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STATUTORY INSTRUMENTS

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**2007 No. 287**

**The Street Works (Amendment) (Northern Ireland) Order 2007**

*Charges, fees, contributions, etc.*

**Contributions to costs of re-surfacing by undertaker**

21.—(1) After Article 38 of the 1995 Order there is inserted—

**“Contributions to costs of re-surfacing by undertaker**

**38A.**—(1) Where a street authority has given a re-surfacing notice to an undertaker (A)—

- (a) the authority shall pay to A a proportion, calculated in the prescribed manner, of the costs reasonably incurred by A in executing the works specified in the notice;
- (b) an undertaker to whom paragraph (2) applies shall pay to A a proportion, calculated in the prescribed manner, of those costs.

(2) This paragraph applies to an undertaker if—

- (a) he has, after the commencement of this Article (whether or not regulations under it have been made) and before the completion of the works specified in the notice, executed street works which involved the breaking up of any part of a street, and
- (b) the works specified in the notice include the re-surfacing of that part of the street.

(3) The Department may by regulations prescribe exceptions to the duty imposed by paragraph (1)(b).

(4) The payments referred to in paragraph (1) shall be made in such instalments and manner, and within such period of such event, as may be prescribed.

(5) The Department may by regulations make provision—

- (a) requiring a street authority, within such period of such event as may be prescribed, to give to an undertaker to whom paragraph (2) applies a notice containing such information as may be prescribed;
- (b) requiring a street authority to pay to an undertaker to whom it has given a re-surfacing notice such sum as he has been unable to recover under paragraph (1)(b) on account of the insolvency of an undertaker;
- (c) requiring disputes of a prescribed description (including disputes as to whether paragraph (2) applies to an undertaker) to be determined in such manner and by such persons as may be prescribed.

(6) For the purposes of this Article, any costs incurred by an undertaker (including any costs of a street authority which are borne by the undertaker) in consequence of a failure by the undertaker to comply with any duty under this Order shall be treated as having been incurred unreasonably.

(7) The Department may by regulations make provision requiring undertakers to make payments to a street authority where—

- (a) the authority has given a re-surfacing notice to an undertaker,

- (b) that undertaker has exercised a right, conferred by regulations under Article 33D, of the sort mentioned in paragraph (2)(d) of that Article, and
  - (c) the authority has carried out any of the works specified in the notice.
- (8) The power in paragraph (7) includes power to make provision corresponding to provision that may be made under paragraphs (1) to (5).
- (9) The first regulations under this Article shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.
- (10) In paragraph (5)(b) “insolvency”—
- (a) in relation to a company, has the meaning given by Article 6(1) of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#);
  - (b) in relation to an individual, includes the approval of a voluntary arrangement under Part VIII of that Order.”.
- (2) In Article 53 of the 1995 Order (recovery of costs and expenses), in paragraph (3), after “street)” there is inserted “or Article 38A (contributions to costs of re-surfacing by undertakers)”.