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STATUTORY INSTRUMENTS

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**1995 No. 3210**

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

*Apparatus affected by road, bridge or transport works*

**Works for road purposes likely to affect apparatus in the street**

**43.**—(1) This Article applies to works for road purposes other than major road works (as to which see Article 44).

(2) Where works to which this Article applies are likely to affect apparatus in the street, the authority executing the works shall take all reasonably practicable steps—

- (a) to give the person to whom the apparatus belongs reasonable facilities for monitoring the execution of the works, and
- (b) to comply with any requirement made by him which is reasonably necessary for the protection of the apparatus or for securing access to it.

(3) An authority (other than the Department) which fails to comply with paragraph (2) commits an offence in respect of each failure and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In proceedings against an authority for such an offence it is a defence for it to show that the failure was attributable—

- (a) to its not knowing the position, or not knowing the existence, of a person's apparatus, or
  - (b) to its not knowing the identity or address of the person to whom any apparatus belongs,
- and that its ignorance was not due to any negligence on its part or to any failure to make inquiries which it ought reasonably to have made.

**Measures necessary where apparatus affected by major works**

**44.**—(1) Where an undertaker's apparatus in a street is or may be affected by major road works, major bridge works or major transport works, the authority concerned and the undertaker shall take such steps as are reasonably required—

- (a) to identify any measures needing to be taken in relation to the apparatus in consequence of, or in order to facilitate, the execution of the works of the authority concerned,
- (b) to settle a specification of the necessary measures and determine by whom they are to be taken, and
- (c) to co-ordinate the taking of those measures and the execution of the works of the authority concerned,

so as to secure the efficient implementation of the necessary work and the avoidance of unnecessary delay.

(2) The Department may issue or approve for the purposes of this Article a code of practice giving practical guidance as to the matters mentioned in paragraph (1) and the steps to be taken by the authority concerned and the undertaker.

(3) Any dispute between the authority concerned and the undertaker as to any of the matters mentioned in paragraph (1) shall, in default of agreement, be settled by arbitration.

(4) If the authority concerned or the undertaker fails to comply with an agreement between them as to any of those matters, or with the decision of the arbitrator under paragraph (3), the authority concerned or undertaker shall be liable to compensate the other in respect of any loss or damage resulting from the failure.

(5) The authority concerned for the purposes of this Article and Article 45 is—

- (a) in the case of major road works, the Department,
- (b) in the case of major bridge works, the bridge authority, and
- (c) in the case of major transport works, the transport authority.

### **Sharing of cost of necessary measures**

**45.**—(1) Where an undertaker's apparatus in a street is affected by major road works, major bridge works or major transport works, the allowable costs of the measures needing to be taken in relation to the apparatus in consequence of the works, or in order to facilitate their execution, shall be borne by the authority concerned and the undertaker in such manner as may be prescribed.

(2) The regulations may make provision as to the costs allowable for this purpose.

Provision may, in particular, be made for disallowing costs of the undertaker—

- (a) where the apparatus in question was placed in the street after the authority concerned had given the undertaker the prescribed notice of its intention to execute the works, or
- (b) in respect of measures taken to remedy matters for which the authority concerned was not to blame,

and for allowing only such costs of either party as are not recoverable from a third party.

(3) Where the authority concerned has a right to recover from a third party its costs in taking measures in relation to undertaker's apparatus but in accordance with Article 44 it is determined that the measures should be taken by the undertaker, the right of the authority concerned includes a right to recover the undertaker's costs in taking those measures and the authority concerned shall account to the undertaker for any sum received.

(4) The regulations shall provide for the allowable costs to be borne by the authority concerned and the undertaker in such proportions as may be prescribed.

(5) The regulations may require the undertaker to give credit for any financial benefit to him from the betterment or deferment of renewal of the apparatus resulting from the measures taken.

(6) The regulations may make provision as to the time and manner of making any payment required under this Article.