

## **NEW COASTAL ACCESS PROVISIONS ARE ON THEIR WAY - WHAT MIGHT THEY MEAN FOR LANDOWNERS?**

The Marine and Coastal Access Bill has completed its progress through the House of Lords and has recently had its second reading in the House of Commons. According to DEFRA's website, Royal Assent for the Bill is planned for 2009 and they are "already starting to work on implementation". Part 9 of the Bill contains coastal access provisions requiring the Secretary of State and Natural England to secure a long distance coastal trail together with "spreading room" around the entire coastline of England.

Natural England has carried out an "access audit" which shows that so far 56% of the coast has existing satisfactory access. 44% of the coast will require a route to be secured through the new legislation. Of this 44% area, 46% of the new route could use routes that are already being used by the public or permissive routes, but 54% would need a new route created from scratch.

The Bill provides for an Order to be made amending Section 3 of the Countryside and Rights of Way Act 2000 (CROW) to give effect to the coastal access provisions and DEFRA have published a paper (the DEFRA Paper) setting out the main measures that the government expects would be included in such an Order. A draft Order itself will be drawn up for consultation after the Bill receives Royal Assent.

### Land proposed to be excepted from the Order

The width of the trail, disregarding any spreading room, would typically be 4 metres, to allow two people to walk comfortably abreast. Land seaward of the trail would generally be spreading room except when it is "excepted land". Other land on the landward side of the trail up to a recognisable physical feature might be included by Natural England as spreading room, as long as it is not "excepted land".

What is "excepted land"?

According to the DEFRA Paper some land that is already excepted land under CROW would continue to be excepted land should the Order be made. An important existing exception that would remain in place is land covered by buildings or the curtilage of such land. Curtilage is a difficult word to define but generally means land attached to a building, in the same ownership as that building and used for the purposes of that building. There may or may not be a physical boundary such as a fence defining the curtilage. A private garden is normally considered part of a dwelling's curtilage.

However, currently there is some uncertainty about the treatment of "parks and gardens" for the purposes of the new coastal access rights.

Natural England states in its draft Implementation Scheme that any buildings or their curtilage "or any other garden or park associated with such buildings" would be excepted from the coastal access rights and that the trail would pass on the landward side of such properties if no other suitable route could be found. However, elsewhere in the draft Implementation Scheme Natural England states that where there are large parks or gardens along the coast they would consult

with the owners and “explore with them the scope to negotiate a route through which respects their privacy”.

The DEFRA Paper is also unclear on whether “parks and gardens” will be excepted land. There is an existing CROW exception for parks and gardens and at first the government announced its intention of leaving this exception in place for the new coastal access Order. However, the Parliamentary Joint Committee recommended that the Government “should give careful thought to what is included in the parks and gardens exception” and DEFRA’s official stance is currently that it will give further consideration to what is included in parks and gardens in the light of discussions in Parliament when the Bill goes back to the House of Commons. So this is an issue to keep an eye on.

Three existing excepted land categories under CROW would be removed for the purposes of coastal access. These are:

- Land within 20 metres of a dwelling;
- Land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure;
- Land habitually used for the training of racehorses.

Two existing excepted land categories under CROW would be modified, to provide for an access strip through such land, covering the coastal trail itself and land within two metres of the line taken by the trail. The two categories are:

- Land on which the soil is or has been in the last 12 months ploughed or drilled for planting or sowing crops or trees;
- Land used as a golf course.

Natural England states in its draft Implementation Scheme that the trail would skirt the seaward edge of cropped fields that represented the most convenient route along the coast and that there would be no spreading room allowed on cropped areas.

The DEFRA Paper also says that they are still considering the status of camp and caravan sites and that their current view is that permanent, formal sites, for instance those which are licensed or annually certified, should be excepted land “except for an excepted land access strip”. They add that such a strip could not go through land actually covered by an individual tent or caravan since such land would fall into the category of “land covered by a building”.

In its draft Implementation Scheme Natural England states that the coastal trail may pass through caravan and camping sites if this is the best alternative. Natural England say that they would consult with the site manager when considering the best alignment and that spreading room would not be created on land used as a formal camping or caravan site: “Government is considering the best means to ensure this”.

There will be three new categories of excepted land which would not be subject to coastal access rights:

- Public highways;
- Graveyards and cemeteries;
- School playing fields.

### The Draft Implementation Scheme

To accompany the Bill, Natural England has published a draft of the Scheme it will use to decide where the new coastal access rights will apply at the local level. Once the Bill receives Royal Assent, Natural England will consult on the draft Scheme before finalising it and submitting it to the Secretary of State for approval. Implementation can only begin once this approval has been given.

The draft Scheme sets out Natural England's proposals for the implementation process. The coast will be divided into stretches, each of which will be the subject of a final report to the Secretary of State. Each final report will recommend the alignment of the trail and the extent of the spreading room on the landward side of that stretch. There are to be several stages before a report is finalised:

1. **Information gathering and analysis.** This appears to involve liaison with access authorities and organisations with a strategic interest in coastal management and use, rather than landowners. It will include liaison with the planning authorities so that large-scale coastal developments (planned or in progress) that may have an impact on alignment of the trail should be identified at this stage. Significant areas of "excepted land" should also be identified at this stage.
2. **Walking the course and site consultations.** Natural England would then visit land which may be affected to discuss options for alignment with the people who own or occupy that land. Where a development is at a formative stage at the time of alignment, Natural England state in the draft Scheme that they "will work with planners and developers to seek to ensure that the final plans take into account coastal access objectives, in line with coastal planning policy guidance." Where a development is in progress at the time of alignment, or planning has been approved, Natural England state that their report is likely to recommend the extent of coastal access rights that will be appropriate on completion of the development. Natural England say that they may also recommend an alternative route for the public to use until the development is complete, in order to get around the site without interfering with building operations.

Existing Countryside and Rights of Way Act access restrictions and exclusions that may be in operation will have no legal effect on the new coastal access rights. As part of the discussions Natural England would therefore consider whether to give new directions which would restrict or exclude the coastal access rights in the same way.

3. **Preparation of draft proposals.** The draft proposals would be set out in the same format that Natural England would use for its final report to the Secretary of State. The draft proposals would include:
  - a map of the proposed route for the trail and any alternative routes.
  - the extent of any spreading room to either side of the trail, including any spreading room that Natural England proposes to create under its discretionary power on the landward side of the trail.
  - Any significant new infrastructure (eg bridges) that would be needed. Natural England may also include provision for subsidising ferry services.
  - Any access management restrictions or exclusions that Natural England considers necessary
  - A schedule of maintenance
  - Any variations proposed to be made to an existing National Trail, to bring it into line with the new coastal trail
4. **Publication of draft proposals on internet for a 12 week period.** This would be to allow people to view the proposals and submit comments on them. At this stage Natural England would also seek any outline consents from other public authorities that are necessary to implement the proposals eg planning and highway authorities and the Environment Agency.
5. **Publication of final report to the Secretary of State on the internet.** The final report would summarise the comments received under stage 4; and any changes that had been made as a result of them.
6. **Receipt of formal representations from the public to Natural England on the final report.** The time allowed for this process is not yet known but would be determined by statutory regulations.
7. **Submission of final report to Secretary of State by Natural England.** Natural England may make comments on the formal representations received under stage 6, although it would not be able amend its report at that stage. Such comments might recommend the Secretary of State to modify the proposals in response to a particular representation, or might explain why Natural England did not think that any modification was necessary.
8. Once a report had been confirmed by the Secretary of State, no appeal would be possible by individual landowners. Infrastructure or other establishment works would be undertaken by the local authority, but funded by Natural England. Directions to restrict or

exclude access that were included in the confirmed report would be made. On completion of these processes, the rights would be brought into force by order on each section of coast on a date decided by the Secretary of State.

9. Natural England would fund maintenance of the new parts of the trail during the ten year implementation phase. Where the trail followed existing public rights of way, highway authorities would remain responsible for their maintenance. Natural England would monitor the outcome of the coastal access provisions at a national and local scale, including monitoring of environmental effects.
10. Natural England might reassess the coastal access provision on any part of the coast at any time if the results of monitoring revealed the need for such reassessment or eg if a representation was received from a landowner or occupier in relation to a change of use on land where coastal access rights applied.

The draft Scheme states that in deciding the alignment of the trail Natural England should “in general” ensure that coastal access rights should not interfere in any significant way with the operational needs of businesses working on the coast. However, there is a proviso that in some places access management rather than realignment would be more appropriate.

Originally there was no appeals process to appeal the decisions of Natural England, but this has been amended by the House of Lords and it looks likely that the Government will concede this point. However, there is no compensation available to landowners or businesses under the proposed Act if the new coastal access rights cause them loss. Concerned landowners or occupiers should therefore watch for and engage in the consultation that will take place on the draft Order and the draft Implementation Scheme if the Bill receives Royal Assent this year.

If you wish to discuss any of the issues raised in this article, or for information on any other commercial property matters, please contact Jenny Harbord of Murrell Ashworth LLP using the following details:

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