

Open Report on behalf of Richard Wills - Executive Director - Development

Report to: **South Lincolnshire and Rutland Local Access Forum**
Date: **13 January 2010**
Subject: **Coastal Access: Natural England's Scheme: Consultation Version**

Summary:

A report on the latest Natural England consultation – Coastal Access: Natural England's Scheme: consultation version

Recommendation(s):

- i) That the forum notes the contents of the report.
- ii) That the coastal access sub group consider the consultation and provide a response on behalf of both Lincolnshire LAFs.

1. Background

Part 9 of the Marine and Coastal Access Act ("the Act") aims to improve public access to, and enjoyment of, the English coastline by creating clear and consistent public rights along the coast for most types of open-air recreation on foot. It will allow existing coastal access to be secured and improved and new access to be created at the coast where it does not now exist.

The Act places a duty on Natural England (NE) to use its powers to secure twin objectives, one relating to a long-distance walking route around the English coast, the other to an accessible margin of land in association with the route where people will be able to spread out and explore, rest or picnic should they wish to.

The Act also requires Natural England to prepare a Scheme setting out the approach they will take in discharging this duty. This report concerns the consultation version of the current Scheme, which builds on previous "outline" and "draft" versions published during 2008.

When consultation on this version of the Scheme is complete NE will then submit a final version of the Scheme to the Secretary of State for approval. Local implementation of the coastal access provisions of the Act can only begin once the Secretary of State's approval of the Scheme has been given.

The closing date for consultation responses is 5 February 2010.

2. Summary

The framework for alignment

The framework for alignment (Chapter 2) is similar to the corresponding chapter of the “draft” Scheme published in December 2008.

The land affected,

The trail - The trail will normally be four metres in width (2 metres either side of the centre line of the trail), but may be wider or narrower in places to coincide with physical features such as fences, walls, hedges or rocks.

The spreading room - The chosen route of the trail will determine the eligibility of any land to either side of it as spreading room. The foreshore and any other land on the seaward side of the trail will automatically become spreading room, unless it is excepted land. There will also be a discretionary power for Natural England to recommend any other land on the landward side of the trail as spreading room, by making the boundary coincide with a recognisable physical feature such as a fence, wall or woodland edge.

Excepted land - Under the Governments proposals the order would remove several categories of excepted land from Schedule 1 and add several new ones and provide for the trail to cross certain categories of access land on an access strip.

The new categories of excepted land will be;

- Land used for the purposes of a graveyard or cemetery
- Land used for the purpose of a school playing field

The following land categories will be excepted from the provisions for spreading room, but provision will be made for the trail to cross them on an access strip:

- Land which has been disturbed by any ploughing or drilling during the last 12 months
- golf courses
- Licensed camping or caravan sites

Highways including public footpaths will also be excepted from the coastal access rights. This will not prevent the trail from following a public footpath or other highway; nor will it prevent people from exercising their rights to use highways that fall within the wider spreading room.

The national restrictions which apply to other CROW access land are set out in Schedule 2 of CROW. The Government has proposed that Schedule 2 should be amended for the purposes of coast access in several ways. The main differences proposed by the Government for coastal access land are that:

- People are required to keep their dogs under effective control at all times.

- There is no national requirement on coastal land to keep dogs on leads between March 1st and July 31st - although NE may give directions to enable this arrangement to apply locally.
- A person may bring equipment on to coastal access land in order to exercise the common law public right to fish in the sea and tidal waters.

Natural England's coastal access reports

Under section 55A of the 1949 Act, Natural England may prepare a series of coastal access reports, each relating to a different stretch of the English coast, recommending to the Secretary of State the alignment of the trail and the extent of any spreading room on the landward side of that stretch.

In preparing the recommendations NE must have had regard to the following criteria:

- the safety and convenience of people using the trail;
- the desirability of the trail adhering to the periphery of the coast and providing views of the sea;
- the desirability of ensuring that, so far as is reasonably practicable, interruptions to the trail are kept to a minimum; and
- the need to strike a fair balance between the public interest in having a right of access and the interests of any owner or lawful occupier of land over which the right would exist.

Each report will include:

- a map of the proposed route for the trail;
- an indication of the extent of any spreading room,
- any access management that is necessary including any restrictions or exclusions.

Implementation

The guidelines for implementation are broadly similar to those in Chapter 3 in the corresponding chapter of the "draft" Scheme, but includes some further details on the NE intended approach to implementation. It clarifies in particular how NE intends to work with the access authority and other local stakeholders to ensure a balanced approach.

Dividing up the coast

NE will divide the coast into stretches, each of which will be the subject of a separate coastal access report to the Secretary of State.

Working with access authorities

NE will work closely with access authorities throughout the process of alignment and establishment of the coastal access rights, combining a nationally consistent approach with a detailed understanding of local circumstances.

Stages of implementation

Stage 1 – Identifying issues and opportunities The purpose of this stage is to achieve clarity about the main issues and opportunities on each stretch of coast. The process will also highlight priorities for a range of different interests, for people with reduced mobility or where there might be possibilities to improve access for horse riders or cyclists.

Stage 2 – Walking the course Affected land will be visited to discuss the options for alignment with landowners and farmers. This will enable NE to understand any specific factors and enable owners and occupiers to raise any particular concerns or suggestions. NE will also discuss other opportunities with owners and occupiers, such as possible improvements for horse riders or cyclists, where this is relevant.

Stage 3 – Draft proposals Natural England will prepare draft proposals detailing how the coastal trail and spreading room should be aligned on a particular stretch of coast based on all of the discussions and walking the coast.

Stage 4 – Consultation on draft proposals Initial conclusions will be made available for comment by anyone wishing to do so. This will enable wider interests, local people and others to see how NE propose to implement the trail, as well as enabling landowners and occupiers and other stakeholder groups to comment on the overall conclusions.

Stage 5 – Final report Analysis of all the comments received on the draft proposals and consideration of the requirement for modifications. NE may decide on the basis of comments received to return to an earlier stage of the alignment process if that is necessary in order to understand the issue fully.

Stage 6 – Representations and objections The purpose of this stage is to enable formal representation regarding the final report. In addition, any owner, tenant or lawful occupier of affected land will be able to make a formal objection regarding the final report. Any valid objections will trigger an independent review of that specific aspect of the proposals by an “appointed person” which the Government has confirmed will be the Planning Inspectorate (PINS).

Stage 7 – Consideration and decision by the Secretary of State The Secretary of State will consider whether to approve NE’s final coastal access report for a particular stretch either in full or with modifications to the proposals.

Stage 8 – Preparation and commencement of rights

Any necessary establishment works will be undertaken and any agreed restrictions and exclusions will be put in place before the public access rights are brought into force. The Secretary of State will then publish an order to bring into force the coastal access rights on a particular stretch of coast on a specified date.

Stage 9 – Maintenance, management and monitoring Once the new rights are in place and operating there will be an ongoing need for maintenance, management and monitoring along each stretch of coast. NE’s report to the

Secretary of State will have set out what they expect the requirements to be for the stretch in question, as well as an estimate of the ongoing costs for that.

Stage 10 – Reassessment Natural England may reassess the coastal access regime on any part of the coast at any time after the Secretary of State has approved a report if the circumstances require it. The scope of any reassessment will typically be very focused on a specific section of coast.

Public interests

The public interests are broadly similar to those in Chapter 4 of the “draft” Scheme, but include significant new details about the intended approach to:

- Convenience of the trail, in particular its overall design and its use by people with reduced mobility
- Spreading room, in particular the intention to recommend spreading room on the landward side of the trail
- Coastal change, in particular to clarify the intended use of special provisions in the Act which allow the trail to adapt.

Interests of owners and occupiers

The public interests are similar to those in Chapter 5 of the “draft” Scheme published in December 2008, but includes more detail about the approach to built development around the coast. The flexible alignment powers under the Act should in general ensure that coastal access rights will not interfere in any significant way with the operational needs of businesses working on the coast.

Some work environments will be automatically excepted from the coastal access rights, for example land subject to military byelaws and land in use for quarrying.

Income

Where businesses wish to charge visitors for specific goods, services or facilities, the coastal access rights will not prevent it i.e. charges for parking, deck-chair hire or entry to attractions. However, businesses will not be able to charge the general public to enter land where the coastal access rights apply, for activities falling within those rights.

Privacy

There are specific CROW provisions intended to protect privacy. Buildings, gardens and parks, and the area surrounding buildings (known as curtilage) will normally be excepted from any new coastal access rights, though the many existing rights of way through such areas will remain in force and the trail may make use of them.

Striking an appropriate balance

The latest version introduces a new chapter ‘Striking a balance’(Chapter 6). It explains in much more detail than the “draft” Scheme:

- The range of techniques available to ensure that NE’s recommendations on coastal access strike a balance between all interests in the affected land.

- The principles used to decide which option is appropriate in each circumstance.

This chapter explains how NE will gauge the need for intervention in relation and the principle of the least restrictive option . It also describes the range of solutions available including:

- Alignment solutions
- Informal management techniques
- Directions to restrict or exclude access

Coastal land cover and landforms

A more detailed explanation of Coastal land cover and landforms is set out in the current scheme (Chapter 7) than the “draft” Scheme. It focuses on the balance between public interests, in particular the balance to be struck between coastal access and environmental objectives. It includes new sections on coastal land cover and landform not considered in the “draft” Scheme.

Chapter 7 indicates Natural England’s likely approach to the coastal access duty in relation to various types of land cover and landform (i.e. sand dunes, woodlands) which occur on the English coast, taking into account the key principles of public interest.

Coastal land use issues

Coastal land use issues are covered in much greater detail in Chapter 8 than in the “draft” Scheme. It focuses on the balance required between private and public interests and includes new sections on land use issues not previously considered.

The chapter explains the likely approach to the coastal access duty in relation to common coastal land use issues, in terms of the private interest factors involved in a wide variety of land uses including livestock, crops, visitor attractions, private houses, hotels, holiday properties, parks and gardens and military use.

Additional considerations at estuaries

The consideration given to the trail in the vicinity of estuaries is similar to the information provided in the “draft” Scheme but includes more detail about the assessment at estuaries of:

- ferry services
- recreational benefit from coastal access

There is no requirement in the Act for the trail to extend up any river estuary further than the seaward limit of the estuarial waters. Estuarial waters occur where the fresh water of a river mixes with salt water from the open sea. Beyond the seaward limit, Natural England has discretion to extend the trail further upstream on either side (or both) as far as:

- the first bridge or tunnel with pedestrian public access; or
- a specified point between the seaward limit and the first bridge or tunnel.

3. 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

4. Appendices

| These are listed below | |
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| Appendix A | Coastal Access: Natural England's scheme: consultation version (This was previously circulated to the Local Access Forum for consideration at its last meeting). |

5. Background papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

This report was written by Andy Savage - Senior Countryside Access Officer, who can be contacted on 01522 782070 or andrew.savage@lincolnshire.gov.uk.