
STATUTORY INSTRUMENTS

1980 No. 1086

Private Streets (Northern Ireland) Order 1980

PART V

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

Prior provision to be made to meet street works expenses

24.—(1) Where—

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

no work shall be done in or for the purpose of erecting the building until the Department has served a notice under^{F1} Article 25(2)] specifying the sum which is to be paid or secured under this paragraph, and a person having an estate in the land on which the building is to be erected—

- (i) has paid to the Department or secured to the satisfaction of the Department the payment to it, of that sum or such lesser sum as may be substituted by the court on an appeal to it under Article 26, and
- (ii) has entered into an agreement under seal with the Department undertaking for himself and his successors in title to pay such further sum, if any, as may be recoverable in respect of the cost of street works.

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

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

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

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

is done in contravention of paragraph (1) or (2) in or for the purpose of erecting a building on the land.

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

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

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

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

- (a) the building proposed to be erected will be situated in the curtilage of, and be appurtenant to, an existing building; or
- (b) it is proposed to erect the building in accordance with planning permission granted under the [F²Planning Act] on land belonging to a public body; or
- (c) the frontage of the building is one in respect of which a sum or security previously paid or given under paragraph (1) is held by the Department or in respect of which an undertaking has been given under paragraph (2); or
- (d) an agreement has been entered into with any person by the Department under Article 32 providing for the carrying out at the expense of that person of street works in the whole of the street or a part of the street comprising the whole of the part on which the frontage of the building will be; or
- (e) the Department, being satisfied that the street is not, and is not likely within a reasonable time to be, substantially built-up, by notice exempts the building from paragraph (1); or
- (f) the Department, being satisfied—
 - (i) that more than three-quarters of the aggregate length of all the frontages on both sides of the street, or of a part of the street comprising the whole of the part on which the frontage of the building will be, consists, or is at some future time likely to consist, of the frontages of industrial premises; and
 - (ii) that its powers under this Order are not likely to be exercised in relation to the street, or that part thereof, as the case may be, within a reasonable time;
 - by notice exempts the street or that part thereof from paragraph (1); or
- (g) the Department, being satisfied that the street is not, and is not likely within a reasonable time to become, joined to a public road, by notice exempts the building from the provisions of paragraph (1); or
- (h) the Department, being satisfied that the street was on 13th October 1964 substantially built-up, by notice exempts the building from the provisions of paragraph (1).

(9) Where a sum has been paid or secured under this Article in relation to a building proposed to be erected, and thereafter the Department by notice under paragraph (8) exempts the building from the provisions of paragraph (1), the Department shall, when an undertaking has been given under paragraph (2), deal with the sum in accordance with Article 30.

(10) The Department may at any time agree with the responsible person to accept any other security or the payment of a sum in substitution for any security held by it for the purposes of paragraph (1).

(11) Where any person has ceased to be the responsible person in respect of any street works, any sum paid or secured by him under paragraph (1) or any undertaking given by him under paragraph (2) shall be deemed to have been paid or secured or, as the case may be, given by the person who has become the responsible person.

(12) Where any land in respect of which a sum has been paid or secured under paragraph (1) is subsequently divided into two or more parts so that two or more persons become the responsible persons, that sum shall, for the purposes of this Order, be treated as apportioned between those persons according to the frontage of those parts and, for the purposes of the apportionment under Article 14(1) of the expenses in respect of which that sum has been paid or secured, the respective frontages of those parts shall be the frontages for which each of those persons is respectively responsible.

(13) Where any land in respect of which an undertaking has been given under paragraph (2) is subsequently divided into two or more parts so that two or more persons become the responsible persons, then, for the purposes of the apportionment under Article 14(1) of the expenses in respect of which the undertaking has been given, the respective frontages of those parts shall be the frontages for which each of those persons is respectively responsible.

(14) Any person who becomes or ceases to be the responsible person for any street works in respect of which a sum has been paid or secured under paragraph (1) or an undertaking has been given under paragraph (2) may give notice of that fact to the Department and the Department shall enter the notice in its records.

F1 1984 NI 15

F2 Words in art. 24(8)(b) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 31](#) (with [s. 211](#)); [S.R. 2015/49, arts. 2, 3, Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159, art. 2](#))

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

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

(2) Where—

- (a) a district council notifies the Department under paragraph (1), and
- (b) planning permission for the erection of the proposed building has been granted under the [^{F3}Planning Act],

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

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

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

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

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

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

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

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

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

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

F3 Words in art. 25(2)(b) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern Ireland\) 2011 \(c. 25\)](#), s. 254(1)(2), [Sch. 6 para. 32](#) (with s. 211); S.R. 2015/49, arts. 2, 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by S.R. 2016/159, art. 2)

Appeal against notice served under Article 25

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

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

Position where plans not proceeded with

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

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

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

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

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

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

Work done otherwise than at the expense of the Department

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

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

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

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

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

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

shall be dealt with in accordance with Article 30.

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

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

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

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

(2) Where any land in respect of which a sum has been secured under Article 24(1) is subsequently divided into two or more parts so that two or more persons become the responsible persons and the security is the property of one only of those persons, the Department shall only be required under paragraph (1)(b) to release the security to the extent of the amount apportioned under Article 24(12) to that person and shall be entitled to realise the security for the purpose of producing the amount or amounts to be paid to the other person or persons under paragraph (1)(c).

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

Interest on sums paid under Article 24(1)

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

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

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

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

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

Agreement for carrying out street works in private street

- 32.**—(1) The Department may enter into an agreement under seal with any person—
- (a) for the carrying out at the expense of that person of street works in a private street; and
 - (b) for the issue of a certificate by the Department when the street works have been completed in accordance with the agreement and the terms and conditions of the agreement have been duly complied with.
- (2) An agreement under this Article shall contain such provisions as to the construction of the street, as to the period during which the person with whom the agreement has been entered into shall be responsible for the maintenance of the street, and as to such other relevant matters as the Department thinks fit.
- (3) Where an agreement under paragraph (1) relates to street works in respect of which a sum has previously been paid or secured under Article 24(1) the agreement may also provide for the refund of that sum or a part thereof either without interest or with interest at such rate as may be specified in the agreement or, where the sum has been secured, for the release of the whole or a part of the security.
- (4) The person with whom the Department enters into an agreement under this Article shall secure the due performance of the agreement by means of a guarantee bond or by any other means acceptable to the Department.
- (5) A certificate issued by the Department under paragraph (1)(b) shall be conclusive for all the purposes of this Order that the street has been provided in accordance with the agreement.

Security not to be deemed prior mortgage under Building Societies Acts

33. Where the security given under Article 24(1) consists of a mortgage of or charge on land, that mortgage or charge shall be deemed not to be a prior mortgage for the purposes of [F4 section 11(2) (d) or (4)(d) of the Building Societies Act 1986].

F4 1986 c. 53

Changes to legislation:

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