Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2007 No. (N.I.)

NORTHERN IRELAND

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

Made - - - - 2007
Coming into operation in accordance with Article 1(2) to (4)

At the Court at Buckingham Palace, the ** day of ** 2007

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 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:–

Introductory

Title and commencement

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

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

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

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

Interpretation

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

(2) In this Order "the 1995 Order" means the Street Works (Northern Ireland) Order 1995 (NI 19).

Permit scheme

Permit scheme

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

""**Permit scheme**

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

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

(a) for or in connection with requiring a permit to be obtained before specified street works are carried out (including provision as to the persons who are required to obtain permits),

(b) for or in connection with the issue of permits (including provision with respect to applications for permits, provision for cases in which there is to be an entitlement to the issue of a permit and provision with respect to cases in which permits are to be deemed to be issued),

(c) as to cases in which specified street works may be carried out without a permit,

(d) for or in connection with the imposition of conditions which are to apply in relation to the carrying out of specified street works (including provision for or in connection with the attachment of such conditions to permits),

(e) for or in connection with the review or variation of permits or such conditions (including provision with respect to applications for such variations);

(f) disapplying or modifying statutory provisions to the extent specified.

(3) Regulations under this Article may make provision—

(a) as to the criteria to be taken into account in the case of decisions with respect to the issue, review or variation of permits or decisions with respect to the imposition, review or variation of conditions under the scheme,

(b) for or in connection with the determination, or facilitating the determination, of disputes (including provision with respect to the appointment of persons to determine, or facilitate the determination of, disputes),

(c) for or in connection with appeals to the planning appeals commission,

(d) as to the action which may be taken if works are carried out without a permit or if any conditions are not complied with,

(e) for or in connection with the creation, in prescribed cases (including prescribed cases where works are carried out without a permit or in breach of any conditions), of a criminal offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale,

(f) for or in connection with excluding or limiting the liability of prescribed undertakers in prescribed cases.

(4) Regulations under this Article may make provision for or in connection with the giving of fixed penalty notices (including, in particular, provision applying Schedule 2A with or without modifications) in relation to any offence created by the regulations; and for this purpose "fixed penalty notice" means a notice offering a person the opportunity of discharging any liability to conviction for an offence by payment of a penalty.

(5) Regulations under this Article may make provision for or in connection with the payment of a fee in respect of any one or more of the following—

(a) an application for a permit,

(b) the issue of a permit,

(c) an application for the variation of a permit or the conditions attached to a permit,

(d) the variation of a permit or the conditions attached to a permit.

(6) Provision made under paragraph (5) may include provision as to—

(a) the amount or maximum amount of any fee,

(b) cases in which fees are not to be payable or are to be repaid,

(c) cases in which fees may be discounted,

(d) the time and manner of making payment of fees,

(e) the application of sums paid by way of fees.

(7) Regulations under this Article may make provision—

(a) for or in connection with the creation and maintenance of a register of permits,

(b) with respect to access to information contained in any such register (including provision restricting such access).

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

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

Registers and records

The street works register

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

(2) In paragraph (1)—

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

(b) at the end there is added "; and

(b) such descriptions of—

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

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

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

as may be prescribed.".

Duty to inspect records

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

"**Duty to inspect records**

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

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

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

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

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

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

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

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

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

(a) a statutory provision; or

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

Notice and co-ordination of works

Notices of street works

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

(a) in paragraph (2) for "contain such" there is substituted "state the date on which it is proposed to begin the works and shall contain such other";

(b) after paragraph (3) there is inserted—

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

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

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

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

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

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

Directions relating to timing of street works

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

(2) In paragraph (1)—

(a) in sub-paragraph (b), after "at certain times" there is inserted "or on certain days (or at certain times on certain days)";

(b) after "the times" there is inserted "or days (or both)".

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

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

(a) that subsisting street works are causing or are likely to cause serious disruption to traffic, and

(b) that the disruption would be avoided or reduced if the works were to continue to be carried out only at certain times or on certain days (or at certain times on certain days),

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

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

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

Directions as to placing of apparatus

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

"**Power to give directions as to placing of apparatus**

16A.—(1) Where—

(a) an undertaker is proposing to execute street works consisting of the placing of apparatus in a street ("street A"),

(b) placing the apparatus in street A is likely to cause disruption to traffic, and

(c) it appears to the street authority that—

(i) there is another street ("street B") in which the apparatus could be placed, and

(ii) the conditions in paragraph (2) are satisfied,

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