

Section 63 Highways Act 1980 – Removal of Obstructions on Rights of Way

Background note

The legislation

1. Section 63 of the Countryside and Rights of Way Act 2000 came into force in February 2004. It inserts new sections 130A to D into the Highways Act 1980. These provisions enable any person to require a highway authority to secure the removal of certain types of obstructions, and to apply to a magistrates' court for an order if the obstruction is not removed.

2. When the Regulatory Impact Assessment was prepared for this part of the CROW Act it was not known how many notices would be served by members of the public on their local highway authority requesting the removal of an obstruction. The figure was estimated anywhere between 700 and 6,000 cases per year.

3. It was assumed that local highway authorities would fail to comply with a proportion of notices and that members of the public would then seek redress in the courts. It was not known what proportion this would be.

Survey results

4. In July and August this year Defra surveyed all of the unitary, metropolitan districts and county councils in England to identify how many notices they had received under the new provisions, and how many of these had ended up in the courts. We had responses from 106 of the 116 councils we contacted.

5. There were **391 notices** served between February 2004, when the legislation came into force, and July/August 2005. Of these only **5 reached the magistrates' court.**

6. We did not contact London Boroughs, of which there are about 16 to which the legislation also applies, but we have no reason to believe the picture there is any different. This would bring the total number of authorities in England to 132.

7. At an average of 4 notices per authority there may have been 528 notices served in the first 18 months, and 6 or 7 cases which reached the magistrates' court.

8. The 5 cases which reached the magistrates' courts were in Dorset (1), Derbyshire (1), Herefordshire (2) and Plymouth (1). A spreadsheet setting out the results of the survey is attached. We are aware that the recent case in Dorset became drawn out after the hearings were postponed several times at the request of the local highway authority.

Conclusion

9. We see no reason why the number of cases should go up substantially in the future. The legislation is now well bedded in and has been widely publicised. Far fewer members of the public are using the new procedure than expected, and it is clear that most of these can be resolved without recourse to the courts.

10. It is possible that the problem this legislation was meant to deal with is not as bad as was first thought i.e. on the whole local highway authorities do act promptly to clear obstructions; or that the new legislation has spurred local highway authorities into action much earlier than anticipated. We suspect it is a mixture of both.

DEFRA October 2005

Section 63 CROW - LA cases since February 2004 (as at August 2005)

Type - 1= County Council, 2=Unitary Council, 3= MBC, 4=Outer London Authority

Authority	Type	Total cases	Magistrates' Court
Bedfordshire	1	6	0
Buckinghamshire	1	0	0
Cambridgeshire	1	0	0
Cheshire	1	0	0
Cornwall	1	3	0
Cumbria	1	1	0
Derbyshire	1	27	1
Devon	1	1	0
Dorset	1	4	1
Durham	1	1	0
East Sussex	1	0	0
Essex	1	6	0
Gloucestershire	1	6	0
Hampshire	1	20	0
Hertfordshire	1	20	2
Kent	1	1	0
Lancashire	1	1	0
Leicestershire	1	1	0
Lincolnshire	1	1	0
Norfolk	1	1	0
Northamptonshire	1	0	0
Northumberland	1	6	0
Nottinghamshire	1	0	0
Nth Yorkshire	1	7	0
Oxfordshire	1	0	0
Shropshire	1	4	0
Somerset	1	60	0
Staffordshire	1	11	0
Suffolk	1	6	0
Surrey	1	1	0
Warwickshire	1	2	0
West Sussex	1	0	0
Wiltshire	1	30	0
Worcestershire	1	1	0
Bath, NE Somerset	2	0	0

Authority	Type	Total cases	Magistrates' Court
Blackburn	2	0	0
Blackpool	2	2	0
Bournemouth	2	17	0
Bracknell Forest	2	0	0
Brighton	2	0	0
Bristol City	2	6	0
Darlington	2	0	0
Derby	2	1	0
East Riding of Yorkshire	2	2	0
Halton	2	0	0
Hartlepool	2	0	0
Herefordshire	2	2	0
Isle of Wight	2	0	0
Kingston upon Hull	2		
Leicester city	2		
Luton	2	1	0
Medway Towns	2	0	0
Middlesbrough	2	0	0
Milton Keynes	2	2	0
N Somerset	2	11	0
NE Lincs	2	0	0
North Lincs	2	0	0
Nottingham City	2	0	0
Peterborough	2	0	0
Plymouth	2	1	1
Poole	2	0	0
Portsmouth	2		
Reading	2	0	0
Redcar	2	1	0
Rutland	2	1	0
Slough	2	0	0
South Gloucestershire	2	6	0
Southampton	2	0	0
Southend on Sea	2	0	0
Stockton on Tees	2	0	0
Stoke on Trent	2	0	0
Swindon	2	0	0
Telford	2	2	0

Authority	Type	Total cases	Magistrates' Court
Thurrock	2	0	0
Torbay	2	0	0
Warrington	2	0	0
West Berkshire	2	0	0
Windsor and Maidenhead	2	0	0
Wokingham	2	0	0
York	2	0	0
Barnsley	3	0	0
Birmingham	3	0	0
Bolton	3	1	0
Bradford	3	46	0
Bury	3	0	0
Calderdale	3	2	0
Coventry	3	0	0
Doncaster	3	0	0
Dudley	3	0	0
Gateshead	3	15	0
Kirklees	3	3	0
Knowsley	3	0	0
Leeds	3	0	0
Liverpool	3	0	0
Manchester	3		
Newcastle upon Tyne	3	0	0
North Tyneside	3		
Oldham	3	0	0
Rochdale	3	2	0
Rotherham	3	1	0
Salford	3	1	0
Sandwell	3	3	0
Sefton	3	0	0
Sheffield	3	0	0
Solihull	3	0	0
South Tyneside	3		
St Helen's	3	0	0
Stockport	3	0	0
Sunderland	3	0	0
Tameside	3	30	0
Trafford	3		

Authority	Type	Total cases	Magistrates' Court
Wakefield	3	1	0
Walsall	3	0	0
Wigan	3	2	0
Wirral	3	1	0
Wolverhampton	3	0	0
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