

## Section 67(1) National Environment & Rural Communities (NERC) Act 2006

### ~ overview of exceptions to extinguishment of motor rights ~

Part 6 of the NERC Act 2006 sought to limit access by motorised vehicles to the Rights of Way network in England and Wales by extinguishing (with some exceptions) unrecorded motor vehicular rights, and by ensuring that in the future a long period of use by mechanically propelled vehicles cannot give rise to public motor vehicular rights.

Section 67(1) of the NERC Act extinguished public rights for mechanically propelled vehicles over ways which were “*not shown in a definitive map and statement*”, or “*was shown in a definitive map and statement only as a footpath, bridleway or restricted byway*”, with a number of exceptions which are set out in Section 67(2).

Please note, therefore, that public motor vehicular rights have not been extinguished over existing recorded Byways Open to All Traffic (BOATs) on the Definitive Map of Public Rights of Way.

Section 67(2) states that the extinguishment of mechanically propelled vehicles rights under Section 67(1) does not apply to an existing public right of way if:

- (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, *(i.e. ways that have been lawfully used more by motor vehicles than by other users [e.g. walkers, cyclists, horse riders and horse drawn vehicles], over the period 2001-2006)*
- (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), *(i.e. ways that are recorded on the List of Streets of highways maintainable at public expense, but are not recorded on the Definitive Map of Public Rights of Way. Thus, there is a presumption that motor vehicular rights have been extinguished over “dually recorded” routes (ways that are on both sets of records) unless one of the other exceptions at section 67(2) applies.*
- (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.  
*(i.e. when it first became an offence to drive off-road)*

Link to full legislation: <https://www.legislation.gov.uk/ukpga/2006/16/section/67>

End.