

Natural Environment and Rural Communities Act 2006 (NERC)

The NERC Act received Royal Assent on 30th March 2006. The act will help to achieve a rich and diverse natural environment and thriving rural communities and implement key elements of the government's rural strategy, published in 2004.

Key Elements of the Act

- The creation of a new body, 'Natural England', to enhance biodiversity and landscape with promoting access and recreation under the responsibility of one organisation, aiming to be of benefit to people through a more integrated approach. By 29 September 2006 Natural England will comprise all of English Nature (EN), the landscape, access and recreation elements of the Countryside Agency (CA), and the environmental land management functions of the Rural Development Service (RDS).
- Establish formally a 'Commission for Rural Communities', a strong national rural advisor, advocate and watchdog charged with ensuring that Government policies are making a real difference in tackling rural disadvantage.

Rights of Way Provisions set out in Part 6 of the NERC Act

Key rights of way provisions (in sections 66-71) were commenced on 2nd May 2006, although section 72 is yet to be implemented. A summary of each provision is as follows:

- **Section 66** restricts the creation of new public rights of way for mechanically propelled vehicles, unless they are created or constructed expressly for mechanically propelled vehicles.
- **Section 67** extinguishes unrecorded public rights for mechanically propelled vehicles on all highways not already shown on the Definitive Map and Statement as byways open to all traffic (BOAT), with the following exceptions:
 - Ways that have been lawfully used more by motor vehicles than other users in the 5 years prior to 2nd May 2006.
 - Ways that are recorded in the list of streets as maintainable at the public expense but are not recorded on the Definitive Map and Statement of public rights of way.
 - Ways that have been expressly created or constructed for motor vehicles.
 - Ways created by the construction of a road intended to be used by mechanically propelled vehicles.
 - Ways that had been in long use by mechanically propelled vehicles before 1930.
- **Section 68** deals with presumed dedication of restricted byways and use by pedal cycles, allowing such use to support a claim for a restricted byway.
- **Section 69** clarifies that an application for a Definitive Map Modification Order is, of itself, sufficient to bring a right of way into question for the purposes of section 31(2) of the Highways Act 1980.

- **Section 70** contains supplementary provisions.
- **Section 71** defines certain terms used in Part 6.
- **Section 72** gives National Park authorities the power to make traffic regulation orders on rights of way and carriageways with unsealed surfaces within National Park boundaries.

The aim is to stop the inappropriate motor vehicle use of byways by preventing claims for motor vehicle access on the basis of historical use by horse-drawn vehicles.

The NERC Act and Restricted Byways

Restricted Byways are a new category of highway which will help the Government to implement its policy on public vehicular rights of way by enabling ways with rights acquired by, or dedicated for, non-mechanically propelled vehicles to be recorded on the definitive map and statement as restricted byways.

Part 6 of the NERC Act as summarized previously has a provision in section 70 for restricted byways to be established and recorded on the definitive map and statement on the basis of either historic evidence or evidence of a qualifying period of use. This means that where a route carries historic vehicular rights, but rights for mechanically propelled vehicles are extinguished by section 67 of the NERC Act, it will be possible to record that route as a restricted byway. In this way the rights associated with these rights of way will better reflect their historic origins.

The NERC Act also provides a private right for people who need to access their land or property in cases where a public right of way for mechanically propelled vehicles has been extinguished by the Act. It also provides exemption from the offence under section 34 of the Road Traffic Act 1988 for persons with an interest in land who need to drive a mechanically propelled vehicle along a former RUPP in order to access that land as stated in Section 70 of the Act.

Further Information

<http://www.defra.gov.uk/ruraldelivery/bill/>

DEFRA Guidance:

www.defra.gov.uk/wildlife-countryside/pdfs/cl/nerc-act-p6-v2.pdf