

To Traffic Penalty Tribunal

Appeal to Traffic Penalty Tribunal on grounds of Procedural impropriety
Doc 2 - Orders prior to the April 2018 Charging Order

This is one of a series of documents prepared by Scrap Mersey Tolls (SMT). They are intended for use by anyone who has made a representation to Merseyflow, and then received a Notice of Rejection who now wishes to appeal to the Traffic Penalty Tribunal on the grounds of 'procedural impropriety'.

Note that these documents include clickable web links.

Introduction

1. Halton Borough Council (HBC) have got themselves into a mess with the various Orders. They may not be able to escape from the quagmire without new primary legislation. This document chronicles how they got into this situation.
2. The genesis of the bridge scheme goes back a long way. By the time of the Public Inquiry in 2009 there were different possibilities as to how tolling might be put on the old bridge and a new bridge.
3. For the Public Inquiry, there was an "Explanation of Tolls and Road User Charging" document. Most of the Inquiry documents are still on the Mersey Gateway site but the link to this Core document 23 no longer works. [This is a copy of a document that was sent to National Alliance Against Tolls \(NAAT\) - 'Tolls And Road User Charges Explanation' dated 4th June 2008](#), the missing document was probably the same or similar.
4. At the 2009 Public Inquiry there were ten Orders and applications that HBC sought approval for. Two of these in part covered tolling or road user charging on the existing and proposed bridges.

Silver Jubilee bridge

5. One Order before the 2009 Inquiry was for the existing 'Silver Jubilee' bridge and was made on 5 December 2008. As explained below the Order needed to be confirmed. It is Core Document 22 and 222 on the [Gateway Inquiry core documents page](#) but the links no longer work and though the Order was only revoked in 2017, there seems to be no copy on the web. [This is a copy of the signed 'A533 \(Silver Jubilee Bridge\) Road User Charging Scheme Order 2008' that was downloaded by NAAT in 2009.](#)

The Silver Jubilee Bridge 2008 Order made use of the road user charging powers in [Part III of Transport Act 2000](#). As originally enacted, Section 169 of the Act required that schemes had to be submitted to the Secretary of State for confirmation. Following changes made at [Section 110 of the Local Transport Act 2008](#), a local authority did not need permission from Government to introduce road user charges. Notwithstanding that the Silver Jubilee Order was submitted for confirmation as explained at paragraphs 58 to 61 of [NAAT main proof of evidence to the 2009 Inquiry](#).

Mersey Gateway bridge

6. Road User charges under the Transport Act 2000 as used for the Silver Jubilee bridge Order were not intended to be a substitute for tolls on a new crossing. [Section 164 of TA2000](#) says that charging schemes may only be made if they are for the purpose of local transport plans and policies. The requirement varies slightly according to whether the scheme is in an integrated transport area or not. Sub section 2 applies outside integrated transport areas and sub section 3 within such areas. This requirement is also indicated at para 145 of the [Explanatory Notes to the Act](#).

7. HBC had repeatedly said that they wanted a free crossing but the choice was 'a tolled bridge or no bridge'. It is obvious that these tolls on the new bridge were there not for the purpose of local transport but for the purpose of covering the costs of designing, building, financing and operating the new bridge and associated roads. HBC must have been aware for a long time before the 2009 Inquiry that road user charges as authorised in the 2000 Act could not be used on the Gateway.

8. Tolling of a new river crossing was normally dealt with by a Private Act of Parliament which gave powers to construct the crossing and to toll it at a certain level for a certain period. In the case of what was later named the Mersey Gateway, the authorities instead used general legislation which it was claimed gave them the needed powers without an Act of Parliament. They did this through 'The River Mersey (Mersey Gateway Bridge) Order'. There are two versions of the draft Order.

9. One of the interested parties at the 2009 Public Inquiry were the NAAT. They were sent various documents in advance of the 2009 Inquiry including on 9th June 2008 a copy of the then draft Silver Jubilee Order and the draft Gateway Order and three other associated documents. The version of the Gateway Order was as at 29th May 2008. The 'Tolls And Road User Charges Explanation' dated 4th June 2008 said that an application had been made to the Secretary of State for the proposed Order for the Gateway on 30th May 2008. It is assumed that this will have been the 29th May document.

10. A copy of the submitted Gateway Order is shown on the Public Inquiry pages as both Core Document / 10, where the link does not work and as [Core document / 223](#) where the link works. This version of 'The River Mersey (Mersey Gateway Bridge) Order 200[]' is headed 'Version 28.1.2009'. A letter that was sent to NAAT on 16th February 2009, indicates that it was this 28th January 2009 version that was to be submitted to the Inquiry, so the application made to the Secretary of State on 30th May 2008 seems to have been superseded.

11. There could be various reasons why the authority changed the submitted Gateway order between May 2008 and February 2009. The Order reduced from 90 pages to 64 pages, so there will have been numerous changes and deletions. One change was that clause 40 'application of Part 3 of the Transport Act 2000' and two of the related schedules- 12 'Tolls, penalty charges and enforcement' and Schedule 13 'Application of the Transport Act 2000' were dropped in the February 2009 version. The new version added a new clause 44 'Application of the Transport Act 2000' but the wording was completely different to the clause 40 in the old version. These changes show that even as far back as 2008, HBC were unsure how they could have Gateway tolls but use the 2000 Act provisions intended solely for road user charges.

12. The version of the draft Gateway Order considered by the Inquiry cites various Acts. The preamble to the Order says it was made using powers in [the Transport and Works Act 1992](#). The Order also relies on the [New Roads and Street Works Act 1991](#) and bizarrely on the provisions in the Transport Act 2000 for enforcement of road user charges.

13. The New Roads and Street Works Act 1991 deals with tolls on a new road or a new road bridge in England and Wales (Part I) or Scotland (Part II). The powers had been used on two other tolls- the Skye bridge and the M6 Toll road. Though oddly it seems that for the Gateway Order, clauses 39 to 44 and Schedule 11, that dealt with tolls, were not relying on powers under the 1991 Act but were instead relying on the Transport and Works Act 1992.

14. At the 2009 Inquiry the NAAT argued that this draft Gateway Order was possibly illegal because it mainly relied on claimed powers in an Act (Transport and Works Act 1992) which made no mention of tolled road crossings. See paragraphs 64 to 70 of the [NAAT main proof of evidence to the 2009 Inquiry](#).

15. The Preamble to the 1992 Act says that it is- "An Act to provide for the making of orders relating to, or to matters ancillary to, the construction or operation of railways, tramways, trolley vehicle systems, other guided transport systems and inland waterways, and orders relating to, or to matters ancillary to, works interfering with rights of navigation; to make further provision in relation to railways, tramways, trolley vehicle systems and other guided transport systems; to amend certain enactments relating to harbours; and for connected purposes."

16. The 1992 Act does mention tolls (once) but given the Preamble to the Act, it is obvious that Parliament did not mean this Act to give the power to introduce tolls on a road that happened to cross a river. It is not plausible that if they did mean that then it was not explicit, it is also implausible as a general tolling power was already in the 1991 Act. That 1991 Act power had already been used by 1992 as the contracts for the Skye bridge were signed in 1991.

17. Following the Inquiry Inspector's report and a change in Government in 2010, a provisional go ahead was given for the scheme and the Secretary of State signed [The River Mersey \(Mersey Gateway Bridge\) Order 2011](#) which came into force on 1 February 2011. The 2011 Order seems to be largely the same as the draft Order that went to the Inquiry in 2009.

18. One reference to the 1991 Act in the version of the Order that went to the Inquiry, and as signed and as still current, is interesting-

Section 11.—(1) Subject to the provisions of article 45 (application of section 2 of the 1991 Act) the bridge roads shall be a public highway and shall be maintained by and at the expense of the highway authority from the opening day.

(Section 45 is in Part 5: Tolling, Concession And Financing Arrangements. It only seems to say that if the road is operated by a concessionaire then it is still as if it was a local authority road.)

It is not clear how this requirement in section 11 that the bridge is maintained at the expense of the authority sits alongside tolling and the authority not contributing any money to the scheme.

19. During October 2011, after the 2011 Order came into force, HBC carried out a [consultation exercise on various changes to the scheme](#) including switching from a system of a tolls plaza and toll booths to a system of 'Open Road tolling'

The result of this was that in March 2012, HBC approved new plans. But there was no change to the February 2011 Gateway Order which was still in place when the contracts for the new bridge (without toll booths) were let in 2014.

20. Early in 2015 there was another consultation, this time [the consultation was about changes to the 2011 Gateway Order](#).

HBC said (see section 3.2 of the consultation document) that "The need to modify the 2011 Order has been created by the Enforcement Regulations becoming law in September 2013 as the Enforcement Regulations specify certain matters that must be contained in a road user charging scheme order (including penalty tolls/charges...". The document incorporated at Appendices A and B the two proposed new Orders- The River Mersey (Mersey Gateway Bridge) (Modification) Order 201[] and The Mersey Gateway Bridge and the A533 (Silver Jubilee Bridge) Roads User Charging Scheme Order 201[X].

21. A member of the committee of Scrap Mersey Tolls (then known as 'Halton Against Tolls' was one of the few objectors to the proposed modification Order.

22. Despite the objections, the new Order- [The River Mersey \(Mersey Gateway Bridge\) \(Amendment\) Order 2016](#) was agreed and came into force on 14th September 2016. The Explanatory Note says-

"This Order amends the River Mersey (Mersey Gateway Bridge) Order 2011 ("2011 Order"). This Order allows Halton Borough Council to make a road user charging scheme under the Transport Act 2000 in place of the tolling provisions in respect of the Mersey Gateway Bridge and Silver Jubilee Bridge to enable an open road charging scheme to be introduced. It also modifies the provisions in the 2011 Order that relate to the enforcement of the payment of tolls and charges if no road user charging scheme is in force."

23. It is not clear how this was done as Parliament did not give any power to the Secretary of State to use powers that were claimed as being in a 1992 Act to override the provisions in a 2000 Act.

Combined Order for both bridges

24. Under the Local Transport Act 2008, local authorities do not require any consent before issuing a Charging Order under the Transport Act 2000, so HBC could make their new Order at any time, though they did not do so till March 2017 - [The Mersey Gateway Bridge and the A533 \(Silver Jubilee Bridge\) Roads User Charging Scheme Order 2017](#) This was the first Order that covered tolling on both the old and new bridges and is the Order that applied to the Mersey Gateway tolls until it was allegedly replaced by a new Order in April 2018. Note that the 2017 Order amended rather than replaced the 2011 Gateway Order. The only section of the 2011 Order that was replaced was section 46, there was a new section 46 'Enforcement' to replace 'Application of the 2000 Act'.

25. In 2018 HBC went through the process of making a 2018 Order to replace the 2017 one. That is dealt with in the next evidence document.

End of this doc