

Annex 5: Summary of Legislative Requirements and Home Office Guidance

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 this area of Micklegate to date are patrolling, offender-based operations and police and media campaigns to raise awareness about securing premises. These include the Operation Joypad and Light-up Lock-up campaigns.

3. Although a Gating Order restricts public use over a route, its highway status is retained, thus making it possible to revoke or review the need for the Order. Home Office Guidance 2006 recommends that this review be carried out on an annual basis.
4. 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).
5. Any person may apply to the High Court for the purpose of questioning the validity of a Gating Order on the ground that-
 - (i) the Council had no power to make it; or
 - (ii) any requirement under the legislation was not complied with in relation to it.

An application under this section must be made within a period of six weeks beginning with the date on which the gating order is made.

6. In making a decision to make a Gating Order, the Council must have regard to the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. This says that the Council is required to have due regard in decision making to the need to:
 - a) eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct;
 - b) advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - c) foster good relations between those who share a relevant characteristic and those that do not share it including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, marriage/civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

7. The Council is obliged to consider any representations made. Regulation 5 of the Gating Order Regulations states:
“5. A council shall consider any representations as to whether or not the proposed gating order should be made whether in response to a notice under regulation 3 or otherwise.”