

# **Company of Proprietors of Whitchurch Bridge**

## ***Summary of Statutory Liabilities and Responsibilities***

### **1 Introduction**

The Company of Proprietors of Whitchurch Bridge has applied to the Secretary of State for Transport for an increase in Tolls at Whitchurch Bridge. This application is made under the Transport Charges &c. (Miscellaneous Provisions) Act of 1954, but also makes reference to the Whitchurch Bridge Acts of 1792 and 1988. This document summarises the main relevant legislative provisions of these Acts.

### **2 Whitchurch Bridge Act 1792 (1792 c. 97)**

The 1792 Act is the primary legislation setting up the Company and governing its operation. This Act was in line with the eighteenth century practice of privately financed toll roads and bridges. Although roads generally ceased to be funded in this way by the early 20<sup>th</sup> century, there remain eight small ancient bridges built and tolled under these Private Acts of Parliament. These undertakings were brought into the general statutory framework by the 1954 Act, and can now only charge tolls based on the costs of operating the undertaking, plus a reasonable return on investment.

As the Company was set up by its own Act, which predates modern company legislation, its operations are governed solely by that Act together with the subsequent amendments (the 1954 Act and the 1988 Act).

The 1792 Act sets out inter alia the following rights and responsibilities

- 2.1 “Whereas the building of a Bridge, at or near the ferry over the River Thames, from Whitchurch in the County of Oxford, to the opposite Shore, in the Parish of Pangbourne in the county of Berkshire, will be of great utility and advantage to the public ... it shall be lawful for the said Company of Proprietors, and they are hereby required, by themselves, their agents, officers, workmen, servants or assistants, at their own proper costs and charges, to build a good and substantial bridge with abutments made of stone, brick, or other materials, at or near the said ferry over the River Thames from Whitchurch, in the said county of Oxford, to the opposite shore, in the parish of Pangbourne, in the said county of Berkshire ”
- 2.2 “...the said Bridge and the said toll houses and conveniences to be erected thereon or near thereto, and also the said ascents or approaches to the said Bridge, and all materials which shall be from time to time gotten or provided for erecting, building, making, maintaining, and repairing the same, shall at all times be vested in the said Company of Proprietors and their successors”
- 2.3 “...it shall be lawful for the said Company of Proprietors and their successors, from time to time and at all times then after, to ask, demand, receive, recover, and take, to and for their own proper use and behoof, for pontage, as or in the name of a toll or duty, before any passage over the said intended Bridge shall be permitted, the several sums following... for every vehicle with two or more wheels, two pence for each and every wheel”. [adjusting for inflation since 1792, this would be equivalent to over £3.00 for a four wheeled vehicle today]

- 2.4 “.....And be it further enacted, that in case the said Bridge shall at any time become impassable or unsafe for travellers or vehicles, the said Company of Proprietors, or their successors, shall and are hereby required to cause the same to be forthwith rebuilt or repaired, and made safe and commodious for the passage of travellers, cattle, and vehicles”;
- 2.5 “And in the meantime, until the said Bridge shall be so rebuilt or repaired, and made safe and commodious, it shall be lawful for the said Company of Proprietors and their successors, and they are hereby required, during all such time as the said Bridge shall be impassable or unsafe as aforesaid, to provide a convenient means of transport [for pedestrians and cyclists –*amended 1988*], over the said river, as near to the said river as conveniently may be”.
- 2.6 The existing bridge, built on 1902, is the third bridge to be built in accordance with this Act, and it follows from the above that the Company continues to have a statutory liability to maintain and if necessary replace the existing bridge in order to maintain the passage of vehicles across the Thames at Whitchurch, as it has been doing for the last 217 years. In return it has the right to charge tolls, the level of which is now governed by the subsequent Acts mentioned.

### **3 Transport Charges &c. (Miscellaneous Provisions) Act 1954 (1954 c. 64)**

This Act sets out the regulatory framework within which the tolled undertakings such as private toll bridges must operate with respect to the tolls that are allowed to be charged. In effect, this Act therefore transforms such undertakings into regulated quasi-public operations in a similar way to other undertakings such as water companies, etc.

The main provisions are

“6 (2)An application may be made to the Minister at any time.....for the revision of any of the charges which the undertakers are for the time being authorised to demand and take in pursuance of any statutory provision; and if on any such application the Minister is satisfied that under the circumstances then existing it is proper so to do, he may, subject to the provisions of this section, make an order revising in such manner as he may think fit, with effect from such date as may be specified in the order, all or any of the said charges, whether or not the subject matter of the application, including any classification by reference to which the amount of any of those charges is to be determined; and any such order shall have effect notwithstanding anything in any statutory provision relating to the subject matter of the order:.....

“(3)In making any order on an application under this section, the Minister shall have regard to the financial position and future prospects of the undertaking and shall not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon the paid up share capital of the undertaking”:

“(4)Where an application is made under this section, the applicant ...shall furnish the Minister with such information and particulars, certified in such manner, as the Minister may require, and the applicant shall publish in such newspapers as the Minister may require a notice stating—

(a) the general effect of the application; and

(b) that within a period of forty-two days from the date of the first publication of the notice any person having a substantial interest may object to the application by giving notice to the Minister accompanied by the grounds of his objection with a copy to the applicant.”

“(5) Before making an order on an application under this section, the Minister shall, if required by the applicant or by any person who has objected to the application and has not withdrawn his objection ....cause a local inquiry to be held by such person as he may appoint for the purpose”.

#### **4 Whitchurch Bridge Act 1988 (1988 c. vi)**

As noted above, the 1792 Act, being a private Act specifically relating to the Whitchurch Bridge Company, was by 1988 in many respects obsolete and no longer appropriate to modern financial and legislative requirements. The Whitchurch Bridge Act 1988 therefore amended this Act in several important respects

- To remove obsolete clauses
- To take formal account of the provisions of the Transport Charges Act 1954 and to bring the Whitchurch Bridge legislation into line with that Act
- To set out the obligations and rights of the Company in modern terms
- To allow the Company to create reserve funds, and to borrow funds where appropriate, for the rebuilding of the Bridge

The relevant clauses are

2. “the bridge” means the Whitchurch Bridge of the Company and all the lands, easements, rights, Toll houses, Toll-gates, signals, offices and other assets of whatever description for the time being held or used by the Company in connection with that Bridge
3. In its application to the Company, section 6 (3) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954 (revision of charges) shall have effect as if for the words “the paid up share capital of the undertaking” there were substituted the words “the investment of the Company of Proprietors of Whitchurch Bridge in the bridge as defined in section 2 of the Whitchurch Bridge Act 1988”
4. Tolls taken under the Act of 1792 shall be applied by the Company
  - (a) in meeting all expenses incurred in, and in connection with, taking of Tolls and other administrative expenses of the Company in connection with the Bridge;
  - (b) (costs related to the Act)
  - (c) in the payment of taxes (if any);

- (d) in defraying the cost of providing, maintaining and renewing Toll houses, Toll-gates, signals, offices, equipment or other conveniences held or used by the Company in connection with the Bridge;
  - (e) in meeting any expenditure incurred by the Company in, or in connection with, the maintenance, repair or alteration of the Bridge;
  - (f) in paying interest on any moneys borrowed under Section 6 of this Act;
  - (g) in setting apart contributions to a reserve fund under Section 7 of this Act;
- and any balance remaining may be applied by the Company in payment of dividends on its paid up share capital
5. The Company may enter into a composition with any person with respect to the payment of tolls and may issue season tickets at concessionary rates for users of the bridge
  6. The Company may, for the purposes of the bridge, borrow money on mortgage of all or any of their property, assets or revenues
    - (1) The Company shall make due provision for the maintenance and renewal of the bridge by setting apart in each year out of revenue sums for the formation and maintenance of a reserve fund in accordance with this section
    - (2) Any sums forming part of the reserve fund shall be applicable for meeting all costs, charges, demands and expenses incurred by or made upon the Company howsoever arising out of the renewal, repair or alteration of the bridge, or in the purchase of land required in connection with such renewal or alteration
    - (3) Any sums forming part of the reserve fund which are not for the time being required for purposes to which the fund is applicable may be invested in any manner prescribed by statute for the investment of trust funds: and the dividends and interest arising from such investment may also be invested in the same manner so as to accumulate at compound interest for the credit of the reserve fund
- 4.1 The purpose of the reserve fund identified in sub-paragraph 3.2.7 above is to make provision for the future maintenance and renewal of the Bridge. A sum of money is set apart each year from revenue received from Tolls to establish and build up the fund. This fund is not distributable to shareholders, but is part of the assets of the Company for the purposes of the 1954 Act as described below..
  - 4.2 As a result of the amendments above, section 6 (3) of the Transport Charges &c. (Miscellaneous Provisions) Act 1954, as amended by the Whitchurch Bridge Act 1988, now reads as follows:

“In making any order on an application under this Section, the Minister shall have regard to the financial position and future prospects of the undertaking and shall not make any revision of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working, management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon the investment of the Company of Proprietors of Whitchurch Bridge in the Bridge as defined in

Section 2 of the Whitchurch Bridge Act 1988”, the relevant definition of “the Bridge” being “the Whitchurch Bridge of the Company and all the lands, easements, rights, Toll houses, Toll-gates, signals, offices and other assets of whatever description for the time being held or used by the Company in connection with that Bridge”

## **5 Conclusion**

The legislative framework shown above clearly sets out the responsibilities and rights of the Company of Proprietors of Whitchurch Bridge, as a “bargain” between the Company and Parliament such that

- The Company is fully responsible for maintaining and replacing the Bridge, at no cost to the general purse
- The Company is permitted to charge tolls that are no more and no less than is required in order to meet the costs associated with these responsibilities, including a reasonable return on the relevant investment in so doing.

The principles of the 1792 Act were brought into line with modern public interests and responsibilities by the 1954 Act, and into line with current financial principles by the 1988 Act.

For the purposes of the current application to increase the tolls at Whitchurch Bridge, the Company is therefore now required to show

- 5.1 What costs can appropriately be charged for the purposes stated in the 1792, 1954 and 1988 Acts
- 5.2 What level of tolls is required in order to comply with the definition stated in the 1954 Act as modified by the 1988 Act..