



Section 53: Rights of entry (Planning Act 2008)

Advice note five: Section 53

Status of this Advice Note

This version of advice note 5 supersedes all previous versions and includes revisions made in response to emerging best practice on projects.

Summary of this Advice Note

This note sets out advice on how a person ('the applicant') who proposes to make, or who has made, an application for a Development Consent Order ('DCO'), or has been granted a DCO under the Planning Act 2008, as amended ('the 2008 Act') may apply for authorisation for a right of entry to gain access onto land in order to carry out surveys and take levels and/or in order to facilitate compliance with statutory provisions implementing the Environmental Impact Assessment Directive¹ or Habitats Directive² under s.53 of the 2008 Act ('s.53 authorisation').

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended from time to time (s.53(1A)(a) of the 2008 Act)

² Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended from time to time (s.53(1A)(b) of the 2008 Act)

Please note: This advice note refers to annexes which can be viewed at:
<http://infrastructure.planningportal.gov.uk/legislation-and-advice/our-guidance-and-advice/>



The Secretary of State can only authorise a right of entry onto third party land in connection with a proposed application for a DCO, an application for a DCO which has been accepted by the Secretary of State, or a DCO (including provision authorising the compulsory acquisition of that land or of an interest in it or right over it)³ which has been granted.

The purpose of s.53 authorisation is to enable the Secretary of State to grant applicants rights of entry to land, where an applicant is considering a distinct project of real substance genuinely requiring entry onto the land, and where they have been refused that access by third parties. Before seeking authorisation under s.53 of the 2008 Act, applicants should be aware of the expectation that they have acted reasonably, through demonstrating that they have first sought to obtain the relevant permission to access land and that they consider that they have been unreasonably refused that access.

Applicants should seek their own legal advice on which they can rely, on how to demonstrate that they have met both the requirements under s.53 of the 2008 Act and the intensions set out in the DCLG Guidance⁴, in their particular circumstances.

The s.53 authorisation request should be made to the Major Applications and Plans Directorate of the Planning Inspectorate, on behalf of the Secretary of State.

³ s.53(1) of the 2008 Act

⁴ Department for Communities and Local Government - Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 Guidance (June 2013) (the 'DCLG Guidance')

Contact details are provided at the end of this advice note under 'Further information'.

Contacting the Planning Inspectorate before requesting authorisation for a right of entry to gain access onto land

Applicants are strongly encouraged to contact the Planning Inspectorate at least four weeks in advance of submitting any s.53 authorisation request(s). The Planning Inspectorate can provide advice as to the evidence that the applicant needs to provide, the likely number of authorisation requests, as well as details on the fees and how these should be paid.

Fees

The current fee payable is £1,000 per request⁵. Fees are payable by BACS payment. Please contact the Planning Inspectorate to obtain these payment details (see contact details at the end of this advice note).

The Planning Inspectorate will confirm receipt of the request(s) for authorisation. Non-payment of the fee(s) due will delay the process because the Secretary of State need not consider the request until the correct payment is received⁶.

Please note that if an authorisation request is subsequently withdrawn, by the applicant after submission, a refund will not be provided.

⁵ Regulation 3(1)(b) of The Infrastructure Planning (Fees) Regulations 2010 (SI 2010/106) (as amended) ('the Fees Regulations')

⁶ Regulation 3(3) of the Fees Regulations



Number of authorisation requests

The fee payable by the applicant is determined by the number of authorisation request(s) submitted. The Planning Inspectorate has discretion to determine the number of authorisation requests made by the applicant⁷.

As a general rule and having regard to the DCLG Guidance⁴, the Planning Inspectorate will treat each land parcel representing a registered title or area of unregistered land as constituting a single s.53 authorisation request.

However, there may be occasions where the applicant considers that a s.53 authorisation request containing more than one land parcel should be treated as a single authorisation request. This may include situations where the applicant is of the opinion that land ownership has been subdivided specifically for the purpose of creating the need for multiple requests, or where multiple parcels of land are held by the same landowner(s) and these parcels of land are sufficiently neighbouring each other. Where this applies, the applicant should provide justification to the Planning Inspectorate as to why one fee would be appropriate, taking into account how all the land parcels relate to each other and the complexity of the titles.

Information to be provided with the s.53 authorisation request

There is no prescribed application form to request authorisation from the Secretary of State to enter third party land. The s.53

authorisation request should be made by letter.

The Secretary of State has to be satisfied that the applicant has a genuine need to enter onto the land in relation to a project which requires development consent. The list below summarises the information to be provided to the Secretary of State:

- contact details for the applicant or the agent acting on behalf of the applicant,
- an explanation why authorisation is needed for the purpose of surveying and taking levels of the land, or in order to facilitate compliance with either the EIA or Habitats Directives⁸,
- where the application is made at the pre-application stage, justification that the applicant is proposing a distinct project of real substance genuinely requiring entry onto the land,
- a description of the project requiring development consent,
- information identifying any owners, occupiers, tenants and lessees who have an interest in the land to which the s.53 authorisation request relates (referred to in this advice note as 'the Persons Interested in the Land'), including up-to-date official copies of the registered title and title plans and/or a copy of a certificate of the result of search of the index map in relation to any unregistered land (including the map submitted to the Land Registry to undertake the search),
- where an agent acts on behalf of the Persons Interested in the Land, confirmation of their authorisation,

⁷ DCLG Guidance, Annex A, Paragraph 3, page 8

⁸ S.53(1) and s.53(1A) of the 2008 Act



- plans identifying the land for which authorisation to enter is sought,
- information to demonstrate that the applicant has acted reasonably and has been unreasonably refused access to the land,
- information to demonstrate that the applicant has notified the Persons Interested in the Land that a request for authorisation has been made to the Secretary of State,
- the duration for which authorisation is sought, and
- what conditions the applicant thinks this authorisation should be granted subject to, if the Secretary of State is minded to grant authorisation to enter the land.

The above information is explained in further detail in the following sections of this advice note.

1. Contact details

The full name, address, telephone number and email address of the person or organisation making the request should be provided. Where the application is being made by an organisation, a named point of contact within that organisation should be given, and in such a case, if the authorisation is granted, the organisation itself will be the 'person authorised' to enter the land.

If the authorisation request is being made by an agent acting on behalf of the applicant, the same information as requested above should be provided for both the applicant and the agent.

2. Purpose of requesting a right of entry onto land

The applicant should provide in their s.53 authorisation request a full explanation as to why authorisation for rights of entry is sought. The applicant should also identify in the authorisation request if entry onto the land is for '*surveying and taking levels*'⁹ and/or in order to facilitate compliance with either the EIA or Habitats Directives¹⁰.

Where applicants are seeking authorisation for '*surveying and taking levels*' of the land, applicants should also identify whether they are requesting authorisation to '*search and bore for the purposes of ascertaining the nature of the subsoil or the presence of minerals or other matter in it*'¹¹. Where authorisation is sought for the inclusion of the power to '*search and bore*' the Secretary of State will consider this a request for intrusive surveys, which should be reflected in the draft conditions proposed by the applicant.

3. Satisfying the criteria for a s.53 authorisation request made at the pre-application stage in the DCO process

The applicant should be aware that the Secretary of State can only authorise entry in relation to a proposed DCO application if it appears to the Secretary of State that the '*applicant is considering a distinct project of real substance genuinely requires entry onto the land*'¹².

9 S.53(1) of the 2008 Act

10 S.53(1), s.53(1A) and s.53(3A) of the 2008 Act

11 S.53(1) and s.53(3) of the 2008 Act

12 S.53(1)(b) and S.53(2) of the 2008 Act



Therefore, the applicant will need to demonstrate to the satisfaction of the Secretary of State that the applicant is:

'considering a distinct project of real substance'

By way of example, the applicant could provide the following to the Secretary of State:

- details about what stage in the pre-application consultation the applicant has reached on the project;
- whether the applicant has given notification under s.46 of the 2008 Act; and
- whether the applicant has requested a screening or scoping opinion from the Secretary of State.

'genuinely requiring entry onto the land'

The applicant should explain why entry is required, bearing in mind whether entry is sought under the provisions of s.53(1) and/ or s.53(1A) of the 2008 Act. Evidence that the applicant may wish to provide to demonstrate this may include details about the proposed surveys and works (please refer to **Section 7** of this advice note '**Details of the proposed surveys and works**' for further details).

4. Description of the project requiring development consent

The following should be provided:

- in cases where an application has not yet been submitted: a description of the proposed nationally significant infrastructure project (NSIP) and any

associated development, or

- where an application for a DCO has been accepted: the reference number of the application, or
- where a DCO has been made, a copy of the DCO.

5. Identifying the Persons Interested in the Land to which the s.53 authorisation request relates

A table, referred to as 'the Table' should be enclosed with the authorisation request(s) which details the known information about the land to which the proposed authorisation request(s) relates and the identity of the Persons Interested in the Land¹³. A suggested format for the Table is included at [Annex A](#).

The applicant should explain how each Person Interested in the Land has been identified. This should include:

- for registered land parcels: providing up-to-date¹⁴ official copies of the registered title and title plans to the Planning Inspectorate, and
- for unregistered land parcels: providing evidence to demonstrate that the land

¹³ Whilst the categories of person that the applicant can serve a s.53 authorisation notice on is not prescribed in s.53 of the 2008 Act, the Planning Inspectorate expects that the applicant will identify, consult and notify the owners, occupiers, tenants and lessees (defined as 'the Persons Interested in the Land') of the land to which the s.53 authorisation request(s) relates

¹⁴ The Planning Inspectorate as a rule of thumb, expects the date on the official copies to not exceed 3 months from the day on which the s.53 authorisation request(s) were submitted to the Secretary of State



is unregistered, such as an up-to-date¹⁵ copy of a certificate of the result of the search of the index map in relation to the land (including the map submitted to the Land Registry to undertake the search). Where the land is unregistered, the diligent inquiry undertaken by the applicant in order to identify the Persons Interested in the Land should be explained in the authorisation request. For example, written confirmation from the Persons Interested in the Land or a record of a meeting in which the person confirmed their interest in the land.

6. Plans to accompany the Table, identifying the land for which entry is sought

A plan, marked as 'Plan A', should be provided showing the following information:

- outlined in red: the extent of the development and works¹⁶,
- identified in blue: any land owned or under the control of the applicant, or confirmation should be provided that there is no land owned or under the control of the applicant shown on Plan A, and
- identified in green: land for which rights of entry are sought, if subsequently authorised by the Secretary of State.

¹⁵ The Planning Inspectorate as a rule of thumb, expects the date on the certificate of the result of search of the index map to not exceed 3 months from the day on which the s.53 authorisation request(s) were submitted to the Secretary of State

¹⁶ The works plan (required under regulation 5(2)(j) the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009) (SI 2264)(as amended), must also show this information

Plan A should be no larger than AO size, drawn to an identified scale (not smaller than 1:2500) and show the direction of north.

Where any part of the land identified in green on Plan A is registered, the boundary of the registered title number(s) should be clearly shown on Plan A and allocated a parcel number. The allocated parcel number(s) and registered title number(s) should be clearly cross-referenced to the Table, and up-to-date official copies of the registered title and title plans should be provided to the Planning Inspectorate. The Planning Inspectorate expects the boundary of the registered title numbers, as shown on Plan A, to match exactly the boundary of the title number as shown on the registered plan. Where this is not the case the Planning Inspectorate will seek clarification from the applicant and/or the Persons Interested in the Land.

Where any part of the land identified in green on Plan A is unregistered, the boundary of the unregistered land should be clearly shown on Plan A and allocated a parcel number. The allocated parcel number(s) should be clearly identified on the Table and a clear description of the parcel area by reference to the boundary and any physical features provided. OS grid references for each parcel of unregistered land should be included in the Table.

Where the full extent of land required for, or affected by, the proposed development¹⁷ cannot be identified on a single 'Plan A' due to the size of the proposed development, a 'Key Plan' should be provided. The Key Plan should

¹⁷ For example, the land plan, as required under regulation 5(2)(i) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (SI 2264) (as amended), must show this information and could be used as a base for Plan A



identify the full extent of land required for, or affected by, the proposed development and the location of the land parcel(s) for which authorisation is sought.

7. Details of the proposed surveys and works

The applicant should clearly specify what surveys they intend to carry out, outlining their methodology and providing an explanation as to why the surveys are connected with the proposed/accepted/consented DCO. The applicant should demonstrate to the Secretary of State that these surveys comply with the purpose of s.53 in relation to the project¹⁸. This may include information about the need to investigate and assess environmental impacts (please refer to **Section 2** of this advice note, '**Purpose of requesting a right of entry onto land**').

The following information should also be provided in relation to each authorisation request:

- the scope of environmental surveys and whether these have been agreed with the relevant regulatory/environmental bodies,
- the survey area, timescale and period, together with an indication of whether or not repetitive visits would be required, and
- any other survey requirements including access into buildings and night-time surveys.

8. Statutory Undertakers Land

The authority of an appropriate Minister is required in relation to land held by statutory undertakers¹⁹ who object to the proposed

¹⁸ s.53(3) and/or s.53(3A) of the 2008 Act

¹⁹ 'statutory undertakers' means persons who are, or who are deemed to be, statutory undertakers for the purposes of any

surveys on the ground that execution of the works would be seriously detrimental to the carrying-on of their undertaking²⁰.

In the case of land in Wales held by water or sewerage undertakers any such authorisation must be obtained from the Welsh Ministers²¹.

Applicants are advised to contact the Planning Inspectorate before submitting a s.53 authorisation request, where they have identified that the proposed request includes land held by statutory undertakers.

9. Crown land

The Secretary of State may grant rights of entry onto Crown land²². However, a person cannot exercise that right unless they have the permission of the appropriate Crown authority or the authority of someone who appears to that person to be entitled to give that authority.

10. Disturbance of protected species

Any authorisation which may be granted by the Secretary of State under s.53 of the 2008 Act will not extend to authorising entry onto land for any activity which may lead to the committing of an offence under:

- the Habitats Regulations²³ (European Protected Species),
- the Wildlife and Countryside Act 1981, or
- legislation for the protection of specific species, for example, the Protection of Badgers Act 1992.

provision of Part 11 of TCPA 1990 (s.53(11) of the 2008 Act)

²⁰ s.53(10) of the 2008 Act

²¹ s.53(11) of the 2008 Act

²² s.54 of the 2008 Act

²³ The Conservation of Habitats and Species Regulations 2010 (SI 490) as amended ('the Habitats Regulations')



If an applicant wishes to carry out survey activities on the land that may lead to an offence being committed, it should consider whether there is a need to obtain a licence from the relevant nature conservation body, for example Natural England or Natural Resources Wales. Where a licence is required, it will be the applicant's responsibility to ensure this is obtained before undertaking the surveys, if s.53 authorisation is granted by the Secretary of State.

11. Intentions of s.53 – applicant has acted reasonably and has been unreasonably refused access

Whilst there is no statutory test in respect of the efforts that the applicant should make to obtain access to the land, prior to making a s.53 authorisation request to the Secretary of State, DCLG Guidance⁴ states, at paragraph 3 of Annex A, that the intention in respect of s.53, is that *'Where an applicant is refused...access, and in relation to section 53 is considering a distinct project of real substance genuinely requiring entry onto the land in question, they can submit a request to the Secretary of State who can require that the...access is to be provided'*.

The DCLG Guidance states, at paragraph 3 of Annex A, that *'Applicants are expected to act reasonably, first seeking to obtain relevant... permission to access land directly before seeking authorisation under these provisions. Specifically, applicants should only submit requests for...access to parcels of land, where they consider they have been unreasonably refused that...access'*.

Therefore, it is expected that an applicant will demonstrate that reasonable efforts have been made to obtain entry to the

land identified in green on Plan A, prior to making the s.53 authorisation request to the Secretary of State, and explain why in their opinion, they have been unreasonably refused that access.

12. Demonstrating that the applicant has acted reasonably and has been unreasonably refused access

To demonstrate that the applicant has undertaken reasonable efforts to obtain access by agreement, it is expected that, wherever possible, there will have been an exchange of correspondence and dialogue over several months between the applicant and the Persons Interested in the Land in an attempt to obtain access to the land, prior to making the s.53 authorisation request. Where dialogue has occurred over a short period of time, prior to the applicant making a s.53 authorisation request, the applicant should explain in their covering letter why they consider that they have been unreasonably refused access, given the short timeframe to reach agreement with the Persons Interested in the Land.

13. Presentation of evidence to demonstrate reasonable efforts

The applicant should provide the Planning Inspectorate with one hard copy and one electronic copy of each s.53 authorisation request, which should include the same information. The information provided on the electronic copy should not be protected nor encrypted. The hard copy of each request should be provided in a separate A4 folder.

The authorisation request(s) cover letter should identify where the information provided to support the applicant's authorisation request(s) can be found within



each folder. This should be by reference to a specific 'Tab' within each folder. Where more than one authorisation is made, which share common documents, the applicant may wish to consider producing a separate core document folder and cross-referencing all of the authorisation requests to this one folder, to avoid duplication of the information.

To assist the Planning Inspectorate and Secretary of State in reviewing the authorisation request(s) the applicant should provide a schedule ('the Schedule of Correspondence') setting out any correspondence between the applicant and the Persons Interested in the Land, including the following information:

- any relevant letters, meeting and telephone notes, and
- the dates that the correspondence was sent and received.

Any documents referred to in the correspondence provided within the Schedule of Correspondence should also be provided to the Planning Inspectorate. Where these documents have not been provided, the Planning Inspectorate will ask for copies, which may delay determination of the authorisation request(s).

14. Corresponding with more than one Person Interested in the Land

Where there is more than one Person Interested in the Land for each s.53 authorisation request, but the applicant has only been corresponding with one person, the applicant should provide written evidence that this individual is authorised to act on behalf of all the Persons Interested in the Land.

Likewise, if the applicant has been corresponding with an agent for any land parcel, written evidence should be provided to confirm that the agent is authorised to act on behalf of the Persons Interested in the Land.

This evidence may take the form of correspondence from all Persons Interested in the Land confirming that the agent / specific person has authority to act on their behalf, or correspondence from the agent / specific person confirming that they have authority to act on behalf of all of those specified persons.

15. Consulting and notifying the Persons Interested in the Land following submission of the s.53 authorisation request(s)

There is no requirement under s.53 for the Secretary of State to consult the Persons Interested in the Land following submission of a s.53 authorisation request. However, the Planning Inspectorate expects the applicant to send a notification letter enclosing an exact copy of the authorisation request, that was provided to the Planning Inspectorate, to each Person Interested in the Land identified by the applicant in the Table (and copied to agents acting on their behalf (if applicable)).

Each Person Interested in the Land listed in the Table should receive a separate copy of the documentation, even if the relevant registered Title Number identifies that two or more of them are registered at the same address. This is to ensure that each Person Interested in the Land has been sent a copy of the notification letter with the enclosed authorisation request. Copies of these notification letters should be provided to the Planning Inspectorate, preferably included



with the authorisation request. However, if these notification letters are sent at the same time as the authorisation request is made to the Secretary of State, these should be forwarded to the Secretary of State as soon as possible.

If the land is registered, a copy of the authorisation request should be sent to the address of the Persons Interested in the Land, as identified in the relevant registered Title Number; where the applicant has sent correspondence to an address which is different from that address, the applicant should explain why in the authorisation request letter.

Applicants should note that the Planning Inspectorate may request evidence to demonstrate that these notification letters were delivered, for example, where the named recipients dispute receipt of the notification letter. Therefore, applicants should consider how this evidence may be provided, which may include providing copies of signed delivery receipts, where the applicant has sent the notification letters by recorded or special delivery.

The applicant should state in their notification letter to the Persons Interested in the Land, that they may provide comments on the authorisation request to the Planning Inspectorate by the deadline specified in the notification letter, which should not be less than 21 days starting the day after the expected date of receipt of the notification by the Persons Interested in the Land. The Planning Inspectorate will also write to the Persons Interested in the Land to confirm that an authorisation request has been made by the applicant to the Secretary of State and to confirm the date by which comments

should be made by the Persons Interested in the Land to the Planning Inspectorate.

The Planning Inspectorate will assume that the Persons Interested in the Land do not have any comments to make on the request, if the Planning Inspectorate has not received any comments from them, by the date specified in the applicant's notification letter.

16. Duration of s.53 authorisation

It is anticipated that authorisation, if granted, would in most cases be expressed to expire either 12 months after the date of the authorisation, or, if made during the pre-application stage, the date of the submission of a DCO application for the proposed development pursuant to s.37 of the 2008 Act (where the submission of the DCO application is earlier than expiry of that 12 month period).

If the Applicant wants the authorisation period to exceed 12 months, or the submission date of the DCO application to the Secretary of State, the applicant should request this in their covering letter providing a clear explanation of the reasons why. The Secretary of State may then take this into consideration when determining the duration of the authorisation notice, if the Secretary of State is minded to grant authorisation.

17. Conditions

If the Secretary of State is minded to grant authorisation for an applicant to enter land, any such authorised person must comply with the requirements of s.53 of the Act 2008 and any conditions subject to which the authorisation is granted²⁴. Therefore, the applicant should also include as part of its

²⁴ s.53(4)(c) of the 2008 Act



request any proposed conditions that it thinks should be attached to the authorisation, if granted. It would assist the Planning Inspectorate if the applicant could provide details of which draft conditions, if any, have been agreed with the Persons Interested in the Land. Where draft conditions have not been agreed, it would assist the Planning Inspectorate if the applicant could provide an explanation as to why.

The Secretary of State will decide whether any proposed conditions are appropriate and may also specify any others that it considers necessary²⁵.

Where the applicant has identified multiple authorisation requests, it will be appropriate to identify the conditions relevant to each separate s.53 authorisation request, if different, and to set these out in separate documents.

18. Check list

Enclosed in [Annex B](#) is a s.53 check list which the applicant should complete to help ensure that the relevant information is provided to the Planning Inspectorate. The completed check list should be provided to the Secretary of State for each s.53 authorisation request.

19. Timeframe for determination of the authorisation requests

There is no prescribed timeframe within which the Planning Inspectorate should make a recommendation, or for the Secretary of State to determine the request for authorisation. However, following the opportunity for the Persons Interested in the Land to comment on the proposed authorisation request and, if the Planning

²⁵ s.53(4)(c) of the 2008 Act


Inspectorate considers it appropriate, for the applicant to respond to any comments made, the Planning Inspectorate will either request further information (please refer to **Section 20** of this advice note '**Request for further information**') or the Planning Inspectorate will immediately move to make a recommendation to the Secretary of State.

Whilst there is no prescribed timeframe for determination of s.53 authorisation requests, experience gained by the Planning Inspectorate, indicates that s.53 authorisation requests take on average 3 months to determine, from the date of receipt of the authorisation request. However, this timeframe can only be a guide and depends on the complexity and number of authorisation requests, the sufficiency of the information provided by the applicant and any issues raised in responses from the Persons Interested in the Land. Applicants will need to be aware of this anticipated timeframe and the potential impact it may have on their overall project programme.

20. Request for further information

The Planning Inspectorate may request further information from the applicant and/or the Persons Interested in the Land to clarify any comments provided to the Planning Inspectorate.

Where the Planning Inspectorate has requested further information, the Planning Inspectorate will specify a deadline by which this information must be provided, which will not be less than 21 days starting the day after the expected date of receipt of that letter by a person to whom it is addressed. Immediately following the expiration of this date, subject to any subsequent requests



for further information, the Planning Inspectorate will immediately move to make a recommendation to the Secretary of State.

Therefore, the applicant and/or the Persons Interested in the Land are advised to provide any comments they wish to make by the specified deadline to ensure that they are considered by the Planning Inspectorate and the Secretary of State.

21. Recommendation and Determination of the s.53 authorisation request(s)

Following receipt of sufficient information to make a recommendation to the Secretary of State, the Planning Inspectorate will produce a Recommendation Report for the Secretary of State. The Secretary of State will then review this Recommendation Report and take into consideration any information provided by the applicant and the identified Persons Interested in the Land by the specified deadlines, and determine the authorisation request(s).

Following determination by the Secretary of State, the Planning Inspectorate will send a copy of the determination to the applicant and the identified Persons Interested in the Land either authorising entry onto the land, or refusing the request with reasons. The authorisation request and all correspondence received from the applicant and the identified Persons Interested in the Land will be published on the Planning Inspectorate's website, along with the Planning Inspectorate's Recommendation Report and the Secretary of State's decision.

22. Human Rights Act 1998

Article 1 of the First Protocol of the European Convention²⁶ gives a right to peaceful enjoyment of property. Any interference with this right should be lawful and proportionate; interference with the right of individuals to peaceful enjoyment of their property can only be in the public interest. The Secretary of State will consider in relation to each s.53 authorisation request whether the authorisation of entry onto third party land would be lawful and proportionate.

23. Exercising the authorisation

If an authorisation is granted, any person duly authorised in writing by the Secretary of State may enter the land at any reasonable time. Before entering the land, a person must, if required to do so, produce evidence of authority to enter that land. Where the land is occupied, 14 days notice prior to entry, must be given²⁷.

Where any damage is caused to land or chattels as a consequence of exercising rights of entry or in the making of any survey, compensation may be recovered²⁸. Disputes about the level of compensation payable will be referred to the Upper Tribunal²⁹.

The authorisation may also be given subject to conditions, which must be complied with by the authorised person³⁰.

²⁶ European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms)

²⁷ s.53(4)(b) of the 2008 Act

²⁸ s.53(7) of the 2008 Act

²⁹ s.53(8) of the 2008 Act

³⁰ s.53(4)(c) of the 2008 Act



Anyone who wilfully obstructs access which has been authorised commits an offence³¹ which may give rise to criminal liability³².

The Planning Inspectorate will not be responsible for ensuring compliance with any s.53 authorisations issued by the Secretary of State.

24. Data protection

Any personal information relating to third parties provided by the applicant to the Planning Inspectorate will be handled by the Planning Inspectorate in accordance with its obligations under the Data Protection Act 1998 and therefore will not be made available on the Planning Inspectorate's website.

It will be for the applicant to seek their own legal advice as to how best to address the identification and processing of personal information.

³¹ s.53(5) of the 2008 Act

³² s.53(6) of the 2008 Act

Review of this advice note

The Planning Inspectorate will keep this advice note under review and will update as appropriate.

Further information

The Planning Inspectorate, Major Applications and Plans Directorate, Temple Quay House, Temple Quay, Bristol BS1 6PN

Email: environmentalservices@infrastructure.gsi.gov.uk

Telephone: 0303 444 5000

Web: <http://infrastructure.planningportal.gov.uk>