
STATUTORY INSTRUMENTS

2007 No. 287

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

Introductory

Title and commencement

1.—(1) This Order may be cited as the Street Works (Amendment) (Northern Ireland) Order 2007.

(2) This Article and Article 2 come into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days as the Department for Regional Development may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as the Department thinks appropriate.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order “the 1995 Order” means the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#).

Permit scheme

Permit scheme

3. In the 1995 Order after Article 12 there is inserted—

“Permit scheme

12A.—(1) The Department may by regulations make provision for, or in connection with, a scheme (a “permit scheme”) which is designed to control the carrying out of specified street works in specified streets.

(2) The permit scheme may (in particular) include provision—

- (a) for or in connection with requiring a permit to be obtained before specified street works are carried out (including provision as to the persons who are required to obtain permits),
- (b) for or in connection with the issue of permits (including provision with respect to applications for permits, provision for cases in which there is to be an entitlement to the issue of a permit and provision with respect to cases in which permits are to be deemed to be issued),
- (c) as to cases in which specified street works may be carried out without a permit,

- (d) for or in connection with the imposition of conditions which are to apply in relation to the carrying out of specified street works (including provision for or in connection with the attachment of such conditions to permits),
 - (e) for or in connection with the review or variation of permits or such conditions (including provision with respect to applications for such variations);
 - (f) disapplying or modifying statutory provisions to the extent specified.
- (3) Regulations under this Article may make provision—
- (a) as to the criteria to be taken into account in the case of decisions with respect to the issue, review or variation of permits or decisions with respect to the imposition, review or variation of conditions under the scheme,
 - (b) for or in connection with the determination, or facilitating the determination, of disputes (including provision with respect to the appointment of persons to determine, or facilitate the determination of, disputes),
 - (c) for or in connection with appeals to the planning appeals commission,
 - (d) as to the action which may be taken if works are carried out without a permit or if any conditions are not complied with,
 - (e) for or in connection with the creation, in prescribed cases (including prescribed cases where works are carried out without a permit or in breach of any conditions), of a criminal offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale,
 - (f) for or in connection with excluding or limiting the liability of prescribed undertakers in prescribed cases.
- (4) Regulations under this Article may make provision for or in connection with the giving of fixed penalty notices (including, in particular, provision applying Schedule 2A with or without modifications) in relation to any offence created by the regulations; and for this purpose “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence by payment of a penalty.
- (5) Regulations under this Article may make provision for or in connection with the payment of a fee in respect of any one or more of the following—
- (a) an application for a permit,
 - (b) the issue of a permit,
 - (c) an application for the variation of a permit or the conditions attached to a permit,
 - (d) the variation of a permit or the conditions attached to a permit.
- (6) Provision made under paragraph (5) may include provision as to—
- (a) the amount or maximum amount of any fee,
 - (b) cases in which fees are not to be payable or are to be repaid,
 - (c) cases in which fees may be discounted,
 - (d) the time and manner of making payment of fees,
 - (e) the application of sums paid by way of fees.
- (7) Regulations under this Article may make provision—
- (a) for or in connection with the creation and maintenance of a register of permits,
 - (b) with respect to access to information contained in any such register (including provision restricting such access).

(8) The first regulations under this Article may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(9) In this Article “specified” means specified, or of a description specified, in the permit scheme.”

Registers and records

The street works register

4.—(1) Article 13 of the 1995 Order (the street works register) is amended as follows.

(2) In paragraph (1)—

(a) after “respect to” (in the second place they appear) there is inserted “(a)”; and

(b) at the end there is added “; and

(b) such descriptions of—

(i) apparatus placed, or proposed to be placed, in the street,

(ii) builders' skips (within the meaning of Article 96 of the Roads Order), or of building materials, rubbish or other things deposited, or proposed to be deposited, in the street; or

(iii) scaffolding or other structures which are erected, or proposed to be erected, in the street,

as may be prescribed.”.

Duty to inspect records

5.—(1) After Article 13 of the 1995 Order (the street works register) there is inserted—

“Duty to inspect records

13A.—(1) The Department may make provision by regulations requiring an undertaker proposing to execute street works of a prescribed description to inspect prescribed statutory records before commencing the street works.

(2) The regulations may provide for the manner in which an inspection of any statutory records is to be carried out.

(3) The regulations may prescribe evidence which may be relied on by the undertaker to demonstrate that he has carried out an inspection required by the regulations.

(4) The regulations may in particular require the undertaker—

(a) to be in possession of prescribed evidence before commencing the street works; and

(b) to produce, in such manner as may be prescribed, prescribed evidence to the street authority either at the request of the authority or at or by such time as may be prescribed.

(5) The regulations may provide for the cases or circumstances in which a requirement under paragraph (1) or (4) does or does not apply.

(6) The regulations may create a summary offence, punishable with a fine not exceeding level 5 on the standard scale, in respect of any contravention by an undertaker of a requirement of the regulations.

(7) In this Article “statutory record” means any register or other record kept in pursuance of a requirement imposed by—

- (a) a statutory provision; or
- (b) a licence or other instrument having effect under or by virtue of a statutory provision.”.

Notice and co-ordination of works

Notices of street works

6.—(1) In Article 14 of the 1995 Order (advance notice of certain works)—

- (a) in paragraph (2) for “contain such” there is substituted “state the date on which it is proposed to begin the works and shall contain such other”;
- (b) after paragraph (3) there is inserted—

“(3A) If an undertaker who has given advance notice under this Article has not, before the starting date specified in the notice, given to the street authority a notice under Article 15 in respect of the works, he shall within such period as may be prescribed give to that authority a notice containing such information as may be prescribed.

(3B) An advance notice under this Article shall cease to have effect in relation to the proposed works (so that paragraph (1) applies again in relation to the works) if those works are not substantially begun before the end of such period beginning with the starting date specified in the notice as may be prescribed, or such further period as the street authority may allow.”.

(2) In Article 15 of that Order (notice of starting date of works) after paragraph (7) there is inserted—

“(8) If a notice under this Article ceases to have effect the undertaker shall, within such period as may be prescribed, give a notice containing such information as may be prescribed to those to whom the notice under this Article was required to be given.

(9) An undertaker who fails to give notice in accordance with paragraph (8) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(3) In Article 51 of that Order (works affecting level crossings or tramways) in paragraph (2) for “(7)” there is substituted “(9)”.

Directions relating to timing of street works

7.—(1) Article 16 of the 1995 Order (power to give directions as to timing of street works) is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (b), after “at certain times” there is inserted “or on certain days (or at certain times on certain days)”;
- (b) after “the times” there is inserted “or days (or both)”.

(3) After paragraph (1) there is inserted—

“(1A) Where it appears to a street authority—

- (a) that subsisting street works are causing or are likely to cause serious disruption to traffic, and
- (b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),

the authority may give the undertaker such directions as may be appropriate as to the times or days (or both) when the works may or may not continue to be carried out.”.

(4) After paragraph (3) there is inserted—

“(3A) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a direction under this Article.”.

Directions as to placing of apparatus

8. In the 1995 Order, after Article 16 there is inserted—

“Power to give directions as to placing of apparatus

16A.—(1) Where—

- (a) an undertaker is proposing to execute street works consisting of the placing of apparatus in a street (“street A”),
- (b) placing the apparatus in street A is likely to cause disruption to traffic, and
- (c) it appears to the street authority that—
 - (i) there is another street (“street B”) in which the apparatus could be placed, and
 - (ii) the conditions in paragraph (2) are satisfied,

the authority may by direction require the undertaker not to place the apparatus in street A (but may not require him to place the apparatus in street B).

(2) The conditions referred to in paragraph (1)(c) are that—

- (a) disruption to traffic would be avoided or reduced if the apparatus were to be placed in street B;
- (b) placing the apparatus in street B would be a reasonable way of achieving the purpose for which the apparatus is to be placed; and
- (c) it is reasonable to require the undertaker not to place the apparatus in street A.

(3) A direction under this Article may be varied or revoked by a further such direction.

(4) The procedure for giving a direction under this Article shall be prescribed.

(5) The Department may by regulations make provision for or in connection with appeals to the planning appeals commission against directions under this Article.

(6) An undertaker who executes works in contravention of a direction under this Article commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) An undertaker shall be taken not to have failed to fulfil any statutory duty to afford a supply or service if, or to the extent that, his failure is attributable to a direction under this Article.

(8) The Department may issue or approve for the purposes of this Article a code of practice giving practical guidance as to the exercise by street authorities of the power conferred by this Article; and in exercising that power street authorities shall have regard to the code of practice.”.

Restriction on works following substantial road works

9.—(1) Article 18 of the 1995 Order (restriction on works following substantial road works) is amended as specified in paragraphs (2) to (8).

(2) In paragraph (1), for the words “12 months” there is substituted “prescribed period”.

(3) In paragraph (2), after “prescribed” there is inserted “form and” and for “3 months” there is substituted “such period as may be prescribed”.

(4) In paragraph (3) after sub-paragraph (e) there is inserted “and

(f) any other person of a prescribed description;”

(5) In paragraph (4), for sub-paragraphs (a) and (b) there is substituted “within such period as may be prescribed”.

(6) In paragraph (6), at the beginning of sub-paragraph (b) there is inserted “if he is convicted of an offence under this paragraph”.

(7) In paragraph (7), for “by arbitration” there is substituted “in the prescribed manner”.

(8) After that paragraph there is inserted—

“(7A) Regulations under paragraph (7) may in particular make provision for the question referred to in that paragraph to be settled—

(a) by arbitration;

(b) by the planning appeals commission on appeal by the undertaker.”.

Restriction on works following substantial street works

10.—(1) After Article 18 of the 1995 Order there is inserted—

“Restriction on works following substantial street works

18A. Schedule 1A shall have effect.”.

(2) After Schedule 1 to that Order there is inserted Schedule 1A as set out in Schedule 1 to this Order.

(3) In Article 17 of that Order (notice of emergency works)—

(a) in paragraph (1) after “works)” there is inserted “or paragraph 2(1)(d) or 3(1) of Schedule 1A (notification of proposed works or directions as to timings of works)”;

(b) in paragraph (2) after “is” there is inserted “(or would, but for paragraph 2(6) of Schedule 1A, be)”.

(4) In Article 24 of that Order (traffic-sensitive streets) in paragraph (1) after “works)” there is inserted “or paragraph 2 of Schedule 1A”.

(5) In Article 34 of that Order (charge for occupation of road where works unreasonably prolonged) in paragraph (3)(b) after “date)” there is inserted “or notification under paragraph 2(1)(d) of Schedule 1A (notification of proposed works)”.

(6) In Article 47 of that Order (provisions relating to bridges) in paragraph (1) after “date)” there is inserted “, or making a notification under paragraph 2(1)(d) of Schedule 1A (notification of proposed works),”.

(7) In Article 48 of that Order (provisions relating to sewers) in paragraph (1) after “date)” there is inserted “, or making a notification under paragraph 2(1)(d) of Schedule 1A (notification of proposed works),”.

Duty of street authority to co-ordinate works

11.—(1) Article 19 of the 1995 Order (general duty of street authority to co-ordinate works) is amended as follows.

(2) In paragraph (1) after “purposes” there is inserted “and the carrying out of relevant activities”.

(3) In paragraph (2) after “works” there is inserted “or relevant activities”.

(4) After paragraph (6) there is inserted—

“(7) In this Article “relevant activities” means any activity, other than the execution of works in the street or the use of the street by traffic (including pedestrians), which—

(a) involves the temporary occupation or use of space in a street;

(b) is subject to regulation by the street authority by virtue of provision made by or under any statutory provision other than this Order; and

(c) is prescribed.”.

Requirements as to execution of street works

Qualifications of supervisors and operatives

12.—(1) Article 27 of the 1995 Order (qualifications of supervisors and operatives) is amended as follows.

(2) After paragraph (1) there is inserted—

“(1A) A street authority may (unless the case is one excepted from paragraph (1)) by notice require an undertaker executing street works—

(a) to notify it of the name of—

(i) the person who is currently the qualified supervisor required by paragraph (1); and

(ii) each person who has previously been the qualified supervisor so required; and

(b) to provide it with such evidence of the requisite qualification of each person named as may be prescribed.”.

(3) After paragraph (2) there is inserted—

“(2A) A street authority may (unless the case is one excepted from paragraph (2)) by notice require an undertaker executing street works—

(a) to notify it of the name of—

(i) a person whose presence on site at any time specified in the notice (being a time when the works were in progress) enabled the undertaker to comply with his duty under paragraph (2); or

(ii) each person whose presence on site during the progress of the works enabled the undertaker to comply with his duty in paragraph (2); and

(b) to provide it with such evidence of the requisite qualification of each person named as may be prescribed.

(2B) A notice under paragraph (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

(2C) The undertaker shall comply with a notice under paragraph (1A) or (2A) within such period as may be prescribed.”.

(4) In paragraph (3) for “or (2)” there is substituted “, (2) or (2C)”.

- (5) In paragraph (4), after sub-paragraph (b) there is inserted “and
 - (c) the form of any document to be issued by an approved body to certify or otherwise show that a qualification has been conferred on any person.”.

Reinstatement

Duty to notify street authority of reinstatement

- 13.**—(1) Article 30 of the 1995 Order (duty of undertaker to reinstate) is amended as follows.
- (2) After paragraph (1) there is inserted—
 - “(1A) The reinstatement required by paragraph (1) may be permanent or interim.”.
 - (3) For paragraphs (3) and (4) there is substituted—
 - “(3) He shall within 7 working days from the date on which the reinstatement is completed give notice to the street authority of that completion—
 - (a) stating whether the reinstatement is permanent or interim; and
 - (b) giving such other information about the reinstatement as may be prescribed.
 - (4) If the reinstatement is interim, he shall complete the permanent reinstatement of the street as soon as reasonably practicable, and in any event within 6 months from the date on which the interim reinstatement was completed.
 - (4A) He shall, within 7 working days from the date on which the permanent reinstatement required by paragraph (4) is completed, give notice to the street authority of that completion, giving such other information about the reinstatement as may be prescribed.
 - (4B) The Department may by regulations modify the period specified in paragraph (3), (4) or (4A).”.

Inspection fees following failure to reinstate

- 14.** In Article 32 of the 1995 Order (powers of street authority in relation to reinstatement) after paragraph (2) there is inserted—
 - “(2A) The Department may prescribe a fee in respect of a prescribed description of inspection mentioned in paragraph (2); and if it does so that paragraph has effect, in relation to that description of inspection, as if for “he shall bear the cost of” there were substituted “he shall pay the prescribed fee in respect of”.
 - (2B) The power to make different provision under paragraph (2A) for different cases includes power—
 - (a) to make different provision for different descriptions of street authority or undertakers;
 - (b) to prescribe different fees by reference to the nature or extent of the inspection, the place where it is carried out and such other factors as appear to the Department to be relevant.”.

Notices requiring remedial works relating to reinstatements

- 15.**—(1) In Article 32 of the 1995 Order (powers of street authority in relation to reinstatement)—
 - (a) in paragraph (3), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed,”; and
 - (b) after paragraph (3) there is inserted—

“(3A) Cases may be prescribed under paragraph (3) in which no minimum period applies.”

- (2) In Article 49 of the 1995 Order (provisions as to reinstatement of sewers, etc.)—
- (a) in paragraph (2), for “of not less than 7 working days” there is substituted “, not being less than such period as may be prescribed,”; and
 - (b) after paragraph (2) there is inserted—

“(2A) Cases may be prescribed under paragraph (2) in which no minimum period applies.”

Power of street authority to require undertaker to re-surface street

16. After Article 33 of the 1995 Order there is inserted—

“Re-surfacing

Power to require undertaker to re-surface street

33A.—(1) In prescribed circumstances, the street authority for a street may by notice (a “re-surfacing notice”) require an undertaker within paragraph (2) to execute such re-surfacing works in the street as may be specified in the notice.

- (2) An undertaker is within this paragraph if—
- (a) he has given notice under Article 14 or 15 of, or made a notification under paragraph 2(1)(d) of Schedule 1A in respect of, proposed street works,
 - (b) he is executing street works, or
 - (c) he has, within such period ending with the giving of the notice as may be prescribed (or if no period is prescribed, at any time), executed street works,

and the works will involve, involve or (as the case may be) involved the breaking up of any part of the street.

(3) The works specified in the re-surfacing notice may relate to any part of the street (including any part not, and not to be, broken up by the undertaker); but regulations may restrict the extent of the works that may be so specified.

(4) The re-surfacing notice relieves the undertaker to the extent (if any) specified in the notice of his duty under Article 30 to reinstate the surface of the street; but regulations may restrict the circumstances in which and the extent to which undertakers may be relieved of that duty.

(5) The street authority may by notice to the undertaker vary or withdraw a re-surfacing notice; but regulations may restrict the circumstances in which notices may be varied or withdrawn.

(6) A street authority may give a re-surfacing notice notwithstanding that the authority (in any capacity) is under a duty to undertake any of the works specified in the notice.

- (7) In this Order—
- “re-surfacing notice” has the meaning given by paragraph (1);
 - “re-surfacing works” means any works relating to the replacement of the surface of any part of a street;
 - “surface” includes a paved surface.

(8) The reference in paragraph (2)(c) to the execution of street works is a reference to the execution of such works after the commencement of this Article (whether or not regulations under it have been made).

Power to specify timing etc. of re-surfacing

33B.—(1) A re-surfacing notice may require an undertaker to—

- (a) execute the works specified in the notice in stages so specified;
- (b) begin the execution of those works (or any stage of them) at or by a date and time so specified;
- (c) execute those works (or any stage of them) at times or on days (or at times on days) so specified;
- (d) complete the execution of those works (or any stage of them) by a date and time so specified.

(2) The Department may by regulations make provision restricting, in some or all cases, the power of street authorities to include requirements within paragraph (1), including provision that—

- (a) requires street authorities to consult an undertaker before a prescribed description of requirement is included in a notice;
- (b) provides that any date specified in a notice for the beginning, execution or completion of works shall not be earlier than a prescribed period from the date on which the notice is given.

Materials, workmanship and standard of re-surfacing

33C.—(1) An undertaker who has been given a re-surfacing notice shall, when executing the works specified in the notice, comply with such requirements as may be prescribed as to the specification of materials to be used and the standards of workmanship to be observed.

(2) He shall also ensure that the new surface conforms to such performance standards as may be prescribed, for the prescribed period after completion of the works.

Re-surfacing: regulations

33D.—(1) The Department may make regulations supplementing Articles 33A to 33C.

(2) The regulations may in particular—

- (a) make provision about the information to be contained in a re-surfacing notice (including the way in which re-surfacing works are to be described);
- (b) prescribe, for cases where a re-surfacing notice may be given to more than one undertaker, the matters that a street authority shall take into account when selecting the undertaker to whom the notice is to be given;
- (c) impose a requirement on an undertaker, in prescribed circumstances, to give notice to the street authority of a prescribed event;
- (d) prescribe circumstances in which an undertaker may elect to make a payment to the street authority instead of executing the works specified in a re-surfacing notice, and make provision about the calculation of the amount of such payments;
- (e) confer a right of review or a right of appeal to the planning appeals commission against a re-surfacing notice or any requirement contained in it, and may make provision about the period within which and manner in which any such right may be exercised and about the determination of appeals;

- (f) require disputes of a prescribed description (including disputes as to the existence of circumstances prescribed under Article 33A(1)) to be determined in such manner and by such persons as may be prescribed;
 - (g) apply any provisions of this Order or the Roads Order, with or without modifications, in relation to works specified in a re-surfacing notice (and provide that for those purposes the works are to be treated as street works or works of any other description).
- (3) The regulations may provide that where a re-surfacing notice has been served on an undertaker, the street authority may (in such circumstances and to such extent as may be prescribed) by notice relieve any other undertaker within Article 33A(2) of his duty under Article 30 to reinstate the surface of the street.
- (4) The regulations may create in respect of any breach of a requirement imposed by a re-surfacing notice or of the duty imposed by Article 33C, or any contravention of the regulations, an offence punishable on summary conviction—
- (a) where the offence consists of a failure to give a notice in accordance with the regulations, with a fine not exceeding level 4 on the standard scale;
 - (b) in any other case, with a fine not exceeding level 5 on the standard scale.
- (5) The first regulations under this Article or any of Articles 33A to 33C shall not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

Re-surfacing: guidance

33E.—(1) The Department may, for the purposes of Articles 33A to 33D (including regulations under those Articles), issue or approve a code of practice giving practical guidance as to the exercise of powers and the discharge of duties under those Articles.

(2) In exercising those powers and in discharging those duties, street authorities and undertakers shall have regard to the code of practice.”.

Inspections

Guidance about street authority inspections

17. After Article 33E of the 1995 Order there is inserted—

Inspections

Guidance about street authority inspections

33F.—(1) The Department may issue or approve guidance to street authorities about any matter relating to the exercise by them of any power to carry out inspections of street works.

(2) In exercising their powers to carry out such inspections street authorities shall have regard to any guidance issued or approved under this Article.

(3) In this Article any reference to inspections includes the carrying out of investigatory works.”.

*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)”.

Duties of undertakers with respect to apparatus

Records of location of apparatus

- 22.**—(1) Article 39 of the 1995 Order (records of location of apparatus) is amended as follows.
- (2) After paragraph (1) there is inserted—
- “(1A) An undertaker may, except in such cases as may be prescribed, include in his records under paragraph (1) a record of the location of any item of apparatus belonging to him which is not required to be so included, stating the nature of the apparatus and (if known) whether it is for the time being in use.”.
- (3) After paragraph (2) there is inserted—
- “(2A) Regulations under paragraph (2) which alter the form or manner in which the records are to be kept may apply to records made before (as well as records made after) the alterations take effect.”.
- (4) After paragraph (3) there is inserted—
- “(3A) In paragraphs (2) to (3) the references to an undertaker’s records are to the records kept by him under paragraph (1) (including anything included in those records by virtue of any provision of this Order or any other statutory provision).”.

Duties relating to the location of unexpected apparatus

23.—(1) Article 40 of the 1995 Order (duties where person finds unidentified apparatus) is amended as follows.

(2) In paragraph (1) for “made available by the undertaker” there is substituted “kept by the undertaker under Article 39(1) and made available by him”.

(3) After paragraph (1) there is inserted—

“(1A) Paragraph (1) has effect subject to such exceptions as may be prescribed.”.

(4) For paragraphs (2) and (3) there is substituted—

“(2) Where a person executing works of any description in the street finds apparatus which does not belong to him and is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, he shall comply with such requirements (if any) as may be prescribed for the purpose of securing that he—

- (a) makes and keeps a record of the location of the apparatus and (so far as appears from external inspection) its nature and whether it is in use; and
- (b) informs the street authority or any other person of those matters.

(2A) Regulations under paragraph (2) may make provision—

- (a) as to the form and manner in which records are to be kept;
- (b) as to the form and manner in which, or the time at or by which, information is to be given; and
- (c) for records which are to be kept by undertakers to be included in the records kept by them under Article 39(1).”.

(5) In paragraph (4) for “(2)” there is substituted “any requirement imposed on him by regulations under paragraph (2)”.

(6) After paragraph (4) there is added—

“(5) The Department may by regulations make provision for and in connection with the keeping by the Department of a register of information recorded by undertakers in pursuance of a requirement imposed under paragraph (2).

(6) Regulations under paragraph (5) may make provision about the inspection of the register by any person having authority to execute works of any description in the street or otherwise appearing to the Department to have a sufficient interest.”.

*Enforcement***Fixed penalty offences**

24.—(1) After Article 52 of the 1995 Order (offences) there is inserted—

“Fixed penalties for certain offences under this Order

52A.—(1) Any offence under this Order relating to any street works which is listed in paragraph (3) is a fixed penalty offence for the purposes of this Order.

(2) Offences listed in that paragraph which are committed by virtue of section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (offences by bodies corporate) are not fixed penalty offences.

(3) The offences are—

- (a) an offence under Article 14(4) (failure to comply with duties under Art. 14 (advance notice of certain works, etc.));
- (b) an offence under Article 15(5) (beginning to execute works in contravention of Art. 15 (notice of starting date));
- (c) an offence under Article 15(9) (failure to give notice in accordance with Art. 15(8) (notice to be given on Art. 15 notice ceasing to have effect));
- (d) an offence under Article 17(4) (failure to give notice in accordance with Art. 17 (notice of emergency works));
- (e) an offence under Article 30(6) consisting of a failure to comply with paragraph (3) or (4A) (failure to comply with requirements to give notice of completion of reinstatement);
- (f) an offence created by regulations made under Article 34(7A) (failure to give a notice required by regulations under Art. 34 (charge for occupation of the road where works unreasonably delayed));
- (g) an offence created by regulations made under Article 34A(8) (failure to give a notice required by regulations under Art. 34A (charge determined by reference to duration of works)).”.

(4) The Department may by order modify paragraph (3) so as to provide for offences under this Order relating to any street works to become (or cease to be) fixed penalty offences.

(5) Such an order may not be made unless a draft of the order has been laid before and approved by resolution of the Assembly.

(6) Schedule 2A (which makes provision about fixed penalties for fixed penalty offences) has effect.”.

(2) After Schedule 2 to that Order there is inserted Schedule 2A as set out in Schedule 2 to this Order.

Increase of fines for certain summary offences under 1995 Order

25.—(1) The maximum fine for an offence under each of the following provisions of the 1995 Order is increased from level 3 on the standard scale to level 4 on that scale and accordingly in each of those provisions for “level 3” there is substituted “level 4”—

- (a) Article 14(4) (failure to comply with duties under Art. 14 (advance notice of certain works, etc.));
- (b) Article 15(5) (beginning to execute works in contravention of Art. 15 (notice of starting date of works));
- (c) Article 17(4) (failure to give notice in accordance with Art. 17 (notice of emergency works));
- (d) Article 28(2) (failure by undertaker to afford street authority with reasonable facilities for ascertaining whether he is complying with his duties under the Order);
- (e) Article 29(2) (failure to comply with Art. 29(1) (requirements relating to street works likely to affect another person’s apparatus in the street));
- (f) Article 40(4) (failure to comply with Art. 40(1) (duty to inform other undertaker of location of certain apparatus) or requirements imposed under Art. 40(2) (duties applicable where ownership of certain apparatus cannot be ascertained));
- (g) Article 43(3) (failure by authority to comply with Art. 43(2) (requirements relating to certain road works likely to affect apparatus in the street));

(h) Schedule 1, paragraph 5(3) (failure to comply with obligation under paragraph 5 (obligations to give notice to street authority)).

(2) The maximum fine for an offence under each of the following provisions of the 1995 Order is increased from level 3 on the standard scale to level 5 on that scale and accordingly in each of those provisions for “level 3” there is substituted “level 5”—

- (a) Article 12(2) (offence under Art. 12(1) (prohibition of unauthorised street works));
- (b) Article 16(3) (execution of works in contravention of direction under Art. 16 (directions as to timing of street works));
- (c) Article 18(6)(a) (carrying out works in contravention of a restriction imposed under Art. 18 (restriction on works following substantial road works));
- (d) Article 20(3) (failure to comply with duty under Art. 20(1) (general duty of undertakers to co-operate));
- (e) Article 25(4) (failure to comply with Art. 25(1) or (2) (safety measures));
- (f) Article 25(6) (interference with safety measures taken by undertaker);
- (g) Article 26(2) (failure to comply with Art. 26(1) (duty to carry on and complete certain street works with all reasonably practicable dispatch));
- (h) Article 27(3) (failure to comply with Art. 27(1), (2) or (2C) (duties relating to the use of qualified supervisors and operatives));
- (i) Article 31(4) (failure to comply with duties under Art. 31 (prescribed requirements as to materials and workmanship and performance standards for reinstatements));
- (j) Article 39(4) (failure to comply with duties under Art. 39(1) to (3) (records of location of apparatus));
- (k) Article 50(2) (failure to comply with a special requirement as to the displaying of lights imposed by a transport authority under Art. 50(1));
- (l) Schedule 2, paragraph 6 (execution of works in street with special engineering difficulties in contravention of paragraph 2 (requirement for agreed plan and section before executing works) or paragraph 3 (requirement to furnish plan and section after emergency works));
- (m) Schedule 2, paragraph 12(5) (failure to execute works in such a street in accordance with a direction under paragraph 12);
- (n) Schedule 2, paragraph 13(2) (failure to comply with paragraph 13(1) (requirement to execute works in such a street in accordance with plan or agreed modification)).

(3) In Article 30(6) of the 1995 Order (failure to comply with Art.30 (duty to reinstate)) for the words from “to a” to the end there is substituted—

- “(a) in the case of an offence consisting of a failure to comply with paragraph (3) or (4A), to a fine not exceeding level 4 on the standard scale; and
- (b) in any other case, to a fine not exceeding level 5 on that scale.”.

(4) In Article 47(3) of the 1995 Order (failure to comply with duties relating to street works affecting the structure of a bridge) for the words from “to a” to the end there is substituted—

- “(a) in the case of an offence consisting of a failure to take all reasonably practicable steps to comply with paragraph (2)(a), to a fine not exceeding level 4 on the standard scale; and
- (b) in any other case, to a fine not exceeding level 5 on that scale.”.

(5) This Article does not have effect in relation to an offence committed before it comes into operation.

Miscellaneous

Inquiries

26. In the 1995 Order after Article 55 there is inserted—

“Inquiries

55A. The Department may cause an inquiry to be held in relation to the exercise of any of its functions under this Order.”.

Delegation of functions

27. In the 1995 Order after Article 56 there is inserted—

“Delegation of functions

56A.—(1) Any function of the Department under this Order (other than a power or duty to make regulations or an order) may be exercised by, or by employees of, any person authorised to do so by the Department.

(2) Articles 13 to 15 of the [Deregulation and Contracting Out \(Northern Ireland\) Order 1996 \(NI 11\)](#) apply where a person is authorised to exercise any function of the Department by virtue of this Article as they apply where a person is authorised to exercise any function of a Northern Ireland department by virtue of Part III of that Order.”.

Regulations

28.—(1) Article 59 of the 1995 Order (regulations) is amended as follows.

(2) In paragraph (1) for “34(8) and 38(5)” there is substituted “12A(8), 33D(5), 34(8), 34A(10), 38(5) and 38A(9)”.

(3) After that paragraph there is inserted—

“(1A) Regulations under this Order may include incidental, supplemental, consequential or transitional provision or savings.”.

Christine Cook
Deputy Clerk of the Privy Council