

NORTH YORKSHIRE  
LOCAL ACCESS FORUM

22<sup>nd</sup> FEBRUARY 2007

DEFRA Consultation – Implementation of Section 72 of the Natural Environment and Rural Communities Act

1.0 PURPOSE OF REPORT

- 1.1 To provide the Forum with information relating to the Power for National Park Authorities to Make Traffic regulation Orders

2.0 BACKGROUND

- 2.1 This consultation seeks views on the Government's proposed approach to implementing powers to enable National Park Authorities (NPAs) to make traffic regulation orders (TROs). These new powers are set out in Section 72 of the Natural Environment and Rural Communities Act 2006, which will amend the Road Traffic Regulation Act 1984 by inserting two new sections, sections 22BB and 22BC.
- 2.2 The powers are part of a package of measures introduced to control excessive or inappropriate use of mechanically propelled vehicles away from the ordinary road network.
- 2.3 NPAs will be able to make TROs within a National Park on roads (or ways) which are shown on a definitive map and statement as Public Footpaths, Public Bridleways, Restricted Byways and Byways Open to All Traffic and other carriageways with a predominantly unsealed surface. The TROs may be of unlimited duration, experimental or temporary.
- 2.4 The issues considered within this consultation include the principle of whether NPAs should be required to follow similar procedures to those followed currently by Local Authorities (LAs) when making TROs and various issues concerning the means and extent to which the NPA should consult on and publicise any proposals to make TROs.

3.0 CURRENT POSITION

- 3.1 Local Authorities (LAs) have for many years had powers to make Traffic Regulation Orders (TROs) to restrict or regulate the traffic on roads within their area. The powers are set out in the Road Traffic Regulation Act 1984 (RTRA84). These powers are widely used regulate many aspects of use of the highway network from one-way systems and speed limits to weight limits and width restrictions. TROs can be made without limit on their duration (hereafter referred to as "permanent") or for temporary periods and can made on an experimental basis to see whether a proposed measure is effective before making a permanent order.
- 3.2 Roads are defined as any length of highway or of any other road to which the public has access (s142 RTRA84) and thus include public rights of way such as

Public Footpaths, Public Bridleways, Restricted Byways and Byways Open to All Traffic and other unsurfaced routes recorded on the LA's List of Streets (a record of highways maintainable at public expense) or that otherwise carry public rights.

- 3.3 The last few years has seen a growing debate about the appropriateness and sustainability of the use of the minor highway network by mechanically propelled vehicles (MPVs) for recreation. The Government responded to this debate by initiating research on the effect of MPV use on byways and extensive public consultation on the way forward.
- 3.4 Whilst the research indicated that the existing byway network can, in general, support current levels of motor vehicle use and types of user, it recognised that there can be difficulties on particular byways or parts of byways. The use of TROs is one of the tools that can be used to manage such problems. However, although LAs already have the requisite powers to make TROs as required, the management of the minor highway network has not necessarily been a high priority for them.
- 3.5 National Parks were designated to conserve and enhance their natural beauty, wildlife and cultural heritage and to promote understanding and enjoyment of their special qualities by the public in recognition of their natural beauty and the opportunities they afford for open-air recreation. Partly because of their often challenging and rough terrain, some National Parks have seemed to attract considerable numbers of recreational vehicle users. The Government considers that in many cases a level of recreational vehicular use that may be acceptable in other areas will be inappropriate within National Parks and incompatible with their special qualities.
- 3.6 The Government addressed the conclusions of the research and consultation by a variety of means of which the rights of way provisions in Part 6 of the Natural Environment and Rural Communities Act 2006 is a part. Section 72, the power for NPAs to make TROs was specifically included in recognition of the factors outlined above.
- 3.7 Section 72 gives NPAs similar powers to those possessed by LAs to make TROs on public rights of way recorded on the Definitive Map and Statement and on predominantly unsealed carriageways. The power does not cover the normal, tarmacked road network and there are no new grounds for making a TRO introduced by the section. It is worth emphasising that any TRO that may be made by a NPA authority exercising the new power could previously have been made by the LA.

#### 4.0 KEY ISSUES

- 4.1 The primary legislation enables the Secretary of State to prescribe and make provision for certain matters through regulations. The key issues which need to be addressed by the regulations are set out in this section. These are focused primarily on the limited areas where there may be scope for enabling NPAs to exercise the powers in a different manner to that followed by LAs.

- 4.2 The intention behind s72 is to enable NPAs to make TROs that could otherwise have been made by LAs. Defra's view is that NPAs should generally follow broadly similar procedures in making TROs that LAs currently follow.

**Question 1 Do you agree that NPAs should follow broadly similar procedures to those currently followed by LAs in making TROs?**

- 4.3 At the moment there are comprehensive regulations in force which prescribe the procedure that LAs must follow when making TROs. It would be relatively simple to amend these regulations so that they could be applied to NPAs. However, Defra considers that many of the existing regulations are not relevant to the types of route for which NPAs are likely to wish to make TROs. It is minded to develop a single new set of Regulations, covering Permanent, Temporary and Experimental Orders, that would be applicable only to NPAs, albeit that they would largely mirror those parts of the existing regulations that are relevant.

**Question 2 Do you agree that providing a single new set of regulations targeted at NPAs is the correct way to implement the new powers?**

- 4.4 The new powers will permit an NPA to make a TRO on roads that are within the NPA area and are either recorded as a public right of way on the definitive map and statement or are a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated road stone or other prescribed material. Defra is not aware of any other materials that should be included in this list at this moment.

**Question 3 Are there any other surface materials that you consider should be added to the list of prescribed materials?**

- 4.5 During the process leading up to and after the making of a TRO there are requirements to carry out consultations with various organisations and bodies and to publicise the order. The precise requirements vary according to the type of order (permanent, experimental or temporary) and its effects. Given the nature of the orders likely to be made by NPAs, it is Defra's view that the list of organisational and bodies that should be prescribed as consultees at these various stages is as set out in Table 1. The number of organisations required to be consulted or notified of Temporary Orders has been kept to a minimum, although it is clearly open to NPAs to consult with others if it appears appropriate to do so.

Table 1. List of Organisations and Bodies proposed to be consulted on / notified of TROs.

Organisation or Body	Cases	
	Permanent & Experimental	Temporary
Local Highway Authority (required by s22BB(4) RTRA84)	Yes	Yes
Crown Authority	When proposed TRO affects a Crown Road	No
Fire & Rescue Authority	Where it appears to the authority that the order is likely to affect the passage on any road of fire-fighting vehicles	
NHS Trust or NHS Foundation Trust	Where it appears to the authority that the order is likely to affect the passage on any road of ambulances	
Chief Officer of the Police	Yes	No
Parish or Town Council	Yes	Yes
Local Access Forum	Yes	No
Auto Cycle Union #	Yes	No
British Driving Society #	Yes	No
British Horse Society #	Yes	No
Byways and Bridleways Trust #	Yes	No
Open Spaces Society #	Yes	No
Ramblers Association #	Yes	No
Cyclists Touring Club #	Yes	No
LARA #	Yes	No
Natural England	All cases which affect a SSSI	
Such other organisations (if any) representing persons likely to be affected by any provision in the order as the NPA thinks it appropriate to consult	Yes	Yes

#Consultations and notifications may be addressed to a local representative for the area in which the route affected by the order lies, where such a local representative has been notified to the NPA for this purpose.

Question 4 Do you agree with the inclusion of the organisations listed in Table 1? Are there any other organisations that you feel should also be included?

- 4.6 LAs are currently required to advertise a proposed Permanent TRO in at least one newspaper circulating in the area to which the Order relates. Similar provisions apply to the proposed making of Temporary TROs. (Experimental TROs are exempt from this requirement as the notice of making includes provision enabling objections to be made to the conversion of the Experimental order into a permanent one.) Defra would welcome the views of consultees on whether these provisions are necessary. An alternative or additional requirement could be the advertising of the proposal on the website of the NPA.

Question 5 Is a requirement to give notice of the proposal in a newspaper appropriate or could it be replaced by a requirement to publish such a notice on the website of the NPA?

- 4.7 The existing regulations make provision for the placing of notices on site to publicise an intention to make a Permanent TRO but not for an Experimental or Temporary Order. Nonetheless a site notice is one of the most effective ways of notifying regular users of a route of a proposed restriction. It is proposed that there should be a requirement to place a notice on site publicising an intention to make a Permanent, Experimental or Temporary TRO.

Question 6 Do you agree that there should be a requirement to place a notice on site publicising an intention to make a Permanent, Experimental or Temporary TRO?

#### Other Issues

- 4.8 Objections may be lodged to a proposal to make a Permanent TRO or to the conversion of an Experimental TRO into a Permanent TRO once made. There is no statutory provision for objecting to a Temporary TRO. Whilst the NPA must consider all objections and representations to proposed Permanent Orders or to Experimental Orders, there is no requirement to hold a Public Inquiry into any Order likely to be proposed by an NPA. It will be open to the NPA to call one if they think it appropriate, for instance where the proposal is controversial and a significant number of objections have been made.
- 4.9 Once an Order has been made, the NPA will be required to put up sufficient Traffic Signs to inform the public of the restrictions in place on the route. Such signs must normally conform with the Traffic Signs Regulations and General Directions 2002. These standard signs may be considered unnecessarily large for unsealed roads in National Parks. S64(2) RTRA84 enables the Secretary of State to authorise non-standard signs, often in terms of a reduction in size. It is not feasible to allow a general dispensation for NPAs from the requirement in s64 for standard signs.
- 4.10 It is proposed to issue Guidance to NPAs on the use of s72 at the time that the new power is commenced. Defra will seek to include in the Guidance information on how and when to apply for a dispensation for non-standard signage in appropriate cases. The Guidance is also likely to include information on topics not covered in this consultation such as the installation of barriers and bollards to enforce TROs under s92 RTRA 1984.

Question 7 Are there other topics or areas that you believe should be covered in Guidance to National Park Authorities?

Question 8 Are there any other considerations which you think it is important for the Secretary of State to take into account in deciding how or when to introduce the new rights ?

- 4.11 A Regulatory Impact Assessment (RIA) is generally required for new regulatory proposals and new legislation. The RIA is a document which set out the objectives for a policy and compares possible options, and their impacts. Where the impacts are expected to fall wholly or mainly on the public sector then an Initial Public Sector (IPS) RIA is required. This is the situation in this case. An IPS RIA is included in Annex D. This will be updated following this consultation and a final RIA will be produced if necessary to accompany any Regulations that may be laid in Parliament.
- 4.12 The RIA is open to suggested improvements, additional information or corrections from any interested party, which can be taken into account in revising the final RIA and informing decisions on the new Regulations. Views are particularly sought on the estimates and assumptions contained in the RIA.

Question 9 Do you agree that the RIA accurately describes the possible impacts and likely costs and benefits of the proposals contained in this consultation paper ?

## 5.0 RECOMMENDATION

It is recommended that:

- a) This report is received
- b) That members form an opinion to the 9 questions

### Contact Officer

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