



## BUCKINGHAMSHIRE LOCAL ACCESS FORUM

# Report

---

AGENDA ITEM 8

**Date:** 3 December 2003

**Title:** Countryside and Rights of Way Act 2000  
DEFRA consultation paper on proposed amendments to legislation when 'Roads Used as Public Paths' are reclassified as Restricted Byways

**Author:** Mike Walker, Group Manager

**Contact Officer:** Karen Jones (01296 383614)

### Summary

As part of the roll out of the Countryside and Rights of Way Act 2000 (The CROW Act), DEFRA has asked for comments to its consultation paper. The paper concentrates on the issues involved with amending existing legislation to take account of this new level of public highway and how to ensure that it is properly integrated into legal processes in the same way as other levels of public highway. Responses are required by 18 December 2003.

### Recommendation

**That the forum supports the Council's response to DEFRA:**

- **Supporting the proposals for integrating restricted byways into current rights of way / highway legislation.**
- **Recommending that sections 42 and 43 of the highways act 1980 should not be extended to incorporate restricted byways**

#### **A. Narrative setting out the reasons for the decision**

The CROW Act has introduced a new form of public highway – Restricted Byway – which is intended to deal with the lack of clarity that applies to a current class of highway – Road Used as Public Path (RUPP).

The definition of a RUPP is a highway, other than a public path, used by the public mainly for the purposes for which footpaths or bridleways are so used. The implication from this was that vehicular rights exist. However, the showing of a RUPP on the Definitive Map could only be taken as conclusive evidence of Bridleway rights. Earlier legislation has looked at this, which is why we now also have the term 'Byway Open To All Traffic' (BOAT). Basically, an investigation would be undertaken by highway

authorities which would reclassify RUPPs either as BOATs (if public vehicular rights were shown to exist) or otherwise as Bridleways. Nationally (and in Buckinghamshire), this process is not complete and the Government has sought to reduce the burden of reclassification on highway authorities with the automatic reclassification of all RUPPs as Restricted Byways.

The definition of a Restricted Byway is a right of way on foot or on horseback or leading a horse, and a right of way for vehicles other than mechanically propelled vehicles, thereby giving a right of way for pedal cyclists and drivers of horse drawn carriages.

The important aspect of this particular consultation is that Restricted Byways be integrated into the full legal process to bring them into line with all other rights of way. Therefore, the proposals are to:

- *Amend sections 25-28 of the Highways Act 1980 so that it is possible to create Restricted Byways by Agreement or by Order.*
- *Extend sections 118, 118a, 119, 119a and 135 of the Highways Act 1980 to facilitate diversion or extinguishment of Restricted Byways.*
- *Extend sections 257 and 258 of the Town and Country Planning Act 1990 to enable District Councils to make diversion or extinguishment Orders where development impacts on a Restricted Byway.*

*Many other aspects of Highway legislation will automatically apply to Restricted Byways in as much as current legislation refers to 'highways'. A highway in the context of the Highways Act for example encompasses all public rights of way and will therefore apply to Restricted Byways. It is only the sections referred to above which specifically refer to 'footpaths or bridleways' that need amendment to include Restricted Byway. Therefore, powers to remove obstructions from 'a highway' will be available to a highway authority for restricted byways as with all other classes of highway.*

With regard to maintenance, a Restricted Byway will be a highway maintainable at the public expense, as with the bulk of highways shown on the Definitive Map. We are asked to consider whether sections 42 and 43 of The Highways Act 1980 should be extended to incorporate Restricted Byways, in that their maintenance can be delegated to district and parish councils. At present this section applies to footpaths and bridleways. My view is that these sections should not be so amended due to the additional expertise that is likely to be needed to maintain these routes.

## **B. Resource implications**

The reclassification of RUPPs as Restricted Byways will have little notable impact for Buckinghamshire. There are currently 15 such routes and, whilst we will be relieved of the responsibility of reclassifying them as either BOATs or bridleways, their status is still likely to be questioned after they become Restricted Byways, leading to claims being submitted.

Similarly, from a point of view of maintenance, there would be no change in that such routes are, and will remain, highways maintainable at the public expense and the level of maintenance required is unlikely to be altered as a result of this process.

### **C. Legal implications**

There are a number of legal implications, which this report has summarised. However, it is felt that the implications are entirely sensible.

### **D. Other implications/issues**

Whilst the introduction of the term 'restricted byway' means that we will not have to undertake investigations as to the status of all RUPPs (which currently is a statutory duty), there may still be a high proportion of them (if not all of them) that will be the subject of challenge, by way of claims, that the routes do, in fact, have full vehicular rights and should be reclassified as BOATs. Similarly, as we are currently finding, many routes that are being claimed as having BOAT status are currently shown on the Definitive Map as Bridleways, (not RUPPs) and the Restricted Byway status cannot apply to those. Therefore the process of automatically reclassifying RUPPs to Restricted Byways is certainly not the panacea that some may have envisaged.

### **E. Feedback from consultation and Local Member views**

There is currently a great deal of concern amongst Members of the County Council and their constituents about the issue of BOATs and there are clearly some misconceptions about the process of reclassifying RUPPs to Restricted Byways. In practice, however, the process under consideration here is unlikely to have any significant impact on those concerns.

The County Council's Community Services Overview and Scrutiny Committee is currently looking at the issue of Byways and it has been advised of the legislative changes in this respect.

---

## **Background Papers**

Consultation Paper on Proposed Amendments to Legislation When 'Roads Used as Public Paths' are Reclassified as Restricted Byways – DEFRA September 2003  
(Available at <http://www.defra.gov.uk/corporate/consult/byways/index.htm> )