

## YOUNG UKELA: MANAGING THE MARINE ENVIRONMENT

### The English Coastal Route

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1. The Marine and Coastal Access Act 2009 contains important provisions designed to promote and maintain biodiversity in the U.K.'s oceans and seas. However, the Act's focus is not entirely aquatic because Part Nine of the Act contains significant new provisions for improving access to coastal land.
2. The Act places a duty on the Secretary of State and Natural England to achieve two objectives:
  - (i) to secure a long-distance walking route (known as the 'English Coastal Route') around the English coast;<sup>1</sup> and
  - (ii) to provide public access to a wider margin of coastal land for open-air recreation.<sup>2</sup>
3. The English Coastal Route will be a signed and managed route enabling people to walk the length of the English coast (subject to some exceptions) and it will provide access to surrounding land such as beaches, headlands and cliffs. Currently, 34% of the English coast has no legal or recognised access and there is no continuity of access in respect of the remaining 66%.<sup>3</sup> Therefore the legislation will affect a large number of property owners.

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<sup>1</sup> S.296(1),(2).

<sup>2</sup> S.296(3).

<sup>3</sup> *Coastal Access Audit Report*, Natural England, July 2009.

4. The English coastal route will be implemented by Natural England using its powers under the National Parks and Access to the Countryside Act 1949 Act (as amended by the 2009 Act) to propose a route.<sup>4</sup>

### The Right of Access

5. The right of access is more extensive than merely the right to follow the route of the English Coastal Path. Section 303(2)(a) includes coastal margin in the definition of 'access land' in section 1(1) of the CROW Act. This will have the effect of extending the right of access under section 2(1) of the CROW Act to the coastal margin as defined in article 3 of the Access to the Countryside (Coastal Margin) (England) Order 2010. Article 3 defines 'coastal margin' as follows:

"Descriptions of coastal margin

3.—(1) Land in England is coastal margin for the purposes of Part 1 of the CROW Act (access to the countryside) if it falls within one or more of the following descriptions.

(2) The first description of land is—

(a) land over which the line of an approved section of the English coastal route passes,

(b) land which is adjacent to and within 2 metres either side of that line, and

(c) land which is seaward of the line of an approved section of the English coastal route and lies between land within sub-paragraph (b) in relation to that approved section and the seaward extremity of the foreshore,

if the land within sub-paragraphs (a) to (c), taken as a whole, is coastal land.

(3) The second description of land is land which—

(a) is landward of the line of an approved section of the English coastal route,

(b) is—

(i) foreshore, cliff, bank, barrier, dune, beach or flat, or

(ii) land of any other kind, which is treated by section 15(1) as being accessible to the public apart from the CROW Act, and

(c) when taken together with land within the first description in relation to the approved section, is coastal land.

(4) The third description of land is—

(a) land over which the line of an official alternative route which is for the time being in operation passes, and

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<sup>4</sup> S.302 MCAA 2009.

(b) land which is adjacent to and within 2 metres either side of that line.

(5) The fourth description of land is—

(a) land over which the line of a temporary route passes, and

(b) land which is adjacent to and within 2 metres either side of that line,

to the extent that the land is within section 55I(4)(d) of the 1949 Act (land over which the owner has agreed the temporary route may pass).”

6. The effect of Article 3 of the Order is that the approval of the English Coastal Route will also give access to:

(a) land 2 m either side of the route;

(b) all land to the seaward side of the route; and

(c) certain classical coastal types on the landward side of the route e.g. cliffs and dunes; and

Additionally, Article 5 of the Order provides that the right of access may extend to land on the landward side of the English Coastal Route which is necessary to take the access land to a suitable boundary such a fence or wall.<sup>5</sup>

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<sup>5</sup> Article 5 provides: “Cases where landward boundary of coastal margin to coincide with physical feature5.—(1) This article applies where relevant approved proposals contain a proposal under section 55D(2)(a) of the 1949 Act for the landward boundary of the relevant coastal margin, or any part of that boundary, to coincide with a physical feature identified in the proposal. (2) The landward boundary of the relevant coastal margin or part is (despite article 3(2) and (3)) to coincide with that feature. (3) It is immaterial whether the effect of this article is—(a) to include land as coastal margin, or (b) to exclude part of an area of coastal land from being coastal margin.

## Exceptions to the Right of Access

7. There are important exceptions to the right of access. The following land is excluded:<sup>6</sup>

(a) highways;

(b) School playing fields and other land used for the purposes of a school;

There are also limited exceptions which do not prevent the route itself from passing through land, but they do prevent the right of access extending to the marginal land.

The limited exceptions apply in respect of:

(a) regulated caravan and camping sites;

(b) burial grounds.

8. Although new exceptions to the access right are provided, other exceptions that normally apply under the CROW Act are removed. The Access to the Countryside (Coastal Margin) (England) Order 2010 amends Schedule 1 of the CROW Act to remove three exemptions which will now only apply to non-coastal:<sup>7</sup>

(a) land within 20 m of a dwelling;

(b) land within 20 m of a building used for holding livestock;

(c) land habitually used for training racehorses.

## Restrictions on the Right of Access

9. Provision is made for there to be restrictions on the right of access, for example, to enable nature conservation or proper land management.<sup>8</sup> The walking of dogs is also

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<sup>6</sup> Access to the Countryside (Coastal Margin) (England) Order 2010, Schedule 1, Part 1.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, Part 3.

regulated by a new paragraph 6A inserted into Schedule 2 of the CROW Act.

Paragraph 6 A provides that:

“6A.—(1) Whatever the time of year, section 2(1) does not entitle a person to be on any land which is coastal margin at any time if—

(a) that person has taken onto the land, or allowed to enter or remain on the land, any dog, and

(b) at that time, the dog is not under the effective control of that person or another person.

(2) For this purpose a dog is under the effective control of a person if the following conditions are met.

(3) The first condition is that—

(a) the dog is on a lead, or

(b) the dog is within sight of the person and the person remains aware of the dog’s actions and has reason to be confident that the dog will return to the person reliably and promptly on the person’s command.

(4) The second condition is that the dog remains—

(a) on access land, or

(b) on other land to which that person has a right of access.”

10. The English coastal route must be open at all times. Therefore, in respect of coastal land, the 2009 Act disapplies sections 22 and 23 of the CROW Act which allow together a landowner to close access to his land at his discretion. Section 25 of the CROW Act which enables access to be restricted for the purpose of avoiding a fire risk is also disapplied.

11. Because the English Coastal Route must always be open it is not likely to be sited in areas where there would be an unacceptable impact on nature conservation, or in areas such as ports where there are security and safety concerns.

### Designating the Route

12. One of the key questions is where should the route be located. Which land should be burdened by the right of access and which precise route should the path follow? The process will be as follows:

- (i) Provision is made for there to be public consultation;<sup>9</sup>
- (ii) After public consultation Natural England will report to the Secretary of State making proposals;
- (iii) Anyone can make representations in relation to the report;<sup>10</sup>
- (iv) Natural England must send a summary of those representations and its own comments to the Secretary of State;
- (v) Those with a relevant interest in the affected land may object on certain specified grounds;
- (vi) The objections are considered by an appointed person (a planning inspector);
- (vii) The Secretary of State will then consider the Inspector's recommendation, any representations received and Natural England's report, before making a decision.

13. Natural England and the Secretary of State are under a duty to strike a fair balance between the interests of owners and occupiers of land on the one hand and the public's interest in acquiring the new right of access on the other hand.<sup>11</sup> This will ensure that the Act is compliant with Article 1 Protocol 1 ECHR which judges the proportionality of an interference with property rights by reference to a similar fair balance test.

#### Diversions and Erosion

14. The 2009 Act permits diversions of the route. Thus a seasonal diversion would be possible for example to avoid nesting birds. Natural England can also re-designate the route if circumstances change in order to move its location.

15. Provision is also made in respect of coastal erosion.<sup>12</sup> It would be rather unsatisfactory if every time part of the route became unusable due to erosion Natural England had to go through the time-consuming process of re-designating

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<sup>9</sup> See Part 2 of the Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010.

<sup>10</sup> The Coastal Access Reports (Consideration and Modification Procedure) (England) Regulations 2010.

<sup>11</sup> S.297.

<sup>12</sup> S.302 inserting a new s.55B into the 1949 Act.

that part of the route. Instead, Natural England may, at the outset, specify that certain parts of the route should be rolled back in the case of erosion thereby obviating the need for re-designation.

### Timescale

16. Once the route has been approved Natural England will provide funding for the construction of any necessary linage bridges etc in order to bring the route up to a usable standard. There is no set timescale for completion of the English coastal route,<sup>13</sup> but DEFRA envisages work being completed within a 10 year period.
  
1. Finally, it is important to emphasise the limited nature of the right granted by the 2009 Act. It is only a right of access for open-air recreation on foot. However, it is possible that Natural England will be able to reach agreement with landowners for improved provision for horse riding, cycling, or new routes to reach the coast from inland.

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<sup>13</sup> S.296(4)(b).