

APPENDIX 58

Natural Environment and Rural Communities Act 2006



Natural Environment and Rural Communities Act 2006

2006 CHAPTER 16

PART 6

RIGHTS OF WAY

Rights of way and mechanically propelled vehicles

66 Restriction on creation of new public rights of way

- (1) No public right of way for mechanically propelled vehicles is created after commencement unless it is—
- (a) created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for such vehicles, or
 - (b) created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles.
- (2) For the purposes of the creation after commencement of any other public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded.

Commencement Information

- I1** [S. 66](#) in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by [S.I. 2006/1176, art. 6](#)
- I2** [S. 66](#) in force at 16.11.2006 for W. by [S.I. 2006/2992, art. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Section 66.



Natural Environment and Rural Communities Act 2006

2006 CHAPTER 16

PART 6

RIGHTS OF WAY

Rights of way and mechanically propelled vehicles

67 Ending of certain existing unrecorded public rights of way

- (1) An existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement—
- (a) was not shown in a definitive map and statement, or
 - (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.

But this is subject to subsections (2) to (8).

- (2) Subsection (1) does not apply to an existing public right of way if—
- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
 - (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
 - (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
 - (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
 - (e) it was created by virtue of use by such vehicles during a period ending before 1st December 1930.

Changes to legislation: There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Section 67. (See end of Document for details)

- (3) Subsection (1) does not apply to an existing public right of way over a way if—
- (a) before the relevant date, an application was made under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) for an order making modifications to the definitive map and statement so as to show the way as a byway open to all traffic,
 - (b) before commencement, the surveying authority has made a determination under paragraph 3 of Schedule 14 to the 1981 Act in respect of such an application, or
 - (c) before commencement, a person with an interest in land has made such an application and, immediately before commencement, use of the way for mechanically propelled vehicles—
 - (i) was reasonably necessary to enable that person to obtain access to the land, or
 - (ii) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only.
- (4) “The relevant date” means—
- (a) in relation to England, 20th January 2005;
 - (b) in relation to Wales, 19th May 2005.
- (5) Where, immediately before commencement, the exercise of an existing public right of way to which subsection (1) applies—
- (a) was reasonably necessary to enable a person with an interest in land to obtain access to the land, or
 - (b) would have been reasonably necessary to enable that person to obtain access to a part of that land if he had had an interest in that part only,
- the right becomes a private right of way for mechanically propelled vehicles for the benefit of the land or (as the case may be) the part of the land.
- (6) For the purposes of subsection (3), an application under section 53(5) of the 1981 Act is made when it is made in accordance with paragraph 1 of Schedule 14 to that Act.
- (7) For the purposes of subsections (3)(c)(i) and (5)(a), it is irrelevant whether the person was, immediately before commencement, in fact—
- (a) exercising the existing public right of way, or
 - (b) able to exercise it.
- (8) Nothing in this section applies in relation to an area in London to which Part 3 of the Wildlife and Countryside Act 1981 (c. 69) does not apply.
- (9) Any provision made by virtue of section 48(9) of the Countryside and Rights of Way Act 2000 (c. 37) has effect subject to this section.

Commencement Information

- I1** S. 67 in force at 2.5.2006 for E. immediately after the coming into force of 2000 c. 37, ss. 47-50 by [S.I. 2006/1176, art. 6](#)
- I2** S. 67 in force at 16.11.2006 for W. by [S.I. 2006/2992, art. 2](#)

Changes to legislation:

There are currently no known outstanding effects for the Natural Environment and Rural Communities Act 2006, Section 67.

APPENDIX 59

S67 NERC 2006 Explanatory Notes

These notes refer to the Natural Environment and Rural Communities Act 2006 (c.16) which received Royal Assent on 30 March 2006

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Rights of way

Section 67: Ending of certain existing unrecorded public rights of way

181. This section extinguishes (subject to stated exceptions) unrecorded rights of way for mechanically propelled vehicles. This extinguishment prevents these rights being used to add new byways open to all traffic to the definitive map and statement for an area.
182. Some of the exceptions are set out in *subsection (2)*. Exception (a) ensures that existing rights of way for mechanically propelled vehicles are not extinguished if the main lawful use of the way for 5 years preceding commencement has been use for mechanically propelled vehicles. Exception (b) ensures that unclassified and other minor roads are not brought within the scope of the extinguishment. Exceptions (c) and (d) are identical to the exceptions in section 61. Exception (e) ensures that where rights were created by a qualifying period of use by mechanically propelled vehicles during a period prior to 1 December 1930, those vehicular rights are not extinguished.
183. Some more exceptions are set out in *subsection (3)*. These exceptions relate to cases where an application to record a public right of way for mechanically propelled vehicles has already been lodged. Under paragraph (a), all applications made under Part 3 of the 1981 Act to record rights for mechanically propelled vehicles which were lodged before the relevant date will be preserved and dealt with under the old law. The relevant date is 20 January 2005 (in England) and 19 May 2005 (in Wales) (see *subsection (4)*). Where such applications have been lodged after the relevant date and have reached the stage of being determined by the surveying authority they will also be processed under the existing law (see paragraph (b)), as will applications in situations where landowners need the public right of way for mechanically propelled vehicles in order to access their property (see paragraph (c)).
184. In addition, *subsection (5)* ensures that where an unrecorded public right of way for mechanically propelled vehicles is relied upon at the time of commencement to enable access to land to be obtained by a person with an interest in the land or by a lawful visitor to that land, that public right becomes a private right of way for mechanically propelled vehicles for the benefit of that land. (This will only be relevant if subsection (3)(c) does not apply.)
185. This section does not apply to areas in London where there is no definitive map and statement.

APPENDIX 60

S66 NERC 2006 Explanatory Notes

These notes refer to the Natural Environment and Rural Communities Act 2006 (c.16) which received Royal Assent on 30 March 2006

NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Rights of way

Section 66: Restriction on creation of new public rights of way

179. This section limits the creation of new public rights of way for mechanically propelled vehicles. It will prevent use over a period of 20 years by any vehicle from giving rise to a public right of way for mechanically propelled vehicles in the future. Instead, new public rights of way for mechanically propelled vehicular rights will be created only if they are expressly provided for or if they relate to a road intended to be used by mechanically propelled vehicles and constructed for that purpose under an enactment.
180. *Subsection (2)* is intended to ensure that where there is illegal use of a way by mechanically propelled vehicles, that use cannot give rise to “lower” public rights of way (such as footpath, bridleway or restricted byway rights).

APPENDIX 61

DETR Letters

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24-AUGUST 1998

Dear Chief Executive,

UNCLASSIFIED COUNTY ROADS

1. This letter is to advise you of the conclusions reached by Department of the Environment, Transport and the Regions on the interpretation of the term "unclassified county road" (UCR). This advice replaces previous advice, usually given in response to specific enquiries rather than a general statement, which was withdrawn in March 1998.
2. We have reached the following conclusions (with the usual proviso that the Secretary of State cannot give an authoritative interpretation of the law as only the Courts can do that) :
 - i) The Highways Act 1980 places a duty on highway authorities to maintain highways, which includes footpaths, bridleways and carriageways. Highway authorities have a further duty under section 36(6) of the Highways Act 1980 (and earlier Highways Acts) to prepare a list of highways maintained at public expense.
 - ii) The Local Government Act 1929 made provision for "unclassified roads", "classified county roads" and "county roads". The term "unclassified road" was made redundant by the Local Government Act 1972. Some routes may, however, be described as unclassified county roads (UCRs) on certain documents, including the list of highways maintained at public expense.
 - iii) In relation to an application under the Wildlife and Countryside Act 1981 to add a route to a definitive map of rights of way, the inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may

provide evidence of vehicular rights. However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights.

- iv) It would, therefore, be possible for a way described as a UCR on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way, provided the route fulfils the criteria set out in Part III of the Wildlife and Countryside Act.
3. Against this background, we have concluded that we cannot offer any guidance which is applicable in all cases on the rights that exist over routes known as UCRs. Any questions about the status of such routes, and the rights that exist over, will need to be resolved by authorities on a case-by-case basis.

SUSAN CARTER

APPENDIX 62

DETR LETTER



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OUR REF: CLEG/B/1/1/05
 YOUR REF: npw/E Roads

14 MAY 2001

UNCLASSIFIED ROADS

Thank you for your letter of 6 April regarding Unclassified County Roads (UCRs). I fully appreciate your concerns about the lack of clarity and advice on the management and classification of UCRs. However periodic meetings with experts and users have failed to reach a consensus on how they should be treated.

I will try to answer your questions in turn, using your paragraph numbers, but I am afraid I cannot comment on them all.

1. The List of Streets is a record of highways maintainable at public expense. It is not, in any way, proof of vehicular rights. Indeed, it should also include footpaths and bridleways, which are publicly maintainable.
2. The term UCR was created by the Local Government Act 1929 and denotes that the way concerned is a highway maintainable at public expense. Since the term was abolished by the Local Government Act 1972 all those involved have been trying to establish an effective way of identifying and classifying them. The last meeting to discuss UCRs looked at three options:
 - a) accepting the status quo;
 - b) review all UCRs individually;
 - c) make some presumptions that all could agree.

Despite attempts to make presumptions it was finally agreed that this could not be achieved and that the original advice in the 1998 guidance should stand. In other words each case must be assessed individually. Evidence would need to be provided to establish the existence of vehicular rights.



INVESTOR IN PEOPLE

3. I agree with your statement.
4. Under s36(6) of the Highways Act 1980 it is the duty of every county council to maintain a List of Streets. I have no knowledge of how these were compiled but as s36 does not specify the detail to be included in the List, I suspect that there are differences. However, as I have already said, generally, the List of Streets alone does not establish the status of a UCR.
5. It is considered that Handover Maps provide useful references for establishing the status of a way. It is a positive indication of what a Highway Authority then believed to be the status of roads listed. However, they were principally for internal administrative use. They were not available to the public and did not purport to be a record of rights. Consequently, while such evidence will clearly weigh in favour of a particular status, its evidential weight must be seen in context with other evidence.
6. There is no duty on a surveying authority to investigate the status of unclassified roads. If, however, you have discovered sufficient evidence pertaining to that route, such as that contained in Inclosure Awards, Tithe Maps, Finance Maps etc, you would have a duty to make a DMMO and investigate further.
7. I am afraid that I cannot answer this question. I have passed it to my colleagues who are responsible for the provisions and regulations of the CROW Act.
8. I accept your logic but I cannot comment further until I have an answer to your para 7 question.
9. I need to seek further advice on this issue. I think that it is unlikely that regulations will allow this to occur but I will respond as soon as I have the answer.
10. Once again I need to seek further advice.

I am sorry that I cannot be more helpful at this moment in time. Your letter has highlighted an issue that, although not ignored, has been considered too difficult to provide definitive guidance on in the past. This is clearly unhelpful and I will be asking the Countryside Agency to reconvene the Byways Working Group to discuss what guidance we can sensibly produce.

Yours sincerely



ALISON ELLIOTT

Street	Locality	Town
WITHERLEY ROAD SERVICE ROAD		ATHERSTONE
WITHY BANK	SYDENHAM	LEAMINGTON SPA
WITHY HILL ROAD		MIDDLETON
WITHYBROOK LANE		SHILTON
WITHYBROOK ROAD		STREET ASHTON
WITHYBROOK ROAD		WOLVEY
WITHYBROOK ROAD	BULKINGTON	BEDWORTH
WIXFORD ROAD		BIDFORD-ON-AVON
WIXFORD ROAD		ARROW
WIXFORD ROAD		EXHALL
WIXFORD ROAD		WIXFORD
WOBURN CLOSE	SYDENHAM	LEAMINGTON SPA
WOBURN DRIVE	BERMUDA	NUNEATON
WOLDS LANE		WOLVEY
WOLFHAMPCOTE LANE	SAWBRIDGE	WOLFHAMPCOTE
WOLFHAMPCOTE ROAD	NETHERCOTE	FLECKNOE
WOLSEY ROAD	BILTON	RUGBY
WOLSTON LANE		RYTON-ON-DUNSMORE
WOLSTON LANE		WOLSTON