

Tourism and the Proposed Marine and Coastal Access Act 2009

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Summary

This article takes a look at the details of new proposals contained in the Marine and Coastal Access Bill, which aims to create a coastal path around England. It also gives a quick overview of the background to the Bill and examines its possible impact on tourism.

Introduction

In June 1993 Holbeck Hall Hotel in Scarborough fell victim to coastal erosion in spectacular style when part of the cliff on which it was built slipped into the sea, taking the hotel and its contents with it. With coastal erosion remaining a problem in the UK, any proposal to increase coastal access and with it the number of walkers and tourists may not all be good news.

The new Marine and Coastal Access Bill introduced in the House of Lords on 5 December 2008 seeks to create a universal right of access for all to the English coast. This article takes a look at the details of these new proposals and examines their possible impact on tourism.

History of coastal access

After World War II was over, the incoming Labour Government's Ministry of Town and Country Planning set up a Special Committee chaired by Sir Arthur Hobhouse to look at access to the countryside.

The Committee recommended that a Coastal Planning Advisory Committee be established because “for the purposes of overall ‘Master Planning’, the coast of England and Wales must be treated as a whole”. As to the route of the path, the Hobhouse Committee recommended that “for walkers there should be continuous cliff-edge routes generally following the line of the old coastguard path”.

These rules were amended by the Countryside Act 1968 and the Wildlife and Countryside Act 1981, consolidated in the Countryside and Rights of Way Act 2000 (CROW) and amended by the Natural Environment and Rural Communities Act 2006. The powers on drawing up proposals for a coastal route were vested in Natural England, which was set up by the 2006 Act and officially came into being on 2 May 2006. Natural England is a merger of the landscape, access and recreation division of the Countryside Agency, English Nature and the Rural Development Services section of the Department for Environment, Food and Rural Affairs (DEFRA).

Background to the Bill

Proposals to amend the regime were first made by DEFRA in its first marine stewardship report [1].

Natural England published a report on 14 February 2007 recommending that access was improved to the English coast and advising the Government to “introduce legislation to create a new right of public access to England’s coastline along a continuous access corridor”.

The Marine Bill White Paper was published in March 2007, which neither mentions coastal access nor refers to the Natural England report’s recommendations on coastal access.

In the summer of 2007 DEFRA consulted on the coastal path that Natural England had recommended. It examined four options and was in favour of the new “coastal access corridor”. This time as it clearly affected tourism, a number of tourism organisations were consulted by DEFRA.

In April 2008, DEFRA eventually published its 687 page Marine Bill for pre-legislative scrutiny [2]. It states that the proposed coastal route will apply to England only with the Welsh Assembly Government to examine whether it wants to adopt similar proposals for the Principality.

Parliamentary Committees stage

This draft Bill was scrutinised by two different Parliamentary Committees. The House of Commons Environment, Food and Rural Affairs Committee delivered its report in July 2008 [3]. This Committee made 23 recommendations including:

- wider accountability and less power should be given from Natural England

- Natural England's Scheme must have clear explanations and diagrams about how it proposes to align the proposed coastal path
- Natural England should report in 10 years time to Parliament on progress and lessons learnt
- there should be a formal appeal mechanism and compensations payable to landowners affected by Natural England's proposed path
- extend the proposed initial budget of £50m over 10 years
- there should be clarity as to who is responsible for maintaining the coastal path
- dogs should be controlled and kept away from farmers' crops and livestock where they are part of the proposed coastal path
- a complete ban on all four-wheel vehicles including quad bikes from the coastal path.

Joint Committee stage

A Joint Committee of both the House of Lords and House of Commons delivered its 151 page report on 30 July 2008 [4]. It made eight recommendations relevant to the proposed coastal path. In addition to the points made by the DEFRA Select Committee about appeal, compensations and funding, this report also stated that:

- there was uncertainty in the Regulatory Impact Assessments that accompanied the draft Bill
- key bodies must be designated as statutory consultees
- it welcomed the principle of universal continuous access path along the English coast
- existing property and privacy rights along the proposed route must be respected.

Consultation

In addition, a public consultation on the draft Bill was carried out from 3 April to 26 June 2008. This attracted 3899 responses. A summary of these was published by DEFRA in September 2008 [5]. The Rambler's Association also ran a campaign in support of coastal access and 11,000 postcards were sent to DEFRA in support of the coastal path. 50% of the public consultation was in favour of the proposed path and 23% were resolutely against it. In addition to the points made by the Parliamentary Committees, the public made comments related to:

- disruption to business or agriculture
- impact on wildlife and nature conservation
- private gardens should not be part of the proposed path
- whether the horse riders or cyclists should be allowed on the path
- what effect the path may have in the future on new developments on the English coast
- impact of the path on coastal erosion.

The Bill was eventually published, introduced into the House of Lords and given its First Reading on 4 December 2008.

Overview of Bill's contents

The provisions about coastal access are in Part 9 of the Bill comprising clauses 286 to 300. Also of relevance is Schedule 19 (which deals with establishment and maintenance of the English coastal route). At the same time 155 pages of Explanatory Notes were published to assist in interpreting this Bill. Coastal Access is dealt with at some length in there.

Section 286 of the Bill provides that there are to be two objectives and lays out in broad terms the new "coastal access duty".

The first objective is that there is a route for the whole of the English coast which "consists of one or more long-distance routes along which the public are enabled to make recreational journeys on foot or by ferry" and which "passes over land which is accessible to the public".

The second objective is that in association with the proposed English coastal route, "a margin of land along the length of the English coast is accessible to the public for the purposes of its enjoyment by them". The duties under the Bill are imposed jointly on DEFRA and Natural England.

As the proposed coastal route will in many cases cross existing private land, the Bill recognises that there is a balancing exercise to be carried out. Both DEFRA and Natural England are required to have regard to

- the safety and convenience of those using the English coastal route (although neither will be liable for any accident)
- the desirability of that route adhering to the periphery of the coast
- the desirability that interruptions to the routes are kept to a minimum.

Coastal Access Scheme

Natural England is given the duty of preparing a coastal access scheme that must set out the approach it will take when discharging its coastal access duty and then be submitted to DEFRA for approval. DEFRA can approve the Scheme, modify it or reject it and require that a new Scheme be drawn up. The first such Scheme has to be submitted by Natural England to DEFRA within a year of the Bill as enacted coming into force but Natural England has already published its draft Scheme [6] in December 2008 although, surprisingly, this was done without any publicity.

The Scheme has to be kept under review by Natural England with the first review to be completed within three years of the first Scheme receiving its approval. One tabled

amendment to the Bill seeks to put the duty to review the Scheme jointly with local authorities and Natural England.

Coastal margin

On coastal margins, Natural England has to include in any report any restrictions or exclusions to the coastal right of access. The Bill also provides that the Natural England report may include proposals as it thinks appropriate as to where the landward boundary of the route will lie (“the margin”) and it has to consult with those with an interest in the land before doing so.

There are certain bodies that must be consulted – such as the Environment Agency, Historic Buildings and Monument Commission, or the Secretary of State for Defence – but none of these consultees include statutory tourism organisations such as VisitBritain or the soon-to-be-created VisitEngland. One of the amendments tabled in Committee in the House of Lords proposes that the following bodies also become statutory consultees:

- British Association of Shooting and Conservation
- British Mountaineering Council
- Country Land and Business Association
- National Farmers’ Union
- Open Spaces Society
- Ramblers’ Association.

How wide will it be?

The Hobhouse Committee examined this issue in 1947 and recommended a new “general right of roaming over the foreshore and the land immediately behind [...] referred to as beach and shore”. It defined “beach and shore” as “a strip of land of varying description and width extending from the low-water mark to beyond the reach of even the most exceptional tides and often to a considerable distance inland until cultivated land is reached”.

At present there is a right of access to countryside land and the Bill proposes to extend this to the “coastal margin” as well. The Bill is however rather vague about this and gives DEFRA wide discretion on designating the limits of the coastal margin. In theory it (together with the corresponding right of unlimited public access) could be very wide indeed. Only after the Bill is passed and an Order is laid will we be able to see for sure how wide the margin is going to be. Any Order will need the approval of both Houses of Parliament, which is a limited if useful safeguard.

Temporary diversions to route

The Bill enables Natural England to establish a temporary route if the English coastal route is closed because of a direction made under the CROW Act. The power to specify

an alternative route is left exclusively in the hands of Natural England, which only needs to consult the Environment Agency.

The temporary route could in theory be diverted over private land or to attractions where an admission fee is normally payable. There is also no definition of “temporary” in the Bill – so a temporary diversion could last for months or even years.

Who will maintain the coastal path?

The Bill leaves the tricky issues of establishment and maintenance to Schedule 19. Where Natural England is of the opinion that it is appropriate for works to be carried out for the purposes of the coastal access duty, it is empowered to “enter into an agreement with the owner or occupier of the land as to the carrying out of the works”. The works contemplated include:

- clearance or maintenance of the land
- removal of obstructions
- drainage or levelling of the land
- construction, removal, repair or improvement of any
 - wall
 - rail
 - fence or barrier
 - post
- planting of any hedge.

Where an agreement is made, it can provide for the making of payments by either Natural England or the access authority as a “contribution towards, or for the purpose of meeting, costs incurred” by the owner or occupier in carrying out these works. It is not clear how much budget Natural England has or will have set aside for this purpose.

The sting in the tail is that if the agreed works are not carried out, then Natural England can give 21 days notice, then carry them out itself and seek to recover the costs of the works .

There are three main problems with the provisions on maintenance.

1. Once Natural England has decided works are “appropriate” it can press ahead to obtain an agreement. There isn't a formal appeal process whereby an aggrieved land owner can appeal to argue that the works are neither appropriate nor necessary.
2. It could spell financial disaster in the present climate for a tourist business which does not actually own the land on which it operates but is made to pay for infrastructure improvements such as new walls or drainage which will only benefit the landowner.
3. There is uncertainty as to what will happen where Natural England is unable to reach agreement with an owner or occupier about proposed works or about how

much it should contribute towards them. If, for example, a tourism business owner refuses to co-operate with Natural England, the Bill provides that Natural England can serve a notice on the owner or occupier of the land “stating that, after the end of the specified period, it intends to take all necessary steps for carrying out the required works”. The business receiving such a notice can then appeal against it to DEFRA .

A number of peers have questioned whether DEFRA was the right appeal body and tabled amendments to put in place a better independent appeals mechanism. As it stands an appeal can be made on only three grounds:

- the works are not necessary
- the works have already been carried out
- the period for carrying out the works is too short.

No appeal can be made to DEFRA on the grounds of financial hardship.

The Bill provides that Natural England may meet or contribute to these maintenance works but it is unclear how much budget Natural England will have for this.

Natural England is given the power to erect and maintain notices or signs about the coastal route and these can be erected on any land over which the route passes or other publicly accessible land. The signs are not only meant to identify the route but also to warn the public about obstacles or hazards. As to the costs of this signage, Natural England will either pay it in full or contribute to the cost which could mean that owners or occupiers may have to pay substantial amounts towards the signage if they receive a notice from Natural England.

Natural England is given powers of entry to survey any land with a view to preparing a report about coastal access.

Occupier’s liability

The usual rule is that an occupier of land – be it as an owner, tenant or other person – is liable to a visitor for accidents that occur on that land with a few exceptions . The Bill seeks to add another exception so that there will be no such occupier’s liability where land is coastal margin and the claimed liability is one “resulting from the existence of any physical feature (whether of the landscape or otherwise) ”

Although this will be good news for owners of attractions near the proposed new Coastal path and their insurers, there is a concern as to who will ensure that the path is made and kept safe.

Coastal path and impact on tourism

The Hobhouse Committee estimated that the total length of the coastline of England and Wales is 2751 miles. Although there is now a complete path around the south west coast of England, there is still a substantial amount – about two-thirds - of the English coast that is not covered by an existing coastal path [7].

Although the recommendations on a coastal path were first made by the Hobhouse Committee in 1947, it was not until 1973, when the Cornwall coastal paths were opened, that anything envisaged by it materialised. Having a completed coastal path in the south west of England is no doubt beneficial to those businesses located in Cornwall, Devon, Somerset and Dorset in persuading tourists to visit but having reliable data as to how much extra tourism is generated solely because of a coastal path is difficult to come by.

South West Tourism calculates that there are just over 20 million trips made to the region every year, and Mark Owen, a researcher for Devon County Council's tourism department, points out that estimates indicate that the South West Coast Path National Trail is worth over £300m annually to the region's economy. From research carried out by Natural England in 2008 the top two draws for walkers are "attractive scenery and views" (47%) and "freedom from traffic" (41%). Owen says:

"The south west has some of the best coastal landscape in the country and this is fairly well protected by designations such as "Areas of Outstanding Natural Beauty". Natural England is working with farmers and landowners through schemes such as Higher Level Stewardship to ensure the path is managed appropriately in terms of landscape and wildlife".'

Once the new legislation is through, it will enable the council to improve a few key sections of the South West Coast Path that run along roads, and (except where these impinge on parks and gardens) to much more quickly reinstate the Path close to the coast following cliff falls. "We have places where it has taken many years to do this."

For Owen, a further benefit of the new legislation is that it will raise the awareness of the Coast Path which is often only known locally.

Tourism businesses – problems of universal coastal access

There are a number of problems that universal access poses for tourism. Some have already been highlighted and others include the following.

Erosion

If the path is a success, the number of visitors and walkers along the English coast will increase, perhaps significantly. It is still unclear whether the coastal path will allow cyclists or horse riders but it looks like those on motorbikes and quad bikes will be excluded.

There is a problem already with erosion at the English coast and cliff slippages are not uncommon. Dr Steve Fletcher of Bournemouth University estimates 12% of the UK coastline is already at risk of erosion. There are a number of action groups focused on this issue. If someone is injured because a section of cliff falls away when they are walking along the designated coastal route, then there will be no liability for this accident. An increase in the number of visitors to the coast is also likely to have in itself an accelerating effect on erosion.

Promotion of the path and signage

Although it is for Natural England to propose the route and for DEFRA to approve it, it is unclear who will promote the path when it is completed. At the moment, South West Tourism helps to promote the South West Coastal path. Although Natural England has a substantial budget, it is not known how much of this will be designated to promoting the path.

Stuart Barrow of VisitBritain says that both VisitBritain and VisitEngland are happy to help promote the coastal path. However, they are not being given any additional budget for this purpose. Whoever promotes the path may need to take some care because the route of the path may deviate and be some distance from the sea and in places the sea may not be visible at all.

Will it increase tourism or visitor numbers?

It is difficult to get reliable data covering all England to answer this question. In the recent survey for the Outdoor Industries Association [8], 51% of adults said they enjoyed walking recreationally. The same research found that 49% of adults are now inclined to go on an outdoor break in Britain because of the credit crunch.

Research for South West Tourism in March 2003 [9] found that visitors who came to the South West to walk the South West Coast Path stayed on average for 2.69 nights – but those who didn't come to walk stayed for **longer** with an average stay duration of 4.62 nights.

There may be some displacement of visitors as well, ie once the path is completed around the whole of the English coast, this unique selling point presently enjoyed by tourist businesses in the south west of England will disappear. What may happen is that the overall numbers of walkers remains the same but their visits become dissipated more evenly throughout England. Paradoxically this could have a negative impact on a region such as the South West while bringing more visitors to less popular areas of the country. Will the completed coastal path encourage more people to take up recreational walking? Only time will tell on this.

Facilities

Natural England merely has to draw up a route. It does not need to cater for car parking, litter collection or toilet provision. If the coastal path does increase visitor numbers to the coast, there will be an increase in demand for these facilities. It is likely that walkers attracted to the path will end up using toilet facilities provided by existing tourist businesses along the route.

Route of the path

There will be some difficulties with the route where it crosses over land that is privately owned. About two-thirds of holiday and home parks in England are either on the coast itself or within a short distance. The route may also cross existing properties owned or operated by organisations such as the Crown Estate, the National Trust or English Heritage and to which admission charges would normally be payable. There is the possibility that a path with a universal right of access that crosses tourist business such as caravan and camping sites may increase the number of undesirable visitors too.

Paul Johnson of Natural England estimates that presently around 50% of the English coastline lacks proper access. The final Scheme will need to be examined by individual tourist businesses with some care and where there are concerns, representations must be made to Natural England as to the route.

Conclusion

This article endeavours to state the position on the Bill as it stood on 27 January 2009. The House of Lords are still considering the Bill, amendments have been tabled and some may succeed. The Bill will then need considering by the House of Commons.

By November 2009, perhaps even by July 2009, the Bill will complete its parliamentary stages and receive its Royal Assent. At that point, the final version will need examining to see what changes (if any) have been made.

Once the Bill is enacted, the Scheme and with it the route of the coastal path that Natural England are empowered to put together will need examining with some care especially as it affects individual tourist businesses.

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