

# Relate

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The journal of developments in social services, policy and legislation in Ireland

## Problems that may arise in the urban environment

This issue covers some of the problems that may affect people who live in urban areas. Among these issues are doing work on party structures, noise, trees, control of animals and taking estates under the charge of local authorities.

Many types of problems may arise between people living close to one another. In general, these problems are best resolved by neighbours talking to each other but sometimes that is not possible or does not lead to a satisfactory result. Suburban dwellers may also have problems that can be resolved only by the authorities. Here we look at some of these problems, how they can be legally resolved and who is responsible for solving them.

Local authorities have various powers to make bye-laws for their areas. Such bye-laws may designate particular rules for designated areas. This means that the rules that apply can vary both between local authorities and within local authorities. We are concentrating on issues that arise in urban and suburban environments. Many of these are also relevant to rural environments but there is other legislation that may apply in rural environments, for example, legislation on agriculture and forestry.

We do not cover the rules relating to planning permission (although that is clearly a significant issue) because it would require more space than is available. The Department of the Environment, Community and Local Government published *A Guide to Planning Enforcement in Ireland* and a summary leaflet in November 2012. These are designed as user-friendly guides to the planning system.

The Minister for Housing and Planning has said that she intends to take other initiatives aimed at clear communication of the planning system and robust enforcement of the planning enforcement regime. These include a policy directive to local authorities on enforcement, a Planning Policy Statement to set out the public policy objectives behind planning and a non-statutory consolidated version of the Planning Acts.

Website: [environ.ie](http://environ.ie).

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## Doing work on party structures

There are various common law rules about carrying out works on shared boundaries or party structures. The *Land and Conveyancing Law Reform Act 2009* covers a wide range of property laws. Among other things, it aims to clarify the rights of a person who wants to carry out works on a party structure. It provides for *works orders*. These are orders that allow you to carry out works on a party structure if you have been unable to agree such works with your adjoining landowner – your neighbour. Effectively, it regulates the position between you and your neighbour while the works are being carried out.

### Party structure

The Act has a wide definition of a *party structure*. A party structure can be any wall, arch, ceiling, floor, partition, ditch, fence, hedge, shrub, tree, or other structure that horizontally, vertically or in any other way:

- Divides adjoining (which is defined to include adjacent) and separately owned buildings, or
- Is situated at or on or so close to the boundary line between adjoining and separately owned buildings or between such buildings and unbuilt-on lands that it is impossible or not reasonably practical to carry out works to the structure without access to the adjoining building or unbuilt-on land

It includes any such structure that is situated entirely in or on one of the adjoining buildings or unbuilt-on lands, or straddles the boundary line between adjoining buildings or between such buildings and unbuilt-on lands and is either co-owned by their respective owners or subject to some division of ownership between them.

### Right to carry out works to party structure

The Act provides that you are entitled to carry out the following works on a party structure:

- Works that are required in order to comply with any statutory provision, for example, the requirements of the Building Regulations
- Exempted developments under the Planning Acts (developments for which planning permission is not needed) or developments for which you have planning permission or which are required in order to comply with the conditions of a planning permission
- Works required for the preservation of the party structure or of any building or unbuilt-on land of which it forms a part

- Any other works that will not cause substantial damage or inconvenience to your neighbour or that even if they will cause damage or inconvenience, it is nevertheless reasonable to carry them out

You must make good any damage or reimburse your neighbour if you cause damage in the course of the work. You are obliged to pay your neighbour's reasonable costs for getting professional advice about the likely consequences of the work, for example, an architect's assessment, and reasonable compensation for any inconvenience caused by the works. However, you are entitled to take proportionate account of your neighbour's use and enjoyment of the party structure when assessing the damages or costs and reduce the amount accordingly. In effect, your neighbour must meet the costs proportionate to the benefit received from the works.

The works that may be carried out on a party structure include:

- Carrying out inspections, drawing up plans and performing other tasks required for, incidental to, or consequential on any of these works
- Adjustment, alteration, cutting into or away, decoration, demolition, improvement, lowering, maintenance, raising, renewal, repair, replacement, strengthening or taking down
- Finding out the course of cables, drains, pipes, sewers, wires or other conduits and clearing, renewing, repairing or replacing them
- Cutting, treating or replacing any hedge, tree or shrub
- Clearing or filling in ditches

### Works orders

You may apply to the District Court for a works order if there is a dispute between yourself and your neighbour about such works. A works order allows you to carry out the work specified, subject to whatever terms and conditions are applied. Among other things, a works order may:

- Authorise you, or people authorised by you, to enter your neighbour's building or land for any purpose connected with the works
- Require you to indemnify or give security to your neighbour for damage, costs and expenses caused by or arising from the works or likely to be caused or to arise

A works order may not authorise any permanent interference with, or loss of, any easement of light or other easement or other right relating to a party structure. An *easement* is a complex legal concept but, broadly speaking, it is a right that

one landowner has over another's land. In this context, one important such right is the right of support, for example, the party wall may be supporting the neighbour's house or outbuildings so works on the party wall have to take that into account.

Any person affected by a works order may apply to the court to have the order discharged or modified.

### Procedure

The procedure for getting a works order is governed by Order 93A of the District Court Rules (SI 162/2010).

You must notify your neighbour of your intention to apply for an order. The required form is available from the District Court clerk.

There are also required forms available for an application to the District Court for damage to be made good and for applications to modify or discharge a works order. The other party must be notified in these cases as well.

Disputes between neighbours as to who is liable to pay the costs involved in party structure works are treated in the same way as any other civil claim.

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## Noise

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There is a range of legislation dealing with noise control. Plans to introduce new legislation on noise control have been discussed for several years. The Department of the Environment issued a *Noise Issues Consultation Paper* in 2008. The current Programme for Government includes a commitment to take further steps to address noise pollution. Among other things, it proposes the introduction of fixed-payment notices (generally called *on-the-spot fines*) and the provision for mediation procedures between neighbours. However, the legislative programme that was published in September 2012 does not give an indication of when this legislation will be published.

### Noise pollution

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The *Environmental Protection Agency Act 1992* (the EPA Act) defines environmental pollution as including noise that is a nuisance, or that would endanger human health or damage property or damage the environment. The Act and the *Environmental Protection Agency Act 1992 (Noise) Regulations 1994* (SI 179/1994) provide for various actions to be taken to prevent or limit noise pollution.

### Noise from commercial premises, processes or works

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The EPA Act gives power to local authorities and the Environmental Protection Agency (EPA) to take steps to ensure compliance with the terms of a notice to control noise in relation to any premises, process or works and to recover the cost of such an action. The local authority may serve a notice on the person in charge of, for example, pubs, discos, processes or works. This notice requires the person in charge to take whatever measures are set out in the notice in order to prevent or limit noise. The local authority may prosecute for failure to comply with the notice.

Alternatively, the local authority may take steps itself to ensure compliance and then recover the costs of these from the person in charge.

The EPA has the power to serve notices in respect of activities that it licenses, for example, waste disposal activities and activities that require Integrated Pollution Prevention and Control (IPPC) licences.

### Complaint to the District Court

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The EPA Act allows any person, a local authority or the EPA to make a complaint to the District Court about noise levels that are a reasonable cause for annoyance. You may complain about a noise that is "so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place".

You can get a standard form for making the complaint from your local District Court clerk and you must pay a small fee. Before making the complaint you must serve notice on the person concerned. If you intend to make a complaint, it is generally recommended that you keep a detailed diary of the noise including the times when it occurred, the duration and, if possible, the levels involved.

A person making noise in the course of trade or business may have a defence if it can be shown that all reasonable care was taken to prevent the noise or that the noise is in accordance with a licence issued under the EPA Act. The court may make an order requiring the person or body making, causing or responsible for the noise to take measures to prevent or limit the noise.

## Environmental Noise Regulations 2006

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The *Environmental Noise Regulations 2006* (SI 140/2006) give effect in Ireland to EU Directive 2002/49/EC on the assessment and management of environmental noise. Environmental noise means unwanted or harmful outdoor sound created by human activities, including noise from transport, road traffic, rail traffic, air traffic, and from sites of industrial activity. The Directive applies to noise to which humans are exposed, particularly in built-up areas, public parks or other quiet areas within built-up areas, and in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise from domestic activities, noise created by neighbours, noise at workplaces or noise inside means of transport or due to military activities in military areas. Under the Directive, local authorities are required to make action plans to reduce ambient noise. The Environmental Protection Agency exercises general supervision over the functions and actions of the local authorities in this aspect of their work.

## Vehicles and road noise

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There are several EU directives dealing with sound level requirements and exhaust systems on new motor vehicles. Some of the requirements are technically detailed.

The *Road Traffic (Construction, Equipment and Use of Vehicles) Regulations* (SI 190/1963) require that vehicles should be fitted with a silencer or other device suitable for reducing to a reasonable level noise caused by the escape of exhaust gases from the engine and prohibits use of a vehicle that causes any excessive noise in a public place. The National Car Test (NCT) includes an assessment of the effectiveness of the silencer in reducing exhaust-related noise.

## Car alarms

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There are EU standards for car alarms that set minimum and maximum time limits for the sounding of the alarm (25 seconds minimum and 30 seconds maximum).

## Car horns

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The *Road Traffic (Construction, Equipment and Use of Vehicles) Regulations* (SI 190/1963) provide that a driver may use a horn only to warn other road users of oncoming danger, or to make them aware of the driver's presence for safety reasons when reasonably necessary. A horn may not be used in a built-up area between 11 pm and 7 am unless there is a traffic emergency. Complaints about breaches of these rules should be made to the Gardaí.

## Aircraft noise

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The Irish Aviation Authority (IAA) is the body responsible for controlling noise from aircraft. There are EU rules on noise at large airports. These are implemented in Ireland by *European Communities (Air Navigation and Transport Rules and Procedures for Noise Related Operating Restrictions at Airports) Regulations 2003* (SI 645/2003).

## Building Regulations

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Part E of the Building Regulations (Sound) sets out the legal requirements in relation to sound insulation in buildings, including dwellings and apartment blocks. The builder is responsible for compliance with the Building Regulations. If you consider that your dwelling is not built in accordance with these regulations, you may take a civil action against the builder. The local authority may prosecute a builder for failure to comply.

## Planning and Development Acts

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When granting planning permission, the local authority has the power to provide that conditions in relation to noise prevention or reduction be included in the permission. These conditions may apply to the construction phase and/or to the subsequent use of the building. Appeals against any such requirements or the absence of them may be made to An Bord Pleanála.

## Noise and nuisance caused by pubs

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Pubs are required to have licences to sell liquor. These licences are renewed annually by the courts. Anyone may object to the granting of a licence on various grounds, including that the activity of the premises was not being conducted in a peaceable and orderly manner.

## Alarms in commercial premises

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Installers of alarm systems are required to have licences from the Private Security Authority. In order to get a licence, they have to establish that they meet the technical requirements, including maximum times for the sounding of external alarms – the maximum is 15 minutes. The local authority, the EPA or an individual may take action under the EPA Act to deal with breaches of these conditions.

## House alarms

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There is no specific legislation on house alarms. The only remedy available is an application to the District Court as described above.

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## Domestic noise

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The Gardai have the power to arrest a person for breach of the peace in a public place. They may ask a person to lower the noise coming from a dwelling but they do not have the power to enter a dwelling with the intention of simply requesting a person to lower the noise. If the noise is persistent, you may use the provisions of the EPA Act to complain to the District Court.

If the noise is coming from a rented dwelling and you don't get a satisfactory response from the tenants, you can complain to the landlord – whether a private landlord, a local authority or a housing association. Under the *Residential Tenancies Act 2004*, tenants of private rented dwellings are obliged not to engage in anti-social behaviour, which includes persistent noise that

interferes with the peaceful occupation of other dwellings. Under the *Housing (Miscellaneous Provisions) Act 2009*, tenants of local authority housing are obliged to avoid any nuisance (including noise) to the occupiers of any other dwelling. If the noise persists, the tenants are in breach of their tenancy agreement and the local authority can take steps to enforce the terms of the agreement.

You may complain to the Private Residential Tenancies Board (PRTB) if a private landlord fails to enforce the tenant's obligations in respect of noise. Under the *Residential Tenancies (Amendment) (No. 2) Bill 2012*, it is planned to bring housing association tenancies under the remit of the PRTB in the near future (see *Relate*, September 2012).

Website: <http://public.prtb.ie>

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## Trees

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Overhanging trees or encroaching roots may be regarded as a nuisance and you are entitled to cut back the tree or the roots. You do not need the permission of the tree owner to do this provided you can do it without going on to the owner's property. However, as with all such matters, it would be preferable to discuss and agree what action was required. You do need to be careful to ensure that you do not leave the tree or, for example, a party wall in a dangerous condition as a result of your actions. If you need to enter the tree owner's property and cannot get agreement, you may apply for a works order as described above.

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### Utility companies

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Electricity and telecommunications companies have various rights to cut down or lop trees that are on private property and that may obstruct wires, under the *Electricity (Supply) Act 1927* as amended. They must give notice to the landowner of their intention to do this. You may choose to have the work done and, if you do, the utility provider must pay the costs involved.

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### Tree preservation orders

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Under the *Planning and Development Act 2000*, the local authority may make tree preservation orders if it is in the interests of amenity or the environment.

The local authority must state its reasons for making such an order. Tree preservation orders may, among other things:

- Prohibit the cutting down, topping, lopping or destruction of a tree
- Require a tree owner (or occupier of the land on which the tree is planted) to make an agreement with the local authority for the proper management of any trees; the local authority may agree to help with the management including help with the costs involved

Before making such an order, the local authority must serve notice on the tree owner and give public notice. There must be a period of at least six weeks for observations on the proposed order. The local authority must maintain a register of tree preservation orders. The land owner or occupier may appeal any such order to An Bord Pleanála.

In general, if you carry out any action that is contrary to the conditions set in a tree preservation order, you may be prosecuted and fined. A preservation order does not prevent the cutting down, topping or lopping of a tree that is dead or dying or has become dangerous or where it is necessary for the prevention or abatement of a nuisance or hazard. It would be advisable to consult the local authority before taking any such action.

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## Control of animals

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### Dogs

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The *Control of Dogs Act 1986*, as amended, is the main law in relation to dogs. Local authorities have the power to make bye-laws controlling various activities within their areas. They have specific powers to make bye-laws relating to the control of dogs.

These bye-laws may deal with a number of matters, including specifying areas in which dogs must be kept on a leash and areas in which dogs, other than guide dogs, are not allowed. Such bye-laws are enforced by the local authorities, mainly by prosecuting dog owners who do not keep the local rules.

### Dangerous dogs

If you are attacked and bitten by a dog in a public place, the dog owner is responsible for your injuries. You may have difficulties in establishing who owns the dog if it is not wearing an identifying collar. If you go into a premises without an invitation and you are bitten by a dog, the situation is not quite as clear-cut. In general, you may be able to establish that the dog owner is responsible for your injuries if you can establish that the owner knew that the dog was dangerous and liable to bite; in effect, you have to show that the dog has already attacked another person.

Certain breeds of dog are subject to specific controls under the Control of Dogs Regulations (SI 442/1998). This means that these dogs must be muzzled and kept on a secure chain or leash when in a public place and must be under the control of a person who is at least 16 years of age and is capable of controlling the dog. Guide dogs and dogs that are being used by the Gardaí or other law enforcement agencies are not subject to this requirement.

If you consider that a dog is dangerous and not being kept under proper control, you may complain initially to the local authority. If you are not satisfied with the local authority's response, you may complain to the District Court. There is a specific form available for this purpose which you may get from your local District Court clerk. You must serve notice on the dog owner of your intention to make a complaint. If your complaint is upheld, the court may make various orders, including an order that the dog be given over to the dog warden and destroyed. The owner may be required to pay the costs involved. The Gardaí may get a search warrant to search for a dog that is thought to have injured a person or worried livestock.

### Identification of dogs

Dogs must wear a collar with the name and address of the owner attached to it.

### Barking dogs

You may complain to the District Court about excessive noise created by dogs barking. You must first serve notice on the dog owner of your intention to do this. Alternatively you may ask the local authority to make the complaint. The court may make an order requiring the occupier of the premises in which the dog is kept to abate the nuisance by exercising due control over a dog. The court may limit the number of dogs that can be kept on a premises or may direct that a dog be delivered to a dog warden to be dealt with as unwanted.

There is a specific court form available for such a complaint. The procedure is similar to the general procedures for dealing with complaints about noise.

### Licences

Owners must have a licence for dogs aged four months or over. A dog licence costs €20 a year or you may pay €140 for a licence for the lifetime of the dog. You must be at least 16 years of age to get a dog licence. Stray dogs may be seized by a Garda or a dog warden.

### Cleaning up after your dog

It is an offence under the *Litter Pollution Act 1997* not to clean up after your dog if it deposits faeces in places such as public roads, land forming part of a retail shopping centre, a school ground, sports ground, playing field, recreational or leisure area, a beach or the grounds of a house where the occupier has not consented to the presence of a dog.

This does not apply to guide dogs or certain working dogs, for example, farm dogs and dogs used by law enforcement agencies. You may get a *fixed charge notice* or on-the-spot fine from a litter warden for such an offence or you may be prosecuted in the usual manner.

### Horses

The *Animals Act 1985* provides that the Gardaí and the local authorities have various powers to impound animals, including horses, found wandering in a public place.

The main legislation dealing specifically with horses is the *Control of Horses Act 1996* (donkeys and mules are also covered by the Act). This Act allows local authorities to introduce bye-laws designating certain areas as control areas for horses and sets out general rules about the control of horses.

### Licensing of horses

In general, a person living in a designated control area needs a licence in order to have a horse. You do not need a licence for a horse that is kept outside a control area. You may not get a licence to keep a horse in a control area if you:

- Are aged under 16
- Have been convicted of an offence under this legislation
- Are unfit to keep a horse, in the opinion of the local authority
- Fail to satisfy the local authority that the horse will be properly maintained and stabled

A licence normally lasts for a year but it may be revoked if you do not comply with its terms or you are convicted of an offence in relation to a horse. Before you get your licence, the horse must be fitted with a microchip. The local authority keeps a publicly available register of all licences issued.

## Setting up control areas

When the local authority is making the bye-laws for the setting up of a control area it must go through certain procedures, including giving details of the proposed areas in local newspapers.

## Offences and disqualification

There are several offences specified in the legislation, including failing to remove a horse from a public place or a control area, and dangerous use of a horse. You may be arrested without warrant for most of these offences. If convicted, you may be fined or imprisoned or both and you may be disqualified from keeping a horse for a period. The court may seize the horse and dispose of it as it sees fit. The Gardaí or authorised local authority personnel may inspect a horse and it is an offence to obstruct them in doing so. They have fairly extensive powers of search and arrest if they suspect cruelty to horses.

On-the-spot fines may be imposed for a number of offences, such as having a horse in a control area without a licence, not telling the local authority that you have disposed of a horse and failing to comply with the bye-laws.

## Disposing of a licensed horse

If you are selling, giving away or destroying a licensed horse, you must inform the local authority and give the name and address of the new owner.

## Selling horses

Horses may not be sold to anyone aged under 16. For the purposes of this legislation, if a person under 16 owns a horse, the head of the household in which he or she lives is considered to be the owner.

## Stray horses

As well as unlicensed horses in control areas, stray or unidentifiable horses or horses causing a nuisance or posing a danger may be seized, detained or destroyed. A stray horse is a horse that is wandering at large, lost or unaccompanied by any person in charge of it in a public place or one that is on any premises without the owner's consent or occupier's consent.

## Criminal liability for damage

The owner, keeper or person in charge of any horse may be criminally liable for damage caused by the horse if he or she wilfully or recklessly allows the horse to pose a danger or cause injury to a person or property.

## Pest control

The control of pests such as rats and mice in a premises is largely a matter for the owner of the premises – generally, you must deal with the problem yourself. Environmental Health Officers in the HSE or the local authority may be able to advise and/or assist you if pests are in public areas near your home.

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# Taking estates under the charge of local authorities

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The taking of housing estates under the charge of local authorities is governed by the *Planning and Development Act 2000* as amended by the *Planning and Development (Amendment) Act 2010*. In this context, a development involves the construction of two or more houses and new roads, open spaces, car parks, sewers, service connections or water mains.

The local authority must start the procedure for taking the development in charge if:

- The development is completed or
- The local authority has not taken any enforcement action within a particular time period (enforcement proceedings are court actions taken by the local authority to require a developer to complete a development in accordance with planning permission)

The local authority may start the procedure for taking uncompleted developments in charge and may make choices about the services for which it will take responsibility.

In all cases, the authority may hold a plebiscite to find out the views of the house owners.

## What taking in charge means

In general, when the local authority takes a development in charge, it takes responsibility for the following:

- Maintenance of all roads and footpaths, including unallocated street car parking
- Repair and reinstatement of roads, footpaths and landscaped areas resulting from repair and/or maintenance of underground services (water mains and drainage services) carried out by the authority
- Maintenance of water mains and drainage services
- Road sweeping and cleaning services of the principal public routes
- Upkeep and maintenance of all public lighting installations

The Citizens Information Board provides independent information, advice and advocacy on public and social services through [citizensinformation.ie](http://citizensinformation.ie), the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

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- Maintenance of public open spaces, that is, spaces to which the general public have access; this does not necessarily include grass cutting or maintenance of grass verges, incidental ornamental/landscaped areas, shrubberies or playgrounds, unless such playgrounds are required by the planning permission, as a facility that will be available to the general public. Many authorities do, in fact, include grass cutting on open public spaces or give grants to residents' associations towards the costs of grass cutting.
- Upkeep and maintenance of all surfaces, fixed elements and rigid play equipment in play lots and playgrounds in cases where the playground or play lot was required by condition of a planning permission.

## Completed development or no enforcement proceedings

If the development has been completed to the satisfaction of the local authority (in effect, if it complies with all the planning requirements), the local authority must start the procedures to take the estate in charge if requested by the developer or by a majority of the owners of the houses involved. If the development has not been completed to the satisfaction of the local authority and the local authority has not started enforcement proceedings within seven years of the expiry of the planning permission, the authority must start the procedures for taking it in charge if requested by a majority of the owners concerned.

The procedure involved is that the local authority makes an order under the *Roads Act 1993* declaring the roads to be public roads. Once that is done, the local authority must also then take charge of any sewers, water mains, service connections, public open spaces or public car parks within the grounds of the development.

## Uncompleted developments

Local authorities may start the procedures to take charge of uncompleted developments (usually referred to as 'unfinished estates') if certain conditions are met. If requested to do so by a majority of the owners concerned, the local authority has the discretion to start the procedure to take in charge a development that has not been completed to its satisfaction and either:

- Enforcement proceedings have been started within seven years of the expiry of the planning permission or
- The authority considers that enforcement proceedings will not result in the satisfactory completion of the development by the developer

The procedure is the same as for completed developments but the local authority does not have to take charge of all the services. An order under the *Roads Act 1993* declaring the roads to be public roads is the start of the procedure. The local authority may then take in charge some or all of the sewers, water mains, service connections, public open spaces or public car parks within the grounds of the development. It may undertake any work that is required for the completion of these services or any work that is necessary to make the development safe.

## Roads orders

The *Roads Act 1993* provides that the local authority may declare a road to be a public road. Before doing so, it must allow for public consultation. Once it is declared a public road, the authority becomes responsible for its maintenance. Certain roads are automatically public roads and do not require such a declaration, for example, motorways, national roads and regional roads.

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