National Roads Authority

Communications Regulation Act, 2002, as amended

Guide
to the use of
Underground Road Capacity
on
National Roads
for

Electronic Communications Infrastructure
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Section A

Background/ General Policy

1. The National Roads Authority and the National Road Network.

1.1 About the NRA.

The National Roads Authority’s general function is to secure the provision of a safe and efficient network of national roads (section 17 of the Roads Act, 1993). Our Mission Statement is to “improve quality of life and national economic competitiveness by developing, maintaining and operating the national road network in a safe, cost effective and sustainable manner.”

1.2 The National Road Network.

National roads play a key role in providing access to all regions of the country and connections between the main centres of population. National roads account for less than 6% of the total length of public roads throughout the country, i.e. approximately 5,400 km out of 94,600 km.

National roads are prefixed with the letters “N” or “M”, e.g. N5, M50. A map of the national road network is provided at Appendix A.

2. Electronic Communications Roadworks on National Roads – Regulatory Framework.

Part 5 of the Communications Regulation Act, 2002, (as amended, “the 2002 Act”) provides the regulatory framework governing the carrying out of roadworks on national roads by network operators for the purpose of establishing, extending or maintaining, etc. underground electronic communications infrastructure and associated physical infrastructure.
3. Requirement to Obtain NRA Consent to Undertake Roadworks on National Roads.

3.1 Introduction.

In accordance with the provisions of section 53(1) of the 2002 Act, no roadworks on national roads may be undertaken by network operators without the prior written consent of the Authority. A network operator or a person engaged by the network operator who contravenes the provisions of section 53(1) is liable, on summary conviction, to a fine not exceeding €5,000 or, on conviction on indictment, to a fine not exceeding €1,000,000.

(Note: A consent is deemed to have been granted, in line with the provisions of section 53(4), where a network operator carries out emergency roadworks, i.e. roadworks necessary to eliminate or reduce danger or risk to persons or property. Please refer to Part 6, Section B, of this Guide for further information regarding emergency roadworks).

Applications for consents in relation to proposed roadworks on national roads should be submitted by network operators to the National Roads Authority. Under the Act, roadworks include:

(i) establishing underground electronic communications infrastructure and any associated physical infrastructure,

(ii) extending the underground electronic communications network to parts of the national road under which electronic communications infrastructure has not previously been placed by that network operator,

(iii) carrying out roadworks on underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure,

(iv) installing electronic communications infrastructure in ducts, which are the responsibility of the Authority.

Where consents are granted by the Authority, network operators or persons engaged by them are required to comply with any conditions contained in such consents.

3.2 Equal Treatment.

Applications for consents under the 2002 Act will be considered and decided upon by the Authority on a ‘first come, first served’ basis or through the drawing of lots where the number of consent applications exceed the available spare duct capacity.

3.3 Submission of Applications to the NRA.

Applications for consents in respect of proposed roadworks relating to national roads should be submitted to the Authority. All applications must be submitted by the network operator and not by their agents or contractors.

Network operators should ensure that sufficient time is available to the Authority to comply with the consultation and other procedures set out in the 2002 Act for the processing of roadworks consent applications taking account of the planned commencement date of roadworks. These various
procedures could, in circumstances where the periods prescribed in the Act are fully availed of, entail a period of at least four months before the terms of a consent are finalised.

3.4 Assessment of Applications.

The key purposes of the Authority’s assessment of consent applications and of the related NRA/road authority consultation process, as provided for under the 2002 Act, are to ensure the proper management and co-ordination of roadworks on national roads so as to minimise safety risks and disruption to traffic and road users generally, and to identify specific conditions that may be appropriate in the granting of a consent, including conditions intended to protect the condition and structural integrity of the road.

When considering an application for a consent in respect of roadworks relating to a national road and any conditions that may be imposed in the granting of a consent, the Authority is required under section 53(10) of the 2002 Act to have particular regard to the following matters:

(i) The existing and potential use and availability of space under the surface of the national road concerned, including—

- the requirements of the Authority in the performance of its functions and responsibilities;
- the course and depth of ducts to be laid by the applicant;
- the existence of ducts in addition to those which are immediately required by any network operator, and
- the existence of duct space in addition to that which is reasonably required by any network operator.

(ii) The safe and efficient operation of the national road.

(iii) Road reconstruction, repair and maintenance costs that may arise as a consequence of the application.

(iv) The protection of the environment and of amenities including residential amenities.

(v) The manner and timing of the reinstatement of the road.

(vi) Any scheme adopted by the Authority in accordance with section 53(11) of the 2002 Act (in this regard, see Section B of this Guide for the current scheme).

(vii) Any contractual arrangements which the Authority may have with a third party.

A key requirement of the Authority in granting a consent is to ensure the continued safe and efficient operation of the national road concerned. It is also essential that all roadworks carried out by network operators on national roads are implemented in accordance with the NRA Specification for the Reinstatement of Openings in National Roads so as to protect the condition and structural integrity of the national roads concerned. The reinstatement specification is available to download from the Authority’s website, www.nra.ie Publications/Road Design & Construction Standards.

Rural sections of national roads, particularly motorway and dual carriageway sections of the network, typically carry high volumes of traffic, much of it heavy goods vehicles, travelling at high
speeds. In the circumstances, particular issues and concerns in relation to road safety and operational matters will attach to roadworks consent applications relating to motorways and dual carriageways. Accordingly, in considering applications by network operators for consent to undertake roadworks on these roads, the Authority’s primary concern will be to ensure that the safety of road users and the operational efficiency of the national roads concerned are not compromised as a consequence of the proposed roadworks.

3.4.1 Urban Locations.
The 2002 Act requires that NRA consent be obtained for proposed roadworks on all national roads, including those sections of the network that are located within urban areas. Accordingly, having regard to the significant number of consent applications that could relate to urban roads, the particular traffic management, reinstatement and other requirements that apply to such locations, as well as the need to ensure that the roadworks concerned are coordinated, as appropriate, with works by other utilities, the Authority will, as part of the road authority consultation process provided for under section 53(3)(a) of the 2002 Act, rely on the road authority concerned to identify the appropriate terms and conditions to be included in consents for proposed roadworks in urban areas. Where the Authority decides to grant a consent, it will have regard to any suggested terms and conditions put forward by the road authority concerned. The Authority reserves the right to apply any additional terms and conditions to such consents as it sees fit.

3.4.2 Non-Motorway/ Non-Dual Carriageway Rural Locations.
Similar procedures to those outlined at 3.4.1 above will be applied for the purpose of identifying terms and conditions in respect of consent applications relating to non-motorway/ non-dual carriageway rural sections of national roads. The Authority’s primary focus in relation to such applications will be to protect the structural integrity of the national roads concerned and ensure the safety and operational efficiency of the roads for road users.

3.4.3 Inter-Urban Motorways and Dual Carriageways.
Ireland’s inter-urban motorway and dual carriageway network provides vital, strategic transport links between our major cities, ports and airports. The Authority’s primary concerns, in considering consent applications relating to these sections of the network, are to ensure that the roads concerned continue to fulfill their strategic transport objective and to protect the major investment that has been made by Government in the development of these roads.

3.5 Past Performance.
It should be noted that, in considering an application for a consent, the Authority will have regard to the past performance of the network operator and/or any person engaged by the network operator in complying with conditions attached by the Authority to previous consents issued to the network operator concerned.
3.6 Additional Approvals.

3.6.1 Public Private Partnership Road Schemes.
In accordance with Government policy, a number of major national road schemes have been constructed in recent years under the Authority’s Public Private Partnership (PPP) programme. Appendix C contains a map showing the locations of the schemes concerned.

Any applications for consent for proposed roadworks that concern any of these PPP schemes, in addition to usual considerations, will be considered in light of the applicable contractual provisions.

It will be a matter for network operators to consult with, and deal with any issues raised by, the PPP companies where operators propose to submit a roadworks consent application to the Authority in respect of sections of the network concerned and to comply with any terms and conditions as may be required by the PPP company in connection with the proposed roadworks.

Any consent granted by the Authority under section 53(3)(a) of the Act will not become operative until all necessary PPP company approvals are obtained and submitted by the network operator to the Authority.

3.6.2 Railway Crossings.
An additional requirement arises in the case of a roadworks consent application to the Authority relating to a section of national road which includes a railway crossing. Such crossings are constructed in accordance with agreements between CIÉ, Iarnród Éireann, the relevant local authority and, as appropriate, the National Roads Authority. In accordance with the terms of these agreements, it will be necessary for the network operator to obtain the prior written approval of CIÉ/ Iarnród Éireann before commencing roadworks on such railway crossings.

Any consent granted by the Authority under section 53(3)(a) of the Act will not become operative until all necessary CIÉ/ Iarnród Éireann approvals are obtained and submitted by the network operator to the Authority.

3.6.3 Other Approvals.
Roadworks on national roads may require additional approvals such as wayleaves (e.g. where works are proposed through signal controlled junctions or works involving a bridge crossing), suspension of parking or road closure orders, etc.).

Any consent granted by the Authority under section 53(3)(a) of the Act will not become operative until all approvals, as may be required, are obtained and submitted by the network operator to the Authority.

Where a network operator intends to submit an application for a roadworks consent relating to roadworks along motorway/ dual carriageway sections of national roads (see map at Appendix B) and/or relating to access to ducts, the Authority will facilitate (to the extent consistent with its duties under legislation and within its ability to procure) the network operator in undertaking a
survey to establish the continuity, condition, existence, design and fitness for purpose of ducting along the route(s) concerned on being so requested by the network operator.

Costs in connection with such surveys, which shall be undertaken at dates and times agreed beforehand with the Authority and subject to such additional conditions as the Authority may specify (including in relation to traffic management and other operational arrangements) will be borne entirely by the network operator.

The Authority will neither give nor make any representation, guarantee or warranty (express or implied) in relation to the continuity, condition, existence, design or fitness for purpose of ducts along national roads.

5. **Withdrawal of Consent.**
Where the holder of a consent fails to comply with any condition attached to the consent, the Authority may, if it considers it appropriate to do so, withdraw the consent. Written notice of such withdrawal will be given to the network operator to whom the consent was issued.

6. **Appeal Procedure.**
Sections 53(15), (16), (17) and (18) of the 2002 Act set out the procedures that apply in cases where the Authority proposes to refuse to grant consent, to grant consent subject to conditions, or to withdraw a consent in respect of roadworks. The sections concerned are reproduced at Appendix D.
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Section B

Scheme Prepared Under Section 53(11) of the Act

Electronic Communications Infrastructure

Use of Underground Road Capacity on National Roads

NRA
National Roads Authority
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Section B

Scheme Prepared Under Section 53(11) of the Act

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Section B

Scheme Prepared Under Section 53(11) of the Act

Part 1

Introduction.

1.1 About this Scheme.

This scheme outlines the Authority’s policy regarding the use of underground national road capacity by network operators. The scheme has been prepared in accordance with section 53 (11) of the Communications Regulation Act, 2002, as amended, which provides as follows:

‘The NRA, in the case of national roads, following consultation, not exceeding 60 days, with road authorities, or a road authority, in the case of regional and local roads in its functional area, may formulate and, after public consultation, adopt a scheme setting out its policy regarding-

(a) the use of underground road capacity, including the rationing of any particular underground spaces below roads,
(b) conditions (including restrictions and requirements) that may be imposed by it in relation to the grant of consents, either generally or with respect to specific areas or circumstances,
(c) refusal of consent, either generally or with respect to specific areas or circumstances,
(d) charges under this Part, and
(e) emergency road works.’

1.2 Definitions of Key Words/Phrases Used in This Scheme.

Throughout this document, unless otherwise stated, the following words have the meanings set out below:

“1993 Act” means the Roads Act, 1993, as amended;

“2002 Act” means the Communications Regulation Act, 2002, as amended by the Communications Regulation (Amendment) Act 2007 and the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act, 2010;

“Authority” means the National Roads Authority;
“consent” means a consent granted to a network operator by the National Roads Authority under section 53(3)(a) of the 2002 Act to carry out roadworks on a national road for the purposes mentioned in section 53(3);

“duct” means a pipe or a tube installed along a national road which may, *inter alia*, be used for the carriage of electronic communications infrastructure;

“electronic communications infrastructure” means any part of an electronic communications network;

“electronic communications network” has the meaning given to it in the 2002 Act;

“emergency roadworks” means roadworks necessary to eliminate or reduce danger or risk to persons or property;

"national road" means a public road or a proposed public road which is classified as a national road under section 10 of the Roads Act, 1993, as amended;

“network operator” means any person who provides or operates an electronic communications network;

“physical infrastructure” means infrastructure which is capable of supporting electric communications infrastructure including ducts, poles, antennae support structures and rights of way overland but does not include electronic communications infrastructure;

"road" includes—

(a) any street, lane, footpath, square, court, alley or passage,

(b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,

(c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gulley, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and

(d) any other structure or thing forming part of the road and

(i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road or for the protection of the environment, or

(ii) prescribed by the Minister for Transport, Tourism and Sport;

“road authority” means the County Council or City Council in whose administrative area the national road in respect of which it is proposed to carry out roadworks is located;
“roadworks” means the opening of a public road or any act or work that requires or causes the closing of a public road or part of a public road, including the opening or closing of a public road or part of a public road for the purposes of opening ducts, for the purpose of the establishment, extension, replacement, repair, removal or maintenance of works on electronic communications infrastructure.

1.3 Scope of this Scheme.

This scheme applies to network operators who wish to carry out roadworks on national roads for the purposes of:

(a) establishing underground electronic communications infrastructure and any associated physical infrastructure;

(b) extending the underground electronic communications network to parts of the road under which electronic communications infrastructure has not previously been placed by that network operator;

(c) carrying out roadworks on underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure, or

(d) installing electronic communications infrastructure in ducts which are the responsibility of the Authority.

1.4 Statement of General Policy.

This scheme is a statement of the general policy of the Authority concerning matters the subject of the scheme. The Authority will, in accordance with section 53(10) of the 2002 Act, have regard to this scheme when considering an application for consent to carry out roadworks on a national road.

Nothing in this scheme is to be taken as a statement of intent or promise as to future conduct in any particular case and the Authority reserves the right, at its absolute discretion, to apply modified, different or additional requirements or conditions as it may deem appropriate in respect of particular proposed roadworks on national roads.

1.5 Monitoring/Revision of Scheme.

The provisions of this scheme will be monitored and revised, as appropriate, by the Authority to ensure that consent applications are processed in a timely and efficient manner and that the safety of road users and the operational efficiency of national roads are not compromised as a consequence of roadworks.
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Section B

Scheme Prepared Under Section 53(11) of the Act

Part 2

Underground Road Capacity on National Roads.

2.1 Introduction.

In recent years, the Authority has adopted a practice of installing roadside ducting as part of the construction of new motorway and dual carriageway sections of the network. This ducting is primarily intended for current and future road-related purposes, e.g. traffic route lighting, variable message signs, I.T. applications for traffic and road network management, etc.

However, limited spare capacity exists in some of these ducts which may allow usage of the ducts for non-road-related uses such as electronic communications cabling.

2.2 Location and Description of Ducts.

A map showing the indicative locations and the number of service ducts (typically 100mm diameter) installed by or on behalf of the Authority along the verges of inter-urban motorway/dual carriageway sections of the national road network as part of the construction or upgrade of the roads concerned is attached at Appendix B.

Note: The map concerned is provided for illustrative purposes only.

2.3 Use of Underground Road Capacity.

2.3.1 Retention of Ducts/Duct Space for Road-Related Purposes.

The ducting installed along major national road schemes in recent years as part of national roads programme related works is primarily intended for road-related purposes. The Authority will consider applications by network operators wishing to carry out roadworks in accordance with, and for the purposes of, section 53(3) to avail of such ducting where the Authority determines that there
is surplus capacity over and above the current and potential/planned future needs of the Authority/the road authority for the area concerned.

In general, a minimum of two ducts are required for road-related purposes.

2.3.2 Sharing of Duct Space
In the interests of maximising the benefits to be derived from available duct capacity, network operators granted consents under section 53(3)(a) of the 2002 Act may be required to share the use of the ducts along national roads, including access arrangements.

2.3.3 Installation of Sub-Ducts.
The existing ducts along national roads are generally expected to be capable of supporting up to four sub-ducts, thereby maximising the benefits to be derived for electronic communications purposes from the available duct capacity. In order to realise these benefits, it may be appropriate, where sub-ducts have not previously been installed, that one of the network operators granted a roadworks consent be required to undertake the necessary sub-ducting work.

Depending on the circumstances, the Authority may permit the associated costs, to the extent that the work undertaken is over and above that required to satisfy the needs of the network operator concerned, to be offset against the charges payable to the Authority for the use of the duct on the national road.

2.3.4 Installation of Duct Network on Motorways and Dual Carriageways.
Roadworks consent applications involving the installation of new/additional ducting along motorway and dual carriageway sections of national roads will only be considered by the Authority in circumstances where the proposed roadworks do not require the excavation of the road pavement and where the proposed roadworks would be confined to the verge. Where an application involves the filling of gaps in ducts along motorway and dual carriageway sections of national roads, the Authority will take into account the potential extension of the ducts (and the underground electronic communications infrastructure) consequent of this. Property in the installed duct vests in the property owner and the network operator shall waive all rights in relation to it.

2.3.5 Installation of Ducts on Non-Motorway and Non-Dual Carriageway Rural Sections of National Roads.
Roadworks involving the installation of ducts along non-motorway and non-dual carriageway rural sections of national roads should generally be carried out in the verge. Consent applications in which the proposed roadworks would involve the excavation of the road pavement on non-motorway and non-dual carriageway rural sections of national roads will, accordingly, only be considered by the Authority in circumstances where no verge exists or where it is clearly demonstrated by the applicant that it would not be feasible to carry out the proposed roadworks within the verge.
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Section B

Scheme Prepared Under Section 53(11) of the Act

Part 3

Conditions of Consent

3.1 Introduction.

Any consent that may be granted by the Authority to the carrying out of roadworks will be subject to certain conditions. Such conditions are likely to include conditions reflecting some or all of the following.

3.2 No Warranty.

The Authority will neither give nor make any representation, guarantee or warranty (express or implied) in relation to the continuity, condition, existence, design or fitness for purpose of ducts along national roads.

3.3 Repairs to Ducts.

Where it is determined that upgrades or repairs are required to be made to ducts, or that incidental gaps in available ducts need to be addressed, the Authority may require network operators to undertake the necessary works and to meet the costs involved.

3.4 Ownership.

Ducts, any sub-ducts or any fixtures are and shall be owned by the Authority or the relevant road authority.

Nothing in any consent granted by the Authority shall have the effect of, or be construed as having the effect of:

(a) granting any right, title or interest in or to any ducts, sub-ducts or fixtures; or

(b) without prejudice to the generality of (a), granting any right to possession (be it exclusive or non-exclusive) of a duct, sub-duct or fixture.
3.5 Security of Ducts.

Ducts may be accessed from time to time by other network operators who have been duly authorised under section 53 of the 2002 Act, as well as by the Authority and road authority/personnel acting on their behalf.

3.6 No Liability.

No responsibility or liability whatsoever shall attach to the Authority or to any road authority for any losses, liabilities, claims, costs or expenditure suffered or incurred by network operators in connection with or arising from, or as a consequence of:

(a) the undertaking of surveys,
(b) the failure of a network operator:
   (i) to undertake surveys, or
   (ii) to take other appropriate steps to establish the continuity, condition, existence, design or fitness for purpose of the ducting concerned,
(c) applying for a consent to roadworks,
(d) the carrying out of roadworks by a network operator,
(e) the accessing or use of the ducts by a network operator,
(f) the accessing or use of the ducts by any party, and
(g) any loss or damage to the electronic communications infrastructure, howsoever caused, except where caused by the wilful act or gross negligence of the Authority or its duly authorised agents.

3.7 Indemnification.

Indemnification of the Authority, the road authority concerned and any other interested party (such as PPP companies) will be required in respect of all claims, proceedings, liabilities, losses or expenses of whatever nature, however arising.

Such indemnification must be supported by insurances with:

- in the case of the roadworks, minimum indemnity of €7m for a single incident/claim, such cover to be in place until the completion of the works in a manner satisfactory to the Authority having regard to the conditions specified in the consent relating to the roadworks concerned, and
- in the case of use of the ducts after completion of the roadworks, a minimum indemnity of €1m in respect of property damage insurances and €1m in respect of liability insurances.

The levels of cover are subject to review on an annual basis.

Evidence of indemnification must be provided to the Authority by the network operator.

3.8 Liaison.

It will be the responsibility of a network operator to liaise with all interested parties, such as (without limitation), landowners, road authorities, maintenance contractors and PPP companies (in the case of the PPP road schemes).
Without prejudice to the generality of the foregoing, network operators granted access to ducting along national roads will, accordingly, be required, as appropriate, to co-ordinate with and accommodate other network operators/utility providers when undertaking roadworks for the installation, maintenance, repair etc. of electronic communications infrastructure along national roads.

3.9 Representatives.

Representatives nominated by the Authority and/ or a road authority may have access to the roadworks, the ducts and any items within them and to all related records, reports and materials.

3.10 Duration of Consents.

A consent issued by the Authority for roadworks relating to the installation of telecommunications infrastructure along motorway and dual carriageway sections of national roads shall expire after 15 years from the date on which the consent was granted and the network operator shall waive any right or entitlement to such infrastructure thereafter. The infrastructure concerned may subsequently be used without charge, or removed and disposed of by the Authority, unless otherwise agreed between the Authority and the network operator.

3.11 Other Issues that may be Subject of Specific Conditions.

In addition to the foregoing general conditions, specific conditions that may be included in consents may relate to some or all of the following:

- nature and extent of roadworks;
- roadworks method statements;
- traffic management arrangements;
- standards/quality control;
- timing of roadworks, including repairs and maintenance of electronic communications infrastructure and of the national road concerned;
- periods during which roadworks are permitted;
- signing of roadworks;
- installing electronic communications infrastructure in ducts on national roads;
- establishing underground electronic communications infrastructure;
- extending underground electronic communications networks;
- carrying out roadworks on underground electronic communications infrastructure, e.g. maintenance, repair, replacement, addition or removal of such infrastructure;
- restrictions on roadworks to accommodate special events;
- moratoria on roadworks on specified roads;
- requirement to cease work in the event of traffic accident or other emergency impacting on the operation or management of the road;
- direction to cease works;
- removal of electronic communications infrastructure;
- prior notification of intention to commence roadworks;
- inspection of roadworks;
- road repair, re-instatement and maintenance;
- payment of fees/charges, etc.;
- liability of the network operator to meet any losses, liabilities and costs suffered or incurred by the Authority under contractual arrangements with a third party;
- indemnity of the Authority against loss or damage caused to electronic communications infrastructure installed in national road ducts, and
- presence of Authority/road authority representatives/ their nominees at roadworks sites.

The above is not intended to constitute an exhaustive list of issues in respect of which the Authority may impose conditions and the Authority reserves the right to impose any conditions that are considered appropriate by it.
Guide to the Use of Underground Road Capacity on National Roads for Electronic Communications Infrastructure

Section B

Scheme Prepared Under Section 53(11) of the Act

Part 4

Refusal of Consent.

4.1 Refusal of Consent – General.

The NRA may refuse an application for permission to carry out roadworks. Factors that may result in a refusal include, but are not limited to:

(a) The Authority considers that the proposed roadworks would pose unacceptable risks to the safety and operational efficiency of the national road(s) concerned.

(b) The Authority considers that the proposed roadworks would pose unacceptable risks in relation to road reconstruction, repair and maintenance costs that may arise as a consequence of the application.

(c) The Authority is satisfied that there is insufficient surplus duct capacity available to accommodate the establishment or extension of underground electronic communications infrastructure.

(d) The Authority is of the view that the installation of the planned infrastructure would seriously compromise the capacity of the road to accommodate the planned/ potential installation at some future date of road-related services/infrastructure.

(e) The past performance of the network operator and/or any person engaged by the network operator in complying with the provisions of this scheme and with any conditions attached by the Authority to a previous consent issued to the network operator has, in the opinion of the Authority, been unsatisfactory.

(f) Invoices/ charges have not been paid in respect of previous consents issued by the Authority.

(g) A moratorium on roadworks has been imposed by the NRA/ road authority on the national road in respect of which an application for a consent to undertake roadworks has been submitted.

(h) The network operator is unable or unwilling to provide required indemnities to the Authority in respect of all claims, proceedings, liabilities, losses or expenses of whatever nature, however arising in connection with the proposed roadworks.
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Section B

Scheme Prepared Under Section 53(11) of the Act

Part 5

Charges.

5.1 Introduction.
In accordance with the provisions of the 2002 Act, certain charges may be imposed by the Authority on network operators in connection with applications and consents to carry out roadworks on national roads. A schedule of the charges that may be applied is provided at Section D of this Guide.

The position in relation to the charges concerned is set out in the following sections.

5.2 Consents for Roadworks in Urban Locations.

Charges/ deposits/ fees etc. arising from consents issued by the Authority in respect of roadworks on national roads in urban locations will normally be payable by the network operator to the road authority concerned. Details of the amounts payable will be set out in the consent notification issued by the Authority. In addition, charges will be payable to the NRA to recover the Authority’s costs, whether administrative, consultative or other, that may be directly incurred by the Authority in dealing with particular consent applications relating to national roads in urban locations.

5.3 Consents for Roadworks in Rural Non-Motorway/ Non-Dual Carriageway Locations.

Similar arrangements to those set out in paragraph 5.2 will apply in respect of consent applications relating to non-motorway/ non-dual carriageway rural sections of national roads. However, having regard to the strategic importance of the roads concerned, as well as the need to ensure the structural integrity and the safety and operational efficiency of the road, consent applications for roadworks on these roads are likely to attract additional charges payable to the Authority. Such charges may, for example, include administrative fees and costs in connection with the supervision and monitoring of the works concerned.
5.4 Consents for Roadworks on Motorways and Dual Carriageways.

Charges payable to the Authority in respect of consents issued for roadworks on motorway and dual carriageway sections of national roads may include some or all of the following. Additional charges may also be payable to the road authority concerned, Public Private Partnership company and CIÉ/ Iarnród Éireann, as appropriate.

- **Administrative Charges.**
  Under section 53(8) of the 2002 Act, the Authority may impose charges on network operators for its administrative costs in processing an application for a consent, including costs involved in monitoring compliance with consents.

- **Maintenance Liability Damage.**
  Section 53(8) of the Act allows for the imposition of charges by the Authority in respect of reasonable costs the Authority may incur in making good long term damage to a national road as a result of road openings carried out by a network operator.

- **Charges for the Use of NRA Ducts.**
  In accordance with the provisions of section 53(9) of the Act, charges may be applied by the Authority for the use by network operators of ducts on national roads which are provided and made available by the Authority/road authority (see paragraph 5.5).

- **Lane Rental Charges.**
  Charges may be applied by the Authority where roadworks require the closure of a lane (including hard shoulder) on a national road.

- **Relocation Charges.**
  In cases where national road improvement/ maintenance works require the relocation of electronic communications infrastructure that has been installed in ducts which are provided and made available by the Authority/road authority, network operators are liable under section 55(2) of the 2002 Act for costs associated with the relocation of their infrastructure. The cost of relocating the duct(s) concerned in such circumstances will be borne by the Authority.

  Where electronic communications infrastructure has been installed in a duct provided by a network operator on or along a national road, the Authority will be liable for all relocation costs unless the network operator had been advised in the consent granted by the Authority that the road concerned was due to be improved within a period of 2 years of the date from which the operator intended to carry out the works. In such circumstances, the Authority is not liable for any relocation costs provided that the road improvement proceeded within that period.

- **Road Reinstatement Costs**
  In accordance with the provisions of section 53(19) of the 2002 Act, a network operator granted a consent by the Authority under section 53(3)(a) shall be responsible for all costs incurred in the reinstatement of a national road which the operator has opened for the purpose of:
establishing underground electronic communications infrastructure and any associated physical infrastructure;

- extending the underground electronic communications network to parts of the national road under which electronic communications infrastructure has not previously been placed by that network operator;

- carrying out roadworks on underground electronic communications infrastructure, being maintenance, repair, replacement or the addition or removal of underground electronic communications infrastructure, or

- installing electronic communications infrastructure in ducts, which are the responsibility of the Authority.

5.5 NRA Charges Scheme.
The Minister for Transport, Tourism and Sport has conveyed approval to the imposition of charges by the Authority under a scheme made in accordance with section 53(9) of the 2002 Act for the use of ducts on national roads which are provided and made available by the Authority/road authority to network operators. In accordance with the Minister’s approval, the Authority will apply a minimum charge of €1,600 plus VAT per cable/subduct per km, or part thereof, per year, or part thereof. The charges concerned will be adjusted annually in line with the Consumer Price Index. A copy of the Authority’s charges scheme is provided in Section C of this Guide.
Section B

Scheme Prepared Under Section 53(11) of the Act

Part 6

Emergency Roadworks.

6.1 Definition.

Emergency roadworks are defined in the 2002 Act as:

"roadworks necessary to eliminate or reduce danger or risk to persons or property."

Electronic communications infrastructure related roadworks do not, therefore, generally qualify as emergency roadworks.

Network operators should ensure that any emergency roadworks carried out on national roads are undertaken in a manner that ensures the safety of road users and minimises impacts on the operational efficiency of the road.

6.2 Notification of Emergency Roadworks.

Notification of all emergency roadworks must be submitted to the Authority and the relevant road authority as soon as is practicable in advance of the commencement of the works.

The Authority may, in accordance with the provisions of section 53(4) of the 2002 Act, apply conditions in relation to the carrying out and completion of emergency roadworks.
Guide to the use of underground road capacity on national roads for electronic communications infrastructure

National Road Network: 2012

Legend
- Motorway
- National Primary
- National Secondary

[Map of Ireland showing major road networks and cities like Dublin, Galway, Limerick, and Waterford]
Indicative Locations of Ducting

Appendix B

Legend
- Available Ducting
Appendix C: PPP Schemes
Appendix D:


53(15) Where an authority proposes—

(a) to refuse to grant consent,

(b) to grant consent subject to conditions,

or

(c) to withdraw a consent granted by it,

the authority shall notify the network operator concerned in writing of the proposal and shall include in the notification a statement of the reasons for the proposal and of the right of the network operator to make representations to the authority under subsection (16).

(16) A network operator may, within 21 days of the receipt by the operator of a notification under subsection (15), make representations to the authority concerned in relation to the proposal.

(17) Where an authority—

(a) after consideration of any representations made to it by a network operator under subsection (16), or

(b) does not receive representations from the network operator concerned within the period specified in subsection (16),

decides—

(i) to refuse to grant consent,

(ii) to grant consent subject to conditions, or

(iii) to withdraw its consent,

the authority shall, not more than 21 days after the expiration of the period specified in subsection (16), notify the network operator in writing of its decision and shall include in the notification a statement of the reasons for the decision and of the right of the network operator to appeal the decision under subsection (18).

(18) A network operator may, within 28 days of the receipt by the operator of a notification under subsection (17), appeal to the High Court against the decision concerned and the Court may—

(a) confirm the decision,

(b) amend the decision, or

(c) direct the authority to grant the consent

or refrain from withdrawing consent, as the case may be.
Guide to the Use of Underground Road Capacity on National Roads for Electronic Communications Infrastructure

Section C

National Roads Authority

Electronic Communications Infrastructure

Use of Ducts on National Roads

Charging Scheme

Prepared under section 53(9) of the Communications Regulation Act, 2002, as amended
Charging Schedule for Use of Ducts on National Roads

Part 5 of the Communications Regulation Act, 2002, as amended (the “Act”), provides the regulatory framework governing the carrying out of roadworks on national roads by network operators for purposes such as the establishment, extension and maintenance of underground electronic communications infrastructure and associated physical infrastructure as well as the installation of electronic communications infrastructure in ducts which are the responsibility of the National Roads Authority/road authority.

Section 53(9) of the Act provides as follows:

"53(9) The NRA may, in the case of national roads, make a scheme which will allow for the NRA to impose charges for the use of ducts, which are provided and made available on those roads by an authority to a network operator, subject to the approval of the Minister for Transport following consultation with the Minister and the Minister for Finance”.

The Minister for Transport, Tourism and Sport, following consultation with the Minister for Communications, Energy and Natural Resources and the Minister for Finance, has given approval to the National Roads Authority to apply a minimum charge for the use by network operators of ducts in the circumstances provided for in Section 53(9) of the Act. The approved minimum charge is as follows:

- €1,600 (plus VAT) per cable/subduct per km, or part thereof, per year, or part thereof.
Guide to the Use of Underground Road Capacity on National Roads for Electronic Communications Infrastructure

Section D

National Roads Authority

Roadworks Consent Applications

Schedule of Charges

Communications Regulation Act, 2002, as amended

Effective Date: January, 2012
Schedule of Charges

2012

1. Motorways and Dual Carriageways in the Following Categories:

(a) Rural

(b) 1Major Urban Bypasses

Details of the charges that may be applied by the Authority in connection with roadworks consent applications relating to these sections of the network of national roads are set out in the following table.

<table>
<thead>
<tr>
<th></th>
<th>0 – 10km</th>
<th>10km – 50km</th>
<th>Over 50km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration Charge²</td>
<td>€5,000</td>
<td>€10,000</td>
<td>€20,000</td>
</tr>
<tr>
<td>Annual Charge³ per subduct per km, or part thereof</td>
<td>€1,600</td>
<td>€1,600</td>
<td>€1,600</td>
</tr>
<tr>
<td>Installation Supervision / Certification Charge</td>
<td>€4,000</td>
<td>€40,000 + €1,000/km or part thereof</td>
<td>€80,000 + €500/km or part thereof</td>
</tr>
<tr>
<td>Maintenance Liability Charge per km ⁴</td>
<td>€2,000</td>
<td>€2,000</td>
<td>€2,000</td>
</tr>
</tbody>
</table>
Schedule of Charges
2012

2. Rural Sections of Non-Motorway/ Non-Dual Carriageway National Roads.

Details of the charges that may be applied by the Authority in connection with roadworks consent applications relating to rural non-motorway and rural non-dual carriageway sections of the network of national roads are set out in the following tables.

(a) Transverse Roadworks and Roadworks Involving Excavations Up To 1km in Length.

<table>
<thead>
<tr>
<th></th>
<th>Road Pavement</th>
<th>Blacktop / Concrete Footpath</th>
<th>Brick Paviour Footpath</th>
<th>Granite Set or similar Footpath</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Administration Charge</strong></td>
<td></td>
<td></td>
<td></td>
<td>€500</td>
</tr>
<tr>
<td><strong>Maintenance Liability Charge per sq.m</strong></td>
<td>€125</td>
<td>€50</td>
<td>€150</td>
<td>€300</td>
</tr>
<tr>
<td><strong>Installation Supervision / Certification Charge</strong></td>
<td>&lt; 100m²</td>
<td>€20/m² (with a minimum of €200)</td>
<td>&gt;100m²</td>
<td>€2,000 + €10/m² (maximum of €10,000)</td>
</tr>
</tbody>
</table>
2. (Contd.)

Rural Sections of Non-Motorway/ Non-Dual Carriageway National Roads.

(b) Longitudinal Roadworks and Roadworks Involving Excavations Greater Than 1km in Length.

<table>
<thead>
<tr>
<th></th>
<th>Road Pavement</th>
<th>Verge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration Charge</td>
<td>€1,000</td>
<td>€1,000</td>
</tr>
<tr>
<td>Maintenance Liability Charge per km or part thereof</td>
<td>€20,000</td>
<td>€0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>1-10km</th>
<th>10km – 50km</th>
<th>Over 50km</th>
</tr>
</thead>
<tbody>
<tr>
<td>Installation Supervision / Certification Charge</td>
<td>€4,000 per km or part thereof</td>
<td>€40,000 + €1,000 per km or part thereof</td>
<td>€80,000 + €500 per km or part thereof</td>
</tr>
</tbody>
</table>
3. Urban Sections of National Roads (other than those specified in section 1).

Details of the charges that may be applied by the Authority in connection with roadworks consent applications relating to the above sections of the network of national roads are set out in the following table.

**Installation of Ducts.**

<table>
<thead>
<tr>
<th></th>
<th>Road Pavement</th>
<th>Blacktop / Concrete Footpath</th>
<th>Brick Paviour Footpath</th>
<th>Granite Set or similar Footpath</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration Charge</td>
<td>€500</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Liability Charge per sq.m</td>
<td>€125</td>
<td>€50</td>
<td>€150</td>
<td>€300</td>
</tr>
<tr>
<td>Installation Supervision / Certification Charge</td>
<td>€20/m² (with a minimum of €200)</td>
<td>€2,000 + €10/m² (maximum of €10,000)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Examples of the routes concerned include the M50 (Dublin), N40 (Cork), M7/N18 Limerick Southern Ring Road and N25 Waterford City Bypass. Please contact the Authority if further information/clarification required.

Charge per application to cover installation and National Roads Authority administration costs. A single application may include for both use of existing NRA ducting and installation of new ducting where gaps occur in duct provision. Charge will be based on the combined length.

The Authority may, at its absolute discretion, waive or vary administration charges for roadworks other than those involving cable or new duct installation.

Annual charge relates to the use of an individual sub-duct along the installed length of cable on the section of motorway/dual carriageway concerned.

The maintenance liability charge is a single charge to cover a maximum licence period of 15 years. The charge is to cover the additional liability attaching to such motorway network maintenance operations as crash barrier repair, bridge deck maintenance and replacement of verge signage.

The maintenance liability charge is a single charge to cover a maximum licence period of 15 years. The charge is to cover the additional liability attaching to the maintenance of road pavements on non-motorway, non-dual carriageway sections of rural national roads.

The maintenance liability charge is a single charge to cover a maximum licence period of 15 years. The charge is to cover the additional liability attaching to the maintenance of road pavements and footpaths in urban areas.
EXPLANATORY NOTE

Part 5 of the Communications Regulation Act, 2002, as amended (the “Act”), provides the regulatory framework governing the carrying out of roadworks on national roads by network operators for purposes such as the establishment, extension and maintenance of underground electronic communications infrastructure and associated physical infrastructure. In accordance with section 53 of the Act, consent applications to undertake roadworks on national roads must be submitted to the NRA by network operators (section 53(3)) and roadworks (except emergency roadworks) on national roads may not be undertaken without the prior written consent of the Authority (section 53(1)).

Under the Act, charges may be applied by the Authority for the use by network operators of ducts on national roads which are provided and made available by the Authority/road authority (section 53(9), as well as in respect of administrative, supervisory and reinstatement costs (section 53(8)).

Details of the current charges applied by the National Roads Authority in connection with roadworks consent applications/ consents relating to national roads are set out in the following tables. The charges concerned apply to consents issued by the Authority during the calendar year stated and are subject to annual review.

The charges concerned are subject to annual review by reference to the Consumer Price Index.

NOTES

a) All charges are exclusive of VAT.

b) The charges concerned are exclusive of any charges Public Private Partnership (PPP) companies may impose arising from roadworks consent applications relating to sections of the motorway/ dual carriageway network provided under the PPP programme, as well as any charges required by CIÉ/ Iarnród Éireann in connection with railway crossings. Any such charges must be determined by agreement between the applicant and the PPP company and/or CIÉ/ Iarnród Éireann and will be payable by the network operator to the PPP company and/or CIÉ/ Iarnród Éireann, as the case may be.

c) Additional charges may be applied by the road authority/ authorities within whose administrative boundaries the motorway/ dual carriageway the subject of the application is located.

d) Property in ducts installed by network operators vests in the property owner and the network operator waives all rights in relation to it.