



EXPLANATORY MEMORANDUM

Draft

The Street Works (Amendment)
(Northern Ireland) Order

£3.00

DRAFT STREET WORKS (AMENDMENT) (NORTHERN IRELAND) ORDER

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The above Order is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution. This Explanatory Memorandum has been prepared by the Department for Regional Development ("the Department") in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

2. Street works (which are largely the works of utilities) are managed in Northern Ireland through the Street Works (Northern Ireland) Order 1995 (NI 19) ("the 1995 Order"). This Order introduces amendments to those arrangements to reflect changes that have been introduced in England and Wales, with the objective of achieving more efficient management of street works, thereby reducing disruption and congestion suffered by road users.

CONSULTATION

3. The Department consulted interested parties on its street works policy proposals between June and September 2005. Discussions also took place with utility representatives on the Northern Ireland Road Authority and Utilities Committee. While the utilities were opposed to some of the Department's proposals, the remainder of respondents were broadly in support of them. A subsequent supplementary consultation on a proposal that would enable the Department to delegate certain functions under the Order took place between February and April 2006. Again, responses received from the utilities identified a number of concerns in relation to the Department's proposal. The Department, nevertheless, concluded that the proposed measures should proceed, given the potential benefit to road users overall. Reports of the consultation can be found at www.roadsni.gov.uk/consultation/consultation.htm.

FINANCIAL EFFECTS OF THE ORDER

4. It is difficult to quantify the financial effects of the Order. Working Groups established in England and Wales to develop the detail of the regime have not yet reached any final conclusions on financial impacts there, and it has not yet been possible to inform with accuracy the approach to be taken in Northern Ireland. Nevertheless, based on the information available at present, the cost to utilities in Northern Ireland has been estimated at approximately £7 million annually. There will also be an increase in workload for the Department and it

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has been estimated that up to thirty additional posts may be required. The costs of administering a permit scheme, which may be introduced under the Order, are likely to be offset by the scheme being self-financing.

EUROPEAN CONVENTION ON HUMAN RIGHTS

5. The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

6. The Department carried out an Equality of Opportunity screening to determine whether or not the measures proposed would have any equality implications for the groups identified in Section 75 of the Northern Ireland Act 1998. The screening concluded that a full equality impact assessment was not required, primarily because the proposals would directly impact on utilities. Utility customers might be indirectly affected in so far as utilities may pass on any increase in costs to them. The effect on all road users will be beneficial in terms of minimised congestion/disruption. The Department is satisfied that there would be no significant adverse impact on any of the Section 75 groups. A report of the equality screening may be viewed at:
[http://www.roadsni.gov.uk/consultation/docs/DBFO\(23Feb2006\).pdf](http://www.roadsni.gov.uk/consultation/docs/DBFO(23Feb2006).pdf)

SUMMARY OF THE REGULATORY IMPACT

7. A partial Regulatory Impact Assessment (“RIA”) has been carried out in respect of the proposed provisions. It may be viewed at:
<http://www.roadsni.gov.uk/consultation/docs/RegImpAssessment.pdf>. The assessment was also placed in the libraries of the House of Commons and the House of Lords. A full RIA will be prepared when the proposals for subordinate legislation are being developed.

MAIN ELEMENTS OF THE ORDER

8. The Order will introduce a number of new measures including:
- a permit scheme to control specified street works in specified streets. Utilities will be required to pay for and obtain permits to carry out certain street works. Conditions may be attached to permits in order to minimise disruption;
 - direction-making powers to enable the Department to direct utilities as to the dates and times at which they may or may not carry out street works, and may require utilities not to use particular streets for their works;
 - the Department will be able to require utilities to resurface entire lane widths or to contribute to the street authority’s costs in carrying out this work;
 - a restriction on the execution of street works for a prescribed period following completion of substantial street works;
 - increases in maximum levels of fines for certain street works offences will increase from level three on the standard scale to level four. For the more

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serious offences this will increase to level five. A Fixed Penalty Noticing system will also be introduced;

- lane rental/overrun charging – the Department will be empowered to charge utilities for the entire duration of their occupation of a road, and also to charge for overrunning an agreed period of occupation; and
- Codes of Practice – the existing Records and Inspection Codes of Practice will be modified and placed on a statutory footing.

COMMENTARY ON ARTICLES

9. Comments are not given where the wording is self-explanatory.

Article 3: Permit Scheme

Article 3 inserts new Article 12A into the 1995 Order to provide for the introduction of a permit scheme. It enables the Department to make a scheme to control specified street works on roads. The detail of a scheme will be contained in regulations.

Article 4: The Street Works Register

Article 4 amends Article 13 of the 1995 Order to enable the Department to record information on the street works register about the placing of other prescribed apparatus, objects or deposits including builders skips, building materials and scaffolding on roads that may affect the flow of traffic.

Article 5: Duty to inspect

Article 5 inserts a new Article 13A into the 1995 Order to require undertakers planning to execute street works to inspect certain prescribed records prior to the works commencing. Regulations may also prescribe evidence that an undertaker may rely on to demonstrate that such an inspection has taken place.

Article 6: Notices of street works

Article 6 amends Articles 14, 15 and 51 of the 1995 Order in relation to the giving of advance notices of certain works. Advance notices given under Article 14 must contain the date when the works are intended to start and such other information as may be prescribed. An undertaker who has given advance notice but who does not submit before the start date quoted a further notice, required nearer to the time of works under Article 15, must supply the authority with a further notice. The further notice will contain such information as may be prescribed. If works have not substantially begun within a prescribed period after the proposed start date, the notice ceases to have effect, meaning the proposed works cannot lawfully begin. If the undertaker wishes to carry out the works, he will have to start the process of giving advance notice all over again.

Article 7: Directions relating to timing of street works

Article 7 amends Article 16 of the 1995 Order to enable a street authority to direct an undertaker to carry out works at certain times or on certain days, or both at certain times and days. The power applies to both planned works and those that are already under way.

Article 8: Directions as to placing of apparatus

Article 8 inserts a new Article 16A into the 1995 Order. It provides street authorities with a power to direct undertakers not to use a particular street in which to place their apparatus. This would be in cases where the authority considers that the works would cause serious disruption to traffic and there is an alternative street in which the apparatus could be placed, resulting in less disruption.

Article 9: Restriction on works following substantial road works

Article 9 amends Article 18 of the 1995 Order, which aimed to provide a period of 12 months' protection from street works for streets in which substantial road works had been recently executed. That period of restriction has been replaced with a period to be prescribed in regulations. Disputes shall be decided in the prescribed manner (either through arbitration or, on appeal by the undertaker to the Planning Appeals Commission).

Article 10: Restriction on works following substantial street works

Article 10 inserts a new Article 18A and Schedule 1A into the 1995 Order, and enables the street authority to restrict street works for a prescribed period following substantial street works. It is similar in effect to the provisions of Article 18, as amended.

Article 11: Duty of street authority to coordinate works

Article 11 amends Article 19 of the 1995 Order. It provides for the existing duty of coordination by street authorities to be extended to encompass the coordination of certain other prescribed temporary activities on streets.

Article 12: Qualifications of supervisors and operatives

Article 12 amends Article 27 of the 1995 Order. It enables a street authority to require, by notice, that an undertaker provides the names of the current or previous qualified supervisors and operatives and evidence of the required qualification. The existing powers of the Department are extended to make regulations prescribing the form of any document issued by an approved body to certify a qualification.

Article 13: Duty to notify street authority of reinstatement

Article 13 amends Article 30 of the 1995 Order to give an undertaker up to 7 working days from the completion of the reinstatement works in which to notify the street authority that the reinstatement has been carried out. It also enables regulations to be made to require other prescribed information about the reinstatement to be provided.

Article 14: Inspection fees following failure to reinstate

Article 14 inserts two new paragraphs (2A) and (2B) into Article 30 of the 1995 Order. They require undertakers to pay prescribed fees in respect of different types of inspection, rather than paying the actual cost of the inspection as provided for in the 1995 Order. The fee payable may vary depending on a number of factors.

Article 15: Notices requiring remedial works relating to reinstatements

Article 15 amends both Articles 32 and 49 of the 1995 Order to provide that the minimum period within which failures of reinstatements must be rectified will not be 7 days, but will be such period as may be prescribed.

Article 16: Power of street authority to require undertaker to re-surface street

Article 16 inserts new Articles 33A, 33B, 33C, 33D and 33E into the 1995 Order. It enables a street authority to require an undertaker to resurface the street or a portion of it. The works in respect of which a resurfacing notice may be given are limited to works carried out from the time of commencement of this Article. A resurfacing notice may relieve an undertaker from certain, or all, of his responsibilities in relation to reinstatement but regulations may restrict the extent to which the duty may be relieved. The new road surface must conform to any prescribed standards for materials and workmanship, as well as any performance standards for a prescribed period after resurfacing. The Department may issue or approve a code of practice giving practical guidance.

Article 17: Guidance about street authority inspections

Article 17 inserts a new Article 33F into the 1995 Order which enables the Department to issue or approve guidance to street authorities when exercising their powers to inspect works. It requires street authorities to have regard to any such guidance and makes it clear that any reference to inspections includes the carrying out of investigatory works.

Article 18: Charges where works unreasonably prolonged

Article 18 amends Article 34 of the 1995 Order to enable the Department to make regulations permitting charges to be applied to undertakers of street works where they fail to complete their street works by an agreed deadline.

Article 19: Charges for whole duration of works

Article 19 inserts a new Article 34A into the 1995 Order. Whereas Article 34 permits charges in respect of unreasonably prolonged occupation of the road, Article 34A enables the Department to collect charges from undertakers of street works in respect of their occupation of the road from the commencement of the works. The detail of the charging system will be included in regulations.

Article 20: Fees for inspections

Article 20 replaces Article 35 of the 1995 Order with a new provision that enables the Department, by regulations, to require undertakers to pay to street authorities a prescribed fee in respect of different types of inspections, rather than pay the costs of the inspection. It also enables different provisions to be made between different descriptions of street authority and undertaker, with the undertaker's previous performance being taken into account. The regulations may also provide for disputes that are to be settled by arbitration.

Article 21: Contribution to costs of re-surfacing by undertakers

Article 21 inserts a new Article 38A into the 1995 Order. It provides for street authorities to pay contributions to the undertaker carrying out resurfacing works as well as for contributions to be made from other undertakers who have carried out reinstatements in that part of the street. An undertaker served with a resurfacing notice may elect instead to make a payment to the street authority, which then carries out the work. Regulations may be made to deal with the details of those contributions.

Article 23: Duties relating to the location of unexpected apparatus

Article 23 amends Article 40 of the 1995 Order to require the finder of unexpected apparatus to keep a record of it and to notify the street authority of the nature and location of it. Regulations may require the Department to keep a register of information in respect of such apparatus.

Article 24: Fixed penalty offences

Article 24 inserts a new Article 52A into the 1995 Order. It identifies a range of offences that will become fixed penalty offences. Details of how the system is to operate are described in Schedule 2 to the Order which inserts a new Schedule 2A into the 1995 Order.

Article 25: Increase of fines for certain summary offences under the 1995 Order

Article 25 increases the maximum levels of fines in respect of certain offences in the 1995 Order from Level 3 (currently £1,000) on the standard scale to Level 4 (currently £2,500) and to Level 5 (currently £5,000) for the most serious offences.

Article 27: Delegation of functions

Article 27 introduces new Article 56A into the 1995 Order. It enables the Department, by authorisation, to delegate certain of its functions under the 1995 Order to other persons.

COMMENCEMENT

10. Article 1 and Article 2 come into operation one week after the date of making of the Order. The remaining provisions of the Order will be brought into operation on such days as the Department may appoint, by order.



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