
STATUTORY INSTRUMENTS

1993 No. 3160

The Roads (Northern Ireland) Order 1993

PART II

CONSTRUCTION, MAINTENANCE AND CLASSIFICATION OF ROADS

Maintenance of roads

Duty to maintain roads

8.—(1) The Department shall be under a duty to maintain all roads and for that purpose may provide such maintenance compounds as it thinks fit.

(2) In an action against the Department in respect of injury or damage resulting from its failure to maintain a road it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove—

- (a) that the Department had taken such care as in all the circumstances was reasonably required to secure that the part of the road to which the action relates was not dangerous for traffic; or
- (b) that the injury or damage—
 - (i) resulted from works (other than works by or on behalf of the Department) carried out on or under that part of the road to which the action relates; and
 - (ii) resulted from an event which occurred before the completion of the re-instatement or making good of that part of the road in accordance with any relevant requirement.

(3) For the purposes of a defence under paragraph (2)(a) the court shall in particular have regard to the following matters—

- (a) the character of the road, and the traffic which was reasonably expected to use it;
- (b) the standard of maintenance appropriate for a road of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the road;
- (d) whether the Department knew, or could reasonably have been expected to know, that the condition of the part of the road to which the action relates was likely to cause danger to users of the road;
- (e) where the Department could not reasonably have been expected to repair that part of the road before the cause of action arose, what warning notices of its condition had been displayed;

but, for the purposes of such a defence, it shall not be relevant to prove that the Department had arranged for a competent person to carry out or supervise the maintenance of the part of the road to which the action relates, unless it is also proved that the Department had given him proper instructions with regard to the maintenance of the road and that he had carried out the instructions.

(4) In paragraph (2)(b) “relevant requirement” means a requirement imposed by or under this Order or any other statutory provision or rule of law or by, or in connection with the issue of, any approval, consent, licence, notice or permission issued under this Order or any other statutory provision.

Treatment of roads affected by snow and ice

9.—(1) The Department may take such steps as it considers reasonable and practicable to prevent snow or ice interfering with the safe passage of persons and vehicles using a road.

(2) Without prejudice to the generality of paragraph (1), the Department may—

- (a) enter into arrangements with any person for the treatment of roads affected by snow or ice;
- (b) place receptacles on roads for the purpose of making available to persons using a road affected by snow or ice material for the treatment of that road.

(3) Nothing in this Article operates to confer on any person a right of action in tort against the Department for failing to exercise any power conferred on it under this Article or in respect of injury or damage resulting from the presence of snow or ice on a road.

Duty to remove snow, soil, etc. which has fallen on a road

10.—(1) If an obstruction occurs in a road from accumulation of snow or from the falling down of banks on the side of the road, or from any other cause, the Department shall remove the obstruction.

(2) If the Department fails to remove an obstruction which it is its duty under this Article to remove, a court of summary jurisdiction may, on an application made by any person, declare the thing complained of to be an obstruction and state a period (not being less than 24 hours) within which the court considers it reasonable, having regard to all the circumstances of the case, that the obstruction should be removed.

(3) In considering whether to make a declaration under this Article and, if so, what period to state for the removal of the obstruction, the court shall in particular have regard to—

- (a) the character of the road to which the complaint relates, and the nature and amount of the traffic by which it is ordinarily used;
- (b) the nature and extent of the obstruction; and
- (c) the resources of manpower, vehicles and equipment for the time being available to the Department for work on roads and the extent to which those resources are being, or need to be, employed by the Department on such work elsewhere.

(4) Where the Department has a duty under this Article to remove an obstruction from a road, it may—

- (a) take any reasonable steps (including the placing of lights, signs and fences on the road) for the purpose of warning users of the road of the obstruction;
- (b) dispose of anything removed in carrying out its duty, unless the thing is claimed by its owner before the expiration of 7 days from the date of its removal;
- (c) without prejudice to Article 48 but subject to paragraph (5), recover from the owner of the thing which caused or contributed to the obstruction any expenses reasonably incurred by it as respects the obstruction in carrying out its duty and in exercising any powers conferred by this paragraph.

(5) No expenses shall be recoverable under paragraph (4)(c) from a person who proves that he took reasonable care to secure that the thing in question did not cause or contribute to the obstruction.

(6) An application under paragraph (2) shall be initiated by notice in accordance with Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(1).

(7) Nothing in this Article operates to confer on any person a right of action in tort against the Department for failing to carry out any duty imposed on it under this Article.

Extraordinary traffic

11.—(1) Subject to paragraph (4), where as respects any road it appears to the Department that, having regard to the usual expense of maintaining the road or the average expense of maintaining similar roads in the neighbourhood, extraordinary expenses have been incurred by the Department in maintaining the road by reason of the damage caused by—

- (a) excessive weight passing along the road; or
- (b) other extraordinary traffic thereon,

the Department may recover from any person (in this Article referred to as “the operator”) by or on behalf of whom the traffic has been conducted any expenses reasonably incurred by the Department in consequence of that damage.

(2) Where it appears to the Department that expenses in respect of the maintenance of any road may be recoverable from any person under paragraph (1), the Department may by notice in writing require that person to give the Department such information about traffic conducted on that road by or on behalf of that person as the Department may reasonably require for the purposes of that paragraph.

(3) Any person required to give information in pursuance of paragraph (2) who without reasonable excuse fails to give, or knowingly misstates, that information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) An operator shall not be liable to proceedings under paragraph (1) in respect of any damage caused by extraordinary traffic to a road if—

- (a) before traffic which may cause such damage commences, he admits liability in respect of such traffic and enters into either of the following agreements with the Department, namely—
 - (i) an agreement for the payment by the operator to the Department of a sum by way of a composition of that liability; or
 - (ii) an agreement for the payment by the operator to the Department at the end of each of such periods as may be specified in the agreement of the expenses reasonably incurred in that period by the Department in consequence of the damage caused by the extraordinary traffic; and
- (b) payment is made to the Department in accordance with any such agreement.

(5) Before extraordinary traffic which may cause damage to a road commences, the Department may serve on a person a notice inviting that person—

- (a) to admit liability in respect of that traffic; and
- (b) to indicate whether he wishes to enter into an agreement with the Department under paragraph (4)(a) and, if so, whether he wishes to enter into an agreement under head (i) or head (ii) of that sub-paragraph.

(6) The sum to be paid by an operator to the Department under an agreement under paragraph (4)(a)(i) and the amount of each payment to be made by an operator to the Department under an agreement under paragraph (4)(a)(ii) shall be such as may be agreed between the operator and the Department or, in default of agreement, such as may be determined by arbitration.

(7) Proceedings for the recovery of any sums under this Article shall not be commenced after the expiration of three years from—

- (a) the date on which the damage came to the knowledge of the Department; or
- (b) where the damage is in consequence of any particular building contract or other work extending over a long period, the date on which the contract or work was completed,

whichever is the later.

(8) References in this Article to expenses reasonably incurred by the Department in consequence of damage caused to a road by extraordinary traffic include references to expenses reasonably incurred by the Department on works to prevent or mitigate anticipated damage to the road by such traffic.

Road bridges over railways

12.—(1) This Article applies to a bridge transferred to the Department by virtue of Article 11 of the Roads (Northern Ireland) Order 1980⁽²⁾.

(2) Any statutory provision in force in relation to the bridge for the benefit or protection of any statutory undertaker or the operator of a telecommunications code system or the holder of a licence under Article 10(1) of the Electricity Order shall have effect, subject to any necessary modifications, as if for any reference therein to the railway undertaking there were substituted a reference to the Department.

(3) The Department shall not reduce the headway or spans of any bridge to which this Article applies without the consent of the railway undertaking.

(4) Any consent required for the execution of any works by the Department under paragraph (3) shall not be unreasonably withheld.

(5) Any dispute between the Department and—

- (a) the railway undertaking as to whether or not consent is being unreasonably withheld under paragraph (4); or
- (b) any person as to the property or liabilities transferred under Article 11 of the Roads (Northern Ireland) Order 1980,

shall be determined by arbitration.

(6) In this Article “the railway undertaking” has the same meaning as in the Transport Act (Northern Ireland) 1967⁽³⁾.

(2) 1980 NI 11
(3) 1967 c. 37 (N.I.)