



# England Coast Path

## Coastal Access Scheme: Technical Memorandum

### Purpose

1. The current version of the Coastal Access Scheme (which is the Methodology for the England Coast Path delivery programme) was approved by the Secretary of State for the purpose in 2013.
2. This Natural England memorandum summarises some recent technical developments that affect the way in which certain aspects of the Scheme should be interpreted.
3. This does not change the policy under which coastal access is being delivered.

### Protection of wildlife sites and features

4. The recent European case law *People Over Wind and another v Coillte Teoranata* (Case C-323/17) EU (12 April 2018) (normally cited as *People over Wind*) means that the precise process sequence described in paragraphs 4.9.11 and 4.9.12 of the Scheme for protecting European sites and features from potential impacts from coastal access is no longer aligned with the Court of Justice of the European Union's interpretation of how Habitats Regulations and Council Directive 92/43/EEC of 21 May 1992 at Article 6.3 should be read. This is because that case ruled that where special mitigation or avoidance measures are required to prevent any adverse effect on site integrity, these measures may not be taken into account during the initial screening process to determine whether a significant effect can be objectively ruled out at that stage. Rather, if there is to be any reliance on such measures, an appropriate assessment must be undertaken to assess their effectiveness for the purpose.

5. While the Scheme paragraphs mentioned above predate *People over Wind* and therefore do not reflect its outcome, Natural England has acted to ensure that its processes are in full compliance with the Habitats Regulations and the Directive as interpreted by the current case law. Accordingly an appropriate assessment is now undertaken by Natural England (NE):

- whenever new coastal access proposals are being developed for publication, and
- before any previously published report proposals that have not yet been determined by the Secretary of State are so determined,

where in either case any part of the proposals indicates a reliance on mitigation or avoidance measures in order to prevent likely significant effect for these purposes. Paragraphs 4.9.11 and 4.9.12 of the Scheme, and the glossary entry on page 175 for appropriate assessment, should be read accordingly.

6. In practice, for any already published but undetermined reports, NE will review any Habitats Regulations Assessment (HRA) it has previously undertaken, and where relevant this will incorporate an appropriate assessment. This refreshed HRA will replace the HRA element of the previously published Access and Sensitive Features Appraisal.

7. Before refreshing a previously published HRA in this way, NE will contact anyone who has objected to its published proposal and feels that it could have an impact on a European site; and will also contact any local groups with an obvious interest in such matters, e.g. the local wildlife trust or conservation forum. NE will invite these relevant stakeholders to direct it to any new relevant data or evidence of which they are aware that has emerged since report publication, and which could have a bearing on the HRA refresh. NE will take any such new relevant data or evidence into account when it refreshes the HRA.

8. Should this process result in NE concluding that any change to its submitted proposals is necessary, it will report this to Defra. Defra officials will then consider whether such a change can be accommodated under the statutory rules for determination and approval by the Secretary of State (or in other ways, e.g. through NE putting in place recommended additional management measures on the ground); or whether it will be necessary in all the circumstances for NE to publish fresh proposals for the section of coast to which the change relates. In the latter event, there would be a further window for objections and representations relating to NE's amended proposals once these were published.

9. It should be noted that rather than being included within the body of coastal access report proposals, as implied by Figure 9 on page 22 of the Scheme, any Habitats Regulation Assessment produced for a stretch of coast, together with NE's Nature Conservation Assessment for the stretch (relating to wildlife sites and features other than those covered by the Habitats Regulations protections), is published separately online, with links to these documents contained within the relevant part of NE's report proposals.

10. Paragraph 4.9.13 of the Scheme directly follows from the sequence described in 4.9.11 and 4.9.12 and, when written, contemplated an exceptional situation in which, having already taken the relevant mitigation or avoidance measures into account, NE nevertheless concluded that the final access proposals would be likely to have a significant effect, either alone or in-combination, on a European site, with the result that an appropriate assessment was required. Such a scenario is no longer possible post-*People over Wind*, because the mitigation or avoidance measures in question cannot be considered at all at the initial screening stage. As a result, paragraph 4.9.13 is not relevant to the process sequence now being followed in the light of *People over Wind*, as summarised in this memorandum.

**Natural England**

**October 2019**

## **Further information**

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