

Public Document Pack

Democratic Services Section
Chief Executive's Department
Belfast City Council
City Hall
Belfast
BT1 5GS



Belfast
City Council

6th November, 2015

MEETING OF LICENSING COMMITTEE

**** Please note the change to the commencement time of the meeting**

Dear Alderman/Councillor,

The above-named Committee will meet in the Lavery Room - City Hall on Thursday, 12th November, 2015 at **5.30 pm.**, for the transaction of the business noted below.

You are requested to attend.

Yours faithfully,

SUZANNE WYLIE

Chief Executive

AGENDA:

1. Routine Matters

- (a) Apologies
- (b) Minutes
- (c) Declarations of Interest

2. Non-Delegated Matters

- (a) PSNI Policy on Charging for Policing Services (Pages 1 - 20)
- (b) Public and Private Land (Pages 21 - 128)
- (c) Provision of Legal Training for Members of the Licensing Committee (Pages 129 - 130)

3. Delegated Matters

- (a) Licences issued under Delegated Authority (Pages 131 - 134)

- (b) Applications for Grant/Renewal of Entertainments Licences with Previous Convictions (Pages 135 - 150)
- (c) Application for the Grant of a Seven-day Annual Entertainments Licence - Beckett's Bar, 241 Stewartstown Road (Pages 151 - 154)
- (d) Competing Applications for the Grant of a Stationary Street Trading Licence – Boucher Road (Pages 155 - 158)
- (e) Application for the Renewal of a Mobile Street Trading Licence (Pages 159 - 166)



Subject:	PSNI Policy on Charging for Policing Services
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

Is this report restricted?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

1.0	Purpose of Report
1.1	Members will recall that, at your meeting on 16 th September, you agreed that Superintendent Nigel Goddard be invited to attend a future meeting to enable Members to outline their ongoing concerns in relation to the policy to charge for police services.
2.0	Recommendation
2.1	The Committee is requested to receive Superintendent Goddard to discuss the policy and provide clarification on any points of concern.
3.0	Main report
	<u>Key Issues</u>
3.1	Members are reminded that the PSNI has implemented a new policy, effective as of 1 st April 2015, which enables it to charge for 'special policing services' which are primarily requests to provide police at events on private land.
3.2	A copy of the policy is attached as Appendix 1 to this report.
3.3	At your meeting, Members raised a number of further concerns in relation to the policy, including the financial implications for local sports clubs, the lack of consultation afforded to the Council in advance of its implementation and the potential risk to the Council arising from the suspension of an Entertainments Licence at the request of the Police Service.
3.4	A copy of the minute of the Licensing Committee meeting of 16 September is attached at Appendix 2.

3.5	<p><u>Financial and Resource Implications</u></p> <p>None.</p> <p><u>Equality and Good Relations Implications</u></p>
3.6	<p>There are no equality or good relations issues associated with this report.</p>
4.0	<p>Documents Attached</p> <p>Appendix 1 – Policy 'Charging for Special Policing Services'</p> <p>Appendix 2 – Minute of meeting of 16th September</p>



Service Procedure

CHARGING FOR POLICE SERVICES

SP Identification Number 4/15

Protective Marking **NOT PROTECTIVELY MARKED**

Policy Ownership:
Department Finance and Support Services
Branch Financial Services
Author Head of Financial Reporting

Procedure Approved By:

Service Executive SFB
Department or Branch Head Head of Finance
Date Of Approval 23 March 2015

Date First Issued: 5 May 2015

Version Number 1

This Version Issued: 5 May 2015

Review Date: 1 Year from latest issue date

Governing Policy Directive(s): Finance Policy Directive

Abstract:

This policy explains how the PSNI will establish a set of regulations and policies to support the system of charging for special police services.

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1. AIM OF SERVICE PROCEDURE

- (1) The Police Service of Northern Ireland (PSNI) aims to safeguard the stewardship of public funds by ensuring private persons or organisations are not able to profit at the expense of the police service.
- (2) As part of this process, PSNI will establish a set of guidelines and procedures to guarantee a consistent methodology for cost recovery.

2. INTRODUCTION

(1) Executive Summary

- (a) This policy explains how the PSNI will establish a set of procedures and policies to support the overall system of income generation and cost recovery relating to requests for special police services.
- (b) This Service Procedure will reflect best practice and provide a practical source of guidance.

(2) Origin

- (a) The PSNI came into existence on 4th November 2001, and exists to build a more confident, safe & peaceful society to keep people safe in Northern Ireland through the prevention, protection and detection of crime. PSNI is accountable to the Northern Ireland Policing Board (NIPB), which is comprised of independent members drawn from the broader Northern Ireland community and representatives from almost all the main political parties.
- (b) The PSNI is a body of constables, funded through the NIPB, which is a Non Departmental Public Body of the Department of Justice (DOJ). The Accounting Officer for the DOJ designated the Chief Constable as Accounting Officer for the Grant of the PSNI.
- (c) The 'Management Statement & Financial Memorandum' (MS/FM) for Governance of PSNI' sets out that fees and charges should be set to ensure where possible full cost recovery.

(3) Aims/Objectives

The aim of this policy is to:

- (a) promote a sound system of charging having regard to the requirements for stewardship of public funds, ensuring private persons/bodies are not able to profit at the expense of the Police Service;
- (b) define the methodology for charging of special police services to ensure a consistent approach to cost recovery;
- (c) ensure transparency and clarity for both providers and receivers of special police services
- (d) establish a set of guidelines which translates into practical guidance to support the PSNI's policies relating to financial management and control.

(4) Contribution

A robust charging framework is necessary for PSNI to deliver on all policing objectives and ensure that private organisations and individuals are aware of when and how they may be charged for the requests of police services.

(5) Application

Compliance with this Service Procedure is compulsory for all police officers and police staff.

(6) Legal basis

Section 11 of the Police (Northern Ireland) Act 2000 states that the 'Chief Constable' may, at the request of any person, provide special police services subject to the payment to the Board the scaling of such charges may be determined by the Board'.

(7) Consultation

- (a) Service Executive Team
- (b) Northern Ireland Policing Board
- (c) Heads of Business Services
- (d) Operational Planners
- (e) S1 Policing with the Community

3. IMPLICATIONS OF THE SERVICE PROCEDURE

(1) Financial and efficiency implications

The charging procedures will strengthen the financial control framework within PSNI and help ensure sound financial management.

(2) Human Resources/ Training

This policy does not give rise to any new training requirements. Rather, the charging procedures will codify existing policies, guidance and material in a more accessible form.

4. POLICY LINKS

Internal

Policy/Procedure
PD 01/13 Finance Policy

External

ACPO guide on Charging for Police Services
Managing Public Money NI

5. MONITORING AND REVIEW

- (1) This policy will be reviewed annually; or
- (2) Interim reviews may also be prompted by feedback, challenge or change in legislation.
- (3) Feedback relating to this policy should be addressed to Financial Services Branch.

6. FREEDOM OF INFORMATION

This Service Procedure is suitable for disclosure in accordance with the Freedom of Information Act (2000).

PROCEDURES AND GUIDELINES FOR CHARGING

1. Background

The PSNI is funded by the Northern Ireland Assembly for the benefit of the public at large. However, there is a limited range of activities where it is appropriate for the service to make charges to individuals and/ or organisations to recover costs. Ensuring that charges are levied effectively and efficiently in these circumstances will protect the public police provision and contribute to the overall funding of PSNI.

The ability to charge for police services is determined by statutory provisions. These guidelines cover the provision of special police services under section 11 of the Police Act 2000, which makes such services subject to payment of charges as determined by the Board.

2. Special Police Services

Special police services are defined as; provision of police services over and above core policing at the request of a person or organisation. Payment for the services is the subject of a contractual arrangement with implications for prior agreement on both sides. The categories of events that this procedure relates to are set out below.

3. Basis for Charging

(a) The event footprint

The chargeable footprint/ locality of any event need to be agreed, as special police services can only be charged for within the event boundary i.e. the event footprint.

The footprint should be determined to encompass the need to properly protect/ benefit the persons organising the event or their attendees, and not the additional resources required to protect the general public as a consequence of the event. Where police resources are not required within an event footprint no charges can be levied to the event organiser.

Where a specific request is made for special police services, to provide a service on public roads to ease the flow of traffic, due to a potential obstruction caused by an unusual use of the highway, such a request will be chargeable at the appropriate rate.

(b) Level of Police Resource

The level of policing required in support of events/enterprises is a matter for the Chief Constable to determine. This will be undertaken by operational planning/events management teams at a local level, in conjunction with the event organiser, and should encompass a risk assessment of the event encompassing the need to ensure;

- Prevention and detection of crime;
- Preventing or stopping breaches of the peace;
- Activation of a contingency plan where there is an immediate threat to life;
- Traffic regulation.

The assessment should be based on the size and scale of the event and the levels of resources and safeguards put in place by the event organiser, as well as the outcomes of any previous events held.

Event organisers/promoters should be made properly aware of the nature and options available to them that could reduce the level of police resources required.

(c) Agreement with event organiser

There must be an agreement in place between PSNI and the event organiser in order for the costs of police services to be charged. The need for special police services must be requested by the event organiser and accepted by the PSNI. The levels and rates of charges to be levied are set out below.

Agreements should be drawn up in writing and signed by both parties. Typically the agreement should include;

- The areas where special police services will be provided;
- The level of police resources to be provided by rank/grade;
- Any specific equipment to be provided
- The total costs for provision of special police services.

All charging agreements will be signed off by ACC District Policing Command.

(d) Dispute Resolution

Where an agreement cannot be reached with the event organiser, the reasons for dispute and rationale for the policing levels should be escalated to District/Area Commander for review.

Where there is no request and or agreement reached between the PSNI and an organiser concerning the provision of special policing services and where PSNI believe there to be a risk to the public, PSNI will seek to have the issue addressed through the agreed licensing approval mechanisms for the event. This includes but is not limited to objecting to the granting of a licence on the grounds that the provision and payment of special policing services is essential to protect the public and to maintain law and order.

4. Categorisation of Events and Charging

There will be five categories of events that will be defined by this Service procedure;

(a) Commercial events and/or enterprises

A commercial event is one where there is financial gain or profit to the organiser/company/organisation without specific community/charitable benefit - usually but not exclusively through members of the public having to pay an entrance fee to gain access to the event. Events would include but are not limited to concerts, motoring events, Animal shows, filming & production and events on private property.

(b) Non-commercial events and /or enterprises

Non-commercial events can cover charitable, community and not for profit events. These events will be characterised by the distribution of any financial-gains to a charitable or community cause. Those organising the events will do so on a voluntary basis for the benefit of participants and spectators.

(c) Sporting events (both commercial and non-commercial)

Sporting events will include professional and amateur sports and both commercial and non-commercial ventures.

(d) Northern Ireland Executive sponsored events/enterprises

These events or enterprises have a significant element of Northern Ireland investment including substantial taxpayer monies.

(e) Statutory events reflecting constitutional rights or processes

These are event such as parades, legal protests and Constitutional events.

5. Charging levels

The level of recoupment for each category of event is set out below;

(a) Commercial events and/or enterprises

Where an event and/or enterprise is classified as Commercial, the organiser will be charged the full economic cost of the special police service provided.

Any proposal to depart from the principle of full cost recovery should only be made on exceptional grounds and requires the approval of a Chief Officer.

(b) Non-commercial events and /or enterprises

In order to recognise that these events are substantially different in nature to commercial, profit making, any event and/ or enterprise classified as non-commercial will be subject to a scoring process to determine whether a full, partial or no charge should be made. Details of the scoring methodology are set out in Appendix B.

NB: The level of abatement of any such charges does not impact on the process for determining the level of police resources required.

(c) Sporting events

Sporting events must be classified as either commercial or non-commercial in order to determine the overall level of charging. Where the classification is unclear, the scoring methodology should be undertaken to provide clarity over the level of charges to be applied.

(d) Northern Ireland Executive sponsored events/enterprises

Events or enterprises which have a significant element of Northern Ireland investment including substantial tax payer monies should be initially classified to determine the level of charging that would be normally levied. Chief Officers will be consulted as to whether or not any further abatement to charges is appropriate. Any shortfall will be regarded as the PSNI's contribution in kind to the event/enterprise's overall strategic objectives.

(e) Statutory events reflecting constitutional rights or processes

The policing of such events will be regarded as part of core policing and no charge will be made for any such event.

6. Charging rates

Special police services will be charged at a rate to reflect the full economic cost of the services provided. This calculation includes all properly attributable costs, including contributions to administrative and general overheads. These rates are available in the PSNI Fees and Charges handbook and are set out in Appendix C.

7. Payment for Special Police Services

Once an agreement is reached on the level of resources and charges to be levied, a copy of the agreement should be passed to business services.

An invoice request will be raised and submitted to central finance to allow issue before the event takes place. Instances of non-payment of charges will be recorded and noted as part of future feedback and negotiations.

8. Feedback

After an event has taken place a debrief of any issues or outcomes from the event should be undertaken with the event organiser/promoter. Where there was a significant element of crime and disorder arising from the event the impact of this on future policing requirements should be made known to the event organiser and any relevant interested parties or government organisations.

9. Reporting of costs

A consolidated return will be made available for viewing on the PSNI website.

COSTING METHODOLOGY

Consideration must be given to abatement to charges for non-commercial events. In order to provide a transparent approach to decision making the scoring process set out below should be undertaken to determine whether a full, partial or no charge should be made for an event. Completed templates should be completed to include rationale for any scoring and if requested made available to event organisers to back up the level of policing required.

A score of 0-6 would mean no charge, 7-15 would incur a 25% charge, 16-25 would incur a 50% charge, 26-35 a 75% charge, all events with a score of 35+ would be subject to full cost recovery.

Criteria	Assessment	Range of Scores	Score Applied
Identified Promoter	The existence of a promoter clearly identifies a commercial event. This can also be an organiser of a significant non commercial event and can also be implied – e.g. for sports matches.	0 to 5	
Premises Licence / Safety Certificate required	Most large defined events require a Premises Licence or a Safety Certificate to operate. Detail of the event capacity and the licensable activities are strong indicators of a significant event.	0 to 5	
Stewards used	This also characterises a major event –but can also be the basis of a reduction in police input leading to reduced charges.	-5 to 0	
Payment on entry	A key determinant of a commercial event. It can also be a factor of a major noncommercial event.	0 to 10	
Performers paid	Can also underline a commercial event or a major charitable/ non commercial event.	0 to 10	
Trader concessions	A secondary indicator of the size of an event – one anticipating a large number of attendees	0 to 10	
Nature of the event	Commercial for profit, not commercial or a private event / function.	0 to 10	
Proceeds to charity	This is an indicator of possible abatement, depending on other safety issues and the size of the event	-5 to 0	
Detrimental Community Impact	This is how a community will be affected by the holding of the event such as increased traffic flow, disruption and disorder.	0 to 10	
Community Value	This covers the reasons that an event should go ahead. An event that has strong traditions or promotes the values of community cohesion will have added community value.	-10 to 0	
Additional policing	This can give an indication that significantly more policing than the normal	0 to 10	
Normal deployment	This would, in conjunction with the above, give an indication of the level of additional chargeable policing resources provided.	-5 to 0	

Electronic versions of the scoring matrix are available on the Financial Services Branch intranet site.

CHARGING RATES FOR SPECIAL POLICE SERVICES

PSNI will take steps to maximise income through the recovery of costs for special police services when it is in the interests of the PSNI and the community to do so.

The current charges for uniformed officers and frequently requested staff grades are listed below. Costs for other Police Officer and Police Staff grades are available on request.

The figures in Table 1 below include;

- Averages basic Pay and permanent allowances
- Employers Pension liability
- Earnings related national insurance Contributions (ERNI)
- A Service charge for recovery of non-pay and support overheads.

Table 1- Hourly rates from 1 April 2015

Uniform and CID	Total Hourly rate £	Support Staff	Total Hourly rate £
Chief Superintendent	99.18	Grade 7	54.36
Superintendent	87.66	Deputy Principal	41.83
Chief Inspector	67.93	Staff Officer	32.69
Inspector	63.52	Executive Officer I	29.31
Sergeant	51.09	Executive Officer II	26.23
Constable	43.36	Administrative Officer	22.81
Part Time Reserve Officer	16.92		

Additional charges may be made to include Short Notice/Public Holiday premium, if the deployment is on a Public Holiday or PSNI is unable to provide Officers with more than 15 days' notice to perform the requested duties.

Costs for the use of police equipment and premises will be made on a case-by-case basis to reflect full cost recovery.

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Minute of Meeting of Licensing Committee

16th September, 2015

Police Service of Northern Ireland
Policy on Charging for Policing Services

The Committee considered the following report:

“1.0 Purpose of Report or Summary of Main Issues

1.1 Members will recall, from your meeting on 20th May, that the PSNI has implemented a new policy, with effective from 1st April 2015, which enables it to charge for what are referred to legally as ‘special policing services’ and are primarily requests to provide police at events on private land.

1.2 At that meeting, Members expressed concerns at the proposal particularly given that, as part of the process, the PSNI may engage the Licensing Committee in making representations in relation to individuals Entertainments Licences and the potential impact it could have on a number of Council Departments which organise events. It was agreed that Council Officers would write to and meet with the PSNI to discuss these concerns. The purpose of this report is to inform Members that Council officers met with Superintendent Nigel Goddard on 2nd September and to update them on the outcomes of that meeting.

2.0 Recommendation

2.1 The Committee is requested to consider the feedback received from Superintendent Goddard and agree:

- that this adequately addresses previous concerns of Members, or
- that Superintendent Goddard be invited to attend a future meeting of the Committee to discuss the policy and clarify any points that may still be of concern.

3.0 Main report

Key Issues

3.1 The legal basis for the charging policy is set out in Section 11 of the Police (Northern Ireland) Act 2000 which states that the Chief Constable may, at the

request of any person, provide special police services subject to the payment to the Board of such charges, or charges on such scales, as may be determined by the Board.

3.2 The policy, at Section 4, sets out five categories of events to which it may apply:

- (a) Commercial events and/or enterprises;
- (b) Non-commercial events and/or enterprises;
- (c) Sporting events (both commercial and non-commercial);
- (d) Northern Ireland Executive sponsored events/enterprises;
- (e) Statutory events reflecting constitutional rights or processes.

3.3 The level of recoupment for each category of event is also set out in the policy.

3.4 Through our discussions, Superintendent Goddard has advised that:

- As a result of a number of media enquiries about the cost of policing at events, the Chief Constable asked that a policy be developed to ensure there is a consistent approach to cost recovery by police across N. Ireland;
- The PSNI has implemented the policy to facilitate a transparent, open and visible approach to charging for both providers and receivers of special police services;
- Whilst there was previously no charging policy in place, the PSNI has been working to the ACPO guide on charging for police services since it was introduced in 1985 and this policy codifies that approach;
- Consultation on the formulation of the policy took place across the PSNI and with the Policing Board;
- The policy was screened out after an equality impact assessment by the PSNI;
- Current case law (Leeds Utd. F.C. v West Yorkshire Police) has established that it is not possible to charge for policing services at statutory events which reflect constitutional rights or processes such as parades and legal protests;

- The case law also established that it is only possible to charge for events which take place on privately owned land and within the event boundary. Whilst this could apply to events in Council Parks, it is not envisaged that special policing services will be required for the vast majority of these events. For those that may, as was the case with Tennents Vital recently, any such costs will be borne by the promoter of the event;
- Any event taking place in the public realm is part of normal policing responsibilities and as such would incur no charge, e.g. Christmas Lights switch on, Belfast Marathon;
- The type of events which the Police Service will seek to charge for are small in number and restricted only to those events in which the organiser has requested policing services or where there is a clear public safety/public order concern held and evidenced by the Police in relation to an event and a request/agreement has not been forthcoming from the organiser/promoter;
- The Chief Constable will decide on the level of policing required in support of these events. This will involve undertaking a risk assessment and considering the Safety Plan; and
- In terms of dispute resolution, ACC Martin chairs a review group which will meet should there be any dispute regarding application of the policy. This was not stated within the policy but Superintendent Goddard has confirmed that this provision is in place.

3.5 The policy states that where no request has been made for policing services or no agreement has been reached with the organiser, the PSNI will ask the promoter to demonstrate through an Event Management Plan how the safety of persons is facilitated. If the PSNI are not satisfied this is the case, and the promoter refuses to pay for additional policing, then they will raise an objection to the Entertainments Licence where a risk to the public is envisaged.

3.6 In the instance where such an event requires a licence from the Council, the Police Service may make representation to the Licensing Committee as part of the application process and the Council must consider that representation in making a decision.

- 3.7** Where there is a licence in force and the PSNI has concerns as outlined in 3.5, then it can make representations to Council on the grounds of the event causing a serious threat to public order or public safety. However, the only option open to the Council in these circumstances would be to suspend the licence if the Council agree there is a serious threat to public order or public safety. The PSNI has indicated all such representations made to the Council will be clearly evidence based.
- 3.8** Such a decision carries an element of risk, as where the Council suspends a licence on the basis of PSNI objections, it is possible that the event organiser may take legal action against the Council leaving the Council liable for damages and costs should the Court subsequently overturn the decision to suspend.
- 3.9** In this situation, the PSNI has been advised that we will be seeking assurances from the PSNI that it will indemnify the Council in respect of any such damages and/or costs.
- 3.10** The PSNI has also been advised that the Council will expect it to have explored all other avenues by which enforcement of the Charging Policy may be achieved, e.g. by way of injunction or objecting to any occasional liquor licence under the Licensing (NI) Order 1996.
- 3.11** Financial and Resource Implications
- None**
- 3.12** Equality or Good Relations Implications
- There are no Equality or Good Relations implications.”**

The Head of Building Control provided a brief overview of the discussions which had taken place with Superintendent Goddard, who had confirmed, amongst other things, that the Police Service of Northern Ireland would now only be charging for those events listed within categories (a) to (c), as set out within paragraph 3.2 of the report.

During discussion, the Members raised a number of further concerns in relation to the policy, including the financial implications for local sports clubs, the lack of consultation afforded to the Council in advance of its implementation and the potential risk to the Council arising from the suspension of an Entertainments Licence at the request of the Police Service.

Accordingly, the Committee agreed that Superintendent Goddard be invited to attend a future meeting in order to enable Members to outline their ongoing concerns in relation to the policy.



Subject:	Public and Private Land
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

1.0	Purpose of Report or Summary of main Issues
1.1	The Committee will recall, at your September Committee meeting, considering an application from Mr Brian McGeown of Aether & Echo for a Street Trading Licence to enable Mr McGeown to apply to the Petty Sessions Court for an Occasional Liquor Licence. The licence facilitated the operation of a bar facility outside their premises for an outdoor musical event, on land owned by the Department of Regional Development ('DRD') and thus regarded as public land.
1.2	DRD had given its consent for the use of the land by Aether and Echo, under Article 72 of the Roads (Northern Ireland) Order 1993. This consent was given to accommodate the erection of scaffolding, hoardings, etc on a road which allowed the applicant possession of a portion of that road for a short period of time which enabled Mr McGeown to provide an outdoor musical event.
1.3	At your September meeting, you also requested that a report was submitted to a future meeting outlining the criteria for determining if an Entertainments Licence was required for an event taking place on public land.
2.0	Recommendations
2.1	<p>The Committee is requested to consider the report, information and recommendations and agree:</p> <ul style="list-style-type: none"> • That, from 1st January 2016, where an outdoor musical event is proposed on land in respect of which the DRD have issued a Consent pursuant to Article 72, the organiser must apply for an Entertainments Licence.

3.0	Main report
3.1	<p><u>Key Issues</u></p> <p>Consent to erect scaffolding, hoardings etc on a road is granted by virtue of Article 72 of The Roads (Northern Ireland) Order 1993..</p>
3.2	<p>When making application for consent the applicant is required to provide the following information to undertake the above operations on a public road:</p> <ul style="list-style-type: none"> • A description of the works • The location of the works • The name and permanent address of the applicant • A drawing showing the nature of the work (where appropriate), and • Details of the appropriate planning approval including drawings if relevant.
3.3	<p>The applicant shall also undertake to do the following:</p> <ul style="list-style-type: none"> • Indemnify the Department against any claims in respect of injury, loss or damage arising from the works. • The applicant is required to make such monetary deposit as the Department shall assess against the proper undertaking and satisfactory completion of the works. An estimate of the deposit likely to be required can be obtained by applying the rates contained on the attached leaflet. • A Consent and a receipt for the deposit will be issued by the Section Office together with a Permanent Restoration Notice. Where necessary a specification showing the standard for the work will be included. • The deposit is returned to the applicant when the Restoration Notice has been received by the Department and no damage has been done to the road or if this damage is covered under an Article 78 consent. <ul style="list-style-type: none"> – If the road has been damaged the deposit will be withheld until the damage has been repaired to the satisfaction of the Department. – If a reinstatement has been made the deposit will not be returned until six months has elapsed from receipt of the Restoration Notice and the work is completed to the satisfaction of the Department and in accordance with the current specification for reinstatement. • The applicant shall be responsible for traffic safety and control in accordance with Chapter 8 of the Traffic Signs Manual during the execution of the works. • Any person aggrieved by the refusal of the Department to give its consent under Article 72 (2) of the Roads (NI) Order 1993 or any condition subject to which any such consent is given, may, within 21 days of receiving notice thereof, appeal to the Planning Appeals Commission by notice in writing under Article 84 of the Roads (NI) Order 1993. • In the instant case, the applicant must ensure that the public have access to walk through Lower Garfield Street and that there is a 2 metre pedestrian access provided.
3.4	<p>Licensing of Places of Entertainment is governed by Schedule 1, Article 3 of the Local Government (Miscellaneous Provisions) (NI) Order 1985.</p>

3.5	<p>Paragraph 2 of Schedule 1, Article 3 states:</p> <p>‘Licensing of outdoor musical entertainments’</p> <p>(1) An entertainment to which this paragraph applies shall not be provided at any place except under and in accordance with the terms of a licence granted under paragraph 3, by the council for the district in which the place is situated.</p> <p>(2) This paragraph applies to any public musical entertainment which is held-</p> <p>(a) wholly or mainly in the open air; and</p> <p>(b) at a place on private land.</p> <p>(3) For the purposes of this paragraph-</p> <p>(a) an entertainment is musical if music or singing is a substantial ingredient; and</p> <p>(b) land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.</p> <p>(4) This paragraph does not apply-</p> <p>(a) to a garden fete, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days; or</p> <p>(b) to a religious meeting or service, merely because music or singing is incidental to it.”</p>
3.6	<p>The 1985 Order does not define ‘private land’ over and above the definition provided at paragraph 3(b).</p>
	<p><u>Legal Opinion</u></p>
3.7	<p>Paragraph 2(3)(b) of Schedule 1, Article 3 of the Local Government (Miscellaneous Provisions) (NI) Order 1985 provides that "land is private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee."</p>
3.8	<p>It could be construed that if a business owns land, or has obtained permission from the owner, (in this case the Transport NI who owns the land) to effectively occupy the land, then it may fall under the definition of ‘private land.’</p>
3.9	<p>Conversely, if the land is considered public land, and the applicant did not obtain the consent from the owner of the land (in this case the Transport NI) , it would be considered public land in respect of which the Council would have no control under the 1985 Order.</p>
3.10	<p>Roads are maintained by Transport NI by virtue of The Roads (Northern Ireland) Order 1993. Under Article 2 of said Order, the reference to ‘a road’ means a public road, which is maintainable by the Department and includes–</p> <ul style="list-style-type: none"> • a road which the public have a right of way on foot only, not being a footway; • any part of a road; and • any bridge or tunnel over or through which a road passes.
3.11	<p>Article 71 of the Order prohibits the erection of any building, wall or fence on a road otherwise than in the exercise of a statutory power; in pursuance of a consent given by the</p>

	Department under the 1993 Order; or in pursuance of a Street Trading Licence.
3.12	We have also examined the circumstances in which the Department could issue a Consent under the 1993 Order. These appear to be primarily in relation to carrying out works on or under the road such as excavation, works to drains or the erection of shelters by a district council by way of a request under Article 72 of the said Order.
3.13	Whilst it is clear that the provision of entertainment at such a location is not pursuant to a statutory power, the Department has consented to such requests by the applicant, to use the land, by virtue of the grant of an Article 72 Consent. The Department is thereby giving its permission to the applicant to occupy the land for a specified period of time subject to certain conditions. In addition to this, the applicant erected barriers around that land, thereby controlling the entry of patrons onto it. The land, for that period of time, therefore falls under the definition of "private land" for the purposes of Paragraph 2 (3)(b) of Schedule 1, Article 3 of the 1985 Order .
3.14	As set out above, granting a Consent does not transfer ownership. It is permission to occupy land for a specified period of time. The Department would have to pass legislation in order to change the classification of a road from public to private. Therefore the grant of a Consent does not make the land private for the purposes of all legislation, nor does it make it private land on a permanent basis.
3.15	Furthermore, a Temporary Street Trading Licence does not appear to be the long term solution as the legislation only permits a maximum of five Temporary Licences per year.
3.16	In respect of Aether and Echo, the Department has confirmed that the public must have access across the land at Lower Garfield Street and stipulate that a 2 metre pedestrian access is provided in this area. Further, the Department advised that this permission is given to Aether and Echo as Lower Garfield Street is considered a dead end street and advised that an Article 72 consent would not be granted for a street which is considered to be a 'live' street. It was also noted that no other publicans have lodged an Article 72 application to the Department.
3.17	We consider that, after discussing the matter further with Transport NI, that the matter is better addressed under Article 2, Schedule 1 of the Local Government (Miscellaneous Provisions) (NI) Order 1985 and the definition provided at paragraph 3(b), regarding the land becoming private if the public has access to it (whether on payment or otherwise) only by permission of the owner, occupier or lessee.
3.18	An Entertainments licence can therefore be issued by the Council as the land falls within the definition of 'outdoor musical events.'
	<u>Consulting agencies</u>
	Transport NI
3.19	The Department have stated that they have no objection or concerns with an Entertainments Licence being granted to permit events to be held on public land. However, they have requested to be involved in the development of the administrative process and procedure, if Members are of the mind to grant approval for the Service to pursue and administer Entertainments Licences for such events being held on public land.
	PSNI
3.20	The PSNI has been consulted and has confirmed that they have no issues with an Entertainments Licence being granted for events on public land and would welcome such a decision as it would ensure consistency of approach regarding public safety, etc in the

	<p>same way as the Council do for other events, such as Belsonic and Tennents Vital.</p> <p>NIFRS</p> <p>3.21 As a statutory consultee for all Entertainment Licence applications, the NIFRS have also been consulted and they too have no concerns with an Entertainments Licence being granted for such occasions</p>
	<p><u>Financial & Resource Implications</u></p> <p>3.22 The requirement to apply for an Entertainments Licence on public land is likely to increase revenue for the Council.</p>
	<p>3.23 However, we consider that there is also added value in that these events will be administered, managed, coordinated and regulated with all parties in the same vain as the regular events which currently take place under the auspice of an Entertainments Licence; thereby creating consistency of approach and ensuring public safety.</p>
	<p>3.24 Officers carry out during performance inspections on premises providing entertainment but this is catered for within existing budgets.</p>
	<p><u>Equality or Good Relations Implications</u></p> <p>3.25 There are no equality or good relations issues associated with this report.</p>
4.0	Appendices – Documents Attached
	<ul style="list-style-type: none"> • Appendix 1 – Relevant extracts of The Roads (Northern Ireland) Order 1993 • Appendix 2 – Application for Consent to erect scaffolding, hoardings, etc on a road

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Status: This is the original version (as it was originally made).

STATUTORY INSTRUMENTS

1993 No. 3160 (N.I. 15)

NORTHERN IRELAND

The Roads (Northern Ireland) Order 1993

Made - - - - *16th December 1993*

Coming into operation *17th February 1994*

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I
INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Roads (Northern Ireland) Order 1993.

(2) This Order shall come into operation on the expiration of 2 months from the day on which it is made.

Interpretation

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

(2) In this Order—

“bridge” includes a footbridge;

“building” includes any erection of whatsoever material in whatsoever manner constructed, any part of a building, and any addition to an existing building;

“carriageway” means a way constituted or comprised in a road being a way over which the public have a right of way for the passage of vehicles;

“classified road” means a road classified in accordance with Article 13;

(1) 1974 c. 28

(2) 1954 c. 33 (N.I.)

- “the Department” means the Department of the Environment;
- “the Electricity Order” means the Electricity (Northern Ireland) Order 1992⁽³⁾;
- “fence” includes a paling;
- “footway” means a way comprised in a road which also comprises a carriageway, being a way over which the public have a right of way on foot only;
- “maintenance compound” means an area (with or without buildings) used or to be used in connection with the maintenance of roads or a particular road;
- “navigable waters” and “navigable watercourse” means waters and a watercourse, respectively, over which a public right of navigation exists;
- “operator”, in relation to a telecommunications code system, has the same meaning as in Schedule 4 to the Telecommunications Act 1984⁽⁴⁾;
- “owner”, in relation to land, means a person who is for the time being receiving a rent of not less than two-thirds of the net annual value of the land whether on his own account or as agent or trustee of any other person or who, if the land were let at such a rent, would receive it;
- “planning permission” means planning permission granted under Article 25(1) of the Planning Order;
- “the Planning Order” means the Planning (Northern Ireland) Order 1991⁽⁵⁾;
- “proposed road” means land upon which the Department is for the time being constructing or intending to construct a road or part of a road in accordance with plans made by it;
- “road” means a public road, that is to say a road which is maintainable by the Department, and includes—
- (a) a road over which the public have a right of way on foot only, not being a footway;
 - (b) any part of a road; and
 - (c) any bridge or tunnel over or through which a road passes;
- and “special road” and “trunk road” shall be construed accordingly;
- “the Road Traffic Order” means the Road Traffic (Northern Ireland) Order 1981⁽⁶⁾;
- “service area” means an area of land adjoining, or in the vicinity of, a special road, being an area in which there are, or are to be provided, service stations or other buildings or facilities to be used in connection with the use of the special road;
- “special road” means a road designated as a special road under Article 15 and includes all land vested in or held by the Department for the purposes of its functions under Part III in connection with that road;
- “statutory power” means a power conferred by or in accordance with this Order or any other statutory provision;
- “statutory provision” has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954⁽⁷⁾;
- “statutory undertaker” means—
- (a) the Post Office;

(3) 1992 NI 1
(4) 1984 c. 12
(5) 1991 NI 11
(6) 1981 NI 1
(7) 1954 c. 33 (N.I.)

- (b) the railway undertaking within the meaning of the Transport Act (Northern Ireland) 1967⁽⁸⁾;
 - (c) an undertaker within the meaning of the Gas (Northern Ireland) Order 1977⁽⁹⁾;
 - (d) any body or person authorised by any statutory provision to carry on any harbour or dock undertaking;
 - (e) any other body or person prescribed by regulations made by the Department;
- “swing bridge” includes a bridge which opens by any mechanical means;
- “transferred provision” has the same meaning as in section 1(g) of the Interpretation Act (Northern Ireland) 1954;
- “trunk road” means a road designated as a trunk road under Article 14;
- “wall” includes any partition of whatsoever material constructed and any bank;
- “telecommunication apparatus”, “the telecommunications code” and “telecommunications code system” have the same meanings as in Schedule 4 to the Telecommunications Act 1984⁽¹⁰⁾.

PART II

CONSTRUCTION, MAINTENANCE AND CLASSIFICATION OF ROADS

Construction of roads

Construction of new roads

3. The Department may construct a new road where it appears to the Department expedient to do so for the purpose of facilitating road traffic.

Construction of bridges and tunnels in relation to navigable waters

4.—(1) The Department may by order provide for the construction as part of a road or as part of a new means of access to any land from a road—

- (a) of a bridge over any navigable waters specified in the order (whether the sea, a river or other navigable waters); or
- (b) of a tunnel under any such waters.

(2) An order under paragraph (1)—

- (a) shall include such information as may be necessary to indicate the position and minimum dimensions of the bridge or tunnel (including, for a bridge, its minimum spans, headways and waterways and, for a tunnel, its minimum depth below the bed of the navigable waters); and
- (b) shall, if it relates to the construction of a swing bridge, contain such provisions as the Department considers expedient for regulating the operation of the bridge.

(3) Before making an order under paragraph (1) the Department shall take into consideration the reasonable requirements of navigation over the waters affected by the order.

⁽⁸⁾ 1967 c. 37 (N.I.)

⁽⁹⁾ 1977 NI 7

⁽¹⁰⁾ 1984 c. 12

Diversion of navigable watercourses

5.—(1) The Department may by order provide for the diversion of such part of a navigable watercourse as is specified in the order if the Department considers the diversion necessary or desirable in connection with—

- (a) the construction, improvement or alteration of a road;
- (b) the construction of a bridge over or tunnel under any navigable waters;
- (c) the provision of a new means of access to any land from a road;
- (d) the provision of a maintenance compound or service area;
- (e) the provision of a parking place for vehicles under Article 104(1) of the Road Traffic Order; or
- (f) the exercise by the Department of its powers under Article 115.

(2) Where a navigable watercourse is to be diverted in pursuance of an order made under paragraph (1), any new length of watercourse provided in pursuance of that order shall be such as will or, but for any bridge or tunnel constructed over or under it in pursuance of an order under Article 4, would be navigable in a reasonably convenient manner by vessels of a kind which immediately before the commencement of the order were accustomed to use that part of the watercourse which is to be replaced by the new length.

(3) Where by virtue of an order made under paragraph (1) the Department may divert any part of a navigable watercourse it may also divert any towing path or way adjacent to that part.

(4) Paragraph (5) shall have effect where—

- (a) works for the diversion of a navigable watercourse have been carried out by the Department in accordance with an order made under paragraph (1); and
- (b) any person has suffered damage in consequence of the works mentioned in sub-paragraph (a)—
 - (i) by the depreciation of any estate in any land to which he is entitled; or
 - (ii) by reason of the fact that his right of access to a navigable watercourse has been interfered with or extinguished.

(5) A person shall be entitled to receive compensation from the Department under this paragraph in respect of the damage where works of the type mentioned in paragraph (4) are carried out unless the works were carried out on land, or in exercise of rights, vested in the Department under Article 110 or 111 or vested in the Department or any of its predecessors in title under any former statutory provision corresponding to Article 110 or 111.

(6) Any question of disputed compensation arising under paragraph (5) shall be referred to and determined by the Lands Tribunal.

Extinguishment of certain public rights over navigable waters and foreshore

6. The Department may, if it considers it necessary or desirable to do so in connection with any matter mentioned in Article 5(1), by order extinguish—

- (a) any public rights over or in relation to such part of the foreshore as is specified in the order;
- (b) any public rights of navigation over such part of any navigable waters (whether the sea, a river or other navigable waters) as is specified in the order.

Power to conduct experiments

7.—(1) The Department may, either by itself or through any authority or organisation approved by it, conduct experiments or trials—

(a) for the improvement of the construction of roads;
(b) for testing the effect of various classes of vehicles on various types of roads; or
(c) for any other purpose connected with any function of the Department in respect of roads,
and may construct such roads and works, erect such plant and provide such accommodation as may
be necessary.

(2) Subject to paragraph (3), any person who suffers damage by reason of anything done in the
exercise of the powers conferred by this Article shall be entitled to recover compensation from the
Department in respect of that damage.

(3) A person shall not be entitled to compensation under paragraph (2) if the damage was caused
by his own negligence; and if his own negligence contributed to the damage the compensation shall
be reduced accordingly.

Maintenance of roads

Duty to maintain roads

8.—(1) The Department shall be under a duty to maintain all roads and for that purpose may
provide such maintenance compounds as it thinks fit.

(2) In an action against the Department in respect of injury or damage resulting from its failure
to maintain a road it shall be a defence (without prejudice to any other defence or the application of
the law relating to contributory negligence) to prove—

- (a) that the Department had taken such care as in all the circumstances was reasonably
required to secure that the part of the road to which the action relates was not dangerous
for traffic; or
- (b) that the injury or damage—
 - (i) resulted from works (other than works by or on behalf of the Department) carried
out on or under that part of the road to which the action relates; and
 - (ii) resulted from an event which occurred before the completion of the re-instatement
or making good of that part of the road in accordance with any relevant requirement.

(3) For the purposes of a defence under paragraph (2)(a) the court shall in particular have regard
to the following matters—

- (a) the character of the road, and the traffic which was reasonably expected to use it;
- (b) the standard of maintenance appropriate for a road of that character and used by such
traffic;
- (c) the state of repair in which a reasonable person would have expected to find the road;
- (d) whether the Department knew, or could reasonably have been expected to know, that the
condition of the part of the road to which the action relates was likely to cause danger to
users of the road;
- (e) where the Department could not reasonably have been expected to repair that part of the
road before the cause of action arose, what warning notices of its condition had been
displayed;

but, for the purposes of such a defence, it shall not be relevant to prove that the Department had
arranged for a competent person to carry out or supervise the maintenance of the part of the road
to which the action relates, unless it is also proved that the Department had given him proper
instructions with regard to the maintenance of the road and that he had carried out the instructions.

(4) In paragraph (2)(b) “relevant requirement” means a requirement imposed by or under this Order or any other statutory provision or rule of law or by, or in connection with the issue of, any approval, consent, licence, notice or permission issued under this Order or any other statutory provision.

Treatment of roads affected by snow and ice

9.—(1) The Department may take such steps as it considers reasonable and practicable to prevent snow or ice interfering with the safe passage of persons and vehicles using a road.

(2) Without prejudice to the generality of paragraph (1), the Department may—

- (a) enter into arrangements with any person for the treatment of roads affected by snow or ice;
- (b) place receptacles on roads for the purpose of making available to persons using a road affected by snow or ice material for the treatment of that road.

(3) Nothing in this Article operates to confer on any person a right of action in tort against the Department for failing to exercise any power conferred on it under this Article or in respect of injury or damage resulting from the presence of snow or ice on a road.

Duty to remove snow, soil, etc. which has fallen on a road

10.—(1) If an obstruction occurs in a road from accumulation of snow or from the falling down of banks on the side of the road, or from any other cause, the Department shall remove the obstruction.

(2) If the Department fails to remove an obstruction which it is its duty under this Article to remove, a court of summary jurisdiction may, on an application made by any person, declare the thing complained of to be an obstruction and state a period (not being less than 24 hours) within which the court considers it reasonable, having regard to all the circumstances of the case, that the obstruction should be removed.

(3) In considering whether to make a declaration under this Article and, if so, what period to state for the removal of the obstruction, the court shall in particular have regard to—

- (a) the character of the road to which the complaint relates, and the nature and amount of the traffic by which it is ordinarily used;
- (b) the nature and extent of the obstruction; and
- (c) the resources of manpower, vehicles and equipment for the time being available to the Department for work on roads and the extent to which those resources are being, or need to be, employed by the Department on such work elsewhere.

(4) Where the Department has a duty under this Article to remove an obstruction from a road, it may—

- (a) take any reasonable steps (including the placing of lights, signs and fences on the road) for the purpose of warning users of the road of the obstruction;
- (b) dispose of anything removed in carrying out its duty, unless the thing is claimed by its owner before the expiration of 7 days from the date of its removal;
- (c) without prejudice to Article 48 but subject to paragraph (5), recover from the owner of the thing which caused or contributed to the obstruction any expenses reasonably incurred by it as respects the obstruction in carrying out its duty and in exercising any powers conferred by this paragraph.

(5) No expenses shall be recoverable under paragraph (4)(c) from a person who proves that he took reasonable care to secure that the thing in question did not cause or contribute to the obstruction.

(6) An application under paragraph (2) shall be initiated by notice in accordance with Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(11).

(7) Nothing in this Article operates to confer on any person a right of action in tort against the Department for failing to carry out any duty imposed on it under this Article.

Extraordinary traffic

11.—(1) Subject to paragraph (4), where as respects any road it appears to the Department that, having regard to the usual expense of maintaining the road or the average expense of maintaining similar roads in the neighbourhood, extraordinary expenses have been incurred by the Department in maintaining the road by reason of the damage caused by—

- (a) excessive weight passing along the road; or
- (b) other extraordinary traffic thereon,

the Department may recover from any person (in this Article referred to as “the operator”) by or on behalf of whom the traffic has been conducted any expenses reasonably incurred by the Department in consequence of that damage.

(2) Where it appears to the Department that expenses in respect of the maintenance of any road may be recoverable from any person under paragraph (1), the Department may by notice in writing require that person to give the Department such information about traffic conducted on that road by or on behalf of that person as the Department may reasonably require for the purposes of that paragraph.

(3) Any person required to give information in pursuance of paragraph (2) who without reasonable excuse fails to give, or knowingly misstates, that information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) An operator shall not be liable to proceedings under paragraph (1) in respect of any damage caused by extraordinary traffic to a road if—

- (a) before traffic which may cause such damage commences, he admits liability in respect of such traffic and enters into either of the following agreements with the Department, namely—
 - (i) an agreement for the payment by the operator to the Department of a sum by way of a composition of that liability; or
 - (ii) an agreement for the payment by the operator to the Department at the end of each of such periods as may be specified in the agreement of the expenses reasonably incurred in that period by the Department in consequence of the damage caused by the extraordinary traffic; and
- (b) payment is made to the Department in accordance with any such agreement.

(5) Before extraordinary traffic which may cause damage to a road commences, the Department may serve on a person a notice inviting that person—

- (a) to admit liability in respect of that traffic; and
- (b) to indicate whether he wishes to enter into an agreement with the Department under paragraph (4)(a) and, if so, whether he wishes to enter into an agreement under head (i) or head (ii) of that sub-paragraph.

(6) The sum to be paid by an operator to the Department under an agreement under paragraph (4)(a)(i) and the amount of each payment to be made by an operator to the Department under an agreement under paragraph (4)(a)(ii) shall be such as may be agreed between the operator and the Department or, in default of agreement, such as may be determined by arbitration.

(7) Proceedings for the recovery of any sums under this Article shall not be commenced after the expiration of three years from—

- (a) the date on which the damage came to the knowledge of the Department; or
- (b) where the damage is in consequence of any particular building contract or other work extending over a long period, the date on which the contract or work was completed,

whichever is the later.

(8) References in this Article to expenses reasonably incurred by the Department in consequence of damage caused to a road by extraordinary traffic include references to expenses reasonably incurred by the Department on works to prevent or mitigate anticipated damage to the road by such traffic.

Road bridges over railways

12.—(1) This Article applies to a bridge transferred to the Department by virtue of Article 11 of the Roads (Northern Ireland) Order 1980(**12**).

(2) Any statutory provision in force in relation to the bridge for the benefit or protection of any statutory undertaker or the operator of a telecommunications code system or the holder of a licence under Article 10(1) of the Electricity Order shall have effect, subject to any necessary modifications, as if for any reference therein to the railway undertaking there were substituted a reference to the Department.

(3) The Department shall not reduce the headway or spans of any bridge to which this Article applies without the consent of the railway undertaking.

(4) Any consent required for the execution of any works by the Department under paragraph (3) shall not be unreasonably withheld.

(5) Any dispute between the Department and—

- (a) the railway undertaking as to whether or not consent is being unreasonably withheld under paragraph (4); or
- (b) any person as to the property or liabilities transferred under Article 11 of the Roads (Northern Ireland) Order 1980,

shall be determined by arbitration.

(6) In this Article “the railway undertaking” has the same meaning as in the Transport Act (Northern Ireland) 1967(**13**).

Classification of roads

Classification of roads

13.—(1) The Department may by order classify roads in such a manner as appears to it to be expedient.

(2) An order under paragraph (1) may classify roads as being first-class roads, second-class roads or third-class roads, or as being of any other class specified in the order.

(12) 1980 NI 11

(13) 1967 c. 37 (N.I.)

Trunk roads

14.—(1) Where the Department considers it expedient for the purpose of extending, improving or reorganising the trunk system that any road should be designated as a trunk road, the Department may by order direct that—

- (a) any existing road;
- (b) any road in the course of construction; or
- (c) any road proposed to be constructed,

shall become a trunk road; and the trunk system shall be modified accordingly.

(2) In this Article “the trunk system” means the main system of routes for through traffic in Northern Ireland.

PART III SPECIAL ROADS

Designation of special roads and classification of traffic

Designation of special roads

15.—(1) Where the Department considers it expedient that—

- (a) any existing road;
- (b) any road in the course of construction; or
- (c) any road proposed to be constructed,

should be designated as a special road, the Department may make an order (a “designation order”) designating that road or proposed road as a special road.

(2) The Department shall not make a designation order in respect of an existing road unless it is satisfied that adequate alternative facilities for traffic, other than traffic authorised to use the road on its being opened for use as a special road, are available or will be made available before the date on which the road is opened for use as a special road.

(3) Without prejudice to any other provision of this Part, a designation order may authorise the Department to construct a new road where it appears to the Department to be necessary or desirable for any purpose connected with a special road and, where any such new road is constructed for temporary purposes, to close that road after such period as may be specified in or determined under the order.

Classification of traffic for purposes of special roads

16.—(1) A special road shall be for the use of such classes of traffic as may be prescribed in the designation order made in respect of that road and different classes of traffic may be so prescribed in relation to different parts of a special road.

(2) The classes of traffic prescribed by a designation order shall be prescribed by reference to the classes set out in Schedule 1.

(3) The Department may, by order made subject to negative resolution, vary the composition of any class of traffic set out in Schedule 1.

(4) An order under paragraph (3) may—

- (a) provide that it does not affect the classes of traffic prescribed in an existing designation order; or
 - (b) contain provision applying the variations made by the order to existing designation orders, with or without exceptions.
- (5) In paragraph (4) “existing designation order” means a designation order made before the order under paragraph (3) comes into operation.

Restrictions applying to special roads

Restriction on laying of mains, etc. in special roads

17.—(1) Subject to the following provisions of this Article, the powers conferred on a statutory undertaker by or under any statutory provision to lay down or erect any apparatus under or over any land shall not be exercisable in relation to any land comprised in the route of a special road except with the consent in writing of the Department.

(2) The consent of the Department shall not be required under this Article for the laying down or erection by a statutory undertaker of any apparatus by way of renewal of any apparatus for the time being vested in or belonging to the statutory undertaker.

(3) The consent of the Department under this Article may be given subject to conditions, but those conditions shall not include a condition requiring any payment to be made by the statutory undertaker to the Department in respect of the exercise of the powers to the exercise of which the consent is given.

(4) Where any apparatus in respect of which the consent of the Department is required under this Article is proposed to be laid down or erected along a line crossing the route of a special road but not running along that route, the Department—

- (a) shall not withhold its consent under this Article unless there are special reasons for doing so; and
 - (b) may, if it gives its consent subject to conditions, make contributions to the statutory undertaker in respect of any expenses incurred by the statutory undertaker in complying therewith.
- (5) Any dispute between the Department and any statutory undertaker in respect of—
- (a) the withholding of the consent of the Department in respect of apparatus to be laid down or erected as mentioned in paragraph (4);
 - (b) the imposition of any condition on the grant of such consent; or
 - (c) the making of any contributions under paragraph (4)(b);

shall be determined by arbitration.

(6) This Article shall have effect in addition to and not in substitution for any other statutory provision restricting or regulating the powers of any statutory undertaker to break open roads or enter upon land for the purpose of laying down or erecting apparatus.

(7) This Article shall apply to the holder of a licence under Article 10(1) of the Electricity Order as it applies to a statutory undertaker.

Restriction of access, etc. in connection with special roads

- 18.—(1) Subject to paragraph (2), the Department may make an order to authorise—
- (a) the stopping-up of any private means of access to land abutting on or adjacent to a special road or land forming the site of any works authorised by a designation order;

- (b) the provision of new means of access to any such land.
- (2) No order shall be made under paragraph (1)(a) unless the Department is satisfied that—
 - (a) access to the land is not reasonably required; or
 - (b) another reasonably convenient means of access to the land is available or will be provided in pursuance of an order made by virtue of paragraph (1)(b).
- (3) Any person, other than a person authorised by the Department, who constructs or alters any means of access to a special road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) Where—
 - (a) a person is convicted of an offence under paragraph (3); and
 - (b) he does not, within such period as the court may allow, remove or restore any means of access constructed or altered in contravention of that paragraph and make good any damage to the road,then the Department may itself—
 - (i) remove or restore that means of access and make good any damage to the road; and
 - (ii) recover from that person any expenses thereby reasonably incurred by it.

Compensation where rights of access stopped-up or restricted under Article 18

- 19.**—(1) Where—
- (a) access to any land has been stopped-up in pursuance of an order made under Article 18(1) (a) or is limited by virtue of the restrictions imposed under this Part on the use of a special road; and
 - (b) any person has suffered damage in consequence thereof by the depreciation of any estate in the land to which he is entitled or by being disturbed in his enjoyment of the land,
- he shall be entitled to recover from the Department compensation in respect of that damage.
- (2) In assessing compensation to which any person is entitled by virtue of this Article regard shall be had to any new means of access provided or to be provided by the Department.
- (3) Any question of disputed compensation arising under this Article shall be referred to and determined by the Lands Tribunal.

Restrictions on use of special roads

- 20.**—(1) A special road shall not be used, except as provided by or under regulations made under this Article, by any traffic other than traffic of a class prescribed in relation to that road by the designation order made in respect of it.
- (2) Until such date as may be declared by a notice published by the Department in the Belfast Gazette as the date on which a special road is open for use by traffic of the prescribed classes, no person shall use that special road unless he is authorised by the Department to do so.
- (3) The Department may make regulations with respect to the use of special roads, and such regulations may, in particular—
- (a) specify the manner in which and the conditions subject to which such roads may be used by traffic of the classes prescribed in relation to those roads in designation orders;
 - (b) authorise, or enable such authority as may be specified in the regulations to authorise, the use of such roads, on occasion or in emergency, or for the purpose of crossing, or for the purpose of securing access to land abutting on or adjacent to the roads, by traffic other

than such traffic as aforesaid, or relax, or enable any such authority as aforesaid to relax, any prohibition or restriction imposed by the regulations.

(4) If any person uses a special road in contravention of paragraph (1) or (2), or of any regulations made under paragraph (3), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) This Article (other than paragraph (2) and so much of paragraph (4) as relates thereto) and any regulations made thereunder shall not apply to any part of a special road until the date declared by the notice mentioned in paragraph (2) as the date on which it is open for use by traffic of the prescribed classes, but nothing in this paragraph shall be construed as preventing the making of regulations under this Article so as to come into force, in relation to any such road, on that date.

Prohibition and control of advertising, etc. on or near special roads

21.—(1) Subject to paragraphs (2) and (3), any person who erects or exhibits or causes or permits to be erected or exhibited any advertisement or notice which is sited or designed wholly or mainly for the purpose of being visible to persons using a special road or which is likely to prejudice the safety of traffic using a special road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) shall not apply to—

- (a) traffic signs or other notices erected or exhibited by, or by the direction of, an officer authorised by the Department or a member of the Royal Ulster Constabulary;
- (b) advertisements or notices exhibited on any structure, wall, hoarding or other apparatus which was in use for the exhibition of advertisements or notices which are or would be visible to the users of a special road at the time of the first publication in relation to that road of the notice referred to in paragraph 1 of Schedule 8.

(3) The Department may by regulations exempt from the provisions of paragraph (1) advertisements or notices of any class or description specified in the regulations or situated in any areas so specified or which comply with such conditions, if any, as may be so specified.

(4) Any person convicted of an offence under paragraph (1) shall within such period as the court may allow remove any advertisement or notice exhibited or displayed in contravention of that paragraph, and if he fails to do so he shall be guilty of a further offence and shall be liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day upon which such failure continues.

(5) Where a person who has been convicted under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself remove the advertisement or notice and do all such things as may be necessary for that purpose and may recover from that person any expenses thereby reasonably incurred by it.

(6) Where in the opinion of the Department any advertisement or notice referred to in paragraph (2)(b) is prejudicial to the safety of traffic using a special road, the Department may serve a notice upon the owner or occupier of the land on which the advertisement or notice is situated directing him to remove the advertisement or notice (including any structure, wall, hoarding or other apparatus on which the advertisement or notice is exhibited) and, where a notice is so served, paragraphs 3 to 8 of Schedule 4 shall apply as if the notice had been served under Article 49.

Service areas for special roads

Provision of service areas for users of special roads

22. The Department may provide, or arrange for the provision of, service areas for users of special roads.

Concession agreements relating to special roads

Concession agreements

23.—(1) In this Part a “concession agreement” means an agreement entered into by the Department under which a person (the “concessionaire”), in return for undertaking such obligations as may be specified in the agreement with respect to the design, construction, maintenance, operation or improvement of a special road, is appointed to enjoy the right (conferred or to be conferred by a toll order under this Part) to charge tolls in respect of the use of the road.

References in this Part to a concession agreement are to the agreement as varied or supplemented from time to time.

(2) Except as otherwise expressly provided by any of the following provisions of this Part, the provisions of this Order apply in relation to a special road in relation to which a concession agreement is in force (referred to in this Part as a “road subject to a concession”) as in relation to any other special road.

(3) A concession agreement shall provide that any land held by the concessionaire which in the opinion of the Department is required, in connection with the matters provided for in the agreement, for any purpose for which the Department may acquire land under Part IX shall be transferred to the Department without payment.

(4) A concession agreement relating to the design and construction of a special road shall provide that if a designation order is not made in respect of the road or the Department decides not to proceed with the proposed road, the Department shall pay to the concessionaire such compensation in respect of costs incurred by him as may be determined in accordance with the agreement.

(5) A concession agreement relating to the design and construction of a special road shall provide that if the concessionaire fails to complete the road in accordance with the agreement, he shall, without prejudice to any other liability, pay to the Department such compensation as may be determined in accordance with the agreement in respect of costs incurred by the Department.

Those costs shall be taken to include the relevant administrative expenses of the Department, including an appropriate sum in respect of general staff costs and overheads.

(6) Nothing in this Part shall be construed as restricting the powers of the Department with respect to a road subject to a concession—

(a) as to the matters which may be provided for in the concession agreement or as to the making of agreements of any other description for any purpose connected with the special road; or

(b) as to the acquisition, by agreement or compulsorily, of any land which in the opinion of the Department is required, in connection with the road, for any purpose for which the Department may acquire land under Part IX.

(7) Nothing in a concession agreement shall be construed as affecting the status of the road subject to the concession as a public road maintainable by the Department.

Exercise of road functions by concessionaire

24.—(1) A concession agreement may authorise the concessionaire to exercise on behalf of the Department such road functions to which this Article applies as may be specified in the agreement.

(2) For this purpose “road functions” means all functions in relation to the road subject to the concession which are exercisable by the Department and this Article applies to all such functions, except—

(a) powers to make orders or regulations under this Order;

(b) powers to make regulations or orders, or give directions, under the Road Traffic Order; and

- (c) such other functions as may be prescribed by the Department by regulations.
- (3) A road function exercisable by the concessionaire may be exercised by the Department only—
 - (a) in an emergency; or
 - (b) if it appears to the Department that such exercise is necessary or expedient in the interests of road safety; or
 - (c) if it appears to the Department that the concessionaire has failed or is unable properly to discharge the function in any respect;

and the Department shall not be liable for anything done or omitted by the concessionaire in the exercise or purported exercise of a road function.

(4) The Department may recover from the concessionaire the costs incurred by it in exercising in the circumstances mentioned in paragraph (3)(a), (b) or (c) a road function exercisable by the concessionaire.

(5) The concessionaire shall in the exercise of a road function act in accordance with the terms of the concession agreement; and the agreement may provide for the withdrawal of the concessionaire's authority to exercise any such function.

Provisions as to traffic regulation

25.—(1) The following provisions have effect with respect to the operation of the Road Traffic Order in relation to a road subject to a concession.

(2) The Department shall consult the concessionaire before making any regulations or order under the Road Traffic Order specifically relating to the road.

(3) The concessionaire may cause or permit traffic signs (within the meaning of Article 2(2) of the Road Traffic Order) to be placed on or near the road, but subject to any directions given by the Department.

If the concessionaire fails to comply with a direction of the Department as to the placing of traffic signs, the Department may carry out the work required and recover from the concessionaire the expenses reasonably incurred by it in doing so.

(4) The concessionaire may impose restrictions or prohibitions under Article 24 or 25 of the Road Traffic Order on the use of the road; and any such restrictions or prohibitions shall have the same effect as restrictions or prohibitions imposed by the Department.

(5) Articles 24, 25 and 26 of the Road Traffic Order shall apply in relation to the imposition of restrictions or prohibitions by the concessionaire with the substitution for references to the Department of references to the concessionaire.

(6) Before imposing any restriction or prohibition by virtue of paragraph (4) the concessionaire shall consult with the Department concerning the use by traffic affected by the restriction or prohibition of suitable alternative routes.

(7) A restriction or prohibition imposed by the concessionaire by virtue of paragraph (4) may be revoked or varied by the Department and shall cease to have effect if a restriction or prohibition inconsistent with it is imposed by the Department under Article 24 or 25 of the Road Traffic Order.

Leasing of land to concessionaire

26.—(1) Where the Department has entered into a concession agreement it may grant to the concessionaire a lease of any land if it appears to the Department to be expedient to do so for the purpose of or in connection with the exercise by the concessionaire of his functions under the agreement.

(2) No statutory provision or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of an agreement between the Department and the concessionaire as to the terms on which land which is the subject of a lease granted under paragraph (1) is provided for the concessionaire's use.

(3) Accordingly no such statutory provision or rule of law applies in relation to the rights and obligations of the parties to a lease so granted—

- (a) so as to exclude or modify in any respect any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) so as to confer or impose on either party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease;
- (c) so as to restrict the enforcement (whether by action for damages or otherwise) by either party to the lease of any obligation of the other party under the lease.

Transfer or termination of concession

27.—(1) The rights of a concessionaire under a concession agreement may be assigned with the consent of the Department and references in this Part to the concessionaire shall be construed as references to the person for the time being entitled to exercise those rights.

(2) On the termination of a concession agreement (by effluxion of time or otherwise) there shall be transferred to the Department by virtue of this Article all such property, rights and liabilities of the concessionaire as in accordance with the concession agreement fall to be so transferred in the circumstances.

Schedule 2 contains supplementary provisions with respect to that transfer.

(3) Where a concession agreement terminates or is terminated before the end of the toll period, the Department—

- (a) shall take reasonable steps to secure the appointment of a new concessionaire; and
- (b) may, for a period of not more than two years until a new appointment or an extension toll order takes effect or the toll period ends, charge and collect tolls in the same way as a concessionaire.

(4) A concession agreement may contain provision as to the circumstances in which, and extent to which, any sum received by the Department—

- (a) in consideration for the appointment of a new concessionaire; or
- (b) by way of tolls collected by virtue of paragraph (3)(b),

is to be applied for the benefit of the former concessionaire or his creditors, as the case may be.

Toll orders

Toll orders

28.—(1) The Department may make an order authorising the charging of tolls (a "toll order") in relation to a special road proposed to be provided by the Department.

(2) The order shall state whether it authorises the charging of tolls by a concessionaire or by the Department.

(3) Schedule 3 has effect as to the making of a toll order.

(4) The proceedings required to be taken in relation to a toll order shall (so far as practicable) be taken concurrently with the proceedings required to be taken in relation to the designation order in respect of the road to which the toll order relates.

(5) The Department shall not make the designation order or the toll order unless it makes them both.

The toll period

29.—(1) A toll order shall provide for tolls to be chargeable for a period (the “toll period”) specified in or determined in accordance with the order.

(2) The order may provide for the toll period to end—

(a) on a date, or at the end of a period, specified in the order; or

(b) on a date determined by reference to—

(i) the achievement of a specified financial objective; or

(ii) the passage of a specified number of vehicles;

or such other factors, or combinations of factors, as may be specified in the order; or

(c) on whichever is the earlier or later of dates specified in or determined in accordance with the order.

(3) In the case of a toll order authorising the charging of tolls by a concessionaire, it is for the Department to decide any matter relevant to determining the date on which the toll period ends.

Amount of tolls chargeable by concessionaire

30.—(1) A toll order authorising the charging of tolls by a concessionaire shall specify the maximum tolls which may be charged if, and only if, the road to which the order relates consists of or includes a major crossing to which there is no reasonably convenient alternative.

(2) The Department may make provision by regulations as to what is to be treated as a major crossing for this purpose and as to the circumstances in which another route is to be taken to be, or not to be, a reasonably convenient alternative.

(3) Subject to any such regulations, a major crossing means a crossing of navigable waters more than 100 metres wide and a reasonably convenient alternative means another crossing (other than a road ferry) which is free of toll and is within five miles of the crossing in question.

For this purpose—

(a) the width of tidal waters shall be ascertained by reference to the mean high-water mark and the width of other waters by reference to the ordinary limits of the waters; and

(b) the distance between two crossings shall be taken to be the shortest distance between the centre lines of the two crossings.

(4) The order shall specify the maximum tolls which may be charged for the use of the crossing or any length of the road including the crossing; and if the condition as to absence of a reasonably convenient alternative is satisfied in relation to certain types of traffic only, the order shall make provision only in relation to those types of traffic.

If that condition ceases to be satisfied, generally or in relation to certain types of traffic, the provisions of the order as to maximum tolls shall cease to apply, or cease to apply to that type of traffic, for so long as that remains the case.

(5) The order may specify different maxima for different descriptions of traffic (which need not correspond with the classes of traffic prescribed by the designation order) and may provide for the amounts to be varied in accordance with a formula specified in the order.

(6) Regulations under this Article shall not apply in relation to an order if notice of the draft order, and of the relevant draft designation order, have been published before the regulations come into operation.

Amount of tolls chargeable by Department

31.—(1) A toll order authorising the charging of tolls by the Department shall in every case specify the maximum tolls which may be charged for the use of the road or any length of the road in respect of which tolls are charged.

(2) The order may specify different maxima for different descriptions of traffic (which need not correspond with the classes of traffic prescribed by the designation order) and may provide for the amounts to be varied in accordance with a formula specified in the order.

Application of statutory provisions relating to monopolies, etc.

32.—(1) For the purposes of—

- (a) the Fair Trading Act 1973⁽¹⁴⁾;
- (b) the provisions of the Competition Act 1980⁽¹⁵⁾ relating to anti-competitive practices; and
- (c) the provisions of the Restrictive Trade Practices Act 1976⁽¹⁶⁾ relating to restrictive agreements,

a person authorised by a toll order to charge tolls shall be deemed to supply a service, namely, providing the facility to use the road in return for the toll charged.

(2) Where the toll charged is subject to a maximum specified by the toll order, the Fair Trading Act 1973 has effect—

- (a) as if the service deemed by paragraph (1) to be supplied were among those listed in Part I of Schedule 7 to that Act (services excluded from Director's power to make monopoly reference); and
- (b) as if, in relation to any such service, the Head of the Department were among the persons listed in section 51(3) of that Act (persons whose concurrence is required for monopoly reference by the Secretary of State).

Variation or revocation of toll order

33.—(1) Subject to paragraphs (2) and (3), a toll order may be varied or revoked by an order made by the Department under this Article.

(2) A toll order may not be varied so as to extend the toll period; and a toll order which does not authorise the charging of tolls in respect of the whole length of the special road to which it relates may not be varied so as to extend the length of road in respect of which tolls may be charged.

(3) A toll order relating to a road subject to a concession may not be varied or revoked without the consent of the concessionaire.

(4) An order under this Article may contain such supplementary, incidental and transitional provisions as appear to the Department to be necessary or expedient.

(5) An order under this Article shall be subject to negative resolution and the provisions of Schedule 3 shall not apply to such an order.

(14) 1973 c. 41

(15) 1980 c. 21

(16) 1976 c. 34

Extension toll orders

34.—(1) The Department may make an order (an “extension toll order”) authorising the charging of tolls by the Department in relation to a road which is or has been subject to a concession.

- (2) Any extension toll order must be made so as to come into operation not later than—
- (a) the end of the toll period under the previous toll order; or
 - (b) where the concession agreement terminates or is terminated before the end of that period, two years after the termination of the agreement,

whichever is the earlier.

(3) The following provisions of this Part apply in relation to an extension toll order as in relation to a toll order under Article 28(1)—

- Article 29(1) and (2) (the toll period);
- Article 31 (amount of tolls chargeable by Department);
- Article 32 (application of statutory provisions relating to monopolies, etc.);
- Article 33 (variation or revocation of order);
- Articles 35 to 39 (further provisions with respect to tolls); and
- Article 40 (annual report by Department).

(4) An extension toll order shall be subject to negative resolution and the provisions of Schedule 3 shall not apply to such an order.

*Further provisions with respect to tolls***Further provisions as to charging of tolls**

35.—(1) A toll order may contain provision exempting from liability for tolls such descriptions of traffic as may be specified in the order.

This does not affect the power of the person authorised by the order to charge tolls to grant such other exemptions from toll as he thinks fit.

- (2) A toll order shall contain provision exempting from liability to pay any toll—
- (a) a vehicle being used for police purposes;
 - (b) an ambulance as defined in section 4(2) of the Vehicles (Excise) Act 1971(17);
 - (c) a fire engine as so defined;
 - (d) a vehicle exempt from duty under that Act by virtue of—
 - section 4(1)(g) of that Act (invalid carriages);
 - section 4(1)(kb) of that Act (vehicles used for carriage of disabled persons by recognised bodies); or
 - section 7(2) of that Act (vehicles used by or for purposes of disabled person).
- (3) A person authorised by a toll order to charge tolls may, subject to the provisions of the order—
- (a) suspend the collection of tolls;
 - (b) enter into agreements under which persons compound in advance, on such terms as may be agreed, for the payment of tolls;
 - (c) charge different tolls according to—

- (i) the distance travelled; or
- (ii) the day, time of day, week, month or other period; and
- (d) charge different tolls for different descriptions of traffic.

In the case of a concessionaire the powers mentioned above are exercisable subject to the provisions of the concession agreement.

Collection of tolls

36.—(1) The Department may make provision by regulations with respect to the collection of tolls in pursuance of a toll order.

(2) Regulations may, in particular, impose requirements with respect to—

- (a) the displaying of lists of tolls; and
- (b) the manner of implementing changes in the amount of tolls;

and where any such requirements are imposed, a toll may not be demanded unless they are, or as the case may be have been, complied with.

(3) A person who in respect of the use of a road to which a toll order relates demands a toll—

- (a) which he is not authorised to charge; or
- (b) which by virtue of paragraph (2) may not be demanded,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Refusal or failure to pay tolls

37.—(1) A person who without reasonable excuse refuses or fails to pay, or who attempts to evade payment of, a toll which he is liable to pay by virtue of a toll order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If it appears to a person employed for the purpose of collecting tolls that a person has, without reasonable excuse, refused or failed to pay a toll which he is liable to pay by virtue of a toll order, he may—

- (a) refuse to permit him to pass, or prevent him from passing, through any place at which tolls are payable; and
- (b) require him to remove his vehicle from any such place by a particular route, and if he does not comply with such a requirement cause the vehicle to be so removed;

and for the purpose of exercising the powers conferred by this paragraph, a person employed for the purpose of the collection of tolls may call upon such assistance as he thinks necessary.

(3) Where a person does not comply with a requirement under paragraph (2)(b) as to the removal of his vehicle, he is liable to pay a prescribed charge in respect of the removal of the vehicle.

(4) Where there remains unpaid—

- (a) a toll which a person is liable to pay by virtue of a toll order; or
- (b) a prescribed charge which he is liable to pay by virtue of paragraph (3),

the person authorised to charge tolls may recover from the person liable the amount of the toll or charge together with a reasonable sum to cover administrative expenses.

(5) In this Article a “prescribed charge” means such charge as may be specified in, or calculated in accordance with, regulations made by the Department.

The regulations may provide for the amount of the charge, or any amount used for the purpose of calculating the charge, to be varied in accordance with a formula specified in the regulations.

Facilities for collection of tolls

38.—(1) A person authorised by a toll order to charge tolls may set up and maintain facilities for the collection of tolls.

The consent of the Department is required for the setting up of any such facilities by a concessionaire.

(2) Those responsible for the design and construction of facilities for the collection of tolls, and those responsible for the collection of tolls at such facilities, shall have due regard to the need to avoid delaying the passage of such vehicles as are mentioned in Article 35(2)(a), (b) or (c) (police vehicles, ambulances and fire engines).

(3) The power of the Department under Article 110 to acquire land for the provision of service areas includes, in the case of a road subject to a toll order, power to acquire any land required for the purpose of setting up facilities for the collection of tolls.

(4) Facilities for the collection of tolls are exempt from rating and shall not be included in any valuation list.

(5) In this Article “facilities for the collection of tolls” means such buildings, structures or other facilities within the boundary of the road, or on land adjoining the road, as are reasonably required for the purpose of or in connection with the collection of tolls in pursuance of a toll order.

Restriction of access to toll roads

39.—(1) Where a toll order is in force in relation to a road subject to a concession, no other road shall be so constructed as to afford access to that road except with the consent of the concessionaire.

(2) Where a toll order is in force in relation to a road, no means of access to that road shall be constructed except with the consent of the Department and, where the road is subject to a concession, of the concessionaire.

(3) Paragraph (2) does not apply to—

- (a) a means of access afforded by a road;
- (b) a means of access to a weighbridge maintained by the Department under Article 206 of the Road Traffic Order; or
- (c) a means of access constructed by or on behalf of a Northern Ireland department or a department of the Government of the United Kingdom which—
 - (i) affords access to premises occupied for the purposes of that department; and
 - (ii) the department is satisfied is reasonably required for discharging any function of the department.

Annual report

40.—(1) The Department shall in respect of each calendar year lay before the Assembly a report

- (a) stating the number of concession agreements entered into by it during the year;
- (b) stating the number of new roads opened to public use during that year which at the time of their opening were subject to a concession;
- (c) listing the toll orders, and orders varying or revoking toll orders, made in that year; and

- (d) containing such information as appears to it to be appropriate with respect to the toll orders (whenever made) which are in operation during that year or any part of it.
- (2) The report shall be laid on or before 31st July in the following calendar year.
- (3) Paragraph (1) does not require the laying of a report in respect of any calendar year if—
 - (a) the number falling to be included in any such report under sub-paragraphs (a) and (b) of that paragraph would be nil; and
 - (b) no matters would fall to be included in any such report under sub-paragraphs (c) and (d) of that paragraph.

Supplementary

Powers under this Part to be cumulative

41. The powers conferred on the Department by this Part shall, unless the context otherwise requires, be construed as being in addition to and not in derogation of the powers conferred on the Department by any other Part of this Order or by any other statutory provision.

Interpretation of Part III

42. The expressions listed below are defined or otherwise fall to be construed for the purposes of this Part in accordance with the provisions indicated—

concession agreement	Article 23(1)
concessionaire	Articles 23(1) and 27(1)
designation order	Article 15(1)
extension toll order	Article 34(1)
road subject to a concession	Article 23(2)
toll order	Article 28(1)
toll period	Article 29(1)

PART IV

IMPROVEMENT AND SAFETY OF ROADS

Improvement of roads

General power of improvement

43.—(1) Subject to the provisions of this Order, the Department may carry out any work for the improvement of a road where it appears to the Department expedient to do so for the purposes of facilitating road traffic.

(2) In this Article “improvement” (without prejudice to the generality of that expression) includes

- (a) the widening, re-aligning and re-shaping of roads; and

- (b) the laying out, planting, maintenance and protection of trees, shrubs and grass margins in and beside roads.

Street lighting

44.—(1) Where the Department considers that any road should be illuminated or better illuminated, it may provide for—

- (a) the supply of electricity or other means of illumination by any person having power in that behalf;
- (b) the installation of such system of illumination (including lamps, lamp posts, cables, supports for cables and other materials and apparatus) as appears to the Department to be necessary for the purpose; and
- (c) the operation and maintenance of any system of illumination installed under this Article.

(2) Where the Department considers that it is in the public interest for a street or footpath to which the public has access to be illuminated or better illuminated, the powers of the Department under paragraph (1) shall be exercisable in relation to that street or footpath as if it were a road.

(3) The Department may alter or remove any system of illumination installed under paragraph (1) or (2).

(4) The Department may provide for the operation and maintenance of any system of illumination installed under Article 24 of the Roads (Northern Ireland) Order 1980⁽¹⁸⁾ and may alter or remove any such system.

(5) The Department may, on such terms and conditions as may be agreed between the Department and any other person, provide, in respect of land which the Department in the exercise of its street planning functions under the Private Streets (Northern Ireland) Order 1980⁽¹⁹⁾ has determined shall be regarded for the purposes of Part III of that Order as being comprised in a street, for—

- (a) the supply of electricity or other means of illumination by any person having power in that behalf; and
- (b) the installation of a system of illumination (including lamps, lamp posts, cables, supports for cables and other materials and apparatus).

(6) For the purposes of, or in connection with, the exercise of its functions under this Article, the Department may obtain from the owner or occupier of any land, on such terms and conditions as may be agreed between the Department and that person, the consent of that person for the Department—

- (a) to install and keep installed on, under or over the land any lamps, lamp posts, cables, supports for cables or other materials or apparatus; and
- (b) to have access to the land for the purpose of inspecting, repairing, altering, renewing or removing any thing so installed.

(7) The power to make a vesting order in respect of any land under Article 113 includes power to create and vest in the Department for the purposes of, or in connection with, the exercise of its functions under this Article new rights over land as well as to vest existing rights and, in particular to create and vest in the Department—

- (a) the right to install and keep installed on, under or over any land any lamps, lamp posts, cables, supports for cables or other materials and apparatus; and
- (b) the right to have access to the land for the purpose of inspecting, repairing, altering, renewing or removing anything so installed.

(8) In this Article—

⁽¹⁸⁾ 1980 NI 11

⁽¹⁹⁾ 1980 NI 12

“footpath” means a way over which the public have a right of way on foot only, not being a footway or other part of a road;

“street” means any street, lane, square, court, alley or passage, not being a road.

Drainage of roads

45.—(1) The Department may, in a road or in land adjacent to or adjoining a road—

- (a) construct and lay road drains;
- (b) construct and lay drains for the purpose of preventing surface water from flowing on to the road;
- (c) erect barriers to divert surface water into or through any existing drain.

(2) The Department may—

- (a) scour, cleanse and keep open road drains;
- (b) scour, cleanse and keep open drains constructed and laid by the Department under paragraph (1)(b);
- (c) for the purpose of relieving the flooding of any road, scour, cleanse and keep open any other drain in land adjacent to or adjoining a road.

(3) The power under paragraph (1)—

- (a) to construct and lay a drain; or
- (b) to erect barriers to divert surface water into or through any existing drain,

includes power to discharge water through that drain into any inland waters, whether natural or artificial, or any tidal waters.

(4) If the owner or occupier of any land suffers damage by reason of the exercise by the Department of any power under paragraph (1), (2) or (3), the Department shall pay compensation therefor.

(5) Any question as to whether compensation is payable under paragraph (4) or as to the amount of any compensation so payable shall be determined by the Lands Tribunal.

(6) For the purpose of draining a road or otherwise preventing surface water from flowing on to it, the Department may acquire by agreement or otherwise any drain, or any right of making or of use or other right in or respecting a drain (with or without any materials or things belonging thereto).

(7) Any person who, before the acquisition of a drain under paragraph (6), has acquired a right to use the drain, shall be entitled to use it or any drain substituted for it, to the same extent as he would or might have done had the drain not been acquired by the Department.

(8) Article 113(1) and (2) and Schedule 7 shall apply where under paragraph (6) the Department acquires otherwise than by agreement any drain or any right.

(9) In this Article and Article 46—

“road drain” means a drain the principal purpose of which is to drain a road;

“drain” includes a ditch, cut, culvert, soakaway, dyke or sluice.

Obstruction of, interference with, or discharge of material into, a road drain, etc.

46.—(1) Any person who, without the consent of the Department, obstructs or interferes with—

- (a) a road drain;
- (b) a drain constructed and laid by the Department under Article 45(1)(b); or
- (c) a barrier erected by the Department under Article 45(1)(c),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person convicted of an offence under paragraph (1) shall within such period as the court may allow—

- (a) remove the obstruction or interference; and
- (b) make good any damage done by him to the drain or barrier;

and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which that failure continues.

(3) Where—

- (a) a person obstructs or interferes with a drain or barrier in contravention of paragraph (1); and
- (b) the Department considers that by reason of that obstruction or interference there is, or is likely to be, a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under paragraph (1)) the Department may carry out such works of repair or reinstatement as in the opinion of the Department are necessitated by reason of his action and recover from that person any expenses thereby reasonably incurred by it.

(4) Any person who, without the consent of the Department, discharges any solid or liquid matter into—

- (a) a road drain; or
- (b) a drain constructed and laid by the Department under Article 45(1)(b),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Any person convicted of an offence under paragraph (4) in respect of any drain shall within such period as the court may allow—

- (a) cease to discharge any solid or liquid matter into the drain;
- (b) remove any pipe or other thing through or by means of which the discharge in question was made; and
- (c) make good any damage done by him to the drain;

and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which that failure continues.

(6) Where—

- (a) a person discharges any solid or liquid matter into a drain in contravention of paragraph (4); and
- (b) the Department considers that it is in the public interest to exercise its powers under this paragraph,

then (whether or not proceedings are instituted for an offence under paragraph (4)) the Department may—

- (i) carry out such works as in the opinion of the Department are necessary to prevent any further solid or liquid matter being discharged in contravention of paragraph (4); and
 - (ii) recover from that person any expenses thereby reasonably incurred by it.
- (7) Where a person—

- (a) has been convicted of an offence under paragraph (1) and becomes liable to prosecution for an offence under paragraph (2); or
- (b) has been convicted of an offence under paragraph (4) and becomes liable to prosecution for an offence under paragraph (5),

the Department may itself do any thing which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(8) A consent under paragraph (1) or (4) may be given subject to such conditions as the Department thinks fit and in particular, but without prejudice to the generality of the foregoing, subject to conditions—

- (a) regulating the place and manner in which any matter is to be discharged into a drain;
- (b) prohibiting the discharge of specified matter into a drain or otherwise regulating the kinds of matter which may be discharged into a drain.

(9) Any person who—

- (a) does anything mentioned in paragraph (1) or (4) in pursuance of a consent given under that paragraph; and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may

- (a) revoke the consent given to that person under paragraph (1) or (4);
- (b) carry out such works of repair or reinstatement as in the opinion of the Department are necessitated by reason of his action; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

(11) Any person aggrieved by—

- (a) the refusal of the Department to give its consent under paragraph (1) or (4); or
- (b) any condition subject to which any such consent is given,

may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this Article.

(12) Paragraphs (2) and (3) of Article 84 shall apply to an appeal under this Article as they apply to an appeal under that Article.

(13) Nothing in this Article applies to—

- (a) the discharge into a drain of surface water from a building adjoining a road by means of a gutter in the footway of the road; or
- (b) anything done in relation to a drain by the owner thereof or by a person exercising a right preserved by Article 45(7).

(14) In this Article “discharge” includes cause or permit to be discharged.

Filling in of roadside ditches

47.—(1) If it appears to the Department that a ditch on land adjacent to or adjoining a road constitutes a danger to users of the road, the Department may—

- (a) if it considers the ditch unnecessary for drainage purposes and any occupier of the land known to the Department agrees in writing that it is unnecessary for those purposes, fill it in; or
 - (b) place in the ditch or in land adjacent to or adjoining it, such pipes as the Department considers necessary in substitution for the ditch, and thereafter fill it in.
- (2) If the owner or occupier of any land suffers damage by reason of the exercise by the Department of any power under paragraph (1), the Department shall pay compensation therefor.
- (3) Any question as to whether compensation is payable under this Article or as to the amount of any compensation so payable shall be determined by the Lands Tribunal.

Safety of roads

Removal of fallen structures, trees, etc.

48.—(1) Where from any cause—

- (a) any wall, fence or other structure (whether of the same kind as those mentioned or not) erected on land adjoining a road; or
- (b) any tree, or branch or bough of a tree, growing on land adjoining a road or in a road,

falls upon or across the road so as to cause danger or obstruction to persons or vehicles using the road, the Department may, without giving notice to the owner or occupier of the land or to any other person, effect the removal of that structure, tree, branch or bough.

(2) Anything removed from a road by the Department under paragraph (1) may be replaced by it upon the land on which it was erected or grew.

(3) Where the Department exercises its powers under paragraph (1), it may recover from the owner or occupier of the land any expenses thereby reasonably incurred by it.

Prevention of obstruction to view, etc.

49. Where the Department considers it necessary, for the prevention of danger arising from obstruction—

- (a) to traffic upon a road, or
- (b) to the view of persons entering or using a road,

to impose restrictions with respect to any land other than restrictions imposed by or under any other provision of this Order, the Department may serve a notice in accordance with Schedule 4.

Removal of potentially dangerous trees and hedges

50. Where the Department is satisfied that any tree or hedge adjoining, adjacent to, or growing on a road—

- (a) is dead, damaged, diseased or insecurely rooted and by reason of its condition is likely to cause danger to persons using the road;
- (b) obstructs or interferes with the light from any public lamp;
- (c) endangers or obstructs the passage of vehicles or pedestrians, or obstructs the view of drivers of vehicles; or
- (d) otherwise prejudices the safety or convenience of persons using the road or prejudices the road,

the Department may serve a notice on the owner of the tree or hedge, or on the occupier of the land on which such tree or hedge is growing, requiring him to remove the tree or hedge or to lop the tree or cut back the hedge to such an extent as will remove the obstruction or remedy any other matter to which the notice relates.

Dangerous land adjoining roads

51. If the Department is of the opinion—

- (a) that a building, wall or other structure is in such a condition as to be dangerous to persons using a road;
- (b) that there is in or on any land adjoining a road an unfenced or inadequately fenced source of danger to persons using the road; or
- (c) that there is on any land adjoining a road any illumination which is a source of danger to persons using the road,

the Department may serve a notice on the owner of the structure or the owner or occupier of the land requiring him to carry out such works of repair, protection, removal, alteration or enclosure as will obviate the danger.

Prevention of solid matter being washed on to roads

52. The Department may serve a notice on the owner or occupier of any land adjoining a road, requiring him to construct and lay such drains, erect such barriers or embankments or do such other works as are necessary to prevent any solid matter from such land from falling upon, or being washed or carried on to, the road, or into any drain, sewer or gully therein, in such quantities as may cause danger or substantial inconvenience to users of the road, or choke up the drain, sewer or gully.

Prevention of water falling or flowing on to roads

53.—(1) The Department may serve a notice on the owner or occupier of any building adjoining a road requiring him—

- (a) to erect or repair such gutters or downpipes on the building;
- (b) to construct such gutters in the footway of the road; or
- (c) to carry out such other works,

as are necessary to prevent—

- (i) water from the roof or any other part of the building falling upon persons using the road;
- (ii) so far as is reasonably practicable, surface water from the building flowing on to, or over, the road.

(2) Every gutter in the footway of a road shall be so constructed and kept in such good condition and repair by the owner or occupier of any building served by the gutter that it does not constitute a danger or a nuisance to road users.

(3) The Department may serve a notice on the owner or occupier of any building adjoining a road requiring him to carry out such works in relation to a gutter serving that building as are necessary to comply with paragraph (2).

(4) The Department may serve a notice on the owner or occupier of land adjoining a road, requiring him to do such works as are necessary to prevent, so far as is reasonably practicable, surface water from the land flowing onto or over the road.

(5) The following are hereby repealed, namely—

- (a) section 142 of the Belfast Corporation Act 1845(20); and
- (b) any other transferred local provision imposing obligations on an owner or occupier of a building in relation to the construction, maintenance or repair of gutters serving the building in footways adjoining the building.

Removal of barbed wire

54.—(1) Where on any land adjoining a road there is a fence made with barbed wire, or having barbed wire in it, and the wire is, in the opinion of the Department, likely to be a danger to persons or animals using the road, the Department may serve on the occupier of the land a notice requiring him to—

- (a) remove the barbed wire; or
- (b) carry out such works as are necessary to prevent the barbed wire from being a danger to persons or animals using the road.

(2) For the purposes of this Article “barbed wire” means any wire with spikes or jagged projections.

Removal of projections from buildings

55.—(1) The Department may serve a notice on the owner or occupier of any building requiring him to remove or alter any projection erected or placed against or in front of a building if the projection—

- (a) is, or is likely to be, an obstruction to safe and convenient passage along any road; or
- (b) is, by reason of its being insecurely fixed or of its defective construction or otherwise, a source of danger to persons or vehicles using the road.

(2) In this Article “projection” includes any projecting window, porch, canopy, awning, sign, sign post, sign iron, showboard, gate, door, bar, wall, fence or step, or any other obstruction or projection.

Doors, etc. opening onto road

56.—(1) A door, gate or bar shall not, except with the consent of the Department, be so erected on land adjoining a road as to open outwards onto the road.

(2) Where a door, gate or bar is erected in contravention of paragraph (1) the Department may serve a notice on the owner or occupier of the land requiring him to alter the door, gate or bar so that it does not open outwards onto the road.

(3) Any person aggrieved by the refusal of the Department to give its consent under paragraph (1) may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this Article.

(4) Paragraphs (2) and (3) of Article 84 apply to an appeal under this Article as they apply to an appeal under that Article.

Retaining walls

57.—(1) This Article applies to a retaining wall any part of which is within 6 metres of a road and which—

- (a) is at any point of a height of one metre or more above the level of the ground at the boundary of the road nearest that point; or

(b) serves, or is intended to serve, as a support for earth or other material which supports a road.

(2) No retaining wall, being a wall which when erected will be a retaining wall to which this Article applies, shall be erected otherwise than in accordance with plans, sections and specifications approved by the Department.

(3) Any person who erects a retaining wall in contravention of paragraph (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Where—

(a) a retaining wall to which this Article applies by virtue of paragraph (1)(a) is in such a condition as to constitute a danger to persons using the road; or

(b) a retaining wall to which this Article applies by virtue of paragraph (1)(b) is in such a condition as to constitute a danger to the support and stability of a road,

the Department may, by notice served on the owner or occupier of the land on which that wall is situated, require him to carry out such works as will obviate the danger.

(5) Any person aggrieved by the refusal of the Department to give its approval under paragraph (2) may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this Article.

(6) Paragraphs (2) and (3) of Article 84 apply to an appeal under this Article as they apply to an appeal under that Article.

(7) In this Article “retaining wall” means a wall, not forming part of a permanent building, which serves, or is intended to serve, as a support for earth or other material on one side only.

Notices under Articles 50 to 57 and appeals

58.—(1) This Article applies to notices served under any of Articles 50 to 57.

(2) A notice shall—

(a) describe the works to be carried out;

(b) require the person upon whom it is served to carry out those works within the specified period; and

(c) require that person within that period to do such other things necessary for or connected with the carrying out of those works as may be specified in the notice.

(3) Any person upon whom a notice is served who is aggrieved by any of its requirements may appeal within 21 days of its service to a court of summary jurisdiction.

(4) Subject to any order made on appeal, if a person upon whom a notice is served fails to comply with any of its requirements—

(a) he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale, and if after conviction the failure continues he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day on which the failure continues;

(b) the Department may execute such works as are necessary to comply with the requirements of the notice and may recover from that person any expenses thereby reasonably incurred by it.

(5) Notice of the right of appeal under paragraph (3) shall be given in the notice.

(6) In this Article “specified period” means such period, being not less than 21 days from the service of the notice, as the Department specifies in the notice.

Removal of nuisances

59.—(1) Where any thing is placed on a road so as to constitute a nuisance, the Department may by notice require the person who placed it there to remove it immediately and if he fails to comply with the notice the Department may make a complaint to a court of summary jurisdiction for a removal and disposal order under this Article.

(2) Where the Department considers that any thing placed on a road without lawful authority constitutes a danger to persons using the road the Department may remove the thing and may make a complaint to a court of summary jurisdiction for a disposal order under this Article.

(3) A court of summary jurisdiction may, on a complaint made under this Article, make an order authorising the Department either to remove the thing in question and dispose of it or, as the case may be, to dispose of the thing in question.

(4) Where in accordance with an order under paragraph (3) any thing is disposed of by sale, the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954⁽²¹⁾.

(5) Where in accordance with an order under paragraph (3) the Department disposes of any thing

- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
- (b) in some manner other than by sale,

the Department may recover from the person who placed that thing on the road any expenses reasonably incurred by it in removing and disposing of the thing.

(6) For the purposes of this Article a thing may be treated as having been placed on a road notwithstanding that it is on wheels.

Damage caused to road by excavations, etc. on adjoining land

60. Where a road is damaged by or in consequence of any excavation or other works on land adjoining the road, the Department may make good the damage and recover from the owner or occupier of the land any expenses thereby reasonably incurred by it.

Miscellaneous powers of Department as to structures, works etc. in or under road

Placing of structures in a road

61.—(1) Article 5 of the Social Need (Northern Ireland) Order 1986⁽²²⁾ shall be renumbered as paragraph (1) of that Article and after that paragraph there shall be added the following paragraphs—

“(2) In the exercise of its powers under this Article the Department may carry out works involving the placing of any structure in a road maintained by it, but shall not so exercise those powers as—

- (a) to obstruct or prevent the passage of vehicles or of the public on foot along the road;
- (b) to obstruct or prevent normal access to premises adjoining the road;
- (c) to prevent any person from having access to any works of his under, in, on, over, along or across the road.

(21) 1954 c. 9 (N.I.)

(22) 1986 NI 14

(3) The Department may sell, let or otherwise dispose of any structure placed by it in a road under this Article to any other person.”

(2) In Article 101 of the Planning Order after paragraph (2) there shall be inserted the following paragraph—

“(2A) The Department may sell, let or otherwise dispose of any trading kiosk placed by it in a road under this Article to any other person.”.

Trading kiosks

62.—(1) This Article applies to any trading kiosk which—

- (a) having been placed in a road by the Department in the exercise of its powers under Article 5 of the Social Need (Northern Ireland) Order 1986 is sold by the Department to another person under paragraph (3) of that Article; or
- (b) having been placed in a road by the Department or a district council in the exercise of its powers under Article 101 of the Planning Order, is sold by the Department or council to another person under paragraph (2A) or (5) of that Article.

(2) Where a trading kiosk to which this Article applies is present in a road, the owner of that kiosk shall, unless there is in force a licence under this Article authorising its presence in that road, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where—

- (a) a person is convicted of an offence under paragraph (2); and
- (b) he does not, within such period as the court may allow, remove the trading kiosk in question and make good any damage to the road,

then the Department may itself—

- (i) remove that trading kiosk and dispose of it in such manner as the Department thinks fit; and
- (ii) make good any damage to the road.

(4) The Department may by a licence issued under this Article to the owner of a trading kiosk to which this Article applies authorise the presence of that trading kiosk in a road and in a position specified in the licence.

(5) The Department may—

- (a) issue a licence under this Article to the owner of a trading kiosk and insert in the licence a provision prohibiting assignment of the licence; or
- (b) issue such a licence to the owner of a trading kiosk and his successors in title, the licence, unless withdrawn or surrendered, to be transferred with the ownership of the trading kiosk;

and references in this Article to the licensee are references to the person who is for the time being entitled to the benefit of a licence under this Article.

(6) A licence under this Article shall be issued subject to such conditions as the Department thinks fit.

(7) Without prejudice to the generality of paragraph (6), a licence under this Article may be issued subject to conditions—

- (a) regulating the maintenance, repair and alteration of the trading kiosk to which the licence relates;
- (b) requiring the licensee to give the Department not less than 6 weeks notice of his intention to cease using or abandon that trading kiosk.

(8) The Department may by notice served on the licensee withdraw a licence issued under this Article—

- (a) on the expiration of such period as may be specified in the notice, being a period of not less than 7 days beginning with the date of service of the notice on the licensee, if—
 - (i) any condition subject to which the licence was issued is contravened by the licensee; or
 - (ii) the Department becomes aware that the licensee intends to cease using or abandon the trading kiosk;
- (b) on the expiration of such period as may be so specified, being a period of not less than 3 months beginning with that date, if—
 - (i) the Department considers the withdrawal of the licence is necessary for the purpose of the exercise of its functions under this Order; or
 - (ii) in the case of a licence relating to a trading kiosk mentioned in paragraph (1)(b), an order under Article 100 of the Planning Order ceases to apply in relation to the road on which the kiosk is present.

(9) Unless withdrawn or surrendered by the licensee, a licence under this Article shall remain in force for such period as may be specified therein.

(10) Where a licence under this Article expires or is withdrawn or surrendered—

- (a) the Department may require the last licensee, within such period as the Department may specify, to remove the trading kiosk to which the licence relates and make good any damage to the road; and
- (b) if the last licensee fails to comply with any such requirement the Department may itself—
 - (i) remove that trading kiosk and dispose of it in such manner as the Department thinks fit; and
 - (ii) make good any damage to the road.

(11) The licensee or (in the case of a licence which has expired or been withdrawn or surrendered) the last licensee shall indemnify the Department against any claim in respect of injury, damage or loss arising out of—

- (a) the presence in a road of the trading kiosk to which the licence relates; or
- (b) the carrying out by any person of any works required under paragraph (10),

other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(12) In paragraphs (10) and (11) “the last licensee” means the person who, immediately before the expiration, withdrawal or surrender of the licence, was the licensee or, if that person has died, his personal representative.

(13) Where any trading kiosk is disposed of by sale under paragraph (3)(i) or (10)(b)(i) the expenses of removal and sale and of making good any damage to the road shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(23).

(14) Where the Department disposes of any trading kiosk under paragraph (3)(i) or (10)(b)(i)—

- (a) by sale and the proceeds are not sufficient to defray the Department’s expenses; or
- (b) in some manner other than by sale,

the Department may recover from the owner of the trading kiosk any expenses reasonably incurred by it in removing and disposing of the trading kiosk and making good any damage to the road.

Cattle-grids

63.—(1) The Department may, if it is satisfied that it is expedient to do so, provide and maintain a cattle-grid in a road or partly in a road and partly in adjoining land.

(2) Where the Department provides a cattle-grid under this Article it shall also provide facilities for the passage under proper control of animals and all other traffic unable to pass over the cattle-grid, being traffic entitled by law to use the road in which the grid is placed.

(3) A cattle-grid and any facilities provided by the Department under this Article shall, when completed, vest in and be maintainable by the Department.

(4) The Department may alter or improve a cattle-grid or facilities provided under this Article.

(5) The Department may enter into an agreement with any person for the making by him of a contribution (by a single payment or periodical payments) of such amount as may be specified in the agreement towards the expenses of the Department in providing and maintaining a cattle-grid under this Article.

(6) An agreement under paragraph (5) may include such incidental and consequential provisions as appear to the parties to be necessary, including provisions for the repayment of, if the cattle-grid is later removed, a specified proportion of a contribution towards the installation of the cattle-grid.

(7) The Department may, in determining whether or not to provide a cattle-grid, have regard to the extent to which persons who will receive special benefit from it are willing to enter into agreements under paragraph (5).

(8) In this Article “cattle-grid” means a device intended to prevent the passage of animals, or animals of a particular description, but to allow the passage of all or some other traffic, and includes any fence or other works necessary for securing the efficient operation of the device.

Shelters, rails, barriers, etc.

64.—(1) The Department may erect or permit to be erected on any road—

- (a) shelters for the protection from the weather of persons waiting to enter public service vehicles;
- (b) rails or other barriers for the regulation of the priority of such persons;
- (c) posts denoting stopping places of public service vehicles;

and may remove anything so erected.

(2) In exercising its functions under paragraph (1), the Department shall have regard to the prevention of danger to persons entering or using the road.

(3) The Department may maintain anything erected under this Article.

Road humps and other traffic calming works

65.—(1) Subject to this Article, the Department may construct—

- (a) road humps; and
- (b) other traffic calming works,

on any road and remove any works so constructed by it.

(2) Where, in exercise of the power conferred by paragraph (1), the Department proposes to construct any works on a road, the Department shall publish in at least one newspaper circulating in the locality in which the road is situated, and place at appropriate points on that road, a notice—

- (a) stating the nature, dimensions and location of the proposed works, and
- (b) specifying the address to which and the period (not being less than 30 days from the date of publication of the notice) within which objections to the proposal may be made to the Department.

(3) The Department shall consider any objections sent to it in accordance with a notice under paragraph (2) and may, if it thinks fit, hold a public inquiry.

(4) The Department may by regulations make such provision in relation to the construction, maintenance and removal of works mentioned in paragraph (1) as appear to it to be necessary or expedient in the interests of safety and the free movement of traffic, and may in particular—

- (a) provide that works shall be constructed only in roads of such descriptions and in such circumstances as may be prescribed by the regulations;
- (b) impose requirements as to—
 - (i) the nature, dimensions, location and spacing of works;
 - (ii) the placing of signs of such type or character as may be so prescribed;
 - (iii) the carrying out and maintenance of other ancillary or consequential works.

(5) Works constructed under paragraph (1) which conform to regulations made under paragraph (4) shall not be treated as an obstruction to the road, but as part of the road, so that in particular—

- (a) the Department's obligation to maintain the road; and
- (b) the obligation of any person having power to break open the road, to make good any damage or otherwise reinstate the road,

extend to maintaining or, as the case may be, making good any damage to or otherwise reinstating the works.

(6) In this Article—

“motor vehicle” has the same meaning as in the Road Traffic Order;

“road hump” means an artificial hump in or on the surface of the road which is designed to control the speed of vehicles, and references to a road hump include references to any other works (including signs or lighting) required in connection with such a hump;

“traffic calming works”, in relation to a road, means works affecting the movement of vehicular and other traffic for the purpose of promoting safety or preserving or improving the environment through which the road runs.

Power of district council to erect shelters and toilets on or under road

Erection of shelters and toilets by district council

66.—(1) A district council may, with the consent of the Department, erect on or under any road within the district of the council—

- (a) shelters for the protection from the weather of persons waiting to enter public service vehicles;
- (b) shelters for the use and convenience of taxi drivers and such other persons as the council may permit to use the shelter;
- (c) public toilets.

(2) A district council may make byelaws regulating the conduct of persons using shelters provided under paragraph (1)(b) and public toilets provided under paragraph (1)(c) and may charge such fees

for, and impose such terms and conditions on, the use of such shelters and toilets as the council thinks fit.

(3) A district council may maintain anything erected by it under this Article and may remove anything so erected.

PART V

ENVIRONMENTAL ASSESSMENT

Environmental assessment of certain road projects

67.—(1) In any case where the Department has under consideration the construction of a new road or the improvement of a road it shall determine before the date of publication of details of the project whether or not it falls within Annex I or Annex II to Council Directive No.85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

(2) Where it appears to the Department that it falls within Annex I, or that it falls within Annex II and has such characteristics that it should be made subject to an environmental assessment in accordance with the Directive, the Department shall prepare an environmental statement, that is, a statement containing the information referred to in Annex III to the Directive to the extent that the Department considers—

- (a) that such information is relevant to the specific characteristics of the project and of the environmental features likely to be affected by it; and
- (b) that (having regard in particular to current knowledge and methods of assessment) the information may reasonably be gathered,

including at least—

- (i) a description of the project comprising information on the site, design and size of the project;
- (ii) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- (iii) the data required to identify and assess the main effects which the project is likely to have on the environment;
- (iv) a non-technical summary of the information mentioned in heads (i) to (iii).

(3) Any project for the construction or improvement of a special road which falls within Annex II to the Directive shall be treated as having such characteristics that it should be made subject to an environmental assessment in accordance with the Directive.

(4) Where an environmental statement has been prepared, the Department shall not later than the date of publication of details of the project publish in each of two successive weeks in one or more newspapers circulating in the area in which the project is initiated a notice—

- (a) stating the general effect of the project;
- (b) stating that an environmental statement has been prepared;
- (c) specifying a place in that area where a copy of the environmental statement may be inspected by any person free of charge at all reasonable hours during a period of not less than 30 days from the date of the last publication of the notice; and
- (d) stating that within that period a person may in writing express an opinion on the statement.

(5) The Department shall not later than the date on which the notice referred to in paragraph (4) is last published consult the district council in whose area the project is to be carried out and such other statutory bodies whose interests appear to the Department to be affected by the project.

(6) The Department may direct any such council or body to furnish it at such time and in such manner as it may specify with any relevant information which that council or body possesses.

(7) After considering any opinions which have been expressed in relation to the statement the Department shall cause a local inquiry to be held if it appears to the Department to be necessary to do so.

(8) Where a local inquiry is held any interested person shall be permitted to appear in person or by a representative and to be heard at the inquiry.

(9) Before deciding whether to proceed with the project the Department shall consider—

- (a) the environmental statement;
- (b) any opinions which have been expressed in relation to the statement; and
- (c) where a local inquiry is held, the report of the person who held the inquiry.

(10) The Department shall publish once in one or more newspapers circulating in the area in which the project is initiated a notice—

- (a) stating that the Department has considered the matters set out in paragraph (9);
- (b) stating the Department's decision as to whether or not to proceed with the project; and
- (c) specifying a place in the area where a statement setting out the reasons and considerations on which its decision is based can be inspected by any person free of charge at all reasonable hours within a period of 30 days from the date of publication of the notice.

PART VI

ABANDONMENT AND STOPPING-UP OF ROADS AND PRIVATE ACCESSES

Abandonment and stopping-up of roads

68.—(1) The Department may by order provide for—

- (a) the abandonment of any road; or
- (b) the stopping-up of any road.

(2) On the coming into operation of an order for the abandonment of a road—

- (a) the road shall cease to be maintainable by the Department; and
- (b) any public right of way over the road shall be extinguished.

(3) An order for the stopping-up of a road shall authorise the Department to carry out such works as it considers necessary to prevent or restrict to such extent as the Department thinks fit, access to the road by road traffic.

(4) No order shall be made under paragraph (1) in relation to a road unless—

- (a) the Department is of the opinion that the road is not necessary for road traffic or that another road is available which provides, or is capable, if improved, of providing, alternative facilities for road traffic; or
- (b) the order provides for the carrying out by the Department or any other person of such works as the Department considers necessary for the provision of alternative facilities for road traffic before the road is stopped-up or abandoned.

(5) An order made under paragraph (1) may—

- (a) provide for the retention or removal of any cables, wires, mains, pipes or other apparatus placed along, across, over or under the stopped-up or abandoned road; and

- (b) provide for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus;

and may contain such consequential, incidental and supplementary provisions as appear to the Department to be necessary or expedient for the purposes of the order.

(6) The Department may by order under this paragraph—

- (a) revoke any order for the time being in operation under paragraph (1)(b); and
- (b) authorise the removal of any works carried out in pursuance of such an order.

(7) Where all the owners and occupiers of land adjoining a road request the Department in writing to make an order under paragraph (1) in respect of the road, the Department may make such an order if (in addition to the condition mentioned in paragraph (4)(a) or (b) being fulfilled) it is satisfied that provision has been made, upon terms agreed by all the owners and occupiers and the Department, for the payment by the owners and occupiers of—

- (a) the costs of any works which by any provision of the order the Department or any other person is required to carry out;
- (b) the expenses of the Department in making the order; and
- (c) compensation in respect of the extinction or modification by the order of any right of any person;

and, accordingly, where an order is made under paragraph (1) at the request of all the owners and occupiers of land adjoining the road, they shall meet the costs and expenses and pay the compensation mentioned above.

(8) Where the Department makes an order under paragraph (1) otherwise than at the request of all the owners and occupiers of land adjoining the road, the Department shall—

- (a) meet the costs of any works which by any provision of the order any person is required to carry out; and
- (b) pay compensation in respect of the extinction or modification by the order of any right of any person.

(9) Any question of disputed compensation arising under this Article shall be referred to and determined by the Lands Tribunal.

Stopping-up of private accesses

69.—(1) Where the Department considers that the use of a private means of access from a road to any land is likely to cause danger to, or to interfere unreasonably with, traffic on the road, the Department may make an order providing for—

- (a) the stopping-up of the access to the land;
- (b) the provision of a new means of access to the land.

(2) No order shall be made under paragraph (1)(a) unless the Department is satisfied that—

- (a) access from the road to the land is not reasonably required; or
- (b) another reasonably convenient means of access to the land is available or will be provided in pursuance of an order made under paragraph (1)(b).

(3) The Department may agree with the occupiers of any land and any other person having an estate therein that any private means of access to the land from a road shall be stopped-up by it and, where it appears to the parties to be necessary, may provide a new means of access to the land.

(4) The Department may stop-up a means of access in any way that seems to it to be appropriate, but shall not do so in such a way as to obstruct any public right of way on foot.

(5) Schedule 5 shall have effect in relation to an order made under paragraph (1).

(6) Any person, other than a person exercising a public right of way on foot, who uses a means of access which has been stopped-up under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Article 19 (compensation where rights of access stopped-up or restricted) shall apply where access to any land has been stopped-up under this Article in the same manner as it applies where access to any land has been stopped-up under Article 18(1).

PART VII

LAWFUL AND UNLAWFUL INTERFERENCE WITH ROADS

Structures, works, etc. on, in, under, over or near a road

General duty to consult Department concerning exercise of statutory power to erect structure on, in or under road

70.—(1) Where a statutory provision (other than this Order) passed or made before the coming into operation of this Article—

- (a) confers power on any body or person to erect any structure on, in or under a road; and
- (b) does not require that body or person to consult the Department concerning the exercise of that power,

that power shall not be exercisable after the coming into operation of this Article unless that body or person has consulted the Department concerning the exercise of that power.

(2) Nothing in paragraph (1) applies to anything done by—

- (a) a statutory undertaker in the exercise of a statutory power;
- (b) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
- (c) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

Erection of a structure on road

71.—(1) Any person who erects any building, wall or fence on a road otherwise than in the exercise of a statutory power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who erects any other structure on a road otherwise than—

- (a) in the exercise of a statutory power; or
- (b) in pursuance of a consent given by the Department under this Order; or
- (c) in pursuance of a licence under the Street Trading (Regulation) Act (Northern Ireland) 1929⁽²⁴⁾ or in circumstances where, by virtue of the proviso to section 1(1) of that Act, he would not be required to obtain a licence under that Act,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(24) 1929 c. 9 (N.I.)

(3) Where a building, wall, fence or other structure is erected on a road in contravention of paragraph (1) or (2), the Department may serve on the owner of that building, wall, fence or other structure a notice requiring him to remove it.

(4) Article 58 applies to a notice served under this Article as it applies to a notice served as mentioned in paragraph (1) of that Article.

(5) For the purposes of this Article—

- (a) “structure” includes any object of such a nature as to be capable of causing obstruction;
- (b) a structure may be treated as having been erected on a road notwithstanding that it is on wheels; and
- (c) “erect” includes place or set up.

Erection of scaffolding, hoardings, etc. on a road

72.—(1) Subject to paragraph (2), any person who, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erects any scaffolding on a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

- (a) with the consent of the Department; or
- (b) in relation to a road which is not a special road, by—
 - (i) a statutory undertaker in the exercise of a statutory power;
 - (ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
 - (iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

(3) Where—

- (a) a person has erected any scaffolding in contravention of paragraph (1); and
- (b) the Department considers that the scaffolding constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

- (i) remove the scaffolding or carry out such other works as are necessary to obviate the danger; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Where—

- (a) a person is convicted of an offence under paragraph (1); and
- (b) he does not, within such period as the court may allow, remove any scaffolding erected in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

- (i) remove that scaffolding and make good any damage to the road; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(5) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(6) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

- (a) the proper erection and removal of the scaffolding and the reinstatement of the road; and
- (b) the safety and convenience of traffic.

(7) Without prejudice to the generality of paragraph (6), a consent under paragraph (2)(a) may be given subject to conditions—

- (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road for the purposes of the work, alteration, repair, maintenance or cleaning in connection with which the scaffolding is erected; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to the erection of the scaffolding might reasonably be expected to obstruct the traffic on the road;
- (b) requiring the person to whom the consent is given to cause the scaffolding to which the consent relates to be properly lighted during the hours of darkness (within the meaning of the Road Traffic Order);
- (c) requiring the person to whom the consent is given to comply with any directions given to him in writing by the Department with respect to the erection and maintenance of signs warning users of the road of the presence of the scaffolding to which the consent relates;
- (d) requiring the person to whom the consent is given to deposit a sum of money with the Department as security for the proper erection and removal of the scaffolding and the reinstatement of the road.

(8) The person to whom a consent is issued under this Article in respect of any scaffolding shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the erection or presence of that scaffolding on a road, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(9) Any person who—

- (a) erects any scaffolding in pursuance of a consent given under paragraph (2)(a); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may —

- (a) revoke the consent given to that person under paragraph (2)(a);
- (b) remove any scaffolding erected in pursuance of that consent; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

(11) Where any scaffolding—

- (a) has been removed by the Department under paragraph (3), (4) or (10), and
- (b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(12) Where any scaffolding is disposed of by sale under paragraph (11) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(25).

(25) 1954 c. 9 (N.I.)

- (13) Where the Department disposes of any scaffolding under paragraph (11)—
- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
 - (b) in some manner other than by sale,

the Department may recover from the person who erected that scaffolding on the road any expenses reasonably incurred by it in removing and disposing of the scaffolding.

(14) This Article shall apply to any hoarding or other structure erected in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building as it applies to scaffolding erected in that connection.

Placing of rails, beams, cables, arches, etc. over a road

73.—(1) Subject to paragraph (2), any person who fixes or places any overhead beam, rail, arch, pipe, cable, wire or other similar apparatus over, along or across any road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (2) Paragraph (1) does not apply to anything done—
- (a) with the consent of the Department;
 - (b) in relation to a road which is not a special road, by—
 - (i) a statutory undertaker in the exercise of a statutory power; or
 - (ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
 - (iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order; or
 - (c) in relation to a special road, with the consent of the Department under Article 17(1) or by virtue of Article 17(2).

(3) Where—

- (a) a person has fixed or placed any apparatus in contravention of paragraph (1); and
- (b) the Department considers that the apparatus constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

- (i) remove that apparatus or carry out such other works as are necessary to obviate the danger; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow, remove any apparatus fixed or placed in contravention of that paragraph and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day upon which that failure continues.

(5) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(6) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(7) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a consent under paragraph (2)(a) may be given subject to conditions—

- (a) requiring the person to whom the consent is given to insure against such risks in connection with the fixing or placing of the apparatus to which the consent relates and its presence over, along or across a road as the Department may specify;
- (b) requiring the person to whom the consent is given to produce to the Department such certificates as the Department may require as to the safety of any apparatus to which the consent relates;
- (c) requiring the apparatus to be fixed or placed not earlier than such date as is specified in the consent and to be removed not later than such other date as is so specified.

(9) The person to whom a consent under paragraph (2)(a) is given shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the fixing, placing or presence over, along or across a road of apparatus to which the consent relates, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(10) Any person who—

- (a) fixes or places any apparatus in pursuance of a consent given under paragraph (2)(a); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) Where it appears to the Department that a person has contravened paragraph (10), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may —

- (a) revoke the consent given to that person under paragraph (2)(a);
- (b) remove any apparatus fixed or placed in pursuance of the consent; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

(12) Where any apparatus—

- (a) has been removed by the Department under paragraph (3), (5) or (11); and
- (b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(13) Where any apparatus is disposed of by sale under paragraph (12) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(26).

(14) Where the Department disposes of any apparatus under paragraph (12)—

- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
- (b) in some manner other than by sale,

the Department may recover from the person who fixed or placed the apparatus over, along or across the road any expenses reasonably incurred by it in removing and disposing of the apparatus.

Festive lighting on roads

74.—(1) The Department may issue to any person a licence authorising that person to place festive lighting over, along or across any road specified in the licence for such period as is so specified.

(2) A licence under paragraph (1) may be issued subject to such conditions as the Department thinks fit, and in particular conditions—

(26) 1954 c. 9 (N.I.)

- (a) regulating the installation of the festive lighting and the use for that purpose of any system of illumination installed under Article 44;
- (b) requiring the payment by the licensee of charges in respect of electricity consumed by the festive lighting;
- (c) requiring the licensee to indemnify the Department against any liability to any other person for injury, loss or damage arising from the placing of the festive lighting over, along or across a road.

(3) Any person who—

- (a) places festive lighting over, along or across a road otherwise than in accordance with a licence granted under paragraph (1); or
- (b) fails to comply with any condition subject to which such a licence is granted to him,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this Article “festive lighting” means lighting which is installed for a temporary period in connection with the celebration of a festive occasion, season or event.

Restriction on construction of buildings over road

75.—(1) No person shall—

- (a) except in the exercise of statutory powers, construct a building over any part of a road (whether it is intended to span the road or not), or alter a building so constructed, without a licence issued under this Article by the Department, or otherwise than in accordance with the conditions of a licence so issued;
- (b) use a building so constructed or altered in pursuance of a licence so issued otherwise than in accordance with the conditions thereof;

and any person who contravenes any provision of this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and if the contravention is continued after conviction, he shall be guilty of a further offence and liable to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the contravention is so continued.

(2) A licence under this Article may be issued subject to such conditions, including conditions with respect to the construction (including the headway over the road), maintenance, lighting and use of the building, as the Department thinks fit; and, any such condition is binding on the successor in title to every owner, and every lessee and occupier, of the building.

(3) Where a licence under this Article makes provision for the execution of any works or the provision of any facilities which in the opinion of the Department require to be executed or provided by it in connection with the building or its construction or alteration, the Department may execute those works or, as the case may be, provide those facilities and may recover the expenses reasonably incurred by it in so doing from the licensee or from the owner of the building.

(4) No appeal lies under Article 84—

- (a) if the land on which the road in question is situated is owned by the Department, or
- (b) against any condition which the Department declares to be necessary for the purpose of securing the safety of persons using the road or of preventing interference with traffic thereon.

(5) Where a person has constructed or altered a building, for the construction, or, as the case may be, alteration, of which a licence is required by this Article, without such a licence or otherwise than in accordance with the conditions of the licence, the Department may by notice served on the licensee or the owner of the building require him to remove the building or make alterations therein.

(6) Where there has been a failure to comply with any conditions of a licence under this Article with respect to the maintenance or use of a building, the Department may by notice served on the licensee or the owner of the building require him to execute such works or take such steps as are necessary to secure compliance with those conditions.

(7) Article 58 applies to a notice served under this Article as it applies to a notice served as mentioned in paragraph (1) of that Article.

Restriction on construction of bridges over road

76.—(1) The Department may issue to the owner or occupier of any land adjoining a road a licence to construct and use a bridge over the road.

(2) Subject to paragraph (3), a licence under this Article may be issued subject to such conditions as the Department thinks fit.

(3) It shall be a condition of every licence under this Article that the person to whom it is granted is, at his own expense, to remove the bridge or alter it in such manner as the Department may require, if at any time the Department considers the removal or alteration necessary or desirable in connection with the carrying out of improvements to the road; and the decision of the Department that the removal or alteration is necessary or desirable in that connection shall be final, and the condition shall be enforceable by the Department against the owner for the time being of the land.

(4) No appeal lies under Article 84 against—

- (a) any condition mentioned in paragraph (3); or
- (b) any condition which the Department declares to be necessary for the purpose of securing the safety of persons using the road or of preventing interference with traffic thereon.

(5) Any person who, except in the exercise of statutory powers—

- (a) constructs a bridge over a road without a licence under this Article, or
- (b) constructs or uses a bridge otherwise than in accordance with the conditions of such a licence, or
- (c) fails to remove or alter a bridge when required to do so in accordance with any condition of the licence,

shall be guilty of an offence and liable to a fine not exceeding level 3 on the standard scale, and if the offence is continued after conviction he shall be guilty of a further offence and liable to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the offence is so continued.

Restriction on construction of cellars, etc. under road

77.—(1) Any person who without the consent of the Department constructs any vault, arch, cellar or part of a building under a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) The consent of the Department—

- (a) shall be given subject to the condition that any vault, arch or cellar constructed in pursuance of the consent and any gratings, lights and other fixtures in the surface of the road that are associated with it are to be kept in such good condition and repair by the person to whom the consent is given as not to constitute a danger or a nuisance to road users;
- (b) may be given subject to such other conditions as the Department thinks fit.

(3) Where a person—

- (a) constructs any vault, arch, cellar or part of a building in pursuance of a consent under this Article; and

(b) fails to comply with any condition subject to which that consent was given, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Where it appears to the Department that a person has contravened paragraph (1) or (3) then (whether or not proceedings are instituted for an offence under that paragraph) the Department may serve on that person a notice requiring him to remove or alter the vault, arch, cellar or part of a building in question.

(5) Article 58 applies to a notice served under paragraph (4) as it applies to a notice served as mentioned in paragraph (1) of that Article.

(6) The person to whom a consent is given under this Article shall indemnify the Department against any claim in respect of injury, damage or loss arising out of—

- (a) the presence under a road of any vault, arch, cellar or part of a building to which the consent relates; or
- (b) the carrying out by any person of any works for the construction of any vault, arch, cellar or part of a building in pursuance of the consent.

Excavations in a road

78.—(1) Subject to paragraph (2), any person who carries out any excavation in, or otherwise breaks up the surface of, a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to any works done—

- (a) with the consent of the Department or under the authority of a licence issued by the Department under Article 79 or in compliance with a requirement of the Department under Article 79(11);
- (b) in the course of constructing—
 - (i) a permitted means of access to a road within the meaning of Article 80(13);
 - (ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or
 - (iii) a milk tanker facility within the meaning of Article 81(10);
- (c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years;
- (d) for the purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980(27) to a determination under Article 3(1) of that Order;
- (e) in relation to a road which is not a special road, by—
 - (i) a statutory undertaker in the exercise of a statutory power;
 - (ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
 - (iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order;
- (f) in relation to a special road, with the consent of the Department under Article 17(1) or by virtue of Article 17(2);
- (g) in the course of constructing a gutter in the footway in accordance with Article 53(2); or

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- (h) for the sole purpose of planting any grass, tree or shrub of a mature height not exceeding 500 millimetres in a verge in a road where—
 - (i) the road does not include a footway;
 - (ii) the verge is provided for the purpose of containing mains, drains, pipes, cables and other apparatus; and
 - (iii) the planting is carried out by or on behalf of the owner or occupier of land on so much of the verge as adjoins that land.
- (3) Where—
 - (a) a person has carried out any works in contravention of paragraph (1); and
 - (b) the Department considers that the works constitute a danger to persons using the road,
 then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—
 - (i) carry out such works as are necessary to obviate the danger; and
 - (ii) recover from that person any expenses thereby reasonably incurred by it.
- (4) Where—
 - (a) a person is convicted of an offence under paragraph (1); and
 - (b) he does not, within such period as the court may allow, fill in any excavation made in contravention of that paragraph and make good any damage to the road,
 then the Department may itself—
 - (i) fill in that excavation and make good any damage to the road; and
 - (ii) recover from that person any expenses thereby reasonably incurred by it.
- (5) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.
- (6) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—
 - (a) the proper completion of the works and reinstatement of the road; and
 - (b) the safety and convenience of traffic.
- (7) Without prejudice to the generality of paragraph (6), a consent under paragraph (2)(a) may be given subject to conditions—
 - (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road as a result of the carrying out of the works to which the consent relates; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such works, might reasonably be expected to obstruct the traffic on the road;
 - (b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the works to which the consent relates;
 - (c) requiring the person to whom the consent is given to insure against such risks in connection with the works to which the consent relates as the Department may specify;
 - (d) regulating or prohibiting the deposit on the road of building materials and rubbish associated with the works to which the consent relates;
 - (e) requiring the person to whom the consent is given to cause the works to which the consent relates and any associated building materials or rubbish to be properly guarded and to be

properly lighted during the hours of darkness (within the meaning of the Road Traffic Order);

- (f) requiring the person to whom the consent is given to fill in any excavation to which the consent relates, if required to do so by the Department.

(8) The person to whom a consent is issued under this Article in respect of any works shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the carrying out of those works, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(9) Any person who—

- (a) carries out any works in pursuance of a consent given under paragraph (2)(a); and
(b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may

- (a) revoke the consent given to that person under paragraph (2)(a);
(b) fill in the excavation, remove any associated building materials or rubbish deposited on the road and make good any damage done to the road; and
(c) recover from that person any expenses thereby reasonably incurred by it.

Placing of apparatus in or under a road

79.—(1) Subject to paragraph (2), any person who—

- (a) places or retains any apparatus in or under a road; or
(b) carries out any excavation in a road for the purpose of placing, maintaining, repairing or reinstating any apparatus in or under a road,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

- (a) under the authority of a licence issued by the Department under this Article;
(b) in relation to a road which is not a special road, by—
(i) a statutory undertaker in the exercise of a statutory power;
(ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
(iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order; or
(c) in relation to a special road, with the consent of the Department under Article 17(1) or by virtue of Article 17(2);
(d) in the course of constructing a gutter in the footway in accordance with Article 53(2); or
(e) in the course of constructing a milk tanker facility within the meaning of Article 81(10).

(3) Where—

- (a) a person has placed or retained any apparatus or made any excavation in contravention of paragraph (1); and

(b) the Department considers that the apparatus or excavation constitutes a danger to persons using the road,
then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

- (i) remove that apparatus or carry out such other works as are necessary to obviate the danger; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Where—

- (a) a person is convicted of an offence under paragraph (1); and
- (b) he does not, within such period as the court may allow, remove any apparatus placed or retained in contravention of that paragraph, fill in any excavation made in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

- (i) remove that apparatus, fill in that excavation and make good any damage to the road; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(5) The Department may by a licence issued under this Article authorise any person—

- (a) to place and leave, or to retain, and thereafter (in either case) to maintain, repair and reinstate, apparatus in or under a road; and
- (b) to carry out in a road any excavation necessary for that purpose.

(6) The Department may—

- (a) issue a licence under this Article to any person and insert in the licence a provision prohibiting assignment of the licence; or
- (b) issue a licence under this Article to any person and insert in the licence a provision permitting assignment of the licence; or
- (c) issue such a licence to the owner of any land adjoining the road and his successors in title, the licence, unless withdrawn or surrendered, to be annexed to that land,

and references in this Article to the licensee are references to the person who is for the time being entitled by virtue of such a licence to do anything authorised by it to be done.

(7) A licence under this Article shall be issued subject to such conditions as seem to the Department to be adequate for securing—

- (a) the proper completion of the works authorised by the licence and the reinstatement of the road; and
- (b) the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a licence under this Article may be issued subject to conditions—

- (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road as a result of the works authorised by the licence; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to the works authorised by the licence, might reasonably be expected to obstruct the traffic on the road;
- (b) requiring the deposit by the licensee of a sum of money as security for the completion of the works authorised by the licence;

- (c) requiring the licensee to insure against such risks in connection with the works authorised by the licence as the Department may specify;
 - (d) requiring the licensee, before carrying out any works authorised by the licence (except works for the purpose of carrying out emergency repairs), to give not less than 7 days' notice to the Department, stating the nature and place of the works proposed;
 - (e) requiring the licensee to comply with any directions given by the Department, for the purpose of minimising inconvenience to traffic, as to the date on which or time at which any works authorised by the licence are to be carried out;
 - (f) requiring any apparatus, wherever practicable, to be laid by thrust boring;
 - (g) requiring the licensee to cause any works authorised by the licence to be properly guarded and to be properly lighted during the hours of darkness (within the meaning of the Road Traffic Order);
 - (h) requiring the licensee to give the Department not less than 6 weeks' notice of his intention to cease using or abandon the apparatus.
- (9) The Department may by notice served on the licensee withdraw a licence issued under this Article—
- (a) on the expiration of such period as may be specified in the notice, being a period of not less than 7 days beginning with the date of service of the notice on the licensee, if—
 - (i) any condition subject to which the licence was issued is contravened by the licensee; or
 - (ii) the Department becomes aware that the licensee intends to cease using or abandon the apparatus;
 - (b) on the expiration of such period as may be so specified, being a period of not less than 3 months beginning with that date, if the Department considers the withdrawal of the licence is necessary for the purpose of the exercise of its functions under this Order.
- (10) Unless withdrawn or surrendered by the licensee, a licence under this Article shall remain in force for such period as may be specified therein.
- (11) Where a licence under this Article expires or is withdrawn or surrendered—
- (a) the Department may require the last licensee, within such period as the Department may specify, to remove the apparatus to which the licence relates or alter it in such manner as the Department may require and to reinstate the road; and
 - (b) if the last licensee fails to comply with any such requirement the Department may itself do anything which he has failed to do and recover from the last licensee any expenses thereby reasonably incurred by it.
- (12) The licensee or (in the case of a licence which has expired or been withdrawn or surrendered) the last licensee shall indemnify the Department against any claim in respect of injury, damage or loss arising out of—
- (a) the placing or presence in or under a road of apparatus to which the licence relates, or
 - (b) the carrying out by any person of any works authorised by the licence or required under paragraph (11),
- other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.
- (13) In paragraphs (11) and (12) “the last licensee” means the person who, immediately before the expiration, withdrawal or surrender of the licence, was the licensee or, if that person has died, his personal representative.
- (14) Where—

- (a) any condition subject to which a licence is issued under this Article is contravened by the licensee; and
- (b) the Department considers that, by reason of that contravention, there is a danger to persons using the road,

the Department may carry out such works as are necessary to obviate the danger and recover from the licensee any expenses thereby reasonably incurred by it.

(15) Where any apparatus—

- (a) has been removed by the Department under paragraph (3), (4) or (11); and
- (b) has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(16) Where any apparatus is disposed of by sale under paragraph (15) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954⁽²⁸⁾.

(17) Where the Department disposes of any thing under paragraph (15)—

- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
- (b) in some manner other than by sale,

the Department may recover from the person who placed that apparatus in or under the road any expenses reasonably incurred by it in removing and disposing of the apparatus.

Construction of permitted means of access to a road

80.—(1) Subject to paragraphs (2) and (3), any person who, without the consent of the Department, constructs any permitted means of access to—

- (a) a trunk road or classified road from agricultural land; or
- (b) any other road,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply—

- (a) if planning permission has been granted in respect of the construction of the means of access; or
- (b) to anything done for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years.

(3) Sub-paragraph (b) of paragraph (1) does not apply if the means of access is constructed in compliance with such requirements as to the siting and layout of means of access to roads of the kind mentioned in that sub-paragraph as may be prescribed by regulations made by the Department.

(4) Where—

- (a) a person has constructed a means of access in contravention of paragraph (1); and
- (b) the Department considers that the existence or use of the means of access constitutes a danger to persons using the road,

then, (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

(28) 1954 c. 9 (N.I.)

- (i) stop-up the means of access and carry out such other works as are necessary to obviate the danger, and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(5) Where a person has constructed a means of access in contravention of paragraph (1), the Department may serve on that person a notice requiring that the means of access be stopped-up; and where, within 21 days from the date on which a notice is served on any person under this paragraph, a means of access is stopped-up in compliance with the notice, that person shall not be liable to prosecution for an offence under paragraph (1) in respect of that means of access.

(6) Any person, other than a person exercising a public right of way on foot, who uses a means of access stopped-up under paragraph (4) or in compliance with a notice under paragraph (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where—

- (a) a person is convicted of an offence under paragraph (1); and
- (b) he does not, within such period as the court may allow, remove any means of access constructed in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

- (i) remove that means of access and make good any damage to the road; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(8) A consent under paragraph (1) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(9) A consent under paragraph (1) shall be given subject to such conditions as seem to the Department to be adequate for securing—

- (a) the proper completion of the means of access and reinstatement of the road; and
- (b) the safety and convenience of traffic.

(10) Without prejudice to the generality of paragraph (9), a consent under paragraph (1) may be given subject to conditions—

- (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road as a result of the construction of the means of access; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to the construction of the means of access, might reasonably be expected to obstruct the traffic on the road;
- (b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the means of access to which the consent relates;
- (c) requiring the person to whom the consent is given to insure against such risks in connection with the construction of the means of access to which the consent relates as the Department may specify.

(11) Any person who—

- (a) constructs a means of access in pursuance of a consent given under paragraph (1); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(12) Where it appears to the Department that a person has contravened paragraph (11), then (whether or not proceedings are instituted for an offence under that paragraph), the Department may —

- (a) revoke the consent given to that person under paragraph (1);
- (b) remove any means of access constructed in pursuance of that consent and make good any damage to the road; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

(13) In this Article—

“agricultural land” has the same meaning as in the Agriculture Act (Northern Ireland) 1949⁽²⁹⁾;

“constructing a means of access” includes forming, laying out or altering that means of access;

“development order” has the same meaning as in the Planning Order;

“permitted means of access” means a means of access the construction of which would be permitted by a development order.

Provision of milk tanker facility on or near road

81.—(1) Any person who, without the consent of the Department, carries out on or near any road works for the provision of a milk tanker facility shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where—

- (a) a person has carried out any works in contravention of paragraph (1); and
- (b) the Department considers that the works constitute a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

- (i) carry out such works as are necessary to obviate the danger; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(3) Where—

- (a) a person is convicted of an offence under paragraph (1); and
- (b) he does not, within such period as the court may allow, remove any works carried out in contravention of that paragraph and make good any damage to the road,

then the Department may itself—

- (i) remove those works and make good any damage to the road; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(4) A consent under paragraph (1) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(5) A consent under paragraph (1) shall be given subject to such conditions as seem to the Department to be adequate for securing—

- (a) the proper completion of the works and reinstatement of the road; and
- (b) the safety and convenience of traffic.

(6) Without prejudice to the generality of paragraph (5), a consent under paragraph (1) may be given subject to conditions—

(29) 1949 c. 2 (N.I.)

- (a) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the works to which the consent relates;
- (b) requiring the person to whom the consent is given to insure against such risks in connection with the works to which the consent relates as the Department may specify.

(7) The person to whom a consent is issued under this Article in respect of any works shall indemnify the Department against any claim in respect of injury, damage or loss rising out of the carrying out of the works, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(8) Any person who—

- (a) carries out any works in pursuance of a consent given under paragraph (1); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) Where it appears to the Department that a person has contravened paragraph (8), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

- (a) revoke the consent given to that person under paragraph (1);
- (b) remove any works executed on the road and make good any damage done to the road; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

(10) In this Article—

“milk tank” means any moveable tank or other container used for the purpose of storing milk in bulk;

“milk tanker” means any motor vehicle constructed or designed for the purpose of carrying milk in bulk;

“milk tanker facility” means any space, platform or other structure whose purpose is to facilitate the collection by a milk tanker while on or partially on a road of milk from a milk tank placed on or near the road.

Excavations near a road

82.—(1) Subject to paragraphs (2) and (3), any person who makes any pit, ditch, drain or watercourse or carries out any other excavation which is not on a road but which is—

- (a) within 12 metres of the nearest part of a special road;
- (b) within 12 metres of the middle of a carriageway of a first-class or a second-class road; or
- (c) within 9 metres of the middle of a carriageway of any other road,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to any excavation which is carried out—

- (a) with the consent of the Department;
- (b) in the course of constructing—
 - (i) a permitted means of access to a road within the meaning of Article 80(13);
 - (ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or
 - (iii) a milk tanker facility within the meaning of Article 81(10);
- (c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years; or

- (d) for the sole purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980(30) to a determination under Article 3(1) of that Order.
- (3) Sub-paragraphs (b) and (c) of paragraph (1) do not apply to any excavation which is carried out—
- (a) by a statutory undertaker in the exercise of a statutory power; or
 - (b) by the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
 - (c) by the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.
- (4) Where—
- (a) a person has carried out an excavation in contravention of paragraph (1); and
 - (b) the Department considers that the excavation constitutes a danger to persons using the road,
- then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—
- (i) carry out such works as are necessary to obviate the danger; and
 - (ii) recover from that person any expenses thereby reasonably incurred by it.
- (5) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow,—
- (a) fill in any excavation made in contravention of that paragraph; and
 - (b) restore anything altered, broken up or taken away in the course of that excavation;
- and if he fails to do so he shall be guilty of a further offence and be liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day upon which that failure continues.
- (6) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (5), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.
- (7) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.
- (8) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—
- (a) the proper completion of the excavation to which the consent relates; and
 - (b) the safety and convenience of traffic.
- (9) Without prejudice to the generality of paragraph (8), a consent under paragraph (2)(a) may be given subject to conditions—
- (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road as a result of the excavation to which the consent relates; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such excavation, might reasonably be expected to obstruct the traffic on the road;

- (b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the excavation to which the consent relates and of any works which are required by any condition subject to which the consent is given; and
- (c) requiring the person to whom the consent is given to insure against such risks in connection with the excavation to which the consent relates as the Department may specify.

(10) Any person who—

- (a) carries out any excavation in pursuance of a consent given under paragraph (2)(a); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(11) Where it appears to the Department that a person has contravened paragraph (10), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may —

- (a) revoke the consent given to that person under paragraph (2)(a);
- (b) carry out such works as are necessary to obviate any danger to persons using the road; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

Alteration of wall, fence or drain at side of road

83.—(1) Subject to paragraph (2), any person who alters any wall, fence or drain at the side of a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Paragraph (1) does not apply to anything done—

- (a) with the consent of the Department;
- (b) in the course of constructing—
 - (i) a permitted means of access to a road within the meaning of Article 80(13);
 - (ii) any other means of access to any road, if planning permission has been granted in respect of the construction of that means of access; or
 - (iii) a milk tanker facility within the meaning of Article 81(10);
- (c) for the sole purpose of repairing any lawful work or of restoring it to substantially the form in which it was at any time within the preceding 3 years;
- (d) for the sole purpose of complying with a requirement attached under Article 3(4A) of the Private Streets (Northern Ireland) Order 1980(31) to a determination under Article 3(1) of that Order; or
- (e) in relation to a road which is not a special road, by—
 - (i) a statutory undertaker in the exercise of a statutory power;
 - (ii) the operator of a telecommunications code system in pursuance of any right conferred by or in accordance with the telecommunications code; or
 - (iii) the holder of a licence under Article 10(1) of the Electricity Order in pursuance of any right conferred by or in accordance with Schedule 4 to that Order.

(3) Where—

- (a) a person has carried out any alteration in contravention of paragraph (1); and
- (b) the Department considers that the alteration constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph), the Department may—

- (i) carry out such works as are necessary to obviate the danger; and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow—

- (a) restore anything altered in contravention of that paragraph; and
- (b) make good any damage to the road,

and if he fails to do so he shall be guilty of an offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day upon which that failure continues.

(5) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (4), the Department may itself do anything which he has failed to do and recover from that person any expenses thereby reasonably incurred by it.

(6) A consent under paragraph (2)(a) may be given by the Department where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.

(7) A consent under paragraph (2)(a) shall be given subject to such conditions as seem to the Department to be adequate for securing—

- (a) the proper completion of the alteration to which the consent relates; and
- (b) the safety and convenience of traffic.

(8) Without prejudice to the generality of paragraph (7), a consent under paragraph (2)(a) may be given subject to conditions—

- (a) designed to ensure—
 - (i) safe access to the road for traffic likely to use the road for any purpose relating to the alteration to which the consent relates; and
 - (ii) the provision of adequate accommodation adjoining the road for vehicles which, by waiting to load or unload or otherwise using the road for any purpose relating to any such alteration, might reasonably be expected to obstruct the traffic on the road;
- (b) requiring the deposit by the person to whom the consent is given of a sum of money as security for the completion of the alteration to which the consent relates;
- (c) requiring the person to whom the consent is given to insure against such risks in connection with the alteration to which the consent relates as the Department may specify.

(9) Any person who—

- (a) carries out any alteration in pursuance of a consent given under paragraph (2)(a); and
- (b) fails to comply with any condition subject to which that consent was given,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) Where it appears to the Department that a person has contravened paragraph (9), then (whether or not proceedings are instituted for an offence under that paragraph) the Department may—

- (a) revoke the consent given to that person under paragraph (2)(a);
- (b) restore anything altered in pursuance of that consent and make good any damage to the road; and
- (c) recover from that person any expenses thereby reasonably incurred by it.

- (11) In this Article—
- “alter” includes remove;
 - “drain” has the same meaning as in Article 45(9).

Provisions supplementary to preceding provisions of this Part

- 84.**—(1) Any person aggrieved by—
- (a) the refusal of the Department to give its consent under—
 - (i) Article 72(2)(a);
 - (ii) Article 73(2)(a);
 - (iii) Article 77(1);
 - (iv) Article 78(2)(a);
 - (v) Article 80(1);
 - (vi) Article 81(1);
 - (vii) Article 82(2)(a);
 - (viii) Article 83(2)(a);
 - (b) any condition subject to which any such consent is given;
 - (c) the refusal of the Department to issue a licence under Article 74(1), 75, 76 or 79; or
 - (d) any condition subject to which any such licence is issued,

may, within 21 days of receiving notice thereof, appeal to the planning appeals commission by notice in writing under this Article.

(2) Before determining an appeal under this Article the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(3) Every notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as the Department may by regulations prescribe.

(4) Summary proceedings for an offence under any of the preceding provisions of this Part shall not be commenced after the expiration of—

- (a) a period of 6 months from the date on which evidence sufficient in the opinion of the Department to justify a prosecution for the offence comes to the knowledge of the Department; or
- (b) a period of one year from the date on which the offence was committed or ceased to continue,

whichever period last expires.

(5) For the purposes of paragraph (4) a certificate purporting to be signed by the secretary of, or other officer authorised by, the Department as to the date on which such evidence as is mentioned in that paragraph comes to the knowledge of the Department shall be conclusive evidence thereof.

(6) Nothing in any of the preceding provisions of this Part applies in relation to anything done for the sole purpose of complying with any requirement of a notice served under any of Articles 50 to 57.

*Other interference with roads***Causing damage to roads**

85.—(1) Any person who, without lawful authority or reasonable excuse, deposits anything whatsoever on a road and thereby causes damage to it shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Any person who causes damage to a road by digging, raising or carrying away any gravel, stones, sand or other materials from the side of the road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where—

(a) a person has caused damage to a road in contravention of paragraph (1) or (2); and

(b) the Department considers that the damage constitutes a danger to persons using the road, then (whether or not proceedings are instituted for an offence under paragraph (1) or (2)) the Department may—

(i) carry out such works as are necessary to obviate the danger; and

(ii) recover from that person any expenses thereby reasonably incurred by it.

(4) Where a person convicted of an offence under paragraph (1) or (2) fails, within such period as the court may allow, to make good any damage to the road, the Department may—

(a) make good any damage to the road; and

(b) recover from that person any expenses thereby reasonably incurred by it.

(5) In this Article “road” includes any part of an embankment supporting a road and any part of a bank which flanks a road.

Vehicle-crossings over footways and verges

86.—(1) Where the occupier of any land adjoining or having access to a road habitually takes or permits to be taken a mechanically-propelled vehicle across a kerbed footway or a verge in the road to or from that land, the Department may serve a notice on the owner and the occupier of that land requiring that such works be executed for the construction of a vehicle-crossing over the footway or verge as may be specified in the notice.

(2) Article 58 applies to a notice served under this Article as it applies to a notice served as mentioned in paragraph (1) of that Article.

Advertisements, pictures, signs, etc.

87.—(1) Any person who, without lawful authority—

(a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or

(b) displays any advertisement,

upon the surface of a road or upon any tree, structure or other works in or on a road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Where any person contravenes paragraph (1), the Department may (whether or not any proceedings are instituted for an offence under that paragraph)—

(a) remove anything painted, inscribed, affixed or displayed in contravention of paragraph (1) and make good any damage done to the road or to the tree, structure or other works in question; and

(b) recover from that person any expenses thereby reasonably incurred.

(3) The Department may serve on the owner of any structure or other works in or on a road a notice requiring him, within 21 days of the service of the notice, to remove anything painted, inscribed, affixed or displayed on the structure or other works in contravention of paragraph (1).

(4) Where a person on whom a notice is served under paragraph (3) fails to comply with that notice within the period specified in that paragraph, the Department may—

- (a) do anything which that person has failed to do; and
- (b) recover from that person any expenses thereby reasonably incurred by it.

(5) Paragraph (1) does not apply to an advertisement relating specifically to a pending parliamentary election or to a pending election to the Assembly or a district council.

(6) Where an advertisement mentioned in paragraph (5) is displayed upon the surface of a road or upon a tree, structure or other works in or on a road in contravention of regulations under Article 67 of the Planning Order, the Department may serve a notice on the person who displayed the advertisement requiring him to remove the advertisement within 21 days of the service of the notice.

(7) Where any person on whom a notice is served under paragraph (6) fails to comply with that notice within the period specified in that paragraph, the Department may—

- (a) do anything which that person has failed to do; and
- (b) recover from that person any expenses thereby reasonably incurred by it.

(8) Paragraphs (3) and (4) apply to any advertisement mentioned in paragraph (5) which is displayed in contravention of regulations under Article 67 of the Planning Order as they apply in relation to anything displayed in contravention of paragraph (1).

(9) For the purposes of this Article a person displays an advertisement if—

- (a) he undertakes or maintains, whether by himself or by a servant or agent, the display of the advertisement; or
- (b) his goods, trade, business or other concerns are given publicity by the advertisement,

but a person shall not be guilty of an offence under paragraph (1) by reason only that his goods, trade, business or other concerns are given publicity by the advertisement, if he proves that it was displayed without his knowledge or consent.

(10) In this Article—

- “advertisement” has the same meaning as in Article 2(2) of the Planning Order;
- “remove” includes obliterate;
- “road” includes any retaining wall or flank wall belonging to a road.

(11) Section 1(1)(c) of the Printed Documents Act (Northern Ireland) 1970(32) shall, in its application to an advertisement printed by any person, have effect as if the reference to a member of the Royal Ulster Constabulary included a reference to the Department acting in pursuance of its functions under this Article.

Obstruction of roads

88. Any person who, without lawful authority or reasonable excuse, in any way intentionally or negligently obstructs the free passage along a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Lighting fires or discharging fireworks near a road

89. Where—

(32) 1970 c. 30 (N.I.)

- (a) any person, without lawful authority or reasonable excuse, lights a fire or discharges a firework within 15 metres of the centre of a road; and
 - (b) in consequence any person or traffic using the road is injured, endangered or interrupted,
- the first-mentioned person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Pitching stalls or offering things for sale on a road

90.—(1) Any person who, on a road, without lawful authority—

- (a) pitches a booth, stall or stand; or
- (b) subject to paragraph (2), offers or exposes anything for sale, or for the purpose of sale,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) A person shall not be guilty of an offence under paragraph (1)(b) if he offers or exposes anything for sale in circumstances where, by virtue of the proviso to section 1(1) of the Street Trading (Regulation) Act (Northern Ireland) 1929⁽³³⁾, he would not be required to obtain a licence under that section authorising him so to do.

(3) Any person convicted of an offence under paragraph (1) shall, within such period as the court may allow, remove from the road any booth, stall or stand, or any thing offered or exposed for sale, and if he fails to do so he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding one-tenth of level 2 on the standard scale for each day upon which that failure continues.

(4) Where a person who has been convicted of an offence under paragraph (1) becomes liable to prosecution for an offence under paragraph (3), the Department may itself do anything which he has failed to do, and may recover from him any expenses thereby reasonably incurred by it.

(5) Where—

- (a) any thing has been removed by the Department under paragraph (4); and
- (b) it has not been recovered by its owner within 21 days from the day on which it was removed,

the Department may dispose of it in such manner as the Department thinks fit.

(6) Where any thing is disposed of by sale under paragraph (5) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954⁽³⁴⁾.

(7) Where the Department disposes of any thing under paragraph (5)—

- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
- (b) in some manner other than by sale,

the Department may recover from the owner thereof any expenses reasonably incurred by it in removing and disposing of the thing.

Encamping on a road

91.—(1) Any person who without reasonable excuse encamps, or maintains an encampment consisting of a tent, caravan or any other form of shelter, on a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

⁽³³⁾ 1929 c. 9 (N.I.)

⁽³⁴⁾ 1954 c. 9 (N.I.)

(2) Where a person has contravened paragraph (1), the Department may serve on him a notice requiring him to remove the encampment within such period as may be specified in the notice.

(3) Where, on a complaint made by the Department, a court of summary jurisdiction is satisfied that a person—

(a) has contravened paragraph (1); and

(b) has failed to comply with a notice served on him under paragraph (2),

the court may make an order requiring that person to remove the encampment.

Playing games on a road

92. Any person who plays a game on a road to the danger of any person using the road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Animals on a road

93.—(1) Any person who—

(a) turns loose any animal onto a road; or

(b) by negligence or illusage in driving any animal on a road causes any person to be injured or property to be damaged by such animal,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any animal is at any time found wandering or lying on or at the side of the road, the keeper thereof shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of paragraph (2) it shall be a defence for the keeper of an animal to show—

(a) that he took reasonable precautions to prevent the animal from wandering onto the road; or

(b) that the animal had wandered onto the road from unfenced land and that—

(i) the land is situated in an area where fencing is not customary, and

(ii) that he had a right to place the animal on that land.

(4) In this Article—

“animal” means any horse (including pony, ass and mule), cattle, sheep, goat or swine or any deer not in the wild state; and

“keeper” has the same meaning as in Article 2(2)(b) of the Animals (Northern Ireland) Order 1976(35).

Depositing of things on roads

94.—(1) Any person who deposits, or causes or permits to be deposited, building materials, rubble, rubbish, compost, dung or any other thing whatsoever on a road in such a position as to cause, or be likely to cause, any obstruction or danger, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) Where—

(a) a person deposits, or causes or permits to be deposited on a road any thing mentioned in paragraph (1); and

- (b) the Department considers that the thing in question constitutes a danger to persons using the road,

then (whether or not proceedings are instituted for an offence under that paragraph) the Department may remove the thing or take such other steps as are necessary to obviate the danger.

(3) Where—

- (a) a person is convicted of an offence under paragraph (1); and
- (b) he does not, within such period as the court may allow, remove the thing in question from the road,

the Department may itself remove that thing from the road.

(4) The Department may dispose of any thing removed by it under paragraph (2) or (3) in such manner as it thinks fit.

(5) Where any thing is disposed of by sale under paragraph (4) the expenses of removal and sale shall be defrayed out of the proceeds thereof and the balance of the proceeds (if any) shall be given to the owner if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(36).

(6) Where the Department disposes of any thing under paragraph (4)—

- (a) by sale and the proceeds are not sufficient to defray the Department's expenses; or
- (b) in some manner other than by sale,

the Department may recover from the person who deposited that thing on the road any expenses reasonably incurred by it in removing and disposing of the thing.

Matter spilling or flowing onto roads from vehicles or adjoining land

95.—(1) Any person who, being in charge of a vehicle on a road, permits any solid or liquid matter from the vehicle, or being carried on the vehicle, to drop or be spilled on the carriageway of a road in such quantity as to create, or be likely to create, a danger or substantial inconvenience to persons using the road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) For the purposes of paragraph (1)—

- (a) a person is in charge of a vehicle if, as owner or otherwise, he has immediate charge or control of the vehicle, or if he is entitled to give orders to the person having such charge or control; and
- (b) “vehicle” includes anything towed by a vehicle.

(3) Any person who intentionally or recklessly permits any filth, dirt, lime, oil or other offensive matter to run or flow onto a road from any adjoining land shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) Where—

- (a) a person permits any matter to drop or be spilled on, or run or flow onto, a road in contravention of paragraph (1) or (3); and
- (b) does not remove that matter as soon as is practicable,

then (whether or not proceedings are instituted for an offence under paragraph (1) or (3)) the Department may—

- (i) remove that matter from the road, and
- (ii) recover from that person any expenses thereby reasonably incurred by it.

(36) 1954 c. 9 (N.I.)

(5) The Department may dispose of any matter removed by it under paragraph (4) in such manner as it thinks fit.

(6) Where a person is convicted of an offence under paragraph (3), the Department may serve a notice on him requiring him to carry out such works as are necessary to prevent further matter running or flowing onto a road in contravention of that paragraph.

(7) Article 58 applies to a notice served under paragraph (6) as it applies to a notice served as mentioned in paragraph (1) of that Article.

Control of builders' skips

96.—(1) The owner of a builder's skip who causes or permits it to be deposited in such a position on a road as to cause or be likely to cause a danger to persons using or entering the road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) The Department may make regulations specifying conditions subject to which builders' skips may be deposited on roads, and, in particular, conditions relating to—

- (a) the siting of skips,
- (b) the marking on skips of the name and telephone number or address of the owner thereof,
- (c) their dimensions,
- (d) the manner in which they are to be coated with paint or other material for the purpose of making them immediately visible to oncoming traffic,
- (e) the care and disposal of their contents,
- (f) the times at and manner in which they are to be lighted or guarded,
- (g) their removal.

(3) Regulations made under paragraph (2) may specify positions and circumstances in which the owner of a builder's skip shall not cause or permit it to be deposited on roads without obtaining the consent of the Department.

(4) Where the owner of a builder's skip contravenes any regulations made under paragraph (2), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where the commission by any person of an offence under paragraph (1) or (4) is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(6) In any proceedings for an offence under paragraph (1) or (4) it shall, subject to paragraph (7), be a defence for the person charged to prove that the commission of the offence was due to the act or default of another person and that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself or any person under his control.

(7) A person charged with an offence under paragraph (1) or (4) shall not, without leave of the court, be entitled to rely on the defence provided by paragraph (6) unless, within a period ending 7 days before the hearing, he has served on the complainant a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(8) The person to whom a consent is issued under this Article in respect of a builder's skip shall indemnify the Department against any claim in respect of injury, damage or loss arising out of the deposit or presence of that skip on a road, other than a claim in respect of injury, damage or loss which is attributable to the negligence of the Department.

(9) Nothing in this Article shall be taken as authorising the creation of a nuisance or danger to persons using or entering a road.

(10) In this Article and in Article 97—

“builder’s skip” means a container designed to be carried on a vehicle and to be placed on a road or other land for the storage of builders' materials, or for the removal and disposal of rubble, waste, household and other rubbish or earth;

“constable” means a member of the Royal Ulster Constabulary or the Royal Ulster Constabulary Reserve;

“owner”, in relation to a builder’s skip which is the subject of a hiring agreement, being an agreement for a hiring of not less than one month, or a hire purchase agreement, means the person in possession of the skip under that agreement;

“police officer” means a member of the Royal Ulster Constabulary not below the rank of Inspector.

Removal of builders' skips

97.—(1) Where a builder’s skip has been deposited on a road an officer authorised by the Department or a constable in uniform may require the owner of the skip to remove or reposition it, or cause it to be removed or repositioned, notwithstanding that the skip has been deposited on the road in accordance with conditions specified in regulations made under Article 96(2).

(2) A person required to remove or reposition, or cause to be removed or repositioned, a skip under a requirement made by virtue of paragraph (1) shall comply with the requirement as soon as practicable, and if he fails to do so he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) An officer authorised by the Department or a constable in uniform may remove or reposition a builder’s skip or cause it to be removed or repositioned.

(4) Where a skip has been removed under paragraph (3), the Department or, as the case may be, a police officer shall, where practicable, notify the owner of its removal, but if the owner cannot be traced, or if after a reasonable period of time after being so notified he has not paid any expenses recoverable from him under paragraph (5) and recovered the skip, the Department or a police officer may dispose of the skip and its contents.

(5) Any expenses reasonably incurred by the Department or a police officer in the removal or repositioning of a skip under paragraph (3) or the disposal of a skip under paragraph (4) may be recovered from the owner of the skip.

(6) The Department or a police officer may retain any skip removed under paragraph (3) until any expenses recoverable by virtue of paragraph (5) in respect of the removal have been recovered.

(7) Any proceeds of such a disposal as is mentioned in paragraph (4) shall be used in the first place to meet the expenses reasonably incurred in the removal and disposal of the skip and its contents and thereafter any surplus shall be given to the person entitled thereto if known and if not shall be applied in the same manner as is provided for with respect to fines by section 20 of the Administration of Justice Act (Northern Ireland) 1954(37).

(8) References in this Article to expenses incurred in the removal of a builder’s skip shall include references to expenses incurred in storing the skip until it is recovered by the owner or, as the case may be, disposed of.

PART VIII

ROAD FERRIES

Interpretation of this Part

98.—(1) In this Part—

“equipment” includes machinery, plant, apparatus and appliances;

“ferry landing place” means a place where vehicles, persons or goods may embark on or disembark from or (as the case may be) be loaded on or unloaded from a ferry vessel;

“ferry vessel” means a vessel used in the provision of a road ferry service;

“harbour authority” means any person in whom are vested, under any statutory provision other than this Part, functions of improving, maintaining or managing a harbour (within the meaning of the Harbours Act (Northern Ireland) 1970⁽³⁸⁾);

“road ferry service” means a service for conveying vehicles, persons and goods by means of a vessel from a place on or near a road across water to another place on or near a road;

“road ferry undertaking” means the vessels, land, equipment, rights and other assets held for the purposes of, or in connection with, the provision of a road ferry service;

“vessel” includes a hovercraft within the meaning of the Hovercraft Act 1968⁽³⁹⁾.

(2) For the purposes of this Part a ferry vessel or ferry landing place belongs to a road ferry service if it is used in the provision of that service.

(3) References in this Part (except Article 100) to a road ferry service are to a road ferry service provided by the Department under Article 99(1) or provided on behalf of the Department by another person in pursuance of any agreement under Article 99(2).

Provision of road ferry services by, or on behalf of, the Department

99.—(1) Subject to the provisions of this Part, the Department may provide such road ferry services as it thinks fit.

(2) The Department may enter into an agreement with any person (“the operator”) for the provision by that person on behalf of the Department of any road ferry service.

(3) An agreement under paragraph (2)—

(a) may provide for the leasing to the operator of any road ferry undertaking owned by the Department or any part thereof specified in the agreement;

(b) may contain such other terms and conditions as appear to the Department to be necessary to ensure the safe and proper provision of the road ferry service.

(4) Except as provided by paragraph (5), where an agreement under paragraph (2) is in force, the operator shall, in relation to any road ferry service to which the agreement relates, have the same powers and duties and be subject to the same restrictions, liabilities and obligations as the Department has, or is subject to, in relation to a road ferry service provided by it.

(5) Paragraph (4) does not apply to—

(a) the power to issue directions under Article 101;

(b) the power to make byelaws under Article 102;

(c) the power to carry out works under Article 105;

⁽³⁸⁾ 1970 c. 1 (N.I.)

⁽³⁹⁾ 1968 c. 59

- (d) the power to dredge under Article 108;
- (e) the power to acquire land under Article 110;
- (f) any other power, duty, restriction, liability or obligation excepted from that paragraph by an agreement under paragraph (2),

and any such power, duty, restriction, liability or obligation shall accordingly remain that of the Department alone.

- (6) For the purposes of this Part the power to provide a road ferry service includes power—
 - (a) to establish, operate and manage that service;
 - (b) to provide vessels, buildings, equipment, facilities, amenities and services for the purposes of, or in connection with, that service;
 - (c) to maintain, operate, manage, repair, extend, alter, improve and renew anything mentioned in sub-paragraph (b); and
 - (d) to do anything which is necessary or appropriate for the purposes of, or in connection with, that service or which is incidental or ancillary to the provision of that service.

Road ferry services provided otherwise than by, or on behalf of, the Department

100.—(1) The Department may enter into an agreement with the owner of any road ferry undertaking for the transfer to the Department, on such terms as may be agreed between the Department and the owner, of that road ferry undertaking.

(2) Paragraph (1) shall have effect notwithstanding anything to the contrary in any local Act of Parliament or other instrument relating to the road ferry undertaking in question and any such Act or instrument shall, to the extent that it is inconsistent with any provision of this Part, cease to have effect on the date on which that undertaking is transferred to the Department under this Article.

(3) The Department may assist, financially or otherwise, the provision by any other person of a road ferry service.

(4) Assistance under paragraph (3) shall be given on such terms and conditions as the Department thinks fit.

Charges for road ferry services

101.—(1) There shall be payable in respect of the conveyance of vehicles, persons and goods on a ferry vessel belonging to a road ferry service such charges as may be specified in relation to that road ferry service in directions in writing issued by the Department in accordance with paragraphs (3) and (4).

(2) A notice setting out the charges for the time being specified in directions under paragraph (1) in relation to a road ferry service shall be exhibited by the Department in a conspicuous place—

- (a) in the vicinity of each ferry landing place belonging to that road ferry service; and
- (b) on each ferry vessel belonging to that road ferry service.

(3) Where it proposes to issue directions under paragraph (1) in relation to a road ferry service, the Department shall—

- (a) publish in at least one newspaper circulating in the locality in which the road ferry service is provided a notice—
 - (i) stating the effect of the proposed directions; and
 - (ii) stating that, within such period as may be specified (not being a period of less than 30 days from the date of the publication of the notice) any person may by notice

to the Department inform it of the grounds upon which he objects to the issuing of the directions;

(b) consider any objections received by it before the expiration of the period referred to in sub-paragraph (a); and

(c) if it appears to the Department to be appropriate to do so, cause a local inquiry to be held.

(4) After considering—

(a) any objections to the proposed directions; and

(b) where a local inquiry is held, the report of the person who held it,

the Department may issue the directions, either without modifications or subject to such modifications as the Department thinks fit.

(5) Any person who, with intent to defraud, travels on any ferry vessel without paying the charge payable by him in accordance with this Article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Byelaws in connection with road ferry services

102.—(1) The Department may make byelaws for any purpose in connection with the operation or management of a road ferry service, and in particular (but without prejudice to the generality of the foregoing) for all or any of the following purposes, namely—

(a) for protecting persons, vehicles and goods on ferry vessels or land forming part of the road ferry undertaking from injury or damage;

(b) for protecting vessels, land, equipment and other property forming part of the road ferry undertaking from damage;

(c) for regulating the conduct of persons (including persons employed for the purposes of the road ferry service) on ferry vessels or land forming part of the road ferry undertaking;

(d) for regulating the embarkation, conveyance and disembarkation of persons, vehicles and goods;

(e) for maintaining order on ferry vessels and land forming part of the road ferry undertaking and preventing obstruction to the operation of the road ferry service.

(2) Any person who contravenes a byelaw made under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) Before making any byelaws under this Article the Department shall publish in at least two newspapers circulating in the locality in which the road ferry service is provided a notice—

(a) stating the intention of the Department to make the byelaws; and

(b) specifying a place in that locality where a copy of the proposed byelaws may be inspected by any person free of charge at all reasonable hours during the period of 30 days from the date of the last publication of the notice.

(4) The Department shall not make the byelaws before the expiration of the period mentioned in paragraph (3)(b).

Duty to provide timetable for, and notify disruption of, road ferry service

103.—(1) The Department shall publish in such manner as it thinks fit a timetable in connection with each road ferry service.

(2) Where for any reason it is necessary for the Department temporarily to discontinue or reduce a road ferry service, the Department shall—

- (a) before any such discontinuance or reduction occurs, publish notice of the discontinuance or reduction in at least one newspaper circulating in the locality in which the road ferry service is provided; and
- (b) during the period when the road ferry service is discontinued or reduced, place such signs on roads in that locality as appear to the Department to be necessary to warn persons using those roads of the discontinuance or reduction.

(3) Paragraph (2)(a) does not apply where, by reason of an emergency or other circumstances, it is impractical for notice to be given in accordance with that provision.

Use of road ferry undertaking for other purposes

104.—(1) The Department may, to such extent as it thinks consistent with the requirements of a road ferry service—

- (a) use any ferry vessel or other vessel belonging to that service; or
- (b) permit the use by any other person of any such vessel,

for any other purpose in the locality in which that road ferry service is provided.

(2) The Department may by directions in writing specify the charges to be paid in respect of the use of a vessel under paragraph (1) and the use of a vessel under that paragraph shall be subject to such other terms and conditions as the Department thinks fit.

Power of Department to carry out works

105.—(1) Subject to paragraphs (2) to (4), the Department may carry out such works as it considers appropriate for the purposes of, or in connection with, a road ferry service or the exercise of its functions under this Part.

(2) It shall be the duty of the Department, before carrying out any works within the limits within which a harbour authority may exercise its functions to consult with that authority and to take account of any representations made to the Department by that authority so as to ensure that the carrying out of those works causes the minimum interference to the property of that authority or to the exercise by that authority of its functions.

(3) The Department shall not construct, alter or extend any tidal work, except with the consent of—

- (a) the Secretary of State; and
- (b) the Crown Estate Commissioners,

and subject to any conditions imposed by the Secretary of State or those Commissioners before the work is begun.

(4) Schedule 6 shall have effect in relation to any tidal work which is, or is to be, constructed, altered or extended by the Department.

(5) In this Article and Schedule 6—

“the Secretary of State” means the Secretary of State concerned with navigation;

“tidal work” means any work, or part of any work, which is on, under or over any land which is below the level of mean high water springs.

Application of 1847 Act to certain ferry landing places

106.—(1) The Harbour, Docks and Piers Clauses Act 1847⁽⁴⁰⁾ (except sections 6 to 13, 15 to 24, 37 to 42, 45, 49, 50, 54, 55, 66 to 68, 79 to 82, 84 to 90, 92, 97 and 98) shall, subject to the following provisions of this Article, apply to a ferry landing place which is not situated within, or immediately adjacent to waters within, the limits within which a harbour authority may exercise its functions as if—

- (a) it were a harbour constructed in pursuance of an Act which incorporated that Act;
- (b) this Part were the special Act for the purposes of that Act;
- (c) the Department were the undertakers for those purposes;
- (d) references to “the prescribed limits” were references to the limits specified under paragraph (2),

and references in the following provisions of this Article and in Article 107 to the 1847 Act are references to that Act as applied by this paragraph.

(2) The Department may by order specify in relation to a ferry landing place mentioned in paragraph (1) the limits which are to be the prescribed limits for the purposes of the 1847 Act.

(3) Nothing in this Part or in any provision of the 1847 Act shall be construed as prejudicing the rights of any person who has an estate in land within any limits specified under paragraph (2).

(4) The purposes for which byelaws may be made under section 83 of the 1847 Act shall include regulating the places within the limits specified under paragraph (2) in relation to a ferry landing place to which members of the public may be admitted, the times during which members of the public may be admitted to such places and the conduct of members of the public when so admitted.

(5) Paragraphs (2) to (4) of Article 102 shall apply to byelaws under section 83 of the 1847 Act as they apply to byelaws under that Article, but with the substitution in paragraph (3) for the reference to the road ferry service of a reference to the ferry landing place.

Functions of Department in relation to certain ferry landing places and surrounding limits

107.—(1) This Article applies to a ferry landing place mentioned in Article 106(1) and references in this Article to the limits of a ferry landing place are references to the limits specified under Article 106(2) in relation to that ferry landing place.

(2) The Department may enter into arrangements with any other person—

- (a) for the provision by that person, on land within the limits of a ferry landing place to which this Article applies, of any facilities, amenities or services;
- (b) for the use by that person of such land for recreational or leisure activities.

(3) The Department shall at all times keep at appropriate places within the limits of a ferry landing place to which this Article applies a sufficient number of lifebuoys and lines in good order and fit and ready for use.

(4) The Department may by directions in writing specify the rate to be paid in respect of vessels entering the limits of a ferry landing place to which this Article applies; and references in the 1847 Act to rates shall be construed as references to rates for the time being specified under this paragraph.

(5) The Department may by directions in writing specify the charges to be paid in respect of the use by any person of equipment, facilities, amenities or services provided by the Department within the limits of a ferry landing place to which this Article applies.

(6) Paragraphs (3) and (4) of Article 101 shall apply to the issuing of directions under paragraph (4) or (5) of this Article as they apply to the issuing of directions under paragraph (1)

⁽⁴⁰⁾ 1847 c. 27

of that Article, but with the substitution for references to the road ferry service of references to the ferry landing place.

(7) A notice setting out the rates for the time being specified in directions under paragraph (4) and the charges for the time being specified in directions under paragraph (5) shall be exhibited by the Department in a conspicuous place in the vicinity of the ferry landing place.

Power to dredge

108.—(1) The Department may, for the purpose of or in connection with any of its functions under this Part, dredge—

- (a) any land owned by it;
- (b) the foreshore and bed of any waters within any limits specified under Article 106(2); and
- (c) the foreshore and bed of any other waters over which a road ferry service is provided.

(2) The powers in paragraph (1)(b) and (c) shall not be exercisable in relation to any part of the foreshore or the bed of waters under the management of the Crown Estate Commissioners except with the consent of, and subject to any conditions imposed by, the Crown Estate Commissioners.

(3) The Department shall not deposit material dredged in a place below the level of mean high water springs except—

- (a) with the consent of, and subject to any conditions imposed by, the Crown Estate Commissioners; and
- (b) in such places and subject to such conditions as the Secretary of State concerned with navigation may determine.

(4) The Department shall not—

- (a) exercise its power under paragraph (1)(c); or
- (b) deposit any material dredged under paragraph (1),

within the limits within which a harbour authority may exercise its functions without the consent of that harbour authority.

Repeal of local enactment and transitional provisions

109.—(1) The Down County Council (Strangford Lough Ferry) Act (Northern Ireland) 1967(41) is hereby repealed.

(2) Any thing done or provided by any predecessor in title to the Department under or for the purposes of that Act shall be deemed to have been done or provided by the Department under or for the purposes of this Part.

(3) The limits set out in section 37 of that Act in relation to the ferry landing places mentioned in that section shall have effect for the purposes of this Part as if specified by an order under Article 106(2).

(41) 1967 c. ii (N.I.)

PART IX

POWERS OF DEPARTMENT IN RELATION TO LAND

Acquisition of land

Acquisition of land for purposes of functions under this Order

110.—(1) The Department may, for any purpose in connection with the performance of any of its functions under this Order, acquire by agreement or compulsorily any land including land on either side of a road or proposed road within 200 metres from the middle thereof.

(2) Without prejudice to the generality of paragraph (1), the Department may acquire under that paragraph—

- (a) land adjacent to a road which is being constructed or improved by the Department if the land is required for the depositing of matter obtained in the course of constructing or improving the road;
- (b) land required for the purpose of providing—
 - (i) service areas, being land within 200 metres of the middle of a special road;
 - (ii) maintenance compounds; or
 - (iii) parking places for vehicles under Article 104(1) of the Road Traffic Order; and
- (c) land required for the purpose of providing a means of access to a road from any land, including any land which will be, or has been, deprived of a means of access to a road by the construction or improvement of a road, if it is not reasonably practical to provide that means of access otherwise than by the exercise of powers under this Article.

Acquisition of land for resettlement of undertakings

111.—(1) The Department may, for the purpose of resettling a relevant undertaking, acquire land by agreement or compulsorily.

(2) The Department shall not acquire compulsorily under paragraph (1) any land of an undertaking which is in use for the purposes of the undertaking, if the undertaking provides employment which is significant having regard to the extent of the land and the nature of the undertaking.

(3) In this Article—

“relevant undertaking” means an undertaking which is being carried on on land which is being or has been acquired by the Department under Article 110;

“undertaking” means any trade or business or other activity providing employment.

Acquisition of land for mitigation of adverse effect of road construction or improvement

112.—(1) Subject to paragraphs (3) and (4), the Department may acquire land by agreement or compulsorily for the purpose of mitigating any adverse effect which the existence or use of a road constructed or improved by it, or proposed to be constructed or improved by it, has or will have on the surroundings of the road.

(2) Subject to paragraphs (3) and (4), the Department may acquire by agreement—

- (a) land the enjoyment of which is seriously affected by the carrying out of works by the Department for the construction or improvement of a road;

- (b) land the enjoyment of which is seriously affected by the use of a road which the Department has constructed or improved,

if the interest of the vendor is one which falls within Article 4 of the Planning Blight (Compensation) (Northern Ireland) Order 1981(42) (interests qualifying for protection under blight provisions) taking references to the date of service of a blight notice under Article 5 of that Order as references to the date on which the purchase agreement is made.

(3) The powers conferred by paragraph (1) to acquire land compulsorily and the powers conferred by paragraph (2)(a) shall not be exercisable unless the acquisition is begun before the date on which the road or, as the case may be, the improved road is first open to public traffic.

(4) The powers conferred by paragraph (1) to acquire land by agreement and the powers conferred by paragraph (2)(b) shall not be exercisable unless the acquisition is begun before the expiration of one year from the date on which the road or, as the case may be, the improved road is first open to public traffic.

(5) For the purposes of paragraphs (3) and (4) the acquisition of any land is begun—

- (a) if it is compulsory, on the date on which the notice required by paragraph 2 of Schedule 6 to the Local Government Act (Northern Ireland) 1972(43) as applied by Article 113 is first published;
- (b) if it is by agreement, on the date on which the agreement is made;

and where compulsory acquisition of any land under paragraph (1) is begun within the time limited by paragraph (3) but is not proceeded with, any subsequent compulsory acquisition of that land under paragraph (1) shall be treated for the purposes of this Article as begun within that time.

(6) For the purpose of assessing the compensation payable on the compulsory acquisition of land under this Article the land shall be treated as if it were being acquired for the construction of the road or, as the case may be, the improvement in question.

Vesting orders

113.—(1) Where the Department in exercise of the power conferred on it by Article 110, 111 or 112 desires to acquire any land otherwise than by agreement, the Department may make an order (in this Article referred to as a “vesting order”) vesting the land in the Department.

(2) Schedule 6 to the Local Government Act (Northern Ireland) 1972(44) shall, subject to the modifications specified in Schedule 7, apply for the purposes of the acquisition of land by means of a vesting order made under this Article in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act.

(3) The power to make a vesting order in respect of land—

- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or
- (b) which is declared by or under any transferred provision to be inalienable,

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Northern Ireland Assembly.

(4) In paragraph (3) “public body” means—

- (a) a Northern Ireland department; and
- (b) any other body established by or under a transferred provision.

(42) 1981 NI 16

(43) 1972 c. 9 (N.I.)

(44) 1972 c. 9 (N.I.)

Appropriation or disposal of land acquired under this Part

114.—(1) Land acquired by the Department under this Part for any purpose may be appropriated by the Department for any other purpose for which it is authorised to acquire land under this Part.

(2) The Department may dispose of any land acquired under this Part.

(3) Section 5 of the Stormont Regulation and Government Property Act (Northern Ireland) 1933⁽⁴⁵⁾ shall not affect the disposal of land acquired under this Part.

Development of land

Development of land for resettlement of undertakings

115.—(1) The Department may, for the purpose mentioned in Article 111(1)—

- (a) develop any land to which this Article applies, whether by the erection or extension of buildings, the carrying out of works, the provision or facilitation of the provision of means of access, services or other facilities, or otherwise;
- (b) enter into an agreement with any person for the development in any manner described in sub-paragraph (a) of any land to which this Article applies.

(2) This Article applies to—

- (a) any land appropriated by the Department under Article 114(1) for the purpose mentioned in Article 111(1); and
- (b) any land acquired by the Department under Article 111(1).

Execution of works in connection with roads

116.—(1) The Department may carry out—

- (a) on land acquired by it under this Part;
- (b) on any other land belonging to it;
- (c) on any road,

works for mitigating any adverse effect which the construction, improvement, alteration, existence or use of a road has, or will have, on the surroundings of the road.

(2) Without prejudice to the generality of paragraph (1), the works that may be carried out under that paragraph include the planting of trees, shrubs or plants of any other description and the laying out of any area as grassland.

(3) Notwithstanding anything in the Land Clauses Consolidation Act 1845⁽⁴⁶⁾, the Department may develop or redevelop any land acquired by it under this Part, or any other land belonging to it, for the purpose of improving the surroundings of a road in any manner which it thinks desirable by reason of its construction, improvement, alteration, existence or use.

Agreements as to use of land near roads

117.—(1) For the purpose of mitigating any adverse effect which the construction, improvement, alteration, existence or use of a road has or will have on the surroundings of the road, the Department may enter into an agreement with any person interested in land adjoining or in the vicinity of the road for restricting or regulating the use of the land either permanently or during such period as may be specified in the agreement.

⁽⁴⁵⁾ 1933 c. 6 (N.I.)

⁽⁴⁶⁾ 1845 c. 18

(2) An agreement under this Article may, in particular, make provision for the planting and maintenance of trees, shrubs or plants of any other description on the land and for restricting the lopping or removal of trees, shrubs or other plants on the land.

(3) An agreement under this Article may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the Department to be necessary or expedient for the purposes of the agreement.

(4) Subject to Part X of the Land Registration Act (Northern Ireland) 1970⁽⁴⁷⁾, the provisions of any agreement made under this Article with any person interested in land shall be binding on persons deriving title from that person in respect of the land.

Miscellaneous powers

Power to obtain information as to ownership of land

118.—(1) 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 land and any person who, either directly or indirectly, receives rent in respect of any land, 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.

(2) Any person required to give information in pursuance of this Article who without reasonable excuse fails to give, or knowingly misstates, that information shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Power to enter on land

119.—(1) Subject to this Article, a person authorised in that behalf by the Department shall, on producing if so required some duly authenticated document showing his authority, have a right to enter on any land at all reasonable hours for the purpose of—

- (a) surveying land or boring or carrying out other works in order to ascertain the suitability of the land for the execution of works or whether land ought to be acquired by the Department under this Order;
- (b) inspecting, repairing, altering, renewing or removing any works executed under this Order in or on the land;
- (c) ascertaining whether there is or has been on or in connection with the land any contravention of this Order;
- (d) ascertaining whether or not circumstances exist which would authorise the Department to take any action or execute any works under this Order;
- (e) taking any action, or executing any works authorised or required by this Order to be taken or executed by the Department.

(2) Except in a case of emergency, admission to land for the purpose of executing work thereon shall not be demanded under paragraph (1) unless at least 7 days' notice of the intended entry has been given to the occupier.

(3) Where notice of intended entry for a particular purpose has been given as respects the first occasion on which the right of entry is exercised, no further notice shall be required before entering on the land on a subsequent occasion in connection with that purpose.

(4) If it is shown to the satisfaction of a justice of the peace on a sworn complaint in writing—

⁽⁴⁷⁾ 1970 c. 18 (N.I.)

- (a) that admission to the land 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 land is 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 land for any purpose for which the entry is required,

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

(5) Any person entitled to enter on any land by virtue of a right of entry or of a warrant issued under this Article—

- (a) may take with him such other persons and such equipment as may be necessary; and
- (b) on leaving any unoccupied land which he has entered by virtue of such a warrant shall leave it as effectually secured against trespassers as he found it.

(6) Every warrant granted under this Article shall continue in force until the purpose for which entry is necessary has been satisfied.

(7) Any person who wilfully obstructs any person upon whom a right of entry has been conferred by this Article or by a warrant issued thereunder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) Where work has been carried out on land in pursuance of this Article, the Department shall reinstate the land as soon as possible.

(9) In determining whether an hour is a reasonable one for the purposes of paragraph (1), regard shall be had to whether there is an emergency or not.

(10) Where—

- (a) in the exercise of the powers conferred by this Article any damage is caused to land or chattels, any person interested in the land or chattels may recover compensation in respect of the damage from the Department;
- (b) in consequence of the exercise of any such powers any person is disturbed in his enjoyment of land or chattels, he may recover compensation in respect of that disturbance from the Department.

(11) Any question of disputed compensation under paragraph (10) shall be referred to and determined by the Lands Tribunal.

Power to enter land for construction of temporary works

120.—(1) Any person authorised in that behalf by the Department may, for the purpose of executing any temporary works which are necessarily incidental to the construction or improvement of a road, enter on any land adjoining the road, and execute those works after giving reasonable notice in writing to the owner or occupier of the land.

(2) Where the Department is about to construct or repair a road, any person authorised by it in that behalf may enter on any land adjoining the road and construct a temporary road on it, for use while the work is in progress.

(3) Where—

- (a) in the exercise of the powers conferred by paragraph (1) or (2) any damage is caused to land or chattels, any person interested in the land or chattels may recover compensation in respect of the damage from the Department;
- (b) in consequence of the exercise of any such powers any person is disturbed in his enjoyment of land or chattels, he may recover compensation in respect of that disturbance from the Department.

(4) Any person who wilfully obstructs a person acting in exercise of his powers under paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Any question of disputed compensation under paragraph (3) shall be referred to and determined by the Lands Tribunal.

PART X

MISCELLANEOUS AND SUPPLEMENTARY

Financial provisions

Expenses of Department

121. Any expenses incurred by the Department under this Order shall be defrayed either out of moneys appropriated for the purposes of defraying such expenses or, if the Department of Finance and Personnel so directs, by means of sums charged on and issued out of the Consolidated Fund.

Execution of works by Department at expense of another

122.—(1) The Department may, if it is satisfied it will be of benefit to the public, enter into an agreement with any person—

- (a) for the execution by the Department of any works which the Department is authorised to execute under this Order; or
- (b) for the execution by the Department of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,

on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.

(2) Without prejudice to the generality of the reference in paragraph (1) to the cost of the works, that reference shall be taken to include—

- (a) the whole of the costs incurred by the Department in or in connection with—
 - (i) the making of the agreement;
 - (ii) the making of any order required for the purposes of the works; and
 - (iii) the acquisition by the Department of any land required for the purposes of the works; and
- (b) all relevant administrative expenses of the Department, including an appropriate sum in respect of general staff costs and overheads.

(3) The agreement may also provide for the making to the Department of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to the Department to be necessary or expedient for the purposes of the agreement.

(4) The fact that works are to be executed in pursuance of an agreement under this Article does not affect the power of the Department to acquire land, by agreement or compulsorily, for the purposes of the works.

(5) If any amount due to the Department in pursuance of an agreement under this Article is not paid in accordance with the agreement, the Department may—

- (a) direct that any means of access or other facility afforded by the works to which the agreement relates shall not be used until that amount has been paid;
- (b) recover that amount from any person having an estate in any land for the benefit of which any such means of access or other facility is afforded; and
- (c) declare that amount to be a charge on any such land (identifying it) and on all estates therein.

(6) If it appears to the Department that a direction under paragraph (5)(a) is not being complied with, the Department may execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land.

(7) Where the Department recovers an amount from a person by virtue of paragraph (5)(b), he may in turn recover from any other person having an estate in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable.

This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.

Recovery of certain expenses by Department

123. Where any provision of this Order enables the Department to recover expenses which it has incurred in exercising any function under this Order—

- (a) those expenses shall include the relevant administrative expenses of the Department, including an appropriate sum in respect of general staff costs and overheads; and
- (b) the Department may recover those expenses summarily or in any court of competent jurisdiction as a civil debt due to it.

Repayment of charges, rates and tolls

124.—(1) A provision in this Order conferring power to make provision for payment of a charge shall be treated as also conferring power to make provision about repayment of sums paid, or purported to be paid, in pursuance of provision made in exercise of that power.

(2) Without prejudice to the generality of the power conferred by paragraph (1), the provision which may be made by virtue of that paragraph includes provision—

- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other specified circumstances;
- (b) that repayment shall be made in part only;
- (c) that, in the case of partial repayment, the amount shall be a specified sum or determined in a specified manner; and
- (d) for repayment of different amounts in different circumstances.

(3) In this Article—

“charge” includes rates and toll;

“specified” means specified in the instrument exercising the power.

Power to pay expenses of persons moving temporarily during works for construction or improvement of road

125.—(1) This Article has effect where—

- (a) works are carried out by the Department for the construction or improvement of a road; and

(b) the carrying out of those works affects the enjoyment of a dwelling adjacent to the site on which they are being carried out to such an extent that continued occupation of the dwelling is not reasonably practicable.

(2) Subject to paragraph (3), the Department may pay any reasonable expenses incurred by the occupier of the dwelling in providing suitable alternative residential accommodation for himself and members of his household for the whole or any part of the period during which the works are being carried out.

(3) No payment shall be made to any person under this Article in respect of any expenses except in pursuance of an agreement made between that person and the Department before the expenses are incurred; and no payment shall be so made except in respect of the amount by which the expenses exceed those which that person would have incurred if the dwelling had continued to be occupied.

Loans to certain undertakings affected by acquisition of land

126.—(1) For the purpose of enabling a person carrying on a relevant undertaking to purchase or take on lease any land or to erect any buildings, the Department may advance money by way of mortgage or charge to that person.

(2) In this Article “relevant undertaking” has the same meaning as in Article 111.

Miscellaneous

Duty to have regard to needs of disabled and blind in executing works, etc.

127.—(1) In executing works in a road or street which may impede the mobility of disabled persons or blind persons, the Department and any other person exercising a statutory power to execute such works shall have regard to the needs of such persons.

(2) The Department or other person mentioned in paragraph (1) shall have regard to the needs of disabled and blind persons when placing lamp-posts, bollards, traffic signs, apparatus or other permanent obstructions in a road or street.

(3) The Department shall have regard to the needs of disabled persons when considering the desirability of providing ramps at appropriate places between carriageways and footways.

(4) In executing in a road or street any such works as are mentioned in paragraph (1), the Department or other person mentioned in that paragraph shall have regard to the need of blind persons to have any openings, whether temporary or permanent, in the road or street properly protected.

(5) Section 18 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978(48) (power to define certain expressions for the purposes of provisions of that Act) shall have effect as if any reference in it to a provision of that Act included a reference to this Article.

(6) In this Article “street” means any street, lane, square, court, alley or passage to which the public has access, not being a road.

Consultation with district councils

128.—(1) The Department shall, where it appears necessary or desirable to do so and in any case at least once in each year, consult each district council with respect to proposals of the Department to exercise its functions under this Order in the district of that council.

(2) A district council may make representations to the Department about the exercise by the Department of its functions under this Order in the district of that council and the Department shall pay due regard to any such representations.

Obligation to give information as to identity

129. Where the driver of a vehicle is alleged to be guilty of an offence under any provision made by or under this Order, Article 177 of the Road Traffic Order shall apply in the same manner as it applies to offences under that Order.

Inquiries

130.—(1) The Department—

- (a) shall cause to be held any such inquiry as is directed by this Order; or
- (b) may cause an inquiry to be held in relation to the exercise of any of its functions under this Order.

(2) For the purposes of paragraph (1), Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972⁽⁴⁹⁾ (which applies in relation to inquiries by virtue of section 23 of the Interpretation Act (Northern Ireland) 1954⁽⁵⁰⁾) shall have effect as if the words “or may, if the Department so determines, be wholly or partly defrayed by the Department” were added at the end of paragraph 6 of that Schedule.

Arbitration

131. Subject to the provisions of this Order, the Arbitration Act (Northern Ireland) 1937⁽⁵¹⁾ shall, in relation to arbitrations under this Order, have effect as if the parties had entered into an arbitration agreement within the meaning of that Act providing for reference to a single arbitrator.

Prospective exercise of road traffic regulation powers

132. In Part XIV of the Road Traffic Order (miscellaneous and general provisions) after Article 211 there shall be inserted—

“Prospective exercise of powers

211A.—(1) Any power under this Order to make an order or give a direction may be exercised before the road to which it relates is open for public use, so as to take effect immediately on the road’s becoming open for public use.

(2) The procedure for making an order or giving a direction applies in such a case with such modifications as may be prescribed.”.

Supplementary

Orders and regulations

133.—(1) Schedule 8 shall have effect with respect to the making of orders under any of the following Articles, namely—

- (a) Article 4(1) (construction of bridges and tunnels in relation to navigable waters);

⁽⁴⁹⁾ 1972 NI 14

⁽⁵⁰⁾ 1954 c. 33 (N.I.)

⁽⁵¹⁾ 1937 c. 8 (N.I.)

- (b) Article 5(1) (diversion of navigable watercourses);
 - (c) Article 6 (extinguishment of certain public rights over navigable waters and foreshore);
 - (d) Article 14(1) (trunk roads);
 - (e) Article 15(1) (designation of special roads);
 - (f) Article 18(1) (restriction of access, etc. in connection with special roads);
 - (g) Article 68(1) (abandonment and stopping-up of roads).
- (2) Subject to paragraph (3), proceedings under Schedule 8 may be taken concurrently (so far as practicable) with—
- (a) proceedings required to be taken under Article 67 (procedure for environmental assessment);
 - (b) proceedings required to be taken under Article 113 and Schedule 7 (procedure for making vesting orders).
- (3) Where an environmental assessment is required to be prepared under Article 67 in connection with any project then—
- (a) no order under any of the Articles mentioned in paragraph (1) shall be made for the purposes of, or in connection with, that project, and
 - (b) no proceedings under Article 113 and Schedule 7 shall be taken in relation to any land which the Department wishes to acquire compulsorily for the purposes of, or in connection with, that project,
- until after the date on which a notice relating to the project is published by the Department under Article 67(10).
- (4) An order made under any of the Articles set out in paragraph (1)—
- (a) shall, together with such observations of the Department upon objections made to the proposed order and not withdrawn and such other observations as the Department considers appropriate, be laid before the Assembly; and
 - (b) shall be subject to negative resolution.
- (5) Regulations made under this Order shall be subject to negative resolution.

Saving provisions, consequential amendments, repeals and revocations

- 134.**—(1) The saving provisions set out in Schedule 9 shall have effect.
- (2) The statutory provisions set out in Schedule 10 shall have effect subject to the amendments specified in that Schedule.
- (3) The statutory provisions set out in columns 1 and 2 of Schedule 11 are hereby repealed to the extent specified in column 3 of that Schedule.
- (4) In the Schedule to the Local Government (Modifications and Repeals) Order (Northern Ireland) 1973(52), the entries relating to the statutory provisions mentioned in Schedule 11 are hereby revoked to the extent that they modify those provisions.
- (5) The Roads (Assessment of Environmental Effects) Regulations (Northern Ireland) 1988(53) are hereby revoked.

(52) SR & O 1973/285

(53) S.R. 1988 No. 344

N. H. Nicholls
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 16(2) and (3).

CLASSES OF TRAFFIC FOR PURPOSES OF SPECIAL ROADS

Class I

1. Motor tractors, heavy motor cars, motor cars and motor-cycles whereof the cylinder capacity of the engine is not less than 50 cubic centimetres, and trailers drawn thereby, which comply with general regulations as to construction and use made under Article 28 of the Road Traffic Order and in the case of which the following conditions are satisfied—

- (i) that the whole weight of the vehicle is transmitted to the road surface by means of wheels;
- (ii) that all wheels of the vehicle are equipped with pneumatic tyres;
- (iii) that the vehicle is not controlled by a pedestrian;
- (iv) in the case of a motor vehicle it is so constructed as to be capable of attaining a speed of 25 miles per hour on the level under its own power, when unladen and not drawing a trailer; and
- (v) that the vehicle is not a vehicle mentioned in paragraph 2 of Part I of Schedule 3 to the Vehicles (Excise) Act 1971⁽⁵⁴⁾.

Class II

2. Motor vehicles and trailers, the use of which for or in connection with the conveyance of abnormal indivisible loads is authorised by an order made under Article 29(3) of the Road Traffic Order.

3. Heavy and light locomotives when being used for or in connection with the conveyance of abnormal indivisible loads.

4. Motor vehicles and trailers constructed for naval, military, air force or other defence purposes, the use of which is authorised by an order under Article 29(3) of the Road Traffic Order.

Class III

5. Motor vehicles controlled by pedestrians.

Class IV

6. All motor vehicles (other than invalid carriages and motor-cycles whereof the cylinder capacity of the engine is less than 50 cubic centimetres) not comprised in Class I, Class II or Class III.

Class V

7. Vehicles drawn by animals.

(54) 1971 c. 10

Class VI

8. Vehicles (other than pedal-cycles, perambulators, push-chairs and other forms of baby carriages) drawn or propelled by pedestrians.

Class VII

9. Pedal-cycles.

Class VIII

10. Animals ridden, led or driven.

Class IX

11. Pedestrians, perambulators, push-chairs and other forms of baby carriages and dogs held on a lead.

Class X

12. Motor-cycles whereof the cylinder capacity of the engine is less than 50 cubic centimetres.

Class XI

13. Invalid carriages.

14. In this Schedule—

“abnormal indivisible load” means a load which—

- (a) cannot without undue expense or undue risk of damage be divided into two or more loads for conveyance on a road; and
- (b) owing to its dimensions or weight can only be carried by motor vehicles or trailers the use of which on roads is lawful only by reason of an order made under Article 29(3) of the Road Traffic Order;

“invalid carriages” means mechanically propelled vehicles the weight of which unladen does not exceed 5 hundredweight and which are specially designed and constructed, and not merely adapted, for the use of persons suffering from some physical defect or disability and are used in accordance with conditions prescribed by regulations made under the Road Traffic Order; and

any expression, other than “invalid carriages”, defined for the purposes of the Road Traffic Order has the same meaning as in that Order.

SCHEDULE 2

Article 27(2).

SUPPLEMENTARY PROVISIONS AS TO TERMINATION OF CONCESSION

Introductory

1. The provisions of this Schedule apply in relation to the transfer of property, rights and liabilities to the Department on the termination of a concession agreement (referred to below as “the ending of the concession”).

Property to vest free from security rights

2.—(1) Property vesting in the Department shall do so free from any mortgage, charge, lien or other security to which it was subject immediately before the ending of the concession.

(2) This does not affect the liability secured.

Recovery of property taken in pursuance of legal process

3.—(1) Where before the ending of the concession possession of any property vesting in the Department has been taken in pursuance of any legal process, the Department may recover it from any person in possession of it without being required to discharge the liability in respect of which the process was issued.

(2) This does not affect the liability in respect of which the process was issued.

Validity of previous discharge of liabilities

4. Where a liability has been discharged before the ending of the concession which if it had subsisted immediately before the ending of the concession would have fallen to be transferred to the Department, nothing in the Insolvency (Northern Ireland) Order 1989(55)—

- (a) affects the validity of anything done by the concessionaire or any other person in discharging the liability;
- (b) authorises a court to make an order affecting the property of, or imposing an obligation on, any person in consequence of or in connection with the receipt by him or by any other person of a payment made, property transferred or other benefit provided by the concessionaire or any other person in discharging that liability; or
- (c) shall be treated as giving rise to a trust affecting money or property so transferred.

Property subject to covenants, conditions or restrictions

5. Except as provided by paragraph 2, property vesting in the Department shall be held by the Department subject to all covenants, conditions and restrictions subject to which the property was held by the concessionaire.

Transfer of agreements, etc.

6.—(1) Subject to the concession agreement and to paragraph 2, all agreements and other transactions entered into or effected by the concessionaire and subsisting immediately before the ending of the concession, in so far as they relate to property, rights or liabilities transferred to the Department shall have effect with the substitution of the Department for the concessionaire.

(2) Accordingly—

- (a) such an agreement or transaction may be enforced by or against the Department; and
- (b) references to the concessionaire in an agreement (whether or not in writing) and in a deed, bond or other instrument or document, so far as relating to the property, rights or liabilities mentioned above shall be taken after the ending of the concession as referring to the Department.

(55) 1989 NI 19

Legal or other proceedings

7.—(1) Subject to the concession agreement, all legal or other proceedings begun before the ending of the concession and relating to property, rights or liabilities transferred to the Department, other than proceedings for enforcing a security from which the property is released by virtue of paragraph 2, may be carried on with the substitution of the Department for the concessionaire.

(2) Such proceedings may be amended in such manner as may be necessary for that purpose.

Transfer of employees

8. For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981(56), or any regulations replacing those regulations, the concessionaire shall be treated as transferring to the Department an undertaking which, if a new concessionaire is appointed, the Department shall be treated as then transferring to the new concessionaire.

SCHEDULE 3

Article 28(3).

PROCEDURE IN CONNECTION WITH TOLL ORDERS

Publicity for proposals

1.—(1) Where the Department proposes to make a toll order, it shall prepare a draft of the order and shall publish in at least one local newspaper circulating in the area in which the proposed special road is to be situated a notice—

- (a) stating the general effect of the proposed order;
- (b) specifying a place in that area where a copy of the draft order may be inspected by any person free of charge at all reasonable hours during a period specified in the notice, being a period of not less than 30 days from the date of the publication of the notice; and
- (c) stating that, within that period, any person may by notice to the Department object to the making of the order.

(2) Where the special road to which the toll order relates is to be subject to a concession, the Department shall make available for inspection with the copy of the draft order a statement containing such information as the Department considers appropriate with respect to the concessionaire and the concession agreement.

The notice under sub-paragraph (1) shall indicate that such a statement will be so available for inspection.

(3) Before or after the end of the period specified in the notice in pursuance of sub-paragraph (1), the Department may by a further notice published in the same manner substitute a longer period for that specified in the first notice.

Making of objections

2.—(1) A person who objects to the making of a toll order shall include in the notice of objection a statement of the grounds of objection.

(2) If that is not done, the Department may disregard the objection.

(56) [SI 1981/1794](#)

Local inquiry

3.—(1) If an objection is received by the Department within the period specified for making objections, and is not withdrawn, then the Department shall cause a local inquiry to be held unless it is satisfied that in the circumstances of the case it is unnecessary.

(2) The period specified for making objections means the period specified in the notice under paragraph 1(1) or any longer period substituted by a further notice under paragraph 1(3).

Making or confirmation of order

4.—(1) The Department, after considering—

- (a) any objections which are not withdrawn; and
- (b) where a local inquiry is held, the report of the person who held the inquiry,

may make the order either without modification or subject to such modifications as it thinks fit.

(2) Where it proposes to make the order subject to modifications which will in its opinion make a substantial change in the order, the Department shall—

- (a) notify any person who appears to it to be likely to be affected by the proposed modifications;
- (b) give that person an opportunity of making representations with respect to the modifications within such reasonable period as it may specify; and
- (c) consider any representations made to it within that period with respect to the proposed modifications.

Assembly procedure

5.—(1) Except as provided by sub-paragraph (2), a toll order shall be subject to negative resolution.

(2) A toll order shall be subject to affirmative resolution where—

- (a) the proposed special road to which the order relates includes in its proposed route any existing road; and
- (b) the toll order authorises the charging of tolls for the use of that existing road or any part of it,

unless the Department is satisfied as regards all classes of traffic entitled to use the existing road that another reasonably convenient route free of toll is available, or will be provided before the date on which the toll order will come into operation, and certifies accordingly.

(3) Where the Department proposes to give such a certificate, it shall—

- (a) give public notice of its intention to do so;
- (b) afford an opportunity to all persons interested to make representations and objections; and
- (c) cause a public local inquiry to be held if it appears to it to be expedient to do so, having regard to representations or objections made,

and before deciding whether to give the certificate the Department shall consider any representations and objections made and, if an inquiry has been held, the report of the person who held the inquiry.

(4) As soon as may be after giving a certificate, the Department shall publish in the Belfast Gazette, and in such other manner as it thinks best for informing persons affected, a notice stating that the certificate has been given.

SCHEDULE 4

Article 49.

PREVENTION OF OBSTRUCTION TO VIEW, ETC.

1.—(1) Notice under Article 49 may be served—

(a) upon the owner or occupier of the land directing him—

(i) to remove any building or structure whether permanent or temporary, the removal of which is in the opinion of the Department expedient for the prevention of any such danger as is mentioned in that Article;

(ii) to provide or improve any means of access to any building or structure;

(iii) to provide or improve any accommodation for vehicles standing or waiting for any purpose connected with the user of any building or structure;

(b) upon the owner or occupier of the land directing him to alter the height or character of any wall, fence, hoarding, tree or hedge thereon so as to cause it to conform with any requirements specified in the notice; or

(c) upon every owner, occupier or lessee of the land restraining him, either absolutely or subject to such conditions as may be specified in the notice, from permitting any building, wall, fence, hoarding, tree or hedge to be erected or planted on the land.

(2) There shall be annexed to any notice served under Article 49 a plan showing the land to which the notice relates; and notice of the right of objection shall be given in the notice.

2. Any restrictions imposed by a notice served under Article 49 shall be registered pursuant to Part X of the Land Registration Act (Northern Ireland) 1970⁽⁵⁷⁾ and shall remain in force until the notice is withdrawn by the Department and the registration is cancelled in accordance with the provisions of that Part, and any such restrictions shall, while in force, be binding upon any successor in title to the owner, occupier, or lessee of the land to which they relate.

3.—(1) If any person upon whom a notice has been served under Article 49 objects to complying with any requirement of the notice or objects to any restriction imposed thereby, he may, within 21 days of receiving the notice, give notice in writing to the Department stating his objection and the grounds thereof and requiring the matter in dispute to be heard and determined by a barrister or solicitor of not less than 10 years' standing, practising in Northern Ireland, to be appointed by the Lord Chief Justice.

(2) A person so appointed shall for the purpose of such hearing have all the powers conferred on an arbitrator by the Arbitration Act (Northern Ireland) 1937⁽⁵⁸⁾.

(3) In determining any question whether a notice shall be withdrawn as respects a requirement or restriction objected to, the arbitrator shall have power to order that the requirement or restriction shall have effect subject to such modifications (if any) as the arbitrator may direct.

4. Any person upon whom a notice is served under Article 49 shall have power, notwithstanding anything in any conveyance or in any lease or other instrument or agreement, to do all such things as may be necessary for complying with the requirements of the notice.

5.—(1) Where notice has been served upon any person under Article 49 the Department may, with the consent of that person, do on his behalf anything necessary for complying with the requirements of the notice.

⁽⁵⁷⁾ 1970 c. 18 (N.I.)

⁽⁵⁸⁾ 1937 c. 8 (N.I.)

(2) Where any such person, within 21 days after the service upon him of the notice, signifies in writing to the Department his assent to the doing by the Department on his behalf of any such thing as aforesaid, such person shall not be liable to prosecution for an offence under paragraph 6.

6. Subject to the provisions of this Schedule, if any person upon whom a notice has been served under Article 49 contravenes the notice, he shall, without prejudice to any other proceedings which may be taken against him, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7. Where a person convicted of an offence under paragraph 6 continues to contravene the notice after the end of such period beginning on the date of that conviction as may be specified by the court—

- (a) he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following the end of that period on which the contravention continues; and
- (b) the Department may do anything necessary for complying with the requirements of the notice.

8.—(1) Any person upon whom a notice is served under Article 49 shall be entitled to recover from the Department any expenses reasonably incurred by him in carrying out any directions contained in the notice.

(2) Any persons sustaining loss in direct consequence of any requirement of a notice served under Article 49, or any person who proves that his property is injuriously affected by restrictions imposed by any such notice, shall, if he makes a claim within six months after the service of the notice, be entitled to recover from the Department compensation for the loss or injury sustained.

(3) If any question arises whether compensation is payable under this provision, or as to the amount of any compensation so payable, the question shall be referred to and determined by the Lands Tribunal.

9. Nothing in Article 49 or this Schedule shall apply with respect to any building or other structure belonging to a railway undertaking or to the owners, trustees or conservators acting under powers conferred by any statutory provision of any canal, inland navigation, dock or harbour, where the building or other structure forms part of, or is necessary for the maintenance of, their railway, canal, inland navigation, dock or harbour.

10. Article 49 and this Schedule shall apply to stacks of turf, hay, corn or other produce, wood piles, wooden sheds and other similar temporary erections in like manner as they apply to a fence or hedge.

SCHEDULE 5

Article 69(5).

PROCEDURE FOR MAKING ORDERS UNDER ARTICLE 69(1)

1. Where the Department proposes to make an order under Article 69(1), it shall publish in at least one newspaper circulating in the area in which the land is situated a notice—

- (a) stating the general effect of the proposed order;
- (b) specifying a place in that area where a copy of a draft of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than 30 days from the date of the last publication of the notice;
- (c) stating that, within that period, any person may by notice to the Department inform it of the grounds upon which he objects to the making of the order.

2.—(1) The Department shall, not later than the date on which the notice referred to in paragraph 1 is published, serve a copy thereof together with a copy of a draft of the order and of any relevant map or plan on the owner and the occupier of land affected by the order.

(2) Where the Department proposes to modify the terms of the draft of the order, the Department shall give and publish, in such manner as appears to it to be appropriate, such additional notices as the Department considers appropriate for informing all persons likely to be adversely affected by the modification.

3. If it appears to the Department, when preparing an order, that a new means of access to any land is likely to have to be provided by it to take the place of a means of access to be stopped-up under the order, then the Department shall indicate in the map or plan referred to in the order the proposed route of that new means of access, and shall serve on the owner and occupier of the land which will be required for the provision of that new means of access (if different from the owner and occupier referred to in paragraph 2(1)) a copy of the notice and the other documents referred to in paragraph 1(b).

4. If, before the expiration of the period referred to in paragraph 1(b), the Department receives an objection from any person on whom a copy of the notice is required to be served under paragraph 2(1) or 3 or from any other person appearing to it to be affected, it may cause a local inquiry to be held.

5. After considering—

- (a) any objections to the proposed order which are not withdrawn;
- (b) where a local inquiry is held, the report of the person who held it,

the Department may make the order either without modifications or subject to such modifications as it thinks fit.

SCHEDULE 6

Article 105(4) and (5).

TIDAL WORKS

1. Where the Department constructs, alters or extends any tidal work in contravention of paragraph (3) of Article 105 or of any condition imposed under that paragraph, the Secretary of State may by notice in writing require the Department at its own expense to remove the work and to restore the site of the work to the condition in which it was before the contravention.

2.—(1) Where the Department abandons any tidal work, or allows it to fall into disrepair, the Secretary of State may by notice in writing require the Department at its own expense—

- (a) to repair and restore the work;
- (b) to remove the work and to restore the land on which it is constructed to the condition in which the land was before the work was constructed.

(2) Where—

- (a) the Department abandons any work consisting of a tidal work and of other work or allows a work so consisting to fall into disrepair; and
- (b) the Secretary of State is satisfied that any part of the work which is not a tidal work is in such a condition as to interfere with or to cause reasonable apprehension that it may interfere with, navigation or public rights over the foreshore;

the Secretary of State may include that part of the work in a notice under sub-paragraph (1).

3. Where any tidal work constructed by the Department is damaged or decays, the Department shall—

- (a) forthwith notify the Commissioners of Irish Lights;
 - (b) lay down such buoys, exhibit such lights and take such other steps to prevent any danger to navigation, as those Commissioners may specify.
- 4.—(1) The Secretary of State may cause a survey and examination to be made—
- (a) of any tidal work; and
 - (b) of the land upon which it is proposed to construct any such work.
- (2) The cost of any survey and examination under sub-paragraph (1) shall be met by the Department.
- 5.—(1) The Department shall, while a tidal work is being constructed, altered or extended—
- (a) exhibit, at or near the work, every night from sunset to sunrise such lights as the Secretary of State may specify;
 - (b) take such steps to prevent any danger to navigation as the Secretary of State may specify.
- (2) The Department shall, in relation to any tidal work, after the work is completed—
- (a) exhibit every night from sunset to sunrise such lights as the Commissioners of Irish Lights may specify, at such places as may be so specified;
 - (b) take such steps to prevent any danger to navigation as those Commissioners may specify.
6. It shall be the duty of the Department to comply with any notice served on it under this Schedule.

SCHEDULE 7

Article 113(2).

MODIFICATIONS OF SCHEDULE 6 TO THE LOCAL GOVERNMENT ACT
(NORTHERN IRELAND) 1972 FOR THE PURPOSES OF ARTICLE 113(2)

1. References to the Ministry or council shall be construed as references to the Department within the meaning of this Order.
2. References to Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall be construed as references to that Schedule as modified by this Schedule.
3. Omit paragraph 1 of that Schedule.
4. In paragraph 2 of that Schedule—
 - (a) for the words from “Notice of application” to “directs” substitute the words “Where the Department proposes to acquire land otherwise than by agreement, notice of its intention to do so”;
 - (b) in sub-paragraph (c) for the words “as may be prescribed.” substitute the words “as the Department considers fit”;
 - (c) after sub-paragraph (c) add the words “and such notice shall state the time within which objections to the proposal may be made to the Department”.
5. In paragraph 3—
 - (a) in sub-paragraph (1)(b) for the words from “unless no representations” to “or vexatious nature”, substitute “if it appears to the Department necessary to do so” and in head (ii) of that sub-paragraph for the word “refuse” substitute the words “decide not”; and
 - (b) in sub-paragraph (2) omit the words “the council and” and “or refusing”.

6. In paragraph 4 omit the words from “and may provide” onwards.
7. In paragraph 5—
 - (a) in sub-paragraph (1)(a) omit the words “in the prescribed form and manner” and for the words from “, having given notice” to the end, substitute the words “has given notice to the Department of his objection to the making of the vesting order”;
 - (b) in sub-paragraph (1)(b) the two references to the said Act of 1972 shall be construed as references to this Order;
 - (c) in sub-paragraph (1)(d) omit the words “in the prescribed form”;
 - (d) in sub-paragraph (2) for the words “as may be prescribed” substitute the words “as the Department considers fit”.
8. In paragraph 6(2) for the words “fund out of which the expenses of the council in acquiring the land are to be defrayed” substitute the words “Consolidated Fund” and for the words “out of the Compensation Fund” substitute the words “made by the Department”.
9. In paragraph 10 for sub-paragraph (3) substitute—

“(2A) Where a notice is served by any person on the Department under sub-paragraph (2), the Department may serve on that person a counter notice, stating that for the reasons specified the Department is not willing to acquire the remainder of the house, building or factory.

(3) Where a notice is served on the Department under sub-paragraph (2) then, notwithstanding that the Department has served a counter notice under sub-paragraph (2A), the Department shall acquire the remainder of the house, building or factory unless—

 - (a) the Lands Tribunal determines that the acquisition of the part thereof acquired by means of the vesting order has not caused material detriment to the house, building or factory; or
 - (b) the person who served the notice under sub-paragraph (2) withdraws the notice in accordance with sub-paragraph (3A).

(3A) A person who has served a notice under sub-paragraph (2) in relation to the remainder of a house, building or factory may withdraw that notice at any time before the amount to be paid for the remainder has been agreed with the Department or determined by the Lands Tribunal or at any time before the end of 6 weeks beginning with the date on which that amount is so agreed or determined.”.
10. In paragraph 11(3) omit the words “in the prescribed form”.
11. In paragraph 12—
 - (a) in sub-paragraph (1) omit the words “such” and “as may be prescribed”;
 - (b) in sub-paragraph (2) for the words from “clerk” to “directs” substitute the words “Department as correct, and publish”.
12. In paragraph 14(1) omit the words “in the prescribed form”.
13. In paragraph 15(1) for the words “in the prescribed form” substitute the words “in such form as may be approved by the Department”.
14. Omit paragraph 19.
15. Omit paragraph 20(2).

SCHEDULE 8

Article 133(1).

PROCEDURE FOR MAKING ORDERS UNDER
ARTICLES 4(1), 5(1), 6, 14(1), 15(1), 18(1) AND 68(1)

1. Before making an order the Department shall publish in the Belfast Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the area in which the road, bridge, tunnel, foreshore, land or navigable watercourse to which the order relates is, or is to be, situated a notice—

- (a) stating the general effect of the proposed order;
- (b) specifying a place in that area where a copy of a draft of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than 30 days from the date of the last publication of the notice; and
- (c) stating that, within that period, any person may, by notice to the Department, inform it of the grounds upon which he objects to the making of the order.

2.—(1) The Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, serve a copy thereof together with a copy of a draft of the order and of any relevant map or plan on—

- (a) a relevant body in whose area any road, bridge, tunnel, foreshore, land or navigable watercourse to which the order relates is, or is to be, situated;
- (b) in relation to an order under Article 6 or any order affecting the foreshore, the Crown Estate Commissioners;
- (c) in relation to an order under Article 4(1), 5(1) or 6, the Secretary of State concerned with navigation;
- (d) in relation to an order under Article 68(1), the owner of any cables, wires, mains, pipes or other apparatus placed along, across, over or under any road to which the order applies.

(2) Where the Department proposes to modify the terms of the draft of the order, the Department shall give and publish, in such manner as appears to it to be appropriate, such additional notices as the Department considers appropriate for informing all persons likely to be adversely affected by the modification.

(3) In this paragraph “relevant body” means—

- (a) in the case of an order under Article 4(1), 5(1) or 6—
 - (i) the Commissioners of Irish Lights,
 - (ii) a district council,
 - (iii) a harbour authority as defined in the Harbours Act (Northern Ireland) 1970(59),
 - (iv) the Fisheries Conservancy Board,
 - (v) the Foyle Fisheries Commission,
- (b) in any other case, a district council.

3. Where the proposed order provides for the abandonment or stopping-up of any road, the Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, cause a copy of that notice to be displayed in a prominent position on that part of the road which is proposed to be abandoned or stopped-up.

4.—(1) If, before the expiration of the period referred to in paragraph 1(b), the Department receives an objection from any person on whom a copy of the notice is required to be served under

(59) 1970 c. 1 (N.I.)

paragraph 2(1) or from any other person appearing to it to be affected, it shall, subject to sub-paragraph (2), cause a local inquiry to be held unless the objection is withdrawn.

(2) Unless the objection is made by a person on whom a notice was served under paragraph 2(1), the Department may dispense with an inquiry if it is satisfied that it is unnecessary to hold one.

5. After considering—

- (a) any objections to the proposed order which are not withdrawn; and
- (b) where a local inquiry is held, the report of the person who held it,

the Department may make the order either without modifications or subject to such modifications as it thinks fit.

6. If it appears to the Department that in any order to which this Schedule applies the description of any road, bridge, tunnel, foreshore, land or navigable watercourse is in any respect incorrect or insufficiently clear, the Department may by order make such modifications in the provisions of the first-mentioned order as may be necessary for correcting or clarifying such description and the provisions of this Schedule shall not apply to such an order, but the Department shall publish notice of the making of the order in one or more than one newspaper circulating in the area to which the order relates.

SCHEDULE 9

Article 134(1).

SAVING PROVISIONS

Telecommunications apparatus

1. Subject to paragraph 2, nothing in this Order or in any order made under it shall affect any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or apply to any telecommunication apparatus kept installed for the purposes of any such system.

2.—(1) Where in pursuance of an order under Article 68 any road is stopped-up or abandoned and, immediately before that order comes into force there is under, in, upon, over, along or across the road any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of that apparatus as if the order had not come into force; but the Department or any person in whom the site of the road is vested shall be entitled to require the alteration of the apparatus.

(2) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of sub-paragraph (1) as it applies for the purposes of the code.

(3) Paragraph 21 of the telecommunications code (restrictions on removal of apparatus) shall apply in relation to any entitlement conferred by sub-paragraph (1) to require the alteration, moving or replacement of any apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.

3. Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the Department for the purposes of any work authorised to be carried out under this Order.

Preservation of certain savings in Roads (Northern Ireland) Order 1980

4. The repeal by this Order of Schedule 7 to the Roads (Northern Ireland) Order 1980(60) does not affect the operation of the savings in paragraphs 5 to 7 of that Schedule in so far as they remain capable of having effect.

SCHEDULE 10

Article 134(2).

AMENDMENTS

The Military Lands Act 1892 (c. 43)

In section 26(5) for the words from “under Article 40” to the end substitute “under Article 68 of the Roads (Northern Ireland) Order 1993 as if the conditions set out in paragraph (4) of that Article were satisfied”.

The Land Powers (Defence) Act 1958 (c. 30)

In the Third Schedule in paragraph 1 for the words before sub-paragraph (a) substitute “The powers in Article 68 of the Roads (Northern Ireland) Order 1993 (stopping-up or abandonment of roads) shall also be exercisable where—”.

In paragraph 2 of that Schedule for the words “the said Article 40” and “that section” substitute respectively “the said Article 68” and “that Article”.

In paragraph 5 of that Schedule for the words “Article 53 of the Roads (Northern Ireland) Order 1980” substitute “Article 110 of the Roads (Northern Ireland) Order 1993”.

The Transport Act (Northern Ireland) 1967 (c. 37 (N.I.))

In section 62(2) for the words “under subsection (1)” substitute “under Article 111 of the Roads (Northern Ireland) Order 1993”.

In section 66(3)(b) for “1980” substitute “1993”.

In section 67F(5) for the words “Article 40(2) of the Roads (Northern Ireland) Order 1980” substitute “Article 68(5) of the Roads (Northern Ireland) Order 1993” and for the words from “paragraphs 1 to 4” to the end substitute “paragraphs 1 to 3 of Schedule 9 to that Order (savings for telecommunications apparatus) shall apply to an order made under this section as they apply to an order made under Article 68 of that Order”.

In section 67F(6) for the words “Article 40(2) of the Roads (Northern Ireland) Order 1980” substitute “Article 68(5) of the Roads (Northern Ireland) Order 1993”.

In section 67I for the words “Article 63(1) to (3) of, and Schedule 6 to, the Roads (Northern Ireland) Order 1980” substitute “Article 133(2) and (4) of, and Schedule 8 to, the Roads (Northern Ireland) Order 1993” and for the words “Article 63(1) of that Order” substitute “Article 133(1) of that Order”.

In Schedule 1A in the heading for the words “Article 63(1) to (3) of, and Schedule 6 to, the Roads (Northern Ireland) Order 1980” substitute “Article 133(2) and (4) of, and Schedule 8 to, the Roads (Northern Ireland) Order 1993”.

In paragraph 1 of that Schedule for the words “Schedule 6” substitute “Schedule 8”.

In paragraph 2 of that Schedule—

- (a) for the words “Article 63” substitute “Article 133”;

(60) 1980 NI 11

(b) for the words “Article 53 and Schedule 4” substitute “Article 113 and Schedule 7”;
(c) for the words from “omit the words” to the end substitute “omit sub-paragraph (a)”.
In paragraph 3 of that Schedule for the words “Schedule 6” substitute “Schedule 8”.

The Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.))

In Schedule 11 for paragraph 32 substitute—

“32. Any of the following matters under the Roads (Northern Ireland) Order 1993—

- (a) a notice under Article 49;
- (b) a condition imposed under Article 75 on the use of a building;
- (c) a condition imposed under Article 76 on the use of any land;
- (d) an agreement under Article 117;
- (e) a charge under Article 122.”.

The Historic Monuments Act (Northern Ireland) 1971 (c. 17 (N.I.))

In section 16(4) for paragraph (b) substitute—

“(b) “road” has the same meaning as in the Roads (Northern Ireland) Order 1993.”.

The Planning (Northern Ireland) Order 1972 (NI 17)

In Article 66B(2) for the words “Article 42 of the Roads (Northern Ireland) Order 1980” there shall be substituted “Article 80 of the Roads (Northern Ireland) Order 1993”.

The Land Acquisition and Compensation (Northern Ireland) Order 1973 (NI 21)

In Article 2(2) for the definitions of “road” and “road authority” substitute—

““road” has the same meaning as in the Roads (Northern Ireland) Order 1993;

“road authority” means the Department of the Environment;”.

In Article 27(2) for the words “of the kind mentioned in Article 24(2)” substitute “one which falls within Article 4 of the Planning Blight (Compensation) (Northern Ireland) Order 1981 (interests qualifying for protection under blight provisions) taking references to the date of service of a blight notice under Article 5 of that Order as references to the date on which the purchase agreement is made”.

The Statutory Rules (Northern Ireland) Order 1979 (NI 12)

In Schedule 3 for paragraph 7 substitute—

“7. Orders under Article 13, 14, 68 or 69 of the Roads (Northern Ireland) Order 1993.”.

The Private Streets (Northern Ireland) Order 1980 (NI 12)

In Article 3(4G) for the words “Article 23 of the Roads (Northern Ireland) Order 1980” substitute “Article 43 of the Roads (Northern Ireland) Order 1993”.

In Article 7(8) for “Article 10 of the Roads (Northern Ireland) Order 1980” substitute “Article 11 of the Roads (Northern Ireland) Order 1993”.

The Road Traffic (Northern Ireland) Order 1981 (NI 1)

In Article 2(2) in the definition of “trunk road” for “1980” substitute “1993”.

In Article 26A(4) for the words “Article 19 of the Roads (Northern Ireland) Order 1980” substitute “Article 20 of the Roads (Northern Ireland) Order 1993”.

In Article 28(1)(h) for “1980” substitute “1993”.

In Schedule 5 in paragraph 5 for the words “Article 58(2) of the Roads (Northern Ireland) Order 1980” substitute “Article 130(2) of the Roads (Northern Ireland) Order 1993”.

The Planning Blight (Compensation) (Northern Ireland) Order 1981 (1981NI 16)

In Article 3(1)(f) for the words from “Schedule 6” to “1973” substitute “Schedule 8 to the Roads (Northern Ireland) Order 1993, or an order under Article 14(1) or 15(1) of that Order, being land in relation to which a power of compulsory acquisition conferred by that Order” and for “the said Article” substitute “Article 112 of that Order”.

In Article 3(1)(k) for the words “Article 24(1) of the Land Acquisition and Compensation (Northern Ireland) Order 1973” substitute “Article 112 of the Roads (Northern Ireland) Order 1993”.

The Civil Aviation Act 1982 (c. 16)

In section 48(3)(b) for “1980” substitute “1993”.

In section 48(9) for the words “paragraphs 2 and 3 of Schedule 7 to the Roads (Northern Ireland) Order 1980” substitute “paragraph 2 of Schedule 9 to the Roads (Northern Ireland) Order 1993” and for the words “those paragraphs” substitute “that paragraph”.

In section 49(4) for the words “paragraph (3) of Article 53 of the Roads (Northern Ireland) Order 1980” substitute “Articles 110 and 113 of the Roads (Northern Ireland) Order 1993” and for “1980” substitute “1993”.

The Telecommunications Act 1984 (c. 12)

In Schedule 2 in paragraph 9(3) for the words “Order 1980” substitute “Order 1993”.

The Road Races (Northern Ireland) Order 1986 (NI 17)

In Article 2(2) in the definition of “road” for “1980” substitute “1993”.

The Occupiers' Liability (Northern Ireland) Order 1987 (NI 15)

In Article 3(9) in the definition of “road” for “1980” substitute “1993”.

The Laganside Development (Northern Ireland) Order 1989 (NI 2)

In Schedule 2 in paragraph 6(2) for the words “Article 63(1) and (3) of, and Schedule 6 to, the Roads (Northern Ireland) Order 1980” substitute “Article 133(1) and (4) of, and Schedule 8 to, the Roads (Northern Ireland) Order 1993”.

The Planning (Northern Ireland) Order 1991 (NI 11)

In Article 2(2) in the definition of “road” for “1980” where it first occurs substitute “1993”.

In Article 9(2)(b) for “13 or 14” substitute “14 or 15” and for “1980” substitute “1993”.

The Electricity (Northern Ireland) Order 1992 (NI 1)

In Schedule 4 in paragraph 1(1) in the definition of road for “1980” substitute “1993”.

SCHEDULE 11

Article 134(3).

REPEALS

Chapter or Number	Short Title	Extent of Repeal
1847 c. 34.	The Towns Improvement Clauses Act 1847.	Sections 81 and 82.
1854 c. 103.	The Towns Improvement (Ireland) Act 1854.	Section 51.
1878 c. 52.	The Public Health (Ireland) Act 1878.	In section 29, paragraph (2) and the words “vault, arch, or cellar” and “or constructed”.
1890 c. 59.	The Public Health Acts Amendment Act 1890.	Section 35. Section 40. Section 43.
1907 c. 53.	The Public Health Acts Amendment Act 1907.	Section 18. Section 20. Section 47.
1919 c. 75.	The Ferries (Acquisition by Local Authorities) Act 1919.	The whole Act.
1928 c. 10 (N.I.).	The Roads Improvement Act (Northern Ireland) 1928.	The whole Act.
1967 c. 37 (N.I.).	The Transport Act (Northern Ireland) 1967.	Section 62(1). In Schedule 1A, paragraphs 3(a), (b)(i) and (d).
1968 c. 30 (N.I.).	The Local Government and Roads Act (Northern Ireland) 1968.	The whole Act, so far as unrepealed.
1970 c. 18 (N.I.).	The Land Registration Act (Northern Ireland) 1970.	In Schedule 11, paragraph 10.
1973 NI 21.	The Land Acquisition and Compensation (Northern Ireland) Order 1973.	Article 2(3). Articles 24 to 26. Article 29(1)(a).

Chapter or Number	Short Title	Extent of Repeal
		In Article 29(2) the words “road authority or” and “as the case may be”.
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Part III of Schedule 1 in the entry beginning “Arbitrator or other person” the words from “any of the following” to “1980”.
1980 NI 11.	The Roads (Northern Ireland) Order 1980.	The whole Order.
1981 NI 1.	The Road Traffic (Northern Ireland) Order 1981.	Article 106(5). In Schedule 7, paragraphs 24 to 27.
1981 NI 16.	The Planning Blight (Compensation) (Northern Ireland) Order 1981.	In Schedule 1, paragraph 2.
1981 NI 26.	The Magistrates' Courts (Northern Ireland) Order 1981.	In Schedule 6, paragraph 166.
1982 NI 18.	The Disabled Persons (Northern Ireland) Order 1982.	Article 3.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 4, paragraphs 3(1) (j) and 77.
1984 NI 3.	The Fines and Penalties (Northern Ireland) Order 1984.	In Schedule 2, paragraph 18.
1984 NI 15.	The Road Traffic, Transport and Roads (Northern Ireland) Order 1984.	Article 18. Schedule 2.
1985 NI 15.	The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.	Article 21.
1990 NI 14.	The Planning and Building Regulations (Amendment) (Northern Ireland) Order 1990.	Article 27.
1992 NI 1.	The Electricity (Northern Ireland) Order 1992.	In Schedule 12, paragraphs 22 to 26.
1992 NI 19.	The Private Streets (Amendment) (Northern Ireland) Order 1992.	Article 4(4).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order re-enacts with amendments the Roads (Northern Ireland) Order 1980 and other related legislation relating to the construction, improvement, maintenance and protection of roads. The Order also makes new provision for road ferry services.

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The Roads (Northern Ireland) Order 1993, Article 72

**Application for Consent to erect scaffolding,
hoardings, etc on a Road**

● Please read the notes overleaf before completing this form

Applicant's details

Name

Address

.....

.....

Postcode

Telephone No.

Agent's details

Name

Address

.....

.....

Postcode

Telephone No.

Location of proposed works

Brief details of proposed works

Proposed date to commence installation of works

Time required to install

Proposed date for removal of works

Time required to remove

Ref. No. of attached drawing (2 copies)

Additional comments

I hereby apply for a licence to carry out the above works.

Signature of Applicant / Agent

..... Date

Authority if acting for an Organisation or Company

The Roads (Northern Ireland) Order 1993, Article 72

Erection of scaffolding, hoardings, etc on a road

Guidance Notes for Applicant

1. The applicant is required to provide the following information, on the attached form when applying to the Department for consent to undertake the above operations on a public road :-
 - (a) a description of the works;
 - (b) the location of the works;
 - (c) the name and permanent address of the applicant;
 - (d) a drawing showing the nature of the work (where appropriate); and
 - (e) details of the appropriate planning approval including drawings if relevant.
2. The applicant shall indemnify the Department against any claims in respect of injury, loss or damage arising from the works.
3. The applicant is required to make such monetary deposit as the Department shall assess against the proper undertaking and satisfactory completion of the works. An estimate of the deposit likely to be required can be obtained by applying the rates contained on the attached leaflet.
4. A Consent and a receipt for the deposit will be issued by the Section Office together with a Permanent Restoration Notice. Where necessary a specification showing the standard for the work will be included.
5. The deposit is returned to the applicant when the Restoration Notice has been received by the Department and no damage has been done to the road or if this damage is covered under an Article 78 consent.
 - (a) If the road has been damaged the deposit will be withheld until the damage has been repaired to the satisfaction of the Department.
 - (b) If a reinstatement has been made the deposit will not be returned until six months has elapsed from receipt of the Restoration Notice and the work is completed to the satisfaction of the Department and in accordance with the current specification for reinstatement.
6. The applicant shall be responsible for traffic safety and control in accordance with Chapter 8 of the Traffic Signs Manual during the execution of the works.
7. Any person aggrieved by the refusal of the Department to give its consent under Article 72 (2) of the Roads (NI) Order 1993 or any condition subject to which any such consent is given, may, within 21 days of receiving notice thereof, appeal to the Planning Appeals Commission by notice in writing under Article 84 of the Roads (NI) Order 1993.



Subject:	Provision of Legal Training for Members of the Licensing Committee
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext 2435

Is this report restricted?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

1.0	Purpose of Report
1.1	Members are requested to confirm whether they would be interested in availing of training around the decision-making processes of the Licensing Committee and the general powers, functions and especially the legal issues they are exposed to when executing their duties.
1.2	The Committee, at its meeting on the 21 st October, was advised of specifically tailored legal training provided to Members of the Planning Committee by a Legal expert that was deemed to be very informative and helpful regarding the Members' roles and responsibilities in deciding on applications.
1.3	As the Licensing Committee carries out a similar function, its Chairman subsequently sent an email to Members of that Committee to enquire if they would be interested in attending a similarly tailored legal training programme and, if so, to inform Ms. N. Largey, Principal Solicitor, who attends the Committee of any issues or areas which would be of particular benefit.
2.0	Recommendation
2.1	Members are requested to consider if they wish to avail of a training programme tailored to suit your needs as a Member of the Licensing Committee and, if so, to forward questions etc to the Principal Solicitor to help formulate that programme.



Subject:	Licences issued under Delegated Authority
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report												
1.1	Under the Scheme of Delegation, the Director of Planning and Place is responsible for exercising all powers in relation to the issue, but not refusal, of permits and licences, excluding provisions relating to the issue of entertainments licences where adverse representations have been made. For your information those applications dealt with under the Scheme are listed below.												
2.0	Recommendation												
2.1	The Committee is requested to note the applications which have been issued under the Scheme of Delegation												
2.2	This item is for noting only.												
3.0	Main report												
3.1	<p><u>Key Issues</u> Under the terms of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, the following Entertainment Licences were issued since your last meeting:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 35%;">Premises and Location</th> <th style="width: 15%;">Type of Application</th> <th style="width: 30%;">Hours Licensed</th> <th style="width: 20%;">Applicant</th> </tr> </thead> <tbody> <tr> <td>Belvoir Activity Centre, 100 Belvoir Drive, Belfast, BT8 7DT</td> <td>Transfer</td> <td>Sun to Sat: 09.00 – 00.00</td> <td>Ms. Katrina Morgan</td> </tr> <tr> <td>Church of God Glenmahan, 13 Glenmahan Road, Belfast, BT4 2NL</td> <td>Renewal</td> <td>Mon to Fri: 08.00 – 01.00 Sat: 08.00 – 00.00</td> <td>Rev. Alan Stephens</td> </tr> </tbody> </table>	Premises and Location	Type of Application	Hours Licensed	Applicant	Belvoir Activity Centre, 100 Belvoir Drive, Belfast, BT8 7DT	Transfer	Sun to Sat: 09.00 – 00.00	Ms. Katrina Morgan	Church of God Glenmahan, 13 Glenmahan Road, Belfast, BT4 2NL	Renewal	Mon to Fri: 08.00 – 01.00 Sat: 08.00 – 00.00	Rev. Alan Stephens
Premises and Location	Type of Application	Hours Licensed	Applicant										
Belvoir Activity Centre, 100 Belvoir Drive, Belfast, BT8 7DT	Transfer	Sun to Sat: 09.00 – 00.00	Ms. Katrina Morgan										
Church of God Glenmahan, 13 Glenmahan Road, Belfast, BT4 2NL	Renewal	Mon to Fri: 08.00 – 01.00 Sat: 08.00 – 00.00	Rev. Alan Stephens										

Premises and Location	Type of Application	Hours Licensed	Applicant
St Marks Church, Heyn Hall, 2 Sydenham Avenue, Belfast, BT4 3FG	Renewal	Mon to Fri: 08.00 – 01.00 Sat: 08.00 – 00.00	Mrs. Lynn Wilson
Linenhall Library, 17 Donegall Square North, Belfast, BT1 5GB	Renewal	Sun to Sat: 08.00 – 01.00	Ms. Julie Andrews
Society, 10-14 Tomb Street, Belfast, BT1 3AS	Renewal & Transfer	Sun: 12.30 – 03.00 Mon to Sat: 11.30 – 03.00	Mr. Ian Killen
Cosy Bar, 44-50 Omeath Street, Belfast, BT6 8DN	Renewal	Sun: 12.30 to 00.00 Mon to Sat: 11.30 – 01.00	Mr. William Townsley
Sunflower Bar, 65 Union Street, Belfast, BT1 2JG	Renewal	Sun: 12.30 – 22.00 Mon to Thurs: 11.30 – 23.00 Fri and Sat: 11.30 – 01.00	Mr. Pedro Donald
Cliftonville Golf Club, 44 Westland Road, Belfast, BT14 6NH	Renewal	Sun: 12.30 – 21.30 Mon to Sat: 11.30 – 23.00	Mr Albert McCullough
Windsor Recreation & Snooker Club, 2A Edinburgh Street, Belfast, BT9 7DS	Renewal	Sun: 12.30 – 22.00 Mon to Sat: 11.30 – 23.00	Mr. Richard Dean
Forthriver Bowling and Tennis Club, 104A Woodvale Road, Belfast, BT13 3BU	Renewal	Sun: 12.30 to 22.00 Mon to Sat: 11.30 – 23.00	Mr. Tom Uprichard
Hibernian Sports & Social Club, 71 Falls Road, Belfast, BT12 4PD	Renewal	Sun: 12.30 to 22.00 Mon to Sat: 11.30 – 23.00	Mr. Gerry Mc Closkey
Knock Golf Club, Summerfield, Upper Newtownards Road, Belfast, BT16 2QX	Renewal	Sun: 12.30 – 22.00 Mon to Sat: 11.30 – 23.00	Mrs. Anne Armstrong
Ulster Sports Club, 96-98 High Street, Belfast, BT1 2BG	Renewal	Sun: 12.30 – 22.00 Mon to Sat: 11.00 – 01.00	Mr. Stephen Watson
Horatio Todd's, 406-408 Upper Newtownards Road, Belfast, BT4 3EZ	Renewal	Sun: 12.30 – 00.00 Mon to Sat: 11.30 – 01.00	Mr. Stephen Magorrian
Grand Opera House, Great Victoria Street, Belfast, BT2 7HR	Renewal	Sun: 08.00 – 00.00 Mon to Sat: 08.00 – 01.00	Ms. Mary-Clare Deane

3.2

Under the terms of the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, the following Amusement Permits were renewed since your last meeting:

Premises and Location	Type of Permit	Hours Licensed	Applicant
Twilight Zone, 100-150 York Street, Belfast, BT15 3HF	Renewal	Mon to Sun: 10.00 – 22.00	Eze Gaming

3.3	<p><u>Financial and Resource Implications</u></p> <p>None</p> <p><u>Equality or Good Relations Implications</u></p>
3.4	<p>There are no equality and good relations issues with this report.</p>
4.0	<p>Documents Attached</p> <p>None</p>

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Subject:	Applications for Grant/Renewal of Entertainments Licences with Previous Convictions
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report
1.1	To consider applications for the grant/renewal of Entertainments Licences where the applicant has been convicted of an offence under the Local Government Miscellaneous Provisions (NI) Order 1985 (the Order) within the previous five years.
2.0	Recommendation
2.1	<p>Taking into account the information presented, you are required to consider the applications and to:</p> <ol style="list-style-type: none"> 1. approve the applications, or 2. should you be of a mind to refuse any of the applications, or approve any applications with additional special conditions, an opportunity of appearing before and of being heard by the Committee must be given to the applicants.
3.0	Main report
	Key Issues
3.1	Members are reminded that the normal process for dealing with Entertainments Licence applications which are not the subject of objections is that the licence will be granted as provided for in the Council's Scheme of Delegation.
3.2	However, in light of the fact that an applicant has been found guilty of committing an offence within five years of the application for a licence being submitted to the Council, you are required to consider the following applications.
3.3	Notwithstanding the possibility of refusing an Entertainments Licence on any other grounds, the Council may refuse an application on the grounds that the applicant has been convicted of an offence under the Order.

Premises and Location	Applicant	Application Type	Offence Details	Date of Conviction & Penalty
Ardoyne Working Men's Club 9b Kerrera Street Belfast BT14 7FL	Brendan Mailey (Secretary)	Grant	18th December 2014 Entertainment being provided without a valid Entertainments Licence being in place	28th July 2015 £200 and £66 Court costs. 6 months to pay
The Cuckoo 149 Lisburn Road Belfast BT9 7AJ	North Down Leisure Ltd	Renewal	24th August 2012 Locked exit door and log book not completed	26th March 2013 £400 and £69 Court costs.

Applications previously considered

3.4 Members may recall that previous renewal applications for The Cuckoo were brought before the Licensing Committee on 18th September 2013 and 15th April 2015 and, after consideration, you agreed on each occasion to grant the Licence.

Representations

3.5 Public notice of the applications has been placed and no written representations have been lodged as a result of the advertisements.

PSNI

3.6 The PSNI has been consulted and has confirmed that they have no objections to the applications.

Health, safety and welfare inspections

3.7 Following the offences, officers of the Service met with the person in charge of each of the premises to review their management procedures and ensure that appropriate measures are in place for the safety of the public, performers and staff at all times and, in particular, if an emergency situation should occur.

3.8 Each of the premises have also been subject to further inspections by officers of the Service and on each occasion agreed that management procedures were being implemented effectively.

3.9 Copies of the application forms for each of the premises are attached.

Financial and Resource Implications

3.10 Officers carry out during performance inspections on premises providing entertainment which is catered for within existing budgets.

Equality and Good Relations Implications

3.11 There are no equality or good relations issues associated with this report.

4.0	Documents Attached
	Appendices 1 and 2 - Application forms

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By virtue of paragraph(s) 1 of Part 1 of Schedule 6
of the Local Government Act (Northern Ireland) 2014.

Document is Restricted

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By virtue of paragraph(s) 1 of Part 1 of Schedule 6
of the Local Government Act (Northern Ireland) 2014.

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Subject:	Application for the Grant of a Seven-day Annual Entertainments Licence – Beckett’s Bar, 241 Stewartstown Road
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext. 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext. 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report						
1.1	<p>To consider an application for the grant of a Seven-day Annual Indoor Entertainments Licence for Beckett’s Bar, based on the Council’s standard conditions to provide music, singing, dancing or any other entertainment of a like kind.</p> <table style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 33%;">Premises and Location</td> <td style="width: 33%;">Ref. No.</td> <td style="width: 33%;">Applicant</td> </tr> <tr> <td>Beckett’s Bar, 241 Stewartstown Road, Dunmurry, BT17 0LA.</td> <td>WK/2015/00780</td> <td>Mrs Carol Hughes, Sharp NI Limited, 60 Limehill Road, Lisburn, BT27 5LR.</td> </tr> </table>	Premises and Location	Ref. No.	Applicant	Beckett’s Bar, 241 Stewartstown Road, Dunmurry, BT17 0LA.	WK/2015/00780	Mrs Carol Hughes, Sharp NI Limited, 60 Limehill Road, Lisburn, BT27 5LR.
Premises and Location	Ref. No.	Applicant					
Beckett’s Bar, 241 Stewartstown Road, Dunmurry, BT17 0LA.	WK/2015/00780	Mrs Carol Hughes, Sharp NI Limited, 60 Limehill Road, Lisburn, BT27 5LR.					
1.2	Members are advised that the premises are located within a former area of Lisburn which transferred over to Belfast City Council under Local Government Reform (LGR).						
2.0	Recommendation						
2.1	The current policy, laid down as a mandatory condition in the Local Government (Miscellaneous Provisions) (NI) Order when considering an application for the grant of a licence, is that the Council must have regard to any observations submitted to it by the Fire Authority.						
2.2	You are, therefore, required to set a suitable date and time to receive the Fire Authority, the applicant and/or their representatives and, after having received their submissions, make a recommendation regarding the application.						
3.0	Main report						
	<u>Key Issues</u>						
3.1	The Northern Ireland Fire and Rescue Service (NIFRS) has made written representation objecting to the application.						
3.2	Their representations relate to concerns they have arising from complaints received about fire safety issues at the premises raised by Lisburn City Council in December 2014 and by Belfast City Council in July and October of this year.						

3.3	<p>The NIFRS and the PSNI are statutory consultees under the terms of the Order and the Committee, when considering an application, must have regard to any representation which is received from them.</p> <p><u>Financial & Resource Implications</u></p>
3.4	<p>None.</p> <p><u>Equality or Good Relations Implications</u></p>
3.5	<p>None.</p>
4.0	Document Attached
	<p>Copy of the correspondence from NIFRS.</p>

By virtue of paragraph(s) 1 of Part 1 of Schedule 6
of the Local Government Act (Northern Ireland) 2014.

Document is Restricted

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Subject:	Competing Applications for the Grant of a Stationary Street Trading Licence – Boucher Crescent
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, Ext 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, Ext 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report
1.1	Members are reminded that, at your meeting on 16 th September, you considered separate Street Trading Licence applications from Miss Kathy Finn and Mr Christopher Hamill for a vacant designated site on Boucher Crescent.
1.2	<p>After consideration, the Committee agreed that it was minded to grant to Mr Hamill a Stationary Street Trading Licence permitting him to sell hot food and non alcoholic beverages, Monday to Saturday 7.00 a m to 4.00 p m in Boucher Crescent, at a site which has been designated previously for the sale of those commodities, subject to:</p> <ul style="list-style-type: none"> The applicant providing all necessary documentation; and The receipt of the appropriate licensing fees.
1.3	A copy of the minute of that meeting is attached.

2.0	Recommendations
2.1	<p>The Committee must agree either to:</p> <ol style="list-style-type: none"> 1. uphold the initial decision of the 16th September 2015 and grant the licence to Mr Hamill for a period of one year and refuse the other application, or 2. amend your decision of 16th September 2015.
2.2	If the Committee agrees to amend its decision of 16 th September, it should give the grounds for so doing and agree that a date for a special meeting be arranged to hear from the applicants again before making the final decision.

2.3	On granting a licence Members may attach any reasonable conditions to it.
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3.0	Main report
3.1	<p><u>Key Issues</u></p> <p>As a consequence of agreeing to proceed on the basis that you were minded to grant the Licence to Mr Hamill and also that there was only one designated site available, the Committee agreed that it was minded to refuse the application which had been submitted by Miss Finn. That decision was on the grounds set out in Sections 9(1)(a)(i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which they wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which they wished to trade.</p>
3.2	Accordingly, Miss Finn was notified that she would be permitted to make written representation to the Council with such representation to be made within twenty-one days from the date of notice.
3.3	Members are advised that Miss Finn has not submitted an appeal.
	<u>Financial and Resource Implications</u>
3.4	<p>If the Committee grants a licence, the Street Trading Licence fee is as follows:</p> <ul style="list-style-type: none"> • application Fee of £100, and • a Licence fee, for Monday to Saturday, of £800.
	<u>Equality or Good Relations Implications</u>
3.5	There are no equality or good relations issues with this report.

4.0	Document Attached
	Minute of meeting of Licensing Committee of 16 th September

Minute of Meeting of Licensing Committee

16th September, 2015

Competing Applications for the Grant of a Stationary Street Trading Licence – Boucher Crescent

The Committee was advised that competing applications had been received from two persons wishing to trade from a designated site in Boucher Crescent, which had become vacant following the cancellation of his Street Trading Licence by the current licensee. The Head of Building Control reviewed the applications, one of which had been submitted by Ms. K. Finn, who had applied to sell, from a hot food trailer measuring 5.5 metres by 2.15 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 9.00 a.m. and 6.00 p.m. He explained that, whilst the applicant was not registered currently as a food business and had not obtained accreditation under the Food Hygiene Rating Scheme, she had, in the past, held Temporary Street Trading Licences which had permitted her to trade at parades taking place on 12th July. On those occasions, her business had been inspected and approved by the Council's Environmental Health Service.

The second applicant, namely, Mr. C. Hamill, was seeking to sell, from a hot food trailer measuring 6 metres by 2.2 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 7.00 a.m. and 4.00 p.m. Mr. Hamill operated currently within the car park of the B&Q premises on the Boucher Road, however, he had been informed by the operator that that premises was due to close and that he would no longer be permitted to trade there. The Head of Building Control pointed out that Mr. Hamill's business was registered currently by the Council and that it had been given a 5* food hygiene rating. He confirmed that the applicants had been invited to outline to the Committee their proposals for the site and Mr. Hamill, who had availed of the opportunity, was welcomed by the Chairperson.

Mr. Hamill informed the Members that he had been trading for six years in the car park of the B&Q premises on the Boucher Road. However, as that business would cease trading early in 2016, he was required to find an alternative site, which had necessitated the submission of his application to the Council. He pointed out that his business was registered currently by the Council and that it had attained a 5* food hygiene rating and stressed that the vacant designated site on the Boucher Road would offer a suitable alternative to his current site and secure his means of income.

After discussion, it was

Moved by Councillor Attwood,
Seconded by Councillor Campbell and

Resolved – That the Committee agrees, in its capacity as Licensing Authority, that it is minded to grant to Mr. C. Hamill a Stationary Street Trading Licence permitting him to sell, from a hot food trailer measuring 6 metres by 2.2 metres, hot food and non-alcoholic beverages from Monday to Saturday between the hours of 7.00 a.m. and 4.00 p.m., at a site which has been designated previously for the sale of those commodities, on the basis that his business was registered currently by the Council and held a 5* food hygiene rating and that it could continue to operate only through the acquisition of an alternative site, subject to:

- (i) the applicant providing all necessary documentation; and
- (ii) the receipt of the appropriate licensing fees.

As a consequence of the decision to grant the Licence to Mr. Hamill and the fact that there was only one designated site available, the Committee agreed that it was minded to refuse the application which had been submitted by Ms. K. Finn, on the grounds set out in Sections 9(1) (a) (i) and (iv) of the Street Trading Act (Northern Ireland) 2001, namely, that the location at which she wished to trade was unsuitable and that there were sufficient traders trading at that location in the articles, things or services in which she wished to trade.

The Head of Building Control informed the Members that the unsuccessful applicant would be advised that, in accordance with Section 12 (2)(b) of the Street Trading Act (Northern Ireland) 2001, she would be permitted to make written representation to the Council within twenty-one days from the date of notice.



Subject:	Application for the Renewal of a Mobile Street Trading Licence
Date:	12th November, 2015
Reporting Officer:	Trevor Martin, Head of Building Control, ext 2450
Contact Officer:	Stephen Hewitt, Building Control Manager, ext 2435

Is this report restricted?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Is the decision eligible for Call-in?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

1.0	Purpose of Report
1.1	To consider an application for the renewal of a Mobile Street Trading Licence from Mr Kevin McShane for the sale of ice cream, confectionery and non alcoholic beverages from Monday to Saturday between the hours of 2.00 p m and 10.30 p m. in the Turf Lodge, Ladybrook, Finaghy, Andersonstown, Suffolk and Falls areas of the City
1.2	Mr McShane has confirmed that he no longer wishes to trade on a Sunday.
2.0	Recommendation
2.1	Taking into account the information presented and any representations received the Committee is requested to consider the application and decide to: <ol style="list-style-type: none"> 1. grant and approve the licence, or 2. grant and approve the licence with additional conditions, or 3. refuse the application.
2.2	Members may attach any reasonable conditions when granting a Licence.
2.3	Should you be of a mind to refuse the application you are required to advise the applicant of your intention to do so.
2.4	If the application is refused, the applicant may appeal the Council's decision within 21 days of notification of that decision to the Magistrates Court.

3.0	Main report
	<u>Key Issues</u>
3.1	Members are reminded that, at the Licensing Committee meeting on 19 th February 2014, you considered an application from Mr McShane to vary his Mobile Street Trading licensed route to include the additional area of the Falls, which included Grosvenor Road, Springfield Road and Donegall Road and included the Clonard Electoral Ward.
3.2	The application had been the subject of objections from other Licensed Mobile Street Traders and had previously been considered by the Licensing Committee at their meeting on the 18 th September 2013.
3.3	When Committee granted the variation, they requested that it be reviewed when Mr McShane's Licence was being renewed in November 2015.
3.4	A copy of the minutes from the Licensing Committee meeting of the 19 th February 2014 is attached.
3.5	The Street Trading Act (Northern Ireland) 2001 (the Act) places a statutory obligation on a district council to grant an application for a Street Trading Licence unless there are sufficient grounds to refuse it.
3.6	Officers are not aware of any issues regarding Mr McShane and he has no licensing infringements.
3.7	Since Mr McShane's Licence was varied, the Council has not had any feedback from either the original objectors or from local residents regarding the impact of his trade in the Falls or any other area.
	<u>Financial and Resource Implications</u>
3.8	If the Committee grants a Street trading Licence to Mr McShane, the fee is as follows: <ul style="list-style-type: none"> • application Fee of £120, and • a Licence fee, for Monday to Saturday, of £628.
	<u>Equality and Good Relations Implications</u>
3.9	There are no equality or good relations issues associated with this report.
4.0	Documents Attached
	Minutes of meeting of 19 th February 2014.

Minute of Meeting of Licensing Committee

19th February, 2014

Application for the Variation of a Mobile Street Trading Licence

The Committee considered the undernoted report:

“1 Relevant Background Information

- 1.1 The Committee is reminded that, at the meeting on 18th September 2013, it considered an application by Mr Kevin McShane to vary his Mobile Street Trading Licensed route to include the additional area of the Falls.
- 1.2 The Committee, after hearing from the applicant and the objectors, agreed that they were minded to refuse the application submitted by Mr McShane for the variation of his Mobile Street Trading Licence, on the grounds that there are sufficient traders within the Falls area offering the goods in which he wishes to trade.
- 1.3 A copy of the minutes of the meeting on 18th September 2013 has been forwarded to Members.
- 1.4 Members are also reminded that, at your meeting of 11th December, 2013 you considered the written appeal by Mr Kevin McShane.
- 1.5 The Committee agreed to defer consideration of the matter to enable officers to obtain further information in relation to the issues which had been raised within the letter.
- 1.6 To enable the Council to regulate Licensed Mobile Street Traders, the traders apply for an area or areas of Belfast to trade in. Officers have used Electoral Wards and/or commonly referred to areas, such as housing estates, to try and define the area the trader is permitted to trade in.
- 1.7 On occasions this has been problematic; a trader may trade in an area covering two or more Electoral Wards. While on paper this may look as if they have a large area the trader will most likely only trade in a small area of those Wards. For example, when somebody refers to the Falls area it can encompass more than just the main Falls Road, which runs from Divis Street into Andersonstown and its immediate environs. Areas that can be included in the Falls area are Beechmount, Clonard and Falls Park Wards.
- 1.8 This application relates to the Falls area of Grosvenor Road, Springfield Road and Donegall Road which would include the Clonard Electoral Ward.

2 Key Issues

- 2.1 The Committee on a number of occasions have asked for advice when determining Mobile Street Trading Licences. In particular, Members have asked ‘what is the right number of traders for a particular area?’ To date this has been almost impossible to answer.**
- 2.2 Legal advice has been that the Council can apply criteria over and above what the Street Trading (NI) Act 2001 states, provided it is in keeping with the intention of the legislation. However, the Council cannot refuse an application on the basis that it would be detrimental to existing traders. Economic considerations of this type are not contained within the Street Trading (NI) Act 2001 and would undoubtedly be contrary to the European Services Directive and also to subsisting primary competition legislation, namely the Competition Act 1998.**
- 2.3 In order to determine this application the focus must be on whether the services already provided within the area are sufficient, not whether the granting of a further licence or licences would reduce the revenue stream of the existing licence holders or businesses within the area.**
- 2.4 To assist Committee in its deliberation, research was carried out in relation to each of the Electoral Wards and areas and the age groups of the usual residents. This data was taken from Northern Ireland Neighbourhood Information Service and the Northern Ireland Statistics and Research Agency using the Northern Ireland Census March 2011. An assumption was also made that the likely target age group for those buying from an ice cream van would be in the 0-16 year’s age groupings.**
- 2.5 The data produced a figure which would be the estimated size of target population for ice cream sales for the respective Wards and areas.**
- 2.6 This data was then divided by the number of ice cream vans licensed in the particular area to produce an individual trader’s estimated size of target population for ice cream sales. Each licensed trader was then given a figure to represent their total estimated size of target population for ice cream sales for all of their routes.**
- 2.7 These figures have been calculated for the traders Mr William O’Halloran, Mr Robert Morelli Jnr, Mr Robert Morelli Snr and Mr Angelo Morelli who all have made representation regarding Mr Kevin McShane’s application, along with a calculation for Mr McShane.**
- 2.8 The Census figures for the Falls area including Clonard bounded by Grosvenor Road, Springfield Road and Donegall Road which relates to this application shows a total resident population of 10,159 persons of which there are 2,184 persons aged 0-16 years.**

- 2.9 This gives the already licensed traders an estimated size of target population for ice cream sales of 546 persons (25%) each. If another trader is licensed this will result in the share becoming 436 persons (20%) for each trader.
- 2.10 Details showing the total estimated size of target population for ice cream sales for each trader across all of their routes has been circulated to Members. The figures in column A shows the estimated size of target population at the moment and column B shows their projected share if the variation of the Falls is included in Mr McShane's Licence.
- 2.11 In trying to address the issues in the letter of appeal, guidance is provided below to each point raised.
- 2.12 Point 1 – *The Falls Road is an area with a large population which is currently serviced by four licensed traders.*
- 2.13 Comment – this application relates to an area with a total resident population of 10,159 persons of which there are 2,184 persons aged 0-16 years. The already licensed traders then have an estimated target population for ice cream sales of 546 persons each. If another trader is licensed this will result in their share becoming 436 persons for each trader.
- 2.14 The lowest estimated target population for ice cream sales of all areas in Belfast is in Andersonstown, where there are 5 ice cream vans with an estimated target population of 151 persons.
- 2.15 Technically the highest estimated target population for ice cream sales is in the Legoniel Ward; with only one trader where there are 1493 persons aged 0-16 years. However the geographical size and population of the Ward does not give a true reflection of trading ability, as the area of trade is predominately the area bounded by Ballysillan, Cliftonville and Glencairn areas.
- 2.16 The Legoniel Ward population figure includes areas such as Wolf and Squires Hill and it is unlikely the trader trades as far out as these areas. As such the super output areas of Legoniel 2 and 3 was used which represents a truer trading area, there are 570 persons aged 0-16 years within this area.
- 2.17 Other areas with high target populations for ice cream sales are predominately in South and East Belfast.
- 2.18 The average target population for ice cream sales across all traders and routes in Belfast is 211 persons aged 0-16 years. The Falls area an estimated target population is higher than the average.
- 2.19 Point 2 - *Mr Morelli senior obtained the licence in August 2013 to trade in the public parks of West Belfast and therefore it would be difficult for him to provide an adequate service to the Falls area together with these public parks.*

- 2.20 Robert Morelli Snr has a tender with the Council's Parks and Leisure Department for 5 Parks out of a possible 12 Parks, the Parks are:
- Cavehill Adventurous Playground;
 - Dunville Park;
 - Falls Park;
 - Musgrave Park;
 - Waterworks Park.
- 2.21 The tender does not require Mr Morelli to personally trade; it allows him to employ another person to assist him.
- 2.22 Point 3 – *Given the size of the area and the population covered there is no evidence upon which the committee could properly conclude that four traders was a sufficient number for the Falls Road.*
- 2.23 Comment – see comment at Point 1 above.
- 2.24 Point 4 – The Committee failed to have adequate regard for the prohibition under European Law of anti-competition regulations and the need to ensure that no one business obtains dominance in a given market.
- 2.25 Comment – Committee had regard to legal advice that the Council can apply criteria over and above what the Street Trading Act states, provided it is in keeping with the intention of the legislation. However, the Council cannot restrict the number of traders on the basis that it would be detrimental to existing traders.
- 2.26 Committee considered that some of the objections received related to the grant of a further licence having a detrimental financial effect on existing businesses and following legal advice did not take into account those objections which referred to a detrimental financial effect on existing traders.
- 2.27 Point 5 – *The restricted number of licences that have been issued fails to meet the demand of the public for goods and services and this could lead to the proliferation of illegal ice cream vans.*
- 2.28 Comment – There was no evidence produced by Mr McShane or his solicitor to substantiate this allegation. There is no evidence of illegal ice cream vans operating in this area. The last complaint we had received regarding any illegal ice cream van operating in West or North Belfast was in July 2011, it was operating in the Glen Road area, the complainant was Mr McShane. The van was never found.
- 2.29 There are no statistics or other evidence, so far as officers are aware, which demonstrates that this area consumes more ice cream than any other area.

- 2.30 In determining this application, the Committee's focus was on whether the services already provided within the area were sufficient. There was no evidence submitted by the applicant to suggest that there was a need for an additional trader to service a demand not being met.
- 2.31 *Point 6 – Mr McShane has been a licensed trader for the past five years and his intention, if granted the variation on his licence, would be to employ more staff to cover the additional area. In the current economic climate the creation of any employment in area of deprivation such as west Belfast should be encouraged by the Council rather than discouraged.*
- 2.32 Comment – A variation to Mr McShane's licence may or may not create new employment. However, that has to be balanced against the other considerations/issues raised above; the objections and any other information which Members deem relevant.

3 Resource Implications

Financial

- 3.1 If the Committee grants a variation of licence, the Street Trading Licence fee remains the same. The applicant was charged an administration fee of £50.

Human Resources

- 3.2 None.

Asset and Other Implications

- 3.3 None.

4 Equality and Good Relations Considerations

- 4.1 There are no equality or good relations issues.

5 Recommendation

- 5.1 The Committee is requested to:

1. affirm its decision of 18th September 2013 and refuse Mr McShane's application, or
2. amend its decision of 18th September 2013."

The Head of Building Control outlined the work which had been undertaken by Council officers to assist the Committee in considering the application, including the issues which had been raised by the applicant within his letter of appeal. He pointed out that Mr. McShane's Mobile Street Trading Licence was due to expire in November, 2015, and he suggested that the Committee might wish, if it was now minded to grant the variation on the basis of the aforementioned information, to review at that time any issues which had arisen.

After discussion, it was

Moved by Councillor Ó Donnghaile,
Seconded by Councillor Attwood and

Resolved – That the Committee agrees, in its capacity as Licensing Authority, to rescind its decision of 18th September to refuse the application which had been submitted by Mr. McShane and, accordingly, agrees to grant the variation, with the arrangement being reviewed upon the expiry of the Licence.