

# Plymouth Local Access Forum

## Summary

### Consultation on regulations on procedures for making representations and objections to coastal access proposals made in a report by Natural England. Defra

**Closing date for responses – 14 June 2010**

**Full report: <http://www.defra.gov.uk/corporate/consult/coastal-access2010/20100322-consult-condoc.pdf>**

#### Summary

Under the Marine and Coastal Act 2009, section 302, an additional section, section 1A, was added to the National Parks and Access to the Countryside Act 1949. This Act covers the coastal access reports to be prepared by Natural England. Schedule 1A covers the process for making representations and objections about coastal access proposals under Natural England's implementation scheme. Defra is proposing to lay down regulations under Schedule 1A which will set out the procedures for advertising, giving notice of the report, making objections and representations and who will be appointed to consider these. This consultation gives an opportunity to comment on these processes.

Natural England will be required to produce a map and report on each section of coastline, showing the landward boundary of coastal access (or description of boundary) and any proposed access restrictions or exclusions. Proposals will be put forward to the Secretary of State for approval following consultation with:

- a. persons with a relevant interest in affected land (the landowner, holder of a term of years absolute or person in lawful occupation);*
- b. access authority for an area in which affected land is situated;*
- c. London borough councils in which affected land is situated;*
- d. local access forum for an area in which affected land is situated;***
- e. Secretary of State for any defence and national security issues;*
- f. Historic Buildings and Monuments Commission (English Heritage);*
- g. Environment Agency.*

"Affected land" refers to the route and associated coastal margin (or an alternative route with alternative route strip) and is not excepted land.

#### Representations

A representation may be made about any matter in Natural England's report by any person.

#### Objections

Objections can only be made by those with a lawful interest in the land and they can only comment on whether the following factors strike a 'fair balance' between access use and those with a relevant interest in the land.

- a. the position of the route;*
- b. proposals for the route where the land is or may be subject to coastal erosion;*
- c. proposals for alternative routes;*
- d. proposals for the margin of coastal land to coincide with a physical feature;*
- e. restrictions and exclusions of access; and*
- f. the exercise of Natural England's discretion to propose the location of the route where the coast is interrupted by a river estuary.*

The objector can propose changes or modifications. Objections will be heard by an appointed person, envisaged as being a member of the Planning Inspectorate, at a hearing or inquiry. The Secretary of State in considering Natural England's report, under section 52(1) of the 1949 Act, must have regard to any representations, any objections and Natural England's response, and the recommendations of the appointed person. The Secretary of State may approve the report with or without modifications, for all or part of the route.

### **Regulations on advertisements and notices of coastal access reports**

#### **Advertisements and form of advertisements**

Under paragraphs 2(1)(a), 2(3)(a) and (c) of Schedule 1A, regulations may be made about the form and manner in which Natural England's reports are to be advertised, and also the timing of any advertisement.

Defra proposes that Natural England's report should be advertised:

- a. in one or more local or regional newspapers circulating in the area to which the report relates;*
- b. on Natural England's website;*
- c. in any other way that Natural England thinks appropriate for drawing the attention of members of the public to the report; and*
- d. at the offices of the access authority in or close to the area to which the report relates.*

Advertisements should follow swiftly after submission of a report to the Secretary of State, either on the date or as soon as practical afterwards. The advertisement should state the date the report was submitted to the Secretary of State, indicate clearly the land and public rights over it and where the report can be inspected. It should invite people to make representation within six weeks to Natural England, on a standard form, obtainable on the Natural England website or from its offices.

Natural England will make the report available:-

- a. on Natural England's website;*
- b. at the offices of Natural England in or close to the area to which the report relates during normal office opening hours;*
- c. at the offices of the access authority in or close to the area to which the report relates during normal office opening hours; and*

*d. at any other location that Natural England thinks would provide access to members of the public with an interest in the area to which the report relates.*

**Question 1: Do you have any comments on the proposals for the form and manner in which Natural England's reports are to be advertised, and the timing of any advertisement?**

### **Notices**

Under paragraphs 2(1)(b), 2(3)(b) and (c) of Schedule 1A, regulations may be made about the form, manner and timing of notices. Natural England must give notice of a report to those people and bodies which are listed in paragraph 2(2)(a) to (f) of Schedule 1A:

- a. persons with a relevant interest in affected land;*
- b. each access authority for an area in which affected land is situated;*
- c. each local access forum for an area in which affected land is situated;***
- d. Historic Buildings and Monuments Commission (English Heritage);;*
- e. Environment Agency;*
- f. such other persons as may be specified in regulations made by the Secretary of State.*

Representations made by the above, with the exception of a. are to be forwarded to the Secretary of State.

Defra proposes to list in a schedule those organisations to be included in f., as below:

**Question 2: Do you agree that the British Mountaineering Council, Country Land and Business Association, National Farmers Union, Open Spaces Society and Ramblers Association and owners of sporting rights (and those with a sporting tenancy) should be included under paragraph 2(2)(f)?**

**Question 3: Are there any other persons you consider should be included under paragraph 2(2)(f)?**

### **Manner and form of notice**

The consultation process, prior to the report, will include extensive consultation by Natural England. Natural England will notify organisations in b. to f. by e-mail or recorded delivery. The notice should:

- a. indicate the date the report was submitted;*
- b. be in terms which:*
  - i. clearly indicate the land to which the report relates and the nature of the proposed public rights over it; and*
  - ii. are sufficient to enable reference to be made to the report either on a website or by inspection at a place indicated in the notice;*
- c. invite representations on the report, to be received by Natural England within 6 weeks from the date of the notice, indicating the address (including the website address) to which representations must be sent.*

Natural England will make efforts to contact land owners and those with a relevant interest using information it holds, local publicity, contacts with other local landowners or occupiers and organisations. If these steps fail a notice will be put on the land. These efforts will also identify other interests, for example holders of sporting rights.

It is proposed that persons with a relevant interest should be contacted, either by delivering a notice to their last known address or sending them a notice by recorded delivery. Using e-mail only is not considered sufficient, unless the person has consented for information to be sent in this way. For those with a relevant interest the notice will also invite objections as well as representations. Those objecting will need to:

- a. identify the land to which the objection relates;*
- b. state the objector's interest in the land;*
- c. state under which of the grounds in paragraph 3(3) the objection is made, and the objection itself; and*
- d. explain why, in the opinion of the objector, Natural England's report has failed to strike a fair balance between the interests of the public in having rights over the land, and the interests of the objector.*

It is proposed there should be a standard form for objectors to make objections or representations. There will be a multiple choice section to identify the type of objection and a section for suggesting modifications.

It is proposed to make provision in the regulations for people to withdraw representations or objections in writing to Natural England, who will then notify the Secretary of State if the objection has already been sent on. The person appointed to consider objections will be notified by the Secretary of State and an inquiry or hearing might be cancelled if already set.

**Question 4: Do you have any comments on the proposals for the form and manner in which a notice about Natural England's report is to be given, and the timing of any notice?**

#### **Regulations on objections considered by the appointed person**

It is proposed the Planning Inspectorate will be the appointed person. The appointed person will determine whether the matters raised by the objector mean that Natural England's report fails to strike a fair balance. If so, the appointed person will publish the objection, as below, under paragraph 10 (6)(a) of Schedule 1A and invite representations:-

- a. published on the appointed person's website;*
- b. published in one or more local or regional newspapers circulating in the area to which the report relates; and*
- c. in any other way that the appointed person thinks appropriate for drawing the attention of members of the public to the notice.*

In addition, the appointed person must give a notice to Natural England and those listed in 2(2)(b) to (f) below by e-mail or recorded delivery:-

- a. access authority for an area in which affected land relevant to the objection is situated;
- b. each local access forum for an area in which affected land relevant to the objection is situated;**
- c. Historic Buildings and Monuments Commission (English Heritage);;
- d. Environment Agency;
- e. such other persons as may be specified in regulations made by the Secretary of State

The appointed person must also give a notice to those with a relevant interest 2 (2)(a) **and** those who might have a relevant interest in affected land under any modifications to the original scheme, by recorded delivery, or e-mail if consent has been given.

### **Form of notice**

A blank form will be completed by the appointed person and include:-

- a. the date the notice was published;
- b. a summary of the grounds of the objection identifying the land involved and the relevant section of the report;
- c. where the report and a map of the area indicating the proposed line of the route and, (if applicable) the boundaries of the margin, which is the subject of the objection may be available for inspection;
- d. a summary of the details of Natural England's comments on the objection;
- e. a statement that the appointed person is minded to determine that Natural England's proposals fail to strike a fair balance; and
- f. any representations on:
  - i. the objection (including any modifications of the proposals proposed by the objection);
  - ii. any relevant alternative modifications in Natural England's comments under paragraph 6 of the Schedule; and
  - iii. any observations which the appointed person made in the notice on any relevant alternative modifications or any modifications proposed by the objection.

Under paragraph 10(5) of Schedule 1A those with a relevant interest, or potentially a relevant interest, will be sent a form to make representations. Other people, groups b. to f. will be able to obtain one from Natural England.

### **Timing of notice**

Given the complexity of the issues which might be involved Defra is not proposing to give a time limit for the appointed person to publish or give a notice following an objection.

**Question 5: Do you have any comments on the proposals for the manner in which notices are to be published or given and the timing of a notice?**

### **Form of notice**

Defra proposes prescribing a form under 10 (4)( c) of the Schedule on which representations can be made.

- a. be made in the prescribed form to the appointed person*
- b. be sent to the appointed person at the address given in the notice; and*
- c. be made to the appointed person within 6 weeks of the date of the issue of the notice.*

**Question 6: Do you have any comments on the proposals for the manner in which representations are to be made in response to an invitation in a notice and the timing of a notice?**

### **Local Inquiries and Hearings**

Paragraph 13(1) of Schedule 1A allows the appointed person to hold a public inquiry (cross-examination) or hearing (discussion) should this be necessary. The appointed person may deal with two or more objections and may have a site visit. The appointed person may determine an objection without either an inquiry or a hearing.

- a. the appointed person may require any person to attend by summons to give evidence or produce documents;*
- b. costs would be paid by Natural England or any other party as the appointed person directs and that failure to do so renders that party liable for a fine; and*
- c. the appointed person may make other orders as to the parties' costs.*

### **Inspection of land**

Under paragraph 14(2)(b):-

- a. the appointed person may arrange for an inspection of the land which is the subject of the objection under consideration where it appears to him that it is necessary or expedient to do so;*
- b. the appointed person must ask the person making the objection and Natural England whether they wish to be present or be represented at such an inspection;*
- c. where the person making the objection or Natural England have indicated that they wish to be present, the appointed person must give the person and Natural England reasonable notice of the date and time of the inspection, and must afford the person and Natural England the opportunity of being present during the inspection; and*
- d. the inspection does not need to be deferred if the person making the objection or Natural England is not present at the appointed time of the inspection*

**Question 7: Do you have any comments on the proposals in the case of where an objection is to be determined by way of a written representation?**

### **Hearing**

It is proposed that the appointed person advertise the hearing in a notice, published in one or more local or regional newspapers; published on the appointed person's website; and in any other way felt appropriate. This should:-

- a. state the date of the notice;*

- b. state that the appointed person intends to determine the objection by way of an hearing;*
- c. state the date, time, and place of the hearing; and*
- d. give a brief description of:*
  - i. the affected land and the report to which the hearing relates;*
  - ii. the objection/objections to be considered at the hearing; and*
  - iii. details about where and when documents relating to the hearing may be available for inspection.*

The notice must be given to:

- a. Natural England;*
- b. the person or persons who made the objections which will be the subject of the hearing; and*
- c. any person who has made representations that are relevant to those objections or the proposed modifications*

#### **Timing of a hearing**

The hearing should be not less than 6 weeks from the date of the notice. The appointed person should be able to change the date and venue if notice is given to those originally notified.

#### **Appearances at a hearing**

Those able to attend a hearing are:

- a. Natural England;*
- b. the person or persons making the objection which will be the subject of the hearing; and*
- c. any person who has made a representation either that is relevant to those objections or the proposed modifications*

In addition anyone else can attend, or their representative, with the permission of the appointed person.

#### **Hearing procedure**

The appointed person will lead a discussion. There will be no cross-examination, unless required to ensure thorough examination of the main issues. In this case the appointed person would have to consider closing the hearing and having an inquiry instead.

The appointing person must identify the main issues to be discussed. During the course of the hearing other people may raise relevant issues not identified by the appointed person.

The objector and Natural England can give oral evidence, or ask others to do so. The appointed person can refuse to permit this if it is considered irrelevant or repetitive.

The appointed person may ask for written evidence instead of permitting oral evidence, either before the end of the hearing or by a given date.

Disruptive people may be asked to leave and may not be permitted to return or only under certain conditions.

The hearing may continue in the absence of anyone entitled to be there.

The appointed person may consider evidence received before or during the hearing, provided such information is disclosed.

The hearing may be adjourned and, if a future date, time and place is set, no further notice is needed.

### **Inspection of land**

People entitled or permitted to appear at a hearing will have a right to accompany the appointed person if a site inspection is arranged. Reasonable notice should be given of the date and time but the inspection can still proceed if neither the objector nor Natural England is present.

Once the hearing has started the appointed person can adjourn it to the land provided:-

- a. the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
  - b. all parties present would have an opportunity to attend the adjourned hearing;
- and
- c. neither the objector nor Natural England have raised any reasonable objections to its being continued at the site of the affected land.

**Question 8: Do you have any comments on the proposals in the case of where an objection is to be determined by way of a hearing?**

### **Inquiry**

The procedure would be as for a hearing but the appointed person will lead a formal examination. Unless otherwise decided Natural England will commence and other persons will be heard in the order determined by the appointed person.

Any person appearing at the inquiry may cross-examine any person giving evidence orally or in writing or presenting any matter at the inquiry. The appointed person may refuse continued cross-examination where this is considered irrelevant or repetitious.

**Question 9: Do you have any comments on the proposals in the case of where an objection is to be determined by way of an inquiry?**

### **Pre-inquiry meeting**

To ensure an efficient inquiry, the appointed person may hold a pre-inquiry meeting, giving at least two weeks notice to Natural England, person(s) making objections and anyone who has made a representation under paragraph 10(4)(c) with details of the time, place and procedure to be followed. A further pre-inquiry meeting with full notice could result.

At the pre-inquiry meeting the appointed person:



- a. must preside at the pre-inquiry meeting;*
- b. must determine the matters to be discussed and the procedure to be followed;*
- c. may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave;*
- d. may refuse to permit that person to return or to attend any further pre-inquiry meeting or may permit him to return or attend only on such conditions as he may specify; and*
- e. shall determine the nature of any documentation that must be submitted to the inquiry and the deadlines for doing so.*

**Question 10: Do you have any comments on the proposal to hold a pre-inquiry?**

**Consideration of two or more objections**

Defra proposes that the appointed person could consider two or more objections at the same hearing of inquiry where:-

- a. the objections relate to the same area of affected land in a report (whether or not they also relate to other land);*
- b. where all the objections relate to adjacent, or contiguous areas of affected land;*
- c. where all objections relate to the same issue or ground and the appointed person considers the circumstances in which they arise are sufficiently similar to warrant the objections being considered together; and*
- d. where the appointed person otherwise considers that it would be expedient to consider two or more objections together.*

**Question 11: Do you have any comments on or suggestions for any other circumstances where the appointed person might wish to consider determining two or more objections together?**

**Regulations on preliminary consultation by the Secretary of State**

Under paragraph 15(1) of Schedule 1A, the Secretary of State may consider identifying or investigating and consulting on modifications other than those proposed by the appointed person.

Where the Secretary of State wishes to consult for this purpose, Defra propose that the regulations should say that the appointed person must consult:

- a. Natural England;*
- b. any person with a relevant interest in affected land who has made an objection which has caused the Secretary of State to identify the possible modification as one to which it might be appropriate to give further consideration;*
- c. any person with a relevant interest in land which might become affected land; and*
- d. any other person with a relevant interest in affected land whom it appears to the Secretary of State it is appropriate to consult.*

Any modifications the Secretary of State wishes to make will then go through the same procedure process.

**Question 12: Do you have any comments on the proposals that allow the Secretary of State to consult people with a view to investigating what possible modifications it might be appropriate to give further consideration**

**Regulations on determinations made by the Secretary of State**

In order to ensure that those persons potentially affected by modifications proposed by the Secretary of State are able to make representations on them, Defra proposes that the existing procedures relating to representations and objections set out in Schedule 1A and the proposed regulations should apply in these circumstances.

**Question 13: Do you have any comments on the proposals where the Secretary of State is minded to approve proposals with modifications other than the modifications made by the appointed person?**

**Use of electronic communications**

It is proposed that electronic communications can be used. Where people have a relevant interest in land use of electronic communication can only be used to contact them with their consent and only if the information appears in the same form as if sent.

**Further documentation**

The appointed person can request further documentation.

**Inspection and copying of documents**

The regulations should state that any person who has been requested to provide a copy of such a document should ensure that the copies are received by the appointed person within the period specified. This would be under the power in paragraph 14(2)(c) of Schedule 1A.

**Question 14: Do you have any comments on the proposals for:**  
**a. the use of electronic communications;**  
**b. further documentation; or**  
**c. the inspection and copying of documents?**