

# **Use of mechanically propelled vehicles on Rights of Way**

## **Consultation document**

Department for Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London SW1P 3JR  
Telephone 020 7238 6000  
Website: [www.defra.gov.uk](http://www.defra.gov.uk)

© Crown copyright 2003

Copyright in the typographical arrangement and design rests with the Crown.

This publication (excluding the logo) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright with the title and source of the publication specified.

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 "Steve Michael". The signature is written in a cursive style with a long, sweeping underline.

# Contents

<b>Overview</b>	4
• Background	4
• Section 34A – the ‘irrebuttable presumption’	5
<b>The Way Forward</b>	6
• Better co-ordination and enforcement	6
• The powers available – offences under the Road Traffic Act 1988	7
• Other powers available	9
• Management	10
• New proposals	11
• Further options	13
<b>Annexes</b>	
1. Case studies	14
2. Initial Regulatory Impact Assessment	17
3. Handling the consultation	31
4. List of main national organisations consulted	34

# 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 problems<sup>1</sup>. 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.

---

<sup>1</sup> 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)<sup>2</sup>, 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 way<sup>3</sup>. 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.<sup>4</sup> 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;

---

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

<sup>3</sup> Based on a quasi-randomised sample of 250 SSSIs.

<sup>4</sup> 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 vehicles<sup>5</sup>.**

**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 applications<sup>6</sup> 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

---

<sup>5</sup> 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.

<sup>6</sup> 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 1<sup>st</sup> 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](mailto: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](mailto: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](mailto: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](mailto: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	