

## SCHEDULES

### SCHEDULE 2 **N.I.**

Article 23(1).

#### Streets With Special Engineering Difficulties

##### Introductory

**1.** In this Schedule a “street with special engineering difficulties” means a street for the time being designated under Article 23 as having special engineering difficulties.

##### Requirement of plan and section

**2.—(1)** In a street with special engineering difficulties street works (other than emergency works) involving—

- (a) breaking up or opening the street, or any sewer, drain or tunnel under it, or
- (b) tunnelling or boring under the street,

shall not be executed until a plan and section of the works have been settled by agreement between the undertaker and each of the relevant authorities or by arbitration.

(2) For that purpose an undertaker proposing to execute any such works shall submit a plan and section of them to each relevant authority.

**3.** Emergency works may be executed without a plan and section being so submitted or settled, but as soon as is reasonably practicable after the execution of the works the undertaker shall furnish a plan and section of the works to each relevant authority.

**4.—(1)** In the case of a street which is not a road and which the street managers have no liability to the public to maintain or repair, the undertaker may give the street managers a notice stating—

- (a) the general effect of the works proposed or, as the case may be, of the emergency works executed, and
- (b) that it is a notice given for the purposes of this paragraph.

(2) Where such a notice is given paragraphs 2 and 3 do not apply if the street managers do not, within 10 working days from the date on which the notice was given to them, give notice to the undertaker requiring the submission or furnishing of a plan and section to them.

**5.—(1)** A relevant authority to which a plan and section of work is required to be submitted or furnished may accept as, or in lieu, of, a plan and section any description of the works whether in diagram form or not, which appears to it to be sufficient.

(2) References in this Schedule to a plan and section include any such description so submitted or furnished to the form of which the relevant authority has not objected within the time allowed under paragraph 7(2).

**6.** If an undertaker—

- (a) executes any works in contravention of paragraph 2, or
- (b) fails to furnish a plan and section in accordance with paragraph 3,

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he commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F1</sup>level 5] on the standard scale.

**F1** Words in Sch. 2 para. 6 substituted (1.10.2007) by Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1)), arts. 1(3), **25(2)(I)** (with art. 25(5)); S.R. 2007/365, art. 2, Sch.

### Procedure on submission of plan and section

7.—(1) A relevant authority to which there is submitted a plan and section of street works proposed to be executed in a street with special engineering difficulties shall give notice to the undertaker—

- (a) approving the plan and section without modification, or
- (b) objecting to them in form as being on too small a scale or giving insufficient particulars, or
- (c) approving them subject to modifications specified in the notice, or
- (d) disapproving them.

(2) The notice shall be given without avoidable delay, and at the latest before the end of the period of—

- (a) 7 working days in the case of a plan and section of works relating only to—
  - (i) a service pipe or service line, or
  - (ii) overhead electric lines or [<sup>F2</sup> electronic communications apparatus], and
- (b) one month in any other case;

and as between the undertaker and a relevant authority which does not duly give notice before the end of that period, the plan and section as submitted shall be deemed to have been settled by agreement.

(3) The reference in sub-paragraph (2)(a)(i) to a service pipe or service line is to—

- (a) a pipe or line through or by means of which a supply of gas, electricity or water is afforded or intended to be afforded to premises—
  - (i) directly from premises from which the supply originates, or
  - (ii) from a main, that is, a pipe or line for affording a general supply;
- (b) a pipe through or by means of which sewage services are afforded, or intended to be afforded, which is [<sup>F3</sup>not a public sewer]; or
- (c) underground [<sup>F2</sup> electronic communications apparatus] for the purpose of providing a service by means of [<sup>F2</sup> an electronic communications network] to or from particular premises (as opposed to apparatus for the general purposes of such [<sup>F2</sup> a network]).

But so much of any such pipe, line or apparatus as is placed or intended to be placed, for a continuous length of 100 metres or more in a road shall be treated as not being a service pipe or service line.

(4) In this paragraph—

“electric lines” has the same meaning as in Part II of the Electricity (Northern Ireland) Order 1992<sup>F4</sup>;

[<sup>F7</sup>“electronic communications network” has the meaning given in section 32 of the Communications Act 2003;]

<sup>F8</sup>  
...

**F2** 2003 c. 21

- F3** Words in Sch. 2 para. 7(3)(b) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308, **Sch. 12 para. 35(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)
- F4** 1992 NI 1
- F5** Sch. 7 para. 7(4): definition of "telecommunication apparatus" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19** (with Sch. 18); S.I. 2003/1900, art. 2(1), **Sch. 1** (with art. 3(1)); S.I. 2003/3142, **art. 3(2)**
- F6** Words in Sch. 2 para. 7(4) substituted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), **Sch. 4 para. 15(2)(a)**
- F7** Words in Sch. 2 para. 7(4) inserted (28.12.2017) by [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), **Sch. 4 para. 15(2)(c)**
- F8** Words in Sch. 2 para. 7(4) omitted (28.12.2017) by virtue of [The Communications Act 2003 and the Digital Economy Act 2017 \(Consequential Amendments to Secondary Legislation\) Regulations 2017 \(S.I. 2017/1011\)](#), reg. 1(1), **Sch. 4 para. 15(2)(b)**

**8.—(1)** Where a relevant authority gives notice approving the plan and section subject to modifications, or disapproving the plan and section, it shall state its reasons for doing so.

(2) If a relevant authority duly gives notice—

- (a) objecting to the plan and section in form, or
- (b) approving them subject to modifications to which the undertaker does not agree, or
- (c) disapproving them,

then, unless the notice is withdrawn, the undertaker may refer the matter to arbitration.

(3) If the notice is withdrawn, the plan and section as submitted shall be deemed to have been settled by agreement between the relevant authority and the undertaker.

**9.** The Department or a bridge authority may not give notice—

- (a) approving a plan and section subject to modifications, or
- (b) disapproving a plan and section,

on grounds other than such as relate to the injurious effect of the proposed works on its sewer or, as the case may be, on the structure or stability of its bridge.

### Settlement of plan and section by arbitration

**10.—(1)** The duty of the arbitrator where a matter is referred to arbitration is to settle a plan and section of works of the kind proposed, as works to be executed in the street.

(2) He may require the undertaker to submit to him a plan and section in such form, require the relevant authority to submit to him such observations on a plan and section submitted to him, and require the undertaker or the relevant authority to furnish him with such information and to take such other steps, as appear to him to be requisite.

(3) He may treat compliance with any such requirement made of the undertaker as a condition of his proceeding with the settlement of a plan and section, and compliance with any such requirement made of the relevant authority as a condition of his settling a plan and section otherwise than as proposed by the undertaker.

**11.—(1)** Where the reference relates to the placing, altering or changing the position of apparatus in a street which is carried or crossed by a bridge, then, if the arbitrator is satisfied—

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- (a) that the execution of the works would be likely to affect injuriously the structure or stability of the bridge, and
  - (b) that it is not practicable to meet objection on that ground to the plan and section submitted,
- he shall so declare, and shall not settle any plan and section of those works on the reference.
- (2) This does not affect the right of the undertaker to submit another plan and section.

#### Objection to works executed without plan and section being settled

**12.—**(1) This paragraph applies where street works have been executed in a street with special engineering difficulties without a plan and section having been settled with the street authority or another relevant authority, whether the works were executed in contravention of paragraph 2 or were emergency works.

(2) The authority in question may, by notice to the undertaker, object to any of the works; and after affording the undertaker an opportunity to enter into an agreement with it for meeting the objection, may refer the matter to arbitration.

(3) The arbitrator may direct the alteration of the works to conform to a plan and section settled by him, or the removal of any apparatus placed in the execution of the works, and the undertaker shall comply with any such direction.

(4) In settling the terms of any such direction the arbitrator shall satisfy himself that compliance with it will not involve any undue interruption or restriction of the supply or service for the purposes of which the works were executed.

(5) If an undertaker fails to execute works in accordance with a direction under this paragraph, he commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F9</sup>level 5] on the standard scale.

**F9** Words in Sch. 2 para. 12(5) substituted (1.10.2007) by Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1)), arts. 1(3), 25(2)(m) (with art. 25(5)); S.R. 2007/365, art. 2, Sch.

#### Execution of works in accordance with plan and section

**13.—**(1) An undertaker executing street works in a street with special engineering difficulties shall, where a plan and section have been settled, execute the works in accordance with the plan and section as settled or, if each of the relevant authorities agrees to the modification of the plan or section, in accordance with them as so modified.

(2) If an undertaker fails to comply with sub-paragraph (1) he commits an offence and is liable on summary conviction to a fine not exceeding [<sup>F10</sup>level 5] on the standard scale.

**F10** Words in Sch. 2 para. 13(2) substituted (1.10.2007) by Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1)), arts. 1(3), 25(2)(n) (with art. 25(5)); S.R. 2007/365, art. 2, Sch.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 13(1)(b) and word inserted by [S.I. 2007/287 \(N.I.\) art. 4\(2\)\(b\)](#)
- art. 14(3A)(3B) inserted by [S.I. 2007/287 \(N.I.\) art. 6\(1\)\(b\)](#)
- art. 15(8)(9) inserted by [S.I. 2007/287 \(N.I.\) art. 6\(2\)](#)
- art. 16(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 7\(3\)](#)
- art. 16(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 7\(4\)](#)
- art. 18(3)(f) and word inserted by [S.I. 2007/287 \(N.I.\) art. 9\(4\)](#)
- art. 18(7A) inserted by [S.I. 2007/287 \(N.I.\) art. 9\(8\)](#)
- art. 19(7) inserted by [S.I. 2007/287 \(N.I.\) art. 11\(4\)](#)
- art. 27(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 12\(2\)](#)
- art. 27(2A)-(2C) inserted by [S.I. 2007/287 \(N.I.\) art. 12\(3\)](#)
- art. 27(4)(c) and word inserted by [S.I. 2007/287 \(N.I.\) art. 12\(5\)](#)
- art. 30(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 13\(2\)](#)
- art. 30(3)-(4B) substituted for art. 30(3)(4) by [S.I. 2007/287 \(N.I.\) art. 13\(3\)](#)
- art. 32(2A)(2B) inserted by [S.I. 2007/287 \(N.I.\) art. 14](#)
- art. 32(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 15\(1\)\(b\)](#)
- art. 34(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(2\)](#)
- art. 34(5A)(5B) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(5\)](#)
- art. 34(7A) inserted by [S.I. 2007/287 \(N.I.\) art. 18\(7\)](#)
- art. 39(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(2\)](#)
- art. 39(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(3\)](#)
- art. 39(3A) inserted by [S.I. 2007/287 \(N.I.\) art. 22\(4\)](#)
- art. 40(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 23\(3\)](#)
- art. 40(2)(2A) substituted for art. 40(2)(3) by [S.I. 2007/287 \(N.I.\) art. 23\(4\)](#)
- art. 40(5)(6) added by [S.I. 2007/287 \(N.I.\) art. 23\(6\)](#)
- art. 49(2A) inserted by [S.I. 2007/287 \(N.I.\) art. 15\(2\)\(b\)](#)
- art. 59(1A) inserted by [S.I. 2007/287 \(N.I.\) art. 28\(3\)](#)