

# MARINE AND COASTAL ACCESS ACT 2009

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### Part 9: Coastal Access

##### The coastal access duty

##### *Section 296: The coastal access duty*

731. This section imposes a duty (described by *subsection (4)(a)* as the “coastal access duty”) on the Secretary of State and Natural England. *Subsections (2)* and *(3)* describe the duty by reference to two objectives.
732. *Subsection (2)* contains the first objective, which is that there is a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry (“the English coastal route”).
733. *Subsection (3)* contains the second objective, which is that there is a margin of land along the length of the coast which the public may enjoy. It requires a margin to exist “in association with” the route, and provides that, subject to the exception mentioned below, the margin of land is to be “accessible to the public for the purposes of its enjoyment by them in conjunction with that route or otherwise”. This makes it clear that the route and the margin are linked objectives, but also that the margin does not have to be accessed directly from the route. It may be accessed from another part of the margin (for example by walking along the foreshore to reach an isolated beach) or using a right of access under other legislation, such as a public right of way, or by other means. The exception to the requirement for the margin to be accessible to the public is the case where the land falls within any category of “excepted land” listed in Schedule 1 to the Countryside and Rights of Way Act 2000 (“the CROW Act”), other than a category of land which is accessible to the public by virtue of any enactment or rule of law (as to which see the note to *subsection (5)(c)*). This formulation enables the margin to be proposed and established without the need to describe individually every area which is not accessible to the public. This is because Schedule 1 to the CROW Act (which may be amended by an order under section 3A of that Act to be inserted by this Act) sets out general categories of land to which there is no access.
734. *Subsection (4)(b)* allows Natural England and the Secretary of State to fulfil the duty in stages over a number of years. This means that the duty may be fulfilled on certain parts of the coast before other parts, and there is no set time limit for completion of the duty.
735. *Subsection (5)* establishes that land will only be considered accessible to the public (as specified in the objectives) if it is accessible in certain ways. *Subsection (5)(a)* provides that one way in which it will be considered accessible to the public is if it is accessible by virtue of section 3A of the CROW Act. This means that, for land to be accessible to the public under *subsection (5)(a)*, access must be available under the right of access conferred by section 2(1) of the CROW Act, and this must be by virtue of it being coastal margin as defined in the new section 3A of the CROW Act (see section 303). So land which is accessible under the CROW Act but which is not coastal margin will not

fulfil the duty. The reason for this distinction is that certain aspects of the management regime for access land under the CROW Act may differ according to whether the land is coastal margin or other access land. *Subsection (5)(a)* goes on to say that this is subject to any exclusions or restrictions imposed by or under Part 1 of the CROW Act. Part 1 of the CROW Act deals with access to the countryside, and allows relevant authorities to make directions excluding the right of access or restricting it in certain ways (for instance the right might be exercisable only along certain routes). So *subsection (5)(a)* makes it clear that such exclusions or restrictions may be disregarded for the purpose of deciding whether the route passes over land which is accessible to the public and there is a margin of land which is accessible to the public.

736. *Subsection (5)(b)* is another category of land which is considered accessible to the public for the purposes of this section. This is land which falls under any of the enactments or instruments specified in section 15 of the CROW Act. These enactments and instruments all provide for public access on foot and in some cases provide higher rights of access, for example on horseback. An example of this is section 193 of the Law of Property Act 1925, which regulates certain commons and has been held by the High Court in the case of *R v Secretary of State for the Environment ex parte Billson*<sup>1</sup> to provide rights on horseback.
737. *Subsection (5)(c)* provides that land will be considered accessible to the public where it is excepted land under the CROW Act (certain types of land set out in Schedule 1 to that Act), but only where it is accessible to the public by virtue of any other enactment or rule of law. The most common situation where this may apply is where the coastal route goes along a public highway. In order to avoid having two different access regimes applying to public highways, it is expected that the public highways will become a category of excepted land under the CROW Act as far as the coastal margin is concerned. *Subsection (5)(c)* therefore allows the English coastal route to follow a public highway, for example through built-up areas. However this does not apply to land which is accessible to the public by virtue of a military lands byelaw as defined in *subsection (8)* (one of the categories of excepted land) and such land may therefore never form part of the route.
738. *Subsection (6)* makes it clear that the duty of Natural England and the Secretary of State to exercise their relevant functions regarding the second objective (making available a margin of land along the length of the English coast) refers to making land accessible to the public by means of section 3A of the CROW Act, as described in *subsection (5)(a)*. Land within the margin may be accessible to the public under the mechanisms described in *subsections (5)(b)* and *(c)*. However, if land is not accessible to the public, the only mechanism which Natural England and the Secretary of State are required to use to make it so accessible is the mechanism described in *subsection (5)(a)*, (provision under section 3A of the CROW Act), although they may decide to use other mechanisms. This reflects the fact that the legislation envisages that so far as any new right of access needs to be created to provide the coastal margin, the principal means of creating it is by way of an order under section 3A of the CROW Act (as inserted by section 303 of the Act).
739. *Subsection (7)* sets out what constitutes a journey by ferry for the purposes of the first objective, and makes it clear that the ferry does not have to be operating at all times of the day or year.

### **Section 297: General provision about the coastal access duty**

740. This section sets out the requirements imposed on Natural England and the Secretary of State as regards considerations that they have to take into account in discharging the coastal access duty. *Subsections (2)* and *(3)* set out these considerations.
741. *Subsection (2)* provides that they must have regard to:

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<sup>1</sup> [1998] 2 All ER 587.

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(c.23) which received Royal Assent on 12th November 2009*

- a) the safety and convenience of those using the English coastal route;
  - b) the desirability of that route adhering to the periphery of the coast and providing views of the sea; and
  - c) the desirability of ensuring that so far as reasonably practicable interruptions to that route are kept to a minimum.
742. *Subsection (3)* provides that they must aim to strike a fair balance between the interests of the public in having rights of access over land and the interests of any person with a relevant interest in the land.
743. *Subsection (4)* sets out which people are treated as having a “relevant interest in land” for the purposes of *subsection (3)* (with the intention of striking a fair balance between the interests of the public and those with a relevant interest in land). It says that a person has a relevant interest in land if the person-
- a) holds an holds an estate in fee simple absolute;
  - b) holds a term of years absolute in the land; or
  - c) is in lawful occupation of the land.

### ***Section 298: The coastal access scheme***

744. This section requires Natural England to draw up a scheme setting out the approach it will take when discharging its coastal access duty, and makes provision regarding this scheme, including provision for its approval by the Secretary of State. *Subsection (5)* requires Natural England to set out in the scheme (and any revised scheme) the approach it will take when deciding whether it would be appropriate for an access authority to carry out any preliminary activity, which is defined in section 302. *Subsection (6)* requires the Secretary of State to lay before Parliament a copy of the scheme or a revised scheme. The section also makes provision for Natural England to revise the scheme, with the approval of the Secretary of State, and to publish the scheme or a revised scheme as soon as is reasonably practicable and in such manner as it considers appropriate. *Subsection (9)* provides that Natural England must act in accordance with an approved scheme in discharging its coastal access duty. *Subsection (10)* provides that Natural England cannot prepare or submit proposals for a long-distance route pursuant to the coastal access duty until there is an approved scheme. *Subsection (11)* enables Natural England to survey land in preparation for preparing or submitting a report before there is an approved scheme, which means that Natural England may do some preparatory work in advance of the scheme being finalised and approved.

### ***Section 299: Review of the coastal access scheme***

745. This section provides for Natural England to review the coastal access scheme (which has been approved by the Secretary of State under section 298) from time to time. *Subsection (2)* requires Natural England to complete the first review of the scheme within three years of the date of approval of the scheme by the Secretary of State. *Subsection (3)* requires Natural England to publish a report of each review as soon as reasonably practical after it has completed the review.

### ***Section 300: The English coast***

746. The coastal access duty (section 296) relates to the English coast. This section defines the English coast, for the purposes of this Part of the Act, by reference to its adjacency to the sea. It provides that the coast includes the coast of islands unless they are excluded.
747. *Subsection (2)* explains what an excluded island is. It says that islands are excluded unless they are “accessible islands” or they are specified by the Secretary of State by order. *Subsection (3)* sets out what constitutes an “accessible island”. This is an island

to which it is possible to walk from the mainland of England or from another island (other than an excluded island) across the foreshore or by means of a bridge, tunnel or causeway. *Subsection (4)* provides that, for this purpose, it is possible to walk to an island even if it is possible at certain times, or during certain periods, only. *Subsection (5)* puts a condition on the Secretary of State's power to specify an island by order. This is that the coast of the island must be sufficiently long to enable the public to make an extensive journey on foot (the language used in relation to long-distance routes by section 51 of the National Parks and Access to the Countryside Act 1949).

748. *Subsection (6)* provides that the means of access to an accessible island (for example a bridge, tunnel or a causeway or the foreshore) is to be considered to be part of the English coast for the purposes of the first objective (the duty to secure the English coastal route). This is so that the English coastal route includes the means of access.
749. *Subsection (7)* provides that this section is subject to section 307 which makes provision about the application of this Part to the Isles of Scilly.

### **Section 301: River estuaries**

750. *Subsection (1)* provides that this section applies where the coast is interrupted by a river.
751. *Subsection (2)* provides that Natural England may treat the relevant upstream waters of any river as if they were the sea. Section 309 says that "the sea", in this Part of the Act, does not include any part of a river which is upstream of the seaward limit of the river's estuarial waters; however this section allows Natural England to treat relevant upstream waters as if they were the sea. This is necessary because section 300 defines the English coast as being the coast of England adjacent to the sea and section 296 relates the coastal access duty to the English coast.
752. *Subsection (3)* defines the relevant upstream waters (which Natural England may treat as if they were the sea) as estuarial waters of the river upstream of the seaward limit of estuarial waters either (*subsection (3)(a)*) to the first bridge or tunnel by means of which the public may cross the river on foot ("the first public foot crossing" which is defined in *subsection (8)*), or (*subsection (3)(b)*) to some point it specifies before (downstream of) the first public foot crossing. Any decision to treat estuarial waters as if they were the sea under either *subsection (3)(a)* or *subsection (3)(b)* is subject to the general provisions about the coastal access duty set out in section 297. This is clarified in *subsection (5)*.
753. *Subsection (4)* sets out certain matters to which Natural England must have regard, in addition to the matters to which it must have regard in applying *subsections (2)* or *(3)* of section 297 (general provisions about the coastal access duty). These are (a) the nature of the land, for instance whether it bears a greater resemblance to either typical coastal land or typical riverine land; (b) the topography of the shoreline for instance how indented it is and hence how awkward a journey might result from including it in the route; (c) the width of the river, which again would contribute to whether it is closer to typically coastal or to typically riverine land; (d) the recreational benefit to the public of including land; (e) the extent of potential excepted land (the presence of a large expanse of excepted land could influence the decision as to whether to include that part of the estuary in the coastal margin or not); (f) the desirability of continuing the route to a particular feature (for instance to an intersection with a footpath or road, or car park) or viewpoint, and (g) the existence of a ferry by which the public may cross the river. This list is not exhaustive. As well as having regard to the matters in section 297(2), Natural England must also comply with section 297(3).
754. *Subsection (6)* gives the Secretary of State powers corresponding to those given to Natural England as set out in *subsections (1)* to *(5)*.
755. *Subsection (7)* makes it clear that the Secretary of State's decisions under *subsection (2)*, and compliance with the requirements set out in section 297 are independent of any

decision taken by Natural England. This means that the Secretary of State may make a different decision about whether waters of a river are to be treated as part of the sea.

## **Implementation of the coastal access duty**

### ***Section 302: Long-distance routes***

756. *Subsection (1)* of this section inserts new sections into the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”). These sections all refer to the coastal access duty imposed under section 296(1) of the Act and reports prepared pursuant to that duty.
757. *Section 55A Proposals relating to the English coastal route. Subsection (1)* provides that Natural England may prepare a report proposing a coastal long-distance route, whether or not the requirements of section 51(1) of the 1949 Act are satisfied. This means that proposals may be made even though they relate to a route which does not enable an “extensive” journey, or when the greater part of the length of the route passes along roads used by vehicles. Under *subsection (2)* it is immaterial that the public are already able to make journeys, as described in section 51(1) of the 1949 Act, by virtue of proposals for a long-distance route that have already been approved under that Act. This is because such existing routes may not be sufficient to discharge the coastal access duty. *Subsection (3)* defines the term “preliminary activity”. *Subsection (4)* requires Natural England to consider whether it would be appropriate for the access authority to carry out any such activity and if so Natural England must take all reasonable steps to enter into an agreement with the access authority in relation to that land. *Subsection (5)* gives access authorities powers to enter into an agreement with Natural England in relation to their area to undertake preliminary activity.
758. *Section 55B* makes provision for eroding coastlines. *Subsection (2)* provides that in the situations set out in *subsection (3)* the report may set out proposals for the route to be determined in accordance with provision in the proposals rather than as shown on a map. *Subsection (3)* sets out the relevant situations, which are where the area is subject to significant erosion or encroachment by the sea, or to significant physical change due to other geomorphological processes. Under *subsection (4)* Natural England may describe the route by reference to a cliff edge or a field boundary, “as that cliff edge or field boundary exists from time to time”; this means that as the cliff edge or field boundary changes over time, so will the route. *Subsection (5)* says that where Natural England makes use of this flexibility, the map of the proposed route contained in the report (as required by section 51 of the 1949 Act) must show the position of the route at the time the map is drawn up. *Subsection (6)* requires Natural England to consult the Environment Agency before exercising its powers in respect of an area which is subject to significant coastal erosion or encroachment by the sea or to significant physical change due to other geomorphological processes in relation to which the Agency has functions.
759. *Section 55C* deals with alternative routes. *Subsection (3)* provides that the report may include alternative routes which will operate as diversions during specified periods, or during those periods when the normal route needs to be closed by direction under Chapter 2 of Part 1 of the CROW Act (for example for land management purposes or for reasons of danger to the public). *Subsection (5)*, taken together with *subsection (3)*, allows this alternative route to operate flexibly, by enabling specified periods of closure to be determined in accordance with the proposal or by a person specified in it, or determined by a person who is in turn determined in accordance with the proposal. For instance it may be that an alternative route should come into operation when a particular breed of bird starts to nest; the time may vary each year and so the alternative route may come into operation on the date that a warden determines that the birds are starting to nest and following the warden putting up a sign to say that the alternative route is in operation. *Subsection (4)* says that the report may include an alternative route which will operate as an optional alternative to the ordinary route or part of it when the ordinary route might reasonably be regarded as unsuitable for use by reason

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of flooding, action of the tide, coastal erosion or encroachment by the sea, or the effect of any geomorphological process.

760. Under *subsection (6)* section 51(2) (which sets out what must be contained in a report proposing a long-distance route), and section 55B (provision for eroding coastlines), apply equally to any alternative route.
761. *Section 55D Coastal margin.* This section deals with those aspects of a report under section 51 pursuant to the coastal access duty which relate to coastal margin. Section 303 allows the coastal margin to be defined by reference to a long-distance route.
762. *Subsection (2)(a)* provides that the report under section 51 pursuant to the coastal access duty may provide for the landward boundary of the coastal margin to be drawn either wider or narrower than follows from the normal application of the new section 3A of the CROW Act (inserted by section 303 of the Act) in order to make it coincide with a physical feature (as described in section 3A(2)(d) of the CROW Act). This may be used, for instance, to make the boundary of access land clearer to the user by aligning the boundary with a more physical marking such as a fence or to bring additional land to the landward of the route into the coastal margin. *Subsection (2)(b)* allows the same flexibility with regard to the route strip for any alternative route. *Subsection (2)(c)* allows the same flexibility with regard to any land which is made an exception to land of a type to which the right of access does not apply (that is, land which is made an exception to excepted land as set out in Schedule 1 to the CROW Act). This would apply, for instance, in cases where a particular type of land is excepted land except for the route strip and would allow the route strip in these cases to coincide with a physical feature such as a field boundary.
763. *Subsection (3)* requires Natural England to include in its report a map showing the landward boundary of the relevant coastal access land or a description of the boundary which is sufficient to identify that land. Natural England must also provide under *subsection (4)* a copy of any map in its report to a person on request with a relevant interest in affected land. *Subsection (5)* requires Natural England to include details in the report of any restrictions to, or exclusion of, the right of access that it intends to put in place if the proposals are approved, which will have effect when any right of access under the CROW Act comes into force. This will help the reader of the report to understand the implications of the proposals. The subsection makes clear that Natural England does not have to include such details if it does not believe that any restrictions or exclusions are appropriate.
764. *Subsection (6)* sets out who Natural England is required to consult before the report is prepared. These requirements are in addition to requirements under section 51(4) of the 1949 Act. The subsection makes reference to “a relevant interest in affected land”. For this purpose, “relevant interest” and “affected land” are defined in section 55J.
765. *Subsection (7)* requires bodies of the type mentioned in section 51(4) of 1949 Act but not required to be consulted under that Act, London borough councils and local access forums to provide information to Natural England when consulted under *subsection (6)*. *Subsection (8)* requires the Secretary of State, when consulted by Natural England under *subsection (6)*, to provide Natural England with information relating to any exclusion or restriction for the purposes of defence and national security which the Secretary of State proposes to make, and to notify Natural England if any information provided in this respect should not be made public, on the grounds of defence and national security. *Subsection (9)* requires Natural England to include information which it considers relevant on defence and national security exclusions or restrictions in the report. This is so that the report contains all the information relevant to the proposals made in it. *Subsection (10)* prohibits Natural England from including information which the Secretary of State has specified should not be included on the grounds of defence and national security.

766. *Section 55E Consideration of reports made pursuant to the coastal access duty.* This section introduces a new Schedule 1A to the 1949 Act. The text of Schedule 1A to the 1949 Act is contained in Schedule 19 to this Act.
767. *Section 55F Directions under Part 1 of the CROW Act.* This section provides that if approved proposals relating to a long-distance route provide that certain restrictions and exclusions on the right of access are to be put in place by Natural England under Chapter 2 of Part 1 of the CROW Act, it must put them in place. *Subsection (3)* makes it clear that Natural England may subsequently revoke or vary these under its powers in the CROW Act.
768. *Section 55G Ferries for the purposes of the English coastal route.* This section should be read in conjunction with section 53 of the 1949 Act. Section 53 relates to ferries on long-distance routes and provides that they may be provided and operated (or provision may be made for them to be provided and operated) by the highway authority (or either or both of the authorities) for the highways that the ferry will connect – for example the highways on either side of a river crossing. As the English coastal route will not be confined to highways, a ferry for the purposes of the route might not connect two highways, but might instead connect two areas of access land. Section 55G provides that in this case the power lies with the highway authority responsible for the area in which the approach route to the ferry along the English coastal route lies.
769. *Section 55H Variation pursuant to the coastal access duty.* This section makes provision to ensure that the “procedural requirements” specified in section 55H(4) apply equally to any reports dealing with variations of the coastal route. With respect to any variation made to the coastal route by direction under section 55(2) (which deals with situations where the Secretary of State considers that a variation should be made but Natural England has not made a proposal), *subsection (2)* provides that the Secretary of State may make regulations for the procedural requirements specified in *subsection (4)* to apply (with suitable modifications), and *subsection (3)* provides that the Secretary of State may only make a direction for such a variation if regulations mentioned under *subsection (2)* are in force.
770. *Section 55I Temporary diversions.* This section allows Natural England to establish a temporary route if the English coastal route or an official alternative route is closed by a direction under Chapter 2 of Part 1 of the CROW Act. *Subsection (2)* says that Natural England cannot do this if the direction is permanent; this is because in this case Natural England would be expected to establish a new route using a variation order under section 55. *Subsection (3)* enables Natural England to give a direction specifying a temporary route. *Subsection (4)* specifies that the temporary route may only be created over access land as defined by Part 1 of the CROW Act, land which is treated by section 15 of that Act as accessible to the public apart from that Act, along a highway or over any other land the owner of which has agreed to the route insofar as it passes over the land which he owns. *Subsection (5)* provides that where the temporary route is to pass over land of a type described in *subsection (4)(d)*, that is any other land where the owner has agreed to the route passing over it, then Natural England must consult the Environment Agency before giving a direction. *Subsection (6)* provides that such a direction must be in writing and enables it to be revoked or varied subsequently.
771. *Section 55J Interpretation.* A number of definitions for words and expressions used in sections 55A to 55I and Schedule 1A are provided in *section 55J*. That section also provides that any power to make regulations conferred by those sections or Schedule 1A includes power to make different provision for different cases, and to make incidental, consequential, supplemental or transitional provision or savings.

### ***Section 303: Access to the coastal margin***

772. This section amends Part 1 of the CROW Act. *Subsection (2)(a)* includes coastal margin in the definition of access land in section 1(1) of the CROW Act. This will have the effect, subject to an order being made by the Secretary of State under section 3A

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(inserted by *subsection (5)*), of extending the right of access under section 2(1) of the CROW Act to the coastal margin, other than in relation to excepted land and land which is treated by section 15 of the CROW Act as accessible apart from that Act. *Subsection (2)(b)* inserts a definition of coastal margin into section 1(2) of the CROW Act; it provides that coastal margin means land which is of a description specified by an order under section 3A.

773. *Subsection (2)(c)* amends the definition of open country under the CROW Act. As a result, the definition of open country becomes “land which:

a) appears to the appropriate countryside body to consist wholly or predominantly of mountain, moor, heath or down; and

b) is not registered common land or coastal margin.”

774. Open country is one of the categories of access land under section 1(1) of the CROW Act. So the effect of *subsection (2)(c)* is that where land appears to the appropriate countryside body to be mountain, moor, heath or down but has become coastal margin, the right of access under section 2(1) applies to it only by virtue of its being coastal margin. *Subsection (2)(d)* has a similar effect for land which is registered common land but has become coastal margin; for the purposes of Part 1 of the CROW Act it is not considered to be registered common land and the right of access under 2(1) applies to it by virtue of its being coastal margin. These provisions ensure that only one regime of access and access management under the CROW Act applies to land which is coastal margin.

775. *Subsection (3)* deals with how the right of access under the CROW Act relates to other enactments as regards prohibitions. The position for coastal land is different from the position for other land to which the right applies. As regards coastal land, prohibitions under any other enactments will apply, whether the enactment is local or general, public or private. So, for instance, rules prohibiting certain types of activities on beaches under a local byelaw will continue to apply. For other land to which the right of access under the CROW Act applies, prohibitions under other enactments only apply if that other enactment is not a local or private Act.

776. *Subsection (4)* makes section 3 of the CROW Act apply in relation to Wales only, rather than in relation to England and Wales as at present.

777. *Subsection (5)* inserts a new section into the CROW Act, section 3A (*Power to extend to coastal land etc: England*). *Section 3A(1)* allows the Secretary of State to make an order defining coastal margin in England. *Subsection (7)* requires orders under section 3A(1) to be approved by resolution of each House of Parliament. This is the same procedure as was previously in place for orders under section 3 of the CROW Act in relation to England and the same as for orders under section 3 to modify provisions which apply to coastal land in Wales.

778. *Section 3A(2)* sets out ways in which the order may describe land, but is not an exhaustive list. It sets out a number of ways in which land may be described by reference to the English coastal route. *Section 3A(2)(a)* provides that such an order may describe land by reference to its being land over which the line of the English coastal route passes, land adjacent to and within a specific distance of that line and land adjacent to such land. This is subject to the proviso that the land, taken as a whole, must be coastal land, as defined in section 3 of the CROW Act, in other words foreshore or land adjacent to the foreshore. *Section 3A(2)(b)* refers to cases where the route is subject to erosion etc and allows coastal margin to be described in relation to such a route as it has effect from time to time. *Section 3A(2)(c)* refers to alternative routes and allows land to be described by reference to its being land over which the line of the English coastal route passes or land adjacent to and within a specified distance of this line. This does not have the effect of making land to the seaward of such land coastal margin. *Section 3A(2)(e)* makes similar provision for temporary diversions. *Section 3A(2)(d)*



provides that land may be included as a result of the boundary of the coastal margin being drawn to coincide with a physical feature and this is the case whether the result is that land is included which is not itself coastal land, or whether land is excluded which is coastal land.

779. Under *section 3A(3)* an order under *section 3A(1)* may be made describing land by reference to the English coastal route before any such route is in existence. This will allow the order to be made before any English coastal route is proposed, so that Natural England in proposing a route, and the Secretary of State when approving the proposals, may take account of the implications of that route for the coastal margin.
780. *Section 3A(4)* provides that an order under *subsection (1)* may modify the provisions of Part 1 of the CROW Act insofar as they apply to coastal margin. This is similar to the existing power in *section 3* (which will now apply to coastal land in Wales only) and would, for instance, allow the Secretary of State to modify the categories of excepted land which apply to the coastal margin.
781. *Section 3A(5)* specifies particular things that provision made under *section 3A(4)* may do. It may for example confer functions on the Secretary of State or Natural England (see *section 3A(5)(a)*). Examples of this might be, in relation to the Secretary of State, a function of considering representations, and, in relation to Natural England, a function of making directions regarding exclusions or restrictions, if new grounds for exclusions or restrictions are introduced. *Section 3A(5)(b)* makes provision in relation to any description of land which is excluded from any category of excepted land. It enables an order to make similar provision in relation to land of that description as in relation to other access land. For example, where the route runs along a strip of land along the seaward edge of arable land (and if such a strip were excluded from the arable land category of excepted land under the CROW Act), the area of coastal margin along that route could be enlarged or narrowed to allow it to coincide with a physical feature.
782. *Section 3A(6)(a)* provides for a period of time, referred to as the access preparation period, between the approval of a coastal route and the right of access coming into force. This is to allow time for Natural England to make preparations such as doing work to sign the route and establishment works to make it suitable for public access (for example installing gates or steps) and to make directions with regard to restrictions and exclusions. *Subsection (6)(b)* allows Natural England to make directions for the exclusion or restriction of access which will come into force after the end of the preparation period. *Subsection (6)(c)* provides that land in the coastal margin that was already open country or registered common land will continue to be treated as open country or registered common land until the end of the preparation period. This ensures that any existing rights of access or restrictions and exclusions over such land under the CROW Act continue until the end of that period. *Subsection (6)(c)(ii)* further makes clear that the position as regards occupier's liability will remain unchanged until the right of access to the land as coastal margin comes into force: once it does come into force the position as regards occupier's liability will be as set out in *section 1(6AA)* of the Occupiers' Liability Act 1984 (see *section 306*).
783. *Section 3A(7)* provides that any exclusions or restrictions of the right of access relating to such land will cease to have effect at the end of the access preparation period. This ensures that any existing exclusions or restrictions on the rights of access over such land under the CROW Act continue until the end of that period. Where appropriate, Natural England should have replaced any such exclusions or restrictions with directions forming part of the proposals for an English coastal route, and these replacement restrictions or exclusions may be made to come into effect immediately after the end of the access preparation period (*subsection (6)(b)*).
784. *Section 3A(8)* ensures that any direction made under *subsection (6)(b)* to take effect after the end of the access preparation period will not be negated by *subsection (7)*.

785. *Subsection 3A(9)* provides that *subsections (6) and (7)* do not apply where land is already dedicated as coastal margin. This is because, at the time that an order under section 3A(1) comes into force, the land is already treated as coastal margin by virtue of the dedication.
786. *Subsection (6)* of section 303 amends section 16 of the CROW Act relating to dedication of land. It allows land in England which is coastal margin or is adjacent to coastal margin to be dedicated as coastal margin. If the land is already coastal margin, the effect of dedicating it is that the restrictions in Schedule 2 to the CROW Act may be relaxed by the dedication if the dedicator so wishes. This subsection also provides that where land is dedicated as coastal margin, then if the land would otherwise be excepted land (within the meaning of Part 1 of the CROW Act) it is treated as if it were not excepted land, unless it is land which is accessible to the public under another enactment or rule of law (for instance, a public right of way). The subsection enables land adjacent to coastal margin to be dedicated as coastal margin, and in this case, in addition to the effects already described, the dedication ensures that the land is treated for the purposes of Part 1 of CROW as if it were coastal margin. Existing dedications may be amended so that land which is already dedicated as access land may also be dedicated as coastal margin.
787. *Subsection (7)* amends section 20 of the CROW Act to require Natural England to ensure that in relation to land which is coastal margin the public are informed that the right of access conferred by the Act does not affect any other rights of access that may exist in relation to that land. The amendment made by *subsection (7)(b)* provides that a separate code of conduct may be drawn up for coastal land.
788. *Subsection (8)* amends section 44 of the CROW Act to ensure that orders under section 3A(1) of that Act are subject to affirmative resolution procedure (like the existing orders under section 3 of that Act).
789. *Subsection (9)* amends section 45 of the CROW Act to include a definition of coastal margin. The definition is the one set out in section 1(2) of that Act (as amended by this section): “land which is of a description specified by an order under section 3A”.

#### ***Section 304: Establishment and maintenance of the English coastal route etc***

790. This section introduces Schedule 20 to the Act.

### **Liabilities**

#### ***Section 305: Restricting liabilities of Natural England and the Secretary of State***

791. There are many dangers on the coast and this section makes clear that Natural England does not have unlimited responsibility for the safety of people who choose to use the route or associated access land. *Subsection (1)(a)* removes any duty of care owed by Natural England under the law of negligence when preparing or proposing the coastal route. *Subsection (1)(b)* removes any duty of care owed by Natural England under the law of negligence in connection with any failure by it to erect notices and signs warning of obstacles or hazards. This is because Natural England cannot assume responsibility for erecting such notices and signs for every obstacle or hazard that exists. It is expected that Natural England will erect notices or signs only when it is aware that there is an obstacle or hazard which is unusual or cannot be easily identified by the public. *Subsection (1)(c)* removes any duty of care owed by Natural England under the law of negligence in connection with any failure by it to exclude or restrict access under Chapter 2 of Part 1 of the CROW Act, except a failure within *subsection (2)*. *Subsection (2)(a)* relates to where Natural England has decided not to act in accordance with an application made under section 24 of the CROW Act, which relates to a direction for the purposes of land management, or an application under section 25 of that Act, which relates to a direction for the purpose of fire protection or avoiding a danger to the public. *Subsection (2)(b)* relates to where Natural England does not act in accordance with representations under section 27(5) of that Act, which relates to consultation with

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the original applicant before revoking or varying a direction made under sections 24 or 25 of that Act. *Subsection (3)* restricts the liability of anyone acting on Natural England's behalf in the same way. This would for example, apply to Natural England's employees and agents.

792. *Subsection (4)* makes it clear that the Secretary of State does not owe any duty of care under the law of negligence when approving proposals for a coastal long-distance route or giving a direction for the variation of such proposals.

### ***Section 306: Occupiers' liability***

793. The CROW Act amended section 1 of the Occupiers' Liability Act 1984 in certain respects including by removing the liability of occupiers of access land to those exercising the right of access, and to trespassers, in respect of risks arising from natural features of the landscape "or any river, stream, ditch or pond whether or not a natural feature". This exclusion of liability is subject to certain safeguards and does not apply if the danger is due to anything done by the landowner with the intention of creating that risk, or being reckless as to whether that risk is created.
794. This section extends this exclusion of liability, for land which is coastal margin, in respect of a risk resulting from any physical feature (whether of the landscape or otherwise). Coastal land includes many man-made features, for example war-time defences. Occupiers should enjoy the same reduced liability for these as they enjoy for natural features.

## **General**

### ***Section 307: Isles of Scilly***

795. This section relates to the application of the Act to the Isles of Scilly. *Subsection (1)* provides that sections 296 to 301, 304, 305, 308, 309 and Schedule 20 do not apply to the Isles of Scilly unless there is an order made by the Secretary of State under *subsection (2)*. *Subsection (3)* requires the Secretary of State to consult the Council of the Isles of Scilly before making such an order.
796. Part 4 of the 1949 Act applies to the Isles of Scilly, but an order under section 111 of that Act may provide for it to apply as if those Isles were a separate county (and not part of Cornwall). *Subsection (4)* makes it clear that such an order may be made in relation to Part 4 of that Act as amended by this Part of the Act. Part 1 of the CROW Act does not apply to the Isles of Scilly unless an order is made under section 100 of that Act applying it there. *Subsection (5)* makes it clear that an order under section 100 of the CROW Act may be made in relation to Part 1 of that Act as amended by this Part of the Act.

### ***Section 308: The Crown***

797. This section makes Part 9 of the Act binding on the Crown and applies it to any Crown land. *Subsection (2)* sets out what constitutes "Crown land".
798. *Subsection (3)* enables the appropriate authority (as defined by *subsection (5)*) in relation to land held by or on behalf of the Crown to enter into an agreement under section 35 of the CROW Act (agreements with respect to means of access) entered into by Natural England or an access authority, by virtue of paragraph 1 of Schedule 20) or an agreement under paragraph 2 of that Schedule in respect of that Crown land. *Subsection (4)* provides that an agreement with respect to any other interest in Crown land (for example, a person entering an agreement in respect of his leasehold interest in Crown land) is of no effect unless it has been approved by the appropriate authority in relation to that land. *Subsection (5)* sets out what constitutes the "appropriate authority" in relation to different categories of Crown land.

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799. *Subsection (6)* provides for any question as to which Crown authority is the appropriate authority for the purpose of making or approving an agreement under *subsection (3)* to be referred to the Treasury, whose decision is final. *Subsection (7)* provides for any reference to Her Majesty's private estates to be construed in accordance with section 1 of the Crown Private Estates Act 1862.

***Section 309: Interpretation of this Part***

800. A number of definitions are provided for words or expressions used in this Part.

**Wales**

***Section 310: Powers of National Assembly for Wales***

801. This section amends the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales. The section provides competence in relation to the establishment and maintenance of a route (or a number of routes) for the coast to enable the public to make recreational journeys. However, the section specifies that this does not include competence to create new highways by Assembly Measure or to enable journeys by mechanically propelled vehicles, except permitted journeys by qualifying invalid carriages. It also provides competence in relation to the securing of public access to relevant land for the purpose of open-air recreation. Land is relevant land if it:
- a) is at the coast;
  - b) may be used for the purposes of open-air recreation in association with land within paragraph (a); or
  - c) may be used for the purposes of open-air recreation in association with the route or routes.
802. The section provides that for the purposes of the section, the coast means the coast of Wales adjacent to the sea, including the coast of any island. It also provides that the sea includes the relevant upstream waters of a river, and that these are the waters from the seaward limit of the estuarial waters of the river upstream to the first bridge or tunnel by means of which the public have rights to cross the river on foot ("the public foot crossing").