

**Legal note on the requirement for the ferry company accounts to be scrutinised on an annual basis by the SoS for Transport and does the SoS has the right to reduce the tolls if he so wished**

1. The Inspector made the following request of the applicants:

*In the evidence given yesterday, Mr Kean made reference was made to a requirement for the ferry company accounts to be scrutinised on an annual basis by the SoS for Transport and that if anything untoward or not done that was undertaken to be done, SoS has the right to reduce the tolls if he so wished. The Inspector asks as to where the requirement for the accounts to be provided to the DfT can be found and where she can find reference to the powers of the DfT in relation to alterations to the tolls as suggested by Mr Kean.*

2. The accounts must be provided, annually, to the Secretary of State to whom the undertaking has been given s35 1923 Ac: [Supplementary bundle/13]. The section having been amended by schedule Part 1 1986 Act: to delete the words from “shall keep” to the words “Transport and” [Supplementary bundle/100]. As amended the section now reads ‘*The Company [shall furnish to the Minister a copy of their annual accounts within a period of two months after the date to which the same are made up or such longer period as the Minister may allow]*’
3. The Transport Charges etc Act 1954 [Supplementary bundle/60] provides that the Secretary of State “*An application may be made to the Minister at any time (a) by the undertakers; or (b) by any person or any body representatives of persons, appearing to the Minister to have a substantial interest*”s6(2)(b)(i) [Supplementary bundle/61]. As such it would follow that any person having a substantial interest could in future make an application to vary the tolls; it is not only the Ferry Company that is so entitled. However, it does not seem to follow from the provisions that the Secretary of State could make an application of his own initiative (there may be some room for legal debate on this, but it is not obvious from the face of the legislation).

4. However, the applicant company has offered the provision of a formal written undertaking to the Secretary of State for Transport to maintain the Applicant's net assets at a certain level and proposed to be not less than £15million [1/p67] and that it refers to the Applicant was confirmed by Mr Kean in evidence.
  
5. Compliance with the undertaking will rest not just with Fairacres Group Limited but also with its individual directors both at the time the undertaking was given, as well as future directors appointed (and whilst the undertaking was still in force). As set out in the detailed note on trusts and escrows (etc), in addition to the penalties for specific breaches of the undertaking any breach of the undertaking would be prima facia evidence for a finding of unfitness in an application to disqualify a director pursuant to the Company Directors Disqualification Act 1986.

**Paul Reynolds**

**1, Crown Office Row**

**Temple**

**London**

**Capstick Dale and Partners**

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