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WELSH STATUTORY INSTRUMENTS

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**2004 No. 317 (W.34)**

**RIGHTS OF WAY, WALES**

**The Removal of Obstructions from  
Highways (Wales) Regulations 2004**

*Made* - - - - - *10th February 2004*

*Coming into force* - - - - - *1st April 2004*

The National Assembly for Wales, in exercise of the powers conferred upon the Secretary of State by sections 130A(8), 130B(6) and 130C(2) of the Highways Act 1980<sup>(1)</sup>, and of all other powers enabling it in that behalf, hereby makes the following Regulations<sup>(2)</sup>:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Removal of Obstructions from Highways (Wales) Regulations 2004 and come into force on 1st April 2004.

(2) These Regulations apply to Wales.

**Interpretation**

2. In these Regulations —

“the Act” (“*y Ddeddf*”) means the Highways Act 1980 and reference to a “section” is a reference to that section in the Act;

“notice” (“*hysbysiad*”) means a notice in a form prescribed by these Regulations (or a form substantially to the same effect) and reference to a numbered form is a reference to a form bearing that number in the Schedule to these Regulations.

**Prescribed notices**

3. The notice prescribed for the purposes of section—

(a) 130A(1) is Form 1;

(b) 130A(6)(a) is Form 2;

(c) 130A(6)(b) is Form 3;

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(1) 1980 c. 66. These sections were inserted into the Act by section 63 of the Countryside and Rights of Way Act 2000 (c. 37).  
(2) The functions of the Secretary of State under these sections are exercisable by the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and section 99(1) of the Countryside and Rights of Way Act 2000.

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- (d) 130C(1) is Form 4; and
- (e) 130B(6) is Form 5.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998**(3)**

10th February 2004

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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## SCHEDULE

### FORM 1

*Please read the notes overleaf before you complete this form*

#### NOTICE OF REQUEST TO LOCAL HIGHWAY AUTHORITY TO SECURE THE REMOVAL OF AN ALLEGED OBSTRUCTION

#### HIGHWAYS ACT 1980 SECTION 130A(1)

**To** [name of Authority]  
**of** [address]

**I** [name]  
**of** [address]  
[e.mail address (optional)]  
[telephone (optional)]

hereby request that you secure the removal of the obstruction described below.

**Status of the highway** [write "Footpath", "Bridleway", "Restricted Byway", "Byway Open to All Traffic", or "Not sure"]

**Location of the highway and of the obstruction:**

**Description of the obstruction:**

**The date I encountered the obstruction was** [enter date]:

**It appears to me that the following may be responsible for the obstruction** (if unknown, write "unknown"):

**Name 1:**  
**Address 1:**

**Name 2:**  
**Address 2:**

Signed

Date

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## NOTES TO FORM 1

### *What is the purpose of this form?*

This form gives notice of your request to a local highway authority ("the Authority") to take action to exercise its duty to prevent obstructions of public rights of way. Only certain types of obstructions fall within the scope of section 130A - these are described below. However, if you are unsure as to whether an obstruction falls within the scope of section 130A, you may submit this form and the Authority will inform you if it is within their powers to deal with it.

When you have completed the form, you must serve it on the Authority in whose area the obstruction lies. Serving notice means delivering this form to the Chief Executive of the Authority. You can deliver it in person, leave it at the Authority's office or post it with or without the registered or recorded delivery service. If you post it without registering or recording the fact of posting, it will be deemed not to have been served if the Authority can show that the person to whom it was addressed did not receive it.

You should keep a copy of all forms you submit to the Authority.

As different procedures may apply to different obstructions, use one form for each obstruction.

### *What constitutes an obstruction?*

An obstruction falls within the scope of section 130A if it is on a footpath, bridleway or restricted byway or a highway shown in a definitive map and statement as a restricted byway or a byway open to all traffic, if it is without lawful authority and it consists of any machine, pump, post or other object of such a nature as to be capable of causing a nuisance or 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 vehicles, pedestrians and horse-riders.

If the obstruction is within the scope of section 130A, the Authority on whom you serve notice must, within one month from the date of service, serve on every person whose name and address is included on this form and, so far as reasonably practicable, on every other person who it appears to them may be for the time being responsible for the obstruction, notice informing them that this notice has been served in relation to the obstruction and stating what, if any, action the Authority proposes to take. Your personal details are confidential and the Authority will not reveal your identity to any other parties involved in the process.

If the obstruction is not within the scope of section 130A, the Authority will inform you.

### *Completing the form*

*Location of the highway and of the obstruction:* Your description of the location of the highway and of the obstruction should be detailed enough for the Authority to be able to locate them.

*Description of the obstruction:* Examples might include agricultural machinery; rubbish deposited on the highway; branches hanging over the highway so as to obstruct your passage. You may attach a photograph if you wish. If the obstruction is a danger to users, the Authority will need to consider whether it has the power to remove it without the service of notices under section 130A.

*Who is responsible for the obstruction :* If you know, or think you know, the individuals and/or companies who may be responsible for either creating, or for failing to prevent the formation of, the obstruction, write their names and addresses.

## FORM 2

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

*To be completed by the local highway authority*

**NOTICE THAT THE LOCAL HIGHWAY AUTHORITY HAS RECEIVED A REQUEST TO SECURE  
THE REMOVAL OF AN OBSTRUCTION**

**HIGHWAYS ACT 1980 SECTION 130A(6)(a)**

[Name of Authority]

To:

Notice has been served on this Authority to secure the removal of an obstruction from a public right of way. We are satisfied that the obstruction is within the scope of section 130A(2) and (3) of the Highways Act 1980.

**Status and location of the highway:**

**Location of the obstruction** (including path reference number, if known):

**Description of the obstruction:**

**You have been named as a person who:**

- may be responsible for the obstruction; or
- is the owner of part, or all, of the obstruction; or
- for the time being has possession or control of the obstruction; or
- may be required to remove the obstruction.

**The Authority proposes to** [describe what action, if any, the Authority proposes to take in relation to the alleged obstruction]

If you are responsible for the obstruction, you should write to the Authority to confirm that the obstruction has been, or will be, removed and the proposed date of removal. If you think you are not a person of a type specified above or if you think the obstruction is not one to which this legislation applies, you should write to the Authority stating your reasons.

Signed

Date

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## NOTES TO FORM 2

*What is the purpose of this form?*

Section 130A(1) of the Highways Act 1980 enables any person to serve notice on a local highway authority ("the Authority") requesting removal of an obstruction on a right of way. If the obstruction is within the scope of section 130A(2) and (3) of the Highways Act 1980, the Authority is required take action to secure the removal of the obstruction.

An obstruction falls within the scope of section 130A(2) and (3) if it is on a footpath, bridleway or restricted byway or a highway shown in a definitive map and statement as a restricted byway or a byway open to all traffic, if it is without lawful authority and it consists of any machine, pump, post or other object of such a nature as to be capable of causing a nuisance or 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 vehicles, pedestrians and horse-riders.

This form gives notice to those who have been identified as being responsible for an obstruction that notice has been given to the Authority to exercise its duty to remove the obstruction and the action that the Authority proposes to take to secure its removal.

Notice must be served within one month from the date of service of Form 1.

## FORM 3

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

*To be completed by the local highway authority*

**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**

**HIGHWAYS ACT 1980 SECTION 130A(6)(b)**

[Name of Authority]

**To:**

**Address:**

**Notice has been served on the persons named by you as persons you believed to be responsible for an obstruction in the form you submitted to the Authority on [date of the request notice].**

**Notice was given by the Authority to those persons by means of the attached copy of Form 2.**

Signed

Date

Name of Officer

FORM 4

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

To be completed by the person who completed Form 1

**NOTICE OF INTENTION TO APPLY TO THE MAGISTRATES' COURT FOR AN ORDER REQUIRING THE LOCAL HIGHWAY AUTHORITY TO SECURE THE REMOVAL OF AN OBSTRUCTION**

**HIGHWAYS ACT 1980 SECTION 130C(1)**

**To** [name of Authority]  
**of** [address]

**I** [name]  
**of** [address]  
[e.mail address (optional)]  
[telephone (optional)]

served notice (Form 1) on you on [date] to secure the removal of an obstruction. The location of the obstruction is described in my notice (Form 1). [A copy of Form 1 is attached] [The descriptions contained in Form 1 are below].

As the obstruction has not been removed, I intend to apply to the Magistrates' Court for an Order requiring you to secure the removal of the obstruction.

Signed Date

**NOTES TO FORM 4**

*Timetable:* You cannot serve notice of your intention to apply to the Magistrates' Court for an Order requiring the local highway authority ("the Authority") to secure the removal of an obstruction until at least two months after the date on which you served notice (Form 1) on the Authority.

You can apply to the Magistrates' Court 5 days after you serve this notice on the Authority, but you must apply within 6 months of giving Form 1 to the Authority.

*Which Magistrates' Court?*

You must apply to the Magistrates' Court in whose jurisdiction the obstruction is to be found.

FORM 5



**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

*To be completed by the local highway authority*

**NOTICE OF AN ORDER MADE BY MAGISTRATES' COURT REQUIRING THE LOCAL HIGHWAY AUTHORITY TO SECURE THE REMOVAL OF AN OBSTRUCTION**

**HIGHWAYS ACT 1980 SECTION 130B(6)**

[Name of Authority]

Notice is hereby given that an Order has been made by the Magistrates' Court at [location of Magistrates' Court] on [date] requiring this Authority to take the following steps [insert the steps and timescale specified in the order] to secure the removal of the obstruction described below.

**Status of the highway:**

**Location of the highway** (including path reference number, if known):

**Location of the obstruction:**

**Description of the obstruction:**

Copies of this notice are being displayed on each side of the obstruction and at the first point, on each side of the obstruction, where the highway (or connecting highway) joins a metalled highway. [Also identify any other points where the notice is being displayed.]. Copies have also been sent to those who have been identified as having an interest, or who have indicated that they have an interest, in the order. These notices will be displayed until [date].

**This Order takes effect on the 22nd day from the day on which the Order was made.**

Signed

Date

**Right of appeal against this Order**

The local highway authority and any person who is for the time being responsible for the obstruction, or was responsible when the application for the Order was made to the Magistrates' Court, may appeal to the Crown Court on the grounds that the highway or the obstruction is of a type which falls outside the legislation or that the obstruction does not significantly interfere with the exercise of public rights over that highway.

Subject to the Crown Court's power to extend the period for appeal, notice of an appeal to the Crown Court must be given within 21 days after the date on which the Magistrates' Court Order was made.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe, in relation to Wales, the form of notices to be served under sections 130A, 130B and 130C of the Highways Act 1980 (“the Act”). These sections were inserted into the Act by section 63 of the Countryside and Rights of Way Act 2000.

The new provisions enable a person, who believes a local highway authority is failing in its duty to prevent a right of way from being obstructed, to ask the authority to secure the removal of the obstruction.

Notices in the form (or in a form substantially to the same effect) prescribed by these Regulations are required to be served when the new provisions are exercised.