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## SUPPORTED BY



## **The Countryside and Rights of Way Act brings threats and opportunities for motor sport and recreation.**

**The new legislation is assessed for its impact.**

**Last-minute amendments to the Bill place great strains on positive management initiatives and will cause disruption to green lane driving and some motor sport events.**

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**"Back To Our Routes", LARA's Workshop 2000/2001 (postponed because of delays to the new legislation) is now in the form of a training workshop on researching old rights of way, evaluating the evidence, and making applications to modify the definitive map. It is now a multi-date regional event. See inside for more details.**

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## **The Countryside and Rights of Way Act has finally finished its passage through Parliament and the first parts of this complex piece of legislation became law in early February 2001.**

Here at LARA we are very disappointed with a number of aspects of the Act and the effects – both deliberate and incidental – on motor sport and recreation. There may be some very serious restrictions placed on trail driving and riding as it is currently practised, and we need the help of everyone in the sport to try to avoid the worst outcome.

LARA's Workshop 2000, on 'gearing-up to respond to the new access legislation' had to be postponed twice as the passage of the Bill through Parliament was slower and later than anticipated. In response to requests we have revised the Workshop's programme a little and will organise it not as a national 'one-off', but as a 'regional roadshow', repeated wherever there is enough demand – see inside this issue for details. The outfall from the Countryside Act amounts to a big task over a number of years. LARA can help you with the tools, but it is up to clubs and individuals to do the job.

## What is in the new Countryside Act and how does it affect me?

**The Countryside and Rights of Way Act is set out in five sections and a lot of schedules. A great deal of this is to amend existing legislation, so it is rather difficult to read through and get a clear over-view of the provisions and their effect. LARA will be issuing various *Briefing Notes* on the detail of crucial provisions, but here is an outline of the new law and how it might affect you.**

**Part I of the Act is concerned with the ‘right of access’ or, as it is now usually known, the ‘right to roam’ for ramblers.**

Essentially, walkers will get a legal right to walk on all registered commons and other land over 600 metres in elevation, but all land that fits the criteria must be surveyed and mapped in a new statutory process before it becomes ‘open access land’. At the moment we do not think there will be any huge negative impact on motor sport events like trials and hill rallies, if only because in many places there is no reason to think that there will be a sudden upsurge in ramblers choosing hard open country over rights of way.

Landowners will have the opportunity to close land to the public for up to 28 days in the year, but there are restrictions such as no closures on public holidays, and only a handful of weekend days, of which none can be in the peak summer season. But, even so, any member of the public exercising a statutory right to roam is prevented by law from obstructing or disrupting any lawful activity taking place on the land – so nobody could deliberately walk slowly up a trials section to block the competitors, and claim a right to be there.

Land ‘used as a racecourse’ is also exempted, so for example a moto-cross track situated in access land – even as a temporary use – looks to be unavailable to right-to-roamers. Ministry of Defence land may be opened up to walkers, but the Act gives the Secretary of State very wide-ranging powers to declare MoD sites outside the right to roam. Where motor sport uses military tracks and roads in firing ranges, it is unlikely that safety would allow the Secretary of State to include the ranges in open access areas.

**What should motor clubs do?** The mapping of open access areas is the statutory duty of the Countryside Agency in England and the Countryside Council for Wales. We envisage that there will be a long period of enquiry and consultation in the process, and the LOCAL ACCESS FORUMS in each area will be vital means of involvement for voluntary bodies. We look at LAFs a little further on.

**Part II of the Act deals with rights of way and the definitive map processes.**

The sometimes problematic ‘road used as a

public path’ (RUPP) is to be changed statutorily to ‘restricted byway’ (RB), which is like a byway open to all traffic (BOAT), but without any conclusive right of way for mechanically propelled vehicles. This provision does not become effective immediately – it has to be brought in by a statutory instrument which will set a commencement date; until that date, orders for reclassifying and (occasionally) modifying RUPPs can be made, and these orders will survive the change-over to the new designation. When a RUPP becomes an RB it will not remove any underlying motor vehicle right of way, but it will be up to anyone using an RB with a motor vehicle to prove such a right if challenged (and even this right may be taken away too – see later). The upshot is that any motor vehicle driver, either recreation or competition, must be sure of the underlying rights on any RB before using it – and expect more challenges from landowners and others who will assume that a restricted byway automatically means no motor vehicles at all.

**The Act introduces a very controversial ‘cut off’ for the definitive map.** 25 years from now the rights of way shown in the definitive map will become ‘fixed’; for example a footpath in the definitive map that is, in truth, an awarded public carriage road, will lose those higher rights and be only a footpath for all time. During the next 25 years it is vital that a thorough programme of research is undertaken to identify all the missing and wrongly recorded rights of way, and make proper applications to modify the definitive map. Once applications are made with the highway authority, this will stop the cut-off clock ticking on that particular track. One interesting aspect of this requirement is that minor vehicular roads, such as unsealed unclassified roads that are not currently on the definitive map at all, will not be extinguished, but it will be impossible to add them to the definitive map later as BOATs.

**The Countryside Agency is currently developing a Government-funded programme for doing all this crucial research into ‘Lost Ways’.** Nobody yet knows how the voluntary sector will fit in with this, but there will undoubtedly be a big task ahead for clubs and individuals to participate in the research programmes. Because there is a significant amount of volunteer training to do here, the basis of archive research and making applications to modify the definitive map will be the core of LARA’s forthcoming Workshop 2000/2001 – see elsewhere in this issue.

**‘Rights of way improvement plans’** is another totally new area introduced by this Act. Each highway authority is obliged to produce a plan for the management and improvement of rights of way, and you can be reasonably certain that footpaths and cycle tracks will get precedence over BOATs and even bridleways in some places. The LOCAL ACCESS FORUMS will provide a major input into the making

and management of these plans, so it is vital that motor sport ensures it is properly represented.

**Removal of obstructions** is a new process – and one that will be welcomed by many users frustrated at highway authorities' failure to deal with obstructions over many years. Essentially, where a public path, restricted byway or byway open to all traffic is on the definitive map, a member of the public can serve a statutory notice on a highway authority requiring the removal of an illegal obstruction and, if no action ensues, go to the Magistrates' Court to seek an order for removal. This is a new process and quite tricky in some areas: watch out for a LARA *Briefing Note* in due course.

**'Mechanically propelled vehicles'** is a new concept introduced to target cowboy motorcyclists on footpaths, bridleways and open land. There is no longer any requirement to show that any illegal user on, say, a bridleway was using a 'motor vehicle' as defined in the Road Traffic Act. Now the offence of illegal driving or riding on public paths or open land can be committed on any mechanically propelled vehicle. This is intended to reduce the complexity for the police and Crown Prosecution Service, and thereby make prosecution of offenders more likely. We remain to be convinced that it will make much difference. Properly authorised events on open land, and/or public paths, will not be affected by this change because they have 'lawful authority' to be there.

**The defence to prosecutions under section 34** of the Road Traffic Act 1988 is tightened up. Schedule 7(5) amends s.34 of the RTA 1988. In future, if anyone is charged with driving without lawful authority on a footpath, bridleway or restricted byway, and he or she argues in defence that higher rights exist, then it is up to the defendant to prove those higher rights, at least to satisfy the court of their existence on the balance of probabilities. This will make little difference to those drivers who have done their research carefully before using wrongly recorded public paths, but those who may have relied on hearsay and wishful thinking will need to reassess their position. This provision is already in force.

The worst bit of the Act is also in Schedule 7, but will not come into force until 'activated' by a statutory instrument. Schedule 7(6) will prevent anyone from arguing the existence of higher rights as a defence to a charge under s.34 of the Road Traffic Act, unless they fit into a narrow range of categories set out in the Schedule – and ordinary members of the public out for a drive do not. This is a grossly unfair and, we think ill-conceived, provision that was slipped into the Act in the middle of the very last night of debate in the House of Lords, thus preventing anyone protesting or lobbying against. If it is activated by statutory instrument we will have the idiotic position where a long unclassified road, with a few yards of public path at one end (not uncommon) will essentially be a

cul-de-sac until the definitive map status is changed – and that is currently taking the thick end of 10 years in some places, and is likely to get worse with the additional workload this Act brings.

LARA is preparing a briefing paper for the Secretary of State showing how this provision is a step too far, and will cause hardship, chaos and confusion.

**Traffic Regulation Orders (TROs) in designated conservation sites will be easier to obtain.** This may have an adverse impact on BOATs and unclassified roads, but highway authorities already have quite sweeping powers to impose TROs when they see fit. Our friends in the horse riding world may have more to fear from this.

### **Part III of the Act deals with nature conservation and the protection of wildlife.**

As we reported in LARA News #28, there will be new powers, with very heavy penalties, to deal with people damaging Sites of Special Scientific Interest, but this is aimed at wilful or reckless damage, and where a motor sport event has planning consent to use land that is in a SSSI (as all now must) then so long as the planning conditions are complied with, the club and competitors should be within the law. Any club or individual using a SSSI for an event or practice without the necessary permissions is now running a serious risk if they cause damage.

### **Part IV deals with Areas of Outstanding Natural Beauty.**

AONBs may become more numerous, and all new and existing ones will have to prepare and adopt management plans. These will almost certainly go out for consultation during the drafting and review processes, so local clubs should keep an eye open for publication and make appropriate submissions.

### **Part V sets out the basics of the new 'Local Access Forums' (LAFs).**

LAFs, we think are going to play a pivotal role in access management in the future. The idea is sound – that a forum based on the public and voluntary bodies most concerned with access should 'oversee' rights of way management, open access, etc. – but this is going to demand a considerable amount of volunteer time and effort on an ongoing basis. LARA News will return to LAFs in the future when their structure and operation becomes a little clearer, but we ask everybody out there in motor sport and recreation to start the process of identifying people able and willing to undertake this essential role. Appointment will not be automatic simply because someone represents a 'big' organisation. Candidates will need some knowledge of and commitment to countryside recreation and its management over and above their own sport.

## Green Lane Day: are you ready?

**Green Lane Day this year falls on Sunday 25th March.** Clubs right across England and Wales are already gearing-up to clear, drain and repair green lanes for the benefit of everyone, in an annual event that has won drivers and motorcyclists a great deal of respect. *Green Lane Day* is not organised by LARA,



and the Steering Committee wants to make it clear to everyone involved that it is their own responsibility to ensure that they are properly trained for any equipment used (e.g. chainsaws and flails) and that they are covered by suitable personal and third party insurance. In some places the highway authority can extend its own insurances to cover volunteer groups, especially if these work under the direction of a council officer. Elsewhere it falls to the local organising clubs to ensure that they have the necessary blanket cover. All LARA member organisations are aware of this and can advise their own local clubs on the availability of insurance.

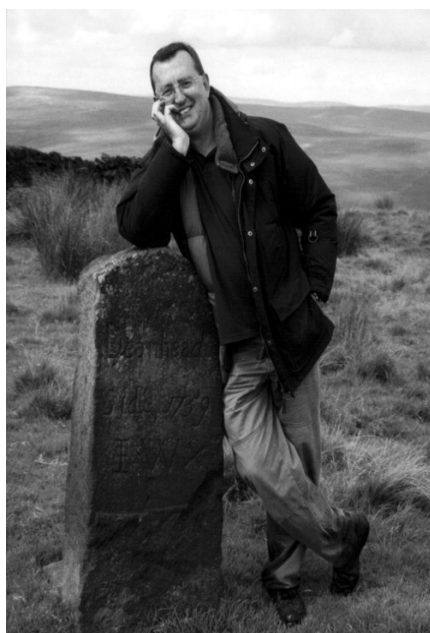
The National Co-ordinator for *Green Lane Day* is Mick Dyer at 2 Poplar Avenue, Windlesham, Surrey GU20 6PL. Mick does not organise *Green Lane Day*, but acts as a point of contact for local

Part of a team of 4x4 drivers and trail riders mending the old road over Dead man's Hill last year. If the worst part of the new Act is put into operation this section would be closed to these careful and hard-working volunteers, simply because one end of the road is wrongly recorded as a bridleway. Is that fair?

clubs, councils, non-motor organisations and landowners. Can all local organisers please ensure that everyone in a working group under their supervision is covered by club or council insurance? Casual volunteers and 'friends' may need temporary club membership to be covered. Better safe now than sorry later. And Mick says "Please take some photographs of what you do on *Green Lane Day* and send them to me with a brief report. The job isn't finished until the paperwork is done."

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## Tombstone Blues?



Well, no. Just to prove that life goes on even during the passage of the Countryside Act, this is LARA's MSDO David Kersey taking a well-earned rest after a morning tramping around a remote moor in Yorkshire. We're not going to say where for now, but this concerns a motor club that has run a motorcycle trial annually on this land for about 30 years, with no reported problems. Now the whole moor has been designated an SSSI, an SPA (ground nesting birds), and in part an SAC (bog and peat areas), and the club has to get planning permission or stop using the site. The application is in (courtesy of a local planning consultant who just happens to be a motorcyclist too...) and we'll tell you what transpires in due course.

### Stop Press!

We have just learned that Richard Marshall, a long-time trail rider and classic trials enthusiast from Breaston, Derbyshire, has been invited to sit on the *Peak Park Local Access Forum*, one of a small number of pilot schemes to test the LAF concept. Richard attends the Forum as an individual, but has promised to keep us informed about how it all works and the opportunities for creative dialogue and thinking.