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DRAFT STATUTORY INSTRUMENTS

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**2007 No.**

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

*Charges, fees, contributions, etc.*

**Charges where works unreasonably prolonged**

18.—(1) Article 34 of the 1995 Order (charges where works unreasonably prolonged) is amended as follows.

(2) After paragraph (2) insert—

“(2A) The regulations may prescribe exemptions from the requirement to pay charges.”.

(3) In paragraph (3)—

(a) for “may submit to the Department” substitute “shall give to the Department, in such manner as may be prescribed, notice containing”, and

(b) for “so submitted” substitute “contained in a notice given to the Department in such manner”.

(4) In paragraph (4), for “may submit” substitute “shall give to the Department, in such manner as may be prescribed, notice containing”.

(5) After paragraph (5) insert—

“(5A) The regulations may—

(a) prescribe more than one rate of charge in respect of the same description of works, and

(b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the Department to be appropriate in relation to those works.

(5B) The regulations may—

(a) make provision for the determination of the duration of works for the purposes of the regulations;

(b) in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the Department, in the prescribed manner, in accordance with a requirement imposed by the regulations.”.

(6) In paragraph (7), for the words from “a charge” to the end substitute “charges—

(a) in any particular case,

(b) in such classes of case as it may decide or as may be prescribed, or

(c) in all cases or in all cases other than a particular case or such class of case as it may decide or as may be prescribed.”.

(7) After that paragraph insert—

“(7A) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding level 4 on the standard scale.”.

### **Charges for whole duration of works**

19. In the 1995 Order, after Article 34 insert—

#### **“Charge determined by reference to duration of works**

**34A.**—(1) The Department may make provision by regulations requiring an undertaker executing street works in a road to pay to the Department a charge determined, in the prescribed manner, by reference to the duration of the works.

(2) The regulations may prescribe exemptions from the requirement to pay charges.

(3) The regulations may prescribe different rates of charge according to—

- (a) the extent to which the surface of the road is affected by the works,
- (b) the place and time at which the works are executed, and
- (c) such other factors as appear to the Department to be relevant.

(4) The regulations may—

- (a) prescribe more than one rate of charge in respect of the same description of works, and
- (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the Department to be appropriate in relation to those works.

(5) The regulations—

- (a) may make provision for the determination of the duration of works for the purposes of the regulations; and
- (b) in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the Department, in the prescribed manner, in accordance with a requirement imposed by the regulations.

(6) The regulations may make provision as to the time and manner of making payment of charges.

(7) The regulations shall provide that the Department may reduce the amount, or waive payment, of a charge—

- (a) in any particular case,
- (b) in such classes of case as it may decide or as may be prescribed, or
- (c) in all cases or in all cases other than a particular case or such class of case as it may decide or as may be prescribed.

(8) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding level 4 on the standard scale.

(9) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.

(10) 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.

(11) Nothing shall be taken to prevent the imposition of charges by both regulations under Article 34 and regulations under this Article in respect of the execution of the same works at the same time.”.

### **Fees for inspections**

**20.** For Article 35 of the 1995 Order (inspection fees) there is substituted—

#### **“Inspection fees**

**35.**—(1) The Department may make provision by regulations requiring an undertaker to pay to the street authority the prescribed fee in respect of—

- (a) all inspections carried out by the authority of his street works; or
- (b) such inspections of those works as may be prescribed.

(2) The regulations may—

- (a) require undertakers to make payments in respect of inspections anticipated to take place within a prescribed period; and
- (b) make provision for the striking of an account between an undertaker and a street authority and the making of any necessary payment or repayment.

(3) The power to make different provision under this Article for different cases includes power—

- (a) to make different provision for different descriptions of street authority or different descriptions of undertakers (including descriptions framed by reference to their previous performance);
- (b) to prescribe different fees by reference to the nature or extent of the excavation or other works, the place where they are executed and such other factors as appear to the Department to be relevant.

(4) The reference in paragraph (3)(a) to the previous performance of an undertaker is to the performance of the undertaker, during such period as may be prescribed, as respects such description of his duties under this Order as may be prescribed.

(5) The regulations may require disputes of any prescribed description to be determined by arbitration.

(6) Nothing in this Article applies to inspections in respect of which the undertaker is obliged to bear the cost, or pay the prescribed fee, under Article 32(2) (inspections consequent on failure to comply with duties as to reinstatement).”.

### **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)”.