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STATUTORY INSTRUMENTS

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**1980 No. 1086 (N.I. 12)**

**Private Streets (Northern Ireland) Order 1980 <sup>F1</sup>**

- - - - - [28th July 1980]

<b>F1</b> functions transf. by SR 1999/481
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**PART I**  
**INTRODUCTORY**

**Title and commencement**

- 1.—(1) This Order may be cited as the Private Streets (Northern Ireland) Order 1980.  
(2) *Commencement*

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

<sup>F2</sup>(2) In this Order—

“adjoining” includes abutting on;

“building regulations” means regulations made under Article 3(1) of the Building Regulations (Northern Ireland) Order 1972 or under Article 3(1) of the Building Regulations (Northern Ireland) Order 1979 ;

“the Department” means the Department of the Environment;

“fronting” includes adjoining;

“industrial premises” means premises used or designed or suitable for use for the carrying on of any industrial undertaking and includes premises used for purposes ancillary to the carrying on of any such undertaking;

“industrial undertaking” includes any undertaking by which any process for, or incidental to, any of the following purposes is, or is intended to be, carried on—

- (a) the making of any article or substance, or part of any article or substance;
- (b) the altering, repairing, ornamenting, finishing, cleaning, washing, preserving, packing, canning, adapting for sale, breaking-up or demolition of any article or substance;
- (c) without prejudice to paragraph ( b), the getting, dressing or preparation for sale of minerals or the extraction or preparation for sale of oil or brine,

being a process carried on in the course of a trade or business; and for the purposes of this definition, the expression “article” means an article of any description, including a<sup>F3</sup> ship as defined in the Merchant Shipping Act 1995];

“owner” means the person for the time being receiving the rack rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such land or premises were let at a rack rent;

“paving” includes metalling and flagging and all other methods of making a carriage-way, footway or footpath;

[<sup>F2</sup> “ the Planning Act ” means the Planning Act (Northern Ireland) 2011; ]

“premises” includes land;

“public body” means a body established by or under any statutory provision;

“public road” means a street which is maintainable at the expense of the Department;

“responsible person” has the meaning assigned to it by Article 36;

“statutory provision” has the meaning assigned to it by section 1(*f*) of the Interpretation Act (Northern Ireland) 1954 ;

“street” includes—

- (a) any highway, any public bridge and any road, lane, footpath, square, court, alley or passage, whether a thoroughfare or not;
- (b) any part of a street; and
- (c) any land which the Department, in exercise of street planning functions, determines shall be regarded as being comprised in a street for the purposes of Part III;

“street planning functions” has the meaning assigned to it by Article 3(2);

“street works” means any works for the sewerage, levelling, paving, channelling and making good of a street<sup>F4</sup> and includes the provision of proper means for lighting a street];

“transfer” in relation to premises or any estate therein includes any disposal of the premises or estate whether by sale, lease, exchange, gift or otherwise.

(3) For the purposes of this Order, the frontage of a building or proposed building on a street shall be deemed to be the frontage that the building itself and any land occupied or, as the case may be, proposed to be occupied, with the building and for the purposes thereof has or will have on the street.

(4) In ascertaining a majority in number of owners for the purposes of this Order, joint owners and owners holding as tenants in common shall be treated as one owner.

(5) In this Order “private street” means a street other than a public road and, for the purpose of the application of Part V in relation to any building, includes any land shown as a proposed street on plans deposited with respect to that building on a planning application under the [<sup>F5</sup>Planning Act] or in accordance with building regulations; and the fact that a part of a street is a public road shall not prevent any other part thereof from being taken for the purposes of this Order to be a part of a private street.

**F2** Words in art. 2(2) 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. 25\(a\)](#) (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](#))

**F3** [1995 c. 21](#)

**F4** [1992 NI 19](#)

**F5** Words in art. 2(5) 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. 25(b)** (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)

## PART II

### LAYING OUT AND CONSTRUCTION OF STREETS

#### Exercise of street planning functions by the Department

**3.—(1)** Where the development of land for which planning permission is required under [<sup>F6</sup>Part 3 of the Planning Act] consists of or includes or appears to require the laying out or construction of streets, the Department shall determine the width, position and arrangement of the streets, and the land to be regarded for the purposes of Part III as being comprised in those streets.

(2) The functions exercisable by the Department by virtue of paragraph (1) are in this Order referred to as “street planning functions” and, where regulations are made under paragraph (3), shall be exercised in accordance with those regulations.

(3) The Department may, by regulations which shall be subject to affirmative resolution, prescribe minimum standards to be applied by it in the exercise of street planning functions, and the regulations may empower the Department to dispense with or relax any of the requirements of the regulations in respect of such matters as may be specified in the regulations.

(4) The Department may, where it considers it necessary for the exercise of street planning functions, require the applicant for permission for the development of any land to submit plans and particulars showing the general scheme for the development of the land of which any street is intended to form part.

[<sup>F7</sup>(4A) Where street planning functions are exercisable by the Department in relation to a street which joins an existing public road, the Department may, subject to paragraph (4B), attach to any determination under this Article in respect of that street a requirement that such works as the Department considers necessary for the improvement of that public road are carried out in accordance with an agreement under paragraph (4C).

(4B) Works required under paragraph (4A) for the improvement of a public road shall be works which are either—

- (a) within the boundary of that road; or
- (b) on land owned by the Department.

(4C) The Department may enter into an agreement under seal with any person—

- (a) for the carrying out at the expense of that person of works required under paragraph (4A); and
- (b) for the issue of a certificate by the Department when those works have been completed in accordance with the agreement and the terms and conditions of the agreement have been duly complied with.

(4D) An agreement under paragraph (4C) between the Department and any other person—

- (a) shall contain such detailed provisions as to the nature of the works to be carried out as the Department thinks fit; and
- (b) may include provision for ensuring that, for such period as may be specified in the agreement, any defects in those works shall be remedied by, and at the expense of, that person.

(4E) The person with whom the Department enters into an agreement under paragraph (4C) shall secure the due performance of the agreement by means of a guarantee bond or by any other means acceptable to the Department.

(4F) A certificate issued by the Department under paragraph (4C)(b) in respect of any works shall be conclusive for all purposes of this Order that those works have been carried out in accordance with the agreement.

(4G) In paragraph (4A) “improvement” has the same meaning as in<sup>F8</sup> Article 43 of the Roads (Northern Ireland) Order 1993.]

(5) Where the Department grants outline planning permission for the development of any land and that permission is conditional upon the subsequent approval of the particulars of the proposed development, the Department may defer its determination of the matters referred to in paragraph (1) pending the submission of those particulars.

<sup>F7</sup>(5A) The Department may stop up or temporarily close any street which another person has constructed—

- (a) before a determination has been given by the Department under paragraph (1) in respect of that street; or
- (b) otherwise than in conformity with a determination so given.]

(6) In this Article “outline planning permission” has the same meaning as in the <sup>F9</sup>Planning Act].

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| <b>F6</b> | Words in art. 3(1) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by <a href="#">Planning Act (Northern-Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 26(a)</a> (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) |
| <b>F7</b> | <a href="#">1992 NI 19</a>  |
| <b>F8</b> | <a href="#">1993 NI 15</a>  |
| <b>F9</b> | Words in art. 3(6) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by <a href="#">Planning Act (Northern-Ireland) 2011 (c. 25), s. 254(1)(2), Sch. 6 para. 26(b)</a> (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) |

### Application of the Planning Order

4.—(1) Subject to the provisions of this Order, functions exercisable in relation to development under the <sup>F10</sup>Planning Act] shall be deemed to include street planning functions and an application for planning permission under <sup>F11</sup>that Act] shall be deemed to include an application for the determination by the Department of any matters set out in Article 3(1) which appear to the Department to require to be determined in accordance with the application for planning permission.

(2) The <sup>F12</sup>Planning Act] shall apply to the exercise of street planning functions in like manner as it applies to the exercise of functions in relation to development.

(3) Without prejudice to the generality of <sup>F13</sup>section 58 of the Planning Act], an applicant for permission for the development of any land may appeal under <sup>F14</sup>that section] against the refusal of the Department to dispense with or relax as respects that land any standards prescribed in regulations made under Article 3(3) which it is empowered by those regulations to dispense with or relax.

(4) For the purposes of <sup>F15</sup>Part 5 of the Planning Act], failure to provide a street for which planning permission has been granted either under the Planning Act (Northern Ireland) 1944 <sup>F16</sup>or the Planning Act] shall be deemed to be a breach of planning control and the powers exercisable by the Department under that Part shall include power to provide that street.

- F10** Words in art. 4(1) 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. 27\(a\)](#) (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)
- F11** Words in art. 4(1) 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. 27\(b\)](#) (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)
- F12** Words in art. 4(2) 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. 28](#) (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)
- F13** Words in art. 4(3) 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. 29\(a\)](#) (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)
- F14** Words in art. 4(3) 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. 29\(b\)](#) (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)
- F15** Words in art. 4(4) 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. 30\(a\)](#) (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)
- F16** Words in art. 4(4) 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. 30\(b\)](#) (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)

## Standards for construction of streets

- 5.—(1) The Department may, by regulations which shall be subject to affirmative resolution—
- (a) prescribe standards in relation to any matter (other than a matter in relation to which regulations may be made under Article 3(3)) in connection with or affecting the construction of streets;
  - (b) draw up and include in the regulations such detailed requirements as may be necessary in relation to all or any of the matters for which regulations may be made under this paragraph;
  - (c) provide for the determination of any question arising under the regulations between the Department and the person by or on whose behalf plans are deposited;
  - (d) provide for the giving of notices and the deposit of plans;
  - (e) provide for the inspection of work and for the carrying out of such investigations and tests and the taking of such samples as are necessary to ensure that the work is in conformity with the regulations;
  - (f) provide for the removal or alteration of work not in conformity with the regulations;
  - (g) provide that no work shall be commenced on matters to which regulations under this paragraph apply until any question arising under the regulations has been determined or any plans required to be deposited have been approved by the Department;
  - (h) provide for the [F17 bearing of any expenses] in connection with—
    - (i) the carrying out of [F17 inspections,] investigations and tests and the taking of samples for the purposes of regulations made under sub-paragraph ( e ), and
    - (ii) the removal or alteration of work for the purposes of regulations made under sub-paragraph ( f ).
- (2) Regulations made under paragraph (1) may empower the Department to dispense with or relax any of the requirements of the regulations in respect of such matters as may be specified

in the regulations and may include such supplemental and incidental provisions as appear to the Department to be expedient.

(3) Any person who contravenes regulations made under paragraph (1) shall be liable on summary conviction to a fine not exceeding £500 and to a further fine not exceeding £50 for each day during which the offence continues after conviction therefor.

F17 1992 NI 19
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### **Appeal against refusal to relax regulations made under Article 5**

6.—(1) Where application is made to the Department to dispense with or relax any requirement of regulations made under Article 5(1) which it is empowered by those regulations to dispense with or relax and it appears to the Department that the application should be refused, the Department shall, within a period of 28 days from the day on which such application is made, issue notice to that effect to the applicant giving such reasons as it considers appropriate.

(2) Before determining an application under this Article, the Department shall, if it sees fit, or if the applicant so requests within a period of 28 days from the day on which he receives such notice, afford to the applicant an opportunity of appearing before and being heard by a person appointed for that purpose by the Planning Appeals Commission and considered by it to be qualified in that behalf.

(3) Where a hearing is held under paragraph (2), the Department shall consider any recommendations made by the person appointed under that paragraph.

## **PART III**

### **ADOPTION OF PRIVATE STREETS AS PUBLIC ROADS**

#### **Adoption of streets dealt with under Article 3**

7.—(1) A street or part of a street in respect of which the Department has exercised street planning functions, shall not be adopted as a public road unless the street comprises land which the Department, in exercise of its street planning functions, has determined shall be regarded as being comprised in the street for the purposes of this Part and—

- (a) the aggregate length of the frontages of the completed buildings on both sides of the street constitutes at least one-half of that of all the frontages on both sides thereof, and the street or part of a street is joined to a street which is a public road or is likely to become a public road within a reasonable time; or
  - (b) the Department has issued a notice under Article 11 requiring the execution of all works which are reasonably necessary to bring the street into conformity with regulations made under Article 5(1); or
  - (c) the street has been provided in accordance with an agreement under Article 32.
- (2) [<sup>F18</sup>Subject to paragraph (2A),] where the Department is satisfied that—
- (a) a street has been provided in conformity with a determination under Article 3(1);
  - (b) the street, or part of the street, satisfies the conditions specified in paragraph (1)( a) or ( b); and
  - (c) all works which are reasonably necessary to bring the street into conformity with regulations made under Article 5(1) have been executed;

the Department may issue a preliminary certificate to that effect.

[<sup>F18</sup>(2A) Where a requirement mentioned in Article 3(4A) is attached to a determination given under Article 3(1) in respect of a street, the Department shall not issue a preliminary certificate under paragraph (2) unless the Department is satisfied that that requirement has been complied with.]

(3) Where the Department is satisfied that a street has been properly maintained during a period of one year from the date on which a preliminary certificate was issued in respect of it and that any defects occurring during that period have been made good, the Department may issue a certificate to that effect.

[<sup>F18</sup>(4) Where—

- (a) a preliminary certificate under paragraph (2) and a certificate under paragraph (3) have been issued in respect of a street; and
- (b) no application under paragraph (4A) has been received by the Department within the period of 28 days beginning on the date on which the certificate under paragraph (3) was issued,

the Department shall on the expiry of that period declare the street to be a public road and the street shall be a public road from the date of the declaration.

(4A) The person to whom a preliminary certificate under paragraph (2) and a certificate under paragraph (3) have been issued in respect of a street may, within the period mentioned in paragraph (4)(b), make application to the Department requesting that the Department should not declare the street to be a public road under this Article.

(4B) Subject to paragraphs (4D) to (4F), on an application made to it under paragraph (4A) in respect of a private street the Department may—

- (a) grant the request in the application and not make any declaration under this Article in respect of the street; or
- (b) refuse the request and declare the street to be a public road;

and the decision of the Department on any such application shall be final.

(4C) Where the Department declares a street to be a public road under paragraph (4B)(b) the street shall be a public road from the date of the declaration.

(4D) Where an application is made to the Department under paragraph (4A) in respect of a private street and the Department is of the opinion that the request in the application should not be granted the Department shall issue notice to that effect to the applicant giving such reasons as it considers appropriate.

(4E) Before determining an application under paragraph (4A), the Department may, or if the applicant so requests within 28 days from the date of the notice under paragraph (4D) shall, afford to him an opportunity of appearing before and being heard by a person appointed for that purpose by the Planning Appeals Commission and considered by it to be qualified in that behalf.

(4F) Where a hearing is held under paragraph (4E), the Department shall consider any recommendations made by the person appointed under that paragraph.]

(5) Where an application is made for a preliminary certificate under paragraph (2) or a certificate under paragraph (3) and the certificate is not issued within 28 days from the day on which that application was made, the certificate shall be deemed to have been refused on the day on which that period expires.

(6) An applicant for a preliminary certificate under paragraph (2) or a certificate under paragraph (3) which is refused or deemed to have been refused may, within the 28 days next following and after serving notice of appeal on the Department, appeal to a court of summary jurisdiction on the ground that the conditions for the issue of the certificate have been fulfilled.

(7) If, on an appeal under paragraph (6), the court is satisfied that such conditions have been fulfilled, it may direct the Department to issue the certificate.

(8) Subject to<sup>F19</sup> Article 11 of the Roads (Northern Ireland) Order 1993] (provisions as to extraordinary traffic) and any other statutory provision relating to liability for injury or damage to a public road, a person who has been issued with a preliminary certificate under paragraph (2) and with a certificate under paragraph (3) in respect of a street shall be free from all liability for any expenses<sup>F18</sup> incurred after the date of a declaration under paragraph (4) or (4B)(b)] in carrying out any street works in that street (other than works required to make good any damage caused by any subsequent act on his part of negligence or malfeasance).

**F18** 1992 NI 19

**F19** 1993 NI 15

### **Adoption of streets provided in accordance with an agreement under Article 32**

8.—<sup>F20</sup>(1)] Subject to<sup>F20</sup> paragraph (2) and] Article 7(1), where a street has been provided in accordance with an agreement under Article 32, the Department shall declare the street to be a public road and the street shall be a public road from the date of the declaration.

<sup>F20</sup>(2) Where a requirement mentioned in Article 3(4A) is attached to a determination given under Article 3(1) in respect of a street, the Department shall not declare the street to be a public road under paragraph (1) unless the Department is satisfied that that requirement has been complied with.]

**F20** 1992 NI 19

### **<sup>F21</sup>Adoption of streets on request of, or with consent of, owners or occupiers of adjoining land**

9.—(1) This Article shall not apply to any street in respect of which the Department has exercised street planning functions, unless the Department has granted the request in an application under Article 7(4A) in respect of the street.]

(2) Where with respect to a street or part of a street not being a public road—

- (a) the Department is of the opinion that the street should become a public road, and a majority of the owners or occupiers of the land in or adjoining such street consent thereto in writing; or
- (b) a majority of such owners or occupiers request in writing that the street should become a public road and the Department is of the opinion that the request should be granted;

then, if the Department is satisfied that the street is in all respects fit and proper to become a public road, the Department may declare the street to be a public road and the street shall be a public road from the date of the declaration.

(3) Where a street meets the conditions set out in paragraph (2)( a) or ( b) but the Department is not satisfied that the street is in all respects fit and proper to become a public road, the Department may, in exceptional circumstances of such a kind as it may determine, declare the street to be a public road, and the street shall be a public road from the date of the declaration.

(4) Where an application is made to the Department to declare a street to be a public road and the Department is of the opinion that the request should not be granted the Department shall issue notice to that effect to the applicant giving such reasons as it considers appropriate.

(5) Before determining an application under this Article, the Department may, or if the applicant so requests within 28 days from the date of the notice under paragraph (4) shall, afford to him an opportunity of appearing before and being heard by a person appointed for that purpose by the Planning Appeals Commission and considered by it to be qualified in that behalf.



(6) Where a hearing is held under paragraph (5), the Department shall consider any recommendations made by the person appointed under that paragraph.

(7) The decision of the Department on any such application shall be final.

**F21** 1992 NI 19

### **Vesting and control of drains**

**10.** A drain appertaining to a street, which—

- (a) becomes a public road after the coming into operation of this Order, or
- (b) which became a public road after 12th October 1964,

and is used solely for the purpose of draining streets shall, whether or not it forms part of the street, vest in and be under the control of the Department from the date on which that street becomes, or became, a public road.

### **[<sup>F22</sup>Vesting and control of lighting equipment**

**10A.** Any lamps, lamp posts, cables or other equipment installed for the purpose of providing a proper means for lighting a street which becomes a public road after the coming into operation of Article 3 of the Private Streets (Amendment) (Northern Ireland) Order 1992 shall, unless already so vested, vest in and be under the control of the Department from the date on which that street becomes a public road.]

**F22** 1992 NI 19

## **PART IV**

### **MAKING-UP OF PRIVATE STREETS**

#### **Notice requiring street works in private street**

**11.—**(1) Subject to paragraphs (2) and (3), where a private street is not, to the satisfaction of the Department, sewered, levelled, paved, channelled<sup>F23</sup>, made good and lighted,] the Department may, by notice in writing served on the person appearing to it to be the responsible person, require that person to execute within such time, not being less than 28 days, as may be specified in the notice, street works with respect to the street of such a nature as may be indicated therein.

(2) Where street works are required under paragraph (1) to be executed with respect to a part only of a street (not being a part extending for the whole of the length of the street), the requirement shall be made only of each person who is a responsible person in respect of street works in the length of the street which constitutes or comprises that part.

(3) Where, before 13th October 1964—

- (a) street works were executed under any statutory provision relating to private streets with respect to a part only of a private street, being a part extending for the whole of the length of the street, and
- (b) those works were executed only by, or at the expense only of, the owners or occupiers of the premises fronting one side of the street, and

- (c) the Department requires street works to be executed under paragraph (1) with respect to any part of the street extending for the whole of the length of the street, other than a part in which street works were previously executed as aforesaid,

then, notwithstanding anything in paragraph (2), the requirement shall not be made of the owners of premises fronting that part of the street on which street works were previously carried out.

(4) The Department may include in street works to be executed under paragraph (1) any works which it thinks necessary for bringing the street as regards sewerage, drainage, level,<sup>[F23 lighting]</sup> or other matters into conformity with other streets, whether maintainable at the public expense or not, including the provision of separate sewers for the reception of sewage and of surface water respectively.

(5) The Department shall, in any notice under paragraph (1), inform the person to whom it is addressed of any right of appeal under Article 12 and of the time within which such appeal may be made.

(6) The Department may, by a further notice in writing served on the person on whom a notice is served under paragraph (1), withdraw a notice served under paragraph (1) or substitute other requirements for those contained in a notice previously so served and such further notice shall, for all the purposes of this Order, be deemed to be a notice served under paragraph (1).

**F23** 1992 NI 19

### **Appeal against notice under Article 11**

**12.** A person on whom a notice is served under Article 11 may, within a period of 28 days from the day on which the notice is served on him and after serving notice of the appeal on the Department, appeal to a court of summary jurisdiction on either or both of the following grounds—

- (a) that he is not the responsible person;
- (b) that the street is not a private street.

### **Power of Department to execute street works**

**13.—(1)** Subject to paragraph (2), if a requirement under Article 11 is not complied with within the time specified in the notice containing that requirement, the Department may execute the street works indicated in the notice and, subject to the following provisions of this Part, may recover in accordance with the provisions of Article 15 from each responsible person in default such part of the expenses of the street works (including a charge in respect of surveys, superintendence and notices<sup>F24</sup> . . . ) as may be apportioned to him in accordance with Article 14.

(2) Where an appeal has been made under Article 12, the notice served under Article 11 shall be suspended until the appeal is finally determined or abandoned and where the appeal is disallowed or abandoned the time specified in that notice shall be reckoned from the date on which the appeal is so determined or abandoned, as the case may be.

(3) Where the Department executes street works under paragraph (1), the street shall be declared by the Department to be a public road and the street shall be a public road from the date of completion of the works.

**F24** 1992 NI 19

### **Apportionment of expenses**

14.—(1) Subject to the following provisions of this Article, the expenses recoverable by the Department under this Order in respect of street works in a private street shall be apportioned against each responsible person under an apportionment according to the frontage for which he is responsible, but in determining the liability of each responsible person regard shall be had to the amount and value of any work already done otherwise than by the Department.

(2) For the purposes of paragraph (1), the frontage for which a person is responsible is, subject to Article 24(12) and (13), the frontage on the part of the street in respect of which he has, or is deemed under Article 24(11) to have, paid or secured a sum under Article 24(1) or given an undertaking under Article 24(2) or in respect of which he has entered into an agreement under Article 32, or, where no such prior provision for street works has been made, the frontage of the premises of which he is the owner.

(3) Where—

- (a) the amount of the expenses apportioned under paragraph (1) in respect of any frontage is disproportionate to the benefit derived by the premises having that frontage; and
- (b) the street works to which those expenses relate are not street works in respect of which—
  - (i) a sum has been paid or secured under Article 24(1), or
  - (ii) an undertaking has been given under Article 24(2), or
  - (iii) an agreement has been entered into under Article 32,

the amount so apportioned shall be reduced by such amount as may appear equitable to the Department and the amount of any such reduction shall be borne by the Department.

(4) Where under paragraph (3), the Department reduces the expenses apportioned under paragraph (1) in respect of any frontage, the Department may recover from the responsible person in accordance with Article 15, in whole or in part, the amount of the reduction if at any time access should be opened to the street so as to increase the benefit of the street works to the premises having that frontage.

(5) The Department shall not be entitled to recover by virtue of paragraph (4) unless, at the time at which the reduction is made, it has served a notice on the responsible person indicating the circumstances in which such recovery may be made.

(6) Where the Department is satisfied that street works carried out by it under this Order in a private street will benefit premises not fronting the street, the Department may apportion against any frontage of those premises such proportion of the expenses incurred by the Department in carrying out those street works as it thinks equitable according to the benefit derived.

(7) Any sum apportioned under paragraph (6) shall be recoverable in accordance with Article 15 from the person or persons who would be the responsible persons if the street works were in respect of the street on which those premises have a frontage.

### **Recovery of expenses by the Department**

15.—(1) A demand in writing for any sum which is recoverable by the Department under any provision of this Order from any person in respect of the expenses of street works in a private street shall be served by the Department on that person or, where it is not possible for the demand to be so served, on any person appearing to the Department to be his agent or trustee.

(2) The Department shall, in any demand under paragraph (1), inform the person to whom it is addressed of his right of appeal under Article 16 and of the time within which such appeal may be made.

(3) Where a demand is served under paragraph (1) on an agent or trustee of the person from whom the expenses are recoverable, the expenses shall, subject to paragraphs (6) and (7), be recoverable from that agent or trustee.

(4) The sum specified in a demand served under paragraph (1), unless varied by the court on an appeal to it under Article 16 and, where the sum has been so varied, the sum which that court determines to be recoverable shall, together with interest thereon, be a civil debt due to the Department, and recoverable by it either summarily or in any court of competent jurisdiction.

(5) The interest under paragraph (4) shall be payable from the date which is one month from the date of service of the demand under paragraph (1) to the date of payment at such rate as, by virtue of a determination of the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962, is, on the date on which the said demand is served, in force for the purposes of expenses to which subsection (1)(b) of that section applies.

(6) Subject to paragraph (7), if a person from whom a sum is recoverable in accordance with this Article proves that he—

- (a) is liable only by reason of the fact that he is an agent or trustee for some other person; and
- (b) has not, and since the date on which he became liable has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department;

his liability shall be limited to the total amount of the money which he has, or since the said date has had, in his hands as aforesaid; but where the Department is or would be debarred by the foregoing provisions from recovering the whole of any such sum from an agent or trustee, it may recover the whole or any unpaid balance thereof from the person for whom he is agent or trustee.

(7) Where, in proceedings brought under paragraph (4) against any person, the court is satisfied that that person is liable only by reason of the fact that he is an agent or trustee, the court may, without prejudice to its power to make an order for the payment of the amount to which his liability is limited under paragraph (6), make an order against him directing the payment by him to the Department of such amount as the court thinks proper out of money to be received by him as such agent or trustee.

(8) The time within which summary proceedings may be taken for the recovery of any sum, which the Department is entitled to recover under this Order, shall be reckoned from the date of the service of a demand therefor; but where the sum is recoverable in a case in which an appeal has been made under Article 16, the said time shall be reckoned from the date on which the appeal is finally determined or abandoned as the case may be.

(9) Any proceedings commenced under paragraph (4) for the recovery of a sum specified in a demand served under paragraph (1) shall, on the service on the Department of notice of an appeal under Article 16 against that demand, be stayed until the appeal is finally determined or abandoned.

(10) Subject to paragraphs (11) and (12), any expenses recoverable in respect of any frontage by the Department in accordance with this Article shall, until recovered, be deemed to be charged on and payable out of the estate, in the premises having that frontage, of—

- (a) the responsible person or other person liable under this Order for those expenses; and
- (b) any person deriving title from him;

so however that, where a person is the responsible person or the person otherwise liable as aforesaid by reason of the fact that he is an agent or trustee for another person, those expenses shall be a charge on the estate in the premises of the person for whom he is agent or trustee.

(11) Subject to paragraph (12), the charge created by paragraph (10) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate that charge has been created (with, where necessary, any concurrence or consent required by law) for the amount of the expenses referred to in that paragraph on—

- (a) the date of the undertaking under Article 24(1) or, as the case may be, of the undertaking under Article 24(2) or of the agreement under Article 32; and
- (b) in every other case, the date of the completion of the street works;

and for the recovery thereof the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed.

(12) Notwithstanding anything in this Order or in Part X of the Land Registration Act (Northern Ireland) 1970 a charge created on an estate in any premises by any provision of this Order shall not be enforced against, or against the estate of, the owner of those premises unless he is the responsible person or a person otherwise liable under this Order for the expenses referred to in paragraph (10).

### **Appeals regarding street works expenses**

**16.**—(1) Subject to the provisions of this Article, a person from whom the Department proposes to recover under this Part any expenses incurred by it in executing street works may, within 28 days from the date on which a demand for the payment of the expenses or any part thereof was first served on him under Article 15 and after serving notice of the appeal on the Department, appeal to court of summary jurisdiction on all or any of the following grounds, namely:—

- (a) that he is not the responsible person or, as the case may be, the person liable under the provisions of this Order;
- (b) that the street is not a private street;
- (c) that the works carried out are insufficient or unreasonable;
- (d) that the expenses are excessive;
- (e) that the amount charged should be reduced under Article 14(3) on the ground that it is disproportionate to the benefit derived from the execution of the street works;
- (f) that the expenses of the street works have not been apportioned in accordance with the provisions of this Order.

(2) On an appeal under paragraph (1), no question may be raised by any person which might have been raised by that person on an appeal under any other provision of this Order.

### **Liability where transferor has taken responsibility for expenses of street works**

**17.**—(1) Where it is shown to the satisfaction of the Department, whether before or after the service of a demand for the payment of the expenses incurred by the Department in executing street works in a private street, that premises having a frontage in respect of which the street works have been executed have been transferred to the responsible person upon terms which included a provision to the effect that the transferor shall pay or procure the payment of such expenses, the Department may treat the transferor as the responsible person and may recover the expenses of the street works from him in accordance with Article 15.

(2) Any expenses recovered from the transferor under paragraph (1) shall be deemed to have been paid by the responsible person but, except to that extent, the liability of the responsible person for the expenses of the street works shall remain unaffected.

### **Evasion of street works expenses**

**18.** Where the Department—

- (a) is empowered under this Order to recover the expenses of street works from any person; and
- (b) is unable by the exercise of its powers (other than powers conferred by this Article) to recover that sum,

then if a court of summary jurisdiction is satisfied, upon application made to it by the Department, that the premises having a frontage in respect of which those street works were executed were previously transferred for the purpose of evading the payment of those expenses, the court may make an order under this Article providing that, to such extent as the court making the order may determine, the Department may recover the expenses.

### **Street works executed in the course of other works by the Department**

**19.**—(1) Where, in order to make a street conform to the requirements for it to be declared to be a public road under Article 9, works are required which include works other than street works and—

- (a) the street is declared to be a public road under Article 9; and
- (b) works (including street works) are carried out by the Department as soon as possible thereafter;

then, notwithstanding anything to the contrary in any statutory provision, the declaration of the street to be a public road and the carrying out of works as aforesaid shall not relieve any person of liability for the expenses of any street works included in such works, and the amount of that liability shall not be greater or less than it would have been if works other than street works had not been carried out.

(2) Notwithstanding that a notice has not been served under Article 11, any street works which are included in works carried out by the Department as aforesaid but in respect of which a notice could have been served by the Department under that Article shall be deemed to be street works carried out by the Department, and the expenses of those street works shall be deemed to be expenses incurred by the Department under Article 13 and shall be recoverable accordingly.

### **Payment of expenses by instalments**

**20.**—(1) Without prejudice to any other power exercisable by it under this Order, the Department may enter into an agreement with any responsible person or any other person liable for expenses under this Order that, subject to such conditions as the Department may specify, any expenses recoverable by it under this Order shall be repaid with interest within a period not exceeding 30 years either by means of instalments of principal, together with interest on the balance of the principal from time to time outstanding, or by means of an annuity of principal and interest combined and any such instalment or annuity, or any part thereof, may be recovered in accordance with Article 15 from the responsible person or that other person.

(2) The interest chargeable under paragraph (1) shall be at such rate as, by virtue of a determination of the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962, is, on the date on which the demand for the expenses is served, in force for the purposes of expenses to which subsection (1)(b) of that section applies.

### **Department's duty to exercise its powers**

**21.**—(1) Where, in respect of a private street on which a building to which Article 24(1) applies has a frontage, all such street works as are required for the issue by the Department of a preliminary certificate in respect of that street under Article 7(2) have not been carried out to the satisfaction of the Department within one year from the date on which the building is first occupied or such longer period as the Department thinks reasonable, the Department shall exercise in relation to that street the powers conferred on it by Articles 11 and 13.

(2) Where—

- (a) a sum has been paid or secured under Article 24(1) in respect of street works in a private street; and

- (b) the aggregate length of the frontages of the completed buildings on both sides of the street constitutes at least one-half of that of all the frontages on both sides thereof and, in the case of part of a street, that part is not less than 100 metres in length and is joined to a street which is a public road or is likely to become a public road within a reasonable time; and
- (c) the majority in number of the owners of the premises having a frontage on the street or as many of them as have between them more than half the aggregate length of all the frontages on both sides of the street by notice so request;

the Department shall exercise in relation to that street the powers conferred on it by Articles 11 and 13.

(3) This Article shall not apply to a street in respect of which an agreement has been entered into under Article 32.

### **Urgent repairs**

**22.**—(1) The Department may, on giving at least 48 hours' notice to the person who appears to it to be the responsible person, carry out such repairs in a private street as are in its opinion urgently required to prevent or remove danger to persons or vehicles in the street.

(2) Any expenses incurred under paragraph (1) shall be deemed to be expenses incurred by the Department under Article 13 and shall be recoverable accordingly.

(3) The provisions of this Article shall be without prejudice to Articles 11 and 13.

### **Contribution by the Department to expenses of street works**

**23.**—(1) The Department may in such circumstances as it considers proper bear the whole or a portion of the expenses of any street works in a private street, and the liabilities of the responsible persons in respect of those expenses shall be treated as discharged, or as proportionately reduced, accordingly.

(2) Paragraph (1) shall not apply to streets not designed for use by vehicular traffic or which are intended only to provide access to the rear of premises.

## **PART V**

### **PRIOR PROVISION FOR EXPENSES OF STREET WORKS IN PRIVATE STREETS**

#### **Prior provision to be made to meet street works expenses**

**24.**—(1) Where—

- (a) it is proposed to erect a building for which plans were prior to 1st October 1973 required to be deposited with a sanitary authority or are required in accordance with building regulations to be deposited with a district council; and
- (b) the building will have a frontage on a private street;

no work shall be done in or for the purpose of erecting the building until the Department has served a notice under<sup>F25</sup> Article 25(2)] specifying the sum which is to be paid or secured under this paragraph, and a person having an estate in the land on which the building is to be erected—

- (i) has paid to the Department or secured to the satisfaction of the Department the payment to it, of that sum or such lesser sum as may be substituted by the court on an appeal to it under Article 26, and

(ii) has entered into an agreement under seal with the Department undertaking for himself and his successors in title to pay such further sum, if any, as may be recoverable in respect of the cost of street works.

(2) Where the Department by notice under paragraph (8)(e), (f), (g) or (h) exempts a building from the provisions of paragraph (1), no work shall be done in or for the purpose of erecting the building until a person having an estate in the land has entered into an agreement under seal with the Department undertaking, for himself and his successors in title, liability for such street works as may be indicated in the agreement.

(3) Subject to paragraphs (4), (5), (6) and (7), if work is done in contravention of paragraph (1) or (2), the owner of the land on which the building is to be erected and, if he is a different person, the person undertaking the erection of the building shall be liable on summary conviction to a fine not exceeding £500 and any further contravention in respect of the same building shall constitute a new offence and may be punished accordingly.

(4) Where an owner of any land has agreed to transfer or has transferred the land upon terms which include a provision to the effect that he shall pay or procure payment of the expenses of any street works—

- (a) that owner shall be the person responsible for paying or securing the sum and giving the undertaking under paragraph (1), or, as the case may be, giving the undertaking under paragraph (2), and
- (b) for the purposes of paragraph (3) that owner shall, and the transferee shall not, unless he is also the person undertaking the erection of the building, be guilty of an offence if work is done in contravention of paragraph (1) or (2) in or for the purpose of erecting a building on the land.

(5) Where the person undertaking the erection of the building, not being the owner of the land on which it is to be erected, is charged with an offence under paragraph (3), it shall be a defence for him to prove that he had reasonable grounds for believing that a sum had been paid or secured and an undertaking given in accordance with paragraph (1) or, as the case may be, that an undertaking had been given in accordance with paragraph (2).

(6) For the purposes of paragraph (5), where the person who is responsible under paragraph (4) for paying or securing the sum under paragraph (1) or giving the undertaking under paragraph (2) has been served with a notice stating the date, not being less than 2 months from the date of the service of the notice, on which work will commence in or for the purpose of erecting the building to which the notice relates, the person undertaking the erection of the building shall, from the date stated in that notice, be deemed to have reasonable grounds for believing that the sum has been secured or the undertaking given.

(7) Proceedings under paragraph (3) shall not be taken by any person other than the Department or a person acting on behalf of, or with the consent of, the Director of Public Prosecutions.

(8) Paragraph (1) shall not apply where—

- (a) the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building; or
- (b) it is proposed to erect the building in accordance with planning permission granted under the [F26Planning Act] on land belonging to a public body; or
- (c) the frontage of the building is one in respect of which a sum or security previously paid or given under paragraph (1) is held by the Department or in respect of which an undertaking has been given under paragraph (2); or
- (d) an agreement has been entered into with any person by the Department under Article 32 providing for the carrying out at the expense of that person of street works in the whole



- of the street or a part of the street comprising the whole of the part on which the frontage of the building will be; or
- (e) the Department, being satisfied that the street is not, and is not likely within a reasonable time to be, substantially built-up, by notice exempts the building from paragraph (1); or
- (f) the Department, being satisfied—
- (i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises; and
  - (ii) that its powers under this Order are not likely to be exercised in relation to the street, or that part thereof, as the case may be, within a reasonable time;
- by notice exempts the street or that part thereof from paragraph (1); or
- (g) the Department, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a public road, by notice exempts the building from the provisions of paragraph (1); or
- (h) the Department, being satisfied that the street was on 13th October 1964 substantially built-up, by notice exempts the building from the provisions of paragraph (1).
- (9) Where a sum has been paid or secured under this Article in relation to a building proposed to be erected, and thereafter the Department by notice under paragraph (8) exempts the building from the provisions of paragraph (1), the Department shall, when an undertaking has been given under paragraph (2), deal with the sum in accordance with Article 30.
- (10) The Department may at any time agree with the responsible person to accept any other security or the payment of a sum in substitution for any security held by it for the purposes of paragraph (1).
- (11) Where any person has ceased to be the responsible person in respect of any street works, any sum paid or secured by him under paragraph (1) or any undertaking given by him under paragraph (2) shall be deemed to have been paid or secured or, as the case may be, given by the person who has become the responsible person.
- (12) Where any land in respect of which a sum has been paid or secured under paragraph (1) is subsequently divided into two or more parts so that two or more persons become the responsible persons, that sum shall, for the purposes of this Order, be treated as apportioned between those persons according to the frontage of those parts and, for the purposes of the apportionment under Article 14(1) of the expenses in respect of which that sum has been paid or secured, the respective frontages of those parts shall be the frontages for which each of those persons is respectively responsible.
- (13) Where any land in respect of which an undertaking has been given under paragraph (2) is subsequently divided into two or more parts so that two or more persons become the responsible persons, then, for the purposes of the apportionment under Article 14(1) of the expenses in respect of which the undertaking has been given, the respective frontages of those parts shall be the frontages for which each of those persons is respectively responsible.
- (14) Any person who becomes or ceases to be the responsible person for any street works in respect of which a sum has been paid or secured under paragraph (1) or an undertaking has been given under paragraph (2) may give notice of that fact to the Department and the Department shall enter the notice in its records.

**F26** Words in art. 24(8)(b) 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. 31](#) (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](#))

### **Determination of amount of sum to be paid or secured under Article 24(1)**

**25.**—(1) Where, in accordance with building regulations, plans for a proposed building to which Article 24(1) applies have been deposited with a district council, the council shall notify the Department of the passing of the plans.

(2) Where—

- (a) a district council notifies the Department under paragraph (1), and
- (b) planning permission for the erection of the proposed building has been granted under the [<sup>F27</sup>Planning Act],

the Department shall serve a notice on the person by whom or on whose behalf the plans have been deposited specifying the sum to be paid or secured under Article 24(1).

(3) Where works for the erection of the proposed building have not been commenced within one year from the date of service of a notice under paragraph (2) or under this paragraph, the Department may serve a notice or, as the case may be, a further notice specifying a revised sum to be paid or secured under Article 24(1).

(4) Subject to paragraph (5), the sum to be specified in a notice served under paragraph (2) or (3) shall be such sum as, in the opinion of the Department, would be recoverable by it under this Order if the Department were then to carry out under Article 13 all street works which are reasonably necessary for the completion, to the standard required for its adoption as a public road, of—

- (a) the whole of the part of the street on which the frontage of the proposed building would be; and
- (b) that street or any other street in order that the said part may be joined to a public road or to a road which is likely to become a public road within a reasonable time;

but where, in respect of any part of those street works, a sum or security previously paid or given under Article 24(1) is held by the Department or an undertaking has been given under Article 24(2) or an agreement has been entered into under Article 32, no sum shall be specified in respect of that part.

(5) Where in the opinion of the Department it would be inequitable, in a notice served under paragraph (2) or (3), to specify a sum in respect of the whole area permitted by paragraph (4), the Department may specify a sum in respect of such lesser area as it may consider equitable.

(6) Subject to paragraph (7), if, at any time after the service of a notice under paragraph (2) or (3), the Department considers that the sum specified in the notice exceeds such sum as in its opinion would be recoverable as mentioned in paragraph (4) if the Department were then to carry out such street works as are so mentioned, or that no sum would be so recoverable, it may, by a further notice, substitute a smaller sum for the sum specified in the notice served under paragraph (2) or (3) or, as the case may be, intimate that no sum falls to be paid or secured.

(7) Paragraph (6) shall not apply where the sum specified in a notice served under paragraph (2) or (3) has been paid or secured and the case is one in which the Department has power to make a refund or release under Article 28.

(8) Where the sum specified in a notice served under paragraph (2) or (3) has been paid or secured and a notice is subsequently served under paragraph (6) substituting a smaller sum for the sum so specified or intimating that no sum falls to be paid or secured, the Department shall deal with the excess or, as the case may be, the whole sum in accordance with Article 30.

(9) The Department shall, in any notice served under this Article, other than a notice intimating that no sum falls to be paid or secured, inform the person to whom it is addressed of the right of appeal under Article 26 and of the time within which such an appeal may be made.

**F27** Words in art. 25(2)(b) 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. 32](#) (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)

### **Appeal against notice served under Article 25**

**26.** Where a notice has been served on any person under Article 25 other than a notice intimating that no sum falls to be paid or secured, that person or any other person having an estate in the land on which work in or for the purpose of erecting the building is to be done may, within 28 days from the date of the service of the notice and after serving notice of the appeal on the Department, appeal to a court of summary jurisdiction on all or any of the following grounds, that is to say—

- (a) that the street is not a private street;
- (b) that the building is exempt under Article 24(8) or that a notice under Article 24(8)( e), ( f), ( g) or ( h) has been unreasonably withheld by the Department;
- (c) that, in respect of the area for which a sum is specified in the notice served under Article 25, a smaller sum should be substituted for the sum so specified.

### **Position where plans not proceeded with**

**27.—(1)** Where, at any time after a notice has been served under Article 25 or an undertaking has been given under Article 24(2)—

- (a) a district council declares under Article 12(5) of the Building Regulations (Northern Ireland) Order 1972 that the deposit of the plans in respect of the building shall be of no effect; or
- (b) before any work is done in or for the purpose of erecting the building, the person by or on whose behalf the plans in respect of the building were deposited gives notice in writing to the Department that it is not intended to proceed with the building;

the said notice under Article 25 and any payment made or security given in accordance therewith, or any undertaking given under Article 24(2), shall, unless street works in respect of which the responsible person is liable have already been carried out or commenced in the street, be of no effect for the purposes of this Part.

(2) Where under paragraph (1) a notice served under Article 25 is of no effect and a sum has been paid or secured in accordance therewith, that sum shall be dealt with in accordance with Article 30.

(3) Where the Department is notified in accordance with paragraph (1)( b) that it is not intended to proceed with the building and by reason thereof a notice under Article 25 is of no effect, and subsequently a person gives notice to the Department that he intends to proceed with the building in accordance with the plans as originally deposited, the notice to be served under Article 25(2) shall be served on that person and Article 25 shall have effect accordingly.

(4) Where part of a sum paid or secured under Article 24(1) has, under Article 25(8) or Article 28, been dealt with in accordance with Article 30, this Article shall have effect as if for references therein to a sum paid or secured there were substituted a reference to any part of that sum retained by the Department or remaining secured.

### **Work done otherwise than at the expense of the Department**

**28.** Where any street works in respect of which a sum has been paid or secured under Article 24(1) have been carried out to the satisfaction of, but otherwise than at the expense of the Department, the Department—

- (a) shall retain in its possession such part of the sum paid or secured as, in its opinion, would be sufficient to meet the cost of any such street works which have not been carried out and, subject to Article 29, shall in any event retain at least ten per cent. of the sum paid or secured; and
- (b) may deal, in accordance with Article 30, with the residue of the sum paid or secured.

### **Sums paid or secured to be in discharge of further liability for street works**

**29.**—(1) Where a sum has been paid or secured under Article 24(1) in respect of the cost of street works, the liability of the responsible person shall, in respect of the carrying out of those street works under this Order or under any other statutory provision, be deemed to be discharged to the extent of the sum so paid or secured and, where the liability of the responsible person in respect of the carrying out of those street works exceeds that sum, the Department may recover the amount of the excess in accordance with Article 15.

(2) Where a sum has been paid or secured under Article 24(1) in respect of the cost of street works and, when the street is declared to be a public road,—

- (a) the said sum is found to exceed the liability of the responsible person in respect of the carrying out of those street works, the amount whereby that sum exceeds that liability; or
- (b) there is no liability because the street works were not carried out by the Department, the said sum;

shall be dealt with in accordance with Article 30.

(3) Where part of a sum paid or secured under Article 24(1) has, under Article 25(8) or 28, been dealt with in accordance with Article 30, this Article shall have effect as if for references therein to a sum paid or secured there were substituted a reference to any part of that sum retained by the Department or remaining secured.

### **Refunds of sums paid or secured under Article 24(1)**

**30.**—(1) Where under this Part a sum paid or secured under Article 24(1) or any part thereof is or is to be dealt with in accordance with this Article, then, subject to this Article,—

- (a) if the sum was paid, the Department shall refund that sum or, as the case may be, that part to the responsible person;
- (b) if the sum was secured and the person whose property is security for the payment thereof is the responsible person, the Department shall acknowledge that the security is released to the extent of that sum or, as the case may be, that part;
- (c) if the sum was secured and the person whose property is security for the payment thereof is not the responsible person, the Department shall be entitled to realise the security and pay to the responsible person—
  - (i) an amount equal to that sum or, as the case may be, that part; or
  - (ii) any amount produced by realising the security;
 whichever is the less.

(2) Where any land in respect of which a sum has been secured under Article 24(1) is subsequently divided into two or more parts so that two or more persons become the responsible persons and the security is the property of one only of those persons, the Department shall only be required under

paragraph (1)( *b*) to release the security to the extent of the amount apportioned under Article 24(12) to that person and shall be entitled to realise the security for the purpose of producing the amount or amounts to be paid to the other person or persons under paragraph (1)( *c*).

(3) Where a security is realised under paragraph (1)( *c*), and the sum produced by realising the security exceeds the amount paid under that paragraph, the amount of the excess shall be held by the Department and dealt with under this Part as if it had been an amount paid under Article 24(1) on the date on which the security was realised.

### **Interest on sums paid under Article 24(1)**

**31.**—(1) Subject to paragraph (2), any sum paid to the Department under Article 24(1) shall, in so far as it continues to be held by the Department, carry simple interest at the appropriate rate from the date of payment until such time as the sum or a part thereof remaining so held—

- (a) falls to be set off under Article 29 against the liability of the responsible person in respect of the carrying out of street works; or
- (b) falls to be refunded in full under the provisions of this Order;

and the interest shall be held by the Department until that time and dealt with under those provisions as if it formed part of the said sum.

(2) Paragraph (1) shall not apply to any sum in so far as it is repaid under an agreement entered into under Article 32.

(3) In this Article “the appropriate rate” means such rate as is determined by the Department of Finance under section 5 of the Public Health and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1962 for the purposes of expenses to which subsection (1)( *b*) of that section applies; and for the purposes of this Article interest on any sum held by the Department shall be calculated in respect of each financial year during which it accrues at the appropriate rate prevailing at the commencement of that financial year.

### **Agreement for carrying out street works in private street**

**32.**—(1) The Department may enter into an agreement under seal with any person—

- (a) for the carrying out at the expense of that person of street works in a private street; and
- (b) for the issue of a certificate by the Department when the street works have been completed in accordance with the agreement and the terms and conditions of the agreement have been duly complied with.

(2) An agreement under this Article shall contain such provisions as to the construction of the street, as to the period during which the person with whom the agreement has been entered into shall be responsible for the maintenance of the street, and as to such other relevant matters as the Department thinks fit.

(3) Where an agreement under paragraph (1) relates to street works in respect of which a sum has previously been paid or secured under Article 24(1) the agreement may also provide for the refund of that sum or a part thereof either without interest or with interest at such rate as may be specified in the agreement or, where the sum has been secured, for the release of the whole or a part of the security.

(4) The person with whom the Department enters into an agreement under this Article shall secure the due performance of the agreement by means of a guarantee bond or by any other means acceptable to the Department.

(5) A certificate issued by the Department under paragraph (1)( *b*) shall be conclusive for all the purposes of this Order that the street has been provided in accordance with the agreement.

### Security not to be deemed prior mortgage under Building Societies Acts

33. Where the security given under Article 24(1) consists of a mortgage of or charge on land, that mortgage or charge shall be deemed not to be a prior mortgage for the purposes of<sup>F28</sup> section 11(2)(d) or (4)(d) of the Building Societies Act 1986].

**F28** 1986 c. 53

## PART VI MISCELLANEOUS

### Registration in Statutory Charges Register

<sup>F29</sup>Para. (1)] inserts para.18A in sch.11 to 1970 c.18 (NI)

<sup>F29</sup>(2) Before giving an undertaking under Article 24(1) or (2) or entering into an agreement under Article 32, a person shall pay to the Department an amount equal to the fee payable by the Department on, or in connection with, the registration in the Statutory Charges Register of that undertaking or agreement.

(3) Any fee paid by the Department on, or in connection with, the registration in the Statutory Charges Register of any matter under this Order relating to street works (other than those mentioned in paragraph (2)) shall be recoverable by the Department summarily as a civil debt from the responsible person.]

**F29** 1992 NI 19

### Power to enter premises, etc.

35.—(1) Subject to paragraph (2), an officer authorised by the Department to carry out functions under this Order may at any reasonable time enter, examine and lay open premises for the purpose of surveying, making plans, executing, maintaining or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries.

- (2) A person authorised under paragraph (1) to enter upon any premises—
- (a) shall, if so required, produce evidence of his authority before entering;
  - (b) shall not demand admission as of right to any premises which are occupied unless 7 days' notice of the intended entry has been given to the occupier.
- (3) If it is shown to the satisfaction of a justice of the peace on a sworn complaint in writing—
- (a) that admission to the premises, which any person is entitled to enter by virtue of this Article, has been refused to that person, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency; and
  - (b) that there are reasonable grounds for entry to the premises for any of the purposes mentioned in paragraph (1),

the justice may by warrant under his hand authorise that person to enter the premises if need be by force.

- (4) Where—

- (a) in the exercise of an authorisation given under paragraph (1) any damage is caused to premises or chattels, any person interested in the premises or chattels may recover compensation from the Department in respect of that damage;
  - (b) in consequence of the exercise of any such authorisation any person is disturbed in his enjoyment of premises or chattels, he may recover compensation from the Department in respect of that disturbance.
- (5) Any question of disputed compensation recoverable under paragraph (4) shall be determined by the Lands Tribunal.
- (6) Where work has been carried out on premises in pursuance of this Article, the Department shall reinstate the premises as soon as possible.
- (7) The Department may, for the purpose of enabling it to carry out any of its functions under this Order, by notice in writing require the occupier of any premises and any person who, either directly or indirectly receives rent in respect of any premises, to state in writing the nature of his own interest therein and the name and address of any other person known to him as having an interest therein, whether as freeholder, mortgagee, lessee or otherwise.
- (8) Anyone who—
- (a) obstructs any authorised person in the performance of anything which that person is required or authorised to do under this Article or by a warrant issued under paragraph (3); or
  - (b) without reasonable excuse fails to give or knowingly mis-states any information required under paragraph (7);
- shall be liable on summary conviction to a fine not exceeding £200.

### **Meaning of “responsible person”**

**36.—**(1) Subject to paragraph (2), in this Order the expression “responsible person” means in relation to street works in any street—

- (a) where, with respect to the expenses of those street works, a sum has been paid or secured under Article 24(1) or an undertaking given under Article 24(2) or an agreement entered into under Article 32, the person who paid or secured the sum or gave the undertaking or between whom and the Department an agreement exists under Article 32;
  - (b) in every other case, the owner for the time being of the premises fronting the street.
- (2) Where a person who, by virtue of a sum paid or secured, or an undertaking given, as aforesaid, is the responsible person in relation to street works in a street—
- (a) has transferred his whole estate in all the premises having a frontage on that street, that person shall, subject to paragraph (3), cease to be, and the person to whom he has transferred that estate shall be, the responsible person for the purposes of this Order;
  - (b) has transferred his whole estate in a part of any such premises, the person to whom he has transferred that estate shall also be a responsible person for the purposes of this Order.
- (3) Notwithstanding anything in paragraph (2), the transfer of any estate in premises shall not affect any security previously given under this Order but every such security shall remain in all respects as fully enforceable as if that transfer had not been made, and for the enforcement thereof the Department may exercise the like remedies against the transferor as if the transferor had remained the responsible person within the meaning of this Article.

### Notices and appeals

37.—(1) The Department may by regulations, which shall be subject to negative resolution, prescribe the form of any notice, order, advertisement, certificate or other document to be used for the purposes of this Order.

(2) Notice of an appeal served on the Department under Article 7(6), 12, 16(1) or 26 shall state the grounds of the appeal and the Department shall be entitled to appear and be heard on the appeal.

(3) Except as provided by<sup>F30</sup> Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981], the decision of the court on an appeal under Article 7(6), 12, 16(1) or 26 shall be final, and where the court allows the appeal in whole or in part, the court shall state the reasons for its decision.

F30 1981 NI 26

### Order to have effect notwithstanding provisions in local Acts, etc.

38. Nothing contained in any local or private Act shall operate to exempt any person from the performance of any duty or obligation imposed by any of the provisions of this Order or from any liability arising out of a contravention of a provision of this Order.

### Repeal and saving

*Para.(1) repeals 1964 c.27 (NI); s.11 of, and sch.2 to, 1966 c.36 (NI); revokes sch.(pt.) to SRO (NI) 1973/285.*

(2) Notwithstanding the repeal of the Private Streets Act (Northern Ireland) 1964 , the Department may carry out, with or without modifications or additions, or abandon proposals for the making up of private streets approved under section 10(6) of that Act, and in so doing the Department shall have regard to any changes of circumstances relevant to the proposal.



**Changes to legislation:**

There are currently no known outstanding effects for the Private Streets (Northern Ireland) Order 1980.