
STATUTORY INSTRUMENTS

1993 No. 3160

The Roads (Northern Ireland) Order 1993

PART IV

IMPROVEMENT AND SAFETY OF ROADS

Miscellaneous powers of Department as to structures, works etc. in or under road

Placing of structures in a road

61.—(1) Article 5 of the Social Need (Northern Ireland) Order 1986⁽¹⁾ shall be renumbered as paragraph (1) of that Article and after that paragraph there shall be added the following paragraphs—

“(2) In the exercise of its powers under this Article the Department may carry out works involving the placing of any structure in a road maintained by it, but shall not so exercise those powers as—

- (a) to obstruct or prevent the passage of vehicles or of the public on foot along the road;
- (b) to obstruct or prevent normal access to premises adjoining the road;
- (c) to prevent any person from having access to any works of his under, in, on, over, along or across the road.

(3) The Department may sell, let or otherwise dispose of any structure placed by it in a road under this Article to any other person.”

(2) In Article 101 of the Planning Order after paragraph (2) there shall be inserted the following paragraph—

“(2A) The Department may sell, let or otherwise dispose of any trading kiosk placed by it in a road under this Article to any other person.”.

Trading kiosks

62.—(1) This Article applies to any trading kiosk which—

- (a) having been placed in a road by the Department in the exercise of its powers under Article 5 of the Social Need (Northern Ireland) Order 1986 is sold by the Department to another person under paragraph (3) of that Article; or
- (b) having been placed in a road by the Department or a district council in the exercise of its powers under Article 101 of the Planning Order, is sold by the Department or council to another person under paragraph (2A) or (5) of that Article.

(2) Where a trading kiosk to which this Article applies is present in a road, the owner of that kiosk shall, unless there is in force a licence under this Article authorising its presence in that road,

be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where—

- (a) a person is convicted of an offence under paragraph (2); and
- (b) he does not, within such period as the court may allow, remove the trading kiosk in question and make good any damage to the road,

then the Department may itself—

- (i) remove that trading kiosk and dispose of it in such manner as the Department thinks fit; and
- (ii) make good any damage to the road.

(4) The Department may by a licence issued under this Article to the owner of a trading kiosk to which this Article applies authorise the presence of that trading kiosk in a road and in a position specified in the licence.

(5) The Department may—

- (a) issue a licence under this Article to the owner of a trading kiosk and insert in the licence a provision prohibiting assignment of the licence; or
- (b) issue such a licence to the owner of a trading kiosk and his successors in title, the licence, unless withdrawn or surrendered, to be transferred with the ownership of the trading kiosk;

and references in this Article to the licensee are references to the person who is for the time being entitled to the benefit of a licence under this Article.

(6) A licence under this Article shall be issued subject to such conditions as the Department thinks fit.

(7) Without prejudice to the generality of paragraph (6), a licence under this Article may be issued subject to conditions—

- (a) regulating the maintenance, repair and alteration of the trading kiosk to which the licence relates;
- (b) requiring the licensee to give the Department not less than 6 weeks notice of his intention to cease using or abandon that trading kiosk.

(8) The Department may by notice served on the licensee withdraw a licence issued under this Article—

- (a) on the expiration of such period as may be specified in the notice, being a period of not less than 7 days beginning with the date of service of the notice on the licensee, if—
 - (i) any condition subject to which the licence was issued is contravened by the licensee; or
 - (ii) the Department becomes aware that the licensee intends to cease using or abandon the trading kiosk;
- (b) on the expiration of such period as may be so specified, being a period of not less than 3 months beginning with that date, if—
 - (i) the Department considers the withdrawal of the licence is necessary for the purpose of the exercise of its functions under this Order; or
 - (ii) in the case of a licence relating to a trading kiosk mentioned in paragraph (1)(b), an order under Article 100 of the Planning Order ceases to apply in relation to the road on which the kiosk is present.

(9) Unless withdrawn or surrendered by the licensee, a licence under this Article shall remain in force for such period as may be specified therein.

(10) Where a licence under this Article expires or is withdrawn or surrendered—

- (a) the Department may require the last licensee, within such period as the Department may specify, to remove the trading kiosk to which the licence relates and make good any damage to the road; and
- (b) if the last licensee fails to comply with any such requirement the Department may itself—
 - (i) remove that trading kiosk and dispose of it in such manner as the Department thinks fit; and
 - (ii) make good any damage to the road.

(11) The licensee or (in the case of a licence which has expired or been withdrawn or surrendered) the last licensee shall indemnify the Department against any claim in respect of injury, damage or loss arising out of—

- (a) the presence in a road of the trading kiosk to which the licence relates; or
- (b) the carrying out by any person of any works required under paragraph (10),

other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(12) In paragraphs (10) and (11) “the last licensee” means the person who, immediately before the expiration, withdrawal or surrender of the licence, was the licensee or, if that person has died, his personal representative.

(13) Where any trading kiosk is disposed of by sale under paragraph (3)(i) or (10)(b)(i) the expenses of removal and sale and of making good any damage to the road shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(2).

- (14) Where the Department disposes of any trading kiosk under paragraph (3)(i) or (10)(b)(i)—
- (a) by sale and the proceeds are not sufficient to defray the Department’s expenses; or
 - (b) in some manner other than by sale,

the Department may recover from the owner of the trading kiosk any expenses reasonably incurred by it in removing and disposing of the trading kiosk and making good any damage to the road.

Cattle-grids

63.—(1) The Department may, if it is satisfied that it is expedient to do so, provide and maintain a cattle-grid in a road or partly in a road and partly in adjoining land.

(2) Where the Department provides a cattle-grid under this Article it shall also provide facilities for the passage under proper control of animals and all other traffic unable to pass over the cattle-grid, being traffic entitled by law to use the road in which the grid is placed.

(3) A cattle-grid and any facilities provided by the Department under this Article shall, when completed, vest in and be maintainable by the Department.

(4) The Department may alter or improve a cattle-grid or facilities provided under this Article.

(5) The Department may enter into an agreement with any person for the making by him of a contribution (by a single payment or periodical payments) of such amount as may be specified in the agreement towards the expenses of the Department in providing and maintaining a cattle-grid under this Article.

(6) An agreement under paragraph (5) may include such incidental and consequential provisions as appear to the parties to be necessary, including provisions for the repayment of, if the cattle-grid is later removed, a specified proportion of a contribution towards the installation of the cattle-grid.

(7) The Department may, in determining whether or not to provide a cattle-grid, have regard to the extent to which persons who will receive special benefit from it are willing to enter into agreements under paragraph (5).

(8) In this Article “cattle-grid” means a device intended to prevent the passage of animals, or animals of a particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the device.

Shelters, rails, barriers, etc.

64.—(1) The Department may erect or permit to be erected on any road—

- (a) shelters for the protection from the weather of persons waiting to enter public service vehicles;
- (b) rails or other barriers for the regulation of the priority of such persons;
- (c) posts denoting stopping places of public service vehicles;

and may remove anything so erected.

(2) In exercising its functions under paragraph (1), the Department shall have regard to the prevention of danger to persons entering or using the road.

(3) The Department may maintain anything erected under this Article.

Road humps and other traffic calming works

65.—(1) Subject to this Article, the Department may construct—

- (a) road humps; and
- (b) other traffic calming works,

on any road and remove any works so constructed by it.

(2) Where, in exercise of the power conferred by paragraph (1), the Department proposes to construct any works on a road, the Department shall publish in at least one newspaper circulating in the locality in which the road is situated, and place at appropriate points on that road, a notice—

- (a) stating the nature, dimensions and location of the proposed works, and
- (b) specifying the address to which and the period (not being less than 30 days from the date of publication of the notice) within which objections to the proposal may be made to the Department.

(3) The Department shall consider any objections sent to it in accordance with a notice under paragraph (2) and may, if it thinks fit, hold a public inquiry.

(4) The Department may by regulations make such provision in relation to the construction, maintenance and removal of works mentioned in paragraph (1) as appear to it to be necessary or expedient in the interests of safety and the free movement of traffic, and may in particular—

- (a) provide that works shall be constructed only in roads of such descriptions and in such circumstances as may be prescribed by the regulations;
- (b) impose requirements as to—
 - (i) the nature, dimensions, location and spacing of works;
 - (ii) the placing of signs of such type or character as may be so prescribed;
 - (iii) the carrying out and maintenance of other ancillary or consequential works.

(5) Works constructed under paragraph (1) which conform to regulations made under paragraph (4) shall not be treated as an obstruction to the road, but as part of the road, so that in particular—

- (a) the Department's obligation to maintain the road; and
- (b) the obligation of any person having power to break open the road, to make good any damage or otherwise reinstate the road,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the works.

(6) In this Article—

“motor vehicle” has the same meaning as in the Road Traffic Order;

“road hump” means an artificial hump in or on the surface of the road which is designed to control the speed of vehicles, and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump;

“traffic calming works”, in relation to a road, means works affecting the movement of vehicular and other traffic for the purpose of promoting safety or preserving or improving the environment through which the road runs.