

CYNGOR SIR POWYS COUNTY COUNCIL

**DRAFT
CABINET EXECUTIVE
14th March 2017**

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

1. 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.
2. 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.
3. 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.
4. The purpose of this report is 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 and discussion with Welsh Government. In addition there has been extensive consultation with the Motor Sports Association, Auto Cycle Union and the Land Access Recreation Association as motorsport representatives.
5. 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).

6. The 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 Motorsport Association (MSA) or Auto Cycle Union (ACU). 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 being that the route does not involve any public highways despite the erroneous interpretation applied by the applicants.
7. Where footpaths, bridleways and restricted byways, “highways”, are affected by a motor vehicle event, such events are to be authorised by the MSA under the 1969 Regulations.
8. However, an authorisation must also be obtained from this Highways Authority (“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 provide defences to certain motoring offences from taking place by the use of a motor vehicle on footpaths, bridleways or restricted byways.
9. Where footpaths, bridleways and restricted byways are affected, applicants must use the Council’s s.33RTA88 application form (See Appendix 2), which will be accessible from the Council’s website. Application forms received using the Council’s application form will be acknowledged within 5 working days of receipt of the original application form.
10. 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 and comply with any reasonable conditions as the Council sees fit, such as those contained within Appendix 4.
11. 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.
12. Legal advice has been received from leading Queens’ Counsel that whenever the Council considers granting a s.33RTA88 authorisation, it should also suspend the public rights over the highway that is coincidental with the route of the event by way of a traffic regulation order. This would prevent 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. This must include 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.

13. Contained within the information from the Queen’s Counsel, he has advised that s.16A Road Traffic Regulation Act 1984 is the appropriate means to regulate traffic for the purposes of managing safety in relation to these events.
14. It is clear from the legal advice received that the most appropriate application of legislation is the adoption of S16A RTRA84. The motorsport representatives, however, have asked if the Council would consider using s14 of the same Act instead. The main advantage is the removal of the need to refer applications for repeat events in the same 12 month period to Welsh Government and the time delay such an approach will incur and it would be in the public interest to do so. Having considered the legal advice, it is possible to adopt a s.14 RTRA84 but even though this maybe a less robust application of the law. It is considered, however, that with the agreement of the relevant motor sport bodies s.14 RTRA84 can be used with minimum risk to the Council of external challenge. Beyond this, the adoption of s14 RTRA84 does not expose the Council to additional risk.
15. To provide for the best environment for motorsport to continue and thrive in Powys, then it is considered there is a strong public interest in using s.14 Road Traffic Regulation Act 1984 when authorising motor events under s.33RTA 88.
16. There are costs associated with suspending public rights of way, and full cost recovery must be taken into account. However, efforts have been made to make the process as efficient as possible, and to minimise costs. As such, a two tiered system will be put into place for both simple and complicated scenarios. Further detail on these scenarios, as well as the breakdown on the costs can be found at Appendix 5 and Appendix 6.
17. Additionally, legal advice has confirmed that the erection and removal of the statutory notices can be “contracted out” to the motorsport organisers, instead of the Council undertaking this work itself. The time and transport costs in erecting and taking down the statutory notices are a large part of the overall costs. In order to minimise the fee, an option for the organiser to do this is provided below.
18. In order to comply with the advice received, it is intended that the application form will reflect whether or not the applicant agrees to erect/remove the statutory notices themselves, or is seeking for the Council to undertake this activity. In signing the application and agreeing to the erection and removal of the statutory notices, this will form part of the contract and conclude the applicant’s clear wishes and intent on the fee structure.
19. Fee to include costs for Council erecting and removal s.14 RTRA84 notices.

	s.14 Costs	s.33RTA Costs	Total Costs
Simple Scenario	£235.81	£30	265.81
Complicated Scenario	£733.68	£30	763.68

20. Fee to include costs for Organisers erecting s.14 RTRA84 notices.

	s.14 Costs	s.33RTA Costs	Total Costs
Simple Scenario	£47.42	£30	£77.42
Complicated Scenario	£91.71	£30	£105.53

21. In addition to safeguarding the public who may use affected footpaths, bridleways and restricted byways, the Environment (Wales) Act 2016 requires the Council to formally consider how the application of its function under Section 33 RTA88 affects wildlife. The Wildlife & Countryside Act 1981 (as amended) and Habitats & Species Regulations 2010 (as amended) also specifically protect a range of habitats and species and require specific procedures to be followed before any consent or permit likely to effect a protected site is issued. The Council is only updated on the position and existence of SSSIs and European protected sites periodically by NRW, and will be unaware of some designations without prior consultation with NRW. As such, organisers will be required to consult with NRW at least 8 weeks prior to the submission of their Section 33 RTA88 application. This will reduce the time needed to process the application by reducing the council's consultation with NRW (which is legally required). Details of all necessary mitigation measures required to adequately safeguard a protected site must be attached to the application. The PCC guidance at appendix 3 has been amended to make this clear.
22. Compliance with any requirements imposed by NRW will be set out as a condition of the Section 33 RTA88 authorisation.
23. To support the conditions, guidance notes including a timeline will be made available to organisers.
24. Guidance will also include contact details in relation to the protection of ancient monuments (see Appendix 3).
25. 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 will be conditional upon the organiser obtaining such planning permission before the event takes place.
26. 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 public highways that are currently unlawful. These provisions have not yet been commenced in Wales. Once this change in legislation is in force this policy and guidance will need to be reviewed.

Powys Change Plan

27. 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

28. 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 be authorised and comply with the 1969 Regulations.
- (iv) Whenever a Section 33 RTA 88 authorisation is made, the Council will also make a Section 14) 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 s14 order will be initially set at the fee as set out depending on the scenario and whether the notices shall be erected and taken down by the motorsport organiser. This cost will be reviewed as required.
- (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 i) that a copy of the written consultation response from NRW is provided and ii) That all details of necessary mitigation required to safeguard a SSSI, SAC or SPA are provided. s.33 RTA88 authorisation will include a condition to deliver protected site protection measures as agreed.
- (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 5 weeks.
- (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 will 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 if legible.

- (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

- 29. 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 Environment (Wales) Act 2016 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 general duties under above legislation will deliver on the further duties imposed on public bodies under the Well-Being of Future Generations (Wales) Act 2015.
- 30. The proposal would not impact upon Welsh language, Equalities or Crime and Disorder policies.

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

- 31. 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)

- 32. Not applicable.

Other Front Line Services

- 33. 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)

- 34. Finance - The recommendations are approved from a financial point of view.
- 35. 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.
- 36. Communications:

Public Service Board/Partnerships/Stakeholders etc

Communications

- 37. Proactive news release required following decision taken by Cabinet.

Statutory Officers

- 38. 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 Strategic Director Resources (S151 Officer) notes the comments made by finance.

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:
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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 authorisation template.*
5. *Appendix 5 – Simple and complicated s.14 RTRA84 costings.*
6. *Appendix 6 – TRO scenarios.*