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STATUTORY INSTRUMENTS

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**1980 No. 1086**

**Private Streets (Northern Ireland) Order 1980**

**PART IV N.I.**

**MAKING-UP OF PRIVATE STREETS**

**Notice requiring street works in private street N.I.**

**11.**—(1) Subject to paragraphs (2) and (3), where a private street is not, to the satisfaction of the Department, sewered, levelled, paved, channelled<sup>[F1]</sup>, made good and lighted,] the Department may, by notice in writing served on the person appearing to it to be the responsible person, require that person to execute within such time, not being less than 28 days, as may be specified in the notice, street works with respect to the street of such a nature as may be indicated therein.

(2) Where street works are required under paragraph (1) to be executed with respect to a part only of a street (not being a part extending for the whole of the length of the street), the requirement shall be made only of each person who is a responsible person in respect of street works in the length of the street which constitutes or comprises that part.

(3) Where, before 13th October 1964—

- (a) street works were executed under any statutory provision relating to private streets with respect to a part only of a private street, being a part extending for the whole of the length of the street, and
- (b) those works were executed only by, or at the expense only of, the owners or occupiers of the premises fronting one side of the street, and
- (c) the Department requires street works to be executed under paragraph (1) with respect to any part of the street extending for the whole of the length of the street, other than a part in which street works were previously executed as aforesaid,

then, notwithstanding anything in paragraph (2), the requirement shall not be made of the owners of premises fronting that part of the street on which street works were previously carried out.

(4) The Department may include in street works to be executed under paragraph (1) any works which it thinks necessary for bringing the street as regards sewerage, drainage, level,<sup>[F1]</sup> lighting] or other matters into conformity with other streets, whether maintainable at the public expense or not, including the provision of separate sewers for the reception of sewage and of surface water respectively.

(5) The Department shall, in any notice under paragraph (1), inform the person to whom it is addressed of any right of appeal under Article 12 and of the time within which such appeal may be made.

(6) The Department may, by a further notice in writing served on the person on whom a notice is served under paragraph (1), withdraw a notice served under paragraph (1) or substitute other requirements for those contained in a notice previously so served and such further notice shall, for all the purposes of this Order, be deemed to be a notice served under paragraph (1).

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### Appeal against notice under Article 11 **N.I.**

12. A person on whom a notice is served under Article 11 may, within a period of 28 days from the day on which the notice is served on him and after serving notice of the appeal on the Department, appeal to a court of summary jurisdiction on either or both of the following grounds—

- (a) that he is not the responsible person;
- (b) that the street is not a private street.

### Power of Department to execute street works **N.I.**

13.—(1) Subject to paragraph (2), if a requirement under Article 11 is not complied with within the time specified in the notice containing that requirement, the Department may execute the street works indicated in the notice and, subject to the following provisions of this Part, may recover in accordance with the provisions of Article 15 from each responsible person in default such part of the expenses of the street works (including a charge in respect of surveys, superintendence and notices<sup>F2</sup> . . . ) as may be apportioned to him in accordance with Article 14.

(2) Where an appeal has been made under Article 12, the notice served under Article 11 shall be suspended until the appeal is finally determined or abandoned and where the appeal is disallowed or abandoned the time specified in that notice shall be reckoned from the date on which the appeal is so determined or abandoned, as the case may be.

(3) Where the Department executes street works under paragraph (1), the street shall be declared by the Department to be a public road and the street shall be a public road from the date of completion of the works.

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### Apportionment of expenses **N.I.**

14.—(1) Subject to the following provisions of this Article, the expenses recoverable by the Department under this Order in respect of street works in a private street shall be apportioned against each responsible person under an apportionment according to the frontage for which he is responsible, but in determining the liability of each responsible person regard shall be had to the amount and value of any work already done otherwise than by the Department.

(2) For the purposes of paragraph (1), the frontage for which a person is responsible is, subject to Article 24(12) and (13), the frontage on the part of the street in respect of which he has, or is deemed under Article 24(11) to have, paid or secured a sum under Article 24(1) or given an undertaking under Article 24(2) or in respect of which he has entered into an agreement under Article 32, or, where no such prior provision for street works has been made, the frontage of the premises of which he is the owner.

(3) Where—

- (a) the amount of the expenses apportioned under paragraph (1) in respect of any frontage is disproportionate to the benefit derived by the premises having that frontage; and
- (b) the street works to which those expenses relate are not street works in respect of which—
  - (i) a sum has been paid or secured under Article 24(1), or
  - (ii) an undertaking has been given under Article 24(2), or
  - (iii) an agreement has been entered into under Article 32,

the amount so apportioned shall be reduced by such amount as may appear equitable to the Department and the amount of any such reduction shall be borne by the Department.

(4) Where under paragraph (3), the Department reduces the expenses apportioned under paragraph (1) in respect of any frontage, the Department may recover from the responsible person in accordance with Article 15, in whole or in part, the amount of the reduction if at any time access should be opened to the street so as to increase the benefit of the street works to the premises having that frontage.

(5) The Department shall not be entitled to recover by virtue of paragraph (4) unless, at the time at which the reduction is made, it has served a notice on the responsible person indicating the circumstances in which such recovery may be made.

(6) Where the Department is satisfied that street works carried out by it under this Order in a private street will benefit premises not fronting the street, the Department may apportion against any frontage of those premises such proportion of the expenses incurred by the Department in carrying out those street works as it thinks equitable according to the benefit derived.

(7) Any sum apportioned under paragraph (6) shall be recoverable in accordance with Article 15 from the person or persons who would be the responsible persons if the street works were in respect of the street on which those premises have a frontage.

### **Recovery of expenses by the Department** **N.I.**

**15.—**(1) A demand in writing for any sum which is recoverable by the Department under any provision of this Order from any person in respect of the expenses of street works in a private street shall be served by the Department on that person or, where it is not possible for the demand to be so served, on any person appearing to the Department to be his agent or trustee.

(2) The Department shall, in any demand under paragraph (1), inform the person to whom it is addressed of his right of appeal under Article 16 and of the time within which such appeal may be made.

(3) Where a demand is served under paragraph (1) on an agent or trustee of the person from whom the expenses are recoverable, the expenses shall, subject to paragraphs (6) and (7), be recoverable from that agent or trustee.

(4) The sum specified in a demand served under paragraph (1), unless varied by the court on an appeal to it under Article 16 and, where the sum has been so varied, the sum which that court determines to be recoverable shall, together with interest thereon, be a civil debt due to the Department, and recoverable by it either summarily or in any court of competent jurisdiction.

(5) The interest under paragraph (4) shall be payable from the date which is one month from the date of service of the demand under paragraph (1) to the date of payment at such rate as, by virtue of a determination of the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962, is, on the date on which the said demand is served, in force for the purposes of expenses to which subsection (1)(b) of that section applies.

(6) Subject to paragraph (7), if a person from whom a sum is recoverable in accordance with this Article proves that he—

- (a) is liable only by reason of the fact that he is an agent or trustee for some other person; and
- (b) has not, and since the date on which he became liable has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department;

his liability shall be limited to the total amount of the money which he has, or since the said date has had, in his hands as aforesaid; but where the Department is or would be debarred by the foregoing provisions from recovering the whole of any such sum from an agent or trustee, it may recover the whole or any unpaid balance thereof from the person for whom he is agent or trustee.

(7) Where, in proceedings brought under paragraph (4) against any person, the court is satisfied that that person is liable only by reason of the fact that he is an agent or trustee, the court may, without prejudice to its power to make an order for the payment of the amount to which his liability is limited under paragraph (6), make an order against him directing the payment by him to the Department of such amount as the court thinks proper out of money to be received by him as such agent or trustee.

(8) The time within which summary proceedings may be taken for the recovery of any sum, which the Department is entitled to recover under this Order, shall be reckoned from the date of the service of a demand therefor; but where the sum is recoverable in a case in which an appeal has been made under Article 16, the said time shall be reckoned from the date on which the appeal is finally determined or abandoned as the case may be.

(9) Any proceedings commenced under paragraph (4) for the recovery of a sum specified in a demand served under paragraph (1) shall, on the service on the Department of notice of an appeal under Article 16 against that demand, be stayed until the appeal is finally determined or abandoned.

(10) Subject to paragraphs (11) and (12), any expenses recoverable in respect of any frontage by the Department in accordance with this Article shall, until recovered, be deemed to be charged on and payable out of the estate, in the premises having that frontage, of—

- (a) the responsible person or other person liable under this Order for those expenses; and
- (b) any person deriving title from him;

so however that, where a person is the responsible person or the person otherwise liable as aforesaid by reason of the fact that he is an agent or trustee for another person, those expenses shall be a charge on the estate in the premises of the person for whom he is agent or trustee.

(11) Subject to paragraph (12), the charge created by paragraph (10) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate that charge has been created (with, where necessary, any concurrence or consent required by law) for the amount of the expenses referred to in that paragraph on—

- (a) the date of the undertaking under Article 24(1) or, as the case may be, of the undertaking under Article 24(2) or of the agreement under Article 32; and
- (b) in every other case, the date of the completion of the street works;

and for the recovery thereof the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed.

(12) Notwithstanding anything in this Order or in Part X of the Land Registration Act (Northern Ireland) 1970 a charge created on an estate in any premises by any provision of this Order shall not be enforced against, or against the estate of, the owner of those premises unless he is the responsible person or a person otherwise liable under this Order for the expenses referred to in paragraph (10).

### Appeals regarding street works expenses **N.I.**

**16.**—(1) Subject to the provisions of this Article, a person from whom the Department proposes to recover under this Part any expenses incurred by it in executing street works may, within 28 days from the date on which a demand for the payment of the expenses or any part thereof was first served on him under Article 15 and after serving notice of the appeal on the Department, appeal to court of summary jurisdiction on all or any of the following grounds, namely:—

- (a) that he is not the responsible person or, as the case may be, the person liable under the provisions of this Order;
- (b) that the street is not a private street;
- (c) that the works carried out are insufficient or unreasonable;
- (d) that the expenses are excessive;

- (e) that the amount charged should be reduced under Article 14(3) on the ground that it is disproportionate to the benefit derived from the execution of the street works;
- (f) that the expenses of the street works have not been apportioned in accordance with the provisions of this Order.

(2) On an appeal under paragraph (1), no question may be raised by any person which might have been raised by that person on an appeal under any other provision of this Order.

#### **Liability where transferor has taken responsibility for expenses of street works** **N.I.**

17.—(1) Where it is shown to the satisfaction of the Department, whether before or after the service of a demand for the payment of the expenses incurred by the Department in executing street works in a private street, that premises having a frontage in respect of which the street works have been executed have been transferred to the responsible person upon terms which included a provision to the effect that the transferor shall pay or procure the payment of such expenses, the Department may treat the transferor as the responsible person and may recover the expenses of the street works from him in accordance with Article 15.

(2) Any expenses recovered from the transferor under paragraph (1) shall be deemed to have been paid by the responsible person but, except to that extent, the liability of the responsible person for the expenses of the street works shall remain unaffected.

#### **Evasion of street works expenses** **N.I.**

18. Where the Department—

- (a) is empowered under this Order to recover the expenses of street works from any person; and
- (b) is unable by the exercise of its powers (other than powers conferred by this Article) to recover that sum,

then if a court of summary jurisdiction is satisfied, upon application made to it by the Department, that the premises having a frontage in respect of which those street works were executed were previously transferred for the purpose of evading the payment of those expenses, the court may make an order under this Article providing that, to such extent as the court making the order may determine, the Department may recover the expenses.

#### **Street works executed in the course of other works by the Department** **N.I.**

19.—(1) Where, in order to make a street conform to the requirements for it to be declared to be a public road under Article 9, works are required which include works other than street works and—

- (a) the street is declared to be a public road under Article 9; and
- (b) works (including street works) are carried out by the Department as soon as possible thereafter;

then, notwithstanding anything to the contrary in any statutory provision, the declaration of the street to be a public road and the carrying out of works as aforesaid shall not relieve any person of liability for the expenses of any street works included in such works, and the amount of that liability shall not be greater or less than it would have been if works other than street works had not been carried out.

(2) Notwithstanding that a notice has not been served under Article 11, any street works which are included in works carried out by the Department as aforesaid but in respect of which a notice could have been served by the Department under that Article shall be deemed to be street works carried out by the Department, and the expenses of those street works shall be deemed to be expenses incurred by the Department under Article 13 and shall be recoverable accordingly.

### **Payment of expenses by instalments** **N.I.**

**20.**—(1) Without prejudice to any other power exercisable by it under this Order, the Department may enter into an agreement with any responsible person or any other person liable for expenses under this Order that, subject to such conditions as the Department may specify, any expenses recoverable by it under this Order shall be repaid with interest within a period not exceeding 30 years either by means of instalments of principal, together with interest on the balance of the principal from time to time outstanding, or by means of an annuity of principal and interest combined and any such instalment or annuity, or any part thereof, may be recovered in accordance with Article 15 from the responsible person or that other person.

(2) The interest chargeable under paragraph (1) shall be at such rate as, by virtue of a determination of the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962, is, on the date on which the demand for the expenses is served, in force for the purposes of expenses to which subsection (1)(b) of that section applies.

### **Department's duty to exercise its powers** **N.I.**

**21.**—(1) Where, in respect of a private street on which a building to which Article 24(1) applies has a frontage, all such street works as are required for the issue by the Department of a preliminary certificate in respect of that street under Article 7(2) have not been carried out to the satisfaction of the Department within one year from the date on which the building is first occupied or such longer period as the Department thinks reasonable, the Department shall exercise in relation to that street the powers conferred on it by Articles 11 and 13.

(2) Where—

- (a) a sum has been paid or secured under Article 24(1) in respect of street works in a private street; and
- (b) the aggregate length of the frontages of the completed buildings on both sides of the street constitutes at least one-half of that of all the frontages on both sides thereof and, in the case of part of a street, that part is not less than 100 metres in length and is joined to a street which is a public road or is likely to become a public road within a reasonable time; and
- (c) the majority in number of the owners of the premises having a frontage on the street or as many of them as have between them more than half the aggregate length of all the frontages on both sides of the street by notice so request;

the Department shall exercise in relation to that street the powers conferred on it by Articles 11 and 13.

(3) This Article shall not apply to a street in respect of which an agreement has been entered into under Article 32.

### **Urgent repairs** **N.I.**

**22.**—(1) The Department may, on giving at least 48 hours' notice to the person who appears to it to be the responsible person, carry out such repairs in a private street as are in its opinion urgently required to prevent or remove danger to persons or vehicles in the street.

(2) Any expenses incurred under paragraph (1) shall be deemed to be expenses incurred by the Department under Article 13 and shall be recoverable accordingly.

(3) The provisions of this Article shall be without prejudice to Articles 11 and 13.

**Contribution by the Department to expenses of street works** **N.I.**

**23.**—(1) The Department may in such circumstances as it considers proper bear the whole or a portion of the expenses of any street works in a private street, and the liabilities of the responsible persons in respect of those expenses shall be treated as discharged, or as proportionately reduced, accordingly.

(2) Paragraph (1) shall not apply to streets not designed for use by vehicular traffic or which are intended only to provide access to the rear of premises.

**Changes to legislation:**

There are currently no known outstanding effects for the Private Streets (Northern Ireland) Order 1980, PART IV.