

Wildlife and Countryside Link Briefing on the Natural Environment and Rural Communities Bill & Rights of Way (Part 6 clauses 61- 64 and 97)

1. Wildlife and Countryside Link (Link) brings together voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management and food production and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of seven million people in the UK and manage over 398,000 hectares of land. This statement is supported by:
 - Butterfly Conservation
 - Campaign to Protect Rural England
 - Council for National Parks
 - Friends of the Earth England
 - Herpetological Conservation Trust
 - Ramblers' Association
 - Royal Society for the Protection of Birds
 - Woodland Trust

Rights of Way

2. Wildlife and Countryside Link welcomes the publication of the Natural Environment and Rural Communities Bill and strongly supports the inclusion in the Bill of Part 6 on Rights of Way. This introduces the commendable principle that historic horse-and-cart use will no longer generate rights for motorised use by designating routes as Byways Open to All Traffic (BOATs). The inclusion of this legislation was promised by the Government following its consultation in 2003 when the need to address the growing problems associated with the recreational use of mechanically propelled vehicles on unsurfaced rights of way in the countryside was recognised. The primary concerns of environmental groups and organisations representing walkers, cyclists, horseriders and horse and carriage drivers as well as landowners, is that motorised use of green lanes – more often than not these are registered as BOATs - is damaging to the surface, heritage and habitats of these routes, and has a wider impact on tranquillity in the countryside.
3. **New and existing public rights of way (Clauses 61 and 62):** Link is pleased to note that the provisions in the present Bill limit those vehicular rights that can be recorded on definitive maps and statements showing public rights of way. It does this by halting the creation of rights of way for mechanically propelled vehicles based on the use of evidence of old rights of horse and cart, and preventing post-1930 use of a way by a mechanically propelled vehicle from giving rise to any future public right of way. Link is concerned however, that the provisions, which will stop claims for vehicle rights being founded on historic evidence, will only come in at the Government's discretion. In the two years since the Government announced intention to legislate, many claims have been put in for vehicular rights over fragile ways using this legal loophole and it is imperative that the clauses 97(4) and 97(10) are amended to ensure that the legislation in Part 6 may take effect as soon as possible.
4. Link understands that the Government considers that motorists should be given a period of grace in order to submit claims. But if the present system is perverse, as is clearly recognised by the plans to end the loophole, then it is Link's view that the legislation should be commenced as soon as possible.

Deferment of the commencement date will inevitably cause a further surge of claims over a number of ways where motorised rights have not so far been shown to exist. As only one example, the Trail Riders Fellowship has recently requested 50 application packs to claim byways from the Lake District National Park Authority.

5. **Section 34A Road Traffic Act (See supplementary Clause 63 (2) and (3)):** Link is concerned to see that the Government is repealing section 34A of the Road Traffic Act 1988, inserted by the Countryside and Rights of Way Act 2000 but which has never come into force. Section 34A was intended to stop those driving on footpaths and bridleways (on the face of it illegally), who were escaping prosecution by producing evidence of alleged but hitherto unknown vehicular rights on that route (i.e. the allegation was enough for a prosecution to fail). The Government considers that section 34A is contrary to human rights legislation, but does not intend to replace it with a robust mechanism for prosecuting those who drive on footpaths and bridleways. Link considers the Bill must be amended to include such a mechanism.
6. **Traffic Regulation Order powers for National Park Authorities:** Link understands that a particular amendment has been proposed by the Council for National Parks and Association for National Park Authorities which would give powers to the National Park Authorities in imposing Traffic Regulation Orders (TROs). These are the regulatory tools whereby damage and nuisance from off-road vehicles may be controlled. National Park Authorities do not have these powers although they often manage rights of way and it would seem a sensible amendment to extend TRO making powers to the National Park Authorities.

Wildlife and Countryside Link has also produced detailed separate briefings on Part 1, Chapter 1 (Natural England) and Part 3 (Wildlife etc) of the Bill. Please contact Alexia Wellbelove (alexia@wcl.org.uk or 020 7820 8600) for more information.