The question before the select committee under which we submit this evidence is: ‘The changing context since 2006 [11] Are there any further parts of the Act which are currently in force that need to be re-considered as a result of developments since 2006?’

From The Motoring Organisations’ Land Access and Recreation Association (LARA).

1. **Overview.**

   1.1. This submission of evidence concerns the operation and effect of parts of Section 67 of the Natural Environment and Rural Communities Act 2006: ‘Ending of certain existing unrecorded public rights of way.’

   1.2. While we cannot and do not seek to change Section 67 as a whole, there are two common outcomes of parts of Section 67 that cause disproportionate disruption to the public road network, which effects we believe were not the intention of Parliament.

2. **Our ‘Ask’ of the Select Committee.**

   2.1. To investigate and consider if these issues should be corrected by a minor amendment to the statute. Correction would not open the door to the use of previously unrecorded and unused roads, and would not undermine the overarching purpose of the Natural Environment and Rural Communities Act 2006.

3. **What is LARA?**

   3.1. LARA (the Motoring Organisations’ Land Access and Recreation Association) is an umbrella organisation and forum that brings together the leading national associations in motor sport and recreation. LARA promotes and advocates responsible and sustainable motor sport and recreation, and offers advice and training on all aspects of land use.

   3.2. Since its formation in 1986, LARA has actively participated in national, regional and local level committees and working groups, alongside all sorts of land management, conservation and recreation bodies, for example the Rights of Way Review Committee (chaired by Earl Lytton) and the Motoring Stakeholder Working Group, set up by the Minister for Rural Affairs.

   3.3. Members of the Select Committee may recall that LARA gave written and oral evidence regarding unsealed public highways to the Scrutiny Committee for the Deregulation Bill.
4. Background.

4.1. The path from the Countryside and Rights of Way Act 2000, via the Natural Environment and Rural Communities Act 2006, to the not-yet-commenced rights of way provisions in the Deregulation Act 2015, has been complex and, with hindsight, not as fair and effective as it might have been. We believe that there is scope to make relatively minor changes, which would mend considerable harm.

4.2. The Countryside and Rights of Way Act 2000 was principally about introducing the ‘right to roam’ for walkers, but it also brought in some rights of way provisions, particularly the blanket reclassification of roads used as public paths (RUPP) to restricted byways, and the ‘2026 cut-off’ after which no more historical-origin, unrecorded public rights of way can be recorded. This latter provision is finally set to be commenced by Deregulation Act regulations in due course.

4.3. After the commencement of the Countryside and Rights of Way Act 2000, there was something of a panic in the rights of way user organisations, which led in a few places to large numbers of applications for orders to record the ‘lost ways’. This led to a furore about supposed huge numbers of ‘new BOATs’ (that is, byways open to all traffic), and that triggered what became the Natural Environment and Rural Communities Act 2006.

4.4. LARA engaged with the then Rural Affairs Minister, proposing a ‘Pre-emptive Sustainability Assessment Process’ (P-SAP) and we believed that this scheme had some traction, but once the Natural Environment and Rural Communities Bill reached Parliament it got a head of steam, and the Act operated to extinguish almost all then-unrecorded public rights of way for mechanically propelled vehicles. It was, in our view based on experience now over eleven years, a blunt instrument.

5. The Harm Done.

5.1. As a consequence of the 2006 Act saving provisions for existing recorded public roads, we have ended up with hundreds of dead-end public roads.

5.2. Similarly, many roads are ‘broken’ as public rights of way for short distances, for historical reasons, or by recent drafting error.

5.3. As a result of provisions in the 2000 and 2006 Act we have, in places and pockets, loss of amenity for the responsible motoring public, degradation of routes for non-motor traffic, an increase in illegal ‘cowboy’ activity, and harm to the local rural economy.

6.1. In the Natural Environment and Rural Communities Act 2006, Parliament provided that unrecorded public rights of way with mechanically propelled vehicles should be extinguished, with limited exceptions.

6.2. The principal exceptions (as regards unsealed public roads) were in Section 67(1) - that a road was on the date of commencement shown in the definitive map and statement as a byway open to all traffic (BOAT); and in Section 67(2)(b) - that a road was shown in a highway authority’s Section 36(6) ‘list of streets’ (what is commonly called an ‘unclassified road’).

6.3. The Section 67(1) provides a saving for BOATs on the definitive map and statement at commencement. That is straightforward and we make no representation here.

6.4. The Section 67(2)(b) saving for roads on the Section 36(6) list is mostly straightforward, but there are cases across England and Wales where the interplay between the subsections has caused more extinguishment of public rights than was, we believe, intended. This is why:

6.5. Section 67(1)(b) operates to extinguish a public right of way for mechanically propelled vehicles where this, ‘was shown in a definitive map and statement only as a footpath, bridleway or restricted byway.’ Where a public road with a vehicular right of way, shown in the Section 36(6) list of streets (per Section 67(2)(b)), is also shown on the definitive map as a footpath, bridleway, or restricted byway (per Section 67(1)(b)), then that definitive map status ‘trumps’ the list of streets status, and the public right of way for mechanically propelled vehicles is extinguished.

6.6. There are many cases (hundreds, scattered randomly, across the country) where just part (and often a very short part) of a road on the list of streets is also on the definitive map and statement as a footpath, bridleway or restricted byway. The outcome is that the public right of way for mechanically propelled vehicles is broken and rendered useless as a through-route.

6.7. In making saving provisions for existing recorded public roads, we respectfully submit that Parliament did not intend to create hundreds of dead-end roads by the contrary-recording of only just a part of those roads.

6.8. Similarly, in some roads that are on the list of streets, and not on the definitive map and statement at all, the road is ‘broken’ on the list of streets, for short distances, for historical reasons, or by recent drafting error. Again, we respectfully submit that Parliament did not intend to destroy the integrity of the through-routes for a minor administrative matter of mis-recording.

6.9. We also ask the Committee please to consider the situation with former roads used as public path (RUPPs). Again, in many instances these roads were acknowledged
public vehicular roads, statutorily renamed as restricted byway by the Countryside and Rights of Way Act 2000, and then extinguished as motor roads by the Natural Environment and Rural Communities Act 2006. These were not ‘unrecorded’ public rights of way: they were known and well used.

6.10. As with footpaths and bridleways, some RUPPs / restricted byways were and remain also recorded on the list of streets. In effect, these roads were doubly-recorded public vehicular highways, yet that double recording is the reason that public rights have been extinguished.

6.11. Further, the original pattern of the recording of RUPPs, and the tardiness of some councils in statutorily reclassifying these, has meant that the application of the Natural Environment and Rural Communities Act 2006 has been a ‘postcode lottery’ as regards how many, and where, public vehicular minor highways are left.

7. **The Remedy.**

7.1. These issues could be corrected by a minor amendment to the statute. Correction would not open the door to the use of previously unrecorded and unused roads (which was the driving force for the Natural Environment and Rural Communities Act 2006) because these roads described in this submission, as through-routes, were previously recorded and in general use by the public before May 2006.

7.2. LARA would be pleased to send a representative to appear before the Committee to provide further supporting evidence and answer questions from Committee members.

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