

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).

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.

Section 66: Presumed dedication of restricted byways and use by pedal cycles etc.

186. Section 31 of the Highways Act 1980 enables a public right of way to be treated as having been created as a result of a period of use for 20 years. This section amends section 31 of the 1980 Act so as to ensure that use of a way by a non-mechanically propelled vehicle (such as a pedal cycle) is capable in appropriate circumstances of giving rise to a public right of way for non-mechanically propelled vehicles (a restricted byway).

Section 67: Presumed dedication and applications under section 53(5) of the 1981 Act

187. This section also amends section 31 of the Highways Act 1980. This time, the purpose is to clarify the application of section 31 in cases where an application is brought to modify the definitive map and statement so as to show a public right of way. Under section 31, the period of use is calculated by reference to the time when the right of the public to use the way is brought into question. Section 67 amends section 31 so as to make clear that, where the right of the public to use the way is brought into question by an application to modify the definitive map and statement, the date on which right of the public is brought into question is to be treated as being the date on which the application is made.

Section 70: Supplementary

188. *Subsection (1)* amends section 53(3) of the 1981 Act. The purpose of this amendment is to allow the recording on the definitive map and statement for the area of a newly discovered right of way which is a restricted byway.
189. *Subsections (2) to (7)* amend section 34 of the Road Traffic Act 1988. Section 34 makes it an offence to drive a mechanically propelled vehicle on a footpath, bridleway or restricted byway. The amendments create a limited exception for a person who has an interest in land or is a visitor to land and who drives on a restricted byway which came into being under the Countryside and Rights of Way Act 2000 and which before it became a restricted byway was in use for obtaining access to land. Subsection (7) clarifies that the phrase “visitor to the land” does not include those exercising their public rights in relation to access land under section 1 of the Countryside and Rights of Way Act 2000, or other public rights of access listed in section 15(1) of that Act.
190. *Subsection (8)* recognises that the new section 34A of the Road Traffic Act 1988, which was to be inserted by Schedule 7 to the Countryside and Rights of Way Act 2000 is not going to be brought into force, by repealing the relevant provision in Schedule 7. The Government announced in a written Parliamentary statement of 9 December 2003 (Hansard Vol. 415 Col. 80WS) that it would not be implementing section 34A. This is on the basis that the provision appears incompatible with Article 6(2) of the European Convention on Human Rights.

Section 71: Interpretation

191. This section provides various definitions for the purposes of Part 6. In particular, it is worth noting that the definition of a mechanically propelled vehicle excludes

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

electrically assisted pedal cycles. In the absence of this definition, the fact a pedal cycle is mechanically assisted might be thought to mean that it is a mechanically propelled vehicle.

Section 72: Traffic regulation on byways etc. in National Parks in England and Wales

192. This section inserts two new sections in the Road Traffic Regulation Act 1984 (sections 22BB and 22BC) giving each National Park authority power to make traffic regulation orders and other traffic-related orders under that Act. The orders must be in relation to roads that are in the National Park that are either byways, footpaths or bridleways shown in a definitive map and statement or unsealed carriageways.