

## Public Guidance Note 4

### Unlawful Obstruction of Public Rights of Way

#### What the Law Says

It is a criminal offence to unlawfully obstruct free passage along a highway.

A highway is defined as any way over which the public have a right to pass and repass.

The term Public Rights of Way is used to collectively refer to four categories of minor highway, these being: Public Footpaths, Public Bridleways, Restricted Byways, and Byways Open to all Traffic (BOATS)

#### **Common Law**

The obstruction of a highway is a public nuisance. A nuisance is something that materially affects the reasonable comfort and convenience of the public when exercising their lawful rights. To commit a public nuisance is a crime in Common Law.

#### **Highways Act 1980**

Section 137 of this Act makes it a criminal offence for any person, without lawful authority or excuse, to in any way, wilfully obstruct free passage along a highway.

A person found guilty of an offence under this section of the Act is liable **to imprisonment for a term not exceeding 51 weeks or a fine or both.**

Section 143 of this Act gives us authority to serve notice on the person having control or possession of a structure that is causing an obstruction to remove it within a specified period of time.

If the obstruction is not removed within the given time, we can remove it and recover the costs that we reasonably incurred during these works.

#### **Countryside and Rights of Way (CROW) Act 2000**

Under section 64 of the CROW Act, a court has the power to order anyone convicted of an offence under Section 137 of the Highways Act (1980), to remove the offending obstruction(s) if it is in that person's power to do so.

Failure to comply with such a court order is a second offence and is punishable by a fine of up to **£5000.**

If the obstruction is not removed following conviction for the second offence, then a third offence is being committed and is punishable by an additional fine of up to **£250 for each day** that the obstruction(s) remains in place.



## **Cross Compliance**

We can notify the Rural Payments Agency if Public Rights of Way are not open and accessible. The wilful obstruction of a Public Right of Way is a breach of Cross Compliance GAEC 7b: Public Rights of Way. This could affect future payments that the landowner receives.

## **What Could Constitute an Obstruction?**

An obstruction, in relation to a highway, has been defined as, 'something which permanently or temporarily removes the whole or part of the highway from the public's use altogether'.

Common obstructions that we take enforcement action on are: arable crops, fences, walls, buildings, deposits of materials (e.g., silage bales or manure heaps), locked gates, cattle grids, planted trees and parked vehicles.

Anything that is placed in such a way as to obstruct in full or reduce the width of a Public Right of Way is an obstruction, even if a user could easily pass around it.

## **Obstruction by Natural Vegetation**

In the majority of cases, managing natural vegetation growing up from the surface of a highway is our responsibility as the Local Highway Authority.

Any vegetation growing into the Public Right of Way from either side, or down into it from above, is usually the responsibility of the landowner to maintain.

Under section 154 of the Highways Act 1980, we can require a landowner or occupier to cut back vegetation of any description which overhangs a Public Right of Way, if it endangers or obstructs the passage of the highway's legitimate users.

This can be done by way of a legal notice served on the landowner.

The landowner has the option of appealing to a magistrate to have the notice set aside.

Subject to any appeal, if work to remove the encroaching vegetation is not completed within the period of time specified in the notice, we can undertake the work required by the notice ourselves. We can recharge the landowner for the reasonable costs that we incur during these works.

## **Users Bypassing or Removing an Obstruction.**

Users can leave the highway and take a short alternative route around an obstruction. This is so long as the land that users enter is under the same ownership as the land where the obstruction is located.

Alternatively, users can remove only as much of the obstruction as is necessary for them to get through the obstruction and continue along the highway.



## **Further Information**

Where a landowner or occupier has any doubts as to whether they are obstructing a Public Right of Way, they should consult the Rights of Way Team for advice. Contact details for this team are provided at the top of the first page of this public guidance note.

