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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1810 (W.141)**

**HIGHWAYS, WALES**

**The Street Works (Recovery of Costs) (Wales) Regulations 2005**

*Made* - - - - 5 July 2005

*Coming into force* - - 8 July 2005

The National Assembly for Wales, in exercise of the powers conferred upon the Secretary of State by sections 96 and 104(1) of the New Roads and Street Works Act 1991(1) and which are now exercisable by the National Assembly in relation to Wales(2), hereby makes the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is the Street Works (Recovery of Costs) (Wales) Regulations 2005 and they come into force on 8 July 2005.

(2) These Regulations apply to Wales.

**Interpretation**

2. In these Regulations:

“the Act” (“*y Ddeddf*”) means the New Roads and Street Works Act 1991;

“chargeable job” (“*gwaith am dâl*”) means an item of work, the costs of which are recoverable under the provisions of Part III of the Act;

“claimant” (“*hawlydd*”) means an authority, body or person who is entitled to recover costs under Part III of the Act;

“costs” (“*costau*”) means costs or expenses referred to in section 96(1) of the Act as being recoverable by an authority, body or person under Part III of the Act;

“cost centre” (“*canolfan gost*”) means a unit of financial accountability identifiable within a claimant’s management accounts and responsible for specific activities within a claimant’s organisation;

“cost of capital” (“*cost cyfalaf*”) 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

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(1) 1991 c. 22.

(2) The powers of the Secretary of State, insofar as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: see article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

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" (*"costau uniongyrchol"*) means those costs described in regulation 5;

"licence" (*"trwydded"*) means any form of authorisation, permission, or appointment, by which the claimant is authorised to carry out regulated activities;

"overheads" (*"gorbenion"*) means those costs described in regulation 6;

"regulated activities" (*"gweithgareddau rheoleiddiedig"*) means activities which are authorised or regulated by a licence and supervised by the relevant regulator;

"relevant regulator" (*"rheoleiddiwr perthnasol"*) 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" (*"gwasanaethau cymorth"*) means 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 will 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 Street Works (Sharing of Costs of Works) (Wales) Regulations 2005<sup>(3)</sup> ("the 2005 Regulations") these Regulations apply to the extent that the costs are "allowable costs" as defined in regulation 2(2) of the 2005 Regulations.

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

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

### **Direct Costs**

5. Direct costs are costs in any of the five categories specified below—

- (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 or, where the equipment or plant is, or vehicles are, leased to the claimant, the equivalent cost based on relevant market rates; and
- (e) other costs which are relevant and specifically attributable to a chargeable job.

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(3) S.I.2005/1721 (W.133).

## Overheads

6.—(1) Overheads will 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 formula:

$(b/a \times 100)$  plus

$(c/a \times 100)$  plus

$(d/a \times 100)$

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), staff costs will 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 will be 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 do not apply to costs or expenses recoverable in respect of any action undertaken in relation to a licence under section 50 of the Act.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(4).

5 July 2005

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## 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 III of the New Roads and Street Works Act 1991.

Part III of that 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 street authority that a failure by an undertaker to comply with its duties to reinstate a street is causing danger to users of the street, 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 will 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 licence granted under section 50 of the Act.