

The Motoring Organisations' Land Access & Recreation Association

## Managing Motor Vehicle Use in the Countryside

A Good Practice Guide to Traffic Management on Unsealed Public Roads





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This document replaces both parts of the LARA publication: "Traffic Management Hierarchy", dated May 2014, and includes additional material.

Although this guidance contains views on how the legislation works, ultimately it is for the courts to interpret the law and the law will change over time. You should consider taking professional legal advice before taking any course of action.

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## About this guide

The purpose of this publication is to provide public authorities<sup>1</sup> in England and Wales with advice on a range of practical measures to manage the lawful and responsible use of motor vehicles on unsealed public roads and “byways open to all traffic”<sup>2</sup>. The term “green road” is used throughout this document to refer, generically, to both.

The aim is to help these authorities choose the most appropriate management measures on the ground prior to consultation. It is intended also to help other interests, primarily: local access forums, parish councils and other user organisations, to understand the processes involved and issues raised.

This is a practical guide to what measures can be applied from common sense right through to permanent all-vehicles, all-seasons, traffic regulation orders. It explains what each option means, where and when it could be used and how it could be implemented. Background and supporting information are included where applicable.

Parliament has already provided all the mechanisms needed to manage the use of motor vehicles<sup>3</sup>. It is a question of how best to employ them.

All local authorities with highway and traffic management powers are under a duty both to maintain highways and ‘assert and protect’ the rights of the public to ‘use and enjoy’ them. In practice, this means restricting the public’s right to use the highway as little as reasonably possible, while ensuring that any measures applied are monitored and enforced.

It is in everyone’s interests to see the highways network properly used and well managed and maintained. LARA and its members are keen to help ensure this happens and willing to assist with this in practical ways.

This publication is self standing but makes reference to other publications where further guidance help to reinforce points made in this guide.

Ian Davis

Honorary Chairman of LARA

June 2022

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<sup>1</sup> Principally local authorities & National Park Authorities, but also including the Police, Natural England, Natural Resources Wales, the Forestry Commission & the Crown Estate.

<sup>2</sup> Defined in [section 66 of the Wildlife & Countryside Act 1981](#).

<sup>3</sup> Wales now has devolved powers and Scotland has a separate legal system.

# Why motor vehicle management?

## ***The public's entitlement to use motor vehicles on highways. What roads exist for. What makes motor vehicles a special target for regulation?***

1. Public highways are there for the public at large, who have a legal right to 'use and enjoy' them. Highway authorities have a statutory duty to assert and protect this right<sup>4</sup>. Nevertheless, anyone who uses a public highway, whether on foot, on horseback or by vehicle is subject to conditions on its use and a degree of statutory regulation.
2. Statutory regulation of traffic has primarily evolved to address activity that exceeds the entitlement to use a highway, that hinders the right of others to use and enjoy the highway and to tackle nuisance or damage to people and properties bordering the highway. That evolution did not begin with the arrival of motor-traffic on the highway. The kind of measures used in current traffic regulation, for example: seasonal restrictions with a weight limit, were first used in the 16th century. Traffic regulation that specifically addresses motor vehicle use was introduced in the 1860s.
3. The vast majority of green roads were built for motorised vehicles. They were created or improved after motorised road transport was invented, as far back as 1769, established as being practicable in the 1830s and/or after legislation from the 1860s required all roads to be built for motor vehicles. A minority of green roads are unsurfaced soft roads with no engineered drainage or improvements to the road surface. Those ancient horse and cart tracks pre-date 1835 and constitute a small minority of green roads, typically being confined to rare examples where engineering improvement was not undertaken from the 1860s.
4. More recently, the continuing increase in population, economic and leisure activity, and the expansion of the built environment have all continued to put increasing pressures on the natural environment and the highways network. Higher levels of affluence and leisure time have seen a rise in growth and demand for recreational activities.
5. The increased use of motor vehicles and non-motorised traffic on both sealed and unsealed highways has resulted in a deterioration in the condition of some parts of the the highways network. While some minor and rural highways are evidently in better condition than 200 years ago, some have suffered from misuse and some unsurfaced routes from unsustainable levels of vehicular use. Moreover, local authority resources have been significantly depleted over the last decade.
6. This has in some cases led to authorities using their powers to effect the prohibition of vehicles from highways as a way of attempting to reduce their maintenance burden and relieving themselves of complaints from those opposed to sharing the countryside, where in many cases better and less draconian alternatives exist. Increased levels of recreational activity across all sectors has increased the potential for conflict between

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<sup>4</sup> Set out in [section 130 of the Highways Act 1980](#).



different interests and there will always be factions that disapprove of motor vehicle use in the countryside as a matter of principle.

7. But it is not appropriate to prohibit a lawful activity because there are some people who disapprove of it. And by definition, prohibition curtails only lawful activity and is no deterrent to unlawful activity. Such measures also adversely impact on other legitimate and beneficial activities, many of them important to the health of the economy at a time when economic recovery is so badly needed.
8. Just as with other visitors, motor-vehicle users bring a wide range of benefits including income to support local communities. Green roads often provide access to public and private car parks and support tourist and hospitality activities, such as the Kielder forest drives. In many cases motor-vehicle use and motor sport events are part of the nation's unique cultural heritage of motoring, which is of international importance.
9. In terms of well-being, there are benefits to be derived from motor-vehicle access to the countryside, just as there are with other forms of access. Motorcycling is a physical activity, while 4-wheeled vehicles often provide people with mobility limitations with a means of access to places that would otherwise be denied to them. Motor vehicles also provide access to remote places for people engaging in other, more physical activities such as potholing, hang gliding and watersports.
10. Just as with other activities (such as cycling, walking and horse-riding), realising the benefits of motor vehicle use entails managing some side effects as a matter of good practice. Enabling benefits to be realised alongside managing the resulting problems is accepted practice for non-motorised access, whilst motorised access is often managed in a manner that fails to capitalise on its full benefits to society. Even so, motoring on green roads continues to provide a net benefit.
11. This guide looks at ways in which appropriate vehicle management measures can be applied effectively with the help and co-operation of national associations for motor sport and recreation. Measures based on consensus and agreement are likely to have a far higher level of compliance than if they are externally imposed.
12. There are three key aspects to keeping the highways network properly used and well managed and maintained. These are:
  - enforcement;
  - highway management, maintenance and repair; and
  - traffic management.

This guide is concerned with one of these aspects: traffic management. Enforcement and maintenance are dealt with (respectively) in LARA's complementary guidance: [Anti-Social and Unlawful Motoring in the Countryside](#) and [Surface Standards for Unsealed Public Roads](#) and the Defra publications: [Regulating the use of motor vehicles on public rights of way and off road](#) and [Making the best of byways](#).

# Management toolbox

## *What and when to use*

13. In most cases on-the-ground management will not be required. This guidance is here to help when it is.
14. All local authorities with highway and management powers are under a duty both to maintain highways and ensure that they are available to the public for use. There must be good reason to apply measures to restrict the public's right to use and enjoy public highways. The starting point is that, as with any other public highway, the authorities should not use their powers to restrict or prohibit vehicle use on a green road unless there is a well-founded justification for doing so.
15. For the purpose of countryside legislation, motoring is open air recreation<sup>5</sup>. Some aspects of motor vehicle use are now part of our cultural heritage and are therefore something that public authorities have a duty to conserve, particularly in National Parks, where there is a primary duty to conserve and enhance.
16. The small minority of green roads that are ancient horse and cart tracks are used by motor vehicles and pedal cycles on the same basis; that their use imparts no greater burden on the road owner or inconvenience to other road user than the horse and cart it was dedicated for<sup>6</sup>.
17. If it were not for the fact that the routes are unsurfaced, or have an unsealed surface, then maintenance should be able to cover virtually all of the physical impacts any road would be subjected to. Therefore, barring a failure in the drainage systems or spectacular weather events, it can be assumed that vehicle management measures will need to be introduced where, because of the physical characteristics of the road, maintenance costs would become unreasonable or prohibitive, or vehicle use is simply unsustainable.
18. Given an authority's duties to maintain and to secure the accommodation and movement of all - including motorised - traffic on green roads, the decision on which management option(s) it uses must be governed by the nature of the issue the authority is confronted with. Beyond the basic measures (set out on the following page), voluntary measures should be the first option to consider. The requirement to avoid undue restriction of public rights does not mean that the authority is obliged to slavishly work through all the options, but it does mean that all the options should be considered fully at the outset and the measure applied should be the least restrictive that would resolve the issue being addressed.

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<sup>5</sup> The statutory guidance for Local Access Forums & Rights of Way Improvement Plans in England encompasses motoring as a form of open air recreation. Paragraph 70 of the Gosling Report says: "Motorcycling is a popular sport and should have a place in the overall scheme of open air recreation in the countryside which will be encouraged by the Countryside Commission, as described in the Bill now before Parliament" [the Bill subsequently enacted as Countryside Act 1968].

<sup>6</sup> The principle follows the dicta in *Case v. The Midland Railway Company* (1859) 27 Beav. 247.

## Basic measures

### Police and local authority action against illegal and nuisance use

19. This guide is based on the premise that authorities have used their powers to enforce against illegal and irresponsible behaviour wherever appropriate. Traffic management measures are not a substitute for enforcement against criminal offences. The restriction or prohibition of vehicles from a highway because of the bad behaviour of some individuals is no more acceptable on a green road than it would be on a trunk road, or on a footpath or bridleway.
20. Advice on tackling the illegal and irresponsible use of motor vehicles can be found in LARA's publication: [Anti-Social and Unlawful Motoring in the Countryside](#) and Defra's publication: [Regulating the use of motor vehicles on public rights of way and off road](#). The support of the motoring groups for enforcement against illegal and irresponsible use can always be relied upon. Such use can be tackled separately from vehicle management, which is almost invariably a different issue requiring different measures.

### Pro-active maintenance and improvement

21. The highway authority is under a statutory duty to keep publicly maintainable highways repaired fit for the 'ordinary traffic of the neighbourhood'. The standard required for green roads is not high, and certainly does not demand sealed surfacing except in very rare cases, where there are high volumes of traffic for land management and access purposes. Repair by voluntary groups is considered to be good practice where appropriate. Volunteer maintenance and repair is valuable in bringing routes up to an acceptable standard and keeping them there. LARA and its members are actively engaged in such voluntary repair work and prepared to help local authorities with this.
22. As with other aspects of this guidance, the starting point is that authorities have a statutory duty to maintain public highways and keep them open for use by the public. Green roads are not an optional extra to be closed to users to save expenditure. Moreover, even in a case where use of recreational vehicles is prohibited, authorities are still required to maintain the highway for other users.
23. However, there may be genuine reasons to prohibit motor vehicles or certain types of vehicles from certain highways, which because of their characteristics are unable to sustain that use, whether permanently or at particular times of year, or in certain weather conditions. Maintenance and selective restrictions may go hand in hand as part of a management regime. In some cases there may be a trade off between restrictions and levels of maintenance, taking into account the authorities' duty to maintain the highway. Further guidance on surface and maintenance standards can be found in LARA's publication: [Surface Standards for Unsealed Public Roads](#).
24. Defra's publication: [Making the Best of Byways](#) is a comprehensive and helpful guide to maintaining green roads in suitable condition. Although published in 2005, it retains its currency and, as a practical maintenance guide, has not been bettered.



## Advisory measures

### Individual common sense

25. This requires no intervention. It depends on people making their own independent judgement on what to do. The risk is that individuals may have imperfect information or not be able to see the whole picture. They may lack experience or knowledge, or have unrealistic expectations. Signage may help, for example: “Unsuitable for Motor Vehicles”, as long as it is applied consistently. This way drivers with limited experience of driving on unsealed surfaces will at least know what to expect.
26. Individual common sense is the starting point. Common sense will be suitable for use on a route that needs little, if any, formal traffic management by the local authority. Such a route would generally be resilient (for example: stone-surfaced and/or well drained) and where there is generally a low level of non-recreational motor vehicle use which the surface is able to sustain.

### Codes of conduct and local guidance

27. LARA Member Organisations have codes of conduct for driving on any green roads, much like the Countryside Code. Examples are the [Trail Riders Fellowship \(TRF\) Code](#) and [Green Lane Association \(GLASS\) Code](#). Guidance can also be developed to deal with specific local circumstances where compliance with a voluntary code seems viable. LARA and its member organisations are willing to work with authorities on developing guidance tailored to local circumstances.
28. The Lake District National Park Authority (LDNPA) provides guidance in the form of a '[Green Road Code](#)' aimed at promoting responsible driving and ensuring sustainable use of the National Park's green roads. The guidance is agreed between the LDNPA, the local highway authority and mechanically propelled vehicle user groups. It was widely distributed through motoring organisations, local vehicle dealerships and tourist information offices, local petrol stations and garages. Commercial businesses involved in recreational driving also distributed the code to their customers. The code can be viewed on the [Lake District National Park](#) and [Cumbria County Council](#) websites.
29. In addition to providing information on recreational driving, the LDNPA guidance includes details on rights of way and the types of rights they carry, voluntary restraint and its importance, and the limitations of maps for identifying routes which carry vehicular rights. It also explains the different classifications of routes in the National Park, the signage on these routes and the reasons for the classification. Not all codes need be as comprehensive as this, but it is an example of what can be achieved through such guidance.

### Voluntary restraint

30. As an alternative to more-formal measures, and in agreement with authorities, LARA or its members may operate a system of voluntary restraint to help solve specific local problems on unsealed roads. It entails a management plan agreed with local motor

vehicle user groups. Signs or notices are erected to indicate that a system is in place and for what period and giving contact details for enquiries. Details of the voluntary restraint scheme are on [LARA's website](#). It depends on peer pressure and sense of responsibility. Users are warned that if they do not respect these signs, vehicular use may eventually be lost permanently. It is best used on a local basis where there are specific problems that need addressing.

31. In addition to the Green Road Code, described in paragraph 28, voluntary restraint is one of the suite of management tools used by the Lake District's Hierarchy of Trail Routes programme<sup>7</sup> which relies on partnership and co-operation. There are 45 trail routes in the hierarchy, on which individual voluntary restraint is applied over and above that advocated in the Green Road Code.
32. There is a risk that irresponsible drivers will ignore agreed voluntary restraint notices and continue to drive on green roads that are deemed inappropriate for unrestricted use. A review of the Hierarchy of Trail Routes<sup>8</sup> concluded that voluntary restraint was effective in reducing inappropriate use (possibly because the reasons for the restraint were clear) but not eliminating it. This suggests that statutory measures only need be applied where:
  - the voluntary measures have been tried and shown not to work;
  - reasonable use of statutory regulation is likely to be more effective and is supported by those restricted;
  - the maintenance issues are such that a high level, if not total, compliance is essential - in such cases delaying more effective measures may exacerbate the situation.
33. Voluntary restraint signs can also be applied locally to help discourage unhelpful behaviour in specific troublespots. LARA member organisations have provided signs to individual landowners who have requested them and would be willing to work with the authority in drawing up and implementing a scheme. For example, signage requesting users to take extra care during lambing season. Similar prescribed signage<sup>9</sup> is commonly used on roads with sealed surfaces to warn of livestock, ducks, deer, hedgehogs, toads etc.

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<sup>7</sup> See [Appendix C](#).

<sup>8</sup> [Towards Practical Management of Motorised Recreational Vehicle Activity in a National Park: Robinson, D and Wilson, G. 2001](#)

<sup>9</sup> [The Traffic Signs Regulations and General Directions 2016 \(SI 2016 No. 362\) \(as amended\) Schedule 2, Part 2.](#)

## Temporary measures

### Temporary restrictions by Notice

34. When unexpected works to the road are needed, or to prevent serious damage to the road or danger to the public, the highway authority may close the road concerned by the display of notices for two periods of 21 days<sup>10</sup>. If more time is needed to effect repairs, the authority can use that time to consult on interim management measures, such as a temporary traffic regulation order, until a more lasting solution can be effected or the issue is resolved.

### Temporary Traffic Regulation Order (TTRO)

35. Temporary restrictions by notice are provided for immediate, short-term repairs, whereas Temporary TROs are more suitable for long term repairs, which may include consultations on a more permanent solution. Temporary TROs entail more procedural steps than restrictions by notice, in keeping with the longer period of restriction, but they may be necessary to continue the period of restriction to allow suitable works to be carried out. The motoring organisations are supportive of all motors TTROs where genuinely needed, for example: for repair or maintenance.

36. The temporary statutory measures are, by definition, short term measures to facilitate maintenance and/or improvement works. So they should only be used as a response to an emergency or as part of a maintenance regime in order to bring the condition of a road up to a certain point and keep it there.

### Experimental Traffic Regulation Order (ETRO)

37. An ETRO has truncated consultation requirements. This enables ETROs to be applied and reapplied on a trial and error basis, to provide traffic managers with information on the practical effect of the restriction that they could not otherwise gain by modelling or other application of predictive skills.

38. There may well be other valid reasons for an experimental order on a green road, for example: applying restrictions by permit on various classes of user to determine the cause of surface damage. However, the truncated consultation requirements are provided for on the basis that there must be a valid justification for conducting a genuine experiment, which would provide information that could not otherwise be gained.

39. ETROs can be made permanent - depending on the outcome of the experiment. But any objections to ETROs must be considered in the same way as for permanent orders. Government guidance is clear that these powers are not to be used to sidestep the statutory requirements for proposer consultation. The availability of ETRO powers does not relieve the traffic authority of its baseline network management duty.

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<sup>10</sup> [Section 14\(2\) of the Road Traffic Act 1984](#) & [section 15, subsections \(7\) & \(8\)\(b\)](#).

## Public Space Protection Order (PSPO)

40. PSPOs can be used to restrict the use of motor vehicles in similar ways to TROs (see paragraph [46](#) and [paragraph 52 of Appendix D](#)). They can be used as a less costly yet effective alternative to TROs or to complement them.
41. PSPOs are temporary, insofar as they can have effect for a period of up to three years. However, this period may be extended and, whilst the extension may not be for more than 3 years, there is no limit on how many times it may be extended. This gives the local authority the option of allowing a PSPO to simply lapse if no longer needed.
42. PSPOs can deal with irresponsible behaviour without necessarily restricting access. PSPOs can be made to limit group sizes, to reinforce requirements to fit legal exhausts, to restrict rear tyre choice on motorcycles. The effect of PSPOs is not confined to the highway and can deal with activity off the highway<sup>11</sup>.
43. A PSPO can be made by a local authority that does not have highway or traffic management duties and powers. It can be enforced by the local authority and so Police involvement is not essential. Signs and notices for PSPOs do not have to conform to the requirements of the traffic signs regulations, though the use of lawfully placed traffic signs can be enabled by a PSPO<sup>12</sup>.
44. Given that PSPOs are cheaper and easier to implement and enforce, are more flexible and cover the whole of a selected area (not just a highway), PSPOs will be a more appropriate option than a TRO in some instances.

## Permanent measures

### Selective or targeted TRO

45. These are permanent TROs that can be used where restrictions are needed at certain times or days of the year or there is a need to restrict certain types of vehicle. This might be because of the pattern and volume of use in certain honeypot locations, perhaps in National Parks where restrictions could operate on busy Sundays and Bank Holidays. It might be because certain road surfaces are prone to wet weather damage in the winter months when wet conditions are more likely to endure for long periods<sup>13</sup> particularly where weather-induced problems are seasonal and predictable. It might be that certain vehicles would be unsuitable because of their size, weight or wheels/tyres; for example: such TROs are commonly used to prohibit 4x4s, because of their size and weight, whilst allowing motorcycles.

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<sup>11</sup> [Section 34 of the Road Traffic Act 1988](#) effects a general prohibition of driving motor vehicles elsewhere than on roads, but subsection (3) contains an exemption for parking on the verge.

<sup>12</sup> Contravention of a traffic sign is an offence that can be enabled by either TRO or PSPO.

<sup>13</sup> Water is by far the biggest maintenance issue on unsurfaced green roads.

46. The existing TRO legislation enables a TRO to be used to apply any of the following restrictions, or combinations of any one or more of them:
- restrict all or certain types of vehicle at particular times of the day or times of the year, for example: to facilitate public events or peaks in usage;
  - restrict use when roads are vulnerable to damage because of particular weather conditions;
  - implement a one-way system, which can help reduce danger to users on narrow or steep lanes;
  - require vehicles to use only a specified proportion of the road, for example: the made-up carriageway and not the soft verges;
  - restrict vehicles that would be unsuitable because of their size, weight or other characteristics;
  - enable access on a permit basis.
47. In addition, it is possible to make a TRO that applies restrictions to several specified roads in a locality. Where there is a good objective evidence base and broad support, including from those who use of the road would be affected by the TRO, an order covering several roads can be a cost-effective option.

### **Flexible TRO**

48. The Flexible TRO is best used where it is known that there are ongoing problems that will arise but their occurrence cannot be reliably predicted. It is simply a variation on the selective or targeted TRO, making motor traffic management on vulnerable unsealed roads more responsive, easier to implement and manage, and fairer.
49. Although permanently in place, the Flexible TRO would only take effect when the signs are displayed, using the same principle that applies to road works. And although road works are almost always effected by Temporary TROs, the legislative framework would enable it to be made as a permanent TRO, where restrictions could be applied only when needed. It requires no legislative or regulatory change.
50. Whereas an emergency notice, or a Temporary TRO, has to be made afresh each time it is needed, a Flexible TRO would be in force all the time and only activated, by an agreed administrative procedure, when circumstances dictate. This could be increasingly helpful to authorities now that extreme weather events are by no means confined to certain months of the year.
51. Where a road, or a group of roads, is, or is sometimes, waterlogged, or soft enough to be vulnerable to excessive motor impact, then the traffic authority could make a Flexible TRO, prohibiting motors<sup>14</sup>, with the prohibition expressed in the TRO to be in

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<sup>14</sup> Or potentially any users.



force only when the statutory signs are displayed<sup>15</sup>. The schedule to the TRO would state that activation of the order by signs will be in accordance with an agreed council procedure or protocol, perhaps with Local Access Forum supervision, except in extreme circumstances, for example: a sudden flood. A practical methodology for a Flexible TRO is set out in [Appendix B](#).

52. A Flexible TRO could also be used in National Parks, and other honeypot locations, to balance motor traffic against other users for amenity reasons. It could be used on more heavily used or sensitive, routes, with the default being: closed to motors, with agreed open periods, either generally, or on a permit-on-request basis.

### **Full time prohibition of all motors TRO**

53. These TROs are mostly used where the physical character of the road is such that motor vehicle use, or use by certain classes of motor vehicle, would be unsustainable or an unreasonable nuisance under any circumstances. However, they can be used for any of the other statutory purposes for making a TRO, including purposes other than highway nuisance such as amenity or conservation of natural beauty. The motoring organisations are supportive of full time, all motors TROs where genuinely necessary, and it is clear that other management measures have not worked, or would not work.

54. Where recreational motoring is not a highway nuisance, motoring organisations are open to compromise and would accept a degree of restriction in order to advance aims for subjective matters such as amenity and natural beauty. The Police and local authorities are much more likely to have the assistance of the motoring groups in education and enforcement on routes where such permanent orders are used only as part of a broad-spectrum management policy approach.

### **Good practice**

55. Reducing conflict can be achieved by raising awareness amongst all parties as to entitlement, responsibilities, and the true nature of byway status. The term byway open to all traffic is often misunderstood. These green roads, like any other highways, are not necessarily open to all traffic. All highways are only open to traffic which does not commit a common-law nuisance or other offence<sup>16</sup>. Such offences include:

- use on a highway of vehicles of unreasonable size and character;
- use of vehicles calculated to intimidate other users;
- racing by any form of traffic;
- hindrance of the free passage of other road users by negligence or misbehaviour.

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<sup>15</sup> Which is a prerequisite for police enforcement in any event.

<sup>16</sup> Halsburys Statutes of England vol XIX, P. 9, 1st edn. (1930).

56. Users of motorised vehicles and other users can, and sometimes do, behave on green roads in ways that breach their legal entitlement. This exacerbates an often needlessly adversarial approach towards use of TROs. Those that suffer from motorists acting beyond their entitlement, understandably mis-perceive that byway status confers on motorists a right to engage in inappropriate behaviour. Some motorists mis-perceive that byway status gives them the right to behave in such ways.
57. Implementing TROs need not be costly or contentious. Many authorities make effective and widely supported TROs at minimal cost. The key to this is effective partnership working, although it has to be recognised that there may be parties at both ends of the spectrum with views that cannot be reconciled. LARA members will always support any reasonable and proportionate proposals, particularly if they are aimed at preserving and maintaining the green roads network for the benefit of responsible and sustainable use.
58. Motorists may be more willing to accept proportional TROs if the effects were evidently simply to introduce management that reflected and preserved the character of the green road. Likewise, non-motorists may be more accepting of responsible motor vehicle use if they had better understanding of the fact that the right to drive is an entitlement which carries with it a responsibility not to engage in behaviour which amounts to a nuisance or offence.
59. The procedures and requirements for making TROs are clearly set out in legislation and guidance (some statutory), as are the duties to be fulfilled by the authority. Authorities should be aware that any decisions made by them are potentially open to legal challenge and therefore it is important for them to be diligent in consulting on proposed measures and in keeping adequate records. However, the rules do not provide for TROs to be quashed because of minor departures from the requirements and TROs will not be quashed unless there are grounds for believing that the process was substantially unfair.
60. Over-restrictive TROs risk imposing an ongoing burden, by reducing the socio-economic benefits of trail-riding and green-laning, provoking an increase in illegal use and triggering litigation. Without this burden, more resources could be expended on maintaining and improving green roads.

## Key Points

- Consider all the possible alternatives and apply the least restrictive option in compliance with the authority's statutory highway and traffic management duties<sup>17</sup>.

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<sup>17</sup> Principally: [section 41 of the Highways Act 1980](#) - to maintain any highway highway maintainable at public expense; [section 130 of the Highways Act 1980](#) - to assert and protect the rights of the public to the use and enjoyment of any highway; [section 122 of the Road Traffic Act 1984](#) - to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians).

- Do not use TRO powers to restrict or prohibit vehicle use on a green road in a way that you would not consider doing on any other class of road, including a trunk road.
- Be aware of authorities' obligations under the the Equality Act 2010 and that the prohibition of motor vehicle use may disproportionately affect, or completely deny, equal opportunity for people with protected characteristics such as disability, health, or age to enjoy access to the countryside and green spaces and the consequent health benefits.
- Carry out a meaningful consultation with all interests likely to be affected. This helps to avoid objections and litigation.
- Do not use TROs as a quick fix to deal with problems for which other legal solutions have been expressly provided by Parliament, for example: fly tipping<sup>18</sup>.
- Acknowledge that the public are equally entitled to use green roads responsibly and sustainably, whatever mode of transport they choose. Pedestrians have no greater entitlement to use highways than equestrians, just as equestrians and pedestrians have no greater entitlement to use highways than motorised users.
- Do not use TROs as a substitute for proper maintenance. The highway authority is under a statutory duty to keep publicly maintainable highways repaired fit for the 'ordinary traffic of the neighbourhood'. For green roads the standard required is not high.
- Motor vehicles are to green roads as narrow boats are to canals and horses are to bridlepaths. Be aware that using a TRO to retract public rights could fundamentally change the character of a green road and effectively turn it from being a public road into a private drive with a public maintenance liability.

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<sup>18</sup> TROs are sometimes seen as a quick fix to deal with non-motoring offences, because they offer the opportunity to erect barriers to physically prevent access. Denying the public access to a public highway to deal with motoring or other offences or misdemeanours is an inappropriate use of statutory powers and subject to judicial review. Moreover, preventing access to a highway will simply displace the problem to another location.

## Appendix A - Example scenarios and solutions

**Scenario A:** A carriageway consisting of a grass track on clay soil is damaged, beyond natural recovery, by being driven on recklessly while waterlogged. There are deep ruts and sloughs along most of the length. The track is waterlogged and there is no effective drainage.

**Solution:** A Flexible TRO to close the carriageway to allow it to dry out and effect repairs. Plough and harrow the surface, leave it for a couple of years to bed down. The Flexible TRO can allow closure while the track is unsuitable for use and to enable it to be opened when it has recovered and to be re-assessed if conditions and use require it.

**Scenario B:** Use of a narrow, twisting track by large 4x4s has resulted in damage to dry stone walls and buildings bordering the track.

**Solution:** A selective/targeted TRO with a prohibition for motor vehicles over a prescribed size or weight, for example: 100-inch wheelbase maximum. Apply a permit access system with motorcycles in 2 directions and 4x4s in one direction. A physical barrier could be used to prevent wider vehicles from breaching the restriction.

**Example:** Gatescarth Pass, Lake District.

**Scenario C:** 4x4 drivers have strayed from the defined path/surface of an unenclosed carriageway causing damage to roadside banks and/or sensitive habitat.

**Solution:** A TRO that would prohibit access to 4x4s and allow gates at the road end to be locked (with side passage for motorcycles and non-motor traffic), with perhaps key access for horse-drawn vehicles by arrangement, and an agreed number of 'open days' each year for motorised vehicles. This would eliminate illegal and irresponsible use without totally closing the road to responsible users. Another possibility is a PSPO that proscribes certain activities.

**Example:** BOAT CL23/41, Burledge Common, Bath and North East Somerset.

**Scenario D:** A green road has been used for fly tipping, lamping and hare coursing. There has been anti-social behaviour, including intimidation and dangerous driving.

**Solution:** A TRO with permits for legitimate users, enforced with Police cooperation and agreement. Installation of stout gates, with a gap to the side to allow motor cyclists, horse riders, cyclists and walkers through without permits. 4x4 drivers required to apply for and carry a County Council permit to then be given the code to the gate locks. Consider using a PSPO.

**Example:** near Luton, Hertfordshire.

**Scenario E:** The junction of a wooded byway with some footpaths has been abused by irresponsible 4x4 use and turned into a muddy off-track play-area making passage of pedestrians and equestrians tricky and treacherous.

**Solution:** Confine use of motor vehicles to the surfaced section of green road using 6 foot tree stumps. Add underground and internal reinforcements of the stumps to prevent winching and chainsawing (see [Figure 1](#) below).

**Example:** Wolvernans Lane, Surrey.

**Scenario F:** The confined width of a green road makes it difficult for other users when encountering vehicles or if vehicles meet head on. Either steep banks prevent users from keeping a safe distance or they have to deviate from the course of the road creating additional informal tracks.

**Solution:** Consider a TRO prohibiting motors other than motorcycles and/or consider making the road one-way only.

**Scenario G:** Sensitive habitats or breeding areas of protected, endangered or vulnerable species have been disturbed and/or damaged.

**Solution:** A TRO to prohibit vehicles at specified times of year critical for species under threat.

**Example:** Motors prohibited from a ford October-May to protect salmon spawning, Rusland Pools, Lake District.



**Scenario H:** ‘Travellers’ have obstructed a section of county road bypassed by a road improvement scheme.

**Solution:** One possibility might be a TRO to prohibit all vehicles. A compromise solution, which would achieve the same end, would be to prohibit vehicles that cannot pass through a “horse gap” alongside the gate erected to enforce the TRO. Another possibility is a PSPO that proscribes certain activities.

**Example:** Old Bristol Road, Shepton Mallet.

**Scenario I :** A green road is subject to irresponsible vehicle use, including abandonment of a vehicle. Maintenance problems include surface degradation and rutting and repairs are quickly reversed in periods of wet weather because of 4x4 use.

**Solution:** Seasonal closure to four wheeled vehicles, excluding quadricycles and motorcycles, between the 1st October and 30th April and at additional times in the event of heavy rainfall. Enforcement by means of a barrier. Surface repairs involving cultivating and compacting the surface and reseeding, to preserve character and be resilient to 4x4 use in dry conditions.

**Example:** Farningham, Kent.

**Scenario J:** A green road just beyond the suburban fringe is prone to fly-tipping and stolen cars being abandoned and set alight.

**Solution:** Whilst there are specific powers to deal with these offences, installing ‘cross axle humps’ will deter access by conventional cars and vans without preventing access by 4x4s, motorcycles or horse-drawn carriages (see [Figure 2](#) below).

**Example:** North-west of Haslingdon, Lancashire.

**Scenario K:** A ford on a clay based soil leading up a hill has become severely damaged such that walkers and horses are almost unable to use it. An adjacent pedestrian footbridge is barely accessible through deep rutting.

**Solution:** Post prominent Voluntary Restraint notices. Consider a post or fence barrier to create a separate safe path to one side for walkers and horse riders from motor vehicle traffic from a safe pedestrian area. Trim back any overhanging vegetation to allow easier passage for for walkers and horse riders.

**Example:** Pisle Lane, Surrey.

**Scenario L:** A popular lane across an heath, which is an SSSI, has become widened following forestry works and irresponsible use of motor vehicles. Some motorised use, especially on motorcycles, has been all over the SSSI, mainly at night. Sandy wallows have become deep and treacherous.

**Solution:** Post prominent Voluntary Restraint notices. Consider a PSPO or TRO to prohibit use of the road after dark. Consider engaging motoring organisations to deploy volunteer labour to regularly refill the wallows. Liaise with the Police over a 'local action day' to stake out the lane and speak to all motorised visitors during one day and night. Encourage the land agents to stake out the lane and reduce it to a single carriageway making it clear where the legal route lies and discourage deviating from it.

**Example:** Sandy Lane, Frensham, Surrey.

**Scenario M:** A steep, stony upland unclassified road has deteriorated through exposure to the weather and visitor pressure causing damage including: blocked and broken drains, culverts and gullies, washed away and sunken road surface, displaced and unstable stone on steeper sections. Deviation because of the damage is causing further damage to the fragile landscape surrounding the road, and increasing its visibility in the landscape.

**Solution:** A temporary TRO to prohibit motor vehicle use whilst the road and drainage is repaired and re-surfaced. Keep the road closed following completion of the works to allow the subsoiling and surfacing to stabilise. Remove prohibition once the road is robust enough to withstand resumption of use by motor vehicles.

**Example:** Breast High Road, Lake District

**Scenario N:** Excessive surface damage has been caused on a green road by its use when waterlogged.

**Solution:** A selective/targeted TRO prohibiting motors with more than 2 wheels from 1 October to 31 May annually. A Flexible TRO could include provision to close the road at other periods due to extreme weather.

**Example:** Witchford and Wentford, Cambridgeshire; Warbleton East Sussex; Ash, Surrey.

**Scenario O:** An ancient upland road with a rock and stone surface has disappeared over time beneath boggy vegetation. The road passes through an area designated for its nature conservation interest. There has been some damage to surrounding area where vehicles have left the road to avoid areas that have become impassable.

**Solution:** A selective TRO to prohibit larger, heavier vehicles and confine any effects to the vicinity of the track. With maintenance, much of the damaging activity will stop. Responsible use can be reinforced through: signage, interpretation, engagement and self-policing. Remove the soft vegetation from the existing track surface, excavate a drainage channel alongside the track using suitable material to raise the track as best possible, lay a geogrid over this prepared formation layer and surface with stone. Introduce drainage discharge points at suitable intervals. Clean drainage ditches crossed by the track lay pipes and cover with stone to maintain existing drainage runs. Create a level base using coarse graded stone and top with a finer grade of stone. Ensure adequate width and camber to ensure effective drainage.

**Scenario P:** There has been a combination of various issues (including some or all of the above scenarios) over a wide area, for example: in an AONB, National Park or local highway authority area.

**Solution:** A holistic, area-wide approach in partnership with representatives of responsible motor vehicle users. Dynamically manage activity through a suite of jointly agreed techniques: colour classification of routes according to their level of use and sustainability; culture change and user education; route signing; voluntary restraint; and statutory measures. Provide dedicated website pages giving general guidance and maps. Encourage local motor vehicle user groups to set up their own forum for: raising awareness, creating dialogue and positive relationships between various interests, providing a pool of manpower for voluntary maintenance work and aiding enforcement through the Police. Form a wider advisory group consisting of authorities, land managers and users (vehicular and others) to help develop solutions to any trouble-spots that arise. Emphasise initiatives through liaison with local highway authorities

**Example:** Lake District (and Cumbria) Hierarchy of Trail Routes (see [appendix C](#)).

**Scenario Q:** Motor vehicles are being used to intimidate local residents or other users of the highway and cause damage both on and off the highway.

**Solution:** Consult the local community on making a PSPO, to target specified activities but allow continued lawful and responsible use of the highway. Consider a permit scheme to enable access only to members of reputable organisations.





*Figure 1. Example of stumps reinforced to prevent winching and chainsawing (Scenario E above)*



*Figure 2. Example of 'cross axle humps' or 'axle twistors' to prevent conventional cars and vans from accessing this green road, which helps to prevent fly tipping and the dumping and/or torching of joy-riden cars, without preventing recreational use (Scenario J above).*

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## Appendix B - Practical methodology for a Flexible TRO

The activation of any Flexible TRO would be in accordance with an agreed council procedure or protocol, set out in a schedule to the order. Where the prohibition starts a standard 'no cars' traffic sign is placed, alongside the field gate if there is one. Gates are not mandatory. Signs alone will suffice in places.

This sign of itself authorises the locking of the gate, and prohibits 'cars' from passing the sign, but needs to be removed for the periods when the order is not activated.

The Department for Transport acknowledges the need to activate/deactivate traffic signs in its guidance, and suggests covering sign-heads with sacks.

The use of a conventional 'fold-down', or 'flip', sign, lockable in either position, would work.



The Department for Transport can (and does) authorise non-standard signs and plates where necessary. This can be done for individual route orders, or for a multi-route order, or perhaps prospectively for an agreed form of order.

This sign, and the plate, could also be authorised by the Department to be smaller, and mounted on the gate itself, such as the ones in use on Gatscarth Pass in the Lake District National Park.



A gap is left at the side of the field gate (or an additional smaller gate is used if stock control is an issue) for the passage of motorcycles, horses, and walkers. In most circumstances ground conditions that require the prohibition for a period of 4x4s will not also require the prohibition of motorcycles, but some routes, at some times, will require such a prohibition. This sign is used.



If the activation of the motorcycle prohibition is only to be occasional and in response to special circumstances, then the bolting of the sign to a pole (or bolting it to a gatepost) is not an onerous task. If the motorcycle prohibition is to be seasonal, or at weekends and bank holidays, then a 'flip sign' plate (as above) would be used.

Consideration needs to be given to horse-drawn vehicles and motorcycle sidecar outfits. Horse-drawn vehicles likely to use the types of roads where a locked-gate TRO would be in force would generally be small 'traps'. If the gate or gap at the side of the field gate is 5'-6" or more wide, then most small traps will pass through anyway.

Councils already address horse-drawn vehicles issues by providing for gate-key-permit access, or by a general prohibition like this.



Motorcycle sidecar outfits and quads (quadracycles) fall under the 'car' sign. Because both the car sign and the motorcycle sign are authorised by (and enforce) the same order, a sign plate can provide a sidecar outfit exemption if this is needed locally (although Department of Transport authorisation may be required).

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## Appendix C - Hierarchy of Trail Routes in the Lake District

The Hierarchy of Trail Routes program (HoTR) was initially developed as a means to manage the recreational use of motor vehicles on green roads in the Lake District National Park. In collaboration with Cumbria County Council (CCC) and the National Park Authority (LDNPA), the HoTR manages activity on green roads using a suite of management techniques, including: the colour classification of routes according to their level of use and sustainability, culture change and user education, route signing, voluntary restraint and statutory measures.

The aim is to eliminate inappropriate use and minimise conflicts between users, reflecting Government guidelines in 'Making the Best of Byways'. through peer pressure and voluntary restraint and the application of statutory measures, such as TROs, with the support of all partners, where inappropriate vehicular use of unsealed roads is identified and where seeking voluntary restraint is not appropriate.

From 2006, management of recreational motor vehicle activity has been on a Cumbria-wide basis, led by CCC as part of its Countryside Access project. CCC hosts website pages covering the HoTR project, general guidance, the survey sheets, and maps<sup>1</sup>. The LDNPA engages with the HoTR project largely through its corps of Rangers and Countryside Access Adviser.

A group of local recreational motor vehicle interests convenes, as the need arises, to address any trouble-spots raised by either of local authorities, other user interests, or individual landowners or parish councils. This group also acts as a forum for raising awareness and creating dialogue and positive relationships between various interests. It provides a pool of manpower for voluntary maintenance work and collaboration with the Police to aid enforcement, where minor traffic offences are not a police priority, especially in remote areas, and vehicle identification often proves difficult. There is a low level of breach of jointly agreed TROs.

The ineffectiveness of traditional, mainly litigious, management options is recognised by all parties, as is the need to manage recreational vehicle use in a high-status environment. In its original form the HoTR project functioned in parallel with a formal, LDNPA managed, Trails Management Advisory Group (TMAG). In this Group other authorities, land managers and user organisations, some of which were known to strongly oppose recreational vehicular activity, and representatives of vehicle users, worked together in search of an acceptable reconciliation of views. After about 10 years of operation the TMAG group was judged to have done its work and was disbanded in favour of direct implementation via the countryside access staff in each local authority.

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<sup>1</sup> [https://www.cumbria.gov.uk/roads-transport/public-transport-road-safety/countryside-access/hotr/hierarchy\\_of\\_trails\\_routes.asp](https://www.cumbria.gov.uk/roads-transport/public-transport-road-safety/countryside-access/hotr/hierarchy_of_trails_routes.asp)

Initial surveys indicated that recreational vehicle activity did not create conflicts in equal measure in all parts of the Lake District. The highest level of MPV use was concentrated in the south-eastern area of the National Park, where a network of up to 25 routes continues to receive special attention from the HoTR Group.

Route condition varies considerably. Upland routes show the greatest signs of erosion. Vehicles, in common with other users, clearly impact on route condition, but many routes have deteriorated because of a lack of regular maintenance and changing weather patterns involving more heavy rain storms. It became apparent that without a properly funded and sustained management regime, routes will continue to deteriorate, no matter how much control is applied to vehicular use. The HoTR project remains dynamic and goes some way to providing that need.

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## Appendix D - Procedures for making statutory orders

### Procedure for making a Temporary Traffic Regulation Order

1. The procedure for effecting temporary closure by notice and making a temporary TRO is set out in Regulations, [Statutory Instrument 1992 No. 1215](#), (as amended). The procedure for a temporary TRO is as follows.

#### *Consultation*

2. Not less than seven days before making an order the authority must publish a notice of their intention to make an order in a local newspaper and in the vicinity of the affected area and inform the police (where an order is one of those exempted from the 18 month time limit, the notice period must be 21 days and a notice must be placed in the London Gazette).

#### *Making the order*

3. Not more than 14 days after making the order the authority must publish a notice in a local newspaper and in the vicinity of the affected area stating that the order has been made. Where the authority considers that traffic signs are required to enforce the order, they must maintain them for the duration of the order, once erected. Revocation orders also require seven days' notification.
4. Where the authority seeks an extension to the maximum duration (of 18 months or 6 months for a BOAT), the legislation requires that it apply to the Secretary of State to obtain a direction for a further period, not to exceed six months. This is to provide for a check on why such extensions are needed and to avoid the detrimental effect to the public of loss of the use of a road for extended periods without adequate justification.

### Procedure for making an Experimental Traffic Regulation Order

5. There are separate rules for experimental orders, as set out in Regulations 22 and 23 of the The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996: [Statutory Instrument 1996 No. 2489](#) (as amended).
6. These say that the requirements for publication of proposals and consideration of objections that apply to permanent orders shall not apply to a ETRO. However, an ETRO cannot come into force before the end of a period of seven days from the day on which a notice of making in relation to the order is published. In addition, the authority must put details of the ETRO (which comply with the requirements of Schedules 2 and 5 to the regulations) on deposit for inspection by the public.
7. ETROs can be made permanent without further publicity, but any objections made to the ETRO as deposited have to be treated in the same way as objections to a permanent TRO.

8. Experimental traffic regulation orders (ETRO) must be for a genuine 'experimental purpose', beyond the 'predictive-by-skill and experience' ability of professional highway engineers. A typical and proper use of an ETRO is where a decision has been made to provide a bus lane in a road and engineers wish to establish, by trial and error, the best start and finish points in order to get the best traffic flow.
9. In the Defra guidance: [Regulating the use of motor vehicles on public rights of way and off road. A guide for Local Authorities, Police and Community Safety Partnerships](#). December 2005, at section 5.3: "*A local traffic authority must be able to demonstrate that the order is a genuine experiment. An order made without good reason would leave a traffic authority vulnerable to judicial review. Experimental orders should not be used to circumvent normal procedures for making [a] permanent traffic regulation order.*"
10. The courts are not reluctant in striking down unconvincing or ill-conceived experiments, typically: UK Waste Management Ltd v. West Lancashire District Council<sup>1</sup> and, as regards prohibition of motor traffic on a BOAT, Trail Riders Fellowship v. Peak District National Park Authority<sup>2</sup>.

## Procedure for making a Traffic Regulation Order

11. The procedure to be used by a local authority for making permanent orders is set out in Regulations: [Statutory Instrument 1996 No. 2489](#) (as amended). The procedure for making a TRO in England and Wales is as follows.

### *Consultation*

12. The authority should consult with any body specified in Regulation 6 (depending on the order, other authorities and/or emergency services). It must publish a notice in a local newspaper and ensure that adequate publicity is provided to those likely to be affected. This may include display of notices in the relevant area and distribution of notices to local properties and road users (though there is no requirement to do this specifically so long as other publicity is adequate). The relevant documents must be held on deposit from the date that the notice of proposal is first published and must remain on deposit until six weeks after the proposed Order has been made (or a decision has been made by the authority not to proceed with the proposal).

### *Public objections*

13. Anyone may object in writing to an order by the date specified on the notices or if later within 21 days of the notice being given and publicity being adequate. A public inquiry only has to be held in certain circumstances, which would not apply to the sort of highways in question here.

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<sup>1</sup> UK Waste Management Ltd v. West Lancashire District Council [1997] R.T.R. 201.

<sup>2</sup> Trail Riders Fellowship v. Peak District National Park Authority [2012] EWHC 3359 (Admin).

### *Making the order*

14. Orders cannot be made before the statutory period for objections has ended or after a period of two years from the making of the initial notice. Within 14 days of making the order the authority must place a notice in the local press announcing their decision, ensure again that adequate publicity is given to the making of the order and write to those who objected to the proposal outlining the reasons for their decision to proceed. Any traffic signs required as a consequence of the order must be in place before it comes into force.

## **Procedure for making a Public Space Protection Order**

15. The procedure to be used by a local authority for making a PSPO is set out in in [sections 59 to 66 the Anti-social Behaviour, Crime and Policing Act 2014](#) and in [Statutory Instrument 2014 No. 2591](#). There is also [statutory guidance](#). The procedure is as follows.
16. Before making an order, the authority must publicise the proposed order and consult the Police and Crime Commissioner and any representatives of the local community and any others likely to be affected, as they consider appropriate. The authority must also consult, as far as reasonably practicable, the owner or occupier of the land in question and inform any other councils affected. These requirements also apply to decisions to extend the period of, vary or discharge an order
17. The authority may make an order if it considers it to be justified under the terms of the 2014 Act. Essentially this is: that the authority is satisfied on reasonable grounds that activities carried on, or likely to be carried on, in a public place are detrimental to the local community's quality of life, and that the impact justifies restrictions being put in place in a particular area. The behaviour must also be ongoing and unreasonable
18. The authority is required to then publish the PSPO as made, extended or varied on its website and by a notice or notices erected in or adjacent to the place to which the order relates. The notice is to draw attention to the fact that the PSPO has been made, extended or varied and the effect of the PSPO. The same procedure applies to the discharge of the PSPO, but must include the date on which the PSPO ceases to have effect.
19. Before making such a PSPO that restricts the public right of way over a highway a local authority must consider the likely effect on the occupiers of nearby premises and other people in the locality likely to be affected and the availability of a reasonably convenient alternative route. They must notify those people of the proposed PSPO, how they can see a copy of the proposed order and the deadline within which they may make representations. The authority must consider any representations made.

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# Appendix E - The legal framework for statutory orders

## Traffic Regulation Orders

1. Traffic Regulation Orders (TROs) are used by local authorities to manage and regulate traffic in their areas. The powers apply to all users of highways, but are mostly used to regulate motor vehicle use. TROs can be permanent, temporary or experimental and can apply all year round or at specific times of day or times of the year. The reasons for making TROs can be varied, but are prescribed by the legislation. They could for example: include: enabling a road, or roads, to be used for an event, protecting residents from 'rat-running', or protecting the road from the weight of heavy vehicles. A TRO does not alter the status of the highway to which it is applied.
2. The power to make TROs is in Parts I, II and IV of the [Road Traffic Regulation Act 1984](#) (RTRA'84), as amended. Section 1(1) of the RTRA'84 states that local traffic authorities in England and Wales (outside London) may make permanent orders for the following reasons:
  - for avoiding danger or for preventing the likelihood of such danger arising;
  - for preventing damage to the road or to any building on or near the road;
  - for facilitating the passage on the road of any class of traffic (including pedestrians);
  - for preventing the use of the road by unsuitable traffic having regard to the existing character of the road or adjoining property;
  - for preserving the character of the road where it is specially suitable for use on horseback or on foot;
  - for preserving or improving the amenities of the area through which the road runs;
  - for preserving or improving local air quality.
3. Although the first four reasons for making TRO's are essentially directed at common-law nuisance, Parliament did not intend TRO powers to deal with anti-social or illegal use of the highway; illegal and anti social motoring should be targeted by the other statutory provisions that are available to the authorities. TROs are intended to be used to regulate everyday traffic, fairly and only where necessary. Traffic regulation orders are enforceable only if they are signed in accordance with the [Traffic Signs Regulations and General Directions 2016 \(SI 2016 No. 362\)](#) (as amended). Government advice can be found in the [Traffic Signs Manual](#).
4. The list reasons for making TROs above was added to later as follows.

### **S.22. TROs for special areas in the countryside**

5. Section 22 applies only to roads in, adjacent to, or forming part of a National Park or Area of Outstanding Natural Beauty, or various other designated areas - including: a country park, Natural England or Natural Resources Wales experimental area, nature

reserves, Sites of Special Scientific Interest (SSSIs), long distance route and National Trust land (see [section 22](#) for the detail).

6. For roads in these areas it creates an additional reason for making a TRO as follows:
  - for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area, or recreation or the study of nature in the area.

### **S.22A TROs for the purpose of conserving natural beauty**

7. Section 22A creates a further reason for making a TRO as follows:
  - for the purpose of conserving or enhancing the natural beauty of the area - to be construed as including conserving its flora, fauna and geological and physiographical features.

This reason also applies to roads other than roads to which section 22 of the Act applies and includes special roads, trunk roads, classified roads, roads within Greater London, cycle tracks, restricted byways, bridleways and footpaths.

8. Section 2 of the RTRA'84 states that TROs may be used for almost anything prohibiting, restricting or regulating the use of a road by traffic – which includes motor vehicles, bicycles and pedestrians.
9. TROs are most commonly applied to manage traffic on sealed roads, but can be applied to unsealed roads and public rights of way. In the context of a green road or unsurfaced route, a TRO may make any provision prohibiting, restricting or regulating the use of a road, or of any part of the width of a road, by vehicular traffic, or by vehicular traffic of any class specified in the TRO, or by pedestrians. This could be a general prohibition or subject to exceptions, for example: applying to certain times of day, or times of the year.

## **Temporary closure by Notice**

10. When an unexpected situation arises, for example: flooding, section 14(2) of the Road Traffic Act 1984 enables the highway authority to close the road affected for two periods of 21 days, by the use of notices alone.

## **Temporary Traffic Regulation Orders**

11. Section 14(1) of the 1984 Act states that temporary orders may be made for the following reasons:
  - Because works are being or are proposed to be executed on or near the road;
  - Because of the likelihood of danger to the public, or of serious damage to the road, which is not attributable to such works; or

- For the purpose of litter or vegetation clearance.
12. Temporary orders have a maximum duration of 18 months or 6 months for a BOAT, except where an order is for works on the road that cannot be executed within that time. Many are much shorter and cover, for example: an event taking place on a particular day or over a series of days.

## Experimental Traffic Regulation Orders

13. The power to make experimental orders is set out in section 9 of the RTRA '84, which says that the authority for a road may, for the purposes of carrying out an experimental scheme of traffic control, make an order under this section (referred to...as an "experimental traffic order") making any such provision as may be made by a traffic regulation order. An experimental traffic order cannot continue in force for longer than 18 months, although the authority can extend it by up to 18 months.

## Statutory reasons for making Traffic Regulation Orders

### TROs for 'danger' reasons

*Section 1(a) - "for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising".*

14. The Police are required to use the national 'Stats 19 Report Form' to record injury accidents involving motors, pedestrians, cyclists and horse riders. The Police also log and investigate 'non-accident' allegations of bad driving made to them. These are given incident numbers and logged by the police for statistical and other purposes. Therefore if a road is, or is likely to be, dangerous, there will be evidence in Police records to substantiate this. Anecdotal evidence alone is not a defensible basis for making such a TRO.
15. If there are no records to substantiate a current danger 'to persons or other traffic' on any road, then there can be no likelihood of danger in the future, unless some significant circumstance has changed, or is going to change. An example of this might be where changes to the layout of a road, or a the surrounding road network could change the behaviour of drivers.
16. Given the highway authorities' duty to ensure highways are available to the public for use and apply the option available to deal with any issues, the first priority should be to remove or ameliorate the danger, or to warn drivers; only the final option being to prohibit traffic. The authority should also consider the danger to users of the road who would be displaced on to other roads by the TRO (see the [Inspector's report on the The County of Wiltshire \(Stonehenge World Heritage Site, Parishes of Amesbury, Berwick St James, Durrington, Wilsford Cum Lake, Winterbourne Stoke and Woodford\) \(Prohibition of Driving\) Order 2010](#)).

## **TROs for ‘preventing damage to the road’**

17. Section 1 (b) - “for preventing damage to the road or to any building on or near the road”.
18. The highway authority for any highway maintainable at public expense has a statutory duty to repair the road and keep it to the common law standard of being in sufficient repair for the ‘ordinary traffic of the neighbourhood.’
19. The courts have ruled that the duty is: “not merely to keep a highway in such state of repair as it is at any particular time, but to put it in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition”<sup>1</sup>. And that: “‘Repair’ means making good defects in the surface of the highway itself so as to make it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition”<sup>2</sup>. “Thus deep ruts in cart roads, potholes in carriage roads, broken bridges on footpaths or bushes rooted in the surface make all the highways ‘out of repair’.”
20. Damage does not include ‘wear and tear’. Roads inevitably need repair (maintenance), not just because of the effect of traffic, but also because of time and weather. Damage, for the purpose of the RTRA’84 must be something more than wear and tear, and more than the natural state of a road. For unsealed roads, deep ruts are not necessarily evidence of ‘damage’, but are wear and tear from ordinary use that requires statutory maintenance. ‘Damage’ must be something more significant. For example: heavy vehicles breaking up culverts. The TRO powers are not provided to circumvent the statutory requirement for maintenance.
21. Damage is also sometimes alleged where vehicles leave ruts in unsealed highways that have not been maintained. If drainage is neglected, then unsealed roads almost inevitably get waterlogged and thereby more susceptible to vehicle impacts. This is not damage, but rather a failure to repair as required by statute the common law.
22. There will be situations where a road is naturally wet and heavy vehicle impacts on it are greater than repair can cope with. That could reasonably be construed as damage that can be managed with TROs. But this situation is uncommon. In the centuries before tarmac, roads had to be reasonably passable, and so most were well sited and sufficiently drained and filled - they had to be, society depended upon it.

## **TROs for the ‘character of the road’**

23. Section 1(d) - “for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property”.

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<sup>1</sup> Burnside v. Emerson [1968] 1 W.L.R. 1490.

<sup>2</sup> Haydon v. Kent County Council [1978] 1 Q.B. 343.

24. Section 1(e) - “(without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot”.
25. There is no guidance on what is ‘unsuitable’ or what makes one road ‘specially suitable’ for equestrians or walkers compared to the character of other roads. Arguably, unsuitability, or special suitability, cannot be quantified in isolation and there has to be comparison and therefore an objective test. A traffic authority, in proposing a TRO on these grounds, should be able to provide objective evidence of unsuitability or special suitability.
26. An illustration of the reasonable application of the purpose might be where a narrow carriageway with a soft, unimproved, grass surface has a traditional and established character of having its surface marked with tyre-, hoof- and foot-prints, with no particularly deep ruts. The soft surface of the road is especially suitable for horses. A seasonal or default TRO might be introduced to preserve the established (soft surface) character of the road and avoid any need to metal the carriageway, which would make it less suitable for use by horses. The TRO would have the effect of allowing the established character of the carriageway to be preserved, primarily for the benefit of equestrians, while allowing sustainable use by motor vehicles.

### **TROs for ‘amenity’ reasons**

27. Section 1(f) - “for preserving or improving the amenities of the area through which the road runs”.
28. Recreational motor vehicles inevitably affect the experience of other users who encounter them whilst on green roads. To what extent can depend on the perceptions of those other users as much as the activities of the motor vehicle users. LARA appreciates the need for some people to experience the countryside through quiet enjoyment. This is where codes of conduct can play a part, for example: LARA advocates that motor vehicle users stop and switch off their engines when encountering other users. However, given that there are vast tracts of countryside that walkers and horse riders can access but motor vehicles cannot, the the question is to what extent the effect of motor vehicle on other users would justify restrictions on motor vehicles on those routes that they are allowed to access.
29. As with any public highway, the starting point is that, as such, they are there for use by the public at large to use and enjoy, and a certain level of traffic is to be expected. There are those to whom the presence of a motor vehicle in the countryside is an anathema and for whom a total ban is the only acceptable option. This absolutist view is as unhelpful and impracticable as the view that there should be no restrictions to vehicles for amenity reasons.
30. Recognising that motor vehicle use could have an impact on amenity and quiet enjoyment for other users of a green road, LARA may well be prepared to support

TRO's that would restrict motor vehicle use, with a view to improving amenity for pedestrians, provided these were applied proportionally.

31. There are restrictions that can be applied in the interests of amenity that allow access in ways that result in a minimal impact on amenity for other users and local residents; for example: having restrictions on motor vehicles at certain times or a permit scheme to allow access to members of certain recognised organisations. However, the authority should also consider the issue of amenity from the point of view of users of the road who would be displaced on to other roads by a TRO and particularly those people with limited mobility whose only access would be by motor vehicle.
32. Amenity can be highly subjective and influenced by personal preference and therefore defining the grounds for a TRO are inherently nebulous and challenging. If the authority is to gain public confidence and avoid challenge, the amenity test must be applied as objectively as possible, supported by a defensible rationale.
33. On most green roads use by motor vehicles is comparatively infrequent. Whilst at weekends or public holidays in popular locations, the possibility of meeting at least one vehicle would be high, on other locations and on weekdays, there would be little, if any. The speed of motor vehicles on green roads is much lower than on roads with more durable surfaces. Noise is fairly localised and relatively temporary. 4x4 noise does not travel great distances, so other users are not affected for long. Moreover, the impact of noise mainly depends on individuals' perceptions and view of how much noise is acceptable.
34. A key question is how these impacts compare to the vastly greater numbers and speed of motor vehicles using other roads in the vicinity? Both uses have a visual impact on the views of the surrounding landscape, so how is the impact of vehicles on a green road significantly different? Would any harm be transitory, or more lasting?
35. An objective assessment should ask whether use and side effects, such as noise, is within tolerable and reasonable levels. One way of looking at amenity is the absence of nuisance. Nobody is entitled to complete protection from noise and other nuisance. There is a balance to be struck between the interests of the different classes of road users and, where present, the interests of local residents.

### **TROs for 'special areas in the countryside'**

36. "...for the purpose of conserving or enhancing the natural beauty of the area, or of affording better opportunities for the public to enjoy the amenities of the area, or recreation or the study of nature in the area."
37. This reason is analogous to the statutory purposes of National Parks and is there to align the TRO legislation with the statutory framework for protecting and managing National Parks, AONBs and other important and sensitive areas of the countryside, including SSSIs.

38. The Hierarchy of Trails Routes programme (HoTR) is an example of how recreational motor vehicle use can exist alongside the National Park purposes - see [Appendix C](#).

### **TROs for ‘conserving natural beauty’**

39. “ ...[for] the purpose of conserving or enhancing the natural beauty of the area...[this] shall be construed as to including a reference to conserving its flora, fauna and geological and physiographical features”.

40. This provision is allied to the preceding provision (section 22A) and extends the scope of the duty to ‘conserve natural beauty’, so that (as well as certain designated areas) it applies to a wide range of highways, some of which are not covered by other TRO making provisions, including cycle tracks and roads within Greater London.

41. These provisions are analogous to those used for the designation of a SSSI, with the clear intention of providing for TROs where they are needed to safeguard against the loss of biodiversity and habit on sensitive sites, which would included Special Areas of Conservation (SACs) and Special Protection Areas (for birds) (SPAs) as well as SSSIs.

42. Studies show that sustainable use of green roads has a positive effect on biodiversity<sup>3</sup>.

### **Powers of National Park Authorities (NPAs) to make Traffic Regulation Orders**

43. NPAs were given powers to make TROs by the Natural Environment and Rural Communities Act 2006. Prior to this NPAs were dependent on the local authority, which often had different objectives and priorities, to make TROs for them. The NPA must consult the relevant highway authority before making any TRO.

44. The powers, in section 22BB of the RTRA’84, enable NPAs to make TROs within the National Parks boundaries for most of the reasons that highway authorities are able to make TROs<sup>4</sup>, but not all types of highway. The powers apply to unsealed carriageways and to ways shown on the definitive map and statement as: a byway open to all traffic, a restricted byway, a bridleway or a footpath. NPAs are also empowered to make experimental and temporary TROs.

45. There are Regulations setting out the process by which National Park Authorities can make such TROs: [Statutory Instrument 2007 No. 2542](#).

46. Defra has issued guidance with regard to the exercise of these powers by National Park Authorities: [Public Rights of Way Guidance for National Park Authorities making Traffic Regulation Orders under section 22BB of the RTRA’84. Guidance to accompany the National Park Authorities’ Traffic Orders Regulations](#).

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<sup>3</sup> For example: Walker, M. P., 2006. *Hedges and green lanes: vegetation composition and structure*. Springer, Biodiversity and Conservation 15 [2595–2610]

<sup>4</sup> In addition, NPAs have powers to make Temporary TROs for purposes of natural beauty etc. An NPA also has the power to make a speed limit using a Temporary TRO.



## Public Space Protection Orders

47. A Public Spaces Protection Order (PSPO) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area. A PSPO could also be used to deal with likely future problems. PSPOs replace designated public place orders, gating orders and dog control orders. Examples of where a new order could be used include prohibiting the consumption of alcohol in public parks or ensuring dogs are kept on a leash in children's play areas. PSPOs can also be used to deal with the use of motor vehicles, where this is having a detrimental effect on the the local community's quality of life.
48. The powers for making Public Space Protection Orders (PSPOs) are in [sections 59 to 75 the Anti-social Behaviour, Crime and Policing Act 2014](#). A local authority can make a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition is that activities have been (or are likely to be) carried on in a public place that have had (or would have) a detrimental effect on the quality of life of those in the locality. The second condition is that the effect of the activities is (or is likely to be of a persistent or continuing nature, such as to make the activities unreasonable, and justifies the restrictions imposed by the Order.
49. A PSPO entails identifying a road or area, within which the Order can prevent specified things being done and/or require specified things to be done by anyone carrying out specified activities. PSPOs can remain in force indefinitely although it must be reviewed every three years.
50. Any prohibition or requirement may be framed so as to apply to all persons, or only to persons inside or outside specified categories; and so as to apply at all times or circumstances, or only at specified times or circumstances. It must identify the activities leading to the detrimental effect.
51. A PSPO can complement the use of other powers to deal with unlawful behaviour so that the use of vehicles in a way that is irresponsible, anti-social or a nuisance at common law can be prohibited.
52. A PSPO can restrict the public right of way over a highway, but the authority must consider the likely effect of the Order on the occupiers of premises adjoining or adjacent to the highway', the likely effect of making the order on other persons in the locality and the availability of a reasonably convenient alternative route, if it is a through route. There are requirements to consult people likely to be affected and consider any representations. A PSPO cannot restrict access to adjoining or adjacent premises to the highway or access to premises used for business or recreational purposes. Subject to these safeguards the PSPO may authorise the installation of barriers. There are certain highways over which a PSPO cannot restrict the public right of way. These include: special roads, trunk roads, classified or principal roads and strategic roads.

53. Examples of traffic regulation that can be delivered by a PSPO.
- Prohibition of recreational towing and winching.
  - Prohibition of use of fragile roads by excessively heavy vehicles.
  - Restricting group or convoy sizes.
  - Prohibiting or requiring the use certain components on vehicles.
  - Restricting access to certain organisations or events.
  - Prohibiting all traffic.
  - Access by permit.
54. A PSPO can have effect for a period of up to three years, but this period may be extended to prevent the occurrence or recurrence after that time of the detrimental activities identified in the order, or an increase in their frequency or severity. The extension may not be for a period of more than 3 years, but the Order may be extended more than once and there is no prescribed limit on the number of extensions, so they may become permanent in practice. The area covered by the PSPO can be varied, as can the activities specified.
55. A local authority must publish a PSPO when it is made, extended, varied or discharged in accordance with regulations made by the Secretary of State. Regulations, [Statutory Instrument 2014 No. 2591](#), briefly set out how a PSPO that is made, extended, varied or discharged is to be published.
56. The statutory requirements for advertising and consultation are less burdensome for PSPOs than for TROs. Local authorities can put up notices to address the particular problem at hand and are not constrained by the Traffic Signs Regulations. PSPOs can be enforced by the local authority and so Police involvement is not necessarily required. Used judiciously, they can be a less costly and more efficient alternative to TROs. They are flexible in their application, as they can allow use by licence, so exemptions can be made or modified after the order is implemented.
57. The statutory process for a PSPO requires notification and consultations with affected parties, which provides an opportunity to verify its lawfulness before implementation. If the made PSPO is challengeable, there is more scope for pre-action settlement than with a TRO. Therefore the process of resolving any dispute over legality is less costly than with a TRO.
58. [Section 104 of the 2014 Act](#) provides for the community trigger. This is a mechanism to enable victims of persistent anti-social behaviour to request that relevant bodies undertake a case review and is intended as a safety net for the victims of anti-social behaviour who consider that there has not been an appropriate response to their complaints about such behaviour. A request for a review, can ask why traffic regulation by means of a PSPO has not been used.

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