



The Motoring Organisations' Land Access & Recreation Association

Driving Conduct and Traffic Offences

Enforcement Against Anti-Social and Unlawful Motoring in the Countryside

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This LARA Document sets out the main types of anti-social and unlawful motoring that can take place on unsealed roads, public rights of way, and other land. This paper lists the traffic offences available to tackle such behaviour, but does not encompass very serious offences (such as causing death by dangerous driving), or regulatory detail (such as compliance with the lighting regulations). The emphasis is on the nature of the driving and the sanctions available to the police and local authorities. The types of careless driving listed here come from discussions within the Motoring Stakeholder Working Group.

Some offences specify ‘motor vehicle’, and others ‘mechanically propelled vehicle’. Some offences apply only on the highway, while others apply on the highway and also on ‘land’, or in a ‘public place’. Some offences provide for the seizure of the vehicles involved. This is specified against each offence provision.

The tabulation of potential offences is necessarily a summary, and there is more detail in the various statutory provisions. Always take appropriate professional advice before committing to any course of action. Please notify errors and omissions.

This LARA Document is a companion paper to the LARA Report *Anti-Social and Unlawful Motoring in the Countryside: Enforcement, Education and Alternative Provision* (to be published during Spring 2019).

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I. Tabulation of Offences

Part 1	Driving where there is no right, or contravening a prohibition
Driving on 'land' without lawful authority	S.34(1) RTA 1988. " <i>if without lawful authority a person drives a mechanically propelled vehicle— (a) on to or upon any common land, moorland or land of any other description, not being land forming part of a road ... he is guilty of an offence.</i> "
Driving on footpaths, bridleways and restricted byways	S.34(1) RTA 1988. " <i>if without lawful authority a person drives a mechanically propelled vehicle— (b) on any road being a footpath, bridleway or restricted byway, he is guilty of an offence.</i> " <i>It is not an offence under s.34 RTA 1988 if a vehicle is driven on land within 15 yards of a road for the purpose only of parking on that land.</i> S.34 is a fixed-penalty notice offence and does not attract driving licence penalty points.
Contravening a TRO prohibiting motor vehicles	S.5(1) RTRA 1984. " <i>A person who contravenes a traffic regulation order, or who uses a vehicle, or causes or permits a vehicle to be used in contravention of a traffic regulation order, shall be guilty of an offence.</i> " Some TRO breaches are chargeable under s.326 RTA 1988 & Schd 2, RTOA 1988, where breach is a penalty point offence. The 'flying motorbike' sign is not so chargeable, but 'no entry' is, and contravention is also a penalty point offence.
Damaging or removing TRO signs	S.22A RTA 1988 has an offence of interfering with signs where this interference is dangerous. S.131(2) HA 1980: " <i>If a person without lawful authority or excuse pulls down or obliterates a traffic sign placed on or over a highway, or a milestone or direction post (not being a traffic sign) so placed, he is guilty of an offence; but it is a defence in any proceedings under this subsection to show that the traffic sign, milestone or post was not lawfully so placed.</i> "
Failure to comply with traffic signs	S.36 RTA 1988 (1) " <i>Where a traffic sign, being a sign ... [conditions as to type of sign] ... has been lawfully placed on or near a road, a person driving or propelling a vehicle who fails to comply with the indication given by the sign is guilty of an offence.</i> "
Failure to comply with public spaces protection order	S.67 ASBCPA 2014 (1) " <i>It is an offence for a person without reasonable excuse— (a) to do anything that the person is prohibited from doing by a public spaces protection order,</i> "
Part 2	Regulatory offences
Driving without a licence (including underage driving)	S.87 RTA 1988 (1) " <i>It is an offence for a person to drive on a road a motor vehicle of any class otherwise than in accordance with a licence authorising him to drive a motor vehicle of that class.</i> " Under subsection (2) it is also an offence to " <i>cause or permit</i> " this offence, so a parent could be prosecuted for allowing a child to drive on a road. 'Road' includes rights of way. S.165A RTA 1988 provides the police with powers of seizure of the vehicle involved.

S.59 PRA 2002 can be used by the police if they have reasonable grounds for believing that a motor vehicle has been used in contravention of s.3 or s.34 RTA 1988 (careless and inconsiderate driving and prohibition of driving on footpaths, bridleways, restricted byways and on land not forming part of a road) and is causing, has caused or is likely to cause, alarm, distress or annoyance to members of the public.

Driving so that stones, mud or chippings fly up towards other users on the track; soaking people with spray from puddles

S.3 RTA careless driving.

Injuring stock

S.3 RTA careless driving.

Intentionally making noise, with loud exhausts/ not using a silencer

Three elements here. One is driving a regulations-compliant motor so as intentionally to make noise. Would probably be a s.3 offence, but hard to prove under that provision enough for prosecution. A s.3 offence here could trigger a PRA 2002 caution.

Secondly, the C&U Regs provide a specific offence: "*Avoidance of excessive noise. 97. No motor vehicle shall be used on a road in such manner as to cause any excessive noise which could have been avoided by the exercise of reasonable care on the part of the driver.*"

The third is driving a non-regulations-compliant vehicle, and that would be a Construction and Use (including Euro Regs) offence.

Night driving that disturbs residents

Just driving along a public road at night is not of itself an offence. If there were say a 'convoy' of motors in a rural location at 02.00, then maybe the threshold for 'nuisance' would be lower than for daytime hours.

Not stopping for oncoming horses

S.3 RTA careless driving.

Passing too close to a horse/ pedestrian/cyclist

S.3 RTA careless driving.

Not showing appropriate consideration for children and dogs

S.3 RTA careless driving.

Skidding towards other users when braking

S.3 RTA careless driving, if a skid were a consequence of normal braking. Intentional skidding at/near a person might well tip-over into being a s.5 dangerous driving offence.

Part 4 Driving so as to damage the highway or land

Driving on and damaging verges	If the 'verge' is part of the highway then in the absence of any traffic order to the contrary, driving upon it does not appear to be a specific offence.
Damaging the surface of the track	Disturbing a highway (other than a made-up carriageway) without lawful authority is an offence under s.131A HA 1980. So this could not be applied to lawful traffic exercising a right of way. It might extend to, e.g., motors on public paths without lawful authority.
Damaging trees and tree roots	Essentially trees are an obstruction in a highway, and other than under the limited terms of a s.142 Highways Act 1980 licence, it is hard to see how the lawful exercise of a right of way could be held an offence or nuisance as regards unlawful trees. And for the avoidance of doubt, TPOs do not oust this basic rule.
Damaging walls/fences/gates with vehicle	Presuming that these are lawful walls/fences/gates, then the sanctions would seem to be the same as for sealed roads: potentially a s.3 offence, and a claim in damages for loss (covered by RTA insurance). Possibly a s.22A RTA offence depending on who owns the walls/fences.
Leaving gates open	Presuming that these are lawful gates, then this might be a s.3 offence, and there might be consequential civil liability. The Countryside Code says plainly " <i>Leave gates as you find them or follow instructions on signs. When in a group, make sure the last person knows how to leave the gates.</i> "
Lifting gates off	Why would anyone need to lift off a lawful gate on a lawful vehicular highway? If the gate is not lawful, then how can abating an unlawful obstruction to get by be wrong?
Taking stones out of walls	No express offence. Criminal damage? Actionable at civil law.
Winching using landowner trees	Presuming that these are not trees in the highway (see above), no express offence. Criminal damage? Actionable at civil law.
Driving over archaeological remains	Archaeological remains in a highway? The CPS advises: " <i>Offences contrary to the Ancient Monuments and Archaeological Areas Act 1979 should generally be prosecuted under that Act rather than under the Criminal Damage Act 1971.</i> " S.28 of the 1979 Act: " <i>Offence of damaging certain ancient monuments. (1) A person who without lawful reasonable excuse destroys or damages any protected monument shall be guilty of an offence if the person — knowing that it is knew or ought to have known that it was a protected monument; and (b) intending intended to destroy or damage the monument or being was reckless as to whether the monument would be destroyed or damaged;</i> " (online Act is amended and the syntax is not clear).
Damage to flora, fauna or features for which a SSSI is designated, or disturbance of fauna for which a SSSI is designated.	"A person ... who without reasonable excuse — (a) intentionally or recklessly destroys or damages any of the flora, fauna, or geological or physiographical features by reason of which a site of special scientific interest is of special interest, or (b) intentionally or recklessly disturbs any of those fauna, is guilty of an offence...." S. 28P (6A) Wildlife and Countryside Act 1981. This is of limited application in respect of vehicular highways; may be more use in open land situations, but intention or recklessness are not easy to prove.

2. The Highway Code

2.1. Government advice states:

Although failure to comply with the other rules of the Code will not, in itself, cause a person to be prosecuted, The Highway Code may be used in evidence in any court proceedings under the Traffic Acts (see The road user and the law) to establish liability. This includes rules which use advisory wording such as 'should/should not' or 'do/do not'.

2.2. Rules for motorists

144. You MUST NOT: drive dangerously; drive without due care and attention; drive without reasonable consideration for other road users

154. Take extra care on country roads and reduce your speed at approaches to bends, which can be sharper than they appear, and at junctions and turnings, which may be partially hidden. Be prepared for pedestrians, horse riders, cyclists, slow-moving farm vehicles or mud on the road surface. Make sure you can stop within the distance you can see to be clear. You should also reduce your speed where country roads enter villages.

206. Drive carefully and slowly when approaching pedestrians on narrow rural roads without a footway or footpath. Always slow down and be prepared to stop if necessary, giving them plenty of room as you drive past.

214. Animals. When passing animals, drive slowly. Give them plenty of room and be ready to stop. Do not scare animals by sounding your horn, revving your engine or accelerating rapidly once you have passed them. Look out for animals being led, driven or ridden on the road and take extra care. Keep your speed down at bends and on narrow country roads. If a road is blocked by a herd of animals, stop and switch off your engine until they have left the road. Watch out for animals on unfenced roads.

3. The Countryside Code:

Consider the local community and other people enjoying the outdoors. When riding a bike or driving a vehicle, slow down or stop for horses, walkers and farm animals and give them plenty of room.

Abbreviations

ASBCPA 2014:	Anti-social Behaviour, Crime and Policing Act 2014
C&U Regs:	Construction and Use Regulations 1986
EAPC:	electrically assisted pedal cycle
EAPCR 2015:	Electrically Assisted Pedal Cycles (Amendment) Regulations 2015
HW:	highway (including rights of way)
MPV:	mechanically propelled vehicle
MV:	motor vehicle
MV(DL)R 1999:	Motor Vehicles (Driving Licences) Regulations 1999
PP:	public place
PRA 2002:	Police Reform Act 2002
HA 1980:	Highways Act 1980
RTA 1988:	Road Traffic Act 1988
RTOA 1988:	Road Traffic Offenders Act 1988
RTRA 1984:	Road Traffic Regulation Act 1984
VERA 1994:	Vehicle Excise and Registration Act 1994

See also the LARA Glossary for more information: <https://laragborg.wordpress.com/glossary/>