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STATUTORY RULES OF NORTHERN IRELAND

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**1998 No. 156**

**ROADS**  
**STREET WORKS**

**Street Works (Sharing of Costs of Works)  
Regulations (Northern Ireland) 1998**

*Made* - - - - *20th April 1998*  
*Coming into operation* *1st June 1998*

The Department of the Environment, in exercise of the powers conferred on it by Articles 45(1), (2) and (4) to (6) and 59(2) of the Street Works (Northern Ireland) Order 1995<sup>(1)</sup>, and of every other power enabling it in that behalf, hereby makes the following regulations:

**Citation, commencement and interpretation**

1.—(1) These regulations may be cited as the Street Works (Sharing of Costs of Works) Regulations (Northern Ireland) 1998 and shall come into operation on 1st June 1998.

(2) In these regulations—

“allowable costs” shall be construed in accordance with paragraph (3);

“the Code” means the Code of Practice entitled “Measures Necessary Where Apparatus Is Affected By Major Works (Diversionary Works)” and dated 17th April 1998, and approved by the Department on 17th April 1998 as revised and re-issued from time to time;

“the Order” means the Street Works (Northern Ireland) Order 1995; and

“works” means major road works, major bridge works or major transport works.

(3) For the purposes of these regulations “allowable costs” means all the reasonable costs of the measures needed to be taken for the purpose specified in Article 44(1) of the Order except costs incurred—

- (a) in preparing the initial set of plans and estimates in relation to those measures (but not in preparing any further plans and estimates which the authority concerned may require); and
- (b) in relation to the undertaker’s apparatus placed in a street after the undertaker was given notice as mentioned in Article 45(2)(a) of the Order.

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(1) S.I.1995/3210 (N.I. 19); see Article 2(2) for the definitions of “the Department” and “prescribed”

### **Payments in cases where measures are executed by the undertaker**

2. Save as provided in regulations 6 and 8, in cases where works are initiated by the authority concerned and an undertaker executes measures which need to be taken in respect of his apparatus because of those works, the authority concerned shall pay to the undertaker a sum equal to the allowable costs incurred by the undertaker in taking those measures, provided that the authority concerned shall pay only 82 per cent of the said allowable costs if the authority concerned pays to the undertaker a sum equal to 75 per cent of the estimate of the said 82 per cent pursuant to paragraph (a) of regulation 8.

### **Payments in cases where measures are executed by the authority concerned**

3. Save as provided in regulation 6, in a case where works are initiated by the authority concerned and the authority concerned executes measures which need to be taken in respect of apparatus of an undertaker because of those works, the undertaker shall pay to the authority concerned a sum equal to 18 per cent of the allowable costs incurred by the authority concerned in taking those measures.

4. In a case where works are initiated by the authority concerned and are done by the authority concerned, an undertaker whose apparatus is moved by the authority concerned at the request of the undertaker solely because of a change in the type of road construction (not involving an alteration in the depth of cover to a depth less or, as the case may be, greater than the acceptable depth referred to in Appendix B to the Code) shall be liable to pay to the authority concerned a sum equal to the whole of the allowable costs incurred by the authority concerned in moving the apparatus.

### **Payments in cases where measures are executed by another person**

5. Save as provided in regulation 6, in a case where works are initiated by a person other than the authority concerned in its capacity as such or an undertaker and for the purposes of that person, and because of those works measures need to be taken in respect of apparatus—

- (a) if the authority concerned takes those measures the undertaker shall pay to the authority concerned a sum equal to 18 per cent of the allowable costs incurred by the authority concerned in taking those measures;
- (b) if the undertaker takes those measures the authority concerned shall pay to the undertaker a sum equal to the allowable costs incurred by the undertaker in taking those measures, provided that the authority concerned shall pay only 82 per cent of the said allowable costs if the authority pays to the undertaker a sum equal to 75 per cent of the estimate of the said 82 per cent pursuant to paragraph (a) of regulation 8.

For the purposes of this regulation in calculating the cost of taking measures, there shall be taken into account in favour of the undertaker any sum which is recoverable from the person for whose purposes the works are done, irrespective of whether or not such a sum is actually recovered from that person, or any sum which would have been recoverable if the person for whose purposes the works are done were not the authority concerned.

### **Costs in respect of major bridge works and certain apparatus placed in the street**

6.—(1) In a case where works consist of or include major bridge works an undertaker shall not be liable for costs in respect of the provision of adequate space in the structure of the bridge or of sufficient strength in the bridge to accommodate the undertaker's apparatus in the bridge, but this paragraph shall not apply to the cost of any ducts, pipe bays, hangers or other provision for housing or supporting the apparatus within such space or to the provision of adequate space or adequate strength to accommodate the apparatus of any undertaker installed in the bridge after the execution of such works other than the installation, replacement or modification (not involving enlargement) of apparatus previously installed in the bridge prior to the execution of such works.

(2) No costs shall be allowable to an undertaker in respect of apparatus placed in the street after the authority concerned has given to the undertaker notice pursuant to Article 45(2)(a) of the Order of its intention to execute the works not more than 5 years before those works are executed.

### **Betterment**

7.—(1) In a case where, under these regulations, an undertaker is liable to make a payment to the authority concerned or the authority concerned is liable to make a payment to an undertaker in relation to measures which need to be taken in respect of the undertaker's apparatus there shall be taken into account in favour of the authority concerned—

- (a) if those measures result in a betterment of the undertaker's apparatus, a sum equal to the benefit which the undertaker gains as a result of the betterment calculated in accordance with Appendix F to the Code;
- (b) if those measures result in a postponement of the need to renew the undertaker's apparatus, a sum determined in accordance with Appendix E to the Code.

(2) For the purposes of this regulation "betterment" shall be determined in accordance with Appendix F to the Code.

### **Payment of allowable costs**

8. Allowable costs under any of the provisions of these regulations shall be payable as follows—

- (a) in the case of any payments due from the authority concerned pursuant to regulations 2 and 5 the authority concerned may pay to the undertaker a sum equal to 75 per cent of the estimate of 82 per cent of the allowable costs in a single lump sum before the measures needed to be taken begin or, if the authority concerned and undertaker so agree in the case of works of an estimated duration of more than 3 months, by instalments of such amounts payable at such times during the execution of these works as the authority concerned and undertaker agree;
- (b) after the measures needed to be taken have been completed the person to whom the allowable costs are due (the creditor) shall issue to the person from whom they are due (the debtor) an account of the allowable costs and within 35 days of that account having been issued the debtor shall pay to the creditor a sum equal to the allowable costs provided that in any case where the authority concerned has made a payment or payments pursuant to paragraph (a)—
  - (i) the authority concerned shall pay to the undertaker the balance of the estimate together with any further sum equal to the amount by which the proportion of allowable costs to which the undertaker is entitled exceeds the estimate;
  - (ii) the undertaker shall refund to the authority concerned a sum equal to the amount by which the sum paid by the authority concerned pursuant to paragraph (a) exceeds the proportion of allowable costs to which he is entitled.

### **Application**

9. These regulations shall not apply to a licence under Article 11 of the Order, a consent under Article 21 of the Order or to the costs of removal or changing the position of apparatus pursuant to Article 22 of the Order.

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**Status:** *This is the original version (as it was originally made). Northern Ireland Statutory Rules are not carried in their revised form on this site.*

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Sealed with the Official Seal of the Department of the Environment on

20th April 1998.

*J. Carlisle*  
Assistant Secretary

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## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These regulations make provision for the sharing of costs between the Department of the Environment, the bridge authority or the transport authority (“the authority concerned”) and the undertaker where the undertaker’s apparatus in a street is affected by major road, bridge or transport works (“the works”) and measures are required to protect it.

Where the works are initiated by the authority concerned and the measures necessary to protect the apparatus are taken by the undertaker the authority concerned shall pay to the undertaker the whole of his allowable costs (as defined in regulation 1(3)), but only 82 per cent of this sum shall be payable if 75 per cent of the estimate of 82 per cent of the allowable costs is paid as a lump sum before the works begin or, in the case of works lasting longer than 3 months, by instalments during the carrying out of the works (regulations 2 and 8(a)). Where the works are initiated by the authority concerned and the authority concerned also takes the measures needed to protect the undertaker’s apparatus, the undertaker shall pay 18 per cent of the allowable costs (regulation 3). Where the undertaker requests the authority concerned to move his apparatus solely because of a change in the type of road construction, he is liable to pay the whole of the allowable costs (regulation 4). In the case of works initiated by a person other than the authority concerned in its capacity as such or an undertaker the foregoing rules apply to protective measures depending on whether they are taken by the authority concerned or the undertaker, but allowance must be made in full for any contribution agreed to be made towards the cost of those measures (regulation 5).

An undertaker is not liable for costs in relation to providing space in or strengthening of a bridge to accommodate his apparatus (regulation 6(1)) and cannot recover costs where he has placed his apparatus in the street after the authority concerned has given him statutory notice of its intention to carry out works (regulation 6(2)). Provision is made requiring the undertaker to give credit for any gain received by him from betterment of his apparatus or deferment of the need to renew his apparatus resulting from protective measure taken (regulation 7). Further provision is made as to the timing and manner of payment (regulation 8(b)) and exclusions (regulation 9).