



Roads (Miscellaneous Provisions) Bill

This paper provides an analysis of the Roads (Miscellaneous Provisions) Bill which aims to introduce measures to update and amend roads related legislation here in Northern Ireland. The new legislation will introduce provisions which give The Department for regional Development the powers to manage Events on Roads, and issue Permit Schemes for work on roads which would allow for better management of possible disruptions as well as offering the potential to generate income. This paper addresses the new provisions and provides analysis of the implications of these. The provisions for both managing Events on Roads and Permit Schemes for works on roads are based on similar legislation in England, Wales and the Republic of Ireland and therefore these are also considered.

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SUMMARY OF KEY POINTS

The roads (miscellaneous provisions) Bill introduces a number of new measures to update and amend roads related legislation here in Northern Ireland.

The expected outcomes of these amendments will be to enable the Department for Regional Development to improve "...the quality and cost-effectiveness of the public services it provides and improve the utility of existing transport infrastructure".

This will be achieved through two new provisions; The first will give Local Councils the powers to manage events on roads, such as closure for the purposes of filming, the second will give the Department the power to issue Permit Schemes for work on roads which would allow for better management of possible disruptions as well as offering the potential to generate income.

The Bill consists of 10 clauses:

- clauses 1-5 deal with the Permit Scheme;
- 6 and 7 deals with the miscellaneous provisions
 These address the powers to close roads for special events including filming as well as the power to hold inquiries in connection with both new powers i.e. power to issue permits and power to close roads;
- Clauses 8-10 are the supplementary provisions.
- There are three schedules;
 Schedule one includes Interpretation, procedures for making orders, how to recover costs, guidance and offences related to orders. Schedule 2 deals with amendments and schedule 3 deals with repeals.

In terms of other legislatures Provision is made for Permit Schemes on Public Roads in section 3 of The Traffic Management Act 2004¹. It is very similar in composition to this Bill.

There is no indication that there are any council's in England charging for permits although it has been announced that a permit scheme will come into effect on London's busiest roads from January 11th 2010.

Stakeholders believe that fees should only be associated to any costs which the department may incur in issuing a permit, and not as a means of profiteering.

In terms of closing roads, this is the result of lobbying by the PSNI and some local council's who wanted statutory powers to clarify and better regulate the closure of roads for events.

In London legislation exists which allows traffic authorities to close roads or highways specifically for the purposes of filming.

¹ OPSI: Traffic Management Act 2004 [online] Available from:
http://www.opsi.gov.uk/acts/acts2004/ukpga_20040018_en_1

This legislation was most welcome and very necessary in order that London could be viewed as world class location in which to film.

This is important as it is widely accepted that filming on location provides that location with many economic benefits both directly through job creation and the use of local services but also indirectly, not least through its propensity to promote tourism to film locations.

Clause 6 of this Bill amends the Road Traffic Regulation (Northern Ireland) Order 1997 enabling local councils to prohibit or restrict the use of roads for the purpose of holding special events which can be:

- a. any sporting event, social event or entertainment which is held on a public road; or
- b. the making of a film on a public road

In terms of recovering costs the bill states that the local council can retrieve all costs associated with either making the bill such as those involved in the consultation process detailed above or those which are as a consequence of issuing the order such as cleaning up and repairing any damage.

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INTRODUCTION

The roads (miscellaneous provisions) Bill introduces a number of new measures to update and amend roads related legislation here in Northern Ireland. The expected outcomes of these amendments will be to enable the Department for Regional Development (the Department) to improve "...the quality and cost-effectiveness of the public services it provides and improve the utility of existing transport infrastructure".

This will be achieved through two new provisions; The first will give Local Councils the powers to manage events on roads, such as closure for the purposes of filming, the second will give the Department the power to issue Permit Schemes for work on roads which would allow for better management of possible disruptions as well as offering the potential to generate income.

This paper will discuss these new provisions and provide analysis of the implications of these. The provisions for both managing Events on Roads and Permit Schemes for works on roads are based on similar legislation in England, Wales and the Republic of Ireland and therefore these will also be considered.

In addition, the Roads (Miscellaneous Provisions) Bill gives councils the power to hold a public enquiry to ensure anybody affected by the provisions introduced by the new Bill will have the opportunity to present their case and the Bill also amends "the Traffic Management (Northern Ireland) Order 2005 to take account of changes that have taken place in the functions of both the Lord Chancellor's Office and that of the Lord Chief Justice.

PERMIT SCHEMES FOR WORK ON ROADS

BACKGROUND

Road works cause much disruption to the roads network in Northern Ireland leading to congestion and delays. Current transport statistics suggest that the level of road use is still rising annually; with cars, vans and minibuses accounting for 83 per cent of journeys to work in 2008² and therefore the strain on the road network along with the need for investment will only increase in the future.

In addition to the necessary works carried out by the department to maintain the road network the utility companies contribute significantly to the disruption caused through their road openings which total in excess of 35,000 per annum³. The National Joint Utilities Group (NJUG) highlighted the important work of utilities in their response to the public consultation on the Bill, stating that:

"It is essential that utilities are able to conduct their necessary works to ensure supply of essential utilities such as water, gas, electricity and telecommunications services. To this end, our members undertake street works for four reasons – safety, security of supply, to connect or upgrade customers' supplies, or to divert apparatus to facilitate major transport or urban regeneration projects."⁴

² Roads (Miscellaneous Provisions) Bill – Explanatory and Financial Memorandum

³ Ibid

⁴ (NJUG) National Joint Utilities Group – Response to Consultation. 26th February 2009

The permit scheme is designed to allow for better management of road works which would minimise disruption to the road network. This would be achieved through better control of start and finish dates as specified by the permit as well as allowing for forward planning on the part of local authorities for things like traffic diversions.

EXISTING LEGISLATION

The Street Works (Amendment) (Northern Ireland) Order 2007 introduced permit requirements, largely in respect of street works carried out by utilities, however, the consultation stage of this Bill identified the need for this type of scheme to apply to all types of work on roads therefore **including private contractors as well as utilities.**

THE BILL

Part 1 of the Bill consists of five clauses which deal with the Permit Scheme. Clause 1 defines what a permit scheme is, which is a scheme designed to control the carrying out of work on roads and states that a permit must be obtained prior to the commencement of work. This clause also makes provision for circumstances where a permit will not be required to carry out work.

Clause 2 is concerned with the making, variation and revocation of schemes. It states that the Department may prepare a permit scheme according to the specified regulations listed in clause 3 (below) and gives details of what must be included in the order such as, where copies can be obtained, the date of the scheme and any other provision which it includes.

Clause 3 provides regulations regarding the content of schemes and the procedures to be followed in making and operation of the schemes. The regulations make provision for:

- The criteria for issuing, reviewing or cancelling schemes;
- The facilitation of disputes;
- The appeals process;
- Actions to be taken when work is carried out without a permit;
- The penalty associated with carrying out un-consented work; and
- Deciding who is liable for carrying out un-consented work.

FINANCIAL IMPLICATIONS OF PERMIT SCHEME

Clause 3(4) makes provision for the Department to have the power to issue fixed penalty notices where work is carried out without a permit, meaning that the person who is liable has the opportunity to stave off conviction by paying a fine. Provision is also made (3(5)) for the introduction of a fee for a permit application; the issuing of a permit; and an application to change a permit while subsection 6 deals with the payment of these fees.

It is suggested in the Policy Consultation paper that any charges for schemes would be in line with those introduced in England and Wales. It states that “the applicant would pay a non-returnable fee for the permit, to which the Department could attach conditions aimed at minimising disruption”⁵ and those executing the works would have to give notice of specific start and finish dates.

⁵ Road Service (2008) “Policy Proposals for a Roads (Miscellaneous Provisions) Bill”. Policy Consultation Paper. DRD: Belfast.

OTHER LEGISLATURES

Provision is made for Permit Schemes on Public Roads in section 3 of The Traffic Management Act 2004⁶. It is very similar in composition to this Bill. In terms of payment it states that a fee may be charged for an application for a permit, the issuing of the permit, any application to change the permit and the application of these changes to the permit.

While there is no indication that there are any councils in England actually charging for the permits identified above, this English regulation: *The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) 2009* apply to every publicly maintainable highway. The reason perhaps why these charges have yet to be applied is that **there are also provisions in the legislation, as there are in this Bill for circumstances when a fee is not necessary,** where it may be discounted and the timeframe and manner of payment.

The code of practice identifies types of works which are exempt from payment, these are⁷:

- works in non traffic-sensitive streets;
- works in the footway of traffic-sensitive streets, at traffic-sensitive times;
- works in traffic-sensitive streets at non traffic-sensitive times;
- replacing poles, lamps, columns or signs in the same location;
- pole testing;
- works where any small diameter holes of less than 30mm diameter are created for investigatory purposes; for example bar holes.
- works carried out by, or on behalf of, a highway authority.

Therefore, what constitutes a traffic sensitive street may be open to interpretation. Under the regulation mentioned above the highway authority has the option to levy a fee when it feels the work on the road has gone on unnecessarily long based on the original agreement it made with the undertaker the maximum fees are shown in table 1:

Table 1: Maximum fees (daily charges) for unreasonable overrun of project⁸

	Street having a road category other than 2, 3 or 4 ⁹	Street of road category 2	Street of road category 3 or 4 (TS)	Street of road category 3 or 4 (TS)
Major and Standard works	£ 2, 500	£2,000	£750	£250
Minor and Immediate works	£500	£500	£250	£100

It has been announced that a permit scheme will come into effect on London's busiest roads from January 11th 2010. The Permits scheme which will affect 18 Borough's in all will require utility companies and other companies to apply for

⁶ OPSI: Traffic Management Act 2004 [online] Available from:

http://www.opsi.gov.uk/acts/acts2004/ukpga_20040018_en_1

⁷ DfT(2009) New Roads and Street Works Act 199: Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters. Dft: London [online] Available from:

<http://www.dft.gov.uk/pgr/roads/network/local/streetworks/cop/cop3rdedition.pdf>

⁸ Ibid (page 67)

⁹ Road category is an indication of the importance of the street - 0 being the highest, 4 the lowest.

permits to dig up roads and is also **aimed at reducing disruption by putting heavy penalties on jobs that go over time** for example, they will have to pay £240 for each permit and face fines of up to £5,000 if they breach regulations¹⁰. Transport for London also believes that:

“Permitting will enable TfL to plan and coordinate the timing of roadwork’s, providing greater opportunities for multiple companies to work on the same sections of road simultaneously”¹¹.

While this will reduce the need to re-dig certain roads and will inevitably reduce disruption, further action may also be taken. In addition to the permitting scheme and with a view to putting the companies under further pressure to complete jobs on time **TfL are in talks with the Department for Transport to allow them to introduce a lane rental scheme which would require utility companies to pay a rental charge for every day that they are working on a street, rather than a one-off charge.**

In terms of the response at consultation to the introduction of charges for permits here in Northern Ireland; BT, NIE and NJUG all took the view that these **should only be associated to any costs which the department may incur** with NJUG stating that:

“Roads that do not attract congestion should not be included within a permit scheme. Charges should only relate to the additional costs incurred in operating a permit scheme and not be related to the works activity being undertaken. **There should be no profit loading which this proposal would allow.**”¹²

This suggestion from NJUG would appear to be closely aligned to what is happening in England with only the busiest roads in London now likely to charge for the permit scheme. **The possible negative implications of these types of charges becoming too widespread include the passing on of costs to consumers**¹³.

¹⁰ Williams, D. (2009) “Utility firms will need a permit to dig holes in roads”. London Evening Standard (7th December 2009) [online] Available from: <http://www.thisislondon.co.uk/standard/article-23780629-utility-firms-will-need-a-permit-to-dig-holes-in-roads.do>

¹¹ Transport for London (TfL) “First road works permit scheme in UK to start on 11 January 2010” [online] Available from: <http://www.tfl.gov.uk/corporate/media/newscentre/13757.aspx>

¹² (NJUG) National Joint Utilities Group – Response to Consultation. 26th February 2009

¹³ See: Barney, K. (2009) “Mayor’s roadwork’s charge ‘will increase energy bills’”. London Evening Standard (14th October 2009) [online] Available from: <http://www.thisislondon.co.uk/standard/article-23756244-mayors-roadworks-charge-will-increase-energy-bills.do>

ROAD CLOSURE FOR FILMING AND SPECIAL EVENTS

BACKGROUND

The PSNI and some local council's lobbied the Department to introduce statutory powers to clarify and better regulate the closure of roads for events. Currently the Department controls road closures through either the:

- Road Traffic Regulation (Northern Ireland) Order 1997; or the
- Road Races (Northern Ireland) Order 1986.

The Police Service for Northern Ireland facilitates events such as the Belfast Marathon through the temporary closing of roads under article 32 of the Road Traffic Regulation (NI) Order 1997.

OTHER LEGISLATURES

In England powers to close roads are contained in the Road Traffic Regulation Act 1984 which states that the traffic authority can prohibit or restrict traffic on a road for the purpose of:

- a. facilitating the holding of a relevant event,
- b. enabling members of the public to watch a relevant event, or
- c. reducing the disruption to traffic likely to be caused by a relevant event.¹⁴

In this "relevant event" means any sporting event, social event or entertainment which is held on a road and the order which closes the road will only last for 3 days¹⁵. This does not however pay any particular reference to closing a road for the purpose of filming which has created a level of ambiguity surrounding what is a "relevant event".

The power to close a road for filming is of particular interest to this Bill which will provide the power to enable traffic on roads to be restricted or prohibited temporarily to facilitate the making of a film, or to facilitate the holding of sporting, social or entertainment events.

LONDON

The London Local Authorities (LLA) and Transport for London (TfL) Act 2008 provides legislation which allows traffic authorities to close roads or highways in London specifically for the purposes of filming. According to Film London which acts as London's film and media agency **this legislation was most welcome and very necessary in order that London could be viewed as world class location in which to film.**¹⁶

The issue with the previously existing legislation was the level of ambiguity which existed over what was a relevant event (see above) and this was seen as a major disadvantage when compared to other cities worldwide.

It is widely accepted that filming on location provides that location with many economic benefits both directly through job creation and the use of local

¹⁴ Roads Traffic Regulation Act 1984. S. 16A(2)

¹⁵ Roads Traffic Regulation Act 1984. S. 16B

¹⁶ Film London (2008) "The London Local Authorities and Transport for London Act 2008" [online] Available from: http://www.filmlondon.org.uk/uploads/documents/doc_680.doc

services¹⁷ but also indirectly, not least through its propensity to promote tourism to film locations¹⁸.

What the old legislation did allow for was a road closure by order for up to three days and only once per year, where as this legislation allows for road closures to be longer and occur more often depending on whether they are done through Order or through Notice.

The closure of a road by Order is done through the amendment in the LLA & TfL Act 2008 to the Highways Act 1980 which (in section 12(2)) specifies that roads may be closed "...for a relevant event" and emphasises that "relevant event" includes filming. In addition to the one order which was allowed **this new legislation allows for a further six orders (7 total) per road, per calendar year, each of which can last up to seven days¹⁹ (section 13(2)).**

Notices may also be issued under this new legislation but are more short term, lasting only 24 hours. The issue of whether or not to grant a Notice to restrict or prohibit traffic on a road is at the discretion of the local authority and there are a number of London Boroughs who do not offer these. When issued, Notices can come into effect immediately and there are no limits to the number of these which can be issued to a particular road (section 13(4)).

Costs

Having an Order or Notice implemented involves a fee which is set by the various boroughs and is paid for by the applicant (see annex 1 for charges). The production companies are also responsible for the additional costs associated with necessary traffic management plans such as:

- Stewarding;
- policing and security plans;
- the provision, maintenance and removal of all advance signing;
- traffic management signs;
- cones and barriers as agreed with the Traffic Authority; as well as
- any other costs associated with issuing the Order/Notice²⁰.

Lead in Times i.e. the time between when an application must be made and when an Order/Notice is made as well as the cost of applications for both Notice's and Order's vary dramatically across all Boroughs', for example in Bromley a notice is £162 where as in Camden it costs £2000. In Bromley the lead in time is five days and Haringley it is six weeks²¹. This would suggest that both cost and lead in time are dependent on popularity indicating that Bromley is not the most sought after location for filming where as Camden and Haringley may well be. **Order's can cost anywhere from £340 – 2100 and in the majority of cases these take a *minimum* of six weeks and can take up to 24 (weeks).**

¹⁷ NI Executive (2009) "US studio to film Hollywood Blockbuster in Northern Ireland" [online] available from: <http://www.northernireland.gov.uk/news/news-ofmdfm/news-ofmdfm-090409-us-studio-to.htm>

¹⁸ Bolan, P., Crossan, C. and Connor, N. (2008) "Film and Television Induced Tourism in Ireland: A Comparative Impact Study of Ryan's Daughter and Ballykissangel". Conference Proceedings, University of Nottingham [online] Available from:

<http://lit.academia.edu/documents/0008/5817/NottinghamPaperBolanCrossanOConnor.doc>
<http://lit.academia.edu/documents/0008/5817/NottinghamPaperBolanCrossanOConnor.doc>

¹⁹ London Local Authorities and Transport for London Act 2008 [online] Available from:

http://www.opsi.gov.uk/acts/localact2008/ukla_20080003_en_3

²⁰ Ibid.

²¹ Film London (2008) "Borough Road Closures and Traffic Management" [online] Available from: http://www.filmlondon.org.uk/uploads/documents/doc_679.pdf

REPUBLIC OF IRELAND

The power to recover costs for holding events is also present in Section 75 of the Roads Act 1993 (Republic of Ireland) which enables road authorities in the Republic to close temporarily close roads by order for the purpose of facilitating a road race, the carrying out of works, or for any other purposes²². Provisions also exist for applicants to apply in advance, the requirement for time to be given to consider objections and the provision for the requirement of an indemnity²³.

THE BILL

Part 2 of the Bill provides the Miscellaneous Provisions which are concerned with “prohibition or restriction of use of public roads in connection with special events”²⁴ and includes 2 clauses (clauses 6 and 7). Clause 6 amends the Road Traffic Regulation (Northern Ireland) Order 1997 enabling local councils to prohibit or restrict the use of roads for the purpose of holding special events which can be:

- c. any sporting event, social event or entertainment which is held on a public road; or
- d. the making of a film on a public road

It excludes as special events; public processions, motor races and cycling races which all have legislation in place to enable the closing of roads for those purposes. Like the Road Traffic Regulation Act (1994) which operates in England and Wales the purpose of the Bill is to:

- a. facilitate the holding of a relevant event,
- b. enable members of the public to watch a relevant event, or
- c. reduce the disruption to traffic likely to be caused by a relevant event

Orders cannot be issued if it would prevent access to any shops or homes adjacent to the road. The order also may contain a number of provisions for the responsibilities of promoters such as the need for insurance, safety certificates (for equipment), to erect barriers, to erect signs and the provision that they must comply with any other requirement, similar to the requirements in London.

In addition to these provisions the Bill states that Orders will only be made when an application is submitted by a promoter and when the application is received a notice must be published in a local paper which identifies:

- The name of the promoter;
- The road affected;
- Details of any restrictions;
- The dates of these;
- Any alternative routes for drivers and pedestrians;
- The address where the public may view the application; and
- The way in which objections can be submitted

As well as public consultation the Bill specifies that all the relevant emergency services be consulted.

²² Road Service (2008) “Policy Proposals for a Roads (Miscellaneous Provisions) Bill”. Policy Consultation Paper. DRD: Belfast.

²³ Section 75 (4) Roads Act 1993 [online] Available from: <http://www.irishstatutebook.ie/1993/en/act/pub/0014/sec0075.html>

²⁴ Roads (Miscellaneous Provisions) Bill, Part 2.

In terms of recovering costs the bill states that **the local council can retrieve all costs associated with either making the bill such as those involved in the consultation process detailed above or those which are as a consequence of issuing the order such as cleaning up and repairing any damage.**

ANNEX 1**COSTS FOR ROAD CLOSURE BY NOTICE AND ORDER ACROSS THE LONDON BOROUGHES**

Borough	Road Closure BY Notice (£)	Road Closure By Order (£)
Brent	625	1820 +VAT
Bromley	162	1500
Camden	2000	1600
City of London	NA	1000 – 2100
Croydon	NA	700
Ealing	528 + Standard Filming Charges	528 + 309 For Advertising + Standard Filming Charges
Greenwich	414 + Associated Costs	414 + Associated Costs
Hackney	600	600
Hammersmith & Fulham	340 + Traffic Management Costs	340 + Traffic Management Costs
Haringey	1500	1500
Harrow	700	1500
Havering	1035	1035 +Additional Costs
Hillingdon	200	1000
Hounslow	200	850 Chiswick 650 Rest of Borough
Islington	2000	2000
Royal Borough of Kensington and Chelsea	NA	1025