

Trespassers will (still) be Prosecuted

(Draft article for the September 2008 Issue of the EYD Newsletter)

As Marion Shoard observed in her 1999 book *A Right to Roam*, “From a train window, Britain's countryside seems open to all.” But it is not, because “The laws of England, Wales and Northern Ireland give landowners the right to exclude us from all of their land, except for a small fraction consisting of public rights of way”, and since 2000, CroW access land, i.e. mountain, moor, heath, down and registered common. The right of exclusion still applies to woods and forests, most types of grassland, land in which crops have not been sown, margins of fields where crops are growing or have been sown, parkland, golf courses, rivers, lakes, canals, reservoirs, riverbanks, lake shores, tracks and paths, beaches and the coastline. This is in sharp contrast to the situation that applies in Scotland, where the Land Reform Act (2003) established access rights that everyone can exercise over most land and inland water for recreational purposes.

One kind of land which we usually assume should be available to all is the seashore. Surely our children are entitled to build sandcastles and watch the incoming tide wash them away? No, actually they are trespassers, tolerated, usually, for the time being, not because the owner lacks the desire to stop them but because he/she lacks the means. And who owns 50% of the foreshore of the UK? The Queen, as inheritor of the Crown Estate. The rest is in the hands of large estates, including the Duchies of Cornwall and Lancaster, although a little is owned by local authorities. As for our ability to walk along the coast, Natural England (NE) recently estimated that “at least 30% of the coast has no legal or recognised access at all, and a proportion of the remaining 70% does not provide continuity of access or a quality coastal experience, because existing rights and provisions for access within the ‘70%’ often fail to join up with each other to allow a clear onward walk.” As readers will know, in our own RA Area there is an accessible coastal path which is continuous from Ravenscar to Bridlington, except for two 2-km gaps due to the Holiday Villages near Hunmanby and Reighton. But from where the Wolds and Centenary Ways turn inland at Hilderthorpe all the way to Spurn Head (63 km) there is no coastal path along public rights of way, except for some short stretches (totalling less than 4 km) at or near Barmston, Hornsea, Tunstall, Withernsea and Holmpton.

Improving access to the English coast was identified as a priority issue in Defra's five year strategy published in 2004, and the Labour Party's Rural Manifesto of April 2005. The government has made a move and the coastal access provisions in Part 9 of the draft Marine Bill of April 2003 would place a duty on the Secretary of State and NE to secure a long distance route (“the English coastal route”) and nearby land, such as beaches, cliffs, rocks and dunes, available for open-air recreation on foot (“spreading room”), together referred to as “coastal margin”. The draft Bill imaginatively amends existing legislation – namely the National Parks and Access to the Countryside Act 1949 and the CRow Act 2000. Defra estimates that the proposals would add from 2,050 to 2,560 km of new or improved access. The draft Bill has been subject to pre-legislative scrutiny by the Environment, Food and Rural Affairs Select Committee (Efra) and the Joint Committee of the Commons and Lords (JC). Kate Ashbrook (RA National Chair) and Tom Franklin (RA Chief Executive) appeared as witnesses before both committees, strongly supporting the objectives of the draft Bill. The transcripts of the oral evidence given to both committees by Kate and Tom, and others, make interesting reading. Both committees have now reported, focusing on five main issues: the Government's vision, exemption of parks and gardens, an appeals process, compensation, and costs.

Vision With regard to the main objectives, JC say “We welcome the principle of increased access to the coast and that of the 'spreading room' for outdoor, coastal recreation.” and “Despite the difficulties facing the alignment of the path, we think the aim of a continuous coastal route around

the length of the English coast is laudable. We support the intention of Natural England and Defra to ensure so far as is possible the continuity of the path.” Efra, on the other hand, only give qualified support: saying “.... proposals to create “spreading room” alongside a coastal trail would, in effect, create a linear park around the English coast. This could provide an additional attraction to visitors. However, the draft legislation requires amendment and modification before we can be satisfied it is sensible and fair.” But they acknowledge “....that access imposed by legislation can work and believe this will be the most effective way of securing coastal access.”

Parks On the question of the exemption of large parks, JC say “Some of us were not clear why exemptions for large parks are necessary, and saw merit in NE's view that the current blanket 'parks and gardens' exemption may be too wide...the majority of us felt that the Government should give careful thought to what is included in the 'parks and gardens' exemption, but this was not the view of all.” Efra does not support NE's view. Marion Shoard described parkland as “...the landscape specifically designed to provide society's most privileged with the kind of environment they would find most attractive.” No wonder the Country Landowner and Business Association strongly support this exemption.

Appeals The RA does not see the need for a formal appeals process as it can only add to the complexity, bureaucracy, and cost of the exercise. JC, however, recommend “that the designation of the route and spreading room, and decisions on exclusions and restrictions, be subject to an independent appeals mechanism.” Efra say that “We consider the right of landowners and occupiers to have an independent, third-party appeal process to be an important element of the fair balance between public and private interests.”

Compensation On the question of compensation to landowners, the RA firmly believes that, with sufficient goodwill, proper consultation and realistic compromise by all parties concerned, the need to look at paying compensation should not arise. JC concludes that “If the Government intends to make payments of any kind for those suffering loss from the designation of the coastal route, there must be an open and transparent process.” and Efra calls for “NE to have the power to offer compensation to owners and occupiers who can demonstrate financial loss.”

Costs Both committees echoed “the widespread concern that the estimated funding of £50 million over 10 years for the coastal path is inadequate and that local authorities may be left with the significant maintenance costs.”

After considering the reports, the Government expects to respond in September when the response to the Efra Committee report is made. Links providing further information about coastal access and progress of the draft Bill can found at <<http://tinyurl.com/6ayq3s>>.

Turning briefly to news about CRow access in our Area, it can be reported that the East Riding of Yorkshire Council did eventually receive additional funding to promote open access and have decided to put their allocation towards the production of an “Open Access Walks Booklet” which should contribute to the education of the public about their new access rights. The booklet, or perhaps a set of leaflets, will contain the descriptions for ten walks, each of about 10 miles, in the southern part of the Yorkshire Wolds, chosen to take advantage of access land. Several members of the RA have been involved in providing critical, but constructive, comments on each of the several drafts and the publication of the final version later this summer is to be welcomed.

Tom Halstead
05/08/08

