

2004 No. 370

HIGHWAYS, ENGLAND

**The Removal of Obstructions from Highways (Notices etc.)
(England) Regulations 2004**

Made - - - - - *13th February 2004*

Laid before Parliament *16th February 2004*

Coming into force - - *10th March 2004*

The Secretary of State, in exercise of the powers conferred upon her by sections 130A(8),130B(6) and130C(2) of the Highways Act 1980(a), hereby makes the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Removal of Obstructions from Highways (Notices etc.) (England) Regulations 2004 and shall come into force on 10th March 2004.

(2) In these Regulations, “the 1980 Act” means the Highways Act 1980.

(3) These Regulations apply in relation to England only(b).

Forms of notices for removal of obstructions from highways

2. The forms set out in the Schedule, or forms substantially to the same effect, shall be the forms to be used for the following purposes of the 1980 Act—

- (a) Form 1 for the notice under section 130A(1) (notice requesting a local highway authority to secure the removal of an obstruction);
- (b) Form 2 for the notice under section 130A(6)(a) (notice by a local highway authority to persons who may be responsible for an obstruction);
- (c) Form 3 for the notice under section 130A(6)(b) (notice by a local highway authority, to a person who served notice in Form 1, that the authority have served notice in Form 2);
- (d) Form 4 for the notice under section 130C(1) (notice to a local highway authority of an intention to apply to the magistrates’ court for an order requiring the authority to take steps for securing the removal of an obstruction); and
- (e) Form 5 for the notice under section 130B(6) (notice of a magistrates’ court order requiring a local highway authority to take steps for securing the removal of an obstruction).

(a) 1980 c. 66; sections 130A, 130B and 130C were inserted by section 63 of the Countryside and Rights of Way Act 2000 (c. 37).

(b) The functions of the Secretary of State under sections 130A to 130C of the Highways Act 1980 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1 as extended by section 99 of the Countryside and Rights of Way Act 2000.

Manner and places of display of notices under section 130B(6) of the 1980 Act

3. A notice by a local highway authority under section 130B(6) of the 1980 Act shall be displayed by affixing a copy of it to some conspicuous object placed—

- (a) at each side of the obstruction; and
- (b) at the first point, from each side of the obstruction, where the obstructed highway is joined by another highway.

13th February 2004

Alan Michael
Minister of State,
Department for Environment, Food and Rural Affairs

FORMS OF NOTICES FOR REMOVAL OF OBSTRUCTIONS FROM HIGHWAYS

FORM 1

HIGHWAYS ACT 1980, SECTION 130A(1)

NOTICE REQUESTING A LOCAL HIGHWAY AUTHORITY TO SECURE THE REMOVAL OF AN OBSTRUCTION

(Please read the notes below before you complete this form)

To [name and address of local highway authority]

I [name]
of [address and telephone number]

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

- Status of the highway [note 1]:
[] footpath
[] bridleway
[] restricted byway
[] byway open to all traffic (BOAT)

Description of the obstruction [notes 2, 3 and 4]:

Location of the highway and of the obstruction [note 5]:

The date when I encountered the obstruction was:[insert date]

It appears to me that the following person(s) may be for the time being responsible for the obstruction [note 6]:

Name 1:
Address:

Name 2:
Address:

[continue as necessary]

OR I do not know who may be responsible.

Signed Date
[notes 7-9]

NOTES

General:
This form is the notice of request to a local highway authority to secure the removal of an obstruction from a highway. Because different procedures may apply to different obstructions, use one form for each obstruction. The guidance booklet "Removal of obstructions from highways: enforcement of local authorities' duty to prevent obstructions on rights of way" PB9193, obtainable from Defra Publications, Admail 6000, London SW1A 2XX, sets out the relevant legislation relating to this notice (sections 130A to 130D of the Highways Act 1980).

- 1. Use this form if the public right of way is:
- a footpath, bridleway, or restricted byway; or
- shown on the definitive map and statement as a restricted byway or a byway open to all traffic.

2. *Use this form if the obstruction is without lawful authority, and:*
 - *is any structure, including a machine, pump, post or other object of such a nature as to be capable of causing obstruction whether or not it is on wheels (section 143 of the Highways Act 1980);*
 - *is anything deposited on a highway which constitutes a nuisance (section 149 of the Highways Act 1980); or*
 - *is a hedge, tree, shrub or vegetation of any description that overhangs a highway so as to endanger or obstruct the passage of vehicles, pedestrians or horse-riders (section 154 of the Highways Act 1980).*
3. *However, some of these obstructions are not covered by this procedure. Do not use this form if the obstruction:*
 - *is, or forms part of, a building (whether temporary or permanent) or works for the construction of a building;*
 - *is, or forms part of, any other structure (including a tent, caravan, vehicle or other temporary or movable structure) which is designed, adapted or used for human habitation;*
 - *is one for which an order may be made under s.56 of the Highways Act 1980 (highway out of repair); or*
 - *is constituted by the presence of any person.*

(Nevertheless, in these cases and in the case of obstructions not mentioned in note 2, for example obstruction caused by crops growing on the way, the local highway authority may be able to take action to remove the obstruction under other provisions; in this respect your attention is drawn to the guidance booklet mentioned above)

4. *Describe the obstruction, for example: agricultural machinery, a fence across the way, rubbish deposited on the way, overhanging hedges or branches. You may attach a photograph.*
5. *Describe the location of the highway and of the obstruction. This should be detailed enough for the local highway authority to be able to locate them. For example:*
 - *describe the points where the highway joins a metalled road or another highway nearest to and on each side of the obstruction; also describe the position of the obstruction in relation to these points; or*
 - *give six figure Ordnance Survey references for these points and the obstruction; or*
 - *attach a sketch map or a copy or trace of the relevant Ordnance Survey map identifying the location of the highway and the obstruction. (Ordnance Survey copyright does not prevent you taking a copy of the relevant part of an Ordnance Survey map to attach to this form); or*
 - *give the parish name and path number if the highway is on the definitive map.*

6. *The persons for the time being responsible for an obstruction include the owner and any other person having possession or control of it or who may be required to remove it (section 130A(7) of the Highways Act 1980).*

7. *When you have completed this form you must serve it on the local highway authority in whose area the obstruction lies by leaving it at, or sending it by post to, the local highway authority's office. You should keep a copy of the completed form.*

8. *What happens next? The highway authority must serve notice (Form 2) informing 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 the authority may be for the time being responsible for the obstruction, that the Form 1 notice has been served. The highway authority must also state what, if any, action they propose to take in relation to the obstruction. The highway authority must serve the Form 2 notice within one month from the date on which you served the Form 1 notice on the authority.*

The highway authority must also send you notice (Form 3) of the name and address of each person on whom they have served the Form 2 notice and state what, if any, action the authority propose to take in relation to the obstruction.

If the obstruction remains, you can serve notice (Form 4) on the highway authority that you intend to apply to the magistrates' court for an order requiring the authority to take steps to secure the removal of the obstruction. You cannot serve the Form 4 notice before the end of 2 months beginning with the date on which you served the Form 1 notice. You can apply to the magistrates' court at any time after the end of 5 days beginning with the date of service of the Form 4 notice and before the end of 6 months from the date of service of the Form 1 notice.

9. Disclosing your identity. *The local highway authority will treat your identity confidentially. It will deal with your personal details in accordance with the Data Protection Act 1998. If you have concerns on this matter you should consult the local highway authority.*

FORM 2

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

NOTICE BY A LOCAL HIGHWAY AUTHORITY TO PERSONS WHO MAY BE RESPONSIBLE FOR AN OBSTRUCTION

OBSTRUCTION AT[description and location of obstruction]

To: [insert name(s) and address(es) of those named in Form 1 as being persons who may be responsible for the obstruction and also insert the names of all other persons who appear to the authority to be responsible]

Notice has been served on this authority under section 130A(1) of the Highways Act 1980 to secure the removal of an obstruction from a highway. It appears that you may be for the time being responsible for the obstruction [note 1].

The status and location of the highway, the location of the obstruction and a description of the obstruction are set out below :

.....
.....

[complete as necessary]

This authority propose to take the following action in relation to the obstruction:

.....
.....

[describe the action the authority propose to take and to what timetable. Give reasons if no action is proposed.]

Your attention is drawn to the notes below which include, at note 2, the action you should consider on receipt of this form.

Signed Date

On behalf of [local highway authority]

..... [address]

[insert details of contact name, address and telephone number]

NOTES

General:

This form gives notice to those, who appear to be for the time being responsible for an obstruction, that notice has been given to the local highway authority to enforce their duty to remove the obstruction. It also gives notice of the action that the authority propose to take to secure the removal of the obstruction.

The guidance booklet "Removal of obstructions from highways: enforcement of local authorities' duty to prevent obstructions on rights of way" PB9193, obtainable from Defra Publications, Admail 6000, London SW1A 2XX, sets out the relevant legislation relating to this notice (sections 130A to 130D of the Highways Act 1980).

1. The persons for the time being responsible for an obstruction include—
 - (a) the owner; and
 - (b) any other person who for the time being has possession or control of it, or who may be required to remove it (section 130A(7) of the Highways Act 1980).
2. On receipt of this form:
 - if you are the person responsible for the obstruction, you should remove it and inform the local highway authority; or
 - if you consider that you should not have been served with this form (e.g. because you are not responsible, or the obstruction has been removed or you think that this legislation does not otherwise apply) you should write to, or contact, the local highway authority. You may consider that you should seek advice.

FORM 3

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

NOTICE BY A LOCAL HIGHWAY AUTHORITY, TO A PERSON WHO SERVED NOTICE IN FORM 1, THAT THE AUTHORITY HAVE SERVED NOTICE IN FORM 2

OBSTRUCTION AT[description and location of obstruction]

To: [insert name of person who served notice on the local highway authority in Form 1]

Address:

On [date of service of notice in Form 1] you served notice in Form 1 on this local highway authority to secure the removal of an obstruction.

This notice is to inform you that notice in Form 2 was served on the following persons who it appears may be for the time being responsible for the obstruction:

..... [insert the names and addresses of all persons mentioned in Form 2 who appear to be responsible for the obstruction]

The authority propose to take the following action in relation to the obstruction:

.....[describe the action the authority propose to take and to what timetable. Give reasons if no action is proposed]

Signed Date.....

On behalf of[local highway authority]

[insert details of contact name, address and telephone number]

FORM 4

HIGHWAYS ACT 1980, SECTION 130C(1)

NOTICE TO A LOCAL HIGHWAY AUTHORITY OF AN INTENTION TO APPLY TO A MAGISTRATES' COURT FOR AN ORDER REQUIRING THE AUTHORITY TO TAKE STEPS FOR SECURING THE REMOVAL OF AN OBSTRUCTION

[To be completed by the person who completed Form 1. Please read the notes below before you complete this form]

To: [name and address of local highway authority]:.....

OBSTRUCTION AT[description and location of obstruction]

1. I [name] of [address and telephone number]

served notice in Form 1 on you on.....[insert date] to secure the removal of the obstruction mentioned above.

2. I am not satisfied that the obstruction has been removed.

3. This notice is to inform you that I intend to apply to the magistrates' court for an order requiring you to take steps for securing the removal of the obstruction [notes 1 and 2].

Signed Date.....

NOTES

1. This notice may not be served before the end of 2 months beginning with the date of service on the local highway authority of the notice in Form 1.

2. The application to the magistrates' court may be made after the end of 5 days beginning with the date of service of this notice but before the end of 6 months beginning with the date of service on the highway authority of the notice in Form 1.

FORM 5

HIGHWAYS ACT 1980, SECTION 130B(6)

NOTICE OF A MAGISTRATES' COURT ORDER REQUIRING A LOCAL HIGHWAY AUTHORITY TO TAKE STEPS FOR SECURING THE REMOVAL OF AN OBSTRUCTION

[To be completed by the local highway authority]

OBSTRUCTION AT*[description and location of the obstruction]*

Notice is hereby given that an order has been made by the *[complete]* magistrates' court on *[insert date]* requiring the *[name of the local highway authority]* to take the steps set out in the Schedule below for securing the removal of the above obstruction.

This order takes effect on *[insert date of 22nd day from the day on which the order was made, s.130B(3)(a) of the Highways Act 1980]*. However, if an appeal in respect of the order is brought before that date, the order will not take effect until the final determination or withdrawal of the appeal.

Right to Appeal. Any person aggrieved by this order, and any other person responsible for the obstruction, may appeal to the Crown Court not later than 21 days after the date on which the order was made. The Crown Court has power to extend this period.

SCHEDULE

STEPS TO BE TAKEN FOR SECURING THE REMOVAL OF THE OBSTRUCTION

[Set out the steps specified in the magistrates' order for securing the removal of the obstruction].....
.....

Signed..... Date.....

On behalf of*[local highway authority]*

.....*[address]*

NOTE

This notice should be displayed by affixing a copy of it to some conspicuous object placed at each side of the obstruction, and at the first point, from each side of the obstruction, where the obstructed highway is joined by another highway.

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 130A, 130B and 130C of the Highways Act 1980 (inserted by section 63 of the Countryside and Rights of Way Act 2000) make provision for the removal of obstructions from highways.

Regulation 2 and the Schedule to these Regulations prescribe the forms of notices required under these sections as follows—

Form 1 is the notice requesting a local highway authority to secure the removal of an obstruction;

Form 2 is the notice by a local highway authority to persons who may be responsible for an obstruction;

Form 3 is the notice by a local highway authority, to a person who served notice in Form 1, stating that the authority have served notice in Form 2;

Form 4 is the notice to a local highway authority of an intention to apply to the magistrates' court for an order requiring the authority to take steps for securing the removal of an obstruction; and

Form 5 is the notice of a magistrates' court order requiring a local highway authority to take steps for securing the removal of an obstruction.

Regulation 3 prescribes the manner and places for display of the notice in Form 5 (notice of an order of the magistrates' court).

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0101 2/2004 140101 19585

ISBN 0-11-048719-2



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