

2000 No. 3314

HIGHWAYS, ENGLAND

**The Street Works (Sharing of Costs of Works) (England)
Regulations 2000**

<i>Made</i> - - - - -	<i>18th December 2000</i>
<i>Laid before Parliament</i>	<i>19th December 2000</i>
<i>Coming into force</i> - -	<i>15th January 2001</i>

The Secretary of State for the Environment, Transport and the Regions, in exercise of his powers under section 85 and 104(3) of the New Roads and Street Works Act 1991(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Street Works (Sharing of Costs of Works) (England) Regulations 2000 and shall come into force on 15th January 2001.

(2) These Regulations extend to England only.

Interpretation

2.—(1) In these Regulations:

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

“authority” means a highway, bridge 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, and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time;

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

“major works” means major highway works, major bridge works or major transport works;

“section 86(3) (a) to (g) works” means major transport works which are or would, if executed by a highway authority, be major highway works described in any of paragraphs (a) to (g) of section 86(3) of the Act.

(2) For the purposes of these Regulations “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).

(a) 1991 c. 22. The functions of the Secretary of State under sections 85 and 104 are transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2(a).

Diversiónary 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 diversionary works, the authority shall pay to the undertaker—

- (a) where the major works are major transport works (other than major bridge works or section 86(3) (a) to (g) 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 diversionary 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 diversionary works;
- (c) in all other cases, the allowable costs of the diversionary works.

(2) This regulation is subject to regulation 6.

Diversiónary 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 diversionary 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 86(3) (a) to (g) works,

a sum equal to 7.5 per cent. of the allowable costs of the diversionary works;

- (b) in all other cases, a sum equal to 18 per cent. of the allowable costs of the diversionary 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 highway 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.

Diversiónary 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 diversionary works are executed by an authority or the undertaker.

(2) Where the authority executes the diversionary 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 diversionary 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 diversionary 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 street 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 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

- 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 licence under section 50 of the Act;
 - (b) a consent under section 61 of the Act;
 - (c) an agreement to house apparatus in a bridge structure; or
 - (d) a direction to remove or change the position of apparatus, pursuant to section 62 of the Act.

Revocation and transitional provision

10.—(1) Subject to paragraph (2) the Street Works (Sharing of Costs of Works) Regulations 1992^(a) (“the 1992 Regulations”) are revoked so far as they extend to England.

(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.

Signed by the authority of the
Secretary of State for the Environment,
Transport and the Regions

18th December 2000

Keith Hill
Parliamentary Under-Secretary of State,
Department of the Environment, Transport and the Regions

^(a) S.I. 1992/1690.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace and revoke (as respects England) the Street Works (Sharing of Costs of Works) Regulations 1992 (S.I. 1992/1690) (“the 1992 Regulations”), which make provision for the sharing of costs between the highway, bridge or transport authority (“the authority”) and the undertaker where the undertaker’s apparatus in a street is affected by major highway, 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 highway works), 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 his apparatus solely because of a change in the type of highway construction, he 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 his apparatus (regulation 6(1)) and cannot recover his costs where he has placed his apparatus in the street after the authority has given him 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 by him from betterment of his apparatus or deferment of the need to renew his 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 as respects England, provides that these Regulations apply where notice of intention to execute major works is given on or after 15th January 2001 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 or by mail, fax or telephone from PO Box 29, Norwich NR3 1GN (Tel. 0870 6005522/fax 0870 6005533) or by e-mail from book.orders@theso.co.uk.

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