

Public Footpaths

THIS BRIEFING COVERS

- Headline messages; CTC's view
- Key facts and arguments: legal status of public footpaths; countryside footpaths; conflict and conduct; pushing cycles on footpaths; upgrading footpaths; urban footpaths; gating orders.
- Policy background (Scottish Land Reform Act 2003)
- References and footnotes

This briefing is about *footpaths* (paths for pedestrians that are away from the carriageway). It is not about *footways/pavements* (paths for pedestrians at the side of roads).

HEADLINE MESSAGES

- There should be a presumption that cyclists should be able to use all rights of way in England and Wales, with exceptions only when there are overriding reasons not to allow this.
- Cycling is legal on 22% of the Rights of Way (RoW) network in England and Wales¹. However, the legality of cycling on a RoW is not related to its suitability. There is no right to cycle on footpaths, even though many of them are perfectly suitable; whereas bridleways, which cyclists are allowed to use, may be much less usable (see photo below). Creating a coherent, logical, off-road network for cyclists therefore requires a fundamental reform of RoW law and political will.
- England has 146,000 km of public footpaths, and Wales over 26,000 km, most of them rural. If opened up to cyclists following Scotland's example, cyclists would benefit from more choice for both leisure and utility travel.
- Even within the current laws, there are many ways in which local authorities could open up more paths for both recreational and day-to-day cycling.



An example of inconsistencies in the Rights of Way network that need to be sorted out: cyclists are not permitted to use the well-surfaced footpath on the right, but can ride on the rougher bridleway to the left.

CTC VIEW

- The public footpath network offers the only realistic option for providing significantly more off-road routes to meet current and future demands. The *Scottish Land Reform Act* (2003) gave cyclists lawful access to most countryside in Scotland. Its success suggests that public footpaths in England and Wales could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists and the fragmented nature of the available route network.
- Rights of Way laws should be amended to permit cycling on footpaths with few limited exceptions only where there are clear location-specific reasons not to do so (e.g. where the increased use of the path would create significant environmental or safety hazards).
- Conflict on rights of way between cyclists and pedestrians is often more perceived than real. It can be mitigated by good design.
- CTC believes that it is acceptable for cyclists to use footpaths, provided they do so in a manner which respects the safety of other road users and their peaceful enjoyment of the outdoors, and with regard for the environment and its ecology. These are the circumstances in which CTC believes it is acceptable for cyclists to ride on footpaths:
 - Where the surface and width of the path make it eminently suitable for safe cycling without causing disturbance or risk to pedestrians; or
 - Where the path is lightly used, such that the likelihood of disturbance or risk to pedestrians is minimal; or
 - Where a path is unlikely to attract such high levels of cycling that it will cause environmental damage (notably erosion); or
 - Where there is a reasonable belief that the footpath in question might already carry higher rights – for example:
 - where there is historic evidence (e.g. through enclosure award maps) demonstrating past use either by horses or by vehicles;
 - where the path is shown on OS maps as an ‘Other Road with Public Access’ (ORPA), indicating an assumption that higher rights may exist;
 - where there is regular use by equestrians, motor vehicles and/or by other cyclists
 - Where the relevant landowner is a public body or a charity and/or accepts or appears to accept use of the path by cyclists.
- Except where the landowner has expressly permitted cycle use, CTC does not generally support the use of footpaths by larger groups of cyclists – particularly as part of an organised event – as this is more likely to generate complaints.
- In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.
- Councils should stringently assess the impact of ‘gating orders’ on cycling and prioritise alternatives where a public footpath forms a convenient through route.
- There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be considered a deterrent to a footpath’s use by cyclists.



KEY FACTS AND ARGUMENTS

1) Legality

Public footpaths are mostly rural rights of way specifically restricted to pedestrians and the right to walk along them is legally protected. County and unitary councils have to maintain 'definitive maps' on which they mark all rights of way, including public footpaths. This makes them conclusive in law (although just because a path does not appear on the map, does not necessarily mean that it is not a public path).

Footways (pavements) are not footpaths: The legal status of footways and footpaths differs: a footway runs alongside a carriageway (i.e. a road), whereas a footpath is located away from it (e.g. between buildings or through open countryside).

Cycling on a *footpath* normally constitutes only a trespass against the landowner. This is a civil and not a criminal matter, i.e. neither the police nor a PCSO can take enforcement action. Instead, an aggrieved landowner can either ask someone cycling on a footpath over their land to leave, or they can seek a court injunction and/or damages against them.

By-laws and Traffic Regulation Orders² (TROs): The exception to the above is where the relevant authority has passed a by-law or TRO, made under the *Road Traffic Regulation Act 1984*, prohibiting or restricting cycling on a particular footpath. By-laws and TROs have the force of law and non-observance may be penalised by a fine.

2) Footpaths in the countryside

CTC view:

- The public footpath network offers the only realistic option for providing significantly more off-road routes to meet current and future demands. The *Scottish Land Reform Act (2003)* gave cyclists lawful access to most countryside in Scotland. Its success suggests that public footpaths in England and Wales could be similarly opened to cyclists as a simple remedy to overcome the lack of off-road routes for cyclists and the fragmented nature of the available route network.
 - Rights of Way laws should be amended to permit cycling on footpaths with few limited exceptions only where there are clear location-specific reasons not to do so (e.g. where the increased use of the path would create significant environmental or safety hazards).
- Bicycling is an act of trespass on footpaths, yet permissible on bridleways³. Many public footpaths in the countryside, however, are indistinguishable from bridleways⁴ - some are possibly more suitable - and their status is simply due to quirks of history.
 - Cyclists (and horseriders) have access to only 22% of the RoW network in England and Wales (see endnote (1)). Opening up more of it to cycling would disperse the concentration of cycle use on the limited parts of the network where cycling is currently permitted, and help reduce congestion and any problems on routes that are also popular with pedestrians.
 - The *1968 Countryside Act*, which permits people to bicycle on bridleways as long as they give way to equestrians, provides a template for cycle access to footpaths with a requirement for cyclists to give way to pedestrians.
 - The Natural England Stakeholder Working Group in their 2010 rights of way report *Stepping Forward* stated that there is a need to provide an integrated network for cyclists.⁵



- This was further supported by Defra (Dept for Environment, Food and Rural Affairs) in their subsequent public consultation, which confirmed that they propose to find ways of improving the network for cyclists and equestrians.⁶
- The Government's Red Tape Challenge⁷ (England), which is an ongoing review of regulation of all kinds, has already led to an agreement to scrap the regulations that set out the procedures by which local authorities can convert footpaths into cycle paths (under the *Cycle Tracks Act 1984*), thus allowing for more local flexibility.
- Notwithstanding, there are ecologically sensitive sites where there are valid reasons for maintaining restrictions on cycling in the vicinity to avoid environmental damage.

3) Footpaths and cycling

a. Fear of conflict

CTC view: Conflict between cyclists and walkers on off-road routes is often more perceived than real. It can be mitigated by good design.

- Research from the Countryside Agency⁸ suggests that conflict between non-motorised users on off-road routes is more perceived than real, and often 'talked up' after the event. CTC accepts that where cyclists mix with pedestrians in an unsegregated shared-use environment, the onus should be on the cyclist to respect the safety of pedestrians by slowing down or dismounting as required. This should be made clear through codes, and through cycle training schemes.
- The *Land Reform Act* in Scotland (see 'Policy Background' below), which provides access to the much of the Scottish countryside for all non-motorised users, has demonstrated that shared routes with pedestrians has led to minimal conflict with walkers or landowners.⁹
- This success could be reflected in England and Wales by providing access to cyclists under Part 1 of the *Countryside & Rights of Way Act 2000*.
- The DfT's guidance on shared use provision (Local Transport Note LTN 1/12, *Shared Use Paths for Pedestrians and Cyclists*¹⁰), stresses the importance of high-quality, inclusive design.

- For further references showing that cyclists and walkers can use shared paths with minimal conflict, see CTC's briefing *Cycling and Pedestrians* www.ctc.org.uk/campaigning/views-and-briefings/pedestrians



b. Use of footpaths by cyclists

CTC view:

- CTC believes that it is acceptable for cyclists to use footpaths, provided they do so in a manner which respects the safety of other path users and their peaceful enjoyment of the outdoors, and with regard for the environment and its ecology. These are the circumstances in which CTC believes it is acceptable for cyclists to ride on footpaths:
 - Where the surface and width of the path make it eminently suitable for safe cycling without causing disturbance or risk to pedestrians; or
 - Where the path is lightly used, such that the likelihood of disturbance or risk to pedestrians is minimal; or
 - Where a path is unlikely to attract such high levels of cycling that it will cause environmental damage (notably erosion); or
 - Where there is a reasonable belief that the footpath in question might already carry higher rights – for example:
 - where there is historic evidence (e.g. through enclosure award maps) demonstrating past use either by horses or by vehicles;
 - where the path is shown on OS maps as an ‘Other Road with Public Access’ (ORPA), indicating an assumption that higher rights may exist;
 - where there is regular use by equestrians, motor vehicles and/or by other cyclists
 - Where the relevant landowner is a public body or a charity and/or accepts or appears to accept use of the path by cyclists.
- Except where the landowner has expressly permitted cycle use, CTC does not generally support the use of footpaths by larger groups of cyclists – particularly as part of an organised event – as this is more likely to generate complaints.

The law allows a right of way to become established by (normally) 20 years of use, providing this is done openly, peaceably and without generating opposition from the landowner. It therefore makes no sense to argue that cyclists should never stray from the RoW open to them, given that regular, unauthorised but unopposed use – whether by cyclists or others – is precisely the means by which RoW become established in the first place. See also ‘Upgrading footpaths’ below.

Many footpaths are, in any case, entirely suitable for shared use and there may be strong indications that some are not just for walking but carry ‘higher rights’ anyway, e.g. where a path is marked on an Ordnance Survey map as an ‘Other Road with Public Access’ (ORPA), and/or where there’s evidence to show that horses or vehicles have used it in the past.

As mentioned, in most circumstances cyclists and walkers are perfectly able to co-exist happily when they use the same routes. Mutual respect and consideration is a vital part of that, so cyclists need to use their discretion before deciding whether to ride along any route that is, for example, too narrow or too crowded and where there’s a risk that they will disturb or intimidate walkers. They should also guard against causing environmental damage, particularly in ecologically sensitive areas.

Events or activities that attract large groups of cyclists are, inevitably, much more likely to disturb walkers and generate complaints. For this reason, CTC believes that footpaths are not appropriate for such use, unless express permission has been given by the landowner.

Some landowners are happy for cyclists to use footpaths on their land and where there are good grounds for believing that this is the case, it is entirely reasonable for cyclists to enjoy the facility. If a landowner objects, it is important to remember that they can take civil action against the cyclist for trespassing. Cycling on a footpath, however, is not a criminal offence, unless it is specifically prohibited by by-laws (more likely in an urban setting). See 'Legality' above.

Codes of conduct help reassure all users of a path and encourage courteous and consideration interaction. CTC and British Cycling both endorse a code of conduct issued by Sustrans (2013) that recommends, for instance, that cyclists give way to pedestrians, slow down, use bells etc. See: www.sustrans.org.uk/resources/in-the-news/code-of-conduct

c. Upgrading process

Although there is no legal right to cycle on footpaths, some are regularly used by cyclists 'as of right' on the assumption of higher status. If enough cyclists use the footpath in this way without the landowner challenging them for (usually) 20 years, then a restricted byway may be claimed through 'presumed rights' under s31 of the *1980 Highways Act*.¹¹

As mentioned above, many footpaths actually have the underlying higher status of a bridleway, restricted byway or byway. This is particularly the case in counties that classified 'carriage roads (footpaths)' and 'carriage roads (bridlepaths)' as footpaths during the development of the definitive map in the 1950s.

Where a highway authority becomes aware of evidence that the recorded status of a way is incorrect, it is required to make an order to rectify this. In reality, this is a slow and bureaucratic process that results in relatively few changes year on year.

Alternatively, or in cases where there is no evidence that a footpath has higher rights, there are a number of ways in which local authorities can update their status to bridleway or restricted byway. These include:

- provision of supporting documentary evidence under s53 of the *Wildlife & Countryside Act*¹²
- by landowner agreement under s25 of the *1980 Highways Act* (see endnote (6))
- by compulsory purchase under s26 of the *1980 Highways Act* (see endnote (6))

- For more, see CTC's campaign's guide, *Developing new paths for cycling in the countryside*: www.ctc.org.uk/article/campaigns-guide/developing-new-paths-for-cycling-in-countryside



d. Pushing cycles on public footpaths

CTC view: There is good evidence, although no direct case law, to support the view that pushing a cycle on a footpath is not illegal. The presence of obstacles such as stiles should not be considered a deterrent to a footpath's use by cyclists.

The following evidence supports the view that it is not illegal to push a cycle on a footpath:

- **Crank v Brooks 1980:** In this case, a motorist was prosecuted for injuring a cyclist who was pushing a cycle on a zebra crossing. In his judgment Lord Waller said *"the fact that the injured party had a bicycle in her hand did not mean that she was no longer a pedestrian"*.
- **The Department for Transport:** In a letter written in 1994, the DfT confirmed *"...that a cyclist pushing a bicycle on a pedestrian facility is regarded as a pedestrian"*.¹³

Comment: a footpath is a pedestrian facility in the same way as a zebra crossing or footway, so it seems reasonable to assume that the law does not differentiate between rural and urban use.

- **The Highway Code:** The Code illustrates a prohibitive 'no vehicles' sign with the words 'no vehicles except cycles being pushed' underneath to qualify the message.¹⁴ The bicycle is defined in law as a vehicle, but the rationale behind this sign suggests that cycles being pushed are to be regarded as exempt from vehicular restrictions.



Alternative views:

- **Ramblers'/Open Spaces Society:** A contrary view is taken by The Ramblers and the Open Spaces Society, who in *Rights of Way - a Guide to Law and Practice*¹⁵ state, *"It is submitted that a bicycle is not a 'natural accompaniment' of a user of a footpath, and to push (or carry) one along a footpath is therefore to commit a trespass against the landowner"*.

Comment: The term 'natural accompaniment', however, was derived from a comment made by a judge in Scotland, but it had little legal impact even in Scotland. Further, the term has *no* basis in English statute whatsoever, so can be safely regarded as an irrelevance.

- Others have attempted to use **s72 1835 Highways Act (+ s85 of the 1888 Local Government Act¹⁶)**, which stated that it was an offence to "lead or drive" any animals, horse drawn carriage (or bicycle) on any footpath alongside the road.

Comment: clearly "lead or drive" does not apply to pushing bicycles, although it could apply to a ridden cycle. Moreover the inapplicability of this Act to footpaths (i.e. highways not adjacent to roads), was confirmed in 2 cases:

- I. *R v Pratt* (1867) in which the judgment stated that the Act ONLY applies to footways alongside roads.
- II. *Selby v DPP* (1994) where a judgment found that an alleyway joining two roads did not constitute a footpath as defined by the 1835 Act.

It can therefore be assumed that the use of any public footpath in a field would receive a similar verdict, and this is also the conclusion in *An Introduction to Highway Law* by Michael Orlik.¹⁷

4. Urban footpaths

CTC view: In suitable urban situations and where footpaths would form convenient links for cyclists, councils should seek to revoke cycling restrictions and prohibitions.

- If opened up for cycling, many urban footpaths could provide convenient, cut-through links for local cyclists. Although many are subject to by-laws that restrict or prohibit cycling, it is possible to revoke them.

5. Gating orders

CTC view: Councils should stringently assess the impact of 'gating orders' on cyclists and prioritise alternatives where a public footpath forms a convenient through route.

- Under Section 2 of the *Clean Neighbourhoods and Environment Act 2005* councils have the power to make, vary or revoke 'gating orders' to restrict public access to any public highway (including footpaths, bridleways or cycleways) within their area, without removing its underlying highway status. These orders are intended to deal with anti-social behaviour (ASB) and crime.
- Home Office guidance¹⁸ already stresses:
 - the need to make sure that the desire to prevent ASB/crime by gating is weighed up against any inappropriate inconvenience that residents and the public might experience as a result;
 - that councils should assess the measure's impact on health if it is likely to encourage more people to drive (i.e. because alternative walking routes are too long, for example);
 - that "*Gating orders are not the only solution to tackling crime and anti-social behaviour on certain thoroughfares.*"
- CTC believes that the impact on cyclists of a gating proposal should be stringently considered before an order is made and, if it is made, during its annual review process; and that alternatives (e.g. better lighting, more police patrols by foot or cycle) should be prioritised where the route in question is valuable to cyclists and closing it off would be a longer detour.

POLICY BACKGROUND

- **Land Reform Act (Scotland) Act 2003¹⁹**

This breakthrough legislation came into effect on February 9, 2005 and gives Scotland the most progressive access arrangements in the UK. Under the Act, cyclists have lawful access to almost all open areas under an Access Code²⁰ that sets out responsibilities for all parties from landowners to visitors. While cyclists are free to roam over most of Scotland's countryside, so long as they abide by the Access Code, they (and the public) are not permitted to enter buildings, private gardens, or to cross fields with growing crops in them. Key points of the Code include:

- Acting responsibly, with care for the landowner, environment and other trail users;
- Being careful not to disturb any work taking place;
- Closing gates and looking for alternative routes around fields with animals.

FOOTNOTES AND REFERENCES

- ¹ Cyclists are allowed to use bridleways, restricted byways and byways open to all traffic. For more about the rights of way network, see www.naturalengland.org.uk/ourwork/enjoying/places/rightsofway/prow/default.aspx (England); <http://naturalresourceswales.gov.uk/out-and-about/enjoy-the-outdoors-/?lang=en> (Wales).
- ² For more on TROs, see <http://www.parliament.uk/briefing-papers/SN06013.pdf> (Parliamentary note, June 2013)
- ³ Bicycling on bridleways has been legal since the Countryside Act 1968.
- ⁴ See presentation to campaigners' conference (Cheltenham), April 2006; and paper to the National Countryside Access Forum (NCAF) 2004, both by former CTC councillor, David Moxon.
<https://www.ctc.org.uk/article/campaigns-guide/rights-of-way-incoherent-network>
- ⁵ Natural England. *Stepping Forward - The Stakeholder Working Group on Unrecorded Public Rights of Way: Report to Natural England (NECR035)*. March 2010. <http://publications.naturalengland.org.uk/publication/40012>
- ⁶ <https://www.gov.uk/government/consultations/improvements-to-the-policy-and-legal-framework-for-public-rights-of-way> (Improvements to the policy and legal framework of public rights of way).
- ⁷ <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/environment-2/>
- ⁸ Countryside Agency. *How people interact on off-road routes*. Research Note CRN 32. March 2001. The Summary says: "In the main, route users accommodate others by changing their speed and pattern of travel: cyclists slow down, while walkers move in more of a straight line and speed up. / The research found that, when people gather together to talk about conflict, they talk it up and their recollection of how many others they met while on the route escalates. Their perceptions of conflict were much higher than that actually experienced."
<http://publications.naturalengland.org.uk/publication/50065>
- ⁹ Scottish Natural Heritage. *Monitoring responsible behaviour - recreation users and land owners/managers 2005-2007*. (Report 314). 2009. www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=1390; *Commissioned Monitoring responsible behaviour among recreational users and land managers*. (Report 424). 2011. www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/?q=424&cat=
- ¹⁰ DfT. *Shared Use Paths for Pedestrians and Cyclists* (LTN 1/12). Sep 2012.
<http://assets.dft.gov.uk/publications/ltn-01-12/shared-use-routes-for-pedestrians-and-cyclists.pdf>
- ¹¹ *Highways Act 1980*. www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1980/cukpga_19800066_en_1
- ¹² *Wildlife and Countryside Act 1981*. www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1981/cukpga_19810069_en_1
- ¹³ Quoted in *Byways and Bridleways* (newsletter of the Byways and Bridleways Trust). 1995/4/19.
- ¹⁴ Dept for Transport. *Highway Code Revised edition 2007*. See 'Signs Giving Orders'
www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_070642.pdf
- ¹⁵ Riddall, John. and Trevelyan, John. *Rights of Way: A Guide to Law and Practice*. 4th Edition. Ramblers' Association and Open Spaces Society. 2007. P 26.
- ¹⁶ The 1888 Act added bicycles to the 1835 Act.
- ¹⁷ Orlik, Michael. *An Introduction to Highway Law*. Shaw & Sons. First published 1993 (revised 2007). Page 10.
- ¹⁸ Home Office. *Clean Neighbourhoods and Environment Act 2005: Guidance Relating to the Making of Gating Orders*. March 2006.
<http://webarchive.nationalarchives.gov.uk/20100405140447/asb.homeoffice.gov.uk/members/article.aspx?id=7924>
- ¹⁹ See <http://www.snh.gov.uk/land-and-sea/managing-recreation-and-access/access-rights/>
- ²⁰ *Ibid.*