

## Annex 6: rights of entry to land for enforcement purposes

### The statutory provisions

**6.1** Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 as amended ("the 1990 Act"), enable LPAs and Justices of the Peace to authorise named officers to enter land specifically for enforcement purposes. This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control. The provisions of sections 324 and 325 of the 1990 Act are no longer available for enforcement purposes.

**6.2** Section 196A(1) specifies the purposes for which entry to land may be authorised. They are

- (a)** to ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;
- (b)** to determine whether any of the LPA's enforcement powers should be exercised in relation to the land, or any other land;
- (c)** to determine how any such power should be exercised; and
- (d)** to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

The inclusion of the words "...or any other land" means that, if necessary, neighbouring land can be entered, whether or not it is in the same ownership, or is occupied by the person whose land is being investigated.

**6.3** The provisions of section 196A state that there must be "... reasonable grounds for entering [the land] for the purpose in question". This is interpreted to mean that entering the land is the logical means of obtaining the information required by the LPA.

### Entering the land

**6.4** Section 196C(1) provides that, on entering any land in pursuance of the right of entry, an authorised person:

- (a)** shall, if so required, produce evidence of authorisation and state the purpose of entry before entering the land;
- (b)** may be accompanied by such other persons as may be necessary.

### Leaving the land

**6.5** Section 196C(1)(c) provides that, on leaving the land, the authorised person shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as it was found.

## Wilful obstruction of the right of entry

**6.6** Section 196C(2) provides that any person who wilfully obstructs an authorised person acting in the exercise of a right of entry shall be guilty of an offence. The maximum summary penalty for this offence is at "level 3" on the standard scale of penalties, currently £1,000.

## Damage to land or chattels in exercising right of entry

**6.7** Section 196C(3) provides that if any damage is caused to land (which includes a building) or chattels (for example, machinery, equipment or livestock), compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry. A dispute about the amount of any compensation is to be referred to, and determined by, the Lands Tribunal, in accordance with the provisions of section 118 of the 1990 Act, as applied by section 196C(4) of the 1990 Act.

**6.8** As public authorities, LPAs are expected to take every reasonable precaution to ensure that no damage is caused to land or chattels as a result of exercising the right of entry. As their investigations for enforcement purposes will normally be confined to a visual inspection, any consequential damage should be most exceptional.

## Entry to agricultural land

**6.9** LPAs are reminded that, in the interests of animal and plant health, special precautions are essential when the right of entry to agricultural land is exercised. The additional precautions which must be taken before, and when, entering agricultural land are stated in the Appendix to this Annex.

## Disclosure of information obtained on entering land

**6.10** Section 196C(5) provides that any person who enters any land, in exercise of a right of entry, and discloses to any person any information obtained while on the land, about any manufacturing process or trade secret, shall be guilty of an offence. The maximum summary penalty for this offence is currently £5,000. On conviction of this offence, on indictment in the Crown Court, the penalty is a term of imprisonment not exceeding two years or an unlimited fine, or both.

**6.11** It is not an offence under section 196C(5) if the disclosure of information is made by an authorised person in the course of performing his or her duty in connection with the purpose for which he or she were authorised to enter the land.

## Right of entry to a dwellinghouse

**6.12** Entry to a building used as a dwellinghouse cannot be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier. In the case of an industrial or commercial building, (such as a factory or shop), where there is also residential accommodation (such as a caretaker's flat), the requirement to give 24 hours' advance notice applies only to the residential part of the building. However, this advance

notice requirement does not apply to the outbuildings or garden land in the curtilage of a dwellinghouse, unless access to them can only be gained by going through the dwellinghouse.

## Entry authorised by warrant issued by a Justice of the Peace

**6.13** Section 1968(1) provides that, when there are reasonable grounds for entering land for enforcement purposes, if entry is refused, or refusal is reasonably apprehended, or the case is one of urgency, entry by warrant issued by a justice of the Peace, is possible. Admission to the land shall be regarded as refused if no reply is received to a request for admission within a reasonable period (section 196B(2)). There are three restrictions on the use of a warrant:-

- it only authorises entry on one occasion;
- the entry must be within one month from the date of issue of the warrant;
- and the entry must be at a reasonable hour, unless the case is one of urgency.

## Entry to listed buildings

**6.14** Sections 88, 88A and 88B of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) effectively provide entry rights for listed building enforcement purposes which are equivalent to planning enforcement powers.

## Right of entry for officers of English Heritage to buildings in London

**6.15** Section 196C(8) provides that the right of entry for enforcement purposes applies to persons authorised by the Historic Buildings and Monuments Commission for England ("English Heritage") so far as buildings situated in the Greater London area are concerned.

## Entry to land in relation to tree preservation enforcement purposes

**6.16** Sections 214B, 214C and 214D of the 1990 Act contain broadly similar rights of entry in respect of protected trees, replacing the former provisions of sections 324 and 325.

**6.17** Section 214B(1) specifies the following three purposes for which entry on to land may be authorised by the LPA without a warrant:

- (a) surveying the land in connection with making or confirming a tree preservation order;
- (b) ascertaining whether an offence under section 210 or 211 has been committed; or
- (c) determining whether a tree replacement notice under section 207 should be served on the owner of the land,

if there are reasonable grounds for entering for that purpose. Entry must take place at a reasonable hour. Twenty-four hours' notice of the intended entry for these purposes does

not have to be given to the occupier. But such notice is required if, in the course of exercising these powers, it is intended to enter a dwellinghouse.

**6.18** The LPA's entry on to land without a warrant for other purposes related to protected trees, and their power to authorise others to enter in connection with the exercise of their functions (such as determining an application for consent under a tree preservation order, or executing works following non-compliance with a tree replacement notice) is within the general right provided under section 214B(3) of the Act. Twenty-four hours' notice for these purposes must always be given in relation to any occupied land.

**6.19** Where entry is required under section 214B(1) (see paragraph 6.17 above) and the case is one of urgency or admission has been refused (or refusal is reasonably expected), entry may be authorised by warrant issued by a magistrate under section 214C(1). A warrant authorises entry on one occasion only within one month from the date of its issue. Furthermore, entry must take place at a reasonable hour, unless the case is one of urgency.

**6.20** Supplementary provisions under section 214D include an offence for the wilful obstruction of anyone exercising right of entry, and a power to take tree and soil samples.

## Appendix to Annex 6: entry to agricultural land

### Animal health

1. When there is an outbreak of serious disease in animals (such as foot-and-mouth disease or anthrax), notices giving warning of the outbreak will be placed strategically by Diseases of Animals Inspectors on the edge of the farmland. This would warn any unexpected or casual visitors (such as a local authority Enforcement Officer) of the dangers and should effectively prevent them entering the land and thus being responsible for spreading the disease. However, there are other instances (such as during a TB/brucellosis outbreak) where there is no requirement to place notices warning of the dangers, but entry to the land could nevertheless cause the spread of disease. LPA officers should therefore contact the MAFF or WOAD Divisional Veterinary Officer at the local Animal Health Offices to check that there are no animal health movement restriction orders in force (or other animal health problems) on the farm they intend to visit.

### Plant health

2. Similarly, where there is serious plant disease (eg rhizomania of sugar beet), access to land may be strictly controlled under the Plant Health (Great Britain) Order 1987. With soil-borne diseases, there is a distinct risk that infested soil could be spread on footwear to an unaffected part of the farm or even to another location. LPA officers *should not* rely on a sign being present on such land and should instead make enquiries with the local MAFF or WOAD Divisional Office, so that a check can be made with the local Plant Health and Seeds Inspectorate that there is no plant health restriction in force on the land to be visited.