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STATUTORY INSTRUMENTS

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**1993 No. 3160**

**The Roads (Northern Ireland) Order 1993**

**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<sup>F1</sup> 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<sup>F2</sup> has determined shall be regarded for the purposes of Part III of that Order as being comprised in a street, for—

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- (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—
- “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.

**F1** 1980 NI 11  
**F2** 1980 NI 12

### **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),

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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.

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