

Coast and access implementation team

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24 July 2012

Dear Consultee,

Consultation on an order for the Isle of Wight under the Marine and Coastal Access Act 2009

1. I am writing to invite your views on whether the Government should make an order under section 300(2)(b) of the Marine and Coastal Access Act 2009 so that the coastal access duty under that Act applies in relation to the coast of the Isle of Wight. Before making a decision on whether to apply the coastal access duty to the Isle of Wight, the Government is giving an opportunity for landowners, users and other interested organisations and bodies to make comments.
2. It should be noted that, in the event that an order is made for this purpose, the Marine and Coastal Access Act 2009 does not require that a coastal access route is established on the Isle of Wight at any particular time, and so (should the order be made) the question would arise as to the sequencing of proposals for any such route on the Isle of Wight relative to Natural England's proposals for such routes elsewhere. Your views are therefore also sought on this question.
3. Further background on the order and the four questions on which the Government would welcome views is included at **Annex A** to this consultation letter.
4. This consultation does not require an Impact Assessment because the assumptions underlying a possible order were reflected in the Impact Assessment which was prepared for the Marine and Coastal Access Act 2009. The Impact Assessment may be found on Defra's website at www.defra.gov.uk.

Responses

5. Please send responses to either:

Coast and access implementation team
Department for Environment, Food and Rural Affairs
Zone 1/09, Temple Quay House
2 The Square
Temple Quay
Bristol



BS1 6EB

Or email: coast.consultation@defra.gsi.gov.uk

6. Responses should be received by **Friday 16 November 2012**.

Consultation Criteria

7. This consultation is in line with the Code of practice on Consultations. This can be found at www.bis.gov.uk/bre/.

8. When this consultation ends, we intend to put a copy of the responses in the Defra library at Ergon House, London. This is so that the public can see them. Also, members of the public may ask for a copy of responses under freedom of information legislation.

9. If you do not want your response - including your name, contact details and any other personal information - to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, this will not count as a confidentiality request.

10. Please explain why you need to keep details confidential. We will take your reasons into account if someone asks for this information under freedom of information legislation. But, because of the law, we cannot promise that we will always be able to keep those details confidential.

11. We will summarise all responses we receive and place this summary on our website at www.defra.gov.uk/consult . This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.

12. To see consultation responses and summaries, please contact the library at:

Defra
Information Resource Centre
Lower Ground Floor
Ergon House
17 Smith Square
London
SW1P 3JR
Telephone: 0207 238 6575
Email: defra.library@defra.gsi.gov.uk

13. Please give the library 24 hours' notice. There is a charge for photocopying and postage.

14. If you have any comments or complaints about the consultation process, please address them to Defra Consultation Co-ordinator, Area 7B Nobel House, 17 Smith Square, London SW1P 3JR or email consultation.coordinator@defra.gsi.gov.uk.

15. Thank you for your help in this matter. If you have any queries please contact us as above.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'R Hepburn', written in a cursive style.

RICHARD HEPBURN
Coast and access implementation team
Department for Environment, Food and Rural Affairs

Annex A

Purpose of consultation

1. The Government is seeking views on the principle as to whether or not to make an Order under section 300(2)(b) of the Marine and Coastal Access Act 2009 so that the coastal access duty under that Act applies in relation to the coast of the Isle of Wight.

Background

2. A new right of access to the English coast was introduced in Part 9 of the Marine and Coastal Access Act 2009¹ (“the 2009 Act”). The 2009 Act amends Part 4 of the National Parks and Access to the Countryside Act 1949 to provide for the designation of a long-distance coastal route for the whole of the English coast, and also amends Part 1 of the Countryside and Rights of Way Act 2000 to provide a right of access to a margin of land associated with the route for the purpose of open-air recreation. For this purpose “the English coast” means the coast of England adjacent to the sea, including any island comprised in England other than “an excluded island”. The Isle of Wight is currently an excluded island for this purpose (see paragraph 6 below).
3. The coastal access provisions in section 296 of the 2009 Act place a coastal access 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 along which the public are enabled to make 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 can have access to and enjoy for the purpose of open-air recreation.
4. In discharging the coastal access duty Natural England and the Secretary of State must (under section 297(2) of the 2009 Act) have regard to the following considerations:
 - a. the safety and convenience of those using the English coastal route;
 - b. the desirability of that route adhering to the periphery of the coast and providing views of the sea; and

¹ A copy of the Marine and Coastal Access Act 2009 is available at:
<http://www.legislation.gov.uk/ukpga/2009/23/contents>

- c. the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
5. 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*”, as set out in section 297(3) of the 2009 Act.
6. The coastal access duty relates to the English coast and applies in relation to the coast of any island (in the sea) unless the island is “excluded”. Section 300(2) of the 2009 Act explains that an island is “excluded” unless it is either an “accessible island” or an island specified by the Secretary of State by order. The 2009 Act defines an island as “accessible” if it is possible to walk to that island from the mainland of England (or from another “accessible island” or an island specified by the Secretary of State by order) across the foreshore or by means of a bridge, tunnel or causeway, even if it is only possible to walk to the island at certain times, or during certain periods, only. The power to make an order for this purpose is exercisable by statutory instrument (an instrument of subordinate legislation) (see section 316(3) of the 2009 Act).
7. It is not possible to walk to the Isle of Wight from the mainland of England, and to date no order has been made specifying the Isle of Wight for the purposes of section 300(2)(b). This means that the coastal access duty under section 296 of the 2009 Act does not presently extend to the Isle of Wight.
8. However the coastal access duty may be applied in relation to the Isle of Wight by means of an order made by the Secretary of State under section 300(2)(b) provided the Secretary of State is satisfied “that the coast of the island is of sufficient length to enable the establishment of one or more long-distance routes along its length capable of affording the public an extensive journey on foot” (section 300(5) of the 2009 Act). The Isle of Wight has a coastline of about 70 miles, and the Secretary of State considers that this condition as to the length of the coast is satisfied.

Effect of making an order

9. The 2009 Act gives the Secretary of State discretion as to whether or not to make an order to extend the coastal access duty in relation to the Isle of Wight. In the light of the responses to this consultation the Secretary of State will decide whether she should make an order specifying the Isle of Wight for the purposes of section 300(2)(b) of the 2009 Act. The effect of making such an order would be to impose a duty on Natural England to make proposals for a long-distance route(s) around the coast of the Isle of Wight (though it would not require such proposals to be made at any particular time).

Timing of making an order

10. As we have said in paragraph 9 above, the Secretary of State will decide whether or not she should make an order for the Isle of Wight. If a decision was taken to make an order we would expect that order to be made so as to come into force on 6 April 2013.
11. Should an order be made to apply the coastal access duty under the 2009 Act to the Isle of Wight, Natural England would in due course need to develop proposals for the coastal access route around the Isle of Wight, involving detailed consultation with landowners, users and other local interests. This would be followed by Natural England's publishing a draft report (with a 12-week period for any comments to be made) before issuing a report to the Secretary of State. We have published guidance (*"Natural England's coastal access reports: guidance on the Secretary of State's decision-making process, including the consideration of representations and objections"*) which sets out the legislative background and process that follows after Natural England's submission of a report to the Secretary of State.²

Coastal access implementation programme – current timetable

12. The new right of coastal access was introduced on a stretch of the English coast at Weymouth Bay on 29 June 2012. Natural England is currently working on delivering coastal access on a further five stretches of the English coast in Cumbria, Durham, Kent, Norfolk and Somerset and its aim is to introduce the right of access on all of these five stretches between now and the end of 2015.
13. On 10 May 2012 Natural England launched public consultations on its draft proposals for improved access to the first two of these five stretches, namely the Cumbria and Durham coasts. Natural England also announced at the same time that it would be starting work during 2012 and 2013 on developing coastal access proposals on a further five stretches of the coast which adjoin the current stretches mentioned in paragraph 12 above. In addition Natural England set out a medium-term plan over the next 5 - 7 years of the coastal access programme, the aim of which is to link the coastal route into some of the existing National Trail network, so, for example, linking the existing South-West Coast Path at Poole, Dorset to the first Severn Bridge and there joining up with the Wales Coast Path (which was opened in May this year) and the southern end of Offa's Dyke Path.

² *Natural England's coastal access reports: guidance on the Secretary of State's decision-making process, including the consideration of representations and objections* which is available at <http://archive.defra.gov.uk/rural/documents/countryside/crow/110401-coastal-access-report.pdf>

Isle of Wight implementation – timetable

14. As we have said, the primary purpose of this consultation is to seek views on the principle as to whether or not to make an order under the 2009 Act so that the coastal access duty under that Act should apply in relation to the coast of the Isle of Wight. As no order has been currently made specifying the Isle of Wight for the purposes of section 300(2)(b) of the 2009 Act, it follows that neither the Government nor Natural England has set a timetable for a possible coastal route under the 2009 Act for the Isle of Wight.
15. Should we decide, in response to this consultation, that an order should be made and come into force on 6 April 2013, Natural England might wish to review the current implementation programme. Therefore, we would welcome your views in response to question 4 below about the priority that Natural England should give to starting work to develop proposals for a coastal route on the Isle of Wight and the sequencing of proposals for any such route, relative to Natural England's proposals for implementation of coastal access elsewhere around the English coast.

Response to consultation

16. We would welcome views on the following questions:

Question 1

Do you support the Government's making an order under section 300(2)(b) of the Marine and Coastal Access Act 2009 specifying the Isle of Wight for the purposes of that section, so that at a future date a coastal route around the Isle of Wight could become part of the English coastal route with, in association with that route, a margin of land accessible to the public?

Please answer yes or no.

Question 2

What are your reasons to support the reply you gave to question 1?

Question 3

If an order were to be made, what priority should Natural England give to starting work to develop proposals for a coastal route on the Isle of Wight and the sequencing of proposals for any such route, relative to Natural England's proposals for implementation of coastal access elsewhere around the English coast?

Question 4

Do you have any additional points you would wish the Government to consider before making its final decision as to whether or not to make an order specifying the Isle of Wight?

**Coast and access implementation team
Defra**

24 July 2012