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THE UK'S NATIONAL CYCLISTS' ORGANISATION

CTC Campaigns Briefing: Public Footpaths

Public Footpaths

THIS BRIEFING COVERS

- Headline messages
- CTC's view
- Key facts and arguments (legal status of public footpaths; countryside footpaths; upgrading footpaths; conflict; urban footpaths, upgrading; gating orders; pushing cycles on footpaths)
- Policy background (Scottish Land Reform Act 2003)
- References and footnotes

HEADLINE MESSAGES

- Cycling is legal on 22% of the Rights of Way (RoW) network in England and Wales¹. However, the legality of cycling on a RoW is not related to its suitability. There is no right to cycle on footpaths, even though many of them are perfectly suitable; whereas bridleways, which cyclists are allowed to use, may be unusable (see photo below). Creating a coherent, logical, off-road network for cyclists therefore requires a fundamental reform of RoW law and political will.
- England has 146,000 km of public footpaths, and Wales over 26,000 km, most of them rural. If opened up to cyclists following Scotland's example, cyclists would benefit from more choice for both leisure and utility travel.
- Even within the current laws, there are many ways in which local authorities could open up more paths for both recreational and day-to-day cycling.

CTC VIEW

- The Scottish Land Reform Act (2003) gave cyclists lawful access to most countryside in Scotland. The success of this legislation suggests that public footpaths could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists in England and Wales and as a way of tackling the network's inconsistencies for cycling use.
- Conflict on rights of way between cyclists and pedestrians is often more perceived than real.
- In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.
- Councils should stringently assess the impact of 'gating orders' on cycling and prioritise alternatives where a public footpath forms a convenient through route.
- There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be considered a deterrent to a footpath's use by cyclists.





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KEY FACTS AND ARGUMENTS

1) Legality

Public footpaths are (mostly rural) rights of way specifically restricted to pedestrians. The right to walk along them is legally protected. County and unitary councils have to maintain 'definitive maps' on which they mark all rights of way, including public footpaths. This makes them conclusive in law (although just because a path does not appear on the map, does not necessarily mean that it is not a public path).

'Footpaths' are **not** the same as 'footways' (pavements) and their legal status differs too:

- A 'footpath' is located away from the carriageway, whereas a 'footway' runs alongside.
- Cycling on a *footway* is a criminal offence.²
- By contrast, cycling on a *footpath* normally constitutes only a trespass against the landowner. This is a civil and not a criminal matter, i.e. neither the police nor a PCSO can take enforcement action. Instead, an aggrieved landowner can either ask a cyclist who is riding on a footpath over their land to leave, or they can go to court to seek an injunction and/or damages against them.
- A bye-law, however, can make it illegal to cycle on a *footpath*.

Bye-laws and Traffic Regulation Orders³ (TROs): The exception to the above is where the relevant authority has passed a bye-law or TRO, made under the *Road Traffic Regulation Act 1984*, prohibiting or restricting cycling on a particular footpath. Bye-laws and TROs have the force of law and non-observance may be penalised by a fine.

2) Footpaths in the countryside

CTC view: The Scottish Land Reform Act (2003) gave cyclists lawful access to most countryside in Scotland. The success of this legislation suggests that public footpaths could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists in England and Wales and as a way of tackling the network's inconsistencies for cycling use.

- Many public footpaths in the countryside are indistinguishable from fully 'cycle-able' bridleways⁴ and are possibly more suitable – and their status is simply due to quirks of history. Cycling is an act of trespass on footpaths, yet permissible on bridleways⁵.
- Cyclists (and horseriders) have access to only 22% of the RoW network in England and Wales (see note (1)). Opening up more of it to cycling would disperse the concentration of cycle use on the limited parts of the network where cycling is currently permitted. This would reduce and dilute conflict with pedestrians.
- One way of opening up footpaths to cyclists would be to adopt wholesale national legislation in England and Wales, along the lines of the Land Reform Act in Scotland (see Policy Background below).



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• Upgrading footpaths

Although there is no legal right to cycle on footpaths, some are regularly used by cyclists 'as of right' on the assumption of higher status. If enough cyclists use the footpath in this way without the landowner challenging them for (usually) 20 years, then a restricted byway may be claimed through 'presumed rights' under s31 of the 1980 Highways Act.⁶

Many footpaths actually have the underlying higher status of a bridleway, restricted byway or byway. This is particularly the case in counties that classified 'carriage roads (footpaths)' and 'carriage roads (bridlepaths)' as footpaths during the development of the definitive map in the 1950s.

Where a highway authority becomes aware of evidence that the recorded status of a way is incorrect, it is required to make an order to rectify this. In reality this is a slow and bureaucratic process that results in relatively few changes year on year.

Alternatively, or in cases where there is no evidence that a footpath has higher rights, there are a number of ways in which local authorities can update their status to bridleway or restricted byway. These include:

- provision of supporting documentary evidence under s53 of the Wildlife & Countryside Act⁷
- by landowner agreement under s25 of the 1980 Highways Act (see endnote (6))
- by compulsory purchase under s26 of the 1980 Highways Act (see endnote (6))

Further details can be found in the CTC briefing *How to claim a bridleway or restricted byway* (in preparation).

3) Conflict

CTC view: Conflict between cyclists and walkers on off-road routes is often more perceived than real.

- Research from the Countryside Agency⁸ suggests that conflict between non-motorised users on off-road routes is more perceived than real, and often 'talked up' after the event. CTC accepts that where cyclists mix with pedestrians in an unsegregated shared-use environment, the onus should be on the cyclist to respect the safety of pedestrians by slowing down or dismounting as required. This should be made clear through codes, and through cycle training schemes.

4) Urban footpaths

CTC view: In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.

- If they were opened up for cycling, many urban footpaths could provide convenient, cut-through links for local cyclists. However, many are subject to bye-laws that restrict or prohibit cycling, but it is possible to revoke them.



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5) Gating orders

CTC view: Councils should stringently assess the impact of 'gating orders' on cyclists and prioritise alternatives where a public footpath forms a convenient through route.

- Under Section 2 of the *Clean Neighbourhoods and Environment Act 2005* councils have the power to make, vary or revoke 'gating orders' to restrict public access to any public highway (including footpaths, bridleways or cycleways) within their area, without removing its underlying highway status. These orders are intended to deal with anti-social behaviour (ASB) and crime.
- Home Office guidance⁹ already stresses:
 - the need to make sure that the desire to prevent ASB/crime by gating is weighed up against any inappropriate inconvenience that residents and the public might experience as a result;
 - that councils should assess the measure's impact on health if it is likely to encourage more people to drive (i.e. because alternative walking routes are too long, for example);
 - that "*Gating orders are not the only solution to tackling crime and anti-social behaviour on certain thoroughfares.*"
- CTC believes that the impact on cyclists of a gating proposal should be stringently considered before an order is made and, if it is made, during its annual review process; and that alternatives (e.g. better lighting, more police patrols by foot or cycle) should be prioritised where the route in question is valuable to cyclists and closing it off would a longer detour.

6) Pushing cycles on public footpaths

CTC view: There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be considered a deterrent to a footpath's use by cyclists.

The following evidence supports the view that it is not illegal to push a cycle on a footpath:

- **Crank v Brooks 1980**

In this case a motorist was prosecuted for injuring a cyclist who was pushing a cycle on a zebra crossing. In his judgment Lord Waller said "*the fact that the injured party had a bicycle in her hand did not mean that she was no longer a pedestrian*".

- **The Department for Transport**

In a letter written in 1994, the DfT confirmed "*...that a cyclist pushing a bicycle on a pedestrian facility is regarded as a pedestrian*".¹⁰

Comment: a footpath is a pedestrian facility in the same way as a zebra crossing or footway, so it seems reasonable to assume that the law does not differentiate between rural and urban use.



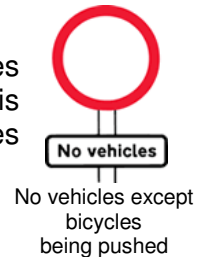
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- **The Highway Code**

The Code illustrates a prohibitive 'no vehicles' sign with the words 'no vehicles except cycles being pushed' underneath to qualify the message.¹¹ The bicycle is defined in law as a vehicle, but the rationale behind this sign suggests that cycles being pushed are to be regarded as exempt from vehicular restrictions.



Advice for cyclists: Landowners and walkers may attempt to prevent the pushing of cycles on public footpaths. Be firm but courteous in response.

- **Alternative views**

- **Ramblers'/Open Spaces Society:** A contrary view is taken by the Ramblers' Association and the Open Spaces Society, who in *Rights of Way - a Guide to Law and Practice*¹² state, "It is submitted that a bicycle is not a 'natural accompaniment' of a user of a footpath, and to push (or carry) one along a footpath is therefore to commit a trespass against the landowner".

The term 'natural accompaniment', however, was derived from a comment made by a judge in Scotland, but it had little precedence value, even in Scotland. Further, the term has NO basis in English statute whatsoever, so can be safely regarded as an irrelevance.

- Others have attempted to use **s72 1835 Highways Act (+ s85 of the 1888 Local Government Act¹³)**, which stated that it was an offence to "lead or drive" any animals, horse drawn carriage (or bicycle) on any footpath alongside the road.

Comment: clearly "lead or drive" does not apply to pushing bicycles, although it could apply to a ridden cycle. Moreover the inapplicability of this Act to footpaths (i.e. highways not adjacent to roads), was confirmed in 2 cases:

- I. *R v Pratt* (1867) in which the judgment stated that the Act ONLY applies to footways alongside roads.
- II. *Selby v DPP* (1994) where a judgment found that an alleyway joining two roads did not constitute a footpath as defined by the 1835 Act.

It can therefore be assumed that the use of any public footpath in a field would receive a similar verdict, and this is also the conclusion in *An Introduction to Highway Law* by Michael Orlik.¹⁴



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POLICY BACKGROUND

- **Land Reform Act (Scotland) Act 2003¹⁵**

This breakthrough legislation came into effect on February 9, 2005 and gives Scotland the most progressive access arrangements in the UK. Under the Act cyclists have lawful access to almost all open areas under an Access Code¹⁶ that sets out responsibilities for all parties from landowners to visitors. While cyclists are free to roam over most of Scotland's countryside, so long as they abide by the Access Code, they (and the public) are not permitted to enter buildings, private gardens, or to cross fields with growing crops in them. Key points of the Code include:

- Acting responsibly, with care for the landowner, environment and other trail users;
 - Being careful not to disturb any work taking place;
 - Closing gates and looking for alternative routes around fields with animals.
- See above for background to our policy on 'gating orders' and on pushing cycles on footpaths.

FOOTNOTES AND REFERENCES

¹ Cyclists are allowed to use bridleways, restricted byways and byways open to all traffic. For composition of the RoW network, see www.naturalengland.org.uk/ourwork/enjoying/places/rightsofway/prow/default.aspx (England); <http://www.ccw.gov.uk/enjoying-the-country/public-rights-of-way.aspx> (Wales).

² Cycling on the footway is an offence under Section 72 of the Highways Act 1835 as amended by Section 85(1) of the Local Government Act 1888.

³ For more on TROs, see

www.dft.gov.uk/pgr/roads/tpm/tmaportal/tmafeatures/tmapart6/secparkingfactsheets/trafregorders.pdf

⁴ See presentation to the National Access Forum by David Moxon (CTC), April 2006.

[www.ctc.org.uk/resources/Campaigns/0611_DMoxon_CCNconference.ppt#262,7,A coherent network?](http://www.ctc.org.uk/resources/Campaigns/0611_DMoxon_CCNconference.ppt#262,7,A%20coherent%20network%20?)

⁵ Cycling on bridleways has been legal since the Countryside Act 1968.

⁶ *Highways Act 1980*. www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800066_en_1

⁷ *Wildlife and Countryside Act 1981*. www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1981/cukpga_19810069_en_1

⁸ Countryside Agency. *How people interact on off-road routes*. Research Note CRN 32. March 2001. The Summary says: "In the main, route users accommodate others by changing their speed and pattern of travel: cyclists slow down, while walkers move in more of a straight line and speed up. / The research found that, when people gather together to talk about conflict, they talk it up and their recollection of how many others they met while on the route escalates. Their perceptions of conflict were much higher than that actually experienced."

<http://naturalengland.etraderstores.com/naturalenglandshop/Product.aspx?ProductID=d591df7c-b3d1-4070-8004-17df41db83f4>

⁹ Home Office. *Clean Neighbourhoods and Environment Act 2005: Guidance Relating to the Making of Gating Orders*. March 2006. www.asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Enforcement_tools_and_powers/GatingOrderGuidance0050.doc

¹⁰ Quoted in *Byways and Bridleways* (newsletter of the Byways and Bridleways Trust). 1995/4/19.

¹¹ Dept for Transport. *Highway Code* Revised edition 2007. See 'Signs Giving Orders'

www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_070642.pdf

¹² Riddall, John. and Trevelyan, John. *Rights of Way: A Guide to Law and Practice*. 4th Edition. Ramblers' Association and Open Spaces Society. 2007. Page 26.

¹³ The 1888 Act added bicycles to the 1835 Act.

¹⁴ Orlik, Michael. *An Introduction to Highway Law*. Shaw & Sons. First published 1993 (revised 2007). Page 10.

¹⁵ See <http://www.snh.org.uk/strategy/access/sr-afor00.asp>

¹⁶ *Ibid.*