

Roads Service Policy & Procedure Guide: RSPPG_S009

Title: The Private Streets (Northern Ireland) Order 1980 [1980 No. 1086 (N.I. 12)] as amended by The Private Streets (Amendment) (Northern Ireland) Order 1992 [1992 No. 3203 (N.I. 19)]

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This document complies with Roads Service Policy. For Implementation and Issue Dates, see above.

(Signed) Director of Engineering

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1 Introduction

1.1 Purpose

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

- a) Is aimed at all Roads Service staff.
- b) This RSPPG replaces section 1203 of the Roads Service Roads Manual.

1.2 Definitions

1.2.1 “**LLB**” – Lands & Legislation Branch

1.2.2 “**the 1980 Order**” – the Private Streets (Northern Ireland) Order 1980.

1.2.3 “**the 1992 Order**” – the Private Streets (Amendment) (Northern Ireland) Order 1992.

1.2.4 “**the Order**” – the Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.

1.3 Background

1.3.1 **The Private Streets (Northern Ireland) Order 1980** was made on 28 July 1980 and came into operation on 28 August 1980.

1.3.2 **The Private Streets (Amendment) (Northern Ireland) Order 1992** was made on 17 December 1992 and, with the exception of Article 3, its provisions came into operation on 17 February 1993. Article 3 was brought into operation by commencement order on 20 February 2001.

1.4 Costs and Benefits

1.4.1 **As this RSPPG replaces an existing RSPPG** the costs and benefits are not relevant at this time.

2 Roads Service Policy & Procedure

2.1 General

2.1.1 **The 1980 Order** re-enacts with some modifications the provisions of the Private Streets Act (Northern Ireland) 1964 which related to the laying out, construction, completion and adoption of new streets and the making up and adoption of existing private streets. The 1980 Order was subsequently amended by the 1992 Order.

2.2 Part I of the Order

2.2.1 Interpretation

2.2.1.1 Most of the definitions in Article 2 need no special comment apart from the following:-

- (a) *“Responsible person”* is defined in detail in Article 36, as the person who has paid or secured a sum in respect of street works expenses under Article 24(1), or given an undertaking under Article 24(2) or entered into an agreement under Article 32. In every other case, the responsible person is the owner, for the time being, of the premises fronting the street. See also Article 36 paragraphs (2) & (3), in cases where the responsible person has transferred his estate.
- (b) *“Street planning functions”*. When the development of land requires planning permission which consists of, includes or appears to require the laying out or construction of streets, the Department must determine the width, position and arrangement of the streets and the land to be regarded as being comprised within those streets for the purposes of Part III of the Order (entitled “Adoption of Private Streets as Public Roads”). There are 2 basic elements in connection with the provision of new streets. First, planning of the layout and then construction. The Street Planning function determines where the street will be, its relationship to other streets, its width and how much land it and its ancillaries will occupy all to suit adoption as public roads when constructed. Article 3 of the Order provides the base on which these requirements can be determined within the framework of planning laws.
- (c) *“Street Works”* is defined in Article 2(2) of the 1980 Order, and Article 3(1) of the 1992 Order extended the definition to include street lighting. This amendment came into operation on 1 May 2001.
- (d) *“Private street”*. The full definition is contained in Article 2(5) and includes a proposed street on plans deposited and makes clear that the fact that part of a street is a public road shall not prevent any other part from being treated as a private street under the Order.

2.3 Part II of the Order

2.3.1 Laying out of Streets

2.3.1.1 **Under Article 3(1)**, where planning permission is required for the development of land which consists of; includes, or appears to require the laying out or construction of streets, the Department must determine the width, position and arrangement of the streets and the land to be regarded as being comprised within those streets for adoption in due course. The Department (Roads Service) must give an appropriate determination to Planning Service to be included in the planning permission.

2.3.1.2 **The effect of the phrase “and the land to be regarded for the purposes of Part III as being comprised in those streets”** is to ensure that any doubts which might arise as to whether, for example, grass verges or pedestrian access footpaths are to be regarded as part of the street for adoption purposes are settled in advance at the planning stage. This is of importance especially where non-traditional type street layouts are proposed. Only those streets subject to determination under this Article can be considered for adoption as public roads. In addition the streets thus identified are those for which the developer must make financial provision in advance as security for street works expenses, normally under Article 32.

2.3.1.3 **Article 3(3)** gave the Department power to make regulations prescribing minimum standards for the layout of streets and to relax such regulations. No regulations have been made under this Article but the required standards for layout and access are contained in the Department’s publication entitled “Creating Places – achieving quality in residential developments”, which was published in 2000.

2.3.1.4 **Article 3** also provides at paragraph (4) that the Department can require an applicant for planning permission to submit plans showing the general development scheme. Paragraph 5 states that where the Department of the Environment’s Planning Service grants outline planning permission, conditional on the approval of the particulars of the development, the Department can defer its determination of the matters referred to in Article 3(1) until that information has been submitted.

2.3.1.5 **Article 3(4) – additional paragraphs (4A) to (4G)** were inserted by Article 4(1) of the 1992 Order to enable the Department to require the improvement of a public road joined by a street in relation to which the Department exercises street planning functions. This amendment came into operation on 17 February 1993.

2.3.1.6 **Article 3(5) – a new paragraph (5A)**, inserted by Article 5 of the 1992 Order, enables the Department to stop up or temporarily close streets constructed otherwise than in conformity with a determination of the Department, or constructed before the Department has exercised its street planning functions in relation to the street. This amendment came into operation on 17 February 1993.

2.3.1.7 **Article 4** brings the exercise of street planning functions under the Planning Order and applies the appeal provisions of that Order to the exercise of those functions.

2.3.1.8 **Normally, powers under Articles 11 and 13 of the Order would be used to secure completion of a street** the whole of which a developer is required to provide as the result of the exercise of street planning functions under Article 3(1). However, if, for example, a length of street without dwellings were simply omitted by a developer, the powers in Article 4(4) would enable the Department to construct the street where an enforcement notice has been served under Part VI of the Planning (Northern Ireland) Order 1991 but has not been complied with (Article 74 of the Planning (Northern Ireland) Order 1991). Article 74 of that Order also allows recovery of the costs of providing such a street.

2.3.2 **Standards for Construction of Streets**

2.3.2.1 **Article 5** gives the Department power to make regulations prescribing minimum standards for the construction of streets. However, it should be borne in mind that for some older determinations the Construction Regulations made under the Private Streets Act (Northern Ireland) 1964 would apply.

2.3.2.2 **The Private Streets Standards of Construction Regulations (Northern Ireland) 1966** (S.R. & O. (N.I.) 1966, No. 262) made under section 3 of the Private Streets Act (Northern Ireland) 1964 apply to the construction of streets in respect of which street planning functions were exercised under section 1(1) of the Private Streets Act 1964 on or after 1 February 1967. (It should be noted that there are separate Detailed Requirements under the Regulations for each former local authority area).

- (a) There are very few developments now reaching the construction stage to which the 1966 regulations would apply and therefore no details of these regulations have been included.

2.3.2.3 **The Private Streets (Construction) Regulations (Northern Ireland) 1994** (S.R. 1994 No. 131) (“the principal regulations”) made under Article 5(1) and (2) of the 1980 Order apply to the construction of streets in respect of which the Department has exercised street planning functions under Article 3(1) of the Order on or after 11 May 1994 but before 1 May 2001.

- (a) These regulations make provision in relation to matters connected with or affecting the construction of private streets.

2.3.2.4 **Part II and Schedules 2 to 7 prescribe standards and detailed requirements for the construction of private streets.**

2.3.2.5 **Part III provides for the deposit and approval of plans and for the giving of notice of the commencement and completion of the various stages of work to the Department** by the person by whom or on whose behalf the plans are deposited.

2.3.2.6 **Part IV relates to the inspection of work**, the carrying out of such investigations and tests and the taking of samples to ensure that the work is in conformity with the regulations. It also provides for the removal or alteration of work not in conformity with the regulations. The Department is empowered to recover any expenses reasonably incurred by it in carrying out such investigations and tests or in removing or altering the work.

2.3.2.7 **Part V provides for the determination by arbitration** of any question arising under the regulations between the Department and the person by whom or on whose behalf the plans are deposited.

2.3.2.8 **It is an offence by virtue of Article 5(3) of the 1980 Order to contravene the regulations.**

2.3.2.9 **Schedule 1 provides a detailed list of the various technical publications**, which are referred to in the regulations. Copies are obtainable from the publishers referred to in that Schedule.

2.3.2.10 **The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001** (S.R. 2001 No. 73) made under Article 5(1) and (2) of the 1980 Order as amended by Article 6 of the 1992 Order, apply to the construction of streets in respect of which the Department has exercised street planning functions under Article 3(1) of the Order on or after 1 May 2001.

2.3.2.11 **These regulations amend the principal regulations and make the following main changes:-**

- (b) *Regulation 15A and Schedule 8* prescribe standards and detailed requirements for the provision of street lighting in private streets (regulation 3(7) and (19)).
- (c) *Regulation 20 of the principal regulations* is amended to extend the specified expenses to include the cost of inspections and to provide for the bearing of such expenses by the person by whom or on whose behalf the plans were deposited (regulation 3(10)).
- (d) *Regulation 16 of the principal regulations* relating to the deposit and approval of plans is amended by regulation 3(8),
- (e) *Regulation 17* relating to notice of commencement and completion of stages of work is amended by regulation 3(9)
- (f) *Schedule 2* relating to detailed requirements for goods and materials to be used in construction of streets is amended by regulation 3(13).
- (g) *References* in the principal regulations to various technical publications have been updated (regulation 3(12)).

2.3.3 Appeal against Refusal to Relax Regulations made under Article 5

2.3.3.1 **Article 6** sets out how the Department should deal with an application to dispense with or relax any requirement of the regulations made under Article 5(1). It also allows for the matter to be heard by the Planning Appeals Commission (PAC).

2.4 Part III of the Order

2.4.1 Adoption of Private Streets as Public Roads

2.4.1.1 **Article 7** - Adoption of Streets Determined under Article 3(1)

a) *Under Article 7*, to be eligible for adoption, the street (or part street) must be built up on half its frontage and must be joined to a public road or to a street, which is likely to become a public road within a reasonable time or if an Article 11 notice had been issued requiring the making up of the street or if the street was provided under an Article 32 Agreement, the foregoing restrictions would not apply.

b) *Article 7(2)* – a new paragraph (2A), was inserted by Article 4(2) of the 1992 Order, to provide that any road improvement works associated with a determination under Article 3(1) must be completed prior to the issue of a preliminary certificate of adoption under Article 7. This amendment came into operation on 17 February 1993.

c) *Article 7(1)* of the 1992 Order replaced Article 7(4) of the 1980 Order with a new paragraph (4) and (4A) to (4F). These amendments are to enable the Department, on request, not to adopt certain private streets as public roads. This amendment came into operation on 17 February 1993.

2.4.1.2 **Article 8 Adoption of Streets Provided in Accordance with an Agreement under Article 32**

a) *An Article 32 Agreement* will also have been the subject of a determination under Article 3(1) and falls within the criteria for adoption set out in Article 7(1)(c). Where an Article 32 Agreement has been entered into, Article 32(1)(b) provides for the issue of a certificate by the Department when the works have been completed in accordance with the agreement and the terms and conditions of the agreement have been complied with, then subject to Article 7(1) and 8(2), the street shall be adopted.

b) *Article 4(3)* of the 1992 Order amended Article 8 and inserted a new paragraph (2) to ensure that any requirement in relation to the improvement of a public road must be complied with in advance of adoption of the associated private streets. This amendment came into operation on 17 February 1993.

2.4.2 Adoption of Streets to which Articles 7 and 8 do not apply

2.4.2.1 Existing Street (not sub-standard)

a) *Article 9* deals with the adoption of a street which was not provided following the exercise of street planning functions (Article 3(1)) or in accordance with an agreement under Article 32. The requirements to be satisfied are:-

- (i) the Department is of the opinion that the street should become a public road and a majority of the owners or occupiers of the land in or adjoining the street consent thereto in writing; or
- (ii) a majority of such owners or occupiers request in writing that the street should become a public road and the Department is of the opinion that the request be granted; and (in either case);
- (iii) the Department is satisfied that the street is in all respects fit and proper to become a public road.

b) *The expression “fit and proper to become a public road”* is intended to ensure that only the street which is brought up to a satisfactory standard in the constructional sense shall be regarded as fit for adoption and that in addition such a street must fulfil a traffic function or use for the public generally to justify the propriety of its maintenance from public funds.

2.4.2.2 Sub-standard Street

a) *Article 9(3)* also enables the Department, in exceptional circumstances of such a kind as it may determine, to declare to be a public road, a street which does not meet requirement (iii) above. Such a street must however meet requirement (i) or (ii) as the case may be.

b) *An existing street may be serving a very useful public purpose but may ideally need extensive works to achieve up-to-date layout*, etc, but it might be inequitable to expect the adjoining owners to bear the costs in the exceptional circumstances.

c) *If application is made to the Department to declare a street to be a public road*, then Article 9(4) requires that the Department give reasons if it is of the opinion that a street should not be adopted.

d) *Article 9(5)* provides for a hearing of the applicant by a person appointed by the PAC if the Department sees fit or if the applicant so requests within 28 days of receiving the notification required by Article 9(4). The Department must consider any recommendations made by the person appointed but the final decision rests with the Department (Article 9(7)).

e) *Article 9*, was amended by Article 7(3) of the 1992 Order, to ensure that it applies to those streets, where the Department has granted the request, in an application under Article 7(4A), to allow a street to remain private. This amendment came into operation on 17 February 1993.

Although it is not a statutory requirement, if the Department proposes to differ from the PAC on a matter of primary fact relating to an appeal under Articles 6, 7 and 9, the parties to the inquiry should be notified of the Department's intentions to afford them an opportunity to make representations to it and the Department should consider any such representations received.

2.4.3 Vesting and Control of Drains

2.4.3.1 **Article 10** provides that any part of a street drain (whether or not it forms part of the street) which drains the street only (i.e. is not a sewer), shall be vested in and be under the control of the Department from the date of adoption of the street. If the drain also takes surface water or foul water from premises adjoining the street it is technically a sewer and the provisions of the Water and Sewerage Services (Northern Ireland) Order 1973 (as amended), would apply under which the Department also has responsibility for the provision and maintenance of sewers for draining domestic sewage and surface water. The Article does not apply to streets adopted before the passing of the Private Streets Act on 13 October 1964.

2.4.3.2 **A new paragraph (10A) was added by Article 3(2) of the 1992 Order to ensure that street lighting equipment provided by developers became vested in and under the control of the Department, following adoption of the street.** This amendment came into operation on 1 May 2001.

2.5 Part IV of the Order

2.5.1 Notice Requiring Streetworks in Private Streets

2.5.1.1 **Article 11** empowers the Department to issue a Notice requiring works to be done to bring the road up to adoption standard. The Article applies to both existing and new streets.

2.5.1.2 **A notice under Article 11** is used where the Department wishes to secure the making up of a street determined under Article 3(1).

2.5.1.3 **Action to initiate the making up of an existing street** would normally be undertaken at the request of frontagers. It is advisable to consult all those affected, to give them estimates of their share of the expenses and to secure their agreement to the proposed works and eventual adoption of the street.

2.5.1.4 **Article 11(2)** states that street works may be required in respect of part of a street only. This may be a complete cross-section, a longitudinal strip (e.g., a footway along one side only) or any other part. Where this is done, the requirement shall be made only of each “responsible person” in the length of that part of the street. The frontagers on both sides of that part of the street can be charged, unless before 13 October 1964, the frontagers on one side only, have paid for street works (executed under any statutory provision in relation to private streets) to part of the street which extended the length of the street and the Department requires street works to be executed under Article 11(1) (Article 11(3)).

2.5.1.5 **Article 11(4)** gives power to include in the streetworks required by the notice, works considered necessary to bring the street into conformity with other streets, as regards sewerage, drainage, level or other matters.

2.5.1.6 **Article 11(6)** enables a notice served to be withdrawn or the substitution by a further notice of other requirements for those contained in a previous notice.

2.5.1.7 **It is important that the notice should clearly detail the nature, extent and location of the works to be executed within a specified time being not less than 28 days.**

2.5.1.8 **A revised notice** may be issued if necessary.

2.5.1.9 **Amendments to paragraphs (1) and (4) were made by Article 3(3) of the 1992 Order** to ensure that street lighting equipment could be included in an Article 11 notice.

2.5.2 **Appeal against Notice under Article 11**

2.5.2.1 **A person served with a notice under Article 11 may appeal** under Article 12 on the grounds that:

- (a) *he* is not the responsible person;
- (b) *the street* is not a private street.

2.5.3 **Power of Department to Execute Streetworks**

2.5.3.1 **If the requirements of a notice under Article 11 are not complied with in the time specified**, Article 13 empowers the Department to execute the works and recover the costs including administrative expenses. These expenses were limited to 5% until the ceiling was removed by Article 8 of the 1992 Order. This amendment came into operation on 17 February 1993. When a street has been completed by the Department, it must be declared a public road from the date of completion.

2.5.4 Apportionment of Expenses against Responsible Persons

2.5.4.1 **Article 14** deals with the apportionment of street works expenses against each responsible person according to the frontage for which he is responsible e.g., in the circumstances where an existing street is being made up, the basis of apportionment is length of frontage.

2.5.4.2 **Where the amount of expenses so apportioned would be disproportionate to the benefit derived** and the street works do not fall within paragraph 3(b), a reduction may be made but the amount of such reduction must be borne by the Department.

2.5.4.3 **Paragraphs (4) and (5)** enable the whole or part of a reduction allowed under paragraph (3) to be recovered if at any time access should be opened to the street so as to increase the benefit derived from the streetworks, provided that at the time the reduction is made a notice is served on the responsible person indicating the circumstances in which such recovery may be made.

2.5.4.4 **It can sometimes happen that if an existing street is made up, premises may benefit which have access to that street** but which do not have a direct frontage to the street. The powers in paragraphs (6) and (7) enable the Department to charge an apportionment in respect of such premises.

2.5.5 Recovery of Street Works Expenses by the Department

2.5.5.1 **Article 15** sets out the procedure for recovery by the Department of street works expenses in the event of default by the responsible person. Where a sum has been paid or secured under Article 24(1), Article 15 can be used only to recover any liability of that person exceeding that sum (see Article 29(1)).

2.5.5.2 **A demand issued under the Article** must inform the person to whom it is addressed of his right of appeal under Article 16.

2.5.5.3 **The sum specified in a demand is recoverable as a civil debt** either summarily or in any court of competent jurisdiction. The time within which proceedings may be taken (6 years for a court of summary jurisdiction) is reckonable from the date of service of the demand or if there has been an appeal, from the date on which the appeal was determined or abandoned.

2.5.5.4 **Interest is payable under Articles 15(4) and (5)** from the date which is one month after the date of service of the demand.

2.5.5.5 Under Article 15(10) any expenses recoverable under the Article become a charge on the estate of the responsible person and those deriving title from him and is enforceable as if it were a valid mortgage in favour of the Department, but under Article 15(12) such a charge is not enforceable against a frontager unless he is also the responsible person. In other words, where prior provision has been made under Part V of the Order, the frontagers cannot be charged with the cost of streetworks in the event of default by the responsible person.

2.5.5.6 Article 15(6) and (7) deals with the position of agents and trustees.

2.5.6 Appeals Regarding Street Works Expenses

2.5.6.1 A person served with a demand under Article 15 may appeal under Article 16 on the grounds that:

- (a) *he is not the responsible person* or, as the case may be, the person liable under the provisions of the Order;
- (b) *the street* is not a private street;
- (c) *the works carried out* are insufficient or unreasonable;
- (d) *the expenses* are excessive;
- (e) *the amount charged should be reduced* under Article 14(3) on the ground that it is disproportionate to the benefit derived from the execution of the street works;
- (f) *the expenses of the street works have not been apportioned* in accordance with the provisions of the Order.

2.5.6.2 It should be noted that no question may be raised by any person which might have been raised by that person on an appeal under any other provision of the Order.

2.5.7 Liability where Transferor is responsible for Street Works Expenses

2.5.7.1 Article 17 gives power to recover street works expenses, under Article 15, from the transferor where the premises have been transferred to the responsible person on terms where the transferor remained liable for such expenses. The ultimate responsibility, however, in such a case still lies with the responsible person as defined in the Order. This Article would not only apply where prior provision for the street works expenses had been made under Part V of the Order.

2.5.7.2 Article 18 gives additional powers to recover street works expenses if a court of summary jurisdiction is satisfied that the property has been transferred for the purpose of evading payment of those expenses.

2.5.8 **Streetworks Executed in the Course of Other Works**

2.5.8.1 **The effect of Article 19** is that the Department can carry out improvements to a street (which requires works other than street works to make it conform to the requirements for it to be declared a public road under Article 9) at the same time as it carries out street works and where the requirements of Article 19(1)(a) and (b) are fulfilled then liability for the expense of the street works included in those works shall remain. This is the case even if an Article 11 Notice could have been but has not been served. As the street must first be adopted under Article 9 of the Order, it is necessary to have the agreement of a majority of frontagers to the proposals.

2.5.8.2 **The class of street which could qualify for both making up and improvement** under this Article would be the old established sub-standard street which it may be in the public interest to bring into the public road system. The Department would first adopt the street under Article 9(3) and then proceed as soon as possible to have the complete works carried out. It would be a waste of resources as well as a considerable upset to frontagers if the street works had first to be carried out before the street could be adopted as a public road and then that operation had to be followed by the more disturbing widening and improvement works.

2.5.9 **Payment of Expenses by Instalments**

2.5.9.1 **Article 20** enables the Department to enter into an agreement with the responsible person for payment of street works expenses by instalments. Such an arrangement would not of course be made in respect of a sum paid or secured under Article 24.

2.5.9.2 **The rate of interest applicable** is the rate as determined by the Department of Finance on the date on which the demand for the expenses is served and will remain unchanged during the period agreed for repayment.

2.5.10 **Duty of Department to Exercise its Powers**

2.5.10.1 **Article 21(1)** states that where a building to which Article 24(1) applies has a frontage on to a private street, the Department must exercise its powers under Articles 11 and 13 if all street works required for the issue of a certificate under Article 7(2) have not been carried out to the Department's satisfaction within one year from the date of first occupation of the building or such longer period the Department thinks is reasonable.

2.5.10.2 **Paragraph (2)** states that the Department must also exercise powers under Articles 11 and 13 where the requirements of paragraphs 2(a), (b) and (c) are met.

2.5.10.3 **Article 21(3)** makes clear that this Article does not apply to a street in respect of which a formal agreement has been entered into under Article 32, as such an agreement made between the Department and the person responsible for the street works includes enforceable provisions in relation to the period within which a street should be completed.

2.5.11 Urgent Repairs

2.5.11.1 **Article 22** enables the Department to carry out, at 48 hours minimum notice, urgent repairs in a private street to prevent or remove danger to persons or vehicles in the street. The type of repairs envisaged is something more than normal maintenance, e.g. where collapse or undermining of the street has occurred or is threatened. The Article can be used even where the making-up of the street has been secured under Article 24. The carrying out of urgent repairs does not mean that the street is adopted. Any expenses incurred by the Department are recoverable.

2.5.12 Contribution of Expenses

2.5.12.1 **Article 23** enables the Department to contribute to the cost of street works, provided:-

- (a) the street is designed for use by vehicular traffic; and
- (b) the street is not intended only to provide access to the rear of premises.

2.5.12.2 **This Article might be used, for example, where a street has to be provided to a higher than normal standard because it has to serve a wider area than the immediate development proposed by the developer.** Approval of HQ to a contribution under this Article should be obtained. Any such contribution would reduce proportionately, or discharge, the liability of all the responsible persons.

2.6 Part V of the Order

2.6.1 Prior Provision for Street Works Expenses

2.6.1.1 **Article 24(1)** states that a person proposing to erect a building which, under building regulations, requires the deposit of plans with the district council (or for which plans were prior to 1973 required to be deposited with a sanitary authority) and the building has a frontage on to a private street shall not commence building work until the Department has served a notice under Article 25(2) specifying the sum which is to be paid or secured and a person with an estate in the land on which the building is to be erected has either paid that sum or secured its payment to the satisfaction of the Department and has entered into an agreement under seal undertaking liability for such further sum, if any, as may be recoverable in respect of the cost of the street works.

2.6.1.2 **Article 24(2)** states that where the Department issues a notice under Article 8(e), (f), (g) or (h) exempting a building from the requirements of paragraph (1) building work shall not commence until a person with an estate in the land on which the building is to be erected has either paid that sum or secured its payment to the satisfaction of the Department and has entered into an agreement under seal undertaking liability for the street works indicated in the agreement.

2.6.1.3 **Article 24(3)** makes it an offence to carry out work in contravention of Articles 24(1) and (2) (subject to paragraphs (4) to (7)).

2.6.1.4 **The streets in respect of which prior provision for street works expenses must be made** are the streets as determined under Article 3(1). Article 24(8) sets out exceptions or exemptions to the requirements set out in Article 24(1).

2.6.2 **Automatic Exceptions:**

Prior provision is not required where:-

- (a) the building is to be situated within the curtilage of; and is to be appurtenant to, an existing building;
- (b) the building is to be erected in accordance with planning permission on land belonging to a public body;
- (c) *a sum, security or undertaking* has previously been given under Article 24(1) or (2);
- (d) *an Article 32 Agreement has been completed* in respect of street works for the whole street or part of the street comprising the frontage of the building.

2.6.3 **Power to grant Exemptions:**

The Department has discretion to grant exemption, by notice, from the requirements of Article (24)(1) where it is satisfied that:-

- (a) the street is not and is not likely within a reasonable time to be substantially built-up;
- (b) *more than ¾ of total frontage will consist of industrial premises* and its powers under the Order are not likely to be exercised or are not likely to be exercised within a reasonable time;
- (c) the street is not and is not likely, within a reasonable time, to be joined to a public road;
- (d) the street was, on 13 October 1964, substantially built-up.

2.6.3.1 **If there is a likelihood of a street becoming fully built-up** then Article 3(1) should be applied from the early stages to secure a satisfactory layout.

2.6.3.2 **Paragraphs (9) to (14)** deal with late exemptions, substitution of security and changes in responsible persons.

2.6.4 **Determination of Amount to be paid or secured under Article 24(1)**

2.6.4.1 **Article 25(1)** requires a district council to notify the Department when plans for a proposed building to which Article 24(1) applies have been deposited in accordance with building regulations. Where the Department has been so notified and planning permission has been granted then the Department is required to serve a notice specifying the sum to be paid or secured under Article 24(1). Normally the amount is the estimated cost of the construction of the streets (including sewers and drainage) as determined under Article 3(1) but may also include the estimated costs of making a satisfactory connection to a public road.

2.6.4.2 **It is not possible to include an element in respect of inflation in the estimated costs** but a revised notice may be issued under Article 25(3) if works for the erection of the building have not been commenced within one year of the service of a notice under Article 25(2).

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

2.6.4.4 **Paragraph (5)** allows a smaller sum to be specified under paragraph (4) where it would be inequitable to specify the full amount permitted. This enables the costs of development of a public road to be apportioned to other development in the area.

2.6.4.5 **Paragraph (6)** enables the Department, by further notice, to substitute a smaller sum or intimate that no sum falls to be paid or secured, if it considers that the sum specified in the original notice exceeds the sum which would be recoverable for completion of the street works.

2.6.4.6 **Paragraph (7)** indicates that paragraph (6) does not apply where the case is one in which the Department has power to make a refund or release under Article 28.

2.6.4.7 **Paragraph (8)** – where a substitute notice has been served under paragraph (6), the Department shall deal with the excess, or as the case may be, the whole sum in accordance with Article 30.

2.6.4.8 **Paragraph (9)** – The Department shall, in any notice served under this Article, inform the person to whom it is addressed, of the right of appeal under Article 26.

2.6.5 **Appeal Against Notice served under Article 25**

2.6.5.1 **Article 26** provides for an appeal against a notice served under Article 25 on grounds:-

- (a) that the street is not a private street;
- (b) that the building is exempt or that an exemption should be granted;
- (c) that a smaller sum should be specified.

2.6.6 **Position where Plans not Proceeded with**

2.6.6.1 **Article 27** deals with the position where the deposit of plans under the Building Regulations (Northern Ireland) Order 1972 is declared to be of no effect or where the person who deposited the plans gives notice that it is not intended to proceed with the building then the Article 25 notice shall have no effect unless street works have already commenced.

2.6.6.2 **Article 27(3)** enables a notice under Article 25(2) to be served on a person who later gives notice that he intends to proceed with the building in accordance with the plans as originally deposited.

2.6.7 **Work done otherwise than at the Expense of the Department**

2.6.7.1 **Article 28** enables refunds in the sum paid or secured to be made as work is carried out to the satisfaction of the Department.

2.6.7.2 **Sufficient security** must always be retained to cover the estimated cost of work still to be carried out and at least 10% must be retained until the issue of the final certificate and adoption of the street.

2.6.8 **Sums Paid or Secured to be in discharge of Further Liability for Street Works**

2.6.8.1 **Article 29(1)** gives the Department power to recover any excess of costs of works carried out by it over and above the security given under Article 24(1).

2.6.8.2 **Article 29(2)** states that any security remaining when the street has been declared a public road, (or there is no liability, as the street works were not carried out) shall be dealt with in accordance with Article 30.

2.6.9 Refunds of Sums Paid or Secured under Article 24(1)

2.6.9.1 **Article 30** sets out the formal procedure for dealing with refunds of sums paid or secured under Article 24(1).

2.6.9.2 **Apart from cash deposits, security** is by way of a guarantee by a Bank or Insurance Company and reductions or cancellations can be effected by letter to the responsible person, the bondsman and by notice to the Statutory Charges Register.

2.6.10 Interest on Sums Paid under Article 24(1)

2.6.10.1 **Article 31** provides for payment of interest on sums paid to the Department under Article 24(1), but does not apply to agreements under Article 32. However, advice from Departmental Solicitor's Office is that interest should be paid in relation to sums under Article 32.

2.6.10.2 **The interest has to be calculated for each financial year** at the rate prevailing at the commencement of that financial year. The rates of interest are determined by the Department of Finance and Personnel.

2.6.11 Agreement for Carrying out Street Works in Private Streets

2.6.11.1 **An agreement under Article 32** for the carrying out of street works in a private street acts as an exemption from the requirements of Article 24(1) – see Article 24(8)(d).

2.7 Part VI of the Order

2.7.1 Registration in Statutory Charges Register

2.7.1.1 **Article 34** details matters that must be registered in the Statutory Charges Register.

- (a) notices served under Article 11;
- (b) notices served under Article 14(5);
- (c) demands served under Article 15(1);
- (d) charges created under Article 15(10);
- (e) undertakings given under Article 24(1) or (2);
- (f) agreements entered into under Article 32.

It is important that registration should be carried out as soon as possible in order to establish priority over any later charges.

2.7.1.2 **Two new paragraphs were added by Article 9 of the 1992 Order to enable the Department to obtain advance payment from developers of any registration expenses before they enter into an undertaking under Article 24(1) or (2) or an Article 32 Agreement and recover expenses in connection with the registration of statutory charges relating to notices served under Article 11 and Article 14(5), demands served under Article 15(1) and charges created under Article 15(10).**

2.7.2 **Power to Enter Premises**

2.7.2.1 **Article 35** gives an authorised officer of the Department power to enter, examine and lay open premises to carry out the functions under the Order for any of the purposes listed e.g. surveying, making plans. Normally consent to enter would be sought but the powers under this Article can be invoked as long as the requirements of paragraphs (1), (2) and (3) are complied with.

2.7.2.2 **If any damage is caused in course of such works, inspection or entry, compensation may be payable.**

2.7.2.3 **Paragraph (7)** gives power to require by notice in writing information on ownership of premises adjoining a private street.

2.7.3 **Meaning of “Responsible Person”**

2.7.3.1 **Article 36** defines the expression “responsible person”.

2.7.4 **Notices and Appeals**

2.7.4.1 **Article 37** gives power to prescribe forms of notices, etc, by regulations. No regulations have been made under this Article.

2.7.4.2 **The Article also contains provisions regarding appeals to a court of summary jurisdiction under Articles 7(6); 12; 16(1) and 26.**

2.7.5 **Effect of the Order**

2.7.5.1 **Nothing contained in any local or private Act shall operate to exempt any person from the performance of any duty or obligation imposed by any of the provisions of the Order or from any liability arising out of a contravention of a provision of the Order.**

2.7.6 **Repeal and Saving**

2.7.6.1 **Article 39** repeals the Private Streets Act (Northern Ireland) 1964 but undertakings, agreements, etc, made under that Act continue to have effect and are enforceable under the 1980 Order.

2.7.6.2 **Article 39(2)** in effect incorporates the provisions of section 10(6) of the Private Streets Act and empowers the Department to modify section 10 proposals in the light of changed circumstances, e.g., redevelopment, opposition of responsible persons.

3 Equality Impact Assessment (EQIA)

3.1 Equality Impact Assessment Section 75 of the Northern Ireland Act 1998

3.1.1 This RSPPG has undergone EQIA screening and it was considered that it did not have significant implications for equality of opportunity, thereby making it unnecessary to carry out a full Equality Impact Assessment.

3.1.2 A copy of the completed 'Equality Screening Analysis Form' has been signed off and forwarded to the DRD Equality Unit via the Communication Unit.

4 References

4.1 General References

4.1.1 None.

4.2 Endnote References

4.2.1 None

5 Control Sheet - Roads Service Policy & Procedure Guide:

Title: RSPPG_S009 The Private Streets (Northern Ireland) Order 1980 [1980 No. 1086 (N.I. 12)] as amended by The Private Streets (Amendment) (Northern Ireland) Order 1992 [1992 No. 3203 (N.I. 19)]

5.1 Document History

| Version | Date | Author | Authorised by Document Control Panel Members Name : Signature |
|---------|-----------|------------|------------------------------------------------------------------|
| 1 | 18-Apr-00 | R Newell | R Wilson |
| 2 | 06-Aug-09 | J A Dutton | Roy Sherman |
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5.2 Overall Reasons for this Version

| Version | Reasons |
|---------|---------------------------------------------------------------------------|
| 1 | First Issue of RSPPG |
| 2 | More detailed interpretation of the legislation governing private streets |
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5.3 Revision Details

| Version | Amendments |
|---------|---------------------------------------------------------------------------|
| 2 | Setting out in greater detail the interpretation of the Order as amended. |
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