

2003 No. 509

ROADS AND BRIDGES

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

Made 27th October 2003

Laid before the Scottish Parliament 28th October 2003

Coming into force 18th November 2003

The Scottish Ministers, in exercise of the powers conferred by sections 144 and 163(3) 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 (Sharing of Costs of Works) (Scotland) Regulations 2003 and shall come into force on 18th November 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

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

“allowable costs” means, in relation to diversionary works, the sum of all the reasonable costs incurred in executing them, except—

(a) costs incurred in preparing the initial set of plans and estimates in relation to those diversionary works (but not in preparing any further plans and estimates which the authority may require);

(b) costs disallowed under regulation 6(3);

“authority” means a roads authority, bridge authority or transport authority;

“the Code” means the Code of Practice entitled “Measures Necessary where Apparatus is affected by Major Works (Diversionary Works)” dated June 1992, as revised and re-issued from time to time(b);

“diversionary works” means measures needing to be taken in relation to an undertaker’s apparatus on a road in consequence of major works or in order to facilitate their execution;

“major works” means major works for roads purposes, major bridge works or major transport works;

“section 145(3)(a) to (f) works” means major transport works which are or would, if executed by a roads authority, be major works for road purposes described in any of paragraphs (a) to (f) of section 145 of the Act.

(a) 1991 c.22. Section 163(1) contains a definition of prescribed relevant to the making of these Regulations. 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) As approved by the Secretaries of State for Transport, Wales and Scotland under sections 84 and 143 of the Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Diversionsary works executed by an undertaker because of an authority's major works

3.—(1) Where, because of major works initiated by an authority, an undertaker executes diversionsary works, the authority shall pay to the undertaker—

- (a) where the major works are major transport works (other than major bridge works or section 145(3)(a) to (f) works) and payment is made in accordance with regulation 8(1), a sum equal to 92.5 per cent of the allowable costs of the diversionsary works;
- (b) in other cases where payment is made in accordance with regulation 8(1), a sum equal to 82 per cent of the allowable costs of the diversionsary works;
- (c) in all other cases, the allowable costs of the diversionsary works.

(2) This regulation is subject to regulation 6.

Diversionsary works executed by an authority because of the authority's major works

4.—(1) Where, because of major works initiated by an authority, the authority executes diversionsary works, the undertaker shall, subject to paragraph (2), pay to the authority—

- (a) where the major works are major transport works other than those which—
 - (i) are also major bridge works, or
 - (ii) are section 145(3)(a) to (f) works,a sum equal to 7.5 per cent of the allowable costs of the diversionsary works;
- (b) in all other cases, a sum equal to 18 per cent of the allowable costs of the diversionsary works.

(2) Where an undertaker's apparatus is moved by the authority at the request of the undertaker and solely because of a change in the type of road construction, not involving an alteration in the depth of cover to a depth of less or greater than the acceptable depth referred to in Appendix B to the Code, the undertaker shall pay to the authority the allowable costs incurred by the authority in moving the apparatus.

(3) This regulation is subject to regulation 6.

Diversionsary works executed by an authority or an undertaker in other cases

5.—(1) This regulation applies where major works are initiated—

- (a) by an authority on behalf of another person or by an authority other than in its capacity as such; or
 - (b) by an undertaker for the purposes of any such person,
- and diversionsary works are executed by an authority or the undertaker.

(2) Where the authority executes the diversionsary works, the undertaker shall pay to the authority the sum which it would have had to pay under regulation 4 if the major works had been initiated by the authority.

(3) Where the undertaker executes the diversionsary works, the authority shall pay to the undertaker the sum which it would have had to pay under regulation 3 if the major works had been initiated by the authority.

(4) In calculating the allowable costs for the purposes of regulations 3 and 4 as applied by this regulation there shall be taken into account in favour of the undertaker—

- (a) any sum recoverable from any person for whose purposes the diversionsary works are executed, irrespective of whether or not such a sum is actually recovered from that person;
- (b) any sum which would have been recoverable from such a person were that person not the authority.

Allowable costs – further provisions

6.—(1) Subject to paragraph (2), where the major works consist of or include major bridge works, allowable costs shall be so calculated that the undertaker is not liable for costs in respect of the provision of—

- (a) adequate space in the structure of the bridge; or
- (b) sufficient strength in the bridge,

to accommodate the undertaker's apparatus in the bridge.

- (2) paragraph (1) does not apply to the costs of—
 - (a) any ducts, pipe bays, hangers or other provision for housing or supporting the undertaker's apparatus within the structure of the bridge;
 - (b) the provision of adequate space or adequate strength to accommodate apparatus installed in the bridge after the execution of such major works other than the installation, replacement or modification (not involving enlargement) of apparatus previously installed in the bridge before the execution of those works.

(3) In calculating an undertaker's allowable costs there shall be disallowed costs incurred in respect of apparatus placed in the road after the authority has given to the undertaker—

- (a) in the case of major works consisting of major bridge works comprising a replacement of the bridge, not more than 10 years;
 - (b) in the case of any other major works, not more than 5 years,
- notice of their intention to execute the major works.

Betterment etc

7.—(1) In a case where, under these Regulations, an undertaker is liable to make a payment to an authority or an authority is liable to make a payment to an undertaker in relation to diversionary works there shall be taken into account in favour of the authority—

- (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 deferment of the need to renew the undertaker's apparatus, a sum calculated 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

8.—(1) For the purposes of regulation 3(1)(a) and (b) (including those provisions as applied by regulation 5) the authority may pay to the undertaker a sum equal to 75 per cent of the estimate of 82 per cent or 92.5 per cent (as appropriate) of the allowable costs—

- (a) in a single lump sum before the diversionary works begin; or
- (b) if the authority and the undertaker so agree in the case of diversionary works of an estimated duration of more than three months, by instalments of such amounts, payable at such times during the execution of the diversionary works, as the authority and the undertaker agree.

(2) After the diversionary works have been completed, the person to whom any sum by way of allowable costs is due ("the creditor") shall issue to the person from whom the sum is due ("the debtor") an account of the sum owing and within 35 days of that account having been issued—

- (a) a debtor that is an authority which has paid a lump sum or instalments in accordance with paragraph (1) shall pay to the undertaker any 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;
- (b) the debtor in any other case shall pay to the creditor the sum owing.

(3) If payments made by an authority under paragraph (1) exceed the relevant proportion of allowable costs specified in regulation 3(1)(a) or (b), the undertaker shall, within 35 days of the issue of the account referred to in paragraph (2), refund to the authority the amount of the excess.

Exclusions

9. These Regulations shall not apply to works executed pursuant to—

- (a) a permission under section 109 of the Act;
- (b) a consent under section 120 of the Act;
- (c) a direction to remove or change the position of apparatus, under section 121 of the Act.

Revocation and transitional provision

10.—(1) Subject to paragraph (2) the Road Works (Sharing of Costs of Works) (Scotland) Regulations 1992^(a) (“the 1992 Regulations”) are revoked.

(2) These Regulations apply where the formal notice of intention to proceed with major works pursuant to paragraph 5 of Appendix C to the Code is served on or after the date on which they come into force; and the 1992 Regulations shall continue to apply where such formal notice has been served before that date.

St Andrew’s House,
Edinburgh
27th October 2003

NICOL STEPHEN
A member of the Scottish Executive

(a) S.I. 1992/1672.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace and revoke the Road Works (Sharing of Costs of Works) Regulations 1992 (S.I. 1992/1672) (“the 1992 Regulations”), which make provision for the sharing of costs between the road, bridge or transport authority (“the authority”) and the undertaker where the undertaker’s apparatus in a road is affected by major works for road purposes, bridge or transport works (“major works”) and measures (“diversionary works”) are required to protect that apparatus. The principal change effected by the Regulations is that the undertaker’s share of the costs of diversionary works required in the case of certain major transport works is now 7.5 per cent rather than the 18 per cent provided for by the 1992 Regulations. There are also some minor and drafting changes.

Where diversionary works are executed by an undertaker because of major works initiated by an authority, the authority shall pay 82 per cent of the allowable costs (as defined in regulation 2(2)) of those diversionary works, provided that 75 per cent of those costs are paid by the authority as provided in regulation 8. Where the major works are major transport works (other than works which are major bridge works or certain major works for road purposes), the authority pays 92.5 per cent of the costs: regulation 3.

Where diversionary works are executed by an authority because of that authority’s major works, the undertaker shall pay 18 per cent or 7.5 per cent (as the case may be) of the allowable costs to the authority: regulation 4.

Where the undertaker requests the authority to move apparatus solely because of a change in the type of road construction, the undertaker is normally required to pay the whole of the allowable costs: regulation 4(2). In the case of works initiated by a person other than an authority in its capacity as such or an undertaker, the foregoing rules apply to diversionary works depending on whether they are executed by the authority or the undertaker, but allowance must be made in full for any contribution agreed to be made towards the costs of those diversionary works: regulation 5.

An undertaker is not liable for allowable costs in relation to providing space in or strengthening of a bridge to accommodate apparatus (regulation 6(1)) and cannot recover the costs where the undertaker has placed apparatus in the road after the authority has given statutory notice of its intention to carry out major works: regulation 6(3).

Provision is made requiring the undertaker to give credit for any gain received from betterment of the undertaker’s apparatus or deferment of the need to renew apparatus resulting from protective measures: regulation 7. There is provision as to the timing and manner of payment (regulation 8) and for exclusions (regulation 9). Regulation 10 revokes the 1992 Regulations, provides that these Regulations apply where notice of intention to execute major works is given on or after the coming into force of these Regulations and that the 1992 Regulations continue to apply where such notice is given before that date.

The Code of Practice entitled “Measures Necessary where Apparatus is affected by Major Works (Diversionary Works)” (1992) (ISBN 0-11-551149-0) is published by The Stationery Office and may be obtained from their bookshops at 71 Lothian Road Edinburgh EH3 9AZ.

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