



Llywodraeth Cymru
Welsh Government

Guidance

Guidance for Local Highway Authorities on the Removal of Obstructions from Rights of Way

September 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Disclaimer

This guidance does not form part of the Countryside and Rights of Way Act 2000 or the associated Regulations and has no legal effect. It provides guidance on the main features contained in the Removal of Obstructions from Highways (Wales) Regulations 2004 (S.I. No 317 (W.34)) but does not attempt to provide a comprehensive explanation of every provision.

Copies of the forms and guidance are available from Natural Resources Wales and the Welsh Government web-site. Forms submitted to and from the local authority must always be served in hardcopy.

GUIDANCE

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 REMOVAL OF OBSTRUCTIONS FROM RIGHTS OF WAY

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Form 1

Notice of Request to Local Highway Authority to Secure the Removal of an Alleged Obstruction

Form 2

Notice that the Local Highway Authority has Received a Request to Secure the Removal of an Obstruction

Form 3

Notice to Person who Served Notice on the Local Highway Authority Requesting the Removal of an Obstruction (Form 1) that the Local Highway Authority has Served Notice on the Person(s) Identified as Being Responsible

Form 4

Notice of Intention to Apply to the Magistrates' Court for an Order Requiring the Local Highway Authority to Secure the Removal of an Obstruction

Form 5

Notice of an Order Made By Magistrates' Court Requiring the Local Highway Authority to Secure the Removal of an Obstruction

COUNTRYSIDE AND RIGHTS OF WAY ACT 2000 REMOVAL OF OBSTRUCTIONS FROM HIGHWAYS (WALES) REGULATIONS 2004

1. The purpose of this guidance

1.1 This guidance is to provide local authority public rights of way officers with advice on the implementation of Section 63 of the Countryside and Rights of Way Act 2000 ("the Act").

1.2 This section of the Act came into force on the 1st April 2004. The Removal of Obstructions from Highways (Wales) Regulations 2004 (S.I. No 317 (W.34))¹ set out the form and content of the notices required under the procedures set out in the Act.

2. Explanation of Section 63 provisions

2.1 Local authorities have a duty under Section 130 of the Highways Act 1980 to prevent, as far as possible, the stopping-up or obstruction of public rights of way. If an individual believes that a highway authority is failing in this duty the new provisions in Section 63 enables that person to serve a notice on the highway authority requesting it to secure the removal of the obstruction. If the authority does not act, then the person who served the notice may seek a Magistrates' Court Order obliging the local authority to act.

2.2 It should be noted that only certain types of obstruction are covered by the Act's provisions and they only apply to rights of way – footpaths, bridleways and restricted byways, and to ways shown on a definitive map as a restricted byway or a byway open to all traffic (BOAT).

3. Types of Obstructions covered by these procedures

3.1 The main types of obstruction covered by these procedures are as follows:

- i. Any structure – except those listed in paragraph 4 below – i.e. any machine, pump, post, or other object capable of causing an obstruction, whether or not it is on wheels.
- ii. Anything deposited on a right of way that constitutes a nuisance [under Section 149 of the Highways Act.]
- iii. A hedge, tree or shrub or vegetation of any other description that overhangs a right of way so as to endanger or obstruct the passage of lawful vehicles, pedestrians or horse-riders [Section 154 of the Highways Act].

3.2 "Obstruction" covers a wide variety of objects. Objects of such a nature as to be capable of causing an obstruction (which could include parallel walling, barbed wire or electric fencing) and items deposited on a path so as to constitute a nuisance (such as permanent water, spoil from excavations, pedal cycles and other abandoned vehicles and unauthorised stiles) are within the scope of these procedures.

¹ <http://www.wales-legislation.hmso.gov.uk/legislation/wales/wsi2004/20040317e.htm>

4. Obstructions excluded by existing legislation from the Section 63 provisions

4.1 These include:

- Temporary or permanent buildings.
- Works for the construction of a building.
- Any other structure (including a tent, caravan, vehicle or other temporary or movable structure) that is designed, adapted or used for human habitation.
- Any way that is in a state of disrepair (i.e. one for which an order may be made under section 56 of the Highways Act 1980).
- People constituting an obstruction.

4.2 Where the surface of the highway, including a footbridge, is in a state of disrepair (as opposed to being obstructed by something placed on the highway), the procedures set out in section 56 of the 1980 Act can be used to remedy the problem. Gates, stiles or similar structures across a footpath in disrepair may be dealt with through the procedure set out in section 146 of the 1980 Act. While the loss of part of a way through erosion of rivers and cliffs is a hindrance to use, it does not constitute an obstruction within the scope of these provisions.

4.3 Obstructions caused by ploughing or cropping are also excluded because of the temporary nature of these activities. They almost certainly will have disappeared by the time the process of serving notice on the highway authority through to the magistrates' court action has been completed. Local authorities can then deal with these under other powers, including environmental health powers, which are available to them.

5. The Procedures and the Forms Required

5.1 A number of procedural steps are involved in this process. A flow-chart summary version of these is in Annex A. The key steps are as follows and should be read in conjunction with the explanatory notes attached to the forms.

Step 1

5.2 The procedure is started by any person serving a notice on the local highway authority requesting it to secure the removal of an obstruction from a right of way. The notice is attached - (Form 1).

Step 2

5.3 Within one calendar month of receiving Form 1 the local highway authority is required to serve two notices, Forms 2 and 3 attached. Form 2 is served on every person named on Form 1 and any other persons the local highway authority believes may be responsible for the alleged obstruction. The notice informs them that Form 1 has been served on the local highway authority, and states what action, if any, the authority proposes to take. It is envisaged that this action will include inspecting the alleged obstruction and giving the person who has been deemed to be responsible for it an opportunity to remove it within a set deadline (which is at the authority's discretion to impose).

5.4 If it cannot establish, within the given time, who is responsible for the obstruction, the local highway authority will be obliged to carry out the work required for removal of

the obstruction. However, should those responsible be identified at a later date the authority would be able to seek to recoup the costs of removal.

5.5 The name and address of the person serving Form 1 should not be revealed to those named in Form 2, unless permission is given to do so.

5.6 Form 3 (with Form 2 attached) is then served on the person who served the original notice (Form 1) on the local highway authority. This will state that Form 2 has been served on those the authority has deemed responsible for the obstruction.

Step 3

5.7 If the obstruction is not removed, the person serving the original notice (Form 1) can apply to the Magistrates' Court for an Order. This order would require the local highway authority to take such steps as are specified in the Order to remove the obstruction.

5.8 At least 5 days prior to making an application to the Court, the person serving the notice must serve notice (Form 4) on the local highway authority concerned indicating his/her intention to take this action. However, Form 4 cannot be served until at least two months after the date on which the original notice (Form 1) was served, but must be within 6 months of the serving the Form 1 on the local highway authority.

Step 4

5.9 Where the Magistrates' Court subsequently makes an Order the local highway authority must then display a notice to that effect (Form 5).

It is important that the forms are completed correctly, as any incomplete or illegible forms could be invalid - make sure that all the information required (information marked as optional would be helpful but not essential) is provided.

6. Display Arrangements

6.1 The local highway authority must display copies of the notice on each side of the obstruction, and where the highway (or connecting highway) joins a metalled highway. Copies also need to be sent to those who have been identified as having an interest, or who have indicated that they have an interest, in the Order.

6.2 Orders take effect on the 22nd day from the day on which they are made by the Magistrates Court.

7. When Orders may not be made

7.1 The Act contains provisions to enable a local highway authority to prevent the making of an Order if it can satisfy the Courts that:

- the fact that the way in question is a public right of way (as defined within section 130A(2) of the Highways Act 1980) is seriously disputed;
- the removal of the obstruction is outside the scope of their statutory duty to prevent, as far as possible, a right of way from being stopped-up or obstructed;
- the local highway authority already has arrangements in place to deal with the obstruction within a reasonable time.

8. Appeal arrangements

8.1 The local highway authority and the person(s) who is allegedly responsible for the obstruction have a right of appeal to the Crown Court against the decision of the Magistrates' Court. These parties also have the right to be heard when the application for an Order for the removal of an obstruction is being considered by the Magistrates' Court.

8.2 Notice of an appeal to the Crown Court must be given within 21 days after the date the Magistrates' Court Order was made. (The Crown Court has power to extend the period for appeal.)

Enquiries

Enquiries about this guidance should be directed to:

Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Phone: 0300 0604400

E-mail: customerhelp@wales.gsi.gov.uk

Annex A

Process for dealing with alleged obstructions to rights of way

