
STATUTORY INSTRUMENTS

1993 No. 3160

The Roads (Northern Ireland) Order 1993

PART III

SPECIAL ROADS

Concession agreements relating to special roads

Concession agreements

23.—(1) In this Part a “concession agreement” means an agreement entered into by the Department 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 any of the following provisions of this Part, the provisions of this Order 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.

(3) A concession agreement shall provide that any land held by the concessionaire which in the opinion of the Department is required, in connection with the matters provided for in the agreement, for any purpose for which the Department may acquire land under Part IX shall be transferred to the Department without payment.

(4) A concession agreement relating to the design and construction of a special road shall provide that if a designation order is not made in respect of the road or the Department decides not to proceed with the proposed road, the Department shall pay to the concessionaire such compensation in respect of costs incurred by him as may be determined in accordance with the agreement.

(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 Department such compensation as may be determined in accordance with the agreement in respect of costs incurred by the Department.

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

(6) Nothing in this Part shall be construed as restricting the powers of the Department 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 Department is required, in connection with the road, for any purpose for which the Department may acquire land under Part IX.

(7) Nothing in a concession agreement shall be construed as affecting the status of the road subject to the concession as a public road maintainable by the Department.

Exercise of road functions by concessionaire

24.—(1) A concession agreement may authorise the concessionaire to exercise on behalf of the Department such road functions to which this Article applies as may be specified in the agreement.

(2) For this purpose “road functions” means all functions in relation to the road subject to the concession which are exercisable by the Department and this Article applies to all such functions, except—

- (a) powers to make orders or regulations under this Order;
- (b) powers to make regulations or orders, or give directions, under the Road Traffic Order; and
- (c) such other functions as may be prescribed by the Department by regulations.

(3) A road function exercisable by the concessionaire may be exercised by the Department only—

- (a) in an emergency; or
- (b) if it appears to the Department that such exercise is necessary or expedient in the interests of road safety; or
- (c) if it appears to the Department that the concessionaire has failed or is unable properly to discharge the function in any respect;

and the Department shall not be liable for anything done or omitted by the concessionaire in the exercise or purported exercise of a road function.

(4) The Department may recover from the concessionaire the costs incurred by it in exercising in the circumstances mentioned in paragraph (3)(a), (b) or (c) a road function exercisable by the concessionaire.

(5) The concessionaire shall in the exercise of a road 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.

Provisions as to traffic regulation

25.—(1) The following provisions have effect with respect to the operation of the Road Traffic Order in relation to a road subject to a concession.

(2) The Department shall consult the concessionaire before making any regulations or order under the Road Traffic Order specifically relating to the road.

(3) The concessionaire may cause or permit traffic signs (within the meaning of Article 2(2) of the Road Traffic Order) to be placed on or near the road, but subject to any directions given by the Department.

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

(4) The concessionaire may impose restrictions or prohibitions under Article 24 or 25 of the Road Traffic Order on the use of the road; and any such restrictions or prohibitions shall have the same effect as restrictions or prohibitions imposed by the Department.

(5) Articles 24, 25 and 26 of the Road Traffic Order shall apply in relation to the imposition of restrictions or prohibitions by the concessionaire with the substitution for references to the Department of references to the concessionaire.

(6) Before imposing any restriction or prohibition by virtue of paragraph (4) the concessionaire shall consult with the Department concerning the use by traffic affected by the restriction or prohibition of suitable alternative routes.

(7) A restriction or prohibition imposed by the concessionaire by virtue of paragraph (4) may be revoked or varied by the Department and shall cease to have effect if a restriction or prohibition inconsistent with it is imposed by the Department under Article 24 or 25 of the Road Traffic Order.

Leasing of land to concessionaire

26.—(1) Where the Department has entered into a concession agreement it may grant to the concessionaire a lease of any land if it appears to the Department to be expedient to do so for the purpose of or in connection with the exercise by the concessionaire of his functions under the agreement.

(2) No statutory provision or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of an agreement between the Department and the concessionaire as to the terms on which land which is the subject of a lease granted under paragraph (1) is provided for the concessionaire's use.

(3) Accordingly no such statutory provision 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.

Transfer or termination of concession

27.—(1) The rights of a concessionaire under a concession agreement may be assigned with the consent of the Department 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 Department by virtue of this Article 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 2 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 Department—

- (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 Department—

- (a) in consideration for the appointment of a new concessionaire; or
 - (b) by way of tolls collected by virtue of paragraph (3)(b),
- is to be applied for the benefit of the former concessionaire or his creditors, as the case may be.