

‘Wet Gates’.

Regulating the Use of Unsealed BOATs and Unclassified Roads in Waterlogged Ground Conditions.

A LARA Proposal for Minor Legislative Amendment.

Introduction.

One of the principal causes of friction between recreational vehicle users and other highway users, and between recreational vehicle users and highway authorities, is the impact on some unsealed roads, from vehicular traffic, when the ground is very soft due to unusually high rainfall, rivers flooding, or melting snow. Routes that would otherwise carry vehicular traffic without undue impact can become susceptible to damage – sometimes quite serious and lasting damage – in ‘waterlogged’ conditions. Over the past three years – and at the start of 2009 – the weather patterns and resulting ground conditions suggest that Britain is becoming ‘wetter for longer’ in each year, not just in terms of precipitation, but, more importantly, as regards the surface condition of minor roads. This paper looks at proposals for minor legislative or regulatory change to allow quick, simple, cheap and responsive ‘conditions-sensitive traffic management’ on Byways Open to All Traffic (BOAT) and Unsealed Unclassified Roads (UUR) in England and Wales. The proposals would work in Scotland, lightly amended to fit into existing Scottish statutes (there are no BOATs in Scotland).

What is Needed?

To make immediate traffic regulation more-readily available to highway authorities during wet ground conditions, there has to be a system with the bite of a traffic regulation order (essentially criminal sanctions for breach, the availability of command signage, and the power to gate and barrier) but without the formalities, cost, delay to make, apply, or disapply, a temporary traffic regulation order. The necessary process could be made available by amending current provisions within the Road Traffic Regulation Act 1984. We call these lawful barriers ‘wet gates’.

Current Management Systems.

Currently, traffic management in such situations on BOATs and UURs comes down to six types:

1. Individual commonsense.
2. Formal voluntary restraint.
3. Temporary traffic regulation orders.
4. Full time, weather-dependent, traffic regulation orders.
5. Full-time, selective (i.e. prohibiting certain traffic) TROs.
6. Repair and improvement by the highway authority.

Taking these in turn:

1. **Individual commonsense** is cheap, flexible, applicable where needed, and engages the driver in the wider context of his activity. Unfortunately, common sense is lacking in some people (if it were not, we might not need speed limits, or give-way lines, etc.) and effective management needs some bite.
2. **Voluntary restraint** has been shown to work, particularly with drivers who are members of national organisations, but is relatively slow to impose, and demands a considerable level of immediate and ongoing liaison and publicity.
3. **Temporary traffic regulation orders** are relatively expensive, slow and cumbersome, and while highway authorities might use these for 'one-offs', they are reluctant to use them for repeating circumstances.
4. **Full-time, weather-dependent traffic regulation orders** have been used successfully in (e.g.) Hertfordshire, Bedfordshire, and the Lake District, but demand the cost and complexity of making individual orders.
5. **Selective traffic regulation orders** typically restrict 'larger/heavier' traffic, e.g. prohibiting 4x4s whilst not prohibiting motorcycles. These are not uncommon.
6. **Pro-active repair and improvement** is increasingly unlikely in these cash-starved times.

The Benefits of 'Wet Gates'.

By this provision, highway authorities would be able to move quickly to prevent vehicular traffic where BOATs and unsealed unclassified roads are 'waterlogged'. The effect would be very much like a temporary traffic regulation order (and not unlike voluntary restraint) but

without the cost, complexity and delay involved. The highway authority would be under a duty to remove the 'gates' as soon as conditions allow, and would not be able to plead 'waterlogging' as a defence to a notice under s.56 of the Highways Act 1980 as regards a long-term situation.

The Negatives.

It might be argued that highway authorities would abuse the system and leave gates up longer than necessary. That might be so, but the authorities would remain open to notices under s.56 and s.130A of the Highways Act 1980 (the latter are not applicable to unclassified roads). Would occasional instances of such breach be any worse than occasional instances where drivers do not comply with voluntary restraints, or with temporary traffic regulation orders, and cause significant damage in the process?

'Notices': the Existing Process, Lightly Amended.

When (for example) a culvert collapses under a road in England or Wales, and the highway authority has to close the road to make emergency repairs, there is no way of making a temporary traffic regulation order quickly enough. The Road Traffic Regulation Act 1984 provides, in s.14, a provision for an authority to make a 'notice' to close a road in such circumstances. A 'notice' can remain in force only for a short period.

S.14(1): if the traffic authority for a road are satisfied that traffic on the road should be restricted or prohibited –

(b) because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to [works being done on or near the road] ... the authority may by [traffic regulation order] restrict or prohibit temporarily the use of that road, or any part of it, by vehicles, or vehicles of any class ... subject to such conditions or exceptions as they may consider necessary.

(2) The traffic authority for a road may at any time by notice restrict or prohibit temporarily the use of the road, or of any part of it, by vehicles, or vehicles of any class ... where it appears to them that it is –

(b) necessary for the reason mentioned in paragraph (b) of [subsection (1) above]

... that the restriction or prohibition should come into force without delay.

S.15(7) A notice under s.14 of this Act shall not continue in force –

(b) if issued for the reason mentioned in paragraph (b) [of s.14(1) above] for more than twenty-one days from that date;

... but the Secretary of State may by regulations alter the number of days for the time being specified in this subsection.

S.15(8)(b) a restriction or prohibition imposed by a notice ... may be continued – (i) by an order ... or (ii) if the notice was issued for the reason mentioned in [s.14(1)(b) above] by one (but not more than one) further notice under that section.

So, if wet ground conditions suggest the 'likelihood of serious damage to a road', the highway authority already has the power to use a notice – thus allowing the use of barriers and prohibition signs – to exclude all or some vehicular traffic. This notice can be kept in force, if necessary, for twenty-one days, and may, if necessary, be followed by one further notice for twenty-one days, giving forty-two days (six weeks) in total. Beyond that, a temporary traffic regulation order is needed to continue the prohibition of traffic.

The Government's current national guidance is: *Making the best of byways: A practical guide for local authorities managing and maintaining byways which carry motor vehicles, December 2005*. "Making the best of byway's has no reference to the availability and application of 'notices' to short-term traffic management situations such as waterlogged ground. Where it looks as though the waterlogging may dry out within six weeks, the current provision is adequate, and its use by authorities might usefully be publicised in revised or additional guidance.

But, is six weeks maximum regulation sufficient for freak-weather waterlogging situations? Experience suggests not. Twelve weeks is long enough for natural drainage and drying in the great majority of cases – if the problem persists beyond that, then it is most likely because of an underlying drainage problem, or serious overgrowth, and repair and/or clearing is needed. To have the opportunity to use a notice for up to twelve weeks (in any year) would require that s.15(8)(b) is amended by regulations so to read:

S.15(8)(b) a restriction or prohibition imposed by a notice ... may be continued – (i) by an order ... or (ii) if the notice was issued for the reason mentioned in [s.14(1)(b) above] by one (but not more than one) further notice under that section, except where the notice is made due to flooding or waterlogged ground conditions, where three further notices may be made consecutively (a total of 84 days) but no more than 84 days of traffic regulation by notice may be imposed in any calendar year.

The Benefits of Extended Notices.

This is cheap, easy, quick, flexible, responsive, allows the use of existing statutory signage, the use of gates and barriers, and has a criminal sanction for breach. Overall, the availability of such a process should save money compared to the use of temporary traffic regulation orders, or surface damage resulting where quick intervention does not happen.