

Talking Trails -- On a road to nowhere?

Scotland is beautiful. Fewer people, less traffic, more hills, more space and clear air. The perfect place to go trail riding?

Captivated by this ethos, having witnessed it first hand when riding trials and in particular when competing in the SSDT, the time seemed right (being somewhat older now) to ride for fun instead of competition.

Competition is fine.

My ego still nags me to compete

occasionally, with my skill and body telling me otherwise. Listening to reason, the wild and peaceful spaces beckoned.



Simple then. Just get out the map and off we go. Wrong. There are no Rights of Way marked on OS maps in Scotland.

In order to understand what makes Scotland different to the rest of UK, it helps to have a history lesson. Oh no! Aren't they for confused pubescents and 12 bhp hopefuls? Short on history, the full tank, full licence and XR400 had to wait. So began 6 months of detective work.

Contacting LARA and the TRF was top of the list. Great, join up, get the info and head for the hills. "Sorry, we're not too sure about the legalities of trail riding in Scotland. Can you help us?" Eh?! Gloom. Whilst both these organisations do excellent work and know the difference between a BOAT and a RUPP, Rights of Way (ROWS) in Scotland are different story.

LARA , BBT and TRF publications make wise reading, providing a solid foundation for the would be trail rider. Scottish law and history elevates the learning process and hopefully leads to a level of understanding.



Ah! to hell with it, I'm off riding. One shotgun cartridge over my head later and latterly an irate caber tossing sized gamekeeper convinced me otherwise.

The Scottish Rights of Way Society provided the next key. The rest of this seemingly labyrinth-like trail now started to fill with organisations, bureaucrats, do-gooders, motorcycle haters, NIMBY'S (not in my back yard), estate managers, deer management groups, local authorities, ramblers, mountaineers, Lords, Ladies and absentee (often English) landowners at every turn.



In fact we need to look at an Irish General to realise where today's Scottish road system, hill tracks and ROWS came from and why there is a resistance to offroading in these areas.

Unlike England, Scotland was not well served with communications. Drove tracks for cattle maybe, but old Roman roads as in England, I'm afraid not. They ended mostly in the Borders and Central Scotland. In particular the Highlands were remote from government control and interference. The building of a network of military roads by Major-General George Wade changed that. Wade was sent to Scotland in July 1724, 'narrowly to inspect the present situation of the Highlanders...to make strict enquiry into the last law for disarming the Highlanders...to suggest to [his] Majesty such other remedies as may conduce to the good settlement of that part of the Kingdom'.

With that backdrop in mind the history lesson ends, save to say the military roads that were subsequently built and added to by Major Caulfield let the English in and the Scots out. The rest is history from the '45 to the current pathos of patriotic undercurrents and political meandering, yet what exists are roads connecting us all. And what beauts! A legacy steeped in history. Most tarmaced and in general daily use, the rest losing their distinct character from erosion, use - and lack of use.

Want a hot potato to go riding on? Try the Corrieyairick Pass. Wade's prize road. A 2,500' pass with 17 or so traverses. 12 miles of rough bliss with a dead end switchback of black road before the real thing starts. It's the equivalent of The Ridgeway in England and under siege by more interested parties than you can shake an empty fuel can at. There are storms over this pass. Physical and political ones. Treat with kid gloves for now.

Is it a Vehicular Right of Way?

"Maybe, it depends on the rules."

Here they are. The creation of a Right of Way in Scotland depends primarily, not on statute law, but on the common law. There are certain essential requirements. Here they are. The creation of a Right of Way in Scotland depends primarily, not on statute law, but on the common law. There are certain essential requirements. These are:

1. It must run from one public place to another. (see note i).
2. It must follow a more or less defined route (see note ii).
3. It must have been used openly and peaceably by members of the public as of right, without the permission, express or implied, of the landowner (see note iii).
4. It must have been used without substantial and effective interruption for a period of 20 years or more (see note iv).



Notes.

- (i) A "public place" is one where the public are entitled to be e.g. a public road, village, church, burial ground.
- (ii) The route may make minor deviations and in open country it need not be visible on

the ground, but it should follow a more or less consistent and generally defined line.

(iii) The use must be regular with regard to the density of the surrounding population, without any stealth or violence on the part of the user and in such a way as is clearly indicated to the landowner that it is being used despite or against the landowner's wishes.

(iv) 20 years is the legally set "prescriptive period". It is not necessary for the same people to have used the route throughout the period but it is necessary for members of the public to have used the route for this period.

"You're not going to like this bit. I also learned of the Roads (Scotland) Act 1984. I could tell you things like - when is a road a path and not a road but a Right of Way anyhow even if it is a path and called a road, but I'd only get you bogged in minutiae such as it's an offence up to level 3 on the standard scale (current 1,000 UKP) to drive a motor vehicle on a road without lawful excuse." Although this is disconcerting I'm not aware that this has ever been used or is generally known.

There is also a misconception there is no law of trespass in Scotland. There is, it's just that it is not always realistically or easily enforceable and there is generally a welcome tolerance of access to many areas of land, particularly to moorland and mountain areas.



Therein lies the key (or not) to accepted trail riding in Scotland. Because there are so few trail riders in Scotland

and vehicular rights of way (as opposed to e.g. pedestrian) have not been asserted or validated there are in principal none or at least very few that are recorded. To understand why, it helps to look at the stated objects and sentiment behind The Scottish Rights of Way Society which I may add is worthwhile joining.

The objects are:

1. The preservation, defence and acquisition of public rights of way in Scotland.
2. The preservation and restoration of such rights of way as may be in danger of being lost.

Whilst in principal this is all good news for trail riders, the reality is somewhat different. The society has been in existence since 1845, long before motor vehicles and therefore caters for walkers in the main, purely by virtue of history and numbers.

The principal documented use of land by motorcycles is probably the Scottish Six Days Trial which over the years has catered for 2 and 3 wheeled vehicles. The first trial was in 1909. The trial has and continues to use rights of way, however this is done by agreement with landowners, which is in fact how many rights of way come into being.

In many ways it is preferable to do things this way. This ensures all parties concerned with land use are considered and catered for. Remember much of Scotland relies on game shooting, hill farming and tourism for its income. So what then of the trail riders lot?

The hard truth is no one is actively looking after your interests. An example is a current working party called "The Access Forum". The title of this forum is:

Scotland's Hills and Mountains: a Concordat on Access. Surely this is an ideal platform for representation by existing pro trail riding groups? Similar less than satisfactory situations exist with Scottish Natural Heritage (the replacement for the Countryside Commission for Scotland) and The Scottish Office. To my disappointment none of these bodies are pro trail riding or wheeled green tourism, save for mountain bikes.

What then does today's Scottish trail rider do? Other than straight forward agreements with landowners, most probably simply go and ride, quietly, out of the way and if meeting hostile and unknowledgeable persons on the trail then they simply go somewhere else.



In my own experience it does little good to attempt to explain that you are asserting your right of way or attempting for example to upgrade a current pedestrian right of way to cart and

carriage access (which conveys a vehicular right) over the prescribed 20 year period - as by definition you are a motorcyclist and probably unwelcome.

Say you use a route consistently and attempt to assert it as a right, what usually happens is that gates suddenly become locked, signs are erected (which in themselves are best ignored and probably not worth the wood they are written on), complaints are made and what was an open and peaceable ride is no longer. Interdicts by landowners can be taken out against an individual to prevent them going to a particular place again, yet this rarely if ever happens due to cost. Likewise few people, once a claimed right of way is considered in contention, attempt by law to vindicate it. This requires a declarator to be issued by the court and is reliant on proof of use. It all comes down to cost. Managed use and use by agreement is cheaper and arguably preferable.



In writing and researching this article I'd hoped to learn and tell how there were many undisputed or vindicated trails. Sadly I cannot conclude this, nor in the



space of a magazine article go into all the caveats and nuances of law which can at best be stated as nebulous and untried. I'd also hoped to tell of all the positive action and considerations that were in place and planned for us. Dismayed, tired and confused from the hopes and disappointments of my research I am in no way surprised that nothing concrete exists to say it's 100% legal to ride here and 100% illegal there.

Which then of the 12,000 miles of recorded Rights of Way would you like to ride? Asserted, Vindicated or Claimed?

"Who cares, as long as we stay out of trouble and don't knowingly do anything illegal, I'll follow you....." This indeed in the absence of accessible maps, access to the SROW society ROW database, and knowledge may well be your sentiment and the only action you are left with - until something better comes along.

In summary maybe you'd just like to join me and other like minded (responsible?) individuals on some known trails - maybe stopping at a mountain bothy on the way? What are they?

"Simple unlocked shelters for the benefit of all those who love the wild and lonely places". I guess that says it all.

Of course you have to know where they are in the first place!

This is the pre-edited article that I wrote for Trail Bike & Enduro magazine in UK in Nov '96 and had published in the Jan issue '97 (issue 18) of the magazine. I trust this article is of interest to the much welcomed uk.rec.motorcycles.trailriding Usenet news group and fellow trailriders.

Further Reading:

New Ways through the Glens	A.R.B Haldane
The Munros	Scottish Mountaineering Club
The Military Roads in Scotland	William Taylor
The Famous Highland Drove Walk	Irvine Butterfield
Rights of Way (A Guide to the Law in Scotland)	The Scottish Rights of Way Society
Enjoying The Outdoors (A programme for Action)	Scottish Natural Heritage
Zen and the Art of Motorcycle Maintenance	Robert M. Pirsig
