FORTH ROAD BRIDGE BILL

DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders in relation to the Forth Road Bridge Bill. It describes the purpose of the subordinate legislation provision in the Bill and outlines the reasons for seeking the proposed powers. This Memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill Provisions

3. The principal objective of this Bill is to pave the way for the most cost-effective and co-ordinated approach to the management and maintenance of the new Forth Crossing and the Forth Road Bridge (FRB). The Scottish Government is of the view that contracting a single bridge operating company to carry out the management and maintenance for both the new Forth Crossing and FRB will deliver the greatest cost and operational efficiencies. Before the Scottish Government can procure a bridge operating company for these functions, the responsibility for the road over the FRB must first be transferred from, the Forth Estuary Transport Authority (FETA) to the Scottish Government. FETA will be dissolved and its property, rights and liabilities transferred to the Scottish Government.

4. Further information on the Bill is contained in the Explanatory Notes, Financial Memorandum and Policy Memorandum published separately as SP Bill 20.

Rationale for subordinate legislation

5. The Scottish Government has had regard in determining whether a provision is best managed on the face of the Bill or through subordinate legislation. It has determined that the subordinate legislation meets appropriate delivery of the Bill objectives by amending existing powers conferred under the Road Traffic Regulation Act 1984 (c.27) (“RTRA”) to include the power to revoke any byelaw made by FETA or their predecessor the Forth Road Bridge Joint Board (“Joint Board”) which remains in force.

Delegated Powers

6. The Bill contains the following delegated powers provision.

Section 5: Bye Laws - power to revoke any byelaw made by the Authority (FETA).

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by Scottish Statutory Instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>No Parliamentary procedure</td>
</tr>
</tbody>
</table>

Provision

7. Section 5 (3) of the Bill provides that the power of the Scottish Ministers to make a road traffic regulation order under section 1 of the RTRA (c. 27)\(^2\) includes the power to revoke any byelaw made by the FETA or their predecessors, the Joint Board.

Reason for taking power

8. Once FETA is dissolved and the road and bridge are transferred to the Scottish Ministers, they, as roads and traffic authority, will include the road in their list of roads that they are obliged to maintain under section 2(2) of the Roads (Scotland) Act 1984 Act (“the 1984 Act”).\(^3\)

9. It is important that all the powers and duties in the 1984 Act, and all other relevant Acts, will be available to Scottish Ministers, and will operate in relation to the FRB as they do in relation to the rest of the trunk road network.

10. Similar to their predecessors, the Joint Board, FETA has the power to make byelaws to regulate and manage the use of the bridge and road. The Joint Board has made such byelaws. The Scottish Ministers do not make byelaws, which are a form of subordinate legislation used by local authorities and other similar bodies. However, the Scottish Ministers will make relevant provision to replace some of the matters regulated by the byelaws using their existing powers to make road traffic regulation orders under section 1 of the RTRA. To ensure a smooth transition, the Bill provides for a saving of the existing byelaws at section 5(1).”

11. Once provision under section 1 of the RTRA has been made by road traffic regulation order, the byelaws do not require to remain in force. Therefore the Bill provides that the power to make a road traffic regulation order will be extended to include a power to revoke any or all of the byelaws.


\(^3\) [http://www.legislation.gov.uk/ukpga/1984/54/section/2](http://www.legislation.gov.uk/ukpga/1984/54/section/2)
Choice of procedure

12. The procedure for an order made under section 1 of the RTRA is contained in the Secretary of State’s Traffic Orders (Procedure) (Scotland) Regulations 1987 \(^4\) made under section 124 and Part III of Schedule 9 of the RTRA\(^5\). The power to make such an order is to be exerсisable by statutory Instrument.

13. These orders are not subject to negative or affirmative Parliamentary procedure and section 30 of the Interpretation and Legislative Reform (Scotland) Act 2012 (asp 10) means that orders made under the RTRA are exempt from the default provision that orders previously not subject to Parliamentary procedure be laid before Parliament as soon as practicable after the SSI has been made and before it is due to come into force.

14. Since the delegated power provision in this Bill simply extends the power already provided under the RTRA, which is exempt from Parliamentary procedure, it is not considered that this procedure would need to change as a result of the extended power to revoke the Forth Road Bridge byelaws. Once the byelaws have all been revoked this power will not require to be exercised in the future.

Section 7 – Commencement

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order made by Scottish Statutory Instrument</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Subject to the default laying requirement under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010</td>
</tr>
</tbody>
</table>

Provision

15. Subsection (2) allows Ministers to bring into force the provisions of the Bill which are not brought into force by subsection (1), by order.

Reasons for taking power

16. This will allow Ministers to time the commencement of the Bill to coincide with any necessary subordinate legislation, the procurement of the bridge operating contract, and also allow Ministers to plan commencement appropriately with stakeholders.

Choice of procedure

17. As is common with simple commencement orders these orders should only be subject to the requirement to lay the instrument as soon as possible after making as laid down in section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.\(^6\)

FORTH ROAD BRIDGE BILL

DELEGATED POWERS MEMORANDUM