

Chapter 6: Striking an appropriate balance

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6.1 Overview

6.1.1 This chapter explains the range of solutions available to us to ensure that an appropriate balance is struck between the key principles described in chapters 4 and 5.

6.1.2 There are several aspects to this balance which will often come into play in combination on particular sections of coast:

- the fair balance which section 297(3) of the 2009 Act requires us to aim to strike between the interests of the public in having rights of access over coastal land (which are considered in chapter 4) and the interests of owners and occupiers of land over which coastal access rights would be conferred (considered in chapter 5);
- the balance between the recreational factors described in chapter 4, which we are required to consider under section 297(2) of the 2009 Act in determining the route we propose, for example the balance between its convenience and its proximity to the sea; and
- the balance between all the recreational factors described in chapter 4 (including the availability of spreading room and the need for our proposals to be responsive to coastal change) and the environmental objectives described in section 4.9.

6.1.3 We must consider all relevant factors in play in each circumstance on the coast in deciding what intervention is necessary in relation to particular concerns and, where intervention is necessary, the solution or combination of solutions that will strike the most appropriate balance.

6.1.4 This chapter begins by explaining:

- how we will gauge **the need for intervention** in relation to a particular concern (section 6.2); and
- the principle of the **least restrictive option** which we will adopt in all cases where intervention is needed (section 6.3).

6.1.5 It then describes the range of solutions available to us in circumstances where we decide that intervention is necessary. The solutions are arranged under three separate headings, although solutions described under separate headings will often be used in combination to address a particular concern:

- **Alignment solutions** (section 6.4)
- **Informal management techniques** (section 6.5)
- **Directions to restrict or exclude access** (section 6.6 to 6.7)

6.1.6 These three headings are also used in chapters 7 and 8, which describe in more detail how we are likely to deploy these solutions in relation to the various types of landform, land cover and land use commonly occurring on the English coast and the issues that are most likely to arise in relation to each.

6.2 The need for intervention

6.2.1 We will aim to identify during the preparation of our initial proposals all foreseeable concerns in relation to the overall balance between the various factors mentioned in paragraph 6.1.2. However, it may be necessary to reassess the balance after the rights have been introduced, for example in relation to a change in local circumstances. Chapter 3 outlines how our overall approach to implementation will ensure that concerns are addressed as and when they arise.

6.2.2 When a concern is raised, we must first consider whether in reality there is a problem that needs addressing. We will weigh the available evidence carefully before deciding whether any intervention is necessary. We may make an assessment of the patterns and levels of access locally to inform these considerations (see figure 16).

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- 6.2.3 We may ask a person raising the concern for further evidence where the matter relates to their private interests, or we may seek evidence or advice from third parties such as English Heritage in relation to heritage concerns or the Environment Agency in relation to coastal change.
- 6.2.4 Concerns may arise about potential effects of access in relation to possible future changes in land use⁴⁰, or the condition or conservation status of affected land. Whether intervention is necessary in relation to these factors will depend on how likely the change is to happen, how soon it may happen and how clearly the effects can be understood in advance.
- 6.2.5 Where we decide that there is insufficient evidence to warrant intervention at the time a concern is raised, or where we conclude from the available evidence that intervention is unnecessary, we will be willing to reassess the situation if further evidence comes to light, or if experience of the operation of the coastal access rights on the ground indicates that intervention may be necessary. We may monitor the effects of coastal access rights on some land to inform these later considerations, for example in relation to nature conservation features that are known to be sensitive to public access.
- 6.2.6 Land managers are often under other statutory obligations which may be relevant. For example, all employers and self-employed people have duties under health and safety at work legislation⁴¹. These include duties to avoid, so far as is reasonably practicable, putting the public at risk through their work activities. For some types of work activity there are also more specific safety requirements under other legislation.⁴²
- 6.2.7 Where the land manager indicates that he carries out (or is willing to carry out) appropriate local management arrangements to secure compliance with such obligations, we may take the view that these steps are adequate to address a particular concern. The fact that a specific type of intervention by us might help to secure compliance with these wider obligations does not in itself require us to adopt that form of intervention, but we will do so where we conclude in all the circumstances this strikes the right balance.
- 6.2.8 Where we conclude from the evidence that some form of intervention is necessary to address a concern, we will aim to identify the solution that will be the least restrictive on public access rights which will meet the need at reasonable cost. This general principle is explained in more detail in section 6.3.

⁴⁰ Section 5.5 explains more about how we will take account of land use changes.

⁴¹ See entry for 'health and safety at work legislation' in the glossary.

⁴² In relation to the scope for the occupier to be sued in the civil courts for injury on access land, the 2009 Act delivers a uniquely low level of exposure to such claims – see section 4.2.

Figure 16

Assessment of patterns and levels of public access

- a) The need for intervention will often depend to some extent on an assessment of the patterns and levels of public access locally. Where access to the coast will be newly created or significantly improved as a result of our proposals, we may need to understand current levels and patterns of visitor use, and predict the resulting changes in order to make that assessment.
- b) The following factors are likely to be relevant to this in most circumstances:
 - the route (or potential route) that the trail follows;
 - other existing or potential access routes over adjoining land, such as rights of way, promoted paths and informal walks;
 - places where people can join the trail and their proximity to coastal settlements, holiday parks, car parks, lay-bys, bus stops etc;
 - the location of public amenities such as information centres, cafes, toilets, information boards;
 - the location of tourist attractions such as sandy beaches, viewpoints or heritage features;
 - challenging, wet or uneven terrain that is likely to deter most people, but may be an attraction to particular users such as climbers;
 - what different people will do whilst they are on the land, and how these activities may affect their choices about where to go;
 - when people are likely to visit and the frequency of their visits, including the times of day, days of the week and seasons; and
 - population centres and any local demographic trends.
- c) We will also take into account local knowledge and information including:
 - the results of any visitor monitoring on the land, or on neighbouring or similar land;
 - advice from local experts who have a good knowledge of the site or of similar sites; and
 - the views of the occupier and/or the land manager.

6.3 The least restrictive option

6.3.1 Where we decide that specific intervention is necessary to address a concern, our policy will be to adopt the least restrictive option on public access that will strike an appropriate balance at reasonable cost. The principle of the least restrictive option means that:

- firstly, we will not normally limit the extent or scope of coastal access rights unless we conclude that there is no other solution available to us that would strike an appropriate balance;
- secondly, where we conclude that it is necessary to limit the extent or scope of the coastal access rights – either through the use of directions or by limiting the use of our power to recommend spreading room on the landward side of the trail – we will do this only to the extent necessary to strike an appropriate balance; and
- thirdly, where there is a choice of options which would meet a local need, we will give priority to the option, or combination of options, which delivers the best alignment of the trail, in terms of the balance between the factors we are required to have regard to under section 297(2).

6.3.2 The solution we adopt will in all cases be one that can be implemented at reasonable and proportionate cost to the public purse, and without significant new cost falling on private interests. Any establishment, management or maintenance work which

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we decide is necessary in connection with the proposed solution will normally be undertaken by the access authority within the overall framework for funding.

6.3.3 Some organisations with an interest in promoting public recreation may already be successfully managing public access to the coast, or may be willing to contribute to the management of public access where it is introduced for the first time under the 2009 Act. Equally, there may be external funding sources that are willing to contribute to such costs. We will take such factors into account in deciding how to proceed.

6.3.4 Private individuals and businesses may already be managing coastal access informally as an integral part of their normal routine or operational practice, or may be happy to make small changes to this routine or practice to deal with coastal access rights, without in either case incurring significant cost. Section 6.5 (informal management techniques) and chapter 8 give examples where appropriate of what we mean by this.

6.3.5 We will discuss these possibilities with organisations and individuals who manage coastal land during the preparation of our initial proposals to the Secretary of State.

6.4 Alignment solutions

The trail

6.4.1 The simplest and most effective way to address any concerns about the effects of coastal access rights will often be to plan or adjust the route in consultation with the owner, occupier or other affected interests, so that it guides people away from areas where there are particular sensitivities. The trail may also alleviate concerns arising in relation to other existing routes, by providing an alternative which people will generally prefer. This is an approach we will always consider where concerns arise during the preparation of our proposals to the Secretary of State.

6.4.2 It will often be possible in this way to meet land management, public safety and environmental concerns without any significant reduction in the recreational value of the trail. However, where recreational interests would be significantly affected by the choice of a particular route under consideration – for example one which would involve a significant detour away from the coastal periphery – we will first consider whether another solution is available that would strike a more appropriate balance.

6.4.3 Occasionally the route will be aligned on a beach if we feel this would best meet the criteria in part B of the Scheme – for example because of a complex interaction of potential impacts on private interests if we were to put it elsewhere. We will only use a beach route where we regard it as substantially the best or only viable option.

6.4.4 Some concerns about coastal access rights over a particular area of land may apply infrequently, or only for part of the year. In these circumstances we may:

- provide a temporary or alternative route for people to use at times when the 'ordinary' route is unsuitable (see figure 17); or
- align the ordinary route so that the concerns are reduced or avoided.

6.4.5 Our choice between these options will be influenced by the relative merits of the routes under consideration, in relation to:

- the factors we are required to have regard to under section 297(2) in proposing a route; and
- the specific implications of each option for land management or environmental objectives.

6.4.6 In all circumstances where access to the 'ordinary' route would have to be excluded at certain times, we will aim to provide a temporary or alternative route provided that this can be done at reasonable cost.

6.4.7 There are also specific provisions to enable the trail to adapt to coastal change, as described in section 4.10. These are also subject to the overarching

requirement to balance their use with the other key principles described in chapters 4 and 5 of the Scheme.

The spreading room

- 6.4.8 Sensitive alignment of the trail will often in itself alleviate concerns about access over the spreading room, by reducing the number and/or frequency of people visiting more sensitive areas, or by encouraging people to use spreading room in other places where there is less sensitivity to public access.
- 6.4.9 In using our discretion to align the landward boundary of spreading room to a specific physical feature, we will aim to strike an appropriate balance in terms of all the factors mentioned in paragraph 6.1.2.
- 6.4.10 We do not have any discretion to omit from spreading room any land of the specific types that are automatically included where they occur landward of the trail (see section 4.8). Nor is such a discretion directly available to us in relation to spreading room seaward of the trail (though the way in which we align the trail will itself decide what seaward spreading room is created). Where intervention is necessary in relation to access over spreading room of these types, we are therefore likely to deploy informal management techniques or directions.

Figure 17

Temporary and alternative routes

	Temporary Route	Alternative Route	Optional Alternative Route
Provision	Section 55I of the 1949 Act	Section 55C(3) of the 1949 Act	Section 55C(4) of the 1949 Act
When is it likely to be used ?	<p>When access to the trail is excluded by direction, or for any part of the period when it is excluded.</p> <p>We may specify a temporary route as an interim measure, whilst awaiting confirmation of a proposal for an alternative route to address a long-term need.</p> <p>A temporary route is likely to be an effective solution for short-term needs which arise after our initial proposals have been confirmed by the Secretary of State. It may not be used indefinitely.</p>	<p>When access to the trail is excluded by direction, or for any part of the period when it is excluded.</p> <p>An alternative route is likely to be an effective solution for circumstances which arise during the preparation of our initial proposals and for any long-term needs which arise after our initial proposals have been confirmed by the Secretary of State.</p>	<p>When the 'ordinary' route is at times unsuitable for use because of flooding, tidal action, coastal erosion or other geomorphological processes.</p> <p>There are no powers to exclude access for these purposes. Hence, unlike an alternative route, an optional alternative route has no direct relationship to a direction.</p>

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	Temporary Route	Alternative Route	Optional Alternative Route
Land it can apply to:	Under subsection 4, a temporary route may pass only: <ul style="list-style-type: none"> over land subject to the coastal access rights; over land with other access rights provided under Part 1 of CROW; over land with public access rights of the types listed in section 15 of CROW; along a highway; or over any other land, with the agreement of the land owner. 	A public right of way or any other land provided that it is not excepted. Is subject to the procedures for coastal access reports set out in chapter 3 including confirmation by the Secretary of State.	A public right of way or any other land provided that it is not excepted. Is subject to the procedures for coastal access reports set out in chapter 3 including confirmation by the Secretary of State.
Will it create additional spreading room?	No	No	No
Does it require approval by Secretary of State?	No	Yes – it is subject to the procedures for coastal access reports (chapter 3).	Yes – it is subject to the procedures for coastal access reports (chapter 3).
Would 'roll back' apply? (see section 4.10)	No	Yes	Yes but unlikely (see 4.10.18)
Width of trail	A short term diversion is likely to be modest in width.	The trail will typically be 4 metres wide comprising 2 metres either side of the route line. We may recommend that the landward or seaward boundary of an alternative route should coincide with a physical feature such as a fence, wall or hedge ⁴³ . Where appropriate we will use this power to “work with the grain” of existing physical features along the access strip. This may result in sections that are wider or narrower than 4 metres or not of uniform width.	

6.5 Informal management techniques

6.5.1 Informal management is often an effective way to minimise any conflicts between public access and land management or other objectives. It can be used anywhere and at any time, subject to any requirements for planning consent etc. in particular cases. It has no legal effect and there is no compulsion on the public to cooperate with it, but if done well it often proves highly effective. It is the most flexible and least bureaucratic way to manage access. Figure 18 describes several common techniques that will often be relevant.

6.5.2 Informal management techniques may already be in use to manage existing public

⁴³ This power is provided under section 55D(2)(b) of the 1949 Act.

access before coastal access rights are introduced. We will not intervene further if we conclude that these existing arrangements are adequate to address a concern. Successful arrangements on nearby land (or land with similar circumstances) may also be relevant in deciding what approach to adopt.

- 6.5.3 Informal management techniques may be used as appropriate in combination with both alignment solutions and directions to restrict or exclude access. At its simplest this would involve the use of way-marks or other indicators to direct people along the trail. Where a direction is used, at least some complementary use of informal management techniques is likely to be necessary to make people aware on the ground of the local restriction or exclusion in question, which is otherwise unlikely to be widely observed.
- 6.5.4 Informal management will often in itself be sufficient to strike an appropriate balance without the need to limit the scope or extent of the coastal access rights, or to align the trail in ways that would reduce its value for recreation in terms of the core alignment principles we are required to consider under section 297(2) of the 2009 Act.
- 6.5.5 If an informal management solution is available which would strike an appropriate balance, we will normally conclude that further intervention is unnecessary unless:
- the cost of implementing the solution is disproportionate to the public benefit it would bring, relative to other available solutions that would meet the need; or
 - the proposed solution would itself have a significant detrimental effect on other interests, such as land management or environmental objectives.
- 6.5.6 In making this assessment, we will take into account any views expressed by the owner or occupier and others with an interest in the management of the land.
- 6.5.7 Natural England and the access authority have powers which may be relevant to the delivery of informal management solutions:
- under Schedule 20 to the 2009 Act, in relation to the establishment and maintenance of the trail; and
 - under chapter 3 of CROW, in relation to any means of access to land for the purposes of the Coastal Access Duty.
- 6.5.8 The access authority has additional powers in relation to land with coastal access rights:
- under section 18 of CROW, to appoint people to act as wardens; and
 - under section 19 of CROW, to put up and maintain notices.

Figure 18

Common informal management techniques

- a) The techniques described below are referred to again in chapters 7 and 8 of the Scheme where we explain our likely approach in relation to particular local circumstances.
- Steering visitors*
- b) Where the objective is to encourage people to use a particular route – for example to avoid significant impacts on an area which is more sensitive to the effects of public access - this can often be achieved satisfactorily by informal means. At its simplest this would involve the use of way-marks or ‘guide’ posts to mark the route and careful positioning and design of any gates or other infrastructure that is necessary to enable people to follow it. A mown surface can also be an effective and unobtrusive means to encourage people along a particular route in some circumstances – for example along the edge of a hay or silage crop (see paragraph 8.7.10).
- c) Where the objective is to discourage people from leaving a preferred route in particular places – for example where the cliff edge is unusually dangerous at one point, or the trail passes close to vegetation which is sensitive to trampling – this may be achieved with a short length of fencing or similar barriers, where there is no

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existing physical feature such as a wall or fence which serves this purpose. These may only be needed for long enough to allow natural vegetation to become established and act as a more subtle barrier in the longer term. We do not expect that new permanent fencing will be necessary to implement the coastal access rights in most other circumstances. Where we conclude that it is desirable to separate public access from a particular area or activity, we will normally rely on the range of other solutions described in chapter 6 of the Scheme.

- d) Where the objective is to discourage people from entering a particular area of spreading room – for example a colony of birds nesting on a beach – it may be cost effective to achieve this through the use of guide fencing. By guide fencing we mean minimal fencing which can be put up and taken down with a minimum of effort. Guide fencing alerts people to the need to avoid a particular area, but is not sufficient to form an effective barrier to access.

Providing information for visitors

- e) Where the objective is to persuade visitors to behave in particular ways, this can often be effectively achieved through carefully targeted information or interpretation which explains the need. This technique ranges from the use of signs at particular sites to information in other media for local or more general distribution. We provide national guidance for the public and for land managers through the Countryside Code⁴⁴, in accordance with our duty under section 20 of CROW (as amended by section 303(7) of the 2009 Act), to communicate relevant national messages for people visiting the coast. Other organisations promote national and local codes of conduct for specific activities such as climbing and fossil-hunting, which help to reduce their potential impacts.

- f) Our use of signs for this purpose will be kept to a minimum and will focus on visitor arrival points. This will limit their aesthetic impact on the natural environment and maximise their impact and effectiveness. For the same reasons we will where practicable arrange for signs to be taken down at times when they are not needed. Land managers may also choose to put up temporary signs to alert people to their operational needs - again it is important that these are removed when no longer relevant.

- g) People are more likely to respond to signs in combination with other communication techniques, for example information leaflets or representatives who can talk to visitors face-to-face and explain the management objectives.

Planning and management of other activities

- h) Where the objective is to avoid disruption to other activities on the land (for example land management activities) it may be possible to plan them to avoid times or places when significant numbers of visitors are likely to be present.

- i) Some land management activities cannot take place without carrying out simple informal measures that may negate the need for further intervention. For example, machine operators normally check if other people are present when they are working and should be prepared to stop work temporarily to avert danger. In some circumstances there may be another person available who can ask visitors for their cooperation face-to-face while work is taking place.

Community involvement and consensus building

- j) Community involvement in decision-making can be an effective way to elicit support for necessary local management arrangements and to encourage local people to play a part in implementing it. It is particularly useful and important where the aim is to change visitor behaviour in order to address an established problem.

⁴⁴ The Countryside Code can be found at www.naturalengland.org.uk/ourwork/enjoying/countrysidecode/default.aspx

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6.6 Directions to restrict or exclude access – administrative tests

6.6.1 Local restrictions and exclusions, where appropriate, will normally be put in place through directions given by Natural England⁴⁵. The Secretary of State has powers to give directions in relation to defence and national security respectively. These powers are by virtue of Chapter II of CROW (as amended by the Order) and are summarised in figure 19.

6.6.2 Before directions can be considered, the circumstances in question must pass three administrative tests:

- the concerns must relate to activities included in the coastal access rights;
- the land affected must be subject to the coastal access rights; and
- there must be valid grounds for a direction.

6.6.3 This section explains each of these tests in more detail. Section 6.7 explains the principles which we will use to decide, where direction-making powers are available and necessary, the least restrictive option that will meet the need.

a) The concerns must relate to activities included in the coastal access rights

6.6.4 Directions can only be used to manage activities included in the coastal access rights conferred by section 2(1) of CROW. Other activities such as horse-riding and camping are subject to the national restrictions in Schedule 2 to CROW – as amended by the Order - unless the national restriction has been removed or relaxed with the owner or farm tenant's consent, or by an access dedication (see section 2.2.). Except in these cases, directions cannot therefore be used to manage such activities.

b) The land affected must be subject to the coastal access rights

6.6.5 Directions have no legal effect on land where coastal access rights do not apply, including:

- excepted land; and
- section 15 land.

6.6.6 Directions on certain grounds are subject to further spatial limitations – see sections on fire prevention and salt marsh and flat below.

Excepted land

6.6.7 Figure 1 in chapter 2 shows the main categories of excepted land on the coastal margin. Coastal access rights are not exercisable over these land categories - other than where the Order allows the trail to cross them along an access strip, as indicated in figure 1, or where the owner voluntarily dedicates a route across them. Directions cannot therefore be used to manage access on excepted land - other than access along the access strip, if there is one.

6.6.8 People will often recognise intuitively land where there are no rights of access, though signs may be necessary in some cases to inform them. However, in some cases (notably highways – see below) there may be other access rights over excepted land which makes this unnecessary.

6.6.9 Directions may occasionally be necessary to prevent danger to people exercising coastal access rights from activities taking place on adjacent land, for example if the area of risk relating to those activities includes land with coastal access rights. Directions may also be used to prevent impacts on land management activities that take place on land adjoining land where coastal access rights do not apply. We may use this power, for example, to restrict dogs to leads to prevent impacts that are likely to occur on adjoining land were dogs to stray there. It is not material to our decision in either case whether the adjoining land falls into any category of excepted land.

6.6.10 Highways, including public footpaths and bridleways, are treated as excepted land

⁴⁵ Except where we have delegated our relevant authority functions to the National Park Authority or the Forestry Commission – see section 3.2 of the Scheme.

under the 2009 Act and directions may not therefore be used to control rights of access over them. This does not in itself prevent us from using a direction to control coastal access rights on adjoining land if we conclude this would be necessary and effective. The local highway authority has separate powers to manage public rights of way under the Highways Act 1980 and associated legislation.

Section 15 land

- 6.6.11 Where section 15 land is crossed by the trail or forms part of the spreading room, it may be necessary to manage the rights informally – for example by placing signs that explain to the public which additional activities are permitted and where the additional rights apply – but directions cannot be used to restrict these pre-existing rights.

c) There must be valid grounds for a direction

- 6.6.12 Chapter II of CROW (as amended by the Order) includes eight grounds on which a direction can be given to restrict or exclude the coastal access rights, which are summarised in figure 19. The notes below explain how we will decide whether in relation to a particular issue a direction can be given and if so, on which grounds.

Scope of land management directions

- 6.6.13 Section 24 of CROW provides powers for Natural England to give directions for the purposes of land management. Land management embraces all forms of conventional or novel land management that are being or will be undertaken on the land, whether in relation to commercial activities or non-commercial activities. Non-commercial activities may include recreational activities (including sporting activities) that have no commercial purpose.

- 6.6.14 We will give a land management direction only when satisfied that access would significantly disrupt one of these activities or otherwise significantly affect the operation of a business and, as in all cases, that there is no less restrictive option that will strike an appropriate balance between them. Chapter 8 explains more about our approach in relation to concerns that are likely to arise in relation to land management.

- 6.6.15 As on other land with access rights provided under Part 1 of CROW, people with a legal interest may apply to us for land management directions, though only once the Secretary of State has confirmed the relevant coastal access report. Applicants have a right of appeal against our decision in these cases under section 30 of CROW.

- 6.6.16 On land with coastal access rights we may also give a direction for land management without an application being received⁴⁶. This power enables us to give directions in line with proposals in a report confirmed by the Secretary of State, without any formal application having been made to us. We may also use this power subsequently, for example if it is necessary to enable a land management activity to be carried out at short notice⁴⁷, but we must take reasonable steps to consult the owner or occupier of the land before doing so. There is no power of appeal if we decide not to give a land management direction in this circumstance, but it remains open to the occupier to apply formally for such a direction and to appeal against our decision on that application.

- 6.6.17 Concerns about public safety and land management can be closely related. For example, where an activity is taking place there may be concerns both about potential disruption to the activity by visitors, and danger to the public from the activity itself. We will consider both concerns carefully in such cases in deciding whether there are grounds for a direction and, if so, whether these relate to public safety or land management or both. Chapter 8 compares these considerations where relevant.

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⁴⁶ This power under section 24(1A)(b) is inserted by article 8 of the Order.

⁴⁷ Any proposal to restrict access for longer than 6 months continuously is subject to special consultation requirements. Directions may therefore only be given at short notice if they would restrict or exclude access for short periods.

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Scope of directions to avoid danger to the public

6.6.18 Section 25(1)(b) of CROW provides powers for Natural England to give directions to avoid danger to the public. As with land management directions, there are also provisions for people with a legal interest in the land to apply to us for these directions once a report is confirmed, and for a right of appeal against any refusal to give such a direction.

6.6.19 This type of direction may only be used to avoid danger to the public from anything done, or proposed to be done, on land with coastal access rights or on adjacent land. 'Anything done' includes activities in the past (such as mining or quarrying), and directions may therefore be considered to prevent any danger resulting from such activities. Chapter 8 explains more about our approach to concerns that are likely to arise in relation to such dangers.

6.6.20 Directions cannot be used to avoid danger to the public from natural features of the landscape or natural processes. Intervention will in any case usually be unnecessary to avoid such dangers, provided the risk is obvious. Where the risks are not obvious, there is a range of other solutions that may help to minimise danger, for example:

- sensitive positioning of the trail and associated infrastructure;
- informal management techniques such as warning signs; and
- in relation to danger from flooding and other coastal processes, the provision of an optional alternative route (see section 4.10).

6.6.21 Chapter 7 explains more about our approach in relation to concerns that are likely to arise in relation to natural hazards.

6.6.22 Some man-made features come to resemble natural features over time and may even become indistinguishable from them, so that it may not be clear from its appearance whether a feature originates from an activity or a natural process. Where the origin of a feature is known to be man-made, we will not take the view that a direction is out of scope simply on the grounds that it has the characteristics as a natural feature. But we may conclude that a direction is unnecessary in these circumstances provided the dangers are obvious.

Scope of directions to prevent fire

6.6.23 Section 25(1)(a) of CROW provides powers for Natural England to give directions to prevent fire. As with land management and public safety directions, there are also provisions for people with a legal interest in the land to apply to us for fire prevention directions once a report is confirmed, and a right of appeal against our decision.

6.6.24 This type of direction may only be used to prevent fire by reason of exceptional weather conditions or an exceptional change in the condition of land with coastal access rights. Fire prevention directions may not exclude access along the trail. Existing experience of access to land at times of exceptional fire risk shows that confining access to main paths makes the risk manageable.

6.6.25 Figure 20 explains our approach to the use of these powers in more detail.

Scope of directions for nature conservation

6.6.26 Section 26(3)(a) of CROW provides powers for Natural England to give directions for the purposes of conserving flora or fauna or geological or physiographical features. There is no power to apply for nature conservation directions, but people may alert us at any stage if they have relevant concerns. Chapter 7 explains more about our approach in relation to the likely concerns.

6.6.27 The powers under section 26(3)(a) of CROW relate to potential impacts from the coastal access rights on wildlife and natural features. They may not be used in relation to a land management activity such as grazing, even if it is carried out for nature conservation reasons. The separate powers to give directions for land management or to avoid danger to the public may be used where necessary in these

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circumstances. These are outlined above, and considered in more detail in chapter 8.

6.6.28 Where some kind of formal access control is necessary for nature conservation reasons, we are likely to use the direction-making powers in preference to byelaw-making powers, on land where both are available to us. We may elect to use byelaws to impose necessary controls on activities which are not included within the coastal access rights. Any byelaws in force when the coastal access rights are introduced will continue to apply.

Scope of directions for heritage preservation

6.6.29 Section 26(3)(b) of CROW provides powers for Natural England to give a direction for the purposes of preserving any Scheduled Monument, or any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest. As with nature conservation directions, there is no power to apply for directions of this type, but people may alert us at any stage if they have relevant concerns.

6.6.30 Where such concerns arise we will take advice from English Heritage and, where appropriate, local government archaeologists and other local experts on how best to address them, in accordance with the general principles outlined in this chapter and in section 4.9.

6.6.31 The powers under section 26(3)(b) of CROW relate to potential impacts from the coastal access rights on heritage features. They may not be used in relation to a land management activity carried out in the interests of preserving a heritage feature. The separate powers to give directions for land management or to avoid danger to the public may be used where necessary in these circumstances. These are outlined above, and considered in more detail in chapter 8.

Directions for defence or national security

6.6.32 Section 28 of CROW provides powers for the Secretary of State to give a direction to restrict or exclude access for the purposes of defence or national security. The Secretary of State is required to inform Natural England before giving a direction for defence or national security, but Natural England has no power to give a direction itself for these purposes. In practice, directions for defence purposes will be given by the Ministry of Defence, whilst directions for national security will be given by the Home Office. Annex J of our relevant authority guidance explains the procedures for such directions in more detail⁴⁸.

6.6.33 Section 8.22 explains more about how Natural England will take account of defence interests in deciding what coastal access to recommend.

Directions to exclude access to salt marsh and flat

6.6.34 The Order amends Chapter 2 of CROW to create a power (at section 25A) for Natural England to give a direction to exclude access to areas of salt marsh or flat if we are satisfied that the land is unsuitable for public access. Section 7.15 sets out our general approach to the use of this power in relation to relevant land types.

6.6.35 Where concerns arise about effects of coastal access rights on salt marsh or flat where we have not used this general exclusion power we will consider the necessity of giving directions on any of the other grounds discussed so far, where relevant. Section 7.15 and some sections in chapter 8 may be relevant to these considerations.

Figure 19

Grounds for which a direction can be given

Brief description	Detailed description	Relevant section of CROW	Further detail in the Scheme	Authority with power to make direction ⁴⁹	Application power, once a report is confirmed
Land management	For the management of the land	24	Chapter 8	Natural England	Yes
Public safety	To avoid danger to the public from something done or proposed to be done on the land	25(1)(b)	Chapter 8	Natural England	Yes
Fire prevention	To prevent fire by reason of exceptional weather or ground conditions	25(1)(a)	Figure 20	Natural England	Yes
Nature conservation	To conserve flora or fauna or geological or physiographical features	26(3)(a)	Section 4.9 and Chapter 7	Natural England	No
Heritage preservation	To preserve any Scheduled Monument as defined by section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979, or any other structure, work, site, garden or area which is of historic, architectural, traditional, artistic or archaeological interest	26(3)(b)	Section 4.9	Natural England	No
Defence	For the purposes of defence	28	Section 8.22	Ministry of Defence	No
National security	For reasons of national security	28	N/a	Home Office	No
Salt marsh and flat	To exclude access to salt marsh or flat where satisfied that it is unsuitable for public access	25A	Section 7.15	Natural England	No

⁴⁹ The 2009 Act provides that no liability will attach to Natural England for failing to give a direction on these grounds, except where we decide not to act in accordance with a valid application.

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6.7 Directions to restrict or exclude access – use in practice

6.7.1 Section 21(3) of CROW sets out the ways in which a direction may restrict or exclude coastal access rights:

- the rights may be completely excluded – though fire prevention directions may not affect rights to use the coastal trail; or
- the rights may be restricted to specified routes or ways; or
- people may be required to enter the land at specified places; or
- people with dogs may be excluded from the land; or
- people may be required to satisfy any other specific conditions – for example if they bring a dog, they may be required to keep it on a lead.

6.7.2 Where a direction is necessary, our approach as in all cases will be to identify the option least restrictive of the extent or scope of coastal access rights that will strike an appropriate balance. Several considerations flow from this guiding principle:

- the extent of the land affected by the direction should not be greater than is required to meet the need;
- where a concern relates to a particular activity, only people carrying out that activity should be restricted. For example if the concern relates to the impact of people with dogs, it will not be necessary to restrict the rights of people who do not bring a dog (see 'directions affecting people with dogs' below);
- where it is necessary to exclude access from an area, a route or routes should be provided wherever practicable so that people can get past and continue their journey (see 'continuity of access' below);
- the period or periods when the local restriction or exclusion is in force should not be longer than is necessary; and
- any notices informing the public about temporary restrictions or exclusions should be put up when needed and taken down when not needed. This practice also helps to draw people's attention to notices when they are put up and so encourage compliance with the terms of the direction.

6.7.3 We will also consider two complementary principles in deciding what direction is most appropriate in each circumstance:

- the nature of the direction should, as far as possible, provide clarity for the public concerning the extent and duration of their access rights; and
- it should be practical to manage (see 'clarity and practicality' below).

6.7.4 We will always endeavour on notices to explain the reason for the direction and, where appropriate, to provide information about other nearby places where local restrictions do not apply in relation to the type of public use affected.

Continuity of access

6.7.5 A key consideration where it is necessary to exclude access from an area will be to ensure, wherever this is practicable and consistent with the underlying need, that the trail is left open in order to retain continuity of access. Section 6.4 explains the options available to us for this purpose, if access along part of the 'ordinary' route is excluded.

6.7.6 We will also consider whether it is practicable and desirable to leave other routes open on the affected land, for example to enable the public to reach spreading room not affected by the exclusion. Sometimes there will be rights of way across affected land that, not being affected by directions excluding coastal access rights, will help to meet such objectives.

Directions affecting people with dogs

6.7.7 Effective control of dogs, appropriate to the circumstances, is a vital component of good coastal access management. But since so many visitors derive part of their enjoyment of the coast from bringing their dog with them, and from seeing it have

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freedom to exercise, we must adopt a balanced approach in this as in other respects. We must take care not to restrict their access rights unnecessarily or require them to keep their dogs on leads unnecessarily. Where special restrictions are necessary at the local level, we will endeavour to inform people of places nearby where they can exercise their dogs more freely.

6.7.8 Where there would be a long-term need to exclude dogs from the trail route we have in mind, we are likely to propose aligning it in a different way that would not require this.

6.7.9 Where there is a temporary or seasonal need to exclude people with dogs from the 'ordinary' route, but we consider it is still the best alignment for the England Coast Path to follow, it may not be the fairest or best solution to divert all trail users along a different route at such times because of the potential problems caused by dogs. In this situation we are most likely to:

- exclude dog walkers from the ordinary route, leaving it open for use by others during the period on question; and
- if practicable, put in place an informal diversion for dog walkers, using existing public rights or with the consent of the relevant land owners.

This diversion cannot be an 'official' alternative or temporary route because those may be provided only where there is a direction in place that suspends all coastal access rights along the ordinary route, including rights for people who do not bring a dog. So if an informal diversion is impracticable, we may have to use signs and advance information to warn dog owners that their access along the coast path is suspended for the period in question, and explain why. This is a last resort outcome and we always use our best endeavours to offer dog walkers some kind of residual access in such a situation.

Clarity and practicality

6.7.10 Occasionally a rigid interpretation of the least restrictive principle might produce a solution that would be difficult to manage or to make clear to the public, for example where:

- the precise extent of the land where the direction would need to be in force would not correspond well with physical features that the public would recognise; or
- the days and times when the direction would need to be in force would lack an easily recognisable pattern.

6.7.11 In such circumstances we will weigh the advantages of clarity and practicality against any advantages that would flow from strict application of the least restrictive principle. We may reject the least restrictive option if any public benefits it offers are outweighed by its disadvantages – for example because:

- the nature or timing of access rights would be difficult for the public to understand; or
- the pattern of local restrictions and exclusions would be difficult to implement.

6.7.12 Questions of clarity and practicality are also likely to come into play where local restrictions or exclusions are necessary for more than one purpose and the timing and extent of each would overlap. There is nothing to prevent us from giving a direction that affects land already subject to another direction, provided it conforms to all the principles above. But we will only regard the second direction as necessary if its restrictive effect on access would be greater – in extent, nature or duration - than that of the existing one.

Outline directions

6.7.13 Where the exact periods when a restriction or exclusion will be needed are not yet known but it has clearly been established that one may be necessary in specified circumstances, we may give an 'outline' direction, which allows any actual periods of restriction or exclusion to be determined later by a specified person. Outline directions may be used in relation to land management, public safety, fire prevention, nature conservation or heritage preservation concerns.

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- 6.7.14 We may place conditions on the use of an outline direction for any of the purposes above to ensure that it is only used to the extent necessary:
- we may specify periods during which access is not to be restricted or excluded; or
 - we may require the specified person to notify us each time access is restricted or excluded⁵⁰;
 - we may stipulate that access along the trail itself is not to be restricted or excluded or, if that is not possible, that a temporary route is provided while the trail is unavailable.
- 6.7.15 The provisions for outline directions are in most other respects the same as those operating on other land with access rights under Part 1 of CROW⁵¹. However, in the case of outline directions for land management, section 24 of CROW is amended by the Order for the purposes of the coast to enable the exact extent of the restriction or exclusion to be determined later by the specified person too.

Figure 20

Fire prevention

The need for intervention

- a) None of the public rights used for the purposes of coastal access includes any right to light or tend a fire, or to do anything likely to cause a fire. However fires do periodically occur on areas of coast either because of people being careless with flames or smoking materials, or through arson, or occasionally because a planned management burn gets out of control. Such fires can occur at any time of year. It is not possible to avoid them completely, but targeted intervention may be able to help reduce their frequency or severity.
- b) Some types of coastal land are more vulnerable to fire than others. Characteristics that increase this vulnerability include:
- types of vegetation with significant fuel potential;
 - types of substrate with significant fuel potential (e.g. peat);
 - slopes, where fires can spread more quickly;
 - exposed locations, where wind can cause fires to spread more quickly; and
 - uniform tracts of vegetation, through which fires can easily spread.
- c) Intervention may be appropriate to help avoid people causing fires in places where such conditions occur, especially at particular times of the year and particular times in the cycle of vegetation when there is a heightened potential for fires to spread readily.
- d) During the preparation of our initial proposals we will look to identify any land that is particularly vulnerable to fire and to identify any additional measures that may be taken to help prevent unplanned fires. We may request expert advice to help with this, for example from the fire authority.
- e) We will also take into account any concerns raised by land managers during the preparation of our initial proposals in deciding whether and, if so, where and when any special measures should be taken to help prevent fire. Subsequently, people with a legal interest in land with coastal access rights will be able to apply for directions to exclude or restrict the rights when there are exceptional weather or ground conditions (see below).

⁵⁰ This power is under CROW section 24(1F)(c) (in respect of directions for land management), CROW section 25(2)(c) (in respect of directions for public safety and fire prevention) and CROW section 26(2)(ca) (in respect of directions for nature conservation or heritage preservation), as inserted by the Order.

⁵¹ The provisions for full and outline directions on other land with access rights under Part 1 of CROW are explained in more detail in chapter 1.2 of the relevant authority guidance: <http://www.naturalengland.org.uk/ourwork/enjoying/places/openaccess/restrictions.aspx>

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Alignment solutions

- f) Fire prevention may be a factor in determining the line of the trail or the landward boundary of spreading room. For example, we may decide in discussion with the land manager to align the trail so that it avoids an area that is particularly vulnerable to fire.

Informal management techniques

- g) Informal techniques can be an effective means to help manage the potential for fire to start or spread:
- signs and other public information may be used in a targeted way to warn of fire danger and encourage visitors to exercise special care and vigilance at times of heightened risk;
 - beach managers sometimes designate special low-risk areas where people are allowed to have barbecues and small fires;
 - some land managers create firebreaks or reduce the fuel load with controlled burning to inhibit the spread of fire if it should occur; and
 - the regular presence of people (whether they be volunteers, wardens or rangers, or simply other visitors) can help ensure that any fire outbreaks that do occur are spotted and dealt with quickly. Wardens and rangers, where available, may also be able to help raise public awareness of fire danger and deter deliberate fire starting, or reckless or careless acts.

Directions to restrict and exclude access

- h) Sometimes a minority of visitors may cause persistent problems by engaging in relevant unauthorised activities such as lighting barbecues or campfires, or dropping cigarettes or matches. If there are persistent problems with fire at a particular site, it may be appropriate for byelaws to be made to address the issue.
- i) Directions may only exclude or restrict access for fire prevention reasons when weather or ground conditions are exceptional. We will only consider using these powers on coastal areas whose characteristics offer the potential for fire to spread readily during exceptional conditions.
- j) In deciding whether a direction is necessary we will take into account whether informal management techniques are available and whether they appear adequate to manage the risk effectively.
- k) Access to the trail itself may not be excluded for fire prevention reasons, even during times of exceptional weather or ground conditions⁵². Existing experience of access to land at such times shows that the risk posed by continuing public use of a main path is relatively easy to manage. Where necessary other powers exist which enable access to be restricted in an emergency⁵³.
- l) Where necessary, directions will therefore exclude access to relevant areas of spreading room during exceptional weather or ground conditions.
- m) Chapter 2.4 of our relevant authority guidance includes more detail about the criteria we use for deciding whether directions are necessary, the operation of the Fire Severity Index developed by the Met Office to provide an objective means to determine when exceptional conditions occur, and the associated rule base. The guidance can be found here:
www.naturalengland.org.uk/ourwork/enjoying/places/openaccess/restrictions.aspx

⁵² By virtue of section 25(1A) of CROW, as inserted by the Order.

⁵³ Section 44 of the Fire and Rescue Services Act 2004.