

Countryside and Rights of Way (CROW) Act 2000

REVIEW OF STATUTORY DIRECTION

SUMMARY FOR PUBLIC CONSULTATION

Prepared by Natural England

1. INFORMATION ABOUT THE PUBLIC CONSULTATION

Access Authority: Somerset County Council
Relevant Authority: Natural England
Local Access Forum: Somerset Local Access Forum

Natural England is about to review the following direction:

Land Parcel Name:	Direction Reference:
Stert Flats	2014107416

This is in line with the relevant authority's statutory duties (see Annex 1).

Your views on the current direction are sought to assist Natural England in deciding whether the restriction is still necessary for its original purpose, and if so, whether the extent and nature of the restriction is still appropriate for the original purpose.

The relevant authority may decide to revoke the direction or that no change to the extent and/ or nature of a direction except the end date is necessary. In which case a Consultation Outcome Report will be published on the Consultation Pages of the Government's website¹.

¹ https://www.gov.uk/government/publications?publication_filter_option=consultations. To access the consultation enter "Open Access" into the free text box titled "Contains" and then filter by "Natural England" in the Department drop down.

If the relevant authority decides to vary the extent or nature of a restriction, a further round of public consultation may be necessary (see Annex 1) in which case a second Consultation Summary Report will be published.

2. SUMMARY OF EXISTING DIRECTION

Land Parcel Name:	Direction Ref.	Dates of restriction on existing direction:	Reason for Exclusion
Stert Flats	2014107416	15 March 2016 until 15 March 2056	S25A Saltmarsh and Flats unsuitable for public access

Natural England made this long-term direction on 15th March 2016.

A short summary is provided below giving the background to the direction. This should be read in conjunction with the other associated documents sent as part of this consultation. Further information is available from Richard Thomas at Richard.Thomas@naturalengland.org.uk.

The 93 km (58 mile) stretch of the England Coast Path (ECP) from Brean Down to Minehead was opened to the public on 15 March 2016. Coastal access rights came into force along this stretch of coast by order of the Secretary of State at that time.

Stert Flats cover a large area to the west and south west of Burnham on Sea, including following the River Parrett up as far as Bridgewater and some way up the River Brue. The flats are situated between Mean High Water and Mean Low Water and therefore fall within the coastal margin.

As part of the process of establishing the coast path along this stretch an assessment was made of the saltmarsh and flats in the coastal margin to ascertain whether they may be unsuitable for access and therefore need to be closed under s25A. Section 25A was added to the CROW Act under Schedule 1, Part 3, Article 20 to the Access to the Countryside (Coastal Margin) (England) Order 2010. Section 25A is a specific addition to CROW relating only to coastal access rights over salt marsh and flat. It should not be confused with our public

safety power under section 25(1)(b) of CROW, which cannot be used to avoid danger to the public from natural features of the landscape or natural processes. Section 25A says:

25A. *–(1) The relevant authority may by direction exclude or restrict access to any land which is coastal margin consisting of salt marsh or flat if the authority is satisfied that the exclusion or restriction under this section of access to the land to the extent provided by the direction is necessary because the land, or any part of the land, is unsuitable for public access.*

This is explained in the Coastal Access Scheme under 7.15:

‘Salt marsh and flats are distinctive coastal environments.’, and ‘Many extensive intertidal areas of this type are unsuitable for informal open air recreation’ (7.15.1) and that they ‘often pose dangers that are neither well-understood nor readily apparent to many visitors to the area.’ (7.15.12).

Salt marsh is generally easy to identify on the ground because of its distinctive salt and flood tolerant vegetation and land form, but it can merge into coastal grazing land quite rapidly. The physical structure of intertidal flats is also variable ranging from mobile, coarse-sand beaches on wave-exposed coasts to stable, fine-sediment mudflats in estuaries and other marine inlets. This habitat type can be divided into three broad categories (clean sands, muddy sands and muds) although in practice there is a continuous gradation between them.

We created new rights of access on the coast here in 2016 and the general public may have little understanding of the extreme dangers often presented by unpredictable tide movements in areas like this. The danger to the general public may therefore be substantially greater than the danger to local people used to the tidal movements on their particular local areas of salt marsh or flat.

Where there are ‘functional’ local uses of areas of this kind, but we consider them unsuitable for wider public access, we make clear to local interests that the established local uses of the land would not be affected by any S25A restriction we might impose. These might include activities such as livestock management, wildfowling, fishing, bait digging, collecting samphire and accessing boats on open water beyond a saltmarsh or flat. Some may take place under a separate legal right, while others may simply be customary on the land or traditionally tolerated by the land owner, often in connection with the exercise of actual legal rights such as fishing or navigation in the sea.

During our assessment the area shown in the consultation notice as excluded was found to be unsuitable for access as it has:

- Network of creeks and channels
- Flats with deep channels and very soft sinking mud
- Unpredictable pattern of features
- Features that change regularly
- Unseen dangers such as tides

These characteristics are by their very nature usually present on **most** saltmarshes and flats, but there may be some areas that do not present them and so do not need a S25A restriction, e.g. areas of salt marsh immediately adjacent to other land types such as beaches, and sand flats which normally provide a firmer surface suitable for walking and beach activities. Here we follow the more general Scheme advice that *'the extent of the land affected by the direction should not be greater than is required to meet the need;'* (6.7.2).

In this case it was found that the area of beach or sand flats at Burnham-on-Sea, is well used by the public and is suitable for use by the public, and it was therefore not included in the excluded area. There was some difficulty determining where to draw a boundary between the land suitable for access and that unsuitable for access around at the mouth of the River Brue at Pillsmouth.

Post Commencement

There have been a number of changes to the s25A mapped boundary since commencement of the CRoW rights in 2016.

The first major change was the mapping of the Stert Inundation, now managed by the Wildfowl & Wetlands Trust as Stert Marshes. On the Web Display Notice produced at commencement the detail of Stert Marshes was not shown on our mapping system, but the area was restricted. In 2017 the base map was revised to show the detail of Stert Marshes but the area was then shown as unrestricted as it was not thought the saltmarsh and flats habitat had developed to the extent to qualify as unsuitable for access under s25A.

In the present consultation notice map Stert Marshes are generally excluded under s25A, except some areas that are not saltmarsh and flats habitat, and a narrow channel of water below Mean Low Water.

There were also some minor changes to the boundary around Combwich to remove non saltmarsh and flats habitat.

Finally some rock and shingle and other non-saltmarsh and flats habitat have been removed from the excluded area in between Hinkley Point, around Stert Point and down to the mouth of the inundation.

The area around Stert Point itself is proposed to be excluded under a new s26 Nature Conservation direction, under case 2020049167. Please see the separate Consultation Report for this case when it is published in the New Year.

Coastal habitats are dynamic environments and saltmarsh and flats can change shape and location over time. Therefore whilst we expect the majority of the Stert Flats will continue to need to be restricted under s25A, we would welcome a thorough examination using local knowledge of the mapped boundary of the excluded area shown in the consultation map. Please let us know if our maps should be modified, because the land is either not saltmarsh or flats habitat, or is saltmarsh or flats habitat but **is** suitable for access.

3. SUBMITTING COMMENTS ON THE REVIEW

If you wish to comment on the review of this direction then you must do so before 29 January 2021 directly to Richard Thomas at Richard.Thomas@naturalengland.org.uk. A map accompanies this notice and is attached, and can be seen on the [Consultation Pages](#) of the Government's website².

² https://www.gov.uk/government/publications?publication_filter_option=consultations. To access the consultation enter "Open Access" into the free text box titled "Contains" and then filter by "Natural England" in the Department drop down.

Using and sharing your consultation responses

In line with Natural England's [Personal Information Charter](#), any comments you make, and any information you send in support of them, will help us to determine the application and / or determine if the restriction is still necessary in relation to the review or reassessment of a current direction.

We may wish to pass such comments or information to others in connection with our duties and powers under the open access legislation. This may mean for example passing information, including your name and contact details, to the Secretary of State or their appointees, the Planning Inspectorate or to the relevant access authority(s).

We will summarise all responses and place this summary on [the Government's consultation website](#). This summary will include a list of names of organisations that responded but not the names, addresses or other contact details of individual respondents.

There may also be circumstances in which we will be required to disclose your response to third parties, either as part of the statutory process for consideration of representations and objections about our decision, or in order to comply with our wider obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please explain clearly why you regard the information you have provided as confidential. However, we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on Natural England.

Annex 1

In accordance with statutory guidance, the relevant authority has a duty to:

- review directions of a long-term character no later than their fifth anniversary; and
- revoke or vary directions where necessary.

Under CROW section 27(3) the relevant authority must review, at least every five years, any direction it has given that restricts access indefinitely; for part of every year; for part of each of six or more consecutive calendar years; or for a specified period of more than five years.

During the review the relevant authority must, having regard to the interest of the public in having access to the land, consider whether the restriction is still necessary for its original purpose, and if so, whether the extent and nature of the restriction is still appropriate for the original purpose.

Before reviewing a long-term direction the relevant authority must consult:

- the local access forum;
- the applicant or his successor in title, where reasonably practicable – for directions under section 24 or 25 made on application; or
- the relevant advisory body – for a direction made under section 26.

The authority must also publish a notice on a website (and send a copy to statutory consultees) that must explain that the authority proposes to review the direction in question; where documents relating to the review may be inspected and copies obtained; and that representations in writing with regard to the review may be made by any person to the authority by a date specified in the notice.

Once consultation is complete the relevant authority should have regard to any representations it receives before making a decision.

If following the consultation, the Relevant Authority decides to:

- leave the original direction unchanged, the relevant authority should record the date that the decision was made and should schedule a subsequent review where necessary.

If following the consultation, the Relevant Authority decides to:

- vary the extent or nature of a restriction, the relevant authority will issue a new direction under the same section and direction number that was used to give the original direction. If the new direction is long-term, it must be reviewed within five years of the date it is given;
- revoke a direction, we will record the date that the decision was made.

Before varying or revoking a direction the relevant authority must: consult the original applicant or his successor in title, where reasonably practicable – for directions given under section 24 or 25 on an application; or consult the relevant advisory body – for directions given under section 26. In either case, follow the consultation procedures set out in the Relevant Authority Guidance but only if it proposes to give a new direction that would restrict access indefinitely or for more than six months continuously.