

has been held that the Court is confined to considering the condition of the road being made up, rather than to review the Department's policy with regard to street works in general.

The estimate of the cost of the works is based on costs incurred recently by the Department for similar works. It should be borne in mind that property values are likely to be increased by the works, and deferment is almost certain to lead to greater cost if the work is done at a later date.

5) *"that any premises ought to be excluded from or inserted in the provisional apportionment"*

Guidance: It should be noted that premises which do not front onto the road, but have access onto it via a court, passage, or otherwise, and which benefit by the works can be included in the apportionment.

6) *"that the provisional apportionment is incorrect in respect of (i) some matter of fact to be specified in the objection;*

Guidance: The Department takes great care in carrying out the necessary survey work, and in preparation in both the estimate and the provisional apportionment.

or (ii) *"the degree of benefit to be derived by any persons"*

Guidance: This reason for objection only applies where degree of benefit has been applied by the Department in preparing the provisional apportionment.

7) *"that no, or no sufficient, regard has been had to the amount and value of any work already done by the owners and occupiers of any premises"*

Guidance: The Department always considers the suitability of any work already done, but has to decide whether or not such work can be satisfactorily incorporated into the finished works.

Q: "What if I cannot afford to pay for my apportionment?"

A: It is realised that the cost of paying for street works may place a financial burden on owners. There are, however, various ways in which payments can be made.

- 1) If payment is made in full within one month of receipt of the account then no interest is charged.
- 2) The Department may agree that a payment can be spread over a period of time up to ten years. In this case interest is also chargeable and dependent on the personal circumstances of the owner, such interest payments may be allowed for tax purposes by the Assessor of Income Tax. Owners are advised to contact the Assessor of Income Tax for further advice.

In cases of extreme hardship, the Department may resolve:-

- (i) to pay up to 25% of the sum apportioned on the frontage and or
- (ii) that the sum apportioned is made a charge against the premises. All that is payable in this case, until the property is sold, is the interest on the debt.

In all such cases the Department has to be satisfied that there is genuine hardship.

Further advice on methods of payment can be obtained from the

Department. Some owners neither wish or have the ability to pay for street works, but the law does not recognise these are valid reasons for objecting to an apportionment.

Q: "How can I be sure that the final cost will not grossly exceed the provisional cost of the work?"

A: The Act requires that the Department ensures that:-

- 1) There has not been an unreasonable departure from the specification, plans and sections.
- 2) The actual cost has not without sufficient reason exceeded the estimated cost by more than 15%.
- 3) The method of apportionment of the final costs has followed exactly that of the provisional apportionment.

An owner can object to the final apportionment if these conditions are not complied with. Experience over many years has shown that where costs have risen, this is usually due to protracted legal matters which have caused delays in commencing the works. In most cases, the final costs are slightly below the provisional estimate.

Q: "Can I increase the rent on my property as a result of making up of the street?"

A: You may be able to, subject to any contract you have with your tenant and the provisions of Landlord and Tenant and Housing (Rent Control) legislation.

Q: "Will my rates on my property be increased?"

A: They may be, but this is a matter for the valuation section of the Treasury.

Q: "What if all the frontagers want the road making up, but prefer to arrange the work themselves?"

A: The Department would encourage this initiative on the part of the frontagers, and would help with ensuring the work is acceptable for adoption purposes.

Q: "Who can I contact for further information?"

A: If you have any queries, the Engineer who is responsible for the scheme will be pleased to discuss them with you, either by telephone or by meeting you at some convenient time and place during normal office hours.

Further Information

The Highways Act 1986 can be viewed on-line at the Isle of Man Legislation website legislation.gov.im

Enquiries by email should be sent to Enquiries@Highways.gov.im



**Isle of Man
Government**

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Street Works A Guide



Introduction

Most roads in the Isle of Man are maintained at the public expense; those which are not maintained are known as “unadopted roads”, or are roads purely for private use which are not adoptable. The term “unadopted road” is therefore related to the maintenance liability and should not be confused with whether or not the public have a right of way along the road.

With few exceptions, there is no-one legally liable to maintain unadopted roads. Consequently many such roads are in a poor state of repair. Legislation gives the power to the Department to make up unadopted roads. This is done by using the procedures prescribed by Part VII of the Highway Act 1986.

Broadly speaking it is the Department’s policy to make up at the expense of the frontagers, those roads not made up to the satisfaction of the Department by the original developer as a matter of first priority and then consider other roads on their merits. However, the Department monitors the street works programme and periodically reviews its policy.

This booklet is intended to provide information to persons likely to be affected by the Department’s decision to make up an unadopted road. The booklet gives general guidance only, and should not be treated as an authoritative statement of the law.

Highways Act 1986

Part VII—Making Up of Unadopted Roads

Where an unadopted road (which means any highway, street, road, lane, path, square, alley or passage) is not adequately surfaced or drained, the Department may decide to carry out street works and to charge the cost of these works to the owners of properties which front, adjoin or abut such road.

The cost of the work is apportioned to each owner according to the frontage measurement of each property on the unadopted road, and value of any works already done to the road by a frontager.

In certain circumstances the Department is allowed to apportion some of the cost to properties which, whilst not fronting directly onto the road, have access to it through a court or passage or otherwise and thus are likely to benefit from the works.

The Department can, if it considers it just, vary the sums apportioned on each frontage to take account of the relative benefit that making up the road would confer on each frontager with respect to other frontagers. This procedure is known as degree of benefit.

Procedure for carrying out a street works scheme

Before the works are commenced

When the Department has resolved to carry out street works, staff carry out a survey and prepare specifications, plans and estimates for the works for approval by the Department together with a provisional apportionment of costs. This shows how it is intended to divide the cost of the works between the various premises which are liable to be charged. The Department is entitled to include an amount towards the costs which are incurred in preparing and supervising the work.

The Department is empowered by Act of Tynwald to bear a proportion of the expenses of street works, up to 50% of the total cost. This contribution by the Department results in a proportionate reduction in the liability of individual frontagers. The value of the Department’s contribution and the net liability of frontagers is shown on the provisional apportionment. It is emphasised that the Department policy can vary, and this guide does not confer any commitment on the Department to make any contribution to any Street Works Scheme.

A copy of the Department’s resolution approving the specification, plans etc., together with details of grounds for objection is then served on the owners of the affected premises.

An owner of a property which is shown in the provisional apportionment may object to the Department’s proposals (the grounds for objection are set out later on in this booklet) and this has to be done within one month of the date of service of resolution. Sometimes objections can be overcome by discussion between owners and the Department, but if the objections are not withdrawn, they have to be considered by the High Court, where the owners or their representatives can give evidence on the grounds for their objections. The Department is required to make the necessary arrangements for the Court hearing, and to notify the objectors of the time and place at which it will be held.

The High Court has the power to quash or amend the resolution of approval, specification, plans, sections, estimate and provisional apportionment, and to decide whether any part, or all of the cost of the Court Proceedings should be paid for by the objectors or the Department.

If the street works proceed, the Department arranges for the work to be done by its own workforce or a private contractor, and supervises the work to ensure that it complies with the plans and specification.

After the works are completed

After the works have been completed a final apportionment is prepared which shows how the costs are divided. The proportions charged to each property are on the same basis as those used in the provisional apportionment. Notices of the final apportionment are sent to the owners, who have limited grounds for objection

which are set out in section 97 of the Highways Act 1986. If these objections cannot be resolved by discussion, they are determined in the same manner as objections to the provisional apportionment. The cost charged to each property is due one month after the serving of the final apportionment and if not paid within one month, interest becomes payable from that date. Methods of payment are set out later in this booklet.

Adoption

After the works are completed the road becomes a highway which is maintainable at the public expense, under section 3 (2) (c) of the Highways Act 1986.

Frequently Asked Questions

Q: “What can the Department include in its scheme?”

A: Any works considered necessary to bring the road into conformity with other roads.

Q: “Can the Department ignore the wishes of the owners?”

A: Under the Highways Act 1986 it is the responsibility of the Department to decide whether a particular road should be made up. The Department will not normally undertake work to make up an unadopted road unless at least 50 per cent of the owners agree to the street works and wish to have the road adopted.

Q: “On what grounds can an owner object to the proposed works?”

A: Section 95 of the Highways Act 1986 lists the grounds on which an owner may object to the proposals as follows:

1) *“that the road is not or does not form part of a road within the meaning of this Part”*

Guidance: “road” here means any highway, street, road, lane, path, square, court, alley or passage, whether a thoroughfare or not, not being a highway maintainable at the public expense, and includes any part of a road.

2) *“that a road is in whole or in part a highway maintainable at the public expense”*

Guidance: The Department maintains map records of all maintainable highways and reference to these will indicate whether the road is maintained at the public expense.

3) *“that there has been some material informality, defect or error in, or in respect of, the resolution, notice, plans, section or estimates”*

Guidance: The Department is bound to follow all the requirements under Part VII of the Highways Act 1986.

4) *“that the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive”*

Guidance: The proposed works must be sufficient for the purpose for which they are designed. In considering the reasonableness of the work, the facts of the whole proposal are dealt with at the date of the provisional apportionment. It should be noted that if an objection on this ground is to be determined at the High Court, it