

Access rights pursuant
to the
Party Wall etc Act 1996
sections 1, 3, and 6
and
access under the
Access to Neighbouring Land Act 1992
a cut and paste guide

Access to Adjoining Land

Access rights pursuant to the Party Wall etc Act 1996 – sections 1, 3, and 6 and access under the Access to Neighbouring Land Act 1992

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Access to Adjoining Land

Party Wall etc Act 1996

Rights of entry.

Section 8

(1) A building owner, his servants, agents and workmen may during usual working hours enter and remain on any land or premises for the purpose of executing any work in pursuance of this Act and may remove any furniture or fittings or take any other action necessary for that purpose.

(2) If the premises are closed, the building owner, his agents and workmen may, if accompanied by a constable or other police officer, break open any fences or doors in order to enter the premises.

(3) No land or premises may be entered by any person under subsection (1) unless the building owner serves on the owner and the occupier of the land or premises-

(a) in case of emergency, such notice of the intention to enter as may be reasonably practicable;

(b) in any other case, such notice of the intention to enter as complies with subsection (4).

(4) Notice complies with this subsection if it is served in a period of not less than fourteen days ending with the day of the proposed entry.

(5) A surveyor appointed or selected under section 10 may during usual working hours enter and remain on any land or premises for the purpose of carrying out the object for which he is appointed or selected.

(6) No land or premises may be entered by a surveyor under subsection (5) unless the building owner who is a party to the dispute concerned serves on the owner and the occupier of the land or premises-

(a) in case of emergency, such notice of the intention to enter as may be reasonably practicable;

(b) in any other case, such notice of the intention to enter as complies with subsection (4).

Saul v Norfolk County Council CA 3WLR

On appeal by the county council:–

Held, dismissing the appeal, (1) that the words “in pursuance of the said part III of the Agriculture Act 1970 in section 18(4)(f) of the Act of 1976 had to be given their ordinary and natural meaning, namely, “in exercise of the authority conferred by Part III of the Act of 1970

Works in Pursuance

Access therefore available for the exercise of rights granted by the Act

New building on line of junction.

Section 1

(6) Where the building owner builds a wall wholly on his own land in accordance with subsection (4) or (5) he shall have the right, ... to place below the level of the land of the adjoining owner such projecting footings and foundations as are necessary for the construction of the wall.

Repair etc. of party wall: rights of owner.

Section 2

(2) A building owner shall have the following rights-

Adjacent excavation and construction.

Section 6

(3) The building owner may, and if required by the adjoining owner shall, at his own expense underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner so far as may be necessary.

Compensation etc.

Section 7

(1) A building owner shall not exercise any right conferred on him by this Act in such a manner or at such time as to cause unnecessary inconvenience to any adjoining owner or to any adjoining occupier.

New building on line of junction.

Section 1

(1) This section shall have effect where lands of different owners adjoin and-

(a) are not built on at the line of junction; or

(b) are built on at the line of junction only to the extent of a boundary wall (not being a party fence wall or the external wall of a building),

and either owner is about to build on any part of the line of junction.

(2) If a building owner desires to build a party wall or party fence wall on the line of junction he shall, at least one month before he intends the building work to start, serve on any adjoining owner a notice which indicates his desire to build and describes the intended wall.

(3) If, having been served with notice described in subsection (2), an adjoining owner serves on the building owner a notice indicating his consent to the building of a party wall or party fence wall-

(a) the wall shall be built half on the land of each of the two owners or in such other position as may be agreed between the two owners; and

(b) the expense of building the wall shall be from time to time defrayed by the two owners in such proportion as has regard to the use made or to be made of the wall by each of them and to the cost of labour and materials prevailing at the time when that use is made by each owner respectively.

(4) If, having been served with notice described in subsection (2), an adjoining owner does not consent under this subsection to the building of a party wall or party fence wall, the building owner may only build the wall-

(a) at his own expense; and

(b) as an external wall or a fence wall, as the case may be, placed wholly on his own land, and consent under this subsection is consent by a notice served within the period of fourteen days beginning with the day on which the notice described in subsection (2) is served.

(5) If the building owner desires to build on the line of junction a wall placed wholly on his own land he shall, at least one month before he intends the building work to start, serve on any adjoining owner a notice which indicates his desire to build and describes the intended wall.

(6) Where the building owner builds a wall wholly on his own land in accordance with subsection (4) or (5) he shall have the right, at any time in the period which-

(a) begins one month after the day on which the notice mentioned in the subsection concerned was served, and

(b) ends twelve months after that day,

to place below the level of the land of the adjoining owner such projecting footings and foundations as are necessary for the construction of the wall.

(7) Where the building owner builds a wall wholly on his own land in accordance with subsection (4) or (5) he shall do so at his own expense and shall compensate any adjoining owner and any adjoining occupier for any damage to his property occasioned by-

(a) the building of the wall;

(b) the placing of any footings or foundations placed in accordance with subsection (6).

(8) Where any dispute arises under this section between the building owner and any adjoining owner or occupier it is to be determined in accordance with section 10.

Repair etc. of party wall: rights of owner.

Section 2

(1) This section applies where lands of different owners adjoin and at the line of junction the said lands are built on or a boundary wall, being a party fence wall or the external wall of a building, has been erected.

(2) A building owner shall have the following rights-

(a) to underpin, thicken or raise a party structure, a party fence wall, or an external wall which belongs to the building owner and is built against a party structure or party fence wall;

(b) to make good, repair, or demolish and rebuild, a party structure or party fence wall in a case where such work is necessary on account of defect or want of repair of the structure or wall;

(c) to demolish a partition which separates buildings belonging to different owners but does not conform with statutory requirements and to build instead a party wall which does so conform;

(d) in the case of buildings connected by arches or structures over public ways or over passages belonging to other persons, to demolish the whole or part of such buildings, arches or structures which do not conform with statutory requirements and to rebuild them so that they do so conform;

(e) to demolish a party structure which is of insufficient strength or height for the purposes of any intended building of the building owner and to rebuild it of sufficient strength or height for the said purposes (including rebuilding to a lesser height or thickness where the rebuilt structure is of sufficient strength and height for the purposes of any adjoining owner);

(f) to cut into a party structure for any purpose (which may be or include the purpose of inserting a damp proof course);

(g) to cut away from a party wall, party fence wall, external wall or boundary wall any footing or any projecting chimney breast, jamb or flue, or other projection on or over the land of the building owner in order to erect, raise or underpin any such wall or for any other purpose;

(h) to cut away or demolish parts of any wall or building of an adjoining owner overhanging the land of the building owner or overhanging a party wall, to the extent that it is necessary to cut away or demolish the parts to enable a vertical wall to be erected or raised against the wall or building of the adjoining owner;

(j) to cut into the wall of an adjoining owner's building in order to insert a flashing or other weather-proofing of a wall erected against that wall;

(l) to raise a party fence wall, or to raise such a wall for use as a party wall, and to demolish a party fence wall and rebuild it as a party fence wall or as a party wall;

(m) subject to the provisions of section 11(7), to reduce, or to demolish and rebuild, a party wall or party fence wall to-

(i) a height of not less than two metres where the wall is not used by an adjoining owner to any greater extent than a boundary wall; or

(ii) a height currently enclosed upon by the building of an adjoining owner;

(n) to expose a party wall or party structure hitherto enclosed subject to providing adequate weathering.

Adjacent excavation and construction.

Section 6

(1) This section applies where-

(a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of three metres measured horizontally from any part of a building or structure of an adjoining owner; and

(b) any part of the proposed excavation, building or structure will within those three metres extend to a lower level than the level of the bottom of the foundations of the building or structure of the adjoining owner.

(2) This section also applies where-

(a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of six metres measured horizontally from any part of a building or structure of an adjoining owner; and

(b) any part of the proposed excavation, building or structure will within those six metres meet a plane drawn downwards in the direction of the excavation, building or structure of the building owner at an angle of forty-five degrees to the horizontal from the line formed by the intersection of the plane of the level of the bottom of the foundations of the building or structure of the adjoining owner with the plane of the external face of the external wall of the building or structure of the adjoining owner.

(3) The building owner may, and if required by the adjoining owner shall, at his own expense underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner so far as may be necessary.

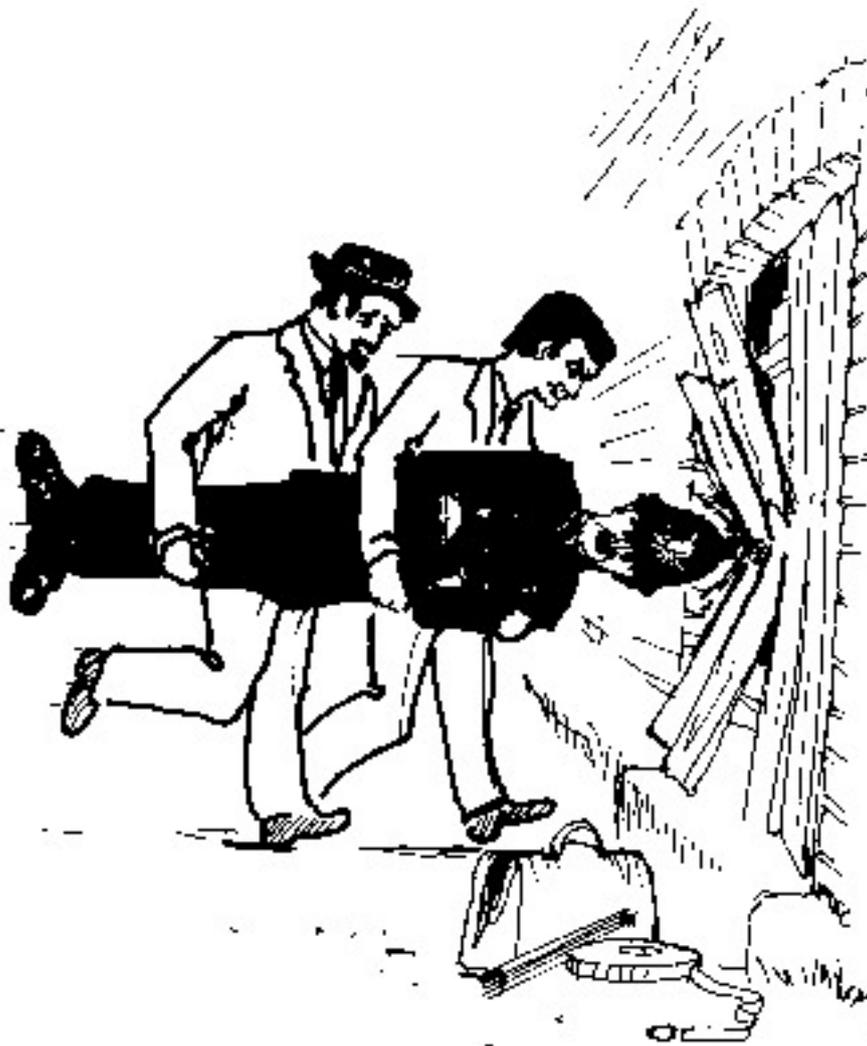
(4) Where the buildings or structures of different owners are within the respective distances mentioned in subsections (1) and (2) the owners of those buildings or structures shall be deemed to be adjoining owners for the purposes of this section.

(5) In any case where this section applies the building owner shall, at least one month before beginning to excavate, or excavate for and erect a building or structure, serve on the adjoining owner a notice indicating his proposals and stating whether he proposes to underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner.

(6) The notice referred to in subsection (5) shall be accompanied by plans and sections showing-

(a) the site and depth of any excavation the building owner proposes to make;

(b) if he proposes to erect a building or structure, its site.



Policeman, use of

This is believed to be a stolen copy of a sketch by Michael Cromar for and of John Anstey

Rights of entry. (building owner)

Section 8

(3) No land or premises may be entered by any person under subsection (1) unless the building owner serves on the owner and the occupier of the land or premises-

(a) in case of emergency, such notice of the intention to enter as may be reasonably practicable;

(b) in any other case, such notice of the intention to enter as complies with subsection (4).

(4) Notice complies with this subsection if it is served in a period of not less than fourteen days ending with the day of the proposed entry.

Rights of entry. (surveyor)

Section 8

(5) A surveyor appointed or selected under section 10 may during usual working hours enter and remain on any land or premises for the purpose of carrying out the object for which he is appointed or selected.

(6) No land or premises may be entered by a surveyor under subsection (5) unless the building owner who is a party to the dispute concerned serves on the owner and the occupier of the land or premises-

(a) in case of emergency, such notice of the intention to enter as may be reasonably practicable;

(b) in any other case, such notice of the intention to enter as complies with subsection (4).

Offences.

Section 16

(1) If-

(a) an occupier of land or premises refuses to permit a person to do anything which he is entitled to do with regard to the land or premises under section 8(1) or (5); and

(b) the occupier knows or has reasonable cause to believe that the person is so entitled,
the occupier is guilty of an offence.

(2) If-

(a) a person hinders or obstructs a person in attempting to do anything which he is entitled to do with regard to land or premises under section 8(1) or (5); and

(b) the first-mentioned person knows or has reasonable cause to believe that the other person is so entitled,

the first-mentioned person is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine of an amount not exceeding level 3 on the standard scale ¹.

¹ £1000 (by virtue of [Criminal Justice Act 1991 \(Commencement No 3\) Order 1992](#))

Compensation etc.

Section 7

(1) A building owner shall not exercise any right conferred on him by this Act in such a manner or at such time as to cause unnecessary inconvenience to any adjoining owner or to any adjoining occupier.

(2) The building owner shall compensate any adjoining owner and any adjoining occupier for any loss or damage which may result to any of them by reason of any work executed in pursuance of this Act.

(3) Where a building owner in exercising any right conferred on him by this Act lays open any part of the adjoining land or building he shall at his own expense make and maintain so long as may be necessary a proper hoarding, shoring or fans or temporary construction for the protection of the adjoining land or building and the security of any adjoining occupier.

(4) Nothing in this Act shall authorise the building owner to place special foundations on land of an adjoining owner without his previous consent in writing.

(5) Any works executed in pursuance of this Act shall-

(a) comply with the provisions of statutory requirements; and

(b) be executed in accordance with such plans, sections and particulars as may be agreed between the owners or in the event of dispute determined in accordance with section 10;

and no deviation shall be made from those plans, sections and particulars except such as may be agreed between the owners (or surveyors acting on their behalf) or in the event of dispute determined in accordance with section 10.

Access to Neighbouring Land Act 1992

Access orders.

Section 1

(1) A person—

(a) who, for the purpose of carrying out works to any land (the "dominant land"), desires to enter upon any adjoining or adjacent land (the "servient land"), and

(b) who needs, but does not have, the consent of some other person to that entry,

may make an application to the court for an order under this section ("an access order") against that other person.

(2) On an application under this section, the court shall make an access order if, and only if, it is satisfied—

(a) that the works are reasonably necessary for the preservation of the whole or any part of the dominant land; and

(b) that they cannot be carried out, or would be substantially more difficult to carry out, without entry upon the servient land;

but this subsection is subject to subsection (3) below.

(3) The court shall not make an access order in any case where it is satisfied that, were it to make such an order—

(a) the respondent or any other person would suffer interference with, or disturbance of, his use or enjoyment of the servient land, or

(b) the respondent, or any other person (whether of full age or capacity or not) in occupation of the whole or any part of the servient land, would suffer hardship, to such a degree by reason of the entry (notwithstanding any requirement of this Act or any term or condition that may be imposed under it) that it would be unreasonable to make the order.

(4) Where the court is satisfied on an application under this section that it is reasonably necessary to carry out any basic preservation works to the dominant land, those works shall be taken for the purposes of this Act to be reasonably necessary for the preservation of the land; and in this subsection "basic preservation works" means any of the following, that is to say—

(a) the maintenance, repair or renewal of any part of a building or other structure comprised in, or situate on, the dominant land;

(b) the clearance, repair or renewal of any drain, sewer, pipe or cable so comprised or situate;

(c) the treatment, cutting back, felling, removal or replacement of any hedge, tree, shrub or other growing thing which is so comprised and which is, or is in danger of becoming, damaged, diseased, dangerous, insecurely rooted or dead;

(d) the filling in, or clearance, of any ditch so comprised;

but this subsection is without prejudice to the generality of the works which may, apart from it, be regarded by the court as reasonably necessary for the preservation of any land.

Theft Act 1968

Burglary.

Section 9

(1) A person is guilty of burglary if—

(a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm or raping any woman therein, and of doing unlawful damage to the building or anything therein.

(4) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding fourteen years.

Criminal Law Act 1977 (amended)

Offences Relating to Entering and Remaining on Property

Section 6

Violence for securing entry

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

(4) It is immaterial for the purposes of this section

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(6) A constable in uniform may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

(7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.

Criminal Justice and Public Order Act 1994

Public Order: Collective Trespass or Nuisance on Land

Powers to remove trespassers on land

Section 61

(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him—

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In proceedings for an offence under this section it is a defence for the accused to show—

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

Serious Organised Crime and Police Act 2005

Part 4 — Public order and conduct in public places etc.

Section 127

Harassment etc: police direction to stay away from person's home

(1) Section 42 of the Criminal Justice and Police Act 2001 (c. 16) (police directions stopping harassment of a person in his home) is amended as follows.

(2) For subsection (4) substitute—

“(4) The requirements that may be imposed by a direction under this section include—

(a) a requirement to leave the vicinity of the premises in question, and

(b) a requirement to leave that vicinity and not to return to it within such period as the constable may specify, not being longer than 3 months;

and (in either case) the requirement to leave the vicinity may be to do so immediately or after a specified period of time.”

(3) In subsection (7), for “contravenes a direction given to him under this section” substitute “fails to comply with a requirement in a direction given to him under this section (other than a requirement under subsection (4)(b))”.

(4) After subsection (7) insert—

“(7A) Any person to whom a constable has given a direction including a requirement under subsection (4)(b) commits an offence if he—

(a) returns to the vicinity of the premises in question within the period specified in the direction beginning with the date on which the direction is given; and

(b) does so for the purpose described in subsection (1)(b).

(7B) A person guilty of an offence under subsection (7A) shall be liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 on the standard scale, or to both.

(7C) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in subsection (7B) to 51 weeks is to be read as a reference to 6 months.”

Crossing the Threshold: 266 ways the state can enter your home²

Under English law, the citizen's home has traditionally been regarded as a privileged space. The courts have insisted that servants of the state cannot enter a private home without the occupier's permission unless a specific law authorises them to do so.

Since the middle of the 20th century, the number of such legal provisions – powers of entry – has grown enormously, mirroring the expansion of the role of the state. There are now 266 powers allowing officials to enter a private home as of right.

A number of these powers originate with European Union directives and regulations, rather than with an Act of Parliament passed by the UK's elected legislators.

As a result of the proliferation and variety of entry powers, a citizen cannot realistically be aware of the circumstances in which his home may be entered by state officials without his consent, or what rights he has in such circumstances.

Force can be used in the exercise of almost all these powers. In part this is due to its specific authorisation by law; in part to the courts' readiness to imply a right to use force on grounds of necessity.

In many cases, discretion as to what is considered as reasonable behaviour in exercising an entry power is left to the judgement of those wielding the entry power.

Many powers are drafted so broadly that the citizen has little or no protection if officials behave officiously or vindictively.

Some carry draconian penalties for obstruction, including heavy fines and prison sentences of up to two years.

Record-keeping by government agencies on how they use these powers is highly variable and sometimes seriously inadequate.

For example, requests made under the Freedom of Information Act show that Her Majesty's Revenue and Customs keeps no regular record of the number of occasions on which its officers use the Writ of Assistance (one of the most intrusive and unregulated entry powers enjoyed by any state official).

The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter, the rain may enter – but the King of England cannot enter; all his force dares not cross the threshold of the ruined tenement.

William Pitt the Elder (1708-1778)

A man's house is his castle.

Sir Edward Coke (1552-1634)

² Harry Snook, Centre for Policy Studies SW1P 3QL 2007 and copied without permission



Metropolitan Police on way to enter houses in Blackstock Road N4 March 2008
<http://link.brightcove.com/services/link/bcpid1456296467/bctid1475735997>



Police enter house in Slough January 2008

Conclusion

1. Access is available to adjoining land for a building owner to exercise rights in pursuance of the Party Wall etc Act 1996
2. Works in pursuance are works “in exercise of the authority conferred by ... the Act” and so can only be those for which no right otherwise exists
3. No right may be exercised so as to cause unnecessary inconvenience and so must be necessary and the work incapable of being carried out in a less inconvenient manner for the adjoining owner or occupier
4. Works for which access is available therefore include:
 - a) under section 1, placing below the level of the land of the adjoining owner such projecting footings and foundations as are necessary for the construction of the wall
 - b) under section 2 any work to a party structure or adjoining owner’s building permitted by that section
 - c) under section 6 underpinning or otherwise strengthening or safeguarding the foundations of a building or structure of an adjoining owner
5. No access may be made by a building owner unless he has followed the procedure under the Act, ie service of notice, making of award or receipt of written consent, etc,
6. No access may be made by a building owner unless he has served notice under section 8 on the owner and the occupier of the land or premises
7. A surveyor appointed or selected under section 10 may during usual working hours enter and remain on any land or premises for the purpose of carrying out the object for which he is appointed or selected
8. No land or premises may be entered by such a surveyor unless the building owner who is a party to the dispute concerned has served notice under section 8 on the owner and the occupier of the land or premises
9. Access is available to adjoining land for a dominant owner to repair his buildings etc if necessary under the Access to Neighbouring Land Act 1992
10. Access is subject to obtaining a court order and paying compensation except in the case of residential land
11. Access made without following the procedures under the legislation is trespass which may be or become a criminal offence

12. The Green Book states on page 5:

The Working Party was unable to agree unanimously as to whether a building owner may enter an adjoining owner's land under s.8 (rights of entry) to build a wall above ground having served notice under s.1(5). It hinges on the interpretation of the phrase "work in pursuance of this Act" cited in s.8. There are three views within the Working Party as follows:

View 1:

The majority view is that the building owner may enter and remain on adjoining land in order to build such a wall. He may do so upon the expiration of the one month and 14-day notice periods under s.1 and s.8 respectively unless an actual dispute arises, in which case the matter must first be determined by surveyors appointed under s.10.

Reasoning:

Work undertaken as described in a notice served pursuant to s.1(5) is "work in pursuance of the Act". The building owner may therefore enter the adjoining land, subject to serving notice of entry under s.8

Access must not cause the adjoining owner unnecessary inconvenience and the adjoining owner is entitled to compensation for any damage to his property under s.1(7)(a) and for damage and loss as set out in s.7(2).

View 2:

A second view, which differs slightly from the first, is that the building owner may only enter the adjoining land if the adjoining owner consents or if an actual dispute arises. In the event of a dispute the appointed surveyors would determine whether the need for access is connected to, and necessary for, the building of the wall and make their award accordingly. In the absence of consent or an award, such as might happen if an adjoining owner does not respond to the notice, the building owner may not enter the adjoining owner's land.

Reasoning:

The details of the work must be settled either by the owners or in accordance with s.10 before it can be considered to be "work in pursuance of the Act".

View 3:

A third view is that a building owner does not have a right to enter an adjoining owner's land under s.8 for the purposes of building such a wall.

Reasoning:

"Work in pursuance of this Act" means work in exercise of the authority conferred by the Act. The Act does not confer authority to build a wall wholly on a building owner's land: he is entitled to do this anyway without the sanction of the Act (compare this with s.2 where the Act confers rights to raise a party wall, which

would otherwise be a trespass.) A wall built under s.1(5) is therefore not “work in pursuance of the Act” and s.8 (rights of entry) does not apply.

The Act simply requires the building owner to notify the adjoining owner before building at the line of junction so that the adjoining owner is given an opportunity to dispute the position of the intended wall and for the dispute to be determined by surveyors in accordance with s.10. If an adjoining owner does not respond to an s.1(5) notice the building owner can proceed to build the wall after the expiration of the one-month period but he may not enter any adjoining land without the express consent of the owner of that land.

In one case concerning an appeal to a third surveyor’s award a county court judgment held that a building owner did not have a right of entry onto an adjoining owner’s land under s.8 for building a wall on the line of junction and entirely on his own land. The building owner chose to have no legal representation in the case and the decision was not appealed and is not legal precedent.

Whatever a surveyor’s own view may be on whether a right of entry may be claimed, he would be well advised to make his appointing owner aware of the differing views.

The Working Party agreed unanimously that a building owner would be entitled to access onto the adjoining owner’s land under s.8 to project foundations onto next door’s land as described in s.1(6) or if a party wall or party fence wall is built as set out in s.1(2) and 1(3).