



# 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.

#### **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—

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- (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.
- (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.

## **68 Presumed dedication of restricted byways and use by pedal cycles etc.**

- (1) Amend section 31 of the Highways Act 1980 (c. 66) (dedication of highway presumed after public use for 20 years) as follows.
- (2) After subsection (1) insert—
- “(1A) Subsection (1)—
- (a) is subject to section 66 of the Natural Environment and Rural Communities Act 2006 (dedication by virtue of use for mechanically propelled vehicles no longer possible), but
  - (b) applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles.”
- (3) After subsection (10) insert—
- “(10A) Nothing in subsection (1A) affects the obligations of the highway authority, or of any other person, as respects the maintenance of a way.”
- (4) After subsection (11) insert—
- “(12) For the purposes of subsection (1A) “mechanically propelled vehicle” does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (electrically assisted pedal cycle).”

## **69 Presumed dedication and applications under section 53(5) of the 1981 Act**

- (1) In section 31 of the 1980 Act, after subsection (7) insert—
- “(7A) Subsection (7B) applies where the matter bringing the right of the public to use a way into question is an application under section 53(5) of the Wildlife and Countryside Act 1981 for an order making modifications so as to show the right on the definitive map and statement.
- (7B) The date mentioned in subsection (2) is to be treated as being the date on which the application is made in accordance with paragraph 1 of Schedule 14 to the 1981 Act.”
- (2) The applications in relation to which the amendments made by subsection (1) apply include any application under section 53(5) of the Wildlife and Countryside Act 1981 (c. 69) which falls within section 67(3)(a), (b) or (c).

## **70 Supplementary**

- (1) In section 53(3) of the Wildlife and Countryside Act 1981 (modification of definitive map and statement in consequence of certain events)—

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- (a) in paragraph (b) (expiration of period raising a presumption of dedication), after “public path” insert “or restricted byway”, and
  - (b) in paragraph (c)(i) (discovery of evidence of right of way), after “public path” insert “, a restricted byway”.
- (2) Amend section 34 of the Road Traffic Act 1988 (c. 52) (prohibition of driving mechanically propelled vehicles elsewhere than on roads) as follows.
- (3) In subsection (2), omit “(subject to section 34A of this Act)”.
- (4) After subsection (2) insert—
- “(2A) It is not an offence under this section for a person with an interest in land, or a visitor to any land, to drive a mechanically propelled vehicle on a road if, immediately before the commencement of section 47(2) of the Countryside and Rights of Way Act 2000, the road was—
- (a) shown in a definitive map and statement as a road used as a public path, and
  - (b) in use for obtaining access to the land by the driving of mechanically propelled vehicles by a person with an interest in the land or by visitors to the land.”
- (5) In subsection (6), for “and section 34A of this Act do” substitute “does”.
- (6) In subsection (7), insert at the appropriate place in the alphabetical order—
- ““interest”, in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights;”.
- (7) After subsection (7) insert—
- “(8) A person—
- (a) entering any land in exercise of rights conferred by virtue of section 2(1) of the Countryside and Rights of Way Act 2000, or
  - (b) entering any land which is treated by section 15(1) of that Act as being accessible to the public apart from that Act,
- is not for the purposes of subsection (2A) a visitor to the land.”
- (8) In Schedule 7 to the Countryside and Rights of Way Act 2000 (c. 37), omit paragraphs 6 and 7.

## 71 Interpretation

- (1) In sections 66 and 67—
- “interest”, in relation to land, includes any estate in land and any right over land (whether exercisable by virtue of the ownership of an estate or interest in the land or by virtue of a licence or agreement) and, in particular, includes rights of common and sporting rights,
- “mechanically propelled vehicle” does not include a vehicle falling within section 189(1)(c) of the Road Traffic Act 1988 (c. 52) (electrically assisted pedal cycle), and

expressions defined for the purposes of Part 3 of the Wildlife and Countryside Act 1981 (c. 69) by section 66(1) of that Act have the same meaning as in that Part.

- (2) In each of sections 66 and 67 “commencement” means the commencement of that section; and in section 67 “existing” means in existence immediately before commencement.