

CYNGOR SIR POWYS COUNTY COUNCIL

**DRAFT
CABINET EXECUTIVE
..... 2016**

**REPORT AUTHOR: County Councillor John Powell
Portfolio Holder for Environment and Sustainability**

**SUBJECT: Revised Protocol for authorising motor vehicle events
affecting footpaths, bridleways and restricted byways
under s.33 Road Traffic Act 1988**

REPORT FOR: Decision

Summary

The County Council has a direct role in providing s.33 Road Traffic Act 1988 authorisations to motor vehicle events that cross or pass along public footpaths, bridleways and restricted byways.

On the 17th April 2012 the Cabinet considered a report setting out a protocol for the authorisation for motor vehicle events within the Council, mostly relating to motorsport. A copy of the report is attached as a background paper to this report as Appendix 1.

Recently, concerns have been raised by officers, members and the motor sport industry as to the effectiveness and operation of that protocol and in the circumstances it was agreed that there should be a review of the protocol so as to ensure the future of motor sports within the county, whilst at the same time ensuring statutory compliance.

The purpose of this report is not to consider the concerns referred to above, but instead to recommend to the Portfolio holder revisions to the protocol which address those concerns. The revised protocol as set out in the proposal section of this report, has been achieved after having taken independent legal advice.

Currently, applications are being received for Section 33 Road Traffic Act 1988 (RTA88) for events which are to be held under two regulations, namely 1) Motor Vehicle (Competition and Trials) Regulations 1969 (as amended) (1969 Regulations) and 2) The Motor Vehicle (Off Road Event) Regulations 1995 (as amended), (1995 Regulations).

The Local Highway Authority has no role in authorising events under the 1995 Regulations where no public highways are involved. Such events can be authorised by a number of organisations such as the MSA. Where an application is received by PCC under the 1995 Regulations, the Council will return the application to the applicant with an explanation as to why PCC are not able to deal with such applications i.e. the route does not involve any public highways.

Where footpaths, bridleways and restricted byways, are affected by a motor vehicle event, such events are authorised by the MSA under the 1969 Regulations. However, an authorisation must also be obtained from the Council under s.33 RTA88 to use or cross the public right of way during these events. In providing s.33RTA88 authorisations, the Council are consenting for the event crossing or using the public right of way so as to avoid criminal offences from taking place by the use of a motor vehicle on footpaths, bridleways or restricted byways.

Where footpaths, bridleways and restricted byways are affected, applicants must use the Council's s.33RTA88 application form (See Appendix 2), which can be accessed from the Council's website at [xxxxxxx](#). Application forms received using the Council's application form will be acknowledged within 5 working days of receipt of the original application form.

Applications which do not use the Council's application form will be returned to the applicant within 5 working days of receipt, with an explanation as to where the correct form can be obtained. Applications will not be processed until such time as a properly made out section 33 RTA88 application form has been received. It shall be a condition of the granting of any Section 33 authorisation, that organisers are required to restore to the Council's satisfaction any damage to the highway resulting from an event.

In order to ensure that footpaths, bridleways, restricted byways and local biodiversity interests are being fully safeguarded, random event monitoring will take place. As part of the random event monitoring, event organisers may be asked for copies of their risk assessments and evidence of appropriate mitigation measures as well as proof that any conditions as set out in the s.33 RTA88 authorisation are being complied with.

Advice has been received from Stephen Sauvain QC that whenever the Council considers granting a s.33RTA88 authorisation it should also make an order under section 16A of the Road Traffic Regulation Act 1984 (RTRA84) preventing public use of a section or length of public right of way so as to ensure that only motor vehicles can use that section during the event, providing that the conditions set out in the 1969 Regulations continue to be followed, including the requirement to adhere to an average speed not exceeding 30mph when crossing or using the public right of way (unless amended by legislation). This protects public safety. Organisers must have in place appropriate risk assessments to ensure public safety is maintained.

The Council's ability to make s.16A orders is limited by section 16B(6) of the RTRA84 which limits the number of times that a section 16A Order can be made in respect of the same length of public highway to only once in any calendar year without Welsh Minister's consent. Furthermore, Welsh Minister's consent is also required if the section 16 Order is required for more than 3 calendar days.

Discussions with Welsh Government officials on behalf of the Minister have confirmed that they are now aware of the issue and will work with the Council to providing such Ministerial consent where appropriate. WG Officers have indicated that such consent could take up to 3-4 weeks, but they are prepared to work with the Council and organisers to consider advanced consent in circumstances where the date of the event and the length of the public highway that will be affected by the order can be identified.

In addition to safeguarding the public who may use affected footpaths, bridleways and restricted byways, Natural Environment and Communities Act 2006 (NERC) requires the Council to formally consider how the application of its function under Section 33 RTA88 affects wildlife. NERC, Wildlife & Countryside Act 1981 (as amended), and Habitats &

Species Regulations 2010 (as amended) also specifically protect a range of habitats and species. The Council is only informed of the position and existence of SSSIs etc intermittently by NRW and has no way of knowing whether or not a route is likely to affect any designation. As such, organisers will be required to consult with NRW at least 8 weeks prior to the submission of their Section 33 RTA88 application. The PCC guidance has been amended to make this clear. Where NRW have specified mitigation measures, details of those mitigation measures must be attached to the application.

Compliance with any requirements imposed by NRW will be set out as a condition of the Section 33 RTA88 authorisation.

To support the conditions, guidance notes will be made available to organisers.

Guidance will also include contact details in relation to the protection of ancient monuments (see Appendix 3).

Where a relevant footpath, bridleway or restricted byway proposes to be used by an event is on or within land that is a SSSI, Schedule 2, Part 4, Class B.1(c)(i) B2 Town and Country Planning (General Permitted Development Order) 1995 requires that planning permission will be required from the relevant Planning Authority and the granting of the Section 33 authorisation may be conditional upon the organiser obtaining such planning permission before the event takes place.

It is noted that the Deregulation Act 2015 contains provisions which would allow properly permitted and authorised races or trials of speed to take place on the public highway, which are currently unlawful. These provisions have not yet been commenced. Once this legislation is in force this policy and guidance will be reviewed.

Powys Change Plan

As a central theme within the Powys Change Plan, the Council is committed to supporting projects which drive Regeneration of the local economy within Powys. It is recognised that events affected by the paper can contribute significantly to this work, and in particular the larger national and international events with major motoring events in Powys and Mid Wales.

Proposal

Applications under s.33 Road Traffic Act 1988 for motor sports events will be approved subject to the following:–

- (i) That organisers fully comply with the 1969 Regulations, and or guidance as set out in the current Motor Sport Association or Auto Cycle Union handbooks, including signage, and a copy of the MSA route authorisation under the 1969 Regulations shall be included with every application. Where there is a conflict between the 1969 Regulations and the MSA guidance, the 1969 Regulations takes precedence.
- (ii) If MSA/ACU signage (or similar) is not used, personalised signage must be agreed by the County Council in advance of the event.
- (iii) That such Section 33 RTA88 authorisations will be given on the written condition that the organiser will comply with the 1969 Regulations. The Application form will be amended to include a written undertaking from the organiser that the event will comply with the 1969 Regulations and Powys CC will be entitled to rely upon such an undertaking.

- (iv) Whenever a Section 33 RTA 88 authorisation is made, the Council will also make a Section 16(A) RTRA84 Traffic Order to prevent other highway users from utilising the highway at the same time as the event in question.
- (v) The total cost of the Section 33 RTA88 authorisation and the s16A order will be £150. This cost will be reviewed on an annual basis.
- (vi) The Council will consult with the motor sports fraternity with a view to provisionally approving a number of routes which minimises the impact upon highway users and avoids the likelihood of impacting upon a SSSI or EU designated conservation site. It is hoped that such agreement could take into account the requirements of any seasonal variations.
- (vii) The Section 33 RTA88 Application form (Appendix 2) will be amended to include an undertaking that the organiser has consulted with NRW at least 8 weeks prior to submission of the Section 33 RTA88 Application and confirming whether or not a response has been received and to provide a copy of any such response. The Council will be entitled to rely upon such an undertaking and in the event that the undertaking proves to be false the Council will be entitled to revoke the Section 33 RTA88 authorisation. In all cases the application form will include an agreement from the organiser to indemnify the Council for all costs, expenses and penalties imposed upon the Council for failing to consult with NRW. The s.33 RTA88 authorisation will include a condition to enforce this indemnity.
- (viii) The Council may carry out monitoring on a random basis, to ensure that any conditions within the s.33 RTA88 authorisation are adhered to and that where events are found to be in breach –
 - (a) a report will be made to the MSA.
 - (b) a report will be made to the County Council's Cabinet, who will decide upon an appropriate action or approach to future applications.
- (ix) A timetable will be issued to guide prospective organisers in procedures for making their applications.
- (x) On receipt of a compliant application, the Council will endeavour to determine an application within 8 weeks, including the 3 week period that it will take to obtain the Welsh Minister's consent to repeat section 16A orders.
- (xi) Where a relevant footpath, bridleway or restricted byway proposes to be used by an event and is on or within land that is a SSSI, Schedule 2, Part 4, Class B.1(c)(i) B2 Town and Country Planning (General Permitted Development Order) 1995 requires that planning permission will be required from the relevant Planning Authority, the Section 33 RTA88 authorisation may be conditional upon the organiser obtaining such planning permission before the event takes place.
- (xii) The Section 33 RTA88 application must include a clear Ordnance Survey plan to a scale no greater than 1:25,000, with the route accurately drawn upon it and annotated on the plan the location of footpaths, bridleways and restricted byways, to allow accurate assessment of the route and its impact upon the highway. If the route is not clearly marked or a route map is not provided, then the application will be returned within 5 working days of receipt without being processed. Electronic or hard copy formats will be accepted.
- (xiii) Payment of the appropriate fee must be included at the same time as the application. If payment is not provided, then the application will be returned within 5 working days of receipt without being processed.
- (xiv) Landowner and occupier consent in writing must be provided at the same time as the application and cross referenced with the annotated footpaths, bridleways and restricted byways from the route map. If this is not provided, then the application will be returned within 5 working days of receipt without being processed.

- (xv) A copy of the 1969 Regulations route authorisation from the Motor Sports Association (MSA) must be provided at the same time as the application. If this is not provided in the application form, then the application will be returned within 5 working days of receipt without being processed.
- (xvi) The section 33 authorisation will contain the conditions set out in Appendix 4.

Sustainability and Environmental Issues/Equalities/Crime and Disorder/Welsh Language/Other Policies etc

Powys County Council has signed up to the Welsh Government's Sustainability Charter committing the Authority to make sustainable development its central organising principle. A sustainable future for Wales includes a commitment '*to support healthy, biologically diverse and productive ecosystems, by actively recognising and supporting our environmental assets including land, water and biodiversity*'. This proposal mirrors recommendations in the accompanying guidance document for embedding sustainability across the organisation. This supplements the duty under the NERC and Wildlife & Countryside Act 1981 (as amended) which requires the Council to consider biodiversity in exercising its functions and in safeguarding protected species and habitats.

The proposal would not impact upon Welsh language, Equalities or Crime and Disorder policies.

Children and Young People's Impact Statement - Safeguarding and Wellbeing

The proposal would not impact on securing the safety and protection of children and young people and supporting the promotion of their wellbeing.

Local Member(s) N/A

Other Front Line Services

If the event runs through a Special Site of Scientific Interest (SSSI), then planning permission is required under Schedule 2, Part 4, Class B.1(c)(i) and B2 Town and Country Planning (General Permitted Development Order) 1995. It states within this section that development is not permitted if the land is, or is within, a SSSI and the use of the land is for motor sports.

Support Services (Legal, Finance, HR, ICT, BPU)

Finance -

Legal - The comments of the Highways and Enforcement Solicitor have been incorporated in the report. The recommendations are approved from a legal point of view.

Communications :

Local Service Board/Partnerships/Stakeholders etc

Communications

Proactive news release required following decision taken by Cabinet.

Statutory Officers

The Solicitor to the Council (Monitoring Officer) has commented as follows: “ I note the legal comment and have nothing to add to the report.

(The views of both the Strategic Director Resources (Section 151 Officer) and the Solicitor to the Council (Monitoring Officer) **must** be set out below)”

Recommendation:	Reason for Recommendation:
<p>1. To approve the revise protocol as set out in the Proposal section of the report.</p> <p>2. That the application and effect of the new protocol be reviewed after 12 months.</p>	<p>Safeguard Authority position and Officer interests and role.</p>

Relevant Policy (ies):	
Within Policy:	Y
Within Budget:	Y

Relevant Local Member(s):	None
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Person(s) To Implement Decision:	Stuart Mackintosh
Date By When Decision To Be Implemented:	Immediate effect

Contact Officer Name:	Tel:	Fax:	Email:
Stuart Mackintosh	01597 827583	01597 827555	Stuart.mackintosh@powys.gov.uk

Background Papers used to prepare Report:

1. *Appendix 1 - Cabinet paper dated 17th April 2012 entitled “Protocol for authorising motor vehicle events affecting footpaths, bridleways and restricted byways“*
2. *Appendix 2 – Application form for s.33 Road Traffic Act 1988 authorisations.*
3. *Appendix 3 - Guidance Note: Conservation of Wildlife and Heritage*
4. *Appendix 4 – s.33 Road Traffic Act 1988 template.*