



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART II

#### NEW ROADS IN SCOTLAND

##### *Toll Roads*

#### **27 Toll orders**

- (1) An order authorising the charging of tolls (a “toll order”) by a roads authority may be made in relation to a special road proposed to be provided by that roads authority.
- (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 roads authority shall be made by the authority and confirmed by the Secretary of State.
- (3) Part IIA, paragraphs 15 and 18 of Part III, and Part IV of Schedule 1 to the Roads (Scotland) Act 1984 apply to the making or confirmation of a toll order and Schedule 2 to that Act applies to a toll order with regard to its validity and date of operation.
- (4) The proceedings required by Part IIA of Schedule 1 to that Act to be taken for the purposes of a toll order shall (so far as practicable) be taken concurrently with the proceedings required to be taken for the purposes of 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) If under paragraph 3(b) of Schedule 2 to that Act the court quashes a toll order, the special road scheme for the road in respect of which the toll order was made shall also cease to have effect.
- (7) Where a roads authority enter into a contract with a person for the design or construction of a road which both parties intend will be subject to a toll order, the

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contract shall make provision for the compensation of that person for such expenses as may be agreed in accordance with the contract in the event of—

- (a) the roads authority deciding not to proceed with the special road scheme, or
- (b) the Secretary of State failing to make or confirm either the toll order or the scheme.

- (8) Where a roads authority enter into a contract such as is mentioned in subsection (7) above and the person who has contracted to design or construct the road fails to complete the road in accordance with the contract he shall, without prejudice to any other liability, pay the authority such compensation in respect of costs incurred by them as may be determined in accordance with the contract.

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.

- (9) Where a toll order has been made—
- (a) the road in respect of which it has been made, and
  - (b) 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,
- are exempt from rating and shall not be included in any valuation roll.
- (10) The power conferred on the Secretary of State by this section to make or confirm a toll order is exercisable by statutory instrument.

## **28 Assignment of rights under a toll order**

- (1) A toll order may authorise the special road authority in whose name it is made to assign, subject to subsection (2), to a person, for such period and subject to such terms and conditions as they think fit, their rights under a toll order to charge and to collect tolls.
- (2) A special road authority may grant such an assignation only to a person who has undertaken such obligations as may be specified in the assignation with respect to the design, construction, maintenance, operation or improvement of the road.
- (3) In this Part, a person to whom the rights under a toll order to charge and to collect tolls have been assigned is referred to as a concessionaire.
- (4) References in this Part to a person authorised to charge tolls include references to a concessionaire.
- (5) Where a special road authority grants an assignation under this section, they shall also assign to the concessionaire such income as they receive in respect of—
- (a) charging for the occupation of the road,
  - (b) charging for any services in relation to the road other than services which they themselves have supplied, or
  - (c) any contribution made by a third party towards the cost of maintenance or improvement of the road,
- except to the extent that they themselves have incurred expense in such cases.
- (6) A special road authority shall not make a charge as mentioned in subsection (5) without consulting the concessionaire with regard to the amount to be charged in such cases as the authority has discretion as to the amount to be charged.

## **29 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
  - (c) on whichever is the earlier or later of dates specified in or determined in accordance with the order.
- (3) Where an assignation has been granted under section 28(1), it is for the special road authority to decide any matter relevant to determining the date on which the toll period ends.

## **30 Extension toll orders**

- (1) Where a toll order authorises the special road authority to assign their rights under the order to charge and collect tolls and—
  - (a) the authority fail to do so;
  - (b) such an assignation terminates or is terminated within the toll period; or
  - (c) the authority wish to charge and collect tolls beyond the toll period,a further order (an “extension toll order”) may be made to authorise the authority to charge and collect tolls for a new toll period.
- (2) An extension toll order shall not authorise the special road authority to assign their rights under it to charge and collect tolls.
- (3) An extension toll order relating to a special road for which the Secretary of State is roads authority shall be made by the Secretary of State; and an extension toll order relating to a road for which the roads authority is a local authority shall be made by that authority and confirmed by the Secretary of State.
- (4) 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 assignation under section 28(1) terminates or is terminated before the end of that period, two years after the termination of the assignation,whichever is the earlier.
- (5) The following provisions of this Act apply in relation to an extension toll order as in relation to a toll order under section 27(1)—
  - section 29(1) and (2) (the toll period)
  - section 31 (amount of tolls chargeable by special road authority),
  - section 33 (application of enactments relating to monopolies, etc.),
  - section 34 (variation and revocation of order),
  - sections 36 to 40 (further provisions with respect to tolls), and
  - section 41 (report by Secretary of State).

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- (6) The power of the Secretary of State to make or confirm an extension toll order shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the provisions of Schedules 1 and 2 to the Roads (Scotland) Act 1984 (procedure in connection with orders) shall not apply to an order under this section.

### **31 Amount of tolls chargeable**

- (1) Where a toll order does not authorise a special road authority to assign their rights under the order to charge and to collect tolls, the toll order 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.
- (3) Subject to section 32, where a toll order does authorise a special road authority to assign their rights under the order to charge and to collect tolls, it shall not specify any maximum in respect of tolls which may be charged by the concessionaire.
- (4) Where a special road authority has authority to assign as described in subsection (3) but no such assignation is made, they shall not charge any tolls in respect of that road unless an extension toll order is made in respect of that road.

### **32 Toll order in respect of major crossings**

- (1) A toll order which relates to a road which consists of or includes a major crossing to which there is no reasonably convenient alternative shall specify the maximum tolls which may be charged in respect of that road.
- (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, where an assignation has been granted under section 28(1), 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.

### **33 Application of enactments relating to monopolies, &c**

- (1) For the purposes of—
  - (a) the Fair Trading Act 1973,
  - (b) the provisions of the Competition Act 1980 relating to anti-competitive practices, and
  - (c) the provisions of the Restrictive Trade Practices Act 1976 relating to restrictive agreements,a person authorised to charge tolls shall be deemed to supply a service, namely, providing the facility to use the road in return for the toll charged.
- (2) Where the toll charged is subject to a maximum specified by the toll order, the Fair Trading Act 1973 has effect as if the service deemed by subsection (1) above to be supplied were among those listed in Part I of Schedule 7 to that Act (services excluded from Director’s power to make monopoly reference).
- (3) The Restrictive Trade Practices Act 1976 has effect in relation to any agreement which—
  - (a) was made before the date on which this section comes into force, and
  - (b) becomes subject to registration under that Act on that date by virtue of the effect which an order under section 11 of that Act has as a result of the coming into force of this section,

as if the agreement had become subject to registration by virtue of an order under that section coming into force on that date.

In this subsection “agreement” has the same meaning as in that Act.

### **34 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 made the toll order; and
  - (b) by an order made by the local roads authority and confirmed by the Secretary of State in any other case.

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- (2) Without prejudice to section 30 above (extension toll orders), a toll order may not be varied so as to extend the toll period.
- (3) 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) The Secretary of State may confirm an order made by a local roads authority either without modifications or subject to such modifications as he thinks fit.
- (5) Where an assignation has been granted under section 28(1), the toll order may not be varied or revoked without the consent of the concessionaire.
- (6) An order under this section may contain such supplementary, incidental and transitional provisions as appear to the roads authority making the order to be necessary or expedient.
- (7) The power conferred on the Secretary of State by this section to vary, revoke or confirm an order is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament; and the provisions of Schedules 1 and 2 to the Roads (Scotland) Act 1984 (procedure in connection with orders) shall not apply to an order under this section.

### **35 Transfer or termination of assignation**

- (1) The rights of a concessionaire under an assignation granted under section 28(1) may, with the consent of the special road authority, be assigned by the concessionaire.
- (2) Where an assignation granted by the special road authority under section 28(1) terminates or is terminated before the end of the toll period, the authority shall take reasonable steps to grant a fresh assignation to a new concessionaire and the authority may charge and collect tolls in the same way as a concessionaire within the period of two years beginning with that termination but, within that period, only until the earliest, if any, of the following events—
  - (a) the granting of a fresh assignation;
  - (b) the expiry of the toll period;
  - (c) the commencement of an extension toll order.
- (3) References in this Part (including this section) to an assignation granted under section 28(1) shall include references to a fresh assignation granted by virtue of subsection (2) above.
- (4) An assignation granted under section 28(1) may contain provision as to the circumstances in which, and the extent to which, any sum received by the special road authority—
  - (a) in consideration for the appointment of a new concessionaire, or
  - (b) by way of tolls collected by virtue of subsection (2),
 is to be applied for the benefit of the former concessionaire or his creditors, as the case may be.
- (5) Where an assignation granted by the special road authority under section 28(1) terminates or is terminated before the end of the toll period and the authority either intends to grant a fresh assignation or to charge and collect tolls itself then, for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations

1981, or any regulations replacing those regulations, the concessionaire shall be treated as transferring to the authority an undertaking which, if a new concessionaire is appointed, the authority shall be treated as then transferring to the new concessionaire.

- (6) References in this Part to the termination of an assignation are references to the termination of the rights assigned under the assignation.