
STATUTORY INSTRUMENTS

2011 No. 41

The River Mersey (Mersey Gateway Bridge) Order 2011

PART 5

TOLLING, CONCESSION AND FINANCING ARRANGEMENTS

Power to charge tolls

41.—(1) The undertaker may charge tolls or charges for the passage of vehicles over the new crossing or for any other services or facilities provided in connection with the new crossing.

(2) The power to charge tolls or charges referred to in paragraph (1) shall include the power to charge, set, demand, take, recover and waive tolls or charges (or any part of such tolls or charges) and the power to suspend the charging of tolls or charges in whole or in part.

(3) The power to charge tolls or charges shall commence with the opening day but this limitation shall not affect the ability to set tolls or charges prior to that date.

(4) Where tolls or charges payable under or by virtue of this Order remain unpaid after they have become due for payment, the person to whom they are payable may recover from the person liable to pay them the amount of the tolls or charges together with all other reasonable costs and expenses including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

(5) The undertaker may appoint any person to collect tolls or charges as its agent.

(6) Schedule 11 (level of tolls) shall have effect and the tolls chargeable in respect of any vehicle or class of vehicles shall be determined and revised in accordance with Part 1 of that Schedule.

(7) The person by whom tolls under this Order and penalty charges imposed in connection with this Order are payable in respect of a motor vehicle is the registered keeper.

(8) The undertaker shall establish and maintain an exemptions register in accordance with Schedule 12 (register of vehicles exempt from tolls).

(9) Toll may not be charged in respect of vehicles where the particulars of the vehicle in question have been entered upon the exemptions register.

(10) The tolls or charges charged in accordance with this article may be applied by the undertaker—

- (a) in paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the new crossing and in managing, operating and maintaining the Silver Jubilee Bridge or any costs associated with financing any of the same;
- (b) in providing such funds as are, or are likely to be, necessary to discharge the obligations of the undertaker pursuant to a concession agreement;
- (c) in paying the interest on, and repaying the principal of, monies borrowed in respect of the new crossing or the Silver Jubilee Bridge;
- (d) in making payment into any maintenance or reserve fund provided in respect of the new crossing and the Silver Jubilee Bridge;

- (e) in making payments to the undertaker's general fund for the purpose of directly or indirectly facilitating the achievement of policies relating to public transport in its local transport plan, or for other purposes relating to transport; and
 - (f) in providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority or consent for, constructing or securing the construction, maintenance and operation of, the new crossing or securing the maintenance or operation of the Silver Jubilee Bridge (as the case may be) or works to the Silver Jubilee Bridge.
- (11) The undertaker shall not apply any of the tolls or charges for the purposes mentioned in sub-paragraphs (e) and (f) of paragraph (10)—
- (a) in a manner that would contravene Directive [1999/62/EC](#) of the European Parliament and of the Council of 17th June 1999⁽¹⁾ on the charging of heavy goods vehicles for the use of certain infrastructure as amended by Directive [2006/38/EC](#) of the European Parliament and of the Council of 17th May 2006⁽²⁾ and Council Directive [2006/103/EC](#) of 20th November 2006⁽³⁾; or
 - (b) unless it is satisfied that it has applied for the purposes of sub-paragraphs (a) to (d) of that paragraph sufficient funds to ensure the safe, efficient and economic management, operation and maintenance of the new crossing in accordance with all applicable statutory requirements.
- (12) Where any scheme of discounts or waivers is proposed in respect of tolls payable or prospectively payable under this Order the undertaker shall in deciding to adopt or apply any such scheme have regard to the most appropriate way of providing the benefits of such a scheme to those socio-economic groups within the Borough of Halton least able to afford the full price of tolls.

Payment of tolls

42.—(1) Subject to paragraphs (5) and (11) of this article a toll imposed by this Order, the amount of which is determined in accordance with Schedule 11 (level of tolls), shall be paid by such method as may be specified by the undertaker or such other method as the undertaker may in the particular circumstances of the case accept.

(2) Without limiting the scope of paragraph (1), except where the undertaker elects in accordance with paragraph (5), tolls may be payable—

- (a) when demanded by a person authorised by the undertaker or its agent in that behalf at a place designated by the undertaker for the collection of tolls; or
- (b) by inserting the appropriate payment for a toll at any appropriate collection point.

(3) The undertaker or its agent may enter into an agreement (“composition agreement”) under which persons compound, on such terms as may be provided by the agreement, for the payment of tolls in respect of the use of the new crossing.

(4) A composition agreement may relate to use on such number of occasions or during such period as may be provided by the agreement.

(5) Where the condition described in paragraph (13) applies the undertaker may elect that, instead of any other method of payment, tolls shall be payable by means of entering into a composition agreement in which case the undertaker may require that method to apply exclusively.

(6) Without limiting the scope of paragraph (4), a composition agreement may be entered into for one of the following periods—

- (a) the duration of a single journey;

(1) OJL 187, 20.7.1999, p 42.

(2) OJL 157, 9.6.2006, p 8.

(3) OJL 363, 20.12.2006, p 344.

- (b) a number of single journeys specified in the composition agreement;
- (c) a single day or any number of single days;
- (d) a period of 5 or 7 consecutive days;
- (e) a period of a single month; or
- (f) a period of one year.

(7) Where the undertaker has elected pursuant to paragraph (5) that the exclusive method of paying tolls shall be by means of entering a composition agreement, such a composition agreement may be entered into—

- (a) on the day concerned, the first day concerned or (where it relates to a single journey) the day of the journey concerned;
- (b) on a day falling within the period of 64 days immediately preceding the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned; or
- (c) on the day after the day concerned, the first day concerned, or (where it relates to a single journey) the day of the journey concerned.

(8) The following provisions shall apply to composition agreements—

- (a) a composition agreement shall be specific to a particular vehicle;
- (b) that vehicle shall be identified by its registration mark; and
- (c) a person entering into a composition agreement with the undertaker shall specify to the undertaker or its agent the registration mark of the vehicle to which the composition agreement relates.

(9) Where a composition agreement is entered into or purported to be entered into, and payment is to be made to the undertaker otherwise than in cash, and payment is not received by the undertaker or its agents (whether because a cheque is dishonoured or otherwise), the toll or tolls to which the composition agreement relates shall be treated as not paid and the composition agreement shall be void.

(10) The undertaker may require a vehicle that is subject to a composition agreement to display a document in that vehicle or carry in or fix equipment to that vehicle.

(11) The undertaker may impose such reasonable conditions upon the making of a composition agreement as it considers appropriate including in relation to the transfer of the benefit of composition agreements or refund of payments.

(12) Where any composition agreement provides for a discount or waiver of any toll or part of any toll calculated solely by reference to the use of the new crossing—

- (a) for a number of journeys; or
- (b) for any period,

users of the new crossing or prospective users of the new crossing shall not be prevented from entering into such a composition agreement by reason of their place of residence or business.

(13) The condition referred to in paragraph (5) is fulfilled when the method of payment for use of the new crossing is not secured by the use of barriers preventing vehicles from proceeding until a toll is paid.

Power to enter into concession agreements and lease or transfer the undertaking, etc.

43.—(1) The undertaker may, on such terms as it sees fit, at any time and for any period, enter into one or more concession agreements and for that purpose may provide for the exercise of the powers of the undertaker in respect of the authorised activities or any part of them, together with the

rights and obligations of the undertaker in relation to them, by any other person and other matters incidental or subsidiary to them or consequential to them, and the defraying of, or the making of contributions towards the costs of the matters whether by the undertaker or any other person.

(2) The undertaker may, with the consent of the Secretary of State, transfer, sell, lease, charge or otherwise dispose of, on such terms and conditions as it thinks fit, the whole or any part of the new crossing and any land held in connection with the new crossing or the right to operate the authorised works under this Order.

(3) The undertaker may grant on such terms and conditions as it thinks fit to any person or take from any person a lease, licence or any other interest in or right over any land, including land comprising or comprised in the new crossing, if it appears to the undertaker expedient to do so for the purpose of or in connection with the exercise by that person of any or all of the authorised activities.

(4) The exercise of the powers of any enactment by any person in pursuance of any agreement under paragraph (1), or any sale, lease, charge or disposal under paragraph (2), shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by the undertaker.

Application of landlord and tenant law

44.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the new crossing or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of them,

so far as any such agreement relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify 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) confer or impose on any such 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; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Application of section 2 of the 1991 Act

45. Section 2 (exercise of highway functions by concessionaire) of the 1991 Act shall apply to any concession agreement under article 43(1) or to any agreement under article 43(2) as if any such agreement were a concession agreement under Part 1 of the 1991 Act.

Application of the 2000 Act

46.—(1) Regulations made pursuant to section 173 (penalty charges) of the 2000 Act shall have effect in respect of the new crossing as if the tolls and charges charged pursuant to this Order were charges payable pursuant to a charging scheme made by order under Part 3 of the 2000 Act.

(2) The imposition and payment of penalty charges in connection with this Order shall be in accordance with such regulations as the Secretary of State may make pursuant to section 173 of the 2000 Act.

(3) Sections 174 (examination, entry, search and seizure), 175 (immobilisation etc.) and 176 (equipment etc.) of the 2000 Act shall have effect in respect of the new crossing as if Part 5 of this Order was a charging scheme made by order under Part 3 of the 2000 Act.