

GLEAM



Green Lanes Environmental Action Movement
Patron: HRH The Duke of Edinburgh KG KT

**A NEWSLETTER for those interested in protecting ancient ways
from the ravages of use by motorised recreational vehicles.
AUTUMN 2003**

Off-roaders destroy Roman Heritage Site in North Wiltshire.

2,000-year-old settlement threatened by vandals on wheels.

Serious damage by off-road vehicles is threatening to destroy some of the most important Roman remains in Wiltshire — a 2,000 year old Roman settlement buried under the Fosse Way.

English Heritage is now teaming up with Wiltshire County Council, Wiltshire Police and the Environment Agency in a bid to stop the damage. In 2001 the county council spent £7,500 to repair previous damage to the riverbed of the Avon caused by off-roaders. The site was closed to traffic in 2002, and dragon s teeth — two-foot concrete bollards — were installed, but these too have since been destroyed by the off roaders.



***FOSSEWAY DAMAGE: PC Bob Prior inspects one of the worst parts of the churned up muddy track.
Photo reproduced by kind permission of the editor, Wiltshire Gazette and Herald.***

John Tremayne of Easton Grey writes:

The stretch of the Fosse Way between the B4040 and the unclassified road connecting the villages of Easton Grey and Foxley is approximately one mile long and runs through the Cotswold Area of Outstanding Natural Beauty. Along this stretch the Fosse Way also crosses the river Avon (Sherston branch) by means of a stone bridge capable of taking the weight of a light vehicle or tractor. The river valley is idyllic and is home to a large variety of wild life.

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Fosse Way Damage cont d.....

The area adjacent to the river and the Fosse Way is also the site of a Roman settlement and enjoys Scheduled Monument status.

In about 1993/94 4x4 vehicles and trail bikes began to use the Fosse Way (a BOAT) for recreational purposes and, in doing so, churned it up into deep mud and ruts. Some of the vehicle drivers were not content with staying on the byway and strayed on to neighbouring grassland, causing considerable damage to the adjoining farmland and ancient sites.

With assistance of the CLA (now the Country Land & Business Association) Wiltshire County Council and English Heritage contributed to the cost of some fencing to keep the 4x4s on the official byway. This has had a reasonable effect, although some drivers have from time to time taken it upon themselves to break down the fencing (including new five-bar gates) with bull-bars of their vehicle. However, the main problem which has been on-going for the past three or four years is that many of the drivers have found alternative "enjoyment" in fording the river in their vehicles (except during periods of high water) rather than use the official bridge mentioned above. This has desecrated the river bank in many places and has also resulted in large areas of deep mud on either side of the river. Apart from the considerable aesthetic damage, there is also wanton destruction to the wild life both on the river bank and in the river itself. The Environment Agency has discovered evidence of fish-spawning grounds being damaged by vehicles, and crayfish survival being put at risk through the destruction of the river banks where they make their furrows. In September 2002, during a period of low water, some vehicles also drove a few hundred yards down stream in the river and gained entry to nearby Foxley Grove (an important woodland) where they drove round and round, causing unbelievable damage.

The area is somewhat remote and it is very difficult to catch the perpetrators or identify them — they often remove their number plates. The local police are well aware of these activities, but it is of course difficult for them to obtain a conviction. English Heritage are, however, about to carry out a survey in the worst affected area on the river bank to establish criminal damage to historical remains. Widespread publicity has been given to this problem over the past few months, mainly through the local and, more recently, national media. Whether this will cause any remorse among the "mud and glory" people (clubs or individuals) remains to be seen.

The Campaign gathers momentum.

The national media have taken interest in the damage done to the Fosse Way and River Avon. Charles Clover of the Daily Telegraph wrote (10/5/03): "Over recent years English Heritage and Wiltshire County Council have spent thousands of pounds trying to keep 4x4 drivers out, but a hard core have persisted, tearing out first concrete bollards and then heavier dragon s teeth , triangular concrete blocks. The drivers tended to take off their number plates when they went off-road, making it harder to catch them."

The Motoring Organisations Land Access & Recreation Association (LARA) is obviously aware of the outrage the situation has aroused and has supplied signs for the area asking others to report off-roaders on the Fosse Way Byway. It remains to be seen how effective they are, but it is more important that the police actually prosecute offenders and do not almost invariably plead lack of resources.



The July 2003 edition of the Environment Agency's magazine Environment Action quoted Phil McMahon, Inspector of Ancient Monuments for English Heritage. Commenting on the threat to important archaeological sites, he said: "Damage from recreational use of 4x4 vehicles is becoming a national problem. There are drivers who don't give a damn, and others who may not know the problems they are causing. We would like the wider community to be aware of the threat to their heritage and environment, and to be vigilant in reporting any suspicious activity."

Alun Michael, Minister of State for Rural Affairs, is being pressed to ban off-roaders from the Ridgeway. Prohibiting all recreational motor vehicles from the whole of the Ridgeway is strongly supported by Newbury MP David Rendel. The leader of West Berkshire Council, Dr. Royce Longton, said that sadly the council could not afford the sheer cost of repairing the Ridgeway every time it was torn up, making it impossible to keep it in good condition for other users.

Fosse Way Damage cont d.....

GLEAM is delighted to note that other voices will in future be rather more pressing and influential in changing the climate of opinion. In the past, the influence of the motoring lobby seems to have prevented the Government from acting more decisively on the menace of the so-called sport of off-roading.

It remains GLEAM's belief that recreational off-roading, whether in 4x4s or on motorbikes, is not a sport which should be permitted on unsurfaced green lanes at all, be they byways or RUPPS. The off-roaders organisations complain that the mileage of byways is relatively short nationwide. But they seem to forget that there are many thousands of miles of metalled roads along which people can drive if they wish to enjoy the countryside. The testing of driving skills off road should only be undertaken on special sites. There are plenty of farmers who have, or who could, diversify into allowing 4x4s and trail bikes on to their land. Old gravel pits are also available. Off-roaders can surely pursue their hobby without wrecking swathes of our countryside and putting the safety of others at risk, as the Wilts and Gloucestershire Standard quite rightly says.

Stop Press....

Stop Press..

News from Derbyshire

Two drivers of 4x4 vehicles on a definitive bridleway have been successfully prosecuted by the Crown Prosecution Service under section 34 of the Road Traffic Act 1988 - thanks to changes in the law achieved by GLEAM supporters.

Further cases against Trail Rider Fellowship members are due shortly.

Letters .

From Hazel Still:

"I attended the recent inquiry in Kings Somborne. Three RUPPs were threatened with reclassification to BOATs. Tricia Newby was there and did an excellent job despite having had very little time to prepare her case as she had also been involved in another one. We await the outcome from the Inspector.

Hampshire County Council was represented by a barrister as well as two solicitors from their legal department. The landowners were represented by a solicitor and by Tricia. Many of us were outraged that the County Council took it upon themselves to present the case on behalf of the applicant at such a high level; and we will be asking why the officers thought fit to spend our tax money in this way. Is that what the people whom local councillors represent want, one wonders."

From Nikki Alford:

" At the end of January, I was riding on a bridleway when my horse stopped dead and refused to move. Seconds later two trailbikes buzzed across my path, leaping and spluttering. My horse spun round and bolted, and I ended up in Salisbury Hospital with broken bones . I count myself lucky that my neck was not broken and that I didn't have children with me. The bikers nearly killed me, I was nearly 5 weeks off work and my passion for riding is ruined ."

From Mike White:

" I was appalled to discover that a well-known bridleway near Calne had been closed because of 4x4 damage. Apparently, Wiltshire County Council were worried that walkers might damage themselves along the deep ruts, and sue. The damage has now been repaired at taxpayers expense and is NOT open to vehicles.

Another bridleway is currently closed because a government oil pipeline has been exposed by 4x4 use!"

Sections 59-60 Police Reform Act 2002

(together with The Police (Retention and Disposal of Motor Vehicles) Regulations 2002)

This is new and little-known legislation, which only came into effect on 1st January 2003, and which could have immense effect in controlling the use of recreational 4x4s and trail bikes on unsurfaced public rights of way.

Summary of the Act and Regulations

1. Under s.59(1) of this Act a constable in uniform who has reasonable grounds for believing that a motor vehicle is being used without lawful authority-
 - a. on a footpath, bridleway or restricted byway, **or**
 - b. on any common land, moorland, or other land not being part of a road, **or**
 - c. on a road or other public place without due care and attention, or without reasonable consideration for other users, **and** is causing, or is likely to cause, alarm, distress or annoyance to members of the public, has the powers set out in s.59(3).
2. Under s.59(2) a constable in uniform has the powers in s.59(3) if he has reasonable grounds for believing that a motor vehicle has been used on any occasion in a manner falling within s.59(1).
3. Under s.59(3) those powers are-
 - a. if the motor vehicle is moving, to order the person driving it to stop the vehicle;
 - b. to seize and remove the motor vehicle;
 - c. for the purpose of exercising the power in a. or b., to enter any premises (but not a private dwelling house) on which he has reasonable grounds for believing the motor vehicle to be;
 - d. to use reasonable force, if necessary, to exercise the powers in a. to c.
4. Under s.59(4) a constable shall not seize a motor vehicle unless-
 - a. he has warned the person whose use falls within s.59(1) that he will seize it, if that use continues or is repeated; and
 - b. it appears to him that the use has continued or been repeated after the warning.
5. Under s.59(5), a constable does not have to give a warning on any occasion on which he would otherwise have the power to seize a motor vehicle if-
 - a. circumstances make it impracticable for him to give the warning;
 - b. he has already on that occasion given a warning in respect of any use of that motor vehicle, or of another motor vehicle by that person or any other person;
 - c. he has reasonable grounds for believing that such a warning has been given on that occasion otherwise than by him;
 - d. he has reasonable grounds for believing that the person whose use of the motor vehicle on that occasion would justify the seizure is a person to whom a warning has been given (whether or not by that constable, or in respect of the same vehicle or the same or similar use) on a previous occasion in the previous twelve months.
6. A person who fails to stop when ordered to do so under s.59(3)(a) is guilty of an offence.
7. Under Regulations Clauses 5 and 6, to have a seized motor vehicle released from custody, the owner must pay the police authority a charge of £105 for its removal, plus £12 for every day (or part thereof) that it was in custody.
8. Under Regulations Clause 7, under circumstances specified in complex regulations, if the motor vehicle has not been released from custody, usually after 21 days, the police authority may dispose of it.

GLEAM s Interpretation of this Legislation

1. This new legislation can be a very powerful tool for controlling 4x4s and trail bikes that have been observed causing severe damage or adding to severe damage that has already been caused to public rights of way, thereby driving without reasonable consideration for other users, and causing annoyance to members of the public.

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GLEAM s Interpretation of Legislation continued.....

2. To implement the legislation, the observation does not necessarily have to be by a constable in uniform. To have at least one constable posted on a public right of way to make such observations would be an unsustainable drain on scarce police resources, and he would have to have at least one member of the public present to register alarm, distress or annoyance. For a constable to issue warnings is not so difficult, but to seize several vehicles and remove them from a remote rural location is a much more difficult and expensive operation.
3. The observation could perfectly well be done by a member of the public (or, better, by two corroborating but unrelated members of the public), provided they can supply the police with definitive evidence of the offending vehicle(s). This would consist of details of date, time, location, direction of travel, description of the vehicle(s) (make, colour, registration number) and if possible the driver, backed up if possible by a photograph. It is probably best for one person to take photographs, and for the other to record details of the vehicle(s), as it is almost impossible for one person to do everything. This evidence should then be supplied to the police, together with a signed statement registering the alarm, distress or annoyance of the observers, and a request for a warning to be issued or the vehicle(s) seized under s.59(2).
4. One type of vehicle that it will not be possible for observers fully to record is unregistered trail bikes with no number plates. Instead, these may be observed after their off-roading activities, being loaded onto a trailer towed by a normal road car. It may be possible to record the description and registration number of the towing car, and hence for the police to identify the owner of the trail bike.
5. If the police can identify such unregistered trail bikes, they can not only issue a warning or seize the vehicle for driving without reasonable consideration and for causing annoyance, but can also charge the rider with driving a motor vehicle on a public highway unlicensed and probably uninsured.
6. When a warning is issued or a vehicle seized, the police would record the vehicle and driver concerned on the Police National Computer system. There will be no difficulty in maintaining a 12-month Black List of vehicles and drivers for this purpose, available to all police forces across the country. If a constable stops an offending vehicle, or if members of the public produce definitive evidence of offending vehicles, the police can quickly and easily find out if the vehicle or its driver has received a prior warning (possibly from another police force), or if the vehicle has been seized and released, and take action accordingly.
7. If a constable seizes a vehicle in a remote rural location, he will need to have the means laid on for removing it to a secure location, possibly using a firm of vehicle removal contractors. If several seized vehicles are involved, this may pose a serious logistical problem. The constable cannot merely lock the vehicle and take the keys, leaving the vehicle where it is, because the police are responsible for its safety. If the vehicle were vandalised, the police would be responsible for the damage, and would have to pay compensation to the owner.
8. There should be no problem in holding seized vehicles in a secure location, as this is regularly done by the Traffic Division of any police force.
9. If a vehicle is seized in a remote rural location, the police have no obligation to transport the driver or passengers to any convenient location. These have to make their own way home, if necessary on foot.
10. If the police receive definitive evidence from members of the public, and identify the name and address of the registered keeper of the vehicle, this has the advantage that they can act in their own time, even if it is done by a different police force. They will know in advance which vehicles have to be seized, and which merely require a warning. The location from which a vehicle has to be seized and removed will probably not be a remote rural one, and will probably be closer to the secure location to which the vehicle will be taken.
11. One great advantage of this new legislation is that the issuing of warnings and the subsequent seizure and removal of motor vehicles is entirely a matter for the police. There is no prosecution, and hence the Crown Prosecution Service and the Magistrates Courts do not enter into it. The only circumstance in which a Magistrates Court might be involved is in s.59(6), when a person ordered to stop under s.59(3)(a) fails to do so, and is then guilty of an offence.

GLEAM s Interpretation of Legislation continued.....

12. Before anyone tries to invoke this new legislation for the first time by submitting definitive evidence to the police, they should first check with their local police authority just how they will interpret the legislation. Different police forces may interpret the same legislation in different ways. Hence any would-be observers are strongly advised to make sure that they and their local police force will make the same interpretation before they start.

Note: This interpretation is based on our own reading of the new legislation, and on discussions with a very experienced constable of Thames Valley Police, who also put it to the TVP solicitor. It is to the best of our understanding of the legislation, but we give no warranty that our interpretation is correct.

Railways and Transport Safety Bill

This Bill, which is somewhat of a hotchpotch of legislation, has been making its way through Parliament during this past summer. Quite unexpectedly, on Thursday 3rd July an amendment was introduced in the House of Lords by Lord Bradshaw, Baroness Scott of Needham Market and Viscount Astor. This amendment, made in the interest of public health and safety, required the Secretary of State within one year to make a permanent Traffic Regulation Order to prohibit the use of non-essential mechanically propelled vehicles on all National Trails. Though somewhat clumsily worded, this amendment attracted great support in the Lords, with The Ridgeway being used several times in the debate as an example. It was carried by 132 votes to 110, thereby defeating the Government.

Following this defeat, the Bill had quickly to go back to the House of Commons, where the amendment had to be either agreed or overturned by a counter-amendment. After this, the Bill would have to return to the Lords, for the Commons decision to be either accepted or overturned. Time was short, and, if the Bill ran out of time, the Government were in danger of losing the whole of it. This they did not wish to happen, particularly as it contained an important item concerning a Private Finance Initiative for London Underground.

The very next day, Friday 4th July, the Government tabled a counter-amendment. This was to insert a new Section 22B into *Road Traffic Regulation Act 1984*, as follows:

22B Traffic regulation on long distance routes

(Note that long distance routes was the original term under which certain routes were introduced in *National Parks and Access to the Countryside Act 1949*, which later became known as "National Trails".)

- (1) This section applies where the Secretary of State thinks that, because of the use of a long distance route by vehicular traffic, members of the public cannot safely and conveniently—
 - (a) enjoy the amenities of any part of the route or of the area through which the route runs;
 - (b) take advantage of opportunities for recreation in any part of that area;
 - (c) study nature in that area.
- (2) The Secretary of State may make an order preventing the use of the route or a specified part of the route
 - (a) by vehicular traffic, or
 - (b) by vehicular traffic of a specified kind.
- (3) An order under this section may have effect only in relation to a long distance route which is, or in so far as it is, in England.
- (4) An order under this section shall be treated for all purposes as if it were a traffic regulation order made by the Secretary of State in relation to a road for which he is the traffic authority."

After consultation over the weekend, GLEAM e-mailed a letter to the Minister for Rural Affairs, Alun Michael, on Monday 7th July. In this we supported the sentiments behind the Bradshaw/Scott/Astor amendment, but considered that the wording of it needed to be tightened up.

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Railways and Transport Safety Bill cont d.....

As for the Government amendment, we said that we felt that it added little to *Road Traffic Regulation Act 1984* which was not already available in the Act in either s.1 (TROs outside Greater London), s.22 (TR for special areas in the countryside) or s.22A (TR on certain roads for the purpose of conserving natural beauty). We gave a critique of the Bradshaw/Scott/Astor amendment demonstrating that the only parts of National Trails which would still be in need of protection are unsurfaced BOATs.

We finally made a detailed suggestion which would achieve the same end as was the intention of the Bradshaw/Scott/Astor amendment, but would not go down the TRO route. Instead it would add to the offences in s.34 *Road Traffic Act 1988* of driving a mechanically propelled vehicle on footpaths, bridleways and restricted byways, by creating the new offence of driving on a BOAT forming part of a National Trail. This is a much simpler and more certain solution. However, events at that time were moving so fast that it is doubtful if our letter had the slightest effect on the Government.

The Government amendment was debated in the Commons on the evening of Tuesday 8th July, introduced by the Parliamentary Under-Secretary of State, Tony McNulty. The Bradshaw/Scott/Astor amendment was overturned, and the Government amendment was agreed, which was later confirmed in the Lords. The Government amendment, though a watered-down version of the Lords amendment, is still a step in the right direction. Its main advance over the existing TRO provisions is that the Secretary of State will have sole responsibility for imposing TROs on National Trails (as he has with trunk roads), rather than the multiplicity of highway authorities (County and Unitary Councils) through whose areas a National Trail may pass. During the Commons debate it was made clear by Mr McNulty that Countryside Agency, who are ultimately responsible for the management of National Trails, have 12 months to get their act together. If they do not, then the Secretary of State will impose TROs.

However, the Government amendment raises almost as many questions as it answers. What are the criteria against which the Secretary of State will judge that the public are unable safely and conveniently to enjoy the amenities of the route? Who will assess that these criteria have not been met and inform the SoS, i.e. who will blow the whistle? The SoS may impose an order, but will he actually do this? Will such a TRO be permanent or temporary? If permanent, can the TRO be objected to, leading to a public inquiry? How will the TRO be enforced - the Police - the public using s.59 *Police Reform Act 2002* - physical barriers? And probably other questions.

It will be interesting to see how this amendment works out in practice when it comes into effect. GLEAM will be watching it carefully.

NATIONAL TRAILS

**The Countryside Agency s website —
www.nationaltrail.co.uk**

It lists thirteen long distance routes which have been designated as National Trails.

They are:

Cleveland Way	Hadrian s Wall Path
North Downs Way	Offa s Dyke Path
Peddars Way/Norfolk Coast Path	
Pennine Way	Ridgeway
South Downs Way	South West Coast Path
Thames Path	Wolds Way
Cotswold Way	Pennine Bridleway

The Agency s website gives information on the exact line of each Trail and what makes it special. The House of Lords amendment was intended to ensure that off-roading was not permitted on the Trails.

GLEAM's List of Experts.

The complexities of rights of way legislation and interpretation are such that ordinary citizens would have the greatest difficulty in finding a way through the maze which confronts them. There are some professionals — lawyers and surveyors — who have made a special study of the problems.

A number of other concerned people have, often through necessity, acquired a great deal of expertise in rights of way matters. **GLEAM** is putting together a list of people who have become experts. They have learnt how to find, interpret and present the historical evidence that is needed in order to counter an application for reclassification to a BOAT. This work is very technical, involving inclosure acts and awards, turnpike acts and suchlike — mostly incomprehensible to the average person. Note that if the requirements of the vehicular rights of way legislation are met, then the council has no alternative but to allow the application — which is precisely why **GLEAM** is campaigning for changes in these archaic, flawed laws.

We hope that there are some other members of **GLEAM** who are willing and able to help others with advice on rights of way problems in the first place. If so, please would he or she let the executive secretary, Elizabeth Still, know so that they can be added to the list. We particularly need people "north of Watford". Expenses and possibly a fee would be expected to be charged.

A copy of the list of experts can be obtained by sending a request together with a stamped, addressed envelope to **GLEAM**'s address.



**GLEAM aims to protect
public paths from
unnecessary damage. If
you would like more
information or wish to
assist please write to:
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