

Roads Service Policy & Procedure Guide : RSPPG_S030

Title: Direction Orders and Designation Orders

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Classification

Procedure Category : Statutory
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Notes

This document is a direct replacement for Section 1004 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: 23 August 2006

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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 1004 of the Roads Service Roads Manual.

1.2 Definitions

- 1.2.1 “DRM” – Divisional Roads Manager
- 1.2.2 “DSO” – Departmental Solicitor’s Office
- 1.2.3 “Roads Order” – Roads (Northern Ireland) Order 1993

1.3 Background

1.3.1 This section is a guide to the statutory provisions that relate to trunk and special road proposals, their scope and purpose. The Roads Order prescribes the limits within which the Department must work. Except where specifically stated the limits and requirements are precise and must be strictly observed. It is important that the Department acts lawfully, follows precedent and otherwise applies the legal and administrative procedures properly.

1.3.2 A road may only be constructed as a:-

- a) trunk road by virtue of Article 14 of the Order of 1993; and
- b) special road (which includes a motorway) by virtue of Article 15.

It is these two Articles, together with the provisions as to the abandonment and stopping-up of roads in Article 68, read with Schedule 8 to the Roads Order, that set out the requirements and procedure for the publication of proposals in draft, for an objection period and for the eventual making of a Direction or Designation Order.

1.3.3 Schedule 8 to the Roads Order, by virtue of Article 133(1), applies the statutory procedures for the making of certain orders under the Order. This Schedule, as it applies to Article 14(1) (Trunk Roads); Article 15(1) (Special Roads) and Article 68(1) (Abandonment and Stopping-Up of Roads) is reproduced in Appendix 1.

1.4 Equality

1.4.1 The Equality Obligations of the Northern Ireland Act 1998 can be viewed at: [Equality Obligations](#).

1.4.2 By virtue of section 75 and Schedule 9 to the Northern Ireland Act 1998, Roads Service, in carrying out its functions, has a statutory obligation to have due regard to the need to promote equality of opportunity over a range of categories, and to have regard to the need to promote good relations in respect of the section 75 categories.

1.4.3 The new obligations came into force on 1 January 2000 and superseded the former PAFT guidelines which had been in force since 1993.

1.4.4 Divisions should carefully consider whether a proposed order or scheme has any implications for the statutory obligations on equality of opportunity and promoting good relations. To assist it in this process, the Division must complete an Equality Impact Assessment (EQIA) screening exercise using the screening analysis form at: [Equality of Opportunity Screening Analysis Form](#).

1.4.5 If the proposal is “screened out”, the Division should forward a copy of the Screening Analysis Form with its submission to RSHQ.

1.4.6 If the proposal is not “screened out”, the Division must carry out a full Equality Impact Assessment. This should be included with its submission to RSHQ.

1.5 European Convention on Human Rights

1.5.1 The Human Rights Act 1998 requires that all legislation, decision making and administrative processes, so far as is practicable, be read and given effect in a way that is compatible with the European Convention on Human Rights. Where the compatibility of subordinate legislation with Convention rights is challenged, a court may quash **or** disapply the legislation or a provision of the legislation **or** give a declaration of compatibility.

1.5.2 The Division must assess whether its proposals comply with the Convention rights and include this as part of its submission to RSHQ.

1.5.3 In considering the compatibility of a proposal it is important to remember that the Convention is to be given a broad and generous interpretation rather than a strict legal interpretation. Where there are 2 possible interpretations of a provision – one that is compatible with the Convention rights and one that is not – the one that is compatible is the interpretation to be adopted.

1.5.4 Further guidance on Human Rights is available on Roadsnet under [Equity Agenda](#)

1.6 **Implementation**

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

1.7 **Costs and Benefits**

1.7.1 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 RELEVANT STATUTORY PROVISIONS

2.1.1 The relevant statutory authority governing the construction and improvement of:-

- a) trunk roads; and
- b) special roads;

is contained in Articles 14(1) and 15(1) of the Roads Order which provide that:

“Trunk roads

14(1) Where the Department considers it expedient for the purpose of extending, improving or reorganising the trunk system that any road should be designated as a trunk road, the Department may by order direct that –

- a) any existing road;
- b) any road in the course of construction; or
- c) any road proposed to be constructed;

shall become a trunk road; and the trunk system shall be modified accordingly.”.

“Designation of special roads

15(1) Where the Department considers it expedient that –

- a) any existing road;
- b) any road in the course of construction; or
- c) any road proposed to be constructed;

should be designated as a special road, the Department may make an order (a “designation order”) designating that road or proposed road as a special road.”.

2.2 DIRECTION AND DESIGNATION ORDERS

2.2.1 The statutory procedures with regard to:-

- a) a Direction Order in the case of trunk road; or
- b) a Designation Order in the case of a special road

are designed to safeguard the rights of individuals affected by proposals for new trunk or special roads.

2.2.2 The main differences between a Direction Order and a Designation Order are to be found in the following provisions of Part III of the Roads Order:-

- a) Article 15(2) - “The Department shall not make a designation order in respect of an existing road unless it is satisfied that adequate alternative facilities for traffic, other than traffic authorised to use the road on its being opened for use as a special road, are available or will be made available before the date on which the road is opened for use as a special road”;
- b) Article 17- Restriction on laying of mains, etc, in special roads;
- c) Article 20- Restriction on use of special roads to class or classes of traffic listed in Schedule 1 to the Order of 1993; and
- d) Article 21- Prohibition and control of advertising etc on or near special roads.

2.2.3 A Direction/Designation Order may make consequential provision in appropriate circumstances for the abandonment and stopping-up of roads and junctions affected by a proposal for a new trunk or special road.

The relevant authority is contained in Article 68(1) and (2) of the Roads Order which provide that:

“Abandonment and stopping-up roads

2.2.3.1 The Department may be order provide for –

- a) the abandonment of any road; or
- b) the stopping-up of any road

2.2.3.2 On the coming into operation of an order for the abandonment of a road –

- a) the road shall cease to be maintainable by the Department; and
- b) any public right of way over the road shall be extinguished.

2.2.3.3 An order for the stopping-up of a road shall authorise the Department to carry out such works as it considers necessary to prevent or restrict to such extent as the Department thinks fit, access to the road by road traffic.

2.2.3.4 No order shall be made under paragraph (1) in relation to a road unless –

- a) the Department is of the opinion that the road is not necessary for road traffic, or that another road is available which provides, or is capable, if improved, of providing alternative facilities for road traffic; or
- b) the order provides for the carrying out by the Department or any other person of such works as the Department considers necessary for the provision of alternative facilities for road traffic before the road is stopped-up or abandoned.

2.2.3.5 An order made under paragraph (1) may –

- a) provide for the retention or removal of any cables, wires, mains, pipes or other apparatus placed along, across, over or under the stopped-up or abandoned road; and
- b) provide for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus;

and may contain such consequential, incidental and supplementary provisions as appear to the Department to be necessary or expedient for the purposes of the order.”.

2.2.4 A Designation or Direction Order may also, in certain circumstances by virtue of Articles 18 and 69 respectively of the Roads Order, make consequential provision for the stopping up of private access to a special or trunk road.

2.3 SUBMISSION TO MAKE A DRAFT ORDER

2.3.1 In cases where a Direction/Designation Order is required for a scheme the DRM will make an application to Lands and Legislation Branch recommending the preparation of a draft order and the publication of the proposal. A draft form of submission is set out in Appendix 2.

2.3.2 A submission should not be made to Lands and Legislation Branch until the proposal has been approved by the Roads Service Board and has a place in the 5 year rolling Major Works Programme or the Preparation Pool.

2.4 PUBLIC CONSULTATION

2.4.1 Planning approval for a trunk or special road is not required as each scheme is subject to public consultation in the Direction/Designation Order procedure and the proposed line of the scheme normally will have been approved in an Area Plan which is also subject to public consultation.

2.4.2 The practical effect of the statutory procedures is that the preferred line for the new road is published together with an illustrative map in a draft Order. Advertisements are put in the Belfast Gazette and the local Press and notice is served on the District Council and sent to other Government Departments and public utility undertakings with an interest.

2.4.3 A period of not less than 30 days from the date of the last publication of the notice is allowed for objections to be made by individuals or public bodies.

2.5 OBJECTIONS

2.5.1 Except where the sheer weight of objections makes it impossible, every attempt should be made by Divisions to resolve objections by discussion and/or correspondence with the objectors but, nonetheless, a public inquiry may be necessary.

2.5.2 An inquiry must in all cases be held if there is an objection from a District Council which has not been withdrawn.

2.5.3 If there are objections from other persons affected which have not been withdrawn, an inquiry will have to be held unless the Department is satisfied that in the circumstances of the case the holding of an inquiry is unnecessary.

2.6 INQUIRY

2.6.1 The decision to hold an inquiry is taken at Roads Service Headquarters usually as a result of a submission by the DRM relating to the objection(s) to the proposal in question, recommending either that the objection(s) be set aside or that an inquiry be held. The submission could, of course, recommend that because of the weight of the objection(s) the proposal be abandoned or revised.

2.6.2 In some instances it may be necessary to hold inquiries into the Environmental Impact Assessment (EIA), the Direction or Designation Order (DO) and the Vesting Order (VO). Article 133A of the Roads Order allows for all or any of the proceedings connected with a proposed road scheme (i.e., the EIA, DO and VO procedures) to be taken concurrently (as far as is practicable).

2.6.3 The statutory requirements and procedures for the holding of an inquiry are set out in RSPPG_S027.

2.7 DEPARTMENT'S DECISION

2.7.1 After any objections to a draft Order which are not withdrawn have been considered (and if a local inquiry has been held, also the Inspector's Report) the Department, through Roads Service HQ, may make the Order with or without modification or decide not to proceed with it, as it thinks fit. Public notice of making is given and the decision is notified to all objectors and other interested parties.

2.8 WITHDRAWAL OF DRAFT ORDER

2.8.1 The occasion might arise where a draft Order is published and then the relevant road proposal for some reason (e.g. altered circumstances) is abandoned. There are no statutory procedures for the withdrawal of a draft Order but it is important that action should be taken to inform the public appropriately in any case that arises. In the case where a draft Order has been published but no inquiry held the District Council would be informed and individual notifications should be sent to objectors. If a draft Order is withdrawn following a public inquiry, the matter of the withdrawal, blight, etc should be covered in the decision letter.

2.9 LAND ACQUISITION

2.9.1 The statutory requirements and procedures for land acquisition are quite separate and are described in RSPPG-S031. In certain circumstances, by virtue of Article 133(2) of the Roads Order, subject to Roads Service HQ approval, the compulsory acquisition by vesting of the land needed to carry out the proposed works may be published concurrently with a Direction Order. In the case of a Designation Order for a special road or proposed special road an order vesting the land in the Department shall not be made until the road has been designated as a special road.

3 Appendices

3.1 Appendix 1

PROCEDURE FOR MAKING ORDERS UNDER ARTICLES 14(1), 15(1) & 68(1)

1. Before making an order the Department shall publish in the Belfast Gazette and once at least in each of two successive weeks in one or more newspapers circulating in the area in which the road to which the order relates is, or is to be, situated, a notice –
 - (a) stating the general effect of the proposed order;
 - (b) specifying a place in that area where a copy of a draft of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of not less than thirty days from the date of the last publication of the notice; and
 - (c) stating that, within that period, any person may, by notice to the Department, inform it of the grounds upon which he objects to the making of the order.
2. (1) The Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, serve a copy thereof, together with a copy of a draft of the order and of any relevant map or plan, on –
 - (a) a relevant body in whose area any road, bridge, tunnel, foreshore, land or navigable watercourse to which the order relates is, or is to be, situated;
 - (b) in relation to an order under Article 6 or any order affecting the foreshore, the Crown Estate Commissioners;
 - (c) in relation to an order under Article 4(1), 5(1) or 6, the Secretary of State concerned with navigation;
 - (d) in relation to an order under Article 68(1), the owner of any cables, wires, mains, pipes or other apparatus placed along, across, over or under any road to which the order applies.
- (2) Where the Department proposes to modify the terms of the draft of the order, the Department shall give and publish, in such manner as appears it to be appropriate, such additional notices as the Department considers appropriate for informing all persons likely to be adversely affected by the modification.

- (3) In this paragraph “relevant body” means –
- (a) in the case of an order under Article 4(1), 5(1) or 6 –
 - (i) the Commissioners of Irish Lights,
 - (ii) a district council,
 - (iii) a harbour authority as defined in the Harbours Act (Northern Ireland) 1970
 - (iv) the Fisheries Conservancy Board,
 - (v) the Foyle Fisheries Commission,
 - (b) in any other case, a district council.
3. Where the proposed order provides for the abandonment or stopping-up of any road, the Department shall, not later than the date on which the notice referred to in paragraph 1 is last published, cause a copy of that notice to be displayed in a prominent position on that part of the road which is proposed to be abandoned or stopped-up.
4. (1) If, before the expiration of the period referred to in paragraph 1(b), the Department receives an objection from any person on whom a copy of the notice is required to be served under paragraph 2(1) or from any other person appearing to it to be affected, it shall, subject to sub-paragraph (2) cause a local inquiry to be held unless the objection is withdrawn.
- (2) Unless the objection is made by a person on whom a notice was served under paragraph 2(1), the Department may dispense with an inquiry if it is satisfied that it is unnecessary to hold one.
5. After considering –
- (a) any objections to the proposed order which are not withdrawn; and
 - (b) where a local inquiry is held, the report of the person who held it,
- the Department may make the order either without modification or subject to such modifications as it thinks fit.

6. If it appears to the Department that in any order to which this Appendix applies the description of any road is in any respect incorrect or insufficiently clear, the Department may by order make such modifications in the provisions of the first-mentioned order as may be necessary for correcting or clarifying such description and the provisions of this Annex shall not apply to such an order, but the Department shall publish notice of the making of the order in one or more than one newspaper circulating in the area to which the order relates.

3.2 Appendix 2

Mr
Lands and Legislation Branch
Roads Service Headquarters

SUBMISSION FOR [DIRECTION/DESIGNATION] ORDER ARTICLES 14, 15 AND 68 OF THE ROADS (NORTHERN IRELAND) ORDER 1993

1. DESCRIPTION

- | | |
|---|--|
| (a) Name of Scheme | |
| (b) Title of Order | Trunk Road T[] (insert route) Order (Northern Ireland) 20.. |
| (c) The New Route | State approx length (in metres) together with location (e.g. in the townland(s) of [] in the County of [] from a point on the present trunk road in the townland of [] and extending in a [] direction to another point (state location) |
| (d) Road which will cease to be trunk | State approx length (in metres) of road to be de-trunked |
| (e) Junction(s) to be stopped up | State junction(s) giving precise details of location |
| (f) Road(s) to be stopped up to vehicular traffic only | State road(s) to be stopped up to vehicular traffic only giving precise details of location |
| (g) Road(s) to be abandoned | State approx length(s) (in metres) together with location as in (c) above |
| (h) New connecting road(s) while not the subject of the Order are referred to in the Explanatory Note and notice of Publication | State location(s) as in (c) above |
| (i) New Bridge(s) if any as (h) above | To carry the new road over the river [name]. |

2. STATUTORY EQUALITY OBLIGATION (see OFM/DFM Circular 1/00)

**Delete as appropriate*

- (a) Has the proposal any implications for the statutory obligations on equality of opportunity and promoting good relations?

*YES/NO

- (b) If "YES", please give further details and, if there are negative implications, explain why the Direction/Designation Order should be made.

- (c) Was an Equality Impact Assessment undertaken?

*YES/NO

If "YES" please include a copy of the assessment with your submission.

3. EUROPEAN CONVENTION ON HUMAN RIGHTS

**Delete as appropriate*

Based on the information available, have you any reason to believe that the proposal is incompatible with the European Convention on Human Rights? *YES/NO

If "Yes", please give further details:

4. PUBLICATION

- (a) State address of nearest offices for inspection of proposals by the public (e.g. Divisional HQ, Section Office or District Council Office, etc)
- (b) Name and address of at least two newspapers circulating in the area of the proposed scheme.

5. MAP

Enclosed is a map No [] to scale (preferably 1:2500 Ordnance Survey marked Crown Copyright Reserved) and showing the following with a legend, map reference number and title of the Order (see 1(b) above):

- | | |
|---|--|
| (a) the new length of trunk/
special road | Delineated and coloured red. |
| (b) The length of road which
will cease to be a trunk road | Delineated and <u>edged</u> coloured brown |
| (c) junction(s) to be stopped up | Delineated, coloured green and marked J
[No] |
| (d) road(s) to be stopped up to
vehicular traffic only | Delineated, coloured purple and marked S
[No] |
| (e) road(s) to be abandoned | Delineated, coloured yellow and marked A
[No] |
| (f) new connecting road(s) | Delineated and coloured blue |
| (g) New bridge(s) (if any) | Delineated and coloured orange |

6. RECOMMENDATION

I recommend the preparation of a draft order and the publication of the proposal which has been approved by the Roads Service Board on [insert date] and is included in the current 5 year Major Works Programme/Preparation Pool with an estimated start date of [insert date].

SIGNED

Divisional Roads Manager
Roads Service Division

DATE:

Version: 2

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Title: Direction Orders and Designation Orders

Document History

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1	11/08/00	R Newell	R Wilson
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Overall Reasons For This Version

Version	Reasons
1	First issue of RSPPG
2	To take account of the Statutory Equality Obligation and the European Convention on Human Rights and the provisions of The Roads (Amendment) (Northern Ireland) Order 2004

Revision Details

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2	2.6.2 amended to take account of the provisions of The Roads (Amendment) (Northern Ireland) Order 2004