

Appendix C: Legal issues

These notes are for guidance only. Practitioners will need to obtain their own legal advice before acting on information provided in this appendix.

Descriptions and definitions

Cycling may be legally permitted in several different places:

- ▶ On the Highway
- ▶ On a Cycle Track
- ▶ On a Bridleway
- ▶ On a Restricted Byway (formerly Road Used as a Public Path)
- ▶ On a Byway Open to All Traffic (BOAT)
- ▶ On paths within some public parks, open spaces or across private land
- ▶ On canal and river towing paths

Different laws apply to the creation of the different types of cycling provision. Most cycle routes form part of the highway or public rights of way networks. Definitions of the most common types of provision are given below:

Highway: This is defined as “a way over which the public has the right to pass and repass, and may be any way, court, alley, footpath, bridleway.” While most ‘highway’ forms part of the road network, other types of route can still form part of what is legally termed maintainable highway.

Carriageway: A way constituting or comprised in a highway (other than a cycle track), over which the public have a right of way for passage of vehicles. [Highways Act 1980 (S329)]. Cycle lanes are part of the carriageway.

Cycle Track: A way constituting or comprised in a highway, over which the public have the following, but no other, rights of way; a right of way on pedal cycles (other than pedal cycles which are motor vehicles within the meaning of the Road Traffic Act 1988) with or without a right of way on foot. [Section 329(1) Highways Act 1980; the words in brackets were inserted by section 1 of the Cycle Tracks Act 1984 and updated by the Road Traffic (Consequential Provisions) Act 1988]. Cycle tracks may be newly constructed or created through conversion of a footway or footpath.

Footway: A way comprised in a highway, which also comprises a carriageway, over which the public has a right of way on foot only [Section 329(1) Highway Act 1980]. Footways are the pedestrian paths alongside a carriageway, referred to colloquially as the pavement. Driving a vehicle (including cycling) or riding a horse on a footway is an offence under the Highways Act 1835.

Public Rights of Way: These comprise Footpaths, Bridleways, Restricted Byways and Byways Open to All Traffic. All public rights of way are highways and are shown on the Definitive Map held by local highway authorities, which is required to be constantly reviewed and updated.

Footpath: A highway over which the public have a right of way on foot only, not being a footway [Section 329(1) Highways Act 1980].

Bridleway: A right of way on horseback (or leading a horse), foot and bicycle. The Countryside Act 1968 gave cyclists a right to use bridleways; however, they must give way to pedestrians and equestrians. There is no penalty for failing to comply. Since the bridleway forms part of the highway it remains for case law to establish whether the offending cyclist could be said to be 'furiously driving a carriage on a highway so as to endanger life and limb', see Highways Act 1835. There may occasionally be a local byelaw to prohibit cycling on a particular bridleway.

Restricted Byways: Are generally open only to pedestrians, cyclists, horse-riders and horsedrawn vehicles and replace the former category of **Roads Used as Public Paths (RUPPs)**. Created by the Countryside and Rights of Way Act 2000 (S48).

Byways Open to All Traffic (BOATs): Are open to motorised traffic, but are used by the public mainly for the purposes for which footpaths and bridleways are used. They rarely have a sealed surface and are generally used in a similar way to restricted byways and bridleways. The definition was created under the Wildlife and Countryside Act 1981 (S66).

Towing Path: The towpath alongside a canal or river. There is no general statutory right to cycle on a towpath in England and Wales (although some sections may also be public rights of way). Cycling may be permitted (or prohibited) through a byelaw.

Cycleway and Cycle Path: Neither of these terms has any legal definition but they often describe continuous cycle routes (usually away from the carriageway) that may be formed by any permutation of the above.

Transport device definitions

Cycle: A pedal cycle is defined as 'a bicycle, a tricycle, or a cycle having four or more wheels, not being in any case a motor vehicle' (Section 192(1) of the Road Traffic Act 1988 (c.52)). In law, a cycle is considered a 'vehicle' as a consequence of the *Ellis v Nott-Bower* judgment in 1896. A cycle is also considered a carriage by section 85 of the Local Government Act 1888.

Electrically Assisted Pedal Cycles (EAPCs): Electrically assisted pedal cycles, often known as e-bikes, are defined in the Electrically Assisted Pedal Cycle Regulations 1983 (as amended). They can legally be ridden where pedal cycles are allowed, but only by someone aged 14 years or more. They are not classed as motor vehicles for the purposes of road traffic legislation.

Manual powered wheelchairs and mobility scooters: These are defined as 'invalid carriages' in law, and there are three classes:

Class 1 – Manual, self-propelled or attendant propelled wheelchairs.

Class 2 – Powered wheelchairs and mobility scooters with a maximum speed of 4 mph.

Class 3 – Powered wheelchairs and mobility scooters with a maximum speed of 8 mph

Invalid carriages can be used on footways, footpaths, bridleways or pedestrianised areas, provided that they are used in accordance with prescribed requirements. Users of invalid carriages have no specific right to use a cycle track, but they commit no offence in doing so unless an order or local by-law exists creating one.

Class 2 wheelchairs and mobility scooters are intended to be used predominantly on footways. Class 3 wheelchairs and mobility scooters are intended for use on footways and along roads. They can travel at up to 8 mph on roads, but must be fitted with a switch that reduces their top speed to 4 mph for use on footways.

Powered invalid carriages are not classed as motor vehicles for the purposes of road traffic legislation (Road Traffic Act 1988, section 185(1)). However, the Vehicle Excise and Registration Act 1994 requires that Class 3 wheelchairs and mobility scooters are registered with the Driver and Vehicle Licensing Agency for road use. They are exempt from vehicle excise duty, but are still required to display a valid (nil duty) tax disc.

Motor vehicle: For use on public roads, motor vehicles must be registered and fitted with a registration plate or plates. They must also be insured and taxed for road use, and they can only be operated by someone in possession of a driver's licence. Motor vehicles cannot normally be used on footways, footpaths or cycle tracks.

Creating cycle tracks

Creating a cycle track within the highway boundary. Procedure – Highways Act 1980

There are two ways in which this can be achieved. Either all or part of the existing footway is converted to a cycle track, or a new cycle track can be constructed alongside the footway.

Section 21 of the Road Traffic Act 1988 makes it an offence to drive or park a motor vehicle wholly or partly on a cycle track, and the making of a Traffic Regulation Order (TRO) is therefore no longer required to control such use. A TRO may be required if the intention is for the cycle track to be one way only, as the default is for two-way cycling. This situation could apply on stepped cycle tracks, for example. However, if vehicular rights for private access existed prior to the conversion of a footway to a cycle track, these are not necessarily extinguished on creation of the cycle track.

Public consultation is not a mandatory requirement, however, engagement with those likely to be affected is strongly recommended, particularly groups representing disabled people.

Converting a footway to cycle track: To create a cycle track using part or all of an existing footway (or extending the kerbs into the carriageway) the Highway Authority must first 'remove' the existing footway under Section 66(4) and then 'create' the cycle track under Section 65(1). The process need not involve physical construction work other than the erection of signs.

Creating a new cycle track: A local authority may create a new cycle track "in or by the side of a highway" under section 65(1) of the Highways Act 1980. This would apply where the sole purpose of widening the footway is to create a cycle track, i.e. the footway is not altered.

The creation or conversion of a cycle track is normally completed by a resolution of a Highway Authority committee, regardless of whether any actual construction is required or if it is simply a change of status of an existing footway. There needs to be clear evidence that the local highway authority has exercised its powers, which can be provided by a resolution of the appropriate committee or portfolio holder etc. to ensure that a clear audit trail has been established.

Highway authorities also have a general power of improvement under the Highways Act 1980, which allows them to create, alter or remove footways without the need to seek planning consent.

Creating a cycle track outside the highway boundary. Procedure – Town and Country Planning Act 1990 and Highways Act 1980

If there is no suitable public space within the highway boundary, then the adjacent land (i.e. not existing highway land) could be used. The land must be acquired from the owner (by Compulsory Purchase Order or dedication) to enable use by pedestrians and cyclists.

General powers to acquire land are provided by the Highways Act 1980 s239. Local authorities may resolve to exercise compulsory purchase powers, either to improve the highway or to promote countryside access. The former is more commonly known, but the latter does provide opportunities to create facilities for leisure that have a low utility component. More information is available in the latest edition of 'The Compulsory Purchase Procedure Manual⁶⁶.

Creating cycle tracks in new development – dedication of land to the highway. Procedure – Highways Act 1980 and Town and Country Planning Act 1990

Sections 37 and 38 of the Highways Act provide the means for land to be dedicated as public highway. The Act does not refer to the nature of the use, simply referring to dedicating a “way as a highway” and may therefore be for any function acceptable to the Highway Authority e.g. footway, cycle track, carriageway etc.

Agreements under Highways Act 1980 S38 between developers and highway authorities will include confirmation that the developers are the owners of the land, and through the S38 agreement, are dedicating the land, shown on development plan drawings, to the highway maintainable at public expense. Such plans/drawings invariably indicate the nature of the works to be undertaken and, therefore, the future use of the land e.g. bridge, carriageway, cycle track etc. that establishes the status of each element as additions to the highway network.

The dedication as highway is often confirmed by the signing of the S38 agreement before the physical completion of the carriageway, footway, cycle track etc. This enables the Highway Authority to exercise its various powers to do works within the highway and complete any outstanding construction works in the event of the failure of the developer to complete their obligations under the agreement. This also indicates that the dedication to the highway is not dependent on works being carried out by the landowner prior to that dedication.

Where a cycle track is to be created by the Highway Authority, consent under the Town and Country Planning Act 1990 will often be required for the change of use and engineering works to create the cycle track.

Converting an existing footpath to a cycle track: Procedure – Cycle Tracks Act (CTA) 1984 (as amended) to convert all or part to shared use

An existing urban footpath or alleyway may be suitable for shared use by cyclists and pedestrians. This is typically a maintainable highway not adjacent to the carriageway and not on the definitive map, with or without a cycle prohibition order (which may be in the form of a byelaw). The new Order could allow cyclists to use part or the entire width of the footpath. Rural footpaths are more likely to be recorded as rights of way on the definitive map, but broadly the same procedures apply.

Under the CTA, a Highway Authority may designate “any footpath for which they are highway authority”, or part of it, as a cycle track. There is no differentiation in it being a definitive footpath (appearing on the definitive footpath map), or an urban footpath (surfaced highway as found in urban areas and created after the drawing up of the definitive map). Any footpath which forms part of the highway, whether or not surfaced or maintained by the Highway Authority, is a footpath for the purposes of the CTA and should be converted by its application.

To convert all or part of an urban footpath maintainable as highway or a public footpath recorded in the rights of way map to a cycle track, a Cycle Tracks Order must be made under Section 3 of the CTA and the Cycle Tracks Regulations 1984 (SI1984/1431). Detailed advice on the conversion of footpaths is contained in Circular Roads 1/86 (Background to the Cycle Tracks Act 1984 and the Cycle Tracks Regulations 1984).

If the land is not owned by the Highway Authority, it must ensure that the landowner has consented in writing [CTA s3]. Any land lying outside the width of the existing footpath which needs to be acquired for the purposes of constructing the cycle track must be dedicated to/ purchased by the Highway Authority to enable widening to take place.

Public consultation is a mandatory requirement for conversions carried out under the 1984 Act. The Regulations specify that, before making the order, a local highway authority has to consult:

- a. one or more organisations representing persons who use the footpath involved or who are likely to be affected by any provision of the proposed order;
- b. any other local authority, parish council or community council within whose area the footpath is situated;
- c. those statutory undertakers whose operational land is crossed by the footpath; and
- d. the chief officer of police for the police area.

Where the footpath crosses agricultural land, the authority will need to obtain consent from the land owner(s). If there are no objections or objections are withdrawn, the order can be confirmed by the local highway authority. If there are un-withdrawn objections, the order can be confirmed by the Secretary of State, who may decide that a local public inquiry is first required.

In practice, the Cycle Tracks Act is often not used, even though it was intended to help local authorities to rationalise existing rights of way to permit cycling more widely. Walking advocates, such as The Ramblers, oppose many applications due to the loss of the footpath from the definitive map (and subsequently from published O.S. maps).

Dealing with objections to the Orders can be costly to the local authority, and any unresolved objections result in a Public Inquiry. The option to create a new cycle track alongside an existing footpath is therefore often preferred by local authorities as a pragmatic method.

The CTA 84 s3(10) (as amended) states that the local authority has the power to carry out any physical works necessary. Any change of use, that would have constituted development within the meaning of the Town and Country Planning Act 1971, is deemed to be granted under Part III of that Act. Any existing byelaw prohibiting cycling would need to be reversed.

Creating a cycle route using permissive rights:

A landowner may give permission for cyclists to use land occupied by a definitive footpath to avoid the use of the Cycle Tracks Act or because they wish to retain control of the land. The path then becomes a 'permissive path' for cycling.

Permissive rights are useful where a landowner is willing to allow public use but does not want a permanent right of way to be created. Where the landowner is willing to allow a permanent right of way, he or she can dedicate the land as public highway, and this is a useful alternative in some cases.

A commonly used permissive agreement is where the local authority (or another party) purchases an interest in the land, constructs a path and then allows the public to use it. The land interest can be:

- freehold, which gives a permanent interest; or
- leasehold, which gives an interest for the period of the lease, e.g. 125 years; or
- licence, which comprises permission to construct and permission for the public to use.

The Department does not encourage the use of permissive rights by licence, because licences can be withdrawn at short notice and at any time. Where a local authority owns a footpath, or where the footpath is maintained at public expense, the preferred option would be to introduce higher-level rights for users by upgrading it to a Cycle Track, Restricted Byway or Bridleway. Otherwise, permissive rights based on a leasehold or freehold interest might be appropriate.

Sustrans has created numerous permissive rights routes that have worked satisfactorily. The interests are largely freehold or leasehold – licences are generally avoided, because of their poor security of tenure. Sustrans can advise on the implementation of permissive agreements.

Creating a new cycle track parallel to an existing footpath

Local authorities can create new cycle tracks under s65(1) Highways Act 1980. New footpaths, bridleways or restricted byways can be created under sections 25 or 26 of the Highways Act 1980, either through agreement or by using compulsory powers. A route might also be dedicated for use as a cycle track if there is a precedent of sustained use by cyclists. Creating a cycle track on a new alignment might require planning approval if it is outside the highway boundary.

In this case, the footpath is not converted but the surface is widened, such that a cycle track is created alongside and separate from the existing footpath. The use of the Cycle Tracks Act does not therefore apply.

In these circumstances, segregation by some form of physical delineation (kerb, surfacing) is appropriate because cyclists have no legal right to cycle on the original section of footpath. This practice is sometime used to avoid objections that the cycle track will result in the removal of a footpath from the definitive map (see note on CTA above).

Any byelaw or order prohibiting cycling on the adjacent footpath should be removed prior to (or in parallel with other procedures) for the creation of a cycle track. This may not be strictly necessary as the cycle track is alongside the footpath, but the presence of any form of prohibition, supported by signs to give it effect, will appear illogical and lead to confusion over user rights.

If the Highway Authority does not own the land, they will need to purchase it (compulsorily if required) or achieve a dedication as highway from the owner. The wording of any dedication is usually along the lines of (the landowner) 'hereby freely dedicates the land shown coloured pink on the attached plan to the highway maintainable at public expense'. It is up to the local Highway Authority to determine what modes are permitted. The plans used for the transaction/dedication agreement could be extracts from the scheme plans. No further action is required to formally create the footway/additional carriageway to give the police the power to enforce relevant offences under the Road Traffic Regulation Act 1984.

Cycle track which terminates at the rear of a footway and conversion of the footway crossing (to enable cyclists to reach the carriageway) Procedure – Highways Act 1980

If the cycle track order ends at the back of the footway, it is necessary to create a short section of cycle track in the highway to join the carriageway. The footway should be converted by using the powers available under the Highways Act 1980. There are no requirements in legislation for a cycle track to be of a minimum length or travel in any direction relative to the carriageway. This may be interpreted as permitting the conversion of the short length of footway necessary to achieve a crossing of the carriageway. This may be either straight across, or may link two routes in a staggered arrangement or to reach a point where there is good visibility to ensure a safer crossing.

Figure: Example of off-road cycle track along line of a footpath, that crosses the footway to join the road. This type of route can also cross minor roads with priority for the cycle track, using a flat top road hump. (Photograph by Adrian Lord)



Footways, footpaths and cycle tracks on private land that are not part of the public highway. Procedure – varies

A ‘footway’ outside the highway boundary has, by definition, no highway status and cannot, therefore, be treated as a footway as defined by the Highways Act 1980. This situation could arise where the footway (and accompanying carriageway) was originally created by a housing authority but not subsequently adopted as public highway. Similarly, it might occur in the case of a development that allows public access, but the means of access are not adopted as highway e.g. on a business or retail park.

Such routes should be dealt with as a permissive route, or through an agreement with the owner for the route to be adopted as highway, to enable creation of a route using one of the methods above. Such cases are complex and should be dealt with locally on a case by case basis. Chapter 14 of the Sustrans Design Manual outlines common forms of permissive agreements.

Footbridges and underpasses. Procedure – Cycle Tracks Act 1984 or Highways Act 1980

The procedures employed will be based upon the circumstances under which these features were created. Where these are not clear, local and professional judgement will be required as to whether the footbridge or subway acts as a footpath or a footway.

Path (Bridleway) Creation. Procedure – Highways Act 1980 s26

Section 30(1) of the Countryside Act 1968 gives the public the right to ride a bicycle on any bridleway, but cyclists must give way to pedestrians and persons on horseback. The act places no obligation on the Highway Authority to improve the surface to better accommodate cycle use. The Highways Act provides powers to create bridleways by means of a public path creation order.

Creating a new cycle track adjacent to a bridleway. Procedure – TCPA and GPDO

This process is similar to widening a footpath as described above, but the highway is adjacent to a bridleway and not a footpath.

Conversion of a footpath alongside a watercourse/river/canal. Procedure – varies

Cycle tracks created alongside a watercourse by the conversion of a public footpath will inevitably require engineering works, if only in the form of signs. In addition to the use of the Cycle Tracks Act or planning approval (if access is based on permissive rights), it may be necessary to obtain consent under the Water Resources Act 1991 – contact the Environment Agency for more information. In some regions and in most circumstances, the agreement of the Internal Drainage Board will be required where any work impacts upon its operations.

Cycling is permitted on most towpaths owned and maintained by the Canal & River Trust, and they frequently work closely with local authorities to improve routes for cyclists and pedestrians. In the case of footpaths alongside canals, the Canal & River Trust's powers to introduce a byelaw prohibiting cycling take precedence over any highway rights. It is therefore recommended that contact be made with their local office to agree the best means of achieving and maintaining cycle access.