



21 August 2020

Lord Gardiner of Kimble
Department for the Environment, Food and Rural Affairs
Seacole Building
2 Marsham Street
London SW1P 4DF

Dear Lord Gardiner,

Temporary diversion of public rights of way where livestock are present

For some time the NFU and CLA have been considering mechanisms to enable the temporary diversion of public rights of way where livestock are present. These plans ostensibly stem from concerns surrounding public safety for users of the path network.

We have been contacted by the NFU and CLA and asked for our views on what they believe to be a viable way forward – amendments to the Highways Act 1980. It is our understanding that their proposals will soon be sent to the Secretary of State for his consideration. Given your ministerial responsibilities we want to notify you of our position.

We have engaged collaboratively with the NFU and CLA since February to try and find a solution that works for both landowners and users. Unfortunately, to date, our concerns about the proposal have not been addressed. The proposals would permit landowners to divert, for up to 40 days out of every 90, any right of way where livestock are present. Diversions could be put in place with no oversight from highway authorities and without consideration of the needs of various user groups. We believe that this would risk preventing or discouraging the use of a significant proportion of the path network at a time when improving access to the outdoors and connections with nature have never been more important. An overview of our concerns is enclosed.

More fundamentally, we are unconvinced of the need for legislative change of the sort proposed. We know that incidents between cattle and walkers do occur and can have profound consequences for all concerned, including landowners. However, measures designed to address the issue must be proportionate to the scale of the problem. Statistics from the Health and Safety Executive show that over the past four years there have been four fatalities and 65 injuries caused by cattle to members of the public. This is against a backdrop of estimates from Natural England that there are 1.4 billion visits to the countryside each year.

The Health and Safety Executive publishes guidance for landowners addressing the risks associated with keeping cattle in fields where there are rights of access. The guidance sets out a range of practical ways to control hazards and minimise the risk to the public. As with other areas of life it is impossible to eliminate risks to public safety. Any steps taken must be balanced, proportionate and not compromise the need to ensure that the path network remains useable and accessible to all.

In an attempt to find a way forward we have drafted a set of principles that we believe should underpin any changes to existing legislation, if this were to take place (see enclosed). This has previously been shared with the NFU and CLA. We have also drafted an initial counter proposal which we believe could, subject to further discussion and consultation, act as a basis for a genuinely collaborative approach. Unfortunately this has been rejected by the NFU and CLA.

We are keen to understand Defra's position on this issue and would welcome the opportunity to work collaboratively with you and interested parties if it is considered that further measures are required.

Yours sincerely,

Kate Ashbrook, General Secretary, Open Spaces Society and Ramblers Chair
Paula Brunt, Secretary and Ramblers Organiser, Disabled Ramblers
Gemma Cantelo, Head of Policy and Advocacy, Ramblers
Catriona Cook MBE, Byways and Bridleways Trust
Roger Geffen, Policy Director, Cycling UK
Cath Flitcroft, Access and Conservation Officer, British Mountaineering Council
Mark Weston, Director of Access, British Horse Society

Encl:

Commentary on NFU and CLA proposals
Principles for future legislation

Commentary on NFU and CLA proposals

The proposals have the potential to undermine the path network and to discourage and prevent use by the public. Our specific concerns are outlined below:

Accessibility and user experience: The proposals would enable landowners to put in place diversions that they consider to be “convenient for the exercise of the public right of way”. This is highly subjective and the proposals offer no assurance that relevant factors will be taken into account, such as length, gradient, surface, width and enjoyment. This is exacerbated by the exclusion of highway authorities from the decision-making process, as outlined below, and has the potential to have the greatest impact on, for example, users with restricted mobility and those least confident in accessing the outdoors.

Highway authority oversight: The principle of allowing temporary diversions to be put in place with no application process to, or input from, the highway authority is inappropriate given their statutory duties to record, manage, maintain, protect and change the public rights of way network. While a requirement for approval and policing will involve extra administration for highway authorities, this is vital to provide necessary checks and balances in the public interest in relation to both the route itself and the wider public rights of way network in the local area.

No reference to public safety: The proposals are said to address safety for the public when exercising their rights of access. However, as drafted the proposals do not include any reference to public safety or make clear that temporary diversions will only take place where concerns surrounding public safety cannot be addressed by other control measures, as advised by the HSE.

Defining livestock: According to Defra, 41% of land use on commercial agricultural holdings is permanent grassland, including rough grazing. This means that there is the potential for a significant proportion of the rights of network to be affected, particularly given that the proposals go beyond cattle and include other livestock, including sheep which cannot be considered a risk to public safety. This is demonstrated by the fact that the HSE has no records of either fatal or non-fatal incidents involving sheep and the public.

Duration of temporary diversions: It remains unclear why 40 days in a period of 90 is being proposed. If the proposals are taken up by landowners then this provision could result in rights of way being diverted, and bearing no resemblance to the definitive map or promoted routes, for almost half of every year.

Cumulative effect: The use of temporary diversions as proposed, should they occur across several contiguous landholdings, could have the effect of diminishing the quality and utility of a wider route as to render it unusable.

Livestock diversions – principles

Any legislative change to enable the temporary diversion of public rights of way where livestock are present must be underpinned by the following principles:

- A public safety issue has been clearly demonstrated.
- The diversion is the act of last resort once other steps to mitigate this risk have been taken.
- Alternative routes must be at least as accessible as the existing public right of way, with clear definitions and criteria established in law (and reflective of other relevant legislation and case law).
- To ensure this, there should be a clear application process with:
 - Assessment of the alternative routes by the highway authority, preferably with user involvement.
 - Sufficient time to assess the suitability of the alternative route, preferably with user involvement.
 - Applications for alternative routes to be considered in the context of the wider network (and the cumulative effect).
 - A clear process for rejecting the proposed diversion.
- The least prohibitive option should be taken, meaning:
 - Time period for diversions should be the minimum required for public safety reasons in each calendar year.
 - Length stopped off should be the minimum required for public safety reasons and creation of suitable alternative.
- Full cost recovery for the highway authority – for application, assessment and inspection.
- Routes are easy to navigate for users when using the path and when planning routes. They should be:
 - Clearly signposted
 - Include template notices
 - Advertised in a single location, easily accessible to path users.