Question 6: Arrangements and provisions for enabling and managing access to the countryside:

1. The provisions with respect to public rights of way have been partially effective in reducing the adverse effects on walkers of the legal use of unsealed routes by recreational motorised vehicles. However, there is a major defect in the Act, as described below in response to Question 11.

Question 6: how effective has Natural England been in promoting better access:

2. Generally effective with respect to access for walkers on open access land, but much less so on access using public rights of way (PRoW). The actions by the former Countryside Agency in providing advice and financial support to local authorities in the management of their PRoW networks seems to have almost ceased. For example, when Natural England responds to consultations on planning applications which affect PRoW, the potential effects and possible mitigation measures on wildlife conservation interests are extensively described, but the effects on current and future public access are not mentioned.

Question 11: Re-consideration of provisions in the Act as a result of developments since 2006:

3. Section 67(2)(b) excepted the extensive network of unsealed routes which are included on local authorities' Lists of Streets from the extinguishment of public motorised vehicular rights. This has resulted in many of these routes retaining such rights, with the inevitable result of continued damage to the surfaces of the routes and the spoiling of the enjoyment of walkers with noise and visual intrusion. In many cases, walkers are simply unable to use the routes, and local authorities have proved to be very reluctant to use the powers they have to prevent use by motorised vehicles. The government wishes to promote countryside recreation for health and well-being, and the use of non-vehicular routes for safe, sustainable transport, but retaining the public rights for use by motorised vehicles acts directly against these laudable aims. It would be a simple legislative change for the exemption from the extinguishment of these rights on unsealed, unclassified routes on the Lists of Streets, which are not part of what Defra calls the "ordinary roads network", to be removed.

4. The phrase "ordinary roads network" is from Defra's guidance on the implementation of the NERC Act (paragraph 30, Version 5, 2008). The quotation marks around the phrase used by Defra show that Defra did not quite know what it meant by it; however, it is plain that the paragraph in which it appears, and the subsequent paragraph, are attempting to make a distinction between, on one hand, those roads upon which the use of motors is both essential, uncontentious, and taken-for-granted, and, on the other, those unsealed ways we know generally as green lanes.

5. The Road Traffic Regulation Act (1984) defines an unsealed way as one whose "surface, or most of whose surface, does not consist of concrete, tarmacadam,
coated roadstone or other prescribed material" (s22BB (1)(b)(ii)). This definition provides the basis for the development of a distinction between unsealed routes and "the ordinary roads network" as defined by Defra.

6 All unsealed, unclassified county roads (UCRs), which are not part of the "ordinary roads network", should be automatically reclassified, by means of an amendment to current legalisation, as restricted byways, which do not carry public motorised vehicular rights. This would protect the enjoyment of the routes by non-motorised users: walkers, cyclists and horse-riders.

7 It should also be noted that the implementation of s67 NERC Act 2006 has resulted in many routes being recorded as part Byway Open to All Traffic (BOAT) and part restricted byway, sometimes changing from one to the other several times along their lengths. This is obviously a ridiculous situation, both legally and in practical terms, and legislation should be enacted such that any such routes are reclassified as restricted byways along their entire lengths.

8 Also, following on from the introduction by NERC of powers for National Park Authorities to make traffic regulation orders (TROs) to restrict the use of vulnerable routes by motorised vehicles, Natural England should provided guidance to National Park and other authorities on the making of such TROs.

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