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Road tolls

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Summary

This paper sets out the powers of government and the private sector to levy tolls on individual roads and explains the policies of successive governments in this regard. It also looks at the only toll road in England along the M6 corridor and at four tolled crossings – at Dartford, across the Humber, the Mersey and the Severn.

In the 1990s the Conservative Government extended the powers of the private sector to levy tolls on new roads, but these powers have barely been used. The Labour Government introduced powers for the Secretary of State to charge a toll on limited parts of the road network, usually those involving a bridge or a tunnel. A combination of powers legislated for by the Labour and Coalition Governments have extended those powers to permit a toll on any new strategic road given planning permission via the designated consent procedure.

There are long running debates about the persistence of tolls at Dartford, and across the Humber and the Severn and about new tolls which have been introduced across the Mersey. Dartford is tolled under order from the Secretary of State and the Mersey Gateway bridges are tolled under order from Halton Borough Council, while the tolls across the Humber and the Severn are levied by the private sector operators of those crossings.

'Free flow' was introduced at Dartford in 2014 and there has been some controversy about its operation. The tolls across the Humber were halved in 2012 and both the Conservatives and Labour went into the 2017 General Election with promises to abolish the Severn tolls. The opening of the Mersey Gateway Bridge in October 2017 was accompanied by new tolls on this and the existing Silver Jubilee Bridge.

The M6 toll road has had mixed success; it is unusual in that it is in direct competition with a free motorway running along the same route; this may account for some of the difficulties it has experienced since opening more than a decade ago.

Information on other road charges such as the London congestion charge and national road pricing can be found on the Roads Briefings Page of the Parliament website.

1. What is a road 'toll'?

There are different arguments about the merits or otherwise of tolls. In the most basic sense they are a way to raise revenue/recoup costs for the public sector; they can also be used to encourage private sector involvement in building and/or maintaining parts of the road network; finally they can be used to drive demand (i.e. a pricing mechanism may discourage road use).

Prof. Kenneth Button describes road tolls as follows:

> Traditionally the methods of charging for road use have taken one of two forms. There have long been tolled roads, of the type initiated in Britain in the seventeenth century, where road users pay a fee for use. These tolls, and the same is true where they are used today, are set to recover the cost of construction and physically maintaining the road. Such tolls are not designed to allocate the road space or to optimize congestion – when the tolls vary it is normally related to the physical damage done by a vehicle to the pavement, and not to the impedance that such a vehicle may impose on other road users [...]
>
> The role of an economic price ... is threefold: to allocate what is available; to indicate where that capacity needs to be changed; and to provide the resources for financing that change. Traditional tolls may serve the last of these purposes by recovering investment costs but they seldom meet the other two.[1]

As Button notes, above, tolls are relatively successful when it comes to providing an income, but less so in providing a price mechanism that reflects the true cost of road use or in reducing road use. Where tolls are provided on roads where there is a viable alternative route, they may even drive traffic onto that route, worsening congestion and failing even to provide a satisfactory income for the tolling authority.

The motorists' argument against pricing is a basic one of unfairness: that drivers are already overtaxed and pay far more generally in taxes and charges that they get out of it in terms of road improvements. This is sometimes referred to as the 'war on the motorist'. That said, research produced for the Independent Transport Commission (ITC) in 2016 found that "the majority of motorists are receptive to new forms of funding":

> The choices which people prefer for funding are those which (at least in terms of perception) are seen to give people some control over choices. Thus peak charges or choices between local roads and motorways are more popular than blanket measures such as area charging or income tax increases. On the other hand, there is concern about privacy in the context of the technology required to operationalise individual choices and little awareness of the extent to which such information is already held in the wider society.[2]

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[1] Button, Kenneth, *Transport Economics* (3rd ed.), 2010, p285

[2] Social Research Associates for the ITC, *Paying for Roads and Road Use: Phase 2: Attitudinal Research Report*, 18 March 2016, executive summary

2. Government policy

2.1 The early years

Historically, the most remembered tolls are those that constituted the eighteenth century 'turnpike' system. The Turnpike Acts authorised Turnpike Trusts to levy tolls on those using the road and to use that income to repair and improve the road. They could also purchase property to widen or divert existing roads. The trusts were not-for-profit and maximum tolls were set. The 'turnpike' was the gate which blocked the road until the toll was paid. As the Parliament website states:

> The first such Act, of 1663, turnpiked the Great North Road between Wadesmill in Hertfordshire and Stilton in Huntingdonshire. The next was not until 1695 (Shenfield to Harwich), but after that there were several a year, and by 1750 most of the main roads from London were turnpiked.
>
> "Turnpike mania" followed between 1751-72, when trusts covered more than 11,500 miles of road. By the time the last was passed in 1836, there had been 942 Acts for new turnpike trusts in England and Wales. By then, turnpikes covered around 22,000 miles of road, about a fifth of the entire road network.[3]

By the end of the nineteenth century turnpikes had been taken over by county councils and tolls on most roads were abolished;[4] Schedule 1, Part 11 of the *Statute Law (Repeals) Act 2013* finally repealed the Turnpike Acts that remained on the statute books into the present day.[5]

Interest in some sort of charging system for the road network was revived in the 1950s, particularly after the first stretch of motorway opened in 1958. By 1961 the private car was the primary method of transportation in Great Britain and the question of 'what to do about the car?' had become paramount.[6] In 1963 and 1964 the Conservative Government published two reports on how to tackle traffic congestion in towns. Neither of these reports was concerned with inter-urban or strategic roads. Buchanan (1963) discussed limiting traffic by taxation, by which he meant introducing some sort of charge for use of urban roads (what would later come to be called congestion charging).[7] Smeed (1964) specifically dismissed tolls for urban roads:

> Toll-gates have, of course, been long used in many places and are still used on bridges and tunnels and on foreign motorways with few points of access. But for ordinary roads in urban areas they

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[3] Parliament Living Heritage, *Turnpikes and Tolls* [accessed 1 June 2017]
[4] Section 11 of the *Local Government Act 1888*
[5] this followed a 2010 review by the Law Commission: *Statute Law Repeals: Consultation Paper Repeal of Turnpike Laws*, June 2010
[6] of passenger journeys by mode, by 1961 53% were made by private car. Figures begin in 1952 when the proportion was 27%. This compares to buses and coaches (42% in 1952, 26% in 1961) and rail (18% in 1952, 13% in 1961). DfT, *Transport Statistics Great Britain*, TSGB0101, December 2012
[7] HMSO, *Traffic in Towns*, 1963, paras 29-33

> are costly and inefficient and impede the flow of traffic, and even with modern refinements we do not regards them as practicable.[8]

In 1966 the Wilson Government recognised the need to invest in road building and it set out in its transport policy command paper of that year how it intended to plan and invest in the wider road network, particularly inter-urban roads and the motorway network. It did not mention tolls or private investment and instead stated that the Government "must retain control over the extent of national investment in the road programme, its place in national and regional planning, and the determination of priorities".[9] A further command paper, published in May 1970, announced a £4 billion investment in inter-urban trunk roads, to double capacity by 1990,[10] but this was modified and reduced in scope in 1977.[11] None of these papers looked at private financing or tolling to fund the improvements to the road network.

2.2 Conservative Governments, 1979-97

Tolls and private financing for roads enjoyed a renaissance under the Conservative Governments of 1979-1997.

In June 1980 the Government published a command paper that looked at the fiscal environment for future long term road investment. At this point, the Government was committed to funding the roads programme though public spending, though it warned that due to fiscal consolidation, schemes would be prioritised and some would be dropped.[12] This was followed in February 1982 by a progress report on the road programme and mentioned, for the first time, alternative sources of funding:

> As a reinforcement to direct public funding in the medium term we are considering whether there are any new ways in which funds for construction of new roads could be raised by tapping the private capital markets on the lines of the general criteria for private sector finance...[13]

However, it was not until the mid-late 1980s that the policy moved forwards.[14] The 1987 command paper stated that the Government was keen to encourage initiatives by the private sector to build transport infrastructure – it gave the example of a new Thames crossing between Thurrock and Dartford that would be built by the private sector and recoup costs via a toll. It stated that "this initiative demonstrates that infrastructure provision need not be a matter for Government alone.

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[8] Ministry of Transport, *Road Pricing: the economic and technical possibilities*, 1964, para 6.1.1
[9] Ministry of Transport, *Transport Policy*, Cmnd. 3057, July 1966, p10 (para 42)
[10] Ministry of Transport, *Roads for the Future: The New Inter-Urban Plan for Transport*, Cmnd. 4369, May 1970, pp6-7
[11] Department of Transport, *Transport Policy*, Cmnd. 6836, June 1977, p55
[12] Department of Transport, *Policy for roads: England 1980*, Cmnd. 7908, June 1980
[13] Department of Transport, *Policy for roads: England 1981*, Cmnd. 8496, February 1982, p4 (para 24)
[14] for example, there was nothing in the 1983 command paper on private finance and tolls, see: Department of Transport, *Policy for roads in England: 1983*, Cmnd. 9059, September 1983

Exciting new opportunities now exist for the private sector to come forward with proposals for other projects".[15]

This was followed in May 1989 by the *Roads to Prosperity* White Paper and the accompanying consultation paper on introducing private finance into the road network. The White Paper said: "The Government wishes to harness the skills and efficiency of the private sector to the maximum extent in the provision of roads. The Government will be ready to consider proposals for the private finance [of road schemes] where this would offer improved value for money".[16] The consultation paper gave further detail:

> The Government is looking for genuine private sector ventures, with appropriate risks and rewards. There is no place for financial devices, disguised Government borrowing or guarantees. Shadow tolls, for example, where the Government makes payments to the private sector according to the number of vehicles using the road, are ruled out for this reason.[17]

In April 1990 the then Secretary of State for Transport, Cecil Parkinson, announced a package of new initiatives for privately financed roads. As part of that package, he invited views on the suitability of six new road schemes for private finance. He also announced receipt of three pre-qualifying bids to build the Birmingham northern relief road (what eventually became the M6 toll road – see below).[18]

In June 1991 the *New Roads and Street Works Act 1991* received Royal Assent; this legislation to give private companies powers to build new roads and charge a toll. Full details are given in section 3.2, below. However, this did not apply to existing roads. As a result, the use of private finance, remunerated by tolls, was ruled out for the large part of the motorway programme, which involved widening or upgrading existing motorways. That in turn limited the potential for using the 1991 Act to provide entirely new privately financed roads as they would inevitably face competition from an existing network.

As a result of these concerns the government published a green paper in May 1993 which argued in favour of direct user charging.[19] The green paper described three options for direct charging: conventional tolling with toll plazas and booths; a permit system; and fully electronic tolling, where vehicles using the motorway network would carry an electronic tag which would react to signals as the vehicles passed roadside beacons.[20]

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[15] Department of Transport, *Policy for roads in England: 1987*, Cm 125, April 1987, paras 2.8-2.9

[16] Department of Transport, *Roads for Prosperity*, Cm 693, May 1989, para 51

[17] Department of Transport, *New Roads by New Means: Bringing in Private Finance*, May 1989, Cm 698, para 3

[18] HC Deb 4 April 1990, cc612-13W; see also: Department of Transport, *Private Finance Road Schemes: Information on Proposed Options*, June 1990 [HC DEP 6141]

[19] Department of Transport, *Paying for Better Motorways: Issues for Discussion*, Cm 2200, May 1993

[20] ibid., pp23-28

It was clear from responses to the green paper that electronic tolling was widely seen as the best way of introducing motorway charging.[21] In the light of this the Government decided to launch a programme of research, development and trials to identify the capabilities of existing technology and to draw up a specification for a motorway charging system. The intention was to install motorway charging in the UK within about five years.[22] However, by 1996 the Government was convinced that the technological hurdles were too great and that such a scheme would not be possible in the short to medium term.[23]

During this time there was another proposal, called 'shadow tolls'. Under this system, operators of private roads would not charge tolls but would receive Government payments pegged to traffic flows. Shadow tolls were ruled out by the Conservative Government in the 1989 consultation paper,[24] however, by 1994 the Government had changed its view and announced the first four DBFO (design, build, finance, operate) roads to be paid for by shadow tolls.[25] The Government's espousal of shadow tolls, which the Treasury had previously opposed, reflected to some extent its disappointment with the lack of interest shown by the private sector in taking up the opportunities presented by the 1991 Act. The Government did not see shadow tolls as a long term solution as they did not fulfil all the criteria for charging set out in the 1993 green paper. In particular, they were not visible to individual drivers and so could not influence their behaviour patterns based on a perception of the marginal cost of each journey.[26]

The Conservatives' final transport policy paper was published in 1996 and summed up the benefits it saw from involving the private sector in transport financing. It said that the transport sector had 'led the way' in harnessing private money and mentioned the examples of the Dartford and Severn crossings, both of which were tolled. It also highlighted the benefits of the DBFO programme on the motorways, which involved shadow tolls.[27]

[21] for more information on the current position vis electronic tolls, see section 3.1
[22] HC Deb 2 December 1993, cc646-49W
[23] Department of Transport, *Transport: the Way Forward,* Cm 3234, April 1996, para 14.19; for a wide-ranging criticism of electronic tolling, see: Centre for Policy Studies*, Charging for Roads: A Better Way to Ease Congestion*, September 1995
[24] op cit., *New Roads by New Means – bringing in private finance: a consultation paper,* para 3
[25] the then Chancellor Ken Clarke indicated the Government's changed attitudes in his November 1993 Budget speech, see: HC Deb 30 November 1993, c932
[26] Transport Committee, *Charging for the use of motorways* (fifth report of session 1993-94), HC 376, 20 July 1994, para 159; shadow tolls found support from people like Stephen Glaister and Tony Travers, see, e.g.: LSE for the AA, *Tolls and Shadow Tolls*, 1994
[27] op cit., *Transport: the way forward*, p44 and p46

2.3 Labour Governments, 1997-2010

The Labour Governments tended to focus more on urban congestion charging and, in the second term at least, on a national road pricing scheme rather than road tolls.

Labour's 1996 transport policy document expressed scepticism of DBFO and stated that in government it would look at developing a new 'public private partnership' for transport investment. It did not mention tolls.[28] The Labour Government's transport White Paper, published in July 1998, discussed the possibility of introducing 'road user charges' on trunk roads and motorways and pledged to continue work on electronic charging/tolling systems.[29]

More detail was given in a consultation paper issued in December 1998. At that time the Government appeared to envisage that primary legislation would be brought forward to provide powers, complementary to those for local authorities, enabling the Secretary of State and the National Assembly for Wales to introduce charging on those roads for which they were responsible (i.e. trunk roads and motorways).[30] At the same time, the Transport Research Laboratory (TRL) undertook a number of surveys on driver attitudes to motorway tolls which predicted evasion of payment, no real impact on congestion and an increase in road accidents. Drivers tended to favour an electronic system but there were concerns about fraud.[31]

In July 2000 Labour published its ten year transport plan which stated that there was only a slim likelihood of inter-urban road tolls being introduced in the near future and that to do so would require primary legislation.[32] *The Economist* reported in April 2002 that Lord Birt, then Prime Minister Tony Blair's personal adviser on transport issues, was intending to propose tolls on motorways. The story was quickly refuted by the Department for Transport, who said there were no plans for at last another eight years.[33] Soon afterward the then Transport Minister, John Spellar, was asked about the multi-modal studies that had recommended the introduction of tolls; he replied that while further

[28] Labour Party, *Consensus for change: Labour's transport strategy for the 21st century*, May 1996

[29] DETR, *A new deal for transport: better for everyone*, Cm 3950, July 1998, paras 4.100-4.104

[30] DETR, *Breaking the logjam: the government's consultation paper*, December 1998, chapter 5

[31] TRL, *Measures for assessing on-board units for electronic toll collection, Parts 1 and 2* (Report 345); *User requirements of on-board units for electronic fee collection* (Report 348); *Motorway tolling – modelling the impact of diversion* (Report 349); *Motorway tolling - modelling some congestion effects of diversion* (Report 351); *The likely effects of motorway tolling on accident risk- phase 2* (Reports 352 and 357); *Toll enforcement using number pates* (Report 354); and *The potential for the evasion of electronic motorway toll systems* (Report 355), all 1999

[32] DfT, *Transport 2010*, July 2000, para 9.15

[33] "Byers dismisses call for motorway tolls from rival Birt", *The Independent*, 27 April 2002

work needed to be done, the Government had no plans to introduce charges on the inter-urban network "this decade".[34]

After that, there were some bodies encouraging the Government to commit to a scheme for tolling the inter-urban road network, or at least to make its position clear.[35] However, the Labour Government said nothing of substance until 2008. During this period its focus shifted more towards a national road pricing scheme and away from tolling on the major road network.[36]

In July 2008 the Department for Transport published a command paper that examined the potential for various forms of charging including road pricing, urban charging schemes and tolls on trunk roads. On tolled lanes, the paper recounted successful examples from the United States and said that the Government had:

> ... started to think about the design of a tolled lane – be it tolled or 'managed' (reserved for people paying, plus defined categories of vehicle). No decisions have been taken – we are at the earliest stage of exploring this idea, which would need to be the subject of detailed consultation and ultimately would require new statutory powers. The discussion in the rest of this chapter is intended to set out some of the important questions that will need to be addressed, and give some illustration of the sort of avenues that might be pursued, in order to inform debate.[37]

The paper stated that any tolled lanes would likely be distinguished by road markings rather than a physical barrier, due to the constraints of the road network.[38] As to whether such lanes might be adopted in England, it stated that more work needed to be done.[39]

In the event, nothing further happened on this policy. In January 2009 the Government published a paper stating that "toll lanes could be beneficial in reducing congestion but significant costs would be associated with their introduction and operation. The Government currently has no plans to seek the powers that would be necessary to implement single lane tolling".[40] Labour did not mention the policy in its manifesto for the 2010 General Election; it's only comment in this area was to rule out national road pricing for the 2010-15 Parliament.[41]

[34] HC Deb 21 June 2002, c576W; the programme of multi-modal studies was launched in March 1999 to take an integrated approach to some of the most severe transport problems on the strategic road network – each study looked at the contribution all modes of transport could make - including road, rail, bus, light rail/guided bus, walking and cycling - in the delivery of long term solutions

[35] see, e.g.: IPPR press notice, "Government must come clean on road tolls", 17 December 2002 and: CfIT, Paying for road use, 25 February 2002

[36] full details of Labour's road pricing policy can be found in HC Library briefing paper SN3732

[37] DfT, *Roads – delivering choice and reliability*, Cmnd 7445, July 2008, paras 5.38-5.39

[38] ibid., paras 5.46-5.47

[39] ibid., para 5.51

[40] DfT, *Britain's Transport Infrastructure Motorways and Major Trunk Roads*, January 2009, para 66

[41] Labour Party, *A Future fair for All: the Labour Party Manifesto 2010*, April 2010, p1.8

2.4 Conservatives in Government since 2010

In the two or three years leading up to the 2010 General Election, the Conservative Party indicated on a number of occasions that it was open to the idea of introducing more tolled roads.[42]

The Conservative-Liberal Democrat Coalition Government that took power in May 2010 made no mention of road tolls in their Coalition Agreement.[43] However, immediately following the election, ministers indicated on a number of occasions that they would be open to ideas to fund new roads via a tolling scheme – like the M6 toll road.[44] The then Secretary of State for Transport, Philip Hammond, told the Commons Transport Select Committee in July 2010 that, in the economic climate, tolling might be the best way for local authorities to afford new road capacity. He said: "We are ... completely open to the suggestion that entirely new roads could be funded by private capital supported by tolling or charging for the use of those roads".[45]

Following speculation in the press,[46] there was an announcement in Budget 2012 that the Government would carry out a feasibility study into new ownership and financing models for the national road network, to report in autumn 2012.[47] In the end, it did not report until summer 2013 and did not mention tolls at all, focusing instead on reform of the Highways Agency.[48] The Government's plans for the Agency were based on the work of Alan Cook. In his 2011 report he had the following to say on private investment and toll roads:

> Using a private toll road model to improve the capacity and performance of existing connections inevitably raises the prospect of tolling routes that are currently available free of charge. This raises obvious political challenges, and would at the very least require a clear lead from national and local politicians, working together to build a consensus that this option reflects the best interests of people using that route. I have not explored this option in detail, but the development of wider route-based strategies ... would provide a vehicle for exploring these issues in their proper local context.[49]

The Government subsequently made it clear that it would not implement tolls on the existing road network. The then Transport Minister, Stephen Hammond, said in July 2013:

> The Government has made a clear commitment not to toll existing road capacity and this has not changed. We have always said we would look at schemes which would fund significant new capacity

[42] see, e.g. *Freeing Britain to Compete: equipping the UK for globalisation*, August 2007, pp25-26 and *Speech by David Cameron to the CBI Conference*, 27 November 2007
[43] HMG, *The Coalition: Our Programme for Government*, May 2010
[44] e.g. "Motorists face tolls to pay for new roads", *The Sunday Times*, 16 May 2010, and: HC Deb 5 July 2010, c18W
[45] Transport Committee, *Uncorrected evidence: The Secretary of State's priorities for transport*, HC 359, 26 July 2010, Q17
[46] e.g. "Toll fears over plan for private motorways", *The Times*, 19 March 2012
[47] HMT, *Budget 2012*, HC 1853, March 2012, para 1.219
[48] DfT, *Action for Roads: A network for the 21st century*, Cm 8679, July 2013
[49] Alan Cook for DfT, *A fresh start for the Strategic Road Network*, November 2011, para 8.11

> through tolling. There will be cases where the combination of the significant expense of the scheme and the distribution of the benefits means that it is fair that users meet some of the costs of the scheme, rather than general taxpayers. This would be in very limited circumstances where schemes deliver new roads or transform an existing road into an entirely new route beyond all recognition and there is a strong economic and commercial case for a contribution from tolling.[50]

The Government had planned to use a toll to part-fund the construction of a new bypass as part of the A14 Cambridge to Huntingdon improvement scheme.[51] However, in December 2013 it announced that it would not proceed with a toll for this scheme following "concerns from local residents and businesses who rely on this road".[52]

In 2004 the Government consulted on minor changes to the process for revising tolls at local tolled crossings in England.[53] These changes require legislation, which has not been forthcoming.[54]

Most recently, in February 2017 the Transport Minister, John Hayes, said that the Government had:

> … no plans to roll out tolling on existing roads. Successive Governments have taken the view that tolls are occasionally justified when private finance enables some of the most expensive road infrastructure, such as significant river crossings, to proceed. It is right that the user pays, rather than the taxpayer, because the user benefits.[55]

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[50] HC Deb 4 July 2013, c726W; various organisations at the time encouraged the Government to be bolder; to introduce more private management and finance and to allow widespread use of tolls, see, e.g.: ASI, *Cash in the attic: Realising the proceeds from government-owned property*, 2013; and IEA, *Moving the Road Sector into the Market Economy*, IEA Current Controversies Paper No. 43, June 2013

[51] see, e.g. DfT, *The A14 Challenge: Finding Solutions Together*, June 2012; Atkins for DfT, *A14 Study: Output 3 Package Testing & Appraisal Report*, November 2012; and DfT, *A14 Cambridge-Huntingdon improvement scheme proposal*, September 2013

[52] HMT, *National Infrastructure Plan 2013*, December 2013, p35 [para 3.10]

[53] there are 11 of these: Aldwark Bridge; Bournemouth-Swanage Motor Road Ferry; Clifton Suspension bridge; Dartmouth–Kingswear Higher Ferry; Dunham Bridge; Rixton and Warburton Bridge; Shrewsbury (Kingsland) Bridge; Swinford Bridge; Tamar Bridge and Torpoint Ferry; Whitchurch Bridge; and Whitney-on-Wye Bridge

[54] DfT, *Simplifying the process for revising tolls at local tolled crossings*, consultation published on 27 February 2014, the response on 23 July 2014

[55] HC Deb 23 February 2017, cc1138-9

3. Legislation

3.1 Public sector

Transport Act 2000

The Labour Government legislated for a new power for the Secretary of State (in England) and the Welsh Government to introduce a toll on specific sorts of road. Section 167 of the *Transport Act 2000*, as amended by the *Local Transport Act 2008*, identifies only very limited situations in which tolls can be introduced in England and gave powers to the Welsh Government to make changes to the rules in Wales.[56] In England a trunk road charging scheme may only be made by the Secretary of State if:

- the road is carried by a bridge or passes through a tunnel of at least 600 metres in length; or
- a local authority requests the Secretary of State to charge on a stretch of trunk road in order to complement an existing local authority road user charging scheme.

This would allow for new structures to be built and paid for (in part) by a toll and for tolls on crossings when existing tolling powers were due for renewal. Revenue generated from charging on trunk roads would accrue to the relevant highway authority for spending on the road network or related integrated transport measures.

Since 2003 governments have used the powers under the 2000 Act to continue charging a toll on the Dartford Crossing (see section 4, below).

Planning law

The Government can implement a toll on any road granted development consent under the *Planning Act 2008*; this is using a combination or powers passed under successive governments.

Nationally Significant Infrastructure Projects (NSIPs) are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as 'development consent'. Development Consent Orders (DCOs) are made under procedures governed by the 2008 Act as amended by the *Localism Act 2011* and the *Growth and Infrastructure Act 2013*.

Any developer wishing to construct a NSIP must first apply for consent to do so. For such projects, the Planning Inspectorate examines the application and will make a recommendation to the relevant Secretary of State, who will then take the decision on whether to grant or to refuse development consent. The process is timetabled to take approximately 12 months from the time that the application is formally accepted by the Planning Inspectorate. Section 14 of the 2008 Act sets out the types of development that can be classed as a NSIP, while further sections set thresholds above which certain types of infrastructure development are considered to be nationally significant

[56] by inserting new Matter 10.1 into Part 1 of Schedule 5 to the *Government of Wales Act 2006*

and require a DCO. The thresholds for highways are set out in section 22. It states that a DCO would be required for a highway in the following circumstances:

- An **altered** or **new highway** is or would be, when fully constructed, wholly in England; the Secretary of State will be the highway authority for the highway; and the area of development is greater than: 15 hectares for a motorway; 12.5 hectares for a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater; and for any other highway is 7.5 hectares.
- An **improvement to a highway** is wholly in England; the Secretary of State will be the highway authority for the highway; and the improvement is likely to have a significant effect on the environment.

Section 22 was inserted into the 2008 Act by regulations made under the 2013 Act. The *Highway and Railway (Nationally Significant Infrastructure Project) Order 2013* (SI 2013/1883) came into force on 24 July 2013. This followed a Government consultation to change the definition of "highways" for the purposes of being classed as nationally significant infrastructure.[57]

It is this, in conjunction with another provision in the 2008 Act, which permits the Government to introduce a toll via the DCO. Section 144 makes it clear that an order granting development consent may include provision authorising the charging of tolls:

> (1) An order granting development consent may include provision authorising the charging of tolls in relation to a highway only if a request to that effect has been included in the application for the order.
>
> (2) If an order granting development consent includes provision authorising the charging of tolls in relation to a highway, the order is treated as a toll order for the purposes of sections 7 to 18 of the New Roads and Street Works Act 1991 (c 22).
>
> [(2A) Subsection (2) does not apply to an order that includes provision authorising other charges in respect of the use or keeping of motor vehicles on roads.

This has yet to be used to introduce a toll road.

3.2 Private sector

New Roads and Street Works Act 1991

As set out in section 2, above, in the late 1980s the Conservative Government wanted to encourage greater private sector involvement in the provision of roads. At that point the procedures for authorising new roads in the *Highways Act 1980* were designed for schemes constructed by the Secretary of State or local authorities and were not appropriate to tolled roads constructed by the private sector. In addition, all tolls

[57] DfT, *Nationally significant highways and rail schemes: amendments to Planning Act 2008 definitions*, consultation published on 18 December 2013, outcome on 3 June 2013; there was a debate of the draft regulations in the House of Commons, see: HC DL Deb 24 June 2013, cc3-8

needed statutory authorisation. Privately-financed roads therefore had to be authorised individually by an Act of Parliament, either by the Government promoting a Hybrid Bill or the private promoter introducing a Private Bill.

The *New Roads and Street Works Act 1991* eliminated the need for separate legislation in England and Wales (Part I) and Scotland (Part II) for new road schemes promoted by the private sector.[58] The Act introduced new procedures to enable promoters to finance, build and operate new roads and to charge tolls.

The fundamental concept is that of the concession agreement defined in section 1 of the Act. This is an agreement between the highway authority and a firm or consortium in the private sector under which the firm agrees to finance, design, build, operate and maintain a road in return for the right to charge tolls to the users of that road.[59] That right is conferred by means of a toll order under section 6. Toll levels are controlled by statute where there is a monopoly of provision, such on an estuary crossing.

The first project to be provided under the 1991 act was the Skye Bridge in Scotland, which opened in 1995. In England the first project to benefit from the new legislation was the M6 toll road (see section 4, below).

3.3 Electronic tolls and interoperability

The European Commission is keen to standardise all electronic tolling equipment used across Member States in order to ensure that it is interoperable. This would enable anyone to drive the length and breadth of the EU with one electronic tag or beacon in one's vehicle that could be used in every country one travels through.

It is as yet unclear whether the UK Government would continue to apply the EU rules on electronic toll interoperability once the UK has left the EU. It might choose to do so for the sake of convenience, but there has been no public statement on this.

Before the EU's involvement, previous UK governments had looked into the possible technology that could be used on the domestic road network. The earliest work was undertaken by the Conservative Government in the 1990s;[60] this got as far as the signing of agreements for electronic tolling trials with two consortia led by Bosch and GEC-Marconi.[61] The trials took place between November 1996 and June 1997 and the results were published by the Labour Government in May 1998. These found that the technologies employed were still maturing and that while they "could form the basis for operational free flow, multi-lane tolling systems in Great Britain within the foreseeable future ... no unequivocal statement of technical feasibility can be made, based upon the test track trials alone".[62]

[58] introducing the Bill at Second Reading in the Lords, Lord Brabazon of Tara explained the main features of the Bill as they related to tolling, see: HL Deb 20 November 1990, c626

[59] more information about DBFOs is available on the Highways England archived website [archived 3 June 2014]

[60] HC Deb 2 December 1993, cc646-49W

[61] DoT press notice, "Eight consortia to trial motorway tolling technology", 31 July 1995; and: "Two remain for motorway tolling trials", *Financial Times*, 16 May 1996

[62] DETR, *Report on the test track trials of motorway tolling technologies 1996-97*, summary, May 1998

In 2003 the Commission published for consultation a draft Directive on the interoperability of electronic toll systems. Under the terms of the draft Directive the European electronic toll service would encompass all road infrastructure in the EU on which tolls or usage fees are collected. A single subscription contract would give access to the service and subscriptions would be available from the manager of any part of the network. It envisioned all new tolling systems having satellite-positioning and GSM-GPRS technologies by 1 January 2008 and all older microwave-based systems introduced before that date being phased-out by 1 January 2012.

In its consultation document on the draft Directive the Labour Government stated that it broadly supported the proposal but was sceptical about the specific details: in particular that the technology would be too prescriptive and therefore expensive and unnecessarily complex; that this would lead to the European electronic toll service extending its powers into local areas (e.g. the Dartford and Severn crossings); the EU role in data processing, revenue collection and redistribution channels; and a lack of detail on privacy and data sharing of personal information.[63]

Agreement on the Directive was reached between the European Parliament and the Council on 20 April 2004. The Government stated that 'for the most part' it was "very successful in securing favourable changes to the Commission's original proposal" such as removing the requirement to use only satellite/mobile technology after 2008 and to replace all existing electronic systems with this technology by 2012; and to exempt charging systems which do not rely on the installation of on-board equipment (like the London Congestion charge). The Government did not, however, agree on the final implementation timetable and abstained on the final vote.[64]

Directive 2004/52/EC entered in force on 20 May 2004. It also established the European Electronic Tolling Service (EETS) in complement to national tolling authorities. In October 2009 the Commission finalised its decision on the EETS definition (i.e. in terms of technical, procedural and legal issues).[65]

In the UK, the *Road Tolling (Interoperability of Electronic Road User Charging and Road Tolling Systems) Regulations 2007* (SI 2007/58) came into force on 12 February 2007 following a public consultation.[66] Section 176 of the *Transport Act 2000*, as amended by section 116 of the *Local Transport Act 2008*, is designed to ensure that the 'national authority' can specify interoperable standards across all charging schemes in England and Wales.

[63] DfT, *Consultation on developing the Trans-European Transport Network and the interoperability of road toll systems*, 18 August 2003, annex C
[64] DfT, *Current position of EU Directive on the interoperability of electronic road toll*, June 2004
[65] Decision 2009/750/EC, 9 October 2009
[66] DfT, *Consultation on the proposed legislation to transpose EC Directive 2004/52*, 18 July 2006

In 2016The Commission launched a review of the Directive, the lack of take-up of EETS and views on future legislative changes:

> With so many electronic tolling systems in Europe, vehicles frequently travelling across the continent must be equipped with a good dozen of on-board units to be able to pay tolls in each country. To help them, the European Union provided for the creation of a European Electronic Toll Service (EETS), a service which allows seamless payment of electronic road tolls across the EU with a single on-board unit, under one contract and a single invoice.
>
> An EETS was to be offered to trucks and buses in 2012, and to other vehicles (notably cars) in 2014. So far, however, the concept has not become reality. The Commission is therefore critically looking at what went wrong and intends to revise its legislation so that the EETS can be offered to EU citizens and businesses as soon as possible. The legislative revision will equally provide the opportunity to look at electronic tolling from a wider perspective, and check if the objectives of the existing legislation were not set too narrowly (or too widely).[67]

This resulted, in May 2017, in the publication of the first part of the Commission's package on 'clean, competitive and connected mobility'. This includes a proposed recast of the 2004 Directive and further promotion of EETS.[68] The Commission stated:

> Current EU tolling systems lack interoperability, which is a problem especially for cross-border traffic. Today, many different on board 'toll tags' and accounts are required to cross the continent. An interoperable system would allow one toll tag and one simple billing system for haulage companies. Besides better service to users, this will also reduce the cost of tolling and give the possibility for service providers to offer other valuable services. This is known as the EETS or European Electronic Tolling System.[69]

[67] EC, *Review of Directive 2004/52/EC and Decision 2009/750/EC on the European Electronic Toll Service*, 8 July 2016
[68] EC, COM(2017) 280 final, 31 May 2017
[69] EC, *Europe on the Move: Questions & Answers on the initiatives for clean, competitive and connected mobility*, 31 May 2017

4. Key road tolling schemes

4.1 Dartford-Thurrock Crossing

Charging at the Dartford-Thurrock Crossing is the responsibility of the Government, under powers set put in the *Transport Act 2000* (see section 3.1, above).

'Free flow' started operation on the Crossing in late 2014, there was been some controversy about its operation.

There has been no recent Parliamentary debate about abolishing the tolls.

In 1987 the then Conservative Government proposed an expansion of what was then the Dartford-Thurrock Tunnel under the Thames. It proposed using private finance to build a new bridge at Dartford which, along with the existing tunnel, would become a single crossing. The *Dartford-Thurrock Crossing Act 1988* provided the primary legislation for the construction of the new bridge by a private company and for the Secretary of State to take control of the tunnels from Kent and Essex County Councils (to let to the private company as part of the concession).[70]

The tolls were introduced primarily to pay for the costs of the bridge's construction – that was achieved in 1999 – but the Labour Government used a separate part of the 1988 Act to permit the company to go on charging for a further three years in order to fund 'future maintenance' of the Crossing.

In 2003 the ownership of the Crossing reverted back to the Government and it replaced the toll with a road charge (still called a toll), under the provisions of section 167 of the *Transport Act 2000*. The tolls paid now are, therefore, tolls paid to the Government. The local councils do not get any money from the toll. A 2009 FOI response from the Department for Transport explained the reasons for this.[71]

In April 2009 the Government published a study into capacity at the Crossing[72] in conjunction with Budget 2009 and the final report of the Operational Efficiency Programme (OEP), the latter of which went into some detail about back-office efficiency savings, via IT, property management etc. and included a few specific examples of how money could be saved in transport-related areas. One of the examples picked out in the OEP report was the Dartford-Thurrock Crossing.[73] In

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[70] in his opening statement at Second Reading of the 1987-88 Bill, the Minister for Roads and Traffic, Peter Bottomley, gave a summary of the background to scheme and how the Government saw the concession progressing, see: HC Deb 9 July 1987, cc582-588

[71] DfT, *Freedom of Information request – Dartford Crossing charges – (ref no – f0004763)*, August 2009

[72] DfT, *Dartford River Crossing Study into Capacity Requirement*, April 2009

[73] HM Treasury, *Operational Efficiency Programme: final report*, April 2009, p43

December 2009 the Treasury published its OEP Asset Portfolio which set out options for changing how the Crossing and the toll concession could be managed in the future.[74] However, the 2010 General Election interceded before these proposals could progress further.

Upon coming into office, the Coalition Government indicated that it was "committed to improving the levels of service experienced by the millions of users of the Dartford crossing" and to that end it intended to investigate upgrades to the tolling technology used on the Crossing.[75] In June 2011, the Department for Transport launched a consultation on proposals to revise the road user charging regime by increasing the cash charge for all vehicles from late 2011. These increases were part of a strategy to both manage demand and to continue to prioritise short, medium and long-term improvements.[76] These increases were later postponed.[77]

In May 2012 the Minister announced that that Government had decided to retain the toll regime at the crossing "as part of its strategy to manage demand for its use, and also to allow the Department to delivery its strategy for future improvements".[78] In November what is now Highways England published detailed proposals to introduce post-payment and enforcement measures that would support the introduction of 'free-flow' charging at the Crossing. To support this change the Government published detailed proposals to provide "fair and effective enforcement of free-flow road user charging".[79]

In July 2013 the Government announced its intention to proceed with the implementation of the relevant legislation to introduce free flow.[80] This was to be accompanied by a discount scheme for local residents, allowing unlimited journeys for £20 per year (single vehicle registration per resident).[81] The new scheme went live on 30 November 2014. Charges increased at the same time and works were scheduled to remove the toll booths and barriers.[82]

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[74] HMG, *Operational Efficiency Programme: Asset Portfolio*, December 2009, p11
[75] HC Deb 13 July 2010, c624W
[76] DfT, *Dartford-Thurrock river crossing charges consultation*, 30 June 2011
[77] HC Deb 24 November 2011, cc33-34WS
[78] HC Deb 22 May 2012, cc62-63WS
[79] HA, *Introducing post-payment periods and enforcement measures for 'free-flow' charging at the Dartford-Thurrock River Crossing: Consultation document*, November 2012; and DfT, *Road user charging scheme regulations: consultation*, November 2012
[80] HC Deb 11 July 2013, c46WS; *Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013* (SI 2013/1783) and *A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2013* (SI 2013/2249)
[81] DfT press notice, "Greater discounts for 4,000 local residents at Dartford-Thurrock Crossing", 12 September 2013
[82] Highways Agency press notice, "Dart Charge: Dartford Crossing remote payment", 1 December 2014; and "Dartford Crossing payment system changes", *BBC News*, 30 November 2014

In the years since free flow and the new payment system were launched there have been ongoing concerns about the robustness of the charging process and how penalty charges are issued and enforced.[83]

Most recently in December 2016 there was a Parliamentary debate on the Crossing and congestion. During the debate the Transport Minister, John Hayes, said that he was "pleased with the Dart Charge" [the new payment system] and that overall it "and the new road layout have improved journeys through the Dartford crossing and reduced journey times for drivers".[84]

4.2 Humber Bridge

Charging at the Humber Bridge is the responsibility of the Humber Bridge Board. The governance, financing and operation of the bridge were reformed most recently by the *Humber Bridge Act 2013*.

In 2012 the Government wrote down a portion of the debt and the tolls were halved at the same time.

There has been no recent Parliamentary debate about abolishing the tolls.

For many years, the biggest issue facing the Humber Bridge was the question of the debt. This is inextricably linked to the tolls (the revenue from which goes towards paying off the debt). There was movement on both of these issues in the 2010 Parliament, when the Government agreed to write down the debt and halve the level of toll. There was also a Bill in Parliament to modernise the governance, financing and operation of the bridge

The Humber Bridge was promoted by the local authority and constructed under the *Humber Bridge Act 1959* and the *Humber Bridge Act 1971*. Matters to do with the debt are covered separately in the *Humber Bridge (Debts) Act 1996*.

The 1959 and 1971 Acts established the Humber Bridge Board with the powers to borrow and construct the bridge, but there were no powers to write off debts. Construction began in 1973 but was not completed until 1981. The bridge and approach roads cost £98 million to build, but by the time the bridge opened to traffic in 1981 the debt had already risen to £151 million, as a result of interest charges which occurred during the construction period. The construction of the bridge was funded by way of loans from the Department of Transport and the Public Works Loan Board, which were to be repaid out of toll income, with the Board being given powers under section 74 of the 1959 Act to make up any financial deficit via rate precepts.

[83] see, e.g. "Motorists pay heavy price for toll muddle", *Sunday Times*, 28 June 2015; and "Toll and trouble: Dartford cameras fine drivers for journeys they didn't make", *The Guardian*, 8 May 2016

[84] HC Deb 7 December 2016, c152WH

Since the opening of the bridge the income from tolls and charges has been more than sufficient to cover the operating and maintenance costs but has not created a surplus large enough to cover the interest charges. It was envisaged that the toll income would be insufficient to service the debt in the early years and legislation therefore provided that unpaid interest could be capitalised. The Secretary of State and the Board entered into an Agreement on 29 March 1972 to capitalise the interest on borrowed money for a period of 13 years from the opening of the bridge (until 1994). This led to a significant growth in the Board's debt, from £151 million in 1981 to £439 million in March 1992. This was then extended until 1999.[85] At the same time, Christopher Chope, then Minister for Roads and Traffic, stated that it was the Government's intention to promote a Bill to write off or suspend the debt and institute a five yearly review (this resulted in the 1996 Act, mentioned above). There then followed various arrangements between the Board and successive governments to stabilise the debt.[86]

Prior to 2012 the tolls had not been revised since 2002.[87] Towards the end of 2010, a Humber Bridge toll study was published which provided analysis of how cancelling the tolls would benefit the local community.[88] The Government announced a review of the debt (and therefore the tolls) in June 2011. This was intended to set out an affordable and long term sustainable solution for repaying the debt and to look at reforming the operations to make it more accountable to the local economy.[89]

As part of the Autumn Statement in November 2011, the Chancellor announced that the Government would write down £150 million of debt on the bridge, halving the tolls for cars.[90] The then Secretary of State for Transport, Justine Greening, subsequently published a letter to the Humber Bridge Board setting out the details of the settlement and explaining the conclusions of the June 2011 review. This found that reducing tolls on the Bridge would have a positive economic impact for both the Humber area and the UK more widely, and "an acceptable benefit to cost ratio". On the basis of the review's findings the Government considered that a substantial write down of the level of debt was justified, with the aim of working towards a new settlement to ensure that the future finances of the bridge were sustainable for both local communities and taxpayers.[91] The order to write down the debt came into force on 31 March 2012, the tolls were reduced at the same time.[92]

[85] DoT press notice, "Extension of debt roll up for Humber Bridge Board", 13 December 1991 (PN 371)
[86] see, e.g.: HC Deb 29 June 1992, c393W; HC Deb 2 July 1998, c236W; the *Humber Bridge (Debts) Order 1998* (SI 1998/1797); and HC Deb 22 October 2008, c420W
[87] a list of the relevant Orders made up to and including 2002 were given in response to a PQ in 2005, see: HC Deb 9 November 2005, c510W
[88] "Scrapping Humber Bridge tolls would net local economy £1bn", *Grimsby Telegraph*, 7 October 2008
[89] DfT press notice, "Ministers launch second phase of Humber Bridge review", 14 June 2011
[90] HMT, *Autumn Statement 2011*, Cm 8231, November 2011, para 1.92
[91] DfT, *Humber Bridge Review*, 29 November 2011
[92] *Humber Bridge (Debts) Order 2012* (SI 2012/716)

In December 2013 the *Humber Bridge Act 2013* received Royal Assent. This was a Private Bill, promoted by the Humber Bridge Board with the support of the Government. Its intention was to modernise the governance, financing and operation of the Humber Bridge. It included a new power for the Board to levy tolls for use of the bridge, and to levy other charges for services provided by it, replacing the provisions in previous legislation. In evidence to the House of Commons Unopposed Bill Committee Paul Thompson, the Parliamentary Agent, explained the provision as follows:

> In summary, the provision specifies that tolls can continue to be levied at their current levels, rather than the higher levels that are still authorised, and that tolls can be increased by the board, but only-in the case of increases above the retail prices index-after consultation with the Secretary of State and users of the bridge.
>
> The existing toll provision has a complex arrangement, in which applications for toll replacements go to the Secretary of State, and are potentially subject to a local inquiry. In practice, there have been a number of toll increases over the years necessitated by increases in costs, and they have simply been ratified, but it is felt that the process has not achieved anything other than increased bureaucracy. The new provision will ease the arrangements.[93]

Most recently, in response to Parliamentary questions on 8 November, the Transport Minister, Jesse Norman, said that the Government had "not made an estimate of the costs of abolishing tolls on the Humber Bridge". He put this in some historical context:

> The tolls on the Humber Bridge were introduced to help pay for the costs of constructing the Bridge, which opened in 1981. Construction was financed through a loan from the Government of the day.
>
> In 2012, the present Government wrote off £150m of the £332m debt In order to reduce tolls and encourage use of the Bridge. Since then, the number of vehicles using the Bridge has increased significantly.
>
> In 2015, the Humber Bridge Board refinanced the remaining debt of £172m with a Public Works Board Loan. The Government has not made an estimate of the costs of abolishing tolls on the Humber Bridge, since the operation and financing of the remaining debt of the Humber Bridge is the responsibility for the Board and its constituent authorities.[94]

[93] OBC Deb 17 April 2013, paras 28-29
[94] Humber Bridge: Tolls: Written question – 111238, 8 November 2017

4.3 M6 toll road

The M6 toll road is operated by Midland Expressway Limited (MEL) under a 53-year concession agreement with the Secretary of State for Transport.

MEL has been sold twice, most recently in spring 2017 to the Australian investment fund IFM Investors, for a reported £1.9 billion.

The last substantive Parliamentary debate about the road was in April 2016.

The M6 toll road is operated by Midland Expressway Limited (MEL) under a 53-year concession agreement with the Secretary of State for Transport. The road arcs to the north and east of Birmingham between junctions 4 and 11 of the M6. On a weekday the toll is £3.00 for a motorcycle; £5.50 for a car and £11 for an HGV. A 5% discount is available for those who use the electronic pre-pay system (TAG).

Plans for a Birmingham Northern Relief Road (BNRR) date back to the 1980s. There was a public inquiry in 1988 and the Inspector's report was sent to the Secretaries of State for Transport and the Environment in March 1989. This public inquiry was superseded by a competition for a privately financed toll motorway. The original proposals were withdrawn in March 1992 because by then tenders had been sought and a concession agreed with a private company for the construction of a new highway to follow broadly the same route as the Department's preferred route put to the first public inquiry. The competition led to an award of a concession to MEL to design, build finance and operate the road.

The Department of Transport withheld the Inspector's report from the first public inquiry until a complaint to the Parliamentary Ombudsman led to an investigation under the *Code of Practice on Access to Government Information* in which the Ombudsman recommended that it should be published. The Department agreed in September 1994 to publish the report.[95] In his report the previous Inspector endorsed the need for the motorway and recommended that with the exception of a length at Muckley Corner, it should follow the line the Department had proposed.

Because of the BNRR's designation as a privately financed toll road a second public inquiry was necessary and this lasted for 16 months from June 1994 to October 1995. The BNRR remained in the Conservative Government's revised road programme until the 1997 General Election. The Labour Government approved the scheme in July 1997.[96] The *Birmingham Northern Relief Road Toll Order 1998* (SI 1998/124) was made in January 1998 and following a legal challenge from groups

[95] Parliamentary Commissioner for Administration press notice, "1989 report on Birmingham Northern Relief Road will be published", 27 September 1994

[96] DETR press notice, "Gavin Strang launches new approach on strategic roads", 28 July 1997

opposed to the BNRR, building began in 2000. It opened on 9 December 2003, six weeks early, at a total construction cost of £485 million.

In June 2004 the then Secretary of State for Transport, Alistair Darling, reported to the House on the first three months operation of the M6 toll road. He said that the road carried one fifth of daily traffic flowing through the West Midlands conurbation and that traffic on the non-tolled M6 had decreased by 10 per cent.[97] An 'after study' was undertaken by Atkins and published in October 2005: it found 15 per cent growth in weekday traffic flows on the toll road; a reduction of 11 per cent on the competing portion of the M6 and an increase in traffic on feeder routes into the toll road; there were traffic reductions on other nearby motorways and trunk roads.[98]

As this was the first road of its kind in the UK, there has obviously been considerable interest in its effectiveness – both in terms of relieving congestion and as a viable financial model. In an article for the *Financial Times* in mid-2009 John Kay, an economist and frequent FT contributor, described how the M6 toll road had become a 'first class' driving lane. He concluded that the "curious conjunction of first- and second-class motorways on the M6 is unlikely to be repeated".[99] In August 2010 the Campaign for Better Transport published a report that concluded that the road had been a failure in terms of congestion and was not a viable financial model.[100] Reports from 2013, the toll road's tenth year of operation, showed financial stresses due to the recession and the viability of operating a toll road in direct competition with a free road.[101] In June 2013 MEL ran a one month trial with the Road Haulage Association to allow their members (HGV operators) to use the road free for that month as a way of attracting new business.[102]

In May 2013 the Government published a report from AECOM about traffic levels on the M6 and the M6 toll road. The study conducted a travel demand analysis, looked at willingness to pay and utilisation of the M6 toll road. In essence, the study was trying to understand how toll levels influence travel when there is an option between a tolled and non-tolled route. [103]

MEL was originally owned by Macquarie Infrastructure Group (MIG) of Australia. Following a debt restructuring in 2013 a group of lenders including Crédit Agricole, Commerzbank and Banco Espirito Santo took

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[97] HC Deb 6 July 2004, c690

[98] Atkins for the Highways Agency, M6 Toll After Study: Traffic and Safety Summary, 5 October 2005, para 2.4

[99] "First-class driving makes little economic sense", *Financial Times*, 12 August 2009

[100] CBT press notice, "Toll roads are no answer to congestion, says campaign group", 31 August 2010; full report also available: CBT, *The M6 Toll, five years on: Counting the cost of congestion relief*, August 2010; it came to similar conclusions in 2013, see: *The M6 Toll – Ten Years On*, 3 December 2013

[101] see, e.g.: "Overpriced and underused: M6 toll road is going nowhere fast", *The Independent*, 7 May 2013; and CBT press notice, "New report finds after ten years the M6 Toll benefits no one", 3 December 2013

[102] M6 Toll press notice, "RHA members get exclusive deal to use M6toll during July free of charge", 22 April 2013

[103] AECOM for DfT, *Birmingham M6 toll road study: modelling report*, 7 May 2013

control of MEL. In 2016 it was reported that they were looking to sell for something like £1.9 billion.[104]

A competitive auction process for 100% of the debt of the M6 Toll led by UBS with legal advice from Linklaters launched in September 2016, after a pause following the UK's vote to leave the European Union. It ran throughout the second half of 2016. However, the auction generated a final price deemed too low for the creditors to accept.[105] It was reported in April 2017 that the Australian pension fund IFM Investors had secured the bulk of the debt and ownership of MEL.[106]

As a result of the sale Highways England expects to realise £180 million as a result of a clause dating back to when the toll was opened in 2003: the new owners are expected to pay off a 'land fund' obligation, which covers the cost of leasing the land from the government.[107]

4.4 Mersey Gateway bridges

Charging on the Mersey Gateway and Silver Jubilee bridges is the responsibility of the Mersey Gateway Crossings Board, as directed by Halton Borough Council under powers set put in the *Transport Act 2000* (see section 3.1, above).

The new Mersey Gateway bridge opened on 14 October 2017; tolling was introduced on this and the existing Silver Jubilee bridge on the same day.

This will be debated in Parliament on 5 December 2017.

There are two road separate sets of crossings across the Mersey:

- The two tunnels, constructed between 1934 and 1971; and
- The Silver Jubilee bridge, opened in 1961 and widened in 1977 and the Mersey Gateway bridge, which opened in October 2017.

Discussed below are the tolls on the bridges.[108]

The Mersey Gateway Project was a scheme to build a new six-lane toll bridge over the River Mersey. The contract for this was awarded to the Merseylink Consortium in March 2014. In response to an FOI request Halton Borough Council said that the contract was in effect a Project Agreement for the design, build, finance and operation (DBFO) of the Mersey Gateway Bridge project over a 30 year period (basically a PFI arrangement). The Project Agreement was not a form of NEC contract, instead it is based on standard SOPC4/PF2 contract guidance. The actual

104 "M6 Toll road goes on the block", *Financial Times*, 10 February 2016
105 "M6 Toll: IFM Investors grasps the majority stake", *IJGlobal*, 5 April 2017
106 ibid., and "Australian pension giant IFM Investors wants to buy the M6 toll road", *City AM*, 2 April 2017
107 "Toll road sale brings home £180m for taxpayers", *The Times*, 7 May 2017
108 For information on the tunnels, see Pinset Masons for Merseytravel, *Report on Mersey Tunnels Historical Legislation Overview*, September 2015; Mott McDonald for Merseytravel, *Mersey Tunnel tolls impact study: Executive Summary*, December 2015 and the *Mersey Tunnels Act 2004*

contact between Halton Borough Council and the Consortium is commercially confidential and not in the public domain.

Initial development, land purchase, decontamination etc. was paid for by direct grant from DfT, Halton Borough Council and some (minor) third party contributions.

The Government agreed to provide a commitment to Halton Borough Council, the promoters of the scheme, to stand behind any shortfall to the level of toll revenue required to meet Halton's financial obligations and laid a departmental minute giving particulars of the contingent liability created.[109]

The funding framework is set out on the Mersey Gateway website:

> The funding arrangements between the UK Government and Halton Borough Council have been agreed on the basis that users of the Mersey Gateway and the Silver Jubilee Bridges will contribute the majority of funding through the payment of tolls.
>
> The project uses toll revenue to fund the total investment required to construct the new crossing and for its maintenance and operation over the next thirty years.
>
> Funding the project will cost £1.86bn over this time period (up to 2044). This figure is based on the figures agreed by all parties in the contracts awarded to the Merseylink consortium in March 2014 and reflects the £250m saved by Halton Borough Council and Merseylink through the innovative procurement process.
>
> When the contracts were signed, Halton Borough Council entered into a Public Private Partnership with the Merseylink consortium.
>
> To ensure the toll levels on both bridges will be in line with the Mersey Tunnels, the UK Government has provided funding in the form of annual grants which are expected to be paid to the Council each year for the first 12 years of operation. In total, this operating grant is set at £126m. (1)
>
> Also, to support the Council in the development of the scheme and for compulsory purchase of land to allow the project to proceed, the Government has provided a capital grant of £86m (called the development cost grant).
>
> **The Project Company funding responsibility**
>
> Merseylink now has the formal responsibility for the design, build, finance, operation and maintenance of the new bridge and associated road infrastructure over a thirty year period. It is also responsible for the provision of tolling equipment on both the new bridge and the existing Silver Jubilee Bridge and a journey time measurement system on the new bridge and road infrastructure.
>
> To be able to meet these costs, Merseylink has put in place a financial arrangement which consists of bank loans, a Council loan and funding through a bond investment supported by the HM Treasury's UK Guarantees Scheme. To deliver this finance, it has been necessary for Merseylink to secure equity investment.
>
> **The Council payment responsibility**

[109] DfT, *Mersey Gateway Bridge*, 10 March 2014

> The Council does not pay Merseylink for any of the costs explained above (such as construction cost) but instead it is required to pay Merseylink an annual fee based on the new crossings being available to users.
>
> The fee, called the unitary charge, is linked to Merseylink's performance against the service requirements as set out in the contract. For example, Merseylink is required to operate the new crossing so that the average speed of users does not drop below an agreed level. If the average speed does drop below this minimum then the unitary charge could be reduced.
>
> The unitary charge only becomes due when the new crossing opens and Merseylink has demonstrated that tolling systems are operating satisfactorily. The Council will pay this charge up until 2044, when the project is handed back (to the Council) in a good condition and with all the private finance repaid.[110]

The legislation which provides for tolls is the *Mersey Gateway Bridge and the A533 (Silver Jubilee Bridge) Roads User Charging Scheme Order 2017*, made under the *Transport Act 2000*. It came into force on 1 July 2017. However, this does not provide for the Halton residents' discount or exceptional hardship schemes. There was a separate Order providing for the construction of the bridge, the *River Mersey (Mersey Gateway Bridge) Order 2011* (SI 2011/41), which refers to discounts or waivers.[111] Annual income from tolls will vary but the most recent estimate produced for the Mersey Gateway Crossings Board shows an annual average income over the operational period of the project [i.e. to 2044] of £38,361,000.[112]

During development phase, the Mersey Gateways project was subject to a number of consultations. During the planning process there was then a public inquiry. This took place in 2009. The case for the promoter, set out in the Inspector's report following the inquiry, explained that tolls were key to the delivery of the project:

> 5.5.1 Financial constraints are such that the Government has stated that the proposed bridge could proceed only if tolled. Tolling of the proposed bridge and the Silver Jubilee Bridge would not only secure the funding of the Project, but would also have very significant transportation and environmental benefits in managing traffic demand. Furthermore, it would also provide funds for, and secure improvements to, public transport […]
>
> 5.5.12 There could be no Project without tolls, so the choice is between the Project, with all its advantages but with tolls and an un-tolled Silver Jubilee Bridge, free but increasingly unavailable through congestion, devoid of reliable public transport, in an area of continuing and unrelieved deprivation, with the problems enduring and exacerbated. Without tolls on the SJB, traffic would not be encouraged to transfer to the proposed bridge and whilst local residents would prefer that no tolls should be imposed, they would prefer limited tolls to maintenance of the status quo.[113]

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[110] Mersey Gateway, *Funding of the Mersey Gateway Project* [accessed 29 November 2017]

[111] Article 41(12)

[112] River Mersey: Bridges: Written question – 3506, 14 July 2017

[113] *The Mersey Gateway Project: Report to the Secretary of State for Transport and the Secretary of State for Communities and Local Government*, 13 January 2010; there

The then Transport Minister, Paul Clark, also told the House in October 2008 that as this is the sort of scheme that would normally have been regionally funded, there simply was not enough money in the North West Regional Funding Allocation[114] to allow the scheme to proceed. He said: "Given the cost of the Mersey Gateway bridge in relation to the North West's regional funding allocation, it is not realistic to expect that it could be funded without income from tolls".[115]

The case for tolling for the Mersey Gateway was not simply related to financial viability. In evidence to the public inquiry that preceded construction of the new bridge, Halton Borough Council said that their tolling approach was designed to ensure that:

1. The impacts of tolling on the road network are acceptable
2. The scheme is financially viable
3. The scheme is environmentally acceptable
4. The scheme meets the Project Objectives[116]

These 'project objectives', also set out in the public inquiry, were:

- To relieve the congested Silver Jubilee Bridge, thereby removing the constraint on local and regional development and better provide for local transport needs;
- To apply minimum toll and road user charges to both the Mersey Gateway Bridge and the Silver Jubilee Bridge consistent with the level required to satisfy the affordability constraints;
- To improve accessibility in order to maximise local development and regional economic growth opportunities;
- To improve local air quality and enhance the general urban environment;
- To improve public transport links across the River Mersey;
- To encourage the increased use of cycling and walking; and
- To restore effective network resilience for road transport across the River Mersey.[117]

The Government has made it clear that the administration and imposition of tolls and penalty charge notices on the bridges are a matter for Halton Borough Council, and that "the powers under which the Mersey Gateway tolling regime was established gives no locus to the Government or HM Treasury to intervene".[118]

is a lot more in this vein in section 8 of the report, including more detail from Halton Borough Council on the PFI arrangements

[114] Local transport financing has been reformed several times since then so these terms are no longer relevant

[115] HC Deb 28 October 2008, c840W

[116] *The Mersey Gateway Project (Mersey Gateway Bridge) Project Sponsor Proof of Evidence of Steve Nicholson* [HBC/2/1P], section 9.4

[117] *The Mersey Gateway Project (Mersey Gateway Bridge) Corporate Proof of Evidence of David Parr* [HBC/1/1P], section 5.3

[118] Mersey Gateway Bridge: Tolls: Written question – 112456, 15 November 2017

4.5 Severn Crossings

Charging at the Severn Crossings is the responsibility of a private concessionaire, the Severn River Crossing plc (SRC).

Now that the concession's end is drawing close politicians have the first opportunity in a generation to change the tolling regime.

There have been extensive reports and consultations on the future of the toll. Both the Conservatives and Labour committed to abolishing the tolls during the 2017 election campaign. The Government has confirmed that it will abolish the tolls to all vehicles at the end of 2018.

The first Severn Bridge opened in September 1966. The Secretary of State was empowered to levy tolls for the use of the bridge under the *Severn Bridge Tolls Act 1965*. In 1986 the Conservative Government announced it would build a second crossing and in 1988 that the private sector would be invited to build it. The costs were to be recovered through tolls. The 1965 Act allowed the Secretary of State to levy tolls on a scale sufficient to cover its costs for 40 years. The bridge opened in September 1966 and Parliament authorised increases in tolls in 1979 and 1985.

The 1965 Act was repealed by the *Severn Bridges Act 1992*. This gave the Secretary of State power to procure from private funds the construction of a second tolled bridge three miles downstream. It also provided for a new tolling regime to apply both at the existing crossing and, once opened, the new crossing. On 26 April 1992 a private concessionaire, the Severn River Crossing plc (SRC), took over responsibility for the operation and maintenance of the existing crossing and the design, construction and, when built, the operation and maintenance of the second crossing. The new tolling regime which involved one-way tolling in the westbound direction started the same day.

The tolling regime on the M4 Severn crossings has remained pretty much the same since the 1992 Act enabled the Government to award a concession to SRC.[119] Under the terms of the concession agreement SRC took on existing outstanding debt of £122 million in 1992 prices and construction costs of £330 million (excluding VAT).[120] In return SRC is authorised to collect tolls from both Crossings to meet its financial obligations.

[119] administrative details are set out in the *Severn Bridges Regulations 1996* (SI 1996/1316) and the current tolls are set out in the *Severn Bridges Tolls Order 2012* (SI 2012/3136)

[120] in an October 2015 letter to the chairman of the Welsh Affairs Select Committee, David T C Davies, the Transport Minister said that SRC had paid HMRC £154.2 million in VAT between 2010 and 2014

The concession agreement is valid until SRC has generated a defined amount of revenue or for a maximum of 30 years (whichever comes sooner). The defined amount of revenue is currently set at £1.029 billion in July 1989 prices, and this figure is expected to be reached in late 2017 or early 2018, at which time the ownership of the bridges will return to the UK Government.

In 2016 National Assembly for Wales voted for the Severn tolls to be abolished entirely but the Welsh Government does not have the power to deliver this because the crossings are not devolved.[121] In January 2017 the UK Government began a consultation on the tolls' future, including price reductions of at least 50% for all users.[122] Other options under consideration included a free-flow electronic charging system (like at Dartford). Charges could be levied in both directions (currently the charges only apply to westbound traffic) and they could be removed altogether at night.

The payment currently required to use the Crossings is a toll which increases annually in line with inflation. The UK Government proposed to replace this by introducing a Charging Order under section 167 of the *Transport Act 2000* which would "change the legal status of the payment…from a toll to a road user charge". It suggested that this change of status would enable it to "reduce the amount users pay more easily." According to the Welsh Assembly Research Service Assembly Members expressed concerns over proposals for road user charging and its legal basis. The Cabinet Secretary for Economy and Infrastructure, Ken States, stated in a debate on 17 January that it was a "very complicated and complex area of legal work" and that the Welsh Government supported abolition of the toll on an economic basis alone.

Both the Conservative and Labour parties went into the 2017 election with promises to abolish the Severn Crossings tolls.[123] The Government confirmed in July 2017 that it will abolish the tolls to all vehicles at the end of 2018.[124]

Further information on the debates about reforming or abolishing the tolls can be found in the National Assembly for Wales Research Service's excellent blog post *Proposed toll reductions for the Severn Crossings*, 20 January 2017.

Extensive background information can be found in multi-year work by the Welsh Affairs Select Committee, particularly its detailed 2010 report; oral and written follow up work in 2013-14 and an oral evidence session in July 2016.

121 "Severn tolls: All assembly parties back scrapping fees", *BBC News*, 16 November 2016
122 DfT, *Severn crossings: proposed toll reductions*, 13 January 2017
123 "Severn tolls: Conservative election pledge to scrap charges", *BBC News*, 16 May 2017, and Labour Party, *For the many not the few: Labour Party manifesto 2017*, May 2017, p92
124 DfT press notice, "Drivers to benefit from free Severn crossings from 2018", 21 July 2017

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