
LARA News

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Special DETR Consultation Issue

'Improving Rights of Way'

During the early part of this year, the Countryside Commission consulted widely on proposals to change rights of way management. Their final act, in access terms, before the Commission became the Countryside Agency, was the issue of recommendations to the government, based on that research. LARA and its members were influential in the process, and while some of the proposals were not what we had hoped for, there was a lot of sense in much of the Commission's paper. In July, the Department of the Environment, Transport and the Regions issued their consultation paper with the title 'Improving Rights of Way in England and Wales'.

The Proposals in Brief

Please note that the DETR document is extensive, and includes explanatory detail. This summary, *and our comments in italics*, are necessarily less than complete.

Encouraging Creation of new Rights of Way, especially for cyclists and equestrians:

1. Authorities to carry out regular reviews of rights of way provision, and local needs.
2. All remaining RUPPs to become Bridleways. *There is little in the whole document that does encourage creation. There seems to be confusion between creation of RoW, reviewing them, and recording them, as if these were the same thing. There is little recognition, anywhere, of the value of old routes because they are old, and not merely because they can be used. This historical aspect is fundamental to the value of RoW as a recreational resource, especially for 'serious' users.*

RUPPs cannot be ploughed, legally, or gated, and they have other safeguards not applied to bridleways. If a Byway is then proved, the damage is done, and all users suffer. Putting the whole burden of claiming onto user volunteers is totally unreasonable – when it is the authorities who have let us all down, using our taxes, for over forty years.

Encouraging Completion of the Historical Record

3. After 10 years (say) no more claims based 'solely on historical documents'.
4. Claims on 20 years use to be made within 5 years of challenge. *'Completing' the historical record may be a sound objective, but it is not an honest statement of what the proposals will do. 'Capping' the record is the very opposite of 'completion', and it is a fraud to suggest otherwise. And even if these proposals get more routes into the Authorities' stock-piles, they do nothing to remove doubt, or to get them through the system and 'clearly available' for the public.*

Improving Procedures for RoW matters, & Dealing with the Needs of Land Management

5. Authorities should deal with objected orders.
6. 'Land managers and the public' to be able to apply for closures or diversions.
7. Joint diversions (etc) & DMMOs.
8. TRO powers 'for conservation' to be extended.
9. Authority 'plans and projects' affecting RoW must comply with EC Habitats Directive.
10. Power to close RoW to be added to 'meet the requirements' of EC Habitats Directive.
11. Creation agreements to take account of nature conservation
12. Power for the public to get obstructions removed.

There is an emphasis throughout on improvements to benefit land and other management, not to meet users' needs. There is little encouragement for co-operative management, or joint ventures with users, landowners and HA involvement. Instead, we find more excuses for closures, and nothing to promote fairness in their application. This is a serious omission.

Environmental Safeguards: Little use is currently made of environmental safeguards, except to provide excuses for overbearing restrictions. It is the rights of the public which need to be safeguarded, and there is nothing to encourage this. We agree that environmental concerns are important, but we feel that restrictions should always apply 'across the board' – to tractors as well as recreational users. Too often recreational users are restricted 'to preserve the character of the road', or 'to prevent unsuitable use by vehicles' but aggressive and uncaring land management continues unabated.

Obstructions: Total agreement in favour, on this point. If the proposals do nothing else, the power to ensure that obstructions are removed will be a boon. But, after all, this is only needed because authorities do not do what they should. It should not be needed at all.

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Measures for Crime Prevention, & Rationalisation

13. TROs and gates against persistent crime.
14. TROs preventing access except to property owners.
15. Power for diversions and closures 'to protect the safety of the public'.
16. Byways to be diverted or closed by HA'80 ss118, 119, instead of ss116, 117.
17. The prohibition of 'roadgoing motor vehicles' on footpaths, bridleways, etc, to include all 'mechanically propelled' vehicles.

Crime prevention: Removing public rights for ever, as proposed, is seen as an overbearing and thoughtless way to deal with social problems which are always temporary in nature. Any new powers will be abused to suit landowners, developers, and especially when the council is one or both of these. The Police, currently, have no understanding of Rights of Way, and no reason to find out. To them, closure is an easy option, but the anti-social activity then moves on, 'justifying' more closures... And unfortunately, it is too easy for 'concerned residents' to arrange for evidence of such activities in apparent justification of their pleas for closure. No checks and balances are in place for cases like this, and nothing in the proposals hints at the need for them.

Improved Disabled Access

18. Improved facilities for disabled access at field boundaries and road crossings.
19. Authorities to report on improvements in disabled access provision.

There is general agreement that this, too, is long overdue, but disappointment that in practice, the proposals would result in more problems for the disabled - in particular due to ploughing, and gating, of RUPPs which become Bridleways.

Improving Quality of the Legal Record & Availability of Information

20. Consolidated Definitive Maps for new and changed authority areas.

Some proposals promise to improve the quality of the record, but will fail to do this as the authority stock-piles of unresolved claims grow ever higher. No measures are proposed to assist users, (or developers, etc) who need to get information out of the authorities. Current requirements (regarding the Definitive Map & Statement, and the List of Streets) are ignored with no prospect of enforcement, and the proposals do not address this.

Further proposals are seen by LARA as vital:

Proper systems of accountability and quality control for all the processes involved in RoW management, from the Secretary of State downwards.

Recognition at all levels of the value of co-operative management, in terms of reduction of conflict and objection, and as a 'best value' tool.

While the value of Local Access Forums is recognised, to advise on some issues and as an arbiter in others, there needs to be enforced provision for fair dealing in terms of membership and accountability. The skewed membership of the National Countryside Access Forum, already being promoted as a model for LAFs, is neither equitable nor helpful for any user, over all.

Users United in Agreement

Everyone knows, don't they, that the motorist, the horse rider, the cyclist, and the walker, are continually in conflict? If you listen in at Public Inquiries or council debates you would guess that this is the case, but it is not. Expert users and representatives from all these activities met recently to look at the new DETR proposals, and to try to find common ground. No conflict arose at all; agreement was total, and a Joint Response was agreed.

The conclusions from a wide-ranging debate were:

- For every one of the proposals, there was consensus among all the users present, whatever their backgrounds.
- Some of the proposals were supported, and seen as long overdue.
- Some of the proposals would not in practice achieve the results claimed, and therefore any promised benefit (which is mainly for landowners) is illusory.

What YOU Can Do About It

To obtain your own copy of the DETR paper, ring this number, and ask for 'Improving Rights of Way in England & Wales':
0870 1226 236

You will be sent a copy post free. Read it carefully, and consider the points set out above. Perhaps you could discuss things with other club members, or colleagues. You should then -

Respond directly to the DETR.

See your MP, ask for their support, and ask them to write to the Minister for you (Details in the Phone Book under 'Members of Parliament').

Let your club know your feelings, and get them to respond to the DETR.

Tell your local Council, and Rights of Way Liaison Group, of your concerns.

The rules do need changing, but not like

- Some of the proposals fit very uncomfortably with the title or text which precedes them.
- Taken as a whole the proposals were seen as unlikely to improve the rights of way network, as DETR claim.
- Completing the record: A few volunteers could not possibly do in ten years what hundreds of professionals had failed to do in forty. The idea is ridiculous.
- There would be huge new loads on volunteers, with nothing to ease their new burdens, or to encourage more to come forward, or to train them in the skills they need.
- The proposals add workload to authorities – reviews, recording claims and challenges, etc – without any promise that action will follow.
- They seem to penalise those authorities who have been thorough and benefit the hopelessly inactive – an unhelpful policy.
- Stockpiling claims with no changes to get them dealt with more quickly solves nothing for anyone.
- *Making the Best of Byways* was positive and was based on real evidence. These DETR proposals are broadly negative. What has changed?
- These ideas are widely seen as ‘a sop to landowners as compensation for Open Access’.
- Current law is not working well, but in many areas minor changes would be better than a ‘new deal’ involving further uncertainty until the courts work out what it all means in practice.
- Several clues point to the fact that the authors of the DETR proposals may not be fully ‘clued-up’ about RoW law. This gives us little confidence, especially when taken with the following factor.
- The whole process seems to be intended to catch the next Queen’s Speech. There will not be time to ensure that it works properly (ie joined up government). Rushed laws are always faulty laws, we all agreed.

A copy of the Joint Response has been sent to all LARA full members, and the DETR.