

**BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
27 OCTOBER 2008**

DRAFT GATING ORDER POLICY

(Joint Report of the Director of City Development and Director of Neighbourhoods)

(Ward: All)

Purpose of Report

1. To advise the committee of the draft Gating Order Policy, Procedure and Practice document and request their views and suggestions on its content, prior to final approval by the Executive Members for Sustainable Development and for Care, Tackling Deprivation and Crime.

Background

2. As reported to this Committee on 24 July 2006, the Highways Act 1980 (Gating Orders) (England) Regulations 2006 brought into effect discretionary powers under Sections 129A to 129G of the Highways Act 1980 for the Highway Authority to make and revoke gating orders for certain highways in order to prevent crime or antisocial behaviour (ASB) on or adjacent to the highway. The provision is intended to be used as a deterrent to allow temporary closures in those cases where it can be demonstrated that a highway is facilitating high and persistent levels of crime and/or anti-social behaviour. Following the reduction of crime or ASB, the restrictions can be varied or revoked.

Procedure

3. The consideration of applications for Gating Orders is a statutory function and the decision on whether to make an Order is currently an executive function. The draft policy document at Appendix 1 sets out in detail the extent of the new powers and a number of practical matters that must be addressed to ensure its effective administration. It outlines the legislative procedure and the recommended criteria to be met for Gating Order applications, as set out in the Regulations and associated government guidance. The Council will only exercise its discretion to make an order if it is satisfied that the order is capable of being confirmed (i.e. that the legislative tests are met) and it is reasonable to do so with reference to the criteria.

4. The policy makes clear that gating orders are not the only solution to tackling crime and ASB and that alternative interventions may be more appropriate and cost effective for tackling the problems associated with the highway. It is also made clear that these alternative interventions will be the responsibility of the applicant to resource and deliver, and not the Highway Authority.
5. Under Regulation 17, Bristol City Council is required to maintain a register of Gating Orders containing copies of published Notices of proposals for Gating Orders and Orders made and to ensure the same information is posted on its website. It is recommended that an annual review period is set and recorded in the Register for any Gating Order made.

Conclusion:

6. There are matters associated with the making of Gating Orders where a clear policy and process would be of benefit in enabling Officers and Members to reach an informed decision on each application, report objections to Orders and administer the statutory provisions effectively. The draft policy establishes clear guidelines on the criteria to be met and the financial obligations for applicants; in particular it is expected that the legal costs of processing orders and costs involved in the purchasing, installation, maintenance and operation of gates will be met by applicants.
7. An accurate assessment of the resources required for administering Gating Orders will not be possible until the provisions are widely understood following the initial processing of such applications. For example, Highways Asset Management have raised concerns regarding the routine maintenance of gated paths, e.g. lighting and gullies, and the need to ensure that works associated with the gating comply with appropriate legislation. Consequently, it is proposed that the draft Policy is kept under regular review.
8. Members are requested to forward any comments or suggestions that they may have on the draft Policy to the author of this report. Any comments raised will be taken into account in the final draft that will be submitted for approval to the Executive Members for Sustainable Development and for Care, Tackling Deprivation and Crime.

Consultation

Internal - Highway Asset Management, City Development; Equalities, Community Safety, Environmental Services and Anti Social Behaviour teams, Neighbourhoods.
External – Rights of Way Liaison Group

Other Approvals Necessary

The draft policy before this Committee has been set out with input from the Safer Bristol Partnership. It is also proposed to invite the Police and members of the Joint Local Access Forum (JLAF) to comment on the final draft before seeking approval from the Executive Members (Sustainable Development) and (Care, Tackling Deprivation and Crime). There is a statutory requirement to consult the JLAF over gating order applications.

Appendices

Appendix 1 – Draft Gating Order Policy, Procedure and Practice Document (including Annex 1-4).

Policy Implications

Applications for orders will be dealt with under the criteria set out within the Policy, and any subsequent Orders will be made under s.129A-129G of the Highways Act 1980.

The new powers conflict with the Council's statutory duty under s.130 Highways Act 1980 to assert and protect the rights of the public to the use and enjoyment of highways, as gating does not extinguish the public right but does make it an offence to exercise that right (s.129A).

There is also a potential conflict with the Council's adopted strategies to increase levels of walking and cycling as outlined in the Bristol Local Plan and Joint Local Transport Plan: e.g. Safer routes to school, Walking and Cycling Strategies and the Joint Public Rights of Way Improvement Plan 2007-2011.

Consideration must also be given to s.17 of the Crime and Disorder Act 1998, which although without prejudice to any other obligation imposed upon this authority, requires authorities to consider crime and disorder reduction and community safety in the exercise of all their duties and activities.

Resource Implications

There are costs associated with the provision of other ways of addressing issues of crime and ASB - such as improvements, upgrading, cleaning, and lighting of the highway - which the Highway Authority will be required to consider and implement if appropriate prior to making a gating order. This will ensure that all requirements of the legislation are complied with to enable to Council to make

an informed decision when making a gating order. It is anticipated that funds will be identified within the relevant cross directorate departmental budgets.

Officer time will also be incurred in carrying out the required preliminary investigation and informal consultation on each application before a Gating Order can be made. Should a proposal be received to gate a highway under Section 129A and objections are received from specified authorities, then a Public Inquiry must be held with the associated costs.

Legal Implications

As indicated in this report the new powers under Section 129A-129G of the Highways Act 1980 allows the gating of minor highways, which can sometimes be seen to facilitate anti-social/illegal behaviour. Gating Orders will provide 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.

It should be noted that the gating of a highway does conflict with the Council's duty both to 'assert and protect' the rights of the public to use the highway and to prevent obstruction. Therefore, a balance will need to be struck between the above-mentioned conflicting policies, strategies and duties when considering proposals for gating orders, where concrete evidence indicates that the proposal will prevent or reduce crime and anti-social behaviour.

Each case will inevitably raise questions of proportionality and balance depending on the facts. Access may be permitted 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 where a way forms the only or principal means of access to dwellings/businesses. It will also provide for exemptions, such as for emergency service access. Gating Orders will not extinguish rights of way nor will the status of the highway be affected. It will also be possible to revoke or vary an Order at a later date.

The Secretary of State has, as already mentioned, made procedure regulations - including the need to advertise proposals and consideration of any representations. There is also provision for public inquiries in certain cases.

At the time of writing, there has as yet been no amendment to the Local Authorities (Functions and Responsibilities) Regulations 2000 to deal with this new power thereby making it a regulatory function. Until there is, the decision on whether to

promote a Gating Order will be an executive function delegated to the appropriate Director.

The draft policy will be checked by the Legal Services Team and appropriate representations (if any) will be made.

(Legal Advice given by Kevin Hill, Senior Solicitor (Planning), Legal Division, Central Resources.)

Recommended: That the report be noted

Local Government (Access to Information) Act 1985 Background Papers

1. Report of 24 July 2006 to the Public Rights of Way and Greens Committee advising Members of the commencement of the provisions of the Clean Neighbourhoods and Environment Act 2005 (Section 2) in respect of Gating Orders and the related procedure regulations.
2. 'Clean Neighbourhoods and Environment Act 2005 – Guidance Relating to the Making of Gating Orders', The Home Office, March 2006.
3. The Highways Act 1980 (Gating Orders) (England) Regulations, 2006 (S.I. 2006 No. 537).
4. Cambridgeshire County Council Gating Order Policy, undated.
5. City of York Council Gating Order Policy, Procedure and Practice Document, 26 March 2007.
6. Birmingham City Council Deployment Flowchart, undated.

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**GATING ORDER POLICY,
PROCEDURE & PRACTICE DOCUMENT**

**SECTIONS 129A to 129G OF THE HIGHWAYS ACT 1980
(Inserted by the Clean Neighbourhoods
and Environment Act 2005)**

October 2008

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A INTERPRETATION

1. This policy shall apply to highways referred to in the legislation as ‘relevant highways’, i.e. those footpaths, bridleways or restricted byways recorded on the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense. It may also include ‘Gulliksen’ estate paths over which the public has access [Gulliksen v Pembrokeshire County Council (2002)], but does not include motorways, trunk roads or classified roads.
2. Although a Gating Order will prevent or limit the use of a highway, it does not remove the highway rights associated with it. An order may, in appropriate circumstances, limit the use of the highway to certain times of the day and orders may be varied or revoked should the crime or anti-social behaviour be reduced.
3. A Gating Order may authorize the installation, operation and maintenance of a barrier to enforce the restriction or closure. A council may install, operate and maintain any authorized barrier.
4. This document sets out Bristol City Council’s policy and procedure for dealing with requests for Gating Orders and the implementation of any subsequent works.

B INTRODUCTION

5. Powers to divert or extinguish certain public highways for the purposes of crime prevention, i.e. Special Diversion or Extinguishment Orders under Sections 118B & 119B of the Highways Act 1980, were first introduced by the Countryside and Rights of Way Act 2000. The powers could only be exercised in areas designated for the purposes of crime prevention by the Secretary of State, or on school premises, and were viewed as a measure of last resort as any resulting diversion or extinguishment of a highway was irrevocable.
6. On the 1st April 2006 the Highways Act 1980 (Gating Orders) (England) Regulations 2006 came into force, which provide additional powers for the Highway Authority to make (and revoke) gating orders in order to prevent crime or anti-social behaviour on or adjacent to the highway. Unlike the ‘Special’ Orders referred to above, the highway does not need to be in an area designated by the Secretary of State. Also, public rights are effectively ‘restricted’ and not ‘extinguished’ by a gating order and the authority remains responsible for the public highway. These new powers were introduced through the Clean Neighbourhoods and Environment Act 2005, which inserted new Sections 129A-129G into the Highways Act.
7. The Clean Neighbourhoods and Environment Act also had the effect of amending the Crime & Disorder Act to require relevant authorities, when implementing crime and disorder reduction strategies, to include anti-social and other behaviour adversely affecting the local environment. This duty is without prejudice to any other obligation imposed upon the Council and does not alter the requirement to carry out any other statutory duty. Therefore a balance will need to be struck between the Highway Authority’s duty to assert and protect the rights of the public to the use and enjoyment of highways and other conflicting policies, strategies and duties when considering proposals for gating orders.

8. Guidance relating to the making of Gating Orders produced by the Home Office specifies that such orders, whilst not a measure of last resort, should be seen as a temporary measure to be used as a deterrent. Before making an Order the Highway Authority must be satisfied that premises next to the highway are affected by persistent crime or anti-social behaviour that is facilitated by the existence of the highway. It is recommended that councils review each Order on an annual basis, to assess the impact it is having on the community and to gauge whether restricted access is causing excessive inconvenience. The guidance makes it clear that to revoke or vary an Order, it is necessary to follow the same procedure required for making the initial order.
9. If the intention is to permanently gate the highway, a Special Extinguishment Order should be used (see Legal Options at Annex 1). Alternatively, if the conditions specific to the highway warrant quick action, a highway can be temporarily gated under the Gating Order regulations pending the processing of a Section 118B order. However, the end result of closing a public highway is that it is no longer maintained at the public expense. Therefore, permanent closure may lead to the land becoming a derelict, unmaintained and unlit area, attractive for flytipping and the criminal activities which closure was intended to curtail.

Routes not shown on the Highway Records

10. In common with many Authorities throughout the country, there are a significant number of routes that are used by the public, but are not shown in the Council's records. This does not mean that highway rights do not exist, simply that they are unrecorded and that the legal records may need to be amended.
11. In general, if a way runs between two highways, is used as a through route and has existed as such for a number of years (usually at least 20 years), then in the absence of any evidence to the contrary, there may be a reasonable presumption that highway rights exist or have been established.
12. Public highway rights may be established either under the provisions of Section 31 of the Highways Act 1980, or at Common Law. In either instance the evidential test is one of 'balance of probability' and in making a decision as to whether or not public highway rights exist, the Council must act in a '*quasi-judicial*' manner. This means that the Council must act in the manner of a court of law and make its decision based upon evidential fact. Issues such as desirability, privacy and security, although important, cannot lawfully be taken into account.
13. A request for a Gating Order in respect of an unrecorded route will not be progressed where there is any dispute over the existence, or otherwise, of public highway rights, with the exception of 'Gulliksen' paths (see paragraph 1 above).

The Highway Authority's Statutory Duties and Powers

14. Other circumstances under which gates or structures can be installed on public highways are strictly controlled by the provisions of Section 147 of the Highways Act 1980 and, even if lawfully installed, such gates or structures cannot be locked or used to prevent free passage by any legitimate user. The criteria for the authorisation of gates or structures are clear and unambiguous: the route concerned must be a footpath or bridleway; the land concerned must be in use for agricultural purposes and

the gates or structures must be required for the purposes of controlling the ingress or egress of animals. Therefore, a request for a Gating Order will not satisfy these criteria.

15. Gates or structures may also be installed for the safety of persons using the route under Section 66 of the Highways Act 1980, but similarly, their installation must not prevent actual use of the route by any member of the public.
16. The Council cannot authorise the installation of any gate, barrier or other structure in, on or across any public highway, under any other circumstances. Before any such gate or structure could be lawfully installed, it would first be necessary to legally extinguish the public highway, which would require a legal order.

Planning Permission

17. Formal planning permission may be required for the erection of such gates. In certain instances permitted development rights may apply pursuant to the Town & Country Planning (General Permitted Development) Order 1995. It would depend on such factors as the situation and the size of the gates. No formal planning permission is required, for instance, in respect of the erection, construction, maintenance, improvement or alteration of a gate adjacent to a highway used by vehicles provided the height of the gate does not exceed 1 metre (Sch.2, Part 2 Class A of the Order).
18. Gates are not listed in the examples given at Schedule 2, Part 12(b) Class A of the Order, which includes lamp standards and control barriers, and advice should be sought as to whether they would be considered as similar structures or works required in connection with the operation of the public service administered by the Council.
19. Schedule 2, Part 2 – Minor Operations – Class A of the GPDO does provide for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, development is not permitted by Class A if: *“the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level.”* Under Section 3(6) of the GPDO, planning permission is not granted if the gates will create an obstruction to the view of those using any route used by vehicular traffic, so as to be likely to cause danger to such persons.

The criteria under which Gating Orders will be considered

20. There must be clear evidence that the premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour.
21. There must be clear evidence that the existence of the highway has directly resulted in the persistent commission of criminal or anti-social behaviour.
22. The likely effectiveness of an order to gate the path to reduce crime and anti-social behaviour should be weighed against the likely effects of making the order on:
 - The occupiers of premises adjoining or adjacent to the highway;
 - members of the public who use the highway;
 - the emergency services;

- statutory undertakers.

In respect of health and mobility implications, Home Office Guidance recommends that a Health Impact Assessment is carried out if there is any doubt over the availability of alternative routes and/or the proposed times the gates will be closed. Also that special consideration should be given to: (a) ensuring that alternative routes are free from obstructions and are suitably paved; and (b) the height of locks and ease of opening when installing gates. It is important that there are sufficient grounds for an order to be made, as individuals may challenge it in the High Court under Section 129D of the Highways Act 1980 if the conditions for making the order have not been complied with.

23. Alternative means of preventing crime and anti-social behaviour should be considered and weighed against the option of closing the path before it is decided to proceed with a gating order; e.g. the installation of security lighting, redeployable or covert CCTV, or working with Neighbourhood Policing teams and detached Youth Work teams to focus on the area over a defined period of time.
24. In order for an application to be successful, documentary records are required such as Police incident reports detailing the frequency of occurrence and severity of crime etc. that is facilitated by the existence of the highway.

C APPLICATIONS FOR GATING ORDERS

Preliminary assessment

25. Requests for Gating Orders should be made to the Highway Authority, who will make an initial assessment as to whether the proposal affects a 'relevant' highway (see p. 1, para. 1 and p.2, para. 13 of this policy), and if so will undertake a pedestrian count and investigate the availability of suitable alternative routes. If a relevant highway is affected, the Highway Authority will invite an application via a 'Gating Order Application Form' (Annex 2) and request the evidence of crime or anti-social behaviour from the Applicant and/or Land Manager in respect of land in private ownership; or the delegated Council officer in respect of Council-owned land (see Section D below, page 8, regarding the criteria used to prioritise applications). The applicant, land manager or delegated officer will be responsible for initiating and coordinating the crime intervention options and consideration of alternative measures for dealing with the issues at hand. The outcomes of intervention will be reported back to the Highway Authority (i.e. Traffic Management officer, City Development) who will review the evidence to ensure it satisfies the statutory tests and recommend whether or not to proceed to make and publish a Draft Gating Order. If objections are received from the emergency services that are not subsequently withdrawn, the Highway Authority will refer the matter to the Executive Member (Sustainable Development) for a decision to hold a Public Inquiry.
26. The applicant and/or land manager or delegated Council officer are responsible for ensuring that the necessary funding is identified to cover the legal costs of processing the order and the practical works required to implement any Gating Order made. N.B. Works must comply with appropriate legislation.

Informal consultation

27. In respect of Gating Orders, the legislation does not specify that informal consultation of the general public is required. However, Home Office guidelines recommend that Councils consult those organisations likely to take an interest in any proposal to gate a highway, such as the Bristol Physical Access Chain and local representatives of the Ramblers' Association, Living Streets and the Open Spaces Society (see DoE Circular 2/93). In addition, Councils should provide a justification and evidence for an order before it is made through a Notice in the local newspaper, giving details of where members of the public can find more information if necessary. Consequently the Council's usual practice of informal consultation on Public Path Orders should be adopted for proposed gating orders at an early stage, to gauge responses from local user groups, affected residents, local Ward Members, emergency services and utility companies. This will prevent unnecessary and costly procedures going ahead if the highway closure is likely to be unpopular, or requires the diversion of utility service equipment.

Initial Proposal / Application

28. The Highway Authority will undertake an assessment of the highway proposed for closure or restriction, to ascertain whether a Gating Order is the most appropriate legislation to use (see Annex 1) before issuing an application form.
29. Upon receipt of a Gating Order Application, the Highway Authority will instruct the applicant and/or land manager or delegated Council officer to undertake the crime data assessment and crime intervention options and compile a Report on the outcomes. The Report will advise and enable the Highway Authority to decide whether or not to proceed to make and publish a Draft Gating Order.

Preparing a Report on Crime Intervention results

30. The Applicant's Report shall include the outcomes of the following informal consultations, where appropriate:

Consultation with Local Residents and Land Owners

31. Informal consultations shall be undertaken with all residents/owners of properties and businesses within and immediately adjacent to a highway subject to a request for a Gating Order. The responses received shall be used to ascertain whether there is a genuine need for the scheme and to gauge local support. When Gating Order consultation documents are sent out, they should include a draft copy of the proposed gating order.

Consents

32. During the informal consultation period, all property owners and occupiers who are affected by the proposals contained within a Gating Order, will be requested to complete an Agreement Form (see Annex 3) in respect of the following:
- The proposed Gating Order;
 - to agree to any changes to the collection of refuse that may be required by the proposed gating of the highway.
33. Although it is recognised that a 100% response is not always possible, consideration

should be given to abandoning the proposed order if there has not been agreement in writing received from the large majority of interested parties to the proposal, or if a substantial number of objections are received during the informal consultation stage.

Protection of Private Rights

34. Gating Order procedures are wholly concerned with restricting public rights over highways and will not affect existing private rights of residents, businesses, or other relevant parties (such as utility companies) having access over those highways.

Consultation with Utility Companies

35. The Utility Companies (gas, water, electricity etc.) must be consulted to ascertain at an early stage which of these companies, if any, have their apparatus on or under any highway that may be subject to a gating proposal. The Utility Companies will require the retention of their rights of unhindered access, or may require the relocation of their apparatus, if it appears they will be affected by the proposals.
36. If the Utility Companies require unhindered access to their apparatus, they may not consent to the installation of any structure across the route. The Council may not therefore be in a position to proceed with any gating order proposals, as the relocation of their apparatus may cost a considerable sum of money (potentially thousands of pounds) and should be avoided. If apparatus is affected by the proposal and a decision is made to proceed with a Gating Order, the applicant and/or land manager or Council department shall fund such relocation works.

Consultation with Emergency Services

37. Consultations shall be undertaken with all of the Emergency Services (Fire & Rescue, Police and Ambulance) and other Authorities for the area (see paragraph 52 below), as they may potentially require access along a highway subject to a gating order proposal. It must be born in mind that should any one of these services object to a Gating Order, then in the absence of a satisfactory resolution of the objection, a public inquiry will have to be held. Therefore it is important at the informal consultation stage to establish reasons for possible objections (e.g. nearby emergency fire exit opening into the highway) and the Applicant and/or Managing Agent or delegated Council officer should attempt to reach a compromise to the satisfaction of both parties. For example, it may be that the design of the gate at the location under review can be altered to accommodate relevant safety requirements; or it may be necessary to alter the location of the gate itself.

Consultation with Safer Bristol Partnership

38. If the Safer Bristol Partnership has not initiated the gating order application, they (and/or the Council land managing department, if Council owned land) shall be consulted on any Gating Order proposals and requested to:
- Assist with providing relevant crime figures and statistics relating to the highway;
 - advise how, and in what way, the proposal is consistent with the Crime and Disorder Strategy;
 - advise whether other Crime Reduction Initiatives are being undertaken in the

immediate area (e.g. CCTV, targeted patrols etc).

Consultation with Refuse Collection / Cleansing Team

39. The Council's Cleansing Services should be consulted to establish whether any changes or special provisions will be required for refuse collection. If they are required, the Applicant and/or Managing Agent or relevant Council department must fund these, unless already catered for in the Cleansing Services budget.

Consultation with other Interested Parties

40. Those organisations specified within the legislation (listed in paragraph 52 below) shall also be informally consulted at this stage. This will include consultation with local representatives of such organizations and anyone expressing a desire to be included in the consultation process.

Consultation with other Council Departments

41. Consultation shall be carried out with relevant officers within the local authority, such as the Property Portfolio officer, Finance and Legal officers etc., and their views noted in the report to prevent any conflicts of interest.
42. The Council's Development Control and Transport Planning teams should be consulted, to identify any planning, highway or local transport implications, including Safer Routes to School schemes and the availability of alternative access routes (see paragraphs 17-19 and 22 of this Policy).

Assessment of Site Works required

43. An assessment of the physical works required to implement the Gating Order shall be undertaken and available options discussed within the Report. This may involve liaising with gate manufacturers and locksmiths to determine the necessary gate and lock specification or installation requirements.

Estimated Costs

44. The Report shall include a budget forecast for the implementation of the proposed scheme and include costings for:
- Legal process, including advertising costs and possible Public Inquiry;
 - Planning Consents (if applicable);
 - Moving of Utility Company apparatus (if applicable);
 - Physical Works on site, including all materials needed;
 - Maintenance of permanent notices on site following confirmation of Order and whilst order is in force, plus costs of opening and closing gates if time limited;
 - Any other costs identified during the Crime Intervention study.

Review of the Evidence

45. Following receipt of the Report, the Highway Authority will review the evidence contained in the Report and base its recommendation on whether the appropriate

legislative criteria has been satisfied, or not, as the case may be.

Decision made whether to Make and Publish a Draft Gating Order

46. Subject to the Application satisfying the statutory tests under Section 129A (3) & (4) of the Highways Act 1980, the Highway Authority's recommendation to the Director of City Development to make and publish a Draft Gating Order must also specify whether the applicant and/or land manager or relevant Council Department has agreed to meet all costs in respect of the legal process and the works required to implement the scheme.
47. If no objections are received (or objections are made by interested parties – see Paragraphs 31-40 above), the application will be referred back to the Director of City Development who will decide whether to make the final Order or to hold a discretionary Public Inquiry. N.B. If objections are received from the Emergency Services, the application will be referred to the Executive Member (Sustainable Development), who must decide to hold a mandatory Public Inquiry.

D PRIORITISATION OF APPLICATIONS

48. The priority given to each Application will be based on the levels of reported crime and official crime statistics set out in the Report to the Highway Authority. Crime data for the highway in question must therefore be sought from the Crime Analyst or Police Crime Prevention Officer.
49. Priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences listed under Category 1 and 2 below, although in the absence of such evidence, offences in Category 3 below may be considered, but will be given a lower priority.

Category 1

Robbery, Domestic Burglary and Vehicle Crime.

Category 2

Arson, real fear of assault /robbery and drug dealing/taking.

Category 3

Noise and anti-social behaviour, fly tipping of rubbish, dog fouling and graffiti.

E IMPLEMENTATION OF GATING ORDERS

LEGAL PROCESS

50. Before making a Gating Order, there must be a formal consultation period of not less than 28 days, where the council shall publish on its website and in the local newspaper, a Notice:
 - Identifying the highway to be restricted;
 - Setting out the effect of the proposed Gating Order;
 - Identifying any alternative routes available to pedestrian/vehicular traffic;
 - Setting out a draft of the proposed Order;
 - Inviting written representations or objections to the Notice.

51. A copy of the Notice and draft Order map must also be displayed on or adjacent to the highway to be restricted for a period of at least 28 days, in order for members of the public using the highway to be made aware of the effect of the proposed Gating Order, and inviting representations (in writing) as to whether or not an order should be made to the address indicated on the notice. The draft Gating Order must contain:
- A statement that the conditions set out in section 129A(3) of the Act have been met;
 - the dates and times that public use of the highway will be restricted;
 - details of any persons excluded from the effects of the restriction;
 - details of alternative routes;
 - contact details of person responsible for maintaining and operating any barrier authorized by the Order.
52. Copies of the Notice and the draft Gating Order must be sent to the following people (as listed under Regulation 4):
- All the occupiers of premises adjacent to or adjoining the relevant highway;
 - every council through whose area the relevant highway passes;
 - every chief officer of a police force through whose police area the relevant highway passes;
 - every fire and rescue authority through whose area the relevant highway passes;
 - every NHS trust or NHS foundation trust through whose area the relevant highway passes;
 - any local access forum through whose area the relevant highway passes;
 - any statutory undertaker who maintains services in the locality in which the relevant highway is situated;
 - any provider of gas, electricity or water services in the locality in which the relevant highway is situated;
 - any communications provider in the locality in which the relevant highway is situated;
 - any persons who the council reasonably considers might have an interest in the proposed gating order;
 - any person who requests a copy of the notice; and
 - any person who has asked to be notified of any proposed gating orders.
53. Local Ward Members should also be included at this stage, as they are likely to have been involved during the informal consultation period.

Objections to draft Gating Order

54. If no objections are received within the statutory timescales, the draft Gating Order will be presented to the Director of City Development (CD) for authority to make the Order.
55. Where interested parties raise objections that are not withdrawn, a decision can be made by the Director of CD whether or not to make the Order. In order to make that decision, the Director must be satisfied that the interests of the local community outweigh the rights of users of the highway and if so, the Order can be made. Whilst it

is important to consider all representations, the Council has a discretion as to whether or not to hold a Public Inquiry, unless objections are lodged by the emergency services.

56. Where an objection is raised by certain authorities such as the Police, Fire & Rescue Service, or the Ambulance Service, a public inquiry must automatically be held. Consequently the disputed Order will be referred to the Executive Member (Sustainable Development), who must decide to hold a Public Inquiry.
57. Contrary to other Public Path Order procedures, the Council itself is required to appoint an Inspector from the Planning Inspectorate to hold a public inquiry into a proposed gating order and not the Secretary of State. The Council must publicise the public inquiry and write to all those who made representations on the draft Order. The Applicant for the gating order and/or the land manager or the relevant Council Department will meet the legal costs of holding the inquiry.
58. A Gating Order cannot be made until either a period of 28 days has lapsed from the date of the advertising of the Notice, or any public inquiry held in accordance with the legislation has been concluded.

Displaying the Gating Order

59. Once a Gating Order has been made, a copy must be displayed at Council offices and advertised on the Council's website for a period of 12 months from the date of making the Order. Copies should also be sent to those specified in paragraph 52 of this Policy. A register of all Gating Orders must be kept at Council offices and made available for public inspection during normal business hours.
60. A copy of the Gating Order must also be situated at each end of the highway in a prominent position for as long as the order is in force and the public's right to use the highway is suspended. It is the Council's responsibility to ensure that it remains visible and legible.

Installation of Gates

61. Upon completion of the legal order process, all physical works and materials shall be commissioned and undertaken by the applicant and/or land manager or delegated Council officer in line with the manufacturer's recommendations and the Council's Procurement Policy, and must comply with appropriate legislation. Funding may be available from other bodies involved with the implementation of the Council's duties under the Crime and Disorder Act, which will reduce the overall costs of the scheme.

Issue of Personal Identification Numbers (PIN)

62. If a decision is made that the gates are to be operated by means of a coded keypad lock, which will require a Personal Identification Number (PIN), all parties with a legitimate need for access shall be issued with a PIN. Applicants for a PIN should provide proof of their identity and address. It is recommended that codes are changed periodically, or at other times deemed necessary for security reasons and all legitimate parties informed in advance of the date of the change and the new PIN.

Maintenance and Management Issues

63. As Gating Orders do not extinguish highway rights the Council will, in addition to the maintenance of the highway, become responsible for the gates and the issuing of PIN's etc., from the date that the gates become operational. This work will be undertaken by the relevant Council officer and any repairs, maintenance and cleansing of the highway will be as and when required and to comply with the Council's legal obligations.

Conditional Gating Orders

64. If the Gating Order is conditional, and the highway is closed during certain times and days (e.g. only at night etc.), the person responsible for the locking and unlocking of the gates should be specified in the Order. Regulation 8(e) of the Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006, No 537) states that: *"[A gating order must contain] contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order"*. Under this regulation, it is not necessary for the 'person' in question to be a named individual. Instead, this can be any relevant position or role within the Council, such as the Anti-Social Behaviour Team Manager, or Highways Manager. However, on a day-to-day basis the responsibility is likely to fall to a delegated officer to ensure continuity of the Order. Consequently, the Order will not need to be changed every time a new person fills the role.
65. Regulation 8(b) states that a Conditional Gating Order must also contain the dates and times when the public right of way will be restricted. Should the gates not be opened at the specified times, the authority would be guilty of committing an offence of unlawful obstruction of the highway and could face prosecution in a court of law. Similarly, should the gates not be closed at the specified time and a member of the public was to become locked in or subject to assault or robbery, or an adjacent property is burgled, then the Council could have a civil liability for compensation.
66. Responsibility for the opening and closing of the gates cannot therefore be handed to adjacent residents and must be managed correctly by the Council.
67. It is important to note that there is presently no Council department with resources in place to take on the responsibility of, or with officers employed to carry out, the opening and closing of such gates. Consequently, should the authority decide to make Conditional Gating Orders, specific resources will have to be identified for this purpose.

F INTERNAL FUNDING

Staffing Implications

68. Officer time (e.g. officers from Highways, Legal Services and the land-managing Department or Safer Bristol) will be required to process Gating Order applications and to oversee the implementation of schemes through to completion. If the Council owns the land, an officer from the relevant Department will be delegated to co-ordinate the collation of crime intervention and other options. In respect of private land, an officer may be delegated from Safer Bristol or relevant Council Department to provide support to the applicant and/or land manager.
69. In respect of Conditional Gating Orders, consideration should be given to creating a

suitable post and ancillary staff, in perpetuity, to oversee and implement the duties of locking and unlocking gates made under such Orders. Alternatively, these duties could be incorporated, in perpetuity, with any existing staff already tasked with similar duties. Should this duty be contracted out to a private security company, the management costs will be subject to the Council's procurement rules.

70. If resources are not secured for these associated duties, the Council will be reluctant to implement Conditional Gating Orders for the reasons set out in paragraph 65 of this Policy. The associated duties will have to be resourced if the Council is to issue conditional gating orders.

Budgetary Implications

71. All costs relating to the implementation of Gating Orders (e.g. the legal costs of processing orders as well as the cost of any physical works) shall be funded by the applicant and/or the land manager or relevant Council land holding Department, in addition to any outside funding which may be available.

Compensation

72. There is no provision included in the Gating Order regulations for the payment of compensation to any party who suffers a loss or damage, e.g. the loss of a rear access to property, as a result of the Order.

Statutory Undertakers

73. The implementation of a Gating Order may require the relocation of apparatus owned by utility companies (gas, water, electric, telephone etc). Costs relating to the relocation of such equipment are often very expensive and should be avoided if at all possible. Notwithstanding this, all statutory undertakers will retain their right of access to closed highways.
74. In the unlikely event of such expenditure being required, it will be funded by the applicant and/or land manager or from the relevant Council Departmental budget.

Maintenance

75. Following the implementation of a Gating Order, the Council will retain responsibility for maintenance of the highway, gates and notices. This will be funded from the relevant Departmental budget, or the Council's Highway Maintenance budget, as agreed by department heads.

Review of Gating Orders

76. Home Office guidance recommends that Councils review each Gating Order annually to evaluate whether it is acting as a useful crime or anti-social behaviour measure and to assess the impact it is having on the community. Local residents should be consulted and user surveys held to gauge whether the restricted access is causing excessive inconvenience.

G TIMESCALES

77. Dependent on circumstances, it is estimated that a Gating Order should take no more than 6 to 8 months to implement following receipt of a formal Application. However there are factors which may impact on the timetable for making Orders outside the control of the Council, such as:

- The completion and return of Agreement forms by residents/owners;
- objections to a Gating Order leading to a Public Inquiry.

78. The following matters may also effect completion dates:

- Delay experienced in obtaining crime data and reporting on the outcomes of intervention;
- the scheduling and deadlines required to report the recommendations of the Highway Authority to the Director of CD or to the Executive Member (Sustainable Development);
- the granting of planning consent (if applicable).

H SUMMARY OF GATING ORDER PROCESS

79. See Procedure Flowchart at Annex 4.

LEGAL ORDER OPTIONS

OPTION ONE – Routes that do not have highway status

In general terms, if a route, path, or way, runs between two other highways, is used as a through route and has existed for a number of years (usually at least 20 years), there may be a reasonable presumption that highway rights exist. It is important that this matter is given consideration on a case-by-case basis, as the installation of any gates or barriers on a public highway, may constitute a criminal offence unless lawful authority can be demonstrated.

Notwithstanding the above, there will be cul-de-sac alleys that do nothing more than serve the rear of properties and are unlikely to have acquired highway rights over them, but will probably be subject to private rights of access.

Subject to any private rights of access being safeguarded (see paragraph 34 of the Gating Order Policy), routes of this nature that are not included in the List of Streets Repairable at Public Expense or shown on the Definitive Map and Statement, nor are “Gulliksen”-type paths (see paragraph 1 of the Gating Order Policy) could be gated without the need for any complex or lengthy legal order processes; e.g. police ‘Alley gating’ schemes. To do this, however, would need the consent of all affected residents.

OPTION TWO – Use of General Powers

Town and Country Planning Act 1990

Section 257 of the Town and Country Planning Act 1990 allows for the closure of a footpath, if it is necessary, to allow development to take place (i.e. approved by a valid planning consent). This essentially means that the development concerned, must actually build over the path itself, a simple change of use from say path to garden would not suffice as it is, in law at least, quite compatible for a path to run through a garden, therefore the criteria would not be met.

It is unlikely that the powers contained within the Town and Country Planning Act 1990 can be used to facilitate a Gating Order.

Highways Act 1980

Section 118 of the Highways Act 1980 is the principle piece of legislation that allows for the extinguishment of highways. The powers for closure are strictly defined by the legislation. This generally provides that extinguishments may only be made, if it can be demonstrated that the highway concerned is not needed/not necessary for public use. Whilst this may be a somewhat subjective decision to make, it is clear that factors such as criminal, or anti-social behaviour, cannot lawfully be taken into account. If a route is heavily used by legitimate pedestrian traffic during daylight hours, it is unlikely that the legislative criteria can be met in order to close the path to prevent its misuse at other times.

OPTION THREE - Use of new Crime Prevention Powers

Countryside and Rights of Way Act 2000 – Closure or diversion for Crime Prevention

The Countryside and Rights of Way Act 2000 introduced new powers to close or divert public rights of way for the purposes of crime prevention via ‘Special Orders’; i.e. new Sections 118B and 119B of the Highways Act 1980 as inserted by the CROW Act. There are however, strict criteria that must be satisfied before such Orders can be made.

If the Highway Authority is minded to process a Special Order, it must first apply to the Secretary of State to designate the area where the public right of way is located as an area within which the Special Orders may be used. The Highway Authority must provide evidence to the Secretary of State that the area suffers from high incidences of crime.

It should be stressed that the designation of an area by the Secretary of State does not, in any way, imply that any subsequent Extinguishment Order will be successful. It is still necessary for each proposal to fulfill the criteria specified in the legislation. Before an Order can be made the Authority must be satisfied, having taken into account the factors listed below, that it is expedient for the purposes of preventing or reducing crime which would otherwise disrupt the life of the community, to stop up that highway. It must also be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and that the existence of the highway is facilitating the persistent commission of criminal offences.

Even if the Highway Authority is satisfied that the evidence satisfies these criteria, an Order will not necessarily succeed. Before an Order can be confirmed and take effect, the Council must also be satisfied that it is expedient to stop up the highway having regard to:

1. Whether and if so to what extent, the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998.
- 1.2. The availability of a reasonably convenient alternative route; or if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway rather than stop it up.
- 1.3. The effect the extinguishment of the right of way would have, as respects land served by the highway, account being taken of the provisions as to compensation that may be payable.

Clean Neighbourhoods and Environment Act 2005 - Gating for Prevention of Crime and Anti Social Behaviour

The Clean Neighbourhoods and Environment Act 2005, which came into force on 1 April 2006, inserted Section 129 into the Highways Act 1980, i.e. 'Gating Orders'. These new powers enable the restriction of the public use of relevant highways for the purposes of the prevention of crime and anti-social behaviour. Such restrictions, unlike Section 118B of the Highways Act, can be temporary, or conditional and are not dependent on an area being designated as an area of high crime by the Secretary of State.

A council may make a Gating Order in accordance with this Act in relation to any relevant highway for which they are the highway authority, if they are satisfied that premises adjoining or adjacent to the highway are affected by crime *or* anti-social behaviour. The Council must also be satisfied that the existence of the highway is facilitating the persistent commission of criminal offences *or* anti-social behaviour; and it is expedient to make the order, for the purposes of reducing crime *or* anti-social behaviour.

As with Special Orders, even if these criteria can be satisfied an Order will not necessarily come into effect unless the Highway Authority is satisfied that it is expedient to stop up the highway having regard to:

1. The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway.
- 1.2. The likely effect of making the order on other persons in the locality.
3. Where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

However, unlike a Section 118B Special Order, which permanently extinguishes public rights over a highway, a Gating Order can:

- Restrict the public right of way at all times; or in respect of such times, days or periods as may be specified in the order (e.g. only at night, or at weekends, etc.);
- Exclude such persons as specified in the Order from the effect of the restriction (e.g. emergency services, council officers, utility companies etc.).

The highway also remains the responsibility of the highway authority after gating, so it continues to be a highway repairable at public expense.

Before making a Gating Order in relation to a relevant highway the Council must be satisfied that:

1. Premises adjoining or adjacent to the highway are affected by crime *or* anti-social behaviour.
- 1.2. The existence of the highway is facilitating the persistent commission of criminal offences *or* anti-social behaviour.
- 1.3. Taking all factors into account, it is expedient to make the order for the purposes of reducing crime *or* anti-social behaviour.

Unlike other legislation used to extinguish public rights, the local authority may make the Gating Order even if there are objections; as long as they are satisfied that the Order is in the best interests of the local community. However, if there are objections from any of the emergency services, then the Council must hold a public inquiry.

Although the legislation has been streamlined to make it easier and quicker to restrict the use of a problem highway, this does not mean that the criteria for making a Gating Order is any less stringent than that introduced by the CROW Act. However, the legislation enables instances of high levels of anti-social behaviour to be a main reason for closure even in the absence of high levels of crime, and is designed to improve residents' quality of life.

Home Office guidance recommends that local authorities review their Gating Orders on an annual basis to ensure that such orders remain useful as a crime or anti-social behaviour reduction method, as there is no maximum limit to how long a highway can be gated. As highway rights are not extinguished, it would be a simple matter to revoke the Gating Order or vary the conditions.

However, there does appear to be contradictions in respect of this guidance. If there exists sufficiently high levels of crime and/or anti-social behaviour to warrant the restriction of public use of a highway, then gating itself is likely to lead to a reduction. Any subsequent review will reflect this reduction in crime and consequently the authority should give consideration to opening up the highway to public use. However, the chances are that re-opening will facilitate an increase in crime and anti-social behaviour back to its pre-restricted levels and thus create a situation where restriction of public use is once again required.

Despite these reservations, there may be circumstances that allow the implementation of conditional restrictions if evidence shows that the crime or anti-social behaviour occurs only at specific times, such as during the hours of darkness. In these cases it is imperative to take the management of the gate closure into account, as, if the gates are not re-opened at the time specified on the Order, they will become unlawful obstructions and leave the local authority open to prosecution. Unless this logistical problem can be properly managed in perpetuity, it would be unwise to consider conditional restrictions.

COUNCIL LOGO

GATING ORDER APPLICATION

(Before submitting a proposal please read Bristol City Council's Gating Order Policy).

Applicant Contact Details
<i>Name</i>
<i>Address</i>
<i>Telephone Number</i>
Request for Gating Order
Define the highway to be subject to the proposed Scheme and attach a 1:1250 scale plan with the boundaries clearly marked.
Reason(s) for Proposal
State as fully as possible the reasons for the proposal and how it meets the criteria of Bristol City Council's Gating Order Policy Include all available crime figures if available (a crime report will be obtained by the Council's Delegated Officer anyway).
Continue on separate sheet if required.
Confirmation of Supply of Information
This Gating Order proposal was discussed and agreed at the meeting on
Local residents who attended the above Meeting have been made aware of the Council's Gating Order Policy, and briefed on its content.
Local residents who attended the above Meeting have been advised that the Council cannot guarantee the success of any Gating Order proposal
Local residents who attended the above Meeting have been advised that gates or other structures will only be installed on highways if it can be achieved lawfully and that the Council will initiate criminal proceedings against any person who erects such structures without lawful authority.
Local residents who attended the above Meeting have been advised that a Gating Order shall only proceed subject to it being lawful and it being funded by Applicant and/or the relevant Council Department budget.
Signed Name (E.G. Neighbourhood Coordinator or Ward Councillor)
Date

COUNCIL LOGO

**GATING ORDER
OWNERS/OCCUPIERS AGREEMENT**

(To be completed by each property owner / occupier affected by the proposals)

WARD: <>

SCHEME REFERENCE: <>

DETAILS OF SCHEME: Request to restrict highway in the <> area of Bristol

Name and Address	Name and Address
Occupier	Landlord/Owner (if different)
Address 1 Address 2 BRISTOL Postcode	
Telephone Number	Telephone Number
Agreement	
<p>*I am / We are the freehold / leasehold * owner(s) of the above property which is affected by the proposed Gating Order.</p> <p>OR</p> <p>*I am / We are the tenant / licensee or occupier(s)* of the above property which is affected by the proposed Gating Order.</p>	
<p>*I / We do not agree to the proposed highway closure/restriction and wish it to remain open to the public at all times.</p>	
<p>*I / We agree and consent to the proposed Gating Order and any necessary Legal Orders to restrict the use of the highway, as shown in the Bristol City Council Gating Order Policy, that may have to be made as a consequence.</p>	
<p>*I / We agree to any reasonable changes to the collection of refuse and household waste by Bristol City Council Cleansing Services, which may be necessitated by the restricted use of the highway.</p>	
<p>Signed Print Name</p> <p>Signed Print Name</p> <p>Date</p>	

*Delete as appropriate Please continue overleaf if required

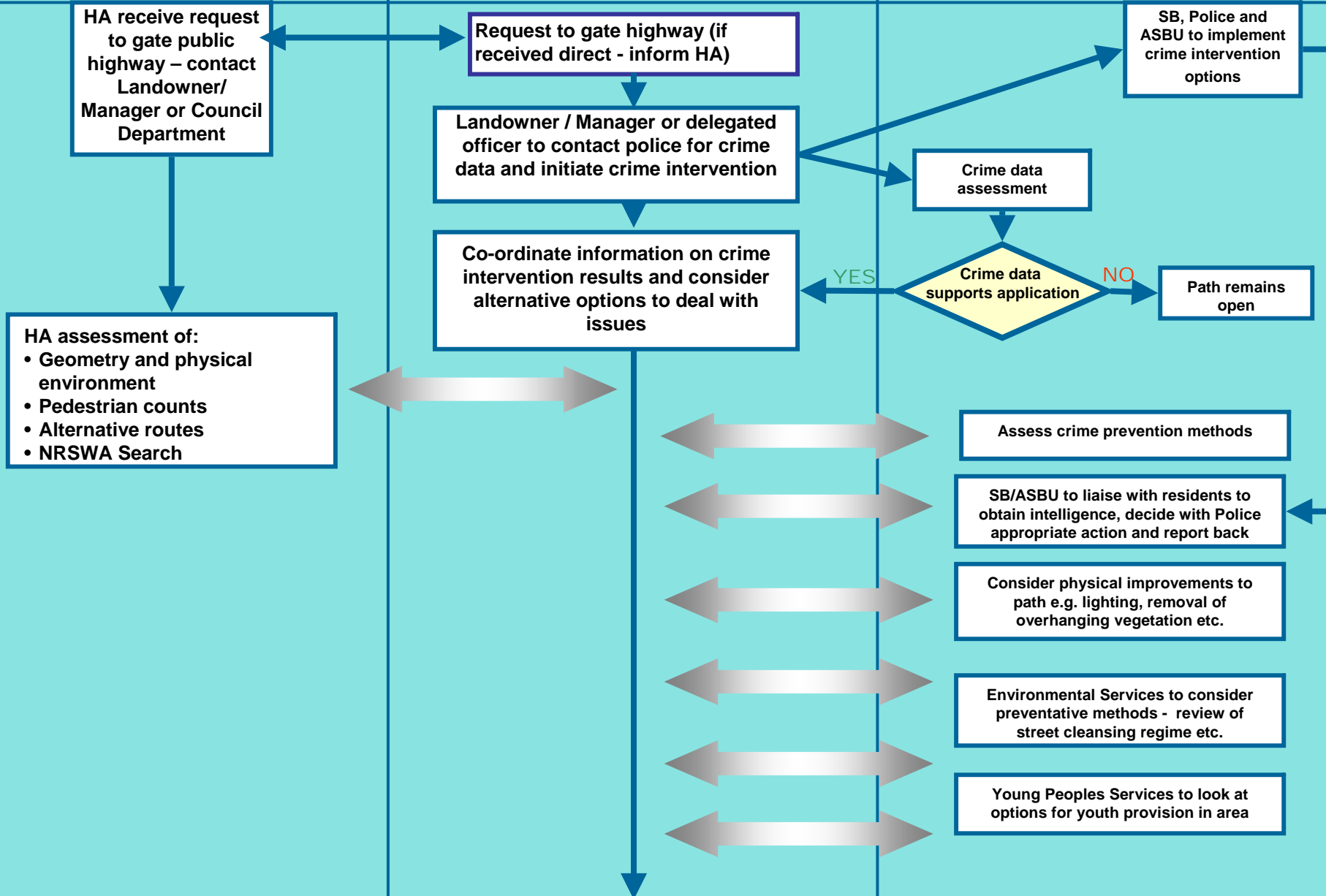
1

FLOW CHART SHOWING PROCEDURES FOR A GATING ORDER UNDER SECTION 129A HIGHWAYS ACT 1980 FOR REASONS OF REDUCING CRIME AND ANTISOCIAL BEHAVIOUR

HIGHWAY AUTHORITY (HA)
City Development (CD)

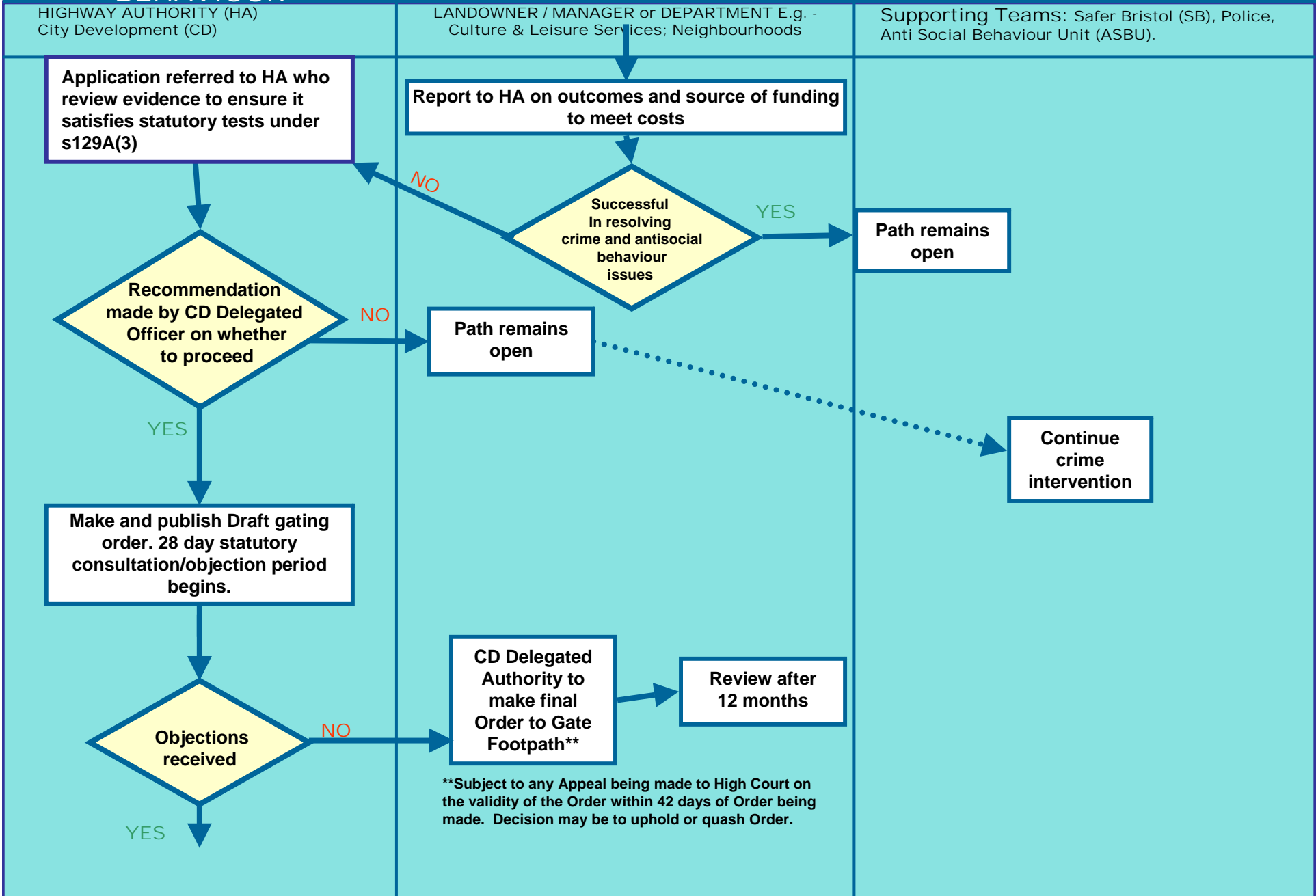
LANDOWNER / MANAGER or DEPARTMENT E.g. -
Culture & Leisure Services; Neighbourhoods

Supporting Teams: Safer Bristol (SB),
Police, Anti Social Behaviour Unit (ASBU).



2

FLOW CHART SHOWING PROCEDURES FOR A GATING ORDER UNDER SECTION 129A HIGHWAYS ACT 1980 FOR REASONS OF REDUCING CRIME AND ANTISOCIAL BEHAVIOUR



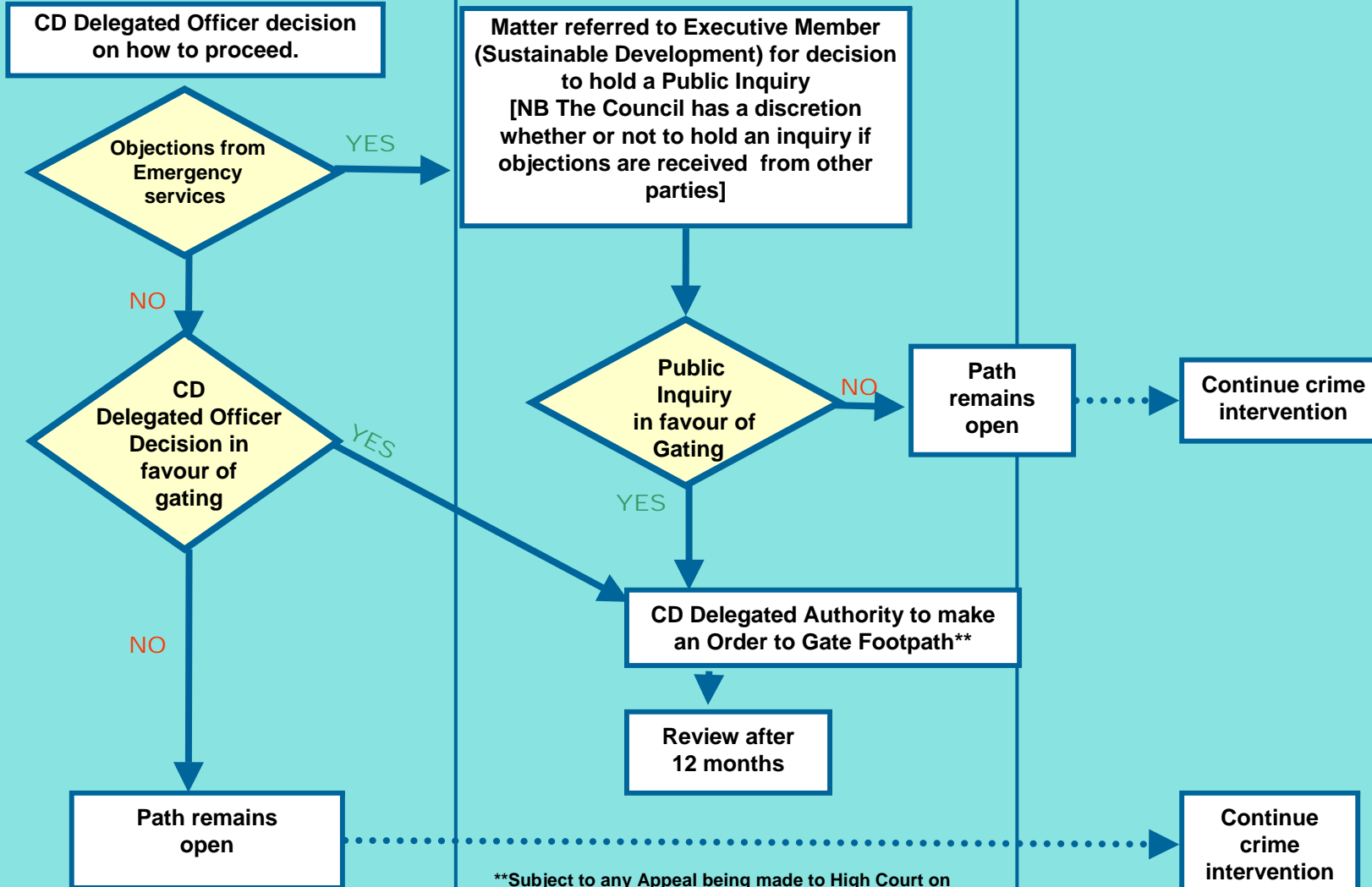
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FLOW CHART SHOWING PROCEDURES FOR A GATING ORDER UNDER SECTION 129A HIGHWAYS ACT 1980 FOR REASONS OF REDUCING CRIME AND ANTISOCIAL BEHAVIOUR

HIGHWAY AUTHORITY (HA)
City Development (CD)

LANDOWNER / MANAGER or DEPARTMENT E.g. -
Culture & Leisure Services; Neighbourhoods

Supporting Teams: Safer Bristol (SB), Police,
Anti Social Behaviour Unit (ASBU).



**Subject to any Appeal being made to High Court on the validity of the Order within 42 days of Order being made. Decision may be to uphold or quash Order.