

Roads Service Policy & Procedure Guide : RSPPG_S029

Title: Land Acquisition – Acquisition Procedures

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Classification

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Notes

This document is a direct replacement for Section 1002 of the Roads Manual as a consequence this document has not passed through the full document control system.

Certification

This document complies with Roads Service policy and practice, and is to be implemented with effect from the date of issue.

(Signed) G. Allister
Director : Engineering
Certification Date: 3 December 2004

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1 Introduction

1.1 Purpose

This Roads Service Policy & Procedure Guide (RSPPG):-

- a) Is aimed at all Roads Service Staff involved in Land Acquisition.
- b) This RSPPG replaces section 1002 of the Roads Service Roads Manual.

1.2 Definitions

- 1.2.1 "DARD" – Department of Agriculture and Rural Development
- 1.2.2 "DRM" – Divisional Roads Manager
- 1.2.3 "DSO" – Departmental Solicitor Office
- 1.2.4 "DV" – District Valuer
- 1.2.5 "Roads Order" – Roads (Northern Ireland) Order 1993
- 1.2.6 "Act of 1972" – Local Government Act (Northern Ireland) 1972.
- 1.2.7 "VLA" – Valuation and Lands Agency

1.3 Background

- 1.3.1 None

1.4 Implementation

- 1.4.1 This RSPPG is to be implemented with effect from the date of issue.

1.5 Costs and Benefits

- 1.5.1 As this RSPPG is to replace an existing Roads Manual Section the Costs and benefits are not relevant at this time.

2 Roads Service Policy & Procedures

2.1 Land in advance of requirement.

2.1.1 The purchase of land for a road scheme is not normally started until near the time when the road works are due to be carried out. Exceptions to this rule are “planning blight” acquisition, “purchase notice” cases and the types of acquisitions set out in this section. The Department’s policy on land acquisition is set out in Appendix 7.

2.1.2 In very exceptional cases where a particular property will be required for a future scheme it may be acquired in advance of need on the grounds that a favourable opportunity exists which cannot be expected to recur. “Favourable opportunity” means that there is evidence that it would be of definite financial advantage to the Department to initiate a purchase e.g., where business or industrial premises on the line of a proposed road have become vacant and purchase would save payment later of substantial compensation for disturbance to a new business occupier.

2.1.3 Before making a decision to purchase on “favourable opportunity” grounds the DRM will consult the DV. The latter will require details of:-

- i. the nature of the interest to be purchased;
- ii. any covenants to which the property is subject;
- iii. the nature and anticipated starting date of the proposed road works;
- iv. the use to which the land will be put in the interim period;
- v. the probable land requirement for the scheme; and
- vi. any anticipated adverse or beneficial effects which the construction and use of the works might have on any part of the property not required for the scheme.

2.1.4 If it is then considered that a prima facie case for a “favourable opportunity” purchase exists the DRM will seek the DV’s opinion as to:-

- i. the kind of benefits and liabilities which might result from advance acquisition;
- ii. whether the prospects of a substantial gain are likely to outweigh the risks of loss; and
- iii. the estimated cost of acquisition.

2.1.5 On receiving instructions from the DRM to commence land acquisition, the Divisional Lands Officer should ask the DV to approach the owner or his agent to ascertain if he is prepared to sell by agreement at a price which the DV can recommend and at which the Department is likely to effect a material financial advantage by purchase in advance of requirements. The circumstances in which the Department had decided to make such an approach should be fully explained to the DV. Discussion on price should not be prolonged and if the DV cannot report provisionally agreed terms of purchase within a reasonable time the advisability of continuing or abandoning the proposal should be considered.

2.1.6 If exceptionally it is necessary for the Divisional Lands Officer to communicate directly with an owner or his agent the Department should in no way be committed to a purchase. It will normally be sufficient to say that the matter has been referred to the DV and that on receipt of his report a decision will be made whether to proceed with the purchase by agreement.

2.1.7 Where the requirements for a valid blight notice are not or cannot be fully met and there is evidence of financial hardship affecting the owner, consideration may be given to advance acquisition. The factors listed in para 2.1.4 will need to be weighed against the degree of hardship involved.

Once an approach has been made which raises the issue of financial hardship the DRM in addition to collating the information set out in paras 2.1.3 and 2.1.4 should obtain from the owner, or his representative, documentation in support of the claimed financial hardship. The composition of such documentation will vary from case to case but the undernoted basic information is essential:-

- a) details of the owner's attempts to sell the property;
- b) details of the owner's attempts to obtain an income from the property;
- c) details of the owner's financial situation (the way in which this is presented will depend on whether the claimant is an individual or a body corporate).

When all relevant information has been received the DRM should forward a submission to the Director of Corporate Service at RSHQ with a recommendation as to whether or not discretion to purchase should be exercised.

Such discretion will not normally be exercised where the future of the road scheme is in doubt, i.e., subject to statutory review, provided that the outcome of the review will be known within a reasonable period, say 3 months.

It is essential that cases of this nature are identified early, dealt with promptly and in a sensitive manner.

2.1.8 Occasionally property (not immediately required) which does not have blight protection may be offered for sale on the open market. If it is considered desirable to negotiate purchase on "favourable opportunity" grounds such negotiations should be on the understanding that each party will meet its own legal costs and agents' fees. No disturbance compensation would be payable.

2.1.9 HQ should be consulted on each proposed advance purchase exceeding £50,000 for schemes in the 5-year programme (£100,000 in the case of Eastern Division) and on all proposed advance purchases for schemes outside the 5-year programme.

2.1.10 See Section 1011 regarding management of property.

2.2 **Planning Blight/Purchase Notice**

2.2.1 Full details of these matters are given in Chapter 12, section 1204.

2.3 **Land Acquisition – General**

2.3.1 It is most important that estimation of the date on which entry will be required onto the land involved in a scheme should be realistic. Variation of an entry date notified to claimants is liable to diminish their confidence and co-operation and makes for bad public relations. It also renders abortive work already done by the DV and can complicate the contractual arrangements. The factors to be taken into consideration in arriving at a date should include the following:-

- i. the size and degree of complexity of the scheme, particularly with regard to land requirements;
- ii. whether any associated statutory orders have to be made;
- iii. the types and number of interests and the nature of properties to be acquired;
- iv. the necessity to make a vesting order (and possibly hold an inquiry);
- v. any difficulties which may arise on account of displacement. Reinstatement or rehabilitation of dispossessed occupiers (e.g. rehousing problems, disturbance of businesses or essential public or private services).

2.3.2 It is essential that adequate time is allowed for the DV to negotiate with the claimants and for the latter to make all necessary arrangements to vacate their land or property. It must be kept in mind that, if land is to be acquired compulsorily, objectors to the vesting order cannot be expected to commence arrangements to move until they know that the Order has been made in respect of their interest in the land. To suggest otherwise could be said to have the effect of prejudicing the outcome of any inquiry and the final decision of the Department. It follows that where a scheme involves dwellings, business premises, farms, etc, it may well be necessary to fix a target entry date say one year (or more than one year where many dwellings are to be demolished or other rehabilitation or disturbance problems arise) beyond the date on which the vesting order is expected to be made.

2.3.3 The compulsory purchase of property - particularly dwellings – for road purposes can give rise to considerable hardship and distress, particularly where those being displaced are either elderly or infirm or otherwise ill-equipped to cope with the upheaval. Those conducting small businesses may find it difficult and in some cases impossible to find suitable alternative accommodation. In certain circumstances and subject to certain undertakings compensation for disturbance where a business is carried on by a person aged over 60 may be assessed on the basis that the business has been extinguished. Families who are rehousing themselves may run into problems for example when the purchase of a new home is frustrated by someone else along a chain of transactions.

2.3.4 Although the Northern Ireland Housing Executive has a duty to rehouse those people displaced by the road schemes who need such help, potential or actual hardship cases should be kept under constant review. In many cases some kind of initiative by the Department which should always be taken in as helpful and sympathetic manner as possible can make all the difference in resolving problems. The initiative can vary from a few words of practical advice to personal visits to those concerned and Divisional Lands Officers should not hesitate to take such action whenever the need arises.

2.3.5 If an owner is unknown or cannot be traced a vesting order must be prepared. A copy of the notice to make a vesting order should be exhibited on some conspicuous part of the land. Before the vesting order is made the Divisional Lands Officer should certify on the file that the notice had been prominently displayed on the land and that nobody had made a claim to ownership.

2.3.6 If the owner of vested land does not come forward to claim compensation when the vesting order becomes operative no further action is needed; the possibility of a claim would still stand.

2.3.7 Section 45 of the Land Acquisition and Compensation (NI) Order 1973 provides that compensation for injurious affection of retained land “..... shall be assessed by reference to the whole of the works and not only the part situated on the land acquired”. It follows that although it may be proposed to acquire only a very small area of land from a particular land or business tenant, the claim for compensation could be considerable if the effect of the scheme as a whole would be to damage substantially the owner’s or business tenant’s retained land (e.g., loss of business by a petrol-filling station). In certain circumstances it may be possible to avoid acquiring such land and therefore liability for such compensation by making a small change in design (e.g., by adjusting the line of a road boundary or of a new private means of access). The attention of engineers is drawn to such considerations at the design stage but should Lands Officers during their initial examination of a scheme find a potential case of this nature they should bring it to the attention of the design engineers.

2.4 Road Bed

2.4.1 The following paragraphs set out the procedures for acquiring road bed.

- a) Registered Land – in the case of land being acquired on one side only of an existing road acquisition should be the folio boundary which is normally the middle of the road.

If land is being acquired on both sides of the road the complete road bed should be acquired.

- b) Unregistered Land – Where unregistered land is involved the complete road bed should be acquired regardless of whether land is being acquired on one or both sides of the existing road.

2.5 Land required for cuttings and embankments

2.5.1 To ensure that the road is adequately protected and maintained it is usual to acquire all the land required for cuttings and embankments designed solely for the support and protection of the road and to include them within the road boundaries. The boundary fence or hedge will normally be placed on the vendor's land at the top or bottom of the slope just behind the land acquired for the road. In certain circumstances (e.g., where the slope is gentle) it may be decided to take only a right in respect of the land needed for the construction and maintenance of all or part of the slope provided the necessary easement gives adequate powers for its maintenance and protection.

2.5.2 In some cases it may be practicable and desirable to fit a new road to the landscape by constructing rounded embankments or extended cuttings which are considerably longer than those which would be necessary merely to support or protect the road. These long slopes, while desirable from the aesthetic point of view, occupy considerably more land than can be shown to be necessary for the road itself.

They are, moreover, generally constructed on agricultural land which in the national interests must be utilised to the greatest possible extent. Because the additional lengths of slopes are really required for amenity purposes and also because it is important to ensure that there is a little interference as possible with agriculture (unless there are special reasons, as, for example, the necessity for a deep ditch or watercourse at the bottom of the slope) the following procedure should be adopted:-

- i. only the land up to the point which would have been the bottom of the embankment or the top of the cutting if it had not been rounded off or extended for landscaping purposes should be acquired; and
- ii. the remaining land from that point to the point at which the rounded embankment or extended cutting merges into the existing ground level should be dealt with by means of a licence.

This will enable the necessary formation work to be carried out but will leave the remaining land in the possession of the landowner so that he may continue to use it after the work has been completed.

2.5.3 If the owner desires, however, the arrangements mentioned in para 1 for taking an easement for the slope may apply. It is for the engineers to say how much land it is necessary to acquire and how much should be dealt with by licence. No permanent restrictive conditions can be imposed on the subsequent use of the "licence land". The position is fully protected by the provisions of the Planning (NI) Order 1991 which prevent the carrying out of building, engineering and mining or other operations without permission.

2.6 Land required for bridges, viaducts and tunnels

2.6.1 Land required for the piers and abutments of bridges (including footbridges) or viaducts should be acquired in fee simple and a right acquired over the land over which the bridge or viaduct will pass.

2.6.2 When a bridge or viaduct crosses a public road it will be necessary to establish ownership of the road bed and if it is not already vested in the Department acquire the fee simple.

2.6.3 In the case of a non-tidal river it might not be necessary to acquire rights across the river when land up to the edge of both banks is acquired because there may be a presumption that such land includes an interest to the middle of the river. In this situation the advice of the DSO should be obtained at an early stage.

2.6.4 For tidal rivers the procedure of acquiring the fee simple for the piers and abutments and a right over the remaining land crossed by the structure applies.

2.6.5 In some cases it may be necessary to acquire rights of access across adjoining land for the purpose of construction, maintenance, etc of the bridge or viaduct.

2.6.6 Land (including road bed) under which a tunnel is to be constructed should, where possible, be acquired in fee simple. In circumstances where another party requires to retain ownership and/or use of the surface of the land the advice of the DSO should be obtained at an early stage.

2.6.7 The requirements of Article 4 of the Roads Order as to statutory orders should be considered in relation to the construction of bridges over and tunnels under navigable waters.

2.7 Material detriment and severed land

2.7.1 Under para 10 of Schedule 6 to the Act of 1972, when a vesting order applies to part only of a house, building or factory a person having an interest in the whole unit may within 6 weeks from the date on which the order becomes operative serve a notice on the Department requiring the Department to purchase the remainder. The Department must acquire the remainder unless the Lands Tribunal determines that the acquisition of the part has not caused material detriment to the whole unit.

2.7.2 If in the light of the DV's recommendation it is considered that the purchase of the whole unit is not appropriate the reply to the claimant should include a paragraph on the following lines:-

"It is considered that the vesting of part of the premises does not cause material detriment to the whole. In the circumstances the Department can only purchase such land as is required for the roads scheme."

2.7.3 Normally such matters can be resolved by negotiation but in the event of disagreement it is implicit that the reference to the Lands Tribunal should be made by the Department.

2.7.4 If it is necessary to acquire land on which part of a house or other building is sited and it is not possible to take the part required for the road without demolishing, interfering with or entering upon any part of the remainder, then the site of the whole building (or as much of it as will have to be demolished plus any part of the remainder that will have to be entered for this purpose) plus any essential working space around the building should be included in the area to be acquired. The plans should also show the line of the new road boundary.

2.7.5 When instructing the DV to open negotiations in the circumstances described in para 2.7.4 above he should be told that the land beyond the new road boundary will not be required permanently for road purposes and will be surplus to requirements after the works have been completed. It should be explained that if the owners of interests concerned indicate that they do not want the Department to purchase the whole of the property but that they wish to retain title to the surplus land then, provided that compensation terms can be agreed, the extra land need not be included in that purchase. The demolition of that part of the building situated on the land to be retained will be treated as an accommodation work; the written consent of the landowner to the entry of the demolition team on to his land must be obtained.

2.7.6 Section 93 of the Lands Clauses Consolidation Act 1845 provides that if any land which is not situated in a town or built upon is so cut through and divided by the works so as to leave, either on both sides or on one side thereof, a less quantity of land than half an acre, the owner of the land may require the Department to purchase the same along with the other land being acquired.

2.7.7 This does not apply if the owner has other land adjoining the land so left which can be easily amalgamated and conveniently occupied with it. In that event the Department must if so required by the owner and at the Department's expense merge the land so left into the adjoining land by removing the fences and levelling the sites thereof and by soiling the same in a sufficient and workmanlike manner.

2.7.8 Articles 50 and 51 of the Land Acquisition and Compensation (NI) Order 1973 provide that where a vesting order becomes operative in respect of any agricultural land which forms part of an agricultural unit the owner may require the Department to purchase the remainder of the unit if the remainder cannot reasonably be farmed either by itself or in conjunction with other land owned by him.

2.7.9 Under the same provisions where a lessee successfully requires the Department to acquire his interest in the remainder of an agricultural unit but the lessor does not want his interest to be acquired the Department is required to offer to surrender the lease to the lessor on such terms as it considers reasonable. The lessor or the Department has the right to refer the question of the terms of surrender to the Lands Tribunal but if within 3 months after the date of the offer no such reference is made and the terms have not been agreed between the parties the Department must itself refer the matter to the Lands Tribunal. The procedure for the surrender of a lease is contained in subsections (5) and (6) of Article 51.

2.7.10 Articles 52 and 53 provide similar rights for a tenant of an agricultural holding part of which has been vested. If the remainder of the holding cannot reasonably be farmed as a separate agricultural unit on its own or with other land in the same unit or land outside the unit which the tenant owns and occupies the tenant can require the authority to take possession of the whole of the affected holding.

2.7.11 If in cases where the Department – having acquired a lease – offers to surrender its interest in severed land to the lessor, it appears that agreement as to the terms of surrender will not be reached within the statutory 3 month period and that the matter will probably have to be referred to the Lands Tribunal, it is important that close liaison be maintained with the DV and that there should be no delay in instructing the DSO in respect of any such reference.

2.8 Acquisition of land for environmental reasons

2.8.1 Article 112(1) of the Roads Order gives the Department the power to acquire land, compulsorily or by agreement, for the purpose of mitigating any adverse effects 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.

2.8.2 Article 116 provides that works for mitigating adverse effects may be carried out on land acquired under Article 112 (or on any other land belonging to the Department). Such works may include the laying out of any area as grassland; the planting of trees, shrubs or plants of any other description; and the development or redevelopment of the land for the purpose of improving the surrounding of the road.

2.8.3 Land may be acquired under Article 112(1):-

- i. Compulsorily if the acquisition is begun before the date on which the new or improved road is opened to public traffic; or
- ii. by agreement if acquisition is begun at any time before the end of one year after the date on which the new or improved road was opened to public traffic.

2.8.4 Land to be acquired under Article 112(1) will normally be identified at the same time as the land-take for the road itself, (ie as for a normal acquisition of title). Land which will be outside the road boundaries should be separately identified.

2.8.5 It is essential that the DV be kept advised of any proposals to develop or redevelop any land to be acquired under Article 112(1) as such proposals are required to be taken into account in assessing the compensation payable.

2.8.6 Where it is proposed to acquire Article 112(1) land by agreement the DV should be informed accordingly and also told whether or not compulsory powers are available (such powers are not available under Article 112(1) in respect of acquisitions begun during the 12 months after a new or improved road is opened to public traffic) and, if available, whether consideration will be given to their use in the event of failure to reach agreement on terms that he is able to recommend.

2.8.7 The DV should also be advised:-

- i. If Shortened Procedure is not applicable in respect of any of the plots (see para 2.8.8).
- ii. Whether or not adjacent plots which are to be acquired by agreement can be treated independently of each other. For example, if the land to be purchased comprises a number of plots, all of which are needed in order to achieve the purpose of the acquisition, the DV should be asked to suspend negotiations and report back if he experiences difficulties in respect of any one of the plots. If there is more than one interest in a plot, negotiations should not proceed if one interest is unwilling to sell.

2.8.8 An Article 112(1) purchase should not be completed by Shortened Procedure where all or part of the land will be situated outside the road boundary. This is necessary to avoid possible misunderstanding regarding the ownership of land which might appear to form part of adjoining property rather than be connected with the road.

Details of Shortened Procedure are set out in para 2.15.

2.8.9 Article 112(2)(a) gives the Department the power to acquire by agreement 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.

2.8.10 Article 112(2)(b) gives the Department power to acquire by agreement land the enjoyment of which is seriously affected by the use of a road which the Department has constructed or improved.

2.8.11 In each of the above cases the interest of the vendor must be one which falls within Article 4 of the Planning Blight (Compensation) (NI) Order 1981 (interests qualifying for protection under blight provisions).

2.8.12 Article 112(2) powers are usually employed only as a last resort where no land is being taken from the vendor for the road or the conditions which would permit compulsory purchase under Article 112(1) are absent.

2.8.13 Where part of a property is being acquired for the road and the Department is asked to purchase the whole on the grounds that the enjoyment of the property is seriously affected by the construction or use of the new or improved road then, if it is considered that the property is so affected, it is most likely that the criteria will also be met for purchasing the whole in accordance with para 6.1.

2.8.14 Acquisitions under Article 112(2)(a) must be begun before the date on which the new or improved road is opened to public traffic and under Article 112(2)(b) before the end of one year after that date.

2.8.15 The DV should be informed under which sub-section of the Roads Order it is proposed to purchase the property. He should also be supplied with copies of any correspondence which has any bearing on the basis or conditions under which the matter is to proceed.

2.9 **Private Accesses**

2.9.1 Article 69 of the Roads Order enables the Department to make orders providing for the stopping-up of private means of access from a road to any land where it is considered that such access is likely to cause danger to, or interfere unreasonably with, traffic on the road.

Article 18 enables the Department to make similar orders in relation to access to special roads.

2.9.2 A private means of access may be closed under Article 69 by agreement with the owners and occupiers of the land to which the access leads.

2.9.3 Article 110 gives power to acquire land to provide means of access to a road if it is not otherwise practicable to provide such access. Before land is acquired suitable arrangements should be made with the parties concerned for the subsequent transfer to them of ownership, for maintenance of the access by them and for rights of way for all parties.

2.10 **Surface water drainage**

2.10.1 In relation to the construction of new roads or improvements of existing roads, it is the Department's usual practice to obtain an easement for drainage purposes whenever it is possible to do so. There is no reason why land through which a drain is to be laid should not remain in the owner's possession (and be used by him or his tenant) provided the drain can be inspected and maintained. The easement must be annexed to adjoining land in the ownership of the Department. If the Department does not own the adjoining land the Department must purchase the land needed for the drain.

2.10.2 Rights to lay and maintain drains may be acquired under Article 45 of the Roads Order. Where a roads drainage system is to be provided the normal course is to include rights in a vesting order and to rely on Article 45 for the creation of these rights. The right should be described in the vesting order as a right to construct and maintain a drain in land (giving a description of the land). When framing the plot description it is important to include an adequate width of land to permit the use of construction machinery on the land for digging the trench and carrying out the necessary works.

2.10.3 When rights are compulsorily acquired it is not customary to include in the rights a specific mention of the discharge of water through the drain. For exercising this right use is made of Article 45(3) which provides for the discharge of water into or through the drain and into any inland waters, whether natural or artificial, or any tidal waters.

2.10.4 There is no distance limit applicable in relation to the acquisition of rights, either compulsorily or by agreement, for purposes connected with the drainage of a road.

2.10.5 In relation to existing roads Article 45 gives the Department power to:-

- i. construct or lay, in the road or in land adjoining or lying near to the road, such drains as are considered necessary;
- ii. erect barriers in the road, or in land adjoining or lying near to the road, to divert surface water into or through any existing drain; and
- iii. scour, cleanse and keep open all drains situated in the road or in land adjoining or lying near to the road,

upon paying the owner or occupier of such lands for the damages he shall sustain thereby. The phrase "adjoining or lying near" would cover, for instance, a ditch in land which was separated from the road by land in the occupation of some other person. The word "drain" is widely defined by Article 45(9) as including a ditch, cut, culvert, dyke, sluice and soak-away. Disputes as to compensation are to be determined by the Lands Tribunal. Powers to discharge water from a drain constructed or laid under Article 45 into any inland waters, whether natural or artificial, or tidal waters, are provided by paragraph (3) of Article 45.

2.10.6 The powers under Article 45 do not extend to a road under construction.

2.10.7 Owners and occupiers have no right of objection to the use of the Departments' powers in Article 45 (1) and (2) to construct and lay road drains in land adjacent to or adjoining a road or to cleanse and keep open any drain. Therefore care must be taken that these powers are used only where essential, eg where it is not possible to use the powers in Article 45(6) to acquire the use of a drain by agreement. It may be necessary to use Article 45(1) powers when it is desired to construct a drain on land adjoining or lying near to a road and agreement cannot be reached with the owner and occupier and a vesting order cannot be made in time. Another case may be where it is necessary to cleanse or carry out other work in connection with the maintenance of an existing drain on land adjoining or lying near to a road but there is no existing arrangement with the owner and occupier and an agreement cannot be reached.

2.10.8 Compensation for damage suffered by reason of the exercise of Article 45 powers to construct and maintain drains is payable by virtue of Article 45(4). Before exercising such powers it is necessary to make sure that compensation is not duplicated and paid twice, ie that there is not already in existence an easement obtained under Article 45(6) which gives the necessary rights to "construct and maintain" takes into account damage which may be suffered during construction and which contains provisions as to possible future damage due to maintenance. Article 119 gives the power to enter on land for the purpose of maintaining drains etc; again it will be necessary to check whether there is an existing easement which contains provisions as to such entry and maintenance and possible damage arising therefrom.

2.10.9 When taking action under Article 45 a letter should be sent to the owner/occupier of the land on the following lines:-

"I am directed by the Department to give you notice that at the expiration of one month from the date of this letter it is proposed in exercise of the powers conferred upon it by Article 45 of the Roads (NI) Order 1993, to construct (cleanse.. or as the case may be) upon the land owned/occupied by you at ... a drain (or as the case may be) (describe the nature of the work) as illustrated on the attached drawing No

In accordance with the provisions of Article 45 the Department will pay for any damage which you may sustain by the execution of the said works"

2.10.10 If the land is occupied by some person other than the owner, the letter must be sent to both the owner and the occupier unless it is clear that the owner could have no possible claim for damage (eg where it is desired merely to cleanse a ditch already constructed). Any claim should be referred to the DV.

2.10.11 It is important that drainage schemes be agreed with DARD.

2.10.12 As stated in para 1, the usual practice is to obtain an easement for drainage purposes but cases may arise when the simple procedure under Article 45 may be attractive to the landowners. As far as possible the reasonable wishes of landowners should be met, the DV being consulted as necessary.

2.10.13 Diversion of ditches made necessary by the acquisition of land for road purposes is normally dealt with as an accommodation work.

2.11 **Contractors' Working space, spoil tips etc**

2.11.1 A contractor under the terms of the contract is normally required to find his own temporary working spaces, spoil tips, and temporary access routes to the sites of roadworks. Where, however, a contractor has "virtually no choice" as to the location of essential working space etc and is, or is likely to be, unable to make his own arrangements, the Department may decide to acquire the necessary land (eg an area on either side of a bridge structure). Such land may be acquired under Article 110 of the Roads Order even though it is not to be incorporated into the new or improved road.

2.11.2 It may sometimes happen that an owner from whom facilities are required for working space, excavating fill, etc, is also an owner from whom the Department is compulsorily acquiring land for the scheme. It will depend upon whether arrangements for the facility are with the contractor or the Department as to whether the set-off provisions for betterment under Article 9 of the Land Acquisition and Compensation (NI) Order 1973 apply. If, exceptionally, the Department decides to exercise powers to acquire land or rights compulsorily for these purposes then the DV will assess compensation having regard to any betterment to contiguous land. However where the contractor obtains the grant of such facilities from the owner, Article 9 would not apply and set-off for betterment would not be made against the compensation for the land taken.

2.11.3 Owners may well feel some dissatisfaction if acquisition of land for the use of contractors is undertaken by the Department, especially if contractors are also engaged in negotiations (without statutory constraints as to the amount of compensation they may pay) with the same or other owners in the locality; such situations should, therefore, be avoided if at all possible. Divisional Lands Branches should, in all cases where they are asked to acquire compulsorily land for the use of contractors, examine the position in consultation with the Engineers in the light of what is said above.

2.11.4 A Department-owned property scheduled for demolition may sometimes be made available to a contractor for use as temporary offices or other temporary accommodation. Arrangements should be made for the tender documents to include a reference to the availability of the property and the fact that no rent will be charged, but that the contractor will be liable for services (eg water, electricity, etc) and the payment of rates which the Employer (ie the Department) will repay under Clause 26(1) of the ICE Conditions of Contract.

2.11.5 If such a property becomes available after the contract is let and the contractor wishes to use it, then the items in the Bills of Quantities for temporary accommodation will need to be altered (by way of a Variation Order) to meet the revised circumstances and a new rate will need to be negotiated.

2.11.6 If there is a possibility of the property becoming surplus to requirements and available for sale, the contractors are made responsible for keeping it in good repair.

2.11.7 If the use of surplus Department-owned land by contractors as working space is proposed at an early stage and is agreed by the Engineers, details can be included in the tender and contract documents. No rent is charged because the availability of this land will be taken into account when tenders are made. A clause will be required in the contract making the contractor responsible for restoring the land to its original condition.

2.11.8 If, after the contract has been signed, a contractor wishes to use surplus land as working space, and the Engineers are agreeable, permission should be granted by means of a licence subject to the contractor undertaking to restore the land to its original conditions. The acknowledgement to be paid by the contractor will be assessed by the DV.

2.12 Existing Easements and restrictive covenants

2.12.1 Where land required for roads purposes is subject to easements or restrictive covenants (including rights-of-way) it should be included in a vesting order.

2.12.2 A person has no remedy in the courts, either by way of injunction or damages, against the Department for interference with private rights in or over land compulsorily acquired in the proper exercise of statutory powers. However, if the Department destroys an easement or commits a breach of a restrictive covenant running with the land, provided that it does so in the course of carrying out the authorised works, the remedy (if any) of the injured party against the Department is for compensation for injurious affection of the dominant tenement.

2.12.3 Any claim for loss of rights will be dealt with by the DV as part of the overall settlement, and not separately if land (for the same scheme) is being acquired from the claimant.

2.12.4 For the procedure to be followed if a private means of access to an existing road is to be closed see para 2.9.

2.12.5 Where land burdened with easements or restrictive covenants is acquired by agreement, the easements or restrictive covenants are binding, notwithstanding the fact that their existence might prejudice the implementation of the road scheme. However such land may be included in a vesting order even though it has already been acquired by agreement from a willing vendor, so as to enable any such restrictions to be overridden. Additionally when the vesting order becomes operative the person(s) entitled to benefit of a covenant or other third party rights may claim compensation in appropriate circumstances.

2.13 Instructions to the District Valuer

2.13.1 Owing to the complexities and difficulties concerning compensation, vendors are generally encouraged to seek professional advice. The likelihood of owners incurring costs and fees for abortive professional work is one of the pitfalls of premature negotiations.

2.13.2 There may be circumstances where the early opening of negotiations could be justified. This could occur for example, where the extent of the land required for a particular scheme is generally known and an owner wishes to proceed with reinstatement works (eg the re-designing of a severed golf course, the replacement or alteration of buildings, etc) in advance of general land acquisition for the scheme so as to minimise the disturbance he will suffer (and, probably, also minimise the amount of compensation payable by the Department). If this is considered reasonable, considerable may be given to opening negotiations for the land on a “favourable opportunity” basis. However, depending on the circumstances of a particular case and the timing of such negotiations in relation to any orders not yet made, the possibility of these orders being prejudiced should be carefully considered.

2.13.3 When a claimant or his agent writes direct to the Department after the DV has been asked to open negotiations, care should be taken in phrasing the reply so as not to prejudice those negotiations. As a general rule the reply should follow some such formula as

“The District Valuer, who acts for the Department, has been instructed to open negotiations and your letter has been sent to him so that he may consider the matters to which you refer in the course of negotiations”. The DV should be consulted whenever exceptionally the reply needs to go beyond a non-committal statement such as this.

2.13.4 Where Divisional Lands Branches receive legal advice on a matter which involves the DV, compensation or valuation and there is a need to write about this direct to a claimant or his professional adviser, it is important that the DV should be consulted before entering into any such correspondence. The Divisional Lands Officer should not send a copy of the legal advice to the claimant nor quote directly from it.

2.13.5 Where a vesting order is being processed negotiations should not take place unless, in the event of the Department being challenged, a convincing explanation can be given as to why proceeding with negotiations is the sensible thing to be doing before a decision has been taken on the vesting order and notwithstanding the possibility that the scheme could fall through.

2.13.6 When a vesting order is operative the DV should be informed accordingly and asked to open negotiations.

2.13.7 When the DV completes his negotiations and reaches a provisional settlement in respect of a particular interest he issues a report of the terms he is able to recommend. Divisional Lands Branches should satisfy themselves that the terms are acceptable to the Department. The settlement will normally cover all heads of claim and will include, inter alia, any additional (eg severed) land which it is recommended the Department should acquire. Action to put in train the preparation of the appropriate legal documents needed to complete the transaction should then be taken.

2.14 Legal Documents

2.14.1 This paragraph gives brief details of the legal documents most frequently used by the Department in connection with the acquisition of land and rights for roads purposes; also advice on the action to be taken if alterations are made to such documents or requests are received for copies.

2.14.2 The Contract and the Memorandum of Agreement

The Contract is a document (usually with a plan attached) which embodies an agreement entered into between the vendor and the purchaser under which the vendor agrees to sell and the purchaser agrees to buy the vendor's interest in the land concerned for a specified consideration, subject to any conditions, stipulations or reservations which the contract may contain. This full form of contract is seldom used for road land purchases. Instead, a short form of contract, commonly referred to as the Memorandum of Agreement is used.

2.14.3 The Conveyance (for unregistered freehold interests)

The Conveyance is the document by which the freehold interest in land is passed from the vendor to the purchaser, and it is supported by copies of documents showing that the title to the land is legally vested in the vendor. The title will usually be contained in the conveyances by which the vendor and his predecessors obtained the land.

2.14.4 The Assignment (for unregistered leasehold interests)

The Assignment is the document by which a leasehold interest is acquired.

2.14.5 The Transfer (for registered interests)

The Transfer is the document by which land registered with Land Registry is transferred by the registered title holders to the purchaser. The Transfer, in respect of road land purchases is drawn up by the DSO which also deals with its registration with the Land Registry.

2.14.6 Agreement (Shortened Procedure)

This is a form of agreement between the vendor and the Department whereby the vendor agrees to accept the compensation money and/or the agreed accommodation works or payment of his solicitors/agents' fees in full satisfaction of his rights in the land and in return agrees that the Department may take possession of the land and execute roadworks thereon and, if so required by the Department, undertakes to dedicate or transfer his interest formally to the Department. This document is particularly useful for acquiring small parcels of land abutting a road for minor schemes and for emergency works. Its use is restricted to certain types of cases and there are several versions of the form of agreement. (For further details see para 2.15).

2.14.7 Land Charge – Registration of

These are forms the registration of which has the effect of putting on record at the Land Registry for the inspection and information of any interested party the fact that there exists an Agreement binding on the vendor and his successors in title. It is used, for example, to charge the title in cases where unregistered land has been acquired under Shortened Procedure to show that the Department can require, within a period of 21 years, that the land in question be formally conveyed to it. (See para 2.20)

2.14.8 Land Charge – Cancellation of Entry In Register

This form is used when it is necessary to cancel the registration of an Agreement (eg, where conveyance of the land is subsequently taken). (See para 2.20 and Appendix 5).

2.14.9 Deed of Grant of Easement

This is the document by which an easement is acquired or given. The procedure to be followed corresponds closely with that of a conveyance. Rights over land (ie, easements) may be acquired compulsorily and the relevant Deed or other instrument is binding on successors in title to the grantor. This means that the practice in regard to rights acquisitions will be the same as in relation to title acquisitions.

The Deed will be drawn up by the DSO which will, where registered land is involved, arrange for its registration with the Land Registry. A grant of easement should be registered in the Registry of Deeds when it relates to unregistered land.

Arrangements for granting wayleave to Statutory Undertakers is contained in Appendix 6.

2.14.10 **Deed of Dedication**

A Deed of Dedication is the document by which land is “dedicated” to road purposes and which confers on the public the right to pass and repass, with or without vehicles, over the surface of the land and also the right to construct and repair a road. Subject to those rights, however, the ownership of the soil remains vested in the landowner and if the road is abandoned at any time in the future, it reverts automatically to his ownership. A fee simple owner of land is the only person who may dedicate the land for road use. When the land is registered there is an advantage to the registered owner in that the area of land in the folio is not diminished by sub-division.

Since the new road has only to be marked in the folio maps, folio boundaries remain unaltered. The owner will not be asked by the DARD to redeem the whole or part of his land purchase annuity (if he has one). The Department has less work to do in arranging a deed of dedication compared with a deed of transfer. It does not need to retain title deeds as the record in the Land Registry is sufficient to indicate the Department’s title in the road. If the owner has mortgaged his property there is no need to join the mortgage in a deed of dedication.

2.14.11 **Licenses**

A licence is used to obtain or to grant a right upon, under or over land. It differs from an easement in that it is a personal agreement between parties and is for a limited, though not necessarily specified, time. It is not binding on successors in title. It can be dealt with in a number of ways including:-

- i. Exchange of letters.
- ii. Deed of Grant of Licence
- iii. Inclusion in another document if other land is being acquired, eg, in a Conveyance, an Assignment or a Shortened Procedure Agreement.

2.14.12 Definition of a Road

In the case of *Attorney General v Mayo Council and Others* 1902 the Master of the Rolls defined a road as follows:

“When the soil has been taken for county purposes everything between the fences is prima facie part of the public highway; and it is important that this should be so, as there may be a block or obstruction causing the road to be in such a condition as to necessitate the use of the part at the side.”

Therefore it is not necessary to grant a legal right of way across road verge as in common law any member of the public has a right to pass and repass across the public highway which includes road verge.

2.14.13 Negotiating Fee

The vendor should be told at the outset that the Department considers he has a duty to mitigate his loss and thus if he chooses to employ a solicitor rather than a surveyor to negotiate for him, the Department will not pay a negotiating fee exceeding that which it would have paid to a surveyor. If, nevertheless, a solicitor is employed he should be asked to state his claim for negotiations separately from his other duties. Negotiating fees should not be paid to both a solicitor and a surveyor in respect of the same transaction. It is a matter for the DV to agree a negotiating fee. (Full details of the circumstances in which solicitor's fees are payable are contained in Section 1003 paras 5.9 to 5.11).

2.15 Shortened Procedure

2.15.1 In certain cases small areas of land abutting a road needed for minor road schemes may be obtained by the use of a form of agreement or simple dedication. This procedure should be used for agricultural land where only standard accommodation works are to be provided, e.g., replacement fencing, gates and entrances.

Preliminary enquiries should establish whether or not use of the form of agreement would be a viable proposition. At this stage the owner should be asked if there are any restrictive covenants attached to the land which would prevent its use for road purposes. If such covenants exist or are thought to exist this procedure should not be used.

2.15.2 Where no cash transaction is involved the simple deed of dedication (Appendix 1) may be used provided the person making the dedication has a freehold interest in the land.

NOTE: The deed of dedication at Appendix 1 should not be used in the case of land falling within the boundary of the area covered by the former Downpatrick Division and its use in other Divisions should be restricted to those cases where the land to be dedicated is unregistered.

2.15.3 If, after the necessary visits have been made, it is considered that compensation for any plot will not exceed £2500:-

- a) negotiations with landowners may be conducted by Divisional Lands Officers without reference to the VLA;
- b) in determining the value of any plot the Divisional Lands Officers should refer to the current VLA table of land values; and
- c) the VLA table of land values will be updated each financial year and Divisions should formally request the updated list from VLA Helpdesk at 1 March each year.

2.15.4 In cases where compensation for any plot is likely to fall within the range £1500 to £2500 the VLA Helpdesk should be consulted for guidance as to an appropriate settlement figure. If settlement is still not possible the case should be referred to the VLA.

2.15.5 If buildings, severance or injurious affection are involved or if a settlement for any one interest will exceed £3,500 the VLA should be asked to undertake all compensation negotiations for the scheme. In addition where any landowner involved in a scheme appoints an agent to act on his behalf the VLA should be asked to undertake all compensation negotiations for the scheme.

2.15.6 Schemes may be encountered as follows:-

- a) where settlement on any reasonable terms is found to be impossible with some landowners; and
- b) with the advent of compulsory registration circumstances may arise, more particularly in relation to unregistered land, where it would be more administratively convenient to vest having obtained the consent of the landowner to prior entry in accordance with paragraph 2.18 of RSPPG_S025.

In such circumstances the DRM should be informed so that he may consider in conjunction with the VLA the possible use of compulsory powers.

2.15.7 It should be noted that the completion of a short form of agreement does not transfer title to the Department. It is therefore necessary that in **all** cases, arrangements for the formal transfer or dedication of land should be put in hand with the DSO.

2.15.8 A specimen form of agreement is attached (Appendix 2). If the price is assessed as at the date of entry on the land provision should be made in the agreement for the payment of interest at current rates. If the price is not assessed at the date of entry provision should be made setting down the formula by which the price will be agreed and for a “use and occupation” payment.

2.16 Licences

2.16.1 Licences are normally dealt with in one of the following ways:-

- a) Exchange of letters. Where a simple licence is required (eg permission to regrade a path, to dump soil or to realign a stream) and no land is being acquired from the owner, a letter setting out the nature of the work to be done and the terms agreed with the DV should be sent to the owner inviting him to permit the works to be carried out on payment of the agreed consideration, the transaction resting entirely on an exchange of letters. On receipt of his written agreement the matter is finalised by the payment of the consideration. In many cases by the time the DV’s report is received the owners will have granted entry and the works will have been carried out. In such cases an exchange of letters (adapted to the circumstances) is eminently suitable.
 - b) Deed of Grant of licence. Where, although no land is being acquired, the licence involves work of a complicated nature (or the owners or their solicitors insist on a formal legal document) the DSO should be informed accordingly and asked to prepare the necessary deed. The instructing minute should include full details of the licence to be obtained.
 - c) Where a freehold or leasehold interest in land is also being acquired.
- i. Where a conveyance or assignment of land is being taken and a licence is required for the carrying out of works (not being accommodation works) on the vendor’s retained land, the instructing minute to the DSO should include full details of the licence to be obtained. A licence may be a separate agreement or part of an agreement to purchase other land; it should not be part of a conveyance or transfer.
 - ii. Where a freehold or leasehold interest is being acquired by Shortened Procedure and a licence is needed, the grant of the licence and details of the work to be carried out should be incorporated in the Agreement.

No apportionment of the purchase money is required as between the acquisition and the licence. The following should be inserted as an additional clause:-

“The Vendor/s hereby give/s to the Department and persons authorised by him licence and authority to enter upon the land coloured _____ and numbered [_____] on the [said plan] [plan numbered aforesaid/attached hereto] and to (insert details of work to be carried out).

such licence to continue [for a period of _____] [from the date hereof] [until the work of road construction and improvement on or in the vicinity of the said land is completed].”

2.16.2 Where the licence is required for the purpose of constructing a private means of access over which a right-of-way is to be granted to a third party by the owner of the land over which it is constructed, the terms of the Shortened Procedure Agreement should include a further clause immediately following that described above as follows:-

“The Vendor/s hereby undertake/s on completion of the roadworks to grant a right-of-way in fee simple with or without vehicles over the land coloured [_____] and numbered [_____] on the [said plan] [plan numbered aforesaid/attached hereto] to (insert name of grantee/s)

and the Department agrees to pay the Vendor’s/Vendors’ proper legal costs of such grant.”

2.16.3 Where such a licence is being dealt with other than in a Shortened Procedure Agreement, a clause/para on the above lines should be included in the appropriate document.

2.16.4 The vendor’s solicitors Bill of Costs in respect of the grant of the right-of-way should be sent to the DSO for their agreement before payment is made.

2.16.5 Where the Department (as owner) is granting a licence, the DSO should be consulted as to the procedure to be followed.

2.17 **Conveyancing**

2.17.1 The DSO is responsible for drawing up the following legal documents:-

- The Conveyance
- The Transfer
- The Assignment
- Deed of Grant of Licence
- Deed of Grant of Easement
- The Contract

2.17.2 Circumstances will from time to time necessitate the preparation of legal documents other than those mentioned above or those usually dealt with by Divisional Lands Branches. These will normally be prepared by the DSO which also takes over or advises on unusual or difficult Shortened Procedure cases.

2.17.3 The DSO is responsible only for ensuring that legal documents are satisfactory from a legal aspect; it is the responsibility of Divisional Lands Branches to ensure that they satisfactorily interpret Departmental policy.

2.17.4 When the DV’s report on the terms of compensation has been examined and any queries have been dealt with, the DSO is “instructed” ie requested to prepare the necessary Conveyance or other appropriate legal documents.

2.17.5 It is important that the Divisional Lands Branch does not agree with vendors, their solicitors or surveyors the form of words of legal documents where these documents are later to be dealt with by the DSO or the date of completion of any purchase of land.

2.17.6 Once the DSO has been instructed to proceed with the preparation of a Conveyance, etc any correspondence with the vendor or his solicitors/agents must be through it unless it agrees otherwise or the procedures in this Chapter provide for direct communication. The DSO must be kept informed, with copies, of all such direct correspondence; this is particularly important when an advance payment is involved.

2.17.7 If any part of the land being acquired will or may be surplus to requirements, or will or may need to be managed, Lands and Legislation Branch and/or Lands Service should be informed at the time the DSO is instructed. In appropriate cases this will enable arrangements for the sale or letting of the property to be put in hand concurrently with the conveyancing action being taken by the DSO. This is particularly important in the case of dwellings or other buildings that may be subject to vandalism or deterioration if left unoccupied for any length of time.

2.17.8 If the assignment of a lease is completed before the purchase of the freehold interest the Department becomes liable under the covenants of the lease, some of which may be of an onerous nature (e.g., see para 2.17.9 below about payment of ground rents). In general, therefore, a leasehold interest should not be acquired before the freehold.

2.17.9 It may sometimes happen that under the terms of his lease a leaseholder is liable for the collection and payment of ground rents in respect of properties other than the one being purchased from him by the Department. If, in such circumstances, the purchase of the freehold interest has not yet been completed it is important that, before completion of the purchase of the leasehold interest, the landlord's formal agreement is obtained to the apportionment of responsibility for the payment of the ground rents.

2.17.10 Where a leasehold interest is being acquired under the planning blight provisions consideration should be given to the possibility and desirability of purchasing the freehold by agreement on a "favourable opportunity" basis. – see paras 2.1 and 2.2.

2.17.11 When a person sells land which is subject to a covenant to maintain a boundary fence, it is the normal practice for the purchaser to indemnify the vendor against any future liability under that covenant. Such an indemnity may therefore be included in a full Conveyance or Assignment providing that the DV has either indicated in his report that he has taken account of the covenant in his negotiated settlement of terms or has been asked if (because of the covenant) he wishes to reconsider the purchase price.

2.17.12 Before the Conveyance can be drawn up, the DSO have to investigate the vendor's title to the land, usually by examining the Conveyances by which the vendor and his predecessors secured their title. Certain questions, known as Requisitions on Title, are then put by the DSO to the vendor's solicitors with regard to the property. On receipt of the additional information provided by the replies, the DSO is able to complete its investigation of title and proceed to draw up the Conveyance.

2.17.13 No interest in land can be created or disposed of except in writing, signed by the person creating or conveying the same. The Conveyance is drawn up by the DSO and sent to the vendor for signature. On return, after signature by the vendor, it is passed by the DSO to the Divisional Lands Branch to arrange for the document to be signed.

2.17.14 Generally the safe custody of all legal documents is entrusted to Divisional Lands Branches. The Divisional Lands Officer should ensure that they are stored in a suitable safe custody cabinet and that a copy of each document is attached to the appropriate file.

2.18 **Signing and Sealing**

2.18.1 Authentication of the sealing of a document must be done by a senior officer of the Department.

2.18.2 Use of the Official Seal is restricted to documents conveying or transferring an estate or rights in land from the Department as well as certain other forms of contract.

2.18.3 The seal is held in the custody of Central Management Branch. The seal is impressed on the document by the Branch which endorses it with a number corresponding to the number in the seal register.

2.19 **Land Registry**

2.19.1 The Land Registry has its Offices at Lincoln Buildings, 27-45 Great Victoria Street, Belfast.

2.19.2 The Land Registry maintains registers showing the ownership of land (including houses and other buildings) situated in Northern Ireland. For convenience, each Register is divided into Folios, each Folio setting out details of the ownership, mortgages and other burdens affecting the title to the holding described in the Folio. All subsequent transactions relating to the registered holding are, with certain exceptions, recorded in the Folio. Not all land in Northern Ireland is however registered in the Land Registry. The situation of each registered holding is shown on a map maintained in the Land Registry. Any person inspecting this map can see at a glance whether or not a particular holding is "registered land" and, if it is, he can then obtain details of the title to that holding from the appropriate folio.

2.19.3 If the Department is involved in any dealing in registered land, the Land Registry Mapping Group will, on request, carry out a preliminary approval of the maps to be used as to the boundaries and where the area of land exceeds 0.5 hectares as to the area also. Any map of registered land for use in any transaction whatsoever (acquisition, disposal or management) must be marked with the approval of the Land Registry Mapping Group.

2.19.4 The basic idea of registering title to the land is to replace the separate investigation of title that takes place on every purchase of unregistered land by a title guaranteed by the State. In the case of unregistered land, a purchaser must satisfy himself from the abstract of title, the Deeds, the requisitions on title, searches and an inspection of the land that the vendor has power to sell the land and that it is subject to no undisclosed encumbrances (e.g., mortgages, restrictive covenants etc). In the case of registered land, the purchaser can ascertain from the mere inspection of the Register whether the vendor has the power to sell and what are the more important encumbrances.

2.19.5 On first registration of land, the person registered as owner of the land is entitled to be issued with a Land Certificate which contains a copy or an extract of the relevant entries in the Folio affecting the title to the registered holding. This Certificate and the entry in the Register maintained by the Land Registry, supersedes the previous title documents.

2.19.6 If the Department compulsorily acquires title to any unregistered land (excluding a mortgage) after 1 October 1977, the title to the land so acquired is compulsorily registerable in the Land Registry and the Department must make an application to the Land Registry showing the title to such land, identifying the lands by means of an Ordnance Survey map and requesting the registration of its ownership to the land (see Entry 3 of Part 1 Schedule 2 to the Land Registration Act (Northern Ireland) 1970 – Ch.18)

A precedent for the application is set out in Appendix 3. No fee is payable to Land Registry provided it is certified to the Land Registry that the transaction is made in the public service.

2.20 **Statutory Charges Register**

2.20.1 The Land Registry also maintains a Statutory Charges Register for the whole of Northern Ireland. The matters capable of registration in the Statutory Charges Register are mostly, though not entirely, specified encumbrances created under statutory authority affecting holdings of land and such registrations can be affected in relation to any land in Northern Ireland whether or not the title to such land is registered in the Land Registry.

2.20.2 A list of Statutory Charges which have been or must now be registered in the Statutory Charges Registry is set out in Appendix 4. Additions are made regularly to this list by legislation.

2.20.3 Effect of Non-Registration – If the Department is entitled to the benefit of a Statutory Charge which is registerable in the Statutory Charges Register and registration is not effected, the Department may be damnified as the Statutory Charge may lose its priority over other encumbrances and rights (see section 88 of the Land Registration Act (Northern Ireland) 1970 – Ch. 18).

2.20.4 Registration Procedures – Where the Department is under an obligation to register a Statutory Charge, application should be made to the Land Registry following the procedure set out in Rule 195 of the Land Registration Rules (Northern Ireland) 1977. No fee is payable provided it is certified that the transaction is made in the public service. Notification of the registration of the charge will be received from the Land Registry and details of such registration should be carefully recorded.

2.20.5 Cancellation of Charge – Where the Department has registered a Statutory Charge and such Statutory Charge has subsequently been discharged or become unenforceable or has otherwise ceased to affect the land, the Department is under the statutory duty to make application to the Land Registry for the cancellation of the registration of the Statutory Charge. A Form of Application for cancellation of a Statutory Charge is set out in Appendix 5 and the necessary details for completion of the Form can be obtained from the Form of Notification of Registration received from the Land Registry.

2.20.6 Where it is anticipated that the Statutory Charge will only exist for a certain period of time, the Department when registering the Statutory Charge in the Land Registry should take a note to review the matter after the necessary period of time and to make the necessary application for the cancellation of the Charge.

2.21 **Consultation with Department of Agriculture and Rural Development**

2.21.1 In common with other parts of the Department and other Departments, Roads Service is under an obligation to ensure that DARD is consulted regarding the use of agricultural land for public works projects.

2.21.2 The concern of DARD on behalf of agricultural or horticultural interests has four main aspects:-

- i. the avoidance of the use of good agricultural land where land of lesser agricultural value is available, even though the costs of services and development of the latter land may be somewhat higher;
- ii. the severance of farmsteads from the land attached;
- iii. the restoration of fences, gates, water supplies, etc, in cases of road widening where substantial severance does not occur; (this also arises under (ii));
- iv. the prevention of the spread of potato-root eel-worm infestation by earth-moving operations.

2.21.3 At an appropriate stage in the preparation of plans, the DRM should formally advise DARD Headquarters of the proposals. Plans etc, in duplicate, should be sent to the Department of Agriculture and Rural Development, Dundonald House, Belfast who will consult the County Agricultural Executive Officer.

2.21.4 Finally agreed land maps should be sent to DARD so that farm maps in County Agricultural Offices can be amended.

2.21.5 The need for consultation with DARD will not often arise in urban areas but the procedure set out above should be followed where land affected by road works is still actively farmed or is used for specialised purposes such as nurseries, market gardens, dairies, etc.

3 Appendices

3.1 Appendix 1

To: Department for Regional Development
Roads Service

I of
agree to dedicate to the use of the public for all purposes to the intent that it forms
part of [give to the Department for Regional Development for inclusion in the] Public
Road No
that portion of my land in the townland of shown in the
sketch below. The Department for Regional Development agrees to erect a standard
wooden post and rail fence or a standard concrete post and wire fence as shown in
RED on the sketch, and I agree to be responsible for the future maintenance of this
fence after it has been erected.

PLAN OF LAND

* The witness should be someone
other than an officer of the
Department
/PS

Signed
*Witness
Date

3.2 **Appendix 2**

_____ (name of owner)

_____ (address of owner)

_____ (title of scheme)

I the above-named owner of the plot of land coloured _____ on the attached plan agree on behalf of myself, my heirs, my executors and my assigns with the Department for Regional Development to dedicate or if the said Department should require at a future date to sell to it or where it would be more administratively convenient to vest for the purpose of roadworks my interest in the said plot and to grant permission for entry hereunder at the price of £ _____ subject to the following conditions:-

1. The said Department shall preserve all my existing rights of accesses and services and shall make good any damage caused thereto in the course of construction of the said works. [It shall carry out for the above-mentioned owner on his land the work described in the schedule].
2. The said Department will pay agent's fees and legal costs in respect of the sale of said plot.
3. [See para 14.8].

I certify that to the best of my knowledge and belief there are no restrictive covenants attached to the land which would prevent its use for roads purposes and I hereby permit the said Department, its servants, agents, workmen and contractors to enter the said plot from the date hereof for the purpose of carrying out the said roadworks.

Dated this _____ day of _____ 199

Signed by owner _____)

*Witness _____)

Signed on behalf of _____)

the Department for Regional _____)

Development _____)

AUTHORISED OFFICER _____)

SCHEDULE [IF REQUIRED]

*The witness should be someone other than an officer of the Department

3.3 **Appendix 3**

APPLICATION FOR FIRST REGISTRATION IN THE REGISTER OF
FREEHOLDERS

LAND REGISTRY

COUNTY OF

APPLICATION OF THE DEPARTMENT FOR REGIONAL DEVELOPMENT

I make oath and say as follows:-

1. I am an Assistant Secretary employed by the above-mentioned Department and am authorised by the said Department to make this Application and Affidavit on its behalf.
2. The lands to which this Application relates are described in the Schedule hereto and defined on the map attached to the Vesting Order hereinafter referred to.
3. The said Department is seized in fee simple of the said lands by virtue of a Vesting Order made by the said Department on the _____ under and in pursuance of the _____
All deeds wills and other documents to my knowledge affecting the title of the said Department have been disclosed.
4. The said Department is entitled for its own benefit to the fee simple in the said land free from encumbrances.
5. The said Department has been in undisputed possession of the said lands since _____ the _____ which were by virtue of

discharged from all claims by any person who is in occupation of same or who had or claimed or have had any title to or interest in the said lands and all material facts have been disclosed.

- 5 The said Department hereby applies that it be registered in the Register of Freeholders, as owner in fee simple of the said lands and that registration be made with an absolute title.

SWORN this _____ day of _____
at _____ in the County of _____ before me,
a Solicitor for the Supreme Court of Judicature in
Northern Ireland

SCHEDULE

ALL THAT AND THOSE the lands and premises comprised in said Vesting Order and not heretofore registered pursuant to the Land Registration Act (Northern Ireland) 1970.

/PS

3.4 Appendix 4

MATTERS WHICH REQUIRE TO BE REGISTERED IN THE STATUTORY CHARGES REGISTER

1. Any charge acquired before, on or after the 2nd April 1951 by a local authority under –
 - (a) the Towns Improvement (Ireland) Act 1854 or the Acts incorporated therewith; or
 - (b) the Public Health Acts (Northern Ireland) 1878 to 1967; or
 - (c) section 31 of the Planning and Housing Act (Northern Ireland) 1931; or
 - (d) any other statutory provision, being a charge which takes effect by virtue of that provision; and

any similar charge acquired either before, on or after the 2nd April 1951 by a local authority under any local or private Act.
2. Any prohibition of or restriction on the user or mode of user of land imposed on or after the 2nd April 1951 by a local authority by order, instrument or resolution or enforceable by virtue of any conditions attached to any consent, approval or licence granted by a local authority on or after that date, pursuant to any statutory provision being a prohibition or restriction binding on successive owners of land and not being a prohibition or restriction operating over the whole of the district of the authority or over the whole of any contributory place thereof.
3. Any regulations made by the Ministry of Agriculture under section 21 of the Irish Land Act 1903 or section 26 of the Northern Ireland Act 1925 with respect to rights of turbary or of access over any land for the purposes of turbary.
4. Any Preservation Order made by the Ministry under section 6 of the Ancient Monuments Act (Northern Ireland) 1926.
5. Any clearance order made under section 23 of the Planning and Housing Act (Northern Ireland) 1931.
6. Any notice served under section 29 of the said Act of 1931.
7. Any statutory conditions attached by virtue of section 2 of the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1946 to any house provided or purported to have been provided in pursuance of a scheme approved by a local authority under section 1 of that Act.
8. Any statutory conditions attached by virtue of section 7 of the Housing (No 2) Act (Northern Ireland) 1946 to any house in respect of which grant has been paid under that Act.

9. Any conditions applied to a cottage by virtue of regulations under section 10 of the Hill Farming Act 1946.
10. Any notice served under section 19 of the Roads Act (Northern Ireland) 1948 by any road authority within the meaning of that Act.
11. Any improvement notice for the time being in force under Part II of the Agriculture Act (Northern Ireland) 1949.
12. Any Part I or Part II conditions, within the meaning of the Housing on Farms Act (Northern Ireland) 1950, attached to any premises by virtue of that Act.
13. Any resolution passed under section 8 of the Housing (Miscellaneous Provisions) and Rent Restriction Law (Amendment) Act (Northern Ireland) 1956 declaring an area to be a proposed redevelopment area.
14. Any statutory conditions attached by virtue of section 16 of the said Act of 1956 to any house in respect of which a conversion or improvement grant has been paid under that Act or by virtue of the said section 16 as applied by section 5 of the Housing Act (Northern Ireland) 1963 or by section 10(2) of the Housing Act (Northern Ireland) 1967 to any house in respect of which a standard grant has been paid under Part I of the said Act of 1963 or, as the case may be, section 10 of the said Act of 1967.
15. Any wayleave order made under section 14 of the Land Powers (Defence) Act 1958 and any restrictions imposed by section 16(1) of that Act.
16. Any notice under section I of the Rights of Light Act (Northern Ireland) 1961.
17. Any order under section 19 of the Housing Act (Northern Ireland) 1963.
18. Any of the following matters under the Private Streets (Northern Ireland) Order 1980
 - (a) notice served under Article 11;
 - (b) notice served under Article 14(5);
 - (c) demand served under Article 15(1);
 - (d) charge created under Article 15(10);
 - (e) undertaking given under Article 24(1) or (2);
 - (f) agreements entered into under Article 32.
19. Any agreement or covenant under section 2(1) or any waiver under section 2(3), of the Amenity Lands Act (Northern Ireland) 1965.
20. Any condition attached by virtue of subsection (1) of section 24 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 to any relevant land within the meaning of that section and any notice served on any person in relation to that land under that subsection.

21. Any condition applied to a unit of land under Schedule 3 to the Agriculture Act 1967.
22. Any of the following matters under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 –
 - (a) an entry in the schedule of monuments compiled and maintained under Article 3(1);
 - (b) a notice served under Article 10(2)(b) as regards compensation.
- 22A. Any of the following matters under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995 –
 - (a) an entry in the Schedule under Article 3;
 - (b) a notice in relation to a decision on compensation under Article 10(2)(b).
23. Any resolution passed under section 23 of the Housing Act (Northern Ireland) 1971 declaring an area to be a general improvement area and any resolution passed under section 25(1)(a) or (2) in relation to such an area.
24. A grant or agreement referred to in section 16(6) of the Civil Aviation Act 1971.
25. Any Order under Article 7 or 8 of the Airports (Northern Ireland) Order 1994.
26. Any Part I or Part II conditions, within the meaning of the Housing on Farms Act (Northern Ireland) 1972, attached to any premises by virtue of that Act.
27. Any of the following matters under the Planning (Northern Ireland) Order 1991 –
 - (a) an entry in a list compiled under Article 42;
 - (b) tree preservation orders;
 - (c) enforcement notices which take effect in relation to any land;
 - (d) listed building enforcement notices which take effect in relation to any land;
 - (e) any conditions imposed on the grant of planning permission –
 - (i) relating to the occupancy of a dwelling house; or
 - (ii) requiring that a dwelling house on any land which is under the control of the applicant be demolished or cease to be used as a dwelling house;
 - (f) notices under Article 82 which take effect in relation to any land;
 - (g) orders under Article 39 requiring discontinuance of use or alterations of buildings or works;
 - (h) any designation under Article 50(1) of an area of special architectural and historical interest – and any matter under the Planning (Northern Ireland) Order 1972 corresponding to any matter mentioned above.
28. Any of the following matters under the Water and Sewerage Services (Northern Ireland) Order 1973 as amended by the Water and Sewerage Services (Amendment) (Northern Ireland) Order 1993 –
 - (a) any notice served under Article 3E(1) or 13(2);

- (b) any decision notified under Article 13(3) in relation to determination of objection;
 - (c) any agreement entered into under Article 13(4) or 17(4);
29. -
30. -
31. Particulars specified in Article 11(4) of the Land Acquisition and Compensation (Northern Ireland) Order 1973.
32. Any of the following matters under the Roads (Northern Ireland) Order 1993 -
- (a) a notice under Article 49 imposing restrictions with respect to any land;
 - (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 restricting or regulating the use of land near roads;
 - (e) a charge under Article 122 in relation to any amount due to the Department in pursuance of an agreement under Article 122.
33. Any resolution passed under Article 32 of the Housing (Northern Ireland) Order 1976 declaring an area to be a housing action area.
34. Any statutory conditions attached, by virtue of an Order made under Article 56 of the Housing (Northern Ireland) Order 1976, to any dwellings in respect of which a grant has been paid under Part VI of that Order.
35. An Order under Article 39(2)(a) of the Matrimonial Causes (Northern Ireland) Order 1978 to the extent that by virtue of Article 39(3)(b) of that Order it renders liable to be set aside at the instance of an applicant for financial relief a disposition of any land in Northern Ireland which is specified in the Order.
36. An order under Article 18(2) (I) of the Domestic Proceedings (Northern Ireland) Order 1980, or such an order made as an interim exclusion order by virtue of Article 21 of that Order, to the extent that by virtue of paragraph 1(b) of Part II of Schedule 1 to that Order, or by virtue of that provision as applied by Part III of that Schedule, it renders liable to be set aside at the instance of the applicant for the order a disposition of any land in Northern Ireland which is specified in the order.
37. Any of the following matters under the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 1992 -
- (a) any clearance order made under Article 33;
 - (b) any undertaken given under Article 35;
 - (c) any closing order made under Article 38;
 - (d) any notice served under Article 35;
 - (e) any demolition order under Article 35;
 - (f) any closing order made under Article 38;
 - (g) any declaration made under Article 47 declaring an area to be a proposed re-development area;

- (h) any declaration made under Article 52 declaring an area to be a housing action area, any extension of the duration of a housing action area under Article 53(2) and any amendment of such a declaration under Article 54;
- 37A. Any of the following matters under the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 1983 -
- (a) any grant conditions attached by virtue of Article 69 of the Housing (Northern Ireland) Order 1983 to any house in respect of which a grant has been paid under Part III of the Order.
38. Any of the following matters under the Access to the Countryside (Northern Ireland) Order 1983 –
- (a) a public path creation agreement, a public path creation order, a public path extinguishment order, or a public path diversion order;
 - (b) an access agreement, an access order, or an instrument or order varying or revoking an access agreement or order.
39. Any of the following matters under the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 –
- (a) any agreement or covenant under Article 8(1), or any waiver relating thereto;
 - (b) any land management agreement under Article 9;
 - (c) any agreement under Article 17 for the management of land as a nature reserve, or any waiver relating thereto;
 - (d) any declaration, made and confirmed under Article 24, that an area of land is an area of special scientific interest;
 - (e) any agreement under Article 24(8)(a) for the management of land as an area of special scientific interest, or any waiver relating thereto.
40. Any of the following matters under the Social Need (NI) Order 1986 –
- (a) any conditions imposed under Article 4(1) for the repayment of financial assistance under the Order, being conditions which provide that they shall be a statutory charge.
41. Any of the following matters under the Housing (Northern Ireland) Order 1992 –
- (a) the statutory condition attached by virtue of Article 13 to land acquired by a registered housing association;
 - (b) any grant condition registrable by virtue of Article 57(5), 58(3), 59(3), 60(7) or 61(3);
 - (c) the statutory condition of participation in a group repair scheme as an assisted participant, registered under Article 68(3);
 - (d) any grant condition registerable by virtue of regulations made under Article 73(3);
 - (e) any notice served under Article 76(1), 79(1), 80(1) or 84(4);
 - (f) any charge under Article 84(8);
 - (g) any notice served under paragraph 2 of the Schedule 4, any undertaking accepted under paragraph 5 of Schedule 4 or any closing order made under paragraph 6 of Schedule 4 -

42. Any of the following matters under the Street Works (NI) order 1995 –
 - (a) any declaration under Article 46 as regards a prospective road.

43. Any of the following matters under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 –
 - (a) an entry in the register maintained under Regulation 10 relating to a European site in Northern Ireland;
 - (b) a management agreement entered into under Article 13(1).

3.5 **Appendix 5**

Application by the Department for Regional Development

of

To cancel the undermentioned charge(s) in the Statutory Charges Register Land Registry.

County Register NoTown(land).....

Street Parish.....Barony

Please cancel the Statutory Charge(s) registered on

Application No(s)

Signature

FOR OFFICIAL LAND REGISTRY USE ONLY

Cancelled this
Application No

| | | |
|-----------|-------------------------|--|
| Settled | Engrossment Compared | Notice of completion posted |
| By | By | |
| Date..... | Date | |

/PS

3.6 Appendix 6

INFORMATION ADDRESSES

Staff Officers, LSHQ
VLO, HQ

Solicitor's Branch, (Environmental Division)
Central Management Branch

File No:
LS/HQ/7492/85

Circular No:
SC/14/86(M)

Date: 28
November 1986

PROCESSING OF WAYLEAVE/EASEMENT APPLICATIONS ON DOE LANDS

1. **Purpose**

To improve co-ordination between various land sections by the promulgation of a systematic procedure for dealing with wayleave and easement applications in relation to lands owned by the Department.

2. **Definitions**

For the purpose of this circular, Wayleave - a term with no meaning in Property Law - is in this context a right-of-way on, over or under the Department's lands. The grant of wayleave is normally made by way of a "Wayleave Agreement" the most common of which are those connected with the public service, e.g. Electricity, Telephones, Watermains and Sewerage etc, where the use of the relevant Authority's standard form is suitable, including Northern Ireland Electricity (NIE) with whom special forms of agreement have been made (see paragraph 3).

An Easement, however, is recognised in law as a right enjoyed by the owner of land over the Department's lands and is not necessarily restricted to a right of way. The grant of an Easement should be by way of Deed completed or approved by the Department's Solicitor.

3. **Wayleaves to Northern Ireland Electricity**

(1) Standard Agreement

A standard format Wayleave Agreement has been agreed with NIE. A copy is attached as Appendix A.

The Agreement is prepared by NIE and forwarded to the Department for signature as the Grantor. Lands Service HQ has agreed with NIE that Clause 11 be amended to allow determination of the agreement with 6 months notice. This alteration should be initialled by the Grantor.

(2) Rates of Payment

4. Procedure

When a wayleave/easement application is received from whatever source the following procedures should be adopted:

(1) Applications received by Lands Service

(a) Lands Managed by Lands Service

- (i) Lands Service Divisional Office will ask the relevant functional Service if it has any comment or objection to the proposal.
- (ii) Simultaneously consult the occupier of the land (if any).
- (iii) If both the functional Service and the occupant have no objection the Lands Service Divisional Office will conclude the proposal with the applicant - dealing with the relevant documentation and where appropriate consultation with VLO, receipt of compensation etc.

Otherwise the applicant should be advised of the objections.

- (iv) Access to the lands can be arranged between the applicant and Lands Service in consultation with the occupant if necessary.

(b) Lands not managed by Lands Service

Lands Service Divisional Office will ask the applicant to contact the functional Service direct so that the Service can deal with the matter in its entirety.

(2) Applications Direct to the Functional Service

Wayleave/easement applications made direct to a functional Service where Lands Service manages the property should be directed to the relevant Lands Service Divisional Office for attention or dealt with directly by the functional service in any other situation.

5. Implementation

These procedures should be implemented immediately.

The current Schedule of Wayleave Rents is attached as Appendix B. These are increased from time to time and any changes will be notified to the Department as they occur.

Payment is made annually in the month following the anniversary of the first agreement and will be based on the rates applicable at date of payment.

TERMS OF WAYLEAVE

In these terms:

1. The expression 'electric line' shall have the same meaning as the Electricity Supply (Northern Ireland) Order 1972 namely "a wire or wires, conductor, or other means used for the purpose of conducting electricity with any insulating material enclosing, surrounding or supporting the same, or any part thereof, or any apparatus connected therewith for the purpose of conducting electricity and includes poles stays and other supports used to carry an electric line above ground".

The expression 'the erection of electric line' includes the laying using inspecting maintaining repairing modifying removing or retention of the electric line.

The expression 'service line' shall have the same meaning as in the Electricity Supply (Northern Ireland) Order 1972 namely "any electric line through which electricity may be supplied or intended to be supplied by the Service to a consumer either from any main or directly from the premises of the Service".

The expression 'lands' includes water, buildings and structures.

2. The electric line shall remain the property of the Service.
3. The Service may carry out the erection of the electric line across the said lands only along the route shown on the map annexed hereto subject to such minor deviations from the said route as may be necessary or desirable.
4. The Grantor shall indemnify the Service against any claims for or in the nature of wayleave rent which may be made by any tenants or other occupiers or persons having an interest in the lands of whose rights and interests in the lands the Grantor was aware at the date of signing the Wayleave Agreement.
5. Without prejudice to the provisions of Article 40 of the Electricity Supply (Northern Ireland) Order 1972 the Service may, on giving fourteen days Notice to the Grantor remove or cut any tree or hedge which obstructs or interferes with the construction maintenance or working of any electric line (including a main or other transmission line) and the Service shall pay to the Grantor reasonable compensation for any tree or hedge belonging to the Grantor which shall be removed by the Service.
6. The Service shall throughout the continuance of this Agreement be liable for all just and fair claims for damage or loss sustained by the Grantor his tenants agents or servants in respect of his/their livestock crops or other property by the erection of the electric line or through any defect in or breakage thereof. PROVIDED ALWAYS that (a) such damage or loss is not caused by the wilful act, default or neglect of the Grantor or his tenants agents or servants and (b) a statement in writing of the claim is received by the Service.
7. Save as otherwise provided herein the Service shall indemnify the Grantor from and against all actions claims, costs and expenses incurred by reason of the erection of the electric line.
8. The Service and its contractors and its and their respective agents, servants and workmen or any person authorised by the Service shall for the purpose of the erection of the electric line be at liberty either with or without engines horses carts lorries and other vehicles to enter on the said lands.
9. The Service shall during the continuance of this Agreement pay to the Grantor in consideration of his consent annual sums commencing on the anniversary of this Agreement in accordance with the current schedule of wayleave rents or otherwise as hereinafter provided which rents may be revised by the Service at such times as it thinks fit in order to ensure insofar as it is reasonably able that the rent presently payable under this Agreement maintains its present value. Details of any changes in the schedule of wayleave rents will be published by the Service at such times and in such newspapers having a circulation throughout Northern Ireland as the Service thinks fit.
10. The Service shall be entitled at any time during the continuance of this Agreement to remove any items of equipment as hereinbefore described. No wayleave rent shall be payable to the Grantor in respect of any item of equipment so removed after the date of removal.

11. This Agreement shall remain in force until determined by either party giving to the other at any time six months' previous notice in writing to that effect except in a case where the wayleave rent is paid in advance in accordance with the provisions set out in the Notes hereto in which case the Grantor shall not be entitled to determine this Agreement under the term without first re-paying the then balance of the advance payment of wayleave rent.
12. Should the Grantor at any time during the continuance of this Agreement bona fide intend to develop any part of the lands across which the electric line is placed in such manner as would interfere with the electric line or place the Service in breach of any statutory regulations concerning the construction and placing of electric lines and would thereby necessitate the removal, resiting or alteration of the electric line he shall notify the Service in writing of his proposals and on receipt of such notice the Service shall co-operate with the Grantor in order to achieve the best arrangement for both parties and where it is necessary shall remove, resite or alter the electric line for the purpose of permitting the proposed development to proceed. PROVIDED that before proceeding so to remove, resite or alter the electric line the Service may require the Grantor –
 - (a) to enter into an Agreement providing for the repayment to the Service of the costs and expenses of such removal, resiting or alteration in the event of the proposed development not being carried out within a period of five years and/
 - (b) to give reasonable security for such repayment
 - (c) to enter into a Wayleave Agreement with the Service in like terms to these presents should the electric line be resited or altered on or over the Grantor's land.In those circumstances where the Service requires the electric line to remain in its present position it shall become liable to pay to the Grantor compensation in such an amount as is equal to the diminution in the development value of the lands caused by the existence of the electric line on the lands provided nevertheless that the payment of such compensation by the Service is subject to the Grantor executing in favour of the Service an easement in fee simple free from encumbrances for the electric line across his lands.
13. Where the electric line is removed, resited or altered in accordance with the provisions of term 12 the cost of such removal, resiting or alteration shall be borne by the Service EXCEPT in the case of the removal, resiting or alteration of any service line or in the case of any other line where that line has been so routed across the Grantor's lands for the greater convenience of supplying the Grantor with electricity and where that line has not been in existence for a period of twenty-one years in which cases the cost shall be borne by the Grantor.
14. Where the Service is no longer entitled to retain the electricity line across the said lands it shall with all reasonable despatch remove the electric line and restore the lands to the reasonable satisfaction of the Grantor.
15. If any dispute or difference shall arise between the parties concerning the interpretation of this Agreement it shall be referred to a single arbitrator being a practising barrister of at least six years standing to be appointed jointly by the parties hereto or failing agreement to be appointed on the application of either party by the Chairman for the time being of the General Council of the Bar of Northern Ireland and in any case the Arbitration Act (NI) 1937 or any statutory modification or re-enactment thereof for the time being in force shall apply to the reference and any other dispute or difference shall be referred to and determined by the Lands Tribunal.
16. Nothing herein contained shall be deemed to take away, diminish or abridge the rights and powers conferred upon the Service by the Electricity Supply (Northern Ireland) Order 1972 or any statutory modification or re-enactment thereof for the time being in force.



WAYLEAVE AGREEMENT

Appendix A

AGREEMENT
NUMBER
15.63

AN AGREEMENT made the _____ day of _____ between the Northern Ireland Electricity Service having its Principal Office at Danesfort, 120 Malone Road, Belfast, BT9 5HT (hereinafter referred to as 'the Service' which expression shall include its successors and assigns) and

DEPT. OF THE ENVIRONMENT FOR N. I.

(hereinafter called 'the Grantor' which expression includes the owner and/or occupier for the time being of lands the location of which is stated below).

WHEREBY IT IS AGREED that the Service shall be permitted to erect an electric line across or under aforesaid lands upon the terms overleaf.

Signature of Grantor.....

Witness.....

Address.....

NATURE OF WAYLEAVE: An electric line along the route shown in red on the map herein.

LOCATION OF ELECTRIC LINE: DRUMATI HUGH

in the County of DOWN

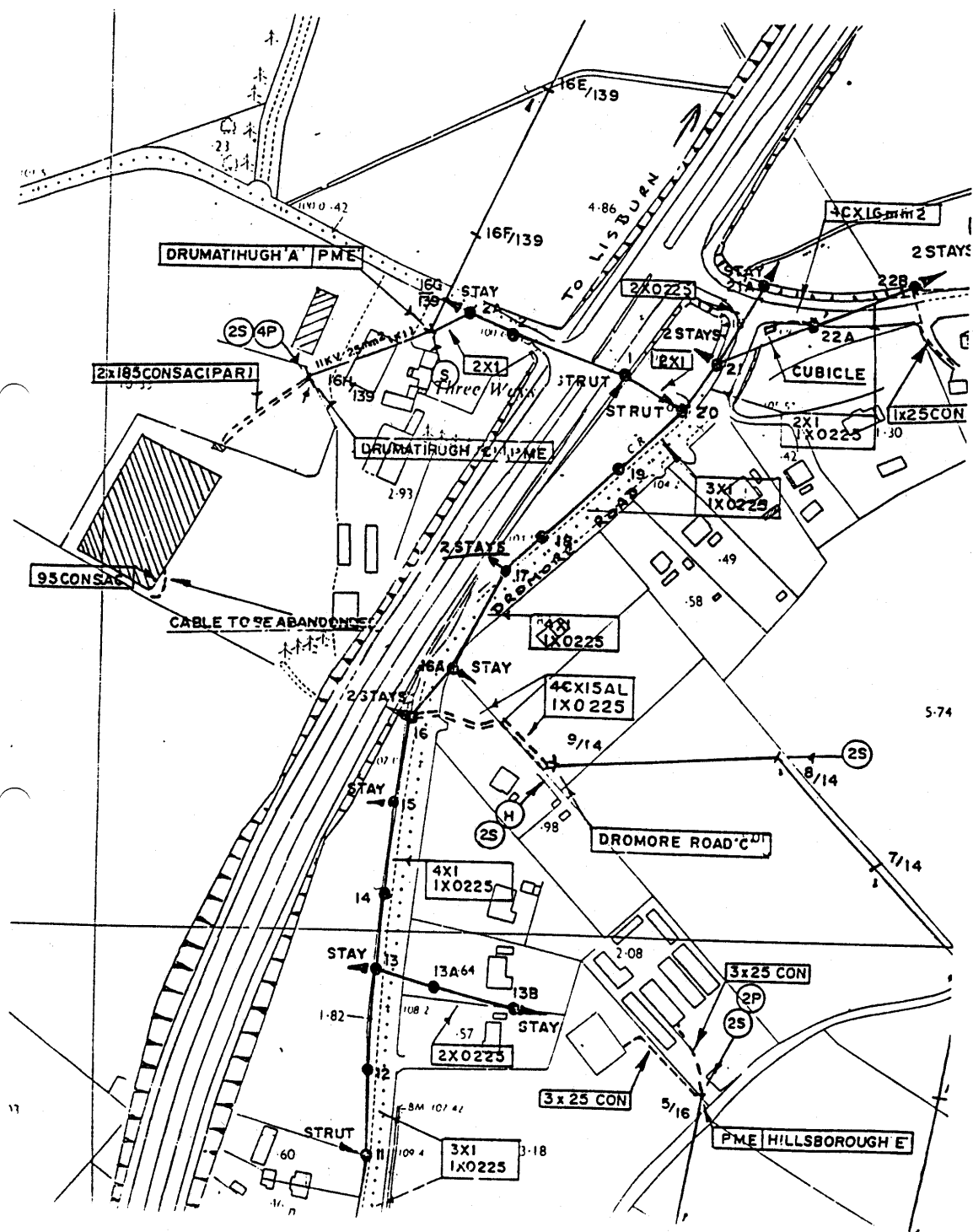
| GRANTOR NUMBER | DATE OF AGREEMENT | RESPONSIBILITY CODE | AUTHORISATION NUMBER | SECTION OR TOWN | PREVIOUS AGREEMENT No | N |
|----------------|-------------------|---------------------|----------------------|---------------------|-----------------------|----------|
| | | 4 | | HILLSBOROUGH | | 1 |

| DESCRIPTION OF ELECTRIC LINE | | ITEM No. | EQUIP. CODE | QTY. No. OF UNITS | VOLTAGE IN UNITS OF 1000 VOLTS |
|------------------------------|---------------------------|----------|-------------|-------------------|--------------------------------|
| Wires | | 1 | SY | 2 | 4 |
| No. of wires | | 2 | | | |
| Wood poles and | | 3 | | | |
| Steel towers | | 4 | | | |
| Stays | 2 STAYS TO POLE 17 | 5 | | | |
| Stays | | 6 | | | |
| U G cable and | | 7 | | | |
| Earthing | | 8 | | | |
| Miscellaneous | | 9 | | | |
| | | 0 | | | |

| | | |
|------------------------------|--------------------|--------|
| Payee if other than Grantor: | WAYLEAVE DEPT. | E.D.P. |
| P | Ref. W133 | |
| | Map N1.2116 | |
| | | |

May 1989

MAP REFERRED TO HEREIN



May 1989

NOTES

Pay Rate 1 is the basic annual rent due.

Pay Rate 2 is a combination of:-

- (i) Pay Rate 1 PLUS
- (ii) The annual compensation payable in respect of interference with normal agricultural operations.

Pay Rate 3 is the annual payment (or rent) due where the Grantor is the occupier or tenant of a house or other building and is payable only on demand.

The basic annual rent payable per Agreement may be subject to the deduction of Income Tax at the standard rate in force at the time of payment as required by the Finance Act, 1970, or any Statutory modification or re-enactment thereof for the time being in force.

A Grantor will have one payment date per annum and all payments will be made on that date. Payment will normally be made in the month following the Anniversary of the first Agreement and will be based on the rates applicable at the date of payment.

When the annual amount payable to a Grantor under Pay Rate 1 or 2, or a combination of these, is less than 'a minimum cheque value' (Decided by the Service), then an advance payment will be made in order to produce a total payment for the Grantor not less than the 'minimum cheque value'. Any such advance made, will be recorded against the Grantor and no further payments will be made until the advance has been cleared.

Details of the present amounts payable are shown on the accompanying Schedule of Wayleave Rents and any alterations will be published in the press.

The Grantor is requested to:-

1. retain his copy of the Wayleave Agreement safely and in any communications relative thereto quote the Agreement No. (as shown on the top right hand corner)
2. inform the Service in the event of a change in ownership of the land
3. inform the Service if and when the use of the land changes thereby altering the annual amount payable.

APPENDIX B

**NORTHERN IRELAND ELECTRICITY SERVICE
SCHEDULE OF WAYLEAVE RENTS
APPLICABLE FROM 1 OCTOBER 1984**

| TYPE OF EQUIPMENT | | EQUIP CODE | PAY RATE 1 (RENT) | PAY RATE 2 (RENT + COMPENSATION) | | PAY RATE 3 |
|--|--------------------------|---------------|----------------------|-------------------------------------|------|---------------|
| | | | | £ P | £ P | |
| | | | £--P | £ P | £ P | £ P |
| SINGLE POLE | | SP | 0.30 | 0.30 | 4.72 | 0.01 |
| DOUBLE POLE | | DP | 0.22 | 0.22 | 4.00 | 0.01 |
| FOUR POLE STRUCTURE | | FP | 0.22 | 0.22 | 4.00 | 0.01 |
| STAY | | SY | 0.42 | 0.42 | 6.14 | 0.01 |
| STRUT | | ST | 0.30 | 0.30 | 4.72 | 0.01 |
| MINI PILLAR | | MP | 0.37 | -- | -- | 0.01 |
| CABLE RISER | | CR | 0.42 | -- | -- | 0.01 |
| EARTH MAT | | EM | 0.25 | -- | -- | 0.01 |
| EARTH WIRE | PER 100 METRE UNIT | EW | 0.25 | -- | -- | 0.01 |
| UNDERGROUND CABLE | PER 100 METRE UNIT | UG | 0.25 | -- | -- | 0.01 |
| UNSUPPORTED OVERHEAD CONDUCTORS AND/OR WIRES | PER 100 METRE UNIT | OH | 0.20 | -- | -- | 0.01 |
| CONDUCTORS AND/OR WIRES ON BUILDING | PER BUILDING | SW | 0.25 | -- | -- | 0.01 |

**STEEL TOWERS DIMENSIONS OVER CONCRETE
AT GROUND LEVEL**

| | | | | | | |
|--------------------------------------|----|------|------|---|-------|------|
| TYPE A UP TO 3.0 METRES SQUARE | TA | 0.22 | 0.22 | + | 2.23 | 0.01 |
| TYPE B OVER 3.0 TO 3.8 | TB | 0.22 | 0.22 | + | 3.22 | 0.01 |
| TYPE C OVER 3.8 TO 4.6 | TC | 0.22 | 0.22 | + | 3.70 | 0.01 |
| TYPE D OVER 4.6 TO 6.1 | TD | 0.36 | 0.36 | + | 4.73 | 0.01 |
| TYPE E OVER 6.1 TO 7.6 | TE | 0.36 | 0.36 | + | 6.20 | 0.01 |
| TYPE F OVER 7.6 TO 9.1 | TF | 0.49 | 0.49 | + | 7.59 | 0.01 |
| TYPE G OVER 9.1 TO 10.7 | TG | 0.49 | 0.49 | + | 8.72 | 0.01 |
| TYPE H OVER 10.6 TO 12.2 | TH | 0.70 | 0.70 | + | 9.76 | 0.01 |
| TYPE I OVER 12.1 TO 13.7 | TI | 0.70 | 0.70 | + | 10.82 | 0.01 |
| TYPE J OVER 13.7 TO 15.2 | TJ | 0.91 | 0.91 | + | 11.78 | 0.01 |
| TYPE K OVER 15.2 TO 16.8 | TK | 0.91 | 0.91 | + | 12.37 | 0.01 |
| TYPE L OVER 16.8 METRES SQUARE | TL | 0.91 | 0.91 | + | 14.36 | 0.01 |

..... MULTI-LEG STRUCTURES - RATE PAYABLE PER LEG

MINIMUM CHEQUES PAYMENT VALUE £2.00

3.7 Appendix 7

ASSESSMENT OF THE NEED FOR LAND BY GOVERNMENT DEPARTMENTS

Purpose

1. The purpose of this circular is to provide guidelines on the assessment of need for land by Government Departments.
2. In the context of this circular land means land, buildings and water as defined in the Interpretation Act (Northern Ireland) 1954.

Pre-Acquisition

3. Before acquiring any land Government Departments should carefully consider the need for and the extent of the land to be acquired. Except in the case of a blight or purchase notice, proposed acquisition should satisfy the following tests:-
 - (a) the acquisition cost and the cost of commencement of the development should be in public expenditure plans; or
 - (b) if the acquisition is for development which is programmed to commence within 5 years but is not yet in public expenditure plans, it should have the approval of the Department's Finance Division or other Division exercising overall financial control; or
 - (c) if the acquisition is for a development which is not likely to commence within five years it should have the approval of the Department's Permanent Secretary.
4. If there is a statutory requirement to seek Department of Finance and Personnel approval, such approval must be obtained before the acquisition takes place.
5. At the outset the VLA, except as agreed otherwise with the VLA, should be involved in any proposal for land acquisition at the earliest practicable time.

A full appraisal of the acquisition and development proposals should be carried out before any acquisition is made. The appraisal should include:-

- (a) whether any other Government owned property which is surplus might be suitable or whether any other Government owned property presently unused or insufficiently used might be suitable;
- (b) whether the development proposal has the approval of DOE's Planning Service. Planning Service will initiate and co-ordinate any other necessary consultations;
- (c) whether there is any other lower cost suitable alternative taking into account land and development costs;
- (d) whether, if there is a lengthy plan period, for example 15 years over which development will take place, it might not be more

appropriate to promote vesting in stages related to say, 5-year development periods. Among other things such staging could take account of possible policy changes and financial cut backs;

- (e) whether, if the need for the land is short term, leasing might not be more appropriate than outright purchase.
6. Blight Notices served under The Planning Blight (Compensation) (Northern Ireland) Order 1981 and Purchase Notices under Part IX of the Planning (Northern Ireland) Order 1991 should be processed expeditiously. This is to ensure that the appropriate steps are taken within the statutory time limit. The purpose in dealing quickly with blight and purchase Notices is to prevent lands inadvertently coming into public ownership. Departments and functional services within Departments which are liable to receive blight or purchase notices should establish clear procedures for dealing with them quickly.

Post Acquisition

- 7. Except where Permanent Secretary approval to hold the property has been given, property which is not needed within 5 years should be notified to Lands and Legislation Branch for disposal in the usual way. If the property declared surplus is affected in any way by a statutory plan for development or any other proposals which have been made public, Lands and Legislation Branch should be provided with details in the disposal advice.
- 8. Departments should ensure that they have efficient monitoring procedures so that they can review on an annual basis the need to hold land vis-à-vis programming changes.
- 9. Each Department, after taking advice as necessary from the VLA, should introduce a regular audit of land holdings, preferably on an annual basis, to ensure that the guidelines outlined in this paper have been applied to all property currently in their portfolio.

Government Policy on Surplus Land

- 10. Surplus land or property is defined in LSC/1/88 issued to all Government Departments on December 1989 as land “which is no longer needed for the purpose for which it was acquired or is held.” Such land should not be retained within the public service for another purpose unless:-
 - (i) there are strong and exceptional reasons for public interest for so doing;
 - (ii) another functional service within a Department or another Department or public body has an immediate use for the land and possesses compulsory purchase powers for such purpose; and
 - (iii) retention is authorised by the Minister or Ministers as appropriate.

Non-Departmental Public Bodies

11. Departments should ensure that non-Departmental bodies for which they are responsible are aware of this circular and that they follow its guidelines.

Department of the Environment (NI)

Title: Land Acquisition – Acquisition Procedures

Document History

| Version | Date | Author | Authorised by Document Control Panel Members Name : Signature |
|----------------|-------------|---------------|--|
| 1 | 3/7/2000 | R Newell | R Wilson |
| 2 | 21/5/04 | J A Dutton | R Sherman |
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Overall Reasons For This Version

| Version | Reasons |
|----------------|----------------------|
| 1 | First issue of RSPPG |
| 2 | Revision to 2.15 |
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Revision Details

| Version | Amendments |
|----------------|--|
| 2 | To update delegated negotiation limits |
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