WELSH STATUTORY INSTRUMENTS

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(**1**) and which are now exercisable by the National Assembly for Wales 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 (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;

(**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(**3**) 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,

(**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.