
STATUTORY INSTRUMENTS

1995 No. 3210

The Street Works (Northern Ireland) Order 1995

Introduction and interpretation

Title and commencement

1.—(1) This Order may be cited as the Street Works (Northern Ireland) Order 1995.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may contain such transitional provisions as appear to the Head of the Department to be necessary or expedient.

General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954⁽¹⁾ shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“apparatus” includes any structure for the lodging therein of apparatus or for gaining access to apparatus;

“carriageway” and “footway” have the same meaning as in the Roads Order;

“the Department” means the Department of the Environment;

“in”, in a context of referring to works, apparatus or other property in a street or other place, includes a reference to works, apparatus or other property under, over, across, along or upon it;

“the planning appeals commission” means the planning appeals commission constituted under the Planning (Northern Ireland) Order 1991⁽²⁾;

“prescribed” means prescribed by regulations made by the Department;

“railway” includes a light railway other than one in the nature of a tramway;

“reinstatement” includes making good;

“road” has the same meaning as in the Roads Order;

“the Roads Order” means the Roads (Northern Ireland) Order 1993⁽³⁾;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“statutory right” means a right (whether expressed as a right, a power or otherwise) conferred by a statutory provision, other than a right exercisable by virtue of a street works licence;

“traffic” and “traffic sign” have the same meaning as in the Road Traffic (Northern Ireland) Order 1981⁽⁴⁾;

(1) 1954 c. 33 (N.I.).

(2) 1991 NI 11.

(3) 1993 NI 15.

(4) 1981 NI 1.

“tramway” means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a street;

“working day” means a day other than a Saturday, Sunday or a public holiday.

(3) A right to execute works which extends both to a street and to other land is included in references in this Order to a right to execute works in a street in so far as it extends to the street.

(4) A right to execute works which extends to part of the street but not the whole is included in references in this Order to a right to execute works in a street; and in relation to such a right references in this Order to the street in which it is exercisable shall be construed as references to the part to which the right extends.

(5) For the purposes of this Order apparatus shall be regarded as affected by works if the effect of the works is to prevent or restrict access to the apparatus (for example, by laying other apparatus above or adjacent to it).

(6) Section 18 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(5) (power to define “disability” and other expressions) applies in relation to the provisions of this Order as to the provisions of that Act.

Streets and street works

3.—(1) In this Order a “street” means the whole or any part of any of the following, irrespective of whether it is a thoroughfare—

- (a) any road, highway, lane, footway, alley or passage,
- (b) any square or court, and
- (c) any land laid out as a way whether it is for the time being formed as a way or not.

Where a street passes over a bridge or through a tunnel, references in this Order to the street include that bridge or tunnel.

(2) The provisions of this Order apply to a street which is not a road subject to such exceptions and adaptations as may be prescribed.

(3) In this Order “street works” means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence—

- (a) placing apparatus, or
- (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,

or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

Undertakers

4.—(1) In this Order “undertaker” in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be.

(2) References in this Order to the undertaker in relation to apparatus in a street are to the person entitled, by virtue of a statutory right or a street works licence, to carry out in relation to the apparatus such works as are mentioned in Article 3(3); and references to an undertaker having apparatus in the street, or to the undertaker to whom apparatus belongs, shall be construed accordingly.

(3) This Article is subject to Article 9(3).

Works for road purposes and major road works

5.—(1) In this Order “works for road purposes” means works of any of the following descriptions executed in relation to a road—

- (a) works for the maintenance of the road,
- (b) any works under powers conferred by any of Articles 7, 43 to 46 or 63 to 65 of the Roads Order (general powers of improvement),
- (c) the erection, maintenance, alteration or removal of traffic signs on or near the road, or
- (d) the construction of a crossing for vehicles across a footway or grass verge or the strengthening or adaptation of a footway for use as a crossing for vehicles,

or works of any corresponding description executed in relation to a street which is not a road.

(2) In this Order “major road works” means works of any of the following descriptions executed by the Department in relation to a road which consists of or includes a carriageway—

- (a) reconstruction or widening of the road,
- (b) substantial alteration of the level of the road,
- (c) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footway or cycle track in the road,
- (d) the construction or removal of a road hump or other traffic calming works within the meaning of Article 65 of the Roads Order,
- (e) works carried out in exercise of the powers conferred by Article 58(4)(b) of the Roads Order as applied by Article 86 of that Order (vehicle crossings over footways and verges),
- (f) provision of a cattle-grid in the road or works ancillary thereto, or
- (g) tunnelling or boring under the road.

Emergency works

6.—(1) In this Order “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

(2) Where works comprise items some of which fall within the preceding definition, the expression “emergency works” shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do.

(3) Where in any civil or criminal proceedings brought by virtue of any provisions of this Order, the question arises whether works were emergency works, it is for the person alleging that they were to prove it.

The street authority and other relevant authorities

7.—(1) In this Order “the street authority” in relation to a street means, subject to the following provisions—

- (a) if the street is a road, the Department, and
- (b) if the street is not a road, the street managers.

(2) Paragraph (1)(b) has effect subject to Article 46 as regards the application of this Order to prospective roads.

(3) In this Order the expression “street managers”, used in relation to a street which is not a road, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street.

(4) The Department may by regulations make provision for exempting street managers from provisions of this Order which would otherwise apply to them as the street authority in relation to a street.

(5) References in this Order to the relevant authorities in relation to any works in a street are to the street authority and also—

- (a) where the works include the breaking up or opening of a public sewer in the street, the Department;
- (b) where the street is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and
- (c) where in any other case the street is carried or crossed by a bridge, the bridge authority.

Interpretation of expressions relating to bridges

8.—(1) In this Order—

- (a) references to a bridge include so much of any street as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the street; and
- (b) “bridge authority” means the authority, body or person in whom a bridge is vested.

(2) In this Order, “major bridge works” means works for the replacement, reconstruction or substantial alteration of a bridge.

(3) Where a street is carried or crossed by a bridge, any statutory right to place apparatus in the street includes the right to place apparatus in, and attach apparatus to, the structure of the bridge; and other rights to execute works in relation to the apparatus extend accordingly.

References in this Order to apparatus in the street include apparatus so placed or attached.

Interpretation of expressions relating to sewers

9.—(1) In this Order—

- (a) “sewer” has the same meaning as in the Water and Sewerage Services (Northern Ireland) Order 1973⁽⁶⁾,
- (b) “public sewer” means a sewer which is vested in the Department.

(2) References in this Order to apparatus include a sewer, drain or tunnel.

(3) References to the undertaker in relation to such apparatus, or in relation to street works in connection with such apparatus, shall be construed—

- (a) in the case of a public sewer, as references to the Department, and
- (b) in any other case, as references to the authority, body or person having the management or control of the sewer, drain or tunnel.

Interpretation of expressions relating to transport

10.—(1) In this Order—

(6) 1973 NI 2.

- (a) “transport authority” means the authority, body or person having the control or management of a transport undertaking; and
- (b) “transport undertaking” means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority.

(2) In this Order “major transport works” means substantial works required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking.

(3) References in this Order to a street which crosses or is crossed by property held or used for the purposes of a transport undertaking extend to cases in which the street and the property in question are at different levels.

But the transport authority shall not be treated as a relevant authority as regards undertakers' works in such a street where the property in question consists only of—

- (a) subsoil of the street which is held by the transport authority but is not used, and has not been adapted for use, for the purposes of the transport undertaking, or
- (b) property underground at such a depth that there is no reasonable possibility of the works affecting it.

(4) The provisions of this Order relating to a street which crosses or is crossed by property held or used for the purposes of a transport undertaking apply to a street which is or forms part of a towing-path or other way running along a canal or inland navigation, provided the path or way is held or used, or the subsoil of it is held, for the purposes of the canal or inland navigation undertaking.

Street works licences

Street works licences

11.—(1) The street authority may grant a licence (a “street works licence”) permitting a person—

- (a) to place, or to retain, apparatus in the street, and
- (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it,

and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).

(2) A street works licence authorises the licensee to execute the works permitted by the licence without obtaining any consent which would otherwise be required to be given—

- (a) by any other relevant authority in its capacity as such, or
- (b) by any person in his capacity as the owner of apparatus affected by the works;

but without prejudice to the provisions of this Order as to the making of requirements by any such authority or person or as to the settlement of a plan and section and the execution of the works in accordance with them.

(3) A street works licence does not dispense the licensee from obtaining any other consent, licence or permission which may be required.

(4) The provisions of Schedule 1 have effect with respect to the grant of street works licences, the attachment of conditions and other matters.

(5) A street works licence may be granted—

- (a) to a person on terms permitting or prohibiting its assignment, or
- (b) to the owner of land and his successors in title;

and references in this Order to the licensee are to the person for the time being entitled by virtue of the licence to do anything permitted by it.

(6) The following, namely—

- (a) any licence granted before the coming into operation of this Article under Article 79 of the Roads Order or any corresponding earlier statutory provision for the execution in a street of any such works as are mentioned in paragraph (1); and
- (b) any licence, consent, permission or other authority for the execution in a street of any such works as are mentioned in that paragraph granted or given by the street manager before the coming into operation of this Article,

shall have effect after the coming into operation of this Article as a street works licence; but paragraph (2) shall not apply in relation to such a licence.

(7) The works referred to in paragraph (1) do not include works for road purposes.

Prohibition of unauthorised street works

12.—(1) It is an offence for a person other than the street authority—

- (a) to place apparatus in a street, or
- (b) to break up or open a street, or a sewer, drain or tunnel under it, or to tunnel or bore under a street, for the purpose of placing, inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, or of changing the position of apparatus or removing it,

otherwise than in pursuance of a statutory right or a street works licence.

(2) A person committing an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) This Article does not apply to—

- (a) works for road purposes,
- (b) emergency works of any description,
- (c) works done with the consent of the Department given under the Roads Order,
- (d) works done under the authority of a licence issued by the Department under the Roads Order,
- (e) works required to be carried out by a notice to which Article 58 of the Roads Order applies, or
- (f) works done by, or under the direction of, a constable which do not involve the breaking up or opening of a street.

(4) If a person commits an offence under this Article, the street authority may—

- (a) in the case of an offence under paragraph (1)(a), direct him to remove the apparatus in respect of which the offence was committed, and
- (b) in any case, direct him to take such steps as appear to the authority necessary to reinstate the street or any sewer, drain or tunnel under it.

If he fails to comply with the direction, the authority may remove the apparatus or, as the case may be, carry out the necessary works and recover from him the costs reasonably incurred by it in doing so.

The street works register

The street works register

13.—(1) The Department shall keep a register showing with respect to each street such information as may be prescribed with respect to the street works, and such other descriptions of works as may be prescribed, executed or proposed to be executed in the street.

(2) The register shall contain such other information, and shall be kept in such form and manner, as may be prescribed.

(3) The Department shall make the register available for inspection, at all reasonable hours and free of charge—

(a) so far as it relates to restricted information, by any person having authority to execute works of any description in the street, or otherwise appearing to the Department to have a sufficient interest, and

(b) so far as it relates to information which is not restricted, by any person.

The Department may make provision by regulations as to the information which is restricted for the purposes of this paragraph.

(4) The Department may by regulations make provision with respect to any register kept in pursuance of this Article—

(a) requiring the registration of such information as may be prescribed, and

(b) requiring the payment of such fee as may be prescribed in respect of the registration of information of any prescribed description;

and the regulations may contain provision as to the person responsible for securing the registration of the information and the person liable to pay the fee.

Notice and co-ordination of works

Advance notice of certain works

14.—(1) In such cases as may be prescribed an undertaker proposing to execute street works shall give the prescribed advance notice of the works to the street authority.

(2) The notice shall contain such information as may be prescribed.

(3) After giving advance notice under this Article an undertaker shall comply with such requirements as may be prescribed, or imposed by the street authority, as to the providing of information and other procedural steps to be taken for the purpose of co-ordinating the proposed works with other works of any description proposed to be executed in the street.

(4) An undertaker who fails to comply with his duties under this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Notice of starting date of works

15.—(1) An undertaker proposing to begin to execute street works involving—

(a) breaking up or opening the street, or any sewer, drain or tunnel under it, or

(b) tunnelling or boring under the street,

shall give not less than 7 working days' notice (or such other notice as may be prescribed) to the street authority, to any other relevant authority and to any other person having apparatus in the street which is likely to be affected by the works.

(2) Cases may be prescribed under paragraph (1) in which no notice is required.

(3) The notice shall state the date on which it is proposed to begin the works and shall contain such other information as may be prescribed.

(4) Where notice is required to be given under this Article, the works shall not be begun without notice or before the end of the notice period, except with the consent of those to whom notice is required to be given.

(5) An undertaker who begins to execute any works in contravention of this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—

(a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or

(b) to his not knowing the identity or address of—

(i) a relevant authority, or

(ii) the person to whom any apparatus belongs,

and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

(7) A notice under this Article shall cease to have effect if the works to which it relates are not substantially begun before the end of the period of 7 working days (or such other period as may be prescribed) beginning with the starting date specified in the notice, or such further period as may be allowed by those to whom notice is required to be given.

Power to give directions as to timing of street works

16.—(1) If it appears to the street authority—

(a) that proposed street works are likely to cause serious disruption to traffic, and

(b) that the disruption would be avoided or reduced if the works were carried out only at certain times,

the authority may give the undertaker such directions as may be appropriate as to the times when the works may or may not be carried out.

(2) The procedure for giving a direction shall be prescribed by the Department.

(3) An undertaker who executes works in contravention of a direction under this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The Department may issue or approve for the purposes of this Article a code of practice giving practical guidance as to the exercise of the power conferred by this Article; and in exercising that power street managers shall have regard to the code of practice.

Notice of emergency works

17.—(1) Nothing in Article 14 (advance notice), Article 15 (notice of starting date) or Article 16 (directions as to timing of works) affects the right of an undertaker to execute emergency works.

(2) An undertaker executing emergency works shall, if the works are of a kind in respect of which notice is required by Article 15, give notice as soon as reasonably practicable, and in any event within 2 hours (or such other period as may be prescribed) of the works being begun, to the persons to whom notice would be required to be given under that Article.

(3) The notice shall state his intention or, as the case may be, the fact that he has begun to execute the works and shall contain such other information as may be prescribed.

(4) An undertaker who fails to give notice in accordance with this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In proceedings against a person for such an offence it is a defence for him to show that the contravention was attributable—

(a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or

(b) to his not knowing the identity or address of—

(i) a relevant authority, or

(ii) the person to whom any apparatus belongs,

and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

Restriction on works following substantial road works

18.—(1) Where it is proposed to carry out substantial road works in a street, the street authority may by notice in accordance with this Article restrict the execution of street works during the 12 months following the completion of those works.

For this purpose substantial road works means works for road purposes, or such works together with other works, of such description as may be prescribed.

(2) The notice shall be published in the prescribed manner and shall specify the nature and location of the proposed works, the date (not being less than 3 months after the notice is published, or first published) on which it is proposed to begin the works, and the extent of the restriction.

(3) A copy of the notice shall be given to each of the following—

(a) where there is a public sewer in the part of the street to which the restriction relates, the Department,

(b) where the part of the street to which the restriction relates is carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority,

(c) where in any other case the part of the street to which the restriction relates is carried or crossed by a bridge, the bridge authority,

(d) any person who has given notice under Article 14 (advance notice of certain works) of his intention to execute street works in the part of the street to which the restriction relates, and

(e) any other person having apparatus in the part of the street to which the restriction relates;

but a failure to do so does not affect the validity of the restriction imposed by the notice.

(4) A notice ceases to be effective if the works to which it relates are not substantially begun—

(a) on or within one month from the date specified in the notice, or

(b) where street works are in progress on that date in the part of the street to which the restriction relates, within one month from the completion of those works.

(5) An undertaker shall not in contravention of a restriction imposed by a notice under this Article break up or open the part of the street to which the restriction relates, except—

(a) to execute emergency works,

(b) with the consent of the street authority, or

(c) in such other cases as may be prescribed.

(6) If he does—

- (a) he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale, and
- (b) he is liable to reimburse the street authority any costs reasonably incurred by it in reinstating the street.

(7) The consent of the street authority under paragraph (5)(b) shall not be unreasonably withheld; and any question whether the withholding of consent is unreasonable shall be settled by arbitration.

(8) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a restriction imposed by a notice under this Article.

General duty of street authority to co-ordinate works

19.—(1) A street authority shall use its best endeavours to co-ordinate the execution of works of all kinds (including works for road purposes) in the streets for which it is responsible—

- (a) in the interests of safety,
- (b) to minimise the inconvenience to persons using the street (having regard, in particular, to the needs of people with a disability), and
- (c) to protect the structure of the street and the integrity of apparatus in it.

(2) That duty extends to co-ordination with other street authorities where works in a street for which one authority is responsible affect streets for which other authorities are responsible.

(3) The Department shall issue or approve for the purposes of this Article codes of practice giving practical guidance as to the matters mentioned above; and in discharging their general duty of co-ordination street managers shall have regard to any such code of practice.

(4) If it appears to the Department that street managers are not properly discharging their general duty of co-ordination, the Department may direct the street managers to supply it with such information as the Department considers necessary to enable the Department to decide whether that is the case and if so what action to take.

The direction shall specify the information to be provided and the period within which it is to be provided.

(5) If after the end of that period (whether or not the direction has been complied with) it appears to the Department that the street managers are not properly discharging their general duty of co-ordination, the Department may direct the street managers to take such steps as the Department considers appropriate for the purpose of discharging duty.

The direction shall specify the steps to be taken and the period within which they are to be taken, and may include a requirement to make a report or periodic reports to the Department as to what steps have been taken and the results of taking them.

- (6) A direction under this Article may be varied or revoked by a further direction.

General duty of undertakers to co-operate

20.—(1) An undertaker shall as regards the execution of street works use his best endeavours to co-operate with the street authority and with other undertakers—

- (a) in the interests of safety,
- (b) to minimise the inconvenience to persons using the street (having regard, in particular, to the needs of people with a disability), and
- (c) to protect the structure of the street and the integrity of apparatus in it.

(2) The Department shall issue or approve for the purposes of this Article codes of practice giving practical guidance as to the matters mentioned in paragraph (1); and—

- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duty under that paragraph, and
- (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that duty.

(3) An undertaker who fails to comply with his duty under paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Streets subject to special controls

Protected streets

21.—(1) The consent of the street authority is required for the placing of apparatus by an undertaker in a protected street, except as mentioned below.

The following are “protected streets” for this purpose—

- (a) any—
 - (i) road,
 - (ii) road in the course of construction, or
 - (iii) proposed road,which is a special road in accordance with Article 15 of the Roads Order; and
- (b) any street designated by the street authority as protected.

(2) Consent is not required for the placing of apparatus—

- (a) by way of renewal of existing apparatus, or
- (b) in pursuance of a street works licence,

unless, in the latter case, the licence was granted before the street became a protected street.

(3) The street authority may require the payment of—

- (a) a reasonable fee in respect of the legal or other expenses incurred in connection with the giving of its consent under this Article, and
- (b) an annual fee of a reasonable amount for administering the consent;

and any such fee is recoverable from the undertaker.

This shall not be construed as affecting any right of the authority where it owns the land on which the street is situated to grant for such consideration as it thinks fit the right to place anything in, under or over the land.

(4) Where the apparatus is to be placed crossing the protected street and not running along it, the street authority shall not withhold its consent unless there are special reasons for doing so.

(5) Consent to the placing of apparatus in a protected street may be given subject to conditions; and the street authority may agree to contribute to the expenses incurred by the undertaker in complying with the conditions.

(6) Any dispute between the street authority and an undertaker as to the withholding of consent, the imposition of conditions, or the making of contributions shall be settled by arbitration.

(7) An undertaker having a statutory duty to afford a supply or service shall not be regarded as in breach of that duty if, or to the extent that, it is not reasonably practicable to afford a supply or service by reason of anything done by the street authority in exercise of its functions under this Article.

(8) A consent granted under Article 17 of the Roads Order shall have effect as a consent granted under this Article.

Supplementary provisions as to designation of protected streets

22.—(1) The Department may prescribe—

- (a) the criteria for designating a street as protected,
- (b) the procedure for making or withdrawing such a designation, and
- (c) the information to be made available by the street authority as to the streets for the time being so designated by it.

(2) Where a street has been designated as protected the street authority may direct an undertaker to remove or change the position of apparatus placed in the street at a time when it was not so designated.

The authority shall indemnify the undertaker in respect of his reasonable expenses in complying with such a direction.

(3) Where a designation is withdrawn the street authority may give such directions as it considers appropriate as to—

- (a) the continuance in force of any conditions subject to which consent was given for the placing of apparatus in the street, and
- (b) the continuance of entitlement to any contributions in respect of the expenses of an undertaker in complying with such conditions.

(4) Where a designation is made or withdrawn the street authority may give such directions as it considers appropriate with respect to works in progress in the street when the designation comes into force or ceases to have effect.

(5) Any dispute between the street authority and an undertaker as to the exercise by the authority of its powers under paragraph (2), (3) or (4) shall be settled by arbitration.

Streets with special engineering difficulties

23.—(1) The provisions of Schedule 2 have effect for requiring the settlement of a plan and section of street works to be executed in a street designated by the street authority as having special engineering difficulties.

(2) The Department may prescribe—

- (a) the criteria for designating a street as having special engineering difficulties,
- (b) the procedure for making or withdrawing such a designation, and
- (c) the information to be made available by the street authority as to the streets for the time being so designated by it.

(3) Where the Department is asked to designate a road as having special engineering difficulties—

- (a) by a transport authority on the ground of the proximity of the road to a structure belonging to, or under the management or control of, the authority, or
- (b) by an undertaker having apparatus in the road,

and the Department proposes to decline to do so, it shall serve notice of that proposal on the transport authority or undertaker concerned.

(4) If within 21 days of receiving notice of the Department's proposal under paragraph (3) the transport authority or undertaker so requests in writing, the Department shall afford the authority or undertaker an opportunity of appearing before and being heard by the planning appeals commission.

(5) There shall be payable in respect of a hearing under paragraph (4) such fee as may be prescribed.

(6) Where a hearing is held under paragraph (4)—

(a) the Department shall, in determining whether to designate a road as having special engineering difficulties, take into account the report of the planning appeals commission; and

(b) the decision of the Department shall be final.

(7) The designation of a street as having special engineering difficulties shall not be withdrawn except after consultation with any transport authority or undertaker at whose request the designation was made.

Traffic-sensitive streets

24.—(1) Regulations made for the purposes of Article 14, 15 or 17 (notices required to be given in respect of street works) may make special provision in relation to street works in a street designated by the street authority as traffic-sensitive.

(2) The Department may prescribe—

(a) the criteria for designating a street as traffic-sensitive,

(b) the procedure for making or withdrawing such a designation, and

(c) the information to be made available by the street authority as to the streets for the time being so designated by it.

(3) If it appears to the street authority that the prescribed criteria are met only at certain times or on certain dates, a limited designation may be made accordingly.

In such a case the reference in paragraph (1) to the execution of works in a street designated as traffic-sensitive shall be construed as a reference to works so executed at those times or on those dates.

General requirements as to execution of street works

Safety measures

25.—(1) An undertaker executing street works shall secure—

(a) that any part of the street which is broken up or open, or is obstructed by plant or materials used or deposited in connection with the works, is adequately guarded and lit, and

(b) that such traffic signs are placed and maintained, and where necessary operated, as are reasonably required for the guidance or direction of persons using the street,

having regard, in particular, to the needs of people with a disability.

(2) In discharging in relation to a road his duty with respect to the placing, maintenance or operation of traffic signs, an undertaker shall comply, with any directions given by the Department.

(3) The Department may issue or approve for the purposes of this Article codes of practice giving practical guidance as to the matters mentioned in paragraph (1); and—

(a) so far as an undertaker complies with such a code of practice he shall be taken to comply with that paragraph; and

(b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with that paragraph.

(4) An undertaker who fails to comply with paragraph (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If it appears to the street authority that an undertaker has failed to comply with paragraph (1) or (2), the street authority may take such steps as appear to it necessary and may recover from the undertaker the costs reasonably incurred by it in doing so.

(6) If a person without lawful authority or excuse—

- (a) takes down, alters or removes any fence, barrier, traffic sign or light erected or placed in pursuance of paragraph (1) or (2), or
- (b) extinguishes a light so placed,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Avoidance of unnecessary delay or obstruction

26.—(1) An undertaker executing street works which involve—

- (a) breaking up or opening the street, or any sewer, drain or tunnel under it, or
- (b) tunnelling or boring under the street,

shall carry on and complete the works with all such dispatch as is reasonably practicable.

(2) An undertaker who fails to do so commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where an undertaker executing any street works creates an obstruction in a street to a greater extent or for a longer period than is reasonably necessary, the street authority may by notice require him to take such reasonable steps as are specified in the notice to mitigate or discontinue the obstruction.

(4) If the undertaker fails to comply with such a notice within 24 hours of receiving it, or any longer period specified in the notice, the street authority may take the necessary steps and recover from him the costs reasonably incurred by it in doing so.

Qualifications of supervisors and operatives

27.—(1) It is the duty of an undertaker executing street works involving—

- (a) breaking up the street, or any sewer, drain or tunnel under it, or
- (b) tunnelling or boring under the street

to secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification as a supervisor.

(2) It is the duty of an undertaker executing streets works involving—

- (a) breaking up or opening the street, or any sewer, drain or tunnel under it, or
- (b) tunnelling or boring under the street,

to secure that, except in such cases as many be prescribed, there is on site at all times when any such works are in progress at least one person having a prescribed qualification as a trained operative.

(3) an undertaker who fails to comply with his duty under paragraph (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding levels 3 on the standard scale.

(4) Regulations made by the Department for the purposes of this Article may include provision with respect to—

- (a) the approval of bodies conferring qualifications (and the withdrawal of such approval), and
- (b) the circumstances in which a qualification may be conferred.

Facilities to be afforded to street authority

28.—(1) An undertaker executing street works shall afford the street authority reasonable facilities for ascertaining whether he is complying with his duties under this Order.

(2) An undertaker who fails to afford the street authority such facilities commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Works likely to affect other apparatus in the street

29.—(1) Where street works are likely to affect another person's apparatus in the street, the undertaker executing the works shall take all reasonably practicable steps—

- (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and
- (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.

(2) An undertaker who fails to comply with paragraph (1) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In proceedings against a person for such an offence it is a defence for him to show that the failure was attributable—

- (a) to his not knowing the position, or not knowing of the existence, of another person's apparatus, or
- (b) to his not knowing the identity or address of the person to whom any apparatus belongs, and that his ignorance was not due to any negligence on his part or to any failure to make inquiries which he ought reasonably to have made.

Reinstatement

Duty of undertaker to reinstate

30.—(1) It is the duty of the undertaker by whom street works are executed to reinstate the street.

(2) He shall begin the reinstatement as soon after the completion of any part of the street works as is reasonably practicable and shall carry on and complete the reinstatement with all such dispatch as is reasonably practicable.

(3) He shall before the end of the next working day after the day on which the reinstatement is completed inform the street authority that he has completed the reinstatement of the street, stating whether the reinstatement is permanent or interim.

(4) If it is interim, he shall complete the permanent reinstatement of the street as soon as reasonably practicable and in any event within 6 months (or such other period as may be prescribed) from the date on which the interim reinstatement was completed; and he shall notify the street authority when he has done so.

(5) The permanent reinstatement of the street shall include, in particular, the reinstatement of features designed to assist people with a disability.

(6) An undertaker who fails to comply with any provision of this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) In proceedings against a person for an offence of failing to comply with paragraph (2) it is a defence for him to show that any delay in reinstating the street was in order to avoid hindering

the execution of other works, or other parts of the same works, to be undertaken immediately or shortly thereafter.

Materials, workmanship and standard of reinstatement

31.—(1) An undertaker executing street works shall in reinstating the street comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

(2) He shall also ensure that the reinstatement conforms to such performance standards as may be prescribed—

- (a) in the case of interim reinstatement, until permanent reinstatement is effected, and
- (b) in the case of permanent reinstatement, for the prescribed period after the completion of the reinstatement.

This obligation is extended in certain cases and restricted in others by the provisions of Article 33 as to cases where a reinstatement is affected by subsequent works.

(3) The Department may issue or approve for the purposes of this Article codes of practice giving practical guidance as to the matters mentioned in paragraphs (1) and (2); and regulations made for the purposes of this Article may provide that—

- (a) so far as an undertaker complies with such a code of practice he shall be taken to comply with his duties under this Article, and
- (b) a failure in any respect to comply with any such code is evidence of failure in that respect to comply with those duties.

(4) An undertaker who fails to comply with his duties under this Article commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Powers of street authority in relation to reinstatement

32.—(1) The street authority may carry out such investigatory works as appear to it to be necessary to ascertain whether an undertaker has complied with his duties under this Order with respect to reinstatement.

If such a failure is disclosed, the undertaker shall bear the cost of the investigatory works; if not, the street authority shall bear the cost of the investigatory works and of any necessary reinstatement.

(2) Where an undertaker has failed to comply with his duties under this Order with respect to reinstatement, he shall bear the cost of—

- (a) a joint inspection with the street authority to determine the nature of the failure and what remedial works need to be undertaken,
- (b) an inspection by the authority of the remedial works in progress, and
- (c) an inspection by the authority when the remedial works have been completed.

(3) The street authority may by notice require an undertaker who has failed to comply with his duties under this Order with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the cost reasonably incurred by it in doing so.

(4) If it appears to the street authority that a failure by an undertaker to comply with his duties under this Order as to reinstatement is causing danger to users of the street, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by it in doing so.

The authority shall, however, give notice to him as soon as reasonably practicable stating its reasons for taking immediate action.

Reinstatement affected by subsequent works

33.—(1) The provisions of this Article apply in relation to an undertaker's duty under Article 31(2) to ensure that a reinstatement conforms to the prescribed performance standards for the requisite period; and references to responsibility for a reinstatement and to the period of that responsibility shall be construed accordingly.

(2) Where a reinstatement is affected by remedial works executed by the undertaker in order to comply with his duties under this Order with respect to reinstatement and the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.

(3) Where the street authority carries out investigatory works in pursuance of Article 32(1) and the investigation does not disclose any failure by the undertaker to comply with his duties under this Order with respect to reinstatement, then, to the extent that the original reinstatement has been disturbed by the investigatory works, the responsibility of the undertaker for the reinstatement shall cease.

(4) Where a reinstatement is affected by remedial works executed by the street authority in exercise of its powers under Article 32(3) or (4) (powers to act in default of undertaker)—

- (a) the undertaker is responsible for the subsequent reinstatement carried out by the authority, and
- (b) if the extent of the works exceeds that prescribed, the subsequent reinstatement shall be treated as a new reinstatement as regards the period of his responsibility.

(5) The following provisions apply where a reinstatement is affected by subsequent works in the street otherwise than as mentioned above.

(6) If the reinstatement is dug out to any extent in the course of the subsequent works, the responsibility of the undertaker for the reinstatement shall cease to that extent.

(7) If in any other case the reinstatement ceases to conform to the prescribed performance standards by reason of the subsequent works, the responsibility of the undertaker for the reinstatement is transferred to the person executing the subsequent works; and the provisions of this Order apply in relation to him as they would have applied in relation to the undertaker.

(8) Where there are successive subsequent works affecting a reinstatement, then as between earlier and later works—

- (a) paragraphs (6) and (7) apply in relation to the cessation or transfer of the responsibility of the person for the time being responsible for the reinstatement; and
- (b) if the reinstatement ceases to conform to the prescribed performance standards by reason of the works or any of them, it shall be presumed until the contrary is proved that this was caused by the later or last of the works.

Charges, fees and contributions payable by undertakers

Charge for occupation of the road where works unreasonably prolonged

34.—(1) The Department may make provision by regulations requiring an undertaker executing street works in a road to pay a charge to the Department where—

- (a) the duration of the works exceeds such period as may be prescribed, and
- (b) the works are not completed within a reasonable period.

(2) For this purpose “a reasonable period” means such period as is agreed by the Department and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question.

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.

(3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the prescribed period he may submit to the Department an estimate of their likely duration—

- (a) in the case of other works in connection with the initial placing of apparatus in the street in pursuance of a street works licence, together with his application for the licence,
- (b) in the case of other works (not being emergency works), together with his notice under Article 15 (notice of starting date), or
- (c) in the case of emergency works, as soon as reasonably practicable after the works are begun,

and that the period stated in an estimate so submitted 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.

(4) The regulations may also provide that if it appears to the undertaker 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 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.

(5) 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.

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

(7) 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.

(8) The first regulations for the purposes of this Article shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

Inspection of fees

35.—(1) An undertaker executing street works shall, subject to the provisions of any scheme under this Article, pay to the street authority the prescribed fee in respect of each inspection of the works carried out by the authority.

(2) The Department may by regulations make a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as may be determined in accordance with the scheme.

(3) The scheme may make provision—

- (a) as to the periods and areas by reference to which the proportion or number is to be determined, and
- (b) as to the intervals at which an account is to be struck between an undertaker and the street authority and any necessary payment or repayment made.

(4) Nothing in this Article applies in relation to inspections in respect of which the undertaker is obliged to bear the cost under Article 32(2) (inspection consequent on his failure to comply with his duties as to reinstatement).

Liability for cost of temporary traffic regulation

36.—(1) Where, by reason of street works, restrictions or prohibitions are imposed under Article 25 of the Road Traffic (Northern Ireland) Order 1981—

- (a) by the Department on the use of any road, or
- (b) by a concessionaire by virtue of Article 25(4) of the Roads Order, on the use of any road subject to a concession,

the Department or concessionaire may recover from the undertaker the whole of the costs incurred by the Department or concessionaire, as the case may be, in connection with or in consequence of the imposition of such restrictions or prohibitions.

(2) Those costs shall be taken to include, in particular, the cost to the Department or concessionaire—

- (a) of complying with any requirement to notify the public of any matter in connection with such restrictions or prohibitions, and
- (b) of providing traffic signs in connection with such restrictions or prohibitions.

(3) In this Article and Article 38 “concessionaire” and “road subject to a concession” have the same meaning as in Part III of the Roads Order.

Liability for cost of use of alternative route

37.—(1) Where by reason of street works the use of a road is restricted or prohibited and the diverted traffic uses as an alternative route a road of a lower classification, the undertaker shall indemnify the Department in respect of costs reasonably incurred by the Department—

- (a) in strengthening the road, so far as that is done with a view to and is necessary for the purposes of its use by the diverted traffic; or
- (b) in making good any damage to the road occurring in consequence of the use by it of the diverted traffic.

(2) For this purpose the order of classification of roads, from higher to lower, is as follows:

1. Trunk roads.
2. First-class roads.
3. Second-class roads.
4. Third-class roads.
5. Other roads.

(3) Expressions used in paragraph (2) have the same meaning as in the Roads Order.

Contributions to costs of making good long-term damage

38.—(1) The Department may make provision by regulations requiring an undertaker executing street works to contribute to the costs incurred or likely to be incurred by the street authority or, in the case of a road subject to a concession, by the concessionaire, in works of reconstruction or re-surfacing of the street.

(2) The regulations may provide—

- (a) for a contribution to the cost of particular remedial works, or
- (b) for a general contribution calculated in such manner as may be prescribed.

(3) In the former case the regulations may contain provision for apportioning the liability where the need for the remedial works is attributable to works executed by more than one person.

(4) In the latter case the regulations may provide for the amount of the contribution to vary according to the nature of the street, the description and extent of the works and such other factors as appear to the Department to be relevant.

(5) The first regulations under this Article shall not be made unless a draft of them has been laid before and approved by resolution of the Assembly.

*Duties and liabilities of undertakers with respect to apparatus***Records of location of apparatus**

39.—(1) An undertaker shall, except in such cases as may be prescribed, record the location of every item of apparatus belonging to him as soon as reasonably practicable after—

- (a) placing it in the street or altering its position,
- (b) locating it in the street in the course of executing any other works, or
- (c) being informed of its location under Article 40,

stating the nature of the apparatus and (if known) whether it is for the time being in use.

(2) The records shall be kept up to date and shall be kept in such form and manner as may be prescribed.

(3) An undertaker shall make his records available for inspection, at all reasonable hours and free of charge, by any person having authority to execute works of any description in the street or otherwise appearing to the undertaker to have a sufficient interest.

(4) If an undertaker fails to comply with his duties under this Article—

- (a) he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
- (b) he is liable to compensate any person in respect of damage or loss incurred by him in consequence of the failure.

(5) In criminal or civil proceedings arising out of any such failure it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.

Duty to inform undertakers of location of apparatus

40.—(1) A person executing works of any description in the street who finds apparatus belonging to an undertaker which is not marked, or is wrongly marked, on the records made available by the undertaker, shall take such steps as are reasonably practicable to inform the undertaker to whom the apparatus belongs of its location and (so far as appears from external inspection) its nature and whether it is in use.

(2) Where a person executing works of any description in the street finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall—

- (a) if he is an undertaker, note on the records kept by him under Article 39(1) (in such manner as may be prescribed) the location of the apparatus he has found and its general description; and
- (b) in any other case, inform the street authority of the location and general description of the apparatus he has found.

(3) Paragraphs (1) and (2) have effect subject to such exceptions as may be prescribed.

(4) A person who fails to comply with paragraph (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Duty to maintain apparatus

41.—(1) An undertaker having apparatus in the street shall secure that the apparatus is maintained to the reasonable satisfaction of—

- (a) the street authority, as regards the safety and convenience of persons using the street (having regard, in particular, to the needs of people with a disability), the structure of the street and the integrity of apparatus of the authority in the street, and
- (b) any other relevant authority, as regards any land, structure or apparatus belonging to it;

and he shall afford reasonable facilities to each such authority for ascertaining whether it is so maintained.

(2) For this purpose maintenance means the carrying out of such works as are necessary to keep the apparatus in efficient working condition (including periodic renewal where appropriate); and includes works rendered necessary by other works in the street, other than major road, bridge or transport works (As to which, see Articles 44 and 45).

(3) If an undertaker fails to give a relevant authority the facilities required by this Article—

- (a) the street authority may in such cases as may be prescribed, and
- (b) any other relevant authority may in any case,

execute such works as are needed to enable it to inspect the apparatus in question, including any necessary breaking up or opening of the street.

(4) If an undertaker fails to secure that apparatus is maintained to the reasonable satisfaction of a relevant authority in accordance with this Article—

- (a) the street authority may in such cases as may be prescribed, and
- (b) any other relevant authority may in any case,

execute any emergency works needed in consequence of the failure.

(5) The provisions of this Order apply in relation to works executed by a relevant authority under paragraph (3) or (4) as if they were executed by the undertaker; and the undertaker shall indemnify the authority in executing the works.

(6) A relevant authority which executes or proposes to execute any works under paragraph (3) or (4) shall give notice to any other relevant authority as soon as reasonably practicable stating the general nature of the works.

(7) Nothing in paragraph (3) or (4) shall be construed as excluding any other means of securing compliance with the duties imposed by paragraph (1).

Liability for damage or loss caused

42.—(1) An undertaker shall compensate—

- (a) the street authority or any other relevant authority in respect of any damage or loss suffered by the authority in its capacity as such, and
- (b) any other person having apparatus in the street in respect of any expense reasonably incurred in making good damage to that apparatus,

as a result of the execution by the undertaker of street works or any event of a kind mentioned in paragraph (2).

(2) The events referred to in paragraph (1) are any explosion, ignition, discharge or other event occurring to gas, electricity, water or any other thing required for the purposes of a supply or service afforded by an undertaker which—

- (a) at the time of or immediately before the event in question was in apparatus of the undertaker in the street, or
- (b) had been in such apparatus before that event and had escaped therefrom in circumstances which contributed to its occurrence.

(3) The liability of an undertaker under this Article arises—

- (a) whether or not the damage or loss is attributable to negligence on his part or on the part of any person for whom he is responsible, and
- (b) notwithstanding that he is acting in pursuance of a statutory duty.

(4) However, his liability under this Article does not extend to damage or loss which is attributable to misconduct or negligence on the part of—

- (a) the person suffering the damage or loss, or any person for whom he is responsible, or
- (b) a third party, that is, a person for whom neither the undertaker nor the person suffering the damage or loss is responsible.

(5) For the purposes of this Article the persons for whom a person is responsible are his contractors and any person in his employ or that of his contractors.

(6) Nothing in this Article shall be taken as exonerating an undertaker from any liability to which he would otherwise be subject.

*Apparatus affected by road, bridge or transport works***Works for road purposes likely to affect apparatus in the street**

43.—(1) This Article applies to works for road purposes other than major road works (as to which see Article 44).

(2) Where works to which this Article applies are likely to affect apparatus in the street, the authority executing the works shall take all reasonably practicable steps—

- (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and
- (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.

(3) An authority (other than the Department) which fails to comply with paragraph (2) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In proceedings against an authority for such an offence it is a defence for it to show that the failure was attributable—

- (a) to its not knowing the position, or not knowing the existence, of a person's apparatus, or
 - (b) to its not knowing the identity or address of the person to whom any apparatus belongs,
- and that its ignorance was not due to any negligence on its part or to any failure to make inquiries which it ought reasonably to have made.

Measures necessary where apparatus affected by major works

44.—(1) Where an undertaker's apparatus in a street is or may be affected by major road works, major bridge works or major transport works, the authority concerned and the undertaker shall take such steps as are reasonably required—

- (a) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the works of the authority concerned,
- (b) to settle a specification of the necessary measures and determine by whom they are to be taken, and
- (c) to co-ordinate the taking of those measures and the execution of the works of the authority concerned,

so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.

(2) The Department may issue or approve for the purposes of this Article a code of practice giving practical guidance as to the matters mentioned in paragraph (1) and the steps to be taken by the authority concerned and the undertaker.

(3) Any dispute between the authority concerned and the undertaker as to any of the matters mentioned in paragraph (1) shall, in default of agreement, be settled by arbitration.

(4) If the authority concerned or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision of the arbitrator under paragraph (3), the authority concerned or undertaker shall be liable to compensate the other in respect of any loss or damage resulting from the failure.

(5) The authority concerned for the purposes of this Article and Article 45 is—

- (a) in the case of major road works, the Department,
- (b) in the case of major bridge works, the bridge authority, and
- (c) in the case of major transport works, the transport authority.

Sharing of cost of necessary measures

45.—(1) Where an undertaker's apparatus in a street is affected by major road works, major bridge works or major transport works, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, shall be borne by the authority concerned and the undertaker in such manner as may be prescribed.

(2) The regulations may make provision as to the costs allowable for this purpose.

Provision may, in particular, be made for disallowing costs of the undertaker—

- (a) where the apparatus in question was placed in the street after the authority concerned had given the undertaker the prescribed notice of its intention to execute the works, or
- (b) in respect of measures taken to remedy matters for which the authority concerned was not to blame,

and for allowing only such costs of either party as are not recoverable from a third party.

(3) Where the authority concerned has a right to recover from a third party its costs in taking measures in relation to undertaker's apparatus but in accordance with Article 44 it is determined that

the measures should be taken by the undertaker, the right of the authority concerned includes a right to recover the undertaker's costs in taking those measures and the authority concerned shall account to the undertaker for any sum received.

(4) The regulations shall provide for the allowable costs to be borne by the authority concerned and the undertaker in such proportions as may be prescribed.

(5) The regulations may require the undertaker to give credit for any financial benefit to him from the betterment or deferment of renewal of the apparatus resulting from the measures taken.

(6) The regulations may make provision as to the time and manner of making any payment required under this Article.

Provisions with respect to particular authorities and undertakings

Prospective roads

46.—(1) Where the Department is satisfied that a street is likely to become maintainable by the Department, it may make a declaration to that effect.

(2) The declaration shall be included among the matters which are required to be registered in the Statutory Charges Register.

(3) The provisions of this Order apply to a street in respect of which such a declaration has been made and registered in the Statutory Charges Register as they apply to a road.

(4) In relation to street works in such a street, the Department—

- (a) shall secure the performance by undertakers of their duties under this Order, and shall exercise its powers under this Order, in such manner as is reasonably required for the protection of the street managers; and
- (b) shall comply with any reasonable request as to securing performance of those duties, or as to the exercise of those powers, which may be made by the street managers.

Duties of undertaker in relation to bridge authority

47.—(1) An undertaker proposing to execute street works affecting the structure of a bridge shall consult the bridge authority before giving notice under Article 15 (notice of starting date) in relation to the works.

(2) An undertaker executing such works shall take all reasonably practicable steps—

- (a) to give the bridge authority reasonable facilities for monitoring the execution of the works, and
- (b) to comply with any requirement made by the bridge authority which is reasonably necessary for the protection of the bridge or for securing access to it.

(3) An undertaker who fails to comply with paragraph (1) or (2) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) This Article does not apply to works in relation to which Schedule 2 applies (works in streets with special engineering difficulties).

Duty of undertaker in relation to sewer authority

48.—(1) An undertaker proposing to execute street works affecting a public sewer shall consult the Department before giving notice under Article 15 (notice of starting date) in relation to the works.

(2) Article 29 (provisions as to works likely to affect other apparatus in the street) does not apply by virtue of Article 9(2) in relation to works likely to affect a public sewer if, or to the extent that, Schedule 2 (works in streets with special engineering difficulties) applies.

Provisions as to reinstatement of sewers, drains or tunnels.

49.—(1) The duties of an undertaker under this Order with respect to reinstatement of the street extend, in the case of street works which involve breaking up or opening a sewer, drain or tunnel, to the reinstatement of the sewer, drain or tunnel.

(2) The responsible authority may by notice require an undertaker who has failed to comply with his duties under this Order with respect to reinstatement to carry out the necessary remedial works within such period of not less than 7 working days as may be specified in the notice.

If he fails to comply with the notice, the authority may carry out the necessary works and recover from him the costs reasonably incurred by it in doing so.

(3) If it appears to the responsible authority that a failure by an undertaker to comply with his duties under this Order as to reinstatement is causing danger to users of the street, the authority may carry out the necessary works without first giving notice and may recover from him the costs reasonably incurred by it in doing so.

The authority shall, however, give notice to him as soon as reasonably practicable stating its reasons for taking immediate action.

(4) The responsible authority for the purposes of this Article is—

- (a) in the case of a public sewer, the Department, and
- (b) in the case of any other sewer, drain or tunnel, the authority, body or person having the management or control of it.

Special precautions as to displaying of lights

50.—(1) An undertaker executing street works in a street which crosses, or is crossed by, or is in the vicinity of, a railway, tramway, dock, harbour, pier, canal or inland navigation, shall comply with any reasonable requirements imposed by the transport authority concerned with respect to the displaying of lights so as to avoid any risk of their—

- (a) being mistaken for any signal light or other light used for controlling, directing or securing the safety of traffic thereon, or
- (b) being a hindrance to the ready interpretation of any such signal or other light.

(2) An undertaker who fails to comply with any such requirement commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In proceedings for such an offence it is a defence for the undertaker to show that all reasonable care was taken by him, and by his contractors and by persons in his employ or that of his contractors, to secure that no such failure occurred.

Works affecting level crossings or tramways

51.—(1) This Article applies to street works at a crossing of a railway on the level or which affect a tramway.

In this Article “the relevant transport authority” means the authority having the management of the railway or tramway undertaking concerned.

(2) An undertaker proposing to begin to execute works to which this Article applies shall give the prescribed notice to the relevant transport authority notwithstanding that such notice is not required under Article 15 (notice of starting date).

The provisions of paragraphs (2) to (7) of that Article (contents of notice when works may be begun, &c) apply in relation to the notice required by this paragraph as in relation to a notice under paragraph (1) of that Article.

(3) An undertaker executing works to which this Article applies shall comply with any reasonable requirements made by the relevant transport authority—

- (a) for securing the safety of persons employed in connection with the works, or
- (b) for securing that interference with traffic on the railway or tramway caused by the execution of works is reduced so far as is practicable;

and, except where submission of a plan and section is required, he shall defer beginning the works for such further period as the relevant transport authority may reasonably request as needed for formulating its requirements under this paragraph or making its traffic arrangements.

(4) Nothing in paragraph (2) or (3) affects the right of an undertaker to execute emergency works.

(5) An undertaker executing emergency works shall give notice to the relevant transport authority as soon as reasonably practicable of his intention or, as the case may be, of his having begun to do so notwithstanding that such notice is not required by Article 17 (notice of emergency works).

The provisions of paragraphs (3) and (4) of that Article (contents of notice and penalty for failure to give notice) apply in relation to the notice required by this paragraph as in relation to a notice under paragraph (2) of that Article.

Supplementary provisions

Offences

52.—(1) Any provision of this Order imposing criminal liability in respect of any matter is without prejudice to any civil liability in respect of the same matter.

(2) Where a failure to comply with a duty imposed by this Order is continued after conviction, the person in default commits a further offence.

Recovery of costs or expenses

53.—(1) Any provision of this Order enabling an authority, body or person to recover the costs or expenses of taking any action shall be taken to include the relevant administrative expenses of that authority, body or person including an appropriate sum in respect of general staff costs and overheads.

The Department may prescribe the basis on which such amounts are to be calculated.

(2) Where a right to payment accruing for the benefit of a person is conferred in respect of the same matter—

- (a) both under this Order and under any statutory provision or agreement passed or made before the coming into operation of this Article, or
- (b) by two or more provisions of this Order,

a payment made in discharge of any of those rights shall be treated as being made in or towards satisfaction of the other or others.

(3) Where under any provision of this Order a person is entitled in certain circumstances to recover costs or expenses incurred by him in executing works or taking other steps, any dispute as to the existence of those circumstances or as to the amount recoverable shall be determined by arbitration.

This applies where the provision is expressed as conferring a right to recover, or as imposing a liability to reimburse or indemnify or to bear the cost, but does not apply in relation to a

provision expressed as providing for the charging of a fee or conferring a right to compensation or in relation to Article 38 (contributions to cost of making good long-term damage to the street).

Notices

54.—(1) Notices required or authorised to be given for the purposes of this Order shall be given in the prescribed form.

(2) The Department may make provision by regulations as to the manner of service of notices and other documents required or authorised to be served for the purposes of this Order.

(3) A notice given after 4.30 p.m. on a working day shall be treated as given on the next working day.

Arbitration

55. Any matter which under this Order is to be settled by arbitration shall be referred to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

Agreements inconsistent with the provisions of this Order

56.—(1) An agreement which purports to make provisions regulating the execution of street works is of no effect to the extent that it is inconsistent with the provisions of this Order.

(2) This does not affect an agreement for the waiver or variation of a right conferred on a relevant authority by any of the provisions of this Order which is made after the right has accrued and is not inconsistent with the future operation of those provisions.

Consequential amendments of other statutory provisions

57. The Department may by order made subject to negative resolution make such provision amending, repealing or preserving the effect of any statutory provision passed or made before the coming into operation of this Article as appears to the Department necessary or expedient in consequence of the provisions of this Order.

Crown application

58.—(1) The provisions of this Order bind the Crown.

(2) Nothing in paragraph (1) shall be construed as authorising the bringing of proceedings for a criminal offence against a person acting on behalf of the Crown.

Regulations

59.—(1) Subject to Articles 34(8) and 38(5), regulations under this Order shall be subject to negative resolution.

(2) Regulations under this Order may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

Amendments and repeals

60.—(1) The statutory provisions set out in Schedule 3 shall have effect subject to the amendments specified in that Schedule.

(2) The statutory provisions specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

N. H. Nicholls
Clerk of the Privy Council