
STATUTORY INSTRUMENTS

2005 No. 2222

The River Tyne (Tunnels) Order 2005

PART 5

CONCESSION AND FINANCING ARRANGEMENTS

Power to charge tolls

42.—(1) Subject to paragraph (2), the undertaker may charge tolls or charges for the passage of vehicles through the tunnel crossing or for any other services or facilities provided in connection with the tunnel crossing.

(2) The undertaker shall not have power to charge tolls or charges in respect of the existing foot tunnels.

(3) The power to charge tolls or charges referred to in paragraph (1) of this article shall include the power to charge, set, demand, take, recover and waive tolls or charges and the power to suspend the charging of tolls or charges.

(4) The power to charge tolls or charges shall commence—

- (a) with the appointed day, as respects the Tyne Tunnel; and
- (b) with the day on which the new tunnel is first open for public use, as respects the Tyne Tunnel and the new tunnel together.

(5) Where tolls 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 together with all other reasonable costs and expenses including administrative expenses, enforcement expenses and interest arising out of any such failure to pay.

(6) The undertaker may appoint any person to collect tolls as its agent.

(7) Schedule 14 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 and section 13 of the 1976 Act as amended by this Order.

(8) The undertaker may enter into agreements under which persons make payments in advance, on such terms as may be agreed, with respect to tolls for use of the existing tunnels or the new tunnel by those or other persons or by any vehicles.

(9) Agreements under paragraph (8) may relate to use on an agreed number of occasions or during an agreed period.

(10) Toll and charges may not be charged in respect of—

- (a) a vehicle being used in the discharge of the functions of a fire authority under the Fire and Rescue Services Act 2004(1) or which would otherwise be an exempt vehicle under paragraphs 4 and 5 of Schedule 2 to the Vehicle Excise and Registration Act 1994(2);
- (b) a vehicle being used for police purposes;

(1) 2004 c. 21.

(2) 1994 c. 42, as amended by the Fire and Rescue Services Act 2004.

- (c) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 by virtue of section 7(4) of that Act (civil defence vehicles);
 - (d) a vehicle exempt from duty under the Vehicles Excise and Registration Act 1994 under paragraphs 6 to 8 of Schedule 2 to that Act (ambulances);
 - (e) a vehicle being driven by a disabled person, or being used for the carriage of one or more disabled persons, which displays a current disabled person's badge issued under—
 - (i) section 21 of the Chronically Sick and Disabled Persons Act 1970⁽³⁾, or
 - (ii) section 14 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978⁽⁴⁾, or
 which has been issued with a token or permit to like effect by the undertaker;
 - (f) a vehicle being used in connection with—
 - (i) the collection of tolls; or
 - (ii) the maintenance, improvement or renewal of, or other dealing with, the tunnel crossing or any structure, works or apparatus in, on, under or over any of the tunnel crossing;
 - (g) a vehicle used for naval, military or air force purposes, while being driven by persons subject to the orders of a member of the armed forces of the Crown;
 - (h) a vehicle which, having broken down in the tunnel crossing while travelling in one direction, is travelling in the opposite direction otherwise than under its own power; or
 - (i) a public service vehicle as defined in the Public Passenger Vehicles Act 1981⁽⁵⁾ which is being used in the provision of a local service as defined in section 2 of the Transport Act 1985⁽⁶⁾.
- (11) The tolls charged in accordance with this article to be demanded, taken and recovered may be applied by the undertaker—
- (a) in paying the costs and expenses incurred in designing, constructing, managing, operating and maintaining the tunnel crossing 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 existing tunnels;
 - (d) in making payment into any maintenance or reserve fund provided in respect of the tunnel crossing;
 - (e) in making grants to the passenger transport executive for the Metropolitan area of Tyne and Wear;
 - (f) 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; and
 - (g) in providing funds for, meeting expenses incurred in, or the cost of securing any necessary authority or consent for, and in constructing or in securing the construction, maintenance and operation of, the new tunnel.
- (12) The undertaker shall not apply any of the tolls for the purposes mentioned in sub-paragraphs (e) to (g) of paragraph (11)—

(3) 1970 c. 44.
 (4) 1978 c. 53.
 (5) 1981 c. 14.
 (6) 1985 c. 67.

- (a) in a manner that would contravene Directive 1999/62/EC of the European Parliament and of the Council of 17th June 1999(7) on the charging of heavy goods vehicles for the use of certain infrastructure; or
- (b) unless it is satisfied that it has applied for the purposes of paragraphs (a) to (d) of that paragraph sufficient funds to ensure the safe, efficient and economic management, operation and maintenance of the tunnel crossing in accordance with all applicable statutory requirements.

Power to enter in to 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 thereof, together with the rights and obligations of the undertaker in relation thereto.

(2) The exercise by the undertaker of its rights under paragraph (1) shall not exclude or limit the responsibility of the undertaker under this Order for the authorised activities.

(3) The undertaker may grant 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 tunnel 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 undertaker may, with the consent of the Secretary of State, transfer the whole or any part of its undertaking.

Application of landlord and tenant law

44.—(1) This article applies to any agreement for leasing to any person the whole or any part of the tunnel crossing or the right to operate the same, and any agreement entered into by the undertaker with any person for the carrying out of the authorised activities or any part of thereof, 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.

(7) OJL 187, 20.7.1999, p 42.