

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Crime and Disorder

Section 2 Gating orders

20. **Section 2** inserts a new part (Part 8A) in the Highways Act 1980. This section provides local authorities with a means to erect, or allow the erection of, a physical barrier to restrict public access to a highway over which the public would normally have a right of passage.
21. In built-up areas there are many minor highways giving rear and side access to properties and providing shortcuts between blocks of properties. They range from narrow footpaths and alleyways to highways capable of accommodating vehicular traffic. Some of these highways provide opportunities to access the rear of properties for illegal entry and concealment and cover for criminal acts and anti-social behaviour. This power will predominantly be used to address crime and anti-social behaviour in built-up areas.
22. ‘Gating’, that is, blocking some or all of the access points to the highway using metal gates, may reduce these problems. This section provides a means whereby a local authority may ‘gate’ a highway, where they would otherwise have a duty both to assert and protect the rights of the public to use the highway and to prevent its obstruction.
23. Section 129A provides for a local authority to make a ‘gating’ order in respect of a highway that is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affects local residents or businesses. This section excludes certain types of public highway by definition.
24. A gating order would restrict the public right of way over the highway and, where necessary, authorise the installation of gates or barriers to enforce the restrictions.
25. Section 129B sets out the extent of the restrictions a gating order may impose on the public right of way over the highway. This includes restricting access for certain periods or times of the day or at all times. Access for occupiers of premises adjoining or adjacent to the highway cannot be restricted, nor can a gating order be made if it forms the only or principal means of access to dwellings. If it forms the only or principal access to premises used for business or recreational purposes, it cannot restrict access during the times of day when these premises are normally used.
26. Certain people may be specified in the order to be exempted from the restriction, such as emergency services and those with a legitimate reason for accessing any premises adjacent to the highway. In practice, this would involve the provision of keys to such

*These notes refer to the Clean Neighbourhoods and Environment
Act 2005 (c.16) which received Royal Assent on 7 April 2005*

people, or the opening of the gates during certain times/periods when such people would expect to use the highway.

27. This power does not permanently extinguish rights of way, making it possible to subsequently revoke the restrictions and reinstate the public's right to use the highway, if appropriate.
28. Section 129C sets out the procedures a local authority must follow in making a gating order. A local authority is required to notify occupiers of properties affected by the order, and others to be specified by regulation, and take their representations into account. They must also hold a public inquiry in any circumstances which might be provided for in regulations. Section 129C also provides for regulations setting out the detailed procedures for public consultation.
29. Section 129D enables a person to challenge the validity of a gating order in the High Court on certain specified grounds. On an application under this section the Court may suspend, quash or allow the gating order to stand.
30. Section 129E requires a gating order to be publicised and made available for public scrutiny.
31. Section 129F sets out the circumstances in which a gating order may be revoked or varied and the procedures for doing so. It also enables regulations relating to revocation or variation to be made.