

**Bills Committee on
Free-Flow Tolling (Miscellaneous Amendments) Bill 2021**

Government's Proposed Committee Stage Amendments

Purpose

This paper sets out the Government's proposed Committee Stage Amendments ("CSAs") (at **Annex A**) to the Free-Flow Tolling (Miscellaneous Amendments) Bill 2021 ("the Bill"), and the response to the enquiries about "date of service of documents" raised by Members at the Bills Committee ("BC") meeting on 10 May 2021.

CSAs

2. As explained at the BC meeting on 10 May 2021, the Administration proposes two CSAs to the Bill as explained below. A mark-up copy showing the CSAs against the existing provisions of the Bill is at **Annex B**.

*(a) Empowering the Commissioner for Transport ("C for T") to designate a time (rather than a date) for a tolled tunnel and the toll area of the Tsing Sha Control Area ("TSCA") to change from booth mode to boothless mode (the proposed amendments at **Annex A** (except those proposed to clauses 28 and 71) are relevant)*

3. According to the proposed section 8B(1) of the Road Tunnels (Government) Ordinance (Cap. 368), C for T may, by notice published in the Gazette, designate that a tolled tunnel is to be operated without toll booths, with effect from a date specified in the notice. It may mean that the designation will take effect at 00:00 hours of the specified date. For TSCA, the same arrangement is provided for under the proposed section 8A(1) of the Tsing Sha Control Area Ordinance (Cap. 594).

4. In order to cater for the circumstances of individual tolled tunnels and TSCA and to minimise the impact on tunnel traffic, we propose amending the proposed section 8B(1) of Cap. 368 and section 8A(1) of Cap. 594 ("the designation sections") to the effect that instead of specifying a date, C for T may

specify a particular point of time for a tolled tunnel or TSCA to change from booth-mode operation to boothless-mode operation. To minimise the possible short disruption to traffic, at this stage, it is reckoned that, depending on the traffic flow of individual tunnels, the small hours of a day with the lowest tunnel traffic (say 5:00 am on a particular date for a particular tunnel) would be so specified by C for T. We also propose consequential amendments to the proposed sections 22A and 22B under Cap. 368, as well as the proposed section 23A of Cap. 594¹ as they refer to the designation sections.

(b) Extending the grace period for toll payment from seven to 14 business days (the proposed amendments to clauses 28 and 71 at Annex A are relevant)

5. According to the proposed regulation 12AAC of the Road Tunnels (Government) Regulations (Cap. 368A) and section 4A of the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B) under the Bill, on each occasion of use of a tolled tunnel or TSCA operating in the boothless mode, the responsible person of the vehicle concerned must pay the toll either by automated payment forthwith, or within a grace period of seven business days by a payment means specified by C for T. Taking into account the views expressed by some vehicle trades after introduction of the Bill that more time is needed for the payment of tolls (particularly where rentee-drivers of commercial vehicles are involved), we see room to extend the grace period from seven business days to 14 business days by amending the two abovementioned provisions.

6. Members are invited to note the Government's proposed CSAs, which will be moved by the Secretary for Transport and Housing upon resumption of Second Reading debate of the Bill.

¹ These provide for the "netting-off" arrangement so that—

- (a) before a tolled tunnel changes to boothless mode for traffic flow in at least one direction, the remuneration and reimbursement payable to the management, operation and maintenance ("MOM") operator of the tunnel may be netted off out of moneys raised or received in respect of the use of the tunnel; and
- (b) after a tolled tunnel or TSCA changes to boothless mode for traffic flow in at least one direction, the remuneration and reimbursement payable to MOM operator and the toll service provider ("TSP") can be netted off by toll-related receipts.

Date of service of documents

7. At the BC meeting on 10 May 2021, some Members asked about how to ascertain when the surcharge notice (or other specified documents under the Bill) is served. In this connection, the proposed section 22F of Cap. 368 and section 29A of Cap. 594 provide for the service of documents concerning toll for use of tolled tunnels or TSCA operating in boothless mode. As far as delivery by post is concerned, subsection (2)(c) of each of the two proposed sections provides that, in the absence of evidence to the contrary, a specified document sent by ordinary post or registered post is taken to have been served or given and received on the second business day after the day on which it is so sent.

8. These “service of documents” provisions apply, for instance, to a surcharge notice issued by the collecting authority (i.e. the Transport Department or TSP) pursuant to the proposed regulation 12AAG of Cap. 368A and section 4E of Cap. 594B for imposing two tiers of surcharge. Specifically, the surcharge notice should state that the unpaid toll plus the initial surcharge of \$175 should be paid in full within 21 calendar days after the service of the surcharge notice; and if the sum is not paid in full by the deadline, a further surcharge of \$350 will be in force. The unpaid toll plus the initial and further surcharges should be settled within 42 days after the service of the surcharge notice.

9. Some Members suggested that the date of the postmark on the mail should be relied on in ascertaining when the surcharge notice (or other specified documents under the Bill) is served. Generally speaking, TSP shall issue and post each surcharge notice on the same date. Therefore, a surcharge notice may conveniently be taken to have been served on the second business day after the date of the notice. Indeed, when considering the provisions on “service of documents”, we have taken into account similar provisions in the Laws of Hong Kong² as well as the usual lead time between the collecting authority mailing the surcharge notice and the responsible person receiving it. We thus propose

² For example, section 8 of the Interpretation and General Clauses Ordinance (Cap. 1) and section 824 of the Companies Ordinance (Cap. 622). Specifically, section 8 of Cap. 1 provides that “[w]here any Ordinance authorizes or requires any documents to be served or any notice to be given by post or by registered post.....the service or notice shall be deemed to be effected **by properly addressing, pre-paying the postage thereon and dispatching it by post or by registered post**, as the case may be, to the last known postal address of the person to be served or given notice, and, unless the contrary is proved, **such service or notice shall be deemed to have been effected at the time at which the document or notice would be delivered in the ordinary course of post.**” (Emphasis added).

that a specified document is taken to have been served and received on the second business day after it is sent by post.

10. It should be noted as well that the proposed section 22F(2)(c) of Cap. 368 and section 29A(2)(c) of Cap. 594 are qualified by the phrase “in the absence of evidence to the contrary”. This can cater for delay caused, for example, by the special working arrangement of the Post Office during an epidemic. In other words, if a responsible person only receives a surcharge notice some time after the date of the notice, he/she may make use of the date of the postmark as evidence when raising dispute against the deadlines for paying unpaid toll plus the initial surcharge (and further surcharge, as the case may be).

Transport and Housing Bureau
Transport Department
May 2021

Free-Flow Tolling (Miscellaneous Amendments) Bill 2021

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
9	In the proposed section 8B(1), by deleting “date” and substituting “time”.
9	In the proposed section 8B(2)(b), by deleting “dates” and substituting “times”.
18(4)	In the proposed section 22A(3), by deleting “on or after a designation under section 8B(1) has taken” and substituting “at or after the time a designation under section 8B(1) takes”.
19	In the proposed section 22B(2), in the definition of <i>earliest designation day</i> — (a) by deleting “ <i>day</i> (最早指定日)” and substituting “ <i>time</i> (最早指定時間)”; (b) by deleting “day on which a designation under section 8B(1) has taken” and substituting “time at which a designation under section 8B(1) takes”.
19	In the proposed section 22B(2), in the definition of <i>toll-related receipts</i> , in paragraph (a), by deleting “on or after the earliest designation day” and substituting “at or after the earliest designation time”.
28	In the proposed regulation 12AAC(1)(b), by deleting “7” and substituting “14”.
40	In the proposed section 8A(1), by deleting “date” and substituting “time”.
40	In the proposed section 8A(2)(b), by deleting “dates” and substituting “times”.

- 46 In the proposed section 23A(2), in the definition of *earliest designation day*—
- (a) by deleting “*day* (最早指定日)” and substituting “*time* (最早指定時間)”;
 - (b) by deleting “day on which a designation under section 8A(1) has taken” and substituting “time at which a designation under section 8A(1) takes”.
- 46 In the proposed section 23A(2), in the definition of *toll-related receipts*, in paragraph (a), by deleting “on or after the earliest designation day” and substituting “at or after the earliest designation time”.
- 71 In the proposed section 4A(1)(b), by deleting “7” and substituting “14”.

**Mark-up of Committee Stage Amendments
against Existing Provisions of the Bill**

**Amendments to Clause 9, i.e. proposed section 8B of the Road Tunnels
(Government) Ordinance (Cap. 368)**

9. Part 3 heading, section 8B and Part 4 heading added

Before section 9—

Add

“Part 3

Booth Mode and Boothless Mode Tunnels

8B. Designation of boothless mode tunnel

- (1) The Authority may, by notice published in the Gazette, designate that a tolled tunnel is to be operated without toll booths, with effect from a ~~time date~~-specified in the notice.
- (2) For the purposes of subsection (1), the Authority—
 - (a) may make different designations in respect of a tolled tunnel for traffic flow in different directions; and
 - (b) may specify that the designation under a notice takes effect from different ~~times dates~~ in respect of a tolled tunnel for traffic flow in different directions.
- (3) A designation under subsection (1) does not prevent tolls from being collected, in the case of emergency or in special circumstances, by any means approved by the Authority.
- (4) A notice published under subsection (1) is not subsidiary legislation.

Amendments to Clause 18(4), i.e. proposed section 22A of Cap. 368

18. Section 22A amended (remunerations, etc., under management agreements)

- (1) Section 22A, heading—

Repeal

“Remunerations, etc., under management agreements”

Substitute

“If no section 8B(1) designation for tolled tunnel, moneys received may be retained for remuneration”.

- (2) Section 22A(1)—

Repeal

“an agreement entered into by an operator with the Government for the management of a tunnel to which this Ordinance applies”

Substitute

“a management agreement entered into by an operator in relation to a booth mode tunnel”.

- (3) Section 22A(2)—

Repeal

“an agreement” (wherever appearing)

Substitute

“a management agreement”.

- (4) After section 22A(2)—

Add

- “(3) This section does not apply to any moneys raised or received in respect of the use of a tolled tunnel at or after the time a designation under section 8B(1) takes on or after a designation under section 8B(1) has taken effect in respect of the tunnel for traffic flow in at least one direction.”.

Amendments to Clause 19, i.e. proposed section 22B of Cap. 368

19. Sections 22B to 22F added

After section 22A—

Add

“22B. If section 8B(1) designation effective for tolled tunnel, moneys received may be paid as remuneration

- (1) If the terms of a specified agreement have been approved by the Financial Secretary for the purposes of this section, a part or percentage of the toll-related receipts constituting the sum payable to the contractor under the specified agreement—
- (a) does not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2); and
 - (b) may be paid by the Authority to the contractor in accordance with the specified agreement.

- (2) In this section—

Cap. 594 (《第 594 章》) means the Tsing Sha Control Area Ordinance (Cap. 594);

contractor (承辦商) means—

- (a) in relation to a specified agreement that is a management agreement—the operator concerned; or
- (b) in relation to a specified agreement that is a toll service agreement—the toll service provider concerned;

earliest designation time (最早指定時間)~~day~~ (最早指定日), in relation to a tolled tunnel, means the earliest time at which a designation under section 8B(1) takes ~~day on which a designation under section 8B(1)~~

~~has taken~~ effect in respect of the tunnel for traffic flow in at least one direction;

specified agreement (指明協議) means any of the following agreements that applies to any specified Government infrastructure—

- (a) a management agreement;
- (b) a toll service agreement;

specified Government infrastructure (指明政府基建) means—

- (a) a tolled tunnel in respect of which a designation under section 8B(1) has taken effect for traffic flow in at least one direction;
- (b) a tunnel for the use of which no toll is payable; or
- (c) the Tsing Sha Control Area in respect of which a designation under section 8A(1) of Cap. 594 has taken effect for traffic flow in at least one direction;

toll-related receipts (隧道費相關收入), in relation to a specified agreement, means all moneys raised or received for the purposes of the Government, whether directly paid to the Government or otherwise, as any of the following—

- (a) a toll received for the use, of a tolled tunnel to which the specified agreement applies, ~~on or after the earliest designation day~~ at or after the earliest designation time for the tunnel (whether or not the use is in a direction of traffic flow for which a designation under section 8B(1) has effect);
- (b) an additional charge paid in respect of a failure to pay a toll referred to in paragraph (a) or an additional charge;

Tsing Sha Control Area (青沙管制區) means the Control Area as defined by section 2(1) of Cap. 594.

- (3) The reference in subsection (1) to the sum payable to the contractor under the specified agreement means the aggregate of any remuneration of, or reimbursement to, the contractor payable under the specified agreement in respect of any specified Government infrastructure to which the specified agreement applies.
- (4) Any remuneration or reimbursement taken into account for the purposes of section 22A must not be taken into account for the purposes of subsection (3).

Amendment to Clause 28, i.e. proposed regulation 12AAC of the Road Tunnels (Government) Regulations (Cap. 368A)

Division 3—Provisions Applicable to Boothless Mode Tunnel

Subdivision 1—Toll Payment Requirements and Surcharges

12AAC. Responsible person liable for toll

- (1) On each occasion of use of a tunnel by a vehicle, the responsible person of the vehicle is liable for a toll payable for the use, which toll must be paid in full—

- (a) by automated payment made in accordance with arrangements made with a collecting authority; or
 - (b) by a means of payment specified under paragraph (3) within 147 business days after the vehicle enters the tunnel on the occasion of use.
- (2) Despite paragraph (1), the Authority may, in the event of an emergency or in special circumstances, give approval for any toll payable in respect of a vehicle for the use of a tunnel on any occasion to be paid by any means of payment and within any period, and the responsible person must pay, or cause to be paid, the toll accordingly.
- (3) For the purposes of paragraph (1)(b), the Authority—
- (a) may, by notice published in the gazette, specify a means of payment for tolls payable for the use of a tunnel; and
 - (b) may, for the purposes of subparagraph (a), specify different means of payment for different cases or different classes of cases.
- (4) A notice published under paragraph (3)(a) is not subsidiary legislation.

Amendments to Clause 40, i.e. proposed section 8A of the Tsing Sha Control Area Ordinance (Cap. 594)

40. Part 2A added

After Part 2—

Add

“Part 2A

Modes of Operation

8A. Designation of boothless mode operation

- (1) The Commissioner may, by notice published in the Gazette, designate that the toll area is to be operated without toll booths, with effect from a time date-specified in the notice.
- (2) For the purposes of subsection (1), the Commissioner—
 - (a) may make different designations in respect of the toll area for traffic flow in different directions; and
 - (b) may specify that the designation under a notice takes effect from different times dates-in respect of the toll area for traffic flow in different directions.
- (3) A designation under subsection (1) does not prevent tolls from being collected, in the case of emergency or in special circumstances, by any means approved by the Commissioner.
- (4) A notice published under subsection (1) is not subsidiary legislation.”.

Amendments to Clause 46, i.e. proposed section 23A of Cap. 594

46. Section 23A added

Part 4, after section 23—

Add

“23A. If section 8A(1) designation effective for toll area, moneys received may be paid as remuneration

(1) If the terms of a specified agreement have been approved by the Financial Secretary for the purposes of this section, a part or percentage of the toll-related receipts constituting the sum payable to the contractor under the specified agreement—

- (a) does not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2); and
- (b) may be paid by the Commissioner to the contractor in accordance with the specified agreement.

(2) In this section—

Cap. 368 (《第 368 章》) means the Road Tunnels (Government) Ordinance (Cap. 368);

Cap. 368 tolled tunnel (《第 368 章》收費隧道) means a tolled tunnel as defined by section 2(1) of Cap. 368;

Cap. 368 tunnel (《第 368 章》隧道) means a tunnel as defined by section 2(1) of Cap. 368;

contractor (承辦商) means—

- (a) in relation to a specified agreement that is a management agreement—the operator concerned; or
- (b) in relation to a specified agreement that is a toll service agreement—the toll service provider concerned;

earliest designation time (最早指定時間) ~~**day** (最早指定日)~~ means the earliest time at which a designation under section 8A(1) takes effect ~~day on which a designation under section 8A(1) has taken effect~~ in respect of the toll area for traffic flow in at least one direction;

specified agreement (指明協議) means any of the following agreements that applies to any specified Government infrastructure—

- (a) a management agreement;
- (b) a toll service agreement;

specified Government infrastructure (指明政府基建) means—

- (a) the Control Area if a designation under section 8A(1) has taken effect in respect of the toll area for traffic flow in at least one direction;
- (b) a Cap. 368 tolled tunnel in respect of which a designation under section 8B(1) of Cap. 368 has taken effect for traffic flow in at least one direction; or

- (c) a Cap. 368 tunnel for the use of which no toll is payable under Cap. 368;

toll-related receipts (使用費相關收入), in relation to a specified agreement, means all moneys raised or received for the purposes of the Government, whether directly paid to the Government or otherwise, as any of the following—

- (a) a toll received for the use of the toll area at or after the earliest designation time ~~on or after the earliest designation day~~ for the toll area (whether or not the use is in a direction of traffic flow for which a designation under section 8A(1) has effect);
 - (b) an additional charge paid in respect of a failure to pay a toll referred to in paragraph (a) or an additional charge.
- (3) The reference in subsection (1) to the sum payable to the contractor under the specified agreement means the aggregate of any remuneration of, or reimbursement to, the contractor payable under the specified agreement in respect of any specified Government infrastructure to which the specified agreement applies.”.

Amendment to Clause 71, i.e. proposed section 4A of the Tsing Sha Control Area (Tolls, Fees and Charges) Regulation (Cap. 594B)

71. Part 2, Division 3 added

After section 4—

Add

“Division 3—Provisions Applicable to Boothless Mode Operation

Subdivision 1—Toll Payment Requirements and Surcharges

4A. Responsible person liable for toll

- (1) On each occasion of use of the toll area by a vehicle, the responsible person of the vehicle is liable for a toll payable for the use, which toll must be paid in full—
 - (a) by automated payment made in accordance with arrangements made with a collecting authority; or
 - (b) by a means of payment specified under subsection (3) within 147 business days after the vehicle enters the toll area on the occasion of use.
- (2) Despite subsection (1), the Commissioner may, in the event of an emergency or in special circumstances, give approval for any toll payable in respect of a vehicle for the use of the toll area on any occasion to be paid by any means of payment and within any period, and the responsible person must pay, or cause to be paid, the toll accordingly.

- (3) For the purposes of subsection (1)(b), the Commissioner—
 - (a) may, by notice published in the gazette, specify a means of payment for tolls payable for the use of the toll area; and
 - (b) may, for the purposes of paragraph (a), specify different means of payment for different cases or different classes of cases.
- (4) A notice published under subsection (3)(a) is not subsidiary legislation.
