence. Mechanically propelled vehicle users may regard this as unfair;
- that local authorities and others (landowners, parish councils, other users) involved in examining whether ways should be recorded on the definitive map will have to deal with byway open to all traffic applications to a shorter timescale and without the benefit of the Discovering Lost Ways framework;

Distributional impacts

42. The effect is one of distribution over time rather than between sectors. It will bring forward the time when costs in making and processing applications will be incurred, but also bring forward the realisation of the benefits associated with the proposals.

Small firms test and competition assessment

43. There are no effects on small firms or on competition.

Compliance and enforcement

44. Existing processes for modifying the definitive map and statement can be used, subject to appropriate guidance being given to local authorities, Planning Inspectorate and others.

Monitoring and review

45. The existing monitoring procedure can be used.

Proposal 6

46. Proposal 6 proposes legislation so that “*an easement conferring a private right of way for vehicles for the benefit of an owner or occupier should be recognised where (before the commencement of new legislation) a public right of way has arisen, which would before the one year cut off date have been treated as a right of way for vehicles, and is now being treated as giving rise to restricted byway rights*”.

Problem to be addressed

47. It is common for property owners to rely on the existence of public rights to gain motor vehicular access to their property. This reliance may be unknowing – i.e. a property owner or occupier may believe that he has a private right where none exists. His use of a way in some cases will rely on the existence (albeit unrecorded) of a public right. If such public rights are not recorded before the Proposal 4 cut-off date, property owners may find themselves without legal motor vehicular access to their properties. As well as the obvious inconvenience this would cause, property values are likely to be reduced.
48. Proposal 6 is intended to ensure that an easement conferring a private right of mechanically propelled vehicle access can be granted in circumstances where, prior to the implementation of Proposal 4, a public right of way would have been recorded as a byway open to all traffic, and is now to be recorded as an restricted byway. Proposal 6 does not provide for the granting of easements along public rights of way that would not have met the current byway open to all traffic criteria.

Options

49. The options are:
- *Do nothing*: the reliance on existence of unrecorded public rights is already widespread and it may be feasible to allow this situation to continue. However, difficulties may arise in future if a landowner were to challenge the exercising of these unrecorded rights. After the Proposal 4 cut-off date, the owner of affected property would have no means of acquiring access rights other than by proving the existence of, or negotiating with the landowner to acquire, a private right.
 - *Use a non-legislative approach*: it may be possible to introduce a framework for determining whether an easement should be granted and how a fair price should be arrived at, although some landowners may not agree to follow the framework. In addition, an approach relying on agreement between the owners of the servient and dominant tenements would not cover situations where there is no one with clear title to the servient tenement. This is, in effect, an extension of the ‘do nothing’ option.

- *Granting easements to all property owners/occupiers:* legislation could be introduced to grant easements to provide access to property for all owners/occupiers who do not have recorded private or public vehicular rights. However, this could well lead to unfair demands on landowners and the development of properties to create a situation where an easement would have to be granted.

50. The approach used in section 68 of CROW 2000 for granting an easement where no public or private rights exist recognises that a payment should be made by the owner/occupier of the dominant tenement to the owner of the servient tenement. However, Proposal 6 provides for an easement to be granted only where public rights fail to be recorded on the definitive map because no application is made before the Proposal 4 cut off date. Since a public right is involved, the issue of compensation does not arise.

Risks assessment

51. No significant issues of public health and safety or environmental effects have been identified. However, Proposal 6 may expose cases where there are in fact no rights of access for mechanically propelled vehicles.

Business sectors affected

52. Landowners will be affected – as owner of either the dominant or servient tenement.

Issues of equity and fairness

53. There could be a period of uncertainty after the cut-off date until all byway open to all traffic applications have been processed. An owner of a servient tenement could stop a property owner from accessing his property even though the application for a byway open to all traffic is ultimately successful.

54. Owners of the servient tenements may feel that they have been deprived of some of their property rights by being forced to confer an easement to a third party. However, because they did not have the right to exclude users before the implementation of Proposal 4, they suffer no loss.

55. It may appear inconsistent to, on the one hand, provide that historic evidence of use of a route by only vehicles that are not mechanically propelled should lead to a way being recorded as an restricted byway rather than a byway open to all traffic and, on the other, to make provision for a private mechanically propelled vehicle right which, had there been no cut-off date, could have continued to be exercised without any need for an easement.

Costs and benefits

Scale of the issue

56. It is impossible to estimate the number of easements that might be granted under Proposal 6.

Benefits

57. Benefits are:
- where the Proposal 6 criteria are met, access to property will be assured;
 - property owners will have greater certainty. Without Proposal 6, they would have to make byway open to all traffic applications before the cut off date in order to be able to access their properties.

Costs

58. Likely costs are:
- there will be a one-off cost of recording easements on title deeds and other documents;
 - implementation of Proposal 4 will not remove the need to examine evidence as to byway open to all traffic status for cases where easements are at issue and there is a dispute as to whether an application for a byway open to all traffic would have been successful if it had been made before the cut off date.

Distributional effects

59. None.

Small firms test and competition assessment

60. No effects on small firms or on competition are expected to arise.

Compliance and enforcement

61. Compliance would be for the individuals concerned (i.e. the owners of the servient and dominant tenements). Enforcement would only become an issue where the existence of a right was disputed. Disputes would be heard in the courts or Lands Tribunal.

Monitoring and review

62. Monitoring the use of this provision would be difficult. There is no central register of easements.

Appendix A : References

Asken Ltd (2002). Advice on Managing Risks to Public Health and Safety on Access Land. Draft report prepared for the Countryside Agency, Countryside Council for Wales and the Forestry Commission.

University of Gloucestershire (2002). Discovering Lost Ways – Phase 1 report for Countryside Agency and Countryside Council for Wales. Countryside Agency, Cheltenham.

Annex 3: Handling the consultation

1. Responses

Please send your response, by 19 March 2004 to:
William Propert-Lewis
Countryside (Recreation and Landscape) Division 5
Department for Environment, Food and Rural Affairs
Zone 1/01
2 The Square
Temple Quay
BRISTOL
BS1 6EB

If you wish to fax your response, please fax it to:
Fax: 0117 372 8587

If you are responding by e-mail, please send your response to:
rights.ofway@defra.gsi.gov.uk

Please send your response using only one of these options.

If you are responding as a representative organisation, please include in your response a summary of the people and organisations which you represent.

2. Copies of responses

In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. The information they contain may also be published in a summary of responses.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, e-mail: defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the library at least 24 hours' notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

If you submit comments in response to this consultation exercise, we may keep your name and address on a list that will be used for future consultation exercises on related issues.

3. Enquiries

Enquiries about the contents of this consultation paper should be made to:
William Propert-Lewis
Countryside (Recreation and Landscape) Division 5
Department for Environment, Food and Rural Affairs
Zone 1/01

2 The Square
Temple Quay
BRISTOL
BS1 6EB
Tel: 0117 372 8379
Fax: 0117 372 8587

4. Further copies of this consultation paper
Requests for further copies of this document should be made, quoting reference **PB 8923** to:
DEFRA Publications
Admail 6000
LONDON
SW1A 2XX
Tel: 0845 9556000
Fax: 020 8957 5012
E-mail: defra@iforcegroup.com

The document is available in both English and Welsh language versions.

Please direct any requests for the document in another format, for example one suitable for people with visual disabilities (large print, Braille, tape etc), to the contact at **3** above.

The consultation paper is also available on the Defra's internet site, at: <http://www.defra.gov.uk/wildlife-countryside/cl/index.htm>, and via <http://www.ukonline.gov.uk>.

We are sending copies of the consultation paper to the main national organisations in England and Wales listed in Annex 4 (and those that responded to the Government's consultation paper on improving rights of way). If you think any other organisation should see the consultation paper, or if you would like more copies, please let us know.

5. Complaints or comments about this consultation paper
The consultation document has been drafted in accordance with the Cabinet Office's code of practice on national public consultations. The code aims to increase the involvement of people and groups in public consultations, minimising the burden it imposes on them, and giving them a proper time — a standard minimum period of twelve weeks — to respond. The code may be viewed on the Cabinet Office's web site at: <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm>

If you have any comments or complaints about this consultation process, other than comments on the consultation document itself, you may wish to take these up with Defra's consultation co-ordinator. He can be contacted as follows:

Lewis Baker
Service Standards Unit
Department for Environment, Food and Rural Affairs
Room 547, Nobel House

LONDON
SW1P 3HX
Tel: 020 7238 5789
Fax: 020 7238 5376
E-mail: lewis.baker@defra.gsi.gov.uk

Annex 4: List of consultees

Local authorities in England and Wales
National Park Authorities in England and Wales
Police authorities in England and Wales
Local Access Forums in England and Wales
Access Association Wales
Access Committee for England
ACES Counties Branch
Action for Blind People
Action with Communities in Rural England
ADAS
All Wales Ethnic Minority Association
All Wheel Drive Club
Amateur Motor Cycle Association
Ancient Monuments Society
Architects & Surveyors Institute
ARROW
Assn of Council Secretaries
Assn of County Planning Officers
Assn of Professional Foresters
Assoc of Community Councils in Rural England
Association of Areas of Outstanding Natural Beauty
Association of British Riding Schools
Association of Chief Police Officers
Association of Classic Trials Clubs
Association of Conservation Officers
Association of Drainage Authorities
Association of Heads of Outdoor Education Centres
Association of Inland Navigation Authorities
Association of Larger Local Councils
Association of London Borough Planning Officers
Association of London Government
Association of Magisterial Officers
Association of Municipal Engineers
Association of National Park Authorities
Association of Professional Foresters
Association of Provincial Stipendiary Magistrates
Association of Rover Clubs
Auto Cycle Union
Automobile Association
BAA PLC
Bampton Society
Black Voluntary Sector Network In Wales
Bridleways & Riders Action Group
British Assoc for Shooting & Conservation
British Assoc of Leisure Parks
British Association of Nature Conservationists
British Canoe Union
British Coal Corporation
British Council of Organisations of Disabled People
British Deer Society
British Driving Society
British Ecological Society
British Equestrian Federation
British Gas Plc
British Holiday & Home Parks Association
British Horse Society
British Horseracing Board
British Motorcyclists Federation
British Mountaineering Council
British Nuclear Fuels PLC
British Off Road Driving Association
British Orienteering Federation
British Ornithologists' Union
British Ports Association
British Property Federation
British Schoolboy Motorcycle Association
British Shooting Sports Council
British Telecom Group Property
British Trust for Conservation Volunteers
British Trust for Ornithology
British Upland Footpath Trust
British Water
British Waterways

British Wildlife Management
 BT PLC
 Business in Sports and Leisure
 Byways & Bridleways Trust
 Canoe-Camping Club
 Caravan Club
 Care for the Wild
 Catholic Education Service
 CCRU
 Central Association Of Agricultural Valuers
 Central Council of Physical Recreation
 Central Science Laboratory
 Centre for Accessible Environments
 CHAR
 Chartered Institute of Environmental Health
 Chartered Institute of Building
 Chemical Industries Assoc Ltd
 Church of England, Archbishops' Council
 Church of England Board of Education
 Churches Conservation Trust
 City of London Conservation Area
 City of London Law Society
 Civic Trust
 Civil Aviation Authority
 Civil Service Motoring Association
 Coastal Heritage Network
 Commission for Architecture and the Built Environment
 Commission for New Towns
 Commission for Racial Equality Wales Office
 Confederation of British Industry
 Construction Industry Council
 Consumers' Association
 Corporation of London
 Council for British Archaeology
 Council for National Parks
 Council for the Protection of Rural England
 Council on Tribunals
 Country Land and Business Association
 Countryside Agency
 Countryside Alliance
 Countryside Alliance Wales
 Countryside Business Group
 Countryside Council for Wales
 Countryside Foundation for Education
 Countryside Planning & Management
 Countryside Recreation Network
 Countryside Restoration Trust
 Countryside Rights Association
 Countrywide Holidays Association
 County Mobility
 County Planning Officers' Society
 Crown Estate Commissioners
 CRS
 CSS
 Cyclists' Touring Club
 Cyngor Gwynedd
 Cyngor Sir Ynys Mon
 Disability Rights Commission
 Disability Wales
 Disabled Drivers Association
 Disabled Off-Road Access
 Disabled Persons Transport Advisory Committee
 District Planning Officers' Society,
 Duchy of Cornwall
 Duke of Edinburgh's Award
 Dwr Cymru
 Earthkind
 Education National Interest Group
 English Golf Union
 English Heritage
 English Historic Towns Forum
 English Nature
 English Partnerships
 English Sports Council
 English Tourist Board
 Environment Agency
 Environment Council
 Environment Trust
 Environmental Investigation Agency
 Environmental Services Association

Exmoor Society
 Face – UK
 Farmers' Union of Wales
 Farming and Rural Conservation Agency
 Farming and Wildlife Advisory Group
 FAVASA
 Federation of Rural Community Councils
 Federation of Small Businesses
 Fieldfare Trust
 Forest Authority
 Forest Enterprise
 Forestry Commission
 Forestry Contracting Association Ltd
 Forestry Industry Committee of Great Britain
 Formby Society
 Forum of People with Disabilities
 Forum of Private Business
 Association
 FPD Savills
 Friends of the Earth
 Friends of the Lake District
 Friends of the Ridgeway
 Friends, Families and Travellers
 Gala Research
 Game Conservancy Trust
 Garden History Society
 Geological Society
 Geologists Association
 Greater London Action on Disability (GLAD)
 Green Base Exchange
 Green Lane Association
 Green Lanes Bridleways Group
 Green Lanes Environmental Action Movement
 Greenpeace
 Guide Association
 Health and Safety Executive
 Highways Agency
 Historic Buildings and Monuments Commission
 for England
 Historic Houses Association
 Horticultural Trades Association
 House Builders Federation
 IFA Association
 Improvement and Development Agency
 Incorporated Society of Valuers & Auctioneers
 Industrial Water Society
 Inland Waterways Association
 Inner London Magistrates' Court Service
 Inst. Of Environmental Management and
 Assessment
 Institute of Chartered Foresters
 Institute of Directors
 Institute of Economic Affairs
 Institute of Highways and Transportation
 Institute of Leisure and Amenity Management
 Institute of Public Rights of Way Officers
 Institution of Civil Engineers
 Institution of Environmental Sciences
 Institution of Water and Environmental
 Management
 International Wildlife Coalition
 ISFTPOWP
 Joint Airports Committee of Local Authorities
 Joint Committee of National Amenity Societies
 Joint Committee on Mobility for Disabled People
 Joint Committee on Mobility of Blind and
 Partially Sighted People
 Joint Nature Conservation Committee
 Joseph Nickerson Heather Foundation
 Justices' Clerks Society
 Land Access and Recreation Association
 Land is Ours
 Land Owners Group
 Landscape Institute
 Law Commission
 Law Society
 League of Venturers
 Living Streets
 Local Authority Valuers Assoc.
 Local Government Association
 Local Government Management Board
 London Ecology Unit

London First
 London Green Belt Council
 London Regional Planning
 London Transport Planning
 London Transport Today
 London Walking Forum
 Long Distance Walkers' Association
 LPGA
 Magistrates' Association
 Marine Conservation Society
 Marine Ecology and Sailing
 Mencap
 Met. Planning Officers' Society
 MFU/LARA
 Mining Association of the UK
 Moorland Association
 Moorland Gamekeepers' Association
 Motor Cycle Industry Association Ltd
 Motorsport Facilities Unit
 Mountain Leader Training Board
 National Access Forum for Wales
 National Farmers' Union Wales
 National Housing and Town Planning
 National Assoc of Local Councils
 National Association of Principal Agricultural
 National Association of Waste Disposal
 Contractors
 National Autograss Sport Association Ltd
 National Caravan Council Ltd
 National Caving Association
 National Council for Metal Detecting
 National Council for Voluntary Organisations
 National Disability Council
 National Farmers' Union
 National Federation of Bridleway Associations
 National Federation of Clay Industries
 National Federation of Housing Associations
 National Forest
 National Gamekeepers' Organisation
 National Governors' Council
 National Grid Company
 National Heritage Memorial Fund
 National Housebuilders Federation
 National House Building Council
 National Joint Utilities Group
 National Playing Fields Assn
 National Power Plc
 National Sheep Association
 National Small Woods Association
 National Society of Allotment and Leisure
 Gardeners Ltd
 National Trust
 National Union of Residents' Assns
 National Urban Forestry Unit
 Open Spaces Society
 Ordnance Survey
 Pathways Trust
 People's Trust for Endangered Species
 Planning Aid for London
 Planning and Environment Bar Association
 Planning Inspectorate
 Planning Officers Society
 Police Federation of England and Wales
 Princes Trust
 PSI
 Quarry Products Association
 RAC Motor Sports Association Ltd
 Radar
 Railtrack
 Ramblers' Association
 Ramblers' Association Wales
 Range Rover Register
 Regional Sports Fora
 Rights of Way Law Review
 Rights of Way Officer Trail Riders Fellowship
 Rights of Way Review Committee
 Rough-Stuff Fellowship
 Royal Agricultural College
 Royal Agricultural Society of England
 Royal Commission on Historic Monuments of
 England
 Royal Commission on Environmental Pollution

Royal Inst. of British Architects	Transport and General Workers Union
Royal Inst. of Chartered Surveyors	Tree Council
Royal Mail Property Holdings	TUA (BBT)
Royal National Institute for the Blind	Twentieth Century Society
Royal National Institute for the Blind Cymru	UK 200 Group
Royal Society for the Prevention of Accidents	UK Environmental Law Association
Royal Society for the Protection of Birds	UK Major Posts
Royal Town Planning Institute	UK Petroleum Industry Association
Royal Veterinary College	UKAEA
RSNC Wildlife Trusts Partnership	Unison
RSPCA	United Kingdom Sports Council
School of Earth Sciences	Vauxhall Off-Road Club
Scout Association	Victorian Society
Seatech Marine	Wales Association of Community and Town Councils
Secondary Heads Association	Wales Council for the Blind
Shooting Sports Trust	Wales Council for the Deaf
Society of County Secretaries	Wales Council for Voluntary Action
Society of County Treasurers	Wales Social Partners Unit
Society of Local Council Clerks	Wales Tourist Board
Society of Trusts and Estates Practitioners	Wales Wildlife and Countryside Link
SPAB	Wales Women's National Coalition
Sportsmans' Association	Walking and Cycling for Health
Standing Conference on Countryside Sports	Water Companies Association
Stone Walling Association of GB	Wildfowl & Wetlands Trust
Strategic Rail Authority	Wildlife and Countryside Link
Sustrans	Wildlife Trusts
Sustrans Cymru	Wildlife Trusts Wales
Surlingham Society	Woodland Trust/Coed Cadw
Tenant Farmers' Association	World Wide Fund for Nature
Thames Planning & Amenities Forum	Young People's Trust for the Environment & Nature Conservation
Town and County Planning Assoc	Youth Hostels Association (England and Wales)
Towpath Action Group	
Trades Union Congress	
Trail Riders Fellowship	Individuals and regional organisations are not listed.
Transport 2000	

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TRESPASS

What Rights of Way Users Can Do...

- The law confers rights to the public to "pass and repass" along rights of way. In doing this, trespass is not committed against the landowner.
- You may also do things regarded as "reasonably incidental" while on a right of way, such as stop for a rest.

What Users Cannot Do...

- Stray from the right of way. If this happens, trespass is committed against the landowner.
- Use the right of way for purposes other than those mentioned above or those for which it is intended.
 - i.e. a cyclist on a footpath (or person carrying or pushing a cycle on a footpath) commits trespass
 - i.e. a person who drives a vehicle along a footpath or bridleway creates trespass
 - *(N.B. these two cases may also constitute the common law criminal offence of public nuisance if the use "prevents the convenient use of the way by passengers" - e.g. causing walkers to have to jump out of the way or churning up the path*

What Landowners Can Do If Trespass Occurs...

- This is a civil wrong (but not a criminal offence).
 - *(N.B. Therefore a notice stating that "Trespassers will be prosecuted" cannot normally be carried out)*
- Civil court (county court or High Court) proceedings following such trespass will therefore seek to compensate the landowner, rather than punish the trespasser.
- In such trespass cases, the law gives the landowner the ability to "eject" the trespasser from his/her land or to seek an injunction against repeat offenders.
- *(However, if more than reasonable force is used to eject a trespasser, the person doing so will commit both a civil wrong and a criminal offence.)*
- Damages sought against a trespasser are assessed so as to compensate for any damage done. If none occurred, a token amount may be awarded.

Liabilities...

- If injury occurs to a user of a right of way when he/she is **off** a right of way without the landowner's permission (express or implied), then he/she is a trespasser and is liable accordingly.

- If injury occurs to a user who has deviated from the public right of way with the landowner's permission or due to an obstruction caused by the landowner, liability is governed by the Occupier's Liability Act 1957. Under this, the user is considered a 'visitor' (a person who is on the premises by the express or implied permission of the landowner) and therefore that user's liability rests with the landowner - "to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there."
- If injury is caused to a user of a right of way by a failure to maintain the way in a proper state of repair, the Highway Authority will be liable.
- If injury is caused to a user from an obstruction caused by the landowner, for example, then that landowner will be liable.
- If injury is caused to a user by the condition of a stile or gate, the landowner is likely to be liable:
 - Highways Act 1980 - Section 146 - imposes a duty on the landowner to maintain any 'stile, gate or other similar structure' across a right of way in a safe condition.
 - Occupier's Liability Act 1957 - as a stile or gate on a highway is not considered to be part of that way, liability concerning it rests with the landowner.

Exceptions to the rules...

- Certain cases exist where bye-laws may make trespass a criminal offence. These may include land owned by the Ministry of Defence or RailTrack, for example.

Designated Access Land

- One way that landowners can reduce their liability towards people on their land is to dedicate their land for public access under the new CROW Act 2000.
- Section 13 of the CROW Act amends the Occupier's Liability Act 1957 so that the liability of landowners to those exercising their access rights is lowered to the same level as owed to trespassers.
- Furthermore, landowners would no longer owe liability to risks arising from natural landscape features such as trees, rivers, streams, ditches or ponds or man-made obstacles such as walls, fences or gates.

Further Information / Sources

Garner, J.F. & Jones, B.L. (1997) *Countryside law*, 3rd Edition, Shaw & Sons Ltd, Kent.

Riddall, J. & Trevelyan, J. (2001) *Rights of way, a guide to law and practice*, 3rd Edition, Open Spaces Society and Ramblers' Association.