STATUTORY INSTRUMENTS

1993 No. 3160

The Roads (Northern Ireland) Order 1993

PART VII

LAWFUL AND UNLAWFUL INTERFERENCE WITH ROADS

Structures, works, etc. on, in, under, over or near a road

Placing of rails, beams, cables, arches, etc. over a road

73.—(1) Subject to paragraph (2), any person who fixes or places any overhead beam, rail, arch, pipe, cable, wire or other similar apparatus over, along or across any road shall be guilty of an offenceand liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

(a) with the consent of the Department;

(b) in relation to a road which is not a special road, by—

(i) a statutory undertaker in the exercise of a statutory power; or

(ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or

(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order; or

(c) in relation to a special road, with the consent of the Department under Article 17(1) or by virtue of Article 17(2).

(3) Where—

(a) a person has fixed or placed any apparatus in contravention of paragraph (1); and

(b) the Department considers that the apparatus constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(i) remove that apparatus or carry out such other works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow, remove any apparatus fixed or placed in contravention of that paragraph and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day upon which that failure continues.

(5) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(6) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(7) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a consent under paragraph (2)(a) may be given subject to conditions—

(a) requiring the person to whom the consent is given to insure against such risks in connection with the fixing or placing of the apparatus to which the consent relates and its presence over, along or across a road as the Department may specify;

(b) requiring the person to whom the consent is given to produce to the Department such certificates as the Department may require as to the safety of any apparatus to which the consent relates;

(c) requiring the apparatus to be fixed or placed not earlier than such date as is specified in the consent and to be removed not later than such other date as is so specified.

(9) The person to whom a consent under paragraph (2)(a) is given shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the fixing, placing or presence over, along or across a road of apparatus to which the consent relates, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(10) Any person who—

(a) fixes or places any apparatus in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) Where it appears to the Department that a person has contravened paragraph (10), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) remove any apparatus fixed or placed in pursuance of the consent; and

(c) recover from that person any expenses thereby reasonably incurred by it.

(12) Where any apparatus—

(a) has been removed by the Department under paragraph (3), (5) or (11); and

(b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(13) Where any apparatus is disposed of by sale under paragraph (12) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(**1**).

(14) Where the Department disposes of any apparatus underparagraph (12)—

(a) by sale and the proceeds are not sufficient to defray the Department's expenses; or

(b) in some manner other than by sale,

the Department may recover from the person who fixed or placed the apparatus over, along or across the road any expenses reasonably incurred by it in removing and disposing of the apparatus.

(**1**) 1954 c. 9 (N.I.)