
STATUTORY INSTRUMENTS

1995 No. 3210

The Street Works (Northern Ireland) Order 1995

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.