

Committee: ACCESS

Date: 19 April 2007

Report: PROPOSED REGULATIONS AND MAKING TRAFFIC REGULATION ORDERS

Purpose of the Report

1. The purpose of this report is to:
 - Seek Members' views on the Defra consultation on the power for National Park Authorities to make Traffic Regulation Orders;
 - consider the processes and procedures for making a TRO and overall approach for the Yorkshire Dales;

Strategic Planning Framework

2. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework.

- **National Park Management Plan**

AR2. Identify the most appropriate measures to manage the use of motorised recreational vehicles on each sensitive 'Green Lane', and put all such measures in place by 2011.

- **Integrated Access Strategy**

AS3 Safeguard the National Park from overall or irreversible damage through inappropriate activity and minimise conflict between different users:

- (a) Use existing legislation and guidance to limit inappropriate activity in the National Park, including supporting and encouraging the Police Authority in controlling illegal and anti-social use.
- (b) Work with the County Councils and users to explore, identify and implement appropriate management of green lanes on a regional basis.
- (c) Work with landowners, farmers, users and user groups to try and resolve any actual or potential conflict through positive visitor management.

AS4 Maintain the quality, diversity and scope of the National Park's recreational assets:

Consider each recreational activity in terms of where it should take place, in what volume and at what time. It must be recognised, though, that in many situations we have no legal means of control and so can only do so through education and encouraging users' voluntary restraint.

Background

3. The Natural Environment and Rural Communities Act 2006, Section 72 sets out new powers which will amend the Road Traffic Regulation Act 1984 (RTRA 1984) by inserting two new sections, sections 22BB and 22BC. Once commenced this will enable National Park Authorities to make Traffic Regulation Orders (TROs).
4. NPAs will be able to make TROs within a National Park on roads (or ways) which are shown on a definitive map and statement as Public Footpaths, Public Bridleways, Restricted Byways and Byways Open to All Traffic and other carriageways with a predominantly unsealed surface. The TROs may be of unlimited duration, experimental or temporary. The current procedure for making a permanent TRO is set out in statutory instrument No. 2489 Road Traffic - The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (LATO Regs) (see http://www.opsi.gov.uk/si/si1996/Uksi_19962489_en_1.htm). **Appendix 1** shows this in a simple diagrammatic form.

Consultation on the power for national park authorities to make traffic regulation orders.

5. This consultation paper, (see www.defra.gov.uk/corporate/consult/npa-trafficregs/index.htm hard copies available on request), sets out the Government's proposed approach to the new power for National Park Authorities (NPAs) to make Traffic Regulation Orders (TROs) on certain classes of roads within a National Park. The legislation enables the Secretary of State to prescribe, by regulation, the procedures to be adopted in the exercise of the new power. The consultation document invites views on the proposed approach to the regulations. It asks a series of questions, shown in **Appendix 2**, together with the Authority's suggested response. (The Yorkshire Dales Access Forum (YDAF) are also responding to this consultation and in drafting the Authority's response the YDAF response has been taken in to account).
6. The issues considered within this consultation include the principle of whether NPAs should be required to follow similar procedures to those followed currently by Local Authorities (LAs) when making TROs and various issues concerning the means and extent to which the NPA should consult on and publicise any proposals to make TROs. It is expected that the Regulations for NPAs will be broadly based on the existing Regulations for Highway Authorities (HA), but tailored to the specific issues in National Parks.
7. Defra will also publish non-statutory guidance, for NPAs, to accompany the regulations. This will set out how the regulations are expected to operate and will give advice on recommended best practice. (See **Appendix 2** for suggested topics to cover).

Reasons for making an Order

Permanent Orders

8. A NPA will be able to make a TRO for any relevant way or road (or part of) where it appears expedient to make it:
- 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, (s1(1)(a) RTRA84)
 - for preventing damage to the road or to any building on or near the road, (s1(1)(b) RTRA84)
 - for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), (s1(1)(c) RTRA84)
 - 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, (s1(1)(d) RTRA84)
 - (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, (s1(1)(e) RTRA84)
 - for preserving or improving the amenities of the area through which the road runs, (s1(1)(f) RTRA84)
 - for any of the purposes to do with the assessment or management of air quality.
 - 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. (s22(2) RTRA84).
9. The scope of a TRO is set out in sections 2(1), 2(2), 2(3) and 4(1) of the RTRA84 but essentially for the purposes of this consultation include powers covering:
- restrictions on the type of user – this could be generally or of a particular class. For example, it could restrict all mechanically propelled vehicles or MPVs with more than two wheels or vehicles of a width greater than 1.5m, etc;
 - extent of road affected – the TRO may apply to the whole of a road, or to a specified length, or to a part of the width of a road;
 - the period during which the TRO is effective – it may apply at all times or at specified hours of the day, days of the week or periods of the year.
10. The general duty of all authorities having traffic regulation powers is to seek to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians), and to have regard to other relevant matters including the desirability of securing and maintaining reasonable access to premises; the effect on local amenities; and the importance of facilitating the passage of public service vehicles. It will be vital in every case that attention is paid to these general criteria, as well as to an evidence-based assessment of whether at least one of the specific grounds for an order (set out in the Management of the Use of Green Lanes (unsealed routes) in the Yorkshire Dales National Park- Final Framework Appendix 4) are met.
11. Whilst ‘amenity’ and ‘natural beauty’ are often seen as difficult to define, it would seem important that these terms are defined within the context of a national park or at least a steer provided in the accompanying Guidance. (This point has been made further in the consultation response in **Appendix 2**).

Procedure to be adopted by The Yorkshire Dales National Park Authority

12. Whilst the regulations governing the application of TROs by National Park Authorities have yet to be finalised it is likely that they will be similar to the current regulations for Highway Authorities. In applying such regulations it will be particularly important that the Authority has a transparent approach to dealing with the various stages of the process. The best way of doing this will be to bring the consultation responses, at each stage, to Access Committee with any decisions publicly 're-assessed' in the light of these.
13. In essence the current Regulations require a 4 stage process. The stages are shown, diagrammatically, in **Appendix 1** and are:
1. Consultation on the possibility of making an order and consideration of those consultation responses.
 2. Sending the notice, and reasons for proposing an Order to consultees, with a copy of the proposed order (and reasons for making it being made available for public inspection). Regulation requires a minimum of 21 days objection period after all notices displayed;
 3. Consideration of the consultees responses, and then deciding whether to still make the order;
 4. Finally making the Order.
14. The first stage is an 'informal' consultation - similar to that undertaken for Definitive Map Modification Orders. Whilst it was hoped that the Green Lanes Advisory Group might fulfil this requirement, the list of consultees within the Defra consultation paper on the proposed regulations is much wider. Given that the Advisory group is up and running, and giving useful advice to the Authority it is considered that it should continue to do so. However the potential need to consult under the first stage of the process means that the existence of the Advisory Group has inserted another informal 'tier' of consultation. Bearing this in mind it is considered that, in order to streamline the decision making process, the Access Committee should ask the Authority to delegate the decision to 'consult on the possibility of making a TRO' to the Head of Park Management. Consideration of the response to this initial consultation, together with the advice of the Green Lanes Advisory Group, will then be brought to the Access Committee for decision on the next stages of the process.

Staffing implications

15. The new TRO powers, do have staffing implications for the Park Management department, and implementation of the powers involve the ranger service, access and definitive map team). A considerable amount of work has already been undertaken in preparation of the new powers, with approximately 2.5 fte working on green lanes issues at the present time. Members are asked to note that despite this preparatory work once a decision has been taken, to put in place a Traffic Regulation order and assuming it is non-controversial, it will take at least 75 hours of work spread over 130 days.

Conclusion

16. The Natural Environment and Rural Communities Act 2006, Section 72 sets out new powers for National Park Authorities, which will amend the Road Traffic Regulation Act 1984. The Authority has undertaken a lot of work in preparation for the commencement of Traffic Regulation Order powers. Whilst we must now await the Regulations to see the details of the process, it is considered prudent that the operational systems and the delegated powers referred to in paragraph 14 above are put in place so that the Authority is ready to deal with the new power and increased work load involved as soon as possible once the new regulations are in place.

RECOMMENDATION

It is recommended that:

- (a) subject to any further comments from Members at the Access Committee meeting, members endorse Appendix 2 as the Authority's response to Defra's consultation on the power for national park authorities to make traffic regulation orders,.
- (b) Members note the process and timescale for making a Traffic Regulation Order.
- (c) The Authority is asked to amend the scheme of delegation so that the Head of Park Management, under delegated powers, is able to undertake statutory consultation on the possibility of making a TRO, on any individual route, in accordance with NERC Act section 72 and any Regulations pertaining to them.

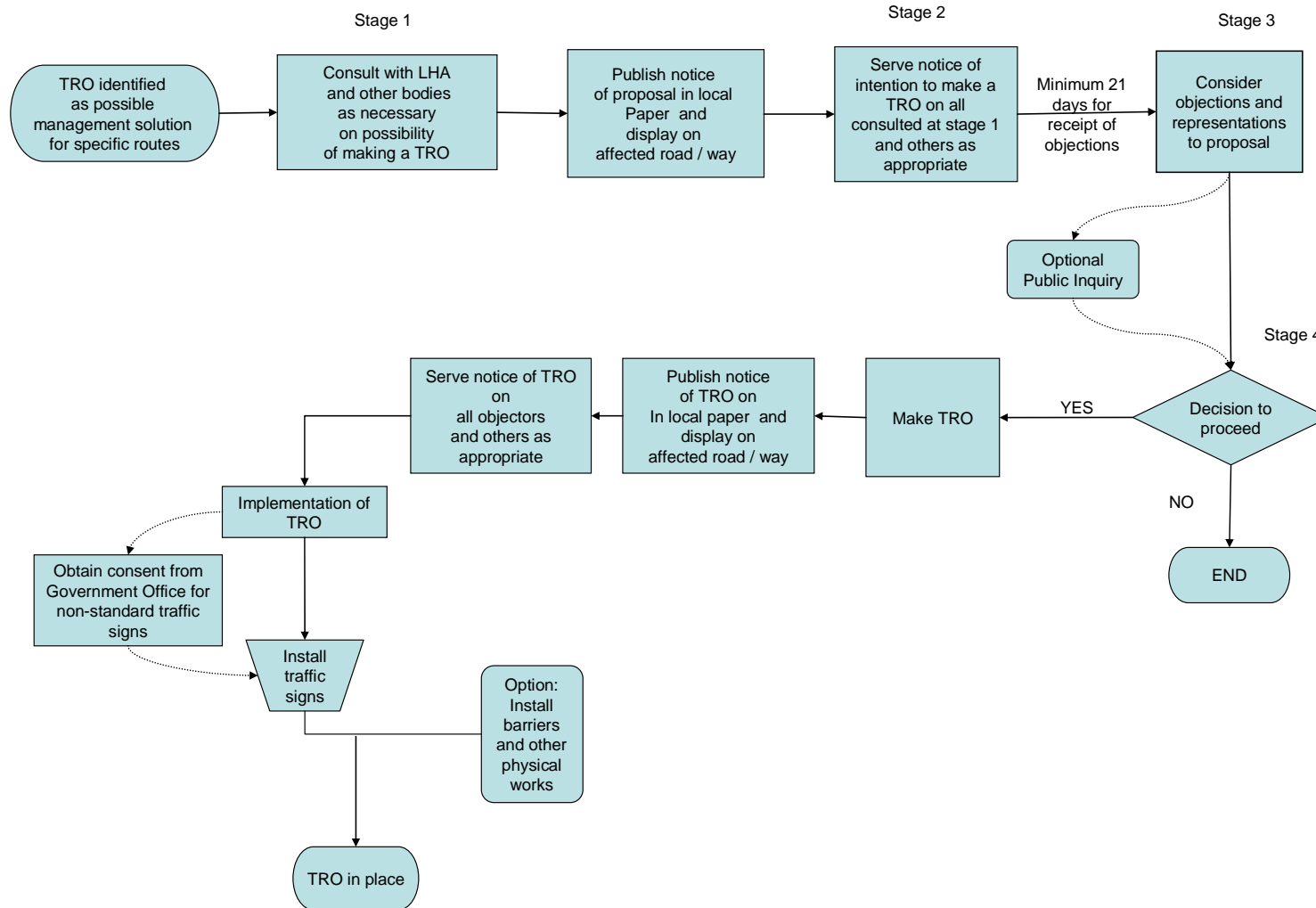
Kathryn Beardmore
Access and Recreation Manager

3 April 2007

Background documents:

Defra Consultation - on the power of National Park Authorities to Make Traffic Regulation Orders January 2007
The Management of the Use of Green Lanes (unsealed routes) in the Yorkshire Dales National Park- Final Framework November 2006

Appendix 1 Draft Procedure for Making a Traffic Regulation Order (based on the current regulations)



**Suggested response to the Government consultation on ‘
the power for national park authorities to make traffic regulation orders’**

The full list of questions, including where they can be found in the document, is summarised below.

1. Do you agree that NPAs should follow broadly similar procedures to those currently followed by LAs in making TROs? (page 8)

Yes, the existing process should be followed to ensure consistency of approach.

2. Do you agree that providing a single new set of regulations targeted at NPAs is the correct way to implement the new powers? (page 8)

Yes, the removal of sections of the existing regulations that will not apply to National Park Authorities will provide more clarity in the implementation of the new powers.

We ask Defra to also consider extending these Regs to all unsealed routes, as we are aware that where a route runs across a National Park boundary, there could be slightly different procedures inside and outside the National Park. For example the LAF inside the National Park will be consulted on that part in the National Park, but the neighbouring LAF won't be consulted for that part outside the National Park.

3. Are there any other surface materials that you consider should be added to the list of prescribed materials? (page 8)

No, this list is comprehensive and provide a useful division of routes between the Local Highways Authority and National Park Authority interest.

4. Do you agree with the inclusion of the organisations listed in Table 1? Are there any other organisations that you feel should also be included? (page 9)

We agree with the list of organisations in Table 1 and the instances in which they should be notified of a TRO. We note that there are no landowning bodies represented and suggest consideration be given to adding the CLA and NFU. We note that the Green Lanes Alliance is also not included in this list, but also have an interest in this matter. We are unsure how active this group is outside of the Pennines and Lake District so do not know if it should be considered as a ‘generic’ ‘statutory’ consultee, as it could be included in ‘such other organisations’? English Heritage could also be added to cover those routes with scheduled ancient monuments.

5. Is a requirement to give notice of the proposal in a newspaper appropriate or could it be replaced by a requirement to publish such a notice on the website of the NPA? (page 10)

Notice of the proposal should be publicised on the relevant National Park Authority's website and this should be outlined as a requirement in the Regulations. We recognise that not everyone has internet access, and suggest there is scope to have a mini advert (subject to legal requirements) in a newspaper to direct people to a website where full details are given. We believe this, combined with on-site notices, is sufficient.

We draw Defra's attention to precedents elsewhere, for example using web-based consultation, only, for applications for restrictions and exclusion under the Countryside and Rights of Way Act. Whilst we recognise that local people, who do not have access to the internet, may have problems accessing the information and responding, we believe that the on-site signing of the proposal, together with a small advert, will publicise it most effectively to these stakeholders.

If the requirement of the regulations was to give detailed notice in a local newspaper, this could prove difficult for the following reasons:

- Routes for a TRO could be long and pass through more than one newspaper area;
- Full newspaper advertisements are costly and to put an advertisement in all newspapers that cover the National Park would incur significant extra costs.
- The National Park has a wider catchment than its immediate area, and possible users of the route may not live in the catchment of the local newspaper(s) used to advertise the possible TRO.

By way of background information, one of our assessment reports, for one individual green lane, can be in excess of 40 pages – we intend making this information available to consultees through our website, but to make it available in paper form would involve a lot of trees!

6. Do you agree that there should be a requirement to place a notice on site publicising an intention to make a Permanent, Experimental or Temporary TRO? (page 10)

Yes, this is extremely important for notifying regular users and local community of the intention.

7. Are there other topics or areas that you believe should be covered in Guidance to National Park Authorities? (page 10)

Yes, the guidance should explain, as far as possible, what some of the reasons for making a TRO eg 'amenity' and 'natural beauty' mean in a national park context – and this should relate to the reasons for designation of a National Park.

National Park Authorities are charged with managing the Park in accordance with National Park purposes as set out in Section 5(1) of the National Parks and Access to the Countryside Act 1949, which are:

- to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park, and
- to promote opportunities for the understanding and enjoyment of its special qualities by the public.

It follows that giving National Park Authorities powers to make TROs on unsealed routes, is the Government recognising the importance of these power to National Parks in pursuing its two statutory functions. As such, reasons for making TROs, eg for preserving or improving the amenities of the area through which the road runs, (s1(1)(f) RTRA84); or 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. (s22(2) RTRA84), where amenity means the benefits afforded to people by a particular area in terms of what is seen and experienced – should be seen as conserving the experience of the landscape and its special qualities in a National Park.

It is for each National Park to define its special qualities, but there are however, some generic ‘tests’ those of ‘natural beauty’, ‘extensive tract of land’, ‘markedly superior recreation experience’ which are found in all National Parks, and it is these elements that make it worthy of designation as a National Park in the first place. To help understanding these terms are defined below: (The principal sources here are the relevant Acts, and an unpublished report to the Countryside Agency¹ that gives the most up-to-date summary and interpretation of National Park criteria and tests following the Natural Environment and Rural Communities Act 2006).

Natural beauty - A statutory term derived from Section 5(2) of the National Parks and Access to the Countryside Act 1949 (as amended and as informed by Sections 59 and 99 of the Natural Environment and Rural Communities Act 2006), and one of the two principal criteria for designating National Parks, the other being opportunities for open-air recreation (see below). A National Park landscape must have outstanding natural beauty ie be of national or international importance. The term ‘**special qualities**’ is also used in legislation as a shorthand term for the reasons why a landscape has outstanding natural beauty.

Tests for natural beauty - Factors that are used to help evaluate natural beauty (and to identify areas for inclusion within a National Park). The tests generally applied are:

- **Landscape quality** ie condition, that is the intactness of the landscape, the condition of its features, its state of repair, and the absence of man-made or incongruous elements;
- **Scenic quality** ie appeal to the visual senses, for example due to important views, visual interest and variety, contrasting landscape patterns, and dramatic topography or scale;
- **Relative wildness** ie the presence of wild (or relatively wild) character in the landscape due to remoteness, lack of human influence, or evidence of the passing of time and a return to nature;
- **Tranquillity** ie freedom from disturbance and presence in the landscape of factors such as openness, perceived naturalness, rivers, peace and quiet;
- **Natural heritage features** ie habitats, wildlife and features of geological or geomorphological interest that may contribute strongly to the naturalness of a landscape;
- **Cultural heritage features** ie archaeological, historical and architectural characteristics or features that may contribute to the perceived beauty of the landscape;

¹ Alison Farmer Associates and Julie Martin Associates, *Recommended Draft Boundary for an Extension to the Lake District National Park*, report to the Countryside Agency, August 2006.

- **Associations** ie connections with particular people, artists, writers, or events in history that may contribute to perceptions of beauty in a landscape or facilitate understanding and enjoyment. Not all tests need to be met everywhere, provided there is a strong weight of evidence, overall, to show that a tract of country is of outstanding natural beauty.

Opportunities for open-air recreation - A term derived from Section 5(2) of the National Parks and Access to the Countryside Act 1949 (as amended and informed by Sections 59 and 99 of the Natural Environment and Rural Communities Act 2006). The wording of Section 5(1) of the Act on National Park purposes suggests a strong link between opportunities for open-air recreation and understanding and enjoyment of a National Park's special qualities by the public. The term '**markedly superior recreational experience**' has been used by the Countryside Agency (now Natural England) to indicate that the recreational experience and opportunity afforded by a National Park should be of national importance.

Recreation tests - Factors used to help evaluate opportunities for open-air recreation within land judged to meet the natural beauty criterion. The reference in legislation to understanding and enjoyment of special qualities suggests a focus on quiet outdoor countryside recreation, associated with the wide open spaces, wildness and tranquillity to be found within the National Parks. Tests applied may include:

- **Access to high quality landscapes, memorable places and special experiences** ie opportunities to enjoy scenic quality, wildness, tranquillity etc;
- **Presence of a wide range of natural or cultural heritage features**, landmarks and designations that cumulatively enrich the landscape experience;
- **Range of outdoor recreational experiences that reflect the qualities of the area** and do not detract from the enjoyment of the area by others ie quiet outdoor recreation.
- **Scope for management of recreation** to enhance recreational opportunities or protect the conservation interest of the Park.

Again, not all the tests are met for every area, but there will be a strong weight of evidence overall.

signage

The existing signing requirements of Traffic Regulation Orders are wholly inappropriate in a protected landscape area such as a National Park. At present the Secretary of State can authorise non-standard signs but, as stated in the consultation paper, this will be another process for the National Park Authority to go through each time it proposes a TRO. New regulations should include more suitable signing standards that are universally recognisable but will not detract from the 'wildness' of National Parks by creating an urban visual intrusion. We ask that Defra approach the DoT to discuss this matter further, as the normal tarmac road network will not be covered by these Regulations the signing standards should not need to reflect the standards required on tarmac routes.

8. Are there any other considerations which you think it is important for the Secretary of State to take into account in deciding how or when to introduce the new powers? (page 11)

The Yorkshire Dales National Park Authority asks that the traffic regulation order powers be introduced without delay.

9. Do you agree that the RIA accurately describes the possible impacts and likely costs and benefits of the proposals contained in this consultation paper? (page 11)

We think the time taken to ‘make’ the order, once the decision has been taken only, is about right if everything that had to be done under the Regulations were undertaken in succession. This is also assuming it is non-controversial (as a lot of time can be taken up responding to queries from Green Lanes Alliance and Trail Riders Fellowship).

TASK	TIME (hours)
prepare and issuing consultations	5
consideration of comments	15
prepare notices / adverts of intention to make order	5
consideration of objections / representations	15
site visit to put up notices	3
make order	7
prepare notices / adverts of order	5
arranging signage, barriers & other works	15
miscellaneous	5
TOTAL	75

Based on our calculation making 1, uncontroversial, Order would take one fte 75 hours, spread over approximately 135 days.

This does not allow for all the preparation and collection of information which would be undertaken before any decisions were made, this in itself is likely to be the most time consuming part of the process.