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## STATUTORY INSTRUMENTS

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# 1995 No. 3210

## The Street Works (Northern Ireland) Order 1995

### 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.

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: The Street Works (Northern Ireland) Order 1995, Charges, fees and contributions payable by undertakers is up to date with all changes known to be in force on or before 25 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.

PROSPECTIVE

### [<sup>F1</sup>Charge determined by reference to duration of works

**34A.**—(1) The Department may make provision by regulations requiring an undertaker executing street works in a road to pay to the Department a charge determined, in the prescribed manner, by reference to the duration of the works.

(2) The regulations may prescribe exemptions from the requirement to pay charges.

(3) The regulations may prescribe different rates of charge according to—

- (a) the extent to which the surface of the road is affected by the works,
- (b) the place and time at which the works are executed, and
- (c) such other factors as appear to the Department to be relevant.

(4) The regulations may—

- (a) prescribe more than one rate of charge in respect of the same description of works, and
- (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the Department to be appropriate in relation to those works.

(5) The regulations—

- (a) may make provision for the determination of the duration of works for the purposes of the regulations; and
- (b) in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the Department, in the prescribed manner, in accordance with a requirement imposed by the regulations.

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

(7) The regulations shall provide that the Department may reduce the amount, or waive payment, of a charge—

- (a) in any particular case,
- (b) in such classes of case as it may decide or as may be prescribed, or
- (c) in all cases or in all cases other than a particular case or such class of case as it may decide or as may be prescribed.

(8) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding level 4 on the standard scale.

(9) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.

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

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(11) Nothing shall be taken to prevent the imposition of charges by both regulations under Article 34 and regulations under this Article in respect of the execution of the same works at the same time.]

**F1** Art. 34A inserted (prosp.) by [Street Works \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/287 \(N.I. 1\)\)](#), arts. 1(3), **19**

### 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<sup>F2</sup> Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997]

- (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.

**F2** [1997 NI 2](#)

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### **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.

PROSPECTIVE

### **[<sup>F3</sup>Contributions to costs of re-surfacing by undertaker**

**38A.**—(1) Where a street authority has given a re-surfacing notice to an undertaker (A)—

- (a) the authority shall pay to A a proportion, calculated in the prescribed manner, of the costs reasonably incurred by A in executing the works specified in the notice;
- (b) an undertaker to whom paragraph (2) applies shall pay to A a proportion, calculated in the prescribed manner, of those costs.

(2) This paragraph applies to an undertaker if—

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- (a) he has, after the commencement of this Article (whether or not regulations under it have been made) and before the completion of the works specified in the notice, executed street works which involved the breaking up of any part of a street, and
  - (b) the works specified in the notice include the re-surfacing of that part of the street.
- (3) The Department may by regulations prescribe exceptions to the duty imposed by paragraph (1)(b).
- (4) The payments referred to in paragraph (1) shall be made in such instalments and manner, and within such period of such event, as may be prescribed.
- (5) The Department may by regulations make provision—
- (a) requiring a street authority, within such period of such event as may be prescribed, to give to an undertaker to whom paragraph (2) applies a notice containing such information as may be prescribed;
  - (b) requiring a street authority to pay to an undertaker to whom it has given a re-surfacing notice such sum as he has been unable to recover under paragraph (1)(b) on account of the insolvency of an undertaker;
  - (c) requiring disputes of a prescribed description (including disputes as to whether paragraph (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.
- (6) For the purposes of this Article, any costs incurred by an undertaker (including any costs of a street authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Order shall be treated as having been incurred unreasonably.
- (7) The Department may by regulations make provision requiring undertakers to make payments to a street authority where—
- (a) the authority has given a re-surfacing notice to an undertaker,
  - (b) that undertaker has exercised a right, conferred by regulations under Article 33D, of the sort mentioned in paragraph (2)(d) of that Article, and
  - (c) the authority has carried out any of the works specified in the notice.
- (8) The power in paragraph (7) includes power to make provision corresponding to provision that may be made under paragraphs (1) to (5).
- (9) The first regulations under this Article shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.
- (10) In paragraph (5)(b) “insolvency”—
- (a) in relation to a company, has the meaning given by Article 6(1) of the Insolvency (Northern Ireland) Order 1989 (NI 19);
  - (b) in relation to an individual, includes the approval of a voluntary arrangement under Part VIII of that Order.]

**F3** Art. 38A inserted (prosp.) by [Street Works \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/287 \(N.I. 1\)\)](#), arts. 1(3), **21(1)**

**Status:**

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**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 13(1)(b) and word inserted by [S.I. 2007/287 \(N.I.\) art. 4\(2\)\(b\)](#)
- art. 14(3A)(3B) inserted by [S.I. 2007/287 \(N.I.\) art. 6\(1\)\(b\)](#)
- art. 15(8)(9) inserted by [S.I. 2007/287 \(N.I.\) art. 6\(2\)](#)
- art. 16(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 7\(3\)](#)
- art. 16(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 7\(4\)](#)
- art. 18(3)(f) and word inserted by [S.I. 2007/287 \(N.I.\) art. 9\(4\)](#)
- art. 18(7A) inserted by [S.I. 2007/287 \(N.I.\) art. 9\(8\)](#)
- art. 19(7) inserted by [S.I. 2007/287 \(N.I.\) art. 11\(4\)](#)
- art. 27(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 12\(2\)](#)
- art. 27(2A)-(2C) inserted by [S.I. 2007/287 \(N.I.\) art. 12\(3\)](#)
- art. 27(4)(c) and word inserted by [S.I. 2007/287 \(N.I.\) art. 12\(5\)](#)
- art. 30(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 13\(2\)](#)
- art. 30(3)-(4B) substituted for art. 30(3)(4) by [S.I. 2007/287 \(N.I.\) art. 13\(3\)](#)
- art. 32(2A)(2B) inserted by [S.I. 2007/287 \(N.I.\) art. 14](#)
- art. 32(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 15\(1\)\(b\)](#)
- art. 34(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(2\)](#)
- art. 34(5A)(5B) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(5\)](#)
- art. 34(7A) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(7\)](#)
- art. 39(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(2\)](#)
- art. 39(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(3\)](#)
- art. 39(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(4\)](#)
- art. 40(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 23\(3\)](#)
- art. 40(2)(2A) substituted for art. 40(2)(3) by [S.I. 2007/287 \(N.I.\) art. 23\(4\)](#)
- art. 40(5)(6) added by [S.I. 2007/287 \(N.I.\) art. 23\(6\)](#)
- art. 49(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 15\(2\)\(b\)](#)
- art. 59(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 28\(3\)](#)