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WELSH STATUTORY INSTRUMENTS

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**2005 No. 1721 (W.133)**

**HIGHWAYS, WALES**

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

*Made* - - - - 28 June 2005

*Coming into force* - - 1 July 2005

The National Assembly for Wales, in exercise of the powers conferred on the Secretary of State by sections 85 and 104(1) and (3) of the New Roads and Street Works Act 1991<sup>(1)</sup> and which are now exercisable by the National Assembly for Wales in relation to Wales<sup>(2)</sup>, hereby makes the following Regulations:

**Title, commencement and application**

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

(2) These Regulations apply to Wales.

**Interpretation**

2.—(1) In these Regulations:

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

“authority” (“*awdurdod*”) means a highway, bridge or transport authority;

“the Code” (“*y Cod*”) 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” (“*gweithfeydd gwyro*”) 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” (“*gweithfeydd pwysig*”) means major highway works, major bridge works or major transport works;

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(1) 1991 c. 22.

(2) The powers of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

“section 86(3) (a) to (g) works” (“*gweithfeydd adran 86(3) (a) i (g)*”) 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” (“*costau a ganiateir*”) 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).

### **Diversionary 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<sup>(3)</sup> executes diversionary works, the authority must 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.

### **Diversionary 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 must, 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 must pay to the authority the allowable costs incurred by the authority in moving the apparatus.

(3) This regulation is subject to regulation 6.

### **Diversionary 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,

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(3) “Undertaker” has the same meaning prescribed in section 48 of the Act.

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

(2) Where the authority executes the diversionary works, the undertaker must 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 must 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 must 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 must 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 must 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 must 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) Within 90 days of the completion of the diversionary works, the person to whom any sum by way of allowable costs is due (the creditor) must 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) must 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 must 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 must, 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 do 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(4) (“the 1992 Regulations”) are revoked so far as they apply to Wales.

(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 continue to apply where such formal notice has been served before that date.

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(4) [S.I. 1992/1690](#). These Regulations were revoked in relation to England by [S.I. 2000/3314](#).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(5)

28 June 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 replace and revoke (as respects Wales) 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 must 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 in the manner 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 must 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 its apparatus solely because of a change in the type of highway construction, it 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 towards the costs of those diversionary works recoverable from the person on whose behalf the works were initiated: regulation 5.

An undertaker is not liable for allowable costs in relation to providing space in or strengthening of a bridge to accommodate its apparatus (regulation 6(1)) and cannot recover its costs where it has placed its apparatus in the street after the authority has given it 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 it from betterment of its apparatus or deferment of the need to renew its 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 Wales, provides that these Regulations apply where notice of intention to execute major works is given on or after the date on which they come into force 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](mailto:book.orders@theso.co.uk).