

**YORKSHIRE DALES NATIONAL PARK AUTHORITY  
ACCESS COMMITTEE**

10<sup>th</sup> August 2006

**NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006 – PART 6 RIGHTS OF WAY**

**Purpose of report**

To inform members of the main content of the rights of way provisions in Part 6 of the Natural Environment and Rural Communities Act 2006 ( “the Nerc Act”)

**Background**

The rights of way provisions contained in Part 6 of the Nerc Act came into effect on 2<sup>nd</sup> May 2006 immediately following related provisions contained in the Countryside and Rights of Way Act 2000. The provisions arise from the Government's commitment to curtail what it considered to be the inappropriate use of rights of way by recreational motor vehicles and end the situation whereby historic use by non-mechanically propelled vehicles, such as horse and carts, can give rise to a right of use by modern mechanically propelled vehicles.

The Act seeks to limit access by motorised vehicles to the public Rights of Way network by restricting the creation of new rights of way and ending certain existing unrecorded public rights of way.

**Part 6 of the Nerc Act**

**1. Ending claims for public rights of way for mechanically propelled vehicles based on future use (s66)**

Section 66 of the Act ensures that use over a period of 20 years by mechanically propelled vehicles (“MPVs”) will not give rise to a public right of way for MPVs in the future. Instead, such rights can only be created if they are expressly provided for or if the rights relate to a road constructed for the use of MPVs under an enactment.

The section also provides that where there is illegal use by MPVs, this use cannot give rise to “lower” rights, such as a footpath or bridleway.

**2. Ending of existing unrecorded Public Rights of way for MPVs (s67)**

Section 67 ensures that existing public rights for MPVs are extinguished from every highway not shown on the definitive map and statement or only shown on the definitive map as a footpath, bridleway or restricted byway on 2<sup>nd</sup> May 2006 unless it can be shown that one of the exceptions in s67(2) or (3) applies. If one of the exceptions does not apply, applications to record a byway open to all traffic (“BOAT”) can only result in a route being recorded as a restricted byway. A restricted byway can only be used by pedestrians, horseriders, cyclists or horse drawn vehicles.

The exceptions in S67(2) are summarised below :

1. The way's main public lawful use for previous 5 years was by MPVs.

This exception is intended to except highways which are part of the normal road network.

2. The way was not on the definitive map but was on the list of streets.

The list of streets is the list that the Highway Authority is required to keep under s36(6) of the Highways Act 1980 of highways maintainable at public expense. This provision is intended to ensure that unclassified and other minor roads which may be little used by MPVs are not brought within the scope of extinguishment. It does, however, also mean that some unsealed routes within the National Park fall within this exception. On some routes, part of the route is on the list of streets whilst the remainder is not. Examples of where this exception may be relevant in the National Park are the routes known as Dawson Close and West Cam road.

Defra are aware of this issue and its implications for National Parks and point to the newly acquired powers of National Park Authorities to make TROs under s72 of the Nerc Act as a potential course of action available to deal with this situation.

3. It was created specifically for MPVs

4. It was created by virtue of use by MPVs before 1<sup>st</sup> December 1930. This is the date when it first became an offence to drive a MPV "off road". Users have suggested a list of routes where they believe this exception applies but have not yet provided any evidence in support.

Section 67(3) contains the following further exceptions to deal with transitional arrangements following implementation of the Act;

1. the way was subject to a DMMO application for a BOAT made before 20<sup>th</sup> January 2005;
2. the Authority has made a determination in respect of such an application for a DMMO for a BOAT ( even if the application was received after 20<sup>th</sup> January 2005);
3. the way was subject to an application received before 2<sup>nd</sup> May 2006 where landowners need a public right of way for MPVs in order to access their property.

A number of issues have arisen regarding interpretation of the transitional arrangements set out in S67(3). These are considered below.

(a) A number of application for BOATs were received by the Authority using the prescribed form and containing a map of the correct scale identifying the right of way claimed before the cut off date. Evidence in support of the application was however scant and the Definitive Map team would normally delay progressing such an application until further evidence was supplied by the applicant. However, for the purposes of S67 of the Nerc Act it is considered that such applications were properly made and, as such, fall within the exception . These could result in orders being made with BOAT status.

(b) The exceptions in S67(3) only relate to applications . It does not appear to relate to DMMOs which have been initiated by the Authority without an application by a member of the public. Therefore if an order has been initiated by the Authority prior to the cut off date without an application by a member of the public meeting the requirement of s67(3) it could be argued that it would not fall within this exception and could only now result in a Restricted Byway. Examples of this scenario are the orders made relating to Moorhead lane, Long Lane and Cam High Road .

(c ) If an application has been received prior to 20<sup>th</sup> January 2005 but only for footpath or bridleway status and evidence subsequently suggests that higher rights may exist, such an application would not enable a BOAT to be made since such higher rights would have been extinguished unless, of course, one of the other exceptions in s67(2) applies.

(d) If an application for a BOAT is made prior to 20th January 2005 and the order is not made, it is arguable that the claimed route will remain open to further applications for BOAT status in the future should additional evidence be discovered to support such a claim. If that subsequent claim is successful it could result in BOAT status rather than a restricted byway status. The original application will have kept the issue a live one.

### **3. Traffic Regulation powers ( s72)**

From 1<sup>st</sup> October 2006 the authority will have power to make TROs itself rather than relying on the Highway Authority. The power can be used in respect of any ways;

1. shown in the definitive map and statement as a BOAT, a restricted byway, a bridleway or a footpath, or
2. a carriageway whose surface, or most of whose surface, does not consist of concrete, tarmacadam, coated roadstone or other prescribed material.

The Authority is being proactive with regard to this new power and a draft document “ Management of the use of green lanes within the Yorkshire Dales National Park” is being considered by this committee.

### **Conclusion**

The provisions of Part 6 of the Nerc Act will significantly curtail the use of ways within the National Park by MPVs. However the provisions of section 67 are somewhat complex and the legal interpretation of some of the exceptions may be open to dispute. It remains to be seen how many applications are made which claim that one or more of the exceptions set out in s67 apply.

Defra have recently published a guidance note on Part 6 of the Nerc Act which members may find of use .It can be found at <http://www.defra.gov.uk/wildlife-countryside/pdfs/cl/nerc-act-p6-v2.pdf>

### **Recommendation**

Members are asked to note the report.

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### **Background documents:**

Management of the use of green lanes in the Yorkshire Dales National Park – draft for consultation  
Nerc Act 2006, Part 6: A guide for local authorities, enforcement agencies, rights of way users and practitioners  
24 July 2006