



# Restricted Byways

## British Horse Society Guidance

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## Restricted Byways

A restricted byway is a right of way for the public with horse-drawn vehicles, horses, pedal cycles and on foot. That makes a restricted byway the same as a general-purpose public road before the age of motor vehicles. The law regarding repair, obstructions and widths is largely straightforward, but with some rather strange aspects in corners.

Restricted byways are sometimes called 'bridleway-plus' and that is fair, but the overall baseline for condition is higher, even if the character of general public use is much the same.

Practitioners in the process may hold different views than those expressed here. This paper seeks to set out the view of the courts, or to clarify what is said in often old statutes. Nothing here prevents different interpretations, but the Inspectors who ultimately determine a case will generally follow what is seen to be the established law at the time. It is important that the established law is sufficiently set out for each topic, and is presented in each appropriate situation.

Order applicants and supporters may use appropriate pages of this paper in their work, or copy/paste relevant parts. This does not replace the need to provide copies of judgments and statutes alongside the actual evidence to which these apply.

This paper is not exhaustive, and the judicial view of types of evidence changes over time. Readers are invited to correct errors and supply additional materials. Contact the authors at:

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Underlining in the case and statute extracts is by the authors.

## **Abbreviations**

CA 1968: Countryside Act 1968

CTA 1984: Cycle Tracks Act 1984

CRoWA 2000: Countryside and Rights of Way Act 2000

BOAT: Byway open to all traffic

DA 2015: Deregulation Act 2015

DEFRA: Department for Environment, Food and Rural Affairs

DMS: Definitive map and statement

EA 2010: Equality Act 2010

HA 1555: Highways Act 1555

HA 1835: Highways Act 1835

HA 1980: Highways Act 1980

MPV: Mechanically propelled vehicle

NERCA 2006: Natural Environment and Rural Communities Act 2006

NPACA 1949: National Parks and Access to the Countryside Act 1949

RTA 1988: Road Traffic Act 1988

RUPP: Road used as public path

WCA 1981: Wildlife and Countryside Act 1981



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## What is a restricted byway?

1. At common law there are three types of highway: footpath, bridleway and carriageway.<sup>1</sup> The greater right includes the lesser, and it is generally accepted that carriageway highways include a right of way to drive stock.<sup>2</sup>
2. Carriageway highways in the countryside mostly originated before the twentieth century, and before the internal combustion engine.<sup>3</sup> Carriageway highways include a right of way for horse-drawn vehicles and pedal cycles, alongside horses and pedestrians.
3. Restricted byway is a type of carriageway highway created by statute. There are twin origins for restricted byways: firstly, CRoWA 2000 simply converted all remaining roads used as public path (RUPP) to be restricted byways.<sup>4</sup> Secondly, NERCA 2006 stripped out public rights for mechanically propelled vehicles (MPV) from a broad swathe of under- or un-recorded carriageway highways, thus limiting the surviving status to restricted byway only.<sup>5</sup> Since 2006 a definitive map modification order that would previously have recorded a byway open to all traffic (BOAT) on the definitive map and statement (DMS) could result only in a restricted byway.<sup>6</sup>
4. Simply, a restricted byway is a carriageway highway without any public right of way for MPV, without any 'balance of user' test to be applied,<sup>7</sup> and which exists whether or not the way is shown in the DMS.

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<sup>1</sup> The everyday terminology has evolved over centuries, and foot road, bridle road and cart road appear in early statute, case law and textbooks.

<sup>2</sup> Ballard v. Dyson (1808) 1 Taunt 279 841 is cited as an authority, although it is a private rights case.

<sup>3</sup> This leaves out the question of steam road locomotives.

<sup>4</sup> S.47, with savings for unresolved reclassification orders. This provision was not commenced until 2006.

<sup>5</sup> Always assuming that these ways are ultimately and individually proved to have such public status.

<sup>6</sup> With some saving provisions, particularly for roads already on the s.36 'list of streets', and not also on the DMS.

<sup>7</sup> As is applied with a byway open to all traffic.

## **Post-RUPP restricted byways**

1. CRowA 2000 s.48(1) provides:

“Subject to subsections (2) and (3), the public shall have restricted byway rights over any way which, immediately before the commencement of section 47, is shown in a definitive map and statement as a road used as a public path.”
2. CRowA 2000 s.48(4) defines restricted byway:

“In this Part –

‘restricted byway rights’ means –

  - (a) a right of way on foot,
  - (b) a right of way on horseback or leading a horse, and
  - (c) a right of way for vehicles other than mechanically propelled vehicles; and

‘restricted byway’ means a highway over which the public have restricted byway rights, with or without a right to drive animals of any description along the highway, but no other rights of way.”
3. CRowA s.49(1), (2) & (3) operates to make all restricted byways into highways maintainable at the public expense (usually termed ‘publicly repairable’).

## Post-NERCA restricted byways

1. NERCA 2006 s.67(1) provides:

“Ending of certain existing unrecorded public rights of way

(1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement –

(a) was not shown in a definitive map and statement, or

(b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).”<sup>8</sup>
2. Thus, by the extinguishment of public rights with MPVs, these un- or under-recorded highways fit the definition of a restricted byway. Nothing in NERCA 2006 makes all restricted byways publicly repairable. It is a question of fact whether any route is a restricted byway, most often answered by a definitive map modification order, with a public repair responsibility based on evidence of a pre-1836 dedication.
3. A restricted byway that is publicly repairable should also be shown in the highway authority’s HA 1980 s.36(6) ‘list of maintainable highways’.
4. NERCA 2006 s.68 ‘Presumed dedication of restricted byways and use by pedal cycles etc.’ provides that pedal cycle user evidence can be evidence of deemed dedication of a restricted byway.<sup>9</sup> A restricted byway brought into being on the basis of recent deemed dedication<sup>10</sup> is not publicly repairable without some form of ‘adoption’ as well.

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<sup>8</sup> Saving provisions, particularly for roads already on the s.36 ‘list of streets’, and not also on the DMS.

<sup>9</sup> Whitworth v. Secretary of State for EFRA [2010] EWCA Civ 1468; Whitworth v. Secretary of State for EFRA [2010] EWHC 738 (Admin); Slough BC v. Secretary of State for EFRA [2018] EWHC 1963 (Admin).

<sup>10</sup> S.31(1) of the Highways Act 1980.

## **Highways Act 1980 order restricted byways**

1. HA 1980 provides for restricted byways to be created by order (s.26), by agreement (s.25) and through the operation of a diversion (s.119). Restricted byways brought about by these provisions are publicly repairable.
2. S.116 stopping up and diversion orders can be made for a vehicular highway subject to the reservation of restricted bridleway rights. These reserved restricted byways are not publicly repairable unless the original highway was so repairable.



## **Provision of a metalled carriageway**

### **For post-RUPP restricted byways**

1. CRowA 2000 s.49(4) provides:

“Nothing in subsections (1) and (3) or in section 48(1) obliges a highway authority to provide on any way a metalled carriage-way or a carriage-way which is by any other means provided with a surface suitable for cycles or other vehicles.”
2. This provision reaches back to s.30 of the CA 1968 where, in giving pedal bicycles a right of way on bridleways, s.30(3) provides:

“The rights conferred by this section shall not affect the obligations of the highway authority, or of any other person, as respects the maintenance of the bridleway, and this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists.”
3. Given that a post-RUPP restricted byway is by definition a right of way for pedal cycles and horse-drawn vehicles, and is also publicly repairable, ‘provide’ in s.49(4) has to be construed in context. ‘Provide’ appears to engage the definition ‘make available for use; supply’, such that a highway authority is not obliged<sup>11</sup> to make a cycle-friendly, or horse-drawn vehicle-friendly, carriageway, but the byway must anyway be in sufficient repair for its lawful traffic, however the highway authority chooses to achieve that.<sup>12</sup> It would be a nonsense if a highway authority does not have to maintain a baseline standard of usability for ordinary traffic.<sup>13</sup>

### **For post-NERCA and Highways Act restricted byways**

4. CRowA 2000 s.48(1) does not apply as that is expressly about post-RUPP restricted byways. CRowA 2000 s.49(1) does not apply as that provision is tied-back to s.48(1). CRowA 2000 s.49(3) is tied-back to RUPP provisions in CA 1968, and WCA 1981, and does not bite on post-NERCA 2006 restricted byways.
5. Where a restricted byway is added to the DMS by means of a modification order made under s.53 of WCA 1981, then the definition in s.66(1) of that act applies, “‘restricted byway’ has the same meaning as

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<sup>11</sup> But might choose to, by way of the power to improve highways.

<sup>12</sup> Barnes v. Metropolitan Borough of Bury, Bolton Crown Court, February 1991, No. A90 24375; Hennelly v. Worcestershire Co. Co. 6 March 2004, see Byway and Bridleway Extra 2004/5/48.

<sup>13</sup> Ordinary traffic is just that – and is not extraordinary traffic. Given the constraints on class of traffic within the definition of restricted byway, it is hard to see what lawful traffic could be other than ‘ordinary’.

in Part II of the Countryside and Rights of Way Act 2000.” The same definition has been inserted into s.329(1) of HA1980.

6. Although there is no duty on a highway authority to provide a metalled carriageway on a restricted byway, there is a power to do this in HA 1980 s.99 Metalling of highways:

“A highway authority may, in relation to a highway maintainable at the public expense by them, execute works for the conversion of the highway into a metalled highway.”

Experience suggests that this power is widely used when making ‘cycle routes’.<sup>14</sup>

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<sup>14</sup> This also happens to bridleways, and is often funded by ‘Active Travel’ grants.

## Downgrading the status of restricted byways

1. In CRoWA 2000, s.48 Restricted byway rights, provides (our emphasis):  
“(1) Subject to subsections (2) and (3), the public shall have restricted byway rights over any way which, immediately before the commencement of section 47, is shown in a definitive map and statement as a road used as a public path.”
2. At the time that s.48 was commenced (in 2006) the informal view of DEFRA was that “shall have” operated to give restricted byway rights to all former RUPPs, regardless of the status that might have come from a s.54 reclassification (should such have happened) and that this restricted byway status cannot, in the future, be challenged.
3. This view accords with DEFRA’s consultation paper issued in the run-up to the commencement of rights of way provisions in CRoWA 2000:<sup>15</sup>  
[1.6] “The 2000 Act approach builds on the presumption in the 1981 Act that RUPPs carry at least bridleway rights. It will not be possible to make a definitive map modification order to downgrade a restricted byway to a footpath or bridleway even if it could be shown that only footpath or bridleway rights existed prior to reclassification.”
4. Thus restricted byways ‘converted’ from RUPPs cannot be downgraded by an evidential order.<sup>16</sup>
5. After the commencement of NERCA 2006 a restricted byway can be recorded on the DMS by an evidential modification order, and a restricted byway so recorded could later have its status modified to footpath or bridleway by a further evidential modification order.<sup>17</sup> While possible, this is unlikely to be a regular occurrence.

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<sup>15</sup> Consultation paper on proposed amendments to legislation when ‘Roads Used as Public Paths’ are reclassified as restricted byways. 2003.

<sup>16</sup> They could have e.g. carriageway rights stopped up by a magistrates’ court under s.116 provisions, reserving a footpath or bridleway.

<sup>17</sup> This would require the discovery of evidence which, with all available evidence, shows that the recorded status is wrong.

## **Restricted byways from former RUPPs: requirement for local publicity**

1. S.48(8) provides:

“Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the effect of section 47(2) and this section.”
2. S.47(2) provides:

“Every way which, immediately before the commencement of this section, is shown in any definitive map and statement as a road used as a public path shall be treated instead as shown as a restricted byway ...”

## Repair standards<sup>18</sup>

1. Restricted byways cover a wide range of character and surface. Some (by operation of CROWA 2000 and NERCA 2006) are 'proper roads'<sup>19</sup> along which an ordinary car could be driven. Those might reasonably be called 'carriage roads'. Others are just roughly stoned tracks, or have no made surface at all.<sup>20</sup> These might be called 'cart roads'.
2. In statute, case law and commentary, up to around 1800, public vehicular roads were generally termed cart roads. Then there was a steady shift to 'carriage road', or increasingly 'carriageway', as the term used to define the public rights thereon.
3. So a restricted byway that originated as a well-metalled inclosure, or turnpike, road might reasonably be called a carriage road (carriageway) and one that was never historically 'well made' might reasonably be called a cart road. This distinction is now not particularly relevant as regards the overall repair standard required by law, but may influence what is acceptably up-to-standard locally.
4. Haydon v. Kent County Council [1978] CA 343. Lord Denning, MR:  
"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'."
5. Start with a baseline of 'sufficient repair' for bridleways. For riders and horses to be able to use a bridleway safely there must be freedom from hidden holes and ditches, and from deep and sharp-edged visible holes and ditches. While the surface need not be in sufficient repair for the full width of the whole length, it must be good enough that riders can easily find a way along, with sufficient clear and sound width to meet and pass other traffic along the way. Riders cannot reasonably expect the level of sufficient repair to provide a surface suitable for cantering or galloping. Similarly, the way must be reasonably passable for walkers.
6. But with restricted byways there is an elephant in the room: horse-drawn vehicles. A two-wheeled 'trap' pulled by a single horse generally does not need a way much better than a decently maintained bridleway, other than more width. But (say) a two-horse, four-wheel carriage rig is a rather different proposition. Historically, for small single-horse freight carts the carter would have walked, leading the horse. These vehicles were used on ways that would now generally be described as 'pack

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<sup>18</sup> See also the BHS legal guidance paper 'Maintenance and Repair of Minor Highways'.

<sup>19</sup> Proper roads with a blacktop surface, road marking and road signs, which the public still use as everyday roads.

<sup>20</sup> Highways set out in inclosure awards as 'drifts', or 'drove roads', are frequently for the use of all classes of traffic, but were not surfaced.

horse roads'<sup>21</sup> Large wagons and wains, and people-carrier traps and carriages, would mostly have been used on better-made roads.

7. So, as a proposition (and this has not been tested in court), for a road that was only ever 'dirt', or crudely stoned, a standard of repair such that a small cart could reasonably get along is good enough. What was a good enough standard<sup>22</sup> in (say) 1820 is largely good enough in 2020. Where a road was better made, and had 'people carrier' carriage traffic, then a higher standard of repair would be the 2020 baseline.
8. What about pedal cycles? The use of pedal bicycles<sup>23</sup> on bridleways is fettered by s.30(3) of CA 1968, "... this section shall not create any obligation to do anything to facilitate the use of the bridleway by cyclists." Essentially, if a bridleway is good enough for horses and walkers, bicyclists cannot require a higher state of repair.
9. On restricted byways pedal cyclists have equal status with the other classes of user. Could a cyclist require (potentially by court order) that a restricted byway is put into good enough repair such that a modern lightweight road cycle can pass along? Or must cyclists use mountain bikes?
10. Again, this is an untested proposition, but if a (particular) restricted byway is in character a nineteenth-century trade or agricultural road, and is reasonably passable by ordinary people<sup>24</sup> on appropriate pedal cycles (say a 'hybrid' or basic mountain bike), then that is good enough repair. If a horse or cycle rider needs to dismount occasionally, or a walker has to path-pick, then as long as this is only a nuisance, rather than a real danger of injury or damage, then the way is good enough. That does not in any way displace the burden on highway authorities to take account of the needs of people with disabilities, and make reasonable adjustments accordingly.<sup>25</sup>
11. Forces of nature should be used to help keep restricted byways in repair. Restricted byways are carriageways. Right back to HA 1555,<sup>26</sup> the surveyor of highways (now the highway authority) has had a power to go

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<sup>21</sup> See *Packmen, Carriers and Packhorse Roads*, by David Hey, 1980, ISBN 0-7183-1192-1.

<sup>22</sup> This is 'proper repair', and not what they might have been like in practice.

<sup>23</sup> There is a distinction between pedal cycles and pedal bicycles. Years ago the Byways and Bridleways Trust suggested to DEFRA that the 1968 Act should be amended such that pedal cycles can use bridleways. DEFRA rejected this proposition.

<sup>24</sup> Not just athletes or trained event riders.

<sup>25</sup> The Equality Act 2010. There is guidance indicating that a formal written process of consideration is necessary in each case.

<sup>26</sup> Highways Act 1767, subsec.IV; Highways Act 1835, s.LXV.



to the court for an order compelling streetward landowners to cut back enclosing hedges blocking a highway<sup>27</sup> from 'sun and wind'.

12. HA 1980, s.136, Damage to highway consequent on exclusion of sun and wind:

“(1) If a highway which consists of or comprises a carriageway is being damaged in consequence of the exclusion from it of the sun and wind by a hedge or tree (other than a tree planted for ornament or for shelter to a building, courtyard or hop ground), a magistrates' court may by order require the owner or occupier of the land on which the hedge or tree is growing, so to cut, prune or plash the hedge or prune or lop the tree as to remove the cause of damage.”

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<sup>27</sup> Now restricted to carriageway highways only.

## Obstructions, gates and barriers

1. S.147 of HA 1980 provides powers for highway authorities to authorise stock-control barriers on footpaths and bridleways. This provision has not been extended to include restricted byways, but this is proposed to happen via the commencement of DA 2015 rights of way provisions.<sup>28</sup>
2. The current cattle grid provisions in HA 1980 ss.82–90 do apply to restricted byways.
3. The HA 1980 s.66(3) 'Footways and guard-rails' provision has not been extended to include restricted byways. It would be impossible (without a traffic order) to obstruct cars and trucks from a restricted byway without blocking horse-drawn vehicles too.<sup>29</sup>
4. Some obstructions are inconsistent with restricted byway status. It was not unknown for RUPPs, described in the DMS as 'CRF', or 'cart road footpath', to have stiles blocking traffic other than foot passengers. DEFRA confirmed by letter of 1 February 2007<sup>30</sup> that in its view the highway authority is under a duty to remove such an obstruction, and that the stile would be vulnerable to a s.130A 'obstruction notice'. Similarly, former RUPPs with bridle gates would have to have these removed to facilitate the passage of horse-drawn vehicles.
5. The foregoing informal view of DEFRA needs to be read with s.50(1) of CRowA 2000:

"Restricted byway rights over any way by virtue of subsection (1) of section 48 are subject to any condition or limitation to which public rights of way over that way were subject immediately before the commencement of that section."
6. This apparent conflict can be rationalised as: if (say) a restricted byway that is a former RUPP has a stile recorded as a limitation, then that stile is lawful, but a stile not recorded as, or otherwise proved to be, a limitation, then that stile is an unlawful obstruction.

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<sup>28</sup> As of 2025, this has not happened.

<sup>29</sup> This acknowledges the 'Kent Carriage Gap' and similar bollard systems, but unless s.66 is amended, these would not be lawful on a restricted byway.

<sup>30</sup> In reply to a letter from the Byways and Bridleways Trust, 19 December 2006.

## **Miscellaneous provisions**

### **Restricted byways from former RUPPs: requirement for local publicity**

1. S.48(8) of CRoWA 2000:  
“Every surveying authority shall take such steps as they consider expedient for bringing to the attention of the public the effect of section 47(2) and this section.”
2. S.47(2):  
“Every way which, immediately before the commencement of this section, is shown in any definitive map and statement as a road used as a public path shall be treated instead as shown as a restricted byway ...”

### **Road humps**

3. Road humps are a particular form of intentional obstruction. The intention is to force motor traffic to slow down. Road humps also force pedal cyclists to slow down, and make such a danger that the DfT guidance recommends a cycle bypass in each structure.
4. Highway authorities can install road humps in highways in accordance with s.90A of HA 1980 (as amended). On a broad construction, this power to instal road humps extends only to carriageway highways with public MPV rights. Parliament had not considered restricted byways, which were still in the future when s.90A was introduced.
5. Even if, on a true construction, a highway authority can install road humps so as to slow private MPV traffic, then, i) the restricted byway must be subject to a 30mph (or less) speed limit, ii) the hump would have to have specified-type street lighting and iii) design would have to comply to The Highways (Road Humps) Regulations 1999. Statutory Instrument 1999 No. 1025.

### **Electrically assisted pedal cycles and e-scooters**

6. S.48(7) of CRoWA 2000 provides:  
“Restricted byway rights  
In subsections (4) and (6) “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.”  
S.189(1)(c) provides:  
an electrically assisted pedal cycle of such a class as may be prescribed by regulations so made, is to be treated as not being a motor vehicle.

7. The current local trials of (rental) electric scooters do not include a right of way on restricted byways.
8. Any electrically-assisted pedal cycle that does not comply with regulations is in law a motorcycle, and the machine and driver must be licensed, registered, and insured, accordingly.
9. Cyclists on bridleways (whether electrically assisted, or not) are bound by s.30(1) of CA 1968:

“Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.”
10. There is no similar ‘must give way’ provision for restricted byways, but RTA 1988 s.29 offence of careless, and inconsiderate cycling is applicable.
11. The 2022 revision of the Highway Code introduces a *Hierarchy of road users*, and in Rule H1:

“Cyclists, horse riders and drivers of horse-drawn vehicles likewise have a responsibility to reduce danger to pedestrians.

None of this detracts from the responsibility of all road users, including pedestrians, cyclists and horse riders, to have regard for their own and other road users’ safety.”
12. In Rule 2:

“Cyclists should give way to pedestrians on shared-use cycle tracks and to horse riders on bridleways.”

This derives from CA 1968 s.30(1) where the burden for giving way is “shall” rather than “should”.
13. A restricted byway is neither a shared-use cycle track, nor a bridleway.