

Annex 4

Summary of Legislative Requirements and Home Office Guidance for Gating Orders

1. Section 129A of the Highways Act 1980 (as amended) by the Clean Neighbourhoods and Environment Act 2005 (CNE) allows local authorities to make Gating Orders to restrict public access over any relevant highway (as defined by S129A(5)) to reduce and prevent crime and anti-social behaviour. In order that a highway can be considered for a Gating Order, it must be demonstrated that it meets all of the following legislative requirements:
 - a) Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
 - b) The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
 - c) It is in all circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour. This means that the following has to be considered:
 - (i) The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
 - (ii) The likely effect of making the order on other persons in the locality; and
 - (iii) In a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
2. Home Office Guidance 2006 suggests that the council should give consideration as to whether there are alternative interventions that may be more appropriate to combat crime and anti-social behaviour before considering the use of a Gating Order. Alternative methods of crime prevention carried out in the Scarcroft View area to date are patrolling, offender-based operations and media campaigns to raise awareness about securing premises.
3. Access along a route which is restricted by a Gating Order is given to residents adjacent to or adjoining the restricted route (HA1980 S129B (3)) and anyone who has a private right of access over it (Gating Orders can only be made to restrict Public Rights of Way).
4. Although a Gating Order restricts public use over a route, its highway status is retained, thus making it possible to review the need for the order. Home Office Guidance 2006 recommends that this review be carried out on an annual basis.

5. As set out by S129F HA1980, a gating order may be varied or revoked. Subsections (1), (2) and (3) set out when this course of action should be taken:
- (1) A council may vary a gating order made by them so as further to restrict any public rights of way over the highway to which the order relates, if they are satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.
 - (2) A council may vary a gating order made by them so as to reduce the restriction imposed by the order, if and to the extent that they are satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime and anti-social behaviour.
 - (3) A council may revoke a gating order made by them, if they are satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.