EXPLANATORY MEMORANDUM TO

THE ACCESS TO THE COUNTRYSIDE (COASTAL MARGIN) (ENGLAND) ORDER 2010

2010 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order is made under section 3A of the Countryside and Rights of Way Act 2000 ("the CROW Act"). The Order sets out descriptions of land which are coastal margin for the purposes of Part 1 of the CROW Act and makes provision for where the relevant approved proposals (as defined in section 3A(10) contain a proposal for any part of the English coastal route, referred to in section 296(2) and (3) of the Marine and Coastal Access Act 2009 ("the 2009 Act"), to be determined in accordance with provision made in the report prepared by Natural England. This would be in the case, for example, where the coast is eroding, and Natural England's report might provide for the route to follow the line of the eroding cliff rather than be shown as a line on a map. The Order also makes provision for where the proposal for the landward boundary of land which is to become coastal margin, coincides with a physical feature identified in the proposal.

2.2 The Schedule to the Order modifies the way in which Part 1 of the CROW Act applies in relation to land which is coastal margin in four ways:

(a) it amends Schedule 1 to the CROW Act (excepted land for the purposes of Part 1 of the CROW Act), which makes provision for certain categories of land to be excepted from the right of access under section 2(1) of that Act (*Part 1 of the Schedule*);

(b) it amends Schedule 2 to the CROW Act (restrictions to be observed by persons exercising right of access), which makes provision preventing that right of access from being exercisable by persons who fail to observe certain restrictions (*Part 2 of the Schedule*);

(c) it amends Chapter 2 of Part 1 of the CROW Act (exclusion or restriction of access) which makes provision for that right of access to be excluded or restricted in certain circumstances including by means of a direction given by "the relevant authority" (as defined in section 21(5)) (*Part 3 of the Schedule*); and

(d) it amends section 1 of the CROW Act which sets out definitions used in Part 1 of that Act to make provision about land which is coastal margin by virtue of the Order and land which is dedicated as coastal margin under section 16 of the Act *(Part 4 of the Schedule).*

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The new right of access to the English coast is provided for in Part 9 of the 2009 Act. The 2009 Act amends both the Part 4 of the National Parks and Access to the Countryside Act 1949 ("the 1949 Act") to provide for the designation of a coastal long distance route, and also the Countryside and Rights of Way Act 2000 (Part 1) to provide a right of access to the route and to coastal land linked to the route. Section 303(5) of the 2009 Act inserts a new section 3A

(power to extend to coastal land etc: England) into the CROW Act, which allows the Secretary of State to make an order defining the descriptions of land in England which are coastal margin.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

6. European Convention on Human Rights

Huw Irranca-Davies, the Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Access to the Countryside (Coastal Margin) (England) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 Provision for extending access to the coast was made in the CROW Act and a commitment to improve coastal access was included in the Department for Environment, Food and Rural Affairs Five Year strategy in December 2004. The Labour party's election paper *Rural Communities forward not back* in April 2005 promised that "*Improving access to coastal areas will be an early priority for a Labour third term*". In February 2007 Natural England submitted a report *Improving coastal access Our advice to Government* which looked at three existing options for improving coastal access These were; using existing rights of ways legislation, using section 3 of the CROW Act, using voluntary measures - and also an option for new legislation. It recommended that the Government should introduce new legislation to enable an approach that combined the best features of the existing mechanisms, giving Natural England customised powers to make sense of the unique coastal situation, and to ensure the necessary flexibility to take account of the circumstances on each section of coast. In June 2007 a consultation document *Consultation on Proposals to Improve Access to the English Coast* was issued, seeking views on the options to improve coastal access, along with a partial Regulatory Impact Assessment. An announcement to bring forward legislation on coastal access was made in September 2007.

7.2 Part 9 of the 2009 Act aims to improve public access to and enjoyment of the English coastline, providing secure and consistent rights for people to enjoy the coast with confidence and certainty. It will do this by making a coastal margin available for access around the coast of England. Within this margin people will be able to walk along the length of the English coast (subject to some exceptions), and in addition will have access to wider areas of suitable coastal land such as beaches, cliffs, rocks and dunes, for open-air recreation on foot.

8. Consultation outcome

8.1 A 12-week consultation ran from 8 September to 1 December 2009 seeking views on the main measures intended to be contained in the Order, including the definition of coastal land to be added to the description of land to which the public would have a right of access under section 2(1) of the CROW Act. The consultation paper also proposed changes to the categories of land which are excepted from the right of access; changes to the general restrictions which must be observed by persons exercising the right of access; and changes to the provisions for restrictions and exclusions of access.

8.2 A total of 197 responses were received from organisations (153) and individuals (44) including local authorities, recreation organisations and landowners/managers and their representative organisations.

8.3 In the light of responses to the consultation paper a number of changes were made to the proposed new categories of excepted land under Schedule 1 to the CROW Act as it applies to coastal margin. These were to allow the coastal route through a burial ground which is currently set apart for the purposes of interment; to include grounds used for the purposes of a school as well as school playing fields and, where they are considered suitable, to make land covered by both sea and flood defences accessible to the public. The existing general restriction on fishing under Schedule 2 to the CROW Act was retained on land used for the purposes of agriculture, including grazing land, although a change was made to allow the carrying of fishing equipment across such land and to permit the exercise of any existing right to fish from other land which is coastal margin.

8.4 An analysis of the consultation responses will be available from http://www.defra.gov.uk/corporate/consult/coastal-access/index.htm

9. Guidance

9.1 Section 298 of the 2009 Act requires Natural England to draw up a scheme setting out the approach it will take when discharging its coastal access duty under the Act. The scheme has to be approved by the Secretary of State and once approved laid before Parliament. The scheme will provide detailed guidance on the measures contained in the Order.

9.2 Section 303(7) of the 2009 Act amends section 20 of the CROW Act (Codes of conduct and other information) to require Natural England to ensure that the public are informed that the right of access conferred by the Act does not affect any other rights of access that may exist on coastal land. A separate code of conduct may be drawn up for coastal land.

10. Impact

10.1 There will be no regulatory requirements placed on business, charities or the voluntary sector as a result of implementation of the coastal access provisions in the 2009 Act. There will however be some costs to property owners who may be affected by the route, including costs for participating in Natural England's consultation on the line of the route and some loss of production where the new right of access affects farmed land. The costs are estimated to be £8 million over 20 years.

10.2 The costs to the public sector of identifying and implementing the coastal route are estimated to be £53 million over a ten-year period. These costs will largely fall to Natural England but some of these costs, estimated at £3 million, will fall to the Department for Environment, Food and Rural Affairs for consideration of objections to Natural England's report under the procedure provided for by section 55E and Schedule 1A to the National Parks and Access to the Countryside Act 1949, inserted by section 302(1) and (2) and Schedule 19 to the 2009 Act.

10.3 A separate Impact Assessment has not been prepared in respect of this Order. An Impact Assessment was prepared for the 2009 Act and included assumptions which are reflected in the Order. The Impact Assessment is available from http://www.defra.gov.uk/environment/marine/legislation/key-docs.htm

11. Regulating small business

11.1 The legislation applies to any small business whose land or premises falls within the coastal margin. Although no special provision has been made for small business there will be some costs where the business may be affected by the route, including costs where the business participates in Natural England's consultation on the line of the route.

12. Monitoring & review

12.1 The 2009 Act includes a detailed procedure for consultation by Natural England with owners, local authorities and local organisations on its proposals for a coastal route and coastal margin for a stretch of the English coast. Following consultation Natural England will issue a report on a proposed route on which representations may be made. In addition those people with a relevant interest in the land - as set out in section 55J of the 1949 Act (inserted by section 302 of the 2009 Act) – will be able to make an objection to Natural England's report. This will be referred to an "appointed person", under Schedule 1A to the 1949 Act, as inserted by Schedule 19 to the 2009 Act. Once Natural England's report has been approved by the Secretary of State, in the light of the report and any recommendations made by the "appointed person", the right of access for that stretch of the English coast will come into force on an appointed date by way of an Order made by the Secretary of State under section 3A(10) of the CROW Act (inserted by section 303(5) of the 2009 Act).

12.2 Identification of the coastal route and margin and the implementation of associated management works are estimated to take 10 years. Natural England will monitor progress as implementation is rolled out throughout England. Natural England is required to review the scheme (which has been approved by the Secretary of State under section 298 of the 2009 Act) from time to time. Section 299 of the 2009 Act requires Natural England to complete the first review of the scheme within three years of the date of approval of the scheme by the Secretary of State. Benefits and costs will also be monitored as implementation is rolled out and will be reviewed within 5 years of completion.

13. Contact

Richard Hepburn at the Department for Environment, Food and Rural Affairs, Tel: 0117 372 8204 or email: richard.hepburn@defra.gsi.gov.uk can answer any queries regarding the order.