
STATUTORY INSTRUMENTS

2005 No. 2222

The River Tyne (Tunnels) Order 2005

PART 4

OPERATIONAL

Power to operate, use and maintain the tunnel crossing

35. The undertaker may operate, use and maintain the tunnel crossing.

Closing the tunnel crossing

36.—(1) The undertaker may whenever in its opinion it is necessary to do so whether in case of emergency or for the purpose of or in connection with the authorised activities close any of the tunnel roads or the existing foot tunnels whether wholly or partially.

(2) Where the undertaker proposes to close any of the tunnel roads it shall except in an emergency—

- (a) give not less than 7 days' notice by advertisement in at least one local newspaper circulating in the area; and
- (b) throughout the period of such closure display signs at convenient situations on the roads communicating with any public access road to the tunnel crossing giving warning of the closure.

No mains or pipes

37.—(1) Subject to paragraph (2), notwithstanding anything contained in the Highways Act 1980⁽¹⁾ or in any other enactment no person shall enter upon, break up or interfere with Works Nos. 3A, 4A, 5 or 6A or the carriageways and footways of the same for the purpose of laying down any main, pipe or wire or executing any work therein, thereon or thereunder, except with the consent of the undertaker and in accordance with such terms or conditions and subject to such charges as the undertaker may determine.

(2) The consent of the undertaker to the breaking up of and interference with any of the said works or the carriageways and footways of the same for the purposes of laying down water mains, water pipes or electric lines therein shall not be withheld unreasonably and any question which may arise as to whether such consent is so withheld or as to whether the terms and conditions subject to which any such consent is given are reasonable shall be resolved by an arbitrator under article 54.

Obstruction of works and trespass on the tunnel crossing

38.—(1) Any person who, without reasonable excuse, obstructs another person from constructing any of the authorised works under the powers conferred by this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(1) 1980 c. 66.

- (2) Any person who—
 - (a) trespasses on the tunnel crossing, or
 - (b) trespasses upon any land of the undertaker in dangerous proximity to the tunnel crossing or to any electrical or other apparatus used for or in connection with the operation of the tunnel crossing,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) No person shall be convicted of an offence under paragraph (2) of this article unless it is shown that a notice warning the public not to trespass upon the tunnel crossing was clearly exhibited and maintained near to the place where the offence is alleged to have been committed or the place at which the trespass upon the tunnel crossing or land is alleged to have begun.

(4) If the tolls payable by any person desirous of using the tunnel crossing be demanded of him before using the same, and such person shall, after demand from him of such tolls (such demand being made by any collector or other person appointed to receive the same), refuse or without reasonable excuse neglect to pay the same or any part thereof, the collector or other person so appointed may refuse to permit the person so in default to use the tunnel crossing and may, by himself, or with such assistance as he shall think necessary, stop and prevent the person so in default from using the same.

Traffic control

39.—(1) The undertaker may for the purpose of or in connection with the authorised activities, place or maintain traffic signs of a type prescribed by regulations made under section 64(1)(a) of the 1984 Act or of a character authorised by the Secretary of State on or near any street leading to or from the tunnel crossing.

- (2) The undertaker—
 - (a) shall consult with the traffic authority as to the placing of signs, and
 - (b) unless the traffic authority are unwilling to do so and subject to any directions given under section 65 of the 1984 Act, shall enter into arrangements with the traffic authority for the signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs shall include a power to give directions to the undertaker as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) shall be exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on or near any street leading to or from the tunnel crossing shall consult with the undertaker as to the placing of any traffic sign which would affect the operation of the tunnel crossing.

(5) Expressions used in this article and in the 1984 Act shall have the same meaning in this article as in that Act.

Power to contract for police services

40.—(1) Agreements may be made between the undertaker and the chief officer of police of any police force and the police authority for making available to the undertaker for the purpose of or in connection with the authorised activities the services of members of the police force.

(2) Any such agreement may be made on such terms as to payment or otherwise, and subject to such conditions, as may be specified in the agreement.

(3) In this article “chief officer of police”, “police authority” and “police force” have the same meaning as in the Police Act 1996(2).

Power to make byelaws

41.—(1) The undertaker may make and enforce byelaws regulating the use and operation of the tunnel crossing, the maintenance of order on and about the tunnel crossing or other facilities provided in connection with the tunnel crossing and the conduct of all persons including employees of the undertaker while on and about the tunnel crossing.

(2) Without prejudice to the generality of paragraph (1), byelaws under this article may make provision—

- (a) with respect to the payment of tolls and the evasion of payment of tolls;
- (b) with respect to interference with, or obstruction of, the operation of the tunnel crossing or other facilities provided in connection with the tunnel crossing;
- (c) with respect to the prevention of nuisances on the tunnel crossing;
- (d) for the recovery, safe custody and re-delivery or disposal of any property or vehicles left in the tunnel crossing and for fixing the charges made in respect of any such property or vehicles;
- (e) to prohibit vehicles from stopping or remaining at rest in prescribed places on the tunnel roads or elsewhere in or about the tunnel crossing, except in prescribed circumstances;
- (f) to require any person in charge of a vehicle which is at rest by reason of breakdown in a prescribed place on any of those roads to take prescribed steps for reporting that fact and the position and circumstances in which the vehicle is at rest;
- (g) to prohibit any person, other than a constable or an appointed person—
 - (i) from carrying out, or attempting to carry out, a repair, adjustment or refuelling of such a vehicle except with permission expressly given by a constable or an appointed person, and
 - (ii) from moving, or attempting to move, such a vehicle from the position in which it is at rest;
- (h) to prohibit persons from carrying out, or attempting to carry out, a repair, adjustment or refuelling of a vehicle except in prescribed circumstances;
- (i) to empower a constable or an appointed person to remove from its position to a prescribed area a vehicle which is for the time being at rest in a prescribed place on any of the roads to which the byelaws relate—
 - (i) in contravention of the byelaws,
 - (ii) by reason of breakdown,
 - (iii) without any person being in charge of it, or
 - (iv) with the person in charge of it not being present in or on it;
- (j) in the case of a vehicle which is so removed or which at the request of the person in charge of it is repaired, adjusted or refuelled (instead of being removed) by an appointed person, to require the prescribed person to pay a charge of an amount to be determined in accordance with such scales and other provisions as may be prescribed;
- (k) to prohibit a person from obstructing any action taken by a constable or an appointed person for the purpose of removing a vehicle in accordance with the byelaws;
- (l) to regulate traffic and the speed of traffic in the tunnel crossing;

- (m) to ensure the safety of vehicles passing through the tunnel crossing and to prohibit smoking or the use of exposed flames;
 - (n) to restrict and regulate the passage of dangerous goods or traffic through the tunnel crossing;
 - (o) for regulating the passage of bicycles and other vehicles on ways and other places intended for the use of persons on foot within the tunnel crossing; and
 - (p) for prohibiting or restricting the placing or leaving of any vehicle without its driver on any part of the tunnel crossing.
- (a) (3) (a) Byelaws under this article may—
 - (i) designate places within the tunnel crossing at which tolls (other than tolls with respect to which a prepayment has been made) are to be paid;
 - (ii) make provision as to the persons by whom, and the manner in which, such tolls are to be paid;
 - (iii) make provision for securing that vehicles in respect of which tolls are payable do not use the tunnel crossing without payment of the tolls; and
 - (iv) make provision for preventing a vehicle which, having used the tunnel crossing, has arrived at the place at which a toll is payable in respect of it from proceeding beyond that place without a toll having been paid.
 - (b) Byelaws made under this article shall provide for a notice specifying—
 - (i) the categories of vehicles in respect of which tolls are payable, and
 - (ii) the amount of the tolls in respect of each category to be displayed at each place designated in accordance with paragraph (3)(a)(i).

(4) Byelaws under this article may provide for it to be an offence for a person to contravene, or to fail to comply with, a provision of the byelaws and for such a person to be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Without prejudice to the terms of paragraph (4) where the undertaker considers it expedient to do so it may prosecute legal proceedings in respect of offences under this Order, or any other legislation which applies to the tunnel or would have applied to the tunnel had it been a highway, as if it were a highway.

(6) Without prejudice to the provisions of paragraph (4) a person who without reasonable excuse—

- (a) refuses or fails to pay a toll for which he is liable, or
- (b) attempts to evade payment of such a toll,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Without prejudice to the taking of proceedings for an offence included in byelaws by virtue of paragraph (4), if the contravention of, or failure to comply with, any byelaw under this article is attended with danger or annoyance to the public or the undertaker or hindrance to the undertaker in the operation of the tunnel crossing, the undertaker may summarily take action to obviate or remove the danger, annoyance or hindrance.

(8) Byelaws under this article shall not come into operation until they have been confirmed by the Secretary of State.

(9) At least 28 days before applying for any byelaws to be confirmed under this article, the undertaker shall publish in such manner as may be approved by the Secretary of State a notice of its intention to apply for the byelaws to be confirmed and of the place at which and the time during which a copy of the byelaws will be open to public inspection; and any person affected by any of

the byelaws may make representations on them to the Secretary of State within a period specified in the notice, being a period of not less than 28 days.

(10) For at least 24 days before an application is made under this article for byelaws to be confirmed, a copy of the byelaws shall be kept at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment.

(11) The undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker may determine.

(12) The Secretary of State may confirm with or without modification, or may refuse to confirm, any of the byelaws submitted under this article for confirmation and, as regards any byelaws so confirmed, may fix a date on which the byelaws shall come into operation; and if no date is so fixed the byelaws shall come into operation after the expiry of 28 days after the date on which they were confirmed.

(13) The Secretary of State may charge the undertaker such fees in respect of any byelaws submitted for confirmation under this article as he may consider appropriate for the purpose of defraying any administrative expenses incurred by him in connection therewith.

(14) A copy of the byelaws when confirmed shall be printed and deposited at the principal office of the undertaker and shall at all reasonable hours be open to public inspection without payment, and the undertaker shall, at the request of any person, supply him with a copy of any such byelaws on payment of such reasonable sum as the undertaker shall determine.

(15) The production of a printed copy of byelaws confirmed under this article on which is endorsed a certificate purporting to be signed by a person duly authorised by the undertaker stating—

- (a) that the byelaws were made by the undertaker,
- (b) that the copy is a true copy of the byelaws,
- (c) that on a specified date the byelaws were confirmed by the Secretary of State, and
- (d) the date when the byelaws came into operation,

shall be *prima facie* evidence of the facts stated in the certificate.

(16) The provisions of the Road Traffic Offenders Act 1988(3) in relation to evidence shall apply to the prosecution of offences under this provision.

(17) Until such time as byelaws made pursuant to this article have been confirmed by the Secretary of State and have come into operation such byelaws as have previously applied to the Tyne Tunnel and the existing foot tunnels shall apply to and be enforceable in respect of the tunnel crossing.

(18) Byelaws made under this article may be varied or revoked by subsequent byelaws and byelaws made under this article may also vary or revoke any byelaws made under any other provision in respect of the tunnels comprised in the tunnel crossing at any time.

(19) In this article—

“appointed person” means a person appointed by the undertaker who may only act as such when wearing a uniform of a description approved by the undertaker;

“breakdown” in relation to a vehicle, includes mechanical defect, lack of fuel, oil or water required for the vehicle, and any other circumstances in which a person in charge of the vehicle could not immediately, safely and without damage to the vehicle or its accessories, drive it under its own power away from the tunnel crossing; and

“prescribed” means prescribed by byelaws under this Order.

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