



tie Policy on payment of costs and expenses incurred by objector and other third parties in relation to EARL

Legal context

- A** As promoters of a Private Bill, **tie** are not legally obliged¹ to pay the costs and expenses incurred by third parties/objectors² in relation to (a) negotiations entered into with third parties/objectors prior to the submission of the Bill; or (b) preparing and sustaining an objection during the Private Bill process in the Scottish Parliament, including costs and expenses of negotiations relating to the objection.
- B** However, once the Bill has been passed as an Act of the Scottish Parliament and the authorised undertaker under the Act compulsorily purchases land under the Act and constructs the railway, costs and expenses will be recoverable from the authorised undertaker if and to the extent that they: (a) are incurred by landowners and others entitled to claim compensation; and (b) directly relate to compulsory purchase of the person's land or to that person's compensation claim³; and (c) are reasonable.

Policy⁴

1. The EARL project should bear those costs and expenses which will be the responsibility of the authorised undertaker as outlined in paragraph **B**.
2. Subject to paragraph 1, it is against public policy for **tie** as a responsible, publicly accountable body to pay costs or expenses of objectors/third parties in over and above those for which **tie** is legally liable.
3. Accordingly, if negotiations during the promotion of the Bill result in a person incurring costs and expenses which, if incurred after the Bill has passed, would be recoverable from the authorised undertaker as described in paragraph **B**, **tie** will reimburse them in whole or in part. The amount payable by **tie** will be calculated in accordance with paragraph 7.
4. It is the responsibility of any third parties/objectors to bear their own costs and expenses (including those of their professional advisers e.g. a surveyor or solicitor). Where applicable, this will be subject to reimbursement in accordance with this Policy.
5. **tie** will enter into early negotiation with third parties/objectors or their agents to try and resolve their concerns, if possible avoiding the need for a formal objection to the Bill.
6. If third parties/objectors refuse to enter negotiations unless their costs and expenses are met on terms other than as stated in this Policy, **tie** will respond in writing.
7. Costs and expenses payable in accordance with paragraph 3 must be reasonably incurred. It is likely that this will mean that only professional fees (e.g. of surveyors, agents or solicitors) will be recoverable. The amounts of recoverable fees must be in accordance with the accepted and recognised professional scales (e.g. in relation to surveyor's fees the Ryde's scale⁵ and in relation to legal fees a reasonable market hourly rate (to be prior agreed with the objector/third party) calculated on an agent/client third party paying basis and subject to taxation by an auditor should there be any disagreement⁶. A written record should also be kept.

¹ The Parliament's Guidance on Private Bills makes clear (section 5.34) that the payment of costs and expenses is a matter for parties to agree if they choose. They are not obliged to make any such agreement and this is not a matter for the Scottish Parliament to decide.

² Including those of their professional advisers e.g. a surveyor or solicitor

³ Costs & expenses covered by (b) include those related to mitigating the impact of the works such as to reduce the amount of compensation that might be otherwise be payable.

⁴ This Policy has been decided in light of the legal context as outlined in paragraphs A and B.

⁵ Ryde's Scale, Valuation Office Agency (1996), available from the Valuation Office Agency, Chief Executive's Office, New Court, Carey Street, London, WC2A 2JE subject to a maximum of up to 25% above the Ryde's Scale.

⁶ In relation to solicitor's fees, the Law Society of Scotland no longer recommends a scale of fees for solicitors.