



Department
for Environment
Food & Rural Affairs

Marine and Coastal Access Act 2009

Natural England's coastal access reports: Guidance on the Secretary of State's decision making process

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1. Introduction

1.1 The coastal access provisions in Part 9 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) introduce a new right of public access to the English coast so that people can walk along the length of the coast and have a right of access to other coastal land for outdoor recreation. Before the right of access can come into force on a particular stretch of coast Natural England will submit a coastal access report (a “report”) to the Secretary of State setting out its proposals for access on that stretch of coast.

1.2 Before deciding whether to approve the proposals in a report the Secretary of State must consider any representations and objections that Natural England has received about the proposals. Anyone may make representations but certain persons – owners, tenants and occupiers of affected land – may also make objections which will be considered by an independent person appointed for this purpose. The appointed person will be an Inspector from the Planning Inspectorate.

1.3 This guidance sets out the legislative background and the process that follows after Natural England’s submission of a coastal access report to the Secretary of State. It includes guidance on the process for making and considering representations and objections and identifies the roles that the Secretary of State, the appointed person and Natural England will play. The initial guidance was issued in January 2011 and revised in April 2011. It has been further revised in the light of the recommendations from the Department’s lessons learned report into the implementation of coastal access at Weymouth Bay. Some small changes have also been made to the forms for objections and representations included at Annexes C to E of this guidance.

2. Relevant legislation

Marine and Coastal Access Act 2009

2.1 The provisions for coastal access in the 2009 Act aim to improve public access to and enjoyment of the English coast, providing secure and consistent access rights for people to enjoy the coast with greater confidence and certainty. It will do this by making a margin of coastal land available to the public for recreation around the coast of England. Within this margin people will be able to walk a long- distance route along the length of the English coast, although there may be gaps in some places (for example, where the route may not extend up a river estuary to a crossing point). In addition there will be access to suitable coastal land such as beaches, cliffs, rocks and dunes.

2.2 The 2009 Act places a duty on the Secretary of State and Natural England to secure a long-distance walking route along the length of the English coast, together with a wider margin of coastal land to which the public have a right of access for recreation. In meeting the duty Natural England and the Secretary of State must have regard to three considerations:

- (a) the safety and convenience of those using the coastal route,
- (b) the desirability of the route adhering to the periphery of the coast and providing views of the sea, and
- (c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.

In addition, the Secretary of State and Natural England must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land. A relevant interest is defined in section 297(4) of the 2009 Act as the land owner, a tenant or anyone otherwise in lawful occupation of the land.

2.3 The legislation is implemented by Natural England, who are proposing a series of long-distance routes around the coast of England under powers contained in the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), as amended by the 2009 Act. Natural England is developing its proposals for a route in consultation with local people including landowners and managers, the local access authority and the local access forum. Natural England must also consult English Heritage on historic or other associated interests, the Environment Agency on matters of flood defence and coastal erosion, and the Secretary of State on issues relating to defence and national security. In addition to the requirements for consultation set out in the 2009 Act Natural England is also holding a public consultation on its draft proposals before finalising a report.

2.4 Natural England must develop its proposals for a route in accordance with a statutory Scheme approved by the Secretary of State under section 298 of the 2009 Act¹. The route will be positioned wherever practicable so that it can always remain open but, where necessary, it can be made subject to temporary diversions, for example to avoid disturbance to nesting birds, or for the purpose of carrying out works. The route will also be able to roll back where the coast is subject to erosion. Following the extensive consultation process Natural England will submit a report to the Secretary of State proposing a route for a particular stretch of coast.

¹ Coastal Access: Natural England’s Approved Scheme - March 2010 (the Scheme is currently under review by Natural England. Until a revised Scheme is approved by the Secretary of State the current version is the legally correct version to follow. It is available at <http://naturalengland.etraderstores.com/NaturalEnglandShop/NE269>

2.5 There will then be an opportunity for the public to make representations about the proposals, and for owners and occupiers of affected land to make objections about the proposals. The Secretary of State must consider any representations and objections before making a decision on whether to approve the proposals contained in Natural England's report.

Countryside and Rights of Way Act 2000

2.6 When the Secretary of State has approved a report setting out proposals for access on a particular stretch of coast any necessary infrastructure, such as gates or bridges or other works such as signage indicating the position of the route, will be put in place on the ground. The public right of access will then commence on a date set by an Order made by the Secretary of State. The right of access will be that provided by Part 1 of the Countryside and Rights of Way Act 2000 ("the CROW Act"). The right of access is for the purpose of open-air recreation on foot and includes activities such as walking, sightseeing, bird watching, picnicking, climbing and running.

2.7 On 6 April 2010 the Access to the Countryside (Coastal Margin) (England) Order 2010² came into force amending the CROW Act for land which is coastal margin. The effect of this coastal margin Order is that the approval of a coastal route will mean that land two metres either side of the line of the route, all land to the seaward of the route, and any of the typical coastal land types such as beaches, dunes and cliffs which are to the landward side of the route, will normally be available to the public under the right of access contained in section 2(1) of the CROW Act. The process of fixing the line of the route will therefore have wider significance than just for the route itself as it will lead to access being available to certain land either side of the line of the route. Natural England may also recommend in its report that other land to the landward side of the route should be included within the coastal margin, to take the access land up to a suitable boundary (such as a fence) or other physical feature.

2.8 The CROW Act provides a right of access on foot to access land (open country, registered common land, and land dedicated for access under section 16 of the CROW Act) and to coastal margin identified in an approved coastal report. The CROW Act contains a number of safeguards to minimise interference with private property rights without undermining the recreational, economic and health benefits which the right of access will bring. These safeguards include the categories of excepted land to which the right of access does not apply. They are set out in Schedule 1 to the CROW Act. The coastal margin Order amends Schedule 1 so that there are some different categories of excepted land for coastal margin to those for access land (see Appendix F to this guidance for a description of the categories of excepted land).

² SI 2010 No.558 http://www.opsi.gov.uk/si/si2010/uksi_20100558_en_1

2.9 The coastal margin Order (see paragraph 2.7 above) amends some of the general restrictions in Schedule 2 to the CROW Act as they apply to coastal margin. It also amends the provisions at sections 22 and 23 of the CROW Act which means that the right for landowners and others to close access land for various reasons without the need to seek the agreement of Natural England or a national park authority (as appropriate) does not apply to coastal land.

National Parks and Access to the Countryside Act 1949

2.10 Natural England will submit its reports proposing a coastal route to the Secretary of State under the long distance route powers in Part 4 of the 1949 Act, as amended by the 2009 Act. Schedule 19 of the 2009 Act inserts a new Schedule 1A to the 1949 Act setting out the procedure to be followed when a report is submitted to the Secretary of State, supplementing the procedures set out in section 52 of the 1949 Act, and for the making and considering of objections and representations about reports.

2.11 Once Natural England has submitted a report recommending a coastal route to the Secretary of State the report will be advertised and anyone may make representations to Natural England about the proposals set out in that report. The Secretary of State must consider any representations before reaching a decision whether to approve the proposals in the report. Further guidance on making and considering representations is given in chapter 4 below.

2.12 In addition, those with a relevant interest in affected land may make objections about the proposals in a report. An objection may be made on a number of grounds which are specified in paragraph 3(3) of Schedule 1A to the 1949 Act (see Appendix A to this guidance). The Secretary of State must refer an objection to an appointed person for consideration. The appointed person will be an Inspector from the Planning Inspectorate. The appointed person must decide whether the proposals set out in the report fail to strike a fair balance in respect of the matters specified in the objection. They must then report to the Secretary of State on their conclusions and recommendations, including any modifications to the proposals that in their view would remedy a failure to strike a fair balance. The Secretary of State must consider any objections and the recommendations of the appointed person before reaching a decision on whether to approve the proposals in the report. Further guidance on making objections is given in chapter 5 below. Chapter 6 covers the role of the appointed person in considering objections.

2.13 The Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010 came into force on 1 October 2010. The Regulations provide further detail on the process for the making and consideration of representations and objections in addition to that set out in Schedule 1A to the 1949 Act, including the procedures for hearings and inquiries.

³ SI 2010 No. 1976 available at http://www.opsi.gov.uk/si/si2010/uksi_20101976_en_1

3. Consultation on Natural England's coastal access reports

Advertising a report

3.1 When Natural England submits a report to the Secretary of State with its proposals for a route along a particular stretch of coast, Natural England must also advertise the report to draw it to the attention of the public and must invite representations about the proposals. Natural England must do this on the date the report is submitted to the Secretary of State, or as soon as reasonably practicable after that date. Natural England is required to advertise the report in one or more local or regional newspapers in the area to which the report relates, on its own website, and in any other manner that it considers appropriate to draw it to the attention of the public. This might include asking the local authority to advertise the report on its website and seeking to make copies available for public viewing in the offices of the local authority and in local libraries. Other opportunities may also be considered, for example posting a notice at a suitable location, such as a public car park, along the proposed route itself, where this is practical and can be done within reasonable costs.

Notices about a report

3.2 In addition to advertising a report to the public, Natural England must also take reasonable steps to specifically notify certain persons about the report. These are the persons with whom Natural England is required by the legislation to consult with before it prepares its report to the Secretary of State. This includes owners and occupiers of affected land and a number of other organisations and individuals considered to have a particular interest in public access and who are specified in the regulations (see Appendix B to this guidance for a full list). In the interests of efficiency the notice will normally be sent by email, but, in the case of notices to persons with a relevant interest in affected land (owners and occupiers), electronic communications such as email will only be used where the person has agreed with this approach. The notice must be given in the format which is specified in the Regulations⁴.

3.3 Anyone may make representations about a report and, in addition, where a person has a relevant interest in affected land, they may also make objections to proposals in the report. More detailed guidance on representations and objections, on completing the forms, and what happens next is provided in the following chapters.

⁴ Schedules 2 and 3 of SI 2010 No.1976

4. Making a representation about a coastal access report

What is a representation?

4.1 Any person may make a representation about a proposal in a report. A representation may be made on any grounds and may include statements in support of the proposals as well as against them. Natural England must send in full a copy of any representations made by the organisations and persons specified at paragraphs 2(2)(b) – (f) of Schedule 1A to the 1949 Act (see Appendix B to this guidance), and a summary of all other representations, to the Secretary of State together with its own comments on the representations. The Secretary of State must take all the representations and Natural England's comments on them into account in reaching a decision on Natural England's proposals.

How to make a representation

4.2 Representations must be made in writing and on a form which is specified in the Regulations⁵. A sample form can be found at Appendix C to this guidance. The completed form may be submitted to Natural England either electronically or in hard copy. Representations which are made in formats other than on the specified form, such as in a letter or by telephone, will not be considered. If a person wishes to make more than one representation about a particular piece of land in a report the representations may be made on the same form. However, if the representations are about different pieces of land the representations should be made on separate forms.

4.3 The advertisement published by Natural England to inform the public that the report has been published (see paragraph 3.1) will state where copies of the form can be obtained. It will also include the appropriate Natural England address (both electronic and postal) that a completed form should be sent to. A copy of the appropriate form on which to make representations will also be made available to those persons who must be specifically notified about the report.

Timescale for making representations

4.4 All representations must be received by Natural England within eight weeks of the date on which the report is first advertised on Natural England's website. The advertisement and the form will include this date. Natural England is required by the Regulations to both advertise a report and give notice of a report on or as soon as

⁵ Schedule 5 of SI 2010 No.1976

reasonably practicable after the date on which that report is submitted to the Secretary of State. This means in practice that we expect Natural England to aim to put a report on its website and send out notices within two working days of the date Natural England submits the report to the Secretary of State. Advertisements should be inserted in one or more local or regional newspapers on the first possible date following website publication, and we would expect hard copies to be made available for inspection at suitable locations to the same timetable.

Advice on completing the form

4.5 To enable Natural England and the Secretary of State to properly consider representations it is important that the land to which they refer is clearly identified in the representation. The form includes a question about this and anyone making a representation is advised to provide as much information as possible. The information provided should include the relevant map number from the report and the relevant route section number from that map. It may add clarity to attach a copy of the map with the relevant location clearly pinpointed, and to add any further description that will help identify the land concerned. The form also asks that the section of the report to which the representation relates is identified— here the particular chapter and paragraph number(s) in the report are likely to be the most effective indication, but the relevant text may also be quoted in addition to the chapter and paragraph numbers.

4.6 The form asks for information about who is making the representation including whether it is made by, or on behalf of, an organisation or person named under paragraphs 2(2)(b) - (f) of Schedule 1A to the 1949 Act (see Appendix B to this guidance). Natural England should have formally notified each of the organisations and individuals within the relevant categories about the publication of the report and made available a copy of the form on which representations must be made. If not responding as, or on behalf of, one of these organisations or persons, the 'Other' box should be ticked on the form. Persons with a relevant interest in affected land, i.e. an owner, tenant or other legal occupier, should also note this on the form where requested.

4.7 The form is designed to draw out the necessary information to allow Natural England and the Secretary of State to give proper consideration to your representation so it is in your interest if you are making a representation to provide as much other detailed documentation or evidence to support your case.

4.8 Additional pages may be attached to the form if there is not enough space on the form to fully make a case. Any additional material you send to support your case should be clearly listed on the form and clearly identified.

4.9 Anyone submitting a representation is also advised to read and follow any instructions provided by Natural England alongside the publication of a report on its website.

What happens once a form is submitted?

4.10 Representations must be received by Natural England at the address given on the form by the date specified on the form. The date will allow eight weeks from when the report is first advertised on Natural England's website. The completed form may be submitted by email or in hard copy.

4.11 Once the closing date for receipt of representations has passed, Natural England will send in full to the Secretary of State representations made on behalf of those bodies and persons listed under paragraphs 2(2)(b) – (f) of Schedule 1A to the 1949 Act (see Appendix B to this guidance), along with Natural England's comments on them. Representations from all other persons will be summarised by Natural England in a report sent to the Secretary of State along with Natural England's comments on them. The Secretary of State must consider all the representations, and Natural England's comments, in reaching a decision on the proposals set out in the relevant report.

Withdrawing a representation

4.12 A representation may be withdrawn at any time by giving notice in writing to Natural England.

Representation process

4.13 Appendix H to the guidance sets out a flow diagram summarising the representation and objections process.

5. Making an objection about a coastal access report

What is an objection?

5.1 While anyone can make a representation about proposals in a report, only certain persons who are specified in the legislation (see paragraph 5.2) can make an objection. Unlike representations, an objection must be based on certain grounds which are:

- (a) where the proposed route goes as shown on a map in Natural England's report
- (b) where the route may "roll back" where it is a coastal area which may be subject to significant erosion or other forms of coastal change
- (c) where, in addition to the ordinary route, an alternative route is or is not included in Natural England's report

(d) where Natural England has either included, or failed to include, a proposal for the landward boundary of the coastal margin to align to a boundary with a more physical feature such as a fence or wall

(e) where Natural England has either included, or failed to include, a proposal for any exclusions or restrictions on access that it intends to put in place if its coastal access proposals are approved by the Secretary of State

(f) where Natural England has either exercised, or failed to exercise its discretion to extend the route to any point between the open coast and the first public foot crossing point.

Fuller details of these grounds, as specified in paragraph 3(3) of Schedule 1A to the 1949 Act, are set out in Appendix A to this guidance.

Who can make an objection?

5.2 Anyone with a relevant interest in affected land may make an objection about proposals in a report. A person with a “relevant interest” is defined in section 297(4) of the 2009 Act and means someone who is an owner or tenant of the land, or other lawful occupier. The term “person in lawful occupation of the land” in this section of the 2009 Act is intended to cover those in full, exclusive occupation of the land, or someone with possessory title to the land. It does not include an owner of an easement over the route, or someone merely entitled to some uses of land occupied by another person. The term “affected land” includes any land over which the route, or an alternative route, is proposed, and any other land which will be coastal margin under the proposals in the report. It does not apply to land within the wider margin which is excepted land but will always apply to the route and any alternative route even where these cross excepted land, for example where the route follows an existing right of way (see Appendix F to this guidance for a description of the categories of excepted land.)

5.3 Natural England must take reasonable steps to give notice to all persons with a relevant interest in affected land that it has submitted a report to the Secretary of State and published it on its website. They will do so using a form which is specified in the Regulations⁶. This means that anyone who is entitled to make an objection should be notified by Natural England. Normally, Natural England will have already been in touch with owners and occupiers of affected land to discuss the proposals for a coastal route, but it is recognised that there may be circumstances where it may not always have been possible for Natural England to identify the owner or occupier or where it may not be possible to contact them, for example because their current address is unknown. On the other hand if you think you should have been sent a notice about a report because you have a relevant interest in affected land and are entitled to make an objection, but you have not been contacted, you should get in touch with Natural England as soon as possible.

⁶ Schedule 2 of SI 2010 No.1976

Timescale for making objections

5.4 Natural England is required by the Regulations to both advertise a report and give notice of a report on or as soon as reasonably practicable after the date that report is submitted to the Secretary of State. This means in practice that we expect Natural England to aim to put a report on its website and send out notices within two working days of the submission of the report to the Secretary of State.

5.5 All objections must be received by Natural England within eight weeks of the date on which Natural England first advertises the report on its website. The form will include the date by which objections must be received, and the address, both postal and electronic, to which completed forms should be sent. A copy of the form on which an objection must be made will be made available to persons with a relevant interest along with the notice alerting them to the publication of the report.

Advice on completing the form

5.6 Objections must be made in writing and on a form which is specified in the Regulations⁷. A sample form can be found at Appendix D to this guidance. A completed form may be submitted electronically or in hard copy. Objections made in formats other than on the specified form, such as in a letter or by telephone, will not be considered. If a person wishes to make more than one objection about a particular piece of land in a report the objections may be submitted on the same form. However if the objections are about different pieces of land each objection should be made on a separate form.

5.7 As with representations it is important that the land to which the objection relates is clearly identified, along with the relevant section of the report, so the advice at paragraph 4.5 also applies to completing a form for an objection.

5.8 An objection must be made on the ground that proposals in the report fail to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land, and in respect of one or more of the grounds which are specified in paragraph 3(3) of Schedule 1A to the 1949 Act. These grounds are listed and explained at Appendix A to this guidance.

5.9 The objection must specify on which of the ground(s) in paragraph 3(3) of Schedule 1A the objection is being made. The grounds are listed on the form and the box or boxes which indicate the ground(s) relevant to the objection should be ticked. The objection must also explain why the proposals in the report fail to strike a fair balance in respect of the ground or grounds that have been chosen. The form is designed to draw out the necessary information to allow the person appointed to determine the objection and the Secretary of State to give proper consideration to your objection, so it is in your interest if

⁷ Schedule 4 of SI 2010 No.1976

you are making an objection to provide as much other detailed documentation or evidence to support your case.

5.10 Additional pages may be attached to the form if there is not enough space on the form to fully make a case. Any additional material you send to support your case should be clearly listed on the form and clearly identified.

5.11 In making an objection, the objector may wish to suggest modifications to the particular proposal to which to objection relates, and which in their view would remedy or mitigate the objection. For example, the objector may wish to propose an alternative position for the route or to propose restrictions that would address land management concerns. However, where such modifications are put forward they must meet the criteria which are set out in paragraph 3(6) of Schedule 1A to the 1949 Act. The criteria are that:

- (a) the proposed modification is practicable,
- (b) it takes account of certain considerations that Natural England must also have regard to in making its proposals. These are:

the safety and convenience of those using the coastal route,

the desirability of the route being close to and providing views of the sea,

the desirability of minimising interruptions to the route, and

where appropriate, the considerations as regards estuaries set out at section 301(4) of the 2009 Act,

- (c) it is in accordance with Natural England's Scheme setting out the approach they will take in implementing coastal access⁸.

5.12 Anyone submitting an objection is also advised to read and follow any instructions provided by Natural England alongside the issue of a notice and publication of a report on its website.

What happens once a form is submitted?

5.13 Any number of objections may be submitted about a particular piece of land in a report. All objections received by Natural England must be forwarded to the Secretary of State, who must refer each objection to the person appointed to consider the objection. The appointed person will be an Inspector from the Planning Inspectorate. The inspector will decide if the objection is admissible, in so far as it meets the requirements for objections (see paragraphs 6.2 – 6.3), and will notify the person who made the objection of that decision, be it that the objection is admissible or otherwise. The inspector will also

⁸ See note 1

notify the Secretary of State and Natural England of the decision. If the objection is deemed admissible the inspector will then go on to consider the substance of the objection itself. When the inspector has reached a conclusion he will report to the Secretary of State setting out his decision and recommendation(s). The Secretary of State must take an admissible objection and the report of the inspector into account in reaching a determination on Natural England's proposals for a coastal route. Further detail on the appointed person's consideration of admissible objections is set out in chapter 6 below.

Change of objector

5.14 Although only a person with a relevant interest in the land can make an objection, they can instruct a solicitor or other person to act as their agent at any stage in the process. There may also be other changes to the status of the person making an objection before the deadline for making objections has passed. For example if the objector dies between the lodging of the objection and its determination, where the relevant interest was by virtue of ownership of the land or a leasehold interest in it, the objectors' executors or administrators may proceed with the objection or withdraw the objection.

5.15 Where the objector sells the property between making an objection and the determination of the report by the Secretary of State, the Regulations enable him to withdraw his objection at any time by giving notice in writing to Natural England, which he is advised to do. This is set out in Regulation 4(5)⁹.

5.16 Where completion of the sale of the property takes place before the deadline for making objections has passed, the purchaser will be able to make an objection. Where completion takes place after the passing of that deadline, the purchaser will not be able to make an objection, unless he was allowed into occupation of the land between the exchange of contracts and completion and had made an objection before the passing of the deadline. However, he should have been informed of the proposals by the vendor in answer to the inquiries before contract, and may have been alerted to Natural England's report by the notices in the local press. In these circumstances, the purchaser should take steps to inform the Planning Inspectorate of his interest in the land, and provide a copy of the transfer of the land to the Inspectorate as proof of his interest. The inspector will then be required to give the purchaser notice if he is minded to determine that the proposals in the report fail to strike a fair balance, and must invite the purchaser to make representations about the objection in question and any possible modifications to the proposals in the report (under paragraph 10(5) of Schedule 1A of the 1949 Act and Regulation 5). The inspector will also be able to invite the purchaser to be present at a site inspection if one is held (Regulation 8(3)). He will also give the purchaser notice of a hearing or inquiry (Regulation 13), which will mean that the purchaser will be entitled to appear at the hearing or inquiry and any pre-inquiry meeting.

⁹ SI 2010 No.1976

Withdrawing an objection

5.17 An objection may be withdrawn at any time by giving notice in writing to Natural England.

Objection process

5.18 Appendix H to the guidance sets out a flow diagram summarising the representation and objections process.

6. Role of the appointed person

6.1 As already noted, Schedule 1A to the 1949 Act requires the Secretary of State to refer any objections to a person appointed for this purpose. The appointed person will be an inspector from the Planning Inspectorate.

Determination as to the admissibility of an objection

6.2 The first task of the inspector on receipt of an objection is to decide if it is an admissible objection. To be admissible the objection must be made in the form and manner specified in the Regulations. An objection can only be made on certain grounds and Appendix A to this guidance provides more detail of what this means. A person making an objection must explain why they think that the proposals in Natural England's report fail to strike a fair balance in respect of the ground(s) that the objection is made on. When the inspector has reached a view on the admissibility of the objection they will inform the person who made the objection, the Secretary of State and Natural England of that decision.

6.3 If the inspector decides that the objection is not admissible no further action will be taken in relation to the objection. Where the inspector decides that the objection is admissible Natural England must then provide its comments to the Secretary of State on the objection and the Secretary of State will pass any such comments made by Natural England on to the inspector. The inspector may request particular information from Natural England, for example about any possible alternatives to the proposals or about other proposals that were considered initially but were rejected. Natural England will also provide the objector with a copy of its comments. If any representations have been made which appear to the Secretary of State to be relevant to the objection these, or a summary of them, will also be sent to the inspector. The inspector may also request additional information or documents from the objector. If you make an objection you should be aware that any additional information or documentation which you then may subsequently submit to the inspector will be made available by the inspector to Natural England. Similarly all of Natural England's evidence or comments about an objection which it submits to the inspector will be forwarded by the inspector to you as the person who has made that objection.

Publication of notices and invitation to submit representations

6.4 The inspector must then determine whether the proposals set out in the report fail, in the respects specified in the objection, to strike a fair balance. Where the inspector is minded to conclude that the proposals in the report fail to strike a fair balance he must publish a notice with details of the objection or objections along with details of Natural England's comments and, if applicable, any observations he wishes to make on the objection(s). The notice will invite representations to be made about the objection(s) and about any possible modifications of the proposals proposed by the objector or by Natural England.

6.5 The form of notice that the inspector will use for this purpose is specified in the Regulations¹⁰. The notice will be published on the Planning Inspectorate's website - <http://www.planning-inspectorate.gov.uk/pins/index.htm>. The Planning Inspectorate will also publish the notice in one or more local or regional newspapers in the area, and in any other manner it thinks appropriate for drawing it to the public's attention.

6.6 Anyone with a relevant interest in affected land, and anyone who would be affected by any proposed modifications will be given a copy of the notice by the inspector as will Natural England and persons listed at 2(2)(b)-(f) of Schedule 1A to the 1949 Act. We expect that Natural England will normally be able to provide the inspector with the information to enable him to give the notice to the appropriate persons as this is information that we would have expected Natural England to have gathered in the earlier stages of the consultation process. Where the inspector might require more information in order to exercise his functions he may ask Natural England to carry out any further investigation before providing him with that information.

6.7 To ensure that the notice is widely drawn to the attention of the public we expect that Natural England will wish to provide a link to the inspector's notice from its own website. The inspector may also wish to seek an agreement with the access authority for the area covered by Natural England's report, and which relates to the objection, for publication of the notice to be referred to on the authority's website.

6.8 Anyone can make representations to the inspector about an objection following the issue of this notice. Any such representations must be received by the inspector at the address given on the notice within eight weeks of the date on which the notice was first published on the website – the relevant date will be given on the notice and on the relevant form. A copy of the form on which persons must make a representation about an objection on a coastal access report is attached at Appendix E to this guidance¹¹.

¹⁰ Schedule 6 of SI 2010 No.1976

¹¹ Schedule 7 of SI 2010 No.1976

Written representations, hearings and inquiries

6.9 The inspector may decide to consider an objection in one of three ways:

- (a) written representations - where evidence submitted in writing is considered by the inspector before he makes a decision;
- (b) hearing - a relatively informal meeting guided by the inspector; or
- (c) inquiry - a formal procedure led by the inspector which may involve cross-examination of witnesses.

To ensure a consistent approach, the Planning Inspectorate will draw up criteria on which the inspector will base a decision about whether it is necessary to hold a hearing or inquiry. While it is for the inspector to decide whether a hearing or inquiry is necessary we would hope that the inspector will determine most objections by means of written representations rather than by the need to hold a hearing or inquiry.

Consideration of two or more objections together

6.10 The inspector may choose to consider two or more objections together. The regulations list the circumstances where the inspector may wish to do so: these are where:

- (a) the objections relate to the same area of affected land;
- (b) the objections relate to adjacent or contiguous areas of affected land;
- (c) the objections relate to the same issue or ground and the inspector thinks that the circumstances in which they arise are sufficiently similar to warrant the objections being considered together; or
- (d) the inspector otherwise thinks that it would be expedient to consider the objections together.

Carrying out a site visit

6.11 The inspector may wish to visit the land which is subject to the objection to get a clearer understanding of the issues. A site visit may be held at any time prior to the inspector reaching a conclusion on the objection.

6.12 Where an objection is to be considered by means of written representations the inspector must invite Natural England and the objector(s) to be present at any site visit. The inspector can, however, go ahead with a visit if the persons invited do not attend. Where an objection is to be considered at a hearing or inquiry the inspector must also invite any person who is entitled to appear at the hearing or inquiry to attend a site visit. The inspector can, however, go ahead with a site visit if the persons invited do not attend.

Unless the hearing or inquiry is adjourned to the site (see paragraph 6.13 below) no discussions on the evidence or the merits of the case will be permitted during the site visit, although the inspector may allow parties to point out particular features of the area to him in order to illustrate evidence already given.

6.13 The inspector may also choose to adjourn a hearing or inquiry to continue at the site of the affected land providing Natural England or the objector(s) do not put forward a good reason for not doing so, and in so doing the inspector must be satisfied that the giving and hearing of evidence would proceed satisfactorily and that everyone present would have the opportunity to attend the adjourned hearing or inquiry.

Recommendation of the appointed person

6.14 The inspector must determine whether the proposals in the report fail, in the respects specified in the objection, to strike a fair balance. In doing so the inspector must reach his decision in accordance with the provisions in the 2009 Act.

6.15 Where the inspector has considered an objection and reached a conclusion he must submit a report to the Secretary of State setting out his conclusion and making recommendations. Where he concludes that the proposals in Natural England's report do strike a fair balance, he will recommend that the Secretary of State makes a determination in line with that conclusion. Where the inspector concludes that a fair balance has not been struck he must report to that effect and also, where appropriate, make a recommendation for a modification to the proposals if this would remedy the failure to strike a fair balance and would produce proposals which would in his view meet the coastal access requirements.

Modifications to the proposals

6.16 In considering any modifications to the proposals suggested in the context of an objection the inspector must base his considerations on the same criteria as for consideration of the original proposal. In his report the inspector may recommend either:

- (a) that the proposals in Natural England's report fail to strike a fair balance but that there is no modification which would meet the coastal access requirements,
- (b) that if the Secretary of State is minded to approve the proposals he should do so with modifications that are recommended in the inspector's report, or
- (c) that if minded to approve the proposals the Secretary of State should consider the modifications recommended in the inspector's report.

6.17 Where the inspector concludes that there is no available modification that would lead to proposals which would strike a fair balance (option (a) in paragraph 6.16 above) the inspector may propose modifications that he considers would mitigate or reduce the effects. Where this is the case the inspector must recommend that the Secretary of State,

if minded to approve the proposals in the report, either should approve them with the mitigating modifications proposed in the inspector's recommendations or that he should consider those modifications.

Timetable

6.18 Neither the 2009 Act nor Schedule 1A to the 1949 Act includes a timetable for the inspector to submit a report to the Secretary of State setting out his conclusion on any admissible objection and, as appropriate, any recommendations. The time taken for the inspector to reach a conclusion on any single objection will depend on such factors as the complexity of the objection, the number of and complexity of any relevant representations received, and the method by which the inspector has considered the objection. We would expect an inspector to generally take a longer time to reach a conclusion on an objection where a hearing or inquiry is necessary than one considered by written representations only. Although there is no statutory requirement to do so the Planning Inspectorate will look to provide information on its website on the inspector's progress in determining individual objections.

7. Role of the Secretary of State

Approving a coastal access report

7.1 The appointed person will make a recommendation to the Secretary of State following his determination of any admissible objections but it is for the Secretary of State to approve the proposals in a report. Under the provisions in paragraph 16(2) of Schedule 1A to the 1949 Act the Secretary of State may approve the proposals in the report as a whole, with or without modifications, or he may approve part of the report and reject the remaining proposals. Before reaching a decision on the report the Secretary of State is required to consider, in addition to the report itself, various relevant documents including:

- (a) any admissible objections, Natural England's comments on them, and the inspector's report,
- (b) any representations on a report sent to him by Natural England in full or in summary, and Natural England's comments on them.

Taking account of the inspector's recommendation(s)

7.2 The final decision on a report is for the Secretary of State to make, and where an inspector's findings about an objection contain a finding of fact the Secretary of State is bound in making a decision to accept the inspector's finding. However there are a number of exceptions, set out in paragraphs 16(3)(a) to (d) of Schedule 1A to the 1949 Act, which

would allow the Secretary of State not to accept the findings. These are where the Secretary of State is satisfied that:

- (a) the finding involves an assessment of the significance of a matter to any person with a relevant interest in land or to the public,
- (b) there was insufficient evidence to make the finding,
- (c) the finding was made by reference to irrelevant factors or without regard to relevant factors, or
- (d) the finding was otherwise perverse or irrational.

7.3 The first of these, at (a) above, refers to a situation where the Secretary of State is satisfied that “the finding involves an assessment of the significance of a matter to any person with a relevant interest in land or to the public” and clarifies that such an assessment is not to be treated by the Secretary of State as a simple “finding of fact”. This ensures that the Secretary of State is not precluded from reaching a view on the significance to the landowner (or the public) of, for example, the proposed position of the route. The judgement of the relative significance of the proposed position of the route to the landowner or the public is at the heart of the assessment of whether a fair balance has been struck and a consideration that the Secretary of State must take in account in reaching a decision on a report.

7.4 The Secretary of State will still be bound by the appointed person’s findings on any of the underlying facts on which the assessment of significance is based. Underlying facts might include, for example, the periods during which the landowner uses the land for a particular purpose, the extent of the land subject to that use for those periods, or any effect on the landowner’s ability to use the land for that purpose.

7.5 The conditions set out at (b) to (d) of paragraph 7.2 above cover the circumstances in which a court can quash a decision on a finding of fact on judicial review.

Considering possible modifications to the proposals

7.6 Before deciding whether to approve the proposals in a report (with or without modifications) the Secretary of State may also choose to investigate possible modifications to the proposals other than those recommended by an inspector in response to an objection.

7.7 Where this is the case the Secretary of State will hold an initial consultation with Natural England and any person with a relevant interest in land which would be affected by the possible modification. He must consult anyone with a relevant interest in land that would be affected by the possible modification, also anyone with a relevant interest in affected land that he thinks it appropriate to consult. Where the possible modification is in connection with a previous objection, he must consult the objector and any other person with a relevant interest in relevant land.

7.8 Following the initial consultation, if the Secretary of State is minded to approve the proposals in the report with that modification Natural England will advertise the modified report and invite representations and objections on the part or parts of the proposals which have been modified, and on any other parts which are affected by the modifications.

Information about the Secretary of State's decision

7.9 When the Secretary of State has reached a decision in respect of a report he must take reasonable steps to give notice of the decision to everyone with a relevant interest in affected land, or publish a notice of the decision in a manner likely to bring it to the attention of those persons. The Secretary of State must also notify Natural England and the various bodies which Natural England was required to consult during the development of the proposals. We would also expect Natural England to draw attention to the decision on its own website.

7.10 Where the Secretary of State has considered an objection and the inspector's report and recommendation on the objection, he will publish the report and make a statement explaining the reasons for his decision in respect of the objection. Any such statement will be included in the notice described at paragraph 7.9 above.

Commencement of the new right of access

7.11 The right of access will not come into effect immediately the Secretary of State has published a decision, but only after any necessary works have been carried out on the ground to make the route accessible to the public. An Order setting the date for commencement of the new right of access will be made by the Secretary of State.

8. Costs

8.1 Paragraph 13(2) of Schedule 1A makes it clear that the Secretary of State will meet the costs of a hearing or local inquiry held in connection with an objection. However, Schedule 1A also extends the application of section 250(5) of the Local Government Act 1972 to inquiries and hearings about objections. Subsection (5) of section 250 (as modified by Schedule 1A of the NPACA 1949 paragraph 13(3)) states:

"The appointed person causing an inquiry to be held under this section may make orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid, and every such order may be made a rule of the High Court on the application of any party named in the order."

8.2 An award of costs may be sought by any party to an objection, and will be awarded where unnecessary and wasted expense has been incurred by one party because of unreasonable behaviour by another. There is no provision for costs to be awarded where

objections are considered by means of written representations, but it seems unlikely that costs would be an issue in these circumstances.

8.3 The key principles underlying awards of costs are set out in DCLG Circular 03/2009 - *Costs awards in appeals and other planning proceedings*¹². Although objections about a coastal access report are not mentioned because they post-date the guidance in the Circular, the wording is wide enough to include them, and they would therefore apply by analogy.

8.4 The costs awards regime does not seek to deter persons from making an objection, but rather seeks to increase the discipline of parties, through financial consequences for those parties who have behaved unreasonably and have caused any other party unnecessary or wasted expense in the process.

8.5 An award of costs does not necessarily follow the outcome of the objection, as in litigation in the Courts. An unsuccessful objector is not expected to reimburse Natural England as a matter of course for the costs incurred in defending the objection. Equally, the costs of a successful appellant are not borne by Natural England as a matter of course.

¹² <http://www.communities.gov.uk/publications/planningandbuilding/circularcostsawards>

Appendix A Grounds on which an objection must be based

Paragraph 3(3) of Schedule 1A to the 1949 Act says that any person who has a relevant interest in affected land may make an objection to Natural England about a coastal access report. All admissible objections will be considered by an appointed person. To be admissible objections must be made on the ground that the proposals in the report, in such respects as are specified in the objection, fail to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land as a result of one or more of the following:

(a) the position of any part of the proposed route.

The position of the route will be shown on a map in the report.

(b) the inclusion of proposals under subsection (2) of section 55B or the nature of any proposal under that subsection.

Section 55B of the 1949 Act provides for the route to “roll back” where an area is subject to significant erosion or other forms of coastal change. Subsection (2) says that in such areas the route may be identified according to proposals made in the report rather than as shown on a map, for example by proximity to a cliff edge or in relation to a field boundary.

(c) the inclusion of, or failure to include, an alternative route under section 55C(2) of the 1949 Act or the position of any such alternative route or part of such a route.

Section 55C provides for Natural England’s report to identify, in addition to the ordinary route, an alternative route which will operate as a diversion from the ordinary route during specified periods when access to the ordinary route will be excluded or restricted (for example for land management purposes). It also enables the alternative route to operate flexibly (for example during a nesting season for a particular breed of bird which may vary from year to year). In addition the alternative route may operate as an optional alternative during periods when the route may reasonably be considered unsuitable for use (for example during periods of flooding or action of the tide, or erosion or other geomorphological process).

(d) the inclusion of, or failure to include, proposals under one or more of paragraphs (a) to (c) of section 55D(2) or the nature of any proposal made under such a paragraph.

Section 55D(2) of the 1949 Act deals with the boundaries of the coastal margin.

Paragraph (2)(a) provides for the report to describe the landward boundary of the coastal margin for example to make it clearer to users by aligning the boundary with a more physical feature such as a fence or wall. Where this is the case the coastal margin may be wider or narrower than normal. Paragraph (2)(b) says that the same flexibility can apply to any alternative route. Paragraph (2)(c) says that the same flexibility can apply in the case of land that would normally be excepted land but which is not to be excepted (for example

to allow a route through an excepted land type) and would allow the route strip in these cases to coincide with a physical feature such as a field boundary.

(e) the inclusion of , or failure to include, a proposal under section 55D(5) or the terms of any such proposal.

Section 55D (5) says that a report must include details of any exclusions or restrictions on access that it intends to put in place if the proposals are approved.

(f) the exercise of a discretion conferred by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or failure to exercise a discretion conferred by section 301(3) of that Act, in relation to a river.

These provisions in the 2009 Act mean that where the coast is interrupted by a river the coastal route may be extended as far upstream as the first public foot crossing. However, Natural England may also decide to specify a point at which the route should stop which is at some point upstream of the seaward limit of the estuarial waters (the mouth of the river) but downstream of the first public foot crossing. Put simply, Natural England may specify a limit at any point between the open coast and the first public foot crossing point. Clearly, where Natural England decides not to extend the coastal route as far as the first public pedestrian crossing there will be a break in continuity of the route.

Appendix B Persons whom Natural England must take reasonable steps to notify of the submission and publication of a coastal access report

Persons listed under paragraph 2(2)(a) – (f) of Schedule 1A to the 1949 Act

- (a) persons with a relevant interest in affected land;
- (b) each access authority for an area in which affected land is situated;
- (c) each local access forum for an area in which affected land is situated;
- (d) the Historic Buildings and Monuments Commission for England (English Heritage);
- (e) the Environment Agency;
- (f) such other persons as may be specified in regulations made by the Secretary of State.

Persons specified for the purposes of paragraph 2(2)(f) of Schedule 1A

British Association for Shooting and Conservation

British Mountaineering Council

Country Land and Business Association

National Farmers Union

Open Spaces Society

Ramblers Association

R-oyal Society for the Protection of Birds

Persons with sporting rights over affected land¹³

¹³ 'sporting rights' here has the same meaning as in the CROW Act.

Appendix C Form on which representations about a report may be made

FORM FOR MAKING REPRESENTATIONS ABOUT A COASTAL ACCESS REPORT	
<p>Any person may make a representation about a coastal access report.</p> <p>This form should be completed if you wish to make a representation about the coastal access report which Natural England submitted to the Secretary of State for Environment, Food and Rural Affairs on <i>[date^(a)]</i> under section 51 of the National Parks and Access to the Countryside Act 1949, pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009. The report relates to <i>[details which indicate the land to which the report relates^(a)]</i>.</p> <p>Any representations about the report must be made on this form and received by Natural England no later than <i>[date^(a)]</i>. If you require more space for your comments, please continue on a separate sheet.</p>	
<p>1. Please give the chapter number of the report and number of the map to which the representation(s) relate(s):</p>	
<p>2. If the representation(s) relate to specific land on the map(s), please describe the land here:</p>	
<p>3. Please tick the appropriate box below to show who is making the representation(s), or on whose behalf you are making the representation(s):</p>	
An access authority for an area in which land to which the report relates is situated	<input type="checkbox"/>
A local access forum for an area in which land to which the report relates is situated	<input type="checkbox"/>
The Historic Buildings and Monuments Commission for England (English Heritage)	<input type="checkbox"/>
The Environment Agency	<input type="checkbox"/>
A person specified in Schedule 1 to the Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010 (S.I. 2010/1976)	<input type="checkbox"/>

Other (please give details):	<input type="checkbox"/>
4. If you have ticked the “other” box above, please also indicate if you are a person with a relevant interest (within the meaning of section 55J(2) of the National Parks and Access to the Countryside Act 1949 ^(b)) in land to which the report relates	<input type="checkbox"/>
5. Please give details of, and the reasons for, the representation(s) you are making about Natural England’s report:	
6. Please list below any documents or evidence you have included in support of the representation(s):	
7. Have you made any other representations about the report?	
Yes <input type="checkbox"/>	
No <input type="checkbox"/>	
8. If you are a person with a relevant interest in land to which the report relates, have you made any objection(s) which relate(s) to that land?	
Yes <input type="checkbox"/>	
No <input type="checkbox"/>	
9. Please complete your details below:	
Name:	
Organisation/company (if appropriate):	
Address (including post code):	
Telephone:	

E-mail:	
Date:	
<p>10. The completed form should be sent to Natural England at:</p> <p><i>[address^(a)]</i></p> <p>or to <i>[e-mail address^(a)]</i>.</p>	
<p>(a) Details to be inserted by Natural England.</p> <p>(b) Section 55J(2) provides that a person has a relevant interest in land if the person is the owner of the land, holds a term of years absolute in the land, or is in lawful occupation of the land.</p>	

This publication was archived on 19 May 2015

Appendix D Form on which persons with a relevant interest in affected land may make objections about a report

FORM FOR MAKING OBJECTIONS ABOUT A COASTAL ACCESS REPORT	
<p>Only owners, tenants and occupiers of affected land may make an objection about a coastal access report.</p> <p>This form should be completed if you wish to make objections about the coastal access report which Natural England submitted to the Secretary of State for Environment, Food and Rural Affairs on <i>[date^(a)]</i> under section 51 of the National Parks and Access to the Countryside Act 1949, pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009. The report relates to <i>[details which indicate the land to which the report relates^(a)]</i>.</p> <p>Any objections about the report must be made on this form and received by Natural England no later than <i>[date^(a)]</i>. If you require more space for your comments, please continue on a separate sheet.</p>	
<p>1. Please give the chapter number of the report and number of the map to which the objection(s) relate(s):</p>	
<p>2. If the objection(s) relates to specific land on the map(s), please describe the land here:</p>	
<p>3. Please tick the box below which indicates your interest in the land to which the objection(s) relate(s) and give a brief description of your relevant interest:</p>	
Owner	<input type="checkbox"/>
Tenant	<input type="checkbox"/>
Occupier	<input type="checkbox"/>
<p>4. You may only make objection(s) on one or more of the grounds below (as set out in paragraph 3(3) of Schedule 1A to the National Parks and Access to the Countryside Act 1949). Please tick the appropriate box(es) to indicate the relevant grounds:</p>	

The proposals in the report fail to strike a fair balance ^(b) in such respects as are specified in the objection(s) as a result of one or more of the following:	Tick box
(a) the position of any part of the proposed route (paragraph 3(3)(a))	<input type="checkbox"/>
(b) the inclusion of proposals (in relation to an area subject to significant coastal erosion, encroachment by the sea or significant physical change due to other geomorphological processes) providing for the route to be determined in accordance with provision made in the proposals (rather than as shown on a map), or the nature of any such proposal (paragraph 3(3)(b))	<input type="checkbox"/>
(c) the inclusion of, or failure to include, proposals for an alternative route, or the position of such a route or any part of it (paragraph 3(3)(c))	<input type="checkbox"/>
(d) the inclusion of, or failure to include, proposals that certain boundaries of certain areas should coincide with a specified physical feature, or the nature of any such proposal (paragraph 3(3)(d))	<input type="checkbox"/>
(e) the inclusion of, or failure to include, proposals as to the directions to be made under Chapter 2 of Part 1 of the Countryside and Rights of Way Act 2000 for the exclusion or restriction of a right of access in relation to land to which the report relates, or the terms of any such proposal (paragraph 3(3)(e))	<input type="checkbox"/>
(f) the exercise of a discretion conferred on Natural England by section 301(2) or (3) of the Marine and Coastal Access Act 2009, or the failure to exercise a discretion conferred by section 301(3) of that Act (discretions which relate to a case where the continuity of any part of the coast is interrupted by a river) (paragraph 3(3)(f))	<input type="checkbox"/>
5. Please give details of the objection(s) you are making, and explain why you think that the proposals in the report fail to strike a fair balance as a result of the matter or matters that you have selected above:	
6. You may propose modifications of the proposals in the report, if you think that the modifications would remedy, or mitigate the effects of, the failure to strike a fair balance to which your objection(s) relate(s), and that the proposals as so modified would satisfy the requirements of paragraph 3(6) of Schedule 1A to the National Parks and Access to the Countryside Act 1949(c). Do you wish to propose any modifications?	
Yes <input type="checkbox"/> No <input type="checkbox"/>	

7. If yes, please give details of the modifications, and state why you think that they would remedy, or mitigate the effects of, the failure to strike a fair balance to which your objection(s) relate(s), and why the proposals as so modified would satisfy the requirements of paragraph 3(6) of Schedule 1A to the National Parks and Access to the Countryside Act 1949:	
8. Please list below any documents or evidence you have included in support of the objection(s):	
9. Have you made any other objection(s) about the report?	
Yes <input type="checkbox"/>	
No <input type="checkbox"/>	
10. Have you made any representations about the report?	
Yes <input type="checkbox"/>	
No <input type="checkbox"/>	
11. Please complete your details below:	
Name:	
Organisation/company (if appropriate):	
Address (including post code):	
Telephone:	
E-mail:	
Date:	

12. The completed form should be sent to Natural England at:

[address^(a)]

or to *[e-mail address^(a)]*.

(a) Details to be inserted by Natural England.

(b) A fair balance means a fair balance between the interests of the public in having rights of access over land, and the interests of any person with a relevant interest in the land (see paragraph 1(b) of Schedule 1A to the National Parks and Access to the Countryside Act 1949 and section 297(3) of the Marine and Coastal Access Act 2009).

(c) See paragraph 3(5) of Schedule 1A to the National Parks and Access to the Countryside Act 1949. The requirements of paragraph 3(6) of that Schedule are that the modified proposals are practicable; take account of the matters mentioned in sections 297(2) and (where appropriate) 301(4) of the Marine and Coastal Access Act 2009 (matters to which Natural England and the Secretary of State must have regard when discharging the coastal access duty); and are in accordance with the scheme approved under section 298 of that Act (the scheme in accordance with which Natural England must act when discharging the coastal access duty) or, where that scheme has been revised, the revised scheme.

This publication was archived on 19 May 2015

Appendix E Form on which persons may make a representation about an objection on a report

FORM FOR MAKING REPRESENTATIONS IN CONNECTION WITH AN OBJECTION	
<p>Any person may make a representation regarding an objection about a coastal access report.</p> <p>On [date^(a)] Natural England submitted a coastal access report to the Secretary of State for Environment, Food and Rural Affairs under section 51 of the National Parks and Access to the Countryside Act 1949 pursuant to its duty under section 296(1) of the Marine and Coastal Access Act 2009. The report relates to [details which indicate the land to which the report relates^(a)].</p> <p>A person was appointed^(b) for the purpose of considering an objection which was received in relation to the report. The appointed person has published a notice dated [date of notice^(a)] inviting representations concerning the objection or modifications of the proposals to which the objection relates. This form should be completed if you wish to make representations in response to that notice.</p> <p>Any such representations must be received by the appointed person no later than [date^(a)].</p> <p>If you require more space for your comments, please continue on a separate sheet.</p>	
<p>1. Please give the chapter number of the report and number of the map to which the representation(s) relate(s):</p>	
<p>2. If the representation(s) relate to specific land on the map(s), please describe the land here:</p>	
<p>3. Representation(s) must relate to one or more of the following. Please tick the box or boxes which indicate the matter(s) to which the representation(s) relate(s):</p>	
(a) the objection (including any modifications proposed by the objection)	<input type="checkbox"/>
(b) any relevant alternative modifications ^(c) in relation to that objection	<input type="checkbox"/>
(c) any observations of the appointed person on any relevant alternative modifications or any modifications proposed by the objection	<input type="checkbox"/>

4. Please give details of the representation(s):	
5. Please list below any documents or evidence you have included in support of the representation(s):	
6. Please complete your details below:	
Name:	
Organisation/company (if appropriate):	
Address (including post code):	
Telephone:	
E-mail:	
Date:	
7. The completed form should be sent to the appointed person at: [address ^(a)] or to [e-mail address ^(a)].	
<p>(a) Details to be inserted by the appointed person.</p> <p>(b) See paragraph 4(2) of Schedule 1A to the National Parks and Access to the Countryside Act 1949.</p> <p>(c) See paragraph 6(3) of Schedule 1A to that Act for the meaning of “relevant alternative modifications”.</p>	

Appendix F Guidelines on categories of excepted land under Schedule 1 to the CROW Act

When the open access provisions of Part 1 of the CROW Act were introduced Defra issued guidelines to help identify what was meant by each of the categories of excepted land in Schedule 1 to the Act. Those guidelines have now been updated as below to reflect the provisions in the Access to the Countryside (Coastal Margin) (England) Order 201014 which made a number of changes to the categories of excepted land as they apply to land which is coastal margin.

These guidelines must be read alongside the general caveat that they do not provide an authoritative interpretation of the legislation, which is a matter for the courts.

1. Land on which the soil is being, or has at any time within the previous 12 months been, disturbed by any ploughing or drilling for the purposes of planting or sowing crops or trees (other than land which is coastal margin and is, or forms part of, a coastal route strip).

Ploughing includes agricultural or forestry operations which are similar to ploughing. Similarly, drilling includes agricultural or forestry operations which are similar to drilling.

On land which is part of the coastal margin, the coastal route strip may cross ploughed or drilled land and will not be excepted from the right of access. No additional spreading room will be created across land used for this purpose.

2. Land covered by buildings or the curtilage of such land.

The term “building” (which is defined in paragraph 14 of Schedule 1) includes most types of structure, including moveable ones like tents and caravans, but not any fence, wall, means of access or, where land is coastal margin, slipways, hards or quays.

The term “curtilage” is not defined, but it generally means a small area, forming part and parcel with the house or building to which it is attached. In most cases the extent of curtilage will be clear: typically, an enclosure around a dwelling containing a garden, garage and side passage; a walled enclosure outside a barn, or a collection of buildings grouped around a farm house and farm yard.

3. Land within 20 metres of a dwelling (other than coastal margin).

Generally a dwelling is a building where people live. This category does not apply to land which is coastal margin.

¹⁴ See note 2

4. Land used as a park or garden.

As well as municipal recreation grounds or play areas, the term park may include the landscaped grounds around a house, such as a country house. A park may include ornamental gardens, water features or other man-made scenic vistas. A garden is usually enclosed land near a building. It typically includes areas of lawn, flower borders and other cultivated plants.

5. Land used for the getting of minerals by surface working (including quarrying).

This includes all types of working quarries and also sites used to extract peat commercially. On land which is coastal margin, it does not include areas of beach or foreshore from which sand or shingle is removed by virtue of certain rights, listed at paragraph 14A of Schedule 1.

6. Land used for the purposes of a railway (including a light railway) or tramway.

This includes working railways or tramways. Other land used for purposes related to a railway or tramway (eg railway embankments and marshalling yards) is also excepted land.

7. Land used for the purposes of a golf course, racecourse or aerodrome (other than, in the case of land used for the purposes of a golf course, land which is coastal margin and is, or forms part of, a coastal route strip).

Golf courses include clubhouses and other buildings, car parks, practice areas and playing areas, such as greens and fairways. On land which is coastal margin the coastal route strip may cross a golf course and will not be excepted from the right of access. No additional spreading room will be created across land used for this purpose.

In most cases racecourses will be fenced, signed and easily recognisable.

Many aerodromes will be securely fenced. Some will be less formal and less well used, but the new right of access does not apply even to small unfenced airstrips when they are in use.

8. Land which does not fall within any of the preceding paragraphs and is covered by

(a) works used for the purposes of a statutory undertaking (other than flood defence works, or sea defence works, on land which is coastal margin), or

(b) works used for the purposes of an electronic communications code network, or the curtilage of any such land.

The term “statutory undertaking” is defined in paragraph 14 of Schedule 1 and covers a wide range of undertakings including the provision of transport, the supply of energy, and of water and sewerage. Works includes electricity substations, reservoirs and telephone masts and also temporary public works, such as trenches. Where the access land is coastal margin, this category does not include flood defence works (which in the coastal context means structures intended to stop water from encroaching upon the land) or sea defence works used to protect land from erosion by the action of the sea and from slipping into the sea.

9. Land as respects which development which will result in the land becoming land falling within any of paragraphs 2 to 8 is in the course of being carried out.

If land is in the process of being developed for one of the uses set out above, it is also excepted land. It will be excepted land providing the development is lawful, and where any necessary planning permission has been granted.

10. Land (other than coastal margin) within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.

The word “livestock” is defined as cattle, sheep, goats, swine, horses or poultry. This category of excepted land does not apply to land which is coastal margin.

11. Land covered by pens in use for the temporary reception or detention of livestock.

This category covers temporary accommodation for livestock, rather than permanent buildings.

12. Land (other than coastal margin) habitually used for the training of racehorses.

This would typically comprise training gallops. The land is only excepted land between dawn and midday on any day, and at any other time when the land is in use for that purpose. This category of excepted land does not apply to land which is coastal margin.

13. Land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Ministry Lands Act 1990.

This includes most Ministry of Defence (MoD) training areas. This land will usually be signed with danger warnings and may sometimes be fenced. Although the right of access

does not apply to this land, there may be access managed by the MoD. People should check with the MoD before setting off to walk in such areas.

13A. Land which is coastal margin and is, or forms part of, a regulated caravan or camping site (other than land which is, or forms part of, a coastal route strip).

This category of excepted land applies only to land which is coastal margin and not to other access land. It includes sites used for static caravans and park home sites as well as sites for touring caravans or tents. A site will only be excepted land if it is licensed or certified under specified provisions in other Acts, as defined in paragraph 14 of Schedule 1, and is used for that purpose. Where a caravan or camping site is excepted land the coastal route strip may cross the site and will not be excepted from the right of access. No additional spreading room will be created over such sites.

13B. Land which is coastal margin and is, or forms part of, a highway (within the meaning of the Highways Act 1980).

This category of excepted land applies to land which is coastal margin but not to other access land. A highway is a way over which the public have a right to pass and re-pass. It includes all public rights of way such as footpaths and bridleways, and also footways (or pavements) and roads, for example in built-up areas. Such land will be excepted from the right of access but the public will have the right to pass and re-pass by virtue of the public right of way.

13C. Land which is coastal margin and is, or forms part of, a burial ground (other than land which is, or forms part of, a coastal route strip).

This category of excepted land applies only to land which is coastal margin and not to other access land. "Burial ground" is defined at paragraph 14 to Schedule 1. It means churchyards and cemeteries and other grounds in which bodies are interred and which is currently set apart for this purpose. The coastal route strip may cross burial grounds and will not be excepted land. No additional spreading room will be created over burial grounds.

13D. Land which is coastal margin and-

(a) is or forms part of a school playing field, or

(b) is land occupied by a school and used for the purposes of that school.

This category of excepted land applies only to land which is coastal margin and not to other access land. It includes all school playing fields, whether within the grounds or curtilage of a school building or separate from it, and any other land owned or otherwise occupied by a school and used for school purposes.

Appendix G Glossary of the main terms used

Affected land

Affected land is land which relates to a proposal in a coastal access report by Natural England. It includes land over which the coastal route or, any alternative route passes, and other relevant land within the wider coastal margin. It does not include land in the wider coastal margin which is excepted land. A person with a *relevant interest* in affected land may make an *objection* to a proposal in a coastal access report.

Appointed person

Refers to a person appointed by the Secretary of State to consider an *objection*, made by someone with a *relevant interest*, to a proposal by Natural England set out in a *coastal access report*. The appointed person must determine whether these proposals fail to strike a fair balance in the terms set out in the objection. The appointed person must report to the Secretary of State on his conclusions and recommendations, which the Secretary of State must consider before reaching a decision on Natural England's proposals. The appointed person is likely to be an inspector from the Planning Inspectorate.

Coastal access report

A coastal access report is a report prepared by Natural England setting out its recommendation for the position of the coastal route on a particular stretch of the English coast. A report will also give details of the extent of the wider margin of land that will be accessible to the public as a result of the proposed position of the route and any restrictions or exclusions of access that Natural England proposes to apply on the route or margin. The Secretary of State may approve the proposals for the route in the report with or without *modifications*. He may approve the proposals for one or more parts of the route only and reject the remaining proposals.

Modification

(a) A person making an *objection* can suggest changes (modifications) to Natural England's proposals where, in their view, the suggested modifications would meet or mitigate the concerns to which the objection relates.

(b) A modification could also be one that a person has proposed as a result of the *representation* made in response to the inspector's notice where the inspector was minded to determine that a fair balance has not been struck.

(c) The *appointed person* may include in his report setting out his conclusions with regard to an *objection*, a recommendation that the Secretary of State include, or consider, certain modifications to Natural England's proposals

(c) The Secretary of State may choose to approve the proposals in a *coastal access report* with or without modifications.

Objection

An objection to a proposal in a *coastal access report* by Natural England may be made by a person with a *relevant interest* in *affected land*. An objection must be based on certain specified grounds. Admissible objections will be considered by an *appointed person* who will make a recommendation to the Secretary of State. The Secretary of State must take an admissible objection, and the recommendations of the *appointed person* regarding the objection, into account in reaching a decision on Natural England's proposal for a coastal route.

Relevant interest

A person making an *objection* to a proposal in a *coastal access report* by Natural England must have a relevant interest in *affected land*. This means that they must be the owner, the tenant, or otherwise in lawful occupation of the *affected land*.

Representation

A representation about a proposal in a *coastal access report* by Natural England may be made by any person. A representation may be made on any grounds, and may include statements in support of Natural England's proposals as well as against them. Natural England must send a copy of representations made by certain organisations and persons, and a summary of other representations, to the Secretary of State together with its comments on them. The Secretary of State must take the representations and Natural England's comments on them, into account in reaching a decision on Natural England's proposal for a coastal route.

Appendix H Flow diagram summarising the representations and objections process



