

SCHEDULES

SCHEDULE 3

Article 60(1).

Amendments

The Land Powers (Defence) Act 1958 (c. 30)

1. After section 18A, insert—

“Modification of street works provisions in Northern Ireland

18B.—(1) In relation to works in Northern Ireland in exercise of the powers under a wayleave order, the provisions of the Street Works (Northern Ireland) Order 1995 have effect subject to the provisions of this section.

(2) The provisions of Schedule 2 to that Order (settlement of plan and section for works in streets with special engineering difficulties) have effect subject as follows—

- (a) an objection to a plan and section in form shall be disregarded if a Minister certifies that in his opinion it would be against the national interest to submit a plan and section on a larger scale or giving further particulars;
- (b) no modification of a plan and section shall be made which would involve an unacceptable diversion or change; and
- (c) a plan and section shall not be disapproved on the ground that there should be such a diversion or change.

(3) An arbitrator appointed in pursuance of—

- (a) paragraph 8(2) of Schedule 2 to that Order (settlement of plan and section in case of works in street with special engineering difficulties), or
- (b) Article 44(3) of that Order (settlement of necessary measures in case of apparatus affected by certain major works),

shall not provide for an unacceptable diversion or change.

(4) In subsections (2) and (3) above an “unacceptable diversion or change” means—

- (a) a lateral diversion of a government oil pipe-line to which the Minister on whose behalf the works are to be executed does not consent, or
- (b) a change of the site of accessory works which would necessitate such a diversion.”.

The Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.))

2. In Schedule 11 (matters requiring to be registered in the Statutory Charges Register), at the end add—

“42. Any declaration under Article 46 of the Street Works (Northern Ireland) Order 1995.”.

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The Public Utilities (Emergency Powers) Act (Northern Ireland) 1972 (c. 2 (N.I.))

3. At the end of section 3 add—

“Any works carried out under paragraph (b) shall be included in the definition of emergency works in Article 6 of the Street Works (Northern Ireland) Order 1995.”.

The Gas (Northern Ireland) Order 1977 (NI 7)

4.—(1) In paragraph (10) of Article 13 (laying of gas pipes across land)—

- (a) for “land” substitute “relevant land”; and
- (b) for the words from “road or bridge” to the end substitute “street”.

(2) After that paragraph insert—

“(10A) In paragraph (10) and Article 13A—

- (a) “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995; and
- (b) “relevant land” means land other than land comprised in a street.”.

5. After Article 13, insert—

“Works under Article 13

13A.—(1) Before commencing to open or break up any relevant land by virtue of paragraph 1 of Schedule 1 as applied by Article 13(10), undertakers shall serve notice of not less than seven days on the owner and occupier of the land.

(2) Subject to paragraph (3), land shall not be opened or broken up except—

- (a) under the superintendence of the owner and occupier of the land; and
- (b) in accordance with a plan—
 - (i) approved by the owner and occupier of the land, or
 - (ii) where any question respecting the plan has arisen and has not been agreed, determined by arbitration,

and the arbitrator may, on the application of the owner or occupier of the land, require the undertakers to make such temporary or other works as the arbitrator thinks necessary for guarding against any interruption of the drainage during the execution of any works which interfere with a sewer or drain.

(3) If the owner or occupier of the land—

- (a) fails to attend at the time fixed for the opening of the land, after service of the notice as mentioned in paragraph (1); or
- (b) fails to approve the plan; or
- (c) refuses or neglects to superintend the operation,

the undertakers may carry out the work specified in the notice without the superintendence of that person.

(4) When undertakers open or break up any relevant land, they shall with all convenient speed—

- (a) complete the work;
- (b) fill in the ground;

- (c) reinstate or make good the land to the reasonable satisfaction of the owner and occupier of the land, and
 - (d) carry away the rubbish occasioned thereby;
- and shall at all times, whilst any land is opened or broken up—
- (i) cause it to be fenced or guarded; and
 - (ii) keep it in good repair for three months after replacing or making it good, and for such further time (if any) not being more than twelve months altogether, as the soil broken up continues to subside.

(5) If undertakers—

- (a) except in cases in which they are authorised to open or break up any relevant land without any superintendence or notice, perform any such work—
 - (i) without serving the notice required by paragraph (1); or
 - (ii) without the superintendence required by paragraph (2); or
 - (iii) otherwise than in accordance with a plan approved or determined under paragraph (2); or
- (b) fail to comply with any other requirement imposed by or under this Article in connection with the opening or breaking up of any relevant land;

they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale and to a further fine not exceeding one-tenth of level 2 on the standard scale for every day during which the act constituting the offence continues after the service of notice on the undertakers that it is being committed.

(6) If undertakers delay or fail to carry out any work as mentioned in paragraph (4), the owner or occupier of the land may carry out that work, and any expense incurred in so doing shall be a debt recoverable summarily by the owner or occupier from the undertakers.

(7) In this Article “arbitrator” means an arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.”.

6. At the end of Article 17 add—

“(4) Where it is proposed to search or bore in pursuance of this Article in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.”.

7. In Schedule 1 (gas supply code) in paragraph 1—

- (a) in sub-paragraph (1), after the word “paragraph” insert “and of Article 21 of the Street Works (Northern Ireland) Order 1995 (protected streets)”;
- (b) for the word “road” and the words “road or bridge” wherever they occur, substitute “street”; and
- (c) at the end add—

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“(13) In this paragraph “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995.”

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

8. In Article 124 (warning of roadworks, after paragraph (2) insert—

“(2A) The works referred to in paragraph (1) do not include street works within the meaning of the Street Works (Northern Ireland) Order 1995.”.

The Telecommunications Act 1984 (c. 12)

9. In Schedule 2 (the telecommunications code)—

(a) in paragraph 1(1)—

(i) in the definition of “maintainable highway” in paragraph (b), for the words from “highway” to the end substitute “road within the meaning of the Roads (Northern Ireland) Order 1993”; and

(ii) in the definition of “street” after “1991” add “or, in Northern Ireland, the Street Works (Northern Ireland) Order 1995”; and

(b) in paragraph 2(8)(a)(ii) for the words “(which for this purpose shall be deemed to extend to Northern Ireland)” substitute “or the Street Works (Northern Ireland) Order 1995”.

The Planning (Northern Ireland) Order 1991 (NI 11)

10. In Article 121 (rights of entry) after paragraph (4) add—

“(5) Where it is proposed to search or bore in pursuance of paragraph (4) in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

(a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;

(b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street); and

(c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.”.

The Electricity (Northern Ireland) Order 1992 (NI 1)

11. Schedule 4 (other powers of licence holders) shall be amended in accordance with paragraphs 12 to 18.

12. In paragraph 1(1) at the appropriate place insert—

““street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;”

and in paragraph 1(3) for “2 to 7” substitute “3 to 6”.

13. In paragraphs 2 to 6, for the word “road” in each place where it occurs substitute “street”.

14. In paragraph 2(1) for “Subject to Article 15 of the Roads (Northern Ireland) Order 1980” substitute “Subject to the Street Works (Northern Ireland) Order 1995”.

15. At the end of paragraph 5 add—

- “(9) In this paragraph “owners” means any of the persons mentioned in paragraphs (a), (b) or (c) of sub-paragraph (1).”.
16. In paragraph 6(2) for “(2) to (7)” substitute “(4) to (6)”.
17. In paragraph 8 for “paragraphs 2 to 7” substitute “paragraph 3 or 4”.
18. In paragraph 15 after sub-paragraph (4) insert—
- “(4A) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—
- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),
- have effect in relation to the searching or boring as if they were street works within the meaning of that Order.”.

The Roads (Northern Ireland) Order 1993 (NI 15)

19. In Article 2(2) (interpretation) at the appropriate places insert—
- ““protected street” has the same meaning as in Article 21 of the Street Works Order;
- “street works licence” means a licence under Article 11 of the Street Works Order;
- “the Street Works Order” means the Street Works (Northern Ireland) Order 1995;”.
20. In Article 72 (erection of scaffolding etc. in a road) in paragraph (2)—
- (a) in a sub-paragraph (b) for “special road” substitute “protected street”;
- (b) after that sub-paragraph add
- “or
- (c) in pursuance of a street works licence”.
21. In Article 73 (placing of rails, beams etc. over a road) in paragraph (2)—
- (a) in sub-paragraph (b) for “special road” substitute “protected street”;
- (b) for sub-paragraph (c) substitute—
- “(c) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order or by virtue of Article 21(2) of that Order; or
- (d) in pursuance of street works licence”.
22. At the end of Article 77 (construction of cellars under road) add—
- “(7) This Article does not apply to street works within the meaning of the Street Works Order.”.
23. In Article 78 (excavations in a road) in paragraph (2)—
- (a) in sub-paragraph (a) for the words from “or under” to the end substitute “or in pursuance of a street works licence or in accordance with an authorisation given by the Department under paragraph 7(2) of Schedule 1 to the Street Works Order;”;
- (b) in sub-paragraph (e) for “special road” substitute “protected street”;
- (c) for sub-paragraph (f) substitute—

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- “(f) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order, or by virtue of Article 21(2) of that Order;”.

24. After Article 78 insert—

“Works under Article 72 or Article 78: charge for occupation of the road

78A.—(1) The Department may make provision by regulations requiring a person carrying out any of the following works in a road—

- (a) erecting scaffolding, hoarding or other structures to which Article 72 applies, in the circumstances mentioned in paragraph (1) of that Article; or
- (b) carrying out any excavations in, or otherwise breaking up the surface of, the road, as mentioned in Article 78(1),

to pay a charge to the Department if the duration of the works exceeds such period as may be prescribed and the works are not completed within a reasonable period.

(2) The works referred to in paragraph (1)(b) do not include any works done for the sole purpose mentioned in Article 78(2)(h).

(3) In paragraph (1) “a reasonable period” means such period as is agreed by the Department and the person executing the works to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

(4) In default of agreement, the Department’s view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

(5) Regulations made under paragraph (1) may provide that if a person intending to carry out any of the works mentioned in that paragraph submits to the Department an estimate of the likely duration of the works—

- (a) in a case where the consent of the Department is required under Article 72 or Article 78, together with his application for such consent, and
- (b) in any other case, before such time as may be prescribed,

the period stated in the estimate shall be taken to be agreed by the Department to be reasonable unless the Department gives notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(6) The regulations may also provide that if it appears to the person carrying out the works that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works—

- (a) is likely to exceed the prescribed period,
- (b) is likely to exceed the period stated in his previous estimate, or
- (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the Department to be reasonable unless the Department gives notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(7) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the road is affected by the works.

(8) The regulations may make provision as to the time and manner of making payment of any charge.

(9) The regulations shall provide that the Department may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as the Department may decide or as may be prescribed, or generally.

(10) In this Article “prescribed” means prescribed by regulations made by the Department.”.

25. At the end of Article 81 (provision of milk tanker facility on road) add—

“(11) This Article does not apply to street works within the meaning of the Street Works Order.”.

26. In Article 84(1)(c) for “76 or 79” substitute “or 76”.

27. In Article 86 (vehicle-crossings over footways and verges)—

(a) at the beginning of paragraph (2) insert “Subject to paragraph (3),”; and

(b) after paragraph (2) add—

“(3) The expenses that the Department may recover under Article 58(4)(b), as applied by paragraph (2), include the cost of any measures needing to be taken in relation to undertaker’s apparatus in accordance with Article 44 of the street Works (Northern Ireland) Order 1995.”.

28. In Article 96 (control of builders’ skips), in paragraph (10) (definitions) for “and in Article 97” substitute “, Article 97 and Article 97A”.

29. After Article 97 (removal of builders’ skips) insert—

“Builders’ skips: charge for occupation of road

97A.—(1) The Department may make provision by regulations requiring the owner of a builder’s skip deposited on a road to pay a charge to the Department where—

(a) the period for which the skip remains in the road exceeds such period as may be prescribed, and

(b) the skip is not removed within a reasonable period.

(2) In paragraph (1) “a reasonable period” means such period as is agreed by the Department and the owner of the skip to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

(3) In default of agreement, the Department’s view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

(4) Regulations made under paragraph (1) may provide that if the owner of a builder’s skip proposing to cause or permit the skip to be deposited on a road submits to the Department an estimate of the likely duration of the occupation of the road—

(a) in a case where the consent of the Department to the deposit of the skip is required by virtue of Article 96(3), together with his application for such consent, and

(b) in any other case, before such time as may be prescribed,

the period stated in the estimate shall be taken to be agreed by the Department to be reasonable unless the Department gives notice, in such manner and within such period as may be prescribed, objecting to the estimate.

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(5) The regulations may also provide that if it appears to the owner of the skip that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation of the road—

- (a) is likely to exceed the prescribed period,
- (b) is likely to exceed the period stated in his previous estimate, or
- (c) is likely to exceed the period previously agreed or determined to be a reasonable period,

he may submit an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the Department to be reasonable unless the Department gives notice, in such manner and within such period as may be prescribed, objecting to the estimate.

(6) The amount of the charge shall be determined in such manner as may be prescribed by reference to the period for which the road is occupied by the skip and the extent of the occupation.

(7) The regulations may make provision as to the time and manner of making payment of any charge.

(8) The regulations shall provide that the Department may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as the Department may decide or as may be prescribed, or generally.

(9) In this Article “prescribed” means prescribed by regulations made by the Department.”.

30. In Article 119 (power to enter on land)—

- (a) after paragraph (7) insert—

“(7A) Where in the exercise of the power conferred by paragraph (1)(a) works (other than surveying) are to be executed in a street—

- (a) Article 15 of the Street Works (Northern Ireland) Order 1995 (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street); and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the works as if they were street works within the meaning of that Order.”;

- (b) after paragraph (10) insert—

“(10A) Where any person is entitled under Article 42 of the Street Works (Northern Ireland) Order 1995, as applied by paragraph (7A), to compensation in respect of any matter, he is not entitled to recover compensation under paragraph (10) in respect of the same matter.”; and

- (c) at the end, add—

“(12) In this Article “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995.”.

31. In Article 133 (orders and regulations) for paragraph (5) substitute—

“(5) Subject to paragraph (6), regulations made under this Order, shall be subject to negative resolution.

(6) The first regulations made under—

- (a) Article 78A(1), in respect of the works mentioned in sub-paragraph (a) of that paragraph;
- (b) Article 78A(1), in respect of the works mentioned in sub-paragraph (b) of that paragraph; or
- (c) Article 97A(1),

shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.”.

32. In Schedule 9 (saving provisions) for paragraph 3, substitute—

“**3.** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunications apparatus) shall apply—

- (a) to the Department for the purposes of any work authorised to be carried out under this Order; and
- (b) without prejudice to the provisions of the Street Works (Northern Ireland) Order 1995 relating to major road works, major bridge works or major transport works, to any person to whom a licence is issued under Article 76 for the purposes of any work authorised by that licence.”.

The Airports (Northern Ireland) Order 1994 (NI 1)

33. In Article 12 (provisions as to telecommunication apparatus)—

- (a) in paragraph (2)(b) after “trunk road” insert “or special road”; and
- (b) after paragraph (3) insert

“(3A) Paragraph 23 of the telecommunications code shall not apply by virtue of paragraph (2)(b) in relation to the alteration of any telecommunications apparatus where the alternation is for the purpose of major work works, major bridge works or major transport works within the meaning of the Street Works (Northern Ireland) Order 1995.”.