

# **Coastal Access: Marine and Coastal Access Act 2009**

**Consultation on proposed regulations for appeals against works notices, exclusions or restrictions of access, and dedication of land**

April 2011

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<b>Contents</b>	<b>3</b>
<b>Executive Summary</b>	<b>4</b>
The context	4
How to respond	5
<b>Chapter 1: Background</b>	<b>7</b>
History	7
Introduction to the consultation	7
<b>Chapter 2: Appeals against works notices</b>	<b>9</b>
Introduction	9
Background	9
Proposals for regulations	11
Proposals relating to notice periods	12
Proposals relating to an appeal to be determined by way of a hearing	12
Proposals relating to an appeal to be determined by way of a pre-inquiry and/or inquiry	12
Other proposals	13
Site inspections	14
Changes of procedure	14
<b>Chapter 3: Exclusions or restrictions of access</b>	<b>15</b>
Introduction	15
Background	15
Proposals for regulations	17
Other proposal	18
Site inspections	18
<b>Chapter 4: Dedication of land</b>	<b>19</b>
Introduction	19
Background	19
Proposals for regulations	21
<b>Annex A: Glossary of the main terms</b>	<b>23</b>
<b>Annex B: Summary of consultation questions</b>	<b>25</b>

## Executive Summary

### The context

The Marine and Coastal Access Act 2009 received Royal Assent on 12 November 2009. Part 9 of the Marine and Coastal Access Act 2009 includes provision for improving access to the English coast.

The purpose of this consultation is to seek views on the detailed proposals for a number of regulations under the Countryside and Rights of Way Act 2000 as a result of amendments made by the Marine and Coastal Access Act 2009. The proposals for regulations are set out in the following chapters:

- **Chapter 2: Appeals against works notices** – regulations for appeals under paragraph 4(1) of Schedule 20 to the Marine and Coastal Access Act 2009 against notices given under paragraph 3(3) of that Schedule, and “means of access” appeals under section 38 of the Countryside and Rights of Way Act 2000.
- **Chapter 3: Exclusions or restrictions of access** – regulations for any new restrictions or exclusions of access under sections 24 to 28 of the Countryside and Rights of Way Act 2000 which were not included as part of a coastal access report, which has been approved by the Secretary of State.
- **Chapter 4: Dedication of land** – regulations under section 16 of the Countryside and Rights of Way Act 2000 to allow a landowner or long leaseholder to be able to dedicate land on or adjacent to the coastal margin as coastal margin under section 16 of that Act.

We are seeking views on a number of questions under each chapter. Please do not feel that you have to comment on all the questions - responses on any number are welcome. The closing date for receipt of responses is **Friday 24 June 2011**.

## How to respond

This is your chance to contribute to a consultation on proposed regulations for appeals against works notices, exclusions and restrictions of access and dedication. There are a number of specific questions throughout the document and these are summarised in **Annex B**. Please do not feel that you have to respond to all the questions if you do not wish to do so.

You can view a copy of the consultation on the Defra website. We have also prepared an electronic template which we hope you will find helpful in responding to the consultation, although responses in any format are welcome. The consultation and a copy of the template are available at [www.defra.gov.uk/consult/coastal-access-1104/](http://www.defra.gov.uk/consult/coastal-access-1104/)

The commencement date of this consultation is 1 April 2011. The closing date for responses is **24 June 2011**. Written responses should be sent to: [coast.consultation@defra.gsi.gov.uk](mailto:coast.consultation@defra.gsi.gov.uk)

Alternatively, you can send your written response to:  
Coastal Access Team  
1/09 Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6EB

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

In line with the Government's policy of openness the information you submit may be made available to other parties. The information they contain may also be published in a summary of responses. If you do not consent to this, you must clearly request that your response be submitted confidentially. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. You should be aware that there may be circumstances in which we will be required to communicate this information to third parties on request in order to comply with our obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Defra Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone requests (tel: 020 7238 6575) or to email requests (at [defra.library@defra.gsi.gov.uk](mailto:defra.library@defra.gsi.gov.uk)). Wherever possible, personal callers should give the library 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.

A summary of responses will be made available on Defra's website in due course.

If you have any comments or complaints about the consultation process, as opposed to comments about any of the issues in this consultation paper, please address them to:

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17 Smith Square  
London SW1P 3JR  
Email: [consultation.coordinator@defra.gsi.gov.uk](mailto:consultation.coordinator@defra.gsi.gov.uk)

## Chapter 1: Background

### History

- 1.1 Part 9 of the Marine and Coastal Access Act 2009 (“the 2009 Act”) makes provision for improving access to the English coast. The 2009 Act received Royal Assent on 12 November 2009. The coastal access provisions place a duty on the Secretary of State and Natural England to secure two linked objectives:
- a. that there is a route for the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry, and
  - b. that in association with the route there is a margin of land along the length of the English coast which the public have access to and can enjoy for the purpose of open-air recreation.
- 1.2 The 2009 Act introduces amendments to existing public access legislation to enable the objectives to be implemented: the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”) to provide a procedure for the designation of a coastal route or routes; and the Countryside and Rights of Way Act 2000 (“the CROW Act”) under which the right of public access to the route and wider margin will be provided.
- 1.3 A copy of the 2009 Act and Explanatory Notes can be found on the Government’s legislation service website<sup>1</sup>.

### Introduction to the consultation

- 1.4 The Government has said that it intends to introduce the new right of coastal access on a 30km stretch of the English coast between Portland and Lulworth, Dorset in time for the start of the 2012 Olympic and Paralympic games. The following steps have been completed:
- Natural England’s coastal access scheme was approved by the Secretary of State on 23 March 2010 under section 298(2) of the 2009 Act<sup>2</sup>
  - The Access to the Countryside (Coastal Margin) (England) Order 2010 (the 2010 Order) came into force on 6 April 2010<sup>3</sup>
  - The Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010 came into force on 1 October 2010<sup>4</sup>

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<sup>1</sup> The Act and Explanatory Notes are available at <http://www.legislation.gov.uk/ukpga/2009/23/contents>

<sup>2</sup> The Scheme is available at <http://naturalengland.etraderstores.com/NaturalEnglandShop/NE269>

<sup>3</sup> SI 2010 No.558 is available at <http://www.legislation.gov.uk/uksi/2010/558/contents/made>

<sup>4</sup> SI 2010 No.1976 is available at [http://www.legislation.gov.uk/uksi/2010/1976/pdfs/uksi\\_20101976\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/1976/pdfs/uksi_20101976_en.pdf)

- Natural England held a public consultation between 15 October 2010 and 12 January 2011 on the draft coastal access report for the Weymouth stretch of the English coast
- Defra published on 31 January 2011 Guidance on the Secretary of State's decision-making process, including the consideration of representations and objection<sup>5</sup>
- Natural England submitted its coastal access report to the Secretary of State for the Weymouth stretch of the English coast on 23 March 2011<sup>6</sup>.

1.5 The purpose of this consultation is to seek views on our detailed proposals for the following regulations which we intend to come into force in October 2011. The proposals are set out in the following chapters:

**Chapter 2: Appeals against works notices** – regulations for appeals under paragraph 4(1) of Schedule 20 to the 2009 Act against works notices given under paragraph 3(3) of that Schedule, and “means of access” appeals under section 38 of the CROW Act;

**Chapter 3: Exclusions or restrictions of access** - regulations for any new exclusions or restrictions of access under sections 24 to 28 of the CROW Act which were not included as part of a coastal access report (“a report”), which has been approved by the Secretary of State; and

**Chapter 4: Dedication of land** - regulations under section 16 of the CROW Act which would allow a landowner or long leaseholder to be able to dedicate land on or adjacent to the coastal margin as coastal margin.

1.6 A glossary of the main terms used in the consultation is at **Annex A** to the consultation paper. Under each chapter there is an explanation of our proposed approach and a number of questions on which we are seeking views. Your comments in response to any or all of the questions are welcome. A summary of the questions is at **Annex B** to the paper.

1.7 We have not prepared a separate Impact Assessment for the proposed regulations because the Impact Assessment for the 2009 Act<sup>7</sup> includes costs and assumptions which are reflected in this consultation paper.

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<sup>5</sup> Guidance is available at <http://www.defra.gov.uk/rural/documents/countryside/crow/110131-coastal-access-report.pdf>

<sup>6</sup> Natural England Weymouth report is available at <http://www.naturalengland.coastalaccess>

<sup>7</sup> A copy of the Impact Assessment is available at <http://www.defra.gov.uk/environment/marine/documents/legislation/marine-ia-0410.pdf>



## Chapter 2: Appeals against works notices

### Introduction

- 2.1 This chapter of the consultation paper deals with proposed regulations under paragraph 4(5) of Schedule 20 to the 2009 Act for appeals to the Secretary of State relating to notices made to the establishment and maintenance of the coastal route given under paragraph 3(3) of that Schedule, and for appeals relating to “means of access” under section 38 of the CROW Act.
- 2.2 The provisional title of the proposed regulations is The Access to the Countryside (Appeals against Works Notices) (England) Regulations 2011.

### Background

- 2.3 Paragraph 1 of Schedule 20 to the 2009 Act provides for the powers of access authorities in relation to means of access to access land as set out in Chapter 3 of Part 1 of the CROW Act to be exercisable by Natural England for the purposes of the coastal access duty. Paragraph 1(1) of the Schedule makes the powers in Chapter 3 apply additionally to land over which the coastal route passes which falls under any of the enactments set out in section 15 of the CROW Act. Under paragraphs 2 and 3 of Schedule 20 both Natural England and the access authority, which are referred in the Schedule as “the relevant authority, can identify any necessary works on coastal access land, enter into agreements with owners or occupiers of such land or, in the absence of an agreement, carry out the work.
- 2.4 Section 38 of the CROW Act provides for owners and occupiers of access land to bring an appeal to the Secretary of State against notices given by an access authority under sections 36(3) or 37(1). A notice may be given by an access authority where an owner or occupier has failed to comply with an agreement with respect to means of access, or where an access authority has been unable to reach an agreement with an owner or occupier. The existing regulations– the Access to the Countryside (Means of Access, Appeals) (England) Regulations 2004 (SI 2004 No.3305)<sup>8</sup> – which provide for procedures for such appeals will be revoked and replaced by the proposed regulations which are the subject of this consultation.
- 2.5 Under paragraph 2(1) of Schedule 20 to the 2009 Act Natural England may enter into an agreement with the owner or occupier of coastal land where it appears to Natural England that it is appropriate for works to be carried out on coastal access land in order to meet Natural England’s coastal access duty, as set out in section 296 of the 2009 Act. An access authority may also enter into a similar agreement where it considers this necessary under paragraph

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<sup>8</sup> SI 2004 No.3305 is available at: <http://www.legislation.gov.uk/ukSI/2004/3305/contents/made>

2(2) to that Schedule. The works which may be covered by an agreement include:

- the clearance or maintenance of land to enable the public to use the route on foot;
- the removal of an obstruction to the route;
- the clearance or maintenance of land to enable the public to enter or remain on land on a bicycle or on horseback (where a general restriction under Schedule 2 to the CROW Act has been removed or relaxed);
- the drainage or levelling of land or the improvement to its surface; and
- the construction, removal, repair or improvement of any wall, rail fence or other barrier, or the planting of a hedge.

2.6 Where Natural England or the access authority is unable to conclude on reasonable terms an agreement it may give notice to the owner or occupier of the land under paragraph 3(3) of Schedule 20 to the 2009 Act that it intends after a specified period to carry out the works that it considers necessary. The works which may be covered by the notice include those set out in paragraph 2.5 above. In giving a notice Natural England or an access authority must give the owner or occupier a period of not less than 21 days before any works may be carried out, and provide details of how an appeal against the notice may be made.

2.7 Paragraph 4 of Schedule 20 to the 2009 Act sets out the provisions on appeals where an owner or occupier may wish to make an appeal to the Secretary of State against a notice given to them under paragraph 3(3) of that Schedule. This includes:

- a person who is given that notice, or any other owner or occupier of the land to which the notice relates, may appeal to the Secretary of State;
- an appeal may be made on any of the following grounds:
  - that the notice requires the carrying out of any works which it is not necessary to carry out for the purposes of the coastal access duty;
  - that any of the works have already been carried out; or
  - that the period specified in the notice after which Natural England or the access authority are to take steps to carry out the works is too short;
- where an appeal has been made, the Secretary of State may confirm the notice (with or without modifications) or may cancel the notice; and
- section 7<sup>9</sup> and 8 of, and Schedule 3<sup>10</sup> to, the CROW Act apply to an appeal.

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<sup>9</sup> Section 7 of the CROW Act enables the Secretary of State to cause an appeal to take the form of a hearing or local inquiry.

<sup>10</sup> Section 8 of the CROW Act enables the Secretary of State to delegate functions relating to appeals. Schedule 3 to that Act covers the delegation of appellate functions.

- 2.8 Paragraph 4 (5) of Schedule 20 to the 2009 Act provides powers for the Secretary of State to make regulations about:
- the period within which and the manner in which appeals may be made;
  - the advertising of such an appeal; and
  - the manner in which appeals are to be considered.
- 2.9 Where an appeal has been made, neither Natural England nor an access authority may exercise any of its functions relating to the establishment and maintenance of the route in the absence of an agreement until the appeal is either determined by the Secretary of State or has been withdrawn by the owner or occupier who made that appeal.

### **Proposals for regulations**

- 2.10 For open access land the right of access came into force on a date set out in a Commencement Order made by the Secretary of State under the CROW Act<sup>11</sup>. The position for coastal land is different as the right of access for a particular stretch of the English coast will come into force after a report has been approved by the Secretary of State and on a day appointed by the Secretary of State at the end of the period defined as the “access preparation period”<sup>12</sup>. This means that any establishment works on coastal land will need to have been completed before the right of access comes into force for a particular stretch of the English coast.
- 2.11 In the “access preparation period” Natural England or the access authority will wish to reach agreements with the owner or occupier of any coastal land where they consider it necessary to carry out works. If no such agreement can be reached sufficient time must be allowed during which Natural England or the access authority may give a notice under paragraph 3(3) of Schedule 20 to the 2009 Act, for that person to make an appeal against a notice if they so wish and for that appeal to be determined by the Secretary of State.
- 2.12 Paragraph 1(2) of Schedule 20 to the 2009 Act provides for the functions of Chapter 3 of the CROW Act to be exercisable by both the access authority and Natural England for the purposes of the coastal access duty. This differs to the current position which applies for open access appeals under section 38 of the CROW Act where the functions of Chapter 3 of that Act are only exercisable by the access authority. This means that when providing for means of access as part of the coastal access duty, Natural England will be using the functions of Chapter 3 of the CROW Act enabling it to give a notice under either section 36(3) or section 37(1).

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<sup>11</sup> Section 103(3) of the CROW Act

<sup>12</sup> The term “access preparation period” is defined in section 3A(10)(b) of the CROW Act, as inserted by section 303 of the 2009 Act

2.13 Our proposals for regulations are set out below in paragraphs 2.14 to 2.21 below.

#### Proposals relating to notice periods

2.14 Firstly, we propose that the following notice periods should apply where as a result they would differ from the periods currently set out in SI 2004 No. 3505:

- regulation 7 (*notification of start of appeal*): that any further representations made in respect of an appeal under regulations 7(1)(j), (k) or (l) must be notified to the Secretary of State within 4 weeks of the start date of the appeal, the date of which is specified by the Secretary of State under regulation 7(1)(a). Revised time limit from 6 weeks;
- regulation 9 (*submission of statements of case etc*): that statements must be received by the Secretary of State within 4 weeks of the start date of the appeal. Revised time limit from 6 weeks; and
- regulation 11 (*comments on statements of case*): that the person making the appeal and the access authority must ensure that any comments on statements of case are received by the Secretary of State within 6 weeks of the start date. Revised time limit from 9 weeks.

#### **Question 1: Do you have any views on the proposed notice periods for appeals?**

#### Proposals relating to an appeal to be determined by way of a hearing

2.15 An appeal may be determined in a number of ways – by written representations, a hearing or an inquiry. We propose to make the following notice periods relating to an appeal to be determined by way of a hearing:

- regulation 16 (*date and notification of hearing*): that the date for holding a hearing under regulation 16 (1)(a) shall be not later than 18 weeks after the start date of the appeal. Revised time limit from 22 weeks; and
- regulation 16 (*date and notification of hearing*): that the Secretary of State will give not less than 3 weeks' notice of the date of the hearing under regulation 16(3)(a). Revised time limit from 4 weeks.

#### **Question 2: Do you have any views on the proposals on appeals to be determined by way of a hearing?**

#### Proposals relating to an appeal to be determined by way of a pre-inquiry and/or inquiry

2.16 We propose to make the following notice periods relating to an appeal to be determined by way of a pre-inquiry and/or inquiry:

- regulation 25 (*procedure where the Secretary of State or inspector causes a pre-inquiry meeting to be held*): if either the Secretary of State or

inspector considers it necessary to hold a pre-inquiry meeting the first such meeting should be held under regulation 25(1) within 12 weeks of the start date of the appeal. Revised time limit from 16 weeks;

- regulation 25 (*procedure where the Secretary of State or inspector causes a pre-inquiry to be held*): that under regulation 25(6) any further information required by either the Secretary of State or inspector will be provided within 2 weeks of the date of the conclusion of the pre-inquiry meeting. Revised time limit from 4 weeks;
- regulation 27 (*date and notification of an inquiry*): that the date for holding an inquiry under regulation 27(1)(b) should be not less than 2 weeks after the conclusion of a pre-inquiry meeting, where such a pre-inquiry meeting has been held. Revised time limit from 8 weeks;
- regulation 27 (*date and notification of an inquiry*): that the date for holding an inquiry under regulation 27(1)(a) shall be not later than 18 weeks after the start date of the appeal. Revised time limit from 22 weeks;
- regulation 27 (*date and notification of an inquiry*): that the Secretary of State will give not less than 3 weeks' notice of the date of the inquiry under regulation 27(3). Revised time limit from 4 weeks; and
- regulation 29 (*statement of common ground*): that the access authority must ensure the Secretary of State receives a statement of common ground, which has been prepared by the appellant and the access authority, not less than 3 weeks before the date of the inquiry. Revised time limit from 4 weeks.

**Question 3: Do you have any views on the proposals on appeals to be determined by way of a pre-inquiry and/or inquiry?**

2.17 The proposals outlined in paragraphs 2.14 to 2.16 above will result in the reduction in a number of the notice and time periods in the existing regulations. These changes have been proposed in order to accommodate the time which we consider should be made available between the Secretary of State's approval of Natural England's report for Weymouth and the coming into force of the right of coastal access there. It will also mean that the time limits that will apply to appeals against notices relating to establishment and maintenance works for the coastal route will be the same as those which would apply to any appeals which may be made against notices under section 38 of the CROW Act. To date no appeals under section 38 of the CROW Act have been made to the Secretary of State since the right of access to open country first came into force in May 2004.

Other proposals

2.18 There are two issues on which we would welcome any views:

## Site inspections

2.19 We propose that it should be for the Secretary of State to decide whether a site inspection of the land to which the appeal relates is necessary, whether that appeal is to be determined on the basis of written representations, or by way of a hearing or an inquiry. We are following the precedent set out in the objections and representations regulations<sup>13</sup> which placed the responsibility on whether or not to hold a site inspection on the “appointed person” on the basis of their professional judgement.

## Changes of procedure

2.20 We have considered whether the regulations should require either the Secretary of State or the inspector (before they have notified a decision on an appeal which is being determined by way of written representations) to arrange for that appeal to proceed instead by way of a hearing or where either the appellant, the appropriate authority or the Secretary of State wishes the appeal to be determined in that way. We think that it should be up to the Secretary of State to decide to change the way in which an objection is being determined, following the precedent set out in the objections and representations regulations. An appellant or the appropriate authority would still be able to ask the Secretary of State to change the way in which the appeal was to be determined but the decision would rest with the Secretary of State. We are not proposing to make any change to the current requirements on the Secretary of State to notify the appellant, the appropriate authority, the local access forum and any interested person of any subsequent change to the way an appeal was to be determined.

**Question 4: Do you have any views on the proposals for site inspections or changes of procedure?**

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<sup>13</sup> See footnote 4

## Chapter 3: Exclusions or restrictions of access

### Introduction

- 3.1 This chapter of the consultation paper deals with proposed regulations relating to the exclusion or restriction of access on coastal land.
- 3.2 The provisional title of the proposed regulations is Access to the Countryside (Exclusions and Restrictions) (Amendment) (England) Regulations 2011.

### Background

- 3.3 The Access to the Countryside (Exclusions and Restrictions) (England) Regulations 2003 (SI 2003 No.2713), as amended by the Access to the Countryside (Exclusions and Restrictions) (England) (Amendment) Regulations 2006 (SI 2006 No 990)<sup>14</sup>, contain provisions relating to the procedures for applications for and appeals relating to exclusions or restrictions of the right of access to open access land under sections 22 to 28 of the CROW Act. In particular:
- Part II of the regulations (regulations 4 to 18) contains provisions relating to:
    - section 22(1) (*exclusion or restriction at discretion of owner and others*);
    - section 23 (*restrictions on dogs at discretion of owner*);
    - section 24 (*directions for land management*);
    - section 25 (*directions for the avoidance of risk of fire or of danger to the public*);
    - section 26 (*directions for nature conservation and heritage preservation*);
    - section 27 (*directions by relevant authority: general*); and
    - section 28 (*directions for defence or national security*).
  - Part III of the regulations (regulations 19 to 70) relates to appeals under section 30 of the CROW Act where a relevant authority<sup>15</sup> has decided not to act in accordance with the application for a direction for an exclusion or restriction under sections 24 or 25 of that Act, has decided not to act in accordance with any representations made by an appellant before deciding whether to revoke or vary certain directions given under those sections.

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<sup>14</sup> SI 2003 No.2713 is available at [http://www.legislation.gov.uk/uksi/2003/2713/pdfs/uksi\\_20032713\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/2713/pdfs/uksi_20032713_en.pdf) and SI 2006 No 990 is available at <http://www.legislation.gov.uk/uksi/2006/990/contents/made>

<sup>15</sup> The term “relevant authority” under the CROW Act means Natural England or the National Park Authority (where the land is in a National Park) or the Forestry Commissioners (for land which is wholly or predominantly woodland).

- 3.4 Natural England's report to the Secretary of State will include details of any exclusions or restrictions of access made under Chapter 2 of Part 1 of the CROW Act, for example for land management purposes or nature conservation, that Natural England intends to put in place if the coastal access proposals are subsequently approved by the Secretary of State. Any exclusions or restrictions of access which are approved by the Secretary of State will come into effect at the end of the "access preparation period" as m noted in paragraph 2.10. The right of access will come into force on a date set out in the Order made by the Secretary of State.
- 3.5 Land which is situated within the coastal margin and which was already mapped as open access land under Part 1 of the CROW Act will continue to be treated as open access land until the end of the "access preparation period" after which it will become subject to the coastal access rights. Where appropriate, Natural England will have proposed in its report to the Secretary of State that any exclusions or restrictions of access on any particular part of existing open access land should be replaced with the same exclusions or restrictions on the part of coastal land. Any existing rights of access and exclusions or restrictions on open access land will therefore continue until the end of the "access preparation period", at which point the coastal access rights and any exclusions or restrictions set out in Natural England's report will come into effect.
- 3.6 A landowner and any person with a legal interest in coastal land may apply to the "relevant authority"<sup>16</sup> for further or new exclusions or restrictions of access if circumstances have changed after the date that Natural England submitted its report to the Secretary of State. Any such further or new exclusions or restrictions of access which are subsequently agreed by the relevant authority will only come into force once the right of access comes into force for that particular stretch of the English coast.
- 3.7 We propose making a number of changes to the existing regulations SI 2003 No. 2713 to take into account changes made by the 2010 Order which came into force on 6 April 2010. Part 3 of the Schedule to that Order amended a number of the provisions in Chapter 2 of Part 1 of the CROW Act as they apply to coastal land including:
- section 22 (*exclusion or restriction at discretion of owner and others*) does not apply in relation to land which is coastal margin;
  - section 23 (*restrictions on dogs at discretion of owner*) does not apply in relation to land which is coastal margin;

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<sup>16</sup> Under section 21(5)(za) of the CROW Act (as inserted by the Order [SI 2010 No.558]) the term "relevant authority" means Natural England in relation to any land which is coastal margin, unless by virtue of section 21(8) of that Act Natural England has authorised its function to either the National Park Authority (where the land is in a National Park) or the Forestry Commissioners (for land which is wholly or predominantly woodland).



- section 24 (*directions for land management*) was amended eg to allow the relevant authority to make a direction without any application having been made (subject to consultation);
- section 25 (*directions for the avoidance of risk of fire or of danger to the public*) was amended so that a direction for the purpose of fire prevention does not apply to the line of the approved coastal route or 2 metres either side of that line.
- A new section 25A was inserted to enable a direction to be made by the relevant authority to exclude or restrict access to a salt marsh or mudflat;
- section 26 (*directions for nature conservation and heritage preservation*) was amended so that the requirement for a relevant authority to consult the Historic Buildings and Monuments Commission (English Heritage) on a direction for heritage preservation does not apply where a direction was made in accordance with a direction as set out in a report approving proposals for the coastal route; and
- section 27 (*directions by relevant authority: general*) was amended so that the consultation requirements for a long-term direction – that is one that lasts for an indefinite period or a period that exceeds 6 months - do not apply where a direction was made in accordance with a direction as set out in a report approving proposals for the coastal route.

## Proposals for regulations

3.8 We propose to make a number of changes to the existing regulations so that they apply to coastal access land. We propose:

- regulation 6 (*applications for a direction under section 24 or 25*): a number of changes will be required to reflect that section 24 of the Act has been amended substantially by the 2010 Order to make specific provision for coastal margin, including a provision that the person who is making an application for a direction should state whether the land is coastal margin, and where it is coastal margin should provide information on the manner in which access is to be excluded or restricted and the extent of the land which is to be included in the direction;
- regulation 7 (*notices relating to periods during which exclusions or restrictions are to apply*) : an amendment to reflect the introduction by way of the 2010 Order which enables the relevant authority to exclude or restrict access to a salt marsh or mudflat;
- regulation 7 (*notices relating to periods during which exclusions or restrictions are to apply*) : an amendment to revise the current definitions of the “relevant person” to include a person specified in a direction under sections 24 (1B)(a), 25(2)(c) and 25 A (2)(d);
- regulation 9 (*consultation on proposals for long-term exclusions or restrictions*): an amendment to reflect that a direction may be made by a relevant authority to exclude or restrict access to a salt marsh or mudflat;
- regulation 11 (*notification by relevant authorities of directions and decisions*): section 24 of the CROW Act was amended by the 2010 Order to allow a

relevant authority to make a direction without any application having been made. To reflect this we propose to make a provision that this regulation will apply to section 24 in the case of coastal margin and also to a direction made to exclude or restrict access to a salt marsh or mudflat; and

- regulation 14 (*review of directions*), 15 (*consultation on reviews by relevant authorities of directions excluding or restricting access on a long-term basis*) and 17 (*informing the public of exclusions or restrictions*): amendments to include a section 25A direction made to exclude or restrict access to a salt marsh or mudflat.

**Question 5: Do you have any views on the proposals for changes to the existing regulations on exclusions or restrictions of access in regulation SI 2003 No. 2713 as they will apply to coastal access land?**

Other proposal

3.9 There is one further issue on which we would welcome any views.

Site inspections

3.10 We are not proposing any change to the general right of an appeal under Section 30 of the CROW Act to a decision made by a relevant authority not to give a direction or one made in accordance with an application. We do however propose amendments to regulations 29, 37 and 51 so that it should be for the Secretary of State to decide whether a site inspection of the land to which an appeal relates is necessary, whether that appeal is to be determined on the basis of written representations, by way of a hearing or by an inquiry. This will be consistent with the procedure we propose to apply to appeals against works notices as set out in paragraph 2.19 of this consultation paper.

**Question 6: Do you have any views on the proposal for site inspections?**

## Chapter 4: Dedication of land

### Introduction

- 4.1 This chapter of the consultation deals with proposed regulations under section 16 of the CROW Act which would allow landowners or long leaseholders to be able to dedicate land on or adjacent to the coastal margin as coastal margin under section 16 of that Act.
- 4.2 The provisional title of the proposed regulations is Access to the Countryside (Dedication of Land) (Amendment) (England) Regulations 2011.

### Background

- 4.3 Under section 16 of the CROW Act the freehold owner of land (that is the holder of “the fee simple absolute in possession of the land”) or a long leaseholder (those whose lease is for a legal term of years absolute and has at least 90 years left to run) may voluntarily dedicate that land for public access if they wish to do so. The act of dedication is irrevocable and binds successive owners and occupiers of the land (and others with an interest in that land) so that the right of access is protected for all time even if the ownership of the land changes. A dedication made by a leaseholder will end when the term of the lease expires.
- 4.4 Dedication does not prevent the land from changing use or prevent its development. Where a development takes place on such land that land will become “excepted land” under Schedule 1 to the CROW Act. A person who dedicates land will benefit from reduced liability under occupiers’ liability legislation.
- 4.5 A dedication allows the person making the dedication to remove, or to relax, any of the general restrictions that normally apply to open access land which is subject to the right of access. These general restrictions are listed in Schedule 2 to the CROW Act<sup>17</sup> and place limits on the sort of activities that can be carried out by a person exercising the right of access.
- 4.6 The steps that must be followed in making a dedication were set out in the Access to the Countryside (Dedication of Land) (England) Regulations 2003 (SI 2003 No.2004)<sup>18</sup>. In particular the regulations:

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<sup>17</sup> The general restrictions are included at Schedule 2 to the CROW Act which is available at [http://www.legislation.gov.uk/ukpga/2000/37/pdfs/ukpga\\_20000037\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/37/pdfs/ukpga_20000037_en.pdf)

<sup>18</sup> SI 2003 No.2004 is available at [http://www.legislation.gov.uk/uksi/2003/2004/pdfs/uksi\\_20032004\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/2004/pdfs/uksi_20032004_en.pdf)

- enable the general restrictions that are to be observed by persons exercising the right of access under Part I of the CROW Act to be removed or relaxed in relation to dedicated land;
- provide for the supply of information to persons who are requested to consent to a dedication of land;
- set out the types of information to be included in an instrument of dedication;
- provide for a copy of that instrument of dedication to be sent to certain persons, including the access authority and Natural England; and
- enable a dedication made to be amended<sup>19</sup>.

4.7 Under section 16(2) of the CROW Act any person who is making the dedication must make that dedication either with the consent of, or jointly with any person who may hold an inferior leasehold interest in any of the land which is to be dedicated. Where such consent to a dedication is needed, paragraph 4(2) of the 2003 regulations requires the person who is proposing to make the dedication to provide information to those persons who are requested to consent to a dedication of land. The information required includes:

- the nature of the interest in the land held by the person making the dedication, and where that person holds a legal term of years absolute, the length of the unexpired term;
- the location and extent of the land which is to be dedicated, marked on a map on a scale of not less than 1/10,000; and
- any proposals to remove or relax any of the general restrictions in Schedule 2 to the CROW Act in relation to any of the land to which the proposed dedication relates.

4.8 Section 303(6) of the 2009 Act amends section 16 of the CROW Act relating to dedication of land. It allows land in England which is coastal margin or land which is adjacent to coastal margin to be dedicated as coastal margin. If the land is already coastal margin, the effect of dedicating it is that any or all of the restrictions in Schedule 2 to the CROW Act may be removed or relaxed. Section 303(6) also provides that where land is dedicated as coastal margin, then if the land would otherwise be excepted land (within the meaning of Part 1 of the CROW Act) it is treated as if it were not excepted land, unless it is land which is accessible to the public under another enactment or rule of law (for instance, a public right of way). Existing dedications may be amended so that land which is already dedicated as access land may also be dedicated as coastal margin and also that any exclusions or restrictions of access that exist on that area of coastal margin will cease to have effect.

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<sup>19</sup> Defra issued a Guidance Note on dedication in January 2004 which is available at <http://www.defra.gov.uk/rural/documents/countryside/crow/dedicate-guide.pdf>

- 4.9 Part 4 of the Schedule to the 2010 Order amended section 1 of the CROW Act to make provision about land which is coastal margin by virtue of the Order and land which is dedicated as coastal margin under section 16 of the Act.
- 4.10 A dedication of land as coastal margin can only take effect on land which is coastal margin, (land that has been approved as coastal margin by the Secretary of State) or which is adjacent to coastal margin. However, Natural England will be able to discuss any possible dedication of coastal land with freehold owners or long leaseholders prior to the Secretary of State's approval of a report. Natural England might wish to start off such discussions during the "walking the course" stage of the implementation process<sup>20</sup>.

### Proposals for regulations

- 4.11 We propose to make a number of amendments to the existing regulations SI 2003 No.2004 to allow the freehold owner or a long leaseholder to be able to dedicate land on or adjacent to the coastal margin as coastal margin under section 16 of the CROW Act. We propose the following amendments:
- regulation 4(2) (*information to persons requested to consent to a dedication*) so that a person who is proposing to dedicate land must provide a statement as to whether the land is being dedicated as coastal margin;
  - regulation 4(2) (*information to persons requested to consent to a dedication*) so that instead of marking on a map the location and extent of the land which is to be dedicated, a person who is proposing to dedicate land may instead provide a description of the boundary provided that it is sufficient to identify that land as coastal margin;
  - regulation 5(1) (*instrument of dedication*) so the instrument of dedication includes a statement as to whether the land is being dedicated as coastal margin; and
  - regulation 6(1)(d) (*notification of a dedication*) to change the reference from "Countryside Agency" to "Natural England".
- 4.12 Amendments will also be made to regulation 7 so that a previous dedication may be amended so as to provide that the land is henceforth dedicated as coastal margin for the purposes of subsection (2C), and that any exclusion or restriction which has effect on land within subsection (2B)(b) immediately before the dedication ceases to have effect at the time the dedication takes effect

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<sup>20</sup> See page 16 of Natural England's Scheme referred to at footnote 2.

**Question 7: Do you have any views on the proposals for amendments to the existing regulations on dedication of land in regulation SI 2003 No. 2004 as they will apply to coastal access land?**

## **Annex A: Glossary of the main terms used in the consultation**

### **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 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 determination 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.

### **Access preparation period**

The period between the Secretary of State's approval of Natural England's report and the right of access coming into force is referred to as the "access preparation period". This period is to allow time for Natural England to make preparations such as doing work to sign the route and establishment works to make it suitable for public access (for example installing gates or steps).

### **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 exclusions or restrictions of access that Natural England proposes to apply on the route or coastal margin. The Secretary of State may approve the proposals for the route in the report with or without *modifications*, approve the proposals for one or more parts of the route only and reject the remaining proposals.

### **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. 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 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 authority**

Relevant authority means the authority with powers to make directions to exclude or restrict access the coastal access rights. Natural England is the relevant authority for coastal access land. It may delegate this role to the National Park Authority (for land in a National Park) or the Forestry Commissioners (for land which is wholly or predominantly woodland). The Ministry of Defence and the Home Office have comparable powers relating to defence and national security needs respectively

### **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, a leaseholder, or otherwise in lawful occupation of the *affected land*.

### **Representation**

A representation to 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.



## **Annex B: Summary of consultation questions**

### **Chapter 2**

- Question 1: Do you have any views on the proposed notice periods for appeals?
- Question 2: Do you have any views on the proposals on appeals to be determined by way of a hearing?
- Question 3: Do you have any views on the proposals on appeals to be determined by way of a pre-inquiry and/or inquiry?
- Question 4: Do you have any views on the proposals for site inspections or changes of procedure?

### **Chapter 3**

- Question 5: Do you have any views on the proposals for changes to the existing regulations on exclusions or restrictions of access in regulation SI 2003 No. 2713 as they will apply to coastal access land?
- Question 6: Do you have any views on the proposal for site inspections?

### **Chapter 4**

- Question 7: Do you have any views on the proposals for amendments to the existing regulations on dedication of land in regulation SI 2003 No. 2004 as they will apply to coastal access land?