Notes & Materials on the Law of Cycling in the Countryside.

This is not intended to be a text book setting down hard law. It is written from a practitioner's perspective and deals with the law and practice of recreational and sporting cycling as it happens in everyday situations.

Comments, criticisms and additional materials are welcomed so that these notes can be regularly updated. Please contact the author via the website below.

All guides to legal matters are vulnerable to error and going out of date. Whilst every care is taken in the preparation of these notes, readers should always take appropriate advice before committing to any course of action.

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Contents.

This contents list will be expanded. There will also be a cases list and a statutes list.

When time permits ....

1. Introduction

The pedal bicycle (with its three- and four-wheeled variants) took off as the plaything of the leisured classes in the last quarter of the 1800s, became the workhorse of the working man and woman after the Great War, fell from favour in the 1960s and 70s, and was born anew when the mountain bike arrived in the early 1980s. As much as it has been the plaything of children and convenient transport to the shops, the bicycle has also provided relatively cheap forms of recreational travel and competitive sport, right from the early days.

The bicycle proper (which term is used throughout these notes unless the context requires otherwise) was born into an age when the governing classes went long distances by train and short distances by horse-drawn vehicle or saddle horse. The pioneer cyclist, or 'wheeler', was sometimes seen as some sort of proto-Hell's Angel, frightening horses and scattering chickens; but many rode out in well-disciplined club groups, in uniform and marshalled by a bugler. From these earliest times the authorities were keen to stamp the imprint of law on cyclists – to bring them to heel and restore the Queen's peace to the car- and tar- free roads of Britain.

The cyclist was and remains largely untroubled by personal regulation: no driving licence or competence test, no age limit, no compulsory insurance or protective clothing, no set alcohol limits. There are laws about careless or dangerous cycling, but these are seldom invoked. The bicycle must meet certain 'construction and use' requirements – particularly in brakes and lights – but there is no MoT test, no vehicle excise duty to pay, and no vehicle registration requirement.

Cyclists can ride their machines on most public roads and some public rights of way. Even if they go where they should not it may not amount to a criminal offence – just a trespass. But there are laws and rules for the cyclist and the cycle, as these notes explain.

What is a bicycle?

Collins Dictionary of 1988 has bicycle as 'A vehicle with a tubular metal frame mounted on two spoked wheels, one behind the other. The rider sits on a saddle, propels the vehicle by means of pedals, and steers with handlebars on the front wheel.' Even in 1988 that was not a particularly valid definition, although it accounted for probably 99% of machines in existence. Bicycles can have non-tubular frames made from plastic composites, disk wheels without spokes, and in the 'recumbent' layout a seat rather than a saddle, with the steering mechanism under the seat. There is no rule that says a pedal cycle must be propelled by foot: hand-cranked machines exist, sometimes used by the disabled. And – to add yet another layer of complication – pedal cycles may be electrically assisted without ceasing, in law, to be pedal cycles.

For once legislation seems to have acknowledged and simplified the situation. Statutes and regulations made under statute tend to use the term 'pedal cycle', regardless of the number of wheels, sometimes being careful to add 'and not being a motorcycle', harking back to the days when motorcycles and (later) mopeds needed pedal power to assist their progress. Perhaps a better definition is:

'A bicycle is a pedal cycle (not being a motor cycle) with two wheels, primarily propelled by the driver using pedals or cranks.'

Similarly , 'A tricycle is a pedal cycle (not being a motor cycle) with three wheels, primarily propelled by the driver using pedals or cranks.

Why say 'driver' and not 'rider' or 'cyclist'? Simply because the law tends to use 'driver' for the person controlling a vehicles. The term goes back to the driving of stock animals and horse-drawn vehicles. This does raise a rather arcane question: is the rear occupant of a tandem (in common parlance 'the stoker') also a 'driver'? He or she supplies independent motive power and often independently controls part of the braking system, but does not steer or choose direction.

A brief history of the pedal cycle

The man generally accepted as the inventor of the pedal bicycle is the Scottish blacksmith Kirkpatrick MacMillan, born at Keir in 1812. The 'hobbyhorse', a primitive machine where the rider straddled and propelled by 'running astride', seems to have been invented soon after (circa 1817) by the Karl von Drais of Germany, so MacMillan may have known about these when, in 1839, he built a bicycle propelled by the rider pushing foot treadles in a back-and-forward motion.

An article in the *Glasgow Argus* in 1842 reports that a Dumfriesshire gentleman had ridden a 'velocipede' (which term was variously applied over the years to hobby horses,

early bicycles, and multi-wheel pedal cycles) from Old Cumnock to Glasgow, where he knocked over a child and was fined five shillings. This may have been MacMillan, or at least one of his machines.

The first 'proper bicycle' was probably the 'boneshaker', common in the 1860s, which evolved into the 'high wheeler', or 'ordinary', now generally remembered as the 'penny-farthing'. This was in widespread use by the mid-1870s, both for social riding and competition (including time-trials on the highway). It was this machine and its adherents that gave rise to the term 'scorching' for fast riding, and provoked widespread outcry about 'machines from Hell'. You think that cyclists sometimes get a bad press today? It is nothing compared to the outcry they caused 125 years ago.

The modern style of bicycle, with equal-size wheels, was originally called the 'safety bicycle' (because it did not tip the rider forward into a 'header' as the ordinary was very prone to do) and was largely the brainchild of James Starley of Coventry. The safety bicycle took off as mass transport after 1889 when John Boyd Dunlop invented, patented and marketed the first practicable pneumatic tyre. By the mid-1890s cycling was hugely popular. The motorcar was nothing more than a spluttering prototype, and the former turnpike roads were still in remarkably good condition, fifty or more years after the railway revolution ended the era of the mail coach in most places.

Surviving guidebooks and magazines from this period show that cyclists travelled huge distances on heavy, single-gear, and often-brakeless machines. One guide to the Lake District warns cyclists that "fitting a brake is advisable" and that they should "learn to distinguish between a thorn hedge and a dry stone wall" for when descents got out of control.

In the early 20th Century the middle classes quickly deserted the bicycle for the motorcycle and motorcar, and the pedal bike became the cheap mass transport of the workingman. Through the 1930s, the war years, and the 1950s, cycling was a 'way of life' recreation for all age groups – but especially young adults – sometimes with gentle political undertones, such as the socialist 'Clarion' cycling clubs and the youth hostel movement. Cheap motor transport in the 1960s dealt a double blow to cycling: ever-busier roads, and the expectation of owning a car or motorcycle while still a teenager. It was the invention of the mountain bike in the late 1970s, with its market-driven popularity boom starting in 1983, that returned cycling to the masses and, ironically, to the middle classes who had deserted to the motor car eighty years earlier; only this time they kept the car and carried the bicycles on a roof or boot rack.


ADVERTISEMENTS.

CYCLING FOR LADIES.

NOW that the Cycling Season has reached its height, MR. PARKIN has, with pleasure, received very satisfactory results respecting his Cycling Outfit which he produced in the early spring. He would, also, respectfully call the attention of ladies to the fact that during the months of June and July he will be prepared to execute all cycling orders at a reduction of 15 per cent. off ordinary prices.

C. Parkin,

Ladies' Cycling Tailor,

141, Northumberland Street,

Newcastle.

TELEGRAMS: "LADIES' TAILOR." NAT. TEL., NO. 1095.

2. Where can bicycles be used lawfully?

There is a right of way for the public with pedal cycles on:

'Public vehicular roads' (generally, public roads as recorded in a highway authority's 'list of streets').

Byways Open to All Traffic (BOAT) (unless prohibited by a traffic regulation order).

Restricted byways (unless prohibited by a traffic regulation order).

Cycle tracks (unless prohibited by a traffic regulation order).

There is a right of way for the public with pedal *bicycles* on:

Public bridleways (unless prohibited by a traffic regulation order or a bylaw).

There is a right of way for the public to push pedal cycles on:

Footways (pavements) (unless prohibited by a traffic regulation order).

There is *arguably* a right of way for the public to push pedal cycles on:

Footpaths (but this has not as yet been clearly established).

There are also local arrangements for general, or restricted, permissive access to:

'Rail trails' (as typically found on parts of the National Cycle Network).

Local and royal parks.

Towpaths.

Forestry Commission roads and trails.

Some statutory access land.

Some urban commons.

3. The early law controlling the use of bicycles.

A bicycle is a vehicle (and a carriage).

The term 'vehicle' is now commonly regarded as applying to cars and other motorised road transport. 'Carriage' is mostly seen as an outdated term, although 'carriageway' is still standard usage, denoting a road for vehicles. The distinction between 'vehicle' and 'carriage' had some limited significance in old highway and road traffic law; but since the courts held that a bicycle is both, the distinction is largely irrelevant. Why does it matter whether or not a bicyle is a 'vehicle'? Today it matters most with regard to where a cyclist may legally go; in pioneer days it was an issue in traffic regulation and in criminal proceedings for dangerous cycling. The courts had to decide whether the laws for horse carriages applied to the new-fangled bicycles, tricycles and velocipedes.

When the bicycle came into use in the middle part of the 19th century, there was no raft of road traffic legislation as exists today. What rules as existed – such as not riding on the shafts of carts, or fixing the width of wheels on carriers' wains – were contained in highway statutes. The principal Act of Parliament in force was the Highway Act, 1835, and this contained a provision (s.72) making it a criminal offence to drive a carriage on a footway – what is now generally called the pavement – and this provision remains in force today. When bicycles came into use that provision was already decades old. The question was asked in the courts 'can the provisions of 1835 apply to a means of transport not even invented when the Act came into effect?' The answer was yes, but it took a while to get sorted out.

The Highways and Locomotives (Amendment) Act, 1878

This Act was one of a series of relatively minor amendments to the main highway legislation of the period: the Highway Act 1835. It dealt with administrative matters such as 'disturnpiking' former turnpike roads, and the consequent increasing importance of county authorities in highway maintenance matters. Another new matter was the increasing use of 'locomotives' on the highway – probably better known these days as traction engines – with their attendant problem of damage to the road surface and drainage systems. The date of the Act is significant. It was the time when the 'boneshaker' had given way to the 'ordinary' and organised club recreational and competitive cycling was taking off in a big way. There was disquiet among the gentry and alarm in the press. How could these speed demons be tamed? S.26 of the Act provided a mechanism:

A county authority may from time to time make, with respect to all or any main roads or other highways … byelaws for all or any of the following; that is to say, (5) For regulating the use of bicycles.

That caused a degree of chaos. Cyclists found it hard to know, as they rode along a road, just what bylaws applied on any particular stretch. It is said (although the author has not been able to confirm) that in some places the bylaws prohibited bicycling altogether. Action was plainly necessary. The new Cyclists' Touring Club (now known just as the CTC) lobbied Parliament for a change in the law, and an opportunity appeared in the Local Government Bill 1888. The crucial clause was proposed by Sir John Donnington MP (a CTC member) and this became a part of the new Act.

The Local Government Act, 1888.

Regulations for Bicycles, etc. S85(1). The provisions of [s.26 of the 1878 Act] in so far as it gives power to any local authority to make byelaws for regulating the use of bicycles, tricycles, velocipedes, and other similar machines, are hereby repealed, and bicycles, tricycles, velocipedes, and other similar machines are hereby declared to be carriages within the meaning of the Highway Acts …

The effect of the Local Government Act, 1888 was to apply those provisions of the Highway Act, 1835 that applied to 'carriages' to include pedal cycles, particularly ss.72 and 78.

S.72: If any person shall willfully ride upon any footpath or causeway by the side of any road, made or set aside for the use or accommodation of foot passengers, or shall willfully drive any … carriage … [they shall be guilty of an offence].

And not just in Britain…

In *Round The World On A Wheel* by John Foster Fraser, first published in 1899, the author recounts a brush with authority in Germany. "We went on. When the road was bad we took to the footpaths. I was wrong, of course, but we felt we could plead the privilege of strangers … The next day we were pounced upon by a helmeted and uniformed gendarme, with a villainous sword dangling between his legs, and a far more villainous pistol stuck in his belt. He was rampantly indignant."

Taylor v. Goodwin [1897] QBD 228.

Taylor was convicted by the justices for furiously driving a carriage on the highway contrary to s.78 of the Highway Act, 1835. On appeal Taylor argued that a bicycle is not a carriage within the meaning of the Act, nor can it be driven in the ordinary meaning of the term, bicycles being unknown when the Act was made. Goodwin argued that the wording of the section applies the offence to 'any sort of carriage' and that a person propelling a bicycle drives it because he guides the machine and regulates its pace. Held by Mellor J: "The justices were correct. It may be that bicycles were unknown at the

time when the Act was passed, but the legislature clearly desired to prohibit the use of any sort of carriage in a manner dangerous to the life or limb of any passenger [Author's note. 'Passenger' here means a traveller or road user, 'taking passage', and not just someone on a carriage or conveyance.] … I think the word carriage is large enough to include a machine such as a bicycle which carries the person who gets upon it, and I think such a person may be said to drive it … The furious driving of a bicycle is clearly within the mischief of the section, and it seems to me to be within the meaning of the words, giving them a reasonable construction."

Lush J: "I am of the same opinion. The mischief intended to be guarded against was the propulsion of any vehicle so as to endanger the lives or limbs of passers by. Although bicycles were unknown at the time when the Act was passed, it is clear that the intention was to use words large enough to comprehend any kind of vehicle which might be propelled at such a speed as to be dangerous."

[See also *Ellis v. Nott Bower* [1896] 60 JP 760, for more on bicycles being vehicles.]

R v. Parker [1895] 59 JP 793.

Parker was indicted on two counts – manslaughter and furious riding – contrary to s.35 of the Offences Against the Person Act, 1861 [which remains in force: see the section on *Traffic offences*.] He had ridden down a hill, without a brake, at night, at an admitted speed of 12mph, with some witnesses estimating 16mph. Parker hit a pedestrian who died from his injuries. Parker offered to plead guilty to the second count and the prosecution dropped the manslaughter charge, although counsel for the prosecution observed that there was little doubt that the facts would sustain a conviction for manslaughter. This was, he said, the first such manslaughter incident involving a cyclist and the Crown did not wish to press the case. *Taylor v. Goodwin* was cited and it was argued that this decision, together with the wording of s.35 of the Offences Against the Person Act 1861, made it clear that a bicycle is both a carriage and a vehicle. Hawkins J held that a bicycle is a vehicle and awarded Parker the lightest available sentence – four months with hard labour.

4. Glossary.

Classes of highway come under the wider area of 'highway law', which also includes maintenance and obstructions. The regulation of persons and vehicles using a highway comes under 'Traffic law'.

This section is relevant to England and Wales only. The situation in Scotland is a little different and rather less clear. The Scottish position is explained separately.

English law (which term covers the law in Wales too,, although nowadays some regulations made by the Welsh Assembly Government can have variations) traditionally recognises three basic forms of highway:

Carriageway – a right of way with vehicles, on horseback, leading a horse, and on foot. Carriageway is now also used in the sense of a 'made up carriageway' — a strip of road specially built for the passage of vehicles. In old legal documents such as inclosure awards the term is usually 'carriage road'.

Bridleway – a right of way on horseback, leading a horse, and on foot. Occasionally: bridle path or bridle road.

Footway – a right of way on foot. 'Footway' is now normally used only to describe the 'pavement' at the side of a carriageway highway, set aside for the use of pedestrians. A highway for pedestrians only is now conventionally called a footpath. The distinction is important.

Over the last 50 years statutory changes to the basic law have introduced new 'sub-classifications' of highway, complicating the picture considerably. The definitive map and statement of public rights of way – the official public record – has definitions of rights of way for its own purposes that are different from those in the Highways Act 1980. There are also terms in common use, used to describe roads, that bear a degree of explanation. It can all get complicated. This glossary sets out the basic terms:

Bridleway. In s.329(1) of the Highways Act 1980:
"bridleway" means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway..

At common law there is no right of way on bridleways for pedal cyclists, but a statutory alteration was made by s.30 of the Countryside Act 1968, which provides that there shall be a right of way for the public on bicycles. This is set out in more detail in 'Bicycles on bridleways.'

Byway Open To All Traffic (BOAT). In s.66(1) of the Wildlife and Countryside Act 1981:
Means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.

Canal Towpath. There is no automatic right of way for cyclists on canal towpaths. Some towpaths are recorded as public bridleways. Some have permissive access arrangements.

Carriageway. In s.329(1) of the Highways Act 1980:
Means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles..

Commons. There is no right to cycle on a common. Commons are not 'public land'. They originated as unenclosed tracts of grazing land where 'commoners' have, from time immemorial, had the right to graze stock, usually alongside the owner's own animals. There are two types of common, rural and urban, although some 'urban commons' are located in wild countryside. There is a specific offence of cycling on an urban common (s.193 of the Law of Property Act 1925). Urban commons are generally regulated by bylaws, and those bylaws sometimes allow some degree of cycle access Most rural and some urban commons have rights of way running across them. These are generally not affected by commons bylaws, but bylaws could be used to prevent bicyclists using bridleways across.

Cycle Track. In s.329(1) of the Highways Act 1980:
Means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988 with or without a right of way on foot..

There is also the Cycle Tracks Act 1984. See the section on 'Cycle tracks'. The whole cycle tracks legal framework is a confusing mess.

Drove road (or drift road). Rights for the passage of stock are presumed to exist on all carriageway highways, and can, according to legal authorities, also be present on some bridleways. This is open to debate. An alternative view is that either all bridleways have public droving rights, or none do; this does not greatly affect the rights of cyclists.

Footpath. In s.329(1) of the Highways Act 1980:
A highway over which the public have a right of way on foot only, not being a footway..

Footway. In s.329(1) of the Highways Act 1980:
Means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only..

Forest Road (Forest Trail). There is no general public right to cycle on Forestry Commission roads in plantations. Some of these roads are public rights of way. There may be local permissive access for pedal cyclists in FC plantations.

National Trails. What are now called 'National Trails' (e.g. the Ridgeway, and the Pennine Bridleway) are the renamed successors to "Long Distance Routes', which were introduced and designated under powers in the National Parks and Access to the Countryside Act 1949. The government agency Natural England has an overseeing role for National Trails (see the NE website). Not all National Trails are 'bridleways' all through, but parts of most are variously bridleway, byway and road, and are these are therefore open to pedal cyclists.

Green road (green lane / green way). This is a non-statutory descriptive term that is used in different ways. The term was in use before the era of tar and asphalt-surfaced roads, so back then it must have distinguished between stone-surfaced roads, and roads with no stone. Now the general usage seems to be for a road (public or private) that does not have a sealed surface (e.g. asphalt). The term is, strictly, status neutral, but often is taken to indicate byway or bridleway rights rather than footpath.

Public Path. In s.66(1) of the Wildlife and Countryside Act 1981:
'Public path' means a highway being either a footpath or a bridleway.

Rail Trails. This is a generic term to describe disused railway beds that have been opened to the public for walking and cycling, and sometimes also horse riding. Some former railways have public rights recorded on the definitive map and statement, but others (probably most) have only permissive access.

Restricted Byway. In s.48(4) of the Countryside and Rights of Way Act 2000:
"Restricted byway rights" means—
(a) a right of way on foot,
(b) a right of way on horseback or leading a horse, and
(c) a right of way for vehicles other than mechanically propelled vehicles; and
"Restricted byway" means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.

Road. This is a descriptive term rather than a status indicator. There are private roads and public roads.

Road Used As A Public Path (RUPP). The history of RUPPs is long and tortuous. Introduced by the National Parks and Access to the Countryside Act 1949, both the Countryside Act 1968 and the Wildlife and Countryside Act 1981 had provisions to 'reclassify' all RUPPs individually to (variously) footpath, bridleway or BOAT status. The process was slow and expensive, and the Countryside and Rights of Way Act 2000 simply 'converted' all extant RUPPs into restricted byways. Pedal cyclists (note, not 'pedal bicyclists', as with bridleways) have a full right of way on restricted byways.

Unclassified (County) Road. This is a non-statutory term, although various Acts speak of 'county roads', and 'unclassified roads', and so merging the two together gives you 'unclassified county road'. In using this term people generally mean unsealed public roads that are on the highway authority's 'list of streets' as made under s.36(6) of the Highways Act 1980. See the section on '*Unclassified roads*'.

5. Cycling on bridleways.

The legal definitions of 'bridleway' state the it is a highway for persons on foot, riding or leading a horse, and with or without a right to drive (herd) animals. There is no right of way for carriages (vehicles) and no mention of bicycles.

After a long and at times fractious debate in Parliament, the Countryside Act 1968 introduced a provision giving the public a right of way with pedal bicycles (note: *not* 'pedal cycles') on public bridleways. The original clause in the Bill operated also to provide a right of way on public footpaths, but this was removed by amendments. In 1968 the mountain bike was still some ten years away from 'invention' and fifteen years from the beginnings of popularity in the UK. There were some 'off road' cyclists active in the 1960s – 'rough stuffers' – and ordinary touring cyclists would have used unsealed roads and tracks as a matter of course, but cycling specifically on 'paths and tracks' was not in any way mainstream then, and cyclists venturing off tarmac would generally have restricted themselves to firm tracks – 'roads' – even if these were not public vehicular roads.

It is easy to forget, after fifteen years of heavy public and charity investment in 'off road' cycling provision, just how unpopular were mountain bikers in the first decade after the activity took hold with the public in 1984/5. In 1993 Exmoor National Park's draft local plan was openly anti-mountain bike, citing the 'potential for conflict with both horse riders and walkers, and the 'problem of erosion.' Around the same time the Lake District National Park held back on embracing the mountain bike, in the belief (hope?) that it would be a flash in the pan and diminish to a niche activity, much as skateboarding before it. In general, the mountain biker was not at first welcomed by highway authorities and countryside managers. Had the Countryside Act 1968 not provided for pedal bicycles on bridleways, would a similar provision after the birth of mountain biking as a mainstream activity got on to the statute books? Quite possibly – probably – not.

The Countryside Act 1968 provided in s.30:

Riding of pedal bicycles on bridleways.

(1) Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.

(2) Subsection (1) above has effect subject to any orders made by a local authority, and to any byelaws.

(3) The rights conferred by this section shall not affect the obligations of the highway authority, or of any other person, as respects the maintenance of the bridleway, and this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists.

Subsection (1) confers on 'bicyclists', but not on the users of pedal cycles with more than two wheels, a right of way on public bridleways. This is not a 'permission'. It is as much a right of way as that enjoyed by walkers and horse riders, but in exercising that right, bicyclists "shall give way to pedestrians and persons on horseback." This requirement appears to be incomplete in that there is no mention of bicyclists giving way to persons leading a horse, or to persons driving stock animals.

Neither is there any statutory offence of, or penalty for, bicyclists failing to give way as required by subsection (1). Failure to give way that is the cause of, or a contributing factor to, injury to another bridleway user would certainly be a factor in any claim for damages for injury. As regards any immediate criminal sanction, s.29 of the Road Traffic Act 1988 provides: "Careless, and inconsiderate, cycling. If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence." The definition of a 'road' is in s.192(1) of the Road Traffic Act 1988: "'road', in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes." "Any highway' includes a public bridleway.

If there is a need to for a bicyclist to give way to pedestrians or riders on a bridleway, and the bicyclist does not give way, then on the face of it this is riding a cycle "without reasonable consideration for other persons using the road." A s.29 offence can take place where there is no express requirement for bicyclists to give way to other road users, so failure to give way where required is aggravating conduct in an alleged offence.

Subsection (2) provides that the right of way for bicyclists is open to be regulated by 'orders' – that is 'traffic regulation orders' – or by bylaws. Both types of regulation are covered elsewhere in these notes.

Subsection (3) operates to protect highway authorities from any call to improve bridleways for cyclists, or to maintain bridleways to a higher standard than they would otherwise be maintained, for the benefit of cyclists. This does not prevent highway authorities from improving bridleways if they so wish, although such improvements may be regulated by other provisions.

S.30 of the Countryside Act only provides for the ordinary highway use of bridleways by bicyclists. It does not provide a right to stage race events on bridleways. Racing is covered in the section *Cycle racing* in these notes.

Keep to the left?

Going back into the 19th century, the 'Rule of the Road' of 'keep to the left except when overtaking' was statutorily applicable only to horse-drawn vehicles. Horse riders and pedestrians picked their way through traffic and potholes as best they could. Before motor traffic speeds were generally low, and the 'keep left' rule was more about keeping traffic moving smoothly than road safety.

The motor age brought with it considerable road safety issues, and the Highway Code developed and extended its advice to all road users, with a clear difference for pedestrians. In Rule 2, "If there is no pavement, keep to the right-hand side of the road so that you can see oncoming traffic ..."

For horse riders, Rule 53, "When riding on the road you should keep to the left ..." but Rule 54 and its reference to bridleways suggests that the Highway Code uses 'road' to mean a general-purpose road. For horse riders, cyclists and motorists, Rule 160, "Once moving you should keep to the left ..."

Is this 'keep left' rule applicable to bicycles and other traffic on bridleways? It seems not. In February 2011 the author wrote to the Driving Standards Agency (a government agency) enquiring why the Highway Code fails to mention s.30 of the Countryside Act 1968 and the requirement that bicyclists must give way to walkers and riders on bridleways. The reply of 8 March says, "The Highway Code relates primarily to roads and any associated footpaths, bus lanes, or cycle tracks running beside, or marked on, these roads. It is relevant to all road users who may use the paths or roads, whether such road users be motorised vehicles, pedestrians, cyclists or horse riders ... Anyone walking, cycling or riding a horse on a bridleway is not using the public highway in the sense described above, in other words they are well away from motorised traffic."

Correcting an anomaly?

S.30(1) of the Countryside Act 1968 gave a right of way on bridleways to the public with bicycles, rather than cycles. Given that all, or almost all, otherstatutory references in highway and road traffic law are to 'pedal cycles', Parliament must have had a purpose in limiting this provision to two-wheelers.

There seems little obvious purpose in excluding pedal cycles with other than two wheels (e.g. unicycles and tricycles) from bridleways, and the Byways and Bridleways Trust made representations to the government that s.30 should be amended at various 'legislative opportunities'. In the run-up to what became the Natural Environment and Rural Communities Act 2006, the Trust was told plainly that 'bicycles' was the intention of parliament, and that s.30 would not be changed.

The wording of s.30 probably excludes only a few tricycle riders from bridleways in practice, but there is a small but enthusiastic group of unicycle riders who have no right of way on bridleways.

6. Unclassified roads, BOATs and restricted byways.

Unclassified roads.

S.36(6) of the Highways Act 1980 provides:

"The council of every county, metropolitan district and London borough … shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense."

This 'list of streets' is each highway authority's record of the public roads that are repairable at the public's expense. Most authorities grade their roads according to the standard in which they are maintained, and this standard generally reflects a road's importance for everyday traffic. In most authority areas the bottom grade of road is called an 'unclassified road', or sometimes an 'unclassified county road'.

Some of these unclassified roads do not have sealed (blacktop) surfaces, and these are generally known as 'unsealed unclassified roads' (UUR). The appearance of some of these roads is little different from that of byways or bridleways. The reason why some unsealed public roads are on the list of streets, while others are on the definitive map and statement (the council's statutory record of public rights of way) goes back to changes in local government organisation in 1894 and 1929. In 1894 the responsibility for maintaining highways was handed over from the parishes to the rural and urban district councils. In 1929 the rural district councils handed over again, this time to the county councils. The county councils had 'handover maps' in 1929, and these became the basis of working records of 'maintainable highways', which in turn later became the formal 'list of streets'.

Public rights of way in general were not surveyed and mapped until after the commencement of the National Parks and Access to the Countryside Act 1949 and the production of the definitive map and statement of public rights of way. The list of streets and the definitive map are separate registers, but there is a small degree of overlap in what they record.

In general the public roads shown in the list of streets are general-purpose roads for all traffic. The fact that a road is in the list of streets is not conclusive evidence that it is a vehicular road, but most highway authorities work to a presumption and system that 'roads' will be on the list of streets, while 'rights of way' will be on the definitive map. In some authority areas some unsealed unclassified roads are also recorded in the definitive map and statement. Where a road shown in the list of streets is also shown as, e.g., a public bridleway, then since a legislative change in 2006 that road can be regarded as being of no higher status that a public bridleway, although there remains the possibility that it could be 'upgraded' to restricted byway status at some point.

The list of streets records some routes that are plainly not public vehicular roads. These include flagged 'church paths', and flights of steps in built-up areas. Apart from those few cases the considerable mileage of unsealed unclassified roads is open to cyclists to use. The Ordnance Survey shows 'non-tarmac' unclassified roads on the *Landranger* and *Explorer* maps as 'ORPAs', or '*Other Route with Public Access*.' Where an unclassified road is also recorded in the definitive map and statement, the Ordnance Survey will show the definitive map status only.

Byways open to all traffic (BOAT).

Byway open to all traffic is defined in s.66(1) of the Wildlife and Countryside Act 1980 as,

"byway open to all traffic" means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used."

Where a route is shown in the definitive map and statement as a BOAT there is a conclusive right to ride pedal cycles on it. S.56(1)(c):

"Where the map shows a byway open to all traffic, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way for vehicular and all other kinds of traffic."

BOATs have had something of a complex statutory evolution. The National Parks and Access to the Countryside Act 1949 required that the new definitive maps and statements would record three classes of public right of way: footpath, bridleway and 'road used as a public path', or RUPP. The statutory definition of a RUPP was poorly drafted (one leading judge said that it was 'of outstanding obscurity') and it was not clear what public rights existed on RUPPs.

The Countryside Act 1968 set out to remedy part of the problem by a process to 'reclassify' RUPPs, according to a set of tests, as one of footpath, bridleway, or BOAT. This reclassification process was itself flawed (and led to the improper loss of many RUPPs down to footpaths) and the Wildlife and Countryside Act 1981 brought in further changes. After 1981 RUPPs were reclassified by individual orders. Because of the wording of the Act very few became footpaths, with the majority split reasonably equally between BOATs and bridleways. But the process was slow and many RUPPs were never reclassified.

The 1981 Act also introduced a system whereby BOATs could be added to the definitive map (where there was no RUPP before) by a process known as 'evidential modifica-

tion orders'. Where evidence was discovered regarding an unrecorded route – usually old documents such as inclosure awards – the council for the area could make an order to add the route to the definitive map (the same could be done for unrecorded footpaths and bridleways).

The Natural Environment and Rural Communities Act 2006 brought to an end the possibility of adding unrecorded BOATs to the definitive map. After May 2006 (apart from in certain excepted cases) evidence that could have been used to add a BOAT to the definitive map and statement could be used only to add a 'restricted byway' to that official register.

Some authorities are still making evidential orders to put unsealed unclassified roads on to the definitive map as BOATs (occasionally as bridleways). This 'additional recording' does not change the status of the public road, but does give a degree of better protection for the public right of way.

Restricted byways.

Restricted byway is defined in s.48(4) of the Countryside and Rights of Way Act 2000.

(4) In this Part— "restricted byway rights" means—

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles; and

"Restricted byway" means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.

The recording in the definitive map and statement is conclusive of restricted byway rights. S.56(1)(d):

Where the map shows a restricted byway, the map shall, subject to subsection (2A), be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse together with a right of way for vehicles other than mechanically propelled vehicles.

Restricted byways were introduced by the Countryside and Rights of Way Act 2000 as a way of ending the laborious process of reclassifying individual roads used as a public path (RUPP). The Act simply changed the status of all remaining RUPPs to that of restricted byway, but left open the possibility for individual restricted byways to be modified to BOAT status by evidential modification orders. This wholesale 'reclassification' was advantageous to cyclists. Under Wildlife and Countryside Act reclassifications processes, some RUPPs ended up as footpaths (with no right of way for cyclists) and probably slightly over half of the rest as bridleways, rather than BOATs. Only pedal bicyclists have a right of way on bridleways, whereas all types of pedal cyclists do on BOATs and restricted byways. Cyclists also have the reasonable expectation of a better standard of maintenance on restricted byways than on bridleways.

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'User evidence' of cyclists.

The Natural Environment and Rural Communities Act 2006 also clarified the evidential effect of a period of long use of a route by cyclists. S.31(1) of the Highways Act 1980 provides,

Dedication of way as highway presumed after public use for 20 years.

(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.

What this means is that where the public has used a route for twenty years (and sufficiently regularly within each year) then after an event that 'brings this use into question' – e.g. the erection of a 'private' sign, or the locking of a gate – then that period of use is good enough to show 'deemed dedication', i.e. to raise a presumption that the landowner has dedicated the route as a public right of way.

Public use of a route on foot would give rise to a presumption of the dedication of a footpath. Use on horseback would give rise to a presumption of dedication of a bridleway. What would pedal cycle user evidence show? S.30 of the Countryside Act 1968 (as amended) provides:

"(1) Any member of the public shall have, as a right of way, the right to ride a bicycle, [not being a mechanically propelled vehicle], on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback."

But that is not the whole of the provision. Subsection (4) of s.30 provides,

"Subsection (1) above shall not affect any definition of "bridleway" in this or any other Act."

The definition of bridleway for the purposes of s.31 of the Highways Act 1980 is in s.329(1) of that Act (my emphasis):

"Bridleway" means a highway over which the *public have the following, but no other, rights of way,* that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway."

Given that ss.31 & 329 postdate s.30 of the Countryside Act 1968, it would seem that s.30 of the 1968 Act does not operate to modify the express words defining 'bridleway' in s.329(1), and deemed dedication under s.31 of the 1980 Act goes only to dedicate a bridleway as more-narrowly defined in that Act. That has been the general understanding since 1980 until 2010. When the Natural Environment and Rural Communities Act 2006 prevented the recording of any further BOATs (see above), the question of the evidential effect of pedal cycle user evidence was clarified. S.66 of the Act amended s.31 of the Highways Act by inserting this provision:

"(1A) Subsection (1)—

"(a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but

"(b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles."

This means that after 2 May 2006 (England) or 16 November 2006 (Wales) (assuming that the provision has no retrospective effect) use of a route by the public with pedal cycles is evidence of the deemed dedication of a restricted byway.

This conventional view has now been turned on its head in the decision of the Court of Appeal in *Whitworth v. Secretary of State for Environment, Food and Rural Affairs* [2010] EWCA Civ 1468. Carnwath LJ said (at paragraph 42):

"In my view, the same conclusion would follow even if there had been no finding of pre-existing bridleway rights, so that the claim had rested solely on use after 1973. One would then be considering the inference to be drawn from the actual use between 1973 and 1993. It is true that regular use by both horse-riders and cyclists over that period would be consistent with an assumed dedication as a restricted byway at the beginning of the period (had that concept then existed). But it is no less consistent with an assumed dedication as a bridleway, of which cyclists have been able to take advantage under the 1968 Act. Since section 30 involves a statutory interference with private property rights, it is appropriate in my view, other things being equal, to infer the form of dedication by the owner which is least burdensome to him."

So as things now stand, user evidence by the public with bicycles, up to 2 May or 16 November 2006, goes to show deemed dedication of a bridleway. After that date, by virtue of s.66 of the Natural Environment and Rural Communities Act 2006, user evidence by the public with bicycles goes to show deemed dedication of a restricted byway.

By s.31(2) the statutory qualifying period of 20 years of public user has to be calculated 'next before' the bringing into question of the alleged right of way. It is inevitable that in the future 20-year qualifying periods of public bicycle user will span 2 May or 16 November 2006, meaning that there will be neither 20 years of 'bridleway evidence', or '20 years of restricted byway evidence.' This confusion may need further statutory intervention to resolve.

7. Cycle tracks.

Cycles tracks can come into being in two distinct ways, but there is one shared definition. In the Highways Act 1980, s.329(1):

"Cycle track" means a way constituting or comprised in a highway, being a way over which the public have the following, but no other, rights of way, that is to say, a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with or without a right of way on foot.

Roadside and new cycle tracks.

In urban areas most cycle tracks are situated at the side of public vehicular roads, generally as a part of the 'pavement', and are delineated by painted white lines and statutory signage. In some places, and particularly in areas that had a high level of urban cycle commuting in the period 1930-1960, there are cycle tracks situated inbetween the carriageway and the footway. The London-to-Southend Arterial Road was reconstructed in the 1930s with a cycle track running the full length. These 'old' cycle tracks provided for high levels of cycle commuters, many of whom travelled quite long distances. There remains a power for highway authorities to provide cycle tracks at the side of publicly maintainable highways: In the Highways Act 1980, s.65. Cycle tracks.

(1) Without prejudice to section 24 above, a highway authority may, in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, construct a cycle track as part of the highway; and they may light any cycle track constructed by them under this section.

(2) A highway authority may alter or remove a cycle track constructed by them under this section.

A highway authority is not constrained to providing cycle tracks at the side of existing highways. An authority can make completely new cycle tracks away from highway-sides, but with compensation implications if land is taken for this purpose. In the Highways Act 1980, S.24(2):

A local highway authority may construct new highways.

Such newly constructed cycle tracks will be publicly maintainable by virtue of s.36 of the Highways Act 1980:

S.36(2) …. the following highways (not falling within subsection (1) above) shall for the purposes of this Act be highways maintainable at the public expense—

(a) a highway constructed by a highway authority.

A highway authority may, with design constraints, redesignate all or part of an existing footway (pavement) as a cycle track, and may provide a new footway at the same time as providing a new cycle track alongside. In the Highways Act 1980:

S.66. Footways and guard-rails etc. for publicly maintainable highways.

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, a proper and sufficient footway as part of the highway in any case where they consider the provision of a footway as necessary or desirable for the safety or accommodation of pedestrians; and they may light any footway provided by them under this subsection.

(4) The powers conferred by the foregoing provisions of this section to provide any works include power to alter or remove them.

Cycle tracks 'converted' from footpaths.

A footpath is a right of way on foot only. Footpaths exist in rural and urban areas. In rural areas most, but not all, footpaths are recorded on the definitive map and statement of public rights of way. In urban areas most, but not all, footpaths are not recorded on the definitive map and statement of public rights of way. Not being recorded on the definitive map and statement is not prejudicial to the existence of a public right of way, but may make it more difficult for any person or council to prove the existence or characteristics of such an unrecorded footpath. A highway authority is responsible for the management of all highways in its area, whether on a statutory record or not. In the Highways Act 1980:

S.1(2) Outside Greater London the council of a county or metropolitan district are the highway authority for all highways in the county or, as the case may be, the district, whether or not maintainable at the public expense, which are not highways for which under subsection (1) above the Minister is the highway authority.

A highway authority may make an order for any footpath, for which it is the highway authority, to 'designate' that footpath, or any part of it, as a cycle track. The legislation is the Cycle Tracks Act 1980:

S.3(1) A local highway authority may in the case of any footpath for which they are the highway authority by order made by them and either

(a) submitted to and confirmed by the Secretary of State, or

(b) confirmed by them as an unopposed order,

designate the footpath or any part of it as a cycle track, with the effect that, on such date as the order takes effect in accordance with the following provisions of this section, the footpath or part of the footpath to which the order relates shall become a highway which for the purposes of the 1980 Act is a highway maintainable at the public expense and over which the public have a right of way on pedal cycles (other than pedal cycles which are motor vehicles) and a right of way on foot.

(2) A local highway authority shall not make an order under this

section designating as a cycle track any footpath or part of a footpath which crosses any agricultural land unless every person having a legal interest in that land has consented in writing to the making of the order.

In this subsection "agricultural land" has the meaning given by section 1(4) of the Agricultural Holdings Act 1986; and "legal interest" does not include an interest under a letting of land having effect as a letting for an interest less than a tenancy from year to year.

(3) An order made under this section by a local highway authority

(a) may be confirmed by the Secretary of State either in the form in which it was made

or subject to such modifications as he thinks fit;

(b) may be confirmed by the authority as an unopposed order only in the form in which it was made.

(4) The Secretary of State may by regulations make provision with respect to the procedure to be followed in connection with the making, submission and confirmation of orders under this section; and the Secretary of State shall by regulations under this subsection make such provision as he considers appropriate with respect to ....

The Secretary of State has made regulations to give effect to the provisions in the Cycle Tracks Act 1984: Cycle Tracks Regulations 1984 SI 1984 No. 1431.

Both the Act and the regulations seem silent about the matters to which the highway authority must put its mind when deciding to make an order under the Cycle Tracks Act, and to the matters proper to the Secretary of State's determination as to whether or not to confirm and order that has attracted one or more objections. The statutory power of the highway authority is to 'designate' a footpath as a cycle track. There is no test of need; no balancing act between competing interests, no environmental impact consideration, and no over-arching expediency requirement. In the absence of such 'making' criteria, it must be open to any person to object to an order on almost any ground; with the Secretary of State empowered to take as material almost any issue or concern about the proposed designation.

Guidance on designating cycle tracks.

The Secretary of State issued a Circular regarding the operation of the Cycle Tracks Act 1984: Circular Roads 1/86 in England; Circular 3/86 Welsh Office. This provides some clear guidance on the extent and nature of the consultations that authorities should carry out before making an order:

(20) The Secretaries of State wish to emphasise that it is their view that there should be widespread consultation on any proposal to introduce cyclists onto facilities formerly reserved solely for pedestrian use. Consultation under regulation 3(a) should be as wide as possible including not only organisations representing users of a footpath but also local, and/or national, cycling organisations. It is particularly important to seek the views of organisations representing the interests of disabled people.

(21) A list of the National organisations a local authority should consult is at Annex A. The Joint Committee on Mobility of Blind and Partially Sighted People has undertaken to co-ordinate the responses of organisations representing blind and partially sighted people. The Joint Committee on Mobility for the Disabled has agreed to act as a focus for consultation with organisations representing disabled people. Local highway authorities are advised to consult the Joint Committees in the first instance. Authorities should keep in mind the difficulties blind or partially sighted people may have in dealing with written material. These difficulties can also arise with respect to subsequent statutory notices etc.

(22) Local highway authorities may also wish to take steps to bring the proposals to the attention of local residents and to explain the implications to them.

(23) Though an order made under section 3(1) of the 1984 Act will relate solely to the principle of conversion of all, or part, of a footpath it is considered advisable to ensure that during any consultation exercise, or as part of any explanatory material accompanying any subsequent statutory notice, the fullest practicable details are given on the works the local highway authority proposes to undertake when providing the cycle track. This is because many of the organisations that a local highway authority consults under regulation 3 are likely to wish to consider the form of segregation it is proposed to provide between a proposed cycle track and an adjacent footpath e.g. when it is proposed to convert half the width of a footpath. Equally, such organisations may wish to take account of any safety works which a local highway authority proposes to undertake on a cycle track or adjacent footpath.

The Circular also gives guidance on what happens to a footpath that is recorded in the definitive map and statement when designated as a cycle track, and as regards the revocation of an order:

Definitive Maps

(57) When an order made under section 3(1) comes into effect, the footpath, or part of it, which is covered by the order ceases to be a footpath and becomes a cycle track with a right of way on foot.

(58) If the footpath is shown on a definitive map and statement of public rights of way it will have to be deleted form that map and statement if all the footpath has been converted to a cycle track.

(59) If only part of the width of the footpath has been converted there will be two distinct but adjacent ways: a cycle track and a footpath. As a footpath remains in existence it can remain on the definitive map; however, any statement describing the footpath may need to be amended to reflect its reduced width.

(60) The Departments are consulting the Director General of the Ordnance Survey on the need to show cycle tracks on OS maps and on whether orders confirmed under section 3 should be notified to the Ordnance Survey.

Revocation of an Order

(64) Section 3(9) allows an order made and confirmed under section 3 to be revoked under the same procedures applied to the making and confirmation of the original order. When such an order is revoked the cycle track reverts to being a footpath, or part of one, and ceases to be a highway maintainable at public expense if the footpath was not previously, or has not itself become, a highway maintainable at public expense.

Guidance on design issues.

There is guidance on design and safety issues regarding cycle tracks in Local Transport Note 2/08 (October 2008): *Cycle Infrastructure Design* (available from the Department for Transport's website). This LTN looks in some depth at 'cycle lanes' (which are essentially cycle facilities marked on to existing roads, rather than stand-alone rights of way, which cycle tracks are), and also at 'Off-road cycle routes' (page 41 *et seq.*) which it says "are often created by converting existing footways/footpaths, and if such routes are not carefully designed, pedestrians may view them as a reduction in quality of provision."

The LTN is extremely helpful in indicating safe minimum widths for segregated and non-segregated cycle tracks. In section 8.5 Width requirements:

(8.5.1) The minimum widths given in this section relate to what is physically required for the convenient passage of a small number of users. They do not take into account the need for increased width to accommodate larger user flows. Wherever it is possible, widths larger than the minimum should be used. Practitioners should not regard minimum widths as design targets. When cyclists are climbing steep gradients, they will need additional width to maintain balance. Similarly, when descending steep gradients, they can quickly gain speed, thus additional track width or separation will reduce the potential for conflict with pedestrians.

(8.5.2) The minimum recommended width for urban footways on local roads is 2 metres. This is sufficient to allow a person walking alongside a pushchair to pass another pram or wheelchair user comfortably. A minimum width of 1.5 metres is recommended for a oneway cycle track. The minimum recommended width for a twoway cycle track is 3 metres. If these widths cannot be realised, the facility may become difficult for some people to use. Narrow stretches should be kept to short lengths, with passing places interspersed along the route. Passing places should be within sight of adjacent ones. The distance between passing places should not exceed 50 metres.

(8.5.3) Where there is no segregation between pedestrians and cyclists, a route width of 3 metres should generally be regarded as the minimum acceptable, although in areas with few cyclists or pedestrians a narrower route might suffice. In all cases where a cycle track or footway is bounded by a vertical feature such as a wall, railings or kerb, an additional allowance should be made, as the very edge of the path cannot be used. Table 8.2 provides the recommended width additions for various vertical features, and Figure 8.1 illustrates how these figures might be applied to 2metre cycle track alongside a 1.5metre footpath.

Problems in designating footpaths as cycle tracks.

Designation of any public footpath as a cycle track – whether the footpath is recorded in the definitive map and statement or not – results in a cycle track that is 'shared use' for its whole width. The government's guidance in Local Transport Note 2/08 is that shared use footpaths should be a minimum of three metres wide, although this might be less where there are 'few' cyclists or pedestrians. But if there are few cyclists, why make an order anyway?

Very few public footpaths recorded in the definitive map and statement have a recorded width of three metres, or anything approaching that. A typical recorded width for a public footpath would be four feet (1.2 metres), and many footpaths have no recorded width at all. A Cycle Tracks Act order cannot increase the width of the footpath that is to be designated. It can only alter the status of the physical extent of the right of way that already exists.

In the absence of a width recorded in the definitive map and statement, or elsewhere, the width of a public footpath is a matter of evidence as to the width that was originally dedicated; or, in the absence of evidence, it is a matter of a presumption of dedication of a sufficient width. A just-sufficient width for a public footpath in a rural environment might be four feet (1.2 metres). This width was typically applied to footpaths set out by inclosure acts and awards two hundred years ago. In urban situations, where footpaths are not recorded on the definitive map and statement, the physical width of the 'made up track' across open ground might reasonably be taken to be the physical extent of the right of way. Where a footpath is enclosed by walls or fences, if the origin of the dedication of the footpath was a long time ago – 'time out of mind' – then there is a rebuttable presumption that the right of way is the full width between the boundary features. If the footpath has been deemed to have been dedicated in recorded memory, then it is a matter of evidence as to how much of the width between the boundary features was dedicated to the public. The highway authority's definitive map records going back to circa 1950 might well assist in establishing these essential facts.

If a footpath has no recorded width then the width must be established before a Cycle Tracks Act order is made, and should be specified in the order.

If a footpath has insufficient width to be designated as a cycle track, then additional width would have to be provided before, or at the same times as, designation by order. There

are two statutory ways of doing this. The first is to create additional footpath width by using either a creation agreement (s.25 of the Highways Act 1980), or a creation order (s.26), and then designating the wider public footpath by means of a Cycle Tracks Act order. The second way is to create a new cycle track alongside the existing footpath using s.24, and designate the known width of the public footpath at the same time.

Retaining cycle tracks on the definitive map and statement.

One acknowledged problem with the designation as cycle tracks, of public footpaths that are recorded on the definitive map and statement, is that these paths 'disappear' from the definitive map and statement and, consequently, from the Ordnance Survey map. The principal walking and cycling organisations have for many years been asking for a simple legislative change such that cycle tracks can be shown on the definitive map and statement (with this recording probably limited to cycle tracks not alongside roads) but there is no indication that this will ever happen. Where a footpath has sufficient width, or where it is possible to create some additional width alongside, part of the width of the footpath can be 'left out' of an order designating the rest as a cycle track. That residual strip of footpath remains on the definitive map and statement, and thereby on Ordnance Survey maps. It does result in the need to have adjacent 'footpath' and 'shared-use cycle track' signage, but that is not a major problem.

Cycle tracks or bridleways?

There is no right of way for the public to ride or lead horses on a cycle track, but bicyclists do have a right of way on bridleways. This absence of reciprocity upsets horse riders, particularly as cycle tracks in urban and urban fringe areas would provide additional safe routes for the relatively few horse riders in such areas. In more-rural areas, highway authorities should consider whether 'upgrading'* a footpath to a bridleway by means of a creation agreement or creation order would provide better additional public access than would using a Cycle Tracks Act order.

* Take care! A creation order is not expressed to 'upgrade' an existing footpath. Creating a bridleway along the route of an existing footpath simply brings into being a bridleway that 'overlays' the existing footpath.

8. Traffic offences for cyclists.

Furious driving and riding.

S.35 of the Offences Against the Person Act 1861 provides: Whosoever, having Charge of any Carriage or Vehicle, shall, by wanton or furious Driving or Racing, or other wilful Miscount, or by wilful Neglect; do or cause to be done any bodily harm … (shall be guilty of an offence).

This offence remains available for the uncommon situation where furious driving takes place on land that is not a highway or a road subject to the provisions of the Road Traffic Act 1988 – for example a car park or a public park. In the Road Traffic Act 1991, the government amended the more serious motoring offences, such as dangerous driving, such that it is possible to commit the offence in a 'public place' as well as on a highway or other road. This was done specifically to target the then-current plague of 'joy riding' in stolen cars. The equivalent offences for cyclists were not similarly amended.

In 1991 a cyclist, Paul Taylor, collided with a Methodist minister, 65 year old James Stringfellow, who was composing a sermon while walking on the Derwent Walk, a 'rail trail' near Rowlands Gill, County Durham. That part of the Derwent Walk is a permissive route for cyclists, walkers and horse riders, owned, managed and promoted by Durham County Council. It is not on the definitive map as any sort of public right of way, and has bylaw signs prominently displayed, regulating the type and character of public use allowed.

Mr Taylor appeared at Newcastle upon Tyne Crown Court in early 1992, charged with causing bodily harm by wanton and furious driving contrary to s.35 of the Offences Against the Person Act 1861. At the first trial it was explained by counsel for the Crown Prosecution Service that, in its view, the Derwent Walk was not a highway, or a road to which the Road Traffic Act 1988 applied. The case was fully argued, but the jury could not reach a verdict and was discharged. A second trial was held in March 1992, at which the prosecution asked for the matter not to proceed as Mr Taylor had agreed to be bound over, and Mr Stringfellow, exercising appropriate Christian consideration, had asked that the matter be dropped. The judge directed that there were no grounds for Mr Taylor to be bound over, and discharged him with full costs against the prosecution. The judge and counsel them mused on the nature of wanton and furious driving and agreed that it was probably akin to the pre-1988 offence of dangerous driving, and law somewhere between the modern concepts of carelessness and recklessness.

In 1997 a cyclist, Tony Adams, was stopped by police in Cambridge city centre, allegedly doing 25mph in a 30mph zone, in training for a world record attempt (per a report in The Guardian, 23rd September 1997). Mr Adams was charged under s.28 of the Town Police Clauses Act, 1847, with furious driving and fined £120, which he then refused to pay. Superintendent David Auton is quoted as saying the "… law was rarely applied, but it was the only one which could be used to prosecute speeding cyclists. If a cyclist is going so fast as to be a danger – and even if you hit someone at 25mph you are likely to kill them – we have to revert to this legislation."

From the *BBC News* website, 16 November 2007:

At Truro Crown Court Peter Messen, 28, was sentenced to one year in prison suspended for two years and given 300 hours community service. The judge heard Messen, who had pleaded guilty to causing bodily harm by wanton or furious cycling ... hit Gary Green on a pavement in the village of Stenalees in March 2006. Mr Green, who was 41, was struck as Messen rode along the pavement at 25 mph. Prosecutor Iain Leadbetter said one witness told the police he had shouted at Messen 'you will kill someone', and another spoke of seeing him 'going like a bat out of hell.'

From the *BBC News* website, 9 July 2008:

The family of a 17-year-old girl who died after being hit by a cyclist has described the sentence of a fine for the man who hit her as 'laughable'. Father Mick Bennett said Jason Howard should have faced manslaughter charges and been jailed for several years over Rhiannon Bennett's death in April 2007.

Howard, 36, of Buckingham, was fined £2,200 on Tuesday after being convicted of dangerous cycling in the town. During Howard's trial, Aylesbury magistrates heard Howard had shouted at Rhiannon to "move because I'm not stopping" before crashing into her.

A CPS spokesperson said: "A file of evidence from the police was reviewed by a senior CPS prosecutor and, based on that evidence, it was decided the charge of dangerous cycling was the most appropriate. Each case is kept under continuous review and following correspondence with Rhiannon's family, the case was looked at before and after the inquest into Rhiannon's death, which returned a verdict of accidental death. It was decided that the charge of dangerous cycling was the appropriate charge and there was insufficient evidence for more serious charges, such as manslaughter, to be pursued."

From the *BBC News* website, 12 August 2009:

A cyclist who knocked down an 84-year-old pedestrian who later died has been jailed for seven months. Darren Hall, 20, cycled down a hill in Weymouth, Dorset, too fast and rode on to the pavement to avoid a red traffic light, Dorchester Crown Court heard. Hall was said to be riding 'like a bat out of hell' when he hit Ronald Turner in August 2008. He died 13 days later.

Hall, of Weymouth, pleaded guilty to the 19th Century offence of wanton and furious driving causing bodily harm. The supermarket worker, who admitted the offence at an earlier hearing, was also banned from driving for a year. The court heard that on 8 August last year Hall cycled around a blind bend but was travelling too quickly to take evasive action

Furious riding, or riding furiously, was, or remains, a statutory offence under the provisions of:

The Town Police Clauses Act,, 1847 s.28; and

The Metropolitan Police Act, 1839, s.54;

A serving police officer has confirmed that the Metropolitan Police still use s.54 of the 1839 Act to deal with dangerous use of bicycles, skateboards and roller skates in public places.

Current statutory offences.

In the Road Traffic Act 1988:

S. 28. Dangerous cycling.

(1) A person who rides a cycle on a road dangerously is guilty of an offence.

(2) For the purposes of subsection (1) above a person is to be regarded as riding dangerously if (and only if)—

(a) the way he rides falls far below what would be expected of a competent and careful cyclist, and

(b) it would be obvious to a competent and careful cyclist that riding in that way would be dangerous.

(3) In subsection (2) above "dangerous" refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.]

S.29. Careless, and inconsiderate, cycling.

If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence.

S.30. Cycling when under influence of drink or drugs.

(1) A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle) is guilty of an offence.

Lighting requirements and offences.

Pedal cycles must carry lights between sunset and sunrise.

The Road Vehicles Lighting Regulations 1989, SI No. 1796.

Exemptions—General

4.— (3) Nothing in these Regulations shall require any lamp or reflector to be fitted between sunrise and sunset to–

(c) a pedal cycle,

24.—(1) Save as provided in paragraphs (5) and (9), no person shall–

(a) use, or cause or permit to be used, on a road any vehicle which is in motion–

(i) between sunset and sunrise …

unless every front position lamp, rear position lamp, rear registration plate lamp, side marker lamp and end-outline marker lamp with which the vehicle is required by these Regulations to be fitted is kept lit and unobscured.

This requirement applies to pedal cycles being used on 'roads'. These regulations are made under the provision of the Road Traffic Act 1988, and in s.192 of that Act:

"road" (a) in relation to England and Wales, means any highway and any other road to which the public has access,

Thus the lighting requirements for bicycles used on ordinary roads after sunset apply to bridleways, byways, cycle tracks, and even to footpaths and footways being used unlawfully.

The technical specification for the type of lights and reflectors required (e.g. flashing, LED or filament bulb) is arcane to say the least. The Department for Transport has an updated information sheet available on its website.

The offence of 'not using lights' is not in the Regulations themselves, but arises from s.91 of the Road Traffic Offenders Act 1988, Penalty for breach of regulations:

If a person acts in contravention of or fails to comply with—

(a) any regulations made by the Secretary of State under the Road Traffic Act 1988 other than regulations made under section 31, 45 or 132,

and the contravention or failure to comply is not made an offence under any other provision of the Traffic Acts, he shall for each offence be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9. Cycling on the 'pavement' and on footpaths.

Offences.

S.72 of the Highway Act 1835 provides:

If any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set aside for the use or accommodation of foot passengers, or shall wilfully drive any … carriage … [they shall be guilty of an offence].

In s.329(1) of the Highways Act 1980:

Footway means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only.

In the Highway Code (2007) Rule 64:

You must not cycle on a pavement.

The Daily Star for 26th August 1994 reported that 18-year-old Alan Croft was jailed for riding his bicycle on a footway, and "banged up with armed robbers and rapists." Actually, Mr Croft was jailed only for refusing to pay a £130 fine levied for the unlawful riding, although the magistrates had allowed him a year to pay at £2.50 a week. His inability to pay may perhaps be connected to his bicycle – as pictured in *The Daily Star* – being equipped with an after-market front disk brake costing, at that time, several hundred pounds.

In 1999 the cycling press started jumping up and down about a 'new offence' of 'cycling on the pavement', with on-the-spot fines, and how outrageous this was. This was (and is) not a new offence. The offence remains breach of s.72 of the Highway Act, 1835, but police officers were given the power to levy on-the-spot fines by virtue of The Fixed Penalty Offences Order [No 1851], made under s.5(3) of the Road Traffic Offenders Act 1988.. This statutory instrument has probably been superseded by now, but the provision remains in force.

Can you push a bicycle on a 'pavement'?

According to the government, yes, you can. In 1993 the Department of Transport published a leaflet, *Cycle Safe: Tips for Safer Cycling*. This states clearly that 'cycling on 'pavements is against the law", and it also advises that at 'tricky' roundabouts, cyclists should "get off your bike and walk it along the pavement to a safe crossing point."

On 4 September 1994 the author wrote to the Secretary of State for Transport querying how this advice lies with the offence of cycling on a 'pavement' (s.72 Highway Act, 1835). On 7 September Hiten Patel of the DoT replied, citing as authority the case of *Crank v. Brooks* [1980] (QBD) RTR 441, where a lady cyclist was walking across a pedestrian crossing (a zebra crossing), wheeling her bicycle, when Mr Brooks drove his car into her and knocked her down. Mr Brooks was prosecuted for not giving precedence to a foot passenger on a crossing, and the magistrates dismissed the case on the basis that the injured party was not a foot passenger because she was wheeling a bicycle.

The prosecutor appealed (by way of case stated). The High Court held that the fact that the lady was wheeling a bicycle on the crossing was immaterial: she was still a foot passenger. Had she been 'scooting' with one foot on a pedal then she would not have been a foot passenger. Waller LJ, "But the fact that she had the bicycle in her hand and was walking does not create any difference from a case where she is walking without a bicycle in her hand."

After a further round of correspondence Mr Patel said in conclusion, "We believe that the judgment in the *Crank v. Brooks* case provides a reasonably clear understanding that a cyclist pushing a pedal cycle on a pedestrian facility is regarded as a pedestrian. Until the current ruling is either overturned or modified, we consider the legal position to be sufficiently clear." Given that the author's original query was a formal letter to the Secretary of State, that might reasonably be taken to be the Department's 'official view'.

Pushing a bicycle on a pavement is now officially not only lawful, but also recommended in some situations. The advice from *Cycle Safe: Tips for Safer Cycling* has now become the basis of Rule 77 in the Highway Code (revised 2007).

Can you ride or push a bicycle on a public footpath?

A 'footway' (pavement) is a way alongside a carriageway highway, set aside for the use of pedestrians. By definition a footway has to be 'comprised in a carriageway'. In towns and villages there are often surfaced paths that are not alongside carriageways. These are not footways, but are generally 'footpaths', even though they are not usually recorded in the 'definitive map and statement' (the public record) of public rights of way. In the countryside things are usually simpler. There are few footways (although these can be found in places) and public footpaths are mostly recorded in the definitive map and statement of public rights of way, and thereby shown on Ordnance Survey maps.

The definition of a footpath is in s.329(1) of the Highways Act 1980:

Footpath: A highway over which the public have a right of way on foot only, not being a footway.

Cyclists do not have any right of way on a public footpath. Use of a public footpath without lawful authority (which would normally be taken to mean the express permission of the owner or occupier of the land) is not in itself a criminal

offence, but is a civil trespass against the landowner. Cycling on a footpath might, depending on the circumstances, amount to a public nuisance, which is a minor criminal offence. Offences such as dangerous or careless cycling can be committed on footpaths because the Road Traffic Act covers all highways, even where a particular type of traffic has no right of way (*Lang v. Hindhaugh*, The Times, 25 March 1986). Footpaths may have bylaws prohibiting cycling – this is quite common on urban footpaths that have been surrounded by development. Proper signage conforming to statutory requirements must be in place at the time of any alleged offence (see 'Bylaws'). The recording of a way in the definitive map of public rights of way as a footpath does not remove any 'slumbering' higher rights that may exist (see *Higher rights*).

The view of the Department of Transport is that it is lawful to push a bicycle on a 'pedestrian facility'. Before the decision in *Crank v. Brooks*, the best view of the law on this point came from *R v. Mathias* (1861) 2 F & F 119. It was held that a perambulator, being pushed by a pedestrian on a 'footway' (here, from the description, meaning what would now be termed a footpath) is a "... usual accompaniment of a large class of foot passengers, being so small and light, as neither to be a nuisance to other passengers or injurious to the soil." The guidance that can be directly drawn from Mathias therefore concerns only things that pedestrians might commonly take with them when they walk, and a bicycle being temporarily wheeled rather than ridden does not fall into this category.
Consider the definitions of 'footway' and 'footpath' in s.329(1) of the Highways Act 1980:

Footway means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only.

Footpath: A highway over which the public have a right of way on foot only, not being a footway.

The definition is the same for both: "a right of way on foot only", so if the view of the Department of Transport is correct as regards footways (as a "pedestrian facility") then it is difficult to see how the Department's view does not apply also to footpaths. There is an argument to be made that the Department of Transport is wrong about footways (pavements) anyway. A zebra crossing (as in *Crank v. Brooks*) is not a 'right of way on foot only'. It is part of the carriageway (for all classes of traffic) but in certain circumstances vehicular traffic going along the road must give way to pedestrian traffic crossing the road. The crossing is not a 'right of way on foot only'. It is simply part of the carriageway which vehicular traffic is temporarily barred from entry while pedestrians cross over. It may be that extending the view of the court in *Crank v. Brooks* to all 'pedestrian facilities' is a step too far, but members of the public are reasonably entitled to rely upon the advice and view of the Department of Transport in the meantime.

Carrying bicycles on footways and footpaths.

If it is lawful to push a bicycle on a footway or footpath, then it must be lawful to carry one. But carrying a bicycle (generally over the person's shoulder) is extremely risky in a crowded area, and the danger – the likelihood – of hitting another person with the cycle might well take the act of carrying into the territory of its being a 'public nuisance': a common law offence against which a police officer (or potentially a member of the public) can take action. 'Careless' and 'dangerous' cycling offences do not apply because these refer to 'riding' a cycle.

On a quiet public footpath, where there is nobody to 'clonk' with the cycle, carrying a bicycle might still be a trespass against the landowner, just as pushing one might be. But the likelihood of such carrying causing offence is mall, and there is no case law authority in this area of highway law.

10. Electrically assisted pedal cycles.

In the absence of legislative provision to the contrary, powering a pedal cycle with any sort of motor would make the cycle into a mechanically propelled vehicle and – for the purposes of some legislation – a motor vehicle. The rider would have to have a driving licence and insurance, and the machine would have to be registered for the road. The bicycle would become akin to what was a 'moped' decades ago: a capacity-limited motorcycle that could also be propelled by pedals.

Electrically assisted pedal cycles have been around for some time now, but have never really caught on in the UK. The Electrically Assisted Pedal Cycles Regulations 1983 SI 1983 No. 1168 set out the requirements and limitations as regards the power unit and top speed. An electric motor fitted to a bicycle must not exceed 200 watts maximum continuous rated output (250 watts for a tandem) and not be capable of propelling the bicycle when it is travelling faster than 15 miles per hour. In 2011 there is pressure from cycling groups to increase this maximum power output.

Where an electrically assisted pedal cycle meets all the requirements then it may be used on the public highway by anyone aged 14 or over, with no requirements for driving licences, insurance, registration, etc. No other form of motive power is authorised. There are now powerful 'electrically powered motorcycles' on sale, with some of these being 'off road' racing-type machines. These do not fall within the ambit of the Electrically Assisted Pedal Cycles Regulations 1983.

The *Western Daily Press* of 17 January 1997 reported that Steven Green had been fined £250 with £50 costs for driving whilst disqualified, and for having no insurance. Mr Green, who had lost his licence after a drink-driving conviction, fitted his bicycle with the petrol engine from a 'strimmer', driving the back wheel, and used it on public roads. He was stopped by the police, and the court held that his powered bicycle was a 'motor vehicle'.

As regards the use of electrically assisted pedal cycles on public rights of way, this has been taken outside of the scope of any road traffic offence by amendments to existing legislation. In the Road Traffic Act 1988, s.34:

(1) Subject to the provisions of this section, if without lawful authority a person drives a mechanically propelled vehicle—
(a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road, or
(b) on any road being a footpath, bridleway or restricted byway,
he is guilty of an offence.

An electrically assisted pedal cycle is ordinarily a mechanically propelled vehicle, but the Act disapplies the offence by means of:

S.7: "mechanically propelled vehicle" does not include a vehicle falling within paragraph (a), (b) or (c) of section 189(1) of this Act.
S. 189(1) For the purposes of the Road Traffic Acts— (c) an electrically assisted pedal cycle of such a class as may be prescribed by regulations so made, is to be treated as not being a motor vehicle.

That amendment to the Road Traffic Act means that there is no criminal offence of riding an electrically assisted pedal cycle (which complies with the regulations) on any land, footpath, bridleway or restricted byway, but does not confer any right to do so. Restricted byways have a right of way for the public with vehicles other than mechanically propelled vehicles, so those are open to the riders of electrically assisted pedal cycles.

As regards bridleways, the right to use a pedal bicycle on a public bridleway has been extended to include electrically assisted pedal bicycles. In the Countryside Act 19868, s.30:

(1) Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.
(5) In this section "mechanically propelled vehicle" does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

11. Traffic regulation orders.

Traffic regulation orders are everywhere on the public highway. 'No right turn', 'no entry', 'weight restriction', 'access only' – these and many more are types of traffic regulation imposed by the making of an order and the erection of authorised signs.

Cyclists are not particularly adversely affected by traffic regulation orders, although people who wish to, or do, cycle the wrong way along 'one-way streets' might disagree. In the urban situation cyclists are generally advantaged by traffic regulation schemes, which tend to regulate or prohibit motor traffic while providing exemptions, or positive facilities, for cyclists.

In rural areas and on the urban fringe highway authorities regularly use traffic regulation orders to regulate or prohibit public motor traffic on unsealed unclassified roads and byways open to all traffic (BOAT). In general cyclists see this as not disadvantageous to their interests. A risk to cyclists here is that their access is adversely affected as 'collateral damage', generally due to the highway authority drafting the order badly.

Cyclists are sometimes prohibited from minor roads and rights of way on 'safety grounds' – which translates to 'the road is out of repair and the council does not want to mend it.'

The statutory framework.

Traffic regulation orders are made under the provisions of the Road Traffic Regulation Act 1984, which is a statute of numbing breadth and complexity. In s.1, traffic regulation orders outside Greater London:

(1) The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a "traffic regulation order") in respect of the road where it appears to the authority making the order that it is expedient to make it—

(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or

(b) for preventing damage to the road or to any building on or near the road, or

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or

(f) for preserving or improving the amenities of the area through which the road runs or

(g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).

The duration of traffic regulation orders.

Most traffic regulation orders are 'permanent', that is they are intended to remain in place indefinitely, although they can be revoked at any time. There are provisions to make 'experimental' traffic regulation orders, and these are used for purposes such as setting up bus lanes and testing where the start and stop points should be for the best traffic flow. In the Road Traffic Regulation Act 1984, s.9 Experimental traffic orders:

(1) The traffic authority for a road may, for the purposes of carrying out an experimental scheme of traffic control, make an order under this section (referred to in this Act as an "experimental traffic order ") making any such provision.

Highway authorities can and do make 'temporary' traffic regulation orders. These are used for short term traffic management to deal with things like flooding, landslips, major works near the road, and events using the highway. In Road Traffic Regulation Act 1984, s.14. Temporary prohibition or restriction on roads:

(1) If the traffic authority for a road are satisfied that traffic on the road should be restricted or prohibited—

(a) because works are being or are proposed to be executed on or near the road; or

(b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or …

A highway authority also has powers to close a highway at very short notice, without prior consultation with the public, but for only a short period. In Road Traffic Regulation Act 1984, s.14(2):

The traffic authority for a road may at any time by notice restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class, or by pedestrians, where it appears to them that it is—

(a) necessary or expedient for the reason mentioned in paragraph (a) or the purpose mentioned in paragraph (c) of subsection (1) above; or

(b) necessary for the reason mentioned in paragraph (b) of that subsection,

that the restriction or prohibition should come into force without delay.

If a longer period than is allowed by the notice provision proves necessary, then the authority must make a traffic regulation order to prolong the closure.

Procedures for making traffic regulation orders.

The regulations for the making of TROs are: Statutory Instrument 1996 No. 2489. The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

These regulations set out a sequential procedure that the order-making authority must follow after it has determined that there is a need to make an order, but before the making of an order. There is a set sequence of events:

Paragraph 6. Consultation.
Paragraph 7. Publication of proposals.
Paragraph 8. Objections.
Paragraph 9. The option to hold a public inquiry.

The statutory consultation stage is limited in the list of which organisations must be consulted. Depending upon the character of the road in question, the emergency services and bus operators would probably be consultees, and otherwise it is very much at the discretion of the highway authority. The Regulations provide in the table to Paragraph 6:

(c) Such other organisations (if any) representing persons likely to be affected by any provision in the order as the order making authority thinks it appropriate to consult.

Some authorities consult the principal rights of way and cycle users' national organisations. Local cycle groups can ask to be put on the list of consultees, and most authorities will do this.

In practice it is difficult for a recreational road users' organisation to influence or change the making of a particular traffic regulation order once the authority has a formed a proposal and commences the sequential process as set out in the regulations. Cycle users need to ensure that every highway authority has a written policy on the management of general and recreational traffic, and how traffic regulation orders will be used as just one option in a 'traffic management toolbox'.

Traffic regulation order offences.

In the Road Traffic Regulation Act 1984, s.5. Contravention of traffic regulation order:

(1) A person who contravenes a traffic regulation order, or who uses a vehicle, or causes or permits a vehicle to be used in contravention of a traffic regulation order, shall be guilty of an offence.

In the Road Traffic Act 1988, s.36, Drivers to comply with traffic signs:

(1) Where a traffic sign, being a sign—
(a) of the prescribed size, colour and type, or
(b) of another character authorised by the Secretary of State under the provisions in that behalf of the Road Traffic Regulation Act 1984,
has been lawfully placed on or near a road, a person driving or propelling a vehicle who fails to comply with the indication given by the sign is guilty of an offence.
(2) A traffic sign shall not be treated for the purposes of this section as having been lawfully placed unless either—
(a) the indication given by the sign is an indication of a statutory prohibition, restriction or requirement, or
(b) it is expressly provided by or under any provision of the Traffic Acts that this section shall apply to the sign or to signs of a type of which the sign is one;

Paragraph 10(1) of the Traffic Signs Regulations and General Directions (Statutory Instrument 2002 No. 3113) specifies that S.36 applies only to specified traffic signs and road markings, and to red light signals. As regards cyclists, this list includes 'no entry' (TSRGD diagram 616) and 'pass to the left (or right)' (TSRGD diagram 610) signs, but not the 'all vehicles prohibited' or 'cycling prohibited' sign (TSRGD diagrams 617 & 951).

That seems to be a curious duplication of potential penalties for breaching traffic regulation orders. S.5 of the Road Traffic Regulation Act 1984 provides a penalty for the breach of any properly made traffic regulation order. S.36 of the Road Traffic Act provides offences of failing to comply with specified traffic signs, which are themselves erected on the authority of a traffic regulation order. The reason for this appears to be that the failure to comply with these signs is deemed serious enough to attract driving licence penalty points and potential disqualification from driving. Some s.36 offences can be dealt with by 'fixed penalty notices'.

Cyclists do not have to have driving licences in order to ride bicycles on the highway, and so there is no provision for cyclists to be given 'penalty points' for cycling offences. There is no express road traffic provision for cyclists to be 'disqualified from cycling' following conviction for road traffic offences, but the courts do now have the power to disqualify a convicted cyclist from driving motor vehicles. In the Powers of Criminal Courts (Sentencing) Act 2000, s.146 Driving disqualification for any offence:

(1) The court by or before which a person is convicted of an offence committed after 31st December 1997 may, instead of or in addition to dealing with him in any other way, order him to be disqualified, for such period as it thinks fit, for holding or obtaining a driving licence.

Traffic signs.

In the Road Traffic Regulation Act 1984, s.64. General provisions as to traffic signs.

(1) In this Act "traffic sign" means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description—

(a) specified by regulations made by the Ministers acting jointly, or
(b) authorised by the Secretary of State,

and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.

(2) Traffic signs shall be of the size, colour and type prescribed by regulations made as mentioned in subsection (1)(a) above except where the Secretary of State authorises the erection or retention of a sign of another character …

In s.65, Powers and duties of highway authorities as to placing of traffic signs:

(1) The traffic authority may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with such general directions as may be given by the Ministers acting jointly or such other directions as may be given by the Secretary of State.

The Secretary of State has given such directions in the the Traffic Signs Regulations and General Directions and the Traffic Signs Manual.

The Traffic Signs Regulations and General Directions 2002.

Signs to be placed only to indicate the effect of a statutory prohibition

7.—(1) Except as provided by paragraph (3), the signs to which this paragraph applies may be placed on or near a road only to indicate the effect of an Act, order, regulation, byelaw or notice ("the effect of a statutory provision") which prohibits or restricts the use of the road by traffic.

SIGN SIZES

1.14 It is important that signs giving effect to traffic regulation orders, and intended to be read from a moving vehicle, are of sufficient size to enable drivers to recognise them and assimilate the information in time. They therefore need to be of a size appropriate to the prevailing traffic speed on the road on which they are used (see Appendix A).

SITING

1.15 It is essential that drivers have an unobstructed view of traffic signs. The distance which should be kept clear of obstructions to the sight line, whether caused by vegetation, other signs or street furniture, is known as the clear visibility distance. The higher the prevailing traffic speeds, the greater this distance needs to be.

'Traffic signs' may not be placed on roads unless they are authorised by the diagrams in the Traffic Signs Manual, or are individually (as regards their purpose and location) authorised by the Secretary of State. All authorised signs must be big enough and well-placed enough that cyclists using the highway in a reasonable way can see and understand them.

Traffic signs regulating cycling.

Left: The traffic regulation order on this route is drafted to prohibit motor vehicles other than motorcycles, between 1 October and 30 April each year. Horse-drawn vehicles and pedal cycles are not prohibited at all by the order. The roundel sign is diagram 618 and it prohibits *all* vehicles, including horse-drawn, and pedal cycles. The two plates attached to the sign cannot be used with diagram 618 signs.

Left: The traffic regulation order on this route is expressed to prohibit motor vehicles other than motorcycles, with or without. a sidecar, throughout each year Horse-drawn vehicles and pedal cycles are not prohibited at all. by the order The roundel sign is diagram 618 and it prohibits all vehicles, including horse-drawn, and pedal cycles. The plate attached to the sign cannot be used with diagram 618 signs. The additional 'public right of way' notice cannot lawfully be attached to a traffic sign.

Left: That is the correct way to do it. The traffic regulation order here prohibits all vehicles other than pedal cycles, and this is the correct combination of signs to inform the public of the order properly and effectively.

Left: The traffic regulation order here prohibits all vehicles other than pedal cycles, and this is the correct combination of roundels to inform the public of the order properly and effectively. 'Except for access' is a valid diagram 620 addition, but 'and permit holders' is not, and would have to be specially authorised by the Secretary of State.

These signs are smaller than the Traffic Signs Manual requires, and are fixed to a gate across the road only. This road is in a national park, and the Secretary of State has authorised this non-standard arrangement to minimise 'visual clutter'.

Left: It might be hard to get it more wrong than this? This sign is intended to give effect to a 'no cycling' traffic regulation order. This roundel is not set out in the Traffic Signs Manual. It should be diagram 951. A diagonal bar across a prohibition sign is the conventional indicator of 'prohibition ends'.

The 'no cycling' plate cannot be used with a diagram 951 sign, and cannot be used on its own.

The cumulative effect of these two unauthorised signs is to tell the public that a 'no cycling' restriction ends at this point by virtue of the diagonal 'prohibition ends' bar.

12. Bylaws.

Bylaws (or byelaws, as is still commonly used) are 'subsidiary legislation' – that is legislation not made by parliament. A by-law can be used to 'suppress a public nuisance', but unless expressly provided by statute, cannot be used to prohibit cycling where it is otherwise lawful.

Local authority bylaws.

As respects cycling, bylaws are commonly made by district, unitary and parish councils to 'suppress nuisances', which usually means 'no cycling on urban footpaths or parks'.

In the Local Government Act 1972, s.235, Power of councils to make byelaws for good rule and government and suppression of nuisances:

(1) The council of a district, the council of a principal area in Wales and the council of a London borough may make byelaws for the good rule and government of the whole or any part of the district, principal area or borough, as the case may be, and for the prevention and suppression of nuisances therein.

(2) The confirming authority in relation to byelaws made under this section shall be the Secretary of State.

(3) Byelaws shall not be made under this section for any purpose as respects any area if provision for that purpose as respects that area is made by, or is or may be made under, any other enactment.

In the Public Health Act 1875, s 164, parish councils (and by amendment community councils in Wales) are given a power to make "byelaws for public walks and pleasure grounds."

Statutory body bylaws.

National statutory bodies (e.g. the Forestry Commission, national parks, Ministry of Defence, royal parks, and the railways, are all given specific statutory powers to make bylaws regulation access in general, and recreational use of paths and land in particular.

In the Forestry Act 1967, s.46: Commissioners' power to make byelaws.

(1) Subject to the provisions of this and the next following sections, the Commissioners may make byelaws with respect to any land which is under their management or control and to which the public have, or may be permitted to have, access.

(2) The Commissioners' byelaws may be such as appear to them to be necessary—

(c) without prejudice to the generality of the foregoing, for regulating the reasonable use of the land by the public for the purposes of exercise and recreation.

As an example of national park bylaws, Under s.90 of the National Parks and Access to the Countryside Act 1949, and s.11 of the Dartmoor Commons Act 1985, the Dartmoor National Park Authority made a bylaw regulating bicycle riding:

3. VEHICLES

(1) No person shall without reasonable excuse ride or drive a cycle, motor cycle, motor vehicle or any other mechanically propelled vehicle on any part of the access land where there is no right of way for that class of vehicle.

(5) In this byelaw:

"cycle" means bicycle, a tricycle or a cycle having four or more wheels not being in any case a motor cycle or motor vehicle;

In general bylaws must be communicated to the public by means of sufficient notices or traffic signs (as appropriate) in the place where the bylaws are in force. Some statutory provisions allowing the making of bylaws state that widespread signage is not mandatory (e.g. in the Forestry Act 1967).

Cycling Weekly of 26 September 1992 reported that a London cyclist, Chris Baker, was prosecuted for riding his machine in Regent Park, allegedly contrary to a bylaw notice "exhibited by order of the Secretary of State." In court Mr Baker called for the actual order making the bylaw and authorising the notice to be produced; it could not be found. The prosecution was therefore unable to prove its case and Mr Baker was discharged.

Bylaws prohibiting cycling on bridleways.

Bicycle riders have a right of way on bridleways by virtue of s.30 of the Countryside Act 1968:

Riding of pedal bicycles on bridleways.

(1) Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.

But that right is qualified by subsection 2:

Subsection (1) above has effect subject to any orders made by a local authority, and to any byelaws.

A local authority can make a traffic regulation order prohibiting bicyclists from bridleways, and any bylaw-making authority can make a bylaw prohibiting bicyclists from bridleways within that order-making authority's area. The author knows of no 'no cycling' bylaw in force regarding a public bridleway.

Signs and notices.

Bylaw notice boards are relatively common, and are generally found at the points of entry for the public on to the land to which the bylaws apply: car parks, visitor centres, etc. Bylaws do get amended over the years, but old notices seem to stay around even when they are out of date.

Standard 'no cycling' signs erected under bylaw powers are 'traffic signs' and come under the statutory rules for design. In the Road Traffic Regulation Act 1984, s.64. General provisions as to traffic signs.

(1) In this Act "traffic sign" means any object or device (whether fixed or portable) for conveying, to traffic on roads or any specified class of traffic, warnings, information, requirements, restrictions or prohibitions of any description—

(a) specified by regulations made by the Ministers acting jointly, or (b) authorised by the Secretary of State,

and any line or mark on a road for so conveying such warnings, information, requirements, restrictions or prohibitions.

(2) Traffic signs shall be of the size, colour and type prescribed by regulations made as mentioned in subsection (1)(a) above except where the Secretary of State authorises the erection or retention of a sign of another character …

(4) Except as provided by this Act, no traffic sign shall be placed on or near a road except—

S.64 of the Act thus requires that only authorised traffic signs may be placed on roads, and placed only in accordance with powers and requirements provided by the Act, and in the Traffic Signs Regulations and General Directions 2002:

Signs to be placed only to indicate the effect of a statutory prohibition

7.—(1) Except as provided by paragraph (3), the signs to which this paragraph applies may be placed on or near a road only to indicate the effect of an Act, order, regulation, byelaw or notice ("the effect of a statutory provision") which prohibits or restricts the use of the road by traffic.

In the Traffic Signs Manual 1982 (updated 2002):

5.26 The sign to diagram 951 is used to give effect to a prohibition of cycling made under an order, or, more often, imposed by a byelaw. It is mainly used where there are pedestrian routes through housing estates which are not suitable for cycling because either their width or the visibility along them is not sufficient.

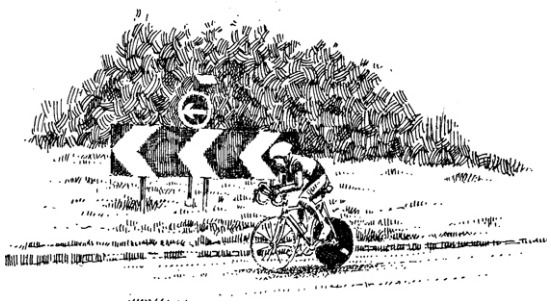
Would a written 'no cycling: by order' sign be lawful? The scope of the lawful use of prescribed traffic signs (as set down in the Traffic Signs Manual) extends to include the enforcement of bylaws, then by s.64(4), such that only these signs can be used on a 'road'. A written sign could be used away from a road – for example to prohibit cycling in a park.

Above: This is a diagram 951 sign used to enforce a 'no cycling' bylaw on an urban 'foot passage' between rows of houses.

13. Cycle racing.

Background.

Cyclists have held race events on the road for almost as long as there have been cycles – certainly for well over one hundred years – but the nature and organisation of such racing has a chequered history. It is now an apocryphal story, but the legend runs in cycling circles that, in the late years of the 19th Century, a massed cycle race o n the Great North Road frightened the horse of the wife of the Lord Lieutenant of Huntingdonshire. The angry spouse bearded the Chief Constable who immediately imposed a diktat banning all cycle racing on the county's highways (nobody ever says under which power this order, if any such ever existed, was made). The national cycling governing body, scared of bad publicity and a draconian national ban, henceforth refused to sanction the organisation of any massed-start races. For a period of some sixty years all cycle racing was in the form of 'time- trialling' where the riders go off at minute intervals, racing the clock rather than each other to determine the winner. Time trial organisers ordered participants to wear dark clothing without advertisements or logos, and advertised the location of the races by means of secret codes: you had to have the relevant handbook to know that course AB123 started at the road junction just north of Woodbury.



"A right of highway does not include a right to race" *Sowerby v. Wadsworth* (1863) 3 F&F 733. This was an action in trespass by a landowner against a group of people who set up a hurdle race for horses on a wide, grassy public road. So, even if there is (or was) no criminal offence of racing bicycles on the highway, such racing is not a public use of the highway, and gives rise to an action for trespass. As regards 'ordinary roads', although there is a presumption that the landowner on either side owns the 'soil of the road' up to the centre-line (*usque ad medium filum*) few such owners would assert 'ownership' of the road in any way.

During the years of the 1939-45 war, a Midlands cycle racer called Percy Stallard started to question this conventional wisdom that massed-start cycle racing was unlawful. Under threat of ban by the cycling authorities Mr Stallard organised a 'road race' which passed off safely and led to many more, although it caused a serious rift in the cycling world. By 1956, and in the run-up to the Road Traffic Bill, cycle racing was firmly established, enough to make a case for formalisation and regulation. The Road Traffic Act 1956 did not 'legalise' cycle racing on the road – unlike motor racing it had never been illegal other than as, perhaps, furious driving or a public nuisance – but it did impose a set of regulations which, if not followed by organisers, created a criminal offence.

Statutory authorisation of cycle racing.

The Road Traffic Act 1956 had this provision:

Regulation of cycle racing on highways. S.13(1) Any person who promotes or takes part in a race or trial of speed on a public highway between bicycles or tricycles, not being motor vehicles, shall, unless the race or trial is authorised, and is conducted in accordance with any conditions imposed, by or under regulations under this section be liable on summary conviction to a fine not exceeding ten Pounds.

(5) In this section the expression 'public highway' does not include a footpath or bridleway.

This provision deals with the requirement that cycle races on highways shall be carried out in accordance with conditions imposed by regulations. It does not confer any 'right to trespass' against the owner of the soil of a highway by carrying out a cycle race without that owner's permission. Since racing is not a valid public user of a highway to start with it is not legitimised by the ruling in *DPP v. Jones* [1999] UKHL 5. This case is considered in greater detail in the section on *Navigation, enduro and mass participation events.*

Why does this regulation of cycle racing apply to vehicular highways, but not to footpaths or bridleways? In 1956 the definitive maps and statements of public rights of way were still in their formative stages, and public awareness and recreational use of public paths was far less than in recent years. It might be that Parliament simply thought that organised cycle racing was a 'non issue' as regards footpaths and bridleways. Cyclo cross, which was by then gaining popularity in the UK, takes place on small, 'tight' circuits, and these might have touched upon some public paths, but the total such impact cannot have been more than very small.

The 1956 Act authorised the making of regulations under which cycle racing could be staged. These were made in 1960 as a statutory instrument: 1960 No. 250 Road Traffic. The Cycle Racing on Highways Regulations 1960. These regulations remain in force with a succession of amending regulations following the original.

The current statutory provision.

The statutory provision is now contained within the Road Traffic Act 1988:

S.31 Regulation of cycle racing on public ways.

(1) A person who promotes or takes part in a race or trial of speed on a public way between cycles is guilty of an offence, unless the race or trial—

(a) is authorised, and

(b) is conducted in accordance with any conditions imposed,

by or under regulations under this section.

(2) The Secretary of State may by regulations authorise, or provide for authorising, for the purposes of subsection (1) above, the holding on a public way other than a bridleway—

(a) of races or trials of speed of any class or description, or

(b) of a particular race or trial of speed,

in such cases as may be prescribed and subject to such conditions as may be imposed by or under the regulations.

(3) Regulations under this section may—

(a) prescribe the procedure to be followed, and the particulars to be given, in connection with applications for authorisation under the regulations, and

(b) make different provision for different classes or descriptions of race or trial.

(4) Without prejudice to any other powers exercisable in that behalf, the chief officer of police may give directions with respect to the movement of, or the route to be followed by, vehicular traffic during any period, being directions which it is necessary or expedient to give in relation to that period to prevent or mitigate—

(a) congestion or obstruction of traffic, or

(b) danger to or from traffic,

in consequence of the holding of a race or trial of speed authorised by or under regulations under this section.

(5) Directions under subsection (4) above may include a direction that any road or part of a road specified in the direction shall be closed during the period to vehicles or to vehicles of a class so specified.

(6) In this section "public way" means, in England and Wales, a highway, and in Scotland, a public road but does not include a footpath.

The significant change between the 1956 and 1988 Acts is that in the new provision the requirement for races to be 'authorised' applies to vehicular highways and to bridleways, and then by subsection (2), the Secretary of State is prevented from making regulations to authorise racing on bridleways. Footpaths remain outside the scope of the statutory and regulatory provision.

The provision in the Road Traffic Act 1988 largely repeats that in the Road Traffic Act 1960. The express change regarding bridleways first came in the Countryside Act 1968. In s.30, whereby pedal bicyclists were given a statutory right of way on bridleways, subsection (7) provided, "Section 12(1) of the said Act [1960] (prohibition of cycle racing on highways) shall have effect as if the expression "public highway" included a bridleway, but without the exception for a race or trial authorised by regulations under that section."

Until the mid-1980s it is unlikely that more than a handful of cycle races used public bridleways. One example was the principal cyclo-cross event, the 'Three Peaks' race in North Yorkshire. This did use bridleways with, certainly in later years, the knowledge of the Yorkshire Dales National Park, which body later instructed the organiser to move the event off the bridleway sections (other than one length of definitive map bridleway with claimed vehicular rights). From the mid-1980s on, the growth in competitive mountain biking led to a far greater number of cycle races being held other than on surfaced roads or race tracks. Many of these have used bridleways and/or footpaths in their routes.

Cycling Weekly (30 April 1994) reported that the organiser of the annual 'Man v. Bike v. Horse Marathon (dating back to 1980) at Llanwyrtyd Wells had dropped mountain bikes from the event, which is staged on a route based primarily on public bridleways. Powys County Council had informed the organiser that this cycle racing on bridleways was illegal, and *Cycling Weekly* reported that the British Cycling Federation had taken leading counsel's advice, which confirmed this situation. The organiser of the event complained to his MP, who in turn complained to the Department of Transport. The DoT decided that the ban on cycle racing on bridleways is "an anomaly" and assured the MP that they would investigate making a change in the law. The national governing body of cycle racing, the British Cycling Federation, also made representations to the government for change.

A campaign to legalise cycle racing on bridleways did reach Parliament, and the Road Traffic Bill in 1991 included provisions to authorise racing on bridleways. Hansard for 7 May 1991 reports the debate in the House of Lords, with the government minister Lord Brabazon of Tara replying to proposed amendments. Lord Brabazon, noting "... the concern of the Byways and Bridleways Trust and other organisations about the possible conflict which that change might create between cycle racing and [the requirement for cyclists to give way on a bridleway] said, "It is difficult to envisage a cycle race taking place under that condition." He concluded, "We propose therefore to return to the existing position in section 32 which prohibits cycle racing on bridleways outright."

In a letter of 3 April 1991 to the Byways and Bridleways Trust, the Department of Transport confirms that "... there is no specific offence of cycle racing on a footpath."

The problem of race events using bridleways did not go away. In 1996 a major event was organised – the Mountain Bike Tour of Britain – in which competitors were bussed to a succession of venues around the country, at which race events were staged. Two such were at Lansdown, Bath; and at the Queen Elizabeth Country Park in Hampshire. The Byways and Bridleways Trust raised this with the highway authorities for the venues. Bath and North East Somerset Council immediately rerouted their event off bridleways, but kept a short length on a public footpath, which was to be "heavilly marshalled" to maintain public access at all times. Hampshire placed "physical barriers" at each side of the bridleways being crossed, and required competitors to dismount and push or carry their bicycles across, under race marshalls' supervision.

The Cycle Racing on Highways Regulations.

The principal statutory instrument remains: 1960 No. 250 Road Traffic. The Cycle Racing on Highways Regulations 1960. This has been amended over the years, notably as regards the allowable numbers of competitors in events, and as regards racing where there are speed limits in force. Tracing the evolution of the regulations through the various amendments is difficult. There are no consolidated regulations issued by the government. A listing of all the amending regulations up to 1989 is in the annual Index to Government Orders. Later regulations are available on the Legislation.gov.uk website.

The 1960 regulations usefully define a 'time trial' ('trial of speed' in the legislation. In paragraph 2(1):

In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:

'time trial' means a race or trial of speed between bicycles or tricycles, not being motor vehicles, so arranged and conducted –

(a) where the competitors are not divided into groups. that each competitor starts at a time which is separated by an interval of not less than one minute from the starting time of every other competitor, or, where the competitors are divided Into groups, that

(i) no group comprises more than four competitors,

(ii) no member of a group competes against any other member of that group,

(iii) each member of a group starts at the same time as every other member of that group, and

(iv) each group starts at a time which is separated by an interval of not less than one minute from the starting time of any group; and;

(b) The result of the trial or race depends not upon the order in which the competitors or any of them reach a particular point but upon-

(i) the time each competitor or, If the competitors are divided into groups as aforesaid, any member of a group to get from his starting point to his finishing point. or

(ii) the distance which each competitor or, as the case may be, any member of a group of competitors covers in a fixed time reckoned from the time when he starts;

'bicycle race' means a race or trial of speed between bicycles or tricycles, not being motor vehicles, which is not a time trial;

Beyond this, the regulations are principally concerned with the processes by which the event organiser must notify the police about the event, and take heed of any conditions imposed. Perhaps curiously there is no requirement for the organiser to notify the highway authority about the proposed event. This probably goes back to 1960 (when the regulations were made) when cycle racing was not envisaged to involve rights of way, and 'traffic on the public road' was much more a police issue than a council issue.

Police powers and marshalling.

From the *BBC News* website, 13 September 2007:

"Tour of Britain is hit by hold-up

"Cyclists on the Tour of Britain were forced to cease racing and ride behind a safety car after organisers failed to close the roads to traffic. The fourth stage from Rotherham to Bradford was neutralised for 20 miles after a dispute between the organisers and North Yorkshire Police."

From the *BBC News* website, 2 September 2004.

Safety doubts mar GB return

The first Tour of Britain for five years has begun with a series of complaints by riders over safety. Olympian Roger Hammond, who finished sixth, said: "The first few riders went into a diversion for the cars at 500m, I got balked and couldn't get back." About half the field were thought to have wanted to halt the race twice soon after the start, and as the race passed through holiday traffic in Blackpool. Italian Andrea Peron said: "Cars were asked to stop but wouldn't." Peron told *The Guardian*: "The first 10 guys would pass, then the cars would move with the peloton."

The cycle racing legislation has always given the police the express power to 'hold up the traffic' to allow the safe and convenient passage of an authorised cycle race event. In the Road Traffic Act 1988:

(4) Without prejudice to any other powers exercisable in that behalf, the chief officer of police may give directions with respect to the movement of, or the route to be followed by, vehicular traffic during any period, being directions which it is necessary or expedient to give in relation to that period to prevent or mitigate—

(a) congestion or obstruction of traffic, or

(b) danger to or from traffic,

in consequence of the holding of a race or trial of speed authorised by or under regulations under this section.

(5) Directions under subsection (4) above may include a direc-

tion that any road or part of a road specified in the direction shall be closed during the period to vehicles or to vehicles of a class so specified.

In the 1960 regulations there is a requirement for the event promoter in paragraph 5(b)(v) to give,:

"Sufficient particulars to show what arrangements will be made for marshalling assisting or supervising the competitors; and also such further particulars relating to the race as may be sufficient to show that it is proposed to be held and conducted in accordance with the standard conditions."

The regulations do not provide for the event promoter to have power to, or to, in any way marshal the general public. The expectation and requirement is that the event marshals itself, and the police marshal the public as required, while ensuring that the event is not a threat to public safety and does not breach road traffic law. This has become something of a difficult issue between event organisers and the police over the past twenty years.

Cycling Weekly reported that the Havant International Grand Prix in 2005 had been stopped by the police because said Inspector Roger Petherbridge, entrants were "riding all over the road and urinating in public." He added that he had stopped the racers twice, the second time because they "had no regard for their safety or the other road users. On the narrow road between East and West Meon they were taking blind corners on the wrong side and spreading across the A32."

On 9 August 2006, the *BBC News* website reported that the 2006 event "will not run this Sunday after a "stalemate" was reached between police and organisers over plans for the 113-mile race. The conduct of cyclists and the safety of road users last year led police to ban the 2006 race."

The powers of the police and other officers to stop and direct traffic.

Although the Cycle Racing on Highways Regulations do not provide for the marshalling of the public (as opposed to the marshalling of the event) but the powers given to the police by the Road Traffic Act 1988 allow the general police powers to regulate traffic to be employed. In the Road Traffic Act 1988:

S.163 Power of police to stop vehicles:

(1) 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 or a traffic officer.

(2) A person riding a cycle on a road must stop the cycle on being required to do so by a constable in uniform or a traffic officer.

(3) If a person fails to comply with this section he is guilty of an offence.

In the Road Traffic Act 1988:

S. 35 Drivers to comply with traffic directions.

(1) Where a constable or traffic officer is for the time being engaged in the regulation of traffic in a road, a person driving or propelling a vehicle who neglects or refuses—

(a) to stop the vehicle, or

(b) to make it proceed in, or keep to, a particular line of traffic,

when directed to do so by the constable in the execution of his duty or the traffic officer (as the case may be) is guilty of an offence.

In both s.35 and s.163 (above) powers exercisable by a police constable shall be exercisable by a traffic warden by virtue of s.96(1) of the Road Traffic Regulation Act 1984.

'Traffic officers' are appointed and their role defined by the Traffic Management Act 2004. S1(5) restricts their role and powers to only 'relevant roads', which are roads for which the Secretary of State in England, or the Assembly in Wales, is the traffic authority.

Police Community Support Officers have limited powers to stop vehicles. In the Police Reform Act 2002, Schedule 4 Paragraph 11B:

Power to control traffic for purposes other than escorting a load of exceptional dimensions

(1) Where a designation applies this paragraph to any person, that person shall have, in the relevant police area—

(a) the power of a constable engaged in the regulation of traffic in a road to direct a person driving or propelling a vehicle to stop the vehicle or to make it proceed in, or keep to, a particular line of traffic;

(b) the power of a constable in uniform engaged in the regulation of vehicular traffic in a road to direct a person on foot to stop proceeding along or across the carriageway.

'Designation' of Police Community Support Officers comes under s.38 of the Act:

Police powers for police authority employees

(1) The chief officer of police of any police force may designate any person who—

(a) is employed by the police authority maintaining that force, and

(b) is under the direction and control of that chief officer,

as an officer of one or more of the descriptions specified in subsection (2).

(2) The description of officers are as follows—

(a) community support officer;

S.40 of the Police Reform Act 2002 provides for 'Community safety accreditation schemes':

(1) The chief officer of police of any police force may, if he considers that it is appropriate to do so for the purposes specified in subsection (3), establish and maintain a scheme ("a community safety accreditation scheme").

(2) A community safety accreditation scheme is a scheme for the exercise in the chief officer's police area by persons accredited by him under section 41 of the powers conferred by their accreditations under that section.
(3) Those purposes are—
(a) contributing to community safety and security;

Persons given accreditation under the Community safety accreditation scheme may be authorised to stop and otherwise direct road traffic by virtue of paragraph 8B of Schedule 5 to the Police Reform Act 2002:
Power to control traffic for purposes other than escorting a load of exceptional dimensions
(1) A person whose accreditation specifies that this paragraph applies to him shall have, in the relevant police area—
(a) the power of a constable engaged in the regulation of traffic in a road to direct a person driving or propelling a vehicle to stop the vehicle or to make it proceed in, or keep to, a particular line of traffic;
(b) the power of a constable in uniform engaged in the regulation of vehicular traffic in a road to direct a person on foot to stop proceeding along or across the carriageway.

Some police forces have set up a community safety accreditation scheme and have used this to accredit cycle race marshals – sometimes mobile in cars or on motorcycles – to have the powers set out in paragraph 8B of Schedule 5. Effectively, civilians not in police, or police-type, uniform can lawfully stop a member of the public in a vehicle, or on foot, to facilitate the passage of an authorised cycle race. The powers of Police Community Support Officers and CSAS 'accredited persons' applies only in the 'relevant police area': the area of the Chief Constable who appoints or accredits them. 'Accredited persons' must carry their accreditation and show it on demand. The prospect of having people not readily identifiable as police or traffic officers, mounted on motorcycle without flashing blue lights and 'police' signs, flagging down motorists, or even forcing them into the side of the road, must raise serious concerns. A motorist could well think that he or she was being 'car-jacked', robbed, or even kidnapped, and might respond by performing preemptive self defence manouvres. Marshals who are not police officers, traffic officers, traffic wardens, police community support officers, or CSAS 'accredited persons' – 'non-authorised marshals' – have no powers to seek to stop or direct public traffic on the highway. Their role is to regulate the competitors within the rules of the event and to avoid any danger or conflict with ordinary traffic by holding up the event where necessary.

The Road Traffic Regulation (Special Events) Act 1994.

In the run-up to the Tour de France visiting England in 1994, the highway authorities and police involved with facilitating the road stages realised that the Road Traffic Regulation Act 1984 did not provide powers to prohibit ordinary traffic from roads for the purpose of staging sporting and similar events. The 'Special Events' statute was rushed through Parliament, providing:
S.1. Prohibition or restriction on roads in connection with certain events.
(1) After section 16 of the M1Road Traffic Regulation Act 1984 there shall be inserted—
"Prohibition or restriction on roads in connection with certain events.
16A. — (1) In this section "relevant event" means any sporting event, social event or entertainment which is held on a road.
(2) If the traffic authority for a road are satisfied that traffic on the road should be restricted or prohibited for the purpose of—
(a) facilitating the holding of a relevant event,
(b) enabling members of the public to watch a relevant event, or
(c) reducing the disruption to traffic likely to be caused by a relevant event,
(4) An order under this section—
(c) may not be made in relation to any race or trial falling within subsection (1) of section 31 of that Act (regulation of cycle racing on public ways) unless the race or trial is authorised by or under regulations made under that section.

The statute has been used since 1984 to facilitate a range of 'town centre' events, including running marathons, but no regulations were ever made specific to the Act, and the whole thing is regarded as rather unsatisfactory by authorities and, particularly, by people whose freedom to use the highway is curtailed without any meaningful consultation first.

The Town Police Clauses Act 1847.

Power to prevent obstructions in streets during public processions, &c.
S.21. The commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of streets, within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty not exceeding …

The Town Police Clauses Act 1847 is a collection of 'standard clauses' available for towns or districts to import into their own 'Special Acts' (usually for improvement or regulation) and the whole of the Act was widely imported, and thereby remains in force locally. S.21 is an early form of traffic regulation, and it gives the commissioners (as defined in the Act: now generally the local authority) the power to close-off streets to traffic in order to facilitate 'events'. The provisions are still used because they can be easily applied to whole town centres (more easily than, e.g., a 'special events' traffic regulation order), and city-centre cycle racing is still sometimes organised using this provision.

14. Navigation, 'enduro' and mass-participation events on rights of way.

Apart from traditional cycle racing and time trialling, there are now many organised cycle events held on the public highway and rights of way. These include 'enduros', which are competitive, timed events over long courses, usually based on public bridleways, navigation events (similar to orienteering) and mass-participation charity rides. These can have a considerable and often adverse impact on other highway users, and on the surface of the routes used, but there seems to be little express provision for the regulation and good conduct of such events. Do these events step outside of the law, and is there any means to control them?

'Enduros' and marathons.

'Enduro' is a term borrowed from motorcycle competition. It is a long, hard event along a set route, with entrants timed, and sometimes with a 'winner' or winners, and sometimes with no graded results issued. Organisers are increasingly expressing their events to be concerned with each entrant's 'personal best time' only, and not to pit entrant against entrant, as in a race. These events can have several hundred entrants, all going as fast as they can on the public rights of way network. 'Marathons' are now largely the same, but marathon is a looser, generic term for long-distance, gruelling events. To understand how these events fit into the scheme of regulation it is necessary to look at the rules regulating racing.

Cycle racing on the public highway is regulated by the Road Traffic Act 1988, and by regulations originally made under provisions in the Road Traffic Act 1956, and continued in force by the 1988 Act: 1960 No. 250 Road Traffic. The Cycle Racing on Highways Regulations 1960. These regulations have been amended since (primarily as regards the number of entrants in an event, and as regards the use of speed-limited roads) but the essential specifications of authorised events remains the same. In the Road Traffic Act 1988, S.31: Regulation of cycle racing on public ways.

(1) A person who promotes or takes part in a race or trial of speed on a public way between cycles is guilty of an offence, unless the race or trial—

(a) is authorised, and

(b) is conducted in accordance with any conditions imposed,

by or under regulations under this section.

(2) The Secretary of State may by regulations authorise, or provide for authorising, for the purposes of subsection (1) above, the holding on a public way other than a bridleway—

(a) of races or trials of speed of any class or description, or

(b) of a particular race or trial of speed6) In this section "public way" means, in England and Wales, a highway, and in Scotland, a public road but does not include a footpath.

Any race or trial of speed between cycles on a public bridleway is unlawful. Any race or trial of speed between cycles on a public carriageway (including unsealed unclassified roads, byways open to all traffic, and restricted byways) is unlawful unless the event is either a race or a time trial as defined in the 1960 regulations, and staged in compliance with those regulations.

Organisers of mountain bike marathon and enduro events based on 'personal best time', argue that their events are not unlawful by virtue of s.31 and the 1960 regulations. Each entrant is timed, and his time is recorded and posted, but is expressed to be nothing more than a 'personal best'. The organisers argue that these events are not 'trials of speed between cycles.' They say that the recorded times are nothing more than a record of the time taken by each individual entrant, and are not related to the times of other entrants.

Such marathon and enduro events are plainly not time trials as defined in the 1960 regulations (above), and cannot therefore be authorised events on highway other than bridleways by virtue of the 1960 regulations. But are they outside the scope and regulation of 'trials of speed' altogether?

The Road Traffic Act does not define a race or a trial of speed. These terms must therefore be given their general meaning. The definition of 'race' is straightforward: 'a contest of speed', and in the conventional usage as regards sporting events it means a contest between a group of competitors, setting off together, where the first one across the finish line wins. The time taken by the winner is not the criterion of victory. It would be very difficult to have a cycle race that is not 'between cycles'.

A 'trial of speed' means something different from 'race', and a trial of speed cannot be between 'cycles' in the sense of the machines alone: it can only be between persons riding cycles. Cycles cannot move without a person powering and controlling them. 'Trial' in this context means 'test', or a 'competition for individuals'. A trial of speed can be an individual 'testing' how fast he can run, or cycle, or drive; or it can be a competition for individuals such as the establishment of the record for cycling from London to York, but in this latter case the trial would not be 'between cycles'. The words 'between cycles' are necessary in the Act to prevent individual 'road record' attempts being caught in the net of the 1960 regulations.

If a person goes out on his or her bicycle and pedals around a circuit of roads as fast as possible, then there is no express road traffic offence committed in doing this, although cycling of such a character might involve road traffic offences, e.g, careless cycling. But once there is an organised event, with

a venue, a set course on public highways, and timing clock system for entrants, then that formality, organisation, purpose and character indicate that this cycling is a 'trial of speed', even if the timing is expressed only to record each person's 'personal best'. Any 'personal best' is only of relevance in comparison to that person's time over the same course on other occasions, or against the times of other persons on the same course. These marathon courses differ markedly in distance and character from event to event, so a 'personal best' at one event has not relevance at all to a 'personal best' at another event.

Consider the mischief that the statute sets out to prevent. A race or time trial between bicycles involves a fixed route, a particular location on a particular day, a considerable number of entrants and other people, actual or potential conflict with other highway users, speed, fastest-time targets, danger and disruption. The combination of all or some of those elements amounts to an 'impact' that parliament decided must be regulated by statute. The mischief of a mountain bike marathon or enduro event, involving hundreds of competitors (often many times more than ordinary bicycle races), and most of the characteristics of a racing event, is similar to that of a racing event. It might be difficult to put a rational construction on s.31 of the Road Traffic Act 1988 that it regulates races and time trials, but exempts mass-participation marathon and enduro events where timing of individual entrants takes place, on the ground that this event is not 'between cycles'. If the words 'between cycles' are construed to differentiate trials of speed with more than one cycle involved, from trials of speed with just one cycle involved (primarily 'road record' attempts) then 'between cycles' surely goes to the multiplicity of cycles / cyclists in the event, rather than there being express competition between the individual cyclists in the event.

In any event, personal best-type events may be unlawful by virtue of the view of the court in *DPP v. Jones* (below).

Navigation events.

Mountain bike navigation events often use the roads and tracks in forestry plantations, most of which are not public roads or rights of way. Some forest events take in some public rights of way. Other types of navigation events are based entirely on the rights of way network in a particular area (often selected / defined by these routes being on one Ordnance Survey map sheet).

The navigation element is a form of route-finding test, where the entrants (often in teams of two) are given or shown, just before the starting time, a map showing the location of 'checkpoints'. The entrants must navigate themselves by any route combination they choose (but generally constrained to stay off private land) to the various checkpoints, where they will get a card stamped or clipped to prove that visit.

There is inevitably a time allowance / cut-off by which the event is ended. If there were not then entrants could all continue until they had visited all the checkpoints. The end time allows the entrants' performance to be evaluated by counting the number of checkpoints visited and 'points' gained from these visits. Remote and isolated checkpoints will often count for more points than will nearer and clustered checkpoints. A finish time is also an essential safety issue in remote countryside, when all entrants and officials must be 'counted back in' by the organisers.

Navigational skill generally counts as much as does outright athletic ability and speed. But it is undeniable that speed is an element of navigation events to a material degree. But speed alone is not a purpose, nor a criterion: it is a means of acquiring checkpoint visits, which are the criterion of success in the event.

The reality of navigation events is that the density of entrants in the competition area is very low. Apart from when in proximity to the start-finish area, the entrants scatter, following their own routes between checkpoints. They might cycle relatively fast (consistent with accurate navigation) but this is not in direct competition with other cyclists on the same route at the same time.

On forest roads the potential offence of furious riding exists, while on rights of way the offences of careless and dangerous cycling are available.

If a navigation event were too big, on fixed on too small an area, then it might make the cyclists' use of public highways unlawful: *DPP v. Jones* (below).

Mass participation events.

There are cycling events with no element of competition at all, which us public roads and rights of way. Some of these – particularly 'charity rides' – can be numerically very big indeed. There is no legal requirement for the organisers of these to inform, or seek consent from, the highway authority, landowner, or police, although good practice, 'risk assessment' and insurance requirements might direct that such consultation is advisable or mandatory.

Horse riders have complained about finding – usually without any prior or signed warning – that local bridleways are carrying so many cyclists that riding a horse along is dangerous or impossible. Highway authorities have found heavy ground impact as a result of such events, and have had to repair the rights of way, sometimes at considerable cost.

Parliament has seen fit to regulate cycle races and trials of speed on public highways, but not ordinary (non-speed) competitive cycle trials, or non-competitive mass-participation events. Some local authorities manage such events by

imposing a traffic regulation order to keep the general public off the rights of way while the event passes, but the making and marshalling of such an order is expensive.

Authorities canvased on this issue seem to be of the general view that there needs to be some form of statutory consultation and regulation, with the ability for authorities to impose a reasonable condition regarding the reinstatement of any right of way unreasonably worn by the passage of the entrants. Again, the decision in *DDP v. Jones* (below) might afford some control of these events, but would not seem to be particularly effect before the event.

Director of Public Prosecutions v. Jones [1999] UKHL 5.

This appeal concerned the conviction of a group of persons who had staged a peaceful and non-obstructive protest on the public highway adjacent to Stonehenge. The conviction by magistrates was overturned by the Divisional Court and then reinstated by the Court of Appeal in *Director of Public Prosecutions v. Jones* [1997] 2 All E.R. 119. In this judgment Romer J observed:

"I conclude therefore the law to be that the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass."

The Court of Appeal examined the law on use of a highway, ancillary 'reasonable purposes', and trespass, and held that the demonstration was not a reasonable public use of the highway. The House of Lords allowed the appeal, and considered along the way the extent of the public's right of passage on the highway, and how far it had now evolved beyond the narrow basic right to 'pass and repass'. Their Lordships approach the issue of the demonstration not be holding that the public have 'more rights than before', but by considering the extent and breadth of the right to pass and repass – ancillary activities – before the public's use steps beyond the right to pass and repass, and exceeds the 'right of passage in the highway'.

Slynn LJ: "It is objected that very often people on the highway singly or in groups take part in activities which go beyond passage and repassage and are not stopped. That is no doubt so, but reasonable tolerance does not create a new right to use the highway and indeed may make it unnecessary to create such a right which in its wider definition goes far beyond what is justified or needed."

Clyde LJ: "So far as the manner of the exercise of the right is concerned, any use of the highway must not be so conducted as to interfere unreasonably with the lawful use by other members of the public for passage along it. The fundamental element in the right is the use of the highway for undisturbed travel. Certain forms of behaviour may of course constitute criminal actings in themselves, such as a breach of the peace. But the necessity also is that travel by the public should not be obstructed. The use of the highway for passage is reflected in all the limitations, whether on extent, purpose or manner. While the right to use the highway comprises activities within those limits, those activities are subsidiary to the use for passage, and they must be not only usual and reasonable but consistent with that use even if they are not strictly ancillary to it.

"I am not persuaded that in any case where there is a peaceful non-obstructive assembly it will necessarily exceed the public's right of access to the highway. The question then is, as in this kind of case it may often turn out to be, whether on the facts here the limit was passed and the exceeding of it established. The test then is not one which can be defined in general terms but has to depend upon the circumstances as a matter of degree. It requires a careful assessment of the nature and extent of the activity in question. If the purpose of the activity becomes the predominant purpose of the occupation of the highway, or if the occupation becomes more than reasonably transitional in terms of either time or space, then it may come to exceed the right to use the highway."

Lord Clyde's view on the public's non-highway use of a highway becoming the predominant purpose of their occupation of the highway provides some good clarity on the extent to which cycle events on public roads and rights of way can go before they cease being lawful uses of the highway.

The basic public right to use a highway remains the right to pass and repass. Essentially this means going from place to place, but also embraces, e.g., simply going out walking or cycling for a circuit for pleasure. Anything reasonably ancillary to this lawful use is also lawful. You can stop to mend a puncture or eat some food (but a full-blown picnic, or camping, may be a step too far). Defining the point at which the ancillary activity becomes the predominant purpose of the persons being on the highway is a matter of fact for (firstly) the police and (secondly) the courts if the activity is, and remains, of such impact as to warrant police intervention. So an organised cycle event 'taking over' a local network of bridleways, and thereby obstructing horse riders for more than a reasonable and short period, would seem to step beyond passing and repassing, and become a trespass against the landowner and a public nuisance.

A 'personal best time'-type mountain bike enduro, with hundreds of entrants going as fast as they can on public bridleways, would seem to step well beyond passing and repassing, to become the predominant purpose of the cyclists being there. As such the event would be a public nuisance and be actionable both at the time and after the event.

The trespass aspects of *DPP v. Jones* may not prove to be much of a regulator of excessive events, but the public law side – public nuisance – gives both the police and highway authorities an effective sanction to prevent repeat events of the same sort.

15. Access land and commons.

Access Land.

The Countryside and Rights of Way Act 2000 introduced a general 'right to roam' for the public on certain types of open country in England and Wales, generally described as 'mountain and moorland'. This general right is statutorily restricted to persons on foot only:

2.—(1) Any person is entitled by virtue of this subsection to enter and remain on any access land for the purposes of open-air recreation, if and so long as—

(a) he does so without breaking or damaging any wall, fence,hedge, stile or gate, and

(b) he observes the general restrictions in Schedule 2 and any other restrictions imposed in relation to the land under Chapter II.

SCHEDULE 2

Restrictions to be observed by persons exercising right of access

General restrictions

1. Section 2(1) does not entitle a person to be on any land if, in or on that land, he—

(a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the Chronically Sick and Disabled Persons Act 1970,

The Act does contain a provision whereby landowners can voluntarily dedicate access rights for additional activities, e.g. cycling and horse riding. In practice this seldom happens.

16.—(1) Subject to the provisions of this section, a person who, in respect of any land, holds—

(a) the fee simple absolute in possession, or

(b) a legal term of years absolute of which not less than 90 years remain unexpired,

may, by taking such steps as may be prescribed, dedicate the land for the purposes of this Part, whether or not it would be access land apart from this section.

Commons.

Commons are not, contrary to quite widespread belief, 'public land'. They are areas of unenclosed land where a number of 'commoners' have rights in addition to the rights of the landowner. Such rights (which vary from common to common) would typically include grazing cattle or sheep, or gathering firewood. Before the era of 'parliamentary inclosure' commons were found everywhere.

The Law of Property Act 1925 introduced a distinction in public access rights between what are usually called 'urban commons' and other commons. The public gained a statutory right of 'air and exercise' on urban commons:

S.193 Rights of the public over commons and waste lands.

(1) Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within an area which immediately before 1st April 1974 was a borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided:

Provided that—

(a) such rights of access shall be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority; and

(c) such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon; and

4) Any person who, without lawful authority, draws or drives upon any land to which this section applies any carriage, cart, caravan, truck, or other vehicle, or camps or lights any fire thereon, or who fails to observe any limitation or condition imposed by the Minister under this section in respect of any such land, shall be liable on summary conviction to a fine …. for each offence.

This right of 'air and exercise' extends to horse riding, but bicycles (being carriages and vehicles) are generally statutorily excluded. The owner of any common can still invite cyclists on to the land, and as regards urban commons there may be formal local arrangements for bicycle access to all or part. This would generally be set out in bylaws for the common (or for all the commons in that administrative district) and such bylaws must be displayed at 'public places', such as car parks.

16. Repair standards for cyclists on public highways.

Cyclists, more than any other highway user on wheels, need to find the roads they use in a reasonable state of repair. The law on the repair of highways (and here 'maintenance' is the same as 'repair') is both arcane and broad: there is a lot of it. In the pre-motor era people, communities, and the parishes (who had to repair highways) were frequently in dispute, because passable roads were so crucial to everyday life. In the motor age the emphasis has shifted towards personal injury claims, where the state of repair of the roads is a material issue. This section looks at the basics of the law on the repair of highways, and how the specific needs and concerns of cyclists fit into this. It does not delve into personal injury issues as such: that is a specialist area requiring the involvement of solicitors.

Who are the highway authority?

In the Highways Act 1980, s.1:

(2) Outside Greater London the council of a county or metropolitan district are the highway authority for all highways in the county or, as the case may be, the district, whether or not maintainable at the public expense, which are not highways for which under subsection (1) above the Minister is the highway authority.

(3) The council of a London borough or the Common Council are the highway authority for all highways in the borough or, as the case may be, in the City, whether or not maintainable at the public expense, which are not for the time being GLA roads or …

(3A) In Wales the council of a county or county borough are the highway authority for all highways in the county or, as the case may be, the county borough, whether or not maintainable at the public expense, which are not highways for which the Minister is the highway authority under subsection (1) above.

Which highways are repairable by the public?

Not all 'public highways' are repairable at the public's expense, but the great majority are. If a road is a public highway then it is up to the highway authority to show that the road is not publicly repairable in the event of a dispute. Strictly, 'public highway' is a tautology – all highways are public – and 'public highway' is generally used in the sense of 'publicly repairable highway'. In the Highways Act 1980, s.36 Highways maintainable at public expense:

(1) All such highways as immediately before the commencement of this Act were highways maintainable at the public expense for the purposes of the Highways Act 1959 continue to be so maintainable (subject to this section and to any order of a magistrates' court under section 47 below) for the purposes of this Act.

In the simplest terms this means that highways that were publicly repairable before 1836 continue to be publicly repairable. If a highway was in existence before 1836 there is a rebuttable presumption that it was then publicly repairable: see *Attorney-General v. Watford RDC* [1912] 1 Ch 417. Roads that have been 'adopted' as publicly repairable highways since 1835; and the footpaths and bridleways shown in the first definitive maps and statements (as at 1959) are publicly repairable. There are also other express statutory provisions making particular classes, or sub-classes, of highway publicly repairable.

The duty to repair various types of highway.

'Roads'.

In the Highways Act 1980, s.36:

(6) The council of every county, metropolitan district and London borough and the Common Council shall cause to be made, and shall keep corrected up to date, a list of the streets within their area which are highways maintainable at the public expense.

(7) Every list made under subsection (6) above shall be kept deposited at the offices of the council by whom it was made and may be inspected by any person free of charge at all reasonable hours and in the case of a list made by the council of a county in England, the county council shall supply to the council of each district in the county an up to date list of the streets within the area of the district that are highways maintainable at the public expense, and the list so supplied shall be kept deposited at the office of the district council and may be inspected by any person free of charge at all reasonable hours.

Highway authorities must make and keep up to date a public register known as the 'list of streets'. This should include all publicly repairable highways in the county or district, including footpaths, bridleways and cycle tracks, but in practice almost all authorities show only 'roads' (see the section Classes of highway) and some made-up paths in urban areas. In general 'public roads' are shown in this list of streets, but the highway authority is liable to repair any highway that meets the qualifying criteria, whether in the list of streets or not.

Bridleways.

Public bridleways are (or should be) recorded in the definitive map and statement of public rights of way. That public register is conclusive of the public status of a bridleway, but not whether it is a highway maintainable at public expense. Most bridleways shown in the definitive map and statement were recorded in the original survey for the first definitive maps, carried out in the early 1950s. These, and any added to the definitive map and statement up to 1959, are all maintainable at the public expense. After 1959 bridleways added to

the definitive map and statement on the basis of 'historical evidence' – i.e. that they originate from before 1836, or were expressly created as publicly maintainable highways by an inclosure award, or a similar legal instrument – are maintainable at public expense. In general, bridleways that have come into being by a creation order or creation agreement (now in ss. 25 & 26 of the Highways Act 1980), or that have been diverted, are maintainable at public expense. Bridleways that came into being by the reclassification of roads used as a public path (RUPP) are now all maintainable at public expense.

But – and it is in practice a significant but – bridleways that have come into existence of the basis of evidence of long use of the route by the public (now in s.31 of the Highways Act 1980) are not maintainable at public expense unless and until they are 'adopted' by the highway authority, much as a newly built estate road would be adopted. These bridleways are not repairable by anybody: the landowner is not obliged to keep them in passable condition.

Cycle tracks.

In the Highways Act 1980, s.65. Cycle tracks:

(1) Without prejudice to section 24 above, a highway authority may, in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway, construct a cycle track as part of the highway; and they may light any cycle track constructed by them under this section.

A cycle track provided at the side of a public road is maintainable at the public expense because the road itself is so maintainable. In the Cycle Tracks Act 1984, s.3. Conversion of footpaths into cycle tracks:

(1) A local highway authority may in the case of any footpath for which they are the highway authority by order made by them … designate the footpath or any part of it as a cycle track, with the effect that, on such date as the order takes effect in accordance with the following provisions of this section, the footpath or part of the footpath to which the order relates shall become a highway which for the purposes of the 1980 Act is a highway maintainable at the public expense …

Restricted byways.

When the remaining roads used as public paths (RUPP) were all changed into restricted byways by s.49 of the Countryside and Rights of Way Act 1980, all these restricted byways became maintainable at the public expense, whether or not each previous RUPP was so repairable:

S.49(1) Every way over which the public have restricted byway rights by virtue of subsection (1) of section 48 (whether or not they also have a right of way for mechanically propelled vehicles or any other right) shall, as from the commencement of that section, be a highway maintainable at the public expense.

That provision was simple, but a later provision in s.67 of the Natural Environment and Rural Communities Act 2006 made things more complicated. As explained in Classes of highways, the 2006 Act extinguished public rights of way with mechanically propelled vehicles over most unrecorded public rights of way. The result of this is that routes which could previously have been added to the definitive map and statement as byways open to all traffic (BOAT) could now be added only as restricted byways. The evidence to add these routes as restricted byways generally falls into two categories: firstly 'historical documentary evidence', which generally, but not always, indicates that the route is already publicly repairable; and 'user evidence', which almost invariably indicates that the route is not publicly repairable.

Byways open to all traffic (BOAT).

BOATs were added to the definitive map by any of four principal methods:

- Reclassification from a RUPP under the procedures in the Countryside Act 1968. These are now all publicly repairable.
- Reclassification from a RUPP under the procedures in the Wildlife and Countryside Act 1981. These are now all publicly repairable.
- Added by an evidential modification order based on 'historical documentary evidence' under the procedures in the Wildlife and Countryside Act 1981. Depending upon the evidence in each case, these are mostly now publicly repairable.
- Added by an evidential modification order based on 'user evidence' under the procedures in the Wildlife and Countryside Act 1981. Unless subsequently 'adopted', these are not publicly repairable. This method of adding BOATs was relatively rare.

Repair or improvement?

Repair is not the same as 'improvement'. Repair means keeping a highway in an adequate condition for the traffic using it, and is a duty of the highway authority. In the Highways Act 1980, s.62 General power of improvement:

(1) The provisions of this Part of this Act have effect for the purpose of empowering or requiring highway authorities and other persons to improve highways.

(2) Without prejudice to the powers of improvement specifically conferred on highway authorities by the following provisions of this Part of this Act, any such authority may, subject to subsection (3) below, carry out, in relation to a highway maintainable at the public expense by them, any work (including the provision of equipment) for the improvement of the highway.

(3) Notwithstanding subsection (2) above, but without prejudice to any enactment not contained in this Part of this Act, work of any

of the following descriptions shall be carried out only under the powers specifically conferred by the following provisions of this Part of this Act, and not under this section—
(b) the construction of cycle tracks;

The carrying out of improvements takes a highway into a better state than is required merely to keep it in repair. 'Improvement' is a power of the highway authority and is therefore at the authority's discretion. Improving a highway tends to pull up the baseline of the adequate standard of repair.

The required level of repair.

There is no statutory definition of 'adequate repair', but the courts have considered the matter many times over the years.

In *Burnside v. Emerson* [1968] 1 WLR 1490, Lord Diplock:: "The duty of maintenance of a highway which was by s.38(1) of the Highways Act 1959, removed from the inhabitants at large of any area, and by s.44(1) of the same Act was placed on the highway authority, is a duty not merely to keep a highway in such state of repair as it is at any particular time, but to put it in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition. I take most of those words from the summing up of Blackburn J., in 1859 in *R v. Inhabitants of High Holborn,* "non-repair" has the converse meaning."

In *Haydon v. Kent County Council* [1975] 1 QB 343, Lord Denning:: "'Repair' means making good defects in the surface of the highway itself so as to make it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition. That is the combined effect of the statements of Blackburn J. in *R v. Inhabitants of High Halden (*1859) 1 F. & F. 678; of Diplock L.J. in *Burnside v. Emerson* [1968] 1 W.L.R. 1490, 1497 and Cairns L.J. in *Worcestershire County Council v. Newman* [1975] 1 W.L.R. 901, 911. Thus deep ruts in cart roads, potholes in carriage roads, broken bridges on footpaths or bushes rooted in the surface make all the highways 'out of repair'."

Both views were considered and approved by the Lord Chancellor in the Court of Appeal in *Department for Transport, Environment & the Regions v. Mott MacDonald & Others* [2006] EWCA Civ 1089.

The often-used term of importance here is the 'ordinary traffic of the neighbourhood.' What is 'ordinary traffic'? The expression goes back to the pre-motor car era, when steam-powered traction engines were causing bad damage to roads in some places. This type of very heavy traffic – in comparison to the common traffic – was (and remains) termed 'extraordinary traffic', and could attract financial penalties for the owners. By deduction, 'ordinary traffic' is traffic that is not extraordinary in character. 'Everyday traffic' might be a better term now, and there is little more everyday than the pedal cyclist.

What is 'reasonably passable'? This degree of repair depends upon the class and character of the highway:

Bridleways.

In the Countryside Act 1968, s.30 Riding of pedal bicycles on bridleways.
(3) The rights conferred by this section shall not affect the obligations of the highway authority, or of any other person, as respects the maintenance of the bridleway, and this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists.

Bridleways need be kept in repair sufficient for the needs only of walkers and horse riders. Walkers have as much of a right of way on bridleways as do horse riders. They are in no way second class users, and they need and can reasonably expect a route in better condition than can be coped with by a horse. A walker should expect to have to wear suitable walking boots, particularly in winter, or after rain, but not to have to 'plough through deep mud' other than in, perhaps. localised patches. As a generality, in or immediately after, other than extreme weather, a bridleway in repair for walkers would be usable by a reasonably fit mountain biker with appropriate tyres, with careful route picking and a bit of pushing and carrying. There is guidance on bridleway surface provision in On the right track: surface requirements for shared use routes: good practice guide. The Countryside Agency (now Natural England) 2005, ref CA 213.

Cycle tracks.

If a highway authority decides to provide or designate a cycle track, then clearly there is an expectation that this cycle track will be in sufficiently good condition for the passage of cyclists. How good? That would depend upon location and level of use. A busy 'commuter cyclist' track in town might need a sealed surface just be be in and stay in repair; a rural cycle track would tend to need something more in keeping with the locality and level of use, and an unsealed, rolled, surface might well be sufficient. On any cycle track keeping the surface free from sharp edges and stones, and potholes, would be the most important general measure of sufficient repair. There is government guidance on cycle track surfaces in section 8.8 of Local Transport Note 2/08: Cycle Infrastructure Design.

Restricted byways.

In the Countryside and Rights of Way Act 2000, s.48(4):

"restricted byway rights" means

(a) a right of way on foot,

(b) a right of way on horseback or leading a horse, and

(c) a right of way for vehicles other than mechanically propelled vehicles …

So, unlike with bridleways, on a restricted byway a pedal cyclist is as much a 'full user' as is a walker or horse rider. In s.49:

(4) Nothing in subsections (1) and (3) or in section 48(1) obliges a highway authority to provide on any way a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for cycles or other vehicles.

This provision is based on the similar one regarding BOATs that were previously RUPPs, in the Wildlife and Countryside Act 1981. It means that just because a way is recorded as a restricted byway, the bare fact of that recording does not oblige the highway authority to provide a 'better surface' than before. It is a check to prevent anyone saying to a highway authority 'you are obliged to repair this road by making a smooth, metalled strip for cyclists.' A highway authority might elect to do that (as a cycle track at the side of a carriageway highway) but it cannot be obliged to do this.

A restricted byway must be kept in repair for the 'ordinary traffic of the neighbourhood.' Given that a restricted byway is not a right of way for motors, it might reasonably be termed a 'cart road' and, as Lord Denning said in *Haydon v. Kent County Council*, 'deep ruts' would indicate that a cart road is out of repair. So the public might reasonably expect to find a restricted byway rutted (but not too badly) with some potholes (but not bad enough to be a real danger to horses – carts are pulled by horses) and a bit muddy, but not so bad as to prevent the passage of cyclists, other than in occasional patches, which the cyclist can steer around.

Could a cyclist say, 'I use a narrow-tyred, high-geared bicycle with minimal mud clearance between tyres and frame. I want this road put into repair for me'? Probably not. The term 'ordinary traffic' has to be given its usual meaning ... conventional, everyday, commonplace. This has not been tested in the courts, but an 'ordinary bicycle' can be described. Before the mountain bike 'revolution', it would have been the 'gents' or ladies' roadster bicycle' – sit-up handlebars, reasonable tyre clearances, mudguards. Those were ridden on all sorts of surfaces as a matter of course. The successor-in-purpose to that type of bicycle is the 'hybrid' – upright position, good clearances, and capable on a variety of surfaces. That description would also include robust tourers with dropped bars. 'Specialist' bicycles – ultra-lightweight sport road bikes, and 'proper' mountain bikes – are no less bicycles, and no less lawful traffic where bicyclists have a right of way, but their design and use characteristics are not defining characteristics for 'ordinary (bicycle) traffic' and are therefore not a benchmark by which the state of repair of highways can be assessed.

There is a caveat to all of this. Since 'good roads' (compared to what went before) became commonplace in the early 1960s, car design has evolved rapidly so as to increase the all-round performance of everyday cars. Car drivers then 'demand' better roads, and complain when low-profile tyres on alloy wheels are vulnerable to even shallow potholes. The standard of roads and the ability of traffic to exploit those roads has been interlocked in an upward spiral for approaching 50 years. Bicycle design has also evolved. Weekend cyclists now commonly use cycles that are far lighter, slimmer and faster than those used by professional racers even 30 years ago, and they still complain about the state of the roads. People's choice of vehicle and expectations about road conditions have probably changed the baseline of 'ordinary traffic' and consequently the threshold of 'sufficient repair'.

Byways open to all traffic (BOAT).

BOATs are defined in s.66(1) of the Wildlife and Countryside Act 1981:

"means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used."

For cyclists, the right of way on BOATs, and the standard to which BOATs have to be repaired, are much the same as for restricted byways. BOATs have to be reasonably passable by 'ordinary' motor traffic, and so this might act to drive a slightly higher state of repair than for restricted byways, but the view of Lord Denning in *Haydon v. Kent County Council,* that 'deep ruts' would indicate that a cart road is out of repair, while 'potholes' would do the same on a carriage road, looks to bite equally on BOATs where these are historically cart roads.

'Roads'.

Ordinary roads, as shown in the highway authority's list of streets as made under s.36(6) of the Highways Act 1980, must be repaired to a sufficient condition for the ordinary traffic of the neighbourhood.

The special defence against liability.

A highway authority has a degree of operational flexibility in carrying out its highway repair duties, and a degree of statutory protection from liability arising from defective highways. In the Highways Act 1980, s.58 Special defence in action against a highway authority for damages for non-repair of highway:

(1) In an action against a highway authority in respect of damage

resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic.

(2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:—

(a) the character of the highway, and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the highway;

(d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;

(e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

This section places a responsibility on road users to drive or cycle in a manner appropriate to the character and condition of the road. It also gives a highway authority a defence against liability where it has a regular inspection programme for roads, and takes appropriate action to remedy defects found in that inspection programme.

In practice very few highway authorities have a regular inspection programme for unsealed roads and rights of way.

Enforcing the duty to repair highways.

In general terms, highway authorities must carry out legal duties, whereas they have a discretion whether to carry out statutory powers. The repair of publicly repairable highways is a legal duty. Where a highway is out of repair, any person may serve on the highway authority a statutory notice under the provisions of the Highways Act 1980. In s.56 Proceedings for an order to repair highway:

(1) A person ("the complainant") who alleges that a way or bridge—

(a) is a highway maintainable at the public expense or a highway which a person is liable to maintain under a special enactment or by reason of tenure, enclosure or prescription, and

(b) is out of repair,

may serve a notice on the highway authority or other person alleged to be liable to maintain the way or bridge (" the respondent") requiring the respondent to state whether he admits that the way or bridge is a highway and that he is liable to maintain it.

The service of a notice under s.56, together with discussions with the Highway authority regarding the problem and a solution, will generally cause a repair to be made in a reasonable time. If not, the person who served the notice may lay a complaint in (usually) the magistrates' court, or (in limited circumstances) the Crown Court to seek an order of the court requiring that the highway is put into repair. In subsection (4):

If, within 1 month from the date of service on him of a notice under subsection (1) above, the respondent serves on the complainant a notice admitting both that the way or bridge in question is a highway and that the respondent is liable to maintain it, the complainant may, within 6 months from the date of service on him of that notice, apply to a magistrates' court for an order requiring the respondent, if the court finds that the highway is out of repair, to put it in proper repair within such reasonable period as may be specified in the order.

The service of a s.56 notice, and a complaint to the court, is within the abilities of lay persons (i.e. not qualified lawyers), but any court process is bound by formal rules and procedures, and the pursuit of an order to repair needs to be carried out with great care.

Examples of repair cases.

Pockstones Moor (The Forest Road).
Kind v. NorthYorksshire County Council (2000).

IT IS ORDERED:-

That the highway known as SN321G and variously as The Forest Road and Pockstones Moor Road, the subject of this Application, is a public carriage road, which is publicly maintainable for the purposes of section 56(1) of the Highways Act 1980.

The North Yorkshire County Council, being the Highway Authority, has undertaken to:-

Repair the surface of the road where out of repair to the full width of the existing made-up carriageway.

And shall complete the work by.....

And shall pay the Complainant's costs as set out on the Schedule of Costs appended to this Order.

Dated this 20th day of June 2000

This case concerned an action brought under the provisions of s.56 of the Highways Act 1980, which allow a member of the public to serve a statutory notice on a highway authority requiring them to say whether they are the highway authority for the road to which the notice refers. Service of the

Above: The Forest Road before repair.

Above: The Forest Road in good repair.

notice is generally sufficient to prompt the highway authority to make the necessary repairs, but if they refuse then the person serving the notice can lay a complaint in (usually) the magistrates' court, and seek an order requiring that the road be put into repair. Such an order cannot prescribe how the work should be done, and cannot require any improvement over and above a state of sufficient repair.

The processes and arguments involved in a complaint to the court under s.56 are not beyond the ability of a well-informed person without legal representation, but like any court process there are rules to be followed and the risk of an adverse costs order.

More information about the s.56 process is in the companion set of notes to this volume: *Standards of repair for minor highways*.

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The Old Hartside Turnpike.

Kind v. Cumbria County Council (1998)..

This case arose the the refusal of Cumbria County Council to repair the old unsealed road that runs behind Hartside Cafe, on the road between Penrith and Alston. The drainage ditch (visible in the photograph) and the under-road cross drains were completely choked, resulting in a lot of bog and reed (in places over four feet deep) on top of the stone road surface. The contractor who did the work carefully scraped-off the deposits, revealing the stone surface of a stretch of road that was bypassed in 1823. This photograph, taken ten years later, shows a surface ideal for cycling, with a 'new deposit' of a couple of inches of muck and grass.

More examples to be added later.