

DP
608

Version: 4

ROADS Service

Roads Service Policy & Procedure Guide : RSPPG_S019

**Title: ABANDONMENT/STOPPING-UP ORDERS
ARTICLE 68 OF THE ROADS (NI) ORDER 1993**

**Title: ABANDONMENT/STOPPING-UP ORDERS
ARTICLE 68 OF THE ROADS (NI) ORDER 1993**

Author :	N Lamont
Owner :	Director of Corporate Services
Version :	5
Date Issued :	21 April 2008

Classification

Procedure Category :	Statutory
Business Category :	Legislation
Business Function :	Orders
Business Activity :	Abandonment / Stopping-Up

Notes

Section 2.2 of this document has been amended due to an EQIA assessment being carried out in early 2008.

Certification

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

(Signed) R Cairns

Director of Engineering

Certification Date: 17 April 2008

CONTENTS

I	INTRODUCTION	3
1.1	Purpose	3
1.2	Definitions	3
1.3	Background	3
1.4	Implementation	4
1.5	Costs and Benefits	4
2	ROADS SERVICE POLICY & PROCEDURES	5
2.1	Procedures for Abandonments/Stopping-Ups	5
2.2	Equality	6
2.3	European Convention on Human Rights	7
2.4	Submission to LLB	7
2.5	Article 68(7) of the 1993 Order - Charging	9
3	EQUALITY IMPACT ASSESSMENT (EQIA)	11
3.1	Equality Impact Assessment Section 75 of the Northern Ireland Act 1998	11
4	APPENDICES	12
4.1	Appendix I	12
4.2	Appendix IIA	13
4.3	Appendix IIB	14
4.4	Appendix III	15

1 Introduction

1.1 Purpose

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

- a) is aimed at all Roads Service Staff involved in Abandonment and Stopping-Up proposals.
- b) replaces section 212 of the Roads Service Roads Manual.

1.2 Definitions

1.2.1 "LLB" - Lands and Legislation Branch

1.2.2 "DSO" – Departmental Solicitors Office

1.2.3 "1993 Order" – The Roads (Northern Ireland) Order 1993

1.2.4 "OFMDFM" – Office of the first and Deputy First Minister

1.3 Background

1.3.1 The effect of an abandonment order is that the road ceases to be maintainable by the Department and any public right of way over it is extinguished.

1.3.2 Unless there is positive evidence that the bed and soil of the road being abandoned is owned by the Department, or by any other person, there is a rebuttable presumption that the owner of a property fronting the public road will own the bed and soil of that part of the road in front of their property up to the middle line of the road.

1.3.2.1 The presumption is however rebuttable. Evidence as to the rebuttability of the presumption is most commonly found in the frontager's own title.

1.3.2.2 The Department should be careful that if it advises any frontager of the concept of rebuttable presumption that it also advises them to have their title inspected in case the title rebuts the presumption. The Department should not offer advice concerning whether rebuttable presumption applies in a particular case and the frontager should be advised to contact a solicitor as the Department does not handle disputes to title.

1.3.3 The effect of a stopping-up order is to prevent access by vehicular traffic or both vehicular and pedestrian traffic at a specified line across the road. The Department remains responsible for maintenance of the road.

1.3.4 Except as provided in paragraph 1.3.5, for all statutory rules there is a requirement (at an early stage) to seek the Minister's approval to proceed with the making of the rule and to obtain the views of the Assembly Departmental committee. This means that we do not normally advertise the proposed statutory rule until we have received the Committee's comments, as their views may influence the content of the rule. As Committee's views are not sought until the Minister's approval has been sought, the timescale from drafting the submission to the Minister to obtaining the Committee's views can take up to 7 weeks alone.

1.3.5 The requirements outlined in paragraph 1.3.4 do not apply when the NI Assembly is suspended.

1.4 Implementation

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

1.5 Costs and Benefits

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

2 Roads Service Policy & Procedures

2.1 Procedures for Abandonments/Stopping-Ups

2.1.1 Applications for abandonment / stopping –up

2.1.1.1 Applications for an abandonment / stopping –up order may be received either from Roads Service, other public authorities or a member of the public.

2.1.1.2 Where an application is received from a member of the public the Division should consider whether Article 68(7) of the 1993 Order applies. Article 68(7) provides that where an order is made at the request of all the owners and occupiers of land adjoining the road they are required to meet certain costs (see paragraph 2.4 below).

2.1.1.3 Article 68(4) requires that no abandonment or stopping up order can be made unless it meets one of the conditions therein. The Division must indicate in their submission to LLB (Appendix III: Section 5 refers) which condition is satisfied and under which the Order is to be drafted.

2.1.2 Consultation

2.1.2.1 Before proceeding with a submission to LLB it is necessary for Divisions to consult with all landowners and frontagers (or their representatives) affected by the proposal. These may be identified through Land Registry and/or site visits. In carrying out this consultation it is important that individuals have access to at least a basic level of information and documentation about the proposals to ensure the opportunity to make representations is an effective one.

2.1.2.2 Article 68(5) states that an abandonment/stopping-up order may 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 for the extinction, modification or preservation of any rights as to the use or maintenance of such cables, wires, mains, pipes or apparatus. Statutory undertakers must be consulted by Divisions to determine whether they have plant or equipment in the area and whether this is to be retained or relocated.

2.1.2.3 The relevant district council and PSNI shall be notified of the Department's intentions at the earliest opportunity. If the district council objects and its objections cannot be overcome and the Division still wishes to proceed, the matter shall be dealt with by public inquiry as in paragraph 2.3.8. (Public Inquiry).

2.1.2.4 Other relevant bodies who must be consulted if they are likely to be affected by an abandonment / stopping-up are identified in Article 2(3) of Schedule 8 to the 1993 Order. In the event that any of these bodies object and its objections cannot be overcome and the Division still wishes to proceed, the matter shall be dealt with by public inquiry as in paragraph 2.3.8. (Public Inquiry).

2.1.2.5 Every effort should be made to notify people most likely to be affected by the proposed abandonment or stopping-up, e.g. -

- Where it is proposed that a footpath remote from the carriageway is to be abandoned or stopped up metal plate signs should be erected. It is noted that in some instances, such as when the footpath to be abandoned has already been incorporated into the curtilage of the adjoining landowner's site or where the footpath is to be realigned directly adjacent to the existing footpath, it may not be practicable to follow these guidelines. Divisions should ensure all reasonable means are taken to notify those affected.

2.1.3 Next steps

2.1.3.1 Submissions from Divisions to LLB recommending the preparation and publication of an order under Article 68 should be on the form set out in Appendix III and signed by a Principal or PPTO.

2.1.3.2 Before proceeding with a submission to LLB careful consideration should be given to any equality or human rights issues.

2.2 Equality

2.2.1 Divisions are to continue to consider whether a proposed order or scheme has any implications for Roads Service's statutory obligations on equality of opportunity and promoting good relations. The Department's policy/procedure in relation to Abandonment and Stopping-Up proposals has undergone EQIA screening and it was considered that it did not have any significant implications for equality of opportunity. Divisions are no longer required to carry out a formal EQIA screening analysis exercise for individual proposals. The overarching policy/procedure has been **screened-out**.

2.2.2 However, if any equality issues are raised as a result of the statutory procedures (for individual proposals), these should be addressed before the making of an Order is finalised.

2.2.3 Guidance on equality issues can be found on-line at The Equality Commission website. The commission has published a Guide to the Statutory Duties - a guide to the implementation of statutory duties on public authorities arising from Section 75 of the Northern Ireland Act 1998. The relevant link is: <http://www.equalityni.org/publications/downloadlist.cfm?id=5>

2.3 European Convention on Human Rights

2.3.1 The Human Rights Act 1998 requires that all legislation and administrative processes, so far as possible, are 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.

2.3.2 As part of its submission to LLB the Division **must** assess whether its proposals comply with the Convention rights.

2.3.3 In considering whether a proposal is compatible 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.

2.3.4 Guidance on human rights issues can be accessed on-line at: <http://www.ofmdfmi.gov.uk/index/equality/human-rights.htm>

2.3.5 Further guidance on human-rights is available on the following link: <http://www.nihrc.org>.

2.4 Submission to LLB

2.4.1 LLB Procedures

2.4.1.1 LLB should ensure that the submission form set out at Appendix III has been fully completed and all necessary documentation has been included. This includes the correspondence with the PSNI, council, statutory undertakers, landowners and frontagers confirming that they have no objection.

2.4.1.2 Maps accompanying the submission form should show clearly the area of road to be abandoned/stopped-up. An A4 map scale either 1/1250 or 1/2500 is preferable. It should show hatched or cross-hatched the road to be abandoned or in the case of a proposed stopping-up well defined lines marked A-B, C-D etc showing the line(s) of stopping-up. It should include a north point, affected road names and where appropriate an alternative route.

2.4.1.3 The order and Notice of Intention will be drafted by LLB and vetted by DSO. Confirmation should be sought from the Division that the description is accurate and that the draft order meets their requirements.

2.4.2 Notice of Intention

Version: 4

2.4.2.1 Schedule 8 to the 1993 Order sets out the statutory requirements relating to the publication, display and service of notice specifying the period in which objections or other representations may be made. All objections or other representations must be in writing and must specify the grounds on which they are made. LLB will be responsible for the preparation and publication of the notice in the local press in two successive weeks and in the Belfast Gazette for one week.

2.4.2.2 LLB will be responsible for the service of the notice, copy draft order and map upon the relevant district council and for notifying OFMDFM.

2.4.2.3 The Division must ensure the notice is displayed in a prominent position on that part of the road that is to be abandoned/stopped-up not later than the last date on which the notice is to be published.

2.4.2.4 The Division must confirm in writing the date of display to LLB.

2.4.2.5 The Division must ensure that the notice, draft Order and map are served on statutory undertakers, landowners, frontagers and those most likely to be affected not later than the last date on which the notice is to be published.

2.4.2.6 The Division should confirm in writing the date of service to LLB.

2.4.2.7 The Division should make available at a preferred local location, during the stated period to receive objections a copy of the notice, the draft order and map.

2.4.3 Consideration of Objections

2.4.3.1 When individuals object to a proposal within the specified period Division should give full consideration to the objections and attempt to resolve them as quickly as possible. It may be appropriate for the Divisions to meet with individual objectors on site explaining the Departments actions clarifying any misunderstandings and to allay any fears which may have arisen.

2.4.3.2 A withdrawal of an objection must be confirmed in writing by the objector.

2.4.3.3 If a statutory undertaker has objected and indicated that an easement is required, this is to be treated as an objection and must be withdrawn by the objector in writing.

2.4.3.4 If the objections cannot be resolved and the Division wishes to proceed with the abandonment /stopping-up proposal the objections (and all related correspondence) should be referred through the Divisional Roads Manager to the Director of Corporate Services, RSHQ with a reasoned recommendation as to why the proposal should proceed without recourse to a public Inquiry or why a Public Inquiry should be held.

2.4.3.5 RSHQ will consider the matter in full and may decide:

- To proceed without recourse to a public inquiry;

Version: 4

- To hold a public inquiry; or
- Not to proceed with the proposal.

2.4.3.6 LLB will advise the objectors of the Department's intentions setting out clearly the grounds on which the decision has been reached.

2.4.4 Public Inquiry

2.4.4.1 The procedure for Inquiries to Abandonment / Stopping- Up proposals is governed by Article 130 of the Roads Order 1993 and Schedule 1A of the Interpretation Act (NI) Order 1954 (as amended by the Inquiries Act 2005).

2.4.4.2 Guidance on the conduct of public inquiries and the procedures involved can be found in RSPPG-SO27.

2.4.5 After an Order has been made

2.4.5.1 Where a Statutory Rule has been made LLB should distribute copies as per current Distribution List provided by OFMDFM.

2.4.5.2 Where RSHQ made a decision to proceed without recourse to public inquiry or where a Statutory Rule has been made following a public inquiry LLB will issue notification to any person who made objections or other representation.

2.4.5.3 A Notice of Making will be drafted and published in the Belfast Gazette and this will be arranged by LLB.

2.4.5.4 The Division is required to notify any person consulted and any person who made objection or other representations which have been resolved by the Division.

2.4.5.5 Where a Statutory Rule has been made records relating to it should be maintained for as long as the Statutory Rule is effective.

2.5 Article 68(7) of the 1993 Order - Charging

2.5.1 Article 68(7) provides that where an order is made at the request of all the owners and occupiers of land adjoining the road they are required to meet the costs of:-

- a) any works required by the order;
- b) the expenses of the Department in making the order; and
- c) compensation in respect of the extinction or modification by the order of any right of any person.

2.5.1.2 The policy is that the Department should not make an order under Article 68(7) where:-

- a) the order should have been initiated by the Department in the first instance, e.g., the abandonment of superseded roads; or
- b) the benefit accruing to the Department, e.g., reduced maintenance and public liability and/or operational advantages, exceeds the cost of making the order.

2.5.1.3 In such cases the Department should make the order in the normal way under Article 68(1).

2.5.1.4 The Department will seek recovery of the relevant costs only in cases where the order is made specifically to accommodate the frontagers without any net benefit to the Department or the general public. Each case will be treated on its own merits but, as an illustration, the application of Article 68(7) would be appropriate where a frontager requests the abandonment of a footpath so that it could be incorporated into his garden and agrees to provide an alternative realigned footpath.

2.5.1.5 Where Article 68(7) is applied, expenses incurred in making the order will be recovered by means of a standard/average charge (to reflect staff time plus overheads) of £660 per order plus actual advertising costs. Where applicable, actual costs incurred on the following items will also have to be recovered:-

- a) 2.4.1.1 (a) and (c); and
- b) any public inquiry; and

2.5.1.6 The frontagers should be advised, at the outset, that they will be responsible for payment, not only of the standard charge plus advertising costs, but for any of the additional costs referred to at 2.4.1.5 (a) and (b) which may apply.

2.5.1.7 A form of undertaking designed to bind the applicants to the payment of the costs is set out in Appendix I. No action should be commenced in connection with a proposed order under Article 68(7) until the undertaking has been signed by the applicants. A separate undertaking should be signed by each applicant where more than one is involved.

2.5.1.8 After the order has been made LLB will advise the relevant Division of the advertising costs and any other additional expenses incurred. A demand for payment relating to the total cost should then issue from the Division to the applicants (see Appendix IIA and IIB for format)

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 any 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 Communications Unit.

4 Appendices

4.1 Appendix I

AGREEMENT

ABANDONMENT/STOPPING UP-ORDER – ARTICLE 68(7) ROADS

(names and address – block capitals)

the owner/occupier (delete as appropriate) of land adjoining (specify road – “the Road”)

pursuant to Article 68(7) of the Roads (Northern Ireland) Order 1993,
request the Department for Regional Development (“the Department”) to make an Order
under Article 68(1) for the abandonment/stopping-up of the road (“the Order”).

In consideration of the Department making the Order:-

1. I undertake to:-
 - a) meet the costs of any works the Department or any other person is required to carry out by provision of the Order;
 - b) meet the expenses of the Department in making the Order; and
 - c) pay compensation in respect of the extinction or modification by the Order of any right of any person.
2. I acknowledge that the above-noted costs and expenses shall be determined by the Department, which decision shall be final and that the costs and expenses may be apportioned between the applicants in such manner as the Department thinks fit.

Signed: _____

Date: _____

Version: 4

4.2 Appendix IIA

Your ref:
Our ref:
Date:

Dear

(ABANDONMENT/STOPPING-UP) ORDER (NORTHERN IRELAND) 200

In accordance with the terms of the undertaking which you signed on _____
I enclose for your attention an account in respect of the costs properly incurred by
the Department in connection with the making of the above-mentioned Order.

* • These costs have been apportioned against each applicant and the amount due by you is
£ _____.

An early settlement would be appreciated.

Lands Officer

* This paragraph is included only if more than one applicant is involved.

4.3 Appendix IIB

SCHEDULE OF COSTS

_____ ABANDONMENT/STOPPING-UP ORDER – ASSOCIATED EXPENSES

	COLUMN 1 £	COLUMN 2 £
Standard Charge for Abandonment/ Stopping-Up Order		660.00
Advertising Costs:- Notice of Proposed Abandonment/Stopping up Names of Papers: { - { - { -	- - -	
Total to Column 2		-
Notice of making Abandonment/Stopping-up Order Belfast Gazette		-
Any Other Costs applicable e.g.:- Public inquiry Works required by the Order Compensation in respect of the extinction or modification by the Order of any right of any person		
NET TOTAL		-
VAT		-
GROSS TOTAL		-

4.4 Appendix III



Divisional Ref:

Lands & Legislation Branch
Room 201
Roads Service Headquarters

**SUBMISSION FOR ABANDONMENT/STOPPING-UP* UNDER
ARTICLE 68 OF THE ROADS (NI) ORDER 1993 (* DELETE AS
APPROPRIATE)**

1. DESCRIPTION

(a) Name of road (including Route No. where applicable):

(b) Name of town:

(c) Name of townland/s:

(d) County:

(e) Council area:

(f) Proposal requested by:

(g) Proposal requested to facilitate:

COMPLETE RELEVANT SECTION

2. REQUEST FOR STOPPING UP

(a) Stopping-Up is applicable to: * TICK APPROPRIATE BOX

i. *All traffic (including pedestrians and cyclists)..... ☐

Version: 4

ii. *Vehicular Traffic (including animal drawn vehicles).....☐

iii. *Motor vehicles only.....☐

(b) Road will be stopped-up by means of : – (e.g. bollards)

(c) Description including all measurements and exact location

3. REQUEST FOR ABANDONMENT

(a) Description including all measurements and exact location

(b) The owner/s of the bed and soil of the length/area to be abandoned is –

(c) What will happen to land following abandonment?

COMPLETE SECTIONS 4 TO 12

4. SERVICES

Are there any services located in the area to be stopped-up/ abandoned?.....YES ☐ NO ☐

(If the answer to the above is yes, please tick the appropriate box below)

i. Retained.....☐

ii. Removed and/or Relocated.....☐

5. REASON FOR STOPPING-UP/ABANDONMENT (TICK ONE ONLY)

I certify that:-

(a) The road is no longer necessary☐

(b) The road is no longer necessary and another road is available which provides alternative facilities.....☐

(c) The road is no longer necessary and will be stopped-up / abandoned on completion of works☐

6. TRAFFIC CONSIDERATIONS

Alternative route is/will be adopted YES ☐ NO ☐

Name of the alternate route:

Nature of works to be completed:

Name and registered address of third party providing alternative facilities:

7. CONSULTATION

(a) I confirm that Roads Service has consulted the following agencies bodies:

- i. PSNI.....*YES. ☐
- ii. Local Council*YES. ☐
- iii. Fire Brigade.....*YES. ☐
- iv. Statutory undertakers.....*YES. ☐
(Water, Gas, Electricity and Telephone).
- v. Crown Estate Commissioners*YES. ☐ NO ☐
(on any Order affecting the foreshore)

and they have:

*(i) have no objection.....☐; OR

*(ii) (no.) objections have been received from the following:

(Attach copy of objection letter(s) and response issued to objector(s))

(b) I confirm that the frontagers/adjacent landowners, and any other persons likely to be affected by the proposed Order have been consulted by Roads Service. YES. ☐ NO ☐

and they have:

*(i) have no objection.....☐; OR

*(ii) (no.) objections have been received from the following:

(Attach copy of objection letter(s) and response issued to objector(s))

(c) In case of footpaths, remote from carriageways *where applicable*:

Metal plate signs were erected on and remained in place until 200

8. CHARGING

I confirm that charging is appropriate YES ☐ NO ☐

If Yes:

I confirm that the applicant/s has signed an undertaking to reimburse the Department and to pay any compensation due as a result of the making of the Order.....YES ☐ NO ☐

9. ENCLOSED IS A BLACK AND WHITE MAP SHOWING THE FOLLOWING –

TICK AS APPROPRIATE

(a) Line of stopping-up marked A-B, ☐

(b) The road to be abandoned hatched..... ☐

(c) A north point..... ☐

(d) Alternative route, if any..... ☐

(e) Name of townland/s (rural areas only) ☐

(f) Route No. (if applicable)..... ☐

(g) Road name/s... ☐

(h) Any other works related to the stopping-up/abandonment.(eg turning head) . ☐

(i) Ordnance Survey Scale.....1:2500 ☐ or 1:1250 ... ☐

Additional map showing the stopping-up/abandonment only ☐

Land ownership map (RURAL AREAS ONLY), ☐

10. STATUTORY EQUALITY OBLIGATION *

(a). An EQIA screening exercise has been carried out using the screening analysis form at: Equality of Opportunity Screening Analysis Form YES ☐ NO ☐

(b). Has the proposal any implications for the statutory obligations on equality of opportunity and promoting good relations?.....YES ☐ NO ☐

(c). If "YES" please give further details and if there are negative implications explain why, the legislation should be made.

(d). Was an equality impact assessment undertaken?.....YES ☐ NO ☐

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

* See RSPPG S019 - Section 2.2 Re: guidance on Equality issues

11. EUROPEAN CONVENTION ON HUMAN RIGHTS *

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:

* See RSPPG S019 - Section 2.3 Re: guidance on Human issues

12. PUBLICATION

(a) Address of Section Office for inspection of the proposed Order by the Public.

(b) Names of two/three newspapers for publication of Nol:

Version: 4

13. RECOMMENDATION

I confirm that all the required consultation has been completed and I recommend the preparation of a draft Order and the publication of this proposal.

Signed:
Roads Service

DRM or PPTO
Division

Dated:

Roads Service Policy & Procedure Guide : RSPPG S019**Title: ABANDONMENT/STOPPING-UP ORDERS - ARTICLE 68 OF THE ROADS (NI) ORDER 1993****Document History**

Version	Date	Author	Authorised by Document Control Panel Members Name : Signature
1	31/05/2000	R Newell	R Wilson
2	06/09/2001	J A Dutton	R Sherman
3	30/07/2003	M McCauley	R Sherman
4	26/10/2006	A Milligan / N Lamont	R Sherman R Sherman
5	14/4/2008	N Lamont	R Sherman R Sherman

Overall Reasons For This Version

Version	Reasons
1	First issue of RSPPG
2	Revision to Appendix III - Submission Form for Abandonment/Stopping-Up
3	Revision to 2.1.1.4; 2.1.2; 3.3 Appendix IIB; 3.4 Appendix III (3) and Appendix III (4)
4	Revision to Appendix III - Submission Form for Abandonment/Stopping-Up. Update of Equality and Human Rights issues and rev Abandonment/Stopping-Up procedures – whole document
5	Full EQIA completed for abandonment/stopping-up policy in early 2008

Revision Details

Version	Amendments
1	First issue of RSPPG
2	Revision to Appendix III - Submission Form for Abandonment/Stopping-Up
3	Revision to 2.1.1.4; 2.1.2; 3.3 Appendix IIB; 3.4 Appendix III (3) and Appendix III (4)
4	Revision of Appendix III - Submission Form for Abandonment/Stopping-Up. Update of Equality and Human Rights issues and Abandonment/Stopping-Up procedures – whole document.
5	Revision to Section 2.2 – EQIA assessment carried out.