



VIEWPOINT - information on issues of concern

Do not let your swine, horse, cattle, mule or bicycle on the footpath!

This is what is says in the Highways Act of 1835 – yes 1835. This Act is the primary law that you contravene if you wilfully lead drive or ride your ass, swine horse or bicycle on a footway. If you do it is an offence and you could be fined if caught and prosecuted.

Exactly where these terrible deeds are forbidden is defined in the 1835 Act as **“upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers”**. In highway terms a path alongside a road is defined as being a **footway**. So on a **footpath**, defined as a path which is not associated or contiguous with a road, it is OK to drive your flock of sheep or cattle along or ride your bike with your family and you do not commit a criminal offence.

Under Section 72 Highways Act 1835, it is a criminal offence, punishable by a fine of up to £50 to ride a bike along a **footway**. From August 1999 the police have had the power to issue a fixed penalty notice for cycling on a **footway**. The notice gives the offender 28 days to either pay the penalty or challenge the notice in court. The fixed penalty is £20.

A fixed penalty notice cannot be issued to anyone under the age of 16 years of age. It is for the individual police officer to decide whether to caution, issue a fixed penalty notice or report the matter for prosecution.

So any one cycling on a footway under 10 can not be prosecuted as they are under the age of criminal responsibility. This leaves children over 10 and under 16 who may be committing a criminal offence under the 1835 Act but who can not be issued with a fixed penalty notice under the 1999 Act. Wonderful!

The only recourse for the police would be to investigate the alleged offence under the 1835 Act and then refer the matter to the CPS who would decide whether or not to take up the criminal prosecution of a child over 10 and under 16 for cycling on the footway. What are the chances of that happening eh?

The effect of all this is that whilst it may technically be a criminal offence, under an Act passed in 1835, for a child over 10 and under 16 to cycle on a footway by the side of a road, there is very little the police can do realistically about it unless the CPS are prepared to prosecute the child.

It should also be noted that the 1835 Act does not apply to footpaths, which are not at the side of a road, cycling in this case is a trespass if it is on private property, such as in the City Centre close to the buildings, in this case the offence can only be restricted by an injunction.

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