

The De-Regulation Act

This Bill received the Royal Assent at 11:00hrs on the last day of sitting of the last Government. The Bill attempts to reduce the burden of requirements on a whole raft of different legislation, ranging from Statues in London to headwear for Sikhs on building sites, and many more varied topics.

This paper is simply about the Rights of Way affected by the new Bill.

The existing legal processes for recording public rights of way are as we are well aware, complex, slow and resource intensive. DEFRA believe that the reforms make improvements to benefit owners of rights of way, landowners, local authorities and developers by creating a simpler system for mapping, changing and extinguishing rights of way. The proposals are a balanced package supported by a group representing the full range of interests in rights of way (SWG, see next para.) They make procedures more streamlined and flexible but also give local authorities more scope to use their judgement in dealing with insubstantial or irrelevant applications and objections and enable the development of locally negotiated solutions.

The Stakeholder Working Group of all interested parties was formed some time ago to advise the Government (DEFRA) of appropriate wording. The body comprised representatives of Landowners, Highway and other Authorities and users including the BHS, CTC, RA, OSS, LARA and others.

That they produced a concise document of agreement was in itself (in my view) a remarkably successful exercise and this group will continue to meet and/or exchange correspondence to advise the new Government of requirements for secondary legislation and guidance to go with this Bill. This is hoped to be completed within the next twelve months.

Recorded Rights of Way – Recognising that the CRoWA remains a confusing piece of legislation, amendments included here are intended as a safeguard for ‘protected rights of way’, by barring orders to alter path’s status in certain circumstances.

Unrecorded Rights of Way – The Stakeholder Working Group’s report set out a wide ranging set of issues and recommendations as to which unrecorded rights of way should be protected from automatic extinguishment in 2025 and how that can be achieved. It is anticipated such detail will be within the secondary legislation and guidance.

These will include:

- 1) Where definitive map modification orders have been submitted ahead of 2025.
- 2) Where an historical unrecorded right of way, which would fall to be extinguished if not otherwise saved, is in use by the public as a right of way.
- 3) Where the existing CRoWA saving provision for vehicular highways shown in the ‘list of streets’ is extended to footpaths and bridleways shown in the list of streets.
- 4) Where ways shown in the ‘Street Works Register’. This is particularly relevant to urban paths and ways, where it can be difficult to make evidential map modification orders.

Conversion of Public Rights of Way to Private Rights of Way - This is a further attempt after NERCA to address landowners and property owners access, where their access is by public right of way that will be extinguished by the CRoWA or, by extension, NERCA via CRoWA.

Application by owners for public path orders. – The ‘right to apply’ for owners and occupiers, for diversion and extinguishment orders will come into force. The scope and detail will appear in the secondary legislation.

Highway Authorities will be empowered to charge-back the costs of making these orders (part, at least) and DEFRA believe this will lower the burden on Highway Authorities.

Gates – Gives provision for landowners and tenants to apply to Highway Authorities to erect gates for stock control on restricted byways and BOATS. This is where rights of way are ‘open sided’ and is intended to assist stock control. This does not include rights of way which are bound by hedges, walls or fences. There will be guidance on this in secondary legislation.

Public Rights of Way Procedure – Contains amendments to the Wildlife & Countryside Act 1981 for applying for, making and determining orders to add rights of way to the definitive map and statement, or modify rights already shown there. Similarly, changes are made to the Schedules to the Highways Act 1980 regarding public path orders. The intention is to improve and streamline the definitive map modification order process. The Stakeholder Working Group will be working on the required secondary legislation and guidance.

Additionally, the Deregulation Bill included clauses which will permit Closed Roads Racing and Trials of Speed (hill climbs & sprints) for motor vehicles.

This legislation will be similar to that enjoyed by Northern Ireland, The Isle of Man, Jersey and Guernsey who have had the ability to promote such events for over a century, as has much of Europe and other parts of the world. A small number of events within the UK mainland have also had such ability, by means of Private Members Bill’s secured within the last thirty years.

Much secondary legislation is required on this subject and it is clear that only by agreement of Highway Authorities, strict regulatory control being applied and permits issued by the current Motor-Sport Governing Bodies, The Auto-Cycle Union (ACU) for two and three wheeled vehicles and the Motor Sports Association (MSA) for four wheeled vehicles, may such events be promoted by established organising clubs.

John H Richardson
NYMNPA LAF Member – June 2015