

FORTH ROAD BRIDGE BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Forth Road Bridge Bill introduced in the Scottish Parliament on 11 December 2012:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 20–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND TO THE BILL

3. This Bill paves the way for the Scottish Government to contract a single bridge operating company to carry out the management and maintenance of –
 - the Forth Road Bridge (FRB),
 - the new Forth Crossing, and
 - the connecting roads from the M90 Junction 3 Halbeath in the north through to the M9 Junction 1a in the south.
4. In order to contract out the functions of managing and maintaining the FRB, the Scottish Government must take those functions from the Forth Estuary Transport Authority (FETA) (the statutory body which presently fulfils the functions). Accordingly, the Bill –
 - makes the road over the FRB a trunk road (which means, like all trunk roads in Scotland, it comes under the Scottish Government's management),
 - transfers all of FETA's property and liabilities to the Scottish Government, and
 - dissolves FETA.
5. Rather than transfer FETA's employees to the Scottish Government, only for them to be transferred to the contracted bridge operating company, the Bill transfers FETA's employees directly into the employment of the bridge operating company and ensures the Transfer of Undertakings (Protection of Employment) Regulations 2006¹ (the TUPE regulations) apply to the transfer.

COMMENTARY ON SECTIONS

Section 1 and the schedule - Trunk roads

6. Section 1 provides for the length of road described in the schedule (which includes the road over the FRB) to become a trunk road. Presently that length of road is managed and

¹ http://www.legislation.gov.uk/uksi/2006/246/pdfs/uksi_20060246_en.pdf

maintained by FETA. As a trunk road it will fall under the management and maintenance of the Scottish Government in its capacity as the roads authority in terms of the Roads (Scotland) Act 1984² (the 1984 Act). The length of road in question is illustrated in Plan FRBB.01 which is available to view on the [Forth Road Bridge Bill page of the Scottish Parliament Website](#)³.

7. Subsection (2) prevents property and liabilities transferring to the Scottish Government on account of the road becoming a trunk road. Certain enactments (specifically sections 80 and 112 of the 1984 Act) provide that when a road becomes a trunk road certain property and liabilities transfer automatically to the roads authority (in this case the Scottish Government). As section 2 of the Bill will transfer all of FETA's property and liabilities to the Scottish Government it is unnecessary to have any property or liabilities transfer under the 1984 Act and having more than one enactment bearing to transfer the same property and liabilities could potentially confuse the legal basis of transfer. Section 1(2) therefore ensures that section 2 will be the sole basis for the Scottish Government inheriting all of FETA's property and liabilities.

Section 2 – Transfer of property, liabilities etc. to Scottish Ministers

8. Section 2 of the Bill provides that all of FETA's property including the bridge itself, the site office, plant and equipment will be transferred into ownership of the Scottish Government. FETA's liabilities, including past service pension contributions, will also be transferred to the Scottish Government.

9. When FETA was established in 2002, it inherited the property and liabilities of its predecessor, the Forth Road Bridge Joint Board (the Joint Board). As an effect of that transfer, anything done by, on behalf of or in relation to the Joint Board was treated as having been done by, on behalf of or in relation to FETA and references to FETA were substituted in place of references to the Joint Board in contracts and other legal documents. Subsections (2) and (3) make similar provision to ensure that the Scottish Government inherit all of FETA's property and liabilities. The effect of those subsections is extended by section 6(2)(a) so that any residual rights, property and liabilities of the Joint Board also transfer to the Scottish Government.

Section 3 – Transfer of staff

10. Section 3 provides that the employees of FETA will be transferred from the employment of FETA to the bridge operating company appointed by the Scottish Government to carry out the functions of managing and maintaining the FRB. The Bill provides that the TUPE Regulations apply to this transfer.

11. The TUPE regulations contain specific details about the effect of a transfer. Generally, the effect of the regulations is to preserve the continuity of employment and terms and conditions of employees when a relevant transfer takes place. This means that employees employed by FETA when FETA is dissolved, automatically become employees of the bridge operating company.

² http://www.legislation.gov.uk/ukpga/1984/54/pdfs/ukpga_19840054_en.pdf

³ http://www.scottish.parliament.uk/S4_Bills/Forth_Road_Bridge_Bill/ForthRoadBill_map.pdf

Section 4 – Dissolution of Forth Estuary Transport Authority

12. Once the road over the FRB has been trunked and the property and assets of FETA have been transferred to the Scottish Government, FETA will no longer have any functions or purpose. The Bill will therefore dissolve FETA.

13. FETA was established by the Forth Estuary Transport Authority Order 2002⁴ (the 2002 Order). The Forth Road Bridge Confirmation Acts contain the residual powers inherited by FETA from its predecessor the Joint Board. As the Scottish Government has the authority to undertake the functions carried out by FETA, the 2002 Order and Confirmation Acts are no longer required.

Section 5 - Byelaws

14. Section 5 makes provision in relation to byelaws made by FETA and its predecessor the Joint Board. It provides that those byelaws continue to have effect despite the revocation of the 2002 Order, which provided the legal basis for FETA making byelaws and the Joint Board's byelaws continuing in force after FETA succeeded it. The byelaws continue to have effect as they did before the 2002 Order's revocation, except that references in the byelaws to FETA or (by virtue of section 6(2)(b)) the Joint Board, are to be read as references to the Scottish Government. Where, for instance, the byelaws refer to "an officer authorised by or on behalf of the Joint Board", that will be read as a reference to an officer authorised by or on behalf of the Scottish Government.

15. As the roads authority, the Scottish Government will have powers under the Road Traffic Regulation Act 1984⁵ to make subordinate legislation in relation to traffic management. Section 5 extends the Scottish Government's powers under section 1 of the Road Traffic Regulation Act 1984 so that a traffic management order under that section can be used to revoke earlier byelaws.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Forth Road Bridge Bill introduced to the Scottish Parliament on 11 December 2012. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the Policy Memorandum and the Bill itself. The Policy Memorandum, published separately, explains in detail the policy intentions of the Bill.

⁴ http://www.legislation.gov.uk/ssi/2002/178/pdfs/ssi_20020178_en.pdf

⁵ <http://www.legislation.gov.uk/ukpga/1984/27/contents>

2. The Forth Road Bridge Bill paves the way for the Scottish Government to contract a single bridge operating company to carry out the management and maintenance of –

- the Forth Road Bridge (FRB),
- the new Forth Crossing, and
- the connecting roads from the M90 Junction 3 Halbeath in the north through to the M9 Junction 1a in the south.

3. In order to contract out the functions of managing and maintaining the FRB, the Scottish Government must take those functions from the Forth Estuary Transport Authority (FETA) (the statutory body which presently fulfils the functions). Accordingly, the Bill –

- makes the road over the FRB a trunk road (which means, like all trunk roads in Scotland, it comes under the Scottish Government’s management),
- transfers all of FETA’s property and liabilities to the Scottish Government’s management, and
- dissolves FETA.

4. The skills, knowledge and professionalism of FETA employees are greatly valued by the Scottish Government. Rather than transfer FETA’s employees to the Scottish Government, only for them to be transferred to the contracted bridge operating company, the Bill transfers FETA’s employees directly into the employment of the bridge operating company and ensures the TUPE regulations applies to the transfer.

5. The Scottish Government will make it a contract requirement, and provide guarantor status, to ensure that the appointed bridge operating company gains ‘admitted body’ status to the Lothian Pension Fund to allow FETA employees to continue with their current pension scheme.

Background

Trunk road operating companies

6. The trunk road and motorway network in Scotland has a gross asset value of approximately £18 billion. It is the Scottish Government’s single biggest asset. The cost of managing and maintaining the trunk road and motorway in Scotland, including bridges, is met by the Scottish Government.

7. Transport Scotland, an agency of the Scottish Government, has contracts in place with Operating Companies⁶ who ensure the trunk roads are safe, efficient and well managed. Work is carried out by Operating Companies working under separate 5 year (with the option to extend to 7 year) contracts. These contracts employ over 1,100 staff directly and 100 more through sub-contracts.

⁶ <http://www.transportscotland.gov.uk/road/maintenance/responsibilities/operating-companies>

8. To ensure these contracts deliver value for money, Transport Scotland has in place a Performance Audit Group (PAG)⁷ who audit, monitor and report on the financial, technical and performance aspects of the Operating Companies to an agreed strategy. PAG also reviews payment requests from the Operating Companies and carries out inter-unit comparisons.

9. The new Forth Crossing scheme, with the existing bridge dedicated to public transport and the new bridge carrying general transport, raised the issue of how the bridges should be managed and maintained. The Scottish Government has taken the decision to introduce a new contract to the market that allows focus to be placed on the bridges, rather than incorporating the management and maintenance of the bridges into an existing operating company unit.

Funding the management and maintenance of the Forth Road Bridge

10. FETA raised its own income through bridge tolls until the Abolition of Bridge Tolls (Scotland) Act 2008⁸ came into force. The Scottish Government replaced the former bridge tolls income by direct grant funding for its revenue and capital maintenance works meaning that FETA is now fully funded by the Scottish Government. Transport Scotland issues this annual grant to FETA on behalf of the Scottish Government. The annual grant process is set within the terms and conditions of the grant. FETA submits a formal request which Transport Scotland initially reviews and then submits to the Scottish Government for approval. The grant is included in the Scottish Government budget for the term of a spending review period which is normally three years. Thereafter, the grant is reviewed on an annual basis.

11. The FETA Board provides strategic leadership, determines policy aims and objectives and takes executive decisions not delegated to officers. Transport Scotland does not have a seat on the FETA Board and does not formally approve its planned utilisation of annual revenue and capital budgets. FETA's audited financial statements are published on the FETA website.⁹

12. FETA's funding for the last seven years is outlined in Table 1 (extracted from FETA's audited accounts).

⁷ <http://www.performanceauditgroup.co.uk/>

⁸ http://www.legislation.gov.uk/asp/2008/1/pdfs/asp_20080001_en.pdf

⁹ <http://www.forthroadbridge.org/document-archive>

Table 1 – FETA – Previous funding

Financial Year	Grant		Grant for one-off toll abolition costs	Tolls/other	Total £000's
	Revenue	Capital			
2011/12	5,100	8,600	-	-	13,700
2010/11	5,115	8,730	-	-	13,845
2009/10	5,674	7,381	-	144	13,199
2008/09	7,070	6,895	2,956	493	17,414
2007/08	-	6,445	544	10,879	17,868
2006/07	-	22,955	-	12,714	34,769
2005/06	-	-	-	12,674	12,674

13. The Scottish Government has confirmed revenue and capital grant funding for allocations for 2012-2015. The allocations are summarised in Table 2.

Table 2 – FETA – Future funding allocations

Year	Capital - £m	Resource - £m
2012-13	4.9	5.1
2013-14	3.9	5.1
2014-15	5.0	5.1

14. Capital works to the FRB are essential and will be required to be carried out regardless of who is managing and maintaining the bridge. After the opening of the new Forth Crossing, the significantly reduced traffic volumes on the FRB will enable planned capital works, such as resurfacing of the deck or replacement of the expansion joints, to be carried out during normal working hours or without expensive temporary works being required. It is expected that this will result in cost efficiencies.

COSTS AND EFFICIENCIES ON THE SCOTTISH ADMINISTRATION AS A DIRECT RESULT OF THE BILL

15. The dissolution of FETA as a standalone action will result in minor savings to the Scottish Government from areas such as central support costs and Board Clerking fees. The Scottish Government will no longer be required to pay the annual grant to FETA; however, this process will ultimately be replaced by administering, paying and managing contract payments to the bridge operating company. The direct effects of the Bill are therefore cost neutral to the Scottish Government.

Trunking the FRB

16. The trunking of the road that carries the FRB brings a range of financial and non-financial benefits.

17. There will be some additional costs for Transport Scotland's administration and for PAG's auditing of an additional bridge operating company. These costs are estimated to be around £250,000-£300,000 per annum, but the similarity of functions to the other operating companies should allow efficiencies to be achieved.

18. This additional cost will be largely balanced out by savings to Transport Scotland of around £235,000 per annum from no longer acting as FETA's sponsoring body or financing its administration services.

Property and liabilities transferred from FETA to the Scottish Government

19. The Bill provides for the transfer of FETA's property and liabilities to the Scottish Government on a date set by commencement order.

20. The main asset, the bridge itself and supporting infrastructure, will be valued in the accounting records of the Scottish Government at a depreciated replacement cost of £220 million. This cost is estimated by specialist engineers and takes account of the planned use of the bridge as a dedicated public transport corridor. The Scottish Government will also incur non-cash depreciated costs of approximately £4 million per annum. This will be treated in line with the Scottish Government's current Accounting Policies.

21. Land and buildings, vehicles, plant and equipment will be transferred at a value of £2 million.

22. Through the process of financial management, it is assumed that FETA's intangible assets, inventories and debtors' cash and investments will be approximately £400,000. Creditors will be fully settled at the time of dissolution.

23. The major liability relates to the pension deficit. The Scottish Government is currently funding the FETA employer pension contributions for the defined benefit salary scheme and the dissolution of FETA will not materially change this liability. The deficit associated with current employee benefits at the date of dissolution and deferred and pension members' benefits will be included in the liabilities that transfer to Scottish Ministers.

24. FETA's accounts¹⁰ as at 31 March 2012 carried a long term liability of £4.6 million in respect of the defined salary pension scheme. The value of the deficit may change significantly between 2012 and 2015. The Lothian Pension Fund (LPF) will next undertake an actuarial valuation in March 2014. Furthermore, the actual cost to the Scottish Government will depend on the terms and duration of any funding agreement between the Scottish Government and the LPF.

25. With regard to future pension benefits, to enable FETA employees to continue with their current pension scheme, the successful bridge operating company will be required to submit an

¹⁰<http://www.forthroadbridge.org/sites/default/files/documents/Item%2010%20-%20Unaudited%20Financial%20Statements%20to%20310312.pdf>

application for admitted body status to the LPF. As part of the procurement process, the Scottish Government will ensure that bidders meet the admission criteria to the LPF as set out in the LPF Funding Strategy Statement¹¹. The Scottish Government will act as a guarantor for the successful bridge operating company. The bridge operating company will be liable to pay future pension contributions to the LPF in respect of the transferred employees for the duration of the operating contract.

26. FETA has estimated a current contingent liability for £600,000 for potential land compensation claims on the dual carriageway A8000. Provision for this liability will be made in the Scottish Government accounts on dissolution of FETA. In addition, FETA is currently assessing the legal position around taking legal action to recover the costs of the cable bolt replacement. FETA is also subject to a small number of Equal Pay claims although resolution is expected before dissolution.

27. When FETA is dissolved, property, assets and liabilities will be transferred to the Scottish Government. The value attached to the property, assets and liabilities will change between now and dissolution of FETA. Table 3 therefore includes best estimates of values for 2015 (the year that FETA is to be dissolved).

Table 3 – Projected value of FETA’s assets and liabilities (2015)

Property and Assets	Projected Transfer Value June 2015
The bridge and supporting infrastructure	220,000,000
Land, buildings, vehicles, plant and equipment	2,000,000
Intangible assets	40,000
Inventories	50,000
Debtors, investments and cash	300,000
Liabilities	Projected Transfer Value June 2015
Creditors	-
Pension Liability	To be confirmed (LPF is due to undertake its next triennial evaluation of pension liability in March 2014)
Usable reserves	330,000

Transfer of FETA employees

28. The financial implications of the transfer of FETA employees to the bridge operating company will be discussed in detail during the procurement process as bidders will be expected to include staffing costs in their bid.

29. FETA currently has 72 employees and it is expected that all employees will transfer to the bridge operating company. FETA currently pays around £3 million per annum on staff costs.

¹¹ http://www.lpf.org.uk/downloads/file/340/funding_strategy_statement_march_2012

Should some employees choose not to transfer to the bridge operating company, the costs associated with the transfer of FETA employees would subsequently reduce. However, the bridge operating company would be required to make up the headcount to ensure sufficient employees for the management and maintenance of both bridges.

COSTS ON LOCAL AUTHORITIES

30. There will be a small reduction in income for the City of Edinburgh Council in relation to the amounts currently paid by FETA for finance and administrative services. However, this will be offset by the freeing up resources within the City of Edinburgh Council to devote to other areas of their business.

31. There will no longer be a requirement for Councillors from the four constituent Local Authorities to form the FETA Board, saving modest costs and freeing up their time for other Council business.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

32. Costs on other bodies, individuals and businesses are not anticipated as a result of this Bill. The bridge operating contract may provide positive benefits for the local communities through increased employment opportunities and apprenticeships and for local businesses if the bridge operating company sub-contract any activities.

33. A final Business Regulatory Impact Assessment (BRIA) has been undertaken to assess the potential impact of the dissolution of FETA and the procurement of bridge operating company on Scotland's economy. The BRIA is published on the Transport Scotland website (www.transportscotland.gov.uk/strategy/Forth-Bridges).

EFFICIENCIES OF SINGLE BRIDGE OPERATING COMPANY

34. The real efficiencies, and therefore savings to the Scottish Government, will arise through the awarding of a contract through a competitive tender exercise, whereby the management and maintenance of the new Forth Crossing and FRB is undertaken by a single bridge operating company. The contract will also include connecting roads from the M90 Junction 3 Halbeath in the north through to M9 Junction 1a in the south. The geographical limits of the contract are illustrated in the Annex of the Forth Road Bridge Bill Policy Memorandum.

35. The key efficiencies from managing and maintaining the new Forth Crossing and FRB together are –

- staff's ability to work on both bridges,
- use of existing premises as a base to manage both bridges,
- use of vehicles, plant and equipment across both bridges, and
- economies of scale in the provision of administrative support and back office functions.

36. The contract will be delivered through a competitive tender in accordance with EU and UK procurement rules. Under these rules if the value of a contract is expected to exceed the specified threshold a Contract Notice must be published in the Official Journal of the European Union (OJEU).¹²

37. The larger the total contract value, the wider the field of bidders is likely to be, ensuring healthy competition in the bidding process and the resultant bid prices. It is also anticipated that the contract will be attractive to bidders due to the geographical area, the central location and the prestige of including the iconic bridge structures.

Methodology and data sources

38. A joint technical feasibility study was undertaken by Transport Scotland and FETA in 2011 to identify the options for the future management and maintenance of the new Forth Crossing and the FRB. The study considered whether one operator managing both bridges would offer benefits over a strategy where two operators are appointed to two individual contracts. The options were assessed against criteria including the ability to deliver value for money and traffic management and maintenance effectiveness. Transport Scotland's analysis concluded that one operating company managing both bridges offers a range of benefits and is more economical than two individual operators.

39. The Forth Crossing Bill Policy Memorandum projected the 'whole-life' costs associated with the management and maintenance of the new Forth Crossing.¹³

40. As part of the business case for the new Forth Crossing, the estimated costs of maintaining the new Forth Crossing and the existing FRB were assessed in 2009. To support this Bill, updated and revised organisational structures, revenue and capital plans supplied by FETA have been applied to the 2009 base cost analysis and revised estimates prepared.

41. The assessment focuses on OPEX (Operational Expenditure) costs revenue savings as these will form the basis of the bridge operating company contract. OPEX costs represent the routine operational, maintenance and administration costs for the network connections, the new Forth Crossing and the FRB, and staff costs.

42. The contract period will be time limited and will be set by the Scottish Government before the procurement process commences. For the purpose of this assessment, the Financial Memorandum assumes a time period of 10 years.

43. The analysis presented in Table 3 compares the projected OPEX costs of two individual operators compared to one operating company managing both bridges. The figures are indicative and based on the information currently available. A detailed investigation of future

¹² <http://www.ojeu.eu>

¹³ <http://archive.scottish.parliament.uk/s3/bills/33-ForthCrossing/b33s3-introd-en.pdf>

maintenance needs and anticipated costs for the new Forth Crossing and FRB will be conducted as part of the tender process in 2013.

44. The figures have been adjusted for projected inflation to the target date of the dissolution, June 2015. A margin of uncertainty of +/- 25% has been applied to these estimates.

Table 3 – Projected OPEX costs

	Option 1	Option 2
Description	FETA continues to manage and maintain the FRB and a separate bridge operating company is appointed to manage and maintain the new Forth Crossing through a competitive tender.	The new Forth Crossing and FRB are managed and maintained by the same bridge operating company, appointed through a competitive tender.
Total OPEX costs per annum £	9,103,853	7,891,049
Lower range of estimate £	6,827,890	5,918,287
Higher range of estimate £	11,379,816	9,863,811

45. As outlined above, it is estimated there is potential for approximate savings of £1.2 million per annum through the use of one contract to manage and maintain both bridges. The exact savings will be determined by the price at which the winning bridge operating company bids.

46. The projected total OPEX costs broken down into estimated staff and non-staff costs for both options is detailed in Table 4. Non-staff costs include costs for premises, transport, operational materials, supplies and services, communications, payments to the City of Edinburgh Council for administrative support and revenue costs associated with the capital plan (investigations and studies).

Table 4 – Projected total OPEX costs – staff costs and non staff costs

Scenario	Option 1	Option 2
Description	FETA continues to manage and maintain the FRB and a separate bridge operating company is appointed to manage and maintain the new Forth Crossing through a competitive tender.	The new Forth Crossing and FRB are managed and maintained by the same bridge operating company, appointed through a competitive tender.
Projected number of staff employed (FTE)	110	92
Staff costs £	5,750,000	5,043,000
Non-staff costs £	3,353,853	2,848,049
Total OPEX costs per annum £	9,103,853	7,891,049

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

On 11 December 2012, the Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon MSP) made the following statement:

“In my view, the provisions of the Forth Road Bridge Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 11 December 2012, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Forth Road Bridge Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Forth Road Bridge Bill (SP Bill 20) as introduced in the Scottish Parliament on 11 December 2012

FORTH ROAD BRIDGE BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2012.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by e-mail to: licensing@oqps.gov.uk.

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland.

ISBN 978-1-78307-015-2