STATUTORY INSTRUMENTS

1993 No. 3160

The Roads (Northern Ireland) Order 1993

PART VII

LAWFUL AND UNLAWFUL INTERFERENCE WITH ROADS

Structures, works, etc. on, in, under, over or near a road

General duty to consult Department concerning exercise of statutory power to erect structure on, in or under road

70.—(1) Where a statutory provision (other than this Order) passed or made before the coming into operation of this Article—

(a) confers power on any body or person to erect any structure on, in or under a road; and

(b) does not require that body or person to consult the Department concerning the exercise of that power,

that power shall not be exercisable after the coming into operation of this Article unless that body or person has consulted the Department concerning the exercise of that power.

(2) Nothing in paragraph (1) applies to anything done by—

(a) a statutory undertaker in the exercise of a statutory power;

(b) the operator of**[**[F1] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F1] electronic communications code**]**; or

(c) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

F1 2003 c. 21

Erection of a structure on road

71.—(1) Any person who erects any building, wall or fence on a road otherwise than in the exercise of a statutory power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who erects any other structure on a road otherwise than—

(a) in the exercise of a statutory power; or

(b) in pursuance of a consent given by the Department under this Order; or

[[F2](ba) in pursuance of a pavement café licence under the Licensing of Pavement Cafés Act (Northern Ireland) 2014; or**]**

[[F3](c) in pursuance of a street trading licence or a temporary licence under the Street Trading Act (Northern Ireland) 2001 or in circumstances where, by virtue of section 2 of that Act, he would not be required to obtain a licence under that Act,**]**

[[F4]or

(d) in connection with the holding of an event in connection with which an order has been made under Schedule 3A to the Road Traffic Regulation (Northern Ireland) Order 1997,**]**

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

(3) Where a building, wall, fence or other structure is erected on a road in contravention of paragraph (1) or (2), the Department may serve on the owner of that building, wall, fence or other structure a notice requiring him to remove it.

(4) Article 58 applies to a notice served under this Article as it applies to a notice served as mentioned in paragraph (1) of that Article.

(5) For the purposes of this Article—

(a) "structure" includes any object of such a nature as to be capable of causing obstruction;

(b) a structure may be treated as having been erected on a road notwithstanding that it is on wheels; and

(c) "erect" includes place or set up.

F2 Art. 71(2)(ba) inserted (1.10.2016) by Licensing of Pavement Cafs Act (Northern Ireland) 2014 (c. 9), s. 32(1), **Sch. para. 1**; S.R. 2016/126, art. 2

F3 2001 c. 8 (NI)

F4 Art. 71(2)(d) and word inserted (4.9.2017) by Roads (Miscellaneous Provisions) Act (Northern Ireland) 2010 (c. 14), s. 9(2), **Sch. 2 para. 4**; S.R. 2017/34, art. 2, Sch.

Erection of scaffolding, hoardings, etc. on a road

72.—(1) Subject to paragraph (2), any person who, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erects any scaffolding on a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

(a) with the consent of the Department; or

(b) in relation to a road which is not a**[**[F5] protected street**]**, by—

(i) a statutory undertaker in the exercise of a statutory power;

(ii) the operator of**[**[F6] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F6] electronic communications code**]**; or

(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order [[F5] or

(c) in pursuance of a street works licence.]

(3) Where—

(a) a person has erected any scaffolding in contravention of paragraph (1); and

(b) the Department considers that the scaffolding constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

(i) remove the scaffolding or carry out such other works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Where—

(a) a person is convicted of an offence under paragraph (1); and

(b) he does not, within such period as the court may allow, remove any scaffolding erected in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

(i) remove that scaffolding and make good any damage to the road; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(5) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(6) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper erection and removal of the scaffolding and the reinstatement of the road; and

(b) the safety and convenience of traffic.

(7) Without prejudice to the generality of paragraph (6), a consent under paragraph (2)(a) may be given subject to conditions—

(a) designed to ensure—

(i) safe access to the road for traffic likely to use the road for the purposes of the work, alteration, repair, maintenance or cleaning in connection with which the scaffolding is erected; and

(ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to the erection of the scaffolding might reasonably be expected to obstruct the traffic on the road;

(b) requiring the person to whom the consent is given to cause the scaffolding to which the consent relates to be properly lighted during the hours of darkness (within the meaning of the Road Traffic Order);

(c) requiring the person to whom the consent is given to comply with any directions given to him in writing by the Department with respect to the erection and maintenance of signs warning users of the road of the presence of the scaffolding to which the consent relates;

(d) requiring the person to whom the consent is given to deposit a sum of money with the Department as security for the proper erection and removal of the scaffolding and the reinstatement of the road.

(8) The person to whom a consent is issued under this Article in respect of any scaffolding shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the erection or presence of that scaffolding on a road, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(9) Any person who—

(a) erects any scaffolding in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

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

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) remove any scaffolding erected in pursuance of that consent; and

(c) recover from that person any expenses thereby reasonably incurred by it.

(11) Where any scaffolding—

(a) has been removed by the Department under paragraph (3), (4) or (10), and

(b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(12) Where any scaffolding is disposed of by sale under paragraph (11) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not 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[F7].

(13) Where the Department disposes of any scaffolding under paragraph (11)—

(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 person who erected that scaffolding on the road any expenses reasonably incurred by it in removing and disposing of the scaffolding.

(14) This Article shall apply to any hoarding or other structure erected in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building as it applies to scaffolding erected in that connection.

F5 1995 NI 19
F6 2003 c. 21
F7 1954 c. 9 (N.I.)

Placing of rails, beams, cables, arches, etc. over a road

73.—(1) Subject to paragraph (2), any person who fixes or places any overhead beam, rail, arch, pipe, cable, wire or other similar apparatus over, along or across any road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

(a) with the consent of the Department;

(b) in relation to a road which is not a**[**[F8] protected street**]**, by—

(i) a statutory undertaker in the exercise of a statutory power; or

(ii) the operator of**[**[F9] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F9] electronic communications code**]**; or

(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order;[F8]. . .

[[F8](c) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order or by virtue of Article 21(2) of that Order; or

(d) in pursuance of a street works licence.**]**

(3) Where—

(a) a person has fixed or placed any apparatus in contravention of paragraph (1); and

(b) the Department considers that the apparatus constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(i) remove that apparatus or carry out such other works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow, remove any apparatus fixed or placed in contravention of that paragraph and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day upon which that failure continues.

(5) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(6) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(7) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a consent under paragraph (2)(a) may be given subject to conditions—

(a) requiring the person to whom the consent is given to insure against such risks in connection with the fixing or placing of the apparatus to which the consent relates and its presence over, along or across a road as the Department may specify;

(b) requiring the person to whom the consent is given to produce to the Department such certificates as the Department may require as to the safety of any apparatus to which the consent relates;

(c) requiring the apparatus to be fixed or placed not earlier than such date as is specified in the consent and to be removed not later than such other date as is so specified.

(9) The person to whom a consent under paragraph (2)(a) is given shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the fixing, placing or presence over, along or across a road of apparatus to which the consent relates, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(10) Any person who—

(a) fixes or places any apparatus in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) Where it appears to the Department that a person has contravened paragraph (10), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) remove any apparatus fixed or placed in pursuance of the consent; and

(c) recover from that person any expenses thereby reasonably incurred by it.

(12) Where any apparatus—

(a) has been removed by the Department under paragraph (3), (5) or (11); and

(b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(13) Where any apparatus is disposed of by sale under paragraph (12) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not 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[F10].

(14) Where the Department disposes of any apparatus under paragraph (12)—

(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 person who fixed or placed the apparatus over, along or across the road any expenses reasonably incurred by it in removing and disposing of the apparatus.

F8 1995 NI 19
F9 2003 c. 21
F10 1954 c. 9 (N.I.)

Festive lighting on roads

74.—(1) The Department may issue to any person a licence authorising that person to place festive lighting over, along or across any road specified in the licence for such period as is so specified.

(2) A licence under paragraph (1) may be issued subject to such conditions as the Department thinks fit, and in particular conditions—

(a) regulating the installation of the festive lighting and the use for that purpose of any system of illumination installed under Article 44;

(b) requiring the payment by the licensee of charges in respect of electricity consumed by the festive lighting;

(c) requiring the licensee to indemnify the Department against any liability to any other person for injury, loss or damage arising from the placing of the festive lighting over, along or across a road.

(3) Any person who—

(a) places festive lighting over, along or across a road otherwise than in accordance with a licence granted under paragraph (1); or

(b) fails to comply with any condition subject to which such a licence is granted to him,

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

(4) In this Article “festive lighting” means lighting which is installed for a temporary period in connection with the celebration of a festive occasion, season or event.

Restriction on construction of buildings over road

75.—(1) No person shall—

(a) except in the exercise of statutory powers, construct a building over any part of a road (whether it is intended to span the road or not), or alter a building so constructed, without a

licence issued under this Article by the Department, or otherwise than in accordance with the conditions of a licence so issued;

(b) use a building so constructed or altered in pursuance of a licence so issued otherwise than in accordance with the conditions thereof;

and any person who contravenes any provision of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and if the contravention is continued after conviction, he shall be guilty of a further offence and liable to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the contravention is so continued.

(2) A licence under this Article may be issued subject to such conditions, including conditions with respect to the construction (including the headway over the road), maintenance, lighting and use of the building, as the Department thinks fit; and, any such condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.

(3) Where a licence under this Article makes provision for the execution of any works or the provision of any facilities which in the opinion of the Department require to be executed or provided by it in connection with the building or its construction or alteration, the Department may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by it in so doing from the licensee or from the owner of the building.

(4) No appeal lies under Article 84—

(a) if the land on which the road in question is situated is owned by the Department, or

(b) against any condition which the Department declares to be necessary for the purpose of securing the safety of persons using the road or of preventing interference with traffic thereon.

(5) Where a person has constructed or altered a building, for the construction, or, as the case may be, alteration, of which a licence is required by this Article, without such a licence or otherwise than in accordance with the conditions of the licence, the Department may by notice served on the licensee or the owner of the building require him to remove the building or make alterations therein.

(6) Where there has been a failure to comply with any conditions of a licence under this Article with respect to the maintenance or use of a building, the Department may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those conditions.

(7) Article 58 applies to a notice served under this Article as it applies to a notice served as mentioned in paragraph (1) of that Article.

Restriction on construction of bridges over road

76.—(1) The Department may issue to the owner or occupier of any land adjoining a road a licence to construct and use a bridge over the road.

(2) Subject to paragraph (3), a licence under this Article may be issued subject to such conditions as the Department thinks fit.

(3) It shall be a condition of every licence under this Article that the person to whom it is granted is, at his own expense, to remove the bridge or alter it in such manner as the Department may require, if at any time the Department considers the removal or alteration necessary or desirable in connection with the carrying out of improvements to the road; and the decision of the Department that the removal or alteration is necessary or desirable in that connection shall be final, and the condition shall be enforceable by the Department against the owner for the time being of the land.

(4) No appeal lies under Article 84 against—

(a) any condition mentioned in paragraph (3); or

(b) any condition which the Department declares to be necessary for the purpose of securing the safety of persons using the road or of preventing interference with traffic thereon.

(5) Any person who, except in the exercise of statutory powers—

(a) constructs a bridge over a road without a licence under this Article, or

(b) constructs or uses a bridge otherwise than in accordance with the conditions of such a licence, or

(c) fails to remove or alter a bridge when required to do so in accordance with any condition of the licence,

shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale, and if the offence is continued after conviction he shall be guilty of a further offence and liable to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the offence is so continued.

Restriction on construction of cellars, etc. under road

77.—(1) Any person who without the consent of the Department constructs any vault, arch, cellar or part of a building under a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) The consent of the Department—

(a) shall be given subject to the condition that any vault, arch or cellar constructed in pursuance of the consent and any gratings, lights and other fixtures in the surface of the road that are associated with it are to be kept in such good condition and repair by the person to whom the consent is given as not to constitute a danger or a nuisance to road users;

(b) may be given subject to such other conditions as the Department thinks fit.

(3) Where a person—

(a) constructs any vault, arch, cellar or part of a building in pursuance of a consent under this Article; and

(b) fails to comply with any condition subject to which that consent was given,

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

(4) Where it appears to the Department that a person has contravened paragraph (1) or (3) then (whether or not proceedings are instituted for an offence under that paragraph) the Department may serve on that person a notice requiring him to remove or alter the vault, arch, cellar or part of a building in question.

(5) Article 58 applies to a notice served under paragraph (4) as it applies to a notice served as mentioned in paragraph (1) of that Article.

(6) The person to whom a consent is given under this Article shall indemnify the Department against any claim in respect of injury, damage or loss arising out of—

(a) the presence under a road of any vault, arch, cellar or part of a building to which the consent relates; or

(b) the carrying out by any person of any works for the construction of any vault, arch, cellar or part of a building in pursuance of the consent.

[[F11](7) This Article does not apply to street works within the meaning of the Street Works Order.**]**

F11 1995 NI 19

Excavations in a road

78.—(1) Subject to paragraph (2), any person who carries out any excavation in, or otherwise breaks up the surface of, a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to any works done—

(a) with the consent of the Department**[**[F12] or in pursuance of a street works licence or in accordance with an authorisation given by the Department under paragraph 7(2) of Schedule 1 to the Street Works Order**]**;

(b) in the course of constructing—

(i) a permitted means of access to a road within the meaning of Article 80(13);

(ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or

(iii) a milk tanker facility within the meaning of Article 81(10);

(c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years;

(d) for the purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980[F13] to a determination under Article 3(1) of that Order;

(e) in relation to a road which is not a**[**[F12] protected street**]**, by—

(i) a statutory undertaker in the exercise of a statutory power;

(ii) the operator of**[**[F14] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F14] electronic communications code**]**; or

(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order;

[[F12](f) in relation to a road which is a protected street, with the consent of the Department under Article 21(1) of the Street Works Order, or by vitue of Article 21(2) of that Order;**]**

(g) in the course of constructing a gutter in the footway in accordance with Article 53(2); or

(h) for the sole purpose of planting any grass, tree or shrub of a mature height not exceeding 500 millimetres in a verge in a road where—

(i) the road does not include a footway;

(ii) the verge is provided for the purpose of containing mains, drains, pipes, cables and other apparatus; and

(iii) the planting is carried out by or on behalf of the owner or occupier of land on so much of the verge as adjoins that land.

(3) Where—

(a) a person has carried out any works in contravention of paragraph (1); and

(b) the Department considers that the works constitute a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

(i) carry out such works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Where—

(a) a person is convicted of an offence under paragraph (1); and

(b) he does not, within such period as the court may allow, fill in any excavation made in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

(i) fill in that excavation and make good any damage to the road; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(5) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(6) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper completion of the works and reinstatement of the road; and

(b) the safety and convenience of traffic.

(7) Without prejudice to the generality of paragraph (6), a consent under paragraph (2)(a) may be given subject to conditions—

(a) designed to ensure—

(i) safe access to the road for traffic likely to use the road as a result of the carrying out of the works to which the consent relates; and

(ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such works, might reasonably be expected to obstruct the traffic on the road;

(b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the works to which the consent relates;

(c) requiring the person to whom the consent is given to insure against such risks in connection with the works to which the consent relates as the Department may specify;

(d) regulating or prohibiting the deposit on the road of building materials and rubbish associated with the works to which the consent relates;

(e) requiring the person to whom the consent is given to cause the works to which the consent relates and any associated building materials or rubbish to be properly guarded and to be properly lighted during the hours of darkness (within the meaning of the Road Traffic Order);

(f) requiring the person to whom the consent is given to fill in any excavation to which the consent relates, if required to do so by the Department.

(8) The person to whom a consent is issued under this Article in respect of any works shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the carrying out of those works, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(9) Any person who—

(a) carries out any works in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

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

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) fill in the excavation, remove any associated building materials or rubbish deposited on the road and make good any damage done to the road; and

(c) recover from that person any expenses thereby reasonably incurred by it.

F12 1995 NI 19
F13 1980 NI 12
F14 2003 c. 21

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F15 prosp. insertion by 1995 NI 19

Placing of apparatus in or under a road

79. F16 . . . . . .

F16 Art. 79 repealed (9.1.2006) by Street Works (Northern Ireland) Order 1995 (S.I. 1995/3120 (N.I. 19)), arts. 1(2), 60(2), **Sch. 4**; S.R. 2005/566, **art. 2**

Construction of permitted means of access to a road

80.—(1) Subject to paragraphs (2) and (3), any person who, without the consent of the Department, constructs any permitted means of access to—

(a) a trunk road or classified road from agricultural land; or

(b) any other road,

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

(2) Paragraph (1) does not apply—

(a) if planning permission has been granted in respect of the construction of the means of access; or

(b) to anything done for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years.

(3) Sub-paragraph (b) of paragraph (1) does not apply if the means of access is constructed in compliance with such requirements as to the siting and layout of means of access to roads of the kind mentioned in that sub-paragraph as may be prescribed by regulations made by the Department.

(4) Where—

(a) a person has constructed a means of access in contravention of paragraph (1); and

(b) the Department considers that the existence or use of the means of access constitutes a danger to persons using the road,

then, (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(i) stop-up the means of access and carry out such other works as are necessary to obviate the danger, and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(5) Where a person has constructed a means of access in contravention of paragraph (1), the Department may serve on that person a notice requiring that the means of access be stopped-up; and where, within 21 days from the date on which a notice is served on any person under this paragraph, a means of access is stopped-up in compliance with the notice, that person shall not be liable to prosecution for an offence under paragraph (1) in respect of that means of access.

(6) Any person, other than a person exercising a public right of way on foot, who uses a means of access stopped-up under paragraph (4) or in compliance with a notice under paragraph (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where—

(a) a person is convicted of an offence under paragraph (1); and

(b) he does not, within such period as the court may allow, remove any means of access constructed in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

(i) remove that means of access and make good any damage to the road; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(8) A consent under paragraph (1) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(9) A consent under paragraph (1) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper completion of the means of access and reinstatement of the road; and

(b) the safety and convenience of traffic.

(10) Without prejudice to the generality of paragraph (9), a consent under paragraph (1) may be given subject to conditions—

(a) designed to ensure—

(i) safe access to the road for traffic likely to use the road as a result of the construction of the means of access; and

(ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to the construction of the means of access, might reasonably be expected to obstruct the traffic on the road;

(b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the means of access to which the consent relates;

(c) requiring the person to whom the consent is given to insure against such risks in connection with the construction of the means of access to which the consent relates as the Department may specify.

(11) Any person who—

(a) constructs a means of access in pursuance of a consent given under paragraph (1); and

(b) fails to comply with any condition subject to which that consent was given,

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

(12) Where it appears to the Department that a person has contravened paragraph (11), then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

(a) revoke the consent given to that person under paragraph (1);

(b) remove any means of access constructed in pursuance of that consent and make good any damage to the road; and

(c) recover from that person any expenses thereby reasonably incurred by it.

[F17](13) In this Article—

[F18]"agricultural land" has the same meaning as in the Agriculture Act (Northern Ireland) 1949;

"constructing a means of access" includes forming, laying out or altering that means of access;

"development order" has the same meaning as in **[**[F17]the Planning Act (Northern Ireland) 2011**]** ;

"permitted means of access" means a means of access the construction of which would be permitted by a development order.

F17 Words in art. 80(13) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by Planning Act (Northern-Ireland) 2011 (c. 25), s. 254(1)(2), **Sch. 6 para. 66** (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2 as amended (16.3.2016) by S.R. 2016/159, art. 2)

F18 1949 c. 2 (N.I.)

Provision of milk tanker facility on or near road

81.—(1) Any person who, without the consent of the Department, carries out on or near any road works for the provision of a milk tanker facility shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where—

(a) a person has carried out any works in contravention of paragraph (1); and

(b) the Department considers that the works constitute a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

(i) carry out such works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(3) Where—

(a) a person is convicted of an offence under paragraph (1); and

(b) he does not, within such period as the court may allow, remove any works carried out in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

(i) remove those works and make good any damage to the road; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) A consent under paragraph (1) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(5) A consent under paragraph (1) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper completion of the works and reinstatement of the road; and

(b) the safety and convenience of traffic.

(6) Without prejudice to the generality of paragraph (5), a consent under paragraph (1) may be given subject to conditions—

(a) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the works to which the consent relates;

(b) requiring the person to whom the consent is given to insure against such risks in connection with the works to which the consent relates as the Department may specify.

(7) The person to whom a consent is issued under this Article in respect of any works shall indemnify the Department against any claim in respect of injury, damage or loss rising out of the carrying out of the works, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(8) Any person who—

(a) carries out any works in pursuance of a consent given under paragraph (1); and

(b) fails to comply with any condition subject to which that consent was given,

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

(9) Where it appears to the Department that a person has contravened paragraph (8), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (1);

(b) remove any works executed on the road and make good any damage done to the road; and

(c) recover from that person any expenses thereby reasonably incurred by it.

(10) In this Article—

"milk tank" means any moveable tank or other container used for the purpose of storing milk in bulk;

"milk tanker" means any motor vehicle constructed or designed for the purpose of carrying milk in bulk;

"milk tanker facility" means any space, platform or other structure whose purpose is to facilitate the collection by a milk tanker while on or partially on a road of milk from a milk tank placed on or near the road.

[[F19](11) This Article does not apply to the street works within the meaning of the Street Works Order.**]**

F19 1995 NI 19

Excavations near a road

82.—(1) Subject to paragraphs (2) and (3), any person who makes any pit, ditch, drain or watercourse or carries out any other excavation which is not on a road but which is—

(a) within 12 metres of the nearest part of a special road;

(b) within 12 metres of the middle of a carriageway of a first-class or a second-class road; or

(c) within 9 metres of the middle of a carriageway of any other road,

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

(2) Paragraph (1) does not apply to any excavation which is carried out—

(a) with the consent of the Department;

(b) in the course of constructing—

(i) a permitted means of access to a road within the meaning of Article 80(13);

(ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or

(iii) a milk tanker facility within the meaning of Article 81(10);

(c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years; or

(d) for the sole purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980[F20] to a determination under Article 3(1) of that Order.

(3) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to any excavation which is carried out—

(a) by a statutory undertaker in the exercise of a statutory power; or

(b) by the operator of**[**[F21] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F21] electronic communications code**]**; or

(c) by the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

(4) Where—

(a) a person has carried out an excavation in contravention of paragraph (1); and

(b) the Department considers that the excavation constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(i) carry out such works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(5) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow,—

(a) fill in any excavation made in contravention of that paragraph; and

(b) restore anything altered, broken up or taken away in the course of that excavation;

and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day upon which that failure continues.

(6) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (5), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(7) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(8) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper completion of the excavation to which the consent relates; and

(b) the safety and convenience of traffic.

(9) Without prejudice to the generality of paragraph (8), a consent under paragraph (2)(a) may be given subject to conditions—

(a) designed to ensure—

(i) safe access to the road for traffic likely to use the road as a result of the excavation to which the consent relates; and

(ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such excavation, might reasonably be expected to obstruct the traffic on the road;

(b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the excavation to which the consent relates and of any works which are required by any condition subject to which the consent is given; and

(c) requiring the person to whom the consent is given to insure against such risks in connection with the excavation to which the consent relates as the Department may specify.

(10) Any person who—

(a) carries out any excavation in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

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

(11) Where it appears to the Department that a person has contravened paragraph (10), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) carry out such works as are necessary to obviate any danger to persons using the road; and

(c) recover from that person any expenses thereby reasonably incurred by it.

F20 1980 NI 12
F21 2003 c. 21

Alteration of wall, fence or drain at side of road

83.—(1) Subject to paragraph (2), any person who alters any wall, fence or drain at the side of a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

(a) with the consent of the Department;

(b) in the course of constructing—

(i) a permitted means of access to a road within the meaning of Article 80(13);

(ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or

(iii) a milk tanker facility within the meaning of Article 81(10);

(c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years;

(d) for the sole purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980[F22] to a determination under Article 3(1) of that Order; or

(e) in relation to a road which is not a special road, by—

(i) a statutory undertaker in the exercise of a statutory power;

(ii) the operator of**[**[F23] an electronic communications code network**]** in pursuance of any right conferred by or in accordance with the**[**[F23] electronic communications code**]**; or

(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

(3) Where—

(a) a person has carried out any alteration in contravention of paragraph (1); and

(b) the Department considers that the alteration constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

(i) carry out such works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow—

(a) restore anything altered in contravention of that paragraph; and

(b) make good any damage to the road,

and if he fails to do so he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day upon which that failure continues.

(5) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(6) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(7) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

(a) the proper completion of the alteration to which the consent relates; and

(b) the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a consent under paragraph (2)(a) may be given subject to conditions—

(a) designed to ensure—

(i) safe access to the road for traffic likely to use the road for any purpose relating to the alteration to which the consent relates; and

(ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such alteration, might reasonably be expected to obstruct the traffic on the road;

(b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the alteration to which the consent relates;

(c) requiring the person to whom the consent is given to insure against such risks in connection with the alteration to which the consent relates as the Department may specify.

(9) Any person who—

(a) carries out any alteration in pursuance of a consent given under paragraph (2)(a); and

(b) fails to comply with any condition subject to which that consent was given,

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

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(a) revoke the consent given to that person under paragraph (2)(a);

(b) restore anything altered in pursuance of that consent and make good any damage to the road; and

(c) recover from that person any expenses thereby reasonably incurred by it.

(11) In this Article—

"alter" includes remove;

"drain" has the same meaning as in Article 45(9).

F22 1980 NI 12
F23 2003 c. 21

Provisions supplementary to preceding provisions of this Part

84.—(1) Any person aggrieved by—

(a) the refusal of the Department to give its consent under—

(i) Article 72(2)(a);

(ii) Article 73(2)(a);

(iii) Article 77(1);

(iv) Article 78(2)(a);

(v) Article 80(1);

(vi) Article 81(1);

(vii) Article 82(2)(a);

(viii) Article 83(2)(a);

(b) any condition subject to which any such consent is given;

(c) the refusal of the Department to issue a licence under Article 74(1), 75,[F24] 76 or 79; or

(d) any condition subject to which any such licence is issued,

may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this Article.

(2) Before determining an appeal under this Article the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(3) Every notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as the Department may by regulations prescribe.

(4) Summary proceedings for an offence under any of the preceding provisions of this Part shall not be commenced after the expiration of—

(a) a period of 6 months from the date on which evidence sufficient in the opinion of the Department to justify a prosecution for the offence comes to the knowledge of the Department; or

(b) a period of one year from the date on which the offence was committed or ceased to continue,

whichever period last expires.

(5) For the purposes of paragraph (4) a certificate purporting to be signed by the secretary of, or other officer authorised by, the Department as to the date on which such evidence as is mentioned in that paragraph comes to the knowledge of the Department shall be conclusive evidence thereof.

(6) Nothing in any of the preceding provisions of this Part applies in relation to anything done for the sole purpose of complying with any requirement of a notice served under any of Articles 50 to 57.

F24 prosp. subst. by 1995 NI 19

Changes to legislation:
There are currently no known outstanding effects for the The Roads (Northern Ireland) Order 1993, Cross Heading: Structures, works, etc. on, in, under, over or near a road.