

REGULATORY APPRAISAL

ENVIRONMENTAL PROTECTION, WALES

THE HIGHWAYS ACT 1980 (GATING ORDERS) (WALES) REGULATIONS 2007

Background

1. Section 2 of the Clean Neighbourhoods and Environment Act 2005 (CNEA) inserts new Part 8A (sections 129A - 129G) into the Highways Act 1980 to enable local authorities to make gating orders in respect of certain highways (for example lanes and alleyways) in their areas in order to assist in the prevention of crime and anti-social behaviour. The provisions allow local authorities to restrict public access to certain public highways by gating them (at certain times of the day if applicable), without removing the underlying highway status of the route/path. In addition, the provisions also allow local authorities to revoke or amend the Orders should the circumstances leading to the making of the original order change.
2. Part 8A also permits, and in some cases requires, the National Assembly to make Regulations prescribing procedural and other requirements in relation to the exercise by local authorities, of their gating Order-making, varying and revocation powers.

Purpose and intended effect of the measure

3. These Regulations make provision for the content (e.g. the times and dates the Order will restrict access) and publicity (i.e. how they must make interested parties aware of the proposed Orders) of gating orders and any subsequent variations or revocations; on the holding of public inquiries and keeping of registers of Orders by local authorities, and other procedural matters, such as how they must make available copies of the Orders on request.

Risk Assessment

4. Implementation of these Regulations will allow local authorities to work with communities to tackle issues relating to anti-social behaviour and crime. Therefore, if these Regulations are not made local authorities would not be able to restrict access to problem highways using the gating Order provisions. Some local authorities have already gated certain highways using other means such as Road Traffic Orders. However, these are essentially a road safety measure and do not fully cover the circumstances under which gating orders would apply.

Options

Option 1: Do Nothing

5. As the Highways Act 1980 requires the National Assembly to make Regulations specifying the procedure to be followed in relation to gating Orders this option would constitute a breach of statutory duty on the part of the National Assembly. Further, the second CNEA Commencement Order

appoints the date on which these Regulations come into force as the date on which the substantive gating order provisions of the CNEA come into force. Therefore, if these Regulations are not made, local authorities will be unable to use the relevant provisions in the 1980 Act and with no options in relation to dealing with certain highways, which facilitate crime and anti-social behaviour (particularly where Road Traffic Orders would be inappropriate).

Option 2: Make the Legislation

6. These Regulations will prescribe the procedure to be complied with by local authorities when using their gating order powers under the 1980 Act to prevent public access on certain highways (at specified times to be decided by the local authorities in each case) for the purpose of preventing crime and/or anti social behaviour.

Benefits

7. The main benefits in making the Regulations are that they will:

- constitute compliance, by the National Assembly, with its statutory duties under Part 8A of the Highways Act 1980;
- specify a consistent and fair procedure to be complied with by local authorities in the exercise of their gating order functions;
- enable local authorities, in partnership with the emergency services and local communities, to take a pro-active measure to help prevent crime and anti-social behaviour;
- enable local authorities to close off certain highways (for example, lanes and alleyways) without permanently removing the rights of way attached to them; and
- enable local authorities to vary or revoke gating orders to ensure that the gates are not retained longer than necessary.

Costs

8. Local authorities receive significant funding for their Community Safety Partnership (CSP) work, which is envisaged to cover the costs of gating projects in those authorities wishing to utilise these provisions. CSPs will receive £4.3 million per year for the next 3 years (2006/7 – 2008/9) from the Assembly, via the Safer Communities Fund. In addition, the Partnerships also receive shares of two sets of core funding from the Home Office for the financial year 2006/7. This will be £4.6 million under the Building Safer Communities Fund and a further £2.3 million under the Basic Command Unit Fund, both of which could potentially be used to fund gating projects.

9. Costs to local authorities will vary depending on how much they utilise the provisions of the 1980 Act. Information gathered by Welsh Assembly Government officials indicates that gates may cost local authorities between £300 and £600 pounds to erect.

Competition Assessment

10. These Regulations do not affect business, charities and/or the voluntary sector. The competition filter was applied to the Statutory Instrument and this revealed no detrimental effect for business competition.

Consultation

With Stakeholders

11. The Welsh Assembly Government consulted on the proposed content of the regulations between 8 June 2006 and 31 August 2006. 56 responses were received on the paper, which were on the whole supportive of the proposals. Amendments were made to the Regulations as a result of the consultation responses. The summary of consultation responses has been published on the Welsh Assembly Government website and is attached at Annex A. A list of consultees is attached at Annex B.

With Subject Committee

12. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation, on 5 October 2005 (EPC(2)-11-05 (p. 7), Annex 2 item no.75, 76PE).
13. The Regulations were scrutinised on 30 November 2006 (EPC(2)-16-06(p.2). Members requested clarification on three points to which the Minister for Environment, Planning and Countryside responded. A copy of the Committee transcript is attached at Annex C. The Committee recommended approval of the Regulations without amendment.

Review

14. The Regulations will be under review in terms of their application and effectiveness; and the associated guidance will also recommend that gating orders be reviewed annually by local authorities.

Summary

15. The new provisions inserted into the Highways Act 1980 will allow local authorities to gate certain highways, which facilitate crime and anti-social behaviour. The Regulations set out the procedures authorities must follow in order to make, vary and revoke gating Orders.

Annex A

SYNOPSIS OF CONSULTATION PAPER

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

Regulations setting out the content and publicity requirements of gating orders under the 2005 Act.

Response to public consultation exercise

1. In June 2006 the Welsh Assembly Government published a consultation paper setting out proposals on the content of new regulations for gating orders under the Clean Neighbourhood and Environment Act 2005 ("the Act").

2. The consultation paper described the Welsh Assembly Government's aims in making the regulations and described the proposed content and the associated notification procedures in relation to making gating orders.

3. The consultation paper was distributed in Wales to all Unitary Authorities, emergency services, Local Access Forums and organisations with an interest in access. 56 responses were received. A list of the organisations which responded is at annex 1.

4. Equivalent regulations were brought into force in England in April 2006. However no public consultation was undertaken as the Department for Communities and Local Government considered that the consultation undertaken during the progress of the Bill through Parliament was sufficient. In Wales the Assembly Government decided to undertake consultation on the proposals for the draft provisions to ensure that the regulations were fit for purpose on implementation.

5. The key issues for consultation and a summary of the main points made in response are as follows:

Proposal 1. General principles behind gating orders.

6. The overall aim of the proposed regulations on gating orders is to develop working practices which are straightforward for the local authorities to operate and for the public to engage with; be in line with the Assembly Government's policies on access to information and e-government; and be in line with authorities' Welsh language policies. These were, on the whole, endorsed by respondents.

7. The general principles underlying the actual implementation of gating orders generated more interest in the consultation exercise. For example, a number of respondents, such as the Ramblers Association, expressed a wish to see information about alternative routes added to draft gating orders. Some highways (lanes and cul de sacs) only have one entry point. However we propose to indicate in the accompanying guidance that authorities should produce information indicating alternative routes where available.

8. A number of local authorities made useful suggestions as to what the accompanying gating guidance should include, such as further clarification on the types of highways to which these orders could be applied and what other measures may be available to authorities to tackle crime and anti-social behaviour before initiating the gating order process. These will be taken on board in drafting the guidance.

9. The Open Spaces Society and the Ramblers Association also requested that it be made clear in the regulations that highways in rural areas be made exempt from these provisions in Wales. While the provisions were originally included in the Parliamentary Bill to tackle anti-social behaviour and crime in urban areas, these can also be problems in rural areas. It is felt that there may be circumstances that would warrant gating in rural areas. For example if a right of way is the only access to a site used for illegal off-roading or raves a gate could be used to restrict public access at certain times when the problem is most apparent. For this reason, and because it would be very difficult to define "rural" in legislation, we do not recommend we make any distinction between urban and rural areas.

Proposal 2. Proposed content of the gating orders.

10. Over-all the content of the orders was agreed by respondents. However there were a few suggestions on changes such as the addition of grid references for the ways affected and a clear indication as to the coming into force date of the order. The former, in our opinion is a reasonable request and will be included in the regulations.

11. The coming into force date of the gating order will be dealt with in the guidance. We do not believe that specifying a coming into force date in Orders would be practical because those will be the dates the gates are erected. We will recommend that that is done in consultation and with the full knowledge of residents.

12. Swansea County Council requested in its response that the regulations prescribe the content and form of the gating orders. Our lawyers advise however, that if the form of the gating orders were to be prescribed in regulations then it would become very difficult to amend, and also it is suggested that authorities follow a similar format as that of Traffic Regulation Orders.

Proposal 3. Proposed publicity procedures.

13. Responses to proposals on publicity varied greatly. A number of respondents, including the Vale of Glamorgan County Council, considered the notification procedure to be excessive, but others, such as Flintshire Local Access Forum believe that a number of other interest groups should also be included as statutory consultees. We have concluded that the list should remain unchanged as it aims to strike the right balance between informing those organisations and individuals which may have a direct interest in retaining access

to the highway while also allowing local authorities to add, at their discretion, other local interests.

14. A number of respondents highlighted concerns over the inclusion in the draft regulations of the need to attach a copy of orders to each end of gated highways. Local authorities were in the main concerned about the practicalities of this provision given that the orders could be subject to vandalism. In addition, North Wales Police was concerned that the legality of the gates may be called into question if the order was missing or illegible. It is suggested therefore that this requirement be removed from the legislation and that in the guidance accompanying the regulations we would add a recommendation that local authorities use a small sign similar to that used where Traffic Regulation Orders are in place, including the phone number of a key holder.

15. Another useful suggestion for the associated guidance was made by Keep Wales Tidy. They recommended that the lead department within local authorities responsible for gating orders should liaise closely with their colleagues in cleansing departments in order to ensure that, where necessary, new collection points can be arranged and that access can be given to the gated area where required.

Proposal 4. Content and availability of registers of gating orders?

16. Comments on this aspect focussed on the potential administrative burden of creating and maintaining electronic and/or hard copy registers of orders. We do not envisage local authorities having large number of orders but even in the event that some do, the registers should not be a burden to maintain. The regulations will require registers to have an index and up to date copies of gating orders. Electronic registers will simply be a list of each order within that local authority and a link from each title on that list to a copy of the relevant order. This should not entail any special software requirements.

Proposal 5. Proposals for public inquiries?

17. The main issue raised on public inquiries was on the appointment of inspectors. The intention is to include in the guidance advice to local authorities on how to appoint an inspector. Pending final discussions with the Planning Inspectorate the Welsh Assembly Government will advise in its guidance that a planning inspector should be used. It is envisaged that few inquiries will ever be held to decide the making of gating orders as it is hoped that the emergency services, in particular, will have been adequately consulted prior to the matter reaching the notification stage.

18. A number of user groups requested that any objection to a gating order or at least objections from a significant number of neighbouring residents should automatically lead to an inquiry. However, it is believed that this will be onerous on local authorities which will have the ability to hold inquiries on the basis of any objection should they believe it is merited. It will be a matter for the local authorities as to whether objections other than those by the emergency services warrant a public inquiry.

General points made

19. A number of respondents were concerned with where funding for gating projects would come from. It is envisaged that funding for gating under these proposed regulations would come from the Community Safety Partnerships who in turn are financed by the Welsh Assembly Government.

20. We think it sensible not to regulate on a timetable for reviewing gating orders as this is something for the local authorities to decide in each case. It is not our intention to burden authorities unnecessarily, however, we will suggest in guidance that each order is reviewed annually as it important that any closures under this legislation are not seen as a means of permanently closing off highways.

Conclusion

21. The responses to the consultation exercise largely endorsed the proposals made in the paper. In light of the comments made certain improvements will now be made to the regulations, as noted above, and incorporated into the associated guidance.

Countryside Access and Sponsorship Branch
October 2006

Annex B – List of Consultees

- ◆ Bay of Colwyn Town Council
- ◆ Blaenau Gwent County Borough Council
- ◆ Brecon Beacons Eastern Area Local Access Forum
- ◆ Brecon Beacons National Park Authority
- ◆ Bridgend County Council
- ◆ Bridgend Community Safety Partnership
- ◆ British Horse Society
- ◆ Byways and Bridleways Trust
- ◆ Ceredigion Community Safety Partnership
- ◆ Ceredigion County Council
- ◆ Ceredigion Local Access Forum
- ◆ City and County of Swansea
- ◆ Conwy County Borough Council
- ◆ Countryside Recreational Access Group
- ◆ Defence Estates
- ◆ Denbighshire County Council
- ◆ Environment Agency Wales
- ◆ Flintshire Local Access Forum
- ◆ Gwent Police
- ◆ Gwent Police Authority
- ◆ Gwynedd Council
- ◆ Keep Wales Tidy
- ◆ Mid & West Wales Fire and Rescue Service
- ◆ Monmouthshire Community Safety Partnership
- ◆ Monmouthshire County Council
- ◆ Neath Port Talbot County Borough Council
- ◆ Neath Port Talbot Local Access Forum
- ◆ Newport City Council
- ◆ North Wales Police
- ◆ One Voice Wales
- ◆ Open Spaces Society
- ◆ Pembrokeshire County Council
- ◆ Pembrokeshire Local Access Forum
- ◆ Pencoed Town Council
- ◆ Police Authorities of Wales
- ◆ Powys County Borough Council
- ◆ Ramblers Wales
- ◆ Rhondda Cynon Taf County Borough Council
- ◆ Rights of Way Review Committee
- ◆ Snowdonia National Park Authority
- ◆ Snowdonia National Park Northern and Southern Local Access Forums
- ◆ South Wales Police
- ◆ Torfaen County Borough Council
- ◆ Torfaen Local Access Forum
- ◆ Vale of Glamorgan Council

- ◆ Welsh Council for Voluntary Action
- ◆ Welsh Local Government Association
- ◆ Welsh Water
- ◆ Wrexham County Borough Council
- ◆ Wrexham Local Access Forum

Annex C – EPC Committee Transcript

Is-ddeddfwriaeth: Rheoliadau Deddf Priffyrdd 1980 (Gorchymyn Lliidiartu)(Cymru) 2006

Subordinate Legislation: The Highways Act 1980 (Gating Orders) (Wales) Regulations 2006

[57] **Glyn Davies:** We have had no notice of any amendments to the legislation. Joaneest tells me that there is a degree of flexibility here and there, but it is fairly minor stuff, and she did not have any particular points that she wants to raise. Do any Members wish to raise anything on the subordinate legislation? Lorraine, do you want to come in? It is item 4.

[58] **Lorraine Barrett:** I am sorry, I am still waking up. I very much welcome these Orders, and, in parts of my constituency, people are just waiting to have gates put up in back lanes where there is a history of people behaving anti-socially and where there have been some pretty nasty goings on. Minister, I have experience in my constituency of the closure of gullies, which is a long, drawn-out legal process—if one resident objects then the whole thing has to go through an even longer legal process. I have read the regulations quite closely and I think that they are pretty straightforward, but will the Minister give some clarification on how difficult it would be to fit a gate—once you get the local authority, the police and the crime reduction partnership to agree that a particular lane fits the criteria to have a gate fitted and that the funding is in place—if some residents objected, for instance, to it being fitted in a particular place?

[59] My other concern is about houses in multiple occupation, which could contain six, eight or 10 separate bedsits or flats. How will it be ensured that everyone living in such houses is made aware that a gate will be placed in the lane? If people object, would that hold up the process?

[60] **Carwyn Jones:** The regulations specify the process that must be followed in such cases, and, under regulation 3, there are several hurdles that a council must overcome before making a gating order. One hurdle is that the council should invite written representations and also ensure that publicity is handed out at various points, such as public access points, so that people are aware of the proposal to make a gating order. If a chief police officer, a fire and rescue authority or an ambulance trust object to the gating order, a public inquiry would occur. If there are objections from members of the public, then regulation 5 makes it clear that the council must consider any representations made by members of the public. However, individual members of the public or individual groups do not have a veto.

[61] **Lorraine Barrett:** I welcome these regulations even more so, therefore, and I am very pleased that it is a much more simplified process than has been the case with other closures that I know about. This will make such a difference to our communities. I was pleasantly surprised at the relatively low cost of the gates, because I had it in my mind that we would be talking about thousands of pounds for each gate, but we are talking about hundreds of pounds. I am also

grateful for the comment in the paper that funding is provided from the Welsh Assembly Government to the crime reduction partnerships, which will now allow councils to access the money to put these things in place.

[62] I cannot see many reasons for refusals where the criteria are met. Obviously, you cannot just have one person who lives in a particular street saying, 'I want a gate, because I got broken into once around the back way'. However, we have real issues in some areas, where there are consistent problems of drugs, prostitution, fly-tipping, and so on, and this will make a big difference to many people's lives. So, thank you for this—I look forward to it going through.

[63] **Glyn Davies:** I believe that there has been a general welcome from the opposition to this proposal—you would normally hear if there were any objections, but I have not heard any. Therefore, there are no suggestions of amendments—we are happy to support that as it stands.