

---

STATUTORY INSTRUMENTS

---

**1995 No. 3210 (N.I. 19)**

**NORTHERN IRELAND**

**The Street Works (Northern Ireland) Order 1995**

*Made - - - - 13th December 1995  
Coming into operation on days to be appointed under  
Article 1(2)*

At the Court at Buckingham Palace, the 13th day of December 1995

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and is hereby ordered, as follows:—

*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(2) 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—

---

(1) 1974 c. 28  
(2) 1954 c. 33 (N.I.).

“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(3);

“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(4);

“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(5);

“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(6) (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

(3) 1991 NI 11.

(4) 1993 NI 15.

(5) 1981 NI 1.

(6) 1978 c. 53.

(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(7),

(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—

(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 of 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 note 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 previous 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

## SCHEDULES

### SCHEDULE 1

Article 11(4).

#### Street Works Licences

##### *Grant of licence*

1. Before granting a street works licence the street authority shall give not less than 10 working days' notice to each of the following—

- (a) where the works are likely to affect a public sewer, to the Department,
- (b) where the works are to be executed in a part of a street which 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, to that authority,
- (c) where in any other case the part of the street in which the works are to be executed is carried or crossed by a bridge, to the bridge authority,
- (d) to any person who has given notice under Article 14 (advance notice of certain works) of his intention to execute streets works which are likely to be affected by the works to which the licence relates, and
- (e) to any other person having apparatus in the street which is likely to be affected by the works;

but a failure to do so does not affect the validity of the licence.

2. The street authority may require the payment of—

- (a) a reasonable fee in respect of legal or other expenses incurred in connection with the grant of a street works licence, and
- (b) an annual fee of a reasonable amount for administering the licence;

and any such fee is recoverable from the licensee.

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.

##### *Conditions attached to licence*

3. A street authority may attach to a street works licence such conditions as it considers appropriate—

- (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), or
- (c) to protect the structure of the street and the integrity of apparatus in it.

4. Where assignment of a street works licence is permitted, a condition may be attached requiring the consent of the street authority to any assignment.

*Notice of change of ownership, &c*

5.—(1) Where the licensee under a street works licence proposes—

- (a) to cease using or abandon the apparatus, or
- (b) to part with his interest in the apparatus,

he shall give the street authority at least 6 weeks' notice before doing so.

(2) Where the licensee under a street works licence granted to the owner of land and his successors in title proposes to part with his interest in the land, he shall before doing so give notice to the street authority stating to whom the benefit of the licence is to be transferred.

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

*Withdrawal of licence*

6.—(1) The street authority may by notice in writing served on the licensee withdraw a street works licence—

- (a) if the licensee fails to comply with any provision of this Order or any condition of the licence,
- (b) if the authority becomes aware that the licensee—
  - (i) has ceased to use or has abandoned the apparatus, or intends to do so, or
  - (ii) has parted with or intends to part with his interest in the apparatus in a case where assignment of the licence is prohibited, or
- (c) if the authority considers the withdrawal of the licence is necessary for the purpose of the exercise of its functions as street authority.

(2) The withdrawal takes effect at the end of such period beginning with the date of service as may be specified in the notice.

The period shall not be less than 7 working days in the case of a withdrawal under sub-paragraph (1)(a) or (b), and shall not be less than 3 months in the case of a withdrawal under sub-paragraph (1)(c).

*Removal of apparatus*

7.—(1) Where a street works licence expires or is withdrawn or surrendered, the street authority may remove the apparatus to which the licence relates or alter it in such manner as the street authority thinks fit and reinstate the street, and may recover from the former licensee the expenses incurred by it in doing so.

(2) If the street authority is satisfied that the former licensee can, within such reasonable time as it may specify, remove the apparatus or alter it in such manner as it may require and reinstate the street, it may authorise him to do so at his own expense.

(3) Before executing any works under this paragraph the street authority or the former licensee, as the case may be, shall give not less than 7 working days' notice to any person whose apparatus is likely to be affected and shall satisfy his requirements as to the method of executing the works and as to the supervision of the works by him.

(4) In this paragraph and paragraph 8 “the former licensee” means the person who immediately before the expiry, withdrawal or surrender of a street works licence was the licensee or, if that person has died, his personal representative.

*Obligation of licensee to indemnify street authority*

8.—(1) The licensee under a street works licence shall indemnify the street authority against any claim in respect of injury, damage or loss arising out of—

- (a) the placing or presence in the street of apparatus to which the licence relates, or
- (b) the execution by any person of any works authorised by the licence;

and the former licensee shall indemnify the street authority against any claim in respect of injury, damage or loss arising out of the execution by the authority or the licensee of any works under paragraph 7.

(2) The liability of a licensee or former licensee under this paragraph 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.

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

- (a) the street authority or a person for whom the authority is responsible, or
- (b) a third party, that is, a person for whom neither the licensee or former licensee nor the authority is responsible.

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

*Appeal against decision of Department*

9.—(1) Where the apparatus in respect of which an application for a street works licence is made to the Department is to be placed or retained on a line crossing the road, and not along the line of the road, a person aggrieved by—

- (a) the refusal of the Department to grant him a licence,
- (b) the refusal of the Department to grant a licence except on terms prohibiting its assignment, or
- (c) any terms or conditions of the licence granted to him,

may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this paragraph.

(2) Before determining an appeal under this paragraph, the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(3) Every notice of appeal to the planning appeals commission under this paragraph shall be accompanied by such fee (if any) as may be prescribed.

SCHEDULE 2

Article 23(1).

Streets With Special Engineering Difficulties

*Introductory*

1. In this Schedule a “street with special engineering difficulties” means a street for the time being designated under Article 23 as having special engineering difficulties.

*Requirement of plan and section*

2.—(1) In a street with special engineering difficulties street works (other than emergency 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 not be executed until a plan and section of the works have been settled by agreement between the undertaker and each of the relevant authorities or by arbitration.

(2) For that purpose an undertaker proposing to execute any such works shall submit a plan and section of them to each relevant authority.

3. Emergency works may be executed without a plan and section being so submitted or settled, but as soon as is reasonably practicable after the execution of the works the undertaker shall furnish a plan and section of the works to each relevant authority.

4.—(1) In the case of a street which is not a road and which the street managers have no liability to the public to maintain or repair, the undertaker may give the street managers a notice stating—

- (a) the general effect of the works proposed or, as the case may be, of the emergency works executed, and
- (b) that it is a notice given for the purposes of this paragraph.

(2) Where such a notice is given paragraphs 2 and 3 do not apply if the street managers do not, within 10 working days from the date on which the notice was given to them, give notice to the undertaker requiring the submission or furnishing of a plan and section to them.

5.—(1) A relevant authority to which a plan and section of work is required to be submitted or furnished may accept as, or in lieu, of, a plan and section any description of the works whether in diagram form or not, which appears to it to be sufficient.

(2) References in this Schedule to a plan and section include any such description so submitted or furnished to the form of which the relevant authority has not objected within the time allowed under paragraph 7(2).

6. If an undertaker—

- (a) executes any works in contravention of paragraph 2, or
- (b) fails to furnish a plan and section in accordance with paragraph 3,

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



*Procedure on submission of plan and section*

7.—(1) A relevant authority to which there is submitted a plan and section of street works proposed to be executed in a street with special engineering difficulties shall give notice to the undertaker—

- (a) approving the plan and section without modification, or
- (b) objecting to them in form as being on too small a scale or giving insufficient particulars, or
- (c) approving them subject to modifications specified in the notice, or
- (d) disapproving them.

(2) The notice shall be given without avoidable delay, and at the latest before the end of the period of—

- (a) 7 working days in the case of a plan and section of works relating only to—
  - (i) a service pipe or service line, or
  - (ii) overhead electric lines or telecommunication apparatus, and
- (b) one month in any other case;

and as between the undertaker and a relevant authority which does not duly give notice before the end of that period, the plan and section as submitted shall be deemed to have been settled by agreement.

(3) The reference in sub-paragraph (2)(a)(i) to a service pipe or service line is to—

- (a) a pipe or line through or by means of which a supply of gas, electricity or water is afforded or intended to be afforded to premises—
  - (i) directly from premises from which the supply originates, or
  - (ii) from a main, that is, a pipe or line for affording a general supply;
- (b) a pipe through or by means of which sewage services are afforded, or intended to be afforded, which is a private sewer or drain within the meaning of the Water and Sewerage Services (Northern Ireland) Order 1973<sup>(8)</sup>; or
- (c) underground telecommunication apparatus for the purpose of providing a service by means of a telecommunication system to or from particular premises (as opposed to apparatus for the general purposes of such a system).

But so much of any such pipe, line or apparatus as is placed or intended to be placed, for a continuous length of 100 metres or more in a road shall be treated as not being a service pipe or service line.

(4) In this paragraph—

“electric lines” has the same meaning as in Part II of the Electricity (Northern Ireland) Order 1992<sup>(9)</sup>;

“telecommunication apparatus” has the same meaning as in Schedule 2 to the Telecommunications Act 1984<sup>(10)</sup>; and

“telecommunications system” has the meaning given by section 4(1) of that Act (read with subsection (2) of that section).

8.—(1) Where a relevant authority gives notice approving the plan and section subject to modifications, or disapproving the plan and section, it shall state its reasons for doing so.

(2) If a relevant authority duly gives notice—

---

<sup>(8)</sup> 1973 NI 2.

<sup>(9)</sup> 1992 NI 1.

<sup>(10)</sup> 1984 c. 12.

- (a) objecting to the plan and section in form, or
- (b) approving them subject to modifications to which the undertaker does not agree, or
- (c) disapproving them,

then, unless the notice is withdrawn, the undertaker may refer the matter to arbitration.

(3) If the notice is withdrawn, the plan and section as submitted shall be deemed to have been settled by agreement between the relevant authority and the undertaker.

**9.** The Department or a bridge authority may not give notice—

- (a) approving a plan and section subject to modifications, or
- (b) disapproving a plan and section,

on grounds other than such as relate to the injurious effect of the proposed works on its sewer or, as the case may be, on the structure or stability of its bridge.

#### *Settlement of plan and section by arbitration*

**10.**—(1) The duty of the arbitrator where a matter is referred to arbitration is to settle a plan and section of works of the kind proposed, as works to be executed in the street.

(2) He may require the undertaker to submit to him a plan and section in such form, require the relevant authority to submit to him such observations on a plan and section submitted to him, and require the undertaker or the relevant authority to furnish him with such information and to take such other steps, as appear to him to be requisite.

(3) He may treat compliance with any such requirement made of the undertaker as a condition of his proceeding with the settlement of a plan and section, and compliance with any such requirement made of the relevant authority as a condition of his settling a plan and section otherwise than as proposed by the undertaker.

**11.**—(1) Where the reference relates to the placing, altering or changing the position of apparatus in a street which is carried or crossed by a bridge, then, if the arbitrator is satisfied—

- (a) that the execution of the works would be likely to affect injuriously the structure or stability of the bridge, and
- (b) that it is not practicable to meet objection on that ground to the plan and section submitted,

he shall so declare, and shall not settle any plan and section of those works on the reference.

(2) This does not affect the right of the undertaker to submit another plan and section.

#### *Objection to works executed without plan and section being settled*

**12.**—(1) This paragraph applies where street works have been executed in a street with special engineering difficulties without a plan and section having been settled with the street authority or another relevant authority, whether the works were executed in contravention of paragraph 2 or were emergency works.

(2) The authority in question may, by notice to the undertaker, object to any of the works; and after affording the undertaker an opportunity to enter into an agreement with it for meeting the objection, may refer the matter to arbitration.

(3) The arbitrator may direct the alteration of the works to conform to a plan and section settled by him, or the removal of any apparatus placed in the execution of the works, and the undertaker shall comply with any such direction.

(4) In settling the terms of any such direction the arbitrator shall satisfy himself that compliance with it will not involve any undue interruption or restriction of the supply or service for the purposes of which the works were executed.

(5) If an undertaker fails to execute works in accordance with a direction under this paragraph, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Execution of works in accordance with plan and section*

**13.**—(1) An undertaker executing street works in a street with special engineering difficulties shall, where a plan and section have been settled, execute the works in accordance with the plan and section as settled or, if each of the relevant authorities agrees to the modification of the plan or section, in accordance with them as so modified.

(2) If an undertaker fails to comply with sub-paragraph (1) he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

SCHEDULE 3

Article 60(1).

Amendments

*The Land Powers (Defence) Act 1958 (c. 30)*

1. After section 18A, insert—

**“Modification of street works provisions in Northern Ireland**

**18B.**—(1) In relation to works in Northern Ireland in exercise of the powers under a wayleave order, the provisions of the Street Works (Northern Ireland) Order 1995 have effect subject to the provisions of this section.

(2) The provisions of Schedule 2 to that Order (settlement of plan and section for works in streets with special engineering difficulties) have effect subject as follows—

- (a) an objection to a plan and section in form shall be disregarded if a Minister certifies that in his opinion it would be against the national interest to submit a plan and section on a larger scale or giving further particulars;
- (b) no modification of a plan and section shall be made which would involve an unacceptable diversion or change; and
- (c) a plan and section shall not be disapproved on the ground that there should be such a diversion or change.

(3) An arbitrator appointed in pursuance of—

- (a) paragraph 8(2) of Schedule 2 to that Order (settlement of plan and section in case of works in street with special engineering difficulties), or
- (b) Article 44(3) of that Order (settlement of necessary measures in case of apparatus affected by certain major works),

shall not provide for an unacceptable diversion or change.

(4) In subsections (2) and (3) above an “unacceptable diversion or change” means—

- (a) a lateral diversion of a government oil pipe-line to which the Minister on whose behalf the works are to be executed does not consent, or
- (b) a change of the site of accessory works which would necessitate such a diversion.”.

*The Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.))*

2. In Schedule 11 (matters requiring to be registered in the Statutory Charges Register), at the end add—

“42. Any declaration under Article 46 of the Street Works (Northern Ireland) Order 1995.”.

*The Public Utilities (Emergency Powers) Act (Northern Ireland) 1972 (c. 2 (N.I.))*

3. At the end of section 3 add—

“Any works carried out under paragraph (b) shall be included in the definition of emergency works in Article 6 of the Street Works (Northern Ireland) Order 1995.”.

*The Gas (Northern Ireland) Order 1977 ( NI 7)*

4.—(1) In paragraph (10) of Article 13 (laying of gas pipes across land)—

- (a) for “land” substitute “relevant land”; and
- (b) for the words from “road or bridge” to the end substitute “street”.

(2) After that paragraph insert—

“(10A) In paragraph (10) and Article 13A—

- (a) “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995; and
- (b) “relevant land” means land other than land comprised in a street.”.

5. After Article 13, insert—

**“Works under Article 13**

**13A.—**(1) Before commencing to open or break up any relevant land by virtue of paragraph 1 of Schedule 1 as applied by Article 13(10), undertakers shall serve notice of not less than seven days on the owner and occupier of the land.

(2) Subject to paragraph (3), land shall not be opened or broken up except—

- (a) under the superintendence of the owner and occupier of the land; and
- (b) in accordance with a plan—
  - (i) approved by the owner and occupier of the land, or
  - (ii) where any question respecting the plan has arisen and has not been agreed, determined by arbitration,

and the arbitrator may, on the application of the owner or occupier of the land, require the undertakers to make such temporary or other works as the arbitrator thinks necessary for guarding against any interruption of the drainage during the execution of any works which interfere with a sewer or drain.

(3) If the owner or occupier of the land—

- (a) fails to attend at the time fixed for the opening of the land, after service of the notice as mentioned in paragraph (1); or
- (b) fails to approve the plan; or
- (c) refuses or neglects to superintend the operation,

the undertakers may carry out the work specified in the notice without the superintendence of that person.

(4) When undertakers open or break up any relevant land, they shall with all convenient speed—

- (a) complete the work;
- (b) fill in the ground;
- (c) reinstate or make good the land to the reasonable satisfaction of the owner and occupier of the land, and
- (d) carry away the rubbish occasioned thereby;

and shall at all times, whilst any land is opened or broken up—

- (i) cause it to be fenced or guarded; and
- (ii) keep it in good repair for three months after replacing or making it good, and for such further time (if any) not being more than twelve months altogether, as the soil broken up continues to subside.

(5) If undertakers—

- (a) except in cases in which they are authorised to open or break up any relevant land without any superintendence or notice, perform any such work—
  - (i) without serving the notice required by paragraph (1); or
  - (ii) without the superintendence required by paragraph (2); or
  - (iii) otherwise than in accordance with a plan approved or determined under paragraph (2); or
- (b) fail to comply with any other requirement imposed by or under this Article in connection with the opening or breaking up of any relevant land;

they shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale and to a further fine not exceeding one-tenth of level 2 on the standard scale for every day during which the act constituting the offence continues after the service of notice on the undertakers that it is being committed.

(6) If undertakers delay or fail to carry out any work as mentioned in paragraph (4), the owner or occupier of the land may carry out that work, and any expense incurred in so doing shall be a debt recoverable summarily by the owner or occupier from the undertakers.

(7) In this Article “arbitrator” means an arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.”.

**6.** At the end of Article 17 add—

“(4) Where it is proposed to search or bore in pursuance of this Article in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street), and

(c) Article 42 of that Order (liability for damage or loss caused),  
have effect in relation to the searching or boring as if they were street works within the  
meaning of that Order.”.

**7.** In Schedule 1 (gas supply code) in paragraph 1—

- (a) in sub-paragraph (1), after the word “paragraph” insert “and of Article 21 of the Street Works (Northern Ireland) Order 1995 (protected streets)”;
- (b) for the word “road” and the words “road or bridge” wherever they occur, substitute “street”; and
- (c) at the end add—

“(13) In this paragraph “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995.”

*The Road Traffic (Northern Ireland) Order 1981 (NI 1)*

**8.** In Article 124 (warning of roadworks, after paragraph (2) insert—

“(2A) The works referred to in paragraph (1) do not include street works within the  
meaning of the Street Works (Northern Ireland) Order 1995.”.

*The Telecommunications Act 1984 (c. 12)*

**9.** In Schedule 2 (the telecommunications code)—

- (a) in paragraph 1(1)—
  - (i) in the definition of “maintainable highway” in paragraph (b), for the words from “highway” to the end substitute “road within the meaning of the Roads (Northern Ireland) Order 1993”; and
  - (ii) in the definition of “street” after “1991” add “or, in Northern Ireland, the Street Works (Northern Ireland) Order 1995”; and
- (b) in paragraph 2(8)(a)(ii) for the words “(which for this purpose shall be deemed to extend to Northern Ireland)” substitute “or the Street Works (Northern Ireland) Order 1995”.

*The Planning (Northern Ireland) Order 1991 (NI 11)*

**10.** In Article 121 (rights of entry) after paragraph (4) add—

“(5) Where it is proposed to search or bore in pursuance of paragraph (4) in a street  
within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street); and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the  
meaning of that Order.”.

*The Electricity (Northern Ireland) Order 1992 (NI 1)*

11. Schedule 4 (other powers of licence holders) shall be amended in accordance with paragraphs 12 to 18.

12. In paragraph 1(1) at the appropriate place insert—

““street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;”

and in paragraph 1(3) for “2 to 7” substitute “3 to 6”.

13. In paragraphs 2 to 6, for the word “road” in each place where it occurs substitute “street”.

14. In paragraph 2(1) for “Subject to Article 15 of the Roads (Northern Ireland) Order 1980” substitute “Subject to the Street Works Northern Ireland) Order 1995”.

15. At the end of paragraph 5 add—

“(9) In this paragraph “owners” means any of the persons mentioned in paragraphs (a), (b) or (c) of sub-paragraph (1).”.

16. In paragraph 6(2) for “(2) to (7)” substitute “(4) to (6)”.

17. In paragraph 8 for “paragraphs 2 to 7” substitute “paragraph 3 or 4”.

18. In paragraph 15 after sub-paragraph (4) insert—

“(4A) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.”.

*The Roads (Northern Ireland) Order 1993 (NI 15)*

19. In Article 2(2) (interpretation) at the appropriate places insert—

““protected street” has the same meaning as in Article 21 of the Street Works Order;

“street works licence” means a licence under Article 11 of the Street Works Order;

“the Street Works Order” means the Street Works (Northern Ireland) Order 1995;”.

20. In Article 72 (erection of scaffolding etc. in a road) in paragraph (2)—

(a) in a sub-paragraph (b) for “special road” substitute “protected street”;

(b) after that sub-paragraph add

“or

(c) in pursuance of a street works licence”.

21. In Article 73 (placing of rails, beams etc. over a road) in paragraph (2)—

(a) in sub-paragraph (b) for “special road” substitute “protected street”;

(b) for sub-paragraph (c) substitute—

- (c) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order or by virtue of Article 21(2) of that Order; or
- (d) in pursuance of street works licence”.
22. At the end of Article 77 (construction of cellars under road) add—
- “(7) This Article does not apply to street works within the meaning of the Street Works Order.”.
23. In Article 78 (excavations in a road) in paragraph (2)—
- (a) in sub-paragraph (a) for the words from “or under” to the end substitute “or in pursuance of a street works licence or in accordance with an authorisation given by the Department under paragraph 7(2) of Schedule 1 to the Street Works Order;”;
- (b) in sub-paragraph (e) for “special road” substitute “protected street”;
- (c) for sub-paragraph (f) substitute—
- “(f) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order, or by virtue of Article 21(2) of that Order;”.
24. After Article 78 insert—

**“Works under Article 72 or Article 78: charge for occupation of the road**

**78A.—(1)** The Department may make provision by regulations requiring a person carrying out any of the following works in a road—

- (a) erecting scaffolding, hoarding or other structures to which Article 72 applies, in the circumstances mentioned in paragraph (1) of that Article; or
- (b) carrying out any excavations in, or otherwise breaking up the surface of, the road, as mentioned in Article 78(1),

to pay a charge to the Department if the duration of the works exceeds such period as may be prescribed and the works are not completed within a reasonable period.

(2) The works referred to in paragraph (1)(b) do not include any works done for the sole purpose mentioned in Article 78(2)(h).

(3) In paragraph (1) “a reasonable period” means such period as is agreed by the Department and the person executing the works to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

(4) 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.

(5) Regulations made under paragraph (1) may provide that if a person intending to carry out any of the works mentioned in that paragraph submits to the Department an estimate of the likely duration of the works—

- (a) in a case where the consent of the Department is required under Article 72 or Article 78, together with his application for such consent, and
- (b) in any other case, before such time as may be prescribed,

the period stated in the 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.



(6) The regulations may also provide that if it appears to the person carrying out the works 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 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.

(7) 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.

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

(9) 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.

(10) In this Article “prescribed” means prescribed by regulations made by the Department.”.

25. At the end of Article 81 (provision of milk tanker facility on road) add—

“(11) This Article does not apply to street works within the meaning of the Street Works Order.”.

26. In Article 84(1)(c) for “76 or 79” substitute “or 76”.

27. In Article 86 (vehicle-crossings over footways and verges)—

- (a) at the beginning of paragraph (2) insert “Subject to paragraph (3),”; and
- (b) after paragraph (2) add—

“(3) The expenses that the Department may recover under Article 58(4)(b), as applied by paragraph (2), include the cost of any measures needing to be taken in relation to undertaker’s apparatus in accordance with Article 44 of the street Works (Northern Ireland) Order 1995.”.

28. In Article 96 (control of builders' skips), in paragraph (10) (definitions) for “and in Article 97” substitute “, Article 97 and Article 97A”.

29. After Article 97 (removal of builders' skips) insert—

**“Builders' skips: charge for occupation of road**

**97A.**—(1) The Department may make provision by regulations requiring the owner of a builder’s skip deposited on a road to pay a charge to the Department where—

- (a) the period for which the skip remains in the road exceeds such period as may be prescribed, and
- (b) the skip is not removed within a reasonable period.

(2) In paragraph (1) “a reasonable period” means such period as is agreed by the Department and the owner of the skip to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable in the circumstances.

(3) 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.

(4) Regulations made under paragraph (1) may provide that if the owner of a builder’s skip proposing to cause or permit the skip to be deposited on a road submits to the Department an estimate of the likely duration of the occupation of the road—

- (a) in a case where the consent of the Department to the deposit of the skip is required by virtue of Article 96(3), together with his application for such consent, and
- (b) in any other case, before such time as may be prescribed,

the period stated in the 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 regulations may also provide that if it appears to the owner of the skip that by reason of matters not previously foreseen or reasonably foreseeable the duration of the occupation of the road—

- (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.

(6) The amount of the charge shall be determined in such manner as may be prescribed by reference to the period for which the road is occupied by the skip and the extent of the occupation.

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

(8) 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.

(9) In this Article “prescribed” means prescribed by regulations made by the Department.”.

**30.** In Article 119 (power to enter on land)—

- (a) after paragraph (7) insert—

“(7A) Where in the exercise of the power conferred by paragraph (1)(a) works (other than surveying) are to be executed in a street—

- (a) Article 15 of the Street Works (Northern Ireland) Order 1995 (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works;
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person’s apparatus in the street); and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the works as if they were street works within the meaning of that Order.”;

(b) after paragraph (10) insert—

“(10A) Where any person is entitled under Article 42 of the Street Works (Northern Ireland) Order 1995, as applied by paragraph (7A), to compensation in respect of any matter, he is not entitled to recover compensation under paragraph (10) in respect of the same matter.”; and

(c) at the end, add—

“(12) In this Article “street” has the same meaning as in the Street Works (Northern Ireland) Order 1995.”.

**31.** In Article 133 (orders and regulations) for paragraph (5) substitute—

“(5) Subject to paragraph (6), regulations made under this Order, shall be subject to negative resolution.

(6) The first regulations made under—

- (a) Article 78A(1), in respect of the works mentioned in sub-paragraph (a) of that paragraph;
- (b) Article 78A(1), in respect of the works mentioned in sub-paragraph (b) of that paragraph; or
- (c) Article 97A(1),

shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.”.

**32.** In Schedule 9 (saving provisions) for paragraph 3, substitute—

“**3.** Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunications apparatus) shall apply—

- (a) to the Department for the purposes of any work authorised to be carried out under this Order; and
- (b) without prejudice to the provisions of the Street Works (Northern Ireland) Order 1995 relating to major road works, major bridge works or major transport works, to any person to whom a licence is issued under Article 76 for the purposes of any work authorised by that licence.”.

*The Airports (Northern Ireland) Order 1994 (NI 1)*

**33.** In Article 12 (provisions as to telecommunication apparatus)—

- (a) in paragraph (2)(b) after “trunk road” insert “or special road”; and
- (b) after paragraph (3) insert

“(3A) Paragraph 23 of the telecommunications code shall not apply by virtue of paragraph (2)(b) in relation to the alteration of any telecommunications apparatus where the alternation is for the purpose of major work works, major bridge works or major transport works within the meaning of the Street Works (Northern Ireland) Order 1995.”.

## SCHEDULE 4

Article 60(2)

## Repeals

Chapter or Number	Short title	Extent of repeal
1847 c. 34.	The Towns Improvement Clauses Act 1847.	Section 79.
1977 NI 7.	The Gas (Northern Ireland) Order 1977.	In Schedule 1, in paragraph 1, sub- paragraphs (4) to (11).
1981 NI 1.	The Road Traffic (Northern Ireland) Order 1981	In Schedule 7, paragraph 1.
1984 c. 12.	The Telecommunications Act 1984.	Section 11(1) and (2). In Schedule 2, paragraphs 1(5) and 9(3).
1991 c. 22.	The New Roads and Street Works Act 1991.	In Schedule 8, paragraph 115(4).
1992 NI. 1.	The Electricity (Northern Ireland) Order 1992.	In Schedule 4 (a) the definition of “road” in paragraph 1(1); (b) paragraph 2(3) to (13); (c) paragraph 3(13); (d) paragraph 5(2),(3), (7) and (8); (e) paragraph 6(3); (f) paragraph 7. In Schedule 13, paragraph 35.
1993 NI 15.	The Roads (Northern Ireland) Order 1993.	Articles 17 and 79.  In Article 73, the word “or” at the end of paragraph (2)(b)(iii).  In Schedule 10 the entries relating to the Telecommunications Act 1984 and the Electricity (Northern Ireland) Order 1992.

---

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes new provision to facilitate the co-ordination and control of street works in Northern Ireland and to make statutory undertakers and other undertakers of works more accountable for their street works.

In particular, the Order makes it an offence to place apparatus in or break-up a street unless a person has a statutory right or a street works licence (Articles 11 and 12). The Department is required to establish a street works register to facilitate the co-ordination of street works and the service of notices (Article 13). There is provision also for restricting the execution of street works in a street for 12 months following the completion of substantial road works in the street (Article 18); for certain categories of street to be subject to special controls (Articles 21 to 24); requiring undertakers of works to adopt appropriate safety standards (Article 25); requiring the employment of properly qualified supervisors and operatives (Article 27); placing full responsibility upon undertakers for reinstating streets after completion of works (Article 30) and thereafter for maintaining apparatus in a street (Article 41); for charging undertakers for their occupation of a road where their works are unreasonably prolonged (Article 34), and requiring undertakers to provide compensation for damage or loss caused as a result of their street works (Article 42).