Countryside and Rights of Way Act 2000

2000 CHAPTER 37

PART II

PUBLIC RIGHTS OF WAY AND ROAD TRAFFIC

Removal of obstructions from highways

63 Enforcement of duty to prevent obstructions.

(1) After section 130 of the 1980 Act there is inserted—

"**130A Notices to enforce duty regarding public paths.**

(1) Any person who alleges, as respects any highway for which a local highway authority other than an inner London authority are the highway authority—

(a) that the highway falls within subsection (2) below, and

(b) that it is obstructed by an obstruction to which this section applies,

may serve on the highway authority notice requesting them to secure the removal of the obstruction from the highway.

(2) A highway is within this subsection if it is—

(a) a footpath, bridleway, or restricted byway, or

(b) a way shown in a definitive map and statement as a restricted byway or a byway open to all traffic.

(3) Subject to subsection (4) below, this section applies to an obstruction of the highway if the obstruction is without lawful authority and either—

(a) the powers conferred by section 143, 149 or 154 below are exercisable in respect of it, or

(b) it is of a description prescribed by regulations made by the Secretary of State and the authority have power (otherwise than under any of those sections) to secure its removal.

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(4) This section does not apply to an obstruction if—

(a) it is or forms part of—

(i) a building (whether temporary or permanent) or works for the construction of a building, or

(ii) any other structure (including a tent, caravan, vehicle or other temporary or movable structure) which is designed, adapted or used for human habitation,

(b) an order may be made in respect of it under section 56 above, or

(c) the presence of any person constitutes the obstruction.

(5) A person serving a notice under subsection (1) above must include in the notice the name and address, if known to him, of any person who it appears to him may be for the time being responsible for the obstruction.

(6) A highway authority on whom a notice under subsection (1) above is served shall, within one month from the date of service of the notice, serve—

(a) on every person whose name and address is, pursuant to subsection (5) above, included in the notice 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, a notice informing that person that a notice under subsection (1) above has been served in relation to the obstruction and stating what, if any, action the authority propose to take, and

(b) on the person who served the notice under subsection (1) above, a notice containing the name and address of each person on whom notice is served under paragraph (a) above and stating what, if any, action the authority propose to take in relation to the obstruction.

(7) For the purposes of this section the persons for the time being responsible for an obstruction include the owner and any other person who for the time being—

(a) has possession or control of it, or

(b) may be required to remove it.

(8) A notice under subsection (1) or (6) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

(9) In this section "inner London authority" means Transport for London, the council of an inner London borough or the Common Council of the City of London.

(10) Subsection (2) above has effect until the commencement of section 47 of the Countryside and Rights of Way Act 2000 with the substitution for the references to a restricted byway and to a way shown in a definitive map and statement as a restricted byway of a reference to a way shown in a definitive map and statement as a road used as a public path.

130B Orders following notice under section 130A.

(1) Where a notice under section 130A(1) above has been served on a highway authority in relation to any obstruction, the person who served it, if not

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satisfied that the obstruction has been removed, may apply to a magistrates' court in accordance with section 130C below for an order under this section.

(2) An order under this section is an order requiring the highway authority to take, within such reasonable period as may be fixed by the order, such steps as may be specified in the order for securing the removal of the obstruction.

(3) An order under this section shall not take effect—
   (a) until the end of the period of twenty-one days from the day on which the order is made; or
   (b) if an appeal is brought in respect of the order within that period (whether by way of appeal to the Crown Court or by way of case stated for the opinion of the High Court), until the final determination or withdrawal of the appeal.

(4) Subject to subsection (5) below, the court may make an order under this section if it is satisfied—
   (a) that the obstruction is one to which section 130A above applies or, in a case falling within subsection (4)(a)(ii) of that section, is one to which that section would apply but for the obstruction having become used for human habitation since service of the notice relating to it under subsection (1) of that section,
   (b) that the way obstructed is a highway within subsection (2) of that section, and
   (c) that the obstruction significantly interferes with the exercise of public rights of way over that way.

(5) No order shall be made under this section if the highway authority satisfy the court—
   (a) that the fact that the way obstructed is a highway within section 130A(2) above is seriously disputed,
   (b) on any other grounds, that they have no duty under section 130(3) above to secure the removal of the obstruction, or
   (c) that, under arrangements which have been made by the authority, its removal will be secured within a reasonable time, having regard to the number and seriousness of obstructions in respect of which they have such a duty.

(6) A highway authority against whom an order is made under this section shall, as soon as practicable after the making of the order, cause notice of the order and of the right to appeal against it to be displayed in such manner and at such places on the highway concerned as may be prescribed by regulations made by the Secretary of State, and the notice shall be in such form and contain such information as may be so prescribed.

(7) An order under this section may be varied on the application of the highway authority to whom it relates.

130C Section 130B: procedure.

(1) A person proposing to make an application under section 130B above shall before making the application serve notice of his intention to do so on the highway authority concerned.

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(2) A notice under subsection (1) above shall be in such form and contain such information as may be prescribed by regulations made by the Secretary of State.

(3) The notice may not be served before the end of two months beginning with the date of service on the highway authority of the notice under section 130A(1) above ("the request notice").

(4) An application in respect of which notice has been served under subsection (1) above may be made at any time—

(a) after the end of five days beginning with the date of service of that notice, and

(b) before the end of six months beginning with the date of service on the highway authority of the request notice.

(5) On making the application the applicant must give notice to the court of the names and addresses of which notice was given to the applicant under section 130A(6)(b) above.

(6) On the hearing of the application any person who is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application relates has a right to be heard as respects the matters mentioned in section 130B(4) above.

(7) Notice of the hearing, of the right to be heard under subsection (6) above and of the right to appeal against a decision on the application shall be given by the court to each person whose name and address is notified to the court under subsection (5) above.

130D Section 130B: costs.

Where an application under section 130B above is dismissed by virtue of paragraph (a), (b) or (c) of subsection (5) of that section, the court, in determining whether and if so how to exercise its power under section 64(1) of the [M1]Magistrates' Courts Act 1980 (costs), shall have particular regard to any failure by the highway authority to give the applicant appropriate notice of, and information about, the grounds relied on by the authority under that paragraph."

(2) In section 317 of the 1980 Act (appeals to the Crown Court from decisions of magistrates' courts) after subsection (2) there is inserted—

"(3) Any person who, in relation to the decision of a magistrates' court on an application under section 130B above, does not fall within subsection (1) above but—

(a) is, within the meaning of section 130A above, a person for the time being responsible for the obstruction to which the application related, or

(b) when the application was heard, was such a person and was, or claimed to be, heard on the application,

may appeal to the Crown Court against the decision on any ground relating to the matters mentioned in section 130B(4) above."

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Commencement Information

I1 S. 63 in force at 13.2.2004 for E. by S.I. 2004/292, **art. 2(a)**

I2 S. 63 in force at 1.4.2004 for W. by S.I. 2004/315, **art. 2(a)**

Marginal Citations

M1 1980 c. 43.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

– Blanket amendment words substituted by S.I. 2011/1043 art. 34

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 15(1)(e) and word inserted by 2023 asc 3 Sch. 13 para. 179
– s. 55A inserted by 2015 c. 20 s. 20
– s. 56A inserted by 2015 c. 20 s. 21
– s. 56B inserted by 2015 c. 20 s. 22(1)