



# 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*Status: Point in time view as at 01/01/2022.*

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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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