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STATUTORY INSTRUMENTS

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**1995 No. 3210**

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

*Introduction and interpretation*

**Title and commencement**

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

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

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

**General interpretation**

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

(2) In this Order—

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

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

“the Department” means the Department of the Environment;

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

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

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

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

“reinstatement” includes making good;

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

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

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

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

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

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

(2) 1991 NI 11.

(3) 1993 NI 15.

(4) 1981 NI 1.

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

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

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

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

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

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

### **Streets and street works**

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

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

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

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

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

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

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

### **Undertakers**

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

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

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

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(5) 1978 c. 53.

### **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<sup>(6)</sup>,
- (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—

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(6) 1973 NI 2.

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

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

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

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

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

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