



# 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 assignment only to a person who has undertaken such obligations as may be specified in the assignment 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 assignment 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.

*Further provision with respect to tolls*

**36 Further provision 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 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;
  - (b) an ambulance as defined in section 4(2) of the Vehicles (Excise) Act 1971;
  - (c) a fire engine as so defined;
  - (d) a vehicle exempt from duty under that Act by virtue of—
    - section 4(1)(g) of that Act (invalid carriages),
    - section 4(1)(kb) of that Act (vehicles used for carriage of disabled persons by recognised bodies), or
    - section 7(2) of that Act (vehicles used by or for purposes of disabled person).
- (3) A person authorised 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 assignation.

**37 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;

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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.

### **38 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.



### **39 Facilities for collection of tolls**

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

The consent of the special road 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 36(2)(a), (b) or (c) (police vehicles, ambulances and fire engines).
- (3) The power of the special road authority under section 104(3)(c) of the Roads (Scotland) Act 1984 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, power to acquire any land required for the purpose of setting up facilities for the collection of tolls.
- (4) 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.

### **40 Restriction of access to toll roads**

- (1) Where a toll order is in force in relation to a road, no road or private means of access to land shall be so constructed as to afford access to the road except with the consent of the special road authority and, where an assignation has been granted under section 28(1), the concessionaire.
- (2) Subsection (1) does not apply to the construction of a road 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.

### *Report*

### **41 Report on toll roads and toll orders in Scotland**

- (1) In any calendar year in which there occurs an event to which this section applies, the Secretary of State shall in respect of that year lay before Parliament a report informing Parliament of that occurrence or, as the case may be, the number of such occurrences.
- (2) This section applies to the following events—
- (a) the Secretary of State enters into a contract for the design and construction of a road which is to be subject to a toll order;
  - (b) there is opened to public use a new road subject to a toll order for which he is the roads authority;
  - (c) a toll order, or an order varying or revoking a toll order, is made or confirmed by him.

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- (3) A report under this section shall contain 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.
- (4) A report under this section shall be laid on or before 31st July in the following calendar year.

*Supplementary provisions*

**42 Environmental assessment of projects involving special roads**

- (1) In section 20A of the Roads (Scotland) Act 1984 (environmental assessment of certain road construction projects), after subsection (2) (cases in which environmental statement must be published) insert—
  - “(2A) Any project for the construction 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.”.
- (2) In section 55A of that Act (environmental assessment of certain road improvement projects), in subsection (2) (cases in which environmental statement must be published) after the word “and” there shall be inserted the words “either the project is in respect of a special road or the project”.

**43 Provisions as to traffic regulation**

- (1) The following provisions have effect with respect to the operation of the Road Traffic Regulation Act 1984 (“the 1984 Act”) in relation to a road in respect of which an assignment has been granted under section 28(1).
- (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.

#### **44 Exercise of road traffic regulation powers**

In Part X of the 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.”.

#### **45 Classification of traffic for purposes of special roads**

In section 8 of the Roads (Scotland) Act 1984 (classification of traffic for purposes of special roads), in subsection (3) there shall be omitted the words from “and where” to the end (which relate to the effect of a variation order on existing schemes) and after that subsection there shall be inserted—

- “(4) A variation order may contain provision applying the variations made by the order to existing schemes (whether made by the Secretary of State or a local roads authority); and in the absence of such provision a variation order does not affect the classes of traffic prescribed in an existing scheme.
- (5) In subsection (4) above an “existing scheme” means a scheme under section 7 made before the order comes into operation.”.

#### **46 Special roads not necessarily to be trunk roads**

In section 10 of the Roads (Scotland) Act 1984 (under which a special road provided by the Secretary of State becomes a trunk road), after subsection (2) there shall be inserted—

- “(3) Subsections (1) and (2) above shall have effect subject to any provision of the scheme under section 7 of this Act directing that the special road in question or any part of it shall not be a trunk road; but any such provision shall not affect the power of the Secretary of State to make an order under section 5(2)(a) of this Act with respect to the special road or part.”.

#### **47 The Roads (Scotland) Act 1984 and the interpretation of Part II**

- (1) In this Part—
  - “extension toll order” means a toll order made under section 30(1) authorising the charging of tolls for a new toll period;

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“roads authority”, “local roads authority” and “special road authority” have the same meaning as in the Roads (Scotland) Act 1984;

“special road” has the same meaning as in that Act;

“special road scheme” means a scheme under section 7 of that Act authorising the provision of a special road;

“toll order” means an order under section 27 authorising the charging of tolls;

“toll period” has the meaning given in section 29(1).

- (2) The following provisions of the Roads (Scotland) Act 1984 apply for the purposes of this Part as if it were a part of that Act—
- sections 136 to 138 (provisions as to notices), and
  - section 139 (inquiries).
- (3) Where an assignation is granted jointly under section 28(1) by two or more local roads authorities references in this Part to the roads authority shall be construed—
- (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.
- (4) Nothing in this Part shall be construed as restricting the powers of a roads authority with respect to a road subject to a toll order in respect of which an assignation has been granted under section 28(1)—
- (a) as to the matters which may be provided for in the assignation 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 IX of the Roads (Scotland) Act 1984.