



# Mersey Tunnels Act 2004

CHAPTER ii

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## CHAPTER ii

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# Mersey Tunnels Act 2004

## CHAPTER ii

An Act to amend provisions of the County of Merseyside Act 1980 relating to the levying, revision and application of tolls for use of the Mersey Tunnels and to amend that Act for other purposes. [1st July 2004]

**W**<sup>HEREAS—</sup>

- (1) The Merseyside Passenger Transport Authority (“the Authority”) was established under section 28 of the Local Government Act 1985 (c. 51) and is the passenger transport authority for the metropolitan county of Merseyside under section 9 of the Transport Act 1968 (c. 73):
- (2) By the Mersey Tunnels Order 1986 (S.I. 1986/297) made pursuant to provisions contained in the Local Government Act 1985, the tunnels undertaking of the County Council of Merseyside was transferred to the Authority on 1st April 1986 and the Authority has resolved during the promotion of the Bill for this Act that it wishes the tunnels undertaking to remain in public ownership:
- (3) That undertaking comprises in particular a tunnel for vehicular traffic under the river Mersey between Liverpool and Birkenhead (known as the Queensway Tunnel) and two tunnels for vehicular traffic under that river between Liverpool and Wallasey (known as the Kingsway Tunnel) (“the tunnels”), which were originally authorised by the Mersey Tunnel Acts 1925 to 1972 and which are now largely governed by provisions contained in Part XIII of the County of Merseyside Act 1980 (c. x) (“the 1980 Act”):
- (4) Pursuant to the 1980 Act, the Authority manages, operates and maintains the tunnels and levies tolls for their use, the income from which is applied in defraying operational costs and expenses, in paying interest on and in re-paying the principal of monies borrowed to finance the construction and operation of the tunnels, and in making payments to a reserve and renewals fund maintained in respect of the tunnels:

- (5) The Authority wishes to secure the regular revision of tolls for use of the tunnels with reference to inflation and power to use surplus income from tolls to improve public transport services in Merseyside and it is expedient that the provisions of the 1980 Act relating to the levying, revision and application of tolls should be amended for these and related purposes:
- (6) It is expedient that the 1980 Act should be amended for other purposes:
- (7) The purposes of this Act cannot be effected without the authority of Parliament:
- (8) In relation to the promotion of the Bill for this Act the requirements of section 239(4A) of the Local Government Act 1972 (c. 70) (powers of joint and local authorities to apply for further powers, etc.) have been observed:

May it therefore please Your Majesty that it may be enacted, and be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Short title**

This Act may be cited as the Mersey Tunnels Act 2004.

**2 Amendment of the 1980 Act: levying, revision and application of tolls**

Part XIII of the County of Merseyside Act 1980 (c. x) is amended in accordance with the provisions set out in Schedule 1 to this Act.

**3 Further amendment of the 1980 Act**

That Part of that Act is further amended by the addition of the provision set out in Schedule 2 to this Act.

**4 Repeals**

The enactments specified in Schedule 3 to this Act are repealed to the extent specified in that Schedule.

## SCHEDULES

### SCHEDULE 1

Section 2

#### AMENDMENT OF THE 1980 ACT: LEVYING, REVISION AND APPLICATION OF TOLLS

1 For sections 91 (Tolls) and 92 (Revision of tolls) there are substituted—

#### **“91 Classification of vehicles, level and application of tolls**

(1) In this section—

“the base month” means November 1999 or, following the making of an order under section 92 (Further revision of tolls) of this Act increasing tolls, the month immediately preceding the month in which falls the date fixed by the last such order as the commencement date for that order;

“local transport plan” means the local transport plan made jointly by the Authority and the councils for the metropolitan districts comprised in the Authority’s area, pursuant to the Transport Act 2000 (c. 38); and

“the relevant date” means 1st December 1999 or, following the making of an order under that section, the date fixed by the last such order as the commencement date for that order.

(2) The Merseyside Passenger Transport Authority may continue to demand, take and recover tolls in respect of all or any class of traffic passing through or into any of the tunnels, and such reasonable charges as it thinks fit for any services rendered by the Authority in connection with the tunnels or any of them.

(3) The tolls authorised by this Part of this Act to be demanded, taken and recovered may be applied by the Authority—

(a) in payment of the costs and expenses incurred in managing, operating and maintaining the tunnels undertaking;

(b) in paying the interest on, and repaying the principal of, monies borrowed under the Mersey Tunnel Acts 1925 to 1972, this Part of this Act or otherwise (being monies borrowed for the purposes of the construction and operation of the tunnels);

(c) in making payments to the reserve and renewals fund maintained in respect of the tunnels undertaking;

(d) in making grants to the Merseyside Passenger Transport Executive in connection with the Executive’s ferries services operating on the river Mersey; and

(e) in making payments to the Authority’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.

- (4) The Authority shall not apply any of the tolls for the purposes mentioned in paragraphs (d) and (e) of subsection (3) above—
- (a) in a manner that would contravene Directive 1999/62/EC of the European Parliament and of the Council of 17th June 1999 on the charging of heavy goods vehicles for the use of certain infrastructure (OJ L 187, 20.7.1999, p. 42); or
  - (b) unless it is satisfied that it has applied for the purposes of paragraphs (a) to (c) of that subsection sufficient tolls to ensure the safe, efficient and economic management, operation and maintenance of the tunnels undertaking in accordance with all applicable statutory requirements.
- (5) The Authority shall not, at any time after all payments and repayments mentioned in paragraph (b) of subsection (3) above have been made, apply any of the tolls for the purposes mentioned in paragraphs (d) and (e) of that subsection unless—
- (a) it has consulted users of the tunnels and the people of Merseyside, when preparing its local transport plan, on whether they consider it is appropriate that those tolls should—
    - (i) remain at a level beyond that required to make all necessary payments for the purposes mentioned in paragraphs (a) and (c) of that subsection; and
    - (ii) be applied for the purposes mentioned in paragraphs (d) and (e) of that subsection in addition to the purposes mentioned in paragraphs (a) and (c) of that subsection;
  - (b) it has subsequently determined, having regard to the views expressed by the persons so consulted, that it is appropriate that those tolls should remain at that level and be so applied; and
  - (c) it has included policies in its local transport plan as to the application of those tolls for the purposes mentioned in paragraphs (d) and (e) of that subsection.
- (6) Subject to the following provisions of this section and to the provisions of section 92 of this Act, the classes of traffic in respect of which tolls may be levied and the amount of those tolls are those established by and in force under the Mersey Tunnels (Revision of Tolls and Traffic Classification) Order 1991 (S.I. 1992/299), namely—

<i>Class of Vehicle</i>	<i>Authorised Toll</i>
1. (a) Motor cycle with side car and 3 wheeled vehicle.	£1.20
(b) Motor car and goods vehicle up to 3.5 tonnes gross weight.	£1.20
(c) Passenger vehicle other than a motor car, with seating capacity for under 9 persons.	£1.20
2. (a) Motor car and goods vehicle up to 3.5 tonnes gross weight, with trailer.	£2.40
(b) Goods vehicle over 3.5 tonnes gross weight, with two axles.	£2.40
(c) Passenger vehicle with seating capacity for 9 or more persons, with two axles.	£2.40
3. (a) Goods vehicle over 3.5 tonnes gross weight, with three axles.	£3.60
(b) Passenger vehicle with seating capacity for 9 or more persons, with three axles.	£3.60
4. Goods vehicle over 3.5 tonnes gross weight, with 4 or more axles.	£4.80

(the terms “motor cycle”, “motor car”, “passenger vehicle”, “goods vehicle” and “gross weight” being construed in accordance with regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986 (S.I. 1986/1078)).

- (7) (a) During February 2005 and every February thereafter, the Authority shall make an order, to come into force on the first day of April immediately following the making of the order, fixing the amounts of the tolls in respect of all classes of traffic in respect of which tolls are leviable under this Act.
- (b) The Authority shall not be obliged to make an order where the relevant date is less than 12 months before the date on which the order would come into force.
- (c) From the date of the order coming into force the order last made by the Authority under this subsection shall cease to have effect (unless already revoked pursuant to section 92(2)(a)(iii) of this Act).
- (8) Subject to subsection (9) below, the amount of the toll to be fixed by the order in respect of each class of traffic shall be an amount arrived at by increasing the amount applicable in the case of that class on the relevant date by the same percentage as the percentage increase between—

- (a) the retail prices index for the base month; and
  - (b) the retail prices index for the month of November immediately preceding the making of the order.
- (9) Any amount which falls in accordance with subsection (8) above to be fixed by an order under this section—
- (a) if it is neither a multiple of ten pence nor an amount which on division by ten produces a remainder of five pence, shall be rounded to the nearest ten pence; and
  - (b) if it is an amount which on division by ten produces a remainder of five pence, shall be increased by five pence.
- (10) (a) Subject to paragraph (b) below, the references in subsection (8) above to the retail prices index are references to the general index of retail prices (for all items) published by the Central Statistical Office of the Chancellor of the Exchequer.
- (b) If that index is not published for any month those references are references to any substituted index or index figures published by that office for that month or to any other index, or substitute for an index, for that month which the Secretary of State may by order prescribe for the purposes of this section.
- (11) The power of the Secretary of State to make orders under subsection (10)(b) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 92 Further revision of tolls

- (1) If at any time it is represented in writing to the Secretary of State by the Merseyside Passenger Transport Authority that in the circumstances then existing or in prospect—
- (a) all or any of the tolls fixed by or by virtue of this Act should be increased by more than the increase authorised by subsection (8) of section 91 (Classification of vehicles, level and application of tolls) of this Act, or
  - (b) any classification of traffic then in force for the purposes of the levying of tolls should be revised,

the Secretary of State may, if he thinks fit, make an order increasing all or any of the tolls by more than the increase authorised by that subsection or revising any such classification of traffic.

- (2) (a) An order made by the Secretary of State under subsection (1) above—
- (i) shall fix the date as from which the order shall have effect, which shall not be less than four weeks from the date the order is made;
  - (ii) may amend subsection (6) of the said section 91; and
  - (iii) shall amend or revoke (as appropriate) the order last made by the Authority under subsection (7) of

that section (unless already revoked by a previous order made under subsection (1) above).

- (b) An order made by the Secretary of State under subsection (1) above increasing tolls shall cease to have effect on the coming into force of a subsequent order made by the Authority under subsection (7) of the said section 91 except to the extent that the order also makes provision for the classification of traffic.
  - (c) The power of the Secretary of State to make orders under subsection (1) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) In the exercise of the powers conferred upon him by this section, the Secretary of State shall have regard to—
- (a) the financial position and future prospects of the tunnels;
  - (b) such other matters of a transportation nature within the county of Merseyside as may be considered by the Secretary of State at that time to be relevant; and
  - (c) such other matters of an economic, environmental or social nature within that county as may be considered by the Secretary of State at that time to be relevant.

#### **92A Further provisions as to further revision of tolls**

- (1) In the event of a representation being made to the Secretary of State under section 92 (Further revision of tolls) of this Act, the Merseyside Passenger Transport Authority shall—
- (a) furnish the Secretary of State with such information and particulars as the Secretary of State may require, and
  - (b) publish a notice in *The London Gazette* and in one or more newspapers circulating in the county of Merseyside.
- (2) The notice shall state—
- (a) the general effect of the representation;
  - (b) the place or places at which copies of the representation may be inspected free of charge and copies thereof purchased and the price of such copies;
  - (c) that within a period of 42 days from the date of the first publication of the notice, any person having a substantial interest may object to the representation by—
    - (i) giving notice to the Secretary of State accompanied by the grounds of his objection; and
    - (ii) sending a copy thereof to the Authority; and
  - (d) the Secretary of State's power to hold a local inquiry by virtue of section 130 (Local inquiries) of this Act.

#### **92B Notice of order**

Not less than two weeks before an order made under section 91 (Classification of vehicles, level and application of tolls) or section 92 (Further revision of tolls) of this Act comes into force, the Merseyside Passenger Transport Authority shall publish notice of

the making of the order, its commencement date and general effect in one or more newspapers circulating in the county of Merseyside.

**92C Power to cease demanding tolls, etc.**

- (1) The Merseyside Passenger Transport Authority may—
  - (a) cease to demand, take and recover tolls in respect of traffic or any class of traffic passing through or into any of the tunnels;
  - (b) resume demanding, taking and recovering such tolls; and
  - (c) allow traffic, or any class of traffic, to use any of the tunnels without paying tolls or on payment of tolls at a reduced rate during such hours, on such occasions or in such other circumstances as it may from time to time determine.
  
- (2) On each occasion that an order is made under section 91 (Classification of vehicles, level and application of tolls) of this Act, the Authority shall consider, having regard to such matters of an economic or social nature within the county of Merseyside as the Authority considers to be relevant—
  - (a) whether it is necessary or appropriate in relation to any or all classes of traffic to exercise its power in subsection (1)(c) above to reduce tolls or to continue to exercise that power (as the case may be); and
  - (b) if the Authority considers that it is necessary or appropriate to do so, for how long tolls should be reduced or continue to be reduced.
  
- (3) If the Authority considers, pursuant to subsection (2) above, that it is necessary or appropriate in relation to any or all classes of traffic for tolls to be reduced or to continue to be reduced, it shall exercise its power in subsection (1)(c) above accordingly.

**92D Disapplication**

Section 6 of the Transport Charges, &c. (Miscellaneous Provisions) Act 1954 (c. 64) shall not apply in relation to the tolls and charges authorised by section 91 (Classification of vehicles, level and application of tolls) and section 92 (Further revision of tolls) of this Act to be demanded and taken.”.

2 For section 96 (Evasion of tolls), there is substituted—

**“96 Evasion of tolls**

Any person who, without reasonable excuse—

- (a) refuses or fails to pay any toll demanded from him in accordance with section 94 (Payment of tolls and charges) of this Act, or
- (b) attempts to evade payment of any such toll,

shall without prejudice to any remedy of the Merseyside Passenger Transport Authority for the recovery of the toll, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

- 3 For subsection (4) of section 102 (Byelaws), there is substituted—
- “(4) The byelaws which may from time to time be made by the Merseyside Passenger Transport Authority in pursuance of this section may provide for the imposition on summary conviction of a fine not exceeding level 3 on the standard scale for a contravention of any of the byelaws.”.
- 4 In section 103 (Prohibition of persons, vehicles, etc., on reserved areas), the reference in subsection (2) to a fine not exceeding £50 is amended to be a reference to a fine not exceeding level 3 on the standard scale.

## SCHEDULE 2

Section 3

### FURTHER AMENDMENT OF THE 1980 ACT

After section 109 (For protection of Mersey Dock Estate), there is inserted the following section—

#### “109A Kingsway Tunnel: noise insulation works and grants

- (1) In this section, “the Kingsway Tunnel” means the tunnels authorised by the Mersey Tunnel (Liverpool/Wallasey) &c. Act 1965 (c. xl) and the Mersey Tunnel (Liverpool/Wallasey) Act 1968 (c. xii).
- (2) Subject to subsections (3) and (4) below, the Authority may—
  - (a) carry out works for insulating any dwelling or other building (or part of a building) used for residential purposes, in the vicinity of the approaches to the Kingsway Tunnel, against noise caused by the use of that tunnel; or
  - (b) make grants towards or for the cost of those works if they are carried out by a person other than the Authority, on such terms and conditions as it thinks fit.
- (3) No works for the insulation of any building (or part of a building) in exercise of the powers of subsection (2)(a) above may be carried out by the Authority except with the written consent of the owner, lessee and occupier of the building (or part of the building) concerned.
- (4) Except when to do so would be inconsistent with the provisions of this section or otherwise inappropriate in the circumstances, the Authority shall determine for the purposes of subsection (2) above—
  - (a) the eligibility for any noise insulation works;
  - (b) the nature and extent of any such works; and
  - (c) the amount of any grant,

in accordance with the Noise Insulation Regulations 1975 (S.I. 1975/1763) and as if it were a highway authority for the approaches and they were highways maintainable at the public expense.”.

## SCHEDULE 3

Section 4

## REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
County of Merseyside Act 1980 (c. x)	Section 99. Section 101.

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