



Llywodraeth Cymru
Welsh Government

Guidance

Guidance for the General Public 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 note does not form part of any Act or 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. 2004/317) (W.34), but does not attempt to provide a comprehensive explanation of every provision. Interpretation of the law is matter for courts and you should therefore consider seeking independent advice.

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

GUIDANCE

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

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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 note provides information on the powers available to secure the removal of obstructions from public rights of way which are contained in sections 130A, 130B, 130C and 130D of the Highways Act 1980 (the Highways Act). These new sections were inserted into the Highways Act 1980 by section 63 of the Countryside and Rights of Way Act 2000 (the CROW Act).

2. Explanation of the provisions

2.1 Local highway authorities have a duty to prevent, as far as possible, the stopping-up or obstruction of public rights of way. If a person believes that a local highway authority is failing in this duty, they have the right to serve a notice on the local highway authority to request that it secures the removal of the obstruction. If the local highway authority does not act, the person who served the notice may seek a Magistrates' Court Order to require the local highway authority to act.

2.2 We suggest that anyone seeking the removal of an obstruction from a right of way should contact the relevant local highway authority before serving a notice as it might be that the local highway authority may already be aware of the obstruction and is in the process of securing its removal. We therefore suggest that these procedures should only be followed after all other avenues have been investigated.

3. What obstructions do the provisions cover?

3.1 It should be noted that only certain types of obstruction are covered by the new provisions and they only apply to footpaths, bridleways and restricted byways, and to ways shown on a definitive map as restricted byways or byways open to all traffic (BOATs).

3.2 The main types of obstruction covered by the new provisions are:

- Any structures (except those listed in 4 below) – for example walls, fences, hedges, barbed wire, electrical fencing.
- Anything deposited on a right of way that constitutes a nuisance – for example permanent water, spoil from excavations, abandoned pedal cycles or vehicles.
- Vegetation in the form of a tree, hedge or shrub or other vegetation that overhangs a highway so as to endanger or obstruct the passage of lawful vehicles, pedestrians or horse-riders.

4. Which obstructions are excluded from these provisions?

4.1 The following obstructions are excluded from the provisions:

- 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) which 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), they may be dealt with under the procedure set out in section 56 of the 1980 Act. Where a gate, stile or similar structure across a footpath is in disrepair, they may be dealt with through the procedure set out under 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. Obstructions caused by ploughing or cropping are also excluded because of the temporary nature of these activities.

5. What do I need to do to initiate the process?

5.1 A number of procedural steps are involved. A flow-chart summary version of these is in Annex A. The key steps are as follows:

Step 1

5.2 The procedure is started by service of a notice on the local highway authority, requesting them to secure the removal of an obstruction from a right of way. Form 1 must be used and it is important to read the explanatory notes that accompany the form. Additionally:

- It is important to use one form for each obstruction.
- It would be helpful to include a telephone number and e-mail address (if applicable) on the Form as this will enable the local highway authority to contact you promptly with any queries.
- If you are unsure what type of way is involved (see the glossary of terms at the end of this guidance note) then, in the first instance, contact the local highway authority or write "not sure" on the Form.
- Provide a brief description of the type of obstruction you have encountered on the way and where you found it. A map grid reference or path number would be helpful, but if this is not known, as much detail as possible should be provided to enable the local highway authority to identify the path and the location of the obstruction.
- If you know, or think you know, who (whether they are individuals or companies) are responsible for the obstruction, state their names and addresses where indicated. Bear in mind that they might not be who the authority believes is responsible.

Step 2

5.3 Within one calendar month of receiving Form 1, the local highway authority is required to serve two notices.

- The first of these notices (in the form required by Form 2) is served on every person named in Form 1 and any other person who the local highway authority believes may be responsible for the alleged obstruction and states what action, if any, the local highway authority proposes to take.
- The other notice (in the form required by Form 3) is 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 who the local highway authority has deemed responsible for the obstruction.

Step 3

5.4 If the obstruction is not removed you can apply to a Magistrates' Court for an Order to require the local highway authority to take such steps as are specified in the Order to remove the obstruction.

5.5 The notice (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 made within **6 months** of the serving the Form 1 on the local highway authority.

5.6 At least **5 days** prior to making an application to the Court, you must serve notice on the local highway authority (Form 4) indicating your intention to take this action.

Step 4

5.7 Where the Magistrates' Court makes an Order, the local highway authority must display a notice to that effect (in the form required by Form 5). Copies of the notice must be displayed on each side of the obstruction where the highway (or connecting highway) joins a metalled highway. Copies also have 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.

5.8 An Order takes effect on the **22nd day** from the day on which it is made by the Magistrates Court.

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

6. When Orders may not be made

6.1 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 authority already has arrangements in place to deal with the obstruction within a reasonable time.

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

Glossary of terms

Public rights of way are paths over which members of the public have a right of passage. The main rights have been defined by Parliament as footpaths, bridleways, restricted byways (currently referred to as roads used as public paths) and byways open to all traffic. The rights held by each classification are:

- **Footpath:** (usually marked with yellow arrows) for use by pedestrians on foot;
- **Bridleway:** (usually marked with blue arrows) for use by pedestrians, pedal-cyclists and those riding or leading a horse;
- **Restricted byway:** (marking to be decided) for use by pedestrians, pedal-cyclists, those riding or leading a horse, and users of non-mechanically propelled vehicles;
- **Byway open to all traffic:** (usually marked with red arrows) includes use of mechanically propelled vehicles but predominantly used by pedestrians, pedal-cyclists, those riding or leading a horse and users of non-mechanically propelled vehicles.

Definitive maps are maps held by local authorities indicating the position, length and type (footpaths, bridleways, etc.) of public rights of way within their boundaries.

Annex A - Process for dealing with alleged obstructions to rights of way

