



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART I

#### NEW ROADS IN ENGLAND AND WALES

##### *Concession agreements*

#### **1 Concession agreements.**

- (1) In this Part a “concession agreement” means an agreement entered into by a highway authority under which a person (the “concessionaire”), in return for undertaking such obligations as may be specified in the agreement with respect to the design, construction, maintenance, operation or improvement of a special road, is appointed to enjoy the right (conferred or to be conferred by a toll order under this Part) to charge tolls in respect of the use of the road.

References in this Part to a concession agreement are to the agreement as varied or supplemented from time to time.

- (2) Except as otherwise expressly provided by this Part, the provisions of the <sup>M1</sup>Highways Act 1980 apply in relation to a special road in relation to which a concession agreement is in force (referred to in this Part as a “road subject to a concession”) as in relation to any other special road provided or to be provided by the highway authority.
- (3) A concession agreement shall provide that any land held by the concessionaire which in the opinion of the highway authority is required, in connection with the matters provided for in the agreement, for any purpose for which the authority may acquire land under Part XII of the <sup>M2</sup>Highways Act 1980 shall be transferred to the highway authority without payment.
- (4) A concession agreement relating to the design and construction of a special road shall provide that if the special road scheme authorising the provision of the road is not made or confirmed, or if the highway authority decide not to proceed with the proposed road, the authority shall pay to the concessionaire such compensation in respect of costs incurred by him as may be determined in accordance with the agreement.

*Status: Point in time view as at 01/02/2011.*

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- (5) A concession agreement relating to the design and construction of a special road shall provide that if the concessionaire fails to complete the road in accordance with the agreement, he shall, without prejudice to any other liability, pay to the highway authority such compensation as may be determined in accordance with the agreement in respect of costs incurred by them.

Those costs shall be taken to include the relevant administrative expenses of the authority, including an appropriate sum in respect of general staff costs and overheads.

#### Marginal Citations

**M1** 1980 c. 66.

**M2** 1980 c. 66.

## 2 Exercise of highway functions by concessionaire.

- (1) A concession agreement may authorise the concessionaire to exercise in place of the highway authority such highway functions to which this section applies as may be specified in the agreement.
- (2) For this purpose “highway functions” means all functions in relation to the road subject to the concession which are exercisable, in whatever capacity, by the authority who are the highway authority; and this section applies to all such functions, except—
- (a) powers to make schemes or orders under the Highways Act 1980,
  - (b) powers to make regulations or orders, or give directions, under the <sup>M3</sup>Road Traffic Regulation Act 1984, and
  - (c) such other functions as may be prescribed by the Secretary of State by regulations.
- (3) A highway function exercisable by the concessionaire may be exercised by the highway authority themselves only—
- (a) in an emergency, or
  - (b) if it appears to the authority that such exercise is necessary or expedient in the interests of road safety, or
  - (c) if it appears to the authority that the concessionaire has failed or is unable properly to discharge the function in any respect;
- and the highway authority shall not be liable for anything done or omitted by the concessionaire in the exercise or purported exercise of a highway function.
- (4) The highway authority may recover from the concessionaire the costs incurred by them in exercising in the circumstances mentioned in subsection (3)(a), (b) or (c) a highway function exercisable by the concessionaire.

Those costs shall be taken to include the relevant administrative expenses of the authority, including an appropriate sum in respect of general staff costs and overheads.

- (5) The concessionaire shall in the exercise of a highway function act in accordance with the terms of the concession agreement; and the agreement may provide for the withdrawal of the concessionaire’s authority to exercise any such function.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**Modifications etc. (not altering text)**

- C1 S. 2 applied (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\)](#), arts. 1, 45 (with art. 51, Sch. 10 paras. 68, 85)

**Marginal Citations**

- M3 1984 c. 27.

### 3 Provisions as to traffic regulation.

- (1) The following provisions have effect with respect to the operation of the <sup>M4</sup>Road Traffic Regulation Act 1984 (“the 1984 Act”) in relation to a road subject to a concession.
- (2) The traffic authority shall consult the concessionaire before making any regulations or order under the 1984 Act specifically relating to the road.
- (3) The concessionaire may cause or permit traffic signs (within the meaning of section 64(1) of the 1984 Act) to be placed on or near the road, but subject to any directions given by the traffic authority.

If the concessionaire fails to comply with a direction of the traffic authority as to the placing of traffic signs, the authority may themselves carry out the work required and recover from the concessionaire the expenses reasonably incurred by them in doing so.

- (4) The concessionaire may issue a notice under section 14 of the 1984 Act (temporary restriction or prohibition of traffic) having the same effect as a notice issued under that section by the traffic authority.

The Secretary of State may by regulations make provision excluding in relation to such a notice issued by a concessionaire the provisions of the 1984 Act relating to—

- (a) the procedure in connection with the issue of the notice,
- (b) the maximum duration of the notice, and
- (c) the making of provision in relation to alternative roads,

and making instead such other provision as appears to him to be appropriate.

- (5) A notice issued by the concessionaire by virtue of subsection (4) may be revoked or varied by the traffic authority and shall cease to have effect if provision inconsistent with it is made by that authority by order or notice under section 14 of the 1984 Act.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Marginal Citations**

- M4 1984 c. 27.

### 4 Leasing of land to concessionaire.

- (1) A highway authority who have entered into a concession agreement may grant to the concessionaire a lease of any land if it appears to the authority to be expedient to do

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so for the purpose of or in connection with the exercise by the concessionaire of his functions under the agreement.

- (2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of an agreement between the authority and the concessionaire as to the terms on which land which is the subject of a lease granted under subsection (1) is provided for the concessionaire's use.
- (3) Accordingly no such enactment or rule of law applies in relation to the rights and obligations of the parties to a lease so granted—
  - (a) so as to exclude or modify in any respect any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
  - (b) so as to confer or impose on either party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease;
  - (c) so as to restrict the enforcement (whether by action for damages or otherwise) by either party to the lease of any obligation of the other party under the lease.

## **5 Transfer or termination of concession.**

- (1) The rights of a concessionaire under a concession agreement may be assigned with the consent of the highway authority; and references in this Part to the concessionaire shall be construed as references to the person for the time being entitled to exercise those rights.
- (2) On the termination of a concession agreement (by effluxion of time or otherwise) there shall be transferred to the highway authority by virtue of this section all such property, rights and liabilities of the concessionaire as in accordance with the concession agreement fall to be so transferred in the circumstances.

Schedule 1 contains supplementary provisions with respect to that transfer.

- (3) Where a concession agreement terminates or is terminated before the end of the toll period, the highway authority—
  - (a) shall take reasonable steps to secure the appointment of a new concessionaire, and
  - (b) may, for a period of not more than two years until a new appointment or an extension toll order takes effect or the toll period ends, charge and collect tolls in the same way as a concessionaire.
- (4) A concession agreement may contain provision as to the circumstances in which, and extent to which, any sum received by the highway authority—
  - (a) in consideration for the appointment of a new concessionaire, or
  - (b) by way of tolls collected by virtue of subsection (3)(b),
 is to be applied for the benefit of the former concessionaire or his creditors, as the case may be.

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## *Toll orders*

### **6 Toll orders.**

- (1) An order authorising the charging of tolls (a “toll order”) may be made in relation to a special road proposed to be provided by a highway authority.

The order shall state whether it authorises the charging of tolls by a concessionaire or by the highway authority.

[<sup>F1</sup>(1A) Subsection (1) is subject to section 33(4) of the Planning Act 2008 (exclusion of powers to make or confirm orders in relation to highways for which development consent required).]

- (2) A toll order relating to a special road to be provided by the Secretary of State shall be made by the Secretary of State; and a toll order relating to a special road to be provided by a local highway authority shall be made by the authority and confirmed by the Secretary of State.
- (3) Schedule 2 has effect as to the making or confirmation of a toll order and as to its validity and date of operation.
- (4) The proceedings required to be taken in relation to a toll order shall (so far as practicable) be taken concurrently with the proceedings required to be taken under the <sup>M5</sup>Highways Act 1980 in relation to the special road scheme authorising the provision of the road to which the order relates.
- (5) The Secretary of State shall not make or confirm the scheme or the toll order unless he makes or confirms them both.
- (6) The power conferred on the Secretary of State by this section to make or confirm a toll order is exercisable by statutory instrument.

#### **Textual Amendments**

**F1** S. 6(1A) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 49](#) (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)

#### **Marginal Citations**

**M5** [1980 c. 66](#).

### **7 The toll period.**

- (1) A toll order shall provide for tolls to be chargeable for a period (the “toll period”) specified in or determined in accordance with the order.
- (2) The order may provide for the toll period to end—
- (a) on a date, or at the end of a period, specified in the order, or
  - (b) on a date determined by reference to—
    - (i) the achievement of a specified financial objective, or
    - (ii) the passage of a specified number of vehicles,or such other factors, or combinations of factors, as may be specified in the order, or

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- (c) on whichever is the earlier or later of dates specified in or determined in accordance with the order.
- (3) In the case of a toll order authorising the charging of tolls by a concessionaire, it is for the highway authority to decide any matter relevant to determining the date on which the toll period ends.

## **8 Amount of tolls chargeable by concessionaire.**

- (1) A toll order authorising the charging of tolls by a concessionaire shall specify the maximum tolls which may be charged if, and only if, the road to which the order relates consists of or includes a major crossing to which there is no reasonably convenient alternative.
- (2) The Secretary of State may make provision by regulations as to what is to be treated as a major crossing for this purpose and as to the circumstances in which another route is to be taken to be, or not to be, a reasonably convenient alternative.
- (3) Subject to any such regulations, a major crossing means a crossing of navigable waters more than 100 metres wide and a reasonably convenient alternative means another crossing (other than a ferry) which is free of toll and is within five miles of the crossing in question.

For this purpose—

- (a) the width of tidal waters shall be ascertained by reference to the mean high-water mark and the width of other waters by reference to the ordinary limits of the waters, and
- (b) the distance between two crossings shall be taken to be the shortest distance between the centre lines of the two crossings.
- (4) The order shall specify the maximum tolls which may be charged for the use of the crossing or any length of the road including the crossing; and if the condition as to absence of a reasonably convenient alternative is satisfied in relation to certain types of traffic only, the order shall make provision only in relation to those types of traffic.

If that condition ceases to be satisfied, generally or in relation to certain types of traffic, the provisions of the order as to maximum tolls shall cease to apply, or cease to apply to that type of traffic, for so long as that remains the case.

- (5) The order may specify different maxima for different descriptions of traffic (which need not correspond with the classes of traffic prescribed by the special road scheme) and may provide for the amounts to be varied in accordance with a formula specified in the order.
- (6) Regulations under this section shall be made by statutory instrument and shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

Any regulations so made do not apply in relation to an order if notice of the draft order, and of the relevant draft special road scheme, have been published before the regulations come into force.

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## 9 Amount of tolls chargeable by highway authority.

- (1) A toll order authorising the charging of tolls by the highway authority shall in every case specify the maximum tolls which may be charged for the use of the road or any length of the road in respect of which tolls are charged.
- (2) The order may specify different maxima for different descriptions of traffic (which need not correspond with the classes of traffic prescribed by the special road scheme) and may provide for the amounts to be varied in accordance with a formula specified in the order.

## 10 Application of enactments relating to monopolies, &c.

- (1) [<sup>F2</sup>For the purposes of the Enterprise Act 2002, a person] authorised by a toll order to charge tolls shall be deemed to supply a service, namely, providing the facility to use the road in return for the toll charged.

<sup>F3</sup>(2) .....

<sup>F4</sup>(3) .....

### Textual Amendments

- F2** Words in s. 10(1) substituted (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 18(2)(a)**
- F3** S. 10(2) repealed (20.6.2003) by [The Enterprise Act 2002 \(Consequential and Supplemental Provisions\) Order 2003 \(S.I. 2003/1398\)](#), art. 1, **Sch. para. 18(2)(b)**
- F4** S. 10(1)(b)(c)(3) repealed (1.3.2000) by [S.I. 2000/311](#), **art. 27**

## 11 Variation or revocation of toll order.

- (1) A toll order may be varied or revoked—
  - (a) by an order made by the Secretary of State if he is the highway authority for the road, and
  - (b) by an order made by the highway authority and confirmed by the Secretary of State in any other case.
- (2) The Secretary of State may confirm an order made by another authority either without modifications or subject to such modifications as he thinks fit.
- (3) A toll order may not be varied so as to extend the toll period; and a toll order which does not authorise the charging of tolls in respect of the whole length of the special road to which it relates may not be varied so as to extend the length of road in respect of which tolls may be charged.
- (4) A toll order relating to a road subject to a concession may not be varied or revoked without the consent of the concessionaire.
- (5) An order under this section may contain such supplementary, incidental and transitional provisions as appear to the highway authority to be necessary or expedient.
- (6) An order under this section made by the Secretary of State, and an instrument made by the Secretary of State confirming an order under this section made by another

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authority, shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The provisions of Schedule 2 (procedure in connection with toll orders) do not apply.

## **12 Extension toll orders.**

- (1) An order authorising the charging of tolls by the highway authority (an “extension toll order”) may be made in relation to a road which is or has been subject to a concession.
- (2) An extension toll order relating to a special road for which the Secretary of State is the highway authority shall be made by the Secretary of State; and an extension toll order relating to a road for which the highway authority is a local highway authority shall be made by that authority and confirmed by the Secretary of State.
- (3) Any extension toll order must be made so as to come into force not later than—
  - (a) the end of the toll period under the previous toll order, or
  - (b) where the concession agreement terminates or is terminated before the end of that period, two years after the termination of the agreement,
 whichever is the earlier.
- (4) The following provisions of this Act apply in relation to an extension toll order as in relation to a toll order under section 6(1)—
  - section 7(1) and (2) (the toll period),
  - section 9 (amount of tolls chargeable by highway authority),
  - section 10 (application of enactments relating to monopolies, &c.),
  - section 11 (variation or revocation of order),
  - sections 13 to 17 (further provisions with respect to tolls), and
  - section 18 (annual report by Secretary of State).
- (5) An extension toll order made by the Secretary of State, and an instrument made by the Secretary of State confirming an extension toll order made by a local highway authority, shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

The provisions of Schedule 2 (procedure in connection with toll orders) do not apply.

### *Further provisions with respect to tolls*

## **13 Further provisions as to charging of tolls.**

- (1) A toll order may contain provision exempting from liability for tolls such descriptions of traffic as may be specified in the order.

This does not affect the power of the person authorised by the order to charge tolls to grant such other exemptions from toll as he thinks fit.

- (2) A toll order shall contain provision exempting from liability to pay any toll—
  - (a) a police vehicle, identifiable as such by writing or markings on it or otherwise by its appearance, if being used for police purposes;
  - <sup>F5</sup>(b) a vehicle which is exempt from vehicle excise duty under—
    - (i) paragraph 4 (fire engines),



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- (ii) paragraph 6 (ambulances),
  - (iii) paragraph 18 (invalid carriages),
  - (iv) paragraph 19 (vehicles for use by or for purposes of certain disabled people), or
  - (v) paragraph 20 (vehicles used for carriage of disabled people by recognised bodies),
- of Schedule 2 to the Vehicle Excise and Registration Act 1994.]
- (3) A person authorised by a toll order to charge tolls may, subject to the provisions of the order—
- (a) suspend the collection of tolls;
  - (b) enter into agreements under which persons compound in advance, on such terms as may be agreed, for the payment of tolls;
  - (c) charge different tolls according to—
    - (i) the distance travelled, or
    - (ii) the day, time of day, week, month or other period; and
  - (d) charge different tolls for different descriptions of traffic.

In the case of a concessionaire the powers mentioned above are exercisable subject to the provisions of the concession agreement.

#### Textual Amendments

- F5** S. 13(2)(b) substituted for s. 36(2)(b)-(d) (1.9.1994) by 1994 c. 22, ss. 63, 66, Sch. 3 para. 28 (with s. 57(4))

## 14 Collection of tolls.

- (1) The Secretary of State may make provision by regulations with respect to the collection of tolls in pursuance of a toll order.
- (2) Different provision may be made for different types of road or different types of toll, or for particular roads or particular tolls.
- (3) Regulations may, in particular, impose requirements with respect to—
- (a) the displaying of lists of tolls, and
  - (b) the manner of implementing changes in the amount of tolls;
- and where any such requirements are imposed, a toll may not be demanded unless they are, or as the case may be have been, complied with.
- (4) A person who in respect of the use of a road to which a toll order relates demands a toll—
- (a) which he is not authorised to charge, or
  - (b) which by virtue of subsection (3) may not be demanded,
- commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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## **15 Refusal or failure to pay tolls.**

- (1) A person who without reasonable excuse refuses or fails to pay, or who attempts to evade payment of, a toll which he is liable to pay by virtue of a toll order commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) If it appears to a person employed for the purpose of collecting tolls that a person has, without reasonable excuse, refused or failed to pay a toll which he is liable to pay by virtue of a toll order, he may—
  - (a) refuse to permit him to pass, or prevent him from passing, through any place at which tolls are payable, and
  - (b) require him to remove his vehicle from any such place by a particular route, and if he does not comply with such a requirement cause the vehicle to be so removed;

and for the purpose of exercising the powers conferred by this subsection, a person employed for the purpose of the collection of tolls may call upon such assistance as he thinks necessary.

- (3) Where a person does not comply with a requirement under subsection (2)(b) as to the removal of his vehicle, he is liable to pay a prescribed charge in respect of the removal of the vehicle.
- (4) Where there remains unpaid—
  - (a) a toll which a person is liable to pay by virtue of a toll order, or
  - (b) a prescribed charge which he is liable to pay by virtue of subsection (3),
 the person authorised to charge tolls may recover from the person liable the amount of the toll or charge together with a reasonable sum to cover administrative expenses.
- (5) In this section a “prescribed charge” means such charge as may be specified in, or calculated in accordance with, regulations made by the Secretary of State.

The regulations may provide for the amount of the charge, or any amount used for the purpose of calculating the charge, to be varied in accordance with a formula specified in the regulations.

- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **16 Facilities for collection of tolls.**

- (1) A person authorised by a toll order to charge tolls may set up and maintain facilities for the collection of tolls.

The consent of the highway authority is required for the setting up of any such facilities by a concessionaire.

- (2) Those responsible for the design and construction of facilities for the collection of tolls, and those responsible for the collection of tolls at such facilities, shall have due regard to the need to avoid delaying the passage of such vehicles as are mentioned in section 13(2)(a), (b) or (c) (police vehicles, ambulances and fire engines).
- (3) The power of the highway authority under section 239(4)(c) of the <sup>M6</sup>Highways Act 1980 to acquire land for the provision of buildings or facilities to be used in connection with the use of the special road includes, in the case of a road subject to a toll order,

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power to acquire any land required for the purpose of setting up facilities for the collection of tolls.

- (4) Facilities for the collection of tolls are exempt from rating and shall not be included in any rating list.
- (5) In this section “facilities for the collection of tolls” means such buildings, structures or other facilities within the boundary of the road, or on land adjoining the road, as are reasonably required for the purpose of or in connection with the collection of tolls in pursuance of a toll order.

#### Marginal Citations

M6 1980 c. 66.

### 17 Restriction of access to toll roads.

- (1) Where a toll order is in force in relation to a road, no highway or private means of access to premises shall be so constructed as to afford access to the road except with the consent of the highway authority and, where the road is subject to a concession, of the concessionaire.
- (2) Subsection (1) does not apply to the construction of a highway or private means of access by or on behalf of a government department or Minister of the Crown which the department or Minister is satisfied is reasonably required for discharging any function of the department or Minister.

#### *Annual Report*

### 18 Annual report on concession agreements and toll orders.

- (1) The Secretary of State shall in respect of each calendar year lay before Parliament a report—
  - (a) stating the number of concession agreements entered into by him during that year,
  - (b) stating the number of new roads opened to public use during that year for which he is the highway authority and which at the time of their opening were subject to a concession,
  - (c) listing the toll orders, and orders varying or revoking toll orders, made or confirmed by him in that year, and
  - (d) containing such information as appears to him to be appropriate with respect to the toll orders (whenever made) which are in force during that year or any part of it.
- (2) The report shall be laid on or before 31st July in the following calendar year.

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### Miscellaneous

#### 19 Environmental assessment of projects involving special roads.

In section 105A of the <sup>M7</sup>Highways Act 1980 (environmental assessment of certain highway projects), after subsection (2) (cases in which environmental statement must be published) insert—

“(2A) Any project for the construction or improvement of a special road which falls within Annex II to the Directive shall be treated as having such characteristics that it should be made subject to an environmental assessment in accordance with the Directive.”.

#### Marginal Citations

M7 1980 c. 66.

#### 20 Classification of traffic for purposes of special roads.

(1) In section 17 of the Highways Act 1980 (classification of traffic for purposes of special roads), in subsection (3) omit the words from “and references” to the end (which relate to the effect of an amending order on existing schemes) and after that subsection insert—

“(4) An amending order may contain provision applying the amendments made by the order to existing schemes (whether made by the Minister or a local highway authority); and in the absence of such provision an amending order does not affect the classes of traffic prescribed in an existing scheme.

In this subsection an “existing scheme” means a scheme under section 16 made before the order comes into operation.”.

(2) In section 325 of the <sup>M8</sup>Highways Act 1980 (provisions as to orders, &c.)—

- (a) omit subsection (3) (which requires affirmative resolution for an order under section 17 varying the classes of traffic for the purposes of special roads); and
- (b) in subsection (2)(b) (orders subject to negative resolution), after “section” insert “ 17 above or ”.

#### Marginal Citations

M8 1980 c. 66.

#### 21 Certain special roads not necessarily trunk roads.

(1) In section 19 of the Highways Act 1980 (under which a special road provided by the Secretary of State becomes a trunk road), after subsection (2) add—

“(3) Subsections (1) and (2) above have effect subject to any provision of the scheme under section 16 directing that the special road in question or any part of it shall not be a trunk road.

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Any such provision does not affect the power of the Minister to make an order under section 10(2)(a) with respect to the special road or part.”.

- (2) In section 1(1) of the Highways Act 1980 (highways for which the Minister is the highway authority), after paragraph (a) (trunk roads) insert—

“(aa) any special road provided by him;”.

- (3) In section 2 of the Highways Act 1980 (responsibility of local highway authority for roads ceasing to be trunk roads), make the present provision subsection (1) and after it insert—

“(2) In the case of a special road provided by the Minister, subsection (1) above has effect subject to any provision of the order directing that the Minister shall continue to be the highway authority for the road.”.

## 22 Adoption of privately constructed roads.

- (1) In section 38 of the Highways Act 1980 (power of highway authorities to adopt by agreement), for subsection (3) (adoption by local highway authority of private road or way) substitute—

“(3) A local highway authority may agree with any person to undertake the maintenance of a way—

- (a) which that person is willing and has the necessary power to dedicate as a highway, or
- (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;

and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.

- (3A) The Minister may agree with any person to undertake the maintenance of a road—

- (a) which that person is willing and has the necessary power to dedicate as a highway, or
- (b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway,

and which the Minister proposes should become a trunk road; and where an agreement is made under this subsection the road shall become for the purposes of this Act a highway maintainable at the public expense on the date on which an order comes into force under section 10 directing that the road become a trunk road or, if later, the date on which the road is opened for the purposes of through traffic.”.

- (2) In section 10 of the <sup>M9</sup>Highways Act 1980 (general provisions as to trunk roads)—

- (a) in subsection (2)(a) (highways which may be made trunk roads) for “, or any highway proposed to be constructed by the Minister,” substitute—

“or any proposed highway—

- (i) to be constructed by the Minister, or

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- (ii) in relation to which the Minister has entered or proposes to enter into an agreement under section 38(3A),”;
- (b) in subsection (4) omit the words from “Without prejudice” to the end of paragraph (b), for “highway proposed to be constructed by the Minister” substitute “ proposed highway ” and omit “by the Minister” in the second place where it occurs; and
- (c) in subsection (7) for “highway proposed to be constructed by the Minister” substitute “ proposed highway ”.

#### Marginal Citations

M9 1980 c. 66.

### 23 Execution of works by highway authority at expense of another.

In Part XIII of the Highways Act 1980 (financial provisions), for section 278 (contributions by persons deriving special benefit from works) substitute—

#### “278 Agreements as to execution of works.

- (1) A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person—
  - (a) for the execution by the authority of any works which the authority are or may be authorised to execute, or
  - (b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,
 on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.
- (2) Without prejudice to the generality of the reference in subsection (1) to the cost of the works, that reference shall be taken to include—
  - (a) the whole of the costs incurred by the highway authority in or in connection with—
    - (i) the making of the agreement,
    - (ii) the making or confirmation of any scheme or order required for the purposes of the works,
    - (iii) the granting of any authorisation, permission or consent required for the purposes of the works, and
    - (iv) the acquisition by the authority of any land required for the purposes of the works; and
  - (b) all relevant administrative expenses of the highway authority, including an appropriate sum in respect of general staff costs and overheads.
- (3) The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

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- (4) The fact that works are to be executed in pursuance of an agreement under this section does not affect the power of the authority to acquire land, by agreement or compulsorily, for the purposes of the works.
- (5) If any amount due to a highway authority in pursuance of an agreement under this section is not paid in accordance with the agreement, the authority may—
  - (a) direct that any means of access or other facility afforded by the works to which the agreement relates shall not be used until that amount has been paid,
  - (b) recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded, and
  - (c) declare that amount to be a charge on any such land (identifying it) and on all estates and interests therein.
- (6) If it appears to the highway authority that a direction under subsection (5)(a) is not being complied with, the authority may execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land.
- (7) Where a highway authority recovers an amount from a person by virtue of subsection (5)(b), he may in turn recover from any other person having an estate or interest in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable.

This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.
- (8) The <sup>M10</sup> Local Land Charges Act 1975 applies in relation to a charge under subsection (5)(c) in favour of the Secretary of State as in relation to a charge in favour of a local authority.”.

**Marginal Citations**

**M10** 1975 C. 76

**24 Exercise of road traffic regulation powers.**

In Part X of the <sup>M11</sup>Road Traffic Regulation Act 1984 (general and supplementary provisions), after section 122 insert—

**“122A Prospective exercise of powers.**

- (1) Any power under this Act to make an order or give a direction may be exercised before the road to which it relates is open for public use, so as to take effect immediately on the road’s becoming open for public use.
- (2) The procedure for making an order or giving a direction applies in such a case with such modifications as may be prescribed.”.

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#### **Marginal Citations**

**M11** 1984 c. 27.

### *General*

## **25 Application of provisions of the Highways Act 1980, &c.**

- (1) The following provisions of the <sup>M12</sup>Highways Act 1980 apply for the purposes of this Part as if it were a part of that Act—
- section 302 (inquiries),
  - section 303 (penalty for obstructing execution of Act),
  - section 312 (restriction on institution of proceedings for offence),
  - section 319 (judges and justices not to be disqualified by liability to rates),
  - sections 320 to 322 (provisions as to notices), and
  - section 323 (reckoning of periods).
- (2) Nothing in this Part shall be construed as restricting the powers of a highway authority with respect to a road subject to a concession—
- (a) as to the matters which may be provided for in the concession agreement or as to the making of agreements of any other description for any purpose connected with the special road; or
  - (b) as to the acquisition, by agreement or compulsorily, of any land which in the opinion of the authority is required, in connection with the road, for any purpose for which the authority may acquire land under Part XII of the Highways Act 1980.
- (3) Nothing in a concession agreement shall be construed as affecting the status of the road subject to the concession as a highway maintainable at the public expense.

#### **Marginal Citations**

**M12** 1980 c. 66.

## **26 Interpretation.**

- (1) In this Part the following expressions have the same meaning as in the Highways Act 1980—
- “highway authority”,
  - “local highway authority”,
  - “special road”,
  - “special road authority”, and
  - “traffic”;
- and “special road scheme” means a scheme under section 16 of that Act authorising the provision of a special road.
- (2) Where a concession agreement is entered into jointly by two or more local highway authorities, references in this Part to the highway authority shall be construed—



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- (a) as references to each of those authorities in relation to times, circumstances and purposes before the special road scheme becomes operative, and
  - (b) in relation to times, circumstances and purposes after the special road scheme becomes operative, as references to the authority which in accordance with the scheme is the special road authority.
- (3) The expressions listed below are defined or otherwise fall to be construed for the purposes of this Part in accordance with the provisions indicated—

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concession agreement	section 1(1)
concessionaire	sections 1(1) and 5(1)
extension toll order	section 12(1)
highway authority	section 26(1) and (2)
local highway authority	section 26(1)
road subject to a concession	section 1(2)
special road	section 26(1)
special road authority	section 26(1)
special road scheme	section 26(1)
toll order	section 6
toll period	section 7
traffic	section 26(1).

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#### **Commencement Information**

**II** S. 26 wholly in force at 01.11.1991, see s. 170 and S.I. 1991/2288, art.3, Sch.

**Status:**

Point in time view as at 01/02/2011.

**Changes to legislation:**

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