



<b>Health and Safety Executive</b>		<b>Operational Circular</b>	
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**Target Audience:**  
All HSE Inspectors

### ABSTRACT OF DECIDED CASE

#### Cullen v N E I Thompson Ltd

In this Scottish civil case the Outer House held that construction of a bridge, not in situ, was a work of engineering construction and accordingly the Construction (Working Places) Regulations 1966 applied.

**Issue:** "Work of engineering construction".

**Regulation:** Construction (Working Places) Regulations 1966.

**Circumstances:** A workman was injured during the construction of part of a bridge in a construction yard. He sued his employer based on the employer's common law duties of care and on breaches of the Construction (Working Places) Regulations 1966 regs.6(2), 33(2) and 38(1). His employer argued that if work was done in a factory such as the construction yard, the regulations did not apply, albeit that work of engineering construction is defined as meaning, inter alia "the construction, structural alteration or repair .... of any bridge". What was involved was the fabrication of a steel structure in a factory and by virtue of the Engineering Construction (Extension of Definitions) Regulations 1960, which extend the meaning of the expression work of engineering construction to cover, "the construction .... of .... any steel .... structure". Such operations when carried out in a factory are excluded from the definition.

**Held:** Outer House.

The work being carried out at the material time was a work of engineering construction. By virtue of the Factories Act 1961 s.176, that expression meant, inter alia, "the construction, structural alteration or repair of any bridge". It was clearly averred in the present case that what was being undertaken was the construction of a bridge. The extension of this definition by the Engineering Construction (Extension of Definition) Regulations 1960 which have the effect of extending the scope of the expression "work of engineering construction" should not be seen as limiting the terms of the original definition. There was nothing in the definition of "work of engineering construction" found in the Factories Act 1961 s.176 which excluded

things which were not built in situ.

**Type of Case:** Civil.

**References:** 1992 SLT 1105.

20 January 1995

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**ASI headings**

Court decisions: decided cases: Construction (Working Places) Regulations 1966.

