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STATUTORY INSTRUMENTS

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**1983 No. 1895**

**The Access to the Countryside (Northern Ireland) Order 1983**

**PART III**

**ACCESS TO OPEN COUNTRY**

**Provision for public access to open country**

**25.**—(1) For the purpose of enabling the public to have access for open-air recreation to open country, this Part applies to land which is, or which gives or forms part of access to, open country, being land to which Article 26 is applied by an access agreement or an access order or acquired under Article 39 or 40.

(2) In this Order “open country” means any land appearing to the district council or the Department to consist wholly or predominantly of mountain, moor, heath, hill, woodland, cliff, foreshore, marsh, bog or waterway.

**Rights of public where access agreement or order is in force**

**26.**—(1) Subject to the following provisions of this Part, a person who—

- (a) enters upon land comprised in an access agreement or order for the purpose of open-air recreation without causing damage, or
- (b) is on such land having so entered thereon,

shall not be treated as a trespasser on that land or incur any other liability by reason only of so entering or being on the land.

(2) Paragraph (1) shall not—

- (a) apply to land which is excepted land, unless an access agreement provides that it shall so apply;
- (b) entitle a person to enter or be on any land, or to do anything on any land, in contravention of any prohibition contained in or having effect under any statutory provision.

(3) An access agreement or order may specify or provide for imposing restrictions subject to which persons may enter or be upon land by virtue of paragraph (1), including restrictions excluding the land or any part of the land at particular times from the operation of paragraph (1); and that paragraph shall not apply to any person entering or being on the land in contravention of any such restriction or failing to comply with any such restriction while he is on the land.

(4) Without prejudice to paragraph (3), paragraph (1) shall have effect subject to the provisions of Schedule 2 as to the general restrictions to be observed by persons having rights of access by virtue of paragraph (1).

(5) In this Order “excepted land” means land which for the time being is of any of the descriptions contained in Schedule 3, but land which is for the time being comprised in an access agreement or order shall not become excepted land by reason of any development carried out on the land if the development is one for which planning permission is required and either that permission has not

been granted or any condition subject to which it was granted has been contravened or has not been complied with.

### **Consultation by district councils on access requirements**

**27.**—(1) A district council shall consult the Department and such bodies as appear to the district council to be representative of owners and occupiers of land for the purpose of ascertaining what land there is of the descriptions specified in Article 25 (2) (definition of “open country”) and considering what action should be taken, whether by the making of access agreements or orders or by the acquisition of land, for securing public access to open country for the purpose of open-air recreation.

(2) In considering what action should be taken, the district council shall have regard to all relevant circumstances, including—

- (a) in the case of particular land, the extent to which public access to open country for the purpose of open-air recreation is likely to be available without such action being taken, and
- (b) generally, the extent to which there is a need for greater facilities in the district for such access, whether for persons living in the district or for other persons.

### **Access agreements**

**28.**—(1) A district council may make an access agreement with any person having an interest in land by means of which the provisions of this Part shall apply to the land.

(2) An access agreement may provide for the making of payments by the district council of either or both of the following descriptions—

- (a) in consideration of the making of the agreement;
- (b) by way of defraying or contributing towards expenditure incurred in consequence of the agreement by the person making the agreement,

and payments under sub-paragraph (a) shall be made on the basis of an assessment of the capital value of the land arrived at in accordance with the provisions of Schedule 4.

(3) An access agreement may be made subject to such provisions for revocation or variation as may be specified in the agreement.

(4) Any person having the powers of a tenant for life may enter into an access agreement relating to the settled land or any part of it either for consideration or gratuitously.

(5) Where an access agreement is made with one or some, but not all, of the persons having interests in the land to which the agreement relates, the provisions of this Part shall not, as against any person entitled to an interest in the land who is not a party to the agreement, operate so as to prejudice his rights in relation to that interest, or impose any restriction on him or confer any right against him, and the district council shall, as soon as may be after the agreement is made, serve a copy of the agreement on every such person who is not a party to the agreement.

### **Access orders**

**29.**—(1) A district council may make an access order.

(2) An access order shall be submitted to the Department and shall not have effect unless the Department confirms it.

(3) The district council shall not make an access order as respects any land—

- (a) if an access agreement is in force which in the opinion of the district council adequately secures the public access to the open country in question for open-air recreation;
- (b) where such an agreement is not in force, unless it appears to the district council impracticable to secure the making of such an agreement.

(4) An access order shall be in such form as may be prescribed.

(5) Schedule 1 shall apply to an access order.

(6) The Department shall not confirm an access order before bye-laws have been made and confirmed under Article 46 (bye-laws) or made under Article 47 (default powers of Department as to bye-laws).

**Provisions as to land used for agricultural purposes, etc.**

**30.**—(1) If, on the submission of an access order to the Department for confirmation, a representation is duly made as respects any land—

(a) that the land is used or being brought into use for agriculture or forestry and that the application of the provisions of Article 26 (rights of public where access agreement or order is in force) would prejudice that use or proposed use of the land; or

(b) that the land is used for the growing of trees so as to be of value for the amenity of the neighbourhood and that the application of the provisions of Article 26 would prejudice the growth or regeneration of the trees,

then, subject to paragraph (6), if the Department is satisfied that the conditions specified in sub-paragraph (a) or (b) are fulfilled and outweigh the benefit arising from the increased facilities for public access, the Department shall not confirm the order so as to apply the provisions of Article 26 to the land.

(2) Where, as respects land comprised in an access agreement, it is represented to the Department that the conditions specified in paragraph (1) (a) or (b) are fulfilled, and the Department is satisfied as stated in that paragraph, then, subject to paragraphs (5) and (6), the Department shall notify the district council and the district council shall vary the agreement so as to exclude the land.

(3) For the purposes of paragraph (2)—

(a) the fact that an access agreement is expressed to be irrevocable shall not prevent its variation so as to exclude the land; and

(b) if the concurrence of any party to the agreement other than the district council, or his successor in title, cannot be obtained to the variation of the agreement, the district council may by order made with the approval of the Department vary the agreement.

(4) Where, as respects land comprised in an access order, it is represented to the Department that the conditions specified in paragraph (1) (a) or (b) are fulfilled, and the Department is satisfied as stated in that paragraph, then, subject to paragraphs (5) and (6), the Department shall make an order varying the access order so as to exclude the land.

(5) Before coming to a conclusion on any such representation as is mentioned in paragraph (2) or (4), the Department shall either—

(a) cause a local inquiry to be held, or

(b) afford to the person by whom the representation was made and to the district council an opportunity of being heard by a person appointed by the Department for the purpose,

and shall consider the report of the person by whom the inquiry was held or the person appointed as mentioned in sub-paragraph (b).

(6) In determining whether the conditions specified in paragraph (1) (a) or (b) are fulfilled in the case of any proposed access order, the Department shall have regard to Article 26 (3) (restrictions on right of access); and references in this Article to varying an agreement or order so as to exclude land include references to varying an agreement or order by the imposition of such restrictions under Article 26(3) as may be specified by the Department as requisite for the purpose of this Article.

### **Effect of access agreement or order on rights and liabilities of persons interested in land**

**31.—**(1) A person interested in any land comprised in an access agreement or order shall not carry out any work on the land whereby the area to which the public are able to have access by virtue of the agreement or order is substantially reduced; but this paragraph shall not affect the doing of anything whereby any land becomes excepted land.

(2) Any restriction arising under a covenant or otherwise as to the use of any land comprised in an access agreement or order shall have effect subject to the provisions of this Part; and any liability of a person interested in such land in respect of such a restriction shall be limited accordingly.

(3) For the purposes of any statutory provision or rule of law as to the circumstances in which a right of way or the grant of an easement may be presumed, or may be established by prescription, use of land by the public or by any person at any time while it is comprised in an access agreement or order shall be disregarded.

### **Provisions for securing safe and sufficient access**

**32.—**(1) An access agreement or order may make such provision as appears expedient for the purposes of the agreement or order for securing that safe and sufficient access will be available for the public on the land comprised in the agreement or order.

(2) An access agreement or order may by virtue of paragraph (1) include provision for—

- (a) the improvement or repair of any means of access to the land in existence at the time when the agreement or order is made;
- (b) the construction of new means of access to the land;
- (c) the carrying out of work to protect persons who are on land comprised in the agreement or order from injury or damage due to the state of the land or anything done or omitted to be done on it;
- (d) the imposition of restrictions on the destruction, removal, alteration or closure of any means of access to the land or of any works provided under sub-paragraph (c), or the doing of anything whereby the use of any such means of access by the public would be impeded or the safety of the public would be endangered; and
- (e) the maintenance of any such means of access to the land as are mentioned in sub-paragraphs (a) and (b) or of any works carried out in accordance with sub-paragraph (c).

(3) No provision made by an access order by virtue of this Article shall—

- (a) apply to land which is for the time being excepted land, or authorise or require anything to be done in relation to such land or any means of access thereto;
- (b) affect the doing of anything whereby any land becomes excepted land; or
- (c) require, or authorise any person to require, any work to be carried out at the expense of any person interested in the land except as provided by paragraph (4) or (5).

(4) A district council may agree with the owner and occupier of the land as to the carrying out of any work required to give effect to any provision by virtue of paragraph (1) and where it is agreed that the work shall be carried out otherwise than by the district council, the district council may defray the cost of the work or may contribute such part of the cost as may be specified in the agreement.

(5) If—

- (a) the district council is unable to make an agreement under paragraph (4), or
- (b) the owner or occupier fails to carry out within a reasonable period any work which he has agreed to carry out,

the district council may, after giving the owner and the occupier not less than fourteen days' notice, take all necessary steps for carrying out the work; and where, in a case to which sub-paragraph (b)

applies, the agreement provided that the district council should contribute part of the cost of carrying out the work, the district council may recover the amount of any expenses reasonably incurred by it in carrying out the work, reduced by the district council's contribution under the agreement, from the person by whom under the agreement the cost (apart from the district council's contribution) of carrying out the work would fall to be borne.

(6) In paragraph (2) “means of access”, in relation to land, means any opening in a wall, fence or hedge bounding the land, with or without a stile, gate or other similar structure for regulating passage through the opening, any stairs or steps for enabling persons to enter on the land, or any bridge, stepping stone or other works for crossing a water-course, sheugh or bog, on, or adjoining the boundary of, the land.

### **Power of district councils to enforce access**

**33.**—(1) If any person contravenes—

- (a) Article 31 (1) (work substantially reducing area to which public have access), or
- (b) any restriction imposed under Article 32(1) on the doing of anything to the detriment of any means of access,

the district council may serve on that person a notice requiring him, within such period as is specified in the notice, to carry out such work so specified as appears to the district council to be requisite for remedying the contravention.

(2) If the person on whom the notice is served under paragraph (1) fails to comply with it within the specified period, the district council may take all necessary steps for carrying out the work specified in the notice and may recover from that person any expenses reasonably incurred by it in carrying out the work.

(3) Any person on whom a notice is served under paragraph (1) may appeal by notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F1</sup> at any time within the period specified in the notice served under paragraph (1) for carrying out the work on the ground—

- (a) that the period specified in the notice served under paragraph (1) is too short;
- (b) that the work so specified, or some of that work, is not requisite for remedying the contravention;
- (c) that he has not contravened Article 31 (1) or any restriction mentioned in paragraph (1) (b) of this Article; or
- (d) that the work specified in the notice served under paragraph (1), or so much of the work as is requisite for remedying the contravention, has been carried out.

(4) On an appeal under paragraph (3) the court may—

- (a) extend the period within which the work was required to be carried out,
- (b) quash the notice as respects the whole or any part of the work, or
- (c) dismiss the appeal.

(5) On an appeal under paragraph (3), the time between the initiation of the appeal and its final determination shall be disregarded in determining the period within which, in accordance with the notice served under paragraph (1), the work there specified is to be carried out.

#### **Annotations:**

**F1** [S.I. 1981/1675 \(N.I. 26\).](#)

### **Suspension of public access to avoid risk of fire**

**34.** If the district council is satisfied that, by reason of any conditions of weather for the time being prevailing, public access to land comprised in an access agreement or order is likely to result in fires occurring on any part of that land, it may direct that Article 26 (1) (rights of public where access agreement or order is in force) shall not have effect in relation to such parts of the land and during such period as may be specified in the direction.

### **Compensation for access orders**

**35.—**(1) Where, in consequence of the coming into operation of an access order,—

- (a) the value of the interest of any person in land is depreciated, or
- (b) any person has suffered damage by being disturbed in his enjoyment of land,

the district council shall pay to that person compensation equal to the amount of the depreciation or damage.

(2) Nothing in paragraph (1) shall confer on a person a right to compensation for depreciation of the value of an interest in land or for disturbance in his enjoyment of land, being land which in either case is not comprised in the order or if so comprised is excepted land, except if and in so far as either—

- (a) it is held with land comprised in the order which is not excepted land, or
- (b) the omission of any other person to exclude the public from the land comprised in the order or any part of that land would have been actionable at the instance of the first-mentioned person if the access order had not come into operation.

### **Compensation to be assessed with regard to effect of first five years of access**

**36.—**(1) For the purpose of enabling compensation under Article 35 to be assessed in the light of experience gained of the actual effect on the land of the coming into operation of access orders, no such compensation shall be claimed or payable before the expiration of a period of five years from the coming into operation of the access order giving rise to the compensation ( “the five-year period” and “the relevant order” ).

(2) Nothing in paragraph (1) shall be construed as requiring such compensation to be assessed as at a date later than the date of the coming into operation of the relevant order; but in calculating the compensation it shall be assumed that, on a sale at that date of the interest in respect of which the compensation is claimed, the purchaser would have had knowledge—

- (a) of the actual effect during the five-year period on the land in which the interest subsists and the use of that land, of the coming into operation of the relevant order;
- (b) of the fact and date of any revocation or variation during that period of the relevant order;
- (c) of the fact and date of any changes during that period, as respects land comprised in the relevant order, from or to excepted land.

(3) If during the five-year period the relevant order is revoked or varied so as to exclude any land not being excepted land, paragraphs (1) and (2) shall thereupon have effect, so far as concerns any claim for compensation in respect of the operation of the relevant order on the excluded land as if for any reference to the five-year period there were substituted a reference to the period beginning with the coming into operation of the relevant order and ending with the revocation or variation excluding that land.

(4) Where at different times within a period of five years two or more areas of land which are contiguous or adjacent to one another become comprised in access orders, and any person has an interest in each of those areas, then, with the consent of every person having an interest in each of the areas other than the one first so comprised, paragraphs (1) to (3) shall apply in relation to each of

the last-mentioned areas with the substitution for any reference to the period of five years from the coming into operation of the order by virtue of which that land became so comprised as aforesaid of a reference to a period of five years from the coming into operation of the order by virtue of which the first of the areas became so comprised.

### **Claims for compensation and interest**

**37.**—(1) Any person claiming to be entitled to an interest in land in respect of the depreciation or the disturbance in the enjoyment of which compensation will become payable under Article 35 may apply in writing to the district council in accordance with paragraph (3) to record his claim.

(2) Any person who has applied under paragraph (1) for the recording of a claim to compensation, or any person claiming under him, may, within six months after the end of the period after which under Article 36 compensation may be claimed, apply in writing to the district council in accordance with paragraph (5) for payment of the compensation.

(3) An application under paragraph (1) shall be served within six months after the date when the relevant order comes into operation and shall be accompanied by particulars of the interest in land in respect of which the claim is made, being particulars sufficient to identify approximately the boundaries of the land, and of the nature of the claimant's title thereto, but it shall not be necessary to state in an application under paragraph (1) the amount of the compensation claimed.

(4) Where an application is duly made under paragraph (1) the district council shall, within seven days of the serving of the application, record in a register of claims which shall be available for inspection by the public at all reasonable hours—

- (a) the name and address of the claimant;
- (b) the date on which the application is served;
- (c) particulars of—
  - (i) the interest in land in respect of which the claim is made,
  - (ii) the nature of the claimant's title thereto,
  - (iii) the order in respect of which the claim is made;

and the district council shall as soon as practicable after the claim has been recorded notify the claimant in writing of that fact.

(5) An application under paragraph (2) shall state the amount of the compensation claimed and the applicant's title to receive the compensation claimed and shall be accompanied by documentary evidence of the applicant's title to the interest in land in respect of which compensation is claimed.

(6) Any compensation payable under Article 35 shall become due when, on an application duly made under paragraph (2), the amount of the compensation has been agreed or, in default of agreement, has been determined by the Lands Tribunal under Article 49; and any such compensation shall be payable with interest, at such rate as is determined by order made by the Department of Finance and Personnel for the purposes of paragraph 18 (2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F2</sup>.

#### **Annotations:**

**F2** 1972 c. 9 (N.I.).

### **Payments on account in special circumstances**

**38.**—(1) At any time during the period after which, under Article 36, compensation may be claimed in respect of the coming into operation of an order, a person claiming to be entitled to such

compensation may apply to the district council for a payment on account of the compensation on the ground of special circumstances.

(2) On an application under paragraph (1), the district council, if it is satisfied that such circumstances exist, shall make that person a payment on account of the compensation of such amount as the district council may determine.

(3) Any person aggrieved—

(a) by the refusal of a district council to make a payment on account, or

(b) by the amount of a payment which the district council has determined to be made to him, may appeal to the Department.

(4) On an appeal under paragraph (3), the Department, after affording to the person aggrieved and to the district council an opportunity of being heard by a person appointed by the Department for the purpose, may—

(a) confirm the decision of the district council, or

(b) direct that the district council shall make a payment on account of such amount as appears to the Department to be just.

#### **Acquisition by district councils of land for public access**

**39.**—(1) Where it appears to a district council as respects any land which is or which gives or forms part of access to open country—

(a) that it is requisite that the public should have access to that open country for open-air recreation; and

(b) that in the circumstances it is expedient that for that purpose the land should be acquired by the district council,

then the district council may acquire the land compulsorily, if it appears to the district council impracticable to obtain such access by an access agreement or access order or by acquiring the land by agreement.

(2) A district council may carry out on land acquired (whether by agreement or compulsorily) for the purposes of this Article and for the time being held by the district council for those purposes such work as the district council considers requisite for providing convenient means of access to the land or otherwise for those purposes.

(3) While any land so acquired is held by the district council for the purposes of this Article, the district council shall so manage the land as to give to the public access for open-air recreation to so much of the land as appears to the district council to be practicable, having regard—

(a) to the nature of the different parts of the land;

(b) to anything done on the land which may result in danger to the public or to persons employed on the land unless public access to that, or adjoining, land is restricted; and

(c) to all other relevant circumstances.

#### **Acquisition by Department of land for public access**

**40.** Where it appears to the Department as respects any land which is or which gives or forms part of access to open country—

(a) that it is requisite that the public should have access to that open country for open-air recreation; and

(b) that in the circumstances it is expedient that for that purpose the land should be acquired by the Department,

the Department may,<sup>F3</sup> in accordance with arrangements approved by] the Department of Finance and Personnel, acquire the land by agreement, whether by way of purchase, lease or exchange, or compulsorily, in accordance with<sup>F3</sup> Article 6 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (acquisition and disposal of amenity lands) and the provisions of that Article and of Article 10 of that Order] shall apply to any land so acquired.

**Annotations:**

**F3** 1985 NI 1

**Maps of land subject to public access**

**41.**—(1) A district council whose district comprises any land—

- (a) which is subject to an access agreement or order, or
- (b) which has been acquired under Article 39 or 40 and is for the time being held for the purpose for which it was acquired,

shall prepare and keep up to date a map, on such scale as may be prescribed, defining in such manner as may be prescribed—

- (i) the land to which sub-paragraph (a) or (b) applies,
- (ii) in the case of land to which sub-paragraph (a) applies, any land comprised therein which is excepted land,
- (iii) in the case of land to which sub-paragraph (b) applies, any such land from which, for the purpose of avoiding danger to the public or to persons employed there or for any other reason, the public are excluded.

(2) A district council to which paragraph (1) applies shall make copies of the map and of the notices referred to in sub-paragraph (b) available for inspection by the public at such places as the district council may determine; and the district council shall display, at such places as it thinks fit, including places where the public obtain access to the land to which the map relates—

- (a) reproductions of the map on an appropriate scale,
- (b) notices specifying any restrictions on access to the land or any part of the land whether the restrictions have effect by virtue of any of the provisions of this Part or otherwise.

**Provision as to danger areas**

**42.**—(1) A district council, where it makes an access agreement or order, shall, after consulting the owner and occupier of any land concerned, so delimit the land to which the agreement or order applies as to exclude all land which, by reason of anything done on that or contiguous or adjacent land, it appears to the district council expedient to exclude for the purpose of avoiding danger to the public or to persons employed on any part of that land.

(2) For the purpose of avoiding danger to the public or to any persons employed on any land, the district council may vary any access agreement or order so as to exclude any land.

(3) For the purposes of paragraph (2)—

- (a) the fact that an access agreement is expressed to be irrevocable shall not prevent its variation in pursuance of that paragraph;
- (b) where the concurrence of any party to an access agreement other than the district council, or the successor in title to his interest, cannot be obtained to the variation of the agreement in pursuance of paragraph (2), the district council may by order vary the agreement.

(4) As respects any land—

(a) which is subject to an access agreement or order, or  
(b) held by the district council and to which Article 41 (1) (b) applies,  
a district council may take such steps and carry out such works (including the erection and maintenance of fences or notices) as appear to the district council to be requisite for protecting the public from any source of danger on the land or on adjoining land.

(5) Paragraph (4) shall apply to the Department as respects land held by the Department under Article 40 as it applies to a district council as respects land held by the district council.

(6) The application of Article 26 to any land—

- (a) in relation to any factory, magazine, store or premises established before the commencement of this Article, shall not constitute the land an open place or resort for the public, or a public place, for the purposes of the Explosives Act (Northern Ireland) 1875 to 1970<sup>F4</sup>, or any order made or licence granted under those Acts;
- (b) in relation to any factory, magazine, store or premises established after the commencement of this Article, shall so constitute the land.

**Annotations:**

**F4** 1875 c. 17; 1924 c. 5 (N.I.); 1970 c.10 (N.I.).

**Boundary notices**

**43.** A district council may erect and maintain notices or other means of indicating the boundaries of land comprised in an access agreement or order and of excepted land.

**Changes to legislation:**

There are currently no known outstanding effects for the The Access to the Countryside (Northern Ireland) Order 1983, PART III.