

# Competitive Sport on Minor Highways

Safe Management of Public Access by Means of the

## *Traffic Suspension Order*

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## 1. Preface

There is nothing new in the concern and differing opinions regarding the use of public ways by competitive motor events such as stage rallies and motor cycle enduros. *Public way* refers to all ways over which the public has a right of access, which includes footpaths, bridleways, roads used as public paths, BOATs and unclassified (county) roads. This issue bites on a wide variety of motor (and pedal cycle sport), but it is motorised sport that originally, and again now, bring it back into consideration.

Cases of conflict over the legality of stage rallies on such ways have occurred before (notably Radnor in the early 1980s) but we have never attempted actually to resolve the problem or succeeded in obtaining clarification. Stage rallies have worked on the premise that a footpath or bridleway is not a public highway, however reviewing various legislation available there is strong evidence to suggest that this is wrong and that these have always been public highways. The inherent problems that this poses are threefold, being:

- (a) that all competitors must have unlimited third party insurance,
- (b) that competitors must comply with the Road Traffic Acts and all other Construction and Use, and Motor Vehicle Lighting, Regulations, and
- (c) that competitors are required to average not more than 30mph.

The problem is, of course, compounded by the confused state of the legislation and the generally poor state of the definitive maps held by local authorities. In 1990 the RAC Rally caused ill feeling in the North York Moors National Park due to stages including not only footpaths and bridleways, but also various types of *green roads* i.e. vehicular public ways, of which there are many depending upon how up-to-date the Highway Authority is. It is also known that in Grizedale, stages cross and traverse a number of unclassified county roads.

In many cases these ways are not actually discernible on the ground or the Forestry Commission has planted an them and put in its own tracks near to the legal alignment of the public way. Nevertheless the conclusion is that these events are breaking the law.

It must be further appreciated that the extent of the problem in England and Wales is enormous and not only includes our 60 odd forest rallies but also the 120 odd single venue rallies on airfields, and many other disciplines of our sport, i.e. some sprints, Swindon rallycross circuit, and some events on M.O.D. property, for the privileges that the military have only apply to military activities for suspending the public's rights of access.

Car sport, as governed by the Motor Sports Association is not alone in this problem, for similar difficulties also face the Auto Cycle Union and other members of LARA. The sport must not, in tackling the problem, compromise the aspirations of the recreational vehicle user, for if the vehicular lobby is divided it cannot hope to overcome the inevitable objections of the 'conservation lobbies' who are perceived to be better at lobbying and obtaining public and therefore Parliamentary support, than is wheeled sport.

In attempting to resolve this dilemma we must at all times impress upon other parties that in legalising the illegal we do not seek exclusive use of the countryside, but to share it with other user groups, with all parties sharing an appreciation for the aspirations and objectives of the others. This will not be easy but as we are starting from a position where we are in the wrong we must appear to be reasonable.

## 2. The Issue

The issue is basically simple, if the solution is not. Motor and pedal cycle competitive sports events often necessarily use land over which also lie public rights of way of various types. The rather anachronistic and complex nature of highway and road traffic law is such that these events may sometimes be either prohibited altogether, or, if run, in breach of arcane rules of dubious relevance to the on-the-ground situation. This does not produce any degree of certainty or the predictability and repeatability essential to event organisers; neither does it provide effective safeguards for other organisations and individuals sharing the same part of the countryside. Highway authorities are, by the current rules, denied any reasonable degree of discretion to allow properly organised and consulted events, while preventing those which do not measure up to a reasonable standard.

The issue comes down to drafting and introducing a new set of regulations that allows fully safeguarded use of minor highways for motor and pedal cycle events (and quite possibly other sports too) whilst safeguarding and even enhancing safe access by other groups and individuals.

The scope of these proposals affects motor and pedal cycle sport events that are:

- **Races or Trials of Speed**
- **Trials-type events where there is a time factor**
- **Trials with no time-schedule factor**
- **Some events with no 'competitive factor'**

This is explained in *Terminology*, below.

## 3 Proposals for Change

### 3.1 Approach

This paper is drafted to look at the question of changing the law to facilitate competitive sport on minor highways, principally from the perspective of motor sports (e.g. car rallies and motor cycle enduros) and also pedal cycle sports (e.g. mountain bike racing). There may also be some beneficial effect on non-competitive motor and pedal cycle events. Other sports and activities may be included to benefit (e.g. horse eventing, orienteering). The intention in the drafting is to find a clear, fair and workable process that causes minimum inconvenience or disbenefit to people not involved with the sporting events concerned and minimum bureaucracy to event organisers. The mechanism for change will be relatively simple legislative change to Road Traffic provisions, with the application of rules specified by Statutory Instrument. This draft is written to apply to England and Wales only. The principle might usefully later be imported, with appropriate changes, into Scottish legislation.

We note that this approach is very similar to that proposed, by Government, for landowners and ramblers under 'right to roam' mechanisms. Just as landowners will have the ability to 'shut off' access to land for a period in any year (probably 28 days) for land management and sporting purposes, so landowners and event organisers, with highway authority approval, will be able to suspend rights of way for limited periods.

This new system would potentially benefit many sports (e.g. orienteering, horse eventing, husky racing) and other occasional land uses (e.g. Sunday markets) and would clearly benefit landowners currently unable to enforce entry charges to events due to the presence of a right of way.

### 3.2 Terminology

The use of terminology by participants in motor and cycle sport, and by highway authorities, can be confusing. The tables below attempt to set out a starting point for terminology.

We are categorising competitive sports into three heads, with non-competitive activity as a separate class. These are:

<b>Racing, or Trial of Speed:</b> [R/ToS]	Basically, first past the post, or shortest time, or greatest distance in a set time, wins.
<b>Time &amp; Regularity Event:</b> [T&R]	There is a time schedule imposed, but this is not the sole criterion in measuring success or failure.
<b>Trial:</b> [T]	A non-speed event where marks are gained or lost through driver skill.
<b>Non-Competitive Event:</b> [N-C]	An event defined only by there being a form of entry and some degree of organisation. There is no 'winner' and no losers.

**Table of Principal Event Types**

Type of Event	Character of Event	Category of Event
Stage Rally (cars)		T&R
Classic Trial (cars)		T&R or T
Sporting Trial (cars)		T
Hill Rally (cars)		R/ToS
4WD Safari (cars)		R/ToS
Treasure hunt/ scatter event (cars)		T
Observation Trial (m/c)		T
Time & Observation Trial (m/c)		T&R
Classic Trial (m/c)		T&R or T
Enduro (m/c)		T&R
Treasure hunt/ scatter event (m/c)		T
Mountain Bike Race (bike)		R/ToS
Cyclo-Cross (bike)		R/ToS
Time Trial (bike)		R/ToS
Reliability Trial (bike)		T&R or T
<i>Trailquest</i> (bike)		T&R

Ian, Geoff, Colin – this table needs expanding and completing – please assist.

## Types of Highway

Public Footpath	A right of way for the public on foot only. Almost all public footpaths are recorded on the 'definitive map' of rights of way compiled and updated by highway authorities.
Public bridleway	A right of way for the public on foot, riding or leading a horse, and riding a pedal bicycle only. Almost all public bridleways are recorded on the 'definitive map' of rights of way compiled and updated by highway authorities.
Cycle Track	Most 'cycle tracks' are at the side of ordinary roads, but there are some that are a modified form of public footpath (as normally shown on the definitive map). These are a right of way for the public on foot and on pedal cycles only.
Road Used as a Public Path (RUPP)	A problematic obsolescent category of highway. All RUPPs carry at least bridleway rights until 'reclassified' by a statutory process. Some RUPPs carry public vehicular rights (and will be reclassified as BOATs in due course). Some RUPPs have no proven vehicular rights (and will become bridleways in due course). A few RUPPs may be proven to be no more than footpaths (and will become footpaths in due course). Recorded in the definitive map.
Byway Open to All Traffic (BOAT)	Minor highways with acknowledged public vehicular rights. Mostly with unsealed surfaces. By definition 'mainly used for the purposes for which footpaths and bridleways are so used' - in practice often used by walkers, riders and cyclists. Recorded in the definitive map.
Unclassified (County) Road	Minor roads, some with a sealed surface, some stoned, some 'green'. Generally presumed to be public vehicular roads, although this is occasionally disputed. Recorded in the highway authority's 'list of streets'; not on the definitive map unless also a 'dual status' FP, BR or RUPP/BOAT.

### 3.3 Introduction to the Legal Position

England and Wales are criss-crossed with minor roads and public paths. These minor highways include:

- Low-Classification (County) Roads
- Unclassified (County) Roads (UCR)
- Byways Open to All Traffic (BOAT)
- Roads Used as Public Paths (RUPP)
- Bridleways
- Footpaths (taken here to include Cycle Tracks made under the Cycle Tracks Act 1984)

For the purpose of setting out these proposals, the 'County Roads', plus BOATs, plus some RUPPs, are taken to admit public vehicular rights. Some RUPPs, bridleways, and footpaths are taken as public rights without vehicles other than pedal bicycles (not footpaths).

Some motor and cycle sport already lawfully uses the public vehicular highway (e.g. car road rallies and cycle time trials). Some sport already lawfully (sometimes under statutory regulation) uses bridleways and footpaths (e.g. motor observation and classic trials). As a starting point, this draft takes on board the view that motor racing and trials of speed on the (public) highway are unlawful; and that cycle racing on bridleways is unlawful.

This proposal seeks to amend the current rather confused position in two areas such that:

- Under rigorous safety conditions, authorised speed events currently outwith the law may be permitted on certain minor highways.
- Events currently lawful can utilise better and clearer safety procedures to the general benefit of participants and the public.

Such a change in the law is very unlikely to bring about any significant increase in the number, frequency, concentration, or impact of motor sport events nationally. It will allow those that already take place to be better and more safely run. There may be an increase in the number of cycling events taking place on rights of way, but the proposals will give the Highway Authority the ultimate right to impose proper conditions, and refuse authorisation if not satisfied as to the safeguarding of the wider public interest.

This proposal is not intended to alter current practice on the use of 'sealed surface roads' for motor races. Under current practice on mainland Britain, for motor racing to be lawful on 'closed roads' there must be a specific Local Act of Parliament in force (e.g. Brighton, Strathclyde, Scottish Borders, and formerly Birmingham). Existing statutory powers allow for the police to effectively 'close' roads for cycle racing. No change is sought in this area.

#### 4. The Current Legal Controls on Motor and Cycle Sports on Minor Highways

To attempt to clarify the current situation a table of principal types of event, plus the provisions controlling these, plus notes, is set out below.

	<u>Type of event</u>	<u>Statutory provision</u>	<u>Notes</u>
a)	Motor racing.	S.12 RTA 1988	Motor racing on a (public) highway is an offence. (Except where authorised by Local Act of Parliament).
b)	Motor competitions and trials (other than speed events).	S.13 RTA 1988	Motor competitions and trials may take place on the public highway if carried out in accordance with <u>Regulations</u> made by the Secretary of State.
c)	All motor events.	S.13A RTA 1988	This section disappplies the provisions on dangerous, careless and inconsiderate driving 'in a public place' for properly authorised motor sport events.
d)	Motor competitions and trials (other than speed events).	Motor Vehicles (Competitions and Trials) Regulations 19.. (as amended). SI No.	These are the <u>Regulations</u> under which the Motor Sport Association authorises non-speed motor events using the highway.
e)	Motor competitions and trials (other than speed events).	S.33 RTA 1988	Motor vehicle trials using footpaths and bridleways must have authorisation from the highway authority.
f)	Use of motor vehicles away from the road.	S.34 RTA 1988	It is an offence to use a motor vehicle on a footpath or bridleway without lawful authority.
g)	Cycle racing on highways.	S.31 RTA 1988	It is an offence to race cycles on a highway unless done in accordance with <u>Regulations</u> made under this section. It is never lawful to race cycles on bridleways.
h)	Cycle racing on highways.	Cycle Racing on Highways Regulations 19... (get proper title)	<u>Regulations</u> setting out the conditions precedent for racing cycles on the highway.

## 5. Difficulties With Trying To Use Existing Road Traffic Regulation Provisions

The essential problem with Road Traffic Regulation is that it does not clearly operate to suspend public rights on any road to which provisions are applied, and there is stringent limitation on who may enforce any order. It may be open to some forensic debate, but this proposal takes the view that (for example) a 'prohibition of pedestrians' order made on a footpath does not remove the common law right of the public to pass and repass along the way. The effect of the order is to make it an offence, punishable by criminal sanction, for the public to exercise the right to pass and repass whilst the order is in force and properly notified by specified signage. If such a 'prohibition of pedestrians' order operated to remove the right of the public to pass and repass, then for the duration of the order the highway would cease to be a highway – it would be (temporarily) stopped-up, but that does not seem to be the intention or effect of the Act. Parliament *has* made express temporary stopping-up provisions elsewhere, notably in Town and Country Planning legislation, to facilitate quarrying works over a period of years, followed by physical reinstatement of the ground.

Current Road Traffic Regulation powers may properly be seen as producing 'soft orders', akin to bylaws. Such orders do not remove a public right; they make it an offence to exercise that right in specified circumstances. Such orders cannot be enforced by the public or even by the owner of the land, or the highway authority. Only a policeman in uniform, or an authorised traffic warden may stop someone apparently transgressing a properly made Traffic Regulation Order.

Parliament has had one attempt at altering Traffic Regulation provisions to facilitate sport on the highway: the arrival of the *Tour de France* in Britain in 1994 gave rise to the hastily enacted Road Traffic Regulation (Special Events) Act 1994. This is arguably somewhat deficient in some areas, and would not address the specific needs of motor and cycle sport anyway.

Road Traffic Regulation powers can suspend certain orders (such as 'no left turn' commands) but cannot make lawful that which is otherwise unlawful. A 'no pedestrians' order might be imposed on a length of footpath to contribute to public safety during a car rally, but no such order could make lawful a motor race on that footpath. Road Traffic Regulation provisions are inadequate to address the present-day needs of motor and cycle sport, and inadequate to properly control and safeguard non-participant members of the public in the same locality as the event.

## 6. How Traffic Suspension Orders Would Differ From Traffic Regulation Orders

The making and application of a Traffic Suspension Order (TSO) would differ from a Traffic Regulation Order (TRO) in two material ways:

- The TSO would operate to suspend temporarily public rights of way over the specified minor highways for the specified duration (nominally the length of time necessary to run the event).
- The TSO would be issued by the highway authority only in appropriate (but not every) case where the motor sport event organiser has a permit from his national governing body (defined as an Authorising Body for the purpose of s.13A of the Road Traffic Act 1988 as amended) and either, or both, authorisation from the Motor Sports Association for a motor rally or trial on the highway, and authorisation from a highway authority for a motor event on a footpath or bridleway, issued in accordance with s.33 of the Highways Act 1988. Cycle events would be brought under the provisions of s.33. A list of 'Authorising Bodies' for cycle events would have to be agreed.

## 7. The Material Effect on Authorisation of Events Would Be This:

[The text in italics shows the proposed changes to the current situation]

Type of Event	Change From Before?
a) All events using major highways (not minor highways, or bridleways/footpaths) must have appropriate route authorisation from the MSA.	<u>No Change.</u>
b) Where the organiser (under the auspices of a national Authorising Body) wishes to organise any competitive motor sport event that uses a UCR, BOAT, or higher road, that organiser must have the necessary authorisation from the Motor Sports Association, which requires police and highway authority consultations. For any such event that uses footpaths and/or bridleways, the organiser must obtain authorisation from the highway authority (under s.33), but does not require MSA route authorisation. <i>Where an event is a race or trial of speed, the organiser <u>must</u> obtain from the highway authority a Traffic Suspension Order, the general terms of which will be set out in a Statutory Instrument, with local conditions as appropriate. Failure to have a proper TSO in force would result in the organisation of such a race or trial of speed remaining a serious offence, as now.</i>	<u>Significant Change:</u> Races and trials of speed <u>may</u> be authorised on minor highways, but only where TSOs are properly in force.
c) Where the motor sport event organiser (under the auspices of a national Authorising Body) is staging an event other than a race or trial of speed, and it is not judged necessary to have a TSO in place, then the current rules shall apply, <i>additionally if the National Governing Body judges that the use of a TSO would be beneficial (e.g. in sensitive areas), then the granting of such must be sought.</i>	<u>Minor Change:</u> For events that are currently lawfully authorised on roads and public paths, the <u>opportunity</u> is introduced to use a TSO as an additional management/safety measure.
d) Where the organiser of a cycle race or trial of speed (under the auspices of a national Authorising Body) wishes to use a minor road other than a footpath or bridleway, he must follow the current procedures and deal with the police as the Act requires.	<u>No Change</u>
e) <i>Where the organiser of a cycle race or trial of speed (under the auspices of a national Authorising Body) wishes to use a footpath or bridleway, then he must go to the highway authority and obtain s.33 authorisation and a TSO.</i>	<u>Significant Change:</u> Cycle racing becomes possible on bridleways (with a TSO in force) and racing on footpaths becomes regulated in the same way – removes an anomaly.
f) <i>Where the organiser of a non-speed competitive cycle event wishes to use a footpath or bridleway, then he must go to the highway authority and obtain s.33 authorisation.</i>	<u>Minor change:</u> Non-speed cycle events, such as reliability trials, must obtain s.33 authorisation, like for motor trials.
g) Where the organiser of a non-speed, non-competitive event (motor or pedal cycle) wishes to use any road or bridleway as of right, or any footpath with occupier's permission, then no other authorisation need be obtained.	<u>No Change</u>
h) Motor events that use the 'road', like navigational rallies and treasure hunts, will continue to be regulated by the existing rules.	<u>No Change.</u>
i) National events given route authorisation by statute (e.g. the Exeter Trial) will not be affected in terms of route authorisation, <i>but may apply for TSOs for sections on minor highways if appropriate.</i>	<u>No Change</u> for statutory route authorisation. <u>Slight Change</u> to allow use of TSOs on sections within these events.

## **8. The Practical Effect ‘On the Ground’**

The essential effect of the making and use of a Traffic Suspension Order is that the length of highway affected ceases to be a highway for the specified period of the order. During that period the highway is ‘private land’, albeit where the highway authority is deemed to be a co-owner of the surface. For the duration of the order, the whole area of the land being lawfully used for the event (e.g. the grounds of a stately home with a public footpath across) would be held under the control of the Authorising Body that has issued the event organiser with the permit to run the event. Event marshals can then exclude non-participants from the course area as safety and good order requires.

At the end of the TSO time period, the highway rights ‘snap’ back into being. The public right to pass and repass returns as normal.

## 9. Conditions and Considerations in the Granting of TSOs

The Statutory Instrument by which the Secretary of State empowers the making of TSOs shall contain a list of mandatory and optional conditions (this list is not exhaustive):

- All motor sport organisers must be members of s.13A Authorising Organisations.
- All s.13A Authorising Organisations must lodge with the Secretary of State a set of 'model rules' for TSO events and must ensure that their own clubs abide by these rules.
- All qualifying motor sport events must have an event permit issued by the appropriate governing body, which may be conditional on a TSO being granted.
- All qualifying events must have authorisation under s.33 before a TSO can come into operation.
- All qualifying cycle events must be under the auspices of agreed Authorising Organisations, and must have s.33 authorisation before a TSO can be granted.
- Applications for TSOs must be made in a prescribed form and a certain period in advance of the event.
- Highway authorities can apply conditions as to insurances and post-event making good. The level of insurance cover would be that which the event governing body applies to its usual events on private ground.
- Statutory signage must be used to notify the existence of a TSO.
- It will be a criminal offence to interfere with such statutory signage.
- Highway authorities must take into account the needs of the public (especially horse riders) in the temporary loss of access and conditions as to the provision of alternative paths wherever practicable.
- Event organisers must seek to accommodate alternatives within the area in use for the event and, in any case, away from busy carriageway highways.
- Event organisers may be required or encouraged to allow public controlled public access to the area during the period of the TSO where such is possible and safe – for example where an otherwise-unaffected bridleway or footpath crosses the line of the event.
- Highway authorities and the Authorising Organisations shall agree and establish a 'grievance procedure' to deal with any issues arising from properly staged TSO events.
- The granting of a TSO shall be at the discretion of the highway authority, but shall not be unreasonably withheld.

## 10. The Necessary New Statutory Provision

Changes would be made to the Road Traffic Act 1988. The proposed changes are underlined below.

S.12 - (1) A person who promotes or takes part in a race or trial of speed between motor vehicles on a public way is guilty of an offence.

(2) In this section “public way” means, in England and Wales, a public highway not subject to a Traffic Suspension Order made under the provisions of s.33(A) of this Act, and, in Scotland, a public road.

S.31 – (1) A person who promotes or takes part in a race or trial of speed on a public way between cycles is guilty of an offence, unless the race or trial –

- (a) is authorised, and
- (b) is conducted in accordance with any conditions imposed by or under regulations under this section or under s.33 of this Act.

S31 – (2) The Secretary of State may by regulations authorise, or provide for authorising, for the purposes of subsection (1) above, the holding on a public way [other than a bridleway] - this section in brackets is taken out.

S31 – (6) In this section a “public way” means, in England and Wales, a public highway and, in Scotland, a public road [and includes a bridleway but not a footpath] – this section in brackets is taken out.

S.33 – (1) A person must not promote or take part in a trial of any description including a race or a trial of speed between motor vehicles or between pedal cycles on a footpath or bridleway unless the holding of the trial has been authorised under this section by the local authority.

S.33(A) The Secretary of State may by regulations authorise the making by highway authorities of Traffic Suspension Orders to provide for the safe conduct of motor vehicle and pedal cycle events authorised under the provisions of ss.13, 31 and 33 of this Act, and for any other type of events as specified in the regulations.

## 11. The Regulations to be Made

The Regulations made under s.13(2) and s.31(2) shall continue in force (as amended).

Regulations will be made under s.33(A). The fundamental clause in these shall be along the lines of:

- A highway authority may, for the purposes of staging a properly authorised motor vehicle race\*, trial of speed, or trial, make a Traffic Suspension Order on any minor road *[needs specification]*, BOAT, RUPP, bridleway or footpath. A highway authority may, for the purposes of staging a properly authorised cycle race, trial of speed, or trial, make a Traffic Suspension Order on any bridleway or footpath. The effect of the Traffic Suspension Order shall be to suspend all public rights of way for the duration of the Order.
- No motor vehicle or cycle race or trial of speed on any public way shall be deemed authorised unless a Traffic Suspension Order is made by the highway authority. In the case of trials that are not races or trials of speed, a highway authority may at its discretion make a Traffic Suspension Order in addition to giving authorisation under s.33.
- Nothing in these Regulations shall alter those Regulations made under ss.13 and 31 of this Act.

The Regulations made under s.33(A) shall contain:

- A list of mandatory considerations and conditions to be satisfied.
- A list of discretionary conditions to be considered.
- A standard form of Traffic Suspension Order and details of posting, notification, etc.
- A statement that non-compliance with a TSO, or interfering with signage, is a criminal offence, and stating the penalties.

### THESE NEW REGULATIONS TO BE DRAFTED BY US, AT LEAST IN SKELETON FORM

- ❖ **Note:** This core element of the new regulations is drafted only for motor and cycle events. It may be necessary to widen the scope of the Regulations to permit TSOs to be made for other sports – like horse eventing – in order to get the whole package accepted.

If the motor sport governing bodies agree that this is the way ahead, then the new Regulations can be drafted accordingly.

## Addendum

Since the first circulation of this proposal paper we have received a number of 'initial comments' as organisations and individuals consider the implications for their own areas of activity and interest. One main concern is apparent: that in creating the Traffic Suspension Order power to improve land management and safety in some circumstances and situations, the process should not impose unnecessary additional burdens on low-key events.

We wish to emphasise that, each year, many thousands of low-key motor, motor cycle and pedal cycle events take place unobtrusively and lawfully. For such events the TSO is an optional additional benefit for organisers and land managers to apply in the few cases where problems occur.

The TSO does not replace those parts of the existing raft of regulations that experience shows to work. The TSO is an additional, discretionary measure intended to assist in land management measures where the current regulations are inadequate to cope with the reality of the on-the-ground position today.