Open Spaces Society

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OSS response to consultation on e-bikes closing 25 April 2024

The Open Spaces Society (OSS) was founded in 1865 and is Britain's oldest national conservation body. It campaigns to protect common land, village greens, open spaces and public paths, and people's rights to enjoy them.

We respond only on those matters which are within the competence of the society having regard to its objects.

We refer to an EAPC below as meaning an electrically-assisted pedal cycle which is prescribed (whether now or in amending regulations) as not being a motor vehicle. We refer to bicycles as meaning non-mechanically assisted cycles.

1 Question 1: Do you support or oppose the proposed change to how EAPCs are classified so that the maximum continuous rated power of the electric motor must not exceed 500 watts instead of 250 watts as set out in the current regulations?

1.1 Not supported.

2 Question 2: Explain your response to question 1. Are there any additional benefits or risks

(including in relation to road safety) not referenced in this document?

2.1 We begin with reference to the use of EAPCs on bridleways and byways. This requires an exploration of the legal position.

Classification of electrically assisted pedal cycles on public paths

2.2 It is stated that:

> EAPCs are treated the same as pedal cycles in terms of what infrastructure they may use and can, therefore, use cycle lanes, tracks and other cycle facilities.

2.3 The statement does not expressly refer to public bridleways and restricted byways, but implies that EAPCs can use such ways (because bicycles may use them). The right to cycle on a bridleway is conferred by s.30(1) of the Countryside Act 1968:

> Any member of the public shall have, as a right of way, the right to ride a bicycle, not being a mechanically propelled vehicle, on any bridleway, but in exercising that right cyclists shall give way to pedestrians and persons on horseback.

2.4 The right is extended to EAPCs, because s.30(5) (inserted by the Countryside and Rights of Way Act 2000, Sch. 7, para.2(1),(3)), provides that:

> In this section “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

2.5 Thus an EAPC, prescribed in SI 1983/1168, is not to be treated as 'mechanically propelled' for the purposes of s.30, and therefore the right to cycle on a bridleway conferred by s.30(1) applies to an EAPC.

2.6 The position is slightly different with respect to restricted byways. S.48(4) of the Countryside and Rights of Way Act 2000 confers restricted byway rights on a restricted byway, including ‘a right of way for vehicles other than mechanically propelled vehicles’. But s.48(7) provides:

> In subsections (4) and (6) “mechanically propelled vehicle” does not include a vehicle falling within paragraph (c) of section 189(1) of the Road Traffic Act 1988.

2.7 Thus an EAPC, prescribed in SI 1983/1168, is not to be treated as ‘mechanically propelled’ for the purposes of s.48(4), and therefore the right to cycle on a restricted byway conferred by s.48(1) applies to an EAPC.

2.8 In either case, the prohibition on driving a mechanically-propelled vehicle on a bridleway or restricted byway, imposed by s.34 of the Road Traffic Act 1988, does not apply to an EAPC: see the definition ‘mechanically-propelled vehicle’ in subs.(7).

2.9 In short, an EAPC may be used on a bridleway or restricted byway.

2.10 Oddly, it seems that it is not an offence to use an EAPC on a public footpath or anywhere else, because s.34(7) of the 1988 Act equally excludes the application of the offence to such use, even though there is no right of use. The use on a public footpath *etc.* therefore merely is a trespass.

Additional benefits or risks

2.11 There are risks associated with the use of bicycles on bridleways. Bridleways can often be narrow, barely sufficient in width for two horses to pass, and sometimes of insufficient width. Cyclists are often unfamiliar with how to pass horse riders (whether oncoming or from behind), notwithstanding the obligation (in s.30(1) of the 1968 Act) that 'cyclists shall give way to…persons on horseback' (failure to give way may give rise to criminal liability under s.29 of the 1988 Act). Cyclists are encouraged to give notice of their approach (if from behind), to slow down, and to stop and pull in if necessary. This advice is encapsulated in the 'Be Nice, Say Hi' campaign supported by equestrian and cycling user groups.

2.12 Even where cyclists are unaware of good practice, cycling a self-propelled vehicle on a bridleway is likely, in terms of physical activity and mechanical operation, to alert the rider, and more importantly, the horse, to the cyclists' approach, particularly if the bridleway is unsurfaced or the approach is uphill. This will give them both time to prepare to accommodate cyclist passing horse rider.

2.13 This advance awareness is much less likely if the cyclist is riding an EAPC which does not need to be 'cycled'. The risk will be greater if the motor is better able to make unaided progress on uneven or uphill paths. There is a much greater risk that cyclists will seek to pass a horse rider without alerting the rider, and without either the horse or rider being aware of the cyclist's presence until too late to accommodate the cyclist. The consequence may be that any of the horse, rider and cyclist is startled, and there is a potential for injury, particularly with the cyclist being kicked (by the horse) or the rider being thrown off (the horse may then be loose and cause a further accident).

2.14 The risk of injury is less with walkers, cyclists and other path users (such as those using mobility scooters), but the likelihood of such users being startled is just the same.

2.15 This risk already arises under the current derogation for EAPCs. An appropriately-constructed EAPC is a competent all-terrain vehicle, more resembling a low-power moped than a bicycle. It is, simply, easier to ride an EAPC into a high-risk situation than a cycle, much as it is easier to exceed the speed limit on a motorway in a high-performance vehicle than an ordinary small saloon car, because the achievement of excessive speed is effortless and hardly noticed. Raising the power threshold for EAPCs and enabling forward motion solely through 'twist and go' will exacerbate the potential for conflict.

2.16 None of this has been even considered in the consultation nor in the impact assessment. Indeed, as we note at para.2.2 above, neither the consultation nor the impact assessment refers to the right of an EAPC user to ride on bridleways and restricted byways. The assessment of 'Potential risks' does not refer to such use, nor does the classification of impacts at para.36 of the impact assessment allow for them. We infer that, before launching the consultation, the Department for Transport did not confer with officials in Defra, as the department responsible for public paths.

3 Question 3: Provide any relevant evidence to support your responses to questions 1 and 2.

3.1 The British Horse Society may be able to supply data on incidents involving EAPCs under existing legislation.

4 Question 4: Do you support or oppose the proposed change to allow EAPCs to have throttle assistance up to 15.5mph (25km/h) without the need for type approval, instead of 3.73mph (6km/h) as currently regulated?

4.1 No, for the same reasons as discussed at Q.2 above.

5 Question 5: Explain your response to question 3. Are there any additional benefits or risks (including in relation to road safety) not referenced in this document?

5.1 We assume you intend to ask for an explanation of the response to Q.4. We refer to our response to Q.2.

6 Question 6: Provide any relevant evidence to support your responses to questions 4 and 5.

6.1 We refer to our response at para.3.1 above

7 Question 7: Do you support or oppose limiting either or both of the proposals to disabled people with impairments that affect their mobility and who would benefit from the proposals? If applicable, provide views on which disabled people the proposals should apply to. Explain your response and provide any relevant evidence.

7.1 We support such an approach, on the basis that, if those with impairments to unassisted cycling require the use of enhanced EAPCs, they, and they alone, should be entitled to such use (in the same way that 'invalid carriages' are enabled to use pavements

under s.20 of the Chronically Sick and Disabled Persons Act 1970). By way of illustration, it is not proposed that all bicycles should be able to use pavements in order to give disabled people an opportunity to do so.

8 Question 8: Do you support or oppose limiting either or both of the proposals to e-cargo bikes? If applicable, provide views on how e-cargo bikes could be defined for these purposes. Explain your response and provide any relevant evidence.

8.1 We support such an approach. We accept the desirability of encouraging the wider adoption of e-cargo bikes, but do not consider that the right way to do so is to loosen regulations on EAPCs generally. On the contrary, we consider that Government could greatly support wider adoption of e-cargo bikes by enabling the use of more powerful vehicles but under a less onerous regulatory regime than applies to motor vehicles.

8.2 Merely because the Government can enable the wider adoption of e-cargo bikes through specification as EAPCs, by means of secondary legislation, is not a good reason for doing so, if the mechanism is inappropriate (as we suggest, for the reasons given above). It is not 'Smarter Regulation' to promote regulatory change through inappropriate secondary legislation because the sponsoring department lacks sufficient clout within Government to promote the desirable primary legislation. We note that new primary legislation was not even an option considered in the impact assessment.

8.3 There traditionally has been a clear dividing line between bicycles, which are manually propelled, and motor cycles, which are at least theoretically regulated as motor vehicles (or which, if not authorised for use on the road, are prohibited from such use). The EAPC blurs the distinction. It is quite reasonable to treat low-powered EAPCs as bicycles for the purposes of road traffic and public path law, but it is far from obvious why an electrically-assisted pedal cycle should be so treated once its power output, capability and mode of operation begins to approach that of a motor cycle. Electric cars are not derogated from road traffic controls (apart from concessions in terms of vehicle tax), and nor should be electrically-assisted pedal cycles if their capabilities set them markedly apart from the bicycle.

9 Question 9: Provide any relevant evidence in response to the questions in the impact assessment

9.1 At para.15 of the impact assessment, it is stated that:

> There may be public health benefits that accrue in the switch from non-active modes to e-cycles, since additional exercise is associated with a very wide range of improved health outcomes.

9.2 However, the assessment does not consider to what extent higher-capability EAPCs will encourage those who currently use bicycles to switch to EAPCs, which will have a countervailing effect on health benefits, although this potential impact is alluded to at para.41.

10 Questions 10–17

None to all questions in this group.

Open Spaces Society
15 April 2024