



Isle of Man

Ellan Vannin

AT 16 of 1993

**ACCESS TO NEIGHBOURING LAND ACT
1993**



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**Isle of Man***Ellan Vannin*

ACCESS TO NEIGHBOURING LAND ACT 1993

Received Royal Assent: 7 July 1993

Passed: 8 July 1993

Commenced: 1 November 1993

AN ACT to enable persons who desire to carry out works to any land which are reasonably necessary for the preservation of that land to obtain access to neighbouring land in order to do so; and for purposes connected therewith.

1 Access orders

[P1992/23/1]

- (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).
- (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 —

(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.

(5) If the court considers it fair and reasonable in all the circumstances of the case, works may be regarded for the purposes of this Act as being reasonably necessary for the preservation of any land (or, for the purposes of subsection (4), as being basic preservation works which it is reasonably necessary to carry out to any land) notwithstanding that the works incidentally involve —

(a) the making of some alteration, adjustment or improvement to the land, or

(b) the demolition of the whole or any part of a building or structure comprised in or situate upon the land.

(6) Where any works are reasonably necessary for the preservation of the whole or any part of the dominant land, the doing to the dominant land of anything which is requisite for, incidental to, or consequential on, the carrying out of those works shall be treated for the purposes of this Act as the carrying out of works which are reasonably necessary for the preservation of that land; and references in this Act to works, or to the carrying out of works, shall be construed accordingly.

(7) Without prejudice to the generality of subsection (6), if it is reasonably necessary for a person to inspect the dominant land —

- (a) for the purpose of ascertaining whether any works may be reasonably necessary for the preservation of the whole or any part of that land,
 - (b) for the purpose of making any map or plan, or ascertaining the course of any drain, sewer, pipe or cable, in preparation for, or otherwise in connection with, the carrying out of works which are so reasonably necessary, or
 - (c) otherwise in connection with the carrying out of any such works,
- the making of such an inspection shall be taken for the purposes of this Act to be the carrying out to the dominant land of works which are reasonably necessary for the preservation of that land; and references in this Act to works, or to the carrying out of works, shall be construed accordingly.

2 Terms and conditions of access orders

[P1992/23/2]

- (1) An access order shall specify —
 - (a) the works to the dominant land that may be carried out by entering upon the servient land in pursuance of the order;
 - (b) the particular area of servient land that may be entered upon by virtue of the order for the purpose of carrying out those works to the dominant land; and
 - (c) the date on which, or the period during which, the land may be so entered upon;

and in the following provisions of this Act any reference to the servient land is a reference to the area specified in the order in pursuance of paragraph (b).

- (2) An access order may impose upon the applicant or the respondent such terms and conditions as appear to the court to be reasonably necessary for the purpose of avoiding or restricting —
 - (a) any loss, damage, or injury which might otherwise be caused to the respondent or any other person by reason of the entry authorised by the order; or
 - (b) any inconvenience or loss of privacy that might otherwise be so caused to the respondent or any other person.
- (3) Without prejudice to the generality of subsection (2), the terms and conditions which may be imposed under that subsection include provisions with respect to —
 - (a) the manner in which the specified works are to be carried out;
 - (b) the days on which, and the hours between which, the work involved may be executed;

- (c) the persons who may undertake the carrying out of the specified works or enter upon the servient land under or by virtue of the order;
 - (d) the taking of any such precautions by the applicant as may be specified in the order.
- (4) An access order may also impose terms and conditions —
- (a) requiring the applicant to pay, or to secure that such person connected with him as may be specified in the order pays, compensation for —
 - (i) any loss, damage or injury, or
 - (ii) any substantial loss of privacy or other substantial inconvenience,
which will, or might, be caused to the respondent or any other person by reason of the entry authorised by the order;
 - (b) requiring the applicant to secure that he, or such person connected with him as may be specified in the order, is insured against any such risks as may be so specified; or
 - (c) requiring such a record to be made of the condition of the servient land, or of such part of it as may be so specified, as the court may consider expedient with a view to facilitating the determination of any question that may arise concerning damage to that land.
- (5) An access order may include provision requiring the applicant to pay the respondent such sum by way of consideration for the privilege of entering the servient land in pursuance of the order as appears to the court to be fair and reasonable having regard to all the circumstances of the case, including, in particular —
- (a) the likely financial advantage of the order to the applicant and any persons connected with him; and
 - (b) the degree of inconvenience likely to be caused to the respondent or any other person by the entry;
- but no payment shall be ordered under this subsection if and to the extent that the works which the applicant desires to carry out by means of the entry are works to residential land.
- (6) For the purposes of subsection (5)(a), the likely financial advantage of an access order to the applicant and any persons connected with him shall in all cases be taken to be a sum of money equal to the greater of the following amounts, that is to say —
- (a) the amount (if any) by which so much of any likely increase in the value of any land —
 - (i) which consists of or includes the dominant land, and

- (ii) which is owned or occupied by the same person as the dominant land,
as may reasonably be regarded as attributable to the carrying out of the specified works exceeds the likely cost of carrying out those works with the benefit of the access order; and
- (b) the difference (if it would have been possible to carry out the specified works without entering upon the servient land) between —
 - (i) the likely cost of carrying out those works without entering upon the servient land; and
 - (ii) the likely cost of carrying them out with the benefit of the access order.
- (7) For the purposes of subsection (5) “residential land” means so much of any land as consists of —
 - (a) a dwelling or part of a dwelling;
 - (b) a garden, yard, private garage or outbuilding which is used and enjoyed wholly or mainly with a dwelling; or
 - (c) in the case of a building which includes one or more dwellings, any part of the building which is used and enjoyed wholly or mainly with those dwellings or any of them.
- (8) The persons who are to be regarded for the purposes of this section as “connected with” the applicant are —
 - (a) the owner of any estate or interest in, or right over, the whole or any part of the dominant land;
 - (b) the occupier of the whole or any part of the dominant land; and
 - (c) any person whom the applicant may authorise under section 3(7) to exercise the power of entry conferred by the access order.
- (9) The court may make provision —
 - (a) for the reimbursement by the applicant of any expenses reasonably incurred by the respondent in connection with the application which are not otherwise recoverable as costs;
 - (b) for the giving of security by the applicant for any sum that might become payable to the respondent or any other person by virtue of this section or section 3.

3 Effect of access order

[P1992/23/3]

- (1) An access order requires the respondent, so far as he has power to do so, to permit the applicant or any of his associates to do anything which the applicant or associate is authorised or required to do under or by virtue of the order or this section.

- (2) Except as otherwise provided by or under this Act, an access order authorises the applicant or any of his associates, without the consent of the respondent —
- (a) to enter upon the servient land for the purpose of carrying out the specified works;
 - (b) to bring on to that land, leave there during the period permitted by the order and, before the end of that period, remove, such materials, plant and equipment as are reasonably necessary for the carrying out of those works; and
 - (c) to bring on to that land any waste arising from the carrying out of those works, if it is reasonably necessary to do so in the course of removing it from the dominant land;

but nothing in this Act or in any access order shall authorise the applicant or any of his associates to leave anything in, on or over the servient land (otherwise than in discharge of their duty to make good that land) after their entry for the purpose of carrying out works to the dominant land ceases to be authorised under or by virtue of the order.

- (3) An access order requires the applicant —
- (a) to secure that any waste arising from the carrying out of the specified works is removed from the servient land forthwith;
 - (b) to secure that, before the entry ceases to be authorised under or by virtue of the order, the servient land is, so far as reasonably practicable, made good; and
 - (c) to indemnify the respondent against any damage which may be caused to the servient land or any goods by the applicant or any of his associates which would not have been so caused had the order not been made;

but this subsection is subject to subsections (4) and (5).

- (4) In making an access order, the court may vary or exclude, in whole or in part —
- (a) any authorisation that would otherwise be conferred by subsection (2)(b) or (c); or
 - (b) any requirement that would otherwise be imposed by subsection (3).
- (5) Without prejudice to the generality of subsection (4), if the court is satisfied that it is reasonably necessary for any such waste as may arise from the carrying out of the specified works to be left on the servient land for some period before removal, the access order may, in place of subsection (3) (a), include provision —
- (a) authorising the waste to be left on that land for such period as may be permitted by the order; and

- (b) requiring the applicant to secure that the waste is removed before the end of that period.
- (6) Where the applicant or any of his associates is authorised or required under or by virtue of an access order or this section to enter, or do any other thing, upon the servient land, he shall not (as respects that access order) be taken to be a trespasser from the beginning on account of his, or any other person's, subsequent conduct.
- (7) For the purposes of this section, the applicant's "associates" are such number of persons (whether or not servants or agents of his) whom he may reasonably authorise under this subsection to exercise the power of entry conferred by the access order as may be reasonably necessary for carrying out the specified works.

4 Persons bound by access order, unidentified persons and bar on contracting out

[P1992/23/4]

- (1) In addition to the respondent, an access order shall, subject to the provisions of the *Registration of Deeds Act 1961* and the *Land Registration Act 1982*, be binding on —
 - (a) any of his successors in title to the servient land; and
 - (b) any person who has an estate or interest in, or right over, the whole or any part of the servient land which was created after the making of the order and who derives his title to that estate, interest or right under the respondent;and references to the respondent shall be construed accordingly.
- (2) If and to the extent that the court considers it just and equitable to allow him to do so, a person on whom an access order becomes binding by virtue of subsection (1)(a) or (b) shall be entitled, as respects anything falling to be done after the order becomes binding on him, to enforce the order or any of its terms or conditions as if he were the respondent, and references to the respondent shall be construed accordingly.
- (3) Rules of court may —
 - (a) provide a procedure which may be followed where the applicant does not know, and cannot reasonably ascertain, the name of any person whom he desires to make respondent to the application; and
 - (b) make provision enabling such an applicant to make such a person respondent by description instead of by name;

and in this subsection "applicant" includes a person who proposes to make an application for an access order.

- (4) Any agreement, whenever made, shall be void if and to the extent that it would, apart from this subsection, prevent a person from applying for an access order or restrict his right to do so.

5 Registration of access orders and of applications for such orders

[P1992/23/5]

- (1) An access order may be registered under the *Registration of Deeds Act 1961* as a judgment affecting land.
- (2) An application for an access order shall be regarded as a pending action relating to land for the purposes of the *Land Registration Act 1982*.
- (3) In any case where —
- (a) an access order is revoked under section 6(1)(a), and
 - (b) the order has been protected by registration under the *Registration of Deeds Act 1961* or by being entered as a burden under the *Land Registration Act 1982*,

the court may by order direct that the registration or entry shall be cancelled.

6 Variation of orders and damages for breach

[P1992/23/6]

- (1) Where an access order or an order under this subsection has been made, the court may, on the application of any party to the proceedings in which the order was made or of any other person on whom the order is binding —
- (a) revoke or vary the order or any of its terms or conditions;
 - (b) suspend any of its terms or conditions; or
 - (c) revive any term or condition suspended under paragraph (b),
- and in the application of subsections (1) and (2) of section 4 in relation to an access order, any order under this subsection which relates to the access order shall be treated for the purposes of those subsections as included in the access order.
- (2) If any person contravenes or fails to comply with any requirement, term or condition imposed upon him by or under this Act, the court may, without prejudice to any other remedy available, make an order for the payment of damages by him to any other person affected by the contravention or failure who makes an application for relief under this subsection.

7 Interpretation and application

[P1992/23/8]

- (1) Any reference in this Act to an “entry” upon any servient land includes a reference to the doing on that land of anything necessary for carrying out the works to the dominant land which are reasonably necessary for its preservation; and “enter” shall be construed accordingly.
- (2) This Act applies in relation to any obstruction of, or other interference with, a right over, or interest in, any land as it applies in relation to an entry upon that land; and “enter” and “entry” shall be construed accordingly.
- (3) In this Act —
 - “**access order**” has the meaning given by section 1(1);
 - “**applicant**” means a person making an application for an access order and, subject to section 4, “**the respondent**” means the respondent, or any of the respondents, to such an application;
 - “**the court**” means the High Court;
 - “**the dominant land**” and “**the servient land**” respectively have the meanings given by section 1(1), but subject, in the case of servient land, to section 2(1);
 - “**land**” does not include a highway;
 - “**the specified works**” means the works specified in the access order in pursuance of section 2(1)(a).

8 Short title and commencement

- (1) This Act may be cited as the Access to Neighbouring Land Act 1993.
- (2) This Act shall come into force on such day as the Council of Ministers may by order appoint.¹

ENDNOTES**Table of Legislation History**

Legislation	Year and No	Commencement

Table of Renumbered Provisions

Original	Current

Table of Endnote References

¹ ADO (whole Act) 1/11/1993 (SD445/93).