

**Open Report on behalf of Richard Wills - Executive Director for Environment & Economy**

Report to: **Mid Lincolnshire Local Access Forum**  
Date: **18 July 2017**  
Subject: **Natural Environment & Rural Communities Act 2006**

**Summary:** Sheila Brookes has requested information about the effects of this Act on Public Rights of Way and particularly 4x4s.

**Recommendation(s):** That the views of the Forum be sought.

## 1. Background

In response to Sheila Brooke's request for more information on this Act the following is a brief description on the affect it has on public rights of way.

The Act is often seen as legislation that sought (amongst other things) to curtail opportunities to access the countryside in mechanically propelled vehicles (MPVs) and it does so in two ways. Firstly the Act restricts the creation of new public rights of way (including what could be termed "normal carriageways") for MPVs unless it is expressly provided for in a piece of legislation e.g. for the construction of major roads or if a road is built intended to carry such vehicles following powers in any enactment e.g. under the terms of s.38 of the Highways Act 1980 often concerning the building of estate roads in housing developments.

Secondly the Act extinguished all *unrecorded* MPV rights if such rights were not shown in a Definitive Map & Statement (as a Byway Open to All Traffic) or if the route on which unrecorded MPV rights may subsist is shown only as a footpath or bridleway. See handout mapping.

There are certain "saving clauses" which will if demonstrated to apply save the MPV rights and allow routes to be recorded as BOATs. The first set appear as s.67(2)(a) to (e):

- (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.

The second set appear as .67(3)(a) to (c):

- (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.

This second set concerns application to amend the Definitive Map & Statement through the Definitive Map Modification Order process following subsequent case law (the *R (Warden and Fellows of Winchester College) v Hampshire CC [2008]* and *Maroudas v Secretary of State for Environment, Food and Rural Affairs and Oxfordshire CC [2009]* judgments) which indicate that any DMMO application must strictly comply with the requirements of the Wildlife & Countryside Act 1981.

Finally there are provisions for those who relied on MPV rights that have now been extinguished to get to their property in that those rights are converted to private rights of access.

## **2. Consultation**

**a) Scrutiny Comments**  
N/A

**b) Executive Councillor Comments**  
N/A

**c) Local Member Comments**  
N/A

**d) Policy Proofing Actions Required**

N/A

**3. Background papers**

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

There are no background papers associated with this report.
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