

**2003 No. 416**

**ROADS AND BRIDGES**

**The Road Works (Recovery of Costs) (Scotland)  
Regulations 2003**

*Made* 8th September 2003

*Laid before the Scottish Parliament* 9th September 2003

*Coming into force* 1st October 2003

The Scottish Ministers, in exercise of the powers conferred by sections 155(1) and 163(1) of the New Roads and Street Works Act 1991(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Road Works (Recovery of Costs) (Scotland) Regulations 2003 and shall come into force on 1st October 2003.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“the Act” means the New Roads and Street Works Act 1991;

“the 1992 Regulations” means the Road Works (Sharing of Costs of Works) (Scotland) Regulations 1992(b);

“chargeable job” means an item of work, the costs of which are recoverable under the provisions of Part IV of the Act;

“claimant” means an authority, body or person who is entitled to recover costs under Part IV of the Act;

“costs” means costs or expenses referred to in section 155(1) of the Act as being recoverable by an authority, body or person under Part IV of the Act;

“costs centre” means a unit of financial accountability identifiable within a claimant's management accounts and responsible for specific activities within a claimant's organisation;

“cost in that period of capital” means the cost of capital calculated by reference to the rate of return which is prescribed either by legislation, or by the relevant regulator in respect of the claimant's regulated activities (whether or not the chargeable job is such an activity) or, if no such rate is prescribed, by reference to a rate which is two per cent above the Public Sector Discount Rate as set by the Treasury from time to time;

“direct costs” means those costs described in regulation 5;

“licence” means any form or authorisation, permission, or appointment, by which the claimant is authorised to carry out regulated activities;

“overheads” means those costs described in regulation 6;

“regulated activities” means activities which are authorised or regulated by a licence and supervised by the relevant regulator;

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(a) 1991 c.22. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1992/1672.

“relevant regulator” means a person, independent of the claimant, charged with supervising the claimant’s regulated activities and ensuring a claimant complies with the terms of the licence authorising those activities; and

“support services” mean services provided from within an organisation in support of activities which incur direct costs.

### **Basis of recovery**

3. The basis on which the amounts of costs are to be calculated is that set out in the following provisions of these Regulations.

### **Costs**

4.—(1) The costs shall comprise direct costs and overheads to the extent that such direct costs and overheads are relevant to a particular chargeable job and are calculated in accordance with the financial policies adopted by the claimant to state the financial results of the cost centres responsible for the chargeable job or for providing support services to such centres.

(2) Where costs are recoverable in pursuance of the 1992 Regulations the 1992 Regulations shall apply to the extent that the costs are “allowable costs” as defined in regulation 2(2) of the said Regulations.

(3) The costs shall be recoverable either as direct costs under regulation 5 or as overheads under regulation 6, but not both.

(4) The costs shall be net of any discount or rebate allowed to the claimant.

### **Direct Costs**

5. Direct costs are costs of any of the following descriptions:—

- (a) the cost of staff (whether salaried or non-salaried) employed directly by the claimant calculated in accordance with regulation 7;
- (b) the costs payable to a contractor engaged by the claimant;
- (c) the cost of materials;
- (d) the cost of hiring equipment, plant and vehicles for transport or, where the equipment, plant or vehicles are leased to or owned by the claimant, the equivalent cost based on relevant market rates;
- (e) other costs which are relevant and specifically attributable to a chargeable job.

### **Overheads**

6.—(1) Overheads shall comprise an appropriate percentage of the direct costs referred to in regulation 5, calculated and applied separately for each category of those costs.

(2) An appropriate percentage for the purpose of this regulation means the percentage calculated by the application of the following formula:—

$\frac{b}{a} \times 100$ ) plus

$\frac{c}{a} \times 100$ ) plus

$\frac{d}{a} \times 100$ )

where:

a = the total direct costs of all chargeable jobs, and jobs other than chargeable jobs, charged to the cost centre or centres responsible for the chargeable job during the most recent period for which published accounts are available;

b = the cost in that period of support services provided within the cost centre or centres responsible for the chargeable job;

c = the cost in that period of support services provided to the cost centre or centres responsible for the chargeable job by other cost centres within the claimant’s organisation; and

d = the cost in that period of capital and of depreciation of assets used in connection with direct costs incurred by the cost centre or centres responsible for

the chargeable job, or directly or indirectly in providing support services to such cost centre or centres.

#### **Calculation of Staff Costs and Productive Hours**

7.—(1) For the purpose of regulation 5(a) above, staff costs shall be calculated by reference to the hourly rate at which a person is employed by dividing the reasonably estimated annual cost of employing a person by that person's productive hours during the same annual period.

(2) In paragraph (1) above, "productive hours" means those hours during which it is reasonably estimated that a person is engaged on a chargeable job or work of a similar kind within the claimant's organisation, but does not include any periods of sickness, holiday, training or other absence.

#### **Exclusions**

8. These Regulations shall not apply to costs or expenses recoverable in respect of any action undertaken in relation to a permission granted under section 109 of the Act.

St Andrew's House,  
Edinburgh  
8th September 2003

*NICOL STEPHEN*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations prescribe the basis for calculating the costs or expenses which an authority, body or person may recover under Part IV of the New Roads and Street Works Act 1991 (“the Act”).

Part IV of the Act contains several provisions entitling an authority, body or person to take action and to recover the costs or expenses of taking that action from other parties. For example, if it appears to a roads authority that a failure by an undertaker to comply with its duties to reinstate a road is causing danger to users of the road, the authority may carry out the necessary works and may recover from the undertaker the costs reasonably incurred by them in doing so. The Regulations prescribe that costs shall comprise direct costs and overheads, and define what categories of direct costs may be claimed. They also prescribe how overheads are to be calculated.

The Regulations do not apply to costs or expenses recoverable in respect of any action undertaken in relation to a permission granted under section 109 of the Act.

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