

**DFI ROADS GUIDELINES FOR THE ACQUISITION OF LAND/PROPERTY FOR
MAJOR ROAD DEVELOPMENT IN NORTHERN IRELAND**

February 2018

CONTENTS

Paragraph		Page No.
	Foreword	4
	Introduction	5
1.0	Public Consultation	7
2.0	Land Liaison Officer	7
3.0	Stages in Scheme Development	9
3.1	Stage I – Preliminary Options	9
3.2	Stage II – Preferred Route	11
3.3	Stage III – Statutory Procedures	11
3.3.1	The Vesting Order Procedure	13
3.3.1.1	<i>Publication of the Notice of Intention to Make a Vesting Order</i>	13
3.3.1.2	<i>Consideration of Objections</i>	13
3.3.1.3	<i>Publication of Notice of Making of Vesting Order</i>	14
3.3.1.4	<i>The Operative Date of Vesting Order</i>	14
3.3.2	Public Inquiries	15
3.3.2.1	<i>Appointment of Inspector(s)</i>	15
3.3.2.2	<i>Notice of Inquiry</i>	16
3.3.2.3	<i>Programme Officer</i>	16
3.3.2.4	<i>Pre-Inquiry Meeting</i>	17
3.3.2.5	<i>Exchange of Evidence</i>	17
3.3.2.6	<i>Site Visits</i>	17
3.3.2.7	<i>Inspector's Report</i>	18
3.3.2.8	<i>Challenge to a Vesting Order</i>	18
3.3.2.9	<i>Departmental Statement</i>	19
3.3.2.10	<i>Department's Decision</i>	19
3.3.2.11	<i>Costs</i>	19
4.0	Access to Land for Investigative Work	20
4.1	Adverse Weather Conditions	21
5.0	Compensation Issues	21
5.1	Process for Settlement of Compensation Claims	23
6.0	Legal Conveyance of Land	24
7.0	Procuring a Contractor	24

7.1	Form of Contract	24
8.0	Commencement of Work	25
8.1	Pre-Construction Stage	25
8.2	Construction Stage	26
8.3	Post-Construction Stage	26
8.4	Supervision of Work	27
9.0	Accommodation Works	27
9.1	Access	29
9.2	Under/Over Passes	30
9.3	Cattle Handling Facilities	30
9.4	Fencing	30
9.5	Hedges	31
9.6	Gates	32
9.7	Timber	32
9.8	Water Services, Sewers/Septic Tanks	32
9.9	Structures	34
9.10	Land Drains	34
9.11	Reinstatement of Land and Completion of Works	35
9.12	Prevention of the Spread of Animal or Plant Diseases	35
10.0	Indemnification	35
11.0	Private Arrangements between the Contractor and Land and Property Owners	36

Appendix 1 Typical Programme Flow Chart

Appendix 2 Seven Principles of Public Life

Foreword

These guidelines are intended to inform and advise farmers/landowners of the development processes that DfI Roads normally adopts when bringing forward proposals for a major road improvement scheme and follow closely the procedures followed by Highways England in Great Britain.

These guidelines provide an overview of the various stages involved in the development of road schemes and of the consultation which will take place between them and DfI Roads and its agents. The guidelines also outline the statutory procedures for determining the line of the road, land acquisition and the environmental effects of the scheme.

The guidelines set out landowners' rights and entitlements and give an overview on the types of accommodation works which they may wish to consider. In addition, they include details of the Public Inquiry process and how to participate in this process.

Although the guidelines mainly relate to Major Works Schemes, some of the principles for example, accommodation works, etc. will equally apply to Minor Works Schemes.

The guidelines are not legally binding, however, DfI Roads believes that they represent current good practice and will encourage its agents and contractors to implement them. They aim to assist farmers/landowners in their dealings with DfI Roads and inform them as to what they can expect from DfI Roads when they are affected by road proposals.

Finally, DfI Roads wishes to acknowledge the assistance and input from the Ulster Farmers' Union in producing the original guidelines.

Introduction

DfI Roads, is part of the Department for Infrastructure (DfI) and as the sole road authority in Northern Ireland has responsibility for a road network of over 25,000km.

As part of this responsibility, DfI Roads is currently implementing the roads related element of the Regional Transportation Strategy for Northern Ireland 2002-2012 and the Investment Strategy for Northern Ireland.

In doing so, DfI Roads recognises the impact that new road works have upon the businesses, residents and the agricultural community. In producing this document and by liaising with colleagues in the Department of Agriculture Environment and Rural Affairs (DAERA), it is hoped to reduce the impact of these schemes.

As part of the process outlined in these guidelines DfI Roads, where necessary, will appoint an Assessor to consider the impact of the proposed road on holdings e.g. land lost to the scheme, severance, access to retained lands. The assessment would also consider the impact of the road proposal on the management of farms and would seek to assess the scale of the enterprise on farms such as the type of husbandry, livestock numbers, arable enterprises, management objectives, employment provided, etc. This assessment would form part of the decision-making process.

Any reinstatement which is required as a result of a road scheme, to any of a landowner's retained lands will, as far as reasonably possible, be to an equivalent standard to that which existed prior to the scheme and will be agreed with the landowner.

DAERA, following consultation, has approved the guidelines and has added the following information:

- "1. Almost all farmers will be participating in one or more of the direct payment schemes under the Single Application (Basic Payment Scheme, Young**

Farmers Payment, Areas of Natural Constraints etc.). As vesting of land is a matter outside the control of any farmer DAERA would have a sympathetic approach towards a farmer informing them that they cannot fulfil their obligations for that reason. A farmer who is subject to vesting or otherwise disposes of their land should notify DAERA promptly in accordance with the rules of Force Majeure or Exceptional Circumstances; which is within 15 working days of being in a position to do so. DAERA considers this to be the point when the farmer is served notice that construction work will be commencing on their land, or land vested from them where they have been allowed to continue using the land post vesting, and that the land will be rendered out of agricultural use.

Farmers are advised to read the rules of Force Majeure or Exceptional Circumstances which can be found in the 2017 Guide to the Basic Payment Scheme at:

<https://www.daera-ni.gov.uk/publications/2017-guide-basic-payment-scheme>

The financial significance of schemes is likely to vary between farmers who should, in the first instance, attempt to mitigate their loss. Failure to mitigate such losses would be a matter for the Land and Property Service to take into account when determining compensation.

2. DAERA offers farmers sources of advice and support either directly through its own staff, or indirectly through its support for the voluntary sector. Specifically, the Rural Support Helpline at 0845 6067607 is available as a service for farmers who need help to deal with the stress and pressure of the uncertainty about their future, or how to deal with their affairs once decisions are made. Staff are also available in DAERA Direct local offices if farmers wish to talk about business or technical issues relating to their farming activities.”

A copy of these guidelines will be given to each affected landowner/farmer along with information on the relevant contact names and contact details.

1.0 PUBLIC CONSULTATION

DfI Roads will engage with land and property owners at an early stage in the development of a major road improvement proposal so that they are kept informed as the scheme develops and advised of likely impacts affecting their land and property.

This will enable land and property owners to plan for the future. For example, in the case of a family farm, this will enable the landowner, to assess what effect such works will have both financially and commercially on their business and to ascertain what effect it may have on the future of their farming business.

The public consultation procedures, undertaken in the course of the scheme development and required by the statutory procedures, are explained within this document and include details of public exhibitions at 'preliminary options' stage and at 'preferred route' stage and individual meetings with affected landowners.

2.0 LAND LIAISON OFFICER

At an early stage in the scheme development process for major works, DfI Roads will normally appoint a 'Land Liaison Officer' to the scheme development team, as a main point of contact for members of the public. In certain schemes, usually major works schemes, the Land Liaison Officer would normally be a member of the technical consultant's team employed by DfI Roads. In cases of minor works schemes or relatively small major works schemes, the Land Liaison Officer will usually be a Lands Officer who would be a member of DfI Roads staff. The Land Liaison Officer would, for example, undertake negotiations with land and property owners where permission to enter is being sought and coordinate consultation between land and property owners and the scheme development team. This officer would act as the first point of contact should individuals have any queries during the scheme development process.

The Land Liaison Officer would be available to advise and inform landowners of developments in relation to the scheme, providing clear and detailed information at each stage.

The Land Liaison Officer will provide information in a clear and easily understood format, using as appropriate, drawings and maps or photo montages in circumstances where scheme development has sufficiently advanced to accurately indicate the likely effects of the scheme on land/property.

The Land Liaison Officer will also keep a complete and accurate record of all communications between landowners, or any members of the public and a record of any meetings held will be taken and copies issued to each party as and when requested. Any areas of disagreement can then be raised.

During the development of the scheme, the Land Liaison Officer will, in particular, explain and provide information on:

- The development of the road scheme proposal and the procedures involved
- The manner and the extent to which individuals and/or their property may be affected
- The opportunities for individuals to comment or to have their views and objections taken into account by DfI Roads, and
- The procedures whereby works to be undertaken as a consequence of the construction of the road, i.e. accommodation works, are agreed between land/property owners or those acting on their behalf and DfI Roads.

This officer would also deal with problems that the landowner may have, for example, queries relating to policy and procedure, and refer the matter to DfI Roads personnel, where appropriate. In instances where the Land Liaison Officer is part of the external consultant's team, should there be any matters

which cannot be resolved, the Land Liaison Officer will also have the support of a Lands Officer from within DfI Roads.

Each affected landowner will be informed, in due course, of the processes and procedures relating to the compulsory purchase of their land and property.

DfI Roads and its representatives will endeavour to avoid the use of unnecessary technical or legal jargon.

3.0 STAGES IN SCHEME DEVELOPMENT

The main stages in the development of a major road scheme are set out in the Flowchart in Appendix 1.

There are broadly 3 stages in scheme development and each assessment stage includes a proportionate land-use assessment, incorporating an assessment on the likely effects on agricultural activity, including land-take, disturbance and severance. The 3 stages are explained in more detail below, however, it is important to note that the unique features of each major road improvement scheme are likely to give rise to some variation in the procedures outlined depending on the nature, scale and complexity of the project. There may, for example, be situations where smaller projects require much less investigation at the preliminary options stage than the larger major works schemes.

3.1 Stage I – Preliminary Options

The Stage I Preliminary Options study involves the identification and assessment of a range of options leading to the selection of a number of options, or a corridor considered most worthy of further, more detailed, assessment. Depending on the nature and scale of the scheme, this Stage I assessment may involve a relatively large study area and consequently a substantial number of land and property owners. While the need to enter onto

land at this stage should be quite limited, where this is required, for example, to survey and assess environmental, topographical or geotechnical features, DfI Roads, or its technical consultants, will identify and contact the landowners involved and request permission to enter. Furthermore, any survey work required at this stage is likely to be observational rather than invasive.

Before entering onto land, DfI Roads or its agents will give at least 14 days' notice, where possible. In this respect, it should be noted, however, that under Article 119 of the Roads (Northern Ireland) Order 1993, the Department or its agent has the power to enter onto any land for the execution of certain works including surveying, boring, inspecting, etc. after giving at least 7 days' notice to the occupier of the land. (See para 4.0 for compensation for entry onto land).

Before concluding the Stage I assessment and confirming the options or corridor that will be the subject of further, more detailed, assessment, DfI Roads may conduct an initial public consultation event. The decision as to whether a public consultation event is held at Stage 1 is dependent upon the nature, scale and complexity of the project – relatively small schemes in urban areas will have limited options available. The public consultation event will show the study area and the proposed options or corridor to be taken forward for further, more detailed, assessment. DfI Roads, in addition to giving notice of the Stage I public exhibition in the local press, would also seek to identify land and property owners who may be directly affected by the proposed options or corridor under consideration, and invite them to the public exhibition. Elected representatives may also be invited to the Stage I public consultation event. Those attending are normally invited to complete a questionnaire which also provides an opportunity for anyone with a particular interest in the scheme, including land and property owners, to submit comments, including objections, and for their views to be taken into consideration. The findings from the completed questionnaires will be published on-line or copies will be made available on request. DfI Roads personnel and their technical consultants are normally in attendance to describe and explain the proposals. It is important to note that the options or corridor under consideration and presented at this stage will be indicative rather than precise road lines.

3.2 Stage II - Preferred Route

Stage II involves a more detailed assessment of the options or corridor selected at Stage I leading to the selection of a Preferred Route, which will subsequently be developed and progressed through the necessary Environmental Impact Assessment, Direction Order and Vesting Order statutory procedures. During this stage of the assessment, DfI Roads would expect to require access to land to carry out detailed inspections and surveys, some of which may be invasive, such as excavating trial pits to determine ground conditions for example, and would therefore be in more frequent contact with land and property owners.

Having completed the necessary assessment of the options and decided on a Preferred Route, the Department will publish its decision. Once the Preferred Route is published, this route would not normally alter significantly unless unforeseen situations arose, for example, following negotiations with landowners, poor ground conditions, extensive flood compensation measures or the outcome of a Public Inquiry. DfI Roads will endeavour to advise land and property owners likely to be affected by the scheme. DfI Roads personnel and its technical consultants will be available to discuss the Preferred Route and to discuss its implications with land and property owners. However it is important to note that while a preliminary design of the Preferred Route will normally be available at this stage, considerable work is still required to develop and refine the design and the details which are available must be considered as indicative because elements of the design may be subject to change. Therefore it is unlikely that the extent of land take, for example, can be confirmed with any certainty at this stage.

3.3 Stage III - Statutory Procedures

This stage involves the development of the scheme design sufficiently to provide a Specimen Design and undertake a comprehensive environmental impact assessment report (EIAR) and, where appropriate, publish an Environmental Report, together with a Notice of Intention to Make a Direction Order (NIMDO) and following consultation a Notice of Intention to Make a Vesting Order (NIMVO). In some instances, where the scheme does not involve a trunk road, instead of publishing a Direction Order, a Planning Application may be lodged. Throughout this aspect of the development of the scheme design, DfI Roads and its technical consultants will continue to liaise with the land and property owners affected by the scheme to seek permission to enter land to carry out environmental, topographical and geotechnical surveys. DfI Roads will respond to specific requests from landowners on the findings of such surveys and the Land Liaison Officer will be available to discuss any issues. DfI Roads would also seek to further describe and explain the nature of the scheme and to discuss the extent and implications of the land take required.

If requested at this stage, a preliminary specimen design could be provided, however, recipients should be aware that the design could be subject to change and if this is the case, subsequent drawings will clearly record the change.

When publishing the ER, NIMDO and NIMVO, DfI Roads will endeavour to inform land and property owners directly affected by the proposed scheme of the publication of these statutory documents. The Vesting Order statutory procedure ensures, as far as reasonably possible that each party, with an interest in land required for the proposed scheme, receives a copy of the Vesting Order Plan showing the part of that party's land required for the scheme. In some cases, DfI Roads may also hold a public 'Statutory Procedures' information event associated with the publication of the ER, NIMDO and NIMVO. (A Statutory Procedures information event may not be held in the case of minor works schemes or small major works schemes.) This has normally taken the form of a further public exhibition, with DfI Roads personnel and their technical advisors in attendance to describe and explain the proposed scheme. As with the 'Stage 1' public consultation event, DfI

Roads would give notice of the 'Statutory Procedures' information event in the local press and invite land and property owners, directly affected by the scheme, and elected representatives to attend.

3.3.1 *The Vesting Order Procedure*

While there are three statutory procedures involved in bringing forward a Strategic Road Improvement scheme – Environmental Statement, Direction Order and Vesting Order, the Vesting Order statutory procedure will be of particular interest to land and property owners directly affected by the proposed scheme and the steps involved are outlined below. There are similar formal consultation processes associated with the Environmental Report and the Direction Order and all 3 are usually carried out concurrently.

3.3.1.1 Publication of a Notice of Intention to Make a Vesting Order

The Notice of Intention to Make a Vesting Order (NIMVO) is a notice served by the Department on all persons identified as having an interest in the land required for the scheme. It is also published in the press to advise the public of the Department's intention and to afford them an opportunity to make their concerns known or to object to the proposal. The NIMVO is published in the press on two consecutive weeks and the period for the lodgement of objections is normally one month from the date of the last publication of the notice.

3.3.1.2 Consideration of Objections

If no objections are received or if the objections are resolved, the Department may decide to proceed to make the Vesting Order.

If objections are received which cannot be resolved through negotiations, the Department may decide to hold a Public Inquiry to determine if the scheme should proceed as planned – see Paragraph 3.3.2. However if objections are received but, after considering the nature and content of the objections, the Department determines that, in the greater public good, the scheme should

proceed, it may, in some circumstances, proceed to make the Vesting Order without recourse to a Public Inquiry.

3.3.1.3 Publication of a Notice of Making of Vesting Order

Once the Vesting Order has been made, a Notice of the Making of the Vesting Order will be published in the local press naming a place(s) where a copy of the Vesting Order and associated map(s) will be made available for inspection i.e. DfI Roads Offices and other public buildings e.g. council offices in the vicinity.

At the same time a copy of the Press Notice will be sent to all interests named in the Vesting Order schedule and anyone who has objected to the making of the Vesting Order.

3.3.1.4 The Operative Date of Vesting

The Operative Date of Vesting is one month after the date of publication in the Press of the Notice of Making of Vesting Order and at the operative date each party with an interest in land required for the scheme will receive a copy of the Vesting Order and the Plan showing the part of that party's land acquired for the scheme.

This is the date when ownership legally transfers to the Department. It is important to note that the land and property required for the scheme, as specified in the Vesting Order schedule and map, transfers into the ownership of the Department on the Operative Date of Vesting and the compensation due is based on its value on that date (see Para 5.0 Compensation Issues). Statutory Interest is payable on the compensation monies from the operative date of vesting until payment is made. Interest payable is determined by Order made by the Department of Finance & Personnel. The current Order is the Compulsory Acquisition (Interest) Order (Northern Ireland) 1996 which states that the rate shall be 0.5 per cent per annum below the standard rate. The

Standard rate is the base rate quoted by the seven largest banks authorised under the Banking Act 1987.

3.3.2 *Public Inquiries*

The Department may decide to hold a Public Inquiry to consider objections particularly where contentious issues arise. Alternatively, the Department may decide not to hold a Public Inquiry if no representations have been made, or any representations have been met or withdrawn or relate solely to the amount of compensation, or are representations which it is satisfied are solely of a frivolous or vexatious nature. The object of such an inquiry is to ensure that all of the issues are considered independently, fairly, thoroughly and consistently but without unnecessary formality, technicality or delay.

Objectors raising concerns relating to the likely valuation of compensation have recourse to a lands tribunal after the vesting order comes into effect.

3.3.2.1 *Appointment of Inspector(s)*

An independent inspector and, if appropriate, assistant or additional inspector(s) will be appointed to take charge of any inquiry and will act as an arbiter of the facts presented in the form of written submissions and in oral evidence received in the course of the inquiry. The inspector is appointed from a call-off list of people who are independent of the Department. They come from varied walks of life e.g. barristers, solicitors, business people, retired civil servants, etc. and must abide by the Seven Principles of Public Life. Appointments to individual inquiries are driven by the availability of inspectors. Alternatively the Department may decide to use the service of the Planning Appeals Commission, who is also independent of the Department, to carry out the Inquiry.

Link to seven principles –

<http://www.northernireland.gov.uk/topics/your-executive/ministerial-code>

Seven Principles – Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership (See Appendix 2).

It is vitally important that the inspector obtains the information necessary to make an informed and reasoned recommendation on the Department's proposal and any representations being considered at an inquiry. To do this, the inspector hears evidence from the parties and may also seek such other information as considered appropriate. The inspector must be satisfied, before the inquiry ends, that the relevant arguments and submissions are understood.

The inspector has wide discretion in conducting the inquiry but must always act in accordance with the principles of fairness, openness and impartiality. While inquiries are not intended to operate as formally as a court of law, the inspector will, for example, need to ensure that the parties to the inquiry have an adequate opportunity to present their case and that they have a fair hearing. Informality of proceedings is considered to be particularly helpful to those who wish to take part but who are not professionally represented. There is no obligation for any party at an inquiry to be represented professionally.

While continuing to observe the rules of natural justice at all times, the inspector must exercise control over the way in which the parties present their case to ensure that the inquiry is run efficiently and time is not wasted but used to the best advantage of all concerned. In doing so the inspector will seek to ensure that the inquiry focuses on the main points raised in a thorough yet informal manner, whilst avoiding unnecessary repetition. For example, where the inspector considers that sufficient evidence has already been given to establish a particular point, it may be necessary to intervene to remind parties of the need to avoid repetitive or irrelevant evidence.

3.3.2.2 Notice of Inquiry

When the necessary arrangements are in place the Department will publish a formal notice of the holding of an inquiry in the Press normally giving at least eight weeks' notice, where possible. Individual notifications are normally sent

to objectors using recorded delivery and notification is also normally given to the District Council.

3.3.2.3 Programme Officer

The Department may assign a Programme Officer, usually a member of staff from the DfI Roads Division in which the inquiry is being held, to supervise the running of the inquiry. This member of staff would normally be someone who has **not** been directly involved in the scheme. Once appointed, the Programme Officer is responsible solely to the inspector for the smooth running of the inquiry and facilitating the inspector in carrying out that role. The Programme Officer is the primary point of contact in relation to the inquiry and will be available during the course of the inquiry to provide assistance to members of the public seeking advice about the procedures of the inquiry.

3.3.2.4 Pre-Inquiry Meeting

Prior to the inquiry, the inspector may convene a pre-inquiry meeting to provide an opportunity for agreement to be reached on procedural and programme matters, including, for example, dates and sitting times, likely duration and order of case and arrangements for the preparation, presentation and distribution of documents.

3.3.2.5 Exchange of Evidence

The inspector may require the Department, objectors or other interested parties to submit copies of all statements of case/evidence for exchange between the parties in good time, usually around 4 weeks, before the hearing takes place.

3.3.2.6 Site Visits

The inspector may make a visit to the site of the proposed road scheme at any time before, during or after the inquiry to look at the land in question, its location and surroundings and any particular physical or geographical

features. Such visits may be unaccompanied or accompanied by representatives of the principal parties and by other persons if considered appropriate. Those accompanying the inspector may point out particular features or aspects referred to in their evidence but the inspector will not discuss the merits of these matters with parties during the visit. Such discussion is for the inquiry itself.

3.3.2.7 Inspector's Report

After the inquiry has closed the inspector will consider all the evidence which has been produced and prepare a report. The Inspector's Report is the formal record of the inquiry. It will, in addition to the inspector's reasoned conclusions and recommendations, normally include a list of the persons appearing at the inquiry and of the documents tabled; a description of the site, the proposed road improvement scheme and any background factual information; a summary of the key points of evidence given by the participants; and the inspector's findings of fact.

The Department will then consider the Inspector's Report of the inquiry and the recommendations along with any other evidence or issues before it and then decide how to proceed. When the Department has made this decision, an appropriate Departmental Statement will be prepared.

The Inspector's report will be published in full on the relevant Scheme website.

3.3.2.8 Challenge to a Vesting Order

If any person who is aggrieved by a Vesting Order wishes to question the validity of the Vesting Order he or she can challenge it within one month from the publication of the notice of the making of the Vesting Order on the grounds that :-

- the Vesting Order is not within the powers conferred by the legislation under which it was made (i.e. the Roads (Northern Ireland) Order 1993 and the Local Government Act (Northern Ireland) 1972). This ground concerns whether or not the decision was *ultra vires* and may raise issues of illegality, irrationality and/or procedural unfairness.
- the other ground on which a Vesting Order can be challenged is on the basis that the procedure provided in Schedule 6 to the Local Government Act (Northern Ireland) 1972 has not been complied with and this has caused substantial prejudice to the applicant.

If the challenge is successfully made, the High Court may suspend operation of the Vesting Order or quash all or part of the Vesting Order.

3.3.2.9 Departmental Statement

The Departmental Statement records the Department's decision in relation to the proposed scheme and the reasons for it. In the case of a Vesting Order the Departmental Statement contains the following sections: -

The Basis/Detail of the Department's Decision;
 The Main Conclusions and Recommendations of the Inspector's Report;
 The Department's comments on the Inspector's Report; and
 The Department's Decision.

3.3.2.10 The Department's Decision

Once the Department has finalised its decision, a copy of the Departmental Statement will be forwarded to each objector. A copy of the Inspector's Report (or the relevant section dealing with their objection) will be appended for their convenience. Both the Departmental Statement and the Inspector's Report

will be available to the public on request at this stage. Copies will also be made available on the Department's website.

3.3.2.11 Costs

It is current DfI Roads policy that the costs of professional representation incurred by a landowner at a Public Inquiry will only be awarded in favour of the objector when the Department accepts a recommendation by the inspector to remove the threat of compulsory purchase. This is common practice across the UK.

4.0 **ACCESS TO LAND FOR INVESTIGATIVE WORK – PRE-ENTRY REQUIREMENTS AND RECORD OF CONDITION**

Access to land is required by DfI Roads and its consultants at various stages in the development of a scheme. At the early stages superficial examination of the area of interest may suffice. More detailed investigation is usually necessary as planning progresses to help refine the actual line of the road and to determine the ground conditions that could influence the design and construction methods.

Where access is required to any landholding, DfI Roads will endeavour to give 14 days' notice to landowners of the date they intend to enter onto land for the purpose of carrying out investigative works. Where notice has been given for the first occasion of entry, no further notice is required for subsequent entry in connection with the same purpose, however, if there is a significant break between access requirements, contact will be made again with landowners prior to entry onto the site. It should be noted that, except in the case of an emergency where immediate access may be required, under Article 119 of the Roads (NI) Order 1993 entry can be demanded by giving at least 7 days' notice to the occupier.

DfI Roads or those acting on their behalf will carry appropriate identification and authorisation, which will be made available on request.

A record of the condition of the site will be taken prior to the commencement of survey or other works and this will include site photographs. These will be available to landowners upon request. It is not common practice to take site photographs in the case of non-invasive surveys e.g. walkover surveys.

If any damage or disturbance is caused by works on land or property carried out by DfI Roads, or its agents, whilst undertaking works in accordance with Article 119 of the Roads (Northern Ireland) Order 1993, for example, inspecting, surveying or boring land, they may claim compensation from DfI Roads.

DfI Roads or its agents will take due care and consideration for crops when undertaking investigative work and will endeavour to avoid working during poor ground conditions. DfI Roads will liaise with landowners and reinstate anything that has been disturbed as soon as practicable. Any reinstatement which cannot be carried out straightaway will be completed at a later mutually acceptable time.

Compensation payments for the carrying out of trial pits and boreholes, etc. (standard rates for which have been determined by Land & Property Services (LPS)) will be paid to the landowner promptly and, where possible, within 60 days of completion of the works and the completion of a form agreeing the extent of the works carried out.

Access to land for site investigation and related activities will be carried out in line with DfI Roads' guidelines and all applicable DAERA regulations and guidelines.

4.1 Adverse Weather Conditions

DfI Roads will endeavour to avoid carrying out trial pits and boreholes on land during particularly wet ground conditions. However, in some cases it may be essential to carry out works while recognising the additional levels of

reinstatement that the Department and its contractors will have to carry out DfI Roads will consult with landowners in such circumstances.

5.0 COMPENSATION ISSUES

Compensation matters are dealt with by the Department of Finance Land & Property Services (LPS). LPS have published their own guidance which is available at:

<https://www.finance-ni.gov.uk/publications/compulsory-purchase-and-compensation-guides>

Further information is available from:

**Department of Finance
Land & Property Services
Lanyon Plaza
7 Lanyon Place
BELFAST
BT1 3LP**

It is important to note that DfI Roads does not negotiate directly with landowners on matters of compensation. These issues are dealt with by LPS (see details above) which acts on behalf of DfI Roads. LPS considers claims for compensation in accordance with the appropriate legislation and land and property owners may employ a professional agent to act on their behalf in negotiations with LPS on all aspects of compensation. DfI Roads will pay reasonable agent's fees for costs incurred in relation to the land acquired. Such costs will also be agreed by LPS. It should be noted, however, that only one set of agent's fees will be paid and land and property owners should consider this when deciding whether to engage the services of a land agent or other representative.

These arrangements normally result in the compensation being agreed between LPS and the landowner's agent. In very exceptional circumstances, where agreement cannot be reached the landowner has recourse to refer the case to the Lands Tribunal for determination. Guidance is available at

<http://www.courtsni.gov.uk/en-gb/tribunals/landtribunal/rules>

Further information is available from:

The Registrar

The Lands Tribunal

Royal Courts of Justice

2nd Floor

Chichester Street

BELFAST BT1 3JJ

Telephone - 028 9032 7703

Facsimile - 028 9054 6187

E-mail - landtribunal@courtsni.gov.uk

5.1 Process for Settlement of Compensation Claims

Upon the operative date of vesting, affected landowners will be issued with a compensation claim form.

Compensation claim forms should be completed by the landowner or on the landowner's behalf, by their agent, and submitted to DfI Roads.

Upon receipt of a completed compensation claim form DfI Roads will appoint LPS promptly to commence negotiations with the landowner or their agent to agree a compensation settlement.

LPS will require the landowner or agent to submit a fully substantiated claim which they will assess and negotiate. Once agreement has been reached and LPS has reported the agreement to DfI Roads for approval, DfI Roads will instruct the Departmental Solicitor's Office (DSO) to complete the legal formalities and DfI Roads will pay the agreed compensation and any statutory interest due. Compensation can only be paid upon the production by the property owner, of satisfactory evidence of title to the property.

With regard to conacre or residential tenants, while it is recognised that there

may be a loss to the conacre or residential tenants the tenant must take this up with the landowner who legally receives the compensation.

The claimant will be required to sign a Statutory Receipt

Statutory Interest on compensation is payable from the operative date of vesting until the date of payment. Arrangements for advance payment can be made in particular circumstances and all such requests will be dealt with promptly. Claims for 90% payments can be made immediately after vesting and must be paid on LPS valuation. This does not affect the rights of the landowner in the outworking of the final settlement.

6.0 LEGAL CONVEYANCE OF LAND

A well-established system for conveyancing is in place with DSO to facilitate the interests of both parties and every effort will be made to ensure that compensation payments are made as promptly as possible.

The claimant should appoint a solicitor to act on their behalf.

DfI Roads will pay the costs, charges or expenses reasonably incurred by a landowner in furnishing any statement or evidence of title in connection with land acquired. Such fees will be approved by DSO.

7.0 PROCURING A CONTRACTOR

The size of most major road improvement schemes requires DfI Roads to progress the awarding of the contract in accordance with European Union procurement regulations which includes publishing notices and makes provision for pre-qualifying to a list of suitably experienced contractors who will be invited to tender for the works which may include the design, construction and operation of the scheme.

7.1 Form of Contract

There are a number of forms of contract that DfI Roads may use and this will be influenced by the nature and scale of the project. It is important to note that the initiative for progressing the construction of the scheme usually transfers to the contractor and in this respect DfI Roads normally requires the contractor to appoint a Land Liaison Officer to take over much of the role of DfI Roads scheme development team's Land Liaison Officer (see Para 2). This arrangement is considered appropriate because the contractor is best placed to advise on the detail of the scheme design at this stage and, more particularly, when particular elements of the works will be implemented. Information can be given on the impacts on adjacent land and property, including, for example the provision and erection of temporary fences, providing and maintaining access and constructing accommodation works.

8.0 COMMENCEMENT OF WORK

The land and property required for the scheme, as reflected in the Vesting Order schedule and map, will have transferred into the ownership of the Department on the operative date of vesting. However, DfI Roads will give as much notice as possible, normally 14 days, to the affected landowners, of the date it intends to take possession of the land and enter onto it to commence advance works or construction works so that the former landowner can vacate the lands acquired under the Vesting Order. In some cases, it may not be possible to give longer notice where urgent works are required to be carried out e.g. the removal of trees prior to the bird nesting season. Simultaneously, a Notice, under Article 120 of the Roads (Northern Ireland) Order 1993, may issue advising landowners if the contractor (as the Department's agent) may require access to their retained lands for the purpose of undertaking temporary works. Where possible, 14 days' notice will be given. The main contractor may also write to each landowner giving basic programme information e.g. start date, period of the construction works

etc. and will include all key contact names and telephone numbers for the site.

8.1 Pre - Construction stage

Where there is a reasonable risk that an existing dwelling house / building may be directly impacted on by construction works, DfI Roads, or the contractor, as appropriate, would normally, with the consent of the property owner, engage a competent consultant to undertake a structural survey of the condition of the property before works begin and prepare a report, including photographs, where appropriate. DfI Roads, or the contractor, will meet the cost of the condition survey and provide the property owner with a copy of the report.

In areas of cut (excavation), all wells within approximately 200 metres of the curtilage of the scheme, would normally be monitored prior to, during and for a period, normally one year (extended for a further year, if appropriate), after construction. This monitoring will include measurement of both water level and water quality and the test results will be made available to the landowner upon request. DfI Roads will meet the cost of well monitoring.

8.2 Construction Stage

The Environmental Report published for a major road scheme normally includes a section on disruption during construction. This would indicate the adoption of current good construction practices to mitigate against the effects of noise, dust, vibration, etc. on human health and the environment. DfI Roads will endeavour to ensure that during the construction phase of the contract, issues relating to access, security, dust, noise, vibration, etc. as identified in the Environmental Report will be addressed in the contract and associated documents and the contractor will be required to secure the site and to adopt current good practice to implement measures and controls to minimise adverse effects.

The contractor will be given details of the site available to him and will normally be responsible for securing the site.

Every effort will be made to maintain, where possible, existing access to property, including homes, farms and severed lands, during construction otherwise reasonable temporary access will be provided.

8.3 Post- Construction Stage

The contractor will normally retain responsibility for maintenance of accommodation works for 1 year (the maintenance period) after completion of the works and any defects, taking account of fair wear and tear, arising during this period will be made good by the contractor. If a persistent fault arises beyond the maintenance period the landowner should contact DfI Roads in the first instance.

8.4 Supervision of Work

DfI Roads normally appoints a Project Manager for each scheme where the works are being constructed using traditional forms of contract and that person along with the project Land Liaison Officer (referred to in Para 2) will be available for landowners to contact – contact names and numbers will be made available along with an out-of-hours number. However DfI Roads is now using other forms of contract where the contractor's designers take over responsibility for developing and finalising the design and supervising the construction of the works and in this case the contractor's Land Liaison Officer should be the initial point of contact for land and property owners who have any query about the works. DfI Roads technical advisors continue to have a role on site, monitoring the works to ensure that the requirements of the contract are being fulfilled and land and property owners may direct queries that are not relevant to the contractor to these Site Representatives or to DfI Roads Land Liaison Officer – this would also be the case during the year post-construction. Furthermore, where a land and property owner believes that the contractor's representative is not dealing satisfactorily with

a matter that has been raised with them they may refer it to DfI Roads' Site Representative or Land Liaison Officer.

DfI Roads recognises its responsibilities as a client, however, it requires contractors to be responsible for their own actions and the actions of their sub-contractors and to indemnify DfI in that respect.

9.0 ACCOMMODATION WORKS

Accommodation works are works which the Department is prepared to carry out during a road contract to accommodate adjoining landowners and to reduce the impact of the road scheme. Accommodation works do not include the provision of replacement buildings, but can comprise such things as the provision of fences (temporary or permanent), hedges, walls, gates and the provision of new or altered access to the road network. There is no obligation on DfI Roads to carry out such works but it may do so where it is cost effective and mutually beneficial to do so.

While the Department is under no legal obligation to erect roadside boundaries (walls, fences or hedges) on lands retained by the landowner, it will nevertheless seek to preserve the existing environment by offering appropriate roadside boundaries as accommodation works.

Accommodation works can only be carried out by agreement with a landowner but if agreement on what is to be provided cannot be reached, the offer to provide accommodation works may be withdrawn. Landowners may also request that no accommodation works are provided. The landowner will still be entitled to claim monetary compensation for diminution in value instead. In such cases it may be necessary to arrange for the erection of a temporary fence along the land-take boundary to delineate the boundary and for the containment of livestock, for example, during the course of the roadworks. The matter would then be dealt with by monetary compensation only.

Any accommodation works provided will be taken into consideration by LPS when agreeing compensation. Many accommodation works will have little impact on the value of the property, however, where they enhance the property value, LPS will set any increase in value off against other compensation which may be due.

Disputes about accommodation works cannot be referred to the Lands Tribunal, which can only adjudicate on the monetary value of compensation.

Accommodation works become the property of the landowner and their future maintenance is normally the landowner's responsibility. The contractor will normally retain responsibility for maintenance of hedges for 3 years after completion of the works until they become established (the maintenance period for landscaping works).

If and when accommodation works are carried out by the Department the effect is to mitigate the compensation payable in respect of land taken and injurious affection to land retained by the landowner. In this respect the cost of accommodation works in terms of value to the property is taken into account by LPS in assessing the overall compensation payable in respect of land and/or rights acquired.

In practice it is generally to the mutual advantage of both the landowner and the Department that accommodation works are carried out by the Department at the same time as the roadworks. This often facilitates LPS's negotiations and is generally the most practical, expedient and economical course to ensure that the works are satisfactorily carried out. Their provision can also make a substantial contribution towards preserving the amenities and surrounding environment of the new highway.

It should be noted that the insistence on replacement of "like with like" by owners cannot legally be asserted although there may be cases where the provision as an accommodation work of the same sort of roadside boundary as previously existed is environmentally desirable.

Overriding amenity, planning and listed building considerations could apply in certain cases, for example in Areas of Outstanding Natural Beauty, which the Department might accept as grounds for providing accommodation works of a nature which could not otherwise be justified.

9.1 Access

While some major road schemes, e.g. a high standard dual carriageway, may not provide direct access to adjacent land and property, DfI Roads, where appropriate, will provide access lanes to provide access from such severed land and property to the adjacent public road network. These access lanes may be shared, providing access to land belonging to several owners. Where appropriate an agricultural assessment may also consider the impact of a scheme on access arrangements onto and within a land holding and inform the decision-making process.

9.2 Under/Over Passes

In certain circumstances, DfI Roads may consider the provision of cattle creeps which may take the form of an underpass or an overbridge. These will be dealt with on a case by case basis and it may be necessary for neighbouring farms to share facilities. The Department will consider the needs of the farm such as its layout and management as well as details of the frequency and type of movement of cattle, size of the herd, the degree of severance, the opportunity to share facilities and road user safety. Where appropriate, an agricultural assessment may once again consider the impact of a scheme on access arrangements within a land holding. The agricultural assessment will also consider the distance that cattle will be required to travel and the constraints in providing an accommodation structure when advising on the need for a cattle creep. Each case will be considered on its merits.

9.3 Cattle Handling Facilities

If a cattle handling facility is lost, LPS will normally take the loss into account

in the assessment of compensation.

The need for temporary cattle handling facilities during the period of the works will be considered on a case by case basis.

9.4 Fencing

Several types of fencing may be available:

- Treated timber posts and wire fencing, to the relevant standard specification, with associated wire mesh, if necessary, and/or thorn quicks.
- Concrete post and wire fencing is considered to be aesthetically unsuitable as a boundary treatment except where associated with a hedge which will eventually outgrow it but may be provided in certain circumstances.
- Badger and otter fencing may be provided, if required. The landowner will only be expected to maintain such fences to a sufficient standard for containment of agricultural livestock. Where evidence suggests a high fatality rate amongst badgers or otters at a location, the Department may intervene to carry out additional maintenance.
- Bio-security fencing will be replaced or provided when an accommodation access lane services 2 or more farms and where there is a demonstrable increase in risk in transmission of disease.
- Suitable stock proof temporary fencing will be installed for the duration of the works, if required.
- Where any fences, walls or hedges are damaged by the contractor they will be made stock proof without delay.

Maintenance of fences will normally be the responsibility of the landowner. However, in the case of motorways and special roads, as defined by the Roads Order (Northern Ireland 1993), the fencing will be erected on the Department's land and will be maintained by the Department.

9.5 Hedges

When hedges are provided as part of accommodation works, the permanent fence will be provided at the road boundary and the hedge set on the landowner's side of the new boundary fence. Temporary stock proof fencing may be required on the landowner's side of the new hedge for a period of 3 years to allow the hedge to become established. In accordance with present policy, hedges and temporary fences set by the Department as part of agreed accommodation works will be maintained by the Department for a period of 3 years.

Consideration may, in some circumstances, be given to transplanting sections of existing hedge in large trenches on the new boundary.

9.6 Gates

Existing gates will normally be rehung.

Requests for more elaborate gates and fittings will only be accepted if there is a formal agreement that such additional costs will be taken into consideration by LPS in assessing compensation.

DfI Roads will liaise with the landowner to achieve the best gradient possible at gateways, appropriate to the topography of the adjacent land. However, if, for example, the land rises steeply adjacent to the road, trying to achieve a shallower gradient could result in the access cutting into the hillside to an unacceptable degree.

9.7 Timber

When land comes into the Department's ownership, on the Operative Date of Vesting, this includes any timber growing on that land. Unless alternative arrangements are made the removal of such timber, together with the removal of other vegetation on the site is normally undertaken by the Department's contractor as part of site clearance works. This is sometimes undertaken in

advance of the main road construction contract. However, the Department will endeavour to consider favourably, requests from the landowner to make his own arrangements for disposal of timber, however any agreement will be subject to time restraints to ensure that the contractor's operations are not delayed. Any loss or retention of timber will be considered by LPS when agreeing compensation.

9.8 Water Services, Sewers/Septic Tanks

Through consultation with the land and property owners affected by a major road improvement scheme, DfI Roads will identify the water supplies that will be affected and will make arrangements for reconnection, normally prior to works commencing.

Where water troughs have to be moved, DfI Roads will seek to agree with the landowner, suitable locations and their connection to the source of supply. However there may be circumstances where water supplies that were not metered will have to be replaced by a metered mains water supply. In this event the landowner will be responsible for future water charges. If this affects the value of the land it will be taken into account by LPS in the assessment of compensation.

Where a natural water supply for livestock from a watercourse is absorbed by the roadworks, this facility will be replaced at a suitable location as agreed with the landowner elsewhere along the watercourse.

Sewers and septic tanks affected by a major road improvement scheme will also be identified and DfI Roads will seek to agree appropriate measures to deal with each situation with the land or property owner involved. As with water supplies, appropriate arrangements will be made for the agreed measures to be implemented. DfI Roads will expect its contractor to implement good working practices, with due regard to health and safety, when dealing with sewers and septic tanks, including taking appropriate measures to avoid pollution.

Any interruptions to water supplies, sewers or septic tanks will be restored urgently or an alternative water supply will be provided, as long as the landowner facilitates all necessary access to enable this to be done.

If a landowner thinks his supply is at risk of being damaged by construction and associated activity, it would be beneficial if he monitored water usage prior to and during construction. If a leak is identified this provides the contractor with an opportunity to repair it. The results of such monitoring may provide important evidence should the landowner consider it necessary to make a claim against the contractor.

If a persistent fault arises beyond the maintenance period the landowner should contact DfI Roads in the first instance.

9.9 Structures

Retaining walls and structures installed as part of a major road improvement scheme will be designed in accordance with the relevant design standards and procedures exist for the technical approval of highway structures. Where a retaining wall or structure supports the road, it forms an integral part of the road and DfI Roads will normally be responsible for its maintenance. Where a retaining wall or structure supports land or property remaining in the landowner's ownership the landowner will normally be responsible for the maintenance of the wall. It should be noted that the designer and builder of the wall have a responsibility, for a limited period, for design and construction defects respectively. In any event DfI Roads will consult with the landowner involved to establish and confirm the maintenance responsibilities of such retaining walls or structures.

9.10 Land Drains

DfI Roads will provide a drainage network which provides an adequate outfall and which drains adjoining land as efficiently as before the major road improvement scheme was implemented. Severed sub-surface field drains or shores unearthed during the course of the works will be connected into the new drains.

Where an open drain exists behind the road fence or hedge, it will be replaced, where possible, by a similar open drain on the field side of the new fence. If this is not practicable, e.g. due to substantial level difference, the replacement may require to be piped in whole or in part at the Department's expense.

If a drain is found to be necessary where none formerly existed, it will be constructed, if possible, within the road boundary therefore having no impact upon the landowner.

Severed field drains, ditches, dikes or sheughs will be picked up and connected into new drainage outfalls.

9.11 Reinstatement of Land and Completion of Works

Where DfI Roads or its agents, either with the agreement of the landowner or under Article 120(1) of the Roads (Northern Ireland) Order 1993, has temporarily occupied lands which were not the subject of a Vesting Order, it will endeavour to reinstate the lands to an equivalent standard to that which existed prior to the scheme (if this cannot be done, it can be taken into consideration when agreeing compensation). This will include removal of all temporary buildings, fences, roadways, all surplus soil, stones or gravel and any debris such as trees, brushwood etc. and any other matter that did not previously belong to the site.

Contractors may enter into private arrangements with landowners – see Para 11.0

9.12 Prevention of the Spread of Animal or Plant Diseases

DfI Roads, in consultation with DAERA, will take appropriate measures to prevent the spread of animal disease or plant disease and will comply with all applicable DfI Roads and DAERA (including NIEA) regulations and guidelines. In this regard, DfI Roads will endeavour to ensure that a road scheme will not place a farm holding at any greater bio-security risk than

existed before the new road was constructed. In the event of an outbreak of a serious disease, DfI Roads and contractors engaged in road construction works in the area concerned will be subject to such operational restrictions as are imposed by DAERA.

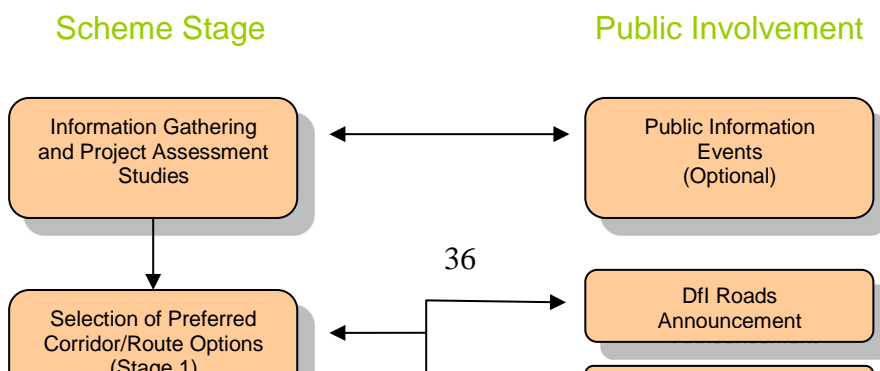
10.0 INDEMNIFICATION

In addition, indemnification is a standard requirement included in any contract between DfI Roads and a contractor and the contractor is required to indemnify the Department against any claim which may arise in relation to the works and to deal expeditiously with any such claim.

11.0 PRIVATE ARRANGEMENTS BETWEEN THE CONTRACTOR AND LAND AND PROPERTY OWNERS

The contractor may negotiate with land and property owners in the vicinity of the works on a range of matters, including acquiring land for site compounds, alternative access arrangements and sites for the disposal of surplus material. Any arrangements arising out of such negotiations are private arrangements between the contractor and the land and property owner and DfI Roads shall not be liable to make good any default on the part of the contractor. DfI Roads considers it appropriate that, in these circumstances, land and property owners should include in the private agreement, appropriate arrangements for the reinstatement of the lands on completion of the works including, for example, the removal of all temporary buildings, fences, roadways and hard standing areas, all surplus construction material, including soil and aggregates, all debris, including inappropriate vegetation, and the final reinstatement of the land.

Appendix 1



Appendix 2 – Seven Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.