



Clean Neighbourhoods and Environment Act 2005

2005 CHAPTER 16

PART 1

CRIME AND DISORDER

2 Gating orders

In the Highways Act 1980 (c. 66), after section 129 insert—

“PART 8A

RESTRICTION OF RIGHTS OVER HIGHWAY

129A Gating orders

- (1) A council may in accordance with this Part make an order under this section in relation to any relevant highway for which they are the highway authority.
- (2) An order under this section is to be known as a “gating order”.
- (3) Before making a gating order in relation to a relevant highway the council must be satisfied that—
 - (a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
 - (b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
 - (c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.
- (4) The circumstances referred to in subsection (3)(c) include—

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- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
 - (b) the likely effect of making the order on other persons in the locality; and
 - (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
- (5) In this section “relevant highway” means a highway other than—
- (a) a special road;
 - (b) a trunk road;
 - (c) a classified or principal road;
 - (d) a strategic road, within the meaning of sections 60 and 61 of the Traffic Management Act 2004 (strategic roads in London);
 - (e) a highway of such other description as the appropriate person may by regulations prescribe.

129B Effect of gating orders

- (1) A gating order restricts, to the extent specified in the order, the public right of way over the highway to which it relates.
- (2) A gating order may in particular—
 - (a) restrict the public right of way at all times, or in respect of such times, days or periods as may be specified in the order;
 - (b) exclude persons of a description specified in the order from the effect of the restriction.
- (3) A gating order may not be made so as to restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.
- (4) A gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.
- (5) In relation to a highway which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.
- (6) A gating order may authorise the installation, operation and maintenance of a barrier or barriers for the purpose of enforcing the restriction provided for in the order.
- (7) A council may install, operate and maintain any barrier authorised under subsection (6).
- (8) A highway in relation to which a gating order is made shall not cease to be regarded as a highway by reason of the restriction of the public right of way under the order (or by reason of any barrier authorised under this section).
- (9) In subsection (4) “dwelling” means any building or part of a building occupied, or intended to be occupied, as a separate dwelling.

129C Procedure for gating orders

- (1) Before making a gating order in relation to a highway a council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of—
 - (a) the proposed order; and
 - (b) the period within which they may make representations about it.
- (2) The appropriate person must by regulations make provision as to further procedure to be complied with by a council in relation to the making of a gating order.
- (3) Regulations under subsection (2) must include provision as to—
 - (a) the publication of a proposed order;
 - (b) public availability of copies of a proposed order;
 - (c) notification of persons (other than those referred to in subsection (1)) likely to be affected by a proposed order;
 - (d) the making of representations about a proposed order.
- (4) Regulations under subsection (2) may include provision—
 - (a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;
 - (b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.
- (5) The appropriate person may by regulations specify requirements as to form and content with which a gating order must comply.

129D Validity of gating orders

- (1) A person may apply to the High Court for the purpose of questioning the validity of a gating order on the ground that—
 - (a) the council had no power to make it; or
 - (b) any requirement under this Part was not complied with in relation to it.
- (2) An application under this section must be made within a period of six weeks beginning with the date on which the gating order is made.
- (3) On an application under this section the High Court may by order suspend the operation of the gating order, or any of its provisions, until the final determination of the proceedings.
- (4) If on an application under this section the High Court is satisfied that—
 - (a) the council had no power to make the order, or
 - (b) the interests of the applicant have been substantially prejudiced by any failure to comply with a requirement under this Part,the High Court may quash the order or any of its provisions.
- (5) A gating order, or any of its provisions, may be suspended under subsection (3) or quashed under subsection (4)—
 - (a) generally; or

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(b) so far as may be necessary for the protection of the interests of the applicant.

(6) Except as provided for by this section, a gating order may not, either before or after it has been made, be questioned in any legal proceedings.

129E Publication and availability of gating orders

(1) The appropriate person may by regulations make provision imposing requirements on councils in relation to—

- (a) the publication of gating orders;
- (b) public availability of copies of gating orders;
- (c) the keeping and inspection of registers of gating orders.

(2) Regulations under subsection (1)(b) may provide that a council need not provide a person with a copy of a gating order otherwise than on payment of a reasonable charge.

129F Variation and revocation of gating orders

(1) A council may vary a gating order made by them so as further to restrict any public right of way over the highway to which the order relates, if they are satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.

(2) A council may vary a gating order made by them so as to reduce the restriction imposed by the order, if and to the extent that they are satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(3) A council may revoke a gating order made by them, if they are satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.

(4) Before varying or revoking a gating order in relation to a highway a council must notify the occupiers of premises adjacent to or adjoining the highway, in such manner as the appropriate person may by regulations prescribe, of—

- (a) the proposed variation or revocation; and
- (b) the period within which they may make representations about it.

(5) The appropriate person must by regulations make further provision as to the procedure to be followed by a council in relation to the variation or revocation of a gating order.

(6) Regulations under subsection (5) must include provision as to—

- (a) publication of any proposed variation or revocation;
- (b) notification of persons (other than those referred to in subsection (4)) likely to be affected by a proposed variation or revocation;
- (c) the making of representations about a proposed variation or revocation.

(7) Regulations under subsection (5) may include provision—

- (a) requiring a council to hold a public inquiry in such circumstances as may be specified in the regulations;

- (b) permitting a council to hold a public inquiry at their discretion in such circumstances as may be so specified.

129G Interpretation

For the purposes of this Part—

“anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as himself;

“appropriate person” means—

- (a) the Secretary of State, in relation to England;
- (b) the National Assembly for Wales, in relation to Wales.”