

Chapter 3. Implementation

This chapter provides an overview of the process we will follow for the implementation of coastal access rights.

3.1 Dividing up the coast

- 3.1.1 We will divide the coast into stretches, each of which will be the subject of a separate coastal access report to the Secretary of State. For each stretch we will follow the implementation process outlined below.
- 3.1.2 We will discuss with the access authorities²¹ the basis for dividing up the coast they cover, and the sequence in which each stretch should be implemented. We will aim to ensure that this enables the establishment and commencement of rights to take place in a way that will facilitate public understanding and enjoyment of them, for example by doing so on stretches of coast between coastal towns.

3.2 The role of access authorities

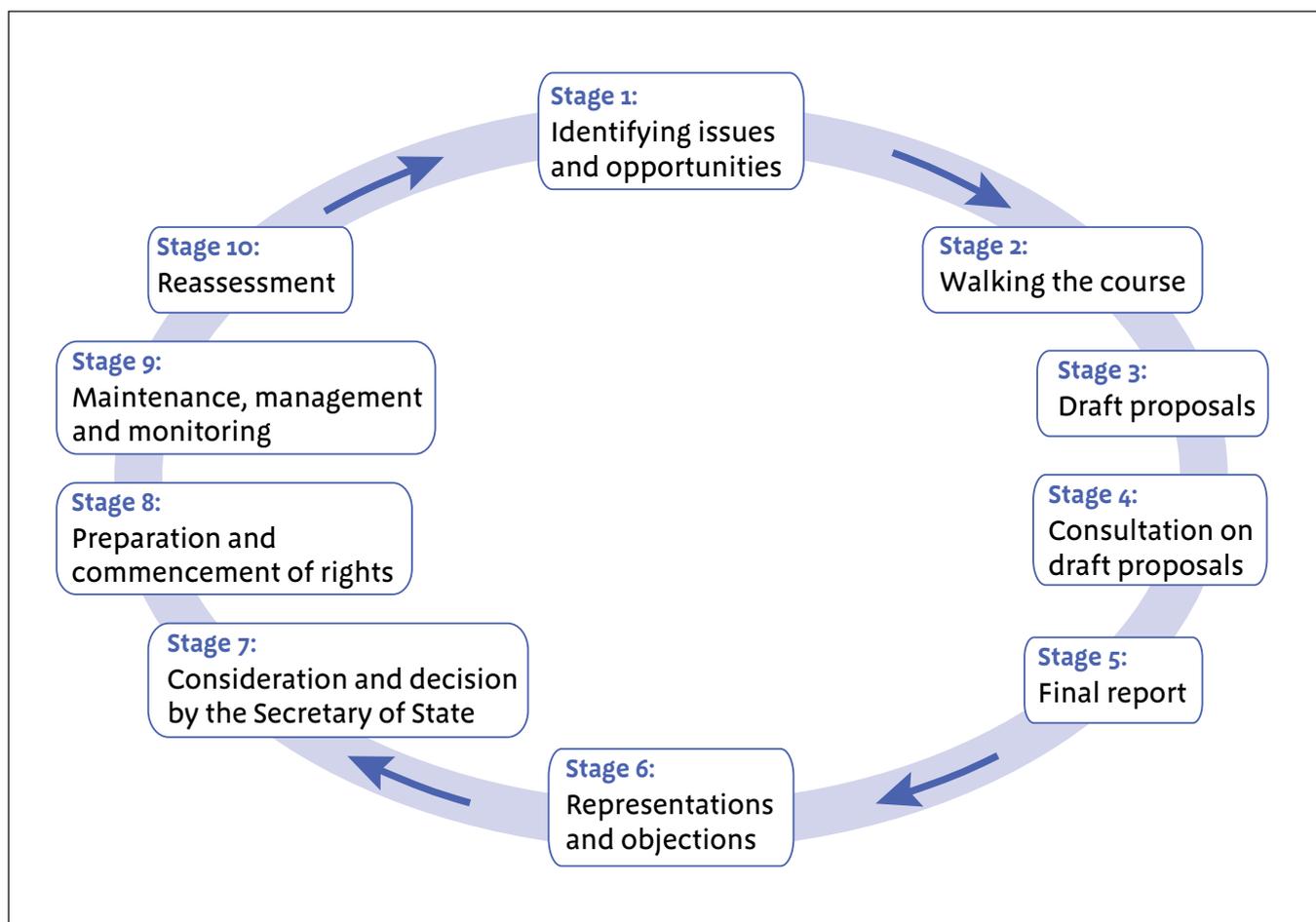
- 3.2.1 We will work closely with access authorities throughout the implementation process described in this chapter, combining our nationally consistent approach with their detailed understanding of local circumstances.
- 3.2.2 Natural England has sole responsibility under section 55A of the 1949 Act for the preparation of the coastal access report itself, but this will require significant preliminary activity, as outlined in section 3.3. We are required to consider whether it would be appropriate for the access authority to carry out any of this preliminary activity and where so, to take all reasonable steps to conclude an agreement with them for that purpose²².
- 3.2.3 We will normally seek to work with the relevant access authorities for each stretch of coast, but the arrangements we put in place with them to enable this to happen will vary according to circumstances, for example the nature or extent of the coast within their administrative boundaries. Where appropriate and efficient we will seek to establish joint working between authorities.
- 3.2.4 Schedule 20 of the 2009 Act and CROW Part 1 provide access authorities with statutory powers to undertake relevant establishment and maintenance works once a coastal access report has been confirmed. We will always seek to establish arrangements with access authorities for this to happen.
- 3.2.5 Natural England is the sole relevant authority with responsibility for giving any directions that are necessary to restrict or exclude the coastal access rights under most circumstances²³. This is to ensure a coherent approach to local restrictions and exclusions in the preparation of coastal access reports.
- 3.2.6 Once the rights have commenced, we may delegate our functions as relevant authority for coastal margin to:
- the National Park Authority, for any area of land within a National Park; or
 - the Forestry Commission, for any area of land that is wholly or predominantly woodland²⁴.
- These bodies already have corresponding functions relating to local restrictions and exclusions on other land with public access rights provided under Part 1 of CROW.
- 3.2.7 We will discuss these arrangements with the authority concerned before making any such delegation and also in the event that we should consider revoking it.

²¹ See entry for 'access authority' in part B of the glossary.

²² Under section 55A(4) of the 1949 Act, as inserted by section 302 of the 2009 Act.

²³ Other bodies have powers to restrict or exclude access for the purposes of defence and national security – see section 6.6.

²⁴ The delegation power is inserted in section 21(5) of CROW by article 8 of the Order.

Figure 7 Overview of the implementation process

3.3 Stages of Implementation

3.3.1 Figure 7 summarises the key stages of the implementation process. The purpose of each is outlined in the subsequent sections:

- The first seven stages describe the processes by which we will decide what local access provision to recommend, and the subsequent steps leading up to determination by the Secretary of State.
- The last three stages describe what happens after the Secretary of State has made a decision.

3.3.2 In this section “we” or “Natural England” can mean Natural England or the access authority acting on our behalf, as described above. In practice there will be close working between the organisations throughout.

Stage 1 – Identifying issues and opportunities

3.3.3 The purpose of this stage is to achieve clarity about the main issues and opportunities on each stretch of coast. It will enable us to identify the pivotal locations on that stretch, where our conclusions about what should happen are likely to have a significant influence on the choices for alignment on the coast on either side. The process will also alert us to the priorities for a range of different interests whom we involve; for example we may identify where improvements for people with reduced mobility would be most beneficial, or where there may be potential for improvements that go beyond our coastal access duty, for example improvements to access for horse riders or cyclists. However, we will not conduct any detailed alignment work until we meet with owners and occupiers on site at stage 2.

3.3.4 This process will include:

- Discussions with a range of organisations – including the local access forum²⁵, English Heritage²⁶, the Environment Agency and others required by the 1949 Act²⁷, but also other organisations who will have a strategic interest in that coast. Recreational, land management and environmental interests will be consulted and we will use established groups to facilitate this where feasible.
- Collecting and analysing information on that stretch – including information held by other organisations, as well as plans and projects that may be relevant to how we implement coastal access²⁸. These may include development plans, strategies for flood and coastal risk management²⁹, rights of way improvement plans, and any existing local byelaws or dog control orders that may be relevant.
- Identifying what the key strategic issues are likely to be – using the information we have and through discussion with others. These may include estuaries, major developments, significant environmental sensitivities and areas of significant erosion as well as other situations.
- Preparing for ‘walking the course’ – deciding on the best sequence in which to do it, taking account of our analysis of the strategic issues, as well as identifying the owners and lawful occupiers of land that will be affected on that stretch and with whom we will be aiming to discuss the possible alignment and management of coastal access rights in stage 2.

3.3.5 We will take all reasonable steps to identify and contact owners, tenants and lawful occupiers who are likely to be affected³⁰. We will make use as appropriate of information we already hold, local publicity, raising awareness through relevant organisations and the personal knowledge of other local owners or occupiers. If we have been unable to identify the owner or occupier by any other means, we will place a notice on the land asking them to contact us. These steps will also bring to our attention other interests in the land, for example holders of sporting rights.

3.3.6 We will also be able to conclude from stage 1 if there is a European site on the stretch that could be significantly affected and which would therefore require an appropriate assessment in accordance with the Habitats Directive (see section 4.8). This would also require us to conduct a strategic environmental assessment of the potential effects of our recommendations on the whole stretch, in accordance with EU Directive 2001/42/EC³¹. In that case we will start the strategic environmental assessment at this stage by identifying any potential effects of coastal access improvements on the environmental features in question and deciding how to measure these, in consultation with English Heritage and the Environment Agency.

²⁵ See entry for ‘local access forum’ in part B of the glossary.

²⁶ In practice this may include discussions with local government archaeological officers acting on behalf of English Heritage – see section 4.8.

²⁷ These are referred to in section 51(4) and section 55D(6) of the 1949 Act (as inserted by section 302 of the 2009 Act). Section 51(4) includes every National Park Authority, joint planning board, county council and county district council through whose Park or area the trail would pass. Section 55D(6) includes a requirement to consult with any London Borough Council through which the trail would pass and to consult the Secretary of State in relation to any interests of defence or national security which may be affected by our proposals.

²⁸ Local authorities and local access forums have a duty under section 55D(7) of the 1949 Act (as inserted by section 302 of the 2009 Act) to provide us with such information as we may reasonably require for preparing our coastal access reports.

²⁹ See entry for ‘flood and coastal risk management’ in part B of the glossary.

³⁰ This is a preliminary step to enable us to fulfil the requirement to consult these interests before preparing a report, under section 55D(6)(a) of the 1949 Act (as inserted by section 302 of the 2009 Act).

³¹ There are entries for ‘European site’, ‘Habitats Directive’ and ‘strategic environmental assessment’ in part B of the glossary.

Stage 2 – Walking the course

- 3.3.7 The purpose of this stage is to visit land that may be affected to discuss the options for alignment and management with the people who own and manage it. This will enable us to understand any specific factors we need to take account of in our proposals, including likely infrastructure³² requirements, and enable owners and occupiers to raise any particular concerns or suggestions they may have in respect of the route of the trail or the extent of any spreading room. We will also discuss other opportunities with them, such as possible improvements for horse riders or cyclists, for example where we have identified some potential for these during discussions with stakeholders during stage 1 of the process. Any such additional provisions will be at the discretion of the land owner or tenant and will therefore not form part of our eventual recommendations to the Secretary of State.
- 3.3.8 First we will visit the pivotal locations identified in stage 1 because these are likely to have a significant influence on the choices for alignment and management on the coast to either side. Once we have identified the possible route of the trail and extent of associated spreading room at each of these, we will move on to visiting the land that may be affected along the rest of the particular stretch. In some cases we may identify several options on our first pass, in which case we may need to return for subsequent follow-up visits to determine the best option. We will always endeavour to involve owners and occupiers in any follow-up discussions.
- 3.3.9 Despite our efforts at stage 1 before walking the course, site visits may raise further issues and questions requiring further clarification or discussion with others with an interest in the management of the land. For example we may need to talk further with the Environment Agency in relation to flood and coastal risk management on the stretch; or with those able to advise on natural and heritage features that are sensitive to public access, such as English Heritage or nature reserve managers; or with site operators and planning authorities in respect of existing or planned major developments such as ports.
- 3.3.10 From our discussions with owners, occupiers and others we will better understand the potential effects of coastal access rights on their interests. Where we identify potential for a particular alignment to cause unacceptable impacts on those interests, we will discuss how these could be mitigated, either through local management solutions or by choosing an alternative alignment (see chapter 6, which outlines the range of options available to us for this purpose). We will always aim to reach provisional agreement with owners and occupiers on the extent and management of coastal access rights. Where agreement is not possible, we will aim to clarify any differences of opinion and/or any further information we will need in order to reach a provisional conclusion.

Stage 3 – Draft proposals

- 3.3.11 The purpose of this stage is to prepare our draft proposals for how the coastal trail and spreading room should be aligned on a particular stretch of coast based on all of the discussions and walking the course we have undertaken. This will bring the proposals for that stretch together into a single document to enable people to see and comment on them in the round.
- 3.3.12 We will prepare our draft proposals in the format of a 'Coastal Access Report' for that stretch of coast. This will be the same format in which our proposals are eventually submitted to the Secretary of State for approval. Figure 8 summarises the main content of the coastal access report.

³² See entry for 'infrastructure' in part B of the glossary.

Figure 8 Contents of our coastal access reports

1. Maps of the proposed route (and any alternative routes) for the trail, drawing attention to any parts of the route that would follow existing public rights of way.
2. Written descriptions to explain how we propose to deal with a variety of specific situations, including for example:
 - proposed extensions up an estuary (see chapter 11);
 - sections where automatic roll back will be required (see section 4.9);
 - the extent of spreading room, including where we propose landward spreading room under our discretionary powers (see section 4.7); and
 - proposals for informal management or for statutory directions to restrict or exclude access (see chapter 6).
3. Where we think there is a significant danger of confusion between the spreading room and excepted land, an indication of the areas in question that we consider are likely to be excepted land.
4. Our estimate of the costs of our proposals, including initial establishment, ongoing maintenance and any local management arrangements, for example for land management or nature conservation reasons.
5. Any assessment we have carried out in accordance with the Habitats Regulations and any steps we consider necessary to ensure that our access recommendations will have no adverse effect on the integrity of the site (see section 4.8).
6. To provide context for our core recommendations, an assessment of any separate but related initiatives, for example rights of way improvement plans, local transport plans or proposals to enhance the coastal environment on that stretch.

Stage 4 – Consultation on draft proposals

- 3.3.13 The purpose of this stage is to make our initial conclusions for a stretch of coast available for comment by anyone wishing to do so. This will enable wider interests, local people and others to see how we propose the access should be put in place, as well as enabling those we have already discussed them with to see and comment on our overall conclusions. This consultation process will help ensure that any significant issues or opportunities we may have overlooked are identified, as well as providing a useful gauge of support for or concern about our proposals.
- 3.3.14 We will:
- publish our draft proposals on the internet³³;
 - advertise their publication locally and make them available to view at suitable locations;
 - invite all interested parties to comment on them in accordance with sections 51(4) and 55D(6) of the 2009 Act; and
 - draw them to the attention of other organisations that we consider have an interest in the management and recreational use of that stretch of coast, including recreational, land management and environmental interests.

³³ We will supply our publications in other formats, such as large print or Braille, on request. We will offer the same service for our final report, for people who need it.

We will allow twelve weeks for people to view the proposals and submit comments on them, in accordance with the Government's Code of Practice³⁴.

- 3.3.15 We will also at this stage seek any outline consents from other public authorities that are necessary to implement the proposals, for example planning consent for new infrastructure, Scheduled Monument consent³⁵, and highways consent for roadside signs.

Stage 5 – Final report

- 3.3.16 The purpose of this stage is for us to analyse all the comments we receive on our draft proposals and to consider whether any modifications are required as a result. This will ensure that we have considered all possible options and effects before we submit our final proposals to the Secretary of State.
- 3.3.17 We may decide on the basis of comments received to return to an earlier stage of the process if that is necessary in order to understand the issue fully. For example, we will seek further discussions with an owner or occupier if we need to clarify their views or discuss alternatives. We may also need to discuss any further changes with others, for example with the Environment Agency if this has any implications for flood risk or coastal erosion management. Once any further modifications have been identified, we will conclude any assessment that is appropriate to ensure no adverse effects on sites with European designations (see section 4.8).
- 3.3.18 Once we have completed any changes we consider necessary, we will publish our final coastal access report on the internet setting out our proposals to the Secretary of State for public access to the chosen stretch of coast. This will be set out in the same format as our draft proposals, but may also include reference to comments we have received during the previous stages, in particular where we have made changes as a result of them.
- 3.3.19 We will advertise publication of the final report and notify, as required by or under the 1949 Act³⁶:
- owners, tenants and lawful occupiers of affected land;
 - each access authority and local access forum for an area in which affected land is situated;
 - English Heritage and the Environment Agency; and
 - other persons that may be specified in regulations.
- Regulations made by the Secretary of State under the powers in Schedule 1A of the 1949 Act may specify the form, manner and timing of the advertisements and notices that are required.
- 3.3.20 We will also notify any other individuals or organisations who have indicated to us that they wish to be notified when the final report is published. In doing so we will explain to people their entitlement to make representations or objections to us about the final report, as set out in stage 6 below.

Stage 6 – Representations and objections

- 3.3.21 The purpose of this stage is for any person to be able to make a formal representation to us regarding our final report. In addition, any owner, tenant or lawful occupier of affected land will be able to make a formal objection regarding our final report, on grounds set out in Schedule 1A of the 1949 Act. We will send the Secretary of State any objection that has been made. Objections will trigger an independent review of that specific aspect of our proposals by an "appointed person" which the Government has said will be the Planning Inspectorate (PINS). The form and manner of representations and objections and the time allowed for them to be made will be determined by Regulations.

³⁴ The Government's Code of Practice on Consultation is published at <http://www.berr.gov.uk/files/file47158.pdf>

³⁵ See entry for 'Scheduled Monument' in part B of the glossary.

³⁶ Schedule 1A of the 1949 Act, which is inserted by Schedule 19 of the 2009 Act.

Stage 7 – Consideration and decision by the Secretary of State

- 3.3.22 The purpose of this stage is for the Secretary of State to consider whether to approve our final coastal access report for a particular stretch either in full or with modifications to our proposals.
- 3.3.23 We will send the following to the Secretary of State:
- copies in full of any representations made by an access authority, local access forum, English Heritage, the Environment Agency and any other persons that may be specified in regulations.
 - a summary of any other representations that we have received;
 - our comments on the representations.
- 3.3.24 The 2009 Act does not allow us to amend our final report in response to these representations. Our comments on them might recommend the Secretary of State to make modifications to our proposals in response to a particular representation, or they might explain why we do not think any modification is necessary.
- 3.3.25 Once PINS has determined that an objection is admissible, we must send our comments on it to the Secretary of State. We will also provide PINS with any supporting documentation or information required under the 2009 Act, for example an outline of:
- any alternative proposals for the affected land that we think are relevant for assessing whether the proposals in the report strike a fair balance, or whether any modification would strike that balance (together with an assessment of the effects of this alternative on both the interests of the public and private interests in the affected land), or, if we think there are none, a statement to that effect;
 - any alternatives we have already considered and rejected for the affected land or, if there were none, a statement to that effect; and
 - our views on any modifications the objector suggests to our proposals³⁷.
- 3.3.26 Schedule 19 of the 2009 Act sets out the procedures under which PINS must consider each admissible objection, and then make recommendations about it to the Secretary of State. The Government will set out the detailed procedures in regulations as made under Schedule 19.
- 3.3.27 The Secretary of State may confirm the report in full, confirm it with modifications to our proposals, or reject some or all of the proposals. In the latter case we would prepare an amended report for consideration by the Secretary of State, relating to the part(s) of the coast affected by the rejected proposals. The same procedures for consultation and representation would apply to any such amended report.

Stage 8 – Preparation and commencement of rights

- 3.3.28 The purpose of this stage is to carry out any necessary establishment works such as installation of access infrastructure and to put in place any local management arrangements (including any agreed local restrictions and exclusions) that were identified as necessary in the approved report, before the public access rights are brought into force on the stretch of coast in question.
- 3.3.29 Before any establishment works are undertaken we will ensure that any statutory consents are in place which may be required from other authorities.
- 3.3.30 We will also discuss with the owner or occupier any new infrastructure such as gates, steps, bridges, drainage or signs and seek agreement on aspects such as their design, installation and maintenance. In practice we will normally have held preliminary discussions with them about these aspects when walking the course.
- 3.3.31 There are relevant powers to make agreements with owners and occupiers regarding:

³⁷ These requirements are set out in paragraph 6(2) of Schedule 1A of the 1949 Act.

- the establishment and maintenance of the route – under paragraph 2 of Schedule 20 of the 2009 Act; and
- any means of access to land for the purposes of the coastal access duty – under section 35 of CROW.

In the event that we are unable to secure the necessary agreement, we may give the owner or occupier a notice of our intention to carry out the agreed works. Owners or occupiers may appeal against the notice to the Secretary of State³⁸.

- 3.3.32 At this stage we will also give any directions to restrict or exclude access in ways proposed by the confirmed report.
- 3.3.33 Once all this work has been completed, the rights will be brought into force by order on each stretch of coast on a date decided by the Secretary of State. In addition, on this date:
- the access regime under Part 1 of CROW over open country or registered common land which fall within the coastal margin will be replaced by the coastal access regime and the changes to the national restrictions outlined in section 2.2 will come into force;
 - existing access dedications under section 16 of CROW will remain in place, but dedicated land which falls within the coastal margin will become subject to the new regime, including the reduction in occupiers liability (see section 4.2) and the changes to national and local restrictions and exclusions (see section 2.2)³⁹;
 - any local restrictions or exclusions of existing access rights under Part 1 of CROW cease to apply; and
 - any new directions to exclude or restrict the coastal access rights locally (to give effect to proposals in the report confirmed by the Secretary of State) will come into force.
- 3.3.34 We will publicise the commencement of the rights to help ensure that they are known about and understood locally and, where necessary, provide other information, for example on signs on the ground. There are relevant powers under Schedule 20 of the 2009 Act and section 19 of CROW for this purpose.
- 3.3.35 We will also provide national guidance for the public and for land managers, in accordance with our duty under CROW section 20 (as amended by section 303(7) of the 2009 Act), and ask other organisations to help us publicise it. In particular we will ensure that there is information to:
- encourage people to behave considerately towards the coastal environment and the needs of land managers and to take responsibility for their own safety and that of any children in their care;
 - explain any aspects of the coastal access regime that are new to the public, such as the national rules for people who bring dogs (see section 2.2) and the operation of alternative and temporary routes – see figure 16;
 - make clear the continuation of any pre-existing access rights where appropriate, including public rights of way⁴⁰ – see figure 1 in chapter 2.

³⁸ These powers of appeal are by virtue of paragraph 4 of Schedule 20 to the 2009 Act (for notices relating to works in connection with the establishment and maintenance of the route) and CROW section 37 (for works connected with means of access for the purposes of the coastal access duty).

³⁹ Land owners may dedicate other land as coastal margin (hence subject to the same regime) provided it is adjacent to the margin. Government may also make regulations to enable existing dedications of other land to be amended in this way by the land owner, provided the land is adjacent to the margin.

⁴⁰ This is a requirement under section 20(1)(c) of CROW, as inserted by section 303(7) of the 2009 Act.

Stage 9 – Maintenance, management and monitoring

- 3.3.36 Once the coastal access rights are in place and operating there will be an ongoing need for maintenance, management and monitoring along each stretch of coast. Our report to the Secretary of State will have set out what we expect these requirements to be for the stretch in question, as well as an estimate of the ongoing costs for that. These will reflect the nature of each section of the trail, the standards we consider should apply, the coincidence with existing maintenance responsibilities on public rights of way, and any other specific factors that are relevant.
- 3.3.37 We will aim to put in place rolling agreements with access authorities to meet these maintenance and management requirements.
- 3.3.38 Monitoring will also be undertaken where necessary, for example to ensure the effectiveness of any mitigation measures put in place to prevent adverse effects on a European site (see section 4.8).
- 3.3.39 We will use or adapt existing monitoring activity wherever possible. We will also work closely with local and national partners to build on existing best practice in encouraging the participation of local people and users of the trail in helping to identify and solve issues.

Stage 10 – Reassessment

- 3.3.40 We may reassess the coastal access regime on any part of the coast at any time after the Secretary of State has approved a report if the circumstances require it. This might for example be where there has been significant coastal change (see section 4.9) or a change in the use of the land such as built development (see section 5.5), or where other circumstances come to our attention that suggest a need to revisit the access position.
- 3.3.41 We must review at regular intervals certain directions that restrict or exclude access for the long-term, in accordance with section 27(3) of CROW. There are also powers under section 27(2) to vary or revoke any direction, which may come into play as a result of such a review or without a review having been conducted. The relevant procedures are set out in detail in Annex M of the relevant authority guidance⁴¹.
- 3.3.42 There are also powers for any person with a legal interest in land to apply to Natural England for a direction on certain grounds once a coastal access report has been confirmed (see section 2.2). Natural England may also give a direction without an application being received. Section 6.6 explains the grounds on which directions may be given in these circumstances.
- 3.3.43 The scope of any reassessment we make will typically be very focused on a specific section of coast. We will always hold discussions with the owners and occupiers of the affected land, provided we are able to identify them, as well as others with an interest in access over the affected land.
- 3.3.44 Where we conclude from reassessment that it is necessary to make changes to the access arrangements on a particular section of coast, there may be a need for a variation report under section 55(1) of the 1949 Act, for consideration by the Secretary of State. The Secretary of State may also direct us to prepare a variation report under section 55(2) of the 1949 Act. Variation reports are subject to the same procedures for consultation, representations and objections as our initial reports.
- 3.3.45 Where a change does not in itself require the Secretary of State's consideration, it may nevertheless be included in a variation report alongside other elements that do. The procedural requirements are summarised in figure 9.

⁴¹ Our relevant authority guidance is published at <http://www.naturalengland.org.uk/ourwork/enjoying/places/openaccess/restrictions.aspx>

Figure 9 Procedures for changes to local coastal access provision

Changes that must be included in a variation report	Changes that do not require approval by the Secretary of State
A change to the route of the trail ⁴² (unless it occurs automatically under a 'roll back' provision in the confirmed report)	A direction to restrict or exclude the coastal access rights ⁴³ (see sections 6.6 and 6.7)
A proposal for a section of the route to be determined in accordance with a 'roll back' provision (see section 4.9)	Varying or revoking of an existing direction to restrict or exclude access (see paragraph 3.3.40)
An alternative route or optional alternative route, or a change to an existing one (section 6.4)	A temporary route (see section 6.4)
A change to the way we use our discretion to align the landward boundary of spreading room with a specific physical feature (see section 4.7)	New or replacement signs or infrastructure (though consent from other authorities is necessary in some instances)



© Natural England / Natasha Ewins

⁴² The power to propose changes to an existing route is provided under section 55(1) of the 1949 Act.

⁴³ Consultation procedures apply before giving directions that would restrict or exclude access for more than six months continuously. The relevant procedures are set out in detail in Annex K of the relevant authority guidance: <http://www.naturalengland.org.uk/ourwork/enjoying/places/openaccess/restrictions.aspx>