

**CLEAN NEIGHBOURHOODS AND
ENVIRONMENT ACT 2005**

**GUIDANCE RELATING TO THE MAKING OF
GATING ORDERS**

March 2006

INTRODUCTORY

1. Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduces a new power that allows councils to make, vary or revoke gating orders in respect of highways within their area. This is achieved by inserting new sections 129A to 129G in the Highways Act 1980 which will enable councils to restrict public access to any public highway by gating it (at certain times of the day if applicable), **without removing its underlying highway status**. Local authorities will be able to make “gating” orders on grounds of anti-social behaviour as well as crime.
2. Powers to close alleyways were first introduced by the Countryside and Rights of Way Act 2000 (CROW Act 2000); this enables alleyways, which are also rights of way, to be closed and gated for crime prevention reasons. But they do not enable alleyways to be gated expressly to prevent anti-social behaviour and they exclude many alleyways that are public highways but not recorded as rights of way. Also, under these provisions the removal of rights of passage is irrevocable.
3. The Clean Neighbourhoods and Environment Act 2005 provisions enable a council to gate a highway in a similar manner to the CROW Act 2000 power but it:
 - a) doesn't first require the highway to be designated by the Secretary of State,
 - b) enables gating to take place if highway suffers from crime and/or anti-social behaviour,
 - c) enables the council to continue with a gating order, even if objections are made (if it is considered in the best interests of the local community to do so).
4. The power to make a gating order will be commenced on 1 April 2006.
5. **This guidance is not statutory, but we recommend that local authorities read the guidance and use it where practicable as it will help avoid some operational difficulties. It has been written with the help of practitioners by the Home Office, the Department for Transport and the Department for Environment, Food and Rural affairs.**

CONDITIONS FOR MAKING A GATING ORDER

General principles:

6. In general, rights of way do not cause or facilitate crime. The provisions in the Clean Neighbourhoods and Environment Act are framed in a way that limits their use to alleyways where it can be shown that persistent crime and anti-social behaviour is expressly facilitated by the use of certain rights of way.
7. The Government considers that these powers will be particularly important in enabling the closure of those back (or side) alleys where they are demonstrably the source of crime in built up areas, particularly housing estates. The rationale behind the formulation of these powers was to assist in strictly urban areas and, in practice, if a footpath is the only means of access to the rear of a terrace of properties, it may well be easier to demonstrate whether the way itself is facilitating persistent crime, than in an open rural setting, where there might be a number of means of access to premises.
8. This provision is intended to be used as a deterrent for temporary closures while the crime or ASB is persistent. Following the reduction of the crime or the ASB, the highway restrictions can be varied or revoked.
9. If the intention is permanently gate the highway (i.e. removing the highway status), the provisions introduced by the Countryside and Rights of Way Act 2000 (CROW Act) should be used. However, given the longer timescales under the CROW Act, and that the condition of the highway may warrant quick action, you can use the Clean Neighbourhoods and Environment Act 2005 provisions to gate the highway while seeking a CROW Act order to revoke the highway status.
10. Section 129A of the Highways Act 1980 sets out these general principles, asserting that a council must be satisfied, before making an order, that the area surrounding the relevant highway suffers from crime or anti-social behaviour and would act as a useful crime/anti-social behaviour reduction measure.
11. Local authorities should also be satisfied that residents and members of the public who use the relevant highway would not be inappropriately inconvenienced by its gating, and should be satisfied that alternative access routes exist. However this should not restrict the gating of highways that are in such a dangerous condition, that gating it is in the best interest of all concerned.
12. The health implications of the order should also be considered as gating orders could potentially encourage the use of cars if the alternatives are too long or lack pedestrianised sections. This should be balanced against the health impacts facing pedestrians from the ongoing crime or ASB in the alleyway. In these situations a Health Impact Assessment could be

carried out if there is any doubt over the availability of alternate routes and/or the proposed times the gates will be closed.

Issues of Mobility:

13. Special consideration should be given to the impact a potential order might have on disabled users of the highway to ensure that alternative routes are free from obstructions and are suitably paved. During the installation of the gates consideration should be given to the height of the locks and the ease at which they can be opened and closed

Consideration of other tools to tackle crime and ASB:

14. Gating orders are not the only solution to tackling crime and anti-social behaviour on certain thoroughfares. Before proposing an order, local authorities should give consideration as to whether there are alternative interventions that may be more appropriate (and cost effective) for tackling the specific problems they are facing without having to gate the highway. Nevertheless, gating orders should not be seen as a last resort.

PUBLICITY

15. Gating orders can have implications for various groups of people, such as walkers who may oppose the termination of certain rights of way. For this reason, it is essential that gating orders are satisfactorily publicised before they are made. Local authorities must publicise a notice to this effect in a local paper and on their website. In order to save costs, this notice does not need to be excessively large and does not need to include a lot of information. The legislation states that the notice should include the highway affected and the general effect of the order. However, in practise this information will be included in the proposed order itself, so the notice only needs to:

- include a draft of the proposed order:
- identify alternative routes that members of the public may take; and
- invite representations (in writing) as to whether or not an order should be made, within a period of notice that is at least 28 days.

16. A similar notice, including all the information stated above, should also be placed on or adjacent to the relevant highway at both ends, in order that people who want to use the highway can see that it is to be gated. These need to be visible enough to draw their attention, and make it clear what the implications of the order will be. The regulations do not specify a minimum time period that these notices should be up before the gating order comes into force. This is because local circumstances may make this difficult to achieve. However, wherever possible, these notices should be assembled to coincide with the notices published on the website and local paper, i.e. for a minimum of 28 days before the gating order is made. It is the responsibility of the council to ensure that notices are maintained in a condition that ensures they remain visible and legible.

17. It is not only necessary to make this notice available to the general public. Certain groups which may be directly affected should be specifically informed of the planned order through receipt of a copy of the order. These include:

- all occupiers of premises adjacent to or adjoining the relevant highway;
- any authority through which the gated highway will run including:
 - Any other council, including parish and town councils;
 - Police authorities (informing the chief of police);
 - fire authorities;
 - NHS Trusts;
- any Local Access Forum through whose area the relevant highway passes
- other public bodies and companies that do maintain or provide services on or around the locality in which the relevant highway will be situated including:
 - statutory undertakers;
 - gas or electricity services providers;
 - water services providers;
 - communications providers;
- anyone who requests a copy of the notice; and
- anyone who has asked to be notified of any proposed gating orders.

18. The council should also inform anyone they reasonably consider might have an interest in the proposed order. This could include a wide range of groups, and it is the responsibility of the applying council to decide who this might include. However, it is recommended that councils also notify a variety of groups that are likely to take an interest in the gating of a highway. The Department of the Environment Circular 2/1993 sets out organisations who should be contacted under other rights of way legislation and you may wish to consult this.

The majority of highways will be urban alleyways that suffer from ASB and crime, however rural highways can suffer from ASB and crime too. Therefore, it is important to ensure that any group who has a particular interest in the highway on which the order will be made is given an opportunity to comment. For example these may be the appropriate National Park, the Chiltern Society and the Peak and Northern Footpaths Society. In the majority of these cases you should be seeking to engage with these organisations early in the process in order to effectively consider all interventions to tackle the ASB and crime.

19. It is important that people who use these relevant highways understand why a gating order has been proposed. Therefore, it is recommended that Local Authorities provide a justification and evidence for the order before it is made. Ideally, this evidence and justification should appear on the notice in the newspaper, with details of where members of the public can find more information if necessary.

REPRESENTATIONS FROM INTERESTED PARTIES

20. Before a gating order can be made it is essential that local authorities consider all representations as to whether or not an order should be made. If there is considerable objection to the order, it is necessary to be absolutely sure that there are sufficient grounds for the order to be made. Particular attention should be given to Section 129A of the Highways Act 1980, balancing crime and anti-social behaviour concerns against the impact it will have on users of the highway and local residents. Section 129D of the Highways Act 1980 allows individuals to challenge an order in the High Court if the conditions for making it have not been complied with. To ensure full impartiality, you may want to consider the use of an external evaluation, for example a Health Impact Assessment.
21. A full justification, with evidence should be something that local authorities have on file to provide to anyone who objects to this order, or who requests an explanation for the proposed order. Your responses to those who object should be comprehensive, and specifically address their concerns. It is in the interests of all parties to conclude this process promptly and without unnecessary delay. Ideally, consideration should be concluded 28 days (or less) after the final date in which written representations can be made.

PUBLIC INQUIRIES

22. While it is important to consider all representations, certain authorities' representations as to whether a gating order should be made will bear more significance. Consequently, an objection from these bodies will automatically cause a public inquiry to be held, if the relevant highway passes through their area. These authorities include:
- the chief officer of a police force;
 - a fire and rescue authority;
 - any council (including parish councils); and
 - an NHS trust, NHS foundation trust or NHS primary care trust.
23. Objections from these authorities should be made in writing, giving reasons for their actions, within the prescribed period of notice (which is not less than 28 days).
24. If objections are received from other individuals, the council can still conduct a public inquiry where it is appropriate to do so.
25. A gating order should not be made until this public inquiry has been concluded and a decision has been made. Consequently, before proposing a gating order, it is highly recommended that you work in partnership with these authorities to ensure that the general consensus is positive. By taking these initial steps, it should be possible to make progress without the need for a potentially costly public inquiry. If objections are still received in writing, the council can avoid an inquiry if they make the requisite changes to the proposal. Public inquiries should

only be instigated as a last resort, when fundamental differences exist between authorities that discussion and negotiation have failed to alleviate.

26. If a public inquiry is inevitable, then the council must adequately advertise this fact. This may include the display of notices in roads or delivering letters to local premises. However, local authorities must publish a notice in a local newspaper (at least once) and write to those who have already made representations as to the making of the order. Again, this notice does not have to be excessively large, but it should include:

- The title and draft of the proposed order (including its general effect);
- the name of the council;
- the identity of the relevant highway, with enough detail, either by description or specification, so that people understand which highway is being referred to;
- A statement referring to the initial notice advertising the order, notifying people that a public inquiry is to be held;
- the date, time and place of the inquiry and the name of the inspector;
- information as to where further information can be found on the proposals for the relevant gating order. Opening and closing times of these premises should be included; and
- the address to which any representations for consideration by the inspector should be sent.

Appointing an Inspector:

27. It is the responsibility of the council to appoint an individual to conduct the inquiry. The council should ensure that this inspector is suitably qualified and fully impartial. Impartiality is essential because the applying authority must be able to defend their actions in court if the situation arises where the order is legally challenged. Any evidence of the authority compromising the independence of the inquiry would invalidate the order's existence. In order to ensure that independence is preserved, it is recommended that the council appoint someone from the Planning Inspectorate.

28. The procedure of the public inquiry is determined by the inspector, but should allow any person to make representations or appear at the inquiry if they wish. The inspector may refuse to listen to any representations if he feels they are irrelevant. After the inquiry has been concluded to his satisfaction, the inspector will then be in a position to make a decision, and all relevant agencies should comply fully with the verdict.

FORM AND CONTENT OF A GATING ORDER

29. In reality, gating orders are quite simple straightforward documents. Firstly, the order must include a statement asserting that the council have met the

conditions set out in Section 129A(3) of the Highways Act, 1980. In effect, this means that you must state that the council is satisfied that anti-social behaviour and/or crime exists in the area around the gating order, that the existence of such behaviour is exacerbated by the highway and that a gating order would be beneficial for tackling crime and anti-social behaviour in the area. You will not need to include large amounts of detail and so this initial statement should be kept fairly brief.

30. In addition to the initial statement, the order should include:
- the dates and times that the public right of way will be restricted;
 - The location where the gating order will be situated;
 - details of any persons who are excluded from this restriction; and
 - the name and contact details of the person who is responsible for maintaining any gate authorised by the order.
31. There is no statutory model, upon which gating orders should be based.

REGISTER OF GATING ORDERS

32. After an order has been made, it is necessary that they continue to be exhibited in a manner that will draw people's attention to them. Prior to the making of the order a copy of the gating order should have been in place at each end of the highway for at least 28 days, inviting representations as to whether or not the order should be made. This should now be replaced by a copy of the gating order alone, in such a manner that it is still visible to members of the public. Therefore, it is recommended that this notice is again placed in a prominent position at each end of the highway. This notice should be in place for as long as the order is in force and the public's right to use the highway is suspended, and it is the council's responsibility to ensure that it remains visible and legible.
33. A copy of the order should also be placed in a prominent position in the council for at least 12 months from the date the order is made, and should also be published on the council's website as well.
34. A register of all orders and all proposed making, varying and revocation of orders should be kept and maintained by each council. This must be open between 9am and 5pm each day for inspection by members of the general public and councils must supply any copies of these documents to anyone who requests them and pays a reasonable charge, (decided by the council).

PROVISION OF KEYS AND MAPS

35. A number of individuals and groups will have legitimate purpose or business to pass through gates. These can include, but is not limited to, property owners and occupants, statutory undertakers, such as telecommunication companies and utility companies, the emergency services and of course council officers on business.

36. Therefore, early in the process of developing these gating orders, councils should undertake an assessment of the likely number of individuals needing keys to enter the particular highway subject to the gating order.
37. It is important that maps are updated quickly, and it is important that they are issued to the relevant groups who will need them. **In particular it is very important that the emergency services have access to accurate maps. Failure to provide up to date information on the limited passage of gated highways may impact on the speed at which emergency services can provide their service.**

VARYING, REVOKING AND REVIEWING A GATING ORDER

38. Once a gating order is in place, it is possible for the council who originally applied for the order to vary or revoke the order. However, any variation will need to comply with the key principles of reducing crime and anti-social behaviour while not excessively inconveniencing users of the gated highway. Consequently, to revoke or vary an order, it is necessary to follow the same procedure required for making the initial order, i.e. advertising the order in a paper, notifying relevant agencies and individuals, considering representations, and prompting a public inquiry when certain bodies object. In order to follow this correctly, the requirements set out in this guidance should be followed.
39. There is no maximum limit to how long a highway can be gated. However, it is recommended that councils review each of their orders on an annual basis. This review should evaluate whether the gating order is acting as a useful crime or anti-social behaviour reduction measure. It should also assess the impact it is having on the community and discussions should be held with local residents to gauge whether the limited access is causing excessive inconvenience.

VERSION

40. This guidance is version 1 and was published on 24 March 2006.
41. It is important that this guidance remains up to date and relevant. To help us ensure this, if you have any comments on the content or suggestions for improvements please email them to together@homeoffice.gsi.gov.uk using the subject line "Alleygating guidance".

