

NORTH YORKSHIRE
LOCAL ACCESS FORUM

19TH NOVEMBER 2009

CONSULTATION ON PROPOSALS TO AMEND THE
CROW ACT 2000 FOR COASTAL LAND

1.0 PURPOSE OF REPORT

- 1.1 To brief members on proposals to improve access to the English coast through the Marine and Coastal Access (MCA) Bill.

2.0 PROPOSALS

- 2.1 DEFRA are consulting on legislation under part 9 of the MCA Bill which provides the framework for establishing a new right of access to the English coast, through the creation of a walking route and access to a wider margin of land for the purpose of outdoor recreation.
- 2.2 The purpose of this consultation is to seek views on the changes to provisions within the CROW Act for the purpose of land which is coastal margin.
- 2.3 The consultation poses a series of 30 questions for consideration.

3.0 RECOMMENDATIONS

- 4.1 It is recommended that the Forum considers the questions posed by DEFRA and formulates a suitable response.

CONTACT OFFICER:

Aidan Rayner
PROW Team Leader
01609 533077

www.defra.gov.uk

Consultation on proposals to amend the Countryside and Rights of Way Act 2000 for coastal land



Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR
Telephone: 020 7238 6000
Website: www.defra.gov.uk

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Defra
Coastal Access Team
1/01 Temple Quay House
2 The Square
Bristol BS1 6EB
Telephone: 0117 372 8427
Website: www.defra.gov.uk

This document is also available on the Defra website.
<http://www.defra.gov.uk/corporate/consult/coastal-access/index.htm>

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

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Contents	1
Executive Summary	2
How to Respond	3
Chapter 1. Background	4
History	4
What the Bill does	5
Introduction to the consultation	6
Chapter 2. Description of the coastal margin	7
Chapter 3. Proposed changes to the provisions for restrictions and exclusions	9
Discretionary restrictions and exclusions	9
Other restrictions and exclusions	9
Our proposals for change	10
The relevant authority	13
Chapter 4. Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act	14
Categories of excepted land we do not propose to change	14
Categories of excepted land we think should be removed	15
Categories of excepted land we think should be amended	15
Proposals for additional categories of excepted land	17
Other land uses	18
Other structures	19
Guidelines on the categories of excepted land	20
Chapter 5. Proposed changes to the general restrictions under Schedule 2 to the CROW Act	21
Control of dogs	21
Sea angling	22
Obstructions to the route	23
Annex A Categories of excepted land under Schedule 1 to the CROW Act	24
Annex B Guidelines on what is meant by the categories of excepted land	25
Annex C General restrictions under Schedule 2 to the CROW Act	27
Annex D Summary of consultation questions	29

The context

The Government set out its vision for improving access to the English coast in 2005 and tasked the Countryside Agency to consider how best to achieve that vision. The work was continued by Natural England on its creation in October 2006 and in February 2007 Natural England submitted its advice to Government. Natural England recommended creating a new type of access tailored to meet the specific circumstances of the coast. Following public consultation on the proposals the Government announced that it intended to introduce new legislation so that the public will have the right to walk around the English coast for the first time.

The Marine and Coastal Access Bill (the MCA Bill) was introduced into Parliament in December 2008. It includes at Part 9 provision for improving access to the English coast. It does this through introducing new sections into two existing pieces of public access legislation: the National Parks and Access to the Countryside Act 1949 (the 1949 Act) and the Countryside and Rights of Way Act 2000 (the CROW Act). It also enables changes to be made to the existing provisions in the CROW Act as they will apply to coastal land (the existing provisions will remain in place for other access land). Any such amendments will be made by order (secondary legislation). The consultation seeks views on the amendments we propose to make which are summarised below.

A description of the coastal margin

Views are sought on a description of the land that will be included in the coastal margin which we propose to insert into the CROW Act. Land which falls within the description will become access land once the new right of access is implemented. The description will include typical features of the coast such as beaches and cliffs; land over which the coastal route itself passes; and land to the seaward of the route.

Changes to the provisions for restrictions and exclusions

The main proposed changes are to remove the right for landowners and others to exclude or restrict access at their discretion; to enable Natural England to put restrictions or exclusions in place without application from the landowner; to provide for a new type of direction enabling Natural England to exclude or restrict access to areas of saltmarsh or mudflat; and to provide for Natural England to be able to delegate the role of relevant authority to a National Park Authority after initial implementation.

Changes to the categories of excepted land in Schedule 1

Schedule 1 to the CROW Act sets out certain categories of excepted land which are not access land for the purpose of Part 1 of the CROW Act. We propose to remove some of the existing categories of excepted land which we do not think are appropriate in the context of the coastal margin; to amend some of the existing categories to allow for the coastal route to go through; and to add some new categories appropriate to the circumstances of the coastal margin. We also seek views on the published guidelines on what the existing categories mean.

Changes to the general restrictions in Schedule 2

Schedule 2 to the CROW Act sets out certain general restrictions to be observed by persons exercising the right of access. We propose to amend the existing restrictions with regard to control of dogs and on fishing in tidal waters, and to add a new restriction to prevent obstructions to the route.

Request for comments

We are seeking views on a number of questions under each heading. Please don't feel that you have to comment on all the questions – responses on any number are welcome. The closing date for receipt of responses is 1 December 2009.

This is your chance to contribute to a consultation on proposals to amend the existing provisions in the Countryside and Rights of Way Act 2000 as they will apply to land which becomes coastal margin once the coastal access provisions in Part 9 of the Marine and Coastal Access Bill are implemented. There are a number of specific questions throughout the document and these are summarised in Annex D. Don't 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 <http://www.defra.gov.uk/corporate/consult/coastal-access/index.htm>

The commencement date of this consultation is **8 September 2009**. The closing date for responses is **1 December 2009**. Written responses should be sent to:
coast.consultation@defra.gsi.gov.uk

Alternatively, you can send your response to:

Defra
Coastal Access Team
1/01 Temple Quay House
2 The Square
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 e-mail 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.

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 (email: 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 the issues in the consultation paper), please address them to:

Marjorie Addo
Defra Consultation Co-ordinator
Area 7B, Nobel House 17 Smith Square London SW1P 3JR
Email: consultation.coordinator@defra.gsi.gov.uk

History

- 1.1 The Marine and Coastal Access Bill (the MCA Bill) which is currently being considered by Parliament includes provision at Part 9 for improving access to the English coast. The proposals in the MCA Bill were developed following research and advice to Government by Natural England on existing access provision at the coast and the type of access that would best meet the Government's vision of:

"A coastal environment where rights to walk along the length of the English coast lie within a wildlife and landscape corridor that offers enjoyment, understanding of the natural environment and a high quality experience; and is managed sustainably in the context of a changing coastline".
- 1.2 Natural England submitted its advice *Improving coastal access our advice to Government* in February 2007. The report recommended that existing mechanisms for providing public access to the countryside were not on their own adequate to meet the Government's objectives for coastal access and that the Government should consider new legislation to create a new type of access that integrates the best features of existing mechanisms, and is flexible to meet the widely varying circumstances of the English coast.
- 1.3 In June 2007 Defra issued a public consultation setting out the Government's objectives for improving access to the coast alongside the key findings and recommendations from Natural England's advice. The *Consultation on Proposals to improve access to the English coast* asked in particular for views on the proposals for new legislation. From analysis of the consultation responses, the Government concluded that the overall weight of the responses to the consultation supported Natural England's recommendation that new legislation was the best way forward for improving coastal access, and it was announced on 27 September 2007 that the Government intended to legislate so that the public will have the right to walk around the English coast for the first time.
- 1.4 On 3 April 2008 a draft Marine Bill was published for pre-legislative scrutiny and public consultation. The coastal access provisions in the draft Bill were considered by both the Efra Committee and a Joint Committee of both Houses of Parliament. In addition 191 responses to the public consultation were received about coastal access and some 11,000 Ramblers' Association members responded in support of the coastal access provisions. A government response *Taking forward the Marine Bill: the Government response to pre-legislative scrutiny and public consultation* was published in September 2008. A number of changes were made to the draft Bill as a result of the pre-legislative scrutiny and consultation process and the revised MCA Bill was introduced into Parliament in December 2008. The House of Lords completed its consideration of the Bill on 8 June 2009 during which a number of further changes were made to the coastal access provisions. The House of Commons Public Bill Committee concluded its consideration of the Bill on 14 July 2009 with no further changes being made to the coastal access provisions. The Bill will continue its passage through Parliament when it resumes after the summer recess in October. The Bill is expected to receive Royal Assent in the Autumn.

- 1.5 A copy of the MCA Bill, explanatory notes, and impact assessment can be found on the Defra website at <http://www.defra.gov.uk/marine/legislation/key-docs.htm> along with transcripts of proceedings in Parliament and other documents about the Bill. We have not prepared a separate impact assessment for this consultation because the impact assessment for the Bill includes assumptions which are reflected in this paper.

What the Bill does

- 1.6 The coastal access provisions in Part 9 of the MCA Bill (clause 291) 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; and
 - (b) that there is a margin of land along the length of the English coast and in association with the route which the public can enjoy for the purpose of recreation.

The Bill 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 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.

- 1.7 Clause 293 of the Bill requires Natural England to set out in a scheme the approach it will take to implementing the coastal access duty. Natural England has published a draft of the scheme describing the approach it intends to take in drawing up a coastal access report; in implementing coastal access in a range of different land types (such as dunes and cliffs) and land uses (such as land used for grazing livestock or where shooting takes place); and the special considerations that apply to estuaries. The scheme must be approved by the Secretary of State and Natural England will consult on the draft scheme before it is finalised and submitted to the Secretary of State. You can read a copy of the draft scheme at <http://www.naturalengland.org.uk/ourwork/enjoying/places/coastalaccess/default.aspx>
- 1.8 The Bill also provides for amendments to be made to the existing provisions of the CROW Act for the purpose of coastal access land. The existing provisions will not be affected for access land which is open country and registered common land, unless it is also coastal margin. Such amendments will be made by order, subject to affirmative resolution in both Houses of Parliament. When the Bill was introduced into Parliament in December 2008 the Government published a paper setting out the main changes it intended to make to the CROW Act for this purpose. A revised version of the paper was published in June 2009. You can read a copy of the paper at <http://www.defra.gov.uk/wildlife-countryside/pdf/access/ca-draft-sect3.pdf>. It is these intended changes that form the subject of this consultation.

Introduction to the consultation

- 1.9 The purpose of this consultation is to seek views on the detailed proposals for changes to the existing provisions in the CROW Act for the purpose of land which is coastal margin. The proposals are set out in the following chapters:
- Chapter 2 Description of land which will be coastal margin
 - Chapter 3 Proposed changes to the provisions for restrictions and exclusions
 - Chapter 4 Proposed changes to the categories of excepted land under Schedule 1
 - Chapter 5 Proposed changes to the general restrictions under Schedule 2.
- 1.10 Under each chapter there is an explanation of the proposed changes and a number of questions on which we are seeking views. Your comments in response to any or all of the questions are welcome. Where we have asked whether you agree with the question please can you state clearly whether you agree, disagree, or are uncertain or have no view, followed by any general comment or explanation you may wish to make.

- 2.1 The MCA Bill inserts new sections into the CROW Act to provide for the extension of the right of access under section 2(1) of the CROW Act to coastal land in England. In particular, it provides at new section 3A for the Secretary of State to specify by order the descriptions of land which are coastal margin for this purpose. The amendments to the CROW Act contained in the Bill will, once the order under the new section 3A is approved by affirmative resolution in both Houses of Parliament and has come into force, extend the right of access provided by the CROW Act to land which is coastal margin, as from the end of the access preparation period (the date appointed by order under new section 3A(10)).
- 2.2 We intend that the section 3A order will specify the following descriptions of land as coastal margin to which the public have a right of access under section 2(1) of the Act:
- (a) the foreshore (the area between mean low water and mean high water mark); and
 - (b) any cliff (whether sloping or sheer), bank, barrier, dune, beach or flat which is adjacent to the foreshore.
- 2.3 In addition to access to the coastal land types at (a) and (b) above, the order will provide for the land which is coastal margin to include the line of the route (which will be designated under the long distance trail provisions of the 1949 Act), and land within two metres either side of the line. This means that the route could be up to but no more than four metres in width (subject to what is proposed in paragraph 2.6). We are also proposing that all land to the seaward of the route will be included in the coastal margin. These three categories will be coastal margin provided that all this land, taken as a whole (land over which the route passes, land which is adjacent to and within 2 metres of the line and land to the seaward of that land) is coastal land within the meaning given by section 3(3) of the CROW Act (i.e. foreshore or land adjacent to the foreshore). In summary, we therefore propose to include the following within the description of coastal margin:
- (c) land of any of the following categories, provided that, taken as a whole, the land falling in these categories is coastal land:
 - (i) land over which the line taken by the English coastal route passes
 - (ii) land which is adjacent to and within 2 metres of that line (as expanded or contracted as proposed in paragraph 2.6), and
 - (iii) land which is adjacent to and to the seaward of land within (ii) above.
- 2.4 Similarly, the order will also contain provisions so that the line of any alternative route (provided for in the Bill in new section 55C of the 1949 Act) and land within 2 metres of that line will be included in the description of land to which the public has a right of access whether or not the land is coastal land. This is so that any such alternative route is accessible to the public during the period of its operation in the same way as the ordinary route.
- 2.5 Where land that is already access land under the CROW Act (that is, it is open country or registered common land) falls within the coastal margin it will be subject to the provisions for coastal margin as amended by the section 3A order, and no longer be access land by virtue of its status as open country or registered common land.

Chapter 2: Description of the coastal margin

- 2.6 The order will also include provision (under section 3A(2)(d)) in relation to proposals under new section 55D 2(a) and (b) of the 1949 Act, which provide that Natural England's report under the 1949 Act can include proposals that the landward boundary of the coastal margin and the landward or seaward boundary of any alternative route may be drawn to coincide with a physical feature. For the ordinary route all land to the seaward will normally be included in the margin so the provision will only be relevant to the landward boundary. For an alternative route the boundary may be drawn to a physical feature on both the landward and the seaward side because there may be land which does not fall within the description of coastal land to both sides of the route. Drawing the limit of the margin or alternative route to meet a particular feature – for example a hedgerow or a wall – where it is appropriate will help provide clarity to users and landowners as to the extent of access land. It may have the effect of including other land within the coastal margin which does not fall within the land types set out in paragraph 2.2, or of excluding some coastal land.

Question 1.

Do you agree with the description of coastal land types (a) and (b) at paragraph 2.2 that should be included in the coastal margin? If you do not agree, please give your reasons.

Question 2.

Are there any other coastal land types you think should be included?

Question 3.

Do you agree that the coastal margin should also include the categories of land set out in paragraph 2.3(c)? If you do not agree, please give your reasons.

Question 4.

Do you agree that, where circumstances allow and subject to the provisions at paragraph 2.6, the route should be 4 metres wide? If not, what width do you think would be appropriate and why?

- 3.1 Chapter 2 of Part 1 of the CROW Act provides for exclusions or restrictions of access. Sections 22 to 28 of Chapter 2 set out the specific powers of owners, the relevant authority and others to apply exclusions or restrictions.

Discretionary restrictions and exclusions

- 3.2 The provisions for landowners and others to exclude or restrict access at their discretion are set out at sections 22 and 23 of the CROW Act:
- Section 22 entitles landowners and certain tenants¹ to exclude or restrict access rights for up to 28 days a year, for any reason, by notifying the relevant authority.² (The 28 days excludes public holidays and only four of these days may be on weekends. The 28 days cannot be used to restrict access on Saturdays between 1 June and 11 August or Sundays between 1 June and 30 September or on more than four Saturdays or Sundays in any year).
 - Section 23(1) entitles landowners to exclude people with dogs from managed grouse moors for up to five years – again by notifying the relevant authority.
 - Section 23(2) entitles landowners and certain tenants to exclude people with dogs from small enclosures (15 hectares or less), in connection with lambing, for a single period of up to six weeks each year – again by notifying the relevant authority.

Other restrictions and exclusions

- 3.3 Sections 24 to 26 and section 28 of the CROW Act set out the circumstances in which exclusions or restrictions of access may be put in place by the relevant authority, or, in the case of defence or national security, by the Secretary of State:
- Section 24 allows the relevant authority to exclude or restrict access for the purposes of land management on application from any person with an interest in the land as defined by section 45 of the CROW Act.³
 - Section 25 provides for exclusions or restrictions where there is a particular risk of fire or to protect the public from any danger by reason of anything being done on the land. Again, anyone with an interest in the land may apply under this section, but the relevant authority may also exercise this power without such an application being made.
 - Section 26 sets out provisions for excluding or restricting access to land in the interests of wildlife and habitat conservation or to protect sites of historic or archaeological importance. This may only be done by the relevant authority and not on application from a person with an interest in the land. The relevant authority must however have regard to any advice given to them by the relevant advisory bodies.⁴
 - Section 28 provides for the Secretary of State to exclude or restrict access for the purposes of defence or national security.

1 Includes a tenant of land which is subject to a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 or a tenancy to which the Agricultural Holdings Act 1986 applies.

2 See paragraph 3.15 for an explanation of the term relevant authority.

3 Section 45 of the CROW Act interprets “interest” as including “any estate in land and any right over land, whether the right is exercisable by virtue of the ownership of an estate or interest in land or by virtue of a licence or agreement, and in particular includes rights of common and sporting rights”

4 The relevant advisory bodies are set out in section 26(6) to the CROW Act and with regard to land in England are Natural England and the Historic Buildings and Monuments Commission (English Heritage).

Chapter 3:

Proposed changes to the provisions for restrictions and exclusions

Our proposals for change

- 3.4 We intend that the section 3A order will amend the provisions for restrictions and exclusions with regard to coastal land. As explained at paragraph 1.6 above, the coastal access duty set out in clause 291 of the MCA Bill requires the Secretary of State and Natural England to secure a route and associated margin of land for public access on foot around the English coast. The process for identifying the coastal margin is very different to the process for mapping open country and registered common land under the CROW Act. In particular, the extensive consultation process with landowners and others prior to Natural England drawing up a report to the Secretary of State means that any need for exclusions or restrictions will be identified at the outset. Provision inserted by clause 297 of the Bill (new section 55D(5) of the 1949 Act) requires Natural England to identify and include in a coastal access report all restrictions and exclusions which would be necessary if the coastal access report were to be approved.
- 3.5 In addition to the consultation process, those with a relevant interest in affected land as defined in section 292(4) of the MCA Bill, that is to say a landowner, leaseholder or lawful occupier, may make objections to proposals in Natural England's report on specified grounds including the inclusion, or failure to include, a proposal for a restriction or exclusion. The objection will be considered by an appointed person who will make a recommendation to the Secretary of State. We intend that the appointed person will be an inspector from the Planning Inspectorate. A recommendation might, for example, be that the route proposed in the report, or the landward boundary of the coastal margin should be modified, or different provision made for restrictions or exclusions. The Secretary of State will consider the report, together with representations and comments, and any recommendations made in respect of objections, and will either approve or reject the report, or approve the report subject to modifications. The detailed provisions relating to the objections mechanism are set out in the new Schedule 1A to the 1949 Act as inserted by Schedule 19 to the Bill.
- 3.6 This provides a unified process whereby all considerations relevant to the proposed access for a particular section of coast can be considered together. Directions will put in place the exclusions or restrictions proposed in the report before the right of access is brought into effect. Section 297, 55F of the MCA Bill provides that where an approved report contains proposals for directions under Chapter 2 of Part 1 of the CROW Act, Natural England must make the direction in accordance with those proposals. The Bill provides for an access preparation period after the Secretary of State has approved a proposal by Natural England for a route and before the right of access to that route comes into effect. This is to allow for implementation of any necessary measures such as installation of access infrastructure, and for any restrictions and exclusions to be put in place.
- 3.7 If different exclusions or restrictions are necessary at some point after the initial implementation of the route because the situation changes, the relevant authority (Natural England) will be able to put them in place on application from a person with an interest in the land under sections 24 and 25 of the CROW Act. If Natural England does not act in accordance with the application, the person making the application can appeal to the Planning Inspectorate under section 30 of the CROW Act. Where such restrictions or exclusions are temporary Natural England is likely to expect the applicant to agree a temporary route where possible, so that continuity of access is maintained.

- 3.8 The government considers it important for the public to have certainty as to the operation of the route, and that it is not appropriate that landowners should be able to close the route at their discretion. The government also believes that the public should have access to the wider coastal margin, unless there is a good reason to exclude or restrict access. We believe that the consultation procedures and other measures outlined at paragraphs 3.4 – 3.7 mean that any necessary restrictions or exclusions will be provided for in Natural England’s report and that if the situation changes new restrictions or exclusions can be put in place under sections 24 – 26 and 28 of the CROW Act.
- 3.9 We consider that restrictions for grouse moors and lambing (see paragraph 3.2) are less relevant on the coastal margin than on open country and registered common land as a whole and can be dealt with by an application for a restriction or exclusion for the purposes of land management under section 24 of the CROW Act. The intention is, therefore, that exclusions and restrictions which can be put in place at the discretion of the owner and others under sections 22 and 23 of the CROW Act will not be available for land that is coastal margin. We do not propose to change the provisions to make an application to the relevant authority for restrictions or exclusions under sections 24 and 25 but are open to views or proposals on ways the restrictions or exclusions system might be improved for coastal land.

Question 5.

Do you agree it is important that users should have certainty that the route will be open?

Question 6.

Do you agree that powers under section 22 of the CROW Act for landowners to restrict or exclude access, at their discretion, for up to 28 days per year are not appropriate for coastal land and should be removed?

Question 7.

Do you agree that the powers under section 23 of the CROW Act for landowners to restrict access for people with dogs, at their discretion, for lambing purposes and on grouse moors are not appropriate for coastal land and should be removed?

- 3.10 We also propose that the section 3A order will give Natural England a power to give a direction for exclusion or restrictions of access under section 24 of the CROW Act (land management) without an application by a landowner. Before doing so Natural England will be obliged to consult the owner and occupier of the relevant land. This will make it simpler to put in place restrictions or exclusions identified as necessary during the consultation process and included in an approved coastal access report by Natural England, as it will not be necessary for someone with an interest in land to make a formal application for this to be done. It will also enable works to be carried out without unnecessary delay, for example, to flood defences or for maintenance purposes.

Chapter 3:

Proposed changes to the provisions for restrictions and exclusions

- 3.11 Section 25 of the CROW Act enables the relevant authority to exclude or restrict access where, by reason of exceptional weather conditions or exceptional change in the condition of the land, it is considered necessary to avoid the risk of fire. We consider that this provision in the CROW Act should be amended as regards coastal land so that a direction for the purpose of fire prevention will not apply to the route itself. In many instances the route will follow existing rights of way, and, as set out at paragraph 4.15, we intend that where this is the case the existing rights of access will continue to apply. Directions for restrictions or exclusions under the CROW Act will not therefore apply where the route follows a right of way, and we consider that closing the other sections of the route that are subject to the CROW Act provisions would not provide for a consistent or practical approach. Where there is exceptional risk of fire we consider that this can be effectively managed where there is access along a linear route.
- 3.12 We also propose that the section 3A order will give the relevant authority a power to give directions for exclusions or restrictions in relation to the coastal margin, relating to the impacts of access to the coastal margin on land adjoining the margin, for instance requiring people to control dogs in specified ways if this is necessary to protect livestock or crops on land which is adjacent to coastal access land.

Question 8.

Do you agree that the relevant authority (Natural England) should be able to give directions for an exclusion or restriction of access under section 24 of the CROW Act without an application by a landowner?

Question 9.

Do you agree that the line of the coastal route should be exempted from the provisions in section 25 of the CROW Act which enable the relevant authority (Natural England) to restrict or exclude access for the prevention of fire risk?

Question 10.

Do you agree that the relevant authority (Natural England) should be able to give directions for the exclusion or restriction of access on the coastal margin to protect land adjoining the margin?

- 3.13 We intend that the section 3A order will also introduce a new type of direction enabling Natural England to exclude or restrict access to an area of saltmarsh or mudflat if it is satisfied that the land is unsuitable for public access. Natural England's advice to Government in February 2007 recognised that areas of intertidal saltmarsh and mudflat are frequently unsuitable for general recreation although in some cases they are used as beaches by local people. Responses to the Defra consultation on proposals to improve access to the English coast in June 2007 generally agreed that access to saltmarsh and mudflat should not be a priority. We consider that the use of exclusions and restrictions will enable Natural England to be flexible to reflect local circumstances and is a more proportionate approach than adding saltmarsh and mudflat as a new category of excepted land to Schedule 1 to the CROW Act, which would mean that the new right of access would not recognise situations where such land is used for recreation by local people.

Question 11.

Do you agree that Natural England should be able to restrict or exclude access to saltmarsh and mudflat where they are not appropriate for access?

- 3.14 We are not proposing to make any changes to the existing provisions in sections 26 to 28 of the CROW Act as they relate to the coastal margin but are open to views or proposals on any ways the restrictions or exclusions system might be improved for coastal land.

The relevant authority

- 3.15 For open country and registered common land under the CROW Act Natural England is the relevant authority for most access land but the Forestry Commission is the relevant authority for woodland (woodland is not normally access land under CROW but there are some cases where woodland is included as part of a larger parcel of land which is access land, and there is some land which has been dedicated as access land by the owner). National Park authorities are the relevant authority for land within their National Park. Relevant authorities are responsible for determining applications to restrict or exclude access to land covered by the CROW Act if this is necessary for land management, public safety or fire prevention.
- 3.16 The government considers that because the coast and the coastal route need to be considered as a unified whole it would be inappropriate to have different bodies involved in giving directions for restrictions and exclusions. Natural England will be responsible for recommending any necessary restrictions and exclusions in its report to the Secretary of State and for ensuring any approved restrictions are in place when the right of access comes into effect on any stretch of coast, and for any directions not included in approved proposals, but which subsequently prove to be required. Natural England will therefore be the sole relevant authority for all land that is coastal margin. However, we think it could be appropriate for Natural England to be able to delegate the role of relevant authority to other bodies such as the National Park authority after the initial alignment of the route, where it is appropriate to do so. That body would then consider any subsequent applications for restrictions or exclusions under sections 24 and 25 of CROW.

Question 12.

Do you agree that Natural England should be the relevant authority for all coastal land?

Question 13.

Do you agree that it should be possible for Natural England to delegate the relevant authority role to National Park authorities if appropriate after the implementation phase?

Chapter 4:

Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act

- 4.1 Schedule 1 to the CROW Act contains a list of categories of excepted land i.e. land which is not access land under the CROW Act and so the CROW right of access does not apply to such land. The categories of excepted land in Schedule 1 to the CROW Act for open country and registered common land are set out at annex A.
- 4.2 The government's policy is that the order under the new section 3A should make some changes to the existing categories of excepted land as they affect land that is coastal margin. The excepted land categories will remain unchanged with regard to other access land i.e. land which is open country and registered common land and which is not coastal margin.

Categories of excepted land we do not propose to change

- 4.3 The categories of excepted land which we do not propose to change in the section 3A order, i.e. they will be excepted land for the purposes of coastal margin, are:
- Land covered by buildings or the curtilage of such land.
 - Land used as a park or garden.
 - Land used for the getting of minerals by surface working (including quarrying).
 - Land used for the purposes of a railway (including a light railway) or tramway.
 - Land covered by pens in use for the temporary reception or detention of livestock.
 - Land used for the purposes of a racecourse or aerodrome.
 - Land which is being developed and will become excepted land under certain other excepted land provisions.
 - Land covered by works used for the purposes of a statutory undertaking or a telecommunications code system, or the curtilage of any such land (except for flood defences managed by the Environment Agency, see paragraph 4.4 below).
 - Land the use of which is regulated by byelaws under section 14 of the Military Lands Act 1892 or section 2 of the Military Lands Act 1900.
- 4.4 These are categories where we are not proposing a change, except in relation to flood defences. The Environment Agency has agreed that certain flood defences which are suitable for public access such as banks, barriers or other similar structures should be removed from this exception and made available for public access. Flood defences that are typically unsuitable for public access, such as sluice gates, will remain excepted land.
- 4.5 Following comments that the exception for parks and gardens could result in significant detours where there are extensive parklands on the coast, we said that we would give further consideration to what is included in the exception for parks and gardens in the light of discussions in Parliament during passage of the Bill. During debate in the House of Commons Committee the Government proposed, with cross party support, that the exception for parks and gardens should not be amended but that:
- Natural England should seek to reach voluntary agreements with landowners to enable a route to be created through parks where necessary to provide continuity of access and avoid a significant inland diversion; and
 - to enable Parliament to monitor the effectiveness of this approach Natural England will report to Parliament within five years of Royal Assent on progress and any issues arising from the exception for parks and gardens.

Chapter 4: Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act

A future section 3A order could be made to amend the exception for parks and gardens if satisfactory progress is not made and significant issues remain.

Question 14.

Do you agree with the proposals to retain the categories of excepted land listed in paragraph 4.3 as they relate to the coastal margin? If not, please state your reasons.

Categories of excepted land we think should be removed

4.6 Existing categories of excepted land which we propose to remove, i.e. they will not be excepted land for the purposes of coastal margin, 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 movable structure.
- Land habitually used for the training of racehorses.

4.7 These are categories of land which we do not consider appropriate to except from the right of access in the context of the coast where, unlike the extensive areas of mountain, moor, heath, down and registered common land, access will be limited to a margin of land next to the sea. With regard to the first two categories, there are many examples of existing access which is closer to buildings than 20 metres, for example rights of way. Other exceptions, particularly the exceptions for curtilage and for land used as a park or garden which are not being changed, will have the effect of protecting the privacy of residents. With regard to the third category we believe that such land can coexist with access if informal management techniques are employed, and where this approach is inappropriate then temporary exclusions or restrictions on access can be used under section 24 of the CROW Act.

Question 15.

Do you agree that, in the context of the coastal margin, land within 20 metres of a dwelling should not be excepted from the right of access?

Question 16.

Do you agree that, in the context of the coastal margin, land within 20 metres of a building used for housing livestock (not being a temporary or movable structure) should not be excepted from the right of access?

Question 17.

Do you agree that, in the context of the coastal margin, land habitually used for the training of racehorses should not be excepted from the right of access?

Categories of excepted land which we think should be amended to allow for the coastal route to go through, but not spreading room.

4.8 We consider that there are some categories of excepted land which should be amended to provide for an excepted land access strip, to allow the coastal route to go across that land. The land over which the route passes, and land up to two metres on either side of the line of the route would no longer be excepted land, but there would be no additional spreading room. The categories we think should be amended in this way are:

Chapter 4:

Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act

- Land on which the soil is being, or has at any time within the previous 12 months been, disturbed by any ploughing or drilling undertaken for the purposes of planting or sowing crops or trees.
- Land used for the purposes of a golf course.

For these categories we believe that it is possible, either through the positioning of the route or through other measures, to avoid adverse impacts on these activities.

Cultivated land

4.9 Where cultivated land extends right to the coast or where it is the most suitable route we intend that the route may skirt the edge of a cultivated field. Natural England's draft scheme explains that in such circumstances they would seek to position the route to the seaward edge of a cropped field. Often there will already be a strip of uncultivated land left for land management or environmental reasons which may be suitable for access on foot. If it is necessary for land management reasons, for example when a field margin is in use for crop harvesting, provisions in the Bill enable the route to be diverted temporarily, for example to a route which is further from the coast. It will also be possible to put restrictions in place requiring people to control dogs in specified ways when passing through or adjacent to a field with crops (see paragraphs 3.12 and 5.5).

Question 18.

Do you agree that the route should be able to pass along the edge of a cultivated field where this forms the most suitable route?

Golf courses

4.10 It has been estimated⁵ that there are about 60 golf courses on the coast that have coastal frontages, but no public access. This is defined as having a part of the course adjacent to the foreshore or cliff-top, without any intervening land use and which carry no public access between the course and the coast. We intend that where there is no suitable access to the seaward of a golf course the route should be able to pass through the course. There are already many courses which do have public rights of way across or around them and which successfully manage play and access. Natural England's draft scheme makes it clear that where a route does pass through a golf course the ideal route will often be along the seaward edge of the course. As part of the local consultations process Natural England will work with the club managers in considering the best position for the route.

Question 19.

Do you agree that where there is no suitable route to the seaward of a golf course the route should be able to pass through the golf course?

⁵ Asken Ltd 2007 Appraisal of options to improve access to the English coast p.227

Proposals for additional categories of excepted land

Camp and caravan sites

- 4.11 Camp and caravan sites are a familiar sight along the English coast. Natural England's access audit, published in July 2009,⁶ identified approximately 26 km of coast occupied by caravan sites and camp sites where there was no legally secure route past, although there may be permissive or de facto paths in some cases. A further 16 km was occupied by caravan or camp sites where there was an existing satisfactory legally secure path. Often the best location for the coastal route will be along the seaward edge of a site but where this is not suitable we think that the route should be able to pass through the site itself.
- 4.12 We think that the most appropriate approach is that permanent, formal camp and caravan sites, for instance those which are licensed or are annually certified,⁷ should be excepted land except for an access strip to provide for a route through which would not be excepted land. Such access may in some cases bring benefits to the site through, for example, increased spending at site facilities. No additional spreading room would be created on land used as a formal caravan or camp site. Where the camp or caravan site is informal, e.g. a site in use for a temporary period and people may camp there by permission of the landowner, we consider that it should not be a category of excepted land. Landowners may apply for any necessary restrictions where this is the case.
- 4.13 The land actually covered by an individual tent or caravan will be excepted land in all cases, as it falls into the category of "land covered by a building" under the supplementary provisions to Schedule 1 (paragraph 14 of Schedule 1) under which "structure" includes any tent, caravan or other temporary or movable structure, and is therefore included within the definition of building.
- 4.14 We also consider that the same approach should apply to residential park home sites on the coast. Park homes are mobile homes used for residential purposes. The land covered by an individual residential park home itself and its curtilage will fall into the existing categories of excepted land, but we consider that the route should be able to pass through a site where this is the most suitable option available. No additional spreading room would be created.

Question 20.

Do you agree that licensed or annually certified camp and caravan sites on the coast should be a new category of excepted land except to allow for a route through?

Question 21.

Do you agree that residential park home sites should be excepted land except to allow for a route through?

Question 22.

Do you agree that temporary camp or caravan sites should not be excepted land?

⁶ Coastal access: an audit of coastal paths in England 2008-09

⁷ Under section 269 of the Public Health Act 1936 the use of land as a campsite for more than 42 days consecutively or 60 days in total in any 12 consecutive months requires a site licence from the local authority. In addition, the use of land for camping for more than 28 days a year normally requires an express grant of planning permission. However, members of recreational organisations which hold a camping exemption certificate issued under section 269(6) of the 1936 Act can camp on land without a site licence and without the need to apply for planning permission, with the landowners permission.

For land to be used as a caravan site it must be licensed and planning permission is usually necessary. However, Section 2 of and the First Schedule to the Caravan Sites and Control of Development Act 1960 provide exemptions from the need for a site licence or planning permission. Part 5 Class A of the Town and Country Planning (General Permitted Development) Order 1995 permits the use of land as a touring caravan site where a caravan exemption certificate has been issued.

Chapter 4:

Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act

Highways

- 4.15 We expect that there will be many instances where Natural England will recommend that the best location for the English coastal route will be along an existing public right of way or be signed through a development (for example a coastal town or village) along pavements or existing rights of way. We intend to add a new category of excepted land for:
- Highways – meaning in this context ways over which the public have a right to pass and re-pass including on foot.

This will ensure that we do not have two separate regimes (for example for access rights and for maintenance) applying to the same land where existing highways and the coastal route coincide. Any rights of way which fall within the wider spreading room will also be excepted land. The existing rights of access to pass and re-pass over them will therefore apply rather than the new coastal rights.

Question 23.

Do you agree that highways should be added as a new category of excepted land?

Other land uses

Land uses in built up areas

- 4.16 There will also be a number of other types of land often found in built up areas which were not generally affected by the CROW right of access to mountain, moor, heath and down and registered common land but might be relevant to the new right of access to coastal land. In particular, we consider that there should not be a general right of access to graveyards and cemeteries, or to school playing fields. In some cases they will be covered by the existing category of excepted land for buildings and their curtilage, but there may be examples where this is not the case.

Question 24.

Do you think that it is important that graveyards and cemeteries should be a new category of excepted land for land which is coastal margin? Do you have particular examples of such land uses on the coast which you think it would be useful for us to consider as part of this consultation exercise?

Question 25.

Do you think that it is important to include school playing fields as a category of excepted land for land which is coastal margin? Do you have particular examples of such land use on the coast which you think it would be useful for us to consider as part of this consultation exercise?

Question 26.

Are there any other categories of land found in built up areas that are not covered by existing categories of excepted land and which you think should be excepted from the right of access? Do you have particular examples of such land uses on the coast which you think it would be useful for us to consider as part of this consultation exercise?

Marinas, yacht clubs and boatyards

4.17 In the Asken report⁸ it was noted that:

“Across the United Kingdom it is estimated that there are some 89,000 berths for recreational craft. The Yacht Harbours Association has about 500 marina and yacht harbour operators in the UK as members. The British Marine Federation estimates that there could be a total of around 400 – 500 marinas and yacht harbours in England”.

4.18 During Parliamentary consideration of the MCA Bill the issue of the possible impact of the coastal route on marinas, yacht clubs and boatyards was raised, in particular issues relating to such sites operating heavy machinery throughout the day, and which could pose a health and safety risk to individuals. Furthermore, sites such as marinas may contain high-value equipment and it was feared that unrestricted access could cause a security risk.

4.19 The government recognises that the safety and security of marinas, yacht clubs and boatyards should not be compromised by the new right of access and has said that it has no intention of seeking to interfere with the normal running of any marina, yacht club and boatyard or with the management of the facilities there. Natural England will discuss with site managers the most appropriate position for the route and will take full account of the safety of visitors and the security of the site when it proposes the position of the coastal route.

4.20 Our view is that, in the case of marinas, yacht clubs and boatyards, much of the land that is being used for the purposes of recreational boating facilities or land which is used for the purpose of manufacturing or storage of recreational vessels and equipment would generally be covered by the existing category of excepted land for “Land covered by buildings or the curtilage of such land” so that there would be no right of access to that land. If necessary, Natural England will be able to discuss with the owner or operator of the marina, yacht club or boatyard the possibility of making a direction to exclude or restrict access when appropriate. We therefore do not intend to add a new category of excepted land to Schedule 1 to cover specifically any land used as a marina, yacht club or boatyard.

Question 27.

Do you agree with the proposal not to add a new category of excepted land to Schedule 1 to cover specifically any land used as a marina, yacht club or boatyard?

Other structures

4.21 There are a variety of structures which are typically found around the English coast such as slipways, hards and quays which could potentially fall within the definition of “building” in paragraph 14 of Schedule 1 of the CROW Act. This is because “building” has a wide definition in the Schedule including any structure or erection. However, it does not include any fence or wall, or anything which is a means of access (such as stairs or steps, bridge, stepping stone or works for crossing a water course) as defined in section 34 of the CROW Act.

Chapter 4:

Proposed changes to the categories of excepted land under Schedule 1 to the CROW Act

- 4.22 We think that for the purposes of the coastal access regime structures such as slipways, hards and quays should not be a category of excepted land, and should be subject to the access rights. There are many instances where de facto access to such structures is already common. If they are included in the right of access (i.e. are not classified as excepted land) then landowners will benefit from the provisions for reduced occupier's liability provided for at section 13 of the CROW Act and clause 301 of the Bill. Exclusions and restrictions will be available if access needs to be restricted for operational purposes. Our view is that structures such as piers would probably fall into the definition of buildings and would therefore be excepted land, and we do not intend to change this.

Question 28.

Do you agree that slipways, hards and quays should be included in the right of access?

Question 29.

Are there any other structures typically found along the coast that you think should be included in the right of access? Do you have particular examples of such structures on the coast which you think it would be useful for us to consider as part of this consultation exercise?

Guidelines on the categories of excepted land

- 4.23 When the right of access to open country and registered common land under the CROW Act was introduced we published some guidelines helping to explain what each category of excepted land meant. The guidelines are set out at annex B and we think it appropriate to review the guidelines as they apply to coastal land. We would therefore welcome any comments you may have on the definitions and whether and how they might be amended for coastal land.

Question 30.

Do you have any comments on the definitions? Should any of the definitions be amended as they apply specifically to coastal land and, if so, how?

5.1 Schedule 2 to the CROW Act sets out certain “general restrictions” to be observed by persons exercising the right of access under the Act. The restrictions are set out at annex C. We are proposing to amend the restrictions as they apply to the coastal margin in the following ways.

Control of dogs

5.2 Paragraph 4 of Schedule 2 to the CROW Act says that dogs must be kept on a short lead between 1 March and 31 July. This was designed to protect ground nesting birds, which are prevalent on mountain, moor, heath and down. However, there are different nature conservation considerations on the coast, for instance winter roosting by birds, and the government considers it more appropriate that specific restrictions are applied as necessary for each situation.

5.3 We propose therefore to disapply this restriction for coastal land and to replace it with a general restriction requiring the keeper of a dog to keep the dog under effective control. The criteria for determining whether a person may be considered to be keeping a dog under effective control include that the keeper of a dog:

- keeps the dog on relevant access land; and
- either (a) keeps the dog on a lead, or
 - (b) if he does not keep the dog on a lead, keeps the dog in sight, remains aware of its actions, and has reason to be confident that the dog will return to him reliably and promptly on command; and
- conforms with the restriction at paragraph 5 of Schedule 2 of the CROW Act to keep the dog on a short lead in the vicinity of livestock, and with any other relevant restrictions made under Chapter II of the CROW Act; and
- conforms with relevant restrictions or orders made under any other Act as they affect coastal land.

5.4 The restriction at paragraph 5 of Schedule 2 to the CROW Act requiring dogs to be kept on a short lead in the vicinity of livestock will continue to apply.

5.5 As part of the process of deciding on the route, Natural England will also be able to put conditions on the use of particular stretches – for example along some sections people may be required to keep dogs on leads or dogs may be excluded, for example for land management or for nature conservation reasons. Restrictions on any section of the route will be clearly signed. We expect tighter control will be necessary:

- Where key populations of wild birds or mammals are present which are vulnerable to disturbance by dogs.
- Where the trail passes along crop edges, to prevent contamination.
- In some places where shooting takes place, to prevent disturbance to the quarry during the shooting season.

Chapter 5:

Proposed changes to the general restrictions under Schedule 2 to the CROW Act

- 5.6 The MCA Bill amends section 2(3) of the CROW Act to provide that for the purposes of coastal margin, a prohibition contained in any type of enactment will prevail over the CROW Act right of access, and therefore other dog control powers will also be available. Existing byelaw powers, for instance enabling dogs to be banned from beaches during certain periods, will continue to apply. Local authorities, parish councils and other designated authorities will be able to make dog control orders under the Clean Neighbourhoods and Environment Act 2006. There are special consultation procedures that apply if an Authority is considering making a Dog Control Order where all or part of the land to which the proposed order would apply is access land. The Dog Control Orders (Procedures) Regulations 2006 require that in such cases the Authority must consult:
- The access authority for that access land;
 - The local access forum for that access land; and
 - In respect of any of the access land that is not situated in a National Park, the Countryside Agency (now Natural England).

The same bodies must also be consulted where an Authority is considering amending or revoking a Dog Control Order that affects access land.

Question 31.

Do you agree that the restriction requiring dogs to be kept on a lead between 1 March and 31 July should be disapplied for land that is coastal margin?

Question 32.

Do you agree that there should instead be a general requirement to keep dogs under effective control on the coastal margin as discussed in paragraph 5.3?

Question 33.

Are there any other requirements that you think should be reflected in a description of effective control in addition to those at paragraph 5.3?

Sea angling

- 5.7 The restrictions set out at Schedule 2 to the CROW Act make it clear that the right of access provided by the Act does not entitle people to do certain activities, although it does not prevent those activities if there is a right under other legislation or by permission. Paragraphs 1(f) and 1(j) of Schedule 2 say that the right of access does not entitle a person to:
- (f) intentionally or recklessly take, kill, injure or disturb any animal, bird or fish or;
 - (j) engage in any operations of or connected with hunting, shooting fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish.

- 5.8 There is a common law (public) right to fish in the sea and tidal waters, subject to certain ancient, private rights and to statutory rights granted under the Sea Fisheries (Shellfish) Act 1967. However, this right does not include any right of access to the seashore – it is a right to fish rather than a right of access to go fishing. We consider that it may be appropriate as regards land which is coastal margin to amend the restrictions under the CROW Act as they apply to the activity of fishing in the sea and tidal waters and for the carrying of apparatus for the purpose of fishing in the sea and tidal waters.
- 5.9 If necessary in particular locations Natural England would place restrictions on such activity. In addition, section 193 of the MCA Bill provides powers under the Sea Fish (Conservation) Act 1967 for the Secretary of State to make orders prohibiting or restricting fishing for sea fish in specified areas. The existing restrictions will remain in place for open country and registered common land that is not coastal margin and for non-tidal waters and rivers.

Question 34.

Do you consider that paragraphs 1(f)) and 1(j) of Schedule 2 to the CROW Act should be amended to remove the restrictions for the purpose of fishing in the sea and tidal waters on land that is coastal margin?

Question 35.

Are you aware of any situations on the open coast or on the tidal part of estuaries where taking this approach would affect other existing arrangements for providing access to the water in order to exercise the public right to fish?

Obstructions to the route

- 5.10 We also propose to introduce a new restriction to prevent obstructions to the coastal route. As noted at paragraph 3.8 above, the government considers it important for the public to have certainty as to the operation of the coastal route. For this reason we intend to introduce a new general restriction so that section 2(1) of the CROW Act does not entitle a person to be on any land if he obstructs the passage of any person on foot along the English coastal route, or along any alternative or temporary route.

Question 36.

Do you agree that there should be a new restriction to prevent obstructions to the coastal route?

Schedule 1 to the CROW Act – Categories of excepted land for purposes of Part 1

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.
2. Land covered by buildings or the curtilage of such land.
3. Land within 20 metres of a dwelling.
4. Land used as a park or garden.
5. Land used for the getting of minerals by surface working (including quarrying).
6. Land used for the purposes of a railway (including a light railway) or tramway.
7. Land used for the purposes of a golf course, racecourse or aerodrome.
8. Land which does not fall within any of the preceding paragraphs and is covered by works used for the purposes of a statutory undertaking or a telecommunications code system, or the curtilage of any such land.
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.
10. Land within 20 metres of a building which is used for housing livestock, not being a temporary or moveable structure.
11. Land covered by pens in use for the temporary reception or detention of livestock.
12. Land habitually used for the training of racehorses.
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.

Guidelines on categories of excepted land for open country and registered common land under Schedule 1 to the CROW Act.

When the open access provisions of Part 1 of the CROW Act were introduced Defra issued some guidelines to help identify what was meant by each of the categories of excepted land. The definitions are printed below for each of the categories of excepted land although this must be read alongside the general caveat that the “guidelines 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.**
Ploughing includes agricultural or forestry operations which are similar to ploughing. Similarly, drilling includes agricultural or forestry operations which are similar to drilling. Where other access rights exist, for instance, public rights of way, these will continue to apply.
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. 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.**
Generally a dwelling is a building where people live. 20 metres is approximately 60 feet, or the length of a tennis court.
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.
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.**
Golf courses includes clubhouses and other buildings, car parks, practice areas and playing areas such as greens and fairways. 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 works used for the purposes of a statutory undertaking or a telecommunications code system, 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.
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.
10. **Land 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.
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 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.
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 MoD training areas. This land will usually be signed with danger warnings and may sometimes be fenced. Although the new right of access does not apply to this land, there may be access managed by the MoD. People should check with MoD before setting off to walk in such areas.

Schedule 2 to the CROW Act – General restrictions to be observed by persons exercising right of access

1. Section 2(1) does not entitle a person to be on any land if, in or on that land, he –
 - (a) drives or rides any vehicle other than an invalid carriage as defined by section 20(2) of the [1970 c. 44.] Chronically Sick and Disabled Persons Act 1970,
 - (b) uses a vessel or sailboard on any non-tidal water,
 - (c) has with him any animal other than a dog,
 - (d) commits any criminal offence,
 - (e) lights or tends a fire or does any act which is likely to cause a fire,
 - (f) intentionally or recklessly takes, kills, injures or disturbs any animal, bird or fish,
 - (g) intentionally or recklessly takes, damages or destroys any eggs or nests,
 - (h) feeds any livestock,
 - (i) bathes in any non-tidal water,
 - (j) engages in any operations of or connected with hunting, shooting, fishing, trapping, snaring, taking or destroying of animals, birds or fish or has with him any engine, instrument or apparatus used for hunting, shooting, fishing, trapping, snaring, taking or destroying animals, birds or fish,
 - (k) uses or has with him any metal detector,
 - (l) intentionally removes, damages or destroys any plant, shrub, tree or root or any part of a plant, shrub, tree or root,
 - (m) obstructs the flow of any drain or watercourse, or opens, shuts or otherwise interferes with any sluice-gate or other apparatus,
 - (n) without reasonable excuse, interferes with any fence, barrier or other device designed to prevent accidents to people or to enclose livestock,
 - (o) neglects to shut any gate or to fasten it where any means of doing so is provided, except where it is reasonable to assume that a gate is intended to be left open,
 - (p) affixes or writes any advertisement, bill, placard or notice,
 - (q) in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended by him to have the effect—
 - (i) of intimidating those persons so as to deter them or any of them from engaging in that activity,
 - (ii) of obstructing that activity, or
 - (iii) of disrupting that activity,
 - (r) without reasonable excuse, does anything which (whether or not intended by him to have the effect mentioned in paragraph (q)) disturbs, annoys or obstructs any persons engaged in a lawful activity on the land,
 - (s) engages in any organised games, or in camping, hang-gliding or para-gliding, or
 - (t) engages in any activity which is organised or undertaken (whether by him or another) for any commercial purpose.

Annex C

2. (1) In paragraph 1(k), "metal detector" means any device designed or adapted for detecting or locating any metal or mineral in the ground.
(2) For the purposes of paragraph 1(q) and (r), activity on any occasion on the part of a person or persons on land is "lawful" if he or they may engage in the activity on the land on that occasion without committing an offence or trespassing on the land.
3. During the period beginning with 1st March and ending with 31st July in each year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead.
4. Whatever the time of year, section 2(1) does not entitle a person to be on any land if he takes, or allows to enter or remain, any dog which is not on a short lead and which is in the vicinity of livestock.
5. In paragraphs 4 and 5, "short lead" means a lead of fixed length and of not more than two metres.

Summary of consultation questions

Chapter 2

1. Do you agree with the description of coastal land types (a) and (b) at paragraph 2.2 that should be included in the coastal margin? If you do not agree please give your reasons.
2. Are there any other coastal land types you think should be included?
3. Do you agree that the coastal margin should also include the categories of land set out in paragraph 2.3(c)? If you do not agree, please give your reasons.
4. Do you agree that, where circumstances allow and subject to the provisions at paragraph 2.6, the route should be 4 metres wide? If not, what width do you think would be appropriate and why?

Chapter 3

5. Do you agree it is important that users should have certainty that the route will be open?
6. Do you agree that powers under section 22 of the CROW Act for landowners to restrict or exclude access, at their discretion, for up to 28 days per year are not appropriate for coastal land and should be removed?
7. Do you agree that the powers under section 23 of the CROW Act for landowners to restrict access for people with dogs, at their discretion, for lambing purposes and on grouse moors are not appropriate for coastal land and should be removed?
8. Do you agree that the relevant authority (Natural England) should be able to give directions for an exclusion or restriction of access under section 24 of the CROW Act without an application by a landowner?
9. Do you agree that the line of the coastal route should be exempted from the provisions in section 25 of the CROW Act which enable the relevant authority (Natural England) to restrict or exclude access for the prevention of fire risk?
10. Do you agree that the relevant authority (Natural England) should be able to give directions for the exclusion or restriction of access on the coastal margin to protect land adjoining the margin?
11. Do you agree that Natural England should be able to restrict or exclude access to saltmarsh and mudflat where they are not appropriate for access?
12. Do you agree that Natural England should be the relevant authority for all coastal land?
13. Do you agree that it should be possible for Natural England to delegate the relevant authority role to National Park authorities if appropriate after the implementation phase?

Chapter 4

14. Do you agree with the proposals to retain the categories of excepted land listed in paragraph 4.3 as they relate to the coastal margin? If not, please state your reasons.
15. Do you agree that, in the context of the coastal margin, land within 20 metres of a dwelling should not be excepted from the right of access?
16. Do you agree that, in the context of the coastal margin, land within 20 metres of a building used for housing livestock (not being a temporary or movable structure) should not be excepted from the right of access?
17. Do you agree that, in the context of the coastal margin, land habitually used for the training of racehorses should not be excepted from the right of access?
18. Do you agree that the route should be able to pass along the edge of a cultivated field where this forms the most suitable route?
19. Do you agree that where there is no suitable route to the seaward of a golf course the route should be able to pass through the golf course?
20. Do you agree that licensed or annually certified camp and caravan sites on the coast should be a new category of excepted land except to allow for a route through?
21. Do you agree that residential park home sites should be excepted land except to allow for a route through?
22. Do you agree that temporary camp or caravan sites should not be excepted land?
23. Do you agree that highways should be added as a new category of excepted land?
24. Do you think that it is important that graveyards and cemeteries should be a new category of excepted land for land which is coastal margin? Do you have particular examples of such land uses on the coast which you think it would be useful for us to consider as part of this consultation exercise?
25. Do you think that it is important to include school playing fields as a category of excepted land for land which is coastal margin? Do you have particular examples of such land use on the coast which you think it would be useful for us to consider as part of this consultation exercise?
26. Are there any other categories of land found in built up areas that are not covered by existing categories of excepted land and which you think should be excepted from the right of access? Do you have particular examples of such land uses on the coast which you think it would be useful for us to consider as part of this consultation exercise?
27. Do you agree with the proposal not to add a new category of excepted land to Schedule 1 to cover specifically any land used as a marina, yacht club or boatyard?
28. Do you agree that slipways, hards and quays should be included in the right of access?

29. Are there any other structures typically found along the coast that you think should be included in the right of access? Do you have particular examples of such structures on the coast which you think it would be useful for us to consider as part of this consultation exercise?
30. Do you have any comments on the definitions? Should any of the definitions be amended as they apply specifically to coastal land and, if so, how?

Chapter 5

31. Do you agree that the restriction requiring dogs to be kept on a lead between 1 March and 31 July should be disapplied for land that is coastal margin?
32. Do you agree that there should instead be a general requirement to keep dogs under effective control on the coastal margin as discussed in paragraph 5.3?
33. Are there any other requirements that you think should be reflected in a description of effective control in addition to those at paragraph 5.3?
34. Do you consider that paragraphs 1(f) and 1(j) of Schedule 2 to the CROW Act should be amended to remove the restrictions for the purpose of fishing in the sea and tidal waters on land that is coastal margin?
35. Are you aware of any situations on the open coast or on the tidal part of estuaries where taking this approach would affect other existing arrangements for providing access to the water in order to exercise the public right to fish?
36. Do you agree that there should be a new restriction to prevent obstructions to the coastal route?

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**Nobel House
17 Smith Square
London SW1P 3JR**

www.defra.gov.uk

