

THE TOLL ROADS ACT, 2002

(Act 7 of 2002)

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SCHEDULE.

JAMAICA

No. 7—2002

I assent,

[L.S.]

H. F. COOKE,
Governor-General

1st day of March, 2002

AN ACT to provide for the designation of specified roads as toll roads, the establishment of the Toll Authority, the operation and maintenance of toll roads, the collection and retention of toll; and for connected matters.

[*November 21, 2001*]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I. *Preliminary*

1. This Act may be cited as the Toll Roads Act, 2002 and shall be deemed to have come into operation on the 21st day of November, 2001.

Short title and
commence-
ment.

Interpretation. 2. In this Act, unless the context otherwise requires—

"authority" means the Toll Authority established under section 4;

"concessionaire" includes—

- (a) a person authorized by the Minister to manage a toll road under a concession agreement pursuant to section 8(1)(b);
- (b) in relation to a person mentioned in paragraph (a), a successor, a delegate or an assignee under section 12, a transferee and an associate, to whom with the approval of the Minister, any rights have been transferred or authorized to be transferred pursuant to a toll order, concession agreement or any amendment thereto;

"Director" means the Chief Executive Officer of the National Works Agency;

"emergency services" means the Security Forces, ambulances, the Jamaica Fire Brigade and such other services as the Minister may by order designate;

"inspector" means a person designated as an inspector under section 24;

"public body" means a statutory body or authority or any government company;

"road" includes—

- (a) the roadway, water tables, bridges and fordings, on the line of the road;
- (b) the land on each side of the roadway and water tables up to the boundary of the road;
- (c) all traffic lanes, acceleration lanes, shoulders, median strips, overpasses, underpasses, interchanges, approaches, entrance and exit ramps, service areas, maintenance areas, signs and other structures and fixtures on a road;
- (d) any other areas on or adjacent to any public main road or parochial road, waterway, railway or other routes used for public passenger transport;

(e) subject to controlled access, any private road designated as a toll road under section 8(1)(a);

"Security Forces" means the Jamaica Constabulary Force, the Jamaica Defence Force, the Island Special Constabulary Force and the Rural Police;

"toll" includes any fee, charge, levy, due or compensation payable in relation to the use of a toll road, or any portion thereof, by vehicular or other traffic;

"toll road" means a road designated as a toll road under section 8;

"Toll Regulator" means the person, group of persons or body designated by the Minister pursuant to section 23;

3.—(1) Except as otherwise expressly provided in this Act or any other enactment, the provisions of the Road Traffic Act shall apply to a toll road. Application of other enactments.

(2) The following provisions of the Main Roads Act shall apply, with such modifications as may be necessary, in relation to toll roads—

- (a) section 8 (Boundaries and width);
- (b) section 9 (Where no boundary fence exists);
- (c) section 10 (When building deemed to be an encroachment within meaning of section 24);
- (d) section 11 (Notice of intention to erect building along or near boundary);
- (e) section 12 (Ownership of dyewoods and fruit of trees within the lines);
- (f) section 15 (Power to grant permission to construct or lay down works across, above or under road);
- (g) section 17 (Power to impound or destroy animals trespassing on road);
- (h) section 19 (Laying out new roads or altering a road);
- (i) section 21 (Powers on execution of works);

- (j) sections 23 and 24 (Encroachments);
- (k) section 27 (Lighting); and
- (l) section 28 (Power to arrest offenders on view without warrant).

(3) For the purposes of this section, references to the Director in the Main Roads Act shall be construed in relation to this Act as a reference to the concessionaire.

PART II. *Toll Authority*

Establishment and Functions

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rity. 4.—(1) There is hereby established, for the purposes of this Act, a body to be called the Toll Authority which shall be a body corporate to which section 28 of the Interpretation Act shall apply.

(2) Without prejudice to the provisions of section 5, the Minister may make regulations—

- (a) prescribing the constitution and functions of the Authority;
- (b) governing the management and operations of the Authority;
- (c) prescribing such other provisions as appear to the Minister to be consequential, supplemental or ancillary to the matters specified in paragraphs (a) and (b).

(3) Regulations made under subsection (2) shall be subject to affirmative resolution.

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hority. 5.—(1) The functions of the Authority are—

- (a) subject to section 8, to regulate the operation and maintenance of toll roads and such other facilities as may be deemed necessary on or adjacent to toll roads;
- (b) to monitor compliance of concessionaires with the terms and conditions of concession agreements;
- (c) to advise the Minister on matters of general policy relating to the design, construction, safety, regulation, operation and maintenance of toll roads in Jamaica;

- (d) to perform such other functions as may be assigned to it by the Minister or by or under this Act or any other enactment.

(2) The Minister may, after consultation with the chairman, give to the Authority such directions of a general character as to the policy to be followed by the Authority in the performance of its functions as appear to the Minister to be necessary in the public interest and the authority shall give effect thereto.

6.—(1) The funds and resources of the Authority shall consist of—

Funds and resources of Authority.

- (a) such sums as may, from time to time, be placed at the disposal of the Authority by Parliament;
- (b) all moneys earned or arising from any investment made by the Authority or from any property, mortgage, charge or debenture acquired by or vested in the Authority;
- (c) all moneys borrowed by the Authority;
- (d) all other sums and other property which may, in any manner, become payable to or vested in the Authority in respect of any matter incidental to its functions.

(2) The expenses of the Authority, including the remuneration of members and employees, shall be paid out of the funds of the Authority.

7.—(1) The Authority and every person employed by it shall—

Obligations as to secrecy.

- (a) regard and deal with as secret and confidential all information contained in a concession agreement, the disclosure of which is likely to cause financial loss to any party to the agreement;
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person referred to in subsection (1) having possession of or control over any information referred to in subsection (1), who, at any time communicates or attempts to communicate that information to any person, without the consent

in writing of the person or body which provided the information, commits an offence under this Act and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding nine months or to both such fine and imprisonment.

PART III. *Toll Orders*

Minister may
make orders.

8.—(1) The Minister may, by order—

- (a) subject to subsection (2), designate any road as a toll road for the purposes of this Act;
- (b) authorize any person, in return for undertaking such obligations as may be specified in an agreement with respect to the design, construction, maintenance, operation, improvement or financing of a toll road, to enjoy the rights conferred in the order, including the right to levy, collect and retain toll in respect of the use of the toll road; and
- (c) specify the terms and conditions under which a person referred to in paragraph (b) may assign or delegate to any other person, any of the rights or obligations specified in the agreement referred to in that paragraph.

(2) No road shall be designated as a toll road under subsection (1)(a) unless in the area in which the toll road is to be established there is an alternative route accessible to the public by vehicular or other traffic.

(3) For the purposes of this section, the Minister may by order (hereinafter referred to as a "toll order")—

- (a) specify—
 - (i) the toll road in respect of which toll may be levied, collected and retained;
 - (ii) the duration of the authorization under subsection (1)(b) (hereinafter referred to as the "concession period");
 - (iii) the classes of vehicles or other conveyance or persons for whose use the toll road is intended and from whom toll may be collected and retained;

- (iv) the maximum amounts of the tolls that shall be charged during the concession period or any part thereof and the basis of calculation of such amounts in respect of the use of a toll road by vehicles or other conveyance and other road users of each class specified;
 - (v) that a person liable to pay toll shall not use, or cause or permit, any vehicle or person of which he is in charge to use, the toll road concerned unless the toll has been paid or arrangements, to the satisfaction of the concessionaire for its payment, have been made;
 - (vi) the place where the toll is to be collected and the form and manner of such collection;
- (b) exempt the emergency services from payment of toll;
 - (c) provide for the issue, inspection and collection of tickets, tokens, vouchers, permits, receipts and other forms of authorization, electronic or otherwise, for the purposes of the use of the toll road concerned;
 - (d) make provisions for penalties for any breach of a provision of the order;
 - (e) specify such other information as the Minister thinks necessary.

(4) Before making a toll order under this section, the Minister shall—

- (a) by notice in writing require a proposed concessionaire to furnish to the Authority such documents or information as the Minister thinks fit;
- (b) by notice in a daily newspaper circulated in the Island—
 - (i) inform members of the public or interest groups of the proposed order; and
 - (ii) invite them to forward submissions in writing concerning the proposed order.

(5) A notice under subsection (4)(a) or (b) shall state the period within which the documents, information, assessment or submissions, as the case may be, shall be submitted to the Authority.

(6) A concessionaire may specify different amounts in relation to the use of a toll road by reference to such circumstances or combination of circumstances as the concessionaire may, after consultation with the Authority, consider appropriate.

Toll order to be displayed in offices of Authority.

9. A copy of every toll order made under section 8 and any map referred to therein, together with any statement explaining the purpose and effect of the order shall, within one month after it is made, be made available at the principal offices of the Authority for inspection by the public during business hours for such period, not being less than one month, as may be determined by the Authority.

Duration of concession period.

10. A toll order may provide for the concession period to end—

- (a) on a date, or at the end of a period, specified in the order; or
- (b) on a date determined by reference to—
 - (i) the achievement of a specified financial objective; or
 - (ii) the passage of a specified number of vehicles or other conveyance; or
 - (iii) such other factors or combination of factors, as may be specified in the order.

PART IV. *Concession Agreements*

Concession agreement.

11.—(1) In this Part, “concession agreement” means an agreement mentioned in section 8(1)(b).

(2) References in this Act to a concession agreement are to the agreement as varied or supplemented from time to time.

Power of concessionaire to assign or delegate.

12.—(1) A concession agreement may authorize a concessionaire to assign or delegate his rights under a toll order for a concession period, or any part thereof, subject to such terms and conditions as the concessionaire, with the prior approval of the Minister in writing, thinks fit or as may be specified in the agreement.

(2) Every delegation under subsection (1) is revocable by the concessionaire with the prior approval of the Minister in writing and the delegation of the rights shall not preclude the performance of those rights by the concessionaire.

13. A toll order may authorize the concessionaire to exercise such functions in relation to the road subject to which the concession relates (in this section referred to as “toll road functions”), as may be specified in the order.

Exercise of toll road functions by concessionaire.

14.—(1) A toll road function exercisable by the concessionaire may, with the consent of the Minister, be exercised by the Authority in accordance with the toll order—

Exercise of toll road function by Authority.

- (a) in an emergency as if it were not a toll road and for this purpose it may form part of an emergency plan;
- (b) if it appears to the Authority that—
 - (i) its exercise is necessary or expedient in the interests of road safety; or
 - (ii) the concessionaire has failed or is unable properly to discharge the function in any respect,

and the Authority shall not be liable for anything done or omitted by the concessionaire in the exercise or purported exercise of a toll road function.

(2) The Authority may recover from the concessionaire the costs incurred by it in exercising a toll road function in the circumstances mentioned in subsection (1), including an appropriate sum in respect of general staff costs and overheads and any other relevant administrative expenses of the Authority.

15.—(1) A concessionaire may, in relation to the exercise of a toll road function, enter into arrangements with a specified organization for the provision of any prescribed utility service on a toll road.

Utility contracts.

(2) Where the concessionaire fails to agree with a specified organization on any issue concerning the provision of a prescribed utility service, the Minister may, on the request of either party, intervene in the public interest and, after hearing the parties, make a determination on the issue.

(3) A determination by the Minister under subsection (2) shall be binding upon the parties.

(4) For the purposes of this section, “specified organization” and “prescribed utility service” have the meaning assigned respectively to them in section 2 of the Office of Utilities Regulation Act.

Duty to
maintain toll
road.

16. Every concessionaire shall—

- (a) maintain the toll road to which his concession relates in good repair and condition and in accordance with sound engineering and operating practices; and
- (b) comply with such design, construction, operating, maintenance and safety standards as may be prescribed by the Minister after consultation with the Authority.

Closure of toll
roads.

17.—(1) Subject to subsection (3), the concessionaire may close part of a toll road to traffic in order to do work on the toll road for such time as is necessary to do the work but in all cases the concessionaire shall keep the toll road open to traffic travelling in both directions at all times.

(2) The concessionaire—

- (a) may close a toll road on the occurrence of any incident on that road that endangers the life, health or safety of persons using the road; and
- (b) shall as soon as practicable after such closure, notify the Authority thereof.

(3) Where the concessionaire plans to close the whole or part of a toll road for more than seventy-two hours, the concessionaire shall—

- (a) give to the Authority at least thirty days written notice or written notice for such shorter period as may be agreed with the Authority; and
- (b) not commence the closure without the approval of the Authority, after consultation with the Minister.

(4) Every person who uses any part of a toll road which is closed to traffic in accordance with this section does so at his own risk and the concessionaire shall not be liable for any injury, loss or damage sustained by that person.

(5) Where a toll road or part thereof is closed, the concessionaire shall notify the public of such closure by—

- (a) placing signs in a conspicuous position on the road; and
- (b) the publication of a notice in a daily newspaper circulated in the Island.

18.—(1) A concession agreement may provide, on termination of the agreement, for the transfer to the Authority of such property, rights and liabilities of the concessionaire as may be approved by the Minister. Transfer on termination concession agreement.

(2) Where a concession agreement terminates or is terminated before the end of the toll period, then, until appropriate arrangements are made by the concessionaire and any person and approved by the Minister, the Authority—

- (a) shall take reasonable steps to secure the appointment of a new concessionaire; and
- (b) may collect and retain tolls in the same way as the concessionaire, for a period of not more than two years until a new concessionaire is appointed or an extension toll order takes effect or the toll period ends.

(3) A concession agreement may contain provision as to the circumstances in which, and extent to which, any sum received by the Authority—

- (a) in consideration for the appointment of a new concessionaire; or
- (b) by way of tolls collected by virtue of subsection (2)(b),

is to be applied for the benefit of the former concessionaire or his creditors, as the case may be.

19.—(1) With the approval of the House of Representatives signified by resolution, the Minister responsible for finance may guarantee, in such manner and on such conditions as he thinks fit, the payment of any money resulting from the performance of any term or condition of a concession agreement which relates to a toll road entered into by any public body, with the prior approval in writing of the Government of Jamaica. Guarantee of term or condition of concession agreement.

(2) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any moneys guaranteed under subsection (1), he shall direct the payment or, as the case may be, the repayment, out of the Consolidated Fund of the amount in respect of which there has been such default and any such repayment or payment shall be a charge on the Consolidated Fund.

(3) The public body concerned shall make to the Accountant-General, at such times and in such manner as the Minister responsible for finance may direct, payments of such amounts as may be so directed in or towards repayment of any sums issued in fulfilment of any guarantee under this section, and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different sums and as respects interest for different periods.

PART V. *Toll*

Failure to Pay Toll

Recovery of unpaid toll.

20. If any person fails or refuses to pay toll in accordance with this Act or any regulations made hereunder, the amount of the toll, administrative fee relating thereto and any interest thereon shall be recoverable by the concessionaire as a civil debt in a Resident Magistrate's Court notwithstanding any limitation as to the amount recoverable under the Judicature (Resident Magistrates) Act.

Liability for payment of toll.

21.—(1) Toll shall be paid to the concessionaire—

- (a) if a toll device is not attached to the vehicle, by the person in whose name the vehicle is licensed under the Road Traffic Act;
- (b) if a toll device is attached to the vehicle, by the person to whom the toll device is registered.

(2) Photographic or electronic evidence of the use of a toll road shall be proof, in the absence of evidence to the contrary, of an obligation to pay a toll.

Requirement for permission to levy toll.

22.—(1) A toll levied in respect of the use of a toll road is valid only if it is charged by the concessionaire in accordance with this Part.

(2) A person who levies any toll in contravention of subsection (1) shall not commit an offence by reason only of that contravention but any toll so charged shall not be recoverable by him and in so far as they have been paid to him, shall be recoverable from him.

Toll Regulator

23.—(1) The Minister may by order designate a person, group of persons or a public body to be the Toll Regulator. Toll Regulator.

(2) A concessionaire shall apply to the Toll Regulator for permission to levy toll.

(3) An application under subsection (2) shall—

(a) contain such particulars with respect to such matters as the Toll Regulator may specify in a notice published in the prescribed manner; and

(b) be accompanied by the prescribed fee.

(4) Any permission granted under this section in relation to any toll shall come into force on the date specified therein, and shall remain in force until it is revoked by the Toll Regulator.

(5) Before granting permission to levy any toll under this section, the Toll Regulator shall obtain the written approval of the Minister.

(6) Any permission granted under this section shall remain in force notwithstanding any change in the concessionaire.

PART VI. *Inspection*

24.—(1) The Authority may, from time to time, appoint as inspectors for the purposes of this Act, public officers or other persons who, by training and experience, are, in its opinion, qualified to be so appointed. Appointment of inspectors.

(2) The Authority shall issue each inspector with an identification card and the inspector shall, on entering any place for the purpose of carrying into effect any of the functions specified

in section 25, produce the identification card to the concessionaire or other person in charge thereof.

(3) The appointment of any person as an inspector shall be published in the *Gazette*.

Functions
of inspectors.

25. An inspector shall—

- (a) inspect toll facilities in order to ensure compliance with the provisions of this Act or any regulations made hereunder;
- (b) keep such records as may be specified by the Authority, in respect of toll facilities that are inspected;
- (c) report to the Authority at such times and in such manner as the Authority may determine; and
- (d) perform such other functions as may be prescribed or as may be authorized by the Authority for the purposes of this Act.

PART VII. Offences and Penalties

Offences and
penalties.
Schedule.

26.—(1) A person who commits an offence specified in the first column of the Schedule is liable on summary conviction to the penalty specified in relation thereto in the second column of that Schedule.

(2) The Minister may, by order subject to affirmative resolution, amend the penalties specified in the Schedule.

PART VIII. General

Returns by
concession-
aire.

27. Every concessionaire shall, in respect of each quarterly period, make to the Authority a return in such form and manner as may be prescribed.

Registers.

28.—(1) The Authority shall keep registers which shall contain such particulars as may be prescribed.

(2) Every register referred to in subsection (1) shall be open for inspection by the public at the offices of the Authority during office hours, free of charge, and the Authority shall, on payment

of the prescribed fee, cause to be made copies of any entry in the register.

29. The Authority may institute proceedings against any person for an offence against this Act and recover any penalty under this Act or any regulations made hereunder. Authority may institute proceedings.

30. All deeds, contracts, conveyances, receipts, agreements and other documents, made or given by the Authority under this Act shall be exempt from stamp duty. Exemption from stamp duties.

31. With this Act is incorporated the Land Clauses Act except sections 10, 11, 12, 13, 14, 15, 16, 84, 88, 101, 104, 105 and except where the provisions of this Act are inconsistent with the provisions of that Act. Land Clauses Act partially incorporated.

32.—(1) The Authority may, with the approval of the Minister, make regulations for giving effect to the provisions and purposes of this Act. Regulations.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

SCHEDULE

(Section 26)

Offences and Penalties

Offences	Penalties
Being liable to pay toll without reasonable excuse—	On summary conviction, a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding thirty days
(a) Neglecting, refusing or failing to pay; or	
(b) Using any counterfeit ticket or device to avoid the payment of toll or otherwise attempting to evade payment of toll	
Failing, neglecting or refusing to obey an instruction or direction of a person authorized by the concessionaire	On summary conviction, a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding thirty days
Depositing rubbish, trash, glass, weeds, garbage or any other offensive matter within the limits of a toll road	On summary conviction, a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding thirty days
Maliciously or forcibly breaking, damaging or destroying any property of a concessionaire	On summary conviction, a fine not exceeding two hundred thousand dollars or imprisonment for a term not exceeding six months
Defacing or removing any barricade, light, detour sign or notice relating to a closure of toll road to traffic	On summary conviction, a fine not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months
Using any part of a toll road which is closed to traffic	On summary conviction, a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding thirty days
Failure by owner or occupier of land from which any encroachment proceeds, or the owner of anything constituting any encroachment, after receiving due notice to remove the encroachment within the time specified in the notice	On summary conviction, a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding thirty days

SCHEDULE

Offences and Penalties

Offences	Penalties
Hindering a concessionaire or any person duly authorized by him while acting in accordance with the provisions of this Act	On summary conviction, a fine not exceeding twenty thousand dollars or imprisonment for a term not exceeding thirty days
Cutting down any tree so that it falls into a toll road, or obstructing a toll road, or diverting a river, stream or watercourse, so as to make it encroach upon or damage a toll road, and failing forthwith to remove the same	On summary conviction, a fine not exceeding ten thousand dollars or imprisonment for a term not exceeding thirty days
Taking any materials from any toll road, or from any quarry or excavation relating thereto or place of deposit made and used in connection with a toll road without the concessionaire's permission	On summary conviction, a fine not exceeding five hundred thousand dollars or imprisonment for a term not exceeding twelve months
Wilfully or negligently causes damage to any toll road, or any wall, bridge, culvert, fence, mile post, guide or direction post, road sign, drain or other structure, pertaining thereto	On summary conviction, a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding three months
Drawing any logs, stones or heavy articles, upon any toll road otherwise than upon a wheeled vehicle	On summary conviction, a fine not exceeding two hundred thousand dollars or imprisonment for a term not exceeding six months
Removing or destroying any barrier placed on a toll road by the concessionaire, or any person authorized by him, for the purpose of diverting traffic	On summary conviction, a fine not exceeding two hundred and fifty thousand dollars or imprisonment for a term not exceeding six months
Allowing any horned stock, horse, mule, ass, sheep, goat or pig, to be at large on any toll road except while being lawfully driven along the road	On summary conviction, a fine not exceeding three hundred thousand dollars or imprisonment for a term not exceeding six months
Leading or driving any horse, gelding, mare, filly, mule, or donkey, loaded	On summary conviction, a fine not exceeding three hundred thousand

SCHEDULE

Offences and Penalties

Offences —	Penalties —
or unloaded and not attached to a wheeled vehicle, along any toll road, and neglecting to have such animal under proper control by means of ropes or reins	dollars or imprisonment for a term not exceeding six months
Riding, driving or being upon any carriage, bicycle, tricycle, or other similar machine on a toll road	On summary conviction, a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding thirty days
Tethering, or allowing to be tethered, on any toll road, or so as to be able to stray on any toll road, any horned stock, horse, mule, ass, sheep, goat or pig	On summary conviction, a fine not exceeding two hundred thousand dollars or imprisonment for a term not exceeding six months
Cutting away or causing or procuring to be cut away any hillside, bank or land adjoining any toll road, whether above or below the road, whereby the stability of such road is or may be lessened or the safety of persons passing along it is or may be endangered	On summary conviction, a fine not exceeding one million dollars or imprisonment for a term not exceeding twelve months
Working or cultivating, or causing or procuring to be worked or cultivated, any part of any hillside or bank on land adjoining any toll road, whether above or below such road, within five feet of the boundary of a toll road where such hillside or bank slopes more than one foot in three	On summary conviction, a fine not exceeding two hundred thousand dollars or imprisonment for a term not exceeding six months
Planting or causing or procuring to be planted any tree within thirty feet from the centre line of a toll road	On summary conviction, a fine not exceeding thirty thousand dollars or imprisonment for a term not

Offences and Penalties

Offences

Penalties

Erecting any fence or building along or near the boundary, or within thirty feet from the centre line, of a toll road

exceeding thirty days
On summary conviction, a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding thirty days