

REGULATORY APPRAISAL

HIGHWAYS, WALES

THE STREET WORKS (SHARING OF COSTS OF WORKS) (WALES) REGULATIONS 2005

Purpose and intended effect of the measure

1. The New Roads and Street Works Act 1991 provides a legislative framework for street works activities, and is supported by Regulations and codes of practice.
2. Under the Act, undertakers (i.e. utility companies) with apparatus in the street are required to meet a proportion of the cost of moving or protecting this apparatus ("diversionary works") in connection with major highway works, major bridge works, and major transport works. These arrangements replaced earlier ones, under which all the costs of diversionary works were charged to the promoter of the scheme giving rise to them.
3. The Act allows different proportions to be prescribed in different cases or classes of case, but the existing Regulations, the Street Works (Sharing of Costs of Works) Regulations 1992 (SI 1991 No. 1690) prescribe a single proportion of 18 per cent, applying to the utility company, for all cases.
4. This proportion reflects an agreement reached between the utilities and highway authorities during the run-up to the 1991 Act. That agreement only covered diversionary works related to road works and bridge works (including road works commissioned by a (public) transport authority, such as a station approach road on railway land).
5. It later became plain that the definition of "major transport works" in the Act was so wide as to cover public transport developments, which were not included in the scope of the agreement. There ensued a protracted dispute between utility representatives and the promoters of public transport schemes. The utilities did not think they should pay any contribution, and the transport promoters considered they were entitled to the same contribution as is payable for road and bridge works, i.e. 18%. Agreement was reached on a compromise contribution figure of 7.5%.
6. These Regulations replace and revoke the Street Works (Sharing of Costs of Works) Regulations 1992. They will reduce the proportion of the cost of works that a utility company has to bear where their appliances beneath the road need to be disturbed as a result of the construction of a major public transport scheme from 18% to 7.5%. In other words, the promoter of the scheme (i.e. the highway, bridge or transport authority) would, pay for 92.5% of the cost of diverting utility infrastructure rather than 82%.

Risk assessment

7. The risk of not making new Regulations is that undertakers would feel discriminated against in having to continue to contribute 18% to major transport works in Wales while only having to contribute 7.5% in England.
8. There are merits in a consistent approach across boundaries and therefore it is proposed that Regulations be adopted for Wales, similar to those for England, to avoid the problem of two systems having to be applied by what, in most cases, are National Utility Companies.

Options

Option 1: Do Nothing

9. Undertakers operating in Wales would feel discriminated against when compared to England and would continue to have to pay 18% of the cost of such works rather than 7.5%. In addition, there would not be a consistent approach across boundaries.

Option 2: Make the Legislation

10. Practice in Wales would then be consistent with that agreed and applied in England. Although, there are no current plans for such schemes but it would be desirable for this legislation to be on the statute book to facilitate the implementation of any future major transport schemes. The Welsh Assembly Government is pursuing a policy of integrated transport and its Transport Framework for Wales (2001) emphasised the need for improvements to all forms of public transport including alternatives to the car. It is envisaged that local authorities will prepare regional public transport strategies and these may lead to major transport schemes that would benefit from having this legislation in place. For example, the provision of a new bus station, or light railway, may require the re-routing of water, gas or electrical services.

Benefits

11. The benefits to undertakers of enacting the regulations would be that they would only have to contribute 7.5% of the cost of works instead of 18%. The benefits are not quantifiable at this stage, as details of the cost of future diversionary works associated with major transport works are not known.

Costs

12. There would be no costs arising from this legislation at present because no qualifying schemes are currently proposed. However, for future major public transport schemes there would be increased costs for the promoter of the project.
13. The business sectors affected would be the promoters of major public transport schemes e.g. Transport Authorities and utility companies (e.g. water, gas, electricity and telecommunications).

14. These Regulations would decrease the contribution undertakers pay towards the cost of diversionary works. It follows, therefore, that the shortfall would have to be made up by the promoting authority. For trunk road schemes, including transport authority works such as a tramway, that would be the Assembly, but for other roads that may also involve such transport authority schemes it would be the appropriate transport authority. These additional costs would be met from within programme budgets. Any additional costs for the Assembly would be met from within the provision of the appropriate budget approved by the Assembly.
15. It must be stressed that this extra cost would only amount to 10.5% of the cost of the amendment to utility services brought about by the scheme and not the cost of the whole scheme. In other words, the promoter of the scheme would, in future, pay for 92.5% of the cost of diverting utility infrastructure rather than 82%.

Competition Assessment

16. There are no competition issues.

Consultation

With Stakeholders

17. A consultation was undertaken between 21 March and 30 April 2003 with all authorities and utilities that operate in Wales (a list of consultees is attached at Annex 1). Twenty four respondents were received to the consultation and these are listed at Annex 2.
18. The 6 substantive responses making technical points were carefully considered by a Consultative Review Group comprising representatives of highway authorities and utilities and chaired by an Officer of the Welsh Assembly Government. Following on going detailed discussion both sides agreed that only one minor addition needed to be made to the Regulations. That addition was to amend section 8(2) to read: "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".

With Subject Committee

19. These Regulations were notified to Economic Development and Transport Committee via the list of forthcoming legislation on 19 January 2005 (EDT(2)02-05, Paper 5), but were not identified for detailed scrutiny.

Review

20. Arrangements such as these are reviewed from time-to-time by Department for Transport (DfT), the Welsh Assembly Government and the Highways and Utilities Committee UK on which Wales is represented.

Summary

21. If enacted, promoters of major public transport schemes would bear the additional costs and the undertakers would benefit from the reduction of 10.5% in their contribution towards the cost of diversionary works associated with such schemes.

Annex 1

The Street Works (Sharing of Costs) (Wales) Regulations 2005 Consultation List

186K Ltd	360 Atlantic (UK) Ltd
Advanced Radio Telecom Ltd	Advantica Technologies Limited
Age Concern Cymru	Albion Water Ltd
Aquila Network Services Ltd.	Arboricultural Association
ARC Recycled Materials	Associated British Ports
Association for Geographic Information	Association for Road Traffic Safety and Management Association of Chief Police Officers
Association of Consulting Engineers	Atlas Internet (UK) Limited
Automobile Association	AXS Telecom (UK) Ltd
Barrie Highfield & Associates	BDS Rights of Way and Access Committee
Belle Group	Brecon Beacons National Park Authority
Briggs Oil Ltd	British Airport Authority
British Association of Conference Destinations	British Cycling Federation
British Motor Cyclists' Federation	British Ports Association
British Retail Consortium	British Waterways
Broadband Optical Access UK Ltd	BT
BT Regulatory Affairs	Cable & Wireless Business HKT Pacific (UK) Ltd
Cable & Wireless Communications	Campaign for the Protection of Rural Wales
Caravan Club	Chartered Institute of Building
Chartered Institute of Logistics and Transport	Chief Executives and Chief Technical Officers of County Councils in Wales
Signal Global Communications UK Ltd	Civic Trust
Civil Engineering Contractors Association	Colas Limited
COLT	CompleTel UK Limited
Concert Communications Ltd	Confederation of British Industry (Wales)
Confederation of Passenger Transport UK	Connect Utilities Ltd
Consignia	Construction Confederation
Construction Industry Training Board	Core Telecommunications Limited
Countryside Council for Wales	Cyclists Public Affairs Group
Cyclists' Touring Club	Dee Valley Water Plc
Disability Wales	Disabled Persons Transport Advisory Committee
Dolphin Telecom Ltd	Dwr Cymru Welsh Water
Dynegy UK Communications Ltd Dyson Bell Martin	Easynet Group plc
Electrical Contractors Association	Energis Carrier Services Ltd
Energis Communications Limited	Engenica
Enterprise PLC	Environment Agency
Environmental Services Association	Esprit Telecom UK Limited
Eurobell	Farland Services UK Limited
Faultbasic Ltd	Federation of Master Builders
Federation of the Electronics Industry	FibreNet (UK) Limited
FirstMark Carrier Services (UK) Ltd	Flag Atlantic UK Ltd
Flag Telecom Ireland Ltd	Flute Limited
Forestry Commission	Formus Communications UK Ltd
Freight Transport Association	Friends of the Earth Cymru
Gamma Telecommunications Ltd	Gas Consumer Council for Wales
General Telecommunications Ltd	Global Crossing

Global One Communications Holdings Ltd	Global Telesystems (UK) Ltd
Global Telesystems Europe BV	Ground Zereau Limited
GT UK Limited	GTS Business Services (UK) Ltd
GTS Network (Ireland) Ltd	Heritage Railways Association
Highway Authorities and Utilities Committee (England)	Highway One Corporation Limited
House Builders Federation	i-21 Ltd
Institute of Highways Incorporated Engineers	Institute of Logistics and Transport
Institute of Petroleum	Institute of Public Rights of Way Officers
Institute of Road Safety Officers	Institution of Civil Engineering Surveyors
Institution of Civil Engineers	Institution of Electrical Engineers
Institution of Gas Engineers	Institution of Highways and Transportation
Institution of Lighting Engineers	Institution of Quality Assurance
Institution of Water & Environmental Management	Interac
International Society of Arboriculture (Europe) Ltd	Internet Central Ltd
INTERNET Network Services Limited	Interoute
Ipsaris Limited	ISA UK/1
Izenkom Limited	Jason Consultants Ltd
Joint Committee on Mobility for Disabled People	Joint Committee on Mobility of Blind and Partially Sighted People
Kingston Communications (Hull) PLC	KPNQWEST Assets UK Limited
Land Access and Recreation Association	Light Rail Transit Association
Lighting Industry Federation Ltd	Louis Dreyfrus Communications SA
Lux Traffic Controls Ltd	M3COM (UK) Ltd
Magnox Electric	MCI-Worldcom
Mid and West Wales Fire Brigade	Mid Wales Partnership
Motorists' Forum	National Association of Tree Officers
National Association of Waste Disposal Contractors	National Federation of Demolition Contractors
National Grid	National Joint Utilities Group
National Power Plc	National Sewerage Association
National Society for Clean Air and Environmental Protection	National Transcommunications Ltd
Neosnetworks Ltd	Networkrail
Nevada Telecom Ltd	North Wales Fire Service
Norweb Telecom Ltd	NRSWA Ltd
NRSWA WALES	NTL
NYNAS UK AB	O2 (UK) Ltd
Office of Gas and Electricity Marketing	Office of Telecommunications
Office of Water Services	Ofwat
Omne Communications Ltd One2One	Orange Personal Communications Services Ltd
Ordnance Survey	Pacific Gateway Exchange (UK) Ltd
Pangea Global Communications Inc	Pedestrians Association
Pembrokeshire Coast National Park Authority	Pensioners' Voice
Pipeline Industries Guild	Powergen
Quadrant	Quarry Products Association
RAC Foundation for Motoring	RadioTel Systems Ltd
Ramblers Association	Redstone Network Services Ltd
Refined Bitumen Association Ltd	Retro-reflective Equipment Manufacturers Association
Rights of Way Review Committee	Road Haulage Association
Road Safety Markings Association	Road Surface Dressing Association
Rocom TBI Limited	RoSPA
Royal Association for Disability and Rehabilitation	Royal Automobile Club

Royal Society for Nature Conservation	Royal Town Planning Institute
Sand & Ballast Hauliers and Allied Trades Alliance Ltd	ScottishPower PLC
Severn Trent Water	Society of British Gas Industries
Society of British Water and Waste Water Industries	Society of Parliamentary Agents
South Wales Fire Service	South Western Electricity Plc
Southern Electric Plc	Storm Telecommunications Limited
Streetworks Consultancy Management Group	Surf Telecoms Ltd
SUSTRANS Cymru	Technical Advisors Group
Technical Press	Tele2 (UK) Communications Ltd
Tele2 (UK) Limited	Telecom Securior Cellular Radio
Teleglobe International	Teleport London International Ltd
Teleport UK Limited	Telewest Communications
Telia UK Ltd	Telstra (UK) Ltd
Thus PLC	TMI Telemedia International Limited
Torch Communications Limited	Traffic Control Systems Unit
Transco	Transport 2000
Transport Reform Alliance	Tree Advice Trust
Trunk Road Agents in Wales	TyCom Networks (UK) Limited
UK Highways A55 Ltd	Unisource Carrier Services (UK) Limited
United Kingdom Society for Trenchless Technology	Utilities Contractor Associations' Federation
Ventelo Business Services (UK) Ltd	Versatel Telecom BV
Viatel Global Communications Ltd	Vodafone Group Plc
Vtesse Networks Ltd	Wales Council for the Blind
Wales Council for the Deaf	Wales Disabled Drivers
Wales TUC Cymru	Waltons and Morse
Water UK	Welsh Association of Technical Officers
Welsh Consumer Council	Welsh Cycling Union
Welsh Joint Utilities Group	Welsh Local Government Association
Western Power	Winstar Communications Limited
World Online UK Ltd	WorldxChange Communications Ltd
Yorkshire Water Services Ltd	Your Communications

RESPONSES TO THE CONSULTATION WERE RECEIVED FROM THE FOLLOWING

Bridgend CBC
Caerphilly CBC
Capita Gwent Consultancy
Cardiff CC
Carmarthenshire CC
Ceredigion CC
Energis
Gwynedd CC
Isle of Anglesey CC
National Joint Utilities Group
National Sewerage Association
Neath Port Talbot CBC
North Wales Fire Service
Office of Telecommunications
Office of the Director General of Water Services
Pembrokeshire CC
Powys CC
Retroreflective Equipment Manufacturers Association
Rhondda Cynon Taff CC
Road Haulage Association
Scottish Power
Swansea CC
Welsh Association of Technical Officers
Welsh Water