

GLEAM



Green Lanes Environmental Action Movement

Patron: HRH The Duke of Edinburgh KG KT

www.gleam-uk.org

**A NEWSLETTER for those interested in protecting ancient ways
from the ravages of use by motorised recreational vehicles.
AUTUMN 2013**

The Draft De-Regulation Bill

by David Gardiner, Chairman, GLEAM

Members may recall that for the last three years GLEAM has been fighting a campaign whereby, if requests for a Traffic Regulation Order to ban recreational motor vehicles from a particular route have been repeatedly refused, there should be the facility to appeal against these refusals. So far this campaign has been unsuccessful.

However, an opportunity has now arisen where this campaign might succeed. In late-July the Government put down a Draft De-Regulation Bill which, while covering many other topics, deals specifically with Rights of Way in Clauses 12-18 and Schedule 6. This will be examined by a Committee appointed for the purpose. They have invited interested parties to submit comments with supporting evidence to this Committee by 16th September.

GLEAM submitted a 3-page proposal (set out below), supported by 10 captioned photographs. The Peak District Green Lanes Alliance (PDGLA), which has the worst problem of off-roader damage in the country, made a 5-page submission (summarised below), plus five appendices. The Yorkshire Dales Green Lanes Alliance (YDGLA) also made a 7-page submission (summarised below), including three case studies with four photographs, supporting and adding to the PDGLA and GLEAM submissions. The Green Lanes Protection Group (GLPG), founded by GLEAM in 2005, and of which PDGLA and YDGLA are members, made a 6-page submission setting out detailed reasons for the proposals, plus other supplementary information.

The PDGLA, YDGLA and GLPG proposals are too long to be included in this Newsletter, but if any member would like to see the full version of them (by e-mail), they should send their request to GLEAM.



*Trail bikes on a track
(bridleway?) in the Peak
District near Buxton,
Derbyshire, in January 2006.
The track had no TRO on it
and was not repaired.*

Cont'd on page 2

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Cont'd from page 1.....

GLEAM's Proposal, as sent to the Committee

Introduction

1. GLEAM is a non-party-political pressure group founded in 1995 to protect rural Green Lanes in England and Wales from damage, mainly by recreational off-road motor vehicles. It has over 2,000 individual or family members. In the last Parliament it had as Honorary Members 91 MPs of all parties and 35 members of the House of Lords. Our Patron is HRH The Duke of Edinburgh. In 2005 GLEAM founded and is a member of the Green Lanes Protection Group (GLPG), an alliance comprising 21 like-minded organisations, some large and national, others smaller and more local, with a collective membership of over 350,000.
2. GLEAM invites the Government to use the Deregulation Bill to close loopholes in rights of ways legislation beyond those already addressed in Clauses 12 - 18. These defects remain following the enactment of the Countryside and Rights of Way Act 2000 (CROWA) and the Natural Environment and Rural Communities Act 2006 (NERCA). The loopholes now identified have resulted in extensive further damage to unsealed Byways Open to All Traffic (U-BOATs) and unsealed unclassified county roads (UUCRs) by recreational off-road motor vehicles.
3. Apart from its own proposal (below), GLEAM supports the proposals of the Peak District Green Lanes Alliance (PDGLA), a member of GLPG, to add to the provisions of this Bill by classifying UUCRs (ie green lanes), and also U-BOATs, as Restricted Byways subject to necessary exceptions.
4. GLEAM has received extensive evidence from all parts of the country of the damage done by recreational vehicles on ways that were never intended for such use, and will supply examples of such evidence to the Committee separately. We are aware that the Peak District has probably the worst problem in the country in this respect, and that PDGLA is providing its own evidence.

A 4ft deep 'bomb crater' caused by 4x4s on a BOAT at Boxford, West Berkshire, being inspected by members of the Mid & West Berkshire Local Access Forum, including well-known members of GLEAM, in July 2009. The only way that a 4x4 could get out of such a hole is by winching, which would damage any tree to which the winch cable was attached. Here one vehicle had left parts of its anatomy behind. After repeated pressure, West Berkshire Council put a temporary TRO on the track while they spent £50,000 in repairing about half a mile of it. It is now again vulnerable. A pre-emptive permanent TRO (£4,000) before the damage was done would have been far less expensive. Note that vehicles have trespassed onto the field to the right in order to avoid the hole.



Proposal

5. GLEAM draws attention to the fact that there is no right of appeal against inaction or unreasonable refusal by highway authorities in respect of requests for Traffic Regulation Orders (TROs) under the Road Traffic Regulation Act 1984 (RTRA). This is inconsistent with there being rights of appeal in virtually every other field of rights of way management including public path orders, obstruction and repair notices, and even rights of way determinations. GLEAM proposes that there should be an amendment to the RTRA introducing similar rights. This would conveniently dovetail with Clauses 15 - 17 of the Draft Bill which seek to amend the Highways Act 1980 as to applications for public path orders.
6. Existing rights of appeal may be to the Secretary of State or to magistrates. We propose in the interests of minimising regulation that TRO appeals should be to magistrates. That would have the advantage of dealing also with costs in a conventional manner.

Cont.d page 3

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Cont'd from page 2.....

Reasons

7. Section 130 of the Highways Act reads: "(1) It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it." That is frequently interpreted as asserting the rights of all users, even though the use by a small minority may result in damage which prevents the use and enjoyment by the majority. GLEAM has received countless complaints about green lanes being damaged by motor vehicles, to the extent of making walking or cycling impossible, and of rutting which presents a risk putting use by horses out of the question. Occasions of actual injury have been reported, as have cases of horses being 'spooked' by fast-moving motor vehicles - even to the point of causing fatal injuries to riders.
8. Highway authorities have a parallel duty not only to repair rights of way, but also to spend taxpayers' money in a responsible way. A badly-damaged BOAT or UCR can cost up to £75,000 per mile to repair. Damage to public paths is not only a criminal offence in itself (a factor normally overlooked by highway authorities) but is also one of the express grounds for imposing a TRO. Regrettably, authorities commonly adopt a policy of waiting for damage to occur before even considering making a TRO. It is factors such as these which offer such a compelling case for a right of appeal.
9. Failure by an authority to carry out its repair obligations is covered by Sections 56 - 58 of the Highways Act. There are appeal rights to the magistrates' court, including the matter of costs.
10. Damage which impairs the use and enjoyment of highways by others is in effect an obstruction. Sections 130A-D of the Act deal with notices under this heading and also with appeal to the magistrates' court, including the matter of costs. There is no apparent reason why no right of appeal exists in respect of TROs. Rectifying this defect would fit squarely within the proposals under Clauses 15 - 17 of the Deregulation Bill. Drafting such a measure would be straightforward, as use could be made of the existing legislation referred to above
11. On balance the proposal will reduce bureaucracy for the same reason as is given in paragraph 81 of the Notes to the Bill. This states, regarding applications for gating orders: "*This measure will make it easier for owners to obtain permission to erect gates on byways. It is thought that it will also have the effect of reducing the number of occasions on which applications for an order modifying a definitive map and statement to show a byway are opposed by landowners.*" It is the experience of GLEAM that in a large number of cases objections to modification orders are accompanied by complaints at the lack of TROs, or requests for the making of TROs, as part of the objections and submissions. Doubtless the Planning Inspectorate will be able to confirm this important point.
12. GLEAM particularly wishes to support PDGLA in its battle against off-roading in the Peak District. Improvements to the TRO system would offer a major step in that direction.

Government policy

13. In December 2003, the then Minister for Rural Affairs (Alun Michael) said:
As Rural Affairs Minister, I have been approached by many individuals and organisations who are deeply concerned about problems caused by the use of mechanically propelled vehicles on rights of way and in the wider countryside. I share these concerns, having seen for myself examples of damage to fragile tracks and other aspects of our natural and cultural heritage in various areas of the country. There is considerable concern about behaviour that causes distress to others seeking quiet enjoyment of the countryside

I do not think that it makes sense that historic evidence of use by horse drawn vehicles or dedications for vehicular use at a time before the internal combustion engine existed can give rise to rights to use modern mechanically propelled vehicles. Those who suffer from vehicle

Cont'd on page 4

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Cont'd from page 3.....

misuse find this incomprehensible and in this paper we offer new proposals that are intended to address what many have come to view as the inappropriate and unsustainable way in which vehicular rights are acquired and claimed on rights of way."

14. That statement of policy was the introduction to what became the Natural Environment and Rural Communities Act 2006. Giving a right of appeal to citizens on TROs is entirely in accord with the Government's policy as to the countryside, as well as with its policy on localism. By bringing focus to authorities' implementation of TRO law, there would probably be a nil net effect in the regulation balance. Undoubtedly it would lead to substantial savings in public expenditure, given that the cost of applying a TRO is very substantially less than the cost of repair brought about by the failure to take effective measures to prevent damage.
15. For these reasons GLEAM urges the Government to use the Deregulation Bill to introduce the right of appeal into TRO legislation to protect unsealed BOATs and UUCRs from further damage by recreational off-road motor vehicles.

Summary of PDGLA's Proposal

We believe that the proposals in the rights of way section of the Draft Bill (Clauses 12 - 18) will have much less de-regulatory effect than is hoped. They also fail to address the widespread and increasing problems caused by the use of vehicles on the type of unsealed routes covered by the proposals. These problems are the damage caused to the routes and surrounding area, and conflicts with non-vehicle users. We suggest re-classifying unsealed Byways Open to All Traffic and unsealed Unclassified County Roads as Restricted Byways. This would give much greater de-regulatory savings whilst also going a long way to solving these problems. These savings include staff time in a number of agencies involved in rights of way matters, and futile recurrent maintenance of unsealed routes caused by inappropriate vehicle use. It would also promote other government policies as a useful side effect and support local economies largely dependent on tourism and outdoor recreation. There would clearly be an effect on vehicle use of unsealed lanes, but we feel this activity is most appropriately pursued in dedicated venues, away from other non-vehicle users, and is justified in the common good.

Trail bikes on a road in the Yorkshire Dales. The road now has a permanent TRO on it.



Summary of YDGLA's Proposal

(A) All unsealed Byways Open To All Traffic, and all unsealed ways on the List of Streets that are not part of 'the ordinary roads network', should be re-classified as Restricted Byways.

(B) The public should have a right of appeal against local authorities who refuse to impose traffic regulation orders on particular routes.

This combines, in YDGLA's own words, the proposals of PDGLA and of GLEAM. YDGLA make the following comment, with which we agree:

Note, however, that the need for TROs would be reduced almost to zero if our first recommendation were to be enacted: if all green lanes were re-classified as Restricted Byways, recreational motor vehicles would, by definition, have no right to use them.

Cont'd on page 5

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Cont'd from page 4.....

Summary of GLPG's Submissions

GLPG has made submissions supporting the PDGLA's and GLEAM's proposals, and giving 11 reasons for doing so. It also gives supplementary information, such as Government policy on these matters, existing and proposed legislation, outstanding problems and the opportunity to rectify them.

Thus all four organisations, GLEAM, PDGLA, YDGLA and GLPG are mutually supporting each other. Besides these documents being sent to the Legislation Office, they have also been sent to Oliver Letwin MP who, together with Kenneth Clarke MP, signed the Foreword to the Draft Bill.

What next?

With all proposals submitted by 16th September, probably from many other organisations besides ourselves, including off-roaders, the Committee will decide what amendments need to be made to the Draft De-Regulation Bill. The Government will then probably table an amended Bill in the New Year. This Bill will then make its normal passage through both Houses of Parliament and their Committees before becoming law. Having made our proposals now, this will be easier and they will stand a better chance of success than by waiting and trying to make amendments to the Bill as it passes through Parliament. We await the outcome!

NERCA/Winchester - a bunch of fives

by Graham Plumbe (Hon Adviser to GLEAM; Vice Chairman GLPG)

On the BOAT application front, there is now only a small residue of claims that could qualify for exemption from extinguishment by NERCA. A penultimate bunch of fives was landed on the off-roaders in Buckinghamshire as reported below.

Natural Environment and Rural Communities Act 2006 (NERCA)

It may be remembered that in early 2005 GLEAM formed the Green Lanes Protection Group (GLPG), an alliance of 21 like-minded organisations, to stiffen the draft legislation in the NERC Bill aimed at stopping further vehicular rights being created on green lanes. And very successful it was too, leading to an unprecedented number of amendments including s67(6), ie that applications must be as laid down in Sch 14 Wildlife and Countryside Act 1981. This in turn led to the Winchester judgment (see below). NERCA killed off an estimated 3-4000 existing or potential BOAT claims, and Winchester has now killed a further 7-800.

In pure NERCA terms (ie non-Winchester), shadows still linger as to the effect of s67(2)(b), ie the exception of ways that (i) were (at May 2006) on the 'List of Streets' (LoS) held by highway authorities recording a liability for maintenance at public expense (but not the level of rights), but (ii) were not on the Definitive Map. The story has still to be played out in **Derbyshire, Hertfordshire, and Northumberland**. In **Somerset**, the exemption for ways predominantly used by the public in motors for 5 years ending in May 2006 (s67(2)(a)) also remains in limbo. The story will unfold eventually.

Winchester College and Humphrey Feeds Ltd v Hampshire CC [2008]

Readers will recall that in early 2008 this case ordained that BOAT applications must strictly comply with the statutory requirements as to presentation. The **Buckinghamshire** bunch of fives for the TRF started at Drayton Parslow in 2009 (concerning application map scales) and was completed at Little Missenden on 12th August. Three Definitive Map Modification Orders (DMMOs), relating to four bridleways, were "not confirmed" (as to which there is no right of appeal), based on the use of 1:50,000 application maps instead of 1:25,000 as laid down in the 1981 Act. That was very successful, as historical arguments could have resulted in a restricted byway modification which would have led to the whole process starting again.

Cont'd on page 6

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Cont'd from page 5.....

Another finger in the bunch of fives was at Stowe and Lillingstone Dayrell, where GLPG represented the LD Parish Council as to a track which is a back door to the Silverstone circuit. A BOAT DMMO had followed a successful TRF appeal against an earlier County rejection of its claim. Silverstone Estates were very concerned about wrongful access, and the Parish Council together with the main landowner were concerned about off-roading on an historically and environmentally important track leading to the site of the chapel of St Thomas à Becket. So it was vitally important to keep the way free of vehicles, quite apart from the historical value of the track – hence the corner by that name on the Silverstone circuit. Counsel's opinion (previously obtained) had said there were no grounds of objection. GLPG disagreed, pointing to the defects in the application form. We won the issue at an inquiry, having alerted the Council to the potential dangers and having overcome its reservations in other respects. Again, a "not confirmed" result denied any right of appeal. GLEAM's fighting fund has benefited from the landowner's appreciation of our work.

In **Hertfordshire**, an important section of the ancient Icknield Way is under threat from a BOAT application where exemption arises again under the LoS rule. The Council ordered a bridleway based on evidence, whereupon an inspector perversely modified the order to BOAT. That will now be contested on behalf of GLPG and local GLEAM members at an inquiry in November. Putting the LoS question to one side, a highly complex argument is developing regarding inclosure law generated in the early 1800s. The potential final nail in the off-roaders' coffin may well turn out to be application forms which fail to qualify under Winchester.

In **Northumberland** the TRF, having lost the Simonburn case under Winchester, as previously reported, continues to invent complications in the Healey case, for which a hearing took place in April. Having argued that in 1765 the way was created expressly for use by mechanically propelled vehicles (!), the argument now is as to the exact line followed historically. As the application again was non-compliant as to copy evidence, it will be a travesty of justice if it succeeds.

Compliance remains also in question in the Dorset case (previously reported), where GLPG as Interested Party is being represented personally. The Court of Appeal, in a very strange decision in April, found that application maps blown up from 1:50,000 satisfy a strict requirement for maps to be drawn to a scale of not less than 1:25,000. Application to the Supreme Court for leave to appeal has been made by DCC supported by GLPG, and the decision is awaited. The outcome of that and any subsequent appeal will decide the fate of 11 BOAT claims. It will set the precedent as to whether the law means what it says. Can devious argument overcome plain horse sense?

Defra and PINS

GLPG's argument that PINS' Advice as to 'duly made' objections is wrong was being reviewed and sent to Defra's lawyers' for vetting. The result is still pending. GLPG has also questioned a very strange procedural decision to reject all legal submissions lodged between Statements of Case and the public inquiry itself. That is unhelpful and illogical. The matter is with the responsible officer at PINS - and has been for some months. Again, may horse sense prevail?

**If you would like more information or wish to assist please write to:
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