

## 9 GENERAL STATEMENT OF FINANCIAL AGREEMENT

### 9.1 General

Section 85 of the Act (for England and Wales) and section 144 of the Act (for Scotland) provides for Regulations prescribing the way in which the allowable costs of diversionary works will be shared between relevant authorities and undertakers. These are contained in the Street Works (Sharing of Costs of Works) (England) Regulations, The Street Works (Sharing of Costs of Works) (Wales) and the Road Works (Sharing of Costs of Works) (Scotland) Regulations).

This section sets out the agreed cost sharing principles. Detailed arrangements for their implementation are set out in Appendix C section C9.

### 9.2 The Standard Cost Sharing Principle

In the case of major transport works, the authority will bear 92.5%, and the undertaker 7.5% of the "allowable costs" of the diversionary works - provided the authority meets the payment schedules as set out in Appendix C, section C9.2 and C9.3.

In the case of major highway, road or bridge works the authority will bear 82%, and the undertaker 18% of the "allowable costs" of the diversionary works - provided the authority meets the payment schedules as set out in Appendix C, section C9.2 and C9.3.

The "allowable costs" are the costs of the works as described in Appendix C section C4. They do not include financing charges, nor the costs of either party in respect of that part of the work described in Appendix C sections C2 and C3, which consists of costs incurred in preparing the initial set of plans and estimates in relation to those diversionary works.

### 9.3 Variations on the Standard Principle

#### 9.3.1 Redundant Highways, Roads and Bridges (see chapters 6 and 8)

There are three possible cases

Case a.

**Where apparatus is in a highway, road or bridge prior to the declaration of redundancy** - the standard cost sharing principle described in section 9.2 above applies to the relocation of that apparatus and any replacement or renewal of it.

Case b.

**Where apparatus is placed in a highway, road or bridge (other than by way of renewal or replacement) after the declaration of redundancy** - provided the highway or road becomes redundant within five years, or the bridge within ten years, of the declaration of redundancy, the allowable cost of relocating that apparatus will be met in full by the undertaker.

Case c.

**Where apparatus is placed in a highway, road or bridge after the declaration of redundancy, but the highway, road or bridge does not become redundant within five or ten years respectively** - the standard cost sharing principle described in section 9.2 above applies to the relocation of that apparatus and any replacement or renewal of it.

### 9.3.2 Replacement or Modification of a Bridge

The design and construction of a replacement or modified bridge should take account of the need to accommodate undertakers' apparatus equivalent in size and mass to that which is in the existing bridge, e.g. by providing sufficient space and structural strength. The costs arising from these requirements will be borne by the authority.

However, the cost sharing principle described in section 9.2 will apply to the allowable costs of housing or supporting the apparatus, e.g. ducts, pipe bays or hangers, and the diversion of the undertaker's apparatus.

If an undertaker wishes to take the opportunity of the bridge works to increase the provision for its apparatus in the bridge, the undertaker must meet the additional cost involved.

### 9.3.3 Special Case of Change of Depth

The Code gives advice on the diversion of apparatus due to a change of depth (section 5.2 and Appendix B). The standard cost sharing principle will apply in most cases. However, there may be some cases, as follows, where different financial arrangements may be needed:

- a. **where apparatus is at sub-standard depth and outside the limits set out in this Code (even for protection).**

In this case, it may be appropriate for the undertaker to make a greater contribution to the cost of the diversionary works, this should be jointly considered by the authority and undertaker. An increased contribution would not be expected where the undertaker has already accepted reduced depth as a result of previous highway or road improvement.

- b. **where the undertaker has already made provision for future highway or road works which are subsequently varied.**

In this case, it would be inappropriate to expect the undertaker to make the relevant cost contribution.

### 9.3.4 Works Funded Wholly or Partly by a Third Party

Where the authority is entitled to receive a contribution towards the cost of diversionary works from a third party, (for example a private developer) the cost share allowance will only apply to the cost of diversionary works not covered by the third party contribution. This also applies where the authority is itself the developer and makes a contribution from non-highway or road funds. The third party will not get the benefit of the cost sharing arrangements..

Section 85 of the Act (for England and Wales) and section 144 of the Act (for Scotland) enable the authority, on behalf of the undertaker, to recover from a third party (for example, a private developer) costs incurred in carrying out diversionary works and the authority is expected to do so in all appropriate cases.

## 10 DISPUTE RESOLUTION

### 10.1 Introduction

It is the intention that this Code will provide sufficiently detailed guidance so that agreement on the nature and extent of any necessary work is reached at local level. Organisations at the local level should always use their best endeavours to achieve a solution to any issue without having to refer the matter to dispute resolution. This might be achieved by referring the issue to senior management within each of the respective organisations for settlement. If however, agreement cannot be reached, then the following procedure should be invoked where appropriate.

### 10.2 Informal dispute resolution

If discussions at local level fail then in order to resolve any issue as quickly and informally as possible an attempt should be made at conciliation in the following manner

#### 10.2.1 Scotland

[The Road Works \(Settlement of Disputes and Appeals against Directions\) \(Scotland\) Regulations 2008 \(legislation.gov.uk\)](#) provide the Scottish Road Works Commissioner with direct powers of arbitration in respect of disputes arising from works under s143 of NRSWA. Any such disputes in Scotland will be dealt with per the Code of Practice for Dispute Resolution and Appeals, as published on the [website of the Scottish Road Works Commissioner](#).

#### 10.2.2 England and Wales

The HAUC dispute resolution pathway is primarily concerned with providing guidance on procedural matters.

Diversionary works may be complex and costly matters. NRSWA provides for the costs of diversionary works to be recovered, using NRSWA s96 (in England and Wales) and applying the relevant cost sharing regulations.

Disputes relating to quantum of costs, or additional costs which could arise as a result of either party failing to uphold an agreement made under the measures necessary are not matters which it would be appropriate for a HAUC panel to make a determination on. Where these cannot be resolved per 10.1, then the dispute resolution procedure in 10.3 may be considered.

If agreement cannot be reached locally on any procedural matter arising under any part of this Code, the dispute should be referred for review following the HAUC disputes resolution process as outlined in the applicable Co-ordination Code of Practice.

If the matter cannot be resolved at a local level or is particularly complex it may be escalated to HAUC (UK).

### 10.3 Arbitration

By virtue of section 84(3) of the Act (for England and Wales) any dispute between the relevant authority and the undertaker as to the identification of necessary measures, settling of a specification, and coordination of those measures and the authority's works etc, shall, in default of agreement, be settled by arbitration. Where the dispute resolution procedure has not resolved the issue or has not been used, the issue shall be referred to an arbitrator appointed by agreement - see sections 99 or 158 respectively of the Act.