

Peak District Local Access Forum

Date: 5 December 2013

Item: 10

Title: Deregulation Bill

Author: Sue Smith

Purpose of the Report

The report provides details of the proposed legislative reforms to rights of way.

Background

In 2012, the Department for Environment, Food and Rural Affairs (DEFRA) published a document entitled 'Improvements to the policy and legal framework for public rights of way'. This was based on the work of a stakeholder working group primarily focused on unrecorded rights of way.

The Draft Deregulation Bill was published on 1 July and essentially takes forward these reforms. The briefing note from the DEFRA rights of way team summarises the main clauses and proposals: [Defra's briefing note](#).

The Process

The draft Bill is subject to pre-legislative scrutiny by a joint committee. The call for evidence has now ended and oral evidence is being taken. The Bill is proposed to be introduced to Parliament early in 2014.

In response to the call for evidence, National Parks England (NPE) commented on the proposals and also identified deregulatory matters in relation to the powers given to NPAs to make traffic regulation orders. NPE's response is attached in Annex 1.

Recommendation:

- 1. That the report be noted.**

Annex 1

Draft Deregulation Bill

Response by National Parks England - September 2013

Introduction

1. National Parks England (NPE) supports the policy-making process by co-ordinating the views of the ten English National Park Authorities. This response represents the collective view of officers who are working within policies established by the National Park Authorities (NPAs) and follows internal consultation amongst the all parks Access Officers Workgroup.

2. National Park Authorities are affected by the Deregulation Bill and provisions for access contained within it as follows:

- some NPAs have taken on the responsibilities, duties and powers of the surveying authority in relation to rights of way
- we work in partnership with our constituent local authorities and are affected by their implementation of the reforms in pursuance of their powers and duties
- we have powers to make traffic regulation orders on predominantly unsurfaced routes within the National Parks.

Comments on Proposals in the Draft Bill

3. NPE welcome the fact that the Bill will assist in bringing about the implementation of the rights of way reform package. We have had input into the relevant Stakeholder Working Group (SWG) and the proposals take forward the matters discussed. As a consequence of this and of the fact that the majority of NPAs do not have delegated authority for the definitive map we propose not to provide comments relating to the provisions for unrecorded rights of way and the procedure for ascertainment of public rights of way. However, we note that the 12 month determination imposes pressures for the modification orders and that there are resource implications inherent in this despite the benefits which could result from clarification of a route's status.

4. We make comment on 2 points which we hope will assist in the clarification and simplification of the proposals:

- 1) Clause 15 – Applications by owners etc for public path orders – We support the right to apply for any owner on any land. Propose that the phrase 'council for the area' is clarified to identify the appropriate order-making authority namely a Highway Authority in preference to a NPA unless the NPA fulfils the HA role. This will help to address unrealistic expectations and injudicious outlay and also prevent 'twin-tracking'. There may be potential for this to be dealt with in guidance or secondary legislation as will other matters pertaining to validity, withdrawal, repeat applications etc.
- 2) Clause 16 – Authorisation of erection of stiles at request of owners – Simplify the proposal to ensure that providing the Highway Authority consider it expedient the grounds need not be specified.

Other Deregulatory Matters

5. The main thrust of our submission is to provide evidence in relation to the question whether there are other changes to deregulatory powers, procedures and parliamentary oversight which should be included in the draft Bill and if so why? In so doing we will also address matters relating to the administrative burden on NPAs and also consider whether this can be dealt with by secondary legislation.

6. As stated, NPAs have similar powers to Highway Authorities to make traffic regulation orders (TROs). In the National Parks where recreational motorised vehicle use is an issue, we assess the sustainability of unsealed routes and work in partnership with the Highway Authorities, the police and interested parties to manage inappropriate and/or excessive use. The relevant primary legislation is the Road Traffic Regulation Act (RTRA) 1984 and the provisions given to NPAs were enabled by the Natural Environment and Rural Communities (NERC) Act 2006.

7. The powers given to NPAs are in the main adequate and sufficient to enable the making of TROs where appropriate. There are however considerations in relation to the procedures as they relate to NPAs which we deal with below. There are also several matters which relate to NPAs in the primary legislation and may therefore be encompassed by the Deregulation Bill.

- 1) **Concurrent TROs** - clarification of the potential to allow the use of orders concurrently could help to further enhance the protection of NPs. Concurrent orders can assist in cases where there is the potential for the use of a TRO by a NPA and by the Highway Authority (HA) for repairs for example (many NPAs do not have the statutory role of the HAs but work in partnership with them) or by a NPA seeking to make a temporary TRO to further protect the Park's special characteristics whilst another less prohibitive permanent order may be in place on the route.

In the case of orders or proposed orders by both a NPA and HA, these may cover different lengths of the route and have varying restrictions relating to users or temporally. These restrictions would be relevant to the grounds of the orders made by the respective authorities. However under the current legislation, a NPA may not be able to make an order while one by a HA is in force. One possible solution could be to implement the provisions of the proposed order in part to tie in with the order already in force but this is unnecessarily burdensome in terms of duplication with publicity and consultation requirements and could frustrate the imposition of any other order. The same process does not apply to a HA which could make an order while one by a NPA is in force.

In the case of orders made by NPAs there is provision for NPAs to implement TROs in addition to the ones they have previously made. This power is also available to HAs. This allows for ad hoc restrictions which may not have been foreseen at the time of the original permanent order such as to deal with adverse weather or ecological requirements. However whilst the potential for concurrent orders exists, it is important to be clear that no prejudice would result from this as a result of consultations ie it would not be used to implement changes which would be subject to proposals to amend a permanent order. This is similar to the approach adopted whereby a temporary order should not be used as a prelude to making a permanent order where that consultation has already commenced ie if we think that there is a requirement to take permanent action then making a temporary order disabuses that notion.

We propose that removing the reference to temporary orders in section 22BC(1)(2)(c) of the RTRA would fit well with the deregulatory function of the proposed Bill and would not result in an additional administrative burden. This would achieve the objectives of the Bill in a fair and equitable manner.

- 2) **Display of permits** - Section 4(2) RTRA 1984 allows for the issue and display of certificates or other means of identification to be included in a TRO. This option is not available to NPAs.

We propose that 'or 4(1)' be inserted into section 22BB(2)(c)(i) of the RTRA 1984.

- 3) **Publicity** – a requirement to use whatever means are deemed appropriate to advertise proposals and orders would be consistent with the intention of reducing regulation and would reduce the financial and administrative burdens for NPAs. This issue is identified in the Rights of Way Reform paper and amending the procedures for TROs would be consistent with the intentions for public path orders. This matter was consulted on by the Department for Transport in 2012 in their consultation on 'Traffic orders: Simplifying the Process'. This can be dealt with by secondary legislation.

- 4) **Responding to objections** - Regulation 14 of the National Park Authorities Traffic Orders (Procedure) (England) Regulations 2007 provide for the NPA to give reasons within 14 days of making the order where they have not acceding to objections properly made. A standard notice of decision would appear to be reasonable and proportionate and would be less burdensome on the NPA than individual tailor-made responses particularly where significant numbers of objections have been received. The TRO process does have the potential to become overly cumbersome as a result of an organised and concerted campaign of opposition and this is one element where the burden may be reduced. The provision of a template could be dealt with by secondary legislation.
- 5) **Revocation** – The 2007 Regulations relating to NPAs do not provide for the amendment, revocation or rescindment of a TRO or provisions contained therein other than by way of resuming the consultation process. The respective Regulations relating to Local Authorities provide for consolidation and minor orders. These are not available to NPAs. There is the need for legislation to provide for this in order to ensure that when TROs or their individual provisions are no longer necessary they can be dealt with in an expedient manner. An example of this is where vehicle rights are proven to no longer exist. We propose that provisions for amendments, consolidations and minor orders can be made by way of secondary legislation. In the case of status clarification subsequently confirming that there are no mechanically propelled vehicle rights on a route which is subject to a TRO, we consider that there is a case for primary legislation to introduce this deregulatory requirement and that this would fall within clause 18/Schedule 6 of the draft bill

Summary

8. In summary, we support in principle the provisions of the Deregulation Bill as they relate to access and rights of way matters pertinent to NPAs and subject to the possible amendments on clauses 15 and 16 as detailed above.

9. We note that the Deregulation Bill proposes to deal with the timescales for the determination of the classification of routes but this is primarily a matter for Surveying Authorities to advise on this process. We have concerns over how time consuming this process can be and that the process for classification carried out by Highway Authorities is based on historic evidence and does not provide for the opportunity to consider suitability for present day traffic.

10. We have highlighted deficiencies in the TRO legislation whether for its administrative burden, lack of clarification or simply the unavailability of the necessary processes. Some of these have the potential to be considered within deregulatory provisions or dealt with by secondary legislation and guidance.

11. Finally, in relation to the use of mechanically propelled vehicles within National Parks, this has increased over time leading to pressure on the sustainability of unsealed routes. Future maintenance requirements relating to this mode of use may therefore lead to irreversible changes to the character of routes and their surrounding areas. It is also the case that expected opportunities for quiet enjoyment in the more sensitive, wilder and tranquil areas may therefore be more likely to be compromised by motorised vehicle use.

12. We would be happy to provide any further evidence in support of the above. We have attached as an appendix a summary of the ongoing TRO consultations in the Peak District National Park. We understand that evidence is to be provided separately by the Yorkshire Dales NPA.

Appendix 1

Recreational Motorised Vehicles in the Peak District National Park

Within the Peak District National Park (PDNP) there are up to 300 'green lanes' ie routes which have or may have rights for mechanically propelled vehicles. Approx 70% of these are unclassified roads. The PDNPA has identified 36 routes where the use may be unsustainable and where improved management is required. 24 of these priority routes are within the Derbyshire part of the National Park. The NPA is not the Highway Authority. There are seven constituent councils within the PDNP.

Consultations under the National Park Authorities' Traffic Order (Procedure) (England) Regulations 2007 have taken place on 5 routes. The NPA has commenced TRO consultations on 4 of these routes because of impacts from excessive or inappropriate use on conservation criteria of national and international importance. Repairs are proposed by Derbyshire County Council (DCC) as the Highway Authority on 3 of these routes. Details of these routes are provided below. The consultation is a two stage process: initially with statutory consultees (Reg 4) and then by way of public notification (Reg 5) of a proposal to make. The NPA provides 28 days and 6 weeks respectively for representations to be made.

The Roych

The Route – Unclassified Road (UCR) of significant conservation interest and recreational value. A section of the route is a National Trail. A section abuts a Special Area Conservation (SAC), Special Protection Area (SPA), Site of Special Scientific Interest (SSSI), and Natural Zone (NZ).

Proposal - a full time permanent restriction on all mechanically propelled vehicles (mpvs) along that section of the route which is a National Trail on grounds of amenity; natural beauty, recreation and the study of nature; and character of the route where especially suitable for those on horseback.

Consultation - Regulation 5 publication of proposals concluded November 2012. Approximately 2200 responses received. Reported to committee in July 2013.

Decision – Order prohibiting all mpvs at all times made on 5 September 2013.

Repairs - Derbyshire County Council as the Highway Authority intend to carry out works in October 2013.

Long Causeway

The Route – Byway Open to All Traffic (BOAT) of significant conservation interest and recreational value. The route is within a SAC, SPA, SSSI, NZ, and Nature Improvement Area (NIA). Deviation from the route has occurred onto areas of conservation interest.

Proposal - a full time permanent restriction on all mpvs on grounds of amenity and natural beauty, recreation and study of nature.

Consultation - Regulation 5 publication of proposals concluded November 2012. Approximately 2450 responses received. Report to committee in September 2013.

Repairs - Derbyshire County Council as the Highway Authority have a closure in place until March 2015. Surfacing and drainage works have commenced. Work is ongoing to design a suitable structure which accommodates safety and conservation concerns.

Chapel Gate

The Route - BOAT of significant conservation interest. The route is within a SAC, SPA, SSSI, and NZ. Deviation from the route has occurred onto areas of conservation interest. Experimental TRO quashed by High Court judgement in November 2012.

Proposal - a full time permanent restriction on all mpvs on grounds of amenity and natural beauty, recreation and study of nature.

Consultation – Regulation 5 publication of proposals concluded June 2013. Approx 2200 responses received.

Repairs - Derbyshire County Council as the Highway Authority have a closure in place until June 2014. Surfacing and drainage works have commenced. Phase 3 proposed.

Chertpit & Leys Lane

The Route - BOAT comprising 2 lanes of a separate character. Leys Lane is narrow leading from Great Longstone to access Longstone Edge and has high amenity and educational value; Chertpit lane is wider and was once designated as a quiet lane leading to a former picnic site.

Proposal - a full time permanent restriction on all mpvs on the Leys lane section of the route on grounds of amenity and natural beauty, recreation and study of nature. No change on Chertpit which will effectively become a cul de sac and retain the parking opportunities. Safety concerns have been raised by consultees but are not considered to be a ground for the NPA to make a TRO.

Consultation – Regulation 4 consultation with statutory consultees in September 2012. Regulation 5 publication of proposals commenced 12 September 2013.

Repairs – Repairs undertaken by Derbyshire County Council in November 2012.

Brushfield- Upperdale

The Route - UCR which is an important through route for all users. The route abuts a SAC, SSSI and NZ and is partly covered by a Scheduled Monument. It links to the Monsal Trail and provides for vehicular access for disabled users to the Trail. Deviation from the route has occurred onto areas of conservation interest. Significant landscape and visual impact.

Proposal is for a potential permit system for all mpvs operating one-way west-east (downhill) one week a month on grounds of amenity and natural beauty, recreation and study of nature.

Consultation – Regulation 4 consultation with statutory consultees in September 2012. Regulation 5 publication proposed following further discussion with interested parties.