Lord Advocate v Strathclyde Regional Council and Lord Advocate v Dumbarton District Council

Rights of way – land owned by statutory undertakers or the Crown · https://scotways.com/ken/lord-advocate-v-strathclyde-regional-council-and-lord-advocate-v-dumbarton-district-council/

Case Report: 1988 SLT (SC) 546 and 1988 SLT (SC) 546

Key points: Closure of public highway by the Crown - notice requiring removal of obstruction - position of local authority vis-à-vis the Crown - procedures regarding dealings with the Crown.

The facts: These Actions related - amongst other things - to the powers of local planning authorities to require the removal of obstructions on public roads. The obstructions had been placed on part of the A814 road near Faslane by contractors acting on behalf of the Ministry of Defence. The local authorities acted in terms of section 87 of the Roads (Scotland) Act 1984, by serving Orders requiring removal of the obstructions (Orders on the Crown, in this instance). The Crown applied for judicial review of the Orders requiring the removal of obstructions. It was argued on behalf of the Crown that it is not bound by any statutory provision unless it (the Crown) is named expressly or by necessary implication.

Decision: It was decided that section 87 of the Roads (Scotland) Act does apply to the Crown: accordingly the notices requiring the removal of the obstructions were valid.

Comments: This is a lengthy and complex case involving points of Constitutional Law. It is noted here only in respect of its relevance to rights of way.

Cases referred to: The parties referred to a copious selection of cases not directly relevant to rights of way, hence not noted here.