

## Stock Control Devices on Minor Highways: the Need for Guidance and Minor Legislative Change.

The *Byways and Bridleways Trust* drafted an outline issues paper on 22 October 2007, and followed up with an undertaking to develop the topic further for progress within the *Rights of Way Review Committee*. This is the first revision.

### Cattle Grids in Statute.

The Highways Act 1980 provides:

*S.82(1). Where, whether on the representations of owners or occupiers of agricultural land or otherwise, and after such consultation with any such owners and occupiers as the highway authority consider requisite, it appears to the highway authority for a highway which consists of or comprises a carriageway expedient so to do for controlling the passage of animals along the highway, the authority may, subject to the provisions of this section, and sections 83 to 90 below, provide for the highway, and maintain, a cattle grid in the highway or partly in the highway and partly in adjoining land.*

*(2) Where a highway authority provide a cattle grid under this Act they shall also provide, either by means of a gate or other works on the highway or by means of a bypass, or partly by one of those means and partly by the other, and maintain, facilities for the passage under proper control of animals and all other traffic that is unable to pass over the cattle grid and is entitled by law to go along the highway.*

*(3) Save as provided by subsection (4) below, the powers conferred by the foregoing provisions of this section do not include power to place any part of a cattle grid in land not forming part of the highway and not belonging to the highway authority, or to provide a bypass on land not belonging to the highway authority, except in so far as is authorised by any such agreement as is provided for by section 87 below.*

*(4) Where after complying with the provisions of Schedule 10 to this Act the highway authority determine, as respects any common or waste land not forming part of the highway but adjoining the highway or adjacent thereto, that it is expedient so to do, the authority may place any part of a cattle grid in, or provide a bypass on, any of that land notwithstanding that it does not form part of the highway and does not belong to the authority.*

*(6) In this Act –*  
“Cattle grid” means a device designed to prevent the passage of animals, or animals of any particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the said device; and  
“Bypass”, in relation to a cattle grid provided for a highway, means a way, over land not comprised within the limits of the highway, for the traffic for which the bypass is provided, with a public right of way thereover –  
*(a) for that traffic, or*  
*(b) if any part of the bypass is provided along an existing*



*highway, for that traffic and for any other traffic entitled to use the highway before the bypass was provided,*

*Subject in either case to the limitation that there may be placed on the way any such gate or other works as may be necessary for the proper control of all or any of such traffic and the efficient operation of the cattle grid for use in connection with which the bypass is provided;*

*And references in this Act to the provision or maintenance of a bypass include references to the provision or maintenance of any such gate or other works.*

*S.84(1). A cattle grid provided under this Act for a highway, a gate or other works on a highway provided for use in connection with such a cattle grid, and any works provided for the purposes of a bypass provided under this Act, are maintainable by the highway authority for the highway.*

*(2) A bypass provided under this Act shall ... be a highway ... maintainable at the public expense for which that authority are the highway authority.*

*S.87(1). A highway authority may, for the purpose of providing, altering or improving a cattle grid or bypass under the powers conferred by this part of this Act, enter into an agreement under this section with persons interested in any land for the use of the land for that purpose ...*

*(2) An agreement under this section may contain provisions for payment to persons who are parties to it ...*

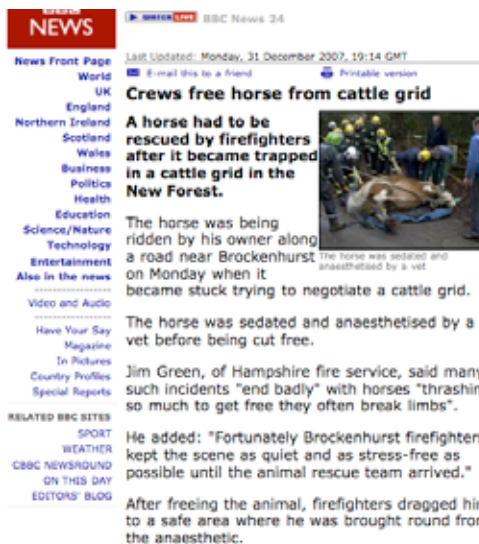
*S.88(1). A highway authority may enter into an agreement with a person at whose instance a cattle grid has been or is to be provided by them under this Act, or any other person willing to make a contribution towards expenses of the authority under this Act in connection with a cattle grid for the making by that person of such a contribution ... of such amount as may be specified ...*

S.145(1). Where there is a gate of less than the minimum width across so much of a highway as consists of a carriageway, or across a highway that is a bridleway, the highway authority for the highway may by notice to the owner of the gate require him to enlarge the gate to that width or remove it.

In this subsection 'the minimum width' means, in relation to a gate across ... a carriageway, 10 feet ... a bridleway, 5 feet, measured in either case between the posts of the gate.

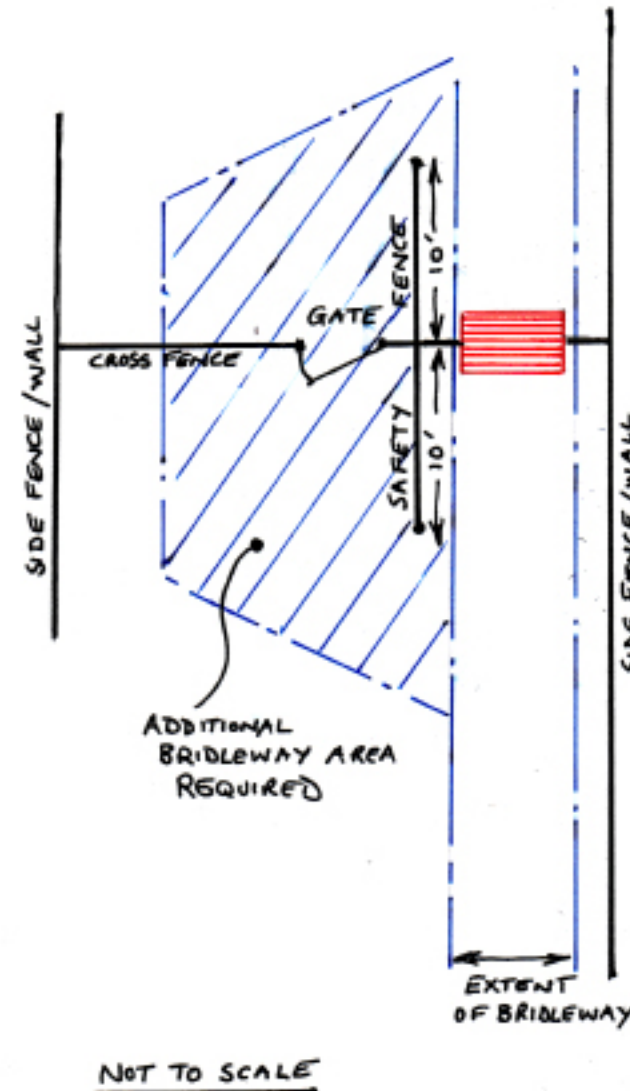
S.147(1). The following provisions of this section apply where the owner, lessee or occupier of agricultural land, or of land which is being brought into use for agriculture, represents to a competent authority, as respects a footpath or bridleway that crosses the land, that for securing that the use, or any particular use, of the land for agriculture shall be efficiently carried on, it is expedient that stiles, gates or other works for preventing the ingress or egress of animals should be erected on the path or way.

(2) Where such a representation is made the authority ... may, subject to such conditions as they may impose for maintenance and for enabling the right of way to be exercised without undue inconvenience to the public, authorise the erection of the stiles, gates or other works.



guidance, or both, that requires adequate physical design safeguards to be installed in every case.

Consider first the basic design requirements necessary for safe horse passage past a cattle grid on a bridleway. By definition, where there is a cattle grid there will be a bypass with a gate. The gate may require that riders dismount (BBT suggests that such gates must be operable from horseback) and dismounting/mounting a horse is the time when it is likely to step sideways, rotate, or get away from the rider. It is essential that there is sufficient distance separation, and sufficient fencing, reasonably to prevent horses, in their normal and usual movement patterns, being able to step into the cattle grid. This is best illustrated diagrammatically:



### Cattle grids on BOATs and restricted byways.

BOATs and restricted byways are 'carriageways', therefore they fall within the existing provisions of s.82 *et seq.*

### Cattle grids on bridleways.

The starting position of the *Byways and Bridleways Trust* is that cattle grids are potentially lethally dangerous to horses, and if grids are currently capable of being lawfully authorised in bridleways, or if the law is to be changed such that they can be authorised, there must be regulation, or

This diagram deals with a common situation. The bridleway either has no recorded width, or a typical recorded width of 8 – 10 feet. A cattle grid is usually between 10 and 12 feet wide – is has to be to accommodate farm vehicles. There is therefore no width available to put the necessary 'bypass' in the bridleway – if the cattle grid is to be on the line of the bridleway, then the bypass simply cannot be.

S.82 *et seq.* of the Highways Act anticipates this situation as regards carriageway highways and provides a means by which the necessary land for a bypass is to be 'acquired' by the highway authority – 'acquired' in the sense of making it

into publicly repairable highway, with authorised gates, for the duration of the existence of the cattle grid. The Highways Act has no provision for acquiring land for a bypass for a cattle grid on a bridleway or footpath (which does rather tend to show that Parliament never intended that bridleways and footpaths should have cattle grids) and without an express power highway authorities may well be *ultra vires* in ‘authorising’, or in any facilitating way engaging with, the installation of a cattle grid that forces lawful uses off the highway and on to non-highway adjoining land.

Put simply, if say there were a 30’-wide bridleway, and if it is lawful to authorise cattle grids under s.147, then it would be quite possible to put a grid in the route and, with sufficient gap between, a BS 5709 bridle gate as an in-highway bypass. But if a bridleway were only the width of the cattle grid (or thereabouts) then there is no sufficient width for a bypass, and no Highways Act provision expressly for acquiring that width. *Ergo* the cattle grid is a total obstruction to lawful passage on the bridleway as an enforced deviation on to non-highway land is not a valid alternative.

But, in the case of bridleways and footpaths, the Highways Act does have a provision by which the necessary bypass land can become public highway: the ‘creation agreement’.

*S.25(1). A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath or bridleway over land in their area.*

Leaving aside the relatively unusual situation where a highway authority, rather than the owner or occupier, may wish to install a cattle grid (designated cycle routes, perhaps?) the initiative for a new cattle grid will come from the owner / occupier by way of a s.147 application for a stock control device. That same owner / occupier has the ability to enter into a creation agreement such that the bypass land becomes part of the public highway. At the same time, national guidance on design requirements – particularly separation



Above: The Portway, in Shropshire. The bridlegate seems to be completely outside the width of the bridleway, but at least it is partly separated by a fence.

Below: Fenwick, Northumberland. Riders are forced to turn at ninety degrees through a small gate, and go well outside the bridleway. Illegal and unsatisfactory.



distance, safety fencing, and signage – would be s.147 conditions imposed by the highway authority. This s.147 / s.25 process could also be used to regularise cattle grids that currently unlawfully obstruct bridleways and footpaths.

If this approach were adopted, then the ‘fundamental questions’ of whether or not cattle grids are lawful in bridleways and footpaths just about becomes irrelevant. At the point where the cross-route fence is pierced by the cattle grid, and by the bypass gate, the bridleway is adequately wide and recorded as such on the definitive map and statement, consequent upon the creation agreement being confirmed. If the need for the cattle grid went, and the owner was desirous of its being removed, then the bypass land would be redundant and could be stopped up as ‘not needed by the public’ under s.118 of the Highways Act.

To make this scheme work requires no amendment to statute law. It can be done by guidance. Where there are existing cattle grids that force users off the public right, then these are unlawful obstructions and must be clearly expressed in guidance to be open to action under s.130A of the Highways Act. If a s.130A notice is served in any such case, the response of the highway authority would be to say ‘we will approach the owner with a view to making a s.25 creation agreement and installing the necessary safety features such that a valid s.147 authorisation may be given.’

Further, the Traffic Signs Directions provide a sign ‘Cattle Grid’. If such an advance warning is deemed necessary on carriageways, then it is equally essential on bridleways. Use of this sign should be mandatory. At the end of the day, this is all about the safety of horse and rider on bridleways, and of pedestrians and wheelchair users on bridleways and footpaths.



## Electric fences.

Electric fences are unpleasant for passengers to touch, and very dangerous to horse riders if a horse makes contact. The solution is to amend s.164HA80 (power to require removal of barbed wire) to include electric fences, and then bolt-on robust guidance akin to that in BS 5709 as regards the lagging of barbed and electric fences adjacent to gates and stiles. If an electric fence is used at the edge of a wide bridleway or byway, where passengers are not forced by neglect or agricultural practice to pass close to the fence, there is no danger and no issue. S.130A (power to request removal of obstructions) should be amended so that the public can ensure the removal of dangerous wire fences where necessary.

The guidance must also address:

- Temporary electric fences – which generally lack proper protection from contact.
- Not running electric fences right up to gates, as this makes it very likely that horses will touch them.
- Siting the power packs, because the ‘ticking noise’ seems to scare many horses – even those otherwise stable and calm.

## Gate catches.

The issue of catches on ‘new gates’ is now largely regulated by BS 5709 and the over-arching bite of the Disability Discrimination Act 2005. Catches on gates that are limitations existing at the date of dedication are more problematic. In general, a gate or stile is the ‘property’ of the landowner and, if it is also a limitation, the public takes that gate or stile as it finds it. But this is qualified by a statutory provision in the Highways Act:

*S.146(1). Any stile, gate or other similar structure across a footpath or bridleway shall be maintained by the owner of the land in safe condition, and to the standard of repair required to prevent unreasonable interference with the rights*

*of the persons using the footpath or bridleway.*

*(2) If it appears to the appropriate authority that the duty imposed by subsection (1) above is not being complied with, they may, after giving [notice] take all necessary steps for repairing and making good the stile, gate or other works.*

The crucial issue here is the definition – scope – of ‘persons using the footpath or bridleway’ and ‘unreasonable interference’. ‘Persons’ is ‘the public’ – these are, after all, public rights of way. The ‘public’ includes all the public, including the millions of people with varying types and degrees of disability. This being so, all ‘existing gates’ must be maintained so that ‘the public including disabled persons’ can reasonably use them. More than anything, that goes to two issues:

- The ease of use of gate catches.
- The lifting weight for gates that sag on to the ground.

A gate with a catch that requires more strength or dexterity than any ‘ordinary person’ possesses is not reasonably usable. A gate that is so heavy that an ‘ordinary person’ cannot lift it to open it sufficiently, is not reasonably usable.

The law exists here – what is needed is clear and robust guidance that sets this provision in the context of current over-arching statutory provision on disability and sex discrimination (given that women are generally not as tall and strong as men, and therefore struggle more with bad gates). It would be good policy to consider a small legislative change so that highway authorities can wholly or partly ‘sponsor’ the upgrading of catches on otherwise-adequate existing gates. For a relatively small cost (particularly with economy of scale) this would bring excellent benefits to the public.

Further, s.146(1) relates only to footpaths and bridleways. Under current law there are gates on BOATs and RBs (lawful, or not) and there is no good reason why the public’s interest should not be as protected on these routes as much as on public paths.

## S.147 gates on BOATs and restricted byways.

Loss of enclosed lanes is the big and very real danger in extending s.147 gate authorisations to BOATs and restricted byways. *The Byways and Bridleways Trust* is, with reservations and caveats, not opposed to the idea that it should be possible to gate byways in much the same way as bridleways are gated. The real and obvious danger is that enclosing walls will be ripped out and field fences run straight across. There must be a safeguard for enclosed lanes as landscape features. Likewise, in a wide lane, a cattle grid and horse-safe bypass may well be the better option, particularly for the landowner. Powers already exist for the erection of cattle grids in carriageways.

## Where next?

- **Electric fences:** This is a legislative change matter, but the way and wait for change could be eased by the issue of guidance.
- **S.147 gates on BOATs and RBs:** This is a legislative change matter.
- **Gate catches:** This needs guidance based on a sound legal analysis of ‘unnecessary interference’, and who are ‘the public’. The idea of giving highway authorities powers to ‘sponsor’ better gate catches may need new legislation, but equally it might fall into the general power of improvement of highways (s.62 Highways Act) in which case guidance is needed.
- **Cattle grids on bridleways:** If this analysis of current law and powers is correct, then the ‘solution’ to existing and future use of cattle grids on bridleways and footpaths rests in comprehensive guidance.
- **Guidance:** All guidance recommended here will need the Secretary of State’s stamp of approval.

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