

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 2007**

Chairman of the Yorkshire Dales Green Lanes Alliance *Michael Bartholomew* *writes about successes and what has yet to be achieved.*

We are half way to our goal. The NERC Act (Natural Environment & Rural Communities Act 2006), which YDGLA did its fair share in helping to secure, has extinguished rights for recreational motor vehicles on about half of the green lanes in the Dales. The legal powers to close the remaining half will rest with North Yorkshire Highway Authority and the Dales National Park Authority, but neither can snap its fingers and simply prohibit vehicles: the legal complexities are formidable. And there are complicated wrangles in prospect.

Routes that escaped the clutches of NERC.

There are two sets of routes that were exempted by NERC. First, any route for which off-roaders lodged a valid byway (BOAT) application before 20 January 2005 is exempted by NERC. The fate of these routes will have to be determined under the old horse-and-cart rules. There are about a dozen such routes in the Dales, including some of the very finest green lanes. Sadly, one of these fine routes, Gorbeck Road, has been determined, after a lengthy public inquiry, as a vehicular byway, on the ground that it was dedicated, back in the 18th century, as a horse and cart track. We have no ground to contest this, although we can lobby for another way of achieving closure to recreational motor vehicles: by the imposition of a traffic regulation order (TRO). It may be the case that other green lanes from among the dozen that NERC exempted will also have to be recognised as BOATs. But wherever there is the slightest chance of showing, under the crippling horse-and-cart rules, that any of the dozen routes were not dedicated as carriageways, YDGLA will fight the case at public inquiries. Research into the historical provenance of the routes is laborious, time-consuming and expensive, but we are already pretty sure that in several of the cases we have so far examined, the off-roaders' evidence is extremely wobbly – even though off-roaders have only the relatively simple job of showing that, long ago, horses and carts were granted rights of way on the route.

The second set of NERC-exempt routes are those that are on Highway Authorities' 'List of Streets', but which are not on the map as footpaths or bridleways. This does not mean that every one of these routes has vehicular rights. It means that for those that do, NERC has not extinguished those rights. Finding out what rights of way obtain on routes that are on the List of Streets should be easy, but it's not. Off-roaders thrive on legal obscurity, and as long as the status of routes on the List of Streets is unclear, 4x4 drivers and motorcyclists will use them, hoping that legal obscurity will protect them from prosecution.

Dales Park Authority officers have estimated that there are still just over a hundred routes in the national park that either have, or may have, vehicular rights. This is a depressingly large number, but we can take comfort from the fact that many of the routes are very short, or are dead-ends, or are in places that, at present, are not attractive to off-roaders. But that still leaves a large number of routes that run through superb, tranquil landscapes and which are precious to mountain bikers, horse riders and walkers, as well as to the farmers and gamekeepers who need them for their day-to-day work.

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How many equivalent routes there are in the adjoining Nidderdale Area of Outstanding Natural Beauty (AONB) is unknown. This is not the AONB authority's fault. The problem is that AONBs do not have the autonomy that national parks have. Control over green lanes in the Nidderdale AONB is in the hands of North Yorkshire's highway authority and its rights of way department, and these departments have not undertaken the research that is necessary to produce the sort of data that the National Park Authority has gathered.

The Dales Park Authority's plans for dealing with NERC-exempt routes.

Having established that there are just over a hundred routes with potential or actual vehicular rights, Park Authority officers have made exhaustive surveys of each of the routes, using an impressive, rigorous method of determining the sensitivity of each route. Archaeological and ecological features, for example, are included in the analysis. And, perhaps most potent of all, the analysis includes objective measurements of the route's tranquillity. Research has shown that areas are shrinking where the only sound is the sound of birds, wind and streams, and that those that remain must be preserved as places where people can be sure to have escaped the sound and sight of motor traffic.

The results of these surveys are to be scrutinised by a group set up by the Park Authority called The Green Lanes Advisory Group. This group, which has a membership drawn from the vehicle-user groups, from the Local Access Forum, from farmers, mountain bikers, and other interested parties, is charged with making recommendations to the Authority's Access Committee, which in turn has the power (or soon will have) to impose TROs if Park Authority members are convinced that any particular green lane needs to be freed, either permanently or temporarily, from recreational motor vehicles. It is too early to say what will be the outcome of the Advisory Group's deliberations, and of the Access Committee's response to them. The Park Authority, however, will not have its own powers to impose TROs until Autumn this year, at the earliest, so we will have to wait and see.

Off-roaders' post-NERC strategy.

We monitor, as closely as we can, whatever sources of information about off-roader thinking that we can find. Tentatively, we can discern the emergence of two schools of thought. The first, hardcore, school tends to argue that, having lost half of their routes, they should boldly use the other half, yielding not a further inch, and to hell with the consequences. Every weekend, they defiantly use every route that is not definitely closed to them (and some that are) and proudly post details and pictures of their exploits on the web. They either do not know, or do not care, about the tide of public opinion that is running against them. They try to woo mountain-bikers and equestrians with baseless stories that if off-roaders are banned, they'll be next. By contrast, the second school of thought looks, at first sight, as if it's more conciliatory. It argues that NERC should be a wake-up call to off-roaders, signalling that Parliament and the public do not like vehicles in the countryside, and that, unless vehicle users mend their ways, further restrictions will surely follow. This second school of thought encourages vehicle users to try to win the battle for the hearts and minds of the public by demonstrating that off-roading is a benign activity, spoiled by just a few inconsiderate riders and drivers. They talk about 'sustainability', quieter exhaust silencers, less gladiatorial-looking crash helmets and clothing. The test that will indicate whether there is any substance behind the rhetoric of this second, seemingly more conciliatory school of off-roader thought, will be the number of off-roaders' BOAT applications that will voluntarily be withdrawn, and how many recommendations for stringent TROs will be initiated by off-roaders. In the Dales, there is scant evidence that there has been any change of heart. The preponderant view still seems to be that the principle of retaining motor vehicular rights on any green lane that can be shown once to have been given horse-and-cart rights must always be asserted. Above all, there is no sign that off-roaders concede that their activities are inconsistent with the special qualities of national parks. Indeed, off-roaders in the Lake District, have coined a priceless slogan about integrating their activities with the special qualities of the Lakes. A bull might more easily be integrated with a china shop.

Individual actions by members.

The important thing now is to send in reports of all illegal vehicular use to the police, with copies to the Park or AONB authorities and to us. The police are now taking reports from the public much more seriously. Using just evidence conscientiously and scrupulously supplied by ordinary citizens, the

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police are now regularly issuing what are known as Section 59 notices to offenders. These put offenders on notice that they are liable to have their vehicles confiscated if further offences are recorded during the subsequent 12 months. The public and the Park authorities are becoming more savvy in their understanding of what is legal and what is not, and police action is now much more common.

Action for the future.

The focus of our activities now shifts away from Parliament, where we – as part of a coalition that united disparate groups from all round the country – helped to bring about a fundamental change in the law. The focus now has to be local. We must contest any BOAT application that has the remotest chance of being defeated. We must report all illegal activity. And we must lobby for the imposition of TROs. An interesting example of a very local campaign came our way. Residents in a small hamlet in the Washburn Valley learned that a 4x4 group had been given permission by North Yorkshire Highways to cut back trees so that off-roaders could take their vehicles down the a pretty little green lane that runs from the hamlet. Like hundreds of routes in the county, the rights of way status of this green lane is unclear, and until the Highway Authority can be persuaded to impose a TRO on it, it is vulnerable. The track is valued highly by both residents and visitors and has been used, for many years, perfectly amicably, by residents, farmers, walkers, horse-riders and cyclists. But the prospect of seeing the trees lopped, and convoys of 4x4s coming down this quiet lane appalled the local community and sparked off a concerted, united effort, helped by the Ramblers' Association, to persuade the highway authority to withdraw its permission to the 4x4 group to undertake what off-roaders call 'maintenance'. What nonsense. But the lane will not be entirely secure from the intrusion of vehicles until a TRO is imposed. The residents, with the support of visitors, are lobbying powerfully to defend their lanes. Local action of this sort is springing up all round the country.

So we are by no means done. Those who think that they need not renew their membership because NERC is now in place are being too optimistic. There is still a need for a large and expanded membership to keep us on track. The happiest day for us all will be when the final Newsletter is issued, and when YDGLA is wound up. That will be when every green lane in the Dales is restored to the state of peace and tranquillity that the public now expects and demands.

The YDGLA Committee - Civic Centre, Cross Green, Otley LS21 1HD.

OFF-ROADERS IN AN AONB. A STUDY OF THEIR IMPACT IN NORTHUMBERLAND.

The following is a summary of a paper submitted to English Nature by the Four Parishes Joint BOATs Committee, representing Slaley, Healey, Hexhamshire and Blanchland Parish Councils, the Allen Valleys Action Group and Allendale Parish Council.

Slaley Forest and the adjacent Blanchland Moor are in SW Northumberland, south of the Tyne valley. It borders on the North Pennines Area of Outstanding Natural Beauty (AONB). The forest, occupying about 10 square km, has an exceptionally high density of inter-connected BOATs (at least 20 km in length), with multiple access to metalled country roads and to extensions of the BOATs over the adjacent moorland. This gives it the maximum rating for "accessibility" using the criteria established in the Natural England Vulnerability Mapping exercise, validated in a recent study of the AONB.

The Forest, Blanchland Moor and adjacent ancient woodland play crucial roles in the UK and European Biodiversity Action Plans for four species of international conservation importance: nightjar, black grouse, red squirrel and otter. Blanchland Moor is a European Special Protection Area (Natura 2000 site) and Special Area of Conservation, a SSSI and part of the North Pennines AONB. There is documented evidence that access along the Slaley BOATs is leading to illegal off-BOAT incursions by motor cyclists, but the highway authority and the police acknowledge that they do not have the resources to police this.

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The government's Wildlife and Access Advisory Group (WAAG), consisting of representatives from the statutory conservation agencies and voluntary conservation bodies, investigates the effects of recreational access on nesting birds. A conference sponsored by English Nature in 2005 to consider preliminary results found a need for further population-level research on birds, and for more information about the changes in numbers of people visiting the countryside and how they behave there. There is not yet a sufficient evidence

base on which to conclude that recreational access to conservation sites is not harmful. Despite this, neither Natural England, as the body responsible for conservation, nor Northumberland County Council as the highway authority in our area, has attempted to assess the environmental impact of the Slaley BOATs and their recreational use.

We therefore proposed to these Competent Authorities that they ought, and indeed have a precautionary duty under Section 40 of the NERC Act and under European law in their role as guardians of the Natura 2000 site, to carry out an urgent professional survey and assessment of the actual, and potential, impact of the use of the Slaley Forest and Blanchland Moor BOATs, particularly by recreational motorised vehicles, on wildlife and biodiversity there. In our proposal we cited, among other things, the dominant importance of ground vegetation and ground-nesting birds in the specification of the BAPs and SSSIs for the area and in the designation of the North Pennines AONB. The Slaley Forest nightjar nesting sites are very close to confirmed BOATs, and there is published scientific evidence for the sensitivity of ground-nesting nightjars to human disturbance, even by walkers and their dogs. The black grouse regeneration sites on the fringe of the forest are also close to BOATs, and the WAAG review recognised the absence of information on the effect of noise and nesting site disturbance by motor vehicles on black grouse; it was recommended that authorities should consider restrictions on access to black grouse nesting sites and winter congregation sites. The SSSI specifications for the area, and published advice to the North Pennines AONB, recognise the potential damage due to motorised vehicle incursion.

We believe that where designated conservation sites like these are crossed by BOATs there is a strong case that the competent authorities have a legal duty to make an appropriate impact assessment, as a precautionary measure, and to act on the findings. We would be glad to provide the full paper and key references to anyone interested.

Dr. Ian Hancock

New Edition of The Blue Book

The 4th Edition of "Rights of Way, a guide to law and practice" by John Riddall and John Trevelyan, known affectionately as 'The Blue Book' and regarded as 'the Bible' by Rights of Way users and practitioners, has now been published by the Ramblers Association, (883 pages, paperback) Information about this new edition can be found at www.ramblers.co.uk/rightsofwaybook On this website is an e-mail address, sales@cordee.co.uk, through which a copy may be ordered at the recommended retail price of £29.95 plus £5.50 carriage.

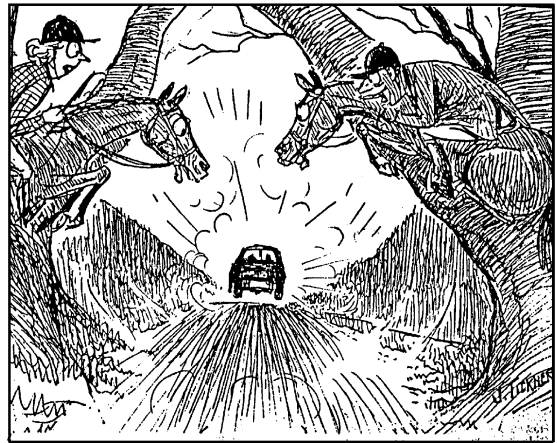
One particular innovation is that this edition of the Blue Book has its own website, which may be accessed, as above, at <http://www.ramblers.co.uk/rightsofwaybook>. From this you can get a description of the contents of each section of each chapter, and the ability to download or link to references given in the text. Also of particular use is a link to 'Blue Book Extra', which gives links to judgments referred to, and regular updates of any relevant new legislation or regulations which may emerge. It is strongly recommended!

From a horse rider's perspective

Horseback must surely be the best way of seeing the countryside using our historic public rights of way network. Being a few extra feet higher up, a rider gets a better view, often gets closer to wildlife than on foot and, in addition, our four-legged friend keeps an eye on the ground below, hopefully keeping the rider safe and sound. In practice, today, the ever increasing numbers of motor vehicles have made a significant impact on enjoyment of the countryside, both on- and off-road. Minor roads, an essential link in the rights of way network, have a 60mph speed limits with vehicles all too often using them at speeds which intimidate non-motorised users. Off-road, as readers of this newsletter know only too well, motorised vehicles have severely compromised the ability of non-motorised users to safely use byways and former RUPPs and to enjoy the peace and tranquillity that the countryside has to offer. Our four-legged friend has had his work cut out to negotiate the rutting left by vehicles and to keep his rider safe and sound.

So, planning a ride has had to include more than just consulting the relevant map. Local knowledge about whether a byway or RUPP surface is safe to ride is essential. Routes have been lost as equestrians will not risk injury to themselves and their mount. In West Berkshire, many byways and former RUPPs have some degree of rutting which requires caution. The prehistoric Ridgeway, passing through Wiltshire, Berkshire and Oxford-shire, has been no exception as previous editions of this newsletter have described.

Living close to the Ridgeway, I have been following the efforts of the local authorities and user groups to restore the severely damaged parts of the Ridgeway. Having heard that repairs had taken place, one grey and cloudy morning, a friend and I set off, on our four-legged friends, from a farmyard just north of Lambourn to sample the newly repaired Ridgeway for ourselves. After skirting Ashdown House and riding northwards, we reached the Ridgeway national trail. The new trail stretched before us with White Horse Hill in the far distance - not a rut to be seen! We were able to concentrate on the wild flowers on the verges and birds in the air, vowing to become much more knowledgeable about both. But the ascent to White Horse Hill proved a bit of a reminder of the old days with both of us choosing to use one of the tracks on the wide verge alongside rather than the treacherous-



"This sort of access to the countryside we don't need"
(Reproduced by kind permission of the editor of HORSE & HOUND.)

looking, sunken rutted track below us. The NERCA has changed a long section of the Ridgeway from RUPP to restricted byway so, hopefully, the newly repaired sections will remain free of public vehicles and be usable by non-motorised users for many years to come, without more costly repairs.

Fired by the positive experience, a couple of weeks later we rode another section of the Ridgeway above East Hendred Down, descending down the scarp face of the ridge on the East Hendred road to pick up the Icknield Way byway. What a contrast to the repaired Ridgeway. Firstly, my horse's front leg slipped into a rut which was obscured with grass overgrowth, then its back leg went in too. I went rigid for fear of my horse falling. We inched our way along the track. Not only were the ruts obscured by grass but the multiple parallel rutting meant there was very little room for a horse to place its feet on level ground. Man and beast heaved a big sigh of relief as we got to a tarmacked road. We will certainly not be riding this track again as it is. Later we learnt that the locals do not use it either so, in practice, this track is lost to equestrians until repaired. When that might be is anyone's guess.

So, this horse rider welcomes the NERCA and the benefits it brings to riding safely in the countryside. Public vehicular use is now prohibited on restricted byways. Surfaces such as those on the restricted byway sections of the Ridgeway should remain safe for non-motorised users for a long time to come. However, the legacy of vehicular use remains on many former RUPPs, and on byways with soft surfaces that still carry public vehicular traffic. There is still plenty of work for GLPG to do!

Janice Bridger, West Berkshire

Slow Progress on the Defra Guide

As reported in our last Newsletter, since the complicated legislation of Part 6 Natural Environment and Rural Communities Act 2006 (NERCA) came into effect, Defra have produced successive versions of a guide to this legislation. The Green Lanes Protection Group (GLPG), an informal group of 18 like-minded organisations set up by GLEAM, have been assisting Defra in the production of this guide. This has involved an immense amount of work by GLEAM's and GLPG's Honorary Adviser Graham Plumbe, assisted by GLPG Chairman Ian Ritchie and by Dr Karen Jones, Chief Legal Adviser to the CLA. Advice has also been given by GLEAM's other Honorary Advisers, solicitors Jonathan Cheal of Thring Townsend in Bath and James Pavey of Knights in Tunbridge Wells.

We said in our last Newsletter that Defra had produced Version 4 of their guide, published in November 2006, and that Version 5 was expected imminently. We now have to report that Version 5 has still not appeared, despite a huge amount of correspondence between GLPG and Defra.

The main sticking point has concerned s67(6) NERCA, which says:

"For the purposes of subsection (3), an application under section 53(5) of the [Wildlife and Countryside] Act 1981 is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act."

Subsection (3) lists those circumstances under which the provisions for extinguishment of public vehicular rights do not apply to an existing public right of way, one being if the claim was made before 20th January 2005 in England or 19th May 2005 in Wales. Commencement of the Act was on 2nd May 2006 (16th November 2006 in Wales).

Paragraph 1 of Schedule 14 WCA 1981 says:

"An application shall be made in the prescribed form and shall be accompanied by:

- (a) a map drawn to the prescribed scale and showing the way or ways to which the application relates; and*
- (b) copies of any documentary evidence (including statements of witnesses) which the applicant wishes to adduce in support of the application."*

The main point at issue lies in sub-paragraph (b). GLPG believes that this should be strictly observed, i.e. that copies of **all** documents that the applicant wishes to adduce **must** accompany the application, and without these the application would not be exempt. Pre-NERCA, when not so much hinged on this point, many Highway Authorities (HAs) had become very relaxed about this. Some merely allowed a **list** – not copies – of the documents to be submitted, even if the authority did not already hold the originals or a copy of them. Defra's interpretation had veered towards that of HAs, in that applicants are not obliged to submit any documents at all. GLPG recognises that HAs may excuse applicants from submitting copies of those documents where they already hold the original or a copy. The High Court has now given consent to apply for a Judicial Review in a test case in Hampshire, which may resolve this issue.

A Basic Guide to Fighting BOAT Claims

The Green Lanes Protection Group (GLPG) was founded by GLEAM before the Natural Environment and Rural Communities (NERC) Bill was tabled in 2005. It achieved many changes to Part 6 of the Bill during its passage through Parliament. Since the NERC Act 2006 came into effect, all footpaths, bridleways and the new category of Restricted Byways (formerly RUPPs) have been legally protected from use – and abuse – by mechanically propelled vehicles (MPVs). The only remaining public Rights of Way still at risk from this abuse are unsurfaced BOATs, which MPVs are still permitted to use.

Prior to NERCA there were several thousand outstanding claims for BOAT status, with many thousands more for which the claim had been prepared but had not yet been lodged (about 2,000 in Wiltshire alone). On most of these, unrecorded public vehicular rights have now been extinguished by NERCA. However, more than 800 claims throughout England and Wales are still potentially exempt from the new legislation. By no means all of these will succeed; but for them to be defeated, they must be fought with determination and, above all, a knowledge of the complex legislation surrounding them.

GLEAM's and GLPG's Honorary Adviser Graham Plumbe has now produced a Basic Guide to Fighting BOAT Claims. This 5-page document succinctly sets out this complex legislation in terms which are understandable by the layman. It is essential reading for anyone who has encountered a BOAT claim to which they object. A copy may be obtained on request by telephoning the author on **01252 850282**.



*No longer allowed: this is **The Ridgeway in Oxfordshire**, then a RUPP, now a **Restricted Byway**.*

The Next Step - TROs

Since the Natural Environment and Rural Communities Act 2006 (NERCA) came into effect, all foot-paths, bridleways and restricted byways have been legally protected from abuse by mechanically propelled vehicles (MPVs). The Rights of Way which remain vulnerable to this abuse are the existing (and the few new) unsurfaced Byways Open to All Traffic (BOATs).

It is, of course, possible for these BOATs to be protected, provided the Highway Authority (HA) will put a Traffic Regulation Order (TRO) on them prohibiting use by MPVs. A TRO is a very flexible instrument which can be applied to any type, length or width of highway; to any type, size, weight or speed of vehicle; and for any period of time, permanent, temporary or seasonal. A permanent TRO can cost in the order of £4,000 to apply, and a lesser amount each year to maintain. By contrast, a badly-damaged BOAT can cost up to £25,000 per mile to repair. Pre-emptive TROs can be applied before any damage is done.

It might have been thought that HAs would apply TROs to all vulnerable BOATs as a matter of course. However, they are very reluctant to do this, perhaps because of the immediate trouble and expense of doing so, hoping that no damage will be done. Then, when damage is done, they are faced with the dual costs of both repairing the damage and applying a TRO. It must be better to apply the TRO before the damage is done.

The solution to this problem was, I believe, first propounded by John Riddall, a doyen of Rights of Way experts, and reported in our last newsletter. This is that if, following repeated requests to an HA to put a TRO on a particular BOAT, the HA refuses to do so, there should be the facility for an appeal against this refusal to the Planning Inspectorate (PINS), and for a Public Inquiry to be held before a trained Inspector. Procedures would be similar to those for Rights of Way Public Inquiries. Costs would be paid by the losing side, which would guard against frivolous appeals. I make no apology for repeating this, for once we have finished working with Defra on the interpretation of NERCA, this will be the vital and one remaining next step for GLEAM and GLPG in protecting our Green Lanes.

I think it is important that such requests and appeals should only be made by responsible bodies. This is to guard against possibly irresponsible individual requests and appeals by over-zealous cranks. I would define 'responsible bodies' in this context as including District and Borough Councils, Parish Councils and Meetings, recognised user and conservation groups, and affected landowners.

Linked to this there should be changes to the TRO procedures to make them simpler and less expensive to apply.

Such changes in legislation would require primary legislation for them to be achieved. By themselves they are probably too small to form a self-standing Bill in Parliament. It may be better to use a larger Bill on an associated subject, and to tack a few clauses containing these TRO provisions onto it.

David Gardiner

**In the matter of Ashover Parish v
Derbyshire CC.....**

[The newly formed Ashover Parish Countryside Protection Organisation is determined to save their green lane from 4x4s and motorbikes. Their leaflet urged people to attend a public meeting to plan their strategy.]

**YOUR QUIET COUNTRY
LIFESTYLE
IS ABOUT TO END!!**

The Derbyshire County Council have given the OK to the Motorcycle Lobby by approving Ralph Lane, Marsh Green, Ashover as a Byway Open to All Traffic (BOAT). This means that 4 wheel drive vehicles and off road motorcycles will be able to use it legally.

We have a right to appeal and need everyone concerned to ask for inquiry by the Inspectorate into this decision. We also need to show Parish solidarity...it really does affect you because this is only one of several routes targeted throughout the Parish of Ashover.

PLEASE ACT NOW! ...WE ONLY HAVE THIS ONE CHANCE...AND MUST FORCE A PUBLIC INQUIRY.



Trail rider on the grass rather than the surfaced track – so much for the grand scheme to solve the problem by surfacing.



GLEAM aims to protect public paths from wanton and illegal damage.

**If you would like more information or wish to assist please write to:
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www.gleam-uk.org**

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