

# 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 2006**

## **NERC – and after .....**

In our last Newsletter we described at length the major successes which the Green Lanes Protection Group (founded by GLEAM) had achieved in changing many clauses in Part 6 of the Natural Environment and Rural Communities Bill during its passage through both Houses of Parliament. This Bill received the Royal Assent on 30 March, and Part 6 of the NERC Act came into effect on 2 May 2006. It was the most successful operation in which GLEAM had ever been involved in the 11 years since it was founded.

Since then Defra have been preparing guidance notes on the interpretation and enforcement of Part 6 (covering sections 66 to 72) of the NERC Act for the benefit of local authorities, the police, the Crown Prosecution Service and the magistrates' courts. During this time the main task of GLPG has been to give help to Defra on the production of their guidance notes. This has been done largely by Graham Plumbe (Hon. Adviser to GLEAM and alternate Vice-Chairman of GLPG), with additional input from Ian Ritchie (Chairman of GLPG and of The Friends of The Ridgeway), Dr Karen Jones (Chief Legal Adviser of CLA) and me (Chairman of GLEAM and Vice-Chairman of GLPG).

Defra is issuing successive versions of their guidance notes, each one covering more sections of the Act and improving previous versions. At the time of writing they have issued Version 2, covering ss.66 and 67, and they are working on Version 3, covering ss.66 to 71. This may sound long-winded, but it is very complex legislation, and it is essential that its interpretation and enforcement by all parties involved is consistent and correct.

Meanwhile, out in the country, local authorities have been dealing with the changes brought about by Part 6. These are not only the outstanding claims for BOAT status, and whether or not each one is exempt from being assessed under the new rules because it was made before 20 Jan 2005 (19 May 2005 in Wales). If it is exempt, the old rules will apply. (We estimate that there are about 800 claims in England and Wales which are exempt, but not all of these will succeed.) There are also the former Roads Used as Public Paths (RUPPs), all of which became Restricted Byways (RBs) on 2 May. There are thousands of these which all have to be re-signed, and their closure to mechanically propelled vehicles enforced. These changes have, not surprisingly, produced many queries from GLEAM members, which we have done our best to resolve.

With the re-signing of RBs, different authorities have shown different degrees of urgency. Some of the National Parks, such as the Yorkshire Dales and Exmoor, have been very forward-going, and put up all their signs within very few weeks after 2 May. This resulted in an immediate decline in off-roader use. Other authorities have been more dilatory. Even on a major National Trail such as The Ridgeway, while most have now been done, a few of the former RUPPs will not be re-signed until October. They still carry the old Seasonal TRO signs, with the trail bike and 4x4 closure roundel and the words "1 Oct to 30 April except for access". This implies that they are open to motor vehicles after 30 April. This makes it much harder for the police to enforce the new RB status, which is a 12-month closure.

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## GLEAM - Working to protect peaceful and quiet enjoyment of the countryside

The same delay is occurring with numerous other former RUPPs elsewhere. There is no excuse for this delay in re-signing RBs, even the excuse of having to consult Defra over the correct wording of signs. Some of the National Parks just went ahead and did it. RBs were introduced in Countryside and Rights of Way Act 2000, enacted in November 2000. They did not come into effect until 2 May 2006, 5½ years later. Everyone knew they were coming, and preparations should have been made in advance.

Nevertheless, the many benefits of the NERC Act will come into effect, and indeed are coming into effect already. Reading some of the off-roaders' websites, it appears that they are in a certain amount of disarray over this Act. If the Act had been passed in its original form we could so easily have had no Green Lanes left to protect.

David Gardiner

### Glossary.

NERC – Natural Environment and Rural Communities Act 2006.

GLPG – Green Lanes Protection Group, an alliance of a number of organisations interested in preserving green lanes locally or nationally.

CLA – Country Land & Business Association.

Defra – Department of the Environment, Farming and Rural Affairs.

BOAT – Byway Open to All Traffic.

RUPP – Road Used as a Public Path.

RB – Restricted Byway.

TRO – Traffic Regulation Order.

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## Praise from a source which really counts.

Following the coming into effect of Part 6 of the Natural Environment and Rural Communities Act 2006, your chairman received the following handwritten letter from Michael FitzGerald OBE, a retired QC and former Leader of the Parliamentary Bar, and a member of GLEAM – a man who certainly knows what he is talking about.

21 May 2006

*Dear David,*

*Thank you for the GLEAM newsletter. Huge congratulations on your monumental achievements with knotty problems posed by Part 6 of the NERC Act as originally proposed.*

*You may know that I was Leader of the Parliamentary Bar for six years, and I do not recall any example of such changes to a Bill successfully sought by a Special Interest Group. Well done indeed!*

*Best wishes,*

*Yours ever,*

*Michael FitzGerald.*

Such a letter from someone of Mr. FitzGerald's standing is praise indeed for all the members of the GLPG team who were able to bring this achievement about.

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**NEWS FROM THE NORTH PENNINE MOORS**  
**A DISPATCH FROM THE ALLEN VALLEYS PROTECTION GROUP IN**  
**SOUTHERN NORTHUMBERLAND.**



After an enormous amount of campaigning to get moorland tracks in the North Pennine Area of Outstanding Natural Beauty (AONB) safeguarded from the ravages of off-roading, it seems that at last there has been some success. Northumberland County Council have put up large clear placards on gates and fences warning motor vehicle drivers of the consequences of driving along bridleways and footpaths over the moors, and indeed anywhere else in the county. Unfortunately, though perhaps unsurprisingly, at least one notice has already been pulled down.

The wording, which could serve equally well in other counties, reads:

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## **Warning.**

### **Illegal use of Public Rights of Way by motor vehicles.**

It is illegal to drive or ride a motor vehicle on **this or any other** public bridleway or public footpath without the landowner's permission.

**Turn Back** if you do not have the landowner's permission.

By using **this** public right of way without the landowner's permission you are contravening Section 34 of the Road Traffic Act 1988 and may risk having your motor vehicle seized by the Police in accordance with Section 59 of the Police Reform Act 2002.

It will cost you £115 to retrieve your vehicle or risk it being crushed.

### **The Police are monitoring this Public Right of Way**

For more information about the content of this notice and the offences you could be committing contact The Highways and Transport Division,  
Community and Environment Services Directorate.

County Hall, Morpeth, Northumberland, NE61 2EF. Telephone 01670 534072

**Ride Responsibly**  
**Ride Legally**

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## GLEAM - Working to protect peaceful and quiet enjoyment of the countryside

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**Maggie Keyte**, who has been among those campaigning tirelessly to save Northumberland's beautiful uplands from illegal off-roaders writes:

"The Advisory Notices were placed in early July 2006 by Northumberland County Council and Northumbria Police.

"The policy which produced these notices is 'parented' also by English Nature. These notices have been placed on the fell gates. On the moorland there is access to public bridleways and public footpaths in the Northumberland sector of the North Pennine AONB.....Our dales are surrounded by magnificent remote and lonely moorland. These moors are internationally designated as the North Pennines Moors Special Protection Area and Special Area of Conservation. They are renowned for their ground nesting bird population of waders (golden plover, curlew, redshank, lapwing), raptors (merlin and the very rare hen harrier), and the Black Grouse (which under the Black Grouse Recovery Project is making a significant comeback in the Pennine Moors). In the forests and grassland periphery of the moors we have little owls, nightjars and skylarks, each declining nationally in numbers. The area has peri-arctic geomorphological features unique in the UK.

"Although trail bike riding has been reported since the notices were put up, it seems to have diminished. But at least one notice has been torn down from a fell gate. The legality of the notices has been challenged, although they were placed after the passing of the NERC Act. BOAT status had been claimed for some tracks.....

"Illegal use by off-road vehicles has been difficult to monitor. Several areas have been subject to continuous "on-piste" and "off-piste" high level trail bike use. It is believed that the Cumbria police are pursuing incidents of illegal trail bike riding on the approaches to the Cross Fell Block.

"We await developments. The moors are vast and police resources are limited."

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### Once a Highway....

The coming into effect of Restricted Byways on 2nd May has severely undermined the ancient legal maxim "Once a highway, always a highway". This is because previously all vehicles, whatever their type (two-, four- or more wheeled, motorised, horse-drawn, bicycles, etc.) were simply classed for rights of way purposes as "vehicles", and they were all treated alike. (Since 1968 bicycles have been allowed on bridleways.)

However, as the former Minister Alun Michael MP said in December 2003 in his Foreword to the Consultation Document "Use of mechanically propelled vehicles on Rights of Way":

*"I do not think that it makes sense that historic evidence of use by horse-drawn vehicles or dedication for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles."*

Now, with Restricted Byways introduced in the Countryside and Rights of Way Act 2000 and brought into effect by the Natural Environment and Rural Communities Act 2006, all this has changed. There are now two distinct classes of vehicle, 'mechanically propelled' and 'non-mechanically propelled'. Whereas Byways Open to All Traffic are still open to vehicles of all types (unless closed by a Traffic Regulation Order), Restricted Byways are open to users "on foot, on horseback or leading a horse, and to vehicles **other than mechanically propelled**"; in other words, open to horse-drawn vehicles and bicycles.

Restricted Byways are therefore open to the same classes of user (plus possibly pedal cyclists) as would have used them in the 19th century or earlier, when they were probably created and when there were no motorised vehicles.

These differentiations between different types of vehicle and types of byway make the old legal maxim obsolete. If it were to be re-phrased as "once a highway for certain classes of user, always a highway for the same classes of user", as GLEAM argued in our Spring 2003 Newsletter, we would agree with it.

## Correspondence....

*A "recently signed up" member from Devon wrote to GLEAM:*

"We live in a narrow and at one time unused green lane which had its old Public Highway (RUPP) status removed and BOAT status substituted. This was later admitted to have been an administrative oversight by Devon County Council.

"From virtually no traffic at all, the lane became a race track for 4WDs and trial bikes with resulting damage to the surface, margins and flora. This was largely brought about by the widespread publicity given to Green Lanes in the motor media as being good news for sport.

"We hope that under the new legislation it will be possible to reverse the present situation, i.e. that BOAT status can be removed .... Also TROs could be applied but at present the Devon County Council have said they cannot afford these."

Following the coming into force of the NERC Act 2006 he wrote to his local councillor: "One disturbing aspect of recent legislation is that minor roads and green lanes which were declared BOATs previously are not affected by the new Act. It now seems that there are two types of 'green lane': one protected by the Act, the other (i.e. BOAT) not protected, although as far as function is concerned they are indistinguishable."

*.....and a member from Hampshire says in his letter:*

"We are trying very hard to get motorbike usage curtailed on parts of the South Downs Way around our village of East Meon which is becoming a complete nightmare, and we have arranged a meeting with Hampshire County Council to try and take this forward. Not an easy task, but we are adamant that we are going to defeat the motorbikes that are completely inappropriate in what should be a tranquil environment on one of the country's National Footpaths."

*...and another from Derbyshire:*

"Our farmhouse is located within the Peak National Park and during the wet winter months of the year the weekends are blighted by trail bikes and 4x4 off-roaders which not only cause noise and pollution but represent a real threat to the safety of our community. On a Sunday, I can witness up to 30 loud and noisy bikes passing my property and as many 4x4s. The lane is also used by ramblers, mountain cyclists and horse riders – all making use of a 6 foot wide stretch of muddy lane.

"Over the past two years I have been in contact with Derbyshire County Council, Derbyshire Constabulary and my MP Patrick McLoghlin; and although they expressed some sympathy, there has been very little action to address the problem. Although I have tried to make contact with National Park body on several occasions and to attempt to understand their strategy for this problem, I have to admit that I am dumbfounded by their lack of action."

*(Editor's note: names of correspondents are not given as we have reason to believe that the mention of names can cause "trouble" with off-roaders in the member's area. and that the printing of addresses can be counterproductive.)*



## **NERCA ROUND 2 - HELP WANTED!**

The Natural Environment and Rural Communities Act 2006 (NERCA) Part 6 extinguished so far unrecorded mechanically propelled vehicular rights on lanes which did not already have Byway status, but allowed some claims to escape the net – those made before 20 January 2005 (19 May 2005 in Wales). About 800 of them. That escape, alias "exemption", is however dependent on the claims being compliant with the requirements of Schedule 14 of the Wildlife and Countryside Act 1981. Schedule 14 requires firstly that any claim is in the prescribed form, accompanied by a map and by documentary evidence; and secondly that a notice of the claim has been served on the owner or occupier of the land to which the claim relates. The compliance rules have hitherto been administered in a relaxed way because they were not important. They now take on a new meaning, because extinguishment of so far unrecorded vehicular rights depends on them. Test runs in the Yorkshire Dales and in Hampshire show that some highway authorities are not taking this new meaning seriously or consistently: some of the fish that were thought to have escaped can still be caught. But it needs fishermen to do so. Will you be a fisherman?

As readers will recall, GLEAM founded a major national alliance known as the Green Lanes Protection Group. GPLG is questioning whether claims for vehicular rights meet the test of exemption (see above) on a county by county basis, and asks for those who are prepared to conduct this questioning to step forward. A model request for information will be supplied with a guidance note as to what we are looking for and how to handle it. Individual guidance will be provided as required. Every claim unseated is yet another route potentially saved for the environment and normal users.

There are about 120 highway authorities. Of those, 62 are known to have potentially exempt claims. The object is to get one principal contact per relevant authority. As the exercise may involve inspecting files, additional volunteers may be enlisted to help where claims are numerous.

Anyone feeling strongly about motorised vehicles desecrating the countryside and willing to help should contact  
**Graham Plumbe on 01252 850282.**



**GLEAM campaigns to  
protect public paths from  
wanton and illegal  
damage.**

**If you would like more  
information or wish to  
assist please write to:  
GLEAM, P.O. Box 5206  
Reading RG7 6YT**

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**Published by GLEAM  
Chairman: David Gardiner.  
Executive Secretary and Editor: Elizabeth Still**

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